

Section 2. PROCEDURE

A. PRIMARY SOURCES

1. Sample Formulae

a) formula certae creditae pecuniae

nominatio Octavius iudex esto—Let Octavius be judge

intentio Si paret Numerium Negidium [N^mN^m] Aulo Agerio [A^oA^o] HS X milia dare oportere—
If it appears that N.N. ought to give 10,000 sesterces to A.A.,

exceptio pacti Si inter A^mA^m et N^mN^m non convenit ne ea pecunia intra annum peteretur—
If A.A. and N.N. did not agree that the money would not be sought within a year.

replicatio doli Aut si quid dolo malo NⁱNⁱ factum est—Or if anything was done by N.N.'s fraud

condemnatio Iudex N^mN^m A^oA^o HS X milia condemnato; si non paret absolvo.—

Let the judge condemn N.N. [to pay] A.A. 10,000 sesterces; if it does not appear let him absolve.

b) formula ficticia

Si A^sA^s L. Titio heres esset, tum si paret N^mN^m A^oA^o HS X milia dare oportere, iudex [etc.]—

If A.A. were heir to L. Titius, then if it appears that N.N. ought to pay A.A. 10,000 sesterces, the judge, etc.

c) rei vindicatio

Si paret mensam de qua agitur AⁱAⁱ ex iure Quiritium esse neque ea mensa A^oA^o restituetur—

If it appears that the table which is the subject of the litigation belongs to A.A. by Quiritine right and that table is not restored to A.A.

Quanti ea mensa erit, tantam pecuniam iudex N^mN^m A^oA^o condemnato, si non paret absolvo—Whatever the table shall be worth, let the judge condemn NN [to pay] to AA so much money; if it does not appear let him absolve.

d) formula depositi in factum concepta

Si paret A^mA^m apud N^mN^m mensam argenteam deposuisse eamque dolo malo NⁱNⁱ A^oA^o redditam non esse, quanti ea res erit, [etc.]—

If it appears that A.A. deposited a silver table with N.N. and it was not returned to A.A. by the fraud of N.N., whatever the thing shall be worth, etc.

e) formula venditi

Quod A^sA^s N^oN^o fundum Cornelianum, quo de agitur, vendidit—

Whereas A.A. sold N.N. the Cornelian land which is the subject of the litigation

Quidquid paret ob eam rem N^mN^m dare facere oportere ex fide bona—

Whatever it appears N.N. ought to give [or] do in good faith

Eius iudex N^mN^m A^oA^o condemnato; si non paret absolvo.—

With respect to that let the judge condemn N.N. [to pay] A.A.; if it does not appear, let him absolve.

Section 3. THE ROMAN INSTITUTIONAL TREATISES

A. GAIUS, *INSTITUTES*

1. BOOK I [introduction]

The Institutes of Gaius (F. de Zulueta ed. & trans., 1946, vol. 1)
Book I, §§ 1–7, pp. [odd nos.] 2–5 [footnotes omitted]†

BOOK I

1. Every people that is governed by statutes and customs observes partly its own peculiar law and partly the common law of all mankind. That law which a people establishes for itself is peculiar to it, and is called *ius civile* (civil law) as being the special law of that *ciuitas* (State), while the law that natural reason establishes among all mankind is followed by all peoples alike, and is called *ius gentium* (law of nations, or law of the world) as being the law observed by all mankind. Thus the Roman people observes partly its own peculiar law and partly the common law of mankind. This distinction we shall apply in detail at the proper places.

2. The laws of the Roman people consist of *leges* (comitial enactments), plebiscites, senatusconsults, imperial constitutions, edicts of those possessing the right to issue them, and answers of the learned. 3. A *lex* is a command and ordinance of the *populus*. A plebiscite is a command or ordinance of the *plebs*. The *plebs* differs from the *populus* in that the term *populus* designates all citizens including patricians, while the term *plebs* designates all citizens excepting patricians. Hence in former times the patricians used to maintain that they were not bound by plebiscites, these having been made without their authorization. But later a *L. Hortensia* was passed, which provided that plebiscites should bind the entire *populus*. Thereby plebiscites were equated to *leges*. 4. A senatusconsult is a command and ordinance of the senate; it has the force of *lex*, though this has been questioned. 5. An imperial constitution is what the emperor by decree, edict, or letter ordains; it has never been doubted that this has the force of *lex*, seeing that the emperor himself receives his *imperium* (sovereign power) through a *lex*. 6. The right of issuing edicts is possessed by magistrates of the Roman people. Very extensive law is contained in the edicts of the two praetors, the urban and the peregrine, whose jurisdiction is possessed in the provinces by the provincial governors; also in the edicts of the curule aediles, whose jurisdiction is possessed in the provinces of the Roman people by quaestors; no quaestors are sent to the provinces of Caesar, and consequently the aedilician edict is not published there. 7. The answers of the learned are the decisions and opinions of those who are authorized to lay down the law. If the decisions of all of them agree, what they so hold has the force of *lex*, but if they disagree, the judge is at liberty to follow whichever decision he pleases. This is declared by a rescript of the late emperor Hadrian.

† Such footnotes as are there are by CD and explain omissions in the text.

2. BOOK I [of persons: slave and free]

The Institutes of Gaius (F. de Zulueta ed. & trans., 1946, vol. 1)
Book I, §§ 8–47, pp. [odd nos.] 5–15 [footnotes omitted]

8. The whole of the law observed by us relates either to persons or to things or to actions. Let us first consider persons.

9. The primary distinction in the law of persons is this, that all men are either free or slaves. 10. Next, free men are either *ingenui* (freeborn) or *libertini* (freedmen). 11. *Ingenui* are those born free, *libertini* those manumitted from lawful slavery. 12. Next, of freedmen there are three classes: they are either Roman citizens or Latins or in the category of *dediticii*. Let us consider each class separately, and first *dediticii*.