INTRODUCTION

Roman law is important because:

- Its rules form the basis of a surprisingly large number of doctrines of the Anglo-American common law
- Its differences from the common law suggest that common-law values and approaches are by no means always the most equitable and efficient ways of approaching legal problems third
- It provides the basic organizing principles of the civil law systems of most of Europe and Latin America and much of Asia.

SOURCES OF ROMAN LAW

- "Constitutions": Rome had no written constitution, but for purposes of a legal system, the role of a constitution was played by the Law of the Twelve Tables, adopted about 450 BC (and inscribed on twelve bronze tablets) as a statement of the customary and ritual law that had previously developed. This Law gradually became outmoded and was eventually submerged by the interpretation and commentary that surrounded it. The Romans, however, regarded most subsequent developments in their legal system as an elaboration of this ancient Law.

- "Statutes": Almost until the end of their history, Romans, like Americans, did not think in terms of comprehensive, rationally framed codes of law. Rather, they enacted individual statutes in response to felt needs, and ended up with a miscellaneous conglomeration of statutory instruments. Laws were enacted in the Roman Republic by tribal assemblies upon the recommendation of the Senate or a magistrate; in the early empire by the Senate alone (under supervision of the Emperor); and in the later empire by edicts of the Emperor (generally called constitutiones), with no pretense of independent legislative action. Statutes were often designated by the name of the magistrate that proposed them (like the Lex Hortensia, 204 BC, from the dictator Hortensius).

- "Common law": That part of Roman law composed of the collective authority of individual decisions had several components:
  - Praetorian edicts: In the third century BC praetors, the annually elected magistrates charged with the responsibility of enforcing the law, began to adopt annual Edicts, publicly setting forth how the praetor would enforce the Law of the Twelve Tables and other enactments of the people. The Edict set forth both procedural matters, such as the formulae that litigants
had to follow, and more substantive statements of modes of remedy and causes of action. Each praetor generally carried forward (and added to) most of the Edict of his predecessors, until the Edict formed a body of substantive and procedural law that largely replaced the primitive and restrictive rules of the old Twelve Tables. Finally, in 130 AD, the Emperor Hadrian ordered the adoption of a "Perpetual Edict," essentially forming a new code of law.

- **Responsa of the Jurisconsults:** As the Roman legal system grew in complexity, there also developed a professional class of jurisconsults (or jurisprudentes) who considered and interpreted the laws and the edicts. Jurisconsults were different from modern lawyers because they generally did not represent litigants in courts (this was left to *advocati*, professional orators), and because their opinions were sought not only by litigants but also by judicial officers. Eventually these opinions were regarded as of binding force (much as court opinions are today). The jurisconsults might best be thought of as a combination of judge, law professor, and expert witness.

- **Imperial decrees:** The Emperor was not only a legislator, but also a judge, and his *decreta* (judgments in individual cases) and *rescripta* (written answers to legal questions) came also to form part of the decisional law, binding in authority.

**CODE OF JUSTINIAN**
By the fifth century AD, the Roman lawyer was faced with a vast, ancient, and miscellaneous collection of statutes and opinions, of varying authority and scope. The Emperor Justinian attempted to make this mass of legal material more rational and accessible by adopting a comprehensive code of law, organizing its sources in a logical and coherent arrangement, and dropping redundant, obsolete, and contradictory provisions.

- **The Code of Justinian:** As finally published in 533 AD (and subsequently supplemented), the Code had the following parts:
  - **The Institutes:** A basic legal textbook for students (and a good source of pithy definitions and maxims).
  - **The Digest (or Pandects):** A selection and logical classification of the currently valid responsa of the jurisconsults.
Schaffer Law Library’s Guide on Roman Law: Basic Structure and Sources

- **The Codex**: A classification of the currently valid imperial *constitutiones* and earlier enactments into a statutory code.
- **The Novels**: Amendments to the *Code* adopted during the reign of Justinian.

Thus, the Code of Justinian was a comprehensive statement of the Roman statutory and case law as it stood at the end of the ancient world. It is what modern students first look to in order to learn the provisions of Roman law.

**A note on citation**: Justinian’s Code is generally cited by its progressively numbered subdivisions. For example, Dig. 42,2,1,1 refers to Book 42, Title 2, law 1, and paragraph 1 of the Digest.

The abbreviation "pr" refers to an unnumbered introductory paragraph (*principium*): thus, Dig. 42,2,pr.

**Basic Sources**: There are two standard English translations of the basic sources: