

## OUTLINE AND TEXTS CONCERNING THE LAW OF PERSONS

1. Before we get into Gaius' scheme of persons, I want to deal with a fundamental that may, in the long run, prove more fruitful for explaining how these categories came about.
  - a. *Hunc ego hominem ex iure Quiritium meum esse aio secundam suam causam. Sicut dixi, ecce tibi vindictam imposui.* "I say this man is mine by Quiritary right according to his condition. As I have spoken, look you, I have put my staff on him." = 4.16 (p. 36).
  - b. *in iure cessio* 1.168 (p. 129) transfer of *tutela* and later on we learn of urban servitudes.
  - c. *manumissio vindicta* 1.17, .18, 1.20 (p. 118) probably originally a *vindicatio in libertatem*.
  - d. *Isque michi emptus esto hoc aere aeneaque libra* "Let him be bought to me by this bronze and this bronze scales." = 1.119 (p. ).
    - i. Conveyance of slaves and other *res máncipi*
    - ii. conveyance of children *in potestate*, but the result is not *potestas* but *in mancipio*.
    - iii. conveyance of children *in potestate* → emancipation, also a three-fold system — 1.132–33 (p. 126).
    - iv. conveyance of children *in potestate* → *adoptio*, the tree-fold system, litig. 1.134 (p. 126).
  - e. *coemptio* — 1.113, 1.123, (p. 124) we do not know the words
  - f. *testamentum per aes et libram* 2.104 (p. 137).

## Persons

<u>I.</u> slaves vs. free			
freeborn	freed—§§36–47 (restrictions on manumission)		
	dediticii—§§13–15	Junii—§§22–35	citizens—§§16–21

<u>II. B.</u> sui iuris vs. <u>A.</u> alieni iuris
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<u>A.</u> alieni iuris: <u>1.</u> in general—§§48–50			
<u>8.</u> termination—§§124–41			
in potestate—§51		<u>6.</u> in manu—§§108–15	<u>7.</u> in mancipio—§§116–23
<u>2.</u> dominica potestas—§§52–4	patria potestas		
<u>3.</u> iustae nuptiae—§§55–64	<u>4.</u> mixed marriage—§§65–96	<u>5.</u> adoptivi—§§97–107	

<u>B.</u> sui iuris: <u>1.</u> in general—§§142–3							
<u>12.</u> actions against tutors and curators—§§199–200							
totally	tutela: <u>9.</u> in general—§§188–93				<u>11.</u> cura—§§179–93		
	<u>10.</u> cessation—§§194–96						
<u>2.</u> testamentaria—§§144–54	legitima	<u>5.</u> fiduciaria	[dativa]		prodigi	furiosi	minorum
<u>3.</u> children—§§155–64	<u>4.</u> freedmen—§§165–66	<u>6.</u> women—§§179–83	<u>7.</u> litigation—§186	<u>8.</u> those without—§§185–87			

2. Legislation and imperial constitutions concerning the manumission mentioned in G.1:
  - a. *l. Fufia Caninia* 2 B.C. limits the number of testamentary manumissions.
  - b. *l. Aelia Sentia* 4 A.D. requires that manumissions of slaves under 30 be made *vindicta* and before a *consilium*.
  - c. *l. Junia Norbana* ?A.D. 19 creates the status of Junian Latins.
  - d. *l. Visellia* (c.25 A.D.) — anyone who being a *libertus* serves as a policeman for 6 years becomes a citizen. Notice the use of policy here.
  - e. SC. Pegasianum (72 A.D.) extends the privilege of *anniculi causae probatio* to Junian Latins freed over the age of 30. (The *a.c.p.* was previously available to those freed under the age of 30. If the Junian Latin had married and produced a child who was one year old or older, he, the wife and the child all became citizens.)
  - f. Edict (*edicto*) of Claudius (41 X 54) — a Junian Latin who builds a ship that carries corn to Rome → citizenship
  - g. Constitution (*a Nerone constitutum est*) (54 X 68) — a Junian Latin who spends 100 K sesterces on a Roman house → citizenship.
  - h. Constitution (*Traianus constituit*) (98 X 117) — a Junian Latin who operates for three years a mill that grinds 100 measures of corn daily → citizenship.

3. The content of the major categories in the *sui iuris/alien iuris* dichotomy
  - a. *potestas, manus, mancipio*
  - b. *dominica potestas* — *ius vitae necisque* – cruelty – bonitary and Quiritary ownership
  - c. *patria potestas*, extraordinary and extraordinarily conservative
  - d. *iustae nuptiae*, a bit on incest, then mixed marriage, 29 secs on this issue; the main points are: (1) mixed marriages by mistake are cured under the *lex Aelia Sentia* and a supplementary SC (§§ 65–75), and (2) the remaining §§ concern manipulation of citizenship and Latin status — the basic principle is that absent connubium children take the status of their mother as of the time of birth, *adoptivi* (adrogation and adoption) — why no separate section on marriage?
  - e. *manus* — *coemptio, confarreatio, usus*
  - f. *mancipium* — [*nexum, noxae deditio*], emancipation is what G. talks about (including the basic material on *mancipatio*), i.e. his definition is backwards, just as it is in *sui iuris* —note that *iniuria* can be committed to one *in mancipio*
  - g. *tutela*, women and boys
  - h. *testamentaria, legitima* (children, freedmen, sidenote on agnates, abolition of agnatic tutelage of women by *l. Claudia*), *fiduciaria, dativa* (for women whose tutors are absent, litigation, those without)
  - i. *cura (prodigi, furiosi, minorum)* — our text is deficient here
4. Hints of history:
  - a. state interference with the treatment of slaves - sec. 53

**53.** But at the present day neither Roman citizens nor any other persons subject to the rule of the Roman people are allowed to treat their slaves with excessive and causeless harshness. For by a constitution of the late emperor Antoninus it is laid down that one who without cause kills his own slave is as much amenable to justice as one who kills another's. And even excessive severity on the part of masters is restrained by a constitution of the same emperor; for, on being consulted by certain provincial governors as to slaves who take refuge at the temples of the gods or the statues of the emperors, he ordained that masters whose harshness is found to be unbearable are to be forced to sell their slaves. Both enactments are just, for we ought not to abuse our lawful right—the principle under which prodigals are interdicted from administering their own property.
  - b. the 'emancipation of women' *manus* and *tutela* — sec. 189

**189.** That persons below puberty should be under guardianship occurs by the law of every State, it being consonant with natural reason that a person of immature age should be governed by the guardianship of another person; indeed, there can hardly be any State in which parents are not allowed to appoint guardians to their children below puberty by their will, though, as we have remarked, it seems that only Roman citizens have their children in their *potestas*. **190.** But hardly any valid argument seems to exist in favour of women of full age being in *tutela*. That which is commonly accepted, namely that they are very liable to be deceived owing to their instability of judgment and that

therefore in fairness they should be governed by the *auctoritas* of tutors, seems more specious than true. For women of full age conduct their own affairs, the interposition of their tutor's *auctoritas* in certain cases being a mere matter of form; indeed, often a tutor is compelled by the praetor to give *auctoritas* even against his will.

- c. state intrusion into the management of the affairs of others *tutela* — §199 and see J.I.

**199.** Against the destruction or wasting by tutors and curators of the property of their wards or of those in their *curatio* the praetor requires both tutors and curators to give security. **200.** But not in every case. For neither are tutors appointed by will obliged to give security, their trustworthiness and diligence having been approved by the testator himself, nor, for the most part, are curators whose office does not devolve on them by statute, but who are appointed by a consul, praetor, or provincial governor, they of course having been selected as sufficiently trustworthy.

- d. ways of getting around *potestas* for adult sons — emancipation again and *peculium* (later)