

# ROMAN LAW AND ITS SOURCES

**THE LAW!** it is divided into two groups: -normative: law is a norm or rule of conduct, an organic complex of norms;



-institutional: the law is identified with the legal organization; it is the same social organization.

**OBJECTIVE LAW!** NORMA AGENDI: objective law understood as a norm, rule of conduct.

**Subjective Right!** FACULTAS AGENDI: subjective right, claim of a subject recognized and protected by law

- objective, which corresponds to the duty of satisfying it by others;
- The subjective right finds its foundation in the objective right.
- Within subjective law, it is possible to identify the concepts of
  - Authority: it concerns certain powers that one subject can exercise over other subjects, regardless from their will (parents and children);
  - Faculties: they concerned the possibilities recognized and guaranteed to a holder of subjective rights, e.g. title holder of property rights! has the right to receive its fruits;
- A subjective right corresponds to a legal duty; it is a passive legal position.

Among the LEGAL DUTIES, it is possible to distinguish OBLIGATION (duty to do or not in relation to the subjective right) subjection (having to submit to someone else's authority) and burden.

◆ Distinction between:

**Private Law!** branch of law that regulates the relationships between individuals concerning private and individual interests;  
**Public law!** regulates the organization and functioning between the community and the individuals that compose it.

## Periods of the History of Roman Law (Archaic Age, Pre-Classical, Classical)

### POSTCLASSICA

#### 1. ARCHAIC ERA (847-300 BC)

Ancient Age! from the origins of Rome to the middle of the 3rd century BC; based on an agricultural society, forms of production agricultural, closed rural system;

- Characteristics of law in archaic times: - **LAW POOR IN STRUCTURES and LEGAL INSTITUTIONS;**  
There is extreme **FORMALISM** and rituality;  
Simple law, suitable to meet the needs of rural society;  
The own and **EXCLUSIVE** right of the Romans;
- **THE MORTS:** ancient customs, of a ritual nature, that governed every aspect of city life. For a long time, at the time, they represented the only **SOURCE** of law, with the belief that only activities carried out in meticulous adherence to them could take on significance in the legal realm; legal customs of the MAJORES (senior Roman ancestors)
- **THE LEGISLATIONS:** The customs were integrated by **PUBLIC LAWS** or LEGGI O LEGES PUBLICAE ("laws of the people") regulatory measures that gained their effectiveness from the will of the people;
- **LEX DEODICINA (450 BC):** The Law of the 12 Tables, the most famous among the leges publicae, was enacted by extraordinary magistrates with the aim of **DESTROYING THE DUALISM BETWEEN PATRICIANS AND PLEBEIANS;**
- **FORWARD LAWS:** They had greater importance than the 12 tables, they were usually proposed by the magistrate who subsequently he interrogated the **PEOPLE** in assembly which could either approve or disapprove and once approved became law;
- **THE POPS:** The knowledge and interpretation of the law were in the hands of the pope (the first jurists Romans) and it is to them that citizens turn to learn about the law;
- **IUS QUIRITUM, THE OLDEST NUCLEUS OF ROMAN LAW; IN IUS QUIRITUM THERE WERE RECOGNIZED ABSOLUTE SUBJECTIVE LEGAL POSITIONS** (position of power over people or things).  
For example, power over inanimate things, animals or slaves, patria potestas, manus and mancipium;
- **CIVIL LAW:** Concerns only Roman citizens;

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**Journal of the Society of Comparative Legislation** ,1914 Includes an annual Review of legislation

**From Mesopotamia to the Mishnah** Jonathan S. Milgram,2016-06-20 In this study Jonathan S Milgram demonstrates that the transformation of inheritance law from the biblical to the tannaitic period is best explained against the backdrop of the legal and social contexts in which the tannaitic laws were formulated Employing text and source critical methods he argues that in the absence of the hermeneutic underpinnings for tannaitic innovations the laws were not the result of the rabbinic imagination and its penchant for inventive interpretation of Scripture Turning to the rich repositories in biblical ancient near eastern Second Temple Greek Elephantine Judean desert and Roman sources the author searches for conceptual parallels and antecedents as well as formulae and terminology adopted and adapted by the tannaim Since the tannaitic traditions reflect the social and economic contexts of the tannaitic period the nuclear family on privatized landholdings in urban centers the author also considers the degree to which tannaitic inheritance laws may have emerged out of these contexts

**A General Survey of Events, Sources, Persons and Movements in Continental Legal History** John Henry Wigmore,1912

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