



UNIVERSITÀ DEGLI STUDI DI PALERMO

DEPARTMENT	Giurisprudenza		
ACADEMIC YEAR	2019/2020		
MASTER'S DEGREE (MSC)	LAW		
SUBJECT	HISTORY OF ROMAN LAW		
TYPE OF EDUCATIONAL ACTIVITY	A		
AMBIT	20004-Storico-giuridico		
CODE	06740		
SCIENTIFIC SECTOR(S)	IUS/18		
HEAD PROFESSOR(S)	VARVARO MARIO	Professore Ordinario	Univ. di PALERMO
	MICELI MARIA	Professore Ordinario	Univ. di PALERMO
	SCIORTINO	Professore Ordinario	Univ. di PALERMO
	SALVATORE		
OTHER PROFESSOR(S)			
CREDITS	7		
INDIVIDUAL STUDY (Hrs)	119		
COURSE ACTIVITY (Hrs)	56		
PROPAEDEUTICAL SUBJECTS			
MUTUALIZATION			
YEAR	1		
TERM (SEMESTER)	1° semester		
ATTENDANCE	Not mandatory		
EVALUATION	Out of 30		
TEACHER OFFICE HOURS	MICELI MARIA Friday 9:00 13:00 Studio Docente SCIORTINO SALVATORE Monday 09:00 14:00 Dipartimento di Giurisprudenza, via Maqueda 172, sezione di storia del diritto, I piano, stanza personale ubicata verso la meta del corridoio della sezione. VARVARO MARIO Wednesday 16:00 17:00 Dipartimento di Giurisprudenza - I piano - Sezione di Storia del diritto - Stanza del docente.		

PREREQUISITES	Concepts and basic categories of general theory of law; essential elements of Roman history; command of the historical method.
LEARNING OUTCOMES	(in the light of the Dublin descriptors – see the educational section of the website of Law – and what is expressed in RAD) Knowledge and understanding Acquisition of knowledge and comprehension of the origin and development of the constitutional structures, of the normative and procedural models of Roman legal experience, as well as of the main processes concerning the interpretation and application of the legal rules, of the techniques and of the case methodologies developed by Roman jurisprudence. Applying knowledge and understanding Providing students with the critical ability to relativize the legal phenomenon through the analysis of Roman constitutional systems in their historical evolution: students must be able to apply their knowledge in order to compare the different forms of government, court systems and legal production, including possible impact on European legal tradition. Making judgements Improving the ability to independently develop a conscious thought in relation to the topics of the lectures with a critical and independent reasoning of the main positions expressed by scholars. Communication skills Being able to express themselves properly, organically, clearly and effectively. Ability to fully convey the concepts using as appropriate the technical legal language. Mastery of the techniques of argumentation in communication of the expressed views. Lifelong learning skills Ability to read the sources and critically compare with each other to being able to draw from them the fundamental knowledge about the evolution of the law in its early stages of development. Ability to learn the law in his casuistic way, in the light of the method developed by the Roman jurists. Ability to derive from analysis of individual cases, the rules applicable to similar cases, identifying the limits in relation to the historical context in which they exist.
ASSESSMENT METHODS	Oral final exam (grades on a scale between 18 and 30 cum laude). The final oral exam consists of an interview (on at least two questions) on all topics in the syllabus by reference to suggested bibliography. The interview aims at ascertaining the level knowledge and understanding of the topics in the syllabus and the ability of the candidate to critically examine also specific issues and legal cases. The evaluation will be sufficient if the candidate proves basic knowledge and understanding of the topics at least in general outline. He/she must also demonstrate command in the specialized language and argumentation skills able to convey his/her knowledge to the examiner. Under those thresholds, the outcome will be insufficient. The more on the contrary the candidate will be able to interact with the examiner and he/she demonstrates detailed knowledge and understanding of the topics the more the evaluation will be positive. The evaluation will take place according to the following grid: "excellent", 30-30 cum laude: excellent knowledge of the topics, excellent ability to frame the historical and dogmatic development of the institutes, excellent property of language, excellent capacity of analysis; "very good", 27-29: very good knowledge of the topics, very good ability to frame the historical and dogmatic development of the institutes, very good property of language, very good capacity of analysis; "good", 24-26: good knowledge of the topics, good ability to frame the historical and dogmatic development of the institutes, good property of language, good capacity of analysis; "satisfactory", 21-23: satisfactory knowledge of the topics, satisfactory ability to frame the historical and dogmatic development of the institutes, satisfactory property of language, satisfactory capacity of analysis; "sufficient", 18-20: sufficient knowledge of the main teaching and technical language issues, sufficient capacity to independently apply theoretical knowledge; "insufficient" outcome: the student does not have a sufficient knowledge of the various syllabus topics and appropriate command in the specialized language.
EDUCATIONAL OBJECTIVES	Command of language and legal categories. Punctual and informed knowledge both of formative processes and of concepts related to the course. Identification of the main differences between the Roman legal experience and legal systems based on a conception of law as a set of rules established by the State. Remark on the essential historicity of law and its concepts as an indispensable tool for the training of the necessary sensitivity to the jurist in the setting and evaluation of the most important legal issues.

TEACHING METHODS	Lectures
SUGGESTED BIBLIOGRAPHY	Per gli aspetti privatistici delle parti I-V e VII-IX del programma: U. Manthe: Storia del diritto privato romano, Il Mulino, Bologna 2010 (ISBN 978-88-15-13821-7). Per gli aspetti pubblicistici delle parti I-V e VII-IX del programma: F. Costabile: Temi e problemi dell'evoluzione storica del diritto pubblico romano, Giappichelli Editore, Torino 2016 (ISBN 978-88-921-0563-8) o in alternativa un altro manuale come: M. Talamanca (sotto la direzione di): Lineamenti di storia del diritto romano, seconda edizione, Milano 1999 (ultima ristampa) (ISBN 9788814918237). G. Grosso: Lezioni di storia del diritto romano, Quinta edizione riveduta ed ampliata, G. Giappichelli Editore, Torino 1965 (ultima ristampa) (ISBN 9788834800904). Per la parte VI del programma: M. Varvaro: La Giustizia, la spada e la bilancia, in Hormos. Ricerche di Storia antica n.s. 9, 2017, pp. 594-621 (contributo disponibile in open access al link: https://www.unipa.it/dipartimenti/cultureesocieta/riviste/hormos/.content/documenti/28MarioVarvaroHormos92017.pdf).

SYLLABUS

Hrs	Frontal teaching
3	Part I. Introduction: Presentation of the course and its object. History, law and history of law. Internal history and external history of Roman law.
30	Part II. Prehistory and the most ancient period until the Twelve Tables (9 hours). Part III. The new law of the Twelve Tables (9 hours). Part IV. From the Twelve Tables to the end of the Republic (12 hours).
14	Part V. The classical era of Roman law (12 hours). Part VI. 'Ius' and 'iustitia' according to Ulpian (2 hours).
3	Part VII. Post-classic development of Roman Law until Justinian.
6	Part VIII. Justinianic law (3 hours). Part IX. The survival of Justinian law (3 hours).

PREREQUISITES	Concepts and basic categories of general theory of law; essential elements of Roman history; command of the historical method
LEARNING OUTCOMES	(in the light of the Dublin descriptors – see the educational section of the website of Law – and what is expressed in RAD) Knowledge and understanding Acquisition of knowledge and comprehension of the origin and development of the constitutional structures, of the normative and procedural models of Roman legal experience, as well as of the main processes concerning the interpretation and application of the legal rules, of the techniques and of the case methodologies developed by Roman jurisprudence. Applying knowledge and understanding Providing students with the critical ability to relativize the legal phenomenon through the analysis of Roman constitutional systems in their historical evolution: students must be able to apply their knowledge in order to compare the different forms of government, court systems and legal production, including possible impact on European legal tradition. Making judgements Improving the ability to independently develop a conscious thought in relation to the topics of the lectures with a critical and independent reasoning of the main positions expressed by scholars. Communication skills Being able to express themselves properly, organically, clearly and effectively. Ability to fully convey the concepts using as appropriate the technical legal language. Mastery of the techniques of argumentation in communication of the expressed views. Lifelong learning skills Ability to read the sources and critically compare with each other to being able to draw from them the fundamental knowledge about the evolution of the law in its early stages of development. Ability to learn the law in his casuistic way, in the light of the method developed by the Roman jurists. Ability to derive from analysis of individual cases, the rules applicable to similar cases, identifying the limits in relation to the historical context in which they exist.
ASSESSMENT METHODS	Oral final exam (grades on a scale between 18 and 30 cum laude). The final oral exam consists of an interview (on at least two questions) on all topics in the syllabus by reference to suggested bibliography. The interview aims at ascertaining the level knowledge and understanding of the topics in the syllabus and the ability of the candidate to critically examine also specific issues and legal cases. The evaluation will be sufficient if the candidate proves basic knowledge and understanding of the topics at least in general outline. He/she must also demonstrate command in the specialized language and argumentation skills able to convey his/her knowledge to the examiner. Under those thresholds, the outcome will be insufficient. The more on the contrary the candidate will be able to interact with the examiner and he/she demonstrates detailed knowledge and understanding of the topics the more the evaluation will be positive. The evaluation will take place according to the following grid: "excellent", 30-30 cum laude: excellent knowledge of the topics, excellent ability to frame the historical and dogmatic development of the institutes, excellent property of language, excellent capacity of analysis; "very good", 27-29: very good knowledge of the topics, very good ability to frame the historical and dogmatic development of the institutes, very good property of language, very good capacity of analysis; "good", 24-26: good knowledge of the topics, good ability to frame the historical and dogmatic development of the institutes, good property of language, good capacity of analysis; "satisfactory", 21-23: satisfactory knowledge of the topics, satisfactory ability to frame the historical and dogmatic development of the institutes, satisfactory property of language, satisfactory capacity of analysis; "sufficient", 18-20: sufficient knowledge of the main teaching and technical language issues, sufficient capacity to independently apply theoretical knowledge; "insufficient" outcome: the student does not have a sufficient knowledge of the various syllabus topics and appropriate command in the specialized language.
EDUCATIONAL OBJECTIVES	Command of language and legal categories. Punctual and informed knowledge both of formative processes and of concepts related to the course. Identification of the main differences between the Roman legal experience and legal systems based on a conception of law as a set of rules established by the State. Remark on the essential historicity of law and its concepts as an indispensable tool for the training of the necessary sensitivity to the jurist in the setting and evaluation of the most important legal issues.
TEACHING METHODS	Lectures
SUGGESTED BIBLIOGRAPHY	Tra i manuali e, salva la libera scelta di qualunque altro testo, si suggeriscono i due seguenti testi: - G. VALDITARA, Diritto pubblico romano, G. Giappichelli ed., Torino 2013. - P. Cerami-M. Miceli, <i>Storicita' del diritto, strutture costituzionali, fonti, codici. Prospettive romane e moderne</i> . G. Giappichelli ed., Torino 2018. Per la conoscenza delle fonti discusse nel corso delle lezioni, e' obbligatoria l'adozione di: - <i>Ab urbe condita</i> . Fonti per la storia del diritto romano dall'eta' regia a Giustiniano, a cura di N. Palazzolo et al., 3a edizione, Libreria Editrice Torre, Catania, 2002.

SYLLABUS

Hrs	Frontal teaching
4	Introduction: Subject of the course and chronological context of the discipline. Roman law and Roman law tradition. - Civil Law and Common Law. Main themes and objectives of the course. History, law and history of law. The history, the sources and the search method. Historical criticism. History and historiography
12	The monarchy. The problem of the city's origins and pre civic structures: gentes and familiae; 2. historical evidence about the existence of the regnum and its chronological boundaries: the Romulus phase, the monarchy so called 'latino-sabina', the Etruscan monarchy. 3. The administrative structures monarchy's age: the rex. The political functions, religious and personal connotation of powers. The manus, the auguria and auspicia, the imperium. the creatio regis: the interregnum. 3.1. The curiae and the comitia curiata. The comitia curiata, the thesis of Corbino about the alleged comitia curiata legislative, election and judicial competence: Critical. 3.2. The competence of the comitia curiata attested by the sources. 4. The regium consilium: functions and powers of the patres. The transition from regium consilium to the Senate. 5. The Etruscan monarchy: the Etruscan reforms. 6. Reflections on legal order and characters of the monarchy's age: compatibility of the concept of 'law' with Roman law; factuality and personality of law in the age of monarchy. 7. Ius and fas. Leges and mores. 8. An outline of Criminal Law: scelera and piacula, the perduellio and proditio, the concept of saceretas. 9. The end of the regnum and transition to free res publica: summary of the theses supported in the literature
14	The Republic. 1. Historical introduction on the history and policy from its origins at the turn of the crisis, on background of the patrician-plebeian conflict. 2. The origins of the plebs: plebei gentes non habent ?. 2.1 The creation of the tribunes of the plebs. 3. The organs of the republican constitution: magister - magistratus - ministros: the general characteristics of the magistrates. 3.1. Ordo magistratus and cursus honorum: classification of magistrates into major and minor. 3.2. the dictatorship and the pro magistratura. 3.3. The powers of the magistrates: imperium, potestas, coercitio. 3.4. The individual magistrates and their functions. 4. The legislative decemvirate and laws Valeriae Horatae. 5. The plebiscitum Canuleium and the constitutional experience of the tribuni militum consulari potestate. 6. The popular assemblies. The comitia centuriata and tributa: the electoral, legislative and judicial functions. 6.1 The concilia plebis. 7. The Senate in Republican age: composition and skills, with particular reference to nomophylactic function and the alleged syndicate of constitutionality on the laws. 7.1. The lex Publilia Philonis and the plebiscite Ovinium. 8. Towards exaequatio of orders: the exaequatio of leges and plebiscita and laws Licinia-Sextiae. 9. Coloniae, municipia and provinciae. 10. Public finances in Republican age. 11. The legal system of Republican age. The ius civile. The leges publicae populi Romani: leges rogatae, leges datae, leges sacratae. The mores maiorum and interpretatio pontificum. 11.1 The fundamental stages of the laicization of iurisprudencia. 12. Jus honorarium and jus gentium. 13. Private Law in Republican age. 14. The criminal law and the criminal procedure: the provocatio ad populum: legal nature, laws regarding provocatio and legal procedure description. 14.1. The crisis of iudicia populi: the causes. The quaestiones extraordinariae and quaestiones publicae. 14.2. The iudicia publica legitima. The popular prosecution and the principle 'nullum crimen sine lege'. 14.3. Figures of crimes. 15. The republican system crisis: the causes of military, financial, political and social crisis. 15.1. The fundamental problems of the age 'of the crisis: the agrarian question, the question of citizenship, the question of exercitus. 15.2. Attempts to rationalize the status rei publicae: the popular movement and the attempt at democratic rationalization; the reaction of Sulla and the rationalization of the aristocratic way system; the Caesar's dictatorship and the attempt to rationalize the constitutional monarchy system in the sense. 15.3. Caesar and Octavian. 16. The impact of the crisis on private law and jurisprudence
12	The Principate. 1. Historical introduction to the events that preceded the birth of the Augustan age, with particular reference to Octavian's constitutional position since 31 BC 1.1. Analysis of chapters 25 and 34 of Res Gestae Divi Augusti: the founding events of 27 and 23 BC 2. The powers of the prince, in particular auctoritas. 2.1. Review of advanced thesis in the doctrine on the legal nature of the Augustan monarchy. 2.2. The problem of succession and the lex de imperio Vespasiani. 2.3 periodization of the principate: the age of the Antonines and the age of the Severi. 3. The cura et tutela rei publicae universa: interventions on the political and administrative structures of the Republic. 3.1 The nova officia and the Consilium principis. 3.2. The Imperial Chancellery and Hadrian arrangement of scrinia. 4. The Finance age of the principality. 5. The local governments, senatorial and imperial provinces; The Constitutio Antoniniana. 6. Cura legum et morum. 6.1. The lex populi as generale iussum populi and exhaustion of legislative activity of the popular assemblies. 6.2. Senatus consulta and orationes in senatu habitae. 6.3. The ius honorarium in the age of the principate: the codification of the edictum perpetuum. 6.4. The classic case law: the ius respondendi ex auctoritate principis and the legal division in to sectae. 6.5. The foundation of the legislative power of the prince; type and history constitutiones principum. 7. The law and the criminal procedure: the lex Iulia iudiciorum publicorum and cognitiones extra ordinem. 7.1. The cognitio senatorial. 7.2 The Oratio Divi Marci and extra ordinem imperial cognitiones, public and private. 8. The military anarchy
14	The Dominate. 1. General periodization: Diocletian and the Tetrarchy; the reforms of Constantine. 2. The public administration in the age of the late roman Empire: the Senate and the sacrum consistorium principis. 2.1 The nova officia palatina and the imperial bureaucracy in the late roman Empire. 2.2. The peripheral administration in the Dominate: the provinces, dioceses and prefectures. 3. The end of the jurisprudential production of law: the law of citations 4. Compilations of iura and leges and the first codifications: the Gregorian code and Hermogenian code. 4.1 The Theodosian code and the Law of the general criteria listed in C. 1.14.3. 4.2. The ancient manuscripts and modern codes: the different legal policy objectives pursued. Roman law in post-classical age: the sources of law and the establishment of a hierarchical ordering of sources. 4.3. The Roman-barbarian laws. 5. Christianity and its influence on various areas of law. 6. The compilation of Justinian: the Digest and its compilation method.. Institutions and their method of compilation. The codex Iustinianus repetitae praelectionis. the Novellae. 6.1 The law schools in the age of Justinian and Byzantine sources

PREREQUISITES	Concepts and basic categories of general theory of law; essential elements of Roman history; command of the historical method.
LEARNING OUTCOMES	Knowledge and understanding Acquisition of knowledge and comprehension of the origin and development of the constitutional structures, of the normative and procedural models of Roman legal experience, as well as of the main processes concerning the interpretation and application of the legal rules, of the techniques and of the case methodologies developed by Roman jurisprudence. Applying knowledge and understanding Providing students with the critical ability to relativize the legal phenomenon through the analysis of Roman constitutional systems in their historical evolution: students must be able to apply their knowledge in order to compare the different forms of government, court systems and legal production, including possible impact on European legal tradition. Making judgements Improving the ability to independently develop a conscious thought in relation to the topics of the lectures with a critical and independent reasoning of the main positions expressed by scholars. Communication skills Being able to express themselves properly, organically, clearly and effectively. Ability to fully convey the concepts using as appropriate the technical legal language. Mastery of the techniques of argumentation in communication of the expressed views. Lifelong learning skills Ability to read the sources and critically compare with each other to being able to draw from them the fundamental knowledge about the evolution of the law in its early stages of development. Ability to learn the law in his casuistic way, in the light of the method developed by the Roman jurists. Ability to derive from analysis of individual cases, the rules applicable to similar cases, identifying the limits in relation to the historical context in which they exist.
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EDUCATIONAL OBJECTIVES	Command of language and legal categories. Punctual and informed knowledge both of formative processes and of concepts related to the course. Identification

	of the main differences between the Roman legal experience and legal systems based on a conception of law as a set of rules established by the State. Remark on the essential historicity of law and its concepts as an indispensable tool for the training of the necessary sensitivity to the jurist in the setting and evaluation of the most important legal issues.
TEACHING METHODS	Lectures
SUGGESTED BIBLIOGRAPHY	Lo studente puo' adottare un qualsiasi manuale di storia del diritto romano aggiornato; in particolare si consigliano due opzioni: a) l'utilizzazione di un unico testo comprensivo di tutti gli argomenti del programma: P. CERAMI, M. MICELI, <i>Storicita' del diritto. Strutture costituzionali, fonti, codici. Prospettive romane e moderne</i>, G. Giappichelli Editore, Torino 2018, 1-485. b) l'utilizzazione di due testi per le diverse parti del programma: 1. per lo studio della I, II e IV parte: CERAMI-CORBINO-METRO-PURPURA, <i>ROMA E IL DIRITTO. Percorsi costituzionali, produzione normativa, assetti, memorie e tradizione del pensiero fondante dell'esperienza giuridica occidentale</i>, Jovene Editore, Napoli, 2010. 2. per lo studio della III e IV parte: P. CERAMI, G. DI CHIARA, M. MICELI, <i>Profili processualistici dell'esperienza giuridica europea. Dall'esperienza romana all'esperienza moderna</i>, Torino, 2003, Giappichelli. Parte I, sez. I, p. 3-16; Parte II, sez. I, p. 75-106; Parte II, sez. I, p. 249-285 E' suggerita, inoltre, ad integrazione della preparazione, la lettura e la consultazione facoltativa dei seguenti testi: • DE MARTINO, <i>Storia della costituzione romana</i>, I-VI, Napoli, 1990 • P. CERAMI- G.PURPURA, <i>Profilo storico-giurisprudenziale del diritto pubblico romano</i>, Giappichelli, Torino, 2007 • L. VACCA, <i>Metodo casistico e sistema prudenziale</i>, in <i>Il Giurista europeo</i>, Padova, 2005. • L. GAROFALO, <i>Fondamenti e svolgimenti della scienza giuridica</i>, in <i>Il Giurista europeo</i>, Padova, 2005. • A. SCHIAVONE, "Ius. L'invenzione del diritto in occidente", Einaudi, 2007. • R. ORESTANO, <i>Introduzione allo studio del diritto romano</i>, Il Mulino, Bologna, 1987. • B. SANTALUCIA, <i>Diritto e processo penale nell'antica Roma</i>, Giuffre, 1998.

SYLLABUS

Hrs	Frontal teaching
56	HISTORY OF ROMAN LAW AND ROMANISTIC TRADITION. A) First Part, 24 hours Chronological demarcation of the historical periods of Roman law; origin and development of constitutional structures and regulatory models Roman legal experience. The primitive community; Etruscan monarchy; the sources of law in the Archaic period. The 'Libera res publica'; republican institutions; the sources of law; the Italic and Mediterranean hegemony; the territorial organization; the crisis of the 'Libera res publica'; attempts to rationalize the 'status rei publicae'; impact of the crisis on legal system. The Principate: affirmation and consolidation of the new system; 'cura et tutela rei publicae universa' and 'cura legum et morum' ; territorial organizational structure; public finance. The classical jurisprudence and the science of law. Dominate: political and social structure of the Empire; the Institutions of the Dominate. Science and politics of law. Production and interpretation of the law: by law jurisprudence to state law. Codifications: Theodosianus Codex; Roman-barbarian laws and the Compilation of Justinian. B) PART TWO, 10 hours The original forms of private and public trial: 'iudicia populi' and 'legis actiones' (structures, proceedings). The criminal trial of 'Quaestiones Perpetuae': historical events, procedures, criminal cases prosecuted. The private trial: 'agere per concepta verba'. 'Iurisdictio' and 'iudicatio'. 'Ius civile, ius honorarium, jus gentium'. The criminal trial in the Principate: 'Cognitio senatoria' and 'Iudicia publica extraordinaria'. Private trial: 'Cognitio extra ordinem'. C) PART THREE, 10 hours 'Aequum iudicium' and 'due process'. Strategies of evidence and 'contradictory'. The Rhetoric evidence: structure, function, rationality. The Procedural collaboration: the Roman roots . Accusatores populares; 'Delatores' or 'informants not involved', 'indices' or accomplices dissociated': semantically, procedural role, protection and awards. D) FOURTH PART: 12 hours The legal heritage of Rome. Methodological considerations on the historical study of law. Comparative and historical study of law. Civil Law and Common Law: Western Legal Tradition. Common core of European law