



THE LEGAL DOCTRINE OF FORGERY AND FRAUD IN ROMAN CRIMINAL LAW WITH PARTICULAR EMPHASIS ON COUNTERFEITING

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ABSTRACT

This study examines the legal doctrine and historical development of forgery and fraud in Roman criminal law, with special emphasis on counterfeiting. It explores how *falsum*, initially a broad concept of deceit, gained clearer legal contours through the *Lex Cornelia de falsis* and later imperial legislation.

Using doctrinal, historical, and comparative methods, the paper analyses offences such as testamentary falsification, forgery of official documents, and monetary counterfeiting. Particular attention is given to the transformation of counterfeiting from a property-related offence in the Republic into a crime of *laesa maiestas* under the Empire, reflecting the growing centralization of monetary sovereignty and imperial authority.

The study argues that Roman criminal law treated falsification not only as a punishable act but also as a threat to public trust in legal and economic institutions. By examining classical sources, including the *Digesta*, the *Collatio Legum Mosaicarum et Romanarum*, and the writings of Ulpian and Paulus, the paper shows how Roman jurisprudence anticipated later European doctrines on state symbols, financial instruments, and deceit.

KEYWORDS Roman law; forgery; fraud; *falsum*; counterfeiting; legal history

1. Introduction

In several countries of the world, judicial practice no longer applies Roman law in any direct or formal sense. Nevertheless, in many jurisdictions Roman legal traditions continue to exert influence in various forms. This influence is particularly evident in those states whose legal systems, though grounded in the principles of Common Law – that is, uncodified customary law – retain elements derived, in whole or in part, from the Roman legal heritage. The Republic of South Africa and the Republic of San Marino exemplify this

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phenomenon: in both, the *ius commune* still plays a significant role, and neither possesses a unified Civil Code.

There is, moreover, another group of countries – such as Spain and several nations of Latin America – where Roman law remains subsidiarily applicable. In these systems, although codified civil legislation exists, courts may, in cases of legislative lacunae, rely on Roman legal principles to reach their judgments.

Finally, there are states – including Hungary – where Roman law has no formal subsidiary authority, yet judicial decisions occasionally invoke it not merely for interpretative or confirmatory purposes, but with decisive effect in the resolution of cases (Földi & Hamza, 2025).

One of the most remarkable cases of this kind was decided in 1998 by the Metropolitan Court of Budapest, acting as a court of second instance. The case concerned the theft of a car that had been loaned under a contract of *commodatum* (gratuitous use). The lender sought to hold the borrower liable for the loss, while the latter argued that he had carefully and diligently locked the vehicle and could not be blamed for its disappearance overnight. The Metropolitan Court incorporated almost verbatim into its reasoning the Roman-law-based argument presented in the statement of claim and held that the borrower was subject to custodia liability. Since theft constituted a *casus minor*, the court ruled that the borrower was responsible for the loss and therefore obliged to compensate the owner.

This decision illustrates a rare instance where a Hungarian court expressly applied Roman legal reasoning in a modern contractual dispute, invoking the classical doctrine of custodia liability derived from Roman law (Földi & Hamza, 2025).

From its earliest origins up to the Justinianic codification, Roman law did not recognize criminal law as an autonomous branch of jurisprudence. In the modern sense, therefore, a distinct category of Roman criminal law did not exist. During the formative period of the Roman legal system, the decisive distinction lay between the *ius civile* – the law applicable to Roman citizens – and other legal orders, as well as between the *ius publicum* and the *ius privatum*. The *ius publicum* comprised legal norms serving the interests of the community and regulating matters of public concern, whereas the *ius privatum* consisted of those rules established for the benefit and protection of private individuals (Pólay, 1957).

Domitius Ulpianus, one of the most eminent Roman jurists, held similar views, maintaining that Roman jurisprudence was divided into two fundamental branches. The first, *ius publicum*, regulated the operation of the state and

safeguarded the interests of the community, while the second, *ius privatum*, concerned itself primarily with individual legal relations and private interests.

Ulpian, born in Tyre (Phoenicia), rose to prominence under Emperor Septimius Severus and later served as *praefectus praetorio* during the reign of Caracalla. He subsequently became head of the imperial council during the minority of Emperor Alexander Severus, under the influence of Julia Mamaea. His strict integrity and opposition to the Praetorian Guard ultimately led to his death in A.D. 228, reportedly in the emperor's presence. Approximately one-third of the *Digest* (Pandects) of the *Corpus Iuris Civilis* consists of passages derived from Ulpian's legal writings (A Pallas nagy lexikona, n.d.).

The Roman legal system attached special importance to the prosecution of offences affecting the public interest, since such acts were regarded as threats to communal order and social stability (Dudás, 2021).

The present study, within the framework of the special part of Roman law, examines the legal aspects of forgery and fraud, with particular emphasis on the offence of counterfeiting. In addressing this topic, the analysis relies primarily on the work of János Zlinszky, *Római büntetőjog* (Roman Criminal Law), as well as on additional Hungarian and international scholarship, with the aim of providing a comprehensive overview of the Roman legal regulation of counterfeiting, its historical development, and its legal consequences (Zlinszky, 1997).

2. The Concept and Development of Forgery and Fraud in Roman Criminal Law

According to Julius Paulus, one of the most eminent Roman jurists of the late second and early third centuries, an act constituted *falsum* – that is, forgery or falsification – whenever it misrepresented reality but was nevertheless presented as true (Collatio, 8.6.1). However, Roman law did not punish every form of deceit in a general sense; only those acts that the *magistratus*, on the basis of existing legal provisions, considered punishable. The assessment of cases involving fraud or falsification was therefore subject to the discretion of the *magistratus*, who decided whether the matter should proceed to adjudication. Roman law contained no general or abstract definition of fraud; instead, the scope of punishable conduct was shaped by concrete cases brought before the courts.

The Twelve Tables prescribed penalties in four specific situations that would later fall under the categories of fraud and forgery. These included the rendering of a false judgment, perjury, the deliberate deception of a client, and – according to

Polybius – the purchase of electoral votes, although the latter’s classification as a defined offence remains disputed.

This early stage of Roman law was also characterized by the principle of *compensatio*, under which material compensation could replace private revenge. The concept is important because it demonstrates that the Twelve Tables still reflected a mixed model of legal response, combining civil reparation with punitive elements and thereby anticipating the gradual emergence of state criminal law (Czebe, 2024).

Paulus himself was a prolific author, credited with over three hundred legal treatises, including the monumental *Ad Edictum* (in eighty books) and *Ad Sabinum* (in fifty books), which became fundamental to classical Roman jurisprudence. He studied under Cervidius Scaevola, served as legal adviser to Papinianus, and later joined the imperial council under Emperor Septimius Severus. Many of his writings were incorporated into the *Digesta* of Justinian, making him one of the most frequently cited authorities in that compilation (Honoré, n.d.).

The *Collatio Legum Mosaicarum et Romanarum*, from which the cited passage originates, is a late Roman comparative compilation juxtaposing Roman and Mosaic law. Although not authored by Paulus himself, the *Collatio* preserves authentic fragments of his work and provides valuable insight into his interpretation of Roman legal doctrine. The text also held significance for late Roman Christian jurists, as it sought to harmonize Roman legal principles with biblical law (Hyamson, 1913).

The later *Lex Cornelia testamentaria nummaria*, also known as the *Lex Cornelia de falsis*, became a foundational statute in the regulation of forgery and falsification. This law remained authoritative in the Roman legal tradition for an extended period and played a decisive role in shaping the jurisprudence concerning falsification. Over time, however, its scope of application expanded significantly in judicial practice, eventually encompassing a wide range of additional offences related to deceit and counterfeiting (Zlinszky, 1997).

2.1. Testamentary Forgery under the *Lex Cornelia de falsis*

The first category of offences covered by the *Lex Cornelia de falsis* concerned acts of falsification and destruction related to wills and legal documents.

- a. Unlawful destruction of a will. The *Digesta* refers to this offence in several passages using different expressions and notes that the same penalty applies when a will is unlawfully opened during the testator’s lifetime, against his expressed will.

- b. Forgery or falsification of a will. This included signing, validating, or using a forged testament, as well as sealing, witnessing, or removing the seals of a genuine will. All such acts fell within the concept of *falsum* as defined by the *Lex Cornelia testamentaria nummaria*.
- c. The *Senatusconsultum Libonianum*. Under this special senatorial decree, anyone who inserted dispositions in a will for their own benefit or that of a relative was subject to criminal punishment. Exceptions were recognized only when the scribe (*scriba*) acted under the authority of the testator or when the testamentary disposition was personally confirmed by the testator. In other circumstances, the penalty could be remitted solely through an act of imperial clemency.
- d. Early *senatusconsulta* of the Principate. An early imperial senatorial decree extended the protective measures originally enacted for wills to other legal instruments, including the falsification or destruction of official documents and the forging of witness attestations. A more lenient penalty was, however, imposed when such falsification involved the subsequent alteration of an official record (*acta*) by a public officer, as compared to the stricter sanctions for testamentary forgery (Zlinszky, 1997).

2.2. Counterfeiting and Precious Metal Offenses (*Crimina Falsi in Nummis et Metallis*)

The phenomenon of coin counterfeiting emerged in ancient Rome as early as the fifth century B.C., coinciding with the introduction of coins bearing images on both sides. One face typically displayed the emblem of Rome, while the reverse depicted a deity such as Jupiter or Minerva. At that time, the value of money was not determined by counting individual coins but by weighing the metal content, reflecting the intrinsic value of the currency.

The earliest written record of coin counterfeiting as a distinct criminal offence dates from the praetorship of Marius Gratidianus, under whose authority legal action could be brought against offenders through a *quaestio* or penal complaint. This precedent marked the beginning of the independent legal treatment of monetary forgery in Roman criminal law, foreshadowing the later comprehensive regulation established by the *Lex Cornelia de falsis* (Angyal, 1940).

Counterfeiting of money was by no means a modern crime; it was treated with gravity already in ancient Rome. During the Republican period, it was initially classified merely as an offence against property, and counterfeiters could expect monetary fines or exile.

A decisive shift occurred in 81 B.C., when Lucius Cornelius Sulla enacted the *Lex Cornelia de falsis*, elevating counterfeiting to a serious public offence punishable even by death. In the Imperial era, legislation imposed progressively harsher sanctions on offenders.

A crucial turning point came with Emperor Constantine's edict of A.D. 326, which reclassified counterfeiting as *crimen laesae maiestatis* – high treason against the emperor and the state. The prescribed punishments were exceptionally severe, including complete confiscation of property and execution by burning alive.

Later, under Emperor Theodosius II in A.D. 438, the law was further reinforced. His decrees prohibited the melting down of coins, criminalized the possession of minting instruments, and extended liability to accomplices and accessories (Zlinszky, 1997).

In A.D. 529, Emperor Justinian further refined the legal definition of counterfeiting in his *Codex Iustinianus*. The imperial legislation expanded criminal liability to include not only those who produced counterfeit coins but also those who traded or circulated them. Moreover, the punishments were differentiated according to the nature and gravity of the offence, establishing a more precise system of sanctions.

The purpose of these measures was unequivocal: to protect imperial authority, to safeguard the stability of the economy, and to preserve public order within the empire. From a modern constitutional criminal law perspective, such an expansion of criminal liability also raises the broader question of the legitimacy of punitive power. Criminal law cannot be regarded merely as an instrument of state policy; rather, its use must be justified by the protection of fundamental legal values and by the principles of necessity and proportionality (Lévay & Czebe, 2024). The codification thus represents the culmination of a long legal evolution that began with the *Lex Cornelia de falsis* and continued through successive imperial reforms (Hermann, 2021).

In Rome, preventive measures were also introduced to combat coin counterfeiting. Specialized offices known as monetary inspection bureaus (*officia ad probandam monetam*) were established, whose primary function was to examine and verify the authenticity of coins in circulation. Their task was to determine whether a particular coin was genuine or counterfeit, thereby safeguarding the integrity of the Roman currency system and maintaining public confidence in the monetary economy (Mommson, 1899).

During the rule of Lucius Cornelius Sulla, a period of comprehensive criminal law reform took place. Among these reforms, the statute enacted in 81 B.C. provided a detailed regulation of the *delict* of *falsum*, specifically addressing the offence of coin counterfeiting.

Under this law, the following acts were declared punishable:

- the mixing of base or inferior metals into coin casts,
- the reduction of the weight or substance of minted coins,
- the imitation or reproduction of coins in circulation, and
- the intentional distribution or circulation of counterfeit money.

These provisions reflected the Roman state's growing concern with the protection of monetary integrity and public trust in the currency system.

The perpetrators of this delict were subjected to *relegatio* – a form of exile or banishment imposed as a penal sanction under Roman law (Tóth, 2020).

In the Roman Imperial period, the reverse side of coins began to bear the image of the emperor, which fundamentally changed the criminal law perception of counterfeiting. From that time onward, coin forgery was no longer treated merely as *falsum* – an act of falsification – but rather as *crimen laesae maiestatis*, an offence against the majesty of the emperor (Balogh, 1988).

From this period onward, coin counterfeiting came to be regarded as a *delictum infidelitatis* – an offence of disloyalty or treason. It was also punishable to refuse acceptance of coins bearing the emperor's image as legal tender, since such an act was interpreted as a denial of imperial authority (Angyal, 1940).

High treason was punishable by death. During the reign of Emperor Constantine, penalties for coin counterfeiting were determined according to the offender's social status. Members of the *honestiores* class were punished by exile, while *plebeians* (*humiliores*) faced deportation and confiscation of property. Slaves (*servi*) convicted of the same offence were sentenced to death.

An acquittal could only be granted in cases of *voluntaria regressio*, which was considered a form of repentance acknowledged by imperial clemency (Rein, 1944).

The severity of the regulations continued to increase in the later Imperial period. The *Codex Theodosianus* also prescribed the death penalty for coin counterfeiting, while Emperor Justinian went even further by excluding the possibility of imperial pardon or public clemency for the offenders (Zlinszky, 1997).

The principal offences relating to coin counterfeiting and precious metals under Roman law included the following:

- the adulteration of gold bars by mixing them with other metals,
- the mutilation or reduction of coins,

- the counterfeiting of money, which also encompassed imitation by private individuals even when the counterfeit coins were of the same precious metal content and value as official currency,
- the deliberate use or circulation of counterfeit coins,
- the conscious refusal to accept genuine state-issued currency, and
- the withdrawal of small denominations (*nummus minutus*) from circulation (Zlinszky, 1997).

From the reign of Emperor Constantine onward, these offences – and coin counterfeiting in general – were frequently classified under *crimen laesae maiestatis* and were subject to aggravated capital punishment. Several passages of the *Codex Theodosianus* bear witness to this development. Even Emperor Justinian explicitly excluded counterfeiters from eligibility for imperial pardon (Zlinszky, 1997).

The punishment for coin counterfeiting varied considerably over time, depending on the historical period and the perceived gravity of the offence. Among the mildest sanctions were monetary fines and exile. In more severe cases, counterfeiters were sentenced to forced labour, often being sent to work in mines.

The offender's social status also played a decisive role in the determination of punishment. While free citizens typically faced severe but not necessarily capital penalties, slaves convicted of counterfeiting could be subjected to the ultimate punishment – crucifixion (Gruska, 2021).

Beginning with the reign of Emperor Constantine, coin counterfeiting was treated as a crime of high treason punishable by the most severe sanctions, including execution by burning alive.

These draconian penalties were justified on several grounds.

First, they served to protect imperial authority, since the right of minting coins belonged exclusively to the emperor, and any infringement of this prerogative undermined the dignity and legitimacy of the state. Second, the aim was to preserve economic stability, as the circulation of counterfeit money could destabilize the monetary system and disrupt commercial exchange.

Finally, strict repression was also deemed necessary for the maintenance of public order, as counterfeiting generated social tension and eroded public trust in the currency.

2.3. Judicial and Advocacy Offenses

According to Roman criminal law, several offences were associated with the administration of justice and legal representation:

- the deliberate rendering of an unlawful judgment (*iniusta sententia consulto lata*),
- the active or passive bribery of judges in exchange for the delivery or omission of a judgment,
- under the *Edictum Theodorici*, such bribery in capital cases was punishable by death, while in other types of proceedings it was sanctioned by a fine amounting to four times the bribe,
- participation, mediation, or facilitation in acts of judicial bribery.

These provisions aimed to preserve the integrity of the judiciary and the fairness of the trial process, reflecting the Roman state's strong stance against corruption within its legal institutions (Zlinszky, 1997).

Further offences related to the administration of justice included:

- active or passive bribery for initiating or abandoning a prosecution, or for the giving or withholding of testimony,
- active or passive bribery aimed at inducing false testimony or concealing true evidence; the latter form was later generally subsumed under the *Lex Cornelia de falsis*,
- collusion between a party and jurors with the intent to secure the conviction of an innocent person,
- the disclosure by an advocate of documents received from the client to the opposing party, constituting a violation of professional secrecy,
- settlement or collusion with the prosecutor in cases of adultery or other non-capital criminal proceedings, and
- the delivery of a deposited document to one party without the consent of the other.

These acts were regarded as serious breaches of judicial integrity and professional ethics, reflecting the Roman state's determination to protect the sanctity of legal proceedings (Zlinszky, 1997).

2.4. Simulation of Kinship or Rank (*Simulatio Cognationis aut Dignitatis*)

Roman criminal law also addressed cases involving the false assumption of personal or social identity. Such offences included:

- substitution of a child (*commutatio liberorum*): in such cases, only the directly affected parties were entitled to bring an accusation, and the offence was not subject to any statute of limitation,
- feigning of family relationships for the purpose of obtaining unlawful benefits or inheritance, and
- fraudulent assumption of rank or office (*simulatio dignitatis vel officii*): this did not, however, extend to the pretended claim of free birth (*ingenuitas*)

or civil status, since during the Republican era these were not covered by the Lex Cornelia de falsis.

These provisions reflected the Roman concern with the protection of social order, personal status, and the legitimacy of public authority (Zlinszky, 1997).

2.5. *Use of False Weights and Measures (Falsum in Ponderibus et Mensuris)*

During the Republican period, agents and public officials found guilty of using false weights or measures were subject to fines amounting to half of their property. Later, under Emperor Trajan, this offence was expressly punishable under the Lex Cornelia de falsis. The same penalty applied to those who falsified officially standardized weights and measures used in public trade. However, the mere use of such instruments – without falsification – was not criminally sanctioned by law.

Under Sulla, these offences were punishable by relegatio (exile). In subsequent periods, members of the higher classes could face deportatio (banishment with confiscation of property). In milder cases, penalties included the loss of half of one's estate, relegatio, and various dishonourable punishments.

For ordinary citizens, forced labour or the death penalty could be imposed, while for slaves, capital punishment was invariably applied (Zlinszky, 1997).

2.6. *Calumnia (Malicious or False Litigation)*

Under this name, Roman law recognized a praetorian delict introduced to prohibit the acceptance of money in exchange for the initiation of a lawsuit or for influencing proceedings already in progress.

While the Lex Cornelia de falsis specifically sanctioned the deliberate rendering of false judgments, the praetorian delict of calumnia punished all forms of dishonest or malicious litigation.

Any amount unlawfully received for such purposes could be recovered by an action for fourfold restitution within the first year, and for single restitution thereafter, irrespective of whether the payer had himself participated in the act of bribery (Zlinszky, 1997).

2.7. *Dolus and Stellationatus*

In connection with violent or fraudulent acts, dolus and stellationatus were regarded as general offences (*crimina generalia*) punishable even without a precise statutory definition.

It is probable that Aquilius Gallus had already introduced an action in delict (*actio doli*) to provide a remedy in cases where the deceived party had no other legal recourse. Judgments in such cases entailed *infamia* (loss of civil honour), although the main consequence was restitution equivalent to the damage caused by the fraudulent act.

The category of *stellionatus* covered acts such as false oaths and other deceitful conduct arising during litigation, provided that no specific criminal provision could be applied to them. Typical sanctions included exile or forced labour, and in all cases the conviction carried the penalty of *infamia* (Zlinszky, 1997).

3. Conclusion

This study has presented the development of the Roman legal regulation of coin counterfeiting, which in the early Republic was regarded primarily as an offense against property, but during the Imperial era came to be treated as a crime against the emperor's authority.

Legal sanctions were initially moderate, yet in later periods the Roman state sought to curb counterfeiting through increasingly severe punishments. A particularly draconian tightening of the law can be observed under the reigns of Constantine and Justinian.

It is evident that Roman criminal law concerning forgery and fraud – especially in relation to coinage – formed a complex and continuously evolving system that took into account not only legal but also economic and social considerations. The severity of the legislation reflects the central role played by the integrity of the monetary system in the Roman Empire.

Roman legal principles on counterfeiting exerted a lasting influence: many medieval statutes adopted these Roman doctrines, and even today, owing to the enduring impact of Roman jurisprudence, counterfeiting is treated as a serious criminal offence in most modern legal systems.

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