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 ciuile* (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.*

13. By the *L. Aelia Sentia* it is provided that slaves who by way of punishment have been put in bonds by their masters or have been branded, or have been questioned under torture on account of some wrongdoing and have been found guilty of the same, also those who have been handed over to fight (in the arena) with men or beasts or who have been cast into a gladiatorial school or into prison—that such slaves, if afterwards manumitted whether by the same or another master, shall become free men of the same status as *peregrini dediticii.* **14.** Are called *peregrini dediticii* those who in the past have taken up arms and fought against the Roman people and being defeated have surrendered (at discretion). **15.** Slaves disgraced in the manner mentioned, by whatever method and at whatever age they are manumitted, and though they were in the full ownership of their masters, never become either Roman citizens or Latins, but are always ranked as *dediticii.*

16. On the other hand, a slave not so disgraced becomes on manumission sometimes a Roman citizen and sometimes a Latin. **17.** A slave in whom these three conditions are united—that he be over 30 years of age, that he be the Quiritary property of his master, and that he be set free by lawful and statutory manumission (that is *uindicta* or by the census or by will), becomes a Roman citizen; but if any of these conditions is lacking, he will be a Latin.

18. The requirement as to the age of the slave was introduced by the *L. Aelia Sentia*, which provided that slaves manumitted below 30 should not become Roman citizens except if freed *uindicta* after proof of adequate motive for the manumission before a *consilium* (council). **19.** There is adequate motive where, for instance, a man manumits before a *consilium* his natural son or daughter, or his natural brother or sister, or his foster-child, or his children's teacher, or a slave whom he wants as *procurator* (business agent), or a female slave whom he intends to marry.

20. The *consilium* is composed in the city of Rome of 5 senators and 5 Roman *equites* (knights); in the provinces of 20 *recuperatores* being Roman citizens. (In the provinces) it sits on the last day of the assizes, but at Rome manumissions before the *consilium* take place on fixed days. On the other hand, slaves above 30 can be manumitted at any time; indeed, manumissions may take place even in the street, for instance when the praetor or proconsul is on his way to the baths or the theatre. **21.** Furthermore, a slave under 30 can become a Roman citizen by manumission where he has been declared free and left heir by the will of an insolvent master, provided that he is not excluded by another heir. . . .[1]

22. . . . Such persons are called Junian Latins, Latins because they are assimilated to colonial Latins, Junian because they owe their freedom to the *L. Iunia*, whereas previously they were ranked as slaves. **23.** The *L. Iunia* does, however, not enable them either to make a will themselves or to take under, or be appointed tutors by, another's will. **24.** Our statement, that they are incapable of taking under a will, is, however, to be understood as meaning that they cannot take directly, by way of inheritance or legacy; for indirectly, by means of a *fideicommissum* (trust), they can take.

25. But by no method can those in the class of *dediticii* take by will any more than any other *peregrinus*, nor, according to the prevailing doctrine, can they make a will themselves. **26.** Thus the freedom of those classed as *dediticii is* the lowest; nor are they allowed admission to Roman citizenship by any *lex*, senatusconsult, or imperial constitution. **27.** Moreover, they are forbidden to reside in the city of Rome or within the hundredth milestone from Rome, and any who contravene this prohibition are ordered to be sold by the State with all their property, subject to the proviso that their servitude is not to be in the city of Rome or within the hundredth milestone, and that they are never to be manumitted; if they are manumitted, they are to be slaves of the Roman people. These provisions are contained in the *L. Aelia Sentia.*

28. Latins, however, attain to Roman citizenship by many methods. **29.** To begin with, under the *L. Aelia Sentia*, if a slave who has been manumitted under 30 and so becomes a Latin takes to wife either a Roman citizen or a colonial Latin or a woman of the same status as his own and has the fact attested by not less than 7 witnesses (Roman citizens, above puberty), then, if he begets a son, he is empowered by the statute, on the son becoming one year old, to go before the praetor, or in a provinces before its governor, and prove that he took a wife under the *L. Aelia Sentia* and has a year-old son by her. And if the magistrate before whom the case is proved finds that the case is as stated, then both the Latin himself and his wife, if she too be of the same status, and likewise the son, if he too be of the same status, are by the

[1] A page is illegible in the Veronese ms. Presumably it dealt with the other two requirements of § 17, Quiritary title and solemnity of form.

statute ordained to be Roman citizens. **30.** The reason why in referring to the son we have added 'if he too be of the same status' is that if the Latin's wife is a Roman citizen, the son born of her is, under a recent senatusconsult made on the authority of the late emperor Hadrian, a Roman citizen from birth. **31.** This right of obtaining Roman citizenship, though by the *L. Aelia Sentia* it was conferred only on those who became Latins on manumission owing to being under 30, was later, by a senatusconsult passed in the consulship of Pegasus and Pusio, granted to persons becoming Latins on manumission over 30. **32.** Even if the Latin dies before having proved the case of a year-old son, the mother can prove it, and thereby she will both become a Roman citizen herself, if she was previously a Latin, *and so will the son* . . .[2] and even though the son himself be already a Roman citizen, because born of a Roman mother, she ought still to prove his case, in order that he may become *suus heres* to his father. **32a.** What we have said of a year-old son is to be taken to apply equally to a year-old daughter. **32b.** Further, under the *L. Visellia*, persons becoming Latins by manumission, whether above or below 30, acquire Quiritary status, i.e. become Roman citizens, by 6 years' service in the police at Rome. A senatusconsult is said to have been passed later giving them citizenship on completion of 3 years' service. **32c.** Also, by an edict of Claudius, Latins obtain Quiritary status if they have built a sea-going ship of a capacity of not less than 10,000 measures of corn, which ship, or one substituted for it, has carried corn to Rome for 6 years. **33.** Further, it has been enacted by Nero that a Latin having a fortune of 200,000 sesterces or more, who builds a house in the city of Rome on which he spends not less than half his fortune, is to obtain Quiritary status. **34.** Lastly, Trajan has enacted that a Latin who for 3 years has worked a mill in the city which grinds not less than 100 measures of corn daily is to attain Quiritary status. . . .[3] **35.** Furthermore, persons manumitted above 30 and having become Latins can obtain Quiritary status *by repetition of the manumission*, *as can those manumitted under* 30 *on their reaching the age of* 30. *In every case a Junian Latin above* 30, *whose manumission is repeated by his Quiritary owner*[4] by means of *uindicta*, the census, or will, becomes a Roman citizen and the freedman of him who has performed the second manumission. Thus, if a slave is yours by bonitary title, but mine by Quiritary, he can be made a Latin by your sole act, but the second manumission can be performed only by me, not by you, and by it he becomes my freedman. Indeed, if he obtains Quiritary status in any of the other ways, he becomes my freedman. But possession of the property left by him at death is granted to you, whatever be the way in which he had obtained Quiritary status. If, however, he belongs by both bonitary and Quiritary title to the same owner, he can both become a Latin and attain Quiritary status by being manumitted by that owner.

36. Not everyone who wishes to manumit is allowed to do so. **37.** For if a man manumits in order to defraud his creditors or his patron, his act is void, because the *L. Aelia Sentia* prevents the liberation. **38.** By the same *lex* also a master under 20 is not permitted to manumit except *uindicta* and with adequate motive for manumission shown before a council. **38.** There is adequate motive for manumission where, for instance, a master manumits his father or mother, or his teacher or foster-brother. Moreover, the motives we mentioned above in the case of a slave manumitted under 30 may be adduced in the present case, just as, conversely, those we have specified for the case of a master under 20 may be applied also to that of a slave under 30. **40.** A limitation being thus imposed by the *L. Aelia Sentia* on manumissions by masters under 20, the result is that, though a master who has reached the age of 14 can make a will and therein institute an heir and leave legacies, he cannot (therein) grant freedom to a slave. **41.** And though the master under 20 is seeking to make his slave a Latin, he must nevertheless show adequate motive before a council, and only then manumit before friends (informally).

42. Furthermore, a limitation has been set on the manumission of slaves by will by the *L. Fufia Caninia.* **43.** For a master who has more than 2 and not more than 10 slaves is allowed to manumit up to half their number; one who has more than 10 and not more than 30 is allowed to manumit up to a third; one who has more than 30 and not more than 100 is allowed to manumit up to a quarter; lastly, one who has more than 100 and not more than 500 is allowed to manumit not more than a fifth; nor is he allowed, even if he has more than 500, to manumit any more, the *lex* enacting that no one may manumit more than 100. On the other hand, a master who has only one or two slaves is not affected by this *lex*, and consequently has unrestricted power of manumission. **44.** Nor has the *lex* any application to masters manumitting otherwise than by will. Hence a master manumitting *uindicta* or by the census or before

[2] About two lines are illegible, and the translation in italics is a partial conjectural restoration.

[3] Two lines illegible in the Veronese ms.

[4] The translation given in italics is from a conjectural restoration of the text.

friends (informally) is allowed to free his whole household, provided of course that there be no other impediment to their freedom. **45.** The rules we have stated with regard to the number of slaves who may be manumitted by will must be taken with the qualification that, where only half or a third or a fourth or a fifth of the actual number may be manumitted, it is always permissible to manumit not fewer than could have been manumitted under the preceding scale. This is laid don n by the *lex* itself, for it would indeed have been absurd that a master of 10 slaves should be allowed to manumit 5, as being allowed to manumit up to half, whereas a master of 12 should not be allowed to manumit more than 4; on the contrary, one who has more than 10, *but less than* 15, *may manumit 5*, *though this exceeds a third of his actual number*. . .[5] **46.** Similarly, if the names of the slaves manumitted by the will are written in a circle, none of them will be freed, since no order of manumission is discoverable. For the *L. Fufia Caninia* and also certain special senatusconsults nullify anything contrived to evade the *lex.*.

47. Finally it is to be noted that the provision of the *L. Aelia Sentia* nullifying manumissions in fraud of creditors applies also to *peregrini* (so ruled by the senate on the authority of Hadrian), but that its other provisions do not apply to them.

[5] An entire page, which probably gave more details about the *L. Fufia Caninia*, is illegible. Cf. Epit. 1.2.2–3. The translation in italics is a conjectural restoration.

3. BOOK I [of persons: *sui iuris* and *aleni iuris*]

The Institutes of Gaius (F. de Zulueta ed. & trans., 1946, vol. 1)
Book I, §§ 48–141, pp. [odd nos.] 17–47 [footnotes omitted]

48. Next comes another division in the law of persons. For some persons are *sui iuris* (independent) and others are *alieni iuris* (dependant on another). **49.** Again, of those *alieni iuris* some are in *potestas*, others in *manus*, and others in *mancipium*. **50.** Let us consider first persons *alieni iuris*; for, knowing those, we shall at the same time know who are *sui iuris*. **51.** And first let us consider persons in another's *potestas.*

52. S1aves are in the *potestas* of their masters. This *potestas* is *iuris gentium*, for it is observable that among all nations alike masters have power of life and death over their slaves, and whatever is acquired through a slave is acquired for his master. **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. **54.** But whereas among Roman citizens there is double ownership (for a slave may belong to a master by bonitary or by Quiritary title, or by both), a slave is held to be in the *potestas* of the master who has the bonitary title to him, even though he have not also the Quiritary. For one who has the bare Quiritary title to a slave is not considered to have *potestas* over him.

55. .Also in our *potestas* are the children whom we beget in *iustae nuptiae* (civil marriage). This right is peculiar to Roman citizens; for scarcely any other men have over their sons a power such as we have. The late emperor Hadrian declared as much in the edict he issued concerning those who petitioned him for citizenship for themselves and their children. I am not forgetting that the Galatians regard children as being in the *potestas* of their parents.

56. Thus Roman citizens have their children in their *potestas* if they take to wife Roman women, or even Latin or peregrine women with whom they have *conubium* (power to contract civil marriage). For, as the effect of *conubium* is that the children take the same status as their father, the result is that the children are not only Roman citizens, but are also in their father's *potestas.* **57.** Hence it is the practice by imperial constitution to grant to certain veterans *conubium* with the first Latin or peregrine women whom they take to wife after their discharge; children born of such a marriage become Roman citizens and in the *potestas* of their parents.

58. It is not, however, every woman whom we may take to wife, but there are some whom we must abstain from marrying. **59.** For no marriage can be contracted, and there is no *conubium*, between persons standing to each other in the relation of ascendant and descendant, for instance between father and daughter, mother and son, grandfather and granddaughter, grandmother and grandson. Persons so related who form a union are considered to have contracted a wicked and incestuous marriage. This principle is so strict that, though the relation of ascendant and descendant have come about only through adoption, they cannot he joined in matrimony; nay, even if the adoption has been dissolved, the legal position remains unaltered. Hence I cannot take to wife a woman who has come into the position of a daughter or granddaughter to me by adoption, even though I have subsequently emancipated her. **60.** Between persons collaterally related similar, but less stringent, rules obtain. **61.** Between brother and sister, whether born of the same two parents or having only one parent in common, marriage is of course forbidden. But where a woman has become my sister by adoption, though, so long as the adoption stands, there can clearly be no marriage between me and her, yet after the adoption has been dissolved by her emancipation I may take her to wife; or again, if I myself have been emancipated, there will be no impediment to our marriage. **62.** A man may lawfully marry his brother's daughter, a practice first introduced after the late emperor Claudius married Agrippina, his brother's daughter. But to marry one's sister's daughter is unlawful. These rules are declared by imperial constitutions. **63.** Also, I may not marry my aunt, paternal or maternal, nor yet a woman who has been my mother-in-law or daughter-in-law, or my stepdaughter or stepmother. We say 'has been' because, if the marriage through which the affinity has arisen still subsists, there is another reason why she cannot become my wife, namely that a woman cannot have two husbands at the same time nor a man two wives. **64.** Accordingly, one who has contracted a wicked and incestuous marriage is considered to have neither wife nor children. Hence the offspring of such a union are considered to have a mother, but no father; consequently they are not in his *potestas*, but are in the position of children whom their mother has conceived in promiscuous intercourse, these likewise being considered to have no father, since even his identity is uncertain. Hence they are termed spurious children, a word derived either from the Greek word σποράδην describing the nature of their conception, or from *sine patre* owing to their being fatherless.

65. It happens sometimes that children who do not come under the paternal *potestas* at birth are subsequently brought under it. **66.** For instance, a Latin who marries under the *L. Aelia Sentia* and begets a Latin or a citizen son, according as the mother is the one or the other, will not hold him in *potestas*, but if afterwards he proves the case and obtains Quiritary status, he thereupon begins to hold him in *potestas*. **67.** Again, if a Roman citizen takes a Latin or a peregrine wife in a mistaken belief that she is a Roman citizen and begets a son, that son is not in his *potestas*: for he is not even a citizen, but either a Latin or a peregrine according to his mother's status, because, except if there be *conubium* between the father and the mother, a child does not take its father's status. But by a senatusconsult the father is allowed to prove a case of mistake, and thereupon both the wife and the son attain to Roman citizenship, and thenceforth the son is subject to his father's *potestas*. The law is the same if by mistake he marries a wife who is in the class of *dediticii*, except that the wife does not become a Roman citizen. **68.** Again, if a Roman woman marries a peregrine in the mistaken belief that he is a Roman citizen, she is allowed to prove a case of mistake, and in this way both her son and her husband attain to Roman citizenship, and at the same time the son becomes subject to his father's *potestas*. The law is the same if under the *L. Aelia Sentia* she marries a peregrine in the belief that he is a Latin; for this contingency also is expressly provided for by the senatusconsult. Up to a certain point the law is the same where she marries one who is in the class of *dediticii* in the belief that he is a Roman citizen, or a Latin under the *L. Aelia Sentia*, except, of course, that the husband remains in his class of *dediticii*, and consequently the son, though he becomes a Roman citizen, is not brought under his father's *potestas*. **69.** Again, if under the *L. Aelia Sentia* a Latin woman marries a peregrine in the belief; that he is a Latin, she can under the senatusconsult, on birth of a son, prove a case of mistake, whereupon they all become Roman citizens and the son comes under his father's *potestas*. **70.** The same has been laid down also for the case of a Latin marrying a peregrine woman under the *L. Aelia Sentia* in the belief that she is a Latin or a Roman citizen. Furthermore, if a Roman citizen, believing himself to be a Latin, for that reason marries a Latin woman, he is allowed, on birth of a son, to prove a case of mistake, as though his marriage had fallen under the *L. Aelia Sentia*. Also those who, being Roman citizens, but believing themselves to be peregrines, take peregrine wives, are allowed under the senatusconsult, on birth of a son, to prove a case of mistake, with the result that the wife will become a Roman citizen, whilst the son not only attains to Roman citizenship, but is also brought under his father's *potestas*. **72.** All the above statements with regard to a son are to be

taken to apply equally to a daughter. **73.** So far as showing a case of mistake is concerned, the age of the son or daughter is immaterial, *except where the proof is offered by one who thought he was* contracting a marriage under the *L. Aelia Sentia*; *such a person* cannot prove a case if the son or daughter be less than one year old. I do not forget that a rescript of the late emperor Hadrian is expressed as though, *wherever it is a case of proving mistake*, *the son must be one year old.*

74. Whether a peregrine who has married a Roman wife can show a case under the senatusconsult has been disputed. . . .[1] But where a peregrine had married a Roman wife and, after the birth of a son, had acquired Roman citizenship by some other means, on the question arising whether he could show a case, the emperor Antoninus declared by rescript that he could do so just as well as if he had remained a peregrine: from which we infer that even a peregrine can show a case. **75.** From what we have said it appears that whether a Roman citizen takes a peregrine wife or a peregrine a Roman wife, their child is a peregrine, but that if such a marriage has been contracted in mistake, its defect is cured under the senatusconsult as explained above. But if there was no mistake, but they contracted the union with knowledge of their status, then in no case is the defect of such a marriage cured.

76. We are referring, of course, to persons between whom *conubium* does not exist. For otherwise, if a Roman citizen takes to wife a peregrine with whom he has *conubium*, a full civil marriage is contracted, as we have previously stated, and in that case their son is a Roman citizen and will be in his father's *potestas*. **77.** Also, if a Roman woman marries a peregrine with whom she has *conubium*, their child will be a peregrine and the lawful son of his father, just as if he had been begotten of a peregrine woman. But at the present day, in virtue of a senatusconsult passed on the authority of the late emperor Hadrian, the offspring of a Roman woman and a peregrine is the lawful son of his father even where *conubium* did not exist between the parents. **78.** Our proposition, that the offspring of a Roman woman and a peregrine is, in the absence of *conubium*, a peregrine, is laid down by the *L. Minicia*, which enacts that the child is to follow the status of the peregrine parent. In the reverse case, where a Roman citizen takes a peregrine wife with whom he has not *conubium*, the same *lex*. provides that the offspring of their union shall be a peregrine. But it was in the case we are considering that the *L. Minicia was* really necessary; for apart from it the child would properly have taken the other status, seeing that the child of persons between whom *conubium* does not exist takes his mother's status under the rule of the *ius gentium*. But the provision of the *lex* that the offspring of a Roman citizen and a peregrine wife is a peregrine seems superfluous, seeing that even apart from the *lex* the same result would follow from the rule of the *ius gentium* in any case. **79.** This rule extends so far that the offspring of a Roman citizen and a Latin wife will be born a Latin, in spite of the fact that the *L. Minicia* does not apply to those who at the present day are called Latins. For though not only foreign races, but also those called Latins, are covered by the term peregrine in that *lex*, the reference is to Latins of another kind, namely those who then possessed communities and States of their own and ranked as peregrines. **80.** On the same principle, contrariwise, the offspring of a Latin husband and a Roman wife is born a Roman citizen, whether the marriage was contracted under the *L. Aelia Sentia* or otherwise. The opinion has indeed been held by some that where the marriage is contracted under the *L. Aelia Sentia* the child is born a Latin, because in this case *conubium* between the parties appears to be granted by that *lex* and the *L. Iunia*, and the invariable effect of *conubium* is that the child takes the father's status; but that if the marriage is contracted otherwise, the child follows the mother's status under the rule of the *ius gentium*, and is consequently a Roman citizen. But the law actually in force is as laid down by a senatusconsult with the authority of the late emperor Hadrian, namely, that in all cases the child of a Latin man and a Roman woman is born a Roman citizen. **81.** Consistently, the same senatusconsult, with the authority of the late emperor Hadrian, has also declared that the child of a Latin man and a peregrine woman, and conversely the child of a peregrine man and a Latin woman, shall follow the mother's status. **82.** From the same principles it also results that the child of a slave-woman and a free man is born a slave by the rule of the *ius gentium*, while on the other hand the child of a free woman and a slave is born free. **83.** But we must be careful to observe whether the rule of the *ius gentium* has not, in any particular case, been varied by some *lex* or by some equivalent of a *lex*. **84.** Thus under the *SC. Claudianum* it was possible for a Roman woman who cohabited with another person's slave with that person's consent, while remaining free herself in virtue of the agreement, to give birth to a slave; for the senatusconsult ordains that what has been agreed between the woman and the slave's owner shall hold good. But subsequently the late emperor Hadrian was moved

[1] One and half lines illegible in the Veronese ms.

by the hardship of the case and the legal anomaly to restore the rule of the *ius gentium*, so that the woman, where she remains free herself, gives birth to a free child. **85.** Again, under a *lex* . . .,[2] it was possible for the children of a slave-woman and a free man to he born free; for by this *lex* it is provided that, where a man has cohabited with another person's slave believing her to he free, their children, if male, shall be born free, but if female, shall belong to the mother's owner. But in this case also the late emperor Vespasian was moved by the legal anomaly to restore the rule of the *ius gentium*, so that the children in every case, even if male, are the slaves of the mother's owner. **86.** But that part of the same *lex* is unrepealed which enacts that the children of a free woman and a man known by her to be another person's slave are born slaves. Thus it is only among people among whom such a *lex*, does not exist that the children follow the mother's status in accordance with the *ius gentium* and are consequently free.

87. It is abundantly clear that in those cases in which a child takes its mother's status and not its father's, the child is not in its father's *potestas* even if the father be a Roman citizen. This is why, as we explained above, in certain cases where, owing to some .mistake, a civil marriage fails to be contracted, the senate intervenes to cure the defect in the marriage and in most cases by so doing causes the son to be brought into his father's *potestas*. **88.** But where a slave-woman after having conceived by a Roman citizen is manumitted and becomes a Roman citizen and then gives birth, her child, though a Roman citizen like its father, is nevertheless not in the father's *potestas*, because it was not begotten in civil marriage, and there is no senatusconsult which enables such intercourse to be regularized.

89. The ruling that where a slave-woman conceives by a Roman citizen and then after being manumitted gives birth the child is born free, rests on natural reason. For children conceived outside civil marriage take their status from the moment of their birth; thus if born of a free mother they are born free, and it is immaterial by whom she conceived them whilst she was a slave. On the other hand, those conceived in civil marriage take their status from the moment of their conception. **90.** Hence if a Roman woman, being with child, is interdicted from fire and water, and having thus become a peregrine, gives birth, many draw a distinction, holding that if she conceived in civil marriage, her child is born a Roman citizen, but if in promiscuous intercourse, a peregrine. **91.** Again, if a Roman woman, being with child, becomes a slave under the *SC. Claudianum* because of her having had intercourse with another person's slave against the will and warning of his master, many draw a distinction, holding that if she conceived in civil marriage, her child is born a Roman citizen, but if in promiscuous intercourse, the slave of the person whose slave its mother has become. **92.** Again, if a peregrine woman conceives in promiscuous intercourse and then, having become a Roman citizen, gives birth, the child is a Roman citizen; but if she conceives by a peregrine in accordance with the laws and customs of peregrines, then, under a senatusconsult passed on the authority of the late emperor Hadrian, the child is a Roman citizen only if citizenship is conferred on the father as well.

93. If a peregrine petitions for Roman citizenship for himself and his children, the children will not come under his *potestas* unless the emperor subjects them to it. This he does only if, after examining the case, he judges it to be for the children's benefit. He examines with special care and particularity the case of children who are below puberty or are not before him. These rules are laid down by an edict of the late emperor Hadrian. **94.** Again, if Roman citizenship is conferred on a man along with his wife who is with child, although, as we have said above, the child is born a Roman citizen, it does not come under its father's *potestas*; this is laid down by a *subscriptio* of the late emperor Hadrian. For this reason one who is aware that his wife is with child ought, when petitioning the emperor for citizenship for himself and his wife, to petition at the same time that he may have the expected child in his *potestas*. **95.** Those who attain to Roman citizenship along with their children in virtue of Latin right are in a different case; for their children do come under their *potestas*. **96.** This right is one that has been granted by the Roman people, the senate, or Caesar to various peregrine States. Two grades of it must be distinguished; for there is greater and lesser Latin right. The greater right is where both those who are elected decurions and those who hold some high office or a magistracy obtain Roman citizenship. The lesser right is where only those who hold some magistracy or high office attain to Roman citizenship. This is laid down in a number of imperial epistles.

97. Not only are the children of our bodies in our *potestas* according as we have stated, but also those whom we adopt. **98.** Adoption takes place in two ways, either by authority of the people or by the *imperium* of a magistrate, such as a praetor. **99.** By authority of the people we adopt those who are *sui*

[2] No gap in the ms. but the name of some *lex* must have dropped out.

iuris. This kind of adoption is called adrogation because both the adopter is asked, that is interrogated, whether he wishes to have the person whom he is about to adopt as his lawful son, and he who is being adopted is asked whether he suffers this to take place, and the people are asked whether they sanction its taking place. By the *imperium* of a magistrate we adopt those who are in the *potestas* of their parents, whether they stand in the first degree of descent, as a son or daughter, or in a remoter degree, as a grandson or granddaughter, great-grandson or great-granddaughter. **100.** The former kind of adoption, that by authority of the people, can be performed nowhere but at Rome, whereas the latter kind is regularly performed in the provinces before the provincial governors. **101.** Further, females cannot be adopted by authority of the people, for this opinion has prevailed; but before a praetor or, in the provinces, before the proconsul or legate, females are regularly adopted. **102.** Also, adoption by authority of the people of a person below puberty has at one time been forbidden and at another time been allowed. At the present day, under an epistle addressed by the excellent emperor Antoninus to the pontiffs, it is allowed, if an adequate motive for it appears, subject to certain conditions. But before a praetor or, in a province, before the proconsul or legate, we can adopt a person of any age. **103.** On the other hand, it is common to both kinds of adoption that those who are incapable of procreation, such as the naturally impotent, can adopt. **104.** But women cannot adopt by any method, for they do not hold even the children of their bodies in their *potestas*. **105.** Also, whether the adoption has been by authority of the people or before a praetor or a provincial governor, the adopter may give the person adopted in adoption to another. **106.** Also common to both kinds of adoption is the dispute whether a younger can adopt an older person. **107.** Peculiar to adoption by authority of the people is that, if a person having children in his *potestas* gives himself in adrogation, not only is he himself subjected to the adrogator's *potestas*, but his children also come under the same *potestas*, as grandchildren.

108. Let us proceed to consider persons who are in *manu* (hand, marital power), which is another right peculiar to Roman citizens. **109.** Now, while both males and females are found in *potestas*, only females can come under *manus*. **110.** Of old, women passed into *manus* in three ways, by *usus*, *confarreatio*, and *coemptio*. **111.** A woman used to pass into *manus* by *usus* if she cohabited with her husband for a year without interruption, being as it were acquired by a usucapion of one year and so passing into her husband's family and ranking as a daughter. Hence it was provided by the Twelve Tables that any woman wishing not to come under her husband's *manus* in this way should stay away from him for three nights in each year and thus interrupt the *usus* of each year. But the whole of this institution has been in part abolished by statutes and in part obliterated by simple disuse. **112.** Entry of a woman into *manus* by *confarreatio is* effected by a kind of sacrifice offered to Jupiter Farreus, in which a spelt cake is employed, whence the name *confarreatio*. In the performance of this ceremony a number of acts and things are done, accompanied by special formal words, in the presence of 10 witnesses. This institution still exists at the present day. For the higher flamens, that is those of Jupiter, Mars, and Quirinus, and also the *rex sacrorum*, can only be chosen from those born of parents married by *confarreatio*; indeed, no person can hold the priesthood without being himself so married. **113.** Entry of a woman into *manus* by *coemptio* takes the form of a mancipation, that is a sort of imaginary sale: in the presence of not less than 5 witnesses, being Roman citizens above puberty, and of a scale-holder, the woman is bought by him into whose *manus* she is passing. **114.** It is, however, possible for a woman to make *coemptio* not only with her husband, but also with a stranger; in other words, *coemptio* may be performed for either matrimonial or fiduciary purposes. A woman who makes a *coemptio* with her husband with the object of ranking as a daughter in his household is said to have made a *coemptio* for matrimonial purposes, whilst one who makes, whether with her husband or a stranger, a *coemptio* for some other object, such as that of evading a tutorship, is said to have done so for fiduciary purposes. **115.** What happens is as follows: a woman wishing to get rid of her existing tutors and to get another makes a *coemptio* with the *auctoritas* of her existing tutors; after that she is remancipated by her *coemptionator* to the person of her own choice and, having been manumitted *uindicta* by him, comes to have as her tutor the man by whom she has been manumitted. This person is called a fiduciary tutor, as will appear below. **115a.** Formerly too fiduciary *coemptio* used to be performed for the purpose of making a will. This was at a time when women, with certain exceptions, had not the right to make a will unless they had made a *coemptio* and had been remancipated and manumitted. But the senate on the authority of the late emperor Hadrian has dispensed from this requirement of a *coemptio*. **115b.** . . .[3] but if a woman makes a fiduciary *coemptio* with her

[3] The reading of §§ 115a–115b is uncertain, and something is missing here.

husband, she nevertheless acquires the position of his daughter. For it is the accepted view that, if for any reason whatever a wife be in her husband's *manus*, she acquires a daughter's rights.

116. We have still to explain what persons are in *mancipio* (bondage). **117.** All children, male or female, who are in a parent's *potestas* can be mancipated by him in just the same manner as slaves. **118.** The same holds good of persons in *manus*: women can be mancipated in the same manner by their *coemptionatores*; indeed, although only a woman married to her *coemptionator* ranks as a daughter in his household, nevertheless a woman not married to him, and consequently not ranking as his daughter, can be mancipated by him. **118a.** For the most part women are mancipated by their parents or *coemptionatores* only when the latter desire to release them from their power, as will appear more clearly below. **119.** Now mancipation, as we have already said, is a sort of imaginary sale, and it too is an institution peculiar to Roman citizens. It is performed as follows: in the presence of not less than 5 Roman citizens of full age and also of a sixth person, having the same qualifications, known as the *libripens* (scale-holder), to hold a bronze scale, the party who is taking by the mancipation, holding a bronze ingot, says: 'I declare that this slave is mine by Quiritary right, and be he purchased to me with this bronze ingot and bronze scale.' He then strikes the scale with the ingot and gives it as a symbolic price to him from whom he is receiving by the mancipation. **120.** It is thus that both servile and free persons are mancipated, as also such animals as are *mancipi* (mancipable), namely oxen, horses, mules, and asses; lands also, whether built or unbuilt on, are mancipated in the same way, if they are *mancipi*, as are Italic lands. **121.** The mancipation of lands differs from that of other things in this point only, that persons, servile and free, and animals that are *mancipi* cannot be mancipated unless they are present—indeed, the taker by the mancipation must grasp the thing which is being mancipated to him, which is why the ceremony is called *mancipatio*, the thing being taken with the hand—whereas lands are regularly mancipated at a distance. **122.** The bronze ingot and scale are used because formerly only bronze money was in use; thus there were *asses*, double-*asses*, half- and; quarter-*asses*, but neither gold nor silver money was current, as we may gather from the law of the Twelve Tables. The value of these pieces was reckoned not by counting but by weighing. Thus for the ancients the *as* was a pound and the double-*as* two pounds (the word *dupondius*, which is still in use, means *duo pondo*), and the half- and quarter-*as* meant a proportionate fraction of a pound's weight. Consequently in early times a man paying, money did not count, but weighed it out, and hence slaves entrusted with the administration of cash were, as they still are, called dispensers. **123.** If it be asked why a woman who has made a *coemptio* differs in status from persons who have been mancipated, the answer is that by making a *coemptio*, she is not reduced to a servile status, whereas persons, male or female, who have been mancipated by their parents or their *coemptionatores* are placed in the position of slaves, and so much so that they can receive an inheritance or a legacy from their holder *in mancipio* only if by the same will they are at the same time declared free, as is the law in the case of slaves. The reason of the difference is plain: the same words are used by the persons who receive them by mancipation from their parents or *coemptionatores* as in the case of slaves, whereas in *coemptio* it is otherwise.

124. Let us now consider how persons subject to another's power are freed therefrom.

125. First let us treat of those who are in *potestas*. **126.** How slaves are freed from *potestas* can be learnt from our previous exposition of their manumission. **127.** Persons in a parent's *potestas* become *sui iuris* on his death. But here we must distinguish: when a father dies, his sons and daughters; always become *sui iuris*, but when a grandfather dies, the grandsons and granddaughters do not always become *sui iuris*, but only if after their grandfather's death they will not relapse into their father's *potestas*. Thus, if at their grandfather's death their father is both alive and in the *potestas* of his father, they fall on the grandfather's death under their father's *potestas*; but if at that moment their father either is dead or has left his father's *potestas*, then, since they cannot fall under their father's *potestas*, they become *sui iuris*. **128.** Again, since one who for some crime has been interdicted from fire and water under the *L. Cornelia* loses Roman citizenship, it follows that, he being thus removed from the category of Roman citizens, his children cease to be in his *potestas* exactly as if he had died; for it is against principle that a man of peregrine status should have a Roman citizen in his *potestas*. For the like reason, if one who is in parental *potestas* is interdicted from fire and water, he ceases to be in his parent's *potestas*, because it is equally against principle that a man of peregrine status should be in the parental *potestas* of a Roman citizen. **129.** But where a parent has been taken prisoner by the enemy, though he becomes the slave of the enemy, his children's status is nevertheless in suspense owing to the *ius postliminii*, whereby those captured by the enemy, if they come back, recover all their anterior rights. Thus, if the parent returns, he will have his

children in *potestas*; if, however, he dies in captivity, the children will be *sui iuris*, though whether as from the time of his death or from that of his capture is a doubtful point. Also, if a son or grandson is himself captured by the enemy, his parent's *potestas* must similarly in virtue of the *ius postliminii* be said to be in suspense. **130.** Furthermore, a male child passes out of parental *potestas* on being inaugurated *flamen* of Jupiter, and a female child on being taken as a Vestal virgin. **131.** In former times also, when the Roman people used to plant colonies in Latin districts, one who with his parent's sanction had enrolled himself in a Latin colony ceased to be in his parent's *potestas*, because he became a citizen of another State.

132. Further, children cease to be in parental *potestas* by emancipation. Now a son passes out of parental *potestas* by three mancipations, but all other children, male or female, leave it by a single mancipation. For the law of the Twelve Tab1es speaks of three mancipations only in the case of a son, its terms being these: 'if a father sells his son three times, the son shall be free of the father'. The procedure is as follows: the father mancipates the son to a third party; the latter manumits the son *uindicta*; thereupon he reverts to his father's *potestas*; the father mancipates him again, it may be to the same person or to another (the practice is to mancipate him to the same person), and that person then manumits him *uindicta* as before; thereby he returns once more into his father's *potestas*; the father mancipates him for the third time to the same or to another person (the practice is that he be mancipated to the same person), and by this mancipation he ceases to be in his father's *potestas*, even though he has not as yet been manumitted, but is still in *mancipii causa*. . . .[4] **133.** Note that one who holds in his *potestas* a son and a grandson by that son has full discretion either to release the son from *potestas* while retaining the grandson in *potestas*, or to keep the son in *potestas* while releasing the grandson, or to make them both *sui iuris*. The same is to be taken to apply to a great-grandson.

134. Further, parents cease to hold in their *potestas* those children whom they have given in adoption to others. In the case of son three mancipations are performed, with two intervening manumissions, exactly as is the practice when a father is releasing his son from *potestas* in order that he may become *sui iuris*; next, either he is remancipated to his father and it is from the father that the adopter claims him as his son before the praetor, who, if the father makes no counterclaim, adjudges the son to the claimant, or else he is not remancipated to his father, but the adopter claims him from the person with whom he is under the third mancipation. Remancipation to the father is, however, more convenient. In the case of all other children, male or female, a single mancipation suffices, and they may or may not be remancipated to the parent. In the provinces the same proceedings are gone through before the provincial governor. **135.** A child begotten by a son after that son has been mancipated once or twice is nevertheless, even if born after its father's third mancipation, in the grandfather's *potestas*, and consequently can be emancipated or given in adoption by the grandfather. But a child begotten by a son who is under his third mancipation is not born in the grandfather's *potestas*. According to Labeo he is *in mancipio* to the same person as his father; but the rule now observed is that, so long as the father remains *in mancipio*, the child's status is in suspense, and that, if the father is manumitted from *mancipium*, the child falls into the father's *potestas*, but if the father dies whilst *in mancipio*, he becomes *sui iuris*. **135a.** The same naturally holds of a child begotten by a grandson who has been mancipated once, but has not yet been manumitted. For, as we said above, in the case of a grandson a single mancipation has the same effect as three mancipations in the case of a son.

136. Also, women cease to be in their father's *potestas* by passing into *manus*. But in the case of the confarreate marriage of the wife of a *flamen* of Jupiter a senatusconsult passed on the proposal of Maximus and Tubero has provided that she is to be considered to be in *manus* only for sacral purposes, while for all other purposes she is to be treated as though she had not entered *manus*. On the other hand, a woman who enters *manus* by *coemptio* is freed from her father's *potestas*, and it makes no difference whether she be in her husband's or a stranger's *manus*, although only women who are in their husband's *manus* rank as daughters.

137. Women cease to be in *manus* in the same ways as those by which daughters are freed from their father's *potestas*. Thus, just as daughters pass out of their father's *potestas* by a single mancipation, so women in *manus* cease by a single mancipation to be in *manus*, and if manumitted from that mancipation become *sui iuris*. **137a.** Between a woman who has made a *coemptio* with a stranger and one who has

[4] An entire page is illegible. It probably dealt with the third manumission necessary to make the son *sui iuris* and went on to consider the emancipation of daughters and grandchildren. § 133 is also a conjectural restoration from D.1.7.28, JI.1.12.7.

done so with her husband there is, however, this difference, that the former can compel her *coemptionator* to remancipate her to the person of her choice, whereas the latter can no more compel her husband to do this than a daughter can compel her father. But, whilst a daughter, even if adoptive, is absolutely incapable of compelling her father, a woman in the *manus* of her husband can, if she has sent him notice of divorce, compel him to release her, just as though she had never been his wife.

138. Persons in *mancipio*, since they rank as slaves, become *sui iuris* if manumitted by *uindicta*, census, or will. **139.** In this case, however, the *L. Aelia Sentia* does not apply, so that no inquiry is made into the ages of the manumitter and manumitted, nor whether the manumitter has a patron or a creditor. Neither does the numerica1 scale laid down by the *L. Fufia Caninia* apply to these persons. **140.** More than this, it is possible for them to obtain liberty by the census even against the will of their holder *in mancipio*, with the exception of one whom his father has mancipated with a proviso for remancipation to himself; for in that case the father is considered in a sense to reserve his *potestas*, in virtue of the fact that he recovers him by mancipation. Nor, we are told, does a person acquire liberty by the census against the will of his holder *in mancipio* if his father gave him in mancipation on account of his wrongful act, for example if he (the father) was condemned for theft on his account and surrendered him by mancipation to the plaintiff; for in that case the plaintiff holds him in lieu of money. **141.** Be it noted finally that we are not allowed to behave insultingly to those whom we hold *in mancipio*; if we do, we shall be legally liable for the insult. And further, a man is not detained long in this status, which for the most part is created only for a moment, as:a matter of form, except, of course, where a man is mancipated on account of wrongdoing.

4. BOOK I [of persons: *tutela*]

The Institutes of Gaius (F. de Zulueta ed. & trans., 1946, vol. 1)
Book I, §§ 142–200, pp. [odd nos.] 49–63 [footnotes omitted]

142. Now let us pass to another classification of persons who are neither in *potestas* nor in *manus* nor in *mancipium*, some are under *tutela* or under *curatio*, others under neither. Let us therefore see which are under *tutela* and which under *curatio*; so we shall know the others, who are under neither. **143.** First then of those who are in *tutela.*

144. Parents are allowed to appoint by will tutors to the children whom they hold in *potestas*, to males below the age of puberty, to females of whatever age, even if they be married. For the early lawyers held that women even of full age should be in *tutela* on account of their instability of judgment. **145.** Thus, if by his will a man has appointed a tutor to his son and daughter and both reach puberty, whereas the son ceases to have a tutor, the daughter none the less remains under *tutela*; for it is only by the *ius liberorum* (as mother of several children) that women are freed from *tutela* by the *L. Iulia et Papia Poppaea*. From this statement, however, we except Vestal virgins, whom even the early lawyers out of respect for their priestly office desired to be free from *tutela*; and so again it was provided by the law of the Twelve Tables. **146.** To grandsons and granddaughters we can appoint tutors by will only if they do not eventually lapse at our death into the *potestas* of their father. Thus, if my son is in my *potestas* at the time of my death, my grandsons by him cannot receive a tutor under my will, in spite of their having been in my *potestas*, for the simple reason that on my death they will he in their father's *potestas*. **147.** Just as in a number of other cases posthumous children are treated as if already born, so in the present case it is settled that tutors can he appointed by will to posthumous children no less than to those already born, provided that in the given circumstances they would, if born in the testator's lifetime, come under his *potestas*. Such children we can also institute as our heirs, whereas we may not institute stranger posthumous children. **148.** To a wife in one's *manus* one can appoint a tutor exactly as to a daughter, and to a daughter-in-law in one's son's *manus* exactly as to a granddaughter. **149.** The most correct form of appointing a tutor is: 'I give Lucius Titius as tutor to my children' or 'to my wife'; but it is also considered a correct appointment if the will reads: 'Let Lucius Titius be tutor to my children' or 'to my wife'. **150.** In the case, however, of a wife in *manus* option of tutor is admitted, that is to say the will may allow her to choose whom she likes for her tutor. The form is: 'I give my wife Titia the option of a tutor'; this permits her to choose a tutor for all purposes or, it may be, for only one or two. **151.** The option given may be unlimited or limited. **152.** An unlimited option is commonly given in the form just stated; a limited option thus: 'I give my wife Titia the option of a tutor not more than once' or 'not more than twice'. **153.** Between these two options there is a wide difference: a woman having an unlimited option is able to choose a tutor once, twice, thrice, or oftener, whereas one having a limited option can do so only up to the

number of times granted—once or twice, as the case may be, and not oftener. **154.** Tutors appointed by name in a will are called *datiui*, those selected under an option *optivi*.

155. Those to whom no tutor has been appointed by will have under the law of the Twelve Tables their agnates as tutors; these are called *legitimi*. **156.** Agnates are those akin to each other through persons of the male sex, being as it were cognates on the father's side, for instance one's brother by the same father, his son and his grandson by that son, or again one's paternal uncle, his son, and his grandson by that son. Those connected through persons of the female sex are not agnates, but cognates related only by natural law. Accordingly, between a mother's brother and her son there is not agnation, but cognation; again, the son of my father's or my mother's sister is not my agnate, but my cognate, and of course my relation to him is the same, since children follow their father's, not their mother's, family. **157.** In former times, under the law of the Twelve Tables, women as well as males had their agnates for tutors, but the subsequent *L. Claudia* has abolished the *tutela* of agnates so far as women are concerned, with the result that a male below puberty has as tutor his brother, if of full age, or his paternal uncle, whereas a woman cannot have a tutor of this kind. **158.** *By capitis deminutio* the tie of agnation is ended, but that of cognition is unaffected, because considerations of civil law can destroy civil but not natural rights. **159.** *Capitis deminutio is* a change of previous status; it occurs in three ways, there being *capitis deminutio maxima*, *minor* (also called *media*), and *minima*. **160.** There is *capitis deminutio maxima* when a man loses both citizenship and freedom at the same time. This happens to those who evade inscription in the census, whom the regulations for the census order to be sold. A similar legal provision . . .[1] who in contravention of that *lex* take up residence in the city of Rome. Another case is that of a woman who under the *SC. Claudianum* becomes enslaved to the owner of a slave with whom she has cohabited against the will and warning of that owner. **161.** There is *capitis deminutio*, *minor* or *media* when citizenship is lost but freedom is retained, as happens to one interdicted from fire and water. **162.** There is *capitis deminutio minima* when, though both citizenship and freedom are retained, there is a change of status, as happens to those who are adopted or who mate a *coemptio*, and to those given in mancipation and manumitted from it, so much so that a man undergoes *capitis deminutio* every time that he is mancipated or manumitted. **163.** Now, the right of agnation is destroyed not only by *capitis deminutio maxima* and *minor*, but also by *capitis deminutio minima*. Thus, if of two children a father has emancipated one, after the father's death neither can be the other's tutor by right of agnation. **164.** But though a *tutela* goes to agnates, it does not go to all of them at the same time, but only to those standing in the nearest degree. . . .[2]

165. By the law of the Twelve Tables also the *tutela* of freedmen below puberty and of freedwomen belongs to their patrons and their patrons' children. This *tutela* likewise is styled *legitima*, not that there is any express provision concerning it in the *lex*, but because it has become accepted by interpretation exactly as though it had been introduced by the *lex* in so many words. For from the fact that the statute ordained that succession to freedmen and freedwomen dying intestate should go to their patrons and their patrons' children, the early lawyers inferred that the intention of the statute was that *tutela* over them should go to the same persons, seeing that it had ordained that agnates whom it called to succession should also be tutors. **166.** On the analogy of the *tutela* of patrons yet another *tutela* has become accepted, which also is styled *legitima*. For if one mancipates to another one's son, grandson, or great-grandson who is below puberty, or one's daughter, granddaughter, or great-granddaughter whether of full age or not, with a proviso for remancipation to oneself, and when they have been remancipated manumits them, one will be their *legitimus tutor.*

166a. There are other *tutelae* that are called *fiduciariae*, namely those that come to us through our having manumitted a free person mancipated to us by a parent or *coemptionator*. **167.** But *tutela* over Latin freedwomen and over Latin freedmen below puberty does not in all cases go to their manumitters and their children, but to those to whom before their manumission they belonged by Quiritary title. Therefore, if a female slave is yours by Quiritary title but mine by bonitary, manumission by me alone and not by you can make her a Latin, and her estate goes to me. Her tutela, however, falls to you; for so the *L. Iunia* provides. But if she has been made a Latin by one who owns her by both bonitary and Quiritary title, then both her estate and her *tutela* go to him.

---

[1] One and a half lines illegible.

[2] Seventeen lines are virtually illegible. The topic was probably the *legitima tutla* of *gentiles* (cf. GI.3.17) and probably another topic as well.

168. *Tutela* over women is allowed to be ceded *in iure* to another by agnates, patrons, and manumitters of free persons, but *tutela* over male wards is not allowed to be ceded, because, being terminated when the ward reaches puberty, it is not considered burdensome. **169.** The person to whom a *tutela is* ceded is called a *cessicius tutor*. **170.** If this tutor dies or undergoes *capitis deminutio*, the *tutela* reverts to the tutor who ceded it. Likewise, if he who ceded it himself dies or undergoes *capitis deminutio*, the *tutela* departs from the *cessicius* and reverts to him who stands in the next degree after the ceder in regard to that *tutela*. **171.** So far, however, as agnates are concerned no question of tutela *cessicia* arises at the present day, since agnatic *tutela* over women has been abolished by the *L. Claudia*. **172.** But some have held that fiduciary tutors also have no right of ceding their tutela, inasmuch as they have subjected themselves to the burden by their own act; but even if that view be accepted, the same should not be said in the case of a parent who has mancipated a daughter, granddaughter, or great-granddaughter to a third party with a proviso for remancipation to himself and who has manumitted her after such remancipation, since he is regarded as a *legitimus tutor* and should he accorded no less respect than a patron.

173. Furthermore, by a *senatusconsultum* women are allowed to apply for another tutor in place of a tutor who is absent; thereupon the previous tutor is retired. It does not matter how far away he is. **174.** But by an express exception a freedwoman is not allowed to apply for another tutor in place of her absent patron. **175.** We place on the same footing as a patron a parent who, by manumitting a daughter, granddaughter, or great-granddaughter after her remancipation to himself, has acquired *legitima tutela* over her. His children, however, are accounted fiduciary tutors, whereas a patron's children acquire the same kind of *tutela* as their parent had. **176.** But sometimes a woman is allowed to apply for another tutor in place of even an absent patron, for instance in order to accept an inheritance. **177.** The same has been decreed by the senate where a patron's son is himself a ward. **178.** For by the *L. Iulia de maritandis ordinibus* (regulating the marriages of the orders) a woman in the *legitima tutela* of a ward may apply to the urban praetor for a tutor for the purpose of creating a *dos* (dowry). **179.** Of course a patron's son becomes tutor of his father's freedwoman even if he be below puberty, though he is unable to give *auctoritas* in any matter, seeing that he himself is not allowed to do any act without his own tutor's *auctoritas*. **180.** Again, a woman in the *legitima tutela* of a lunatic or a dumb man is allowed by the senatusconsult to apply for a tutor for the purpose of creating a *dos*. 18I. In the above cases it is clear that the *tutela* of a patron or a patron's son remains unimpaired. **182.** The senate has further decreed that if the tutor of a male or female ward be removed from his tutela as suspect, or be excused from office on some lawful ground, another tutor shall be appointed in his place; whereupon the previous tutor loses his *tutela*. **183.** The practice in all these cases is the same at Rome and in the provinces, namely that application for a tutor should be made at Rome to the praetor and in the provinces to the provincial governor.

184. In earlier times, when the *legis actiones* were in use, a tutor used to be appointed if there was to bc a *legis actio* between a tutor and his ward, whether a woman or a male under puberty. For, inasmuch as the tutor could not himself give *auctoritas* in a matter in which he was himself interested, another tutor used to be appointed, in order that the *legis actio* might be carried through with his *auctoritas*. He was called a *praetorius tutor*, because appointed by the urban praetor. Some hold that since the abolition of the *legis actiones* this case of appointment of a tutor has gone out of use, but another view is that it is still available if the proceedings in view be by *iudicium legitimum.*

185. If a person has no tutor at all, one is appointed for him, at Rome by the praetor and a majority of the tribunes of the *plebs* under the *L. Atilia*, who is called *Atilianus tutor*, and in the provinces by the provincial governors under the *L. Iulia et Titia*. **186.** Accordingly, where a tutor has been appointed by a will subject to a condition or as from a certain date, a tutor can be appointed pending the realization of the condition or the arrival of the date. Again, where the testamentary appointment is absolute, a tutor may be applied for under the *leges* mentioned during such time as no one has qualified as heir; the tutor appointed ceases to be tutor as soon as someone becomes tutor under the will. **187.** Application for a tutor should also be made under the same *leges* if a tutor has been captured by the enemy; this appointed tutor ceases to be tutor if the captive tutor returns to Roman territory; for *iure postliminii* he recovers his *tutela* on his return.

188. From all this it is evident how many species or varieties of *tutela* there are. But to inquire into the number of *genera* between which these species are distributed would involve a long discussion, this being a point on which the older lawyers have been exceedingly doubtful. For our part, having dealt with the matter very carefully in our commentary on the Edict and in our books *ex Quinto Mucio*, we omit the whole discussion. It is enough to observe that some, for instance Quintus Mucius, have said that there are

five genera, others, for instance Servius Sulpicius, that there are three, others, for instance Labeo, that there are two, while others have held that there are as many genera as there are species.

189. That persons below puberty should he 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 instabi1ity of judgment and that therefore in fairness they should he 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. **191.** This is why no action on the *tutela* lies at the suit of a woman against her tutor. In contrast, where tutors manage the affairs of a male or female ward below age, they are held to account to their wards on their attaining, full age by the *tutelae iudicium*. **192.** It must, however, he allowed that the *legitima tutela* of a patron or a parent is of some real efficacy, in that such guardians are not compelled to give *auctoritas* for the making of a will, the alienation of *res mancipi*, or the incurring of obligations, except where a strong reason for alienating *res mancipi* or incurring obligations exists. A11 this is provided in the interest of the tutors themselves, in order that, being entitled to the inheritance of their wards should these die intestate, they may not he excluded from it by a will nor receive it rendered less lucrative by the alienation of the more valuable property or by debts incurred. **193.** Among peregrines women are not in *tutela* in the same way as with us; still, in general, they are in a sort of *tutela*: a law of the Bithynians, for example, ordains that if a woman enters into any transaction, it must be authorized by her husband or full-grown son.

194. Freeborn women are released from *tutela* in right of three children, freedwomen in right of four if they are in the *legitima tutela* of their patron or his children, but otherwise, if they have tutors of another sort, such as *Atiliani* or *fiduciarii*, in right of three children. **195.** A freedwoman may have a tutor of another sort in various ways; thus, if she has been manumitted by a woman, she must apply, for a tutor under the *L. Atilia* or, in a province, under the *L. Iulia et Titia*, since she cannot be in the *tutela* of her patroness. **195a.** Again if, having been manumitted by a male and having with his *auctoritas* made a *coemptio*, she has then been remancipated and manumitted, she ceases to have her patron for tutor and now has him by whom she has been (secondly) manumitted, who is called a *fiduciarius tutor*. **195b.** Again, if her patron or his son has given himself in adoption, a freedwoman must apply for a tutor under the *L. Atilia* or *Iulia et Titia*. **195c**. A freedwoman must make a similar application under these *leges* if her patron dies leaving no issue of the male sex in the family. **196.** Males, on the other hand, are released from *tutela* when they reach puberty. Sabinus, Cassius, and the rest of our teachers consider that a boy reaches puberty when he shows the fact by his physical development, that is when he is capable of procreation, but in the case of those who cannot so develop, such as the naturally impotent, they hold that the normal age of puberty must be taken. The authorities of the other school consider that puberty must be judged simply by age, that is, they hold a boy to have reached puberty when he has reached the age of 14. . . .[3]

197. . . . has reached an age at which he is capable of looking after his own affairs, a practice which, as we have pointed out above, is observed among peregrine peoples. **198.** On the same grounds curators are likewise appointed in the provinces by their governors.

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.

[3] A whole page is illegible in the ms. The sense may be given in Ulp. 11.28. Futher discussion of the termination of *tutela* is missing (cf. JI.1.22) and all but the end ot the treatment of *curatio*. Cf. JI.1.23, Ulp. 12, Epit.1.8.

PROOEMIUM

IN the name of Our Lord Jesus Christ.

The Emperor Caesar Flavius Justinian, conqueror of the Alamanni, the Goths, the Franks, the Germans, the Antes, the Alani, the Vandals, the Africans, pious, prosperous, renowned, victorious, and triumphant, ever august,

To the youth desirous of studying the law:

The imperial majesty should be armed with laws as well as glorified with arms, that there may be good government in times both of war and of peace, and the ruler of Rome may not only be victorious over his enemies, but may show himself as scrupulously regardful of justice as triumphant over his conquered foes.

1. With deepest application and forethought, and by the blessing of God, we have attained both of these objects. The barbarian nations which we have subjugated know our velour, Africa and other provinces without number being once more, after so long an interval, reduced beneath the sway of Rome by victories granted by Heaven, and themselves bearing witness to our dominion. All peoples too are ruled by laws which we have either enacted or arranged.

2. Having removed every inconsistency from the sacred constitutions, hitherto inharmonious and confused, we extended our care to the immense volumes of the older jurisprudence; and, like sailors crossing the mid-ocean, by the favour of Heaven have now completed a work of which we once despaired. **3**. When this, with God's blessing, had been done, we called together that distinguished man Tribonian, master and ex-quaestor of our sacred palace, and the illustrious Theophilus and Dorotheus, professors of law, of whose ability, legal knowledge, and trusty observance of our orders we have received many and genuine proofs, and specially commissioned them to compose by our authority and advice a book of Institutes, whereby you may be enabled to learn your first lessons in law no longer from ancient fables, but to grasp them by the brilliant light of imperial learning, and that your ears and minds may receive nothing useless or incorrect, but only what holds good in actual fact. And thus whereas in past time even the foremost of you were unable to read the imperial constitutions until after four years, you, who have been so honoured and fortunate as to receive both the beginning and the end of your legal teaching from the mouth of the Emperor, can now enter on the study of them without delay. **4**. After the completion therefore of the fifty books of the Digest or Pandects, in which all the earlier law has been collected by the aid of the said distinguished Tribonian and other illustrious and most able men, we directed the division of these same Institutes into four books, comprising the first elements of the whole science of law. **5**. In these the law previously obtaining has bee.l briefly stated, as well as that which after becoming disused has been again brought to light by our imperial aid. **6**. Compiled from all the Institutes of the ancient jurists, and in particular from the commentaries of our Gaius on both the Institutes and the common cases, and from many other legal works, these Institutes were submitted to us by the three learned men aforesaid, and after reading and examining them we have given them the fullest force of our constitutions.

7. Receive then these laws with your best powers and with the eagerness of study, and show yourselves so learned as to be encouraged to hope that when you have compassed the whole field of law you may have ability to govern such portion of the state as may be entrusted to you.

Given at Constantinople the 21st day of November, in the third consulate of the Emperor Justinian, Father of his Country, ever august.

1. BOOK I

TITLE I

OF JUSTICE AND LAW

JUSTICE is the set and constant purpose which gives to every man his due.

1. Jurisprudence is the knowledge of things divine and human, the science of the just and the unjust.

2. Having laid down these general definitions, and our object being the exposition of the law of the Roman people, we think that the most advantageous plan will be to commence with an easy and simple path, and then to proceed to details with a most careful and scrupulous exactness of interpretation. Otherwise, if we begin by burdening the student's memory, as yet weak and untrained, with a multitude

and variety of matters, one of two things will happen: either we shall cause him wholly to desert the study of law, or else we shall bring him at last, after great labour, and often, too, distrustful of his own powers (the commonest cause, among the young, of ill-success), to a point which he might have reached earlier, without such labour and confident in himself, had he been led along a smoother path.

3. The precepts of the law are these: to live honestly, to injure no one, and to give every man his due. **4**. The study of law consists of two branches, law public, and law private. The former relates to the welfare of the Roman State; the latter to the advantage of the individual citizen. Of private law then we may say that it is of threefold origin, being collected from the precepts of nature, from those of the law of nations, or from those of the civil law of Rome.

TITLE II

OF THE LAW OF NATURE, THE LAW OF NATIONS, AND THE CIVIL LAW

The law of nature is that which she has taught all animals; a law not peculiar to the human race, but shared by all living creatures, whether denizens of the air, the dry land, or the sea. Hence comes the union of male and female, which we call marriage; hence the procreation and rearing of children, for this is a law by the knowledge of which we see even the lower animals are distinguished.

1. The civil law of Rome, and the law of all nations, differ from each other thus. The laws of every people governed by statutes and customs are partly peculiar to itself, partly common to all mankind. Those rules which a state enacts for its own members are peculiar to itself, and are called civil law: those rules prescribed by natural reason for all men are observed by all peoples alike, and are called the law of nations. Thus the laws of the Roman people are partly peculiar to itself, partly common to all nations; a distinction of which we shall take notice as occasion offers. **2**. Civil law takes its name from the state wherein it binds; for instance, the civil law of Athens, it being quite correct to speak thus of the enactments of Solon or Draco. So too we call the law observed by the Roman people the civil law of the Romans, or the law of the Quirites; the law, that is to say, which they observe, the Romans being called Quirites after Quirinus. Whenever we speak, however, of civil law, without any qualification, we mean our own; exactly as, when ‘the poet’ is spoken of, without addition or qualification, the Greeks understand the great Homer, and we understand Vergil. But the law of nations is common to the whole human race; for nations have settled certain things for themselves as occasion and the necessities of human life required. For instance, wars arose, and then followed captivity and slavery, which are contrary to the law of nature; for by the law of nature all men from the beginning were born free. The law of nations again is the source of almost all contracts; for instance, sale, hire, partnership, deposit, loan for consumption, and very many others.

3. Our law is partly written, partly unwritten, as among the Greeks. The written law consists of statutes, plebiscites, senatusconsults, enactments of the Emperors, edicts of the magistrates, and answers of those learned in the law. **4**. A statute is an enactment of the Roman people, which it used to make on the motion of a senatorial magistrate, as for instance a consul. A plebiscite is an enactment of the commonalty, such as was made on the motion of one of their own magistrates, as a tribune. The commonalty differs from the people as a species from its genus; for ‘the people’ includes whole aggregte of citizens, among them patricians and senators, while the term ‘commonalty’ embraces only such citizens as are not patricians or senators. After the passing, however, of the statute called the lex Hortensia, plebiscites acquired for the first time the force of statutes. **5**. A senatusconsult is a command and ordinance of the senate, for when the Roman people had been so increased that it was difficult to assemble it together for the purpose of enacting statutes, it seemed right that the senate should be consulted instead of the people. **6**. Again, what the Emperor determines has the force of a statute, the people having conferred on him all their authority and power by the *lex regia*, which was passed concerning his office and authority. Consequently, whatever the Emperor settles by rescript, or decides in his judicial capacity, or ordains by edicts, is clearly a statute: and these are what are called constitutions. Some of these of course are personal, and not to be followed as precedents, since this is not the Emperor’s will; for a favour bestowed on individual merit, or a penalty inflicted for individual wrongdoing, or relief given without a precedent, do not go beyond the particular person: though others are general, and bind all beyond a doubt. **7**. The edicts of the praetors too have no small legal authority, and these we are used to call the *ius honorarium*, because those who occupy posts of honour in the state, in other words the magistrates, have given authority to this branch of law. The curule aediles also used to issue an edict relating to certain matters, which forms part of the *ius honorarium*. **8**. The answers of those learned in the

law are the opinions and views of persons authorized to determine and expound the law; for it was of old provided that certain persons should publicly interpret the laws, who were called jurisconsults, and whom the Emperor privileged to give formal answers. If they were unanimous the judge was forbidden by imperial constitution to depart from their opinion, so great was its authority. **9**. The unwritten law is that which usage has approved: for ancient customs, when approved by consent of those who follow them, are like statute. **10**. And this division of the civil law into two kinds seems not inappropriate, for it appears to have originated in the institutions of two states, namely Athens and Lacedaemon; it having been usual in the latter to commit to memory what was observed as law, while the Athenians observed only what they had made permanent in written statutes.

11. But the laws of nature, which are observed by all nations alike, are established, as it were, by divine providence, and remain ever fixed and immutable: but the municipal laws of each individual state are subject to frequent change, either by the tacit consent of the people, or by the subsequent enactment of another statute.

12. The whole of the law which we observe relates either to persons, or to things, or to actions. And first let us speak of persons: for it is useless to know the law without knowing the persons for whose sake it was established.

TITLE III

OF THE LAW OF PERSONS

In the law of persons, then, the first division is into free men and slaves.

1. Freedom, from which men are called free, is a man's natural power of doing what he pleases, so far as he is not prevented by force or law: **2**. Slavery is an institution of the law of nations, against nature subjecting one man to the dominion of another. **3**. The name 'slave' is derived from the practice of generals to order the preservation and sale of captives, instead of killing them; hence they are also called *mancipia*, because they are taken from the enemy by the strong hand. **4**. Slaves are either born so, their mothers being slaves themselves; or they become so, and this either by the law of nations, that is to say by capture in war, or by the civil law, as when a free man, over twenty years of age, collusively allows himself to be sold in order that he may share the purchase money. The condition of all slaves is one and the same: in the conditions of free men there are many distinctions; to begin with, they are either free born, or made free.

TITLE IV

OF MEN FREE BORN

A freeborn man is one free from his birth, being the offspring of parents united in wedlock, whether both be free born or both made free, or one made free and the other free born. He is also free born if his mother be free, even though his father be a slave, and so also is he whose paternity is uncertain, being the offspring of promiscuous intercourse, but whose mother is free. It is enough if the mother be free at the moment of birth, though a slave at that of conception: and conversely if she be free at the time of conception, and then becomes a slave before the birth of the child, the latter is held to be free born, on the ground that an unborn child ought not to be prejudiced by the mother's misfortune. Hence arose the question whether the child of a woman is born free, or a slave, who, while pregnant, is manumitted, and then becomes a slave again before delivery. Marcellus thinks he is born free, for it is enough if the mother of an unborn infant is free at any moment between conception and delivery: and this view is right. **1**. The status of a man born free is not prejudiced by his being placed in the position of a slave and then being manumitted: for it has been decided that manumission cannot stand in the way of rights acquired by birth.

TITLE V

OF FREEDMEN

Those are freedmen, or made free, who have been manumitted from legal slavery. Manumission is the giving of freedom; for while a man is in slavery he is subject to the power once known as *manus*; and from that power he is set free by manumission. All this originated in the law of nations; for by natural law all men were born free—slavery, and by consequence manumission, being unknown. But afterwards slavery came in by the law of nations, and was followed by the boon of manumission; so that though we are all known by the common name of 'man', three classes of men came into existence with the law of nations, namely men free born, slaves, and thirdly freedmen who had ceased to be slaves. **1**. Manumission

may take place in various ways; either in the holy church, according to the sacred constitutions, or by default in a fictitious vindication, or before friends, or by letter, or by testament or any other expression of a man's last will: and indeed there are many other modes in which freedom may be acquired, introduced by the constitutions of earlier emperors as well as by our own. **2**. It is usual for slaves to be manumitted by their masters at any time, even when the magistrate is merely passing by, as for instance while the praetor or proconsul or governor of a province is going to the baths or the theatre.

3. Of freedmen there were formerly three grades; for those who were manumitted sometimes obtained a higher freedom fully recognized by the laws, and became Roman citizens; sometimes a lower form, becoming by the lex Iunia Norbana Latins; and sometimes finally a liberty still more circumscribed, being placed by the lex Aelia Sentia on the footing of enemies surrendered at discretion. This last and lowest class, however, has long ceased to exist, and the title of Latin also had become rare: and so in our goodness, which desires to raise and improve in every matter, we have amended this in two constitutions, and reintroduced the earlier usage; for in the earliest infancy of Rome there was but one simple type of liberty, namely that possessed by the manumitter, the only distinction possible being that the latter was free born, while the manumitted slave became a freedman. We have abolished the class of

dediticii, or enemies surrendered at discretion, by our constitution, published among those our decisions, by which, at the suggestion of the eminent Tribonian, our quaestor, we have set at rest the disputes of the older law. By another constitution, which shines brightly among the imperial enactments, and suggested by the same quaestor, we have altered the position of the *Latini Iuniani*, and dispensed with all the rules relating to their condition; and have endowed with the citizenship of Rome all freedmen alike, without regard to the age of the person manumitted, the nature of the master's ownership, or the mode of manumission, in accordance with the earlier usage; with the addition of many new modes in which freedom coupled with the Roman citizenship, the only kind of freedom now known may be bestowed on slaves.

TITLE VI

OF PERSONS UNABLE TO MANUMIT, AND THE CAUSE OF THEIR INCAPACITY

In some cases, however, manumission is not permitted; for an owner who would defraud his creditors by an intended manumission attempts in vain to manumit, the act being made of no effect by the lex Aelia Sentia. **1**. A master, however, who is insolvent may institute one of his slaves heir in his will, conferring freedom on him at the same time, so that he may become free and his sole and necessary heir, provided no one else takes as heir under the will, either because no one else was instituted at all, or because the person instituted for some reason or other does not take the inheritance. And this was a judicious provision of the lex Aelia Sentia, for it was most desirable that persons in embarrassed circumstances, who could get no other heir, should have a slave as necessary heir to satisfy their creditors' claims, or that at least (if he did not do this) the creditors might sell the estate in the slave's name, so as to save the memory of the deceased from disrepute. **2**. The law is the same if a slave be instituted heir without liberty being expressly given him, this being enacted by our constitution in all cases, and not merely where the master is insolvent; so that in accordance with the modern spirit of humanity, institution will be equivalent to a gift of liberty; for it is unlikely, in spite of the omission of the grant of freedom, that one should have wished the person whom one has chosen as one's heir to remain a slave, so that one should have no heir at all. **3**. If a person is insolvent at the time of manumission, or becomes so by the manumission itself, this is manumission in fraud of creditors. It is, however, now settled law, that the gift of liberty is not avoided unless the intention of the manumitter was fraudulent, even though his property is in fact insufficient to meet his creditors' claims; for men often hope and believe that they are better off than they really are. Consequently, we understand a gift of liberty to be avoided only when the creditors are defrauded both by the intention of the manumitter, and in fact: that is to say, by his property being insufficient to meet their claims.

4. The same lex Aelia Sentia makes it unlawful for a master under twenty years of age to manumit, except in the mode of fictitious vindication, preceded by proof of some legitimate motive before the council. **5**. It is a legitimate motive of manumission if the s]ave to be manumitted be, for instance, the father or mother of the manumitter, or his son or daughter, or his natural brother or sister, or governor or nurse or teacher, or foster-son or foster-daughter or foster-brother, or a slave whom he wishes to make his agent, or a female slave whom he intends to marry; provided he marry her within six months, and provided that the slave intended as an agent is not less than seventeen years of age at the time of

manumission. **6**. When a motive for manumission, whether true or false, has once been proved, the council cannot withdraw its sanction.

7. Thus the lex Aelia Sentia having prescribed a certain mode of manumission for owners under twenty, it followed that though a person fourteen years of age could make a will, and therein institute an heir and leave legacies, yet he could not confer liberty on a slave until he had completed his twentieth year. But it seemed an intolerable hardship that a man who had the power of disposing freely of all his property by will should not be allowed to give his freedom to a single slave: wherefore we allow him to deal in his last will as he pleases with his slaves as with the rest of his property, and even to give them their liberty if he will. But liberty being a boon beyond price, for which very reason the power of manumission was denied by the older law to owners under twenty years of age, we have as it were selected a middle course, and permitted persons under twenty years of age to manumit their slaves by will, but not until they have completed their seventeenth and entered on their eighteenth year. For when ancient custom allowed persons of this age to plead on behalf of others, why should not their judgement be deemed sound enough to enable them to use discretion in giving freedom to their own slaves?

TITLE VII

OF THE REPEAL OF THE LEX FUFIA CANINIA

Moreover, by the lex Fufia Caninia a limit was placed on the number of slaves who could be manumitted by their master's testament: but this law we have thought fit to repeal, as an obstacle to freedom and to some extent invidious, for it was certainly inhuman to take away from a man on his deathbed the right of liberating the whole of his slaves, which he could have exercised at any moment during his lifetime, unless there were some other obstacle to the act of manumlsslon.

TITLE VIII

OF PERSONS INDEPENDENT OR DEPENDENT

Another division of the law relating to persons classifies them as either independent or dependent. Those again who are dependent are in the power either of parents or of masters. Let us first then consider those who are dependent, for by learning who these are we shall at the same time learn who are independent. And first let us look at those who are in the power of masters.

1. Now slaves are in the power of masters, a power recognized by the law of all nations, for all nations present the spectacle of masters invested with power of life and death over slaves; and to whatever is acquired through a slave his owner is entitled. **2**. But in the present day no one under our sway a is permitted to indulge in excessive harshness towards his slaves, without some reason recognized by law; for, by a constitution of the Emperor Antoninus Pius, a man is made as liable to punishment for killing his own slave as for killing the slave of another person; and extreme severity on the part of masters is checked by another constitution whereby the same Emperor, in answer to inquiries from presidents of provinces concerning slaves who take refuge at churches or statues of the Emperor, commanded that on proof of intolerable cruelty a master should be compelled to sell his slaves on fair terms, so as to receive their value. And both of these are reasonable enactments, for the public interest requires that no one should make an evil use of his own property.

The terms of the rescript of Antoninus to Aelius Marcianus are as follow:—'The powers of masters over their slaves ought to continue undiminished, nor ought any man to be deprived of his lawful rights; but it is the master's own interest that relief justly sought against cruelty, insufficient sustenance, or intolerable wrong, should not be denied. I enjoin you then to look into the complaints of the slaves of Iulius Sabinus, who have fled for protection to the statue of the Emperor, and if you find them treated with undue harshness or other ignominious wrong, order them to be sold, so that they may not again fall under the power of their master; and the latter will find that if he attempts to evade this my enactment, I shall visit his offence with severe punishment.'

TITLE IX

OF PATERNAL POWER

Our children whom we have begotten in lawful wedlock are in our power. **1**. Wedlock or matrimony is the union of male and female, involving the habitual intercourse of daily life. **2**. The power which we have over our children is peculiar to Roman citizens, and is found in no other nation. **3**. The offspring then of you and your wife is in your power, and so too is that of your son and his wife, that is to say, your

grandson and granddaughter, and so on. But the offspring of your daughter is not in your power, but in that of its own father.

TITLE X

OF MARRIAGE

Roman citizens are joined together in lawful wedlock when they are united according to law, the man having reached years of puberty and the woman being of a marriageable age, whether they be independent or dependent: provided that, in the latter case, they must have the consent of the parents in whose power they respectively are, the necessity of which, and even of its being given before the marriage takes place, is recognized no less by natural reason than by law. Hence the question has arisen, can the daughter or son of a lunatic lawfully contract marriage? and as the doubt still remained with regard to the son, we decided that, like the daughter, the son of a lunatic might marry even without the intervention of his father, according to the mode prescribed by our constitution.

1. It is not every woman that can be taken to wife: for marriage with certain classes of persons is forbidden. Thus, persons related as ascendant and descendant are incapable of lawfully intermarrying; for instance, father and daughter, grandfather and granddaughter, mother and son, grandmother and grandson, and so on *ad infinitum*; and the union of such persons is called criminal and incestuous. And so absolute is the rule, that persons related as ascendant and descendant merely by adoption are so utterly prohibited from intermarriage that dissolution of the adoption does not dissolve the prohibition: so that an adoptive daughter or granddaughter cannot be taken to wife even after emancipation.

2. Collateral relations also are subject to similar prohibitions, but not so stringent. Brother and sister indeed are prohibited from intermarriage, whether they are both of the same father and mother, or have only one parent in common: but though an adoptive sister cannot, during the subsistence of the adoption, become a man's wife, yet if the adoption is dissolved by her emancipation, or if the man is emancipated, there is no impediment to their intermarriage. Consequently, if a man wished to adopt his son-in-law, he ought first to emancipate his daughter: and if he wished to adopt his daughter-in-law, he ought first to emancipate his son. **3**. A man may not marry his brother's or his sister's daughter, or even his or her granddaughter, though she is in the fourth degree; for when we may not marry a person's daughter, we may not marry the granddaughter either. But there seems to b.c. no obstacle to a man's marrying the daughter of a woman whom his father has adopted, for she is no relation of his by either natural or civil law. **4**. The children of two brothers or sisters, or of a brother and sister, may lawfully intermarry. **5**. Again, a man may not marry his father's sister, even though the tie be merely adoptive, or his mother's sister: for they are considered to stand in the relation of ascendants. For the same reason too a man may not marry his great-aunt either paternal or maternal. **6**. Certain marriages again are prohibited on the ground of affinity, or the tie between a man or his wife and the kin of the other respectively. For instance, a man may not marry his wife's daughter or his son's wife, for both are to him in the position of daughters. By wife's daughter or son's wife we must be understood to mean persons who have been thus related to us; for if a woman is still your daughter-in-law, that is, is still married to your son, you cannot marry her for another reason, namely, because she cannot be the wife of two persons at once. So too if a woman is still your stepdaughter, that is, if her mother is still married to you, you cannot marry her for the same reason, namely, because a man cannot have two wives at the same time. **7**. Again, it is forbidden for a man to marry his wife's mother or his father's wife, because to him they are in the position of a mother, though in this case too our statement applies only after the relationship has finally terminated; otherwise, if a woman is still your stepmother, that is, is married to your father, the common rule of law prevents her from marrying you, because a woman cannot have two husbands at the same time: and if she is still your wife's mother, that is, if her daughter is still married to you, you cannot marry her because you cannot have two wives at the same time. **8**. But a son of the husband by another wife, and a daughter of the wife by another husband, and vice versa, can lawfully intermarry, even though they have a brother or sister born of the second marriage. **9**. If a woman who has been divorced from you has a daughter by a second husband, she is not your stepdaughter, but Iulian is of opinion that you ought not to marry her, on the ground that though your son's betrothed is not your daughter-in-law, nor your father's betrothed your stepmother, yet it is more decent and more in accordance with what is right to abstain lO from intermarrying with them. **10**. It is certain that the rules relating to the prohibited degrees of marriage apply to slaves: supposing, for instance, that a father and daughter, or a brother and sister, acquired freedom by manumission.

11. There are also other persons who for various reasons are forbidden to intermarry, a list of whom we have permitted to be inserted in the books of the Digest or Pandects collected from the older law.

12. Alliances which infringe the rules here stated do not confer the status of husband and wife, nor is there in such case either wedlock or marriage or dowry. Consequently children born of such a connexion are not in their father's power, but as regards the latter are in the position of children born of promiscuous intercourse, who, their paternity being uncertain, are deemed to have no father at all, and who are called bastards, either from the Greek word denoting illicit intercourse, or because they are fatherless. Consequently, on the dissolution of such a connexion there can be no claim for return of dowry. Persons who contract prohibited marriages are subjected to penalties set forth in our sacred constitutions.

13. Sometimes it happens that children who are not born in their father's power are subsequently brought under it. Such for instance is the case of a natural son made subject to his father's power by being inscribed a member of the curia; and so too is that of a child of a free woman with whom his father cohabited, though he could have lawfully married her, who is subjected to the power of his father by the subsequent execution of a dowry deed according to the terms of our constitution: and the same boon is in effect bestowed by that enactment on children subsequently born of the same marriage.

TITLE XI

OF ADOPTIONS

Not only natural children are subject, as we said, to paternal power, but also adoptive children. **1**. Adoption is of two forms, being effected either by rescript of the Emperor, or by the judicial authority of a magistrate. The first is the mode in which we adopt independent persons, and this form of adoption is called adrogation: the second is the mode in which we adopt a person subject to the power of an ascendant, whether a descendant in the first degree, as a son or daughter, or in a remoter degree, as a grandson, granddaughter, great-grandson., or great-granddaughter. **2**. But by the law, as now settled by our constitution, when a child in power is given in adoption to a stranger by his natural father, the power of the latter is not extinguished: no right passes to the adoptive father, nor is the person adopted in his power, though we have given a right of succession in case of the adoptive father dying intestate. But if the person to whom the child is given in adoption by its natural father is not a stranger, but the child's own maternal grandfather, or, supposing the father to have been emancipated, its paternal grandfather, or its great-grandfather paternal or maternal, in this case, because the rights given by nature and those given by adoption are vested in one and the same person, the old power of the adoptive father is left unimpaired, the strength of the natural bond of blood being augmented by the civil one of adoption, so that the child is in the family and power of an adoptive father, between whom and himself there existed antecedently the relationship described. **3**. When a child under the age of puberty is adopted by rescript of the Emperor, the adrogation is only permitted after cause shown, the goodness of the motive and the expediency of the step for the pupil being inquired into. The adrogation is also made under certain conditions; that is to say, the adrogator has to give security to a public agent or attorney of the people, that if the pupil should die within the age of puberty, he will return his property to the persons who would have succeeded him had no adoption taken place. The adoptive father again may not emancipate them unless upon inquiry they are found deserving of emancipation, or without restoring them their property. Finally, if he disinherits him at death, or emancipates him in his lifetime without just cause, he is obliged to leave him a fourth of his own property, besides that which he brought him when adopted, or by subsequent acquisition. **4**. It is settled that a man cannot adopt another person older than himself, for adoption imitates nature, and it would be unnatural for a son to be older than his father. Consequently a man who desires either to adopt or to adrogate a son ought to be older than the latter by the full term of puberty, or eighteen years. **5**. A man may adopt a person as grandson or granddaughter, or as great-grandson or greatgranddaughter, and so on, without having a son at all himself. **6**. And similarly he may adopt another man's son as grandson, or another man's grandson as son. **7**. If he wishes to adopt some one as grandson, whether as the son of an adoptive son of his own, or of a natural son who is in his power, the consent of this son ought to be obtained, lest a family heir be thrust upon him against his will: but on the other hand, if a grandfather wishes to give a grandson by a son in adoption to some one else, the son's consent is not requisite. **8**. An adoptive child is in most respects in the same position, as regards the father, as a natural child born in lawful wedlock. Consequently a man can give in adoption to another a person whom he has adopted by imperial rescript, or before the praetor or governor of a province, provided that in this latter case he was not a stranger (i. e. was a natural descendant) before he adopted him himself. **9**. Both forms of adoption

agree in this point, that persons incapable of procreation by natural impotence are permitted to adopt, whereas castrated persons are not allowed to do so. **10**. Again, women cannot adopt, for even their natural children are not subject to their power; but by the imperial clemency they are enabled to adopt, to comfort them for the loss of children who have been taken from them. **11**. It is peculiar to adoption by imperial rescript, that children in the power of the person adrogated, as well as their father, fall under the power of the adrogator, assuming the position of grandchildren. Thus Augustus did not adopt Tiberius until Tiberius had adopted Germanicus, in order that the latter might become his own grandson directly the second adoption was made. **12**. The old writers record a judicious opinion contained in the writings of Cato, that the adoption of a slave by his master is equivalent to manumission. In accordance with this we have in our wisdom ruled by a constitution that a slave to whom his master gives the title of son by the solemn form of a record is thereby made free, although this is not sufficient to confer on him the rights of a son.

TITLE XII

OF THE MODES IN WHICH PATERNAL POWER IS EXTINGUISHED

Let us now examine the modes in which persons dependent on a superior become independent. How slaves are freed from the power of their masters can be gathered from what has already been said respecting their manumission. Children under paternal power become independent at the parent's death, subject, however, to the following distinction. The death of a father always releases his sons and daughters from dependence; the death of a grandfather releases his grandchildren from dependence only provided that it does not subject them to the power of their father. Thus, if at the death of the grandfather the father is alive and in his power, the grandchildren, after the grandfather's death, are in the power of the father; but if at the time of the grandfather's death the father is dead, or not subject to the grandfather, the grandchildren will not fall under his power, but become independent. **1**. As deportation to an island for some penal offence entails loss of citizenship, such removal of a man from the list of Roman citizens has, like his death, the effect of liberating his children from his power; and conversely, the deportation of a person subject to paternal power terminates the power of the parent. In either case, however, if the condemned person is pardoned by the grace of the Emperor, he recovers all his former rights. **2**. Relegation to an island does not extinguish paternal power, whether it is the parent or the child who is relegated. **3**. Again, a father's power is extinguished by his becoming a 'slave of punishment', for instance, by being condemned to the mines or exposed to wild beasts. **4**. A person in paternal power does not become independent by entering the army or becoming a senator, for military service or consular dignity does not set a son free from the power of his father. But by our constitution the supreme dignity of the patriciate frees a son from power immediately on the receipt of the imperial patent; for who would allow anything so unreasonable as that, while a father is able by emancipation to release his son from the tie of his power, the imperial majesty should be unable to release from dependence on another the man whom it has selected as a father of the State? **5**. Again, capture of the father by the enemy makes him a slave of the latter; but the status of his children is suspended by his right of subsequent restoration by postliminium; for on escape from captivity a man recovers all his former rights, and among them the right of paternal power over his children, the law of postliminium resting on a fiction that the captive has never been absent from the state. But if he dies in captivity the son is reckoned to have been independent from the moment of his father's capture. So too, if a son or a grandson is captured by the enemy, the power of his ascendant is provisionally suspended, though he may again be subjected to it by postliminium. This term is derived from *limen* and *post*, which explains why we say that a person who has been captured by the enemy and has come back into our territories has returned by postliminium: for just as the threshold forms the boundary of a house, so the ancients represented the boundaries of the empire as a threshold; and this is also the origin of the term *limes*, signifying a kind of end and limit. Thus postliminium means that the captive returns by the same threshold at which he was lost. A captive who is recovered after a victory over the enemy is deemed to have returned by postliminium.

6. Emancipation also liberates children from the power of the parent. Formerly it was effected either by the observance of an old form prescribed by statute by which the son was fictitiously sold and then manumitted, or by imperial rescript. Our forethought, however, has amended this by a constitution, which has abolished the old fictitious form, and enabled parents to go directly to a competent judge or magistrate, and in his presence release their sons or daughters, grandsons or granddaughters, and so on, from their power. After this, the father has by the praetor's edict the same rights over the property of the emancipated child as a patron has over the property of his freedman: and if at the time of emancipation

the child, whether son or daughter, or in some remoter degree of relationship, is beneath the age of puberty, the father becomes by the emancipation his or her guardian. **7**. It is to be noted, however, that a grandfather who has both a son, and by that son a grandson or granddaughter, in his power, may either release the son from his power and retain the grandson or granddaughter, or retain the son and release the grandson or granddaughter, or emancipate both together; and a greatgrandfather has the same latitude of choice. **8**. Again, if a father gives a son whom he has in his power in adoption to the son's natural grandfather or great-grandfather, in accordance with our constitution on this subject, that is to say, by declaring his intention, before a judge with jurisdiction in the matter, in the official records, and in the presence and with the consent of the person adopted, the natural father's power is thereby extinguished, and passes to the adoptive father, adoption by whom under these circumstances retains, as we said, all its old legal consequences. **9**. It is to be noted, that if your daughter-in-law conceives by your son, and you emancipate or give the latter in adoption during her pregnancy, the child when born will be in your power; but if the child is conceived after its father's emancipation or adoption, it is in the power of its natural father or its adoptive grandfather, as the case may be. **10**. Children, whether natural or adoptive, are only very rarely able to compel their parent to release them from his power.

TITLE XIII

OF GUARDIANSHIPS

Let us now pass on to another classification of persons. Persons not subject to power may still be subject either to guardians or to curators, or may be exempt from both forms of control. We will first examine what persons are subject to guardians and curators, and thus we shall know who are exempt from both kinds of control. And first of persons subject to guardianship or tutelage. **1**. Guardianship, as defined by Servius, is authority and control over a free person, given and allowed by the civil law, in order to protect one too young to defend himself. **2**. And guardians are those persons who possess this authority and control, their name being derived from their very functions; for they are called guardians as being protectors and defenders, just as those entrusted with the care of sacred buildings are called

aeditui. **3**. The law allows a parent to appoint guardians in his will for those children in his power who have not attained the age of puberty, without distinction between sons and daughters; but a grandson or granddaughter can receive a testamentary guardian only provided that the death of the testator does not bring them under the power of their own father. Thus, if your son is in your power at the time of your death, your grandchildren by him cannot have a guardian given them by your will, although they are in your power, because your death leaves them in the power of their father. **4**. And as in many other matters afterborn children are treated on the footing of children born before the execution of the will, so it is ruled that afterborn children, as well as children born before the will was made, may have guardians therein appointed to them, provided that if born in the testator's lifetime they would be family heirs and in his power. **5**. If a testamentary guardian be given by a father to his emancipated son, he must be approved by the governor in all cases, though inquiry into the case is unnecessary.

TITLE XIV

WHO CAN BE APPOINTED GUARDIANS BY WILL

Persons who are in the power of others may be appointed testamentary guardians no less than those who are independent. **1**. And a man can also validly appoint one of his own slaves as testamentary guardian, giving him at the same time his liberty; and even in the absence of express manumission his freedom is to be presumed to have been tacitly conferred on him, whereby his appointment becomes a valid act, although of course it is otherwise if the testator appointed him guardian in the erroneous belief that he was free. The appointment of another man's slave as guardian, without any addition or qualification, is void, though valid if the words 'when he shall be free' are added: but this latter form is ineffectual if the slave is the testator's own, the appointment being void from the beginning. **2**. If a lunatic or minor is appointed testamentary guardian, he cannot act until, if a lunatic, he recovers his faculties, and, if a minor, he attains the age of twenty-five years.

3. There is no doubt that a guardian may be appointed for and from a certain time, or conditionally, or before the institution of the heir. **4**. A guardian cannot, however, be appointed for a particular matter or business, because his duties relate to the person, and not merely to a particular business or matter.

5. If a man appoints guardians to his sons or daughters, he is held to have intended them also for such as may be afterborn, for the latter are included in the terms son and daughter. In the case of grandsons, a

question may arise whether they are implicitly included in an appointment of guardians to sons; to which we reply, that they are included in an appointment of guardians if the term used is ‘children’, but not if it is ‘sons’: for the words son and grandson have quite different meanings. Of course an appointment to afterborn children includes all children, and not sons only.

TITLE XV

OF THE STATUTORY GUARDIANSHIP OF AGNATES

In default of a testamentary guardian, the statute of the Twelve Tables assigns the guardianship to the nearest agnates, who are hence called statutory guardians. **1**. Agnates are persons related to one another by males, that is, through their male ascendants; for instance, a brother by the same father, a brother’s son, or such son’s son, a father’s brother, his son or son’s son. But persons related only by blood through females are not agnates, but merely cognates. Thus the son of your father’s sister is no agnate of yours, but merely your cognate, and vice versa; for children are members of their father’s family, and not of their mother’s. **2**. It was said that the statute confers the guardianship, in case of intestacy, on the nearest agnates; but by intestacy must here be understood not only complete intestacy of a person having power to appoint a testamentary guardian, but also the mere omission to make such appointment, and also the case of a person appointed testamentary guardian dying in the testator’s life time. **3**. Loss of status of any kind ordinarily extinguishes rights by agnation, for agnation is a title of civil law. Not every kind of loss of status, however, affects rights by cognation; because civil changes cannot affect rights annexed to a natural title to the same extent that they can affect those annexed to a civil one.

TITLE XVI

OF LOSS OF STATUS

Loss of status, or change in one’s previous civil rights, is of three orders, greatest, minor or intermediate, and least. **1**. The greatest loss of status is the simultaneous loss of citizenship and freedom, exemplified in those persons who by a terrible sentence are made ‘slaves of punishment’, in freedmen condemned for ingratitude to their patrons, and in those who allow themselves to be sold in order to share the purchase-money when paid. **2**. Minor or intermediate loss of status is loss of citizenship unaccompanied by loss of liberty, and is incident to interdiction of fire and water and to deportation to an island. **3**. The least loss of status occurs when citizenship and freedom are retained, but a man’s domestic position is altered, and is exemplified by adrogation and emancipation. **4**. A slave does not suffer loss of status by being manumitted, for while a slave he had no civil rights. **5**. And where the change is one of dignity, rather than of civil rights, there is no loss of status; thus it is no loss of status to be removed from the senate.

6. When it was said that rights by cognation are not affected by loss of status, only the least loss of status was meant; by the greatest loss of status they are destroyed—for instance, by a cognate’s becoming a slave—and are not recovered even by subsequent manumission. Again, deportation to an island, which entails minor or intermediate loss of status, destroys rights by cognation. **7**. When agnates are entitled to be guardians, it is not all who are so entitled, but only those of the nearest degree, though if all are in the same degree, all are entitled.

TITLE XVII

OF THE STATUTORY GUARDIANSEIIP OF PATRONS

The same statute of the Twelve Tables assigns the guardianship of freedmen and freedwomen to the patron and his children, and this guardianship, like that of agnates, is called statutory guardianship; not that it is anywhere expressly enacted in that statute, but because its interpretation by the jurists has procured for it as much reception as it could have obtained from express enactment: the fact that the inheritance of a freedman or freedwoman, when they die intestate, was given by the statute to the patron and his children, being deemed a proof that they were intended to have the guardianship also, partly because in dealing with agnates the statute coupled guardianship with succession, and partly on the principle that where the advantage of the succession is, there, as a rule, ought too to be the burden of the guardianship. We say ‘as a rule’, because if a slave below the age of puberty is manumitted by a woman, though she is entitled, as patroness, to the succession, another person is guardian.

TITLE XVIII

OF THE STATUTORY GUARDIANSHIP OF PARENTS

The analogy of the patron guardian led to another kind of so-calIed statutory guardianship, namely that of a parent over a son or daughter, or a grandson or granddaughter by a son, or any other descendant through males, whom he emancipates below the age of puberty: in which case he will be statutory guardian.

TITLE XIX

OF FIDUCIARY GUARDIANSHIP

There is another kind of guardianship known as fiduciary guardianship, which arises in the following manner. If a parent emancipates a son or daughter, a grandson or granddaughter, or other descendant while under the age of puberty, he becomes their statutory guardian: but if at his death he leaves male children, they become fiduciary guardians of their own sons, or brothers and sisters, or other relatives who had been thus emancipated. But on the decease of a patron who is statutory guardian his children become statutory guardians also; for a son of a deceased person, supposing him not to have been emancipated during his father's lifetime, becomes independent at the latter's death, and does not fall under the power of his brothers, nor, consequently, under their guardianship; whereas a freedman, had he remained a slave, would at his master's death have become the slave of the latter's children. The guardianship, however, is not cast on these persons unless they are of full age, which indeed has been made a general rule in guardianship and curatorship of every kind by our constitution.

TITLE XX

OF ATILIAN GUARDIANS, AND THOSE APPOINTED UNDER THE LEX JULIA ET TITIA

Failing every other kind of guardian, at Rome one used to be appointed under the lex Atilia by the praetor of the city and the majority of the tribunes of the people; in the provinces one was appointed under the lex Iulia et Titia by the president of the province. **1**. Again, on the appointment of a testamentary guardian subject to a condition, or on an appointment limited to take effect after a certain time, a substitute could be appointed under these statutes during the pendency of the condition, or until the expiration of the term: and even if no condition was attached to the appointment of a testamentary guardian, a temporary guardian could be obtained under these statutes until the succession had vested. In all these cases the office of the guardian so appointed determined as soon as the condition was fulfilled, or the term expired, or the succession vested in the heir. **2** On the capture of a guardian by the enemy, the same statutes regulated the appointment of a substitute, who continued in office until the return of the captive; for if he returned, he recovered the guardianship by the law of postliminium. **3**. But guardians have now ceased to be appointed under these statutes, the place of the magistrates directed by them to appoint being taken, first, by the consuls, who began to appoint guardians to pupils of either sex after inquiry into the case, and then by the praetors, who were substituted for the consuls by imperial constitutions; for these statutes contained no provisions as to security to be taken from guardians for the safety of their pupils' property, or compelling them to accept the office in case of disinclination. **4**. Under the present law, guardians are appointed at Rome by the prefect of the city, and by the praetor when the case falls within his jurisdiction; in the provinces they are appointed, after inquiry, by the governor, or by inferior magistrates at the latter's behest if the pupil's property is of no great value. **5**. By our constitution, however, we have done away with all difficulties of this kind relating to the appointing person, and dispensed with the necessity of waiting for an order from the governor, by enacting that if the property of the pupil or adult does not exceed five hundred *solidi*, guardians or curators shall be appointed by the officers known as defenders of the city, along with the holy bishop of the place, or in the presence of other public persons, or by the magistrates, or by the judge of the city of Alexandria; security being given in the amounts required by the constitution, and those who take it being responsible if it be insufficient.

6. The wardship of children below the age of puberty is in accordance with the law of nature, which prescribes that persons of immature years shall be under another's guidance and control. **7**. As guardians have the management of their pupils' business, they are liable to be sued on account of their administration as soon as the pupil attains the age of puberty.

TITLE XXI

OF THE AUTHORITY OF GUARDIANS

In some cases a pupil cannot lawfully act without the authority of his guardian, in others he can. Such authority, for instance, is not necessary when a pupil stipulates for the delivery of property, though it is otherwise where he is the promisor; for it is an established rule that the guardian's authority is not necessary for any act by which the pupil simply improves his own position, though it cannot be dispensed with where he proposes to make it worse. Consequently, unless the guardian authorizes all transactions generating bilateral obligations, such as sale, hire, agency, and deposit. the pupil is not bound, though he can compel the other contracting party to discharge his own obligation. **1**. Pupils, however, require their guardian's authority before they can enter on an inheritance, demand the possession of goods, or accept an inheritance by way of trust, even though such act be advantageous to them, and involves no chance of loss. **2**. If the guardian thinks the transaction will be beneficial to his pupil, his authority should be given presently and on the spot. Subsequent ratification, or authority given by letter, has no effect. **3**. In case of a suit between guardian and pupil, as the former cannot lawfully authorize an act in which he is personally concerned or interested, a curator is now appointed, in lieu of the old praetorian guardian, with whose co-operation the suit is carried on, his office determining as soon as it is decided.

TITLE XXII

OF THE MODES IN WHICH GUARDIANSHIP IS TERMINATED

Pupils of either sex are freed from guardianship when they reach the age of puberty, which the ancients were inclined to determine, in the case of males, not only by age, but also by reference to the physical development of individuals. Our majesty, however, has deemed it not unworthy of the purity of our times to apply in the case of males also the moral considerations which, even among the ancients, forbade in the case of females as indecent the inspection of the person. Consequently by the promulgation of our sacred constitution we have enacted that puberty in males shall be considered to commence immediately on the completion of the fourteenth year, leaving unaltered the rule judiciously laid down by the ancients as to females, according to which they are held fit for marriage after completing their twelfth year. **1**. Again, tutelage is terminated by adrogation or deportation of the pupil before he attains the age of puberty, or by his being reduced to slavery or taken captive by the enemy. **2**. So too if a testamentary guardian be appointed to hold office until the occurrence of a condition, on this occurrence his office determines. **3**. Similarly tutelage is terminated by the death either of pupil or of guardian. **4**. If a guardian suffers such a loss of status as entails loss of either liberty or citizenship, his office thereby completely determines. It is, however, only the statutory kind of guardianship which is destroyed by a guardian's undergoing tile least loss of status, for instance, by his giving himself in adoption. Tutelage is in every case put an end to by the pupil's suffering loss of status, even of the lowest order. **5**. Testamentary guardians appointed to serve until a certain time lay down their office when that time arrives. **6**. Finally, persons cease to be guardians who are removed from their office on suspicion, or who are enabled to lay down the burden of the tutelage by a reasonable ground of excuse, according to rules to be presently stated.

TITLE XXIII

OF CURATORS

Males, even after puberty, and females after reaching marriageable years, receive curators until completing their twenty-fifth year, because, though past the age fixed by law as the time of puberty, they are not yet old enough to administer their own affairs. **1**. Curators are appointed by the same magistrates who appoint guardians. They cannot legally be appointed by will, though such appointment, if made, is usually confirmed by an order of the praetor or governor of the province. **2**. A person who has reached the age of puberty cannot be compelled to have a curator, except for the purpose of conducting a suit: for curators, unlike guardians, can be appointed for a particular matter. **3**. Lunatics and prodigals, even though more than twenty-five years of age, are by the statute of the Twelve Tables placed under their agnates as curators; but now, as a rule, curators are appointed for them at Rome by the prefect of the city or praetor, and in the provinces by the governor, after inquiry into the case. **4**. Curators should also be given to persons of weak mind, to the deaf, the dumb, and those suffering from chronic disease, because they are not competent to manage their own affairs. **5**. Sometimes even pupils have curators, as, for instance, when a statutory guardian is unfit for his office: for if a pupil already has one guardian, he cannot have another given him. Again, if a testamentary guardian, or one appointed by the praetor or

governor, is not a good man of business, though perfectly honest in his management of the pupil's affairs, it is usual for a curator to be appointed to act with him. Again, curators are usually appointed in the room of guardians temporarily excused from the duties of their office.

6. If a guardian is prevented from managing his pupil's affairs by ill-health or other unavoidable cause, and the pupil is absent or an infant, the praetor or governor of the province will, at the guardian's risk, appoint by decree a person selected by the latter to act as agent of the pupil.

TITLE XXIV

OF THE SECURITY TO BE GIVEN BY GUARDIANS AND CURATORS

To prevent the property of pupils and of persons under curators from being wasted or diminished by their curators or guardians the praetor provides for security being given by the latter against maladministration. This rule, however, is not without exceptions, for testamentary guardians are not obliged to give security, the testator having had full opportunities of personally testing their fidelity and carefulness, and guardians and curators appointed upon inquiry are similarly exempted, because they have been expressly chosen as the best men for the place. **1**. If two or more are appointed by testament, or by a magistrate upon inquiry, any one of them may offer security for indemnifying the pupil or person to whom he is curator against loss, and be preferred to his colleague, in order that he may either obtain the sole administration, or else induce his colleague to offer larger security than himself, and so become sole administrator by preference. Thus he cannot directly call upon his colleague to give security; he ought to offer it himself, and so give his colleague the option of receiving security on the one hand, or of giving it on the other. If none of them offer security, and the testator left directions as to which was to administer the property, this person must undertake it: in default of this, the office is cast by the praetor's edict on the person whom the majority of guardians or curators shall choose. If they cannot agree, the praetor must interpose. The same rule, authorizing a majority to elect one to administer the property, is to be applied where several ar› appointed after inquiry by a magistrate. **2**. It is to be noted that, besides the liability of guardians and curators to their pupils, or the persons for whom they act, for the management of their property, there is a subsidiary action against the magistrate accepting the security, which may be resorted to where all other remedies prove inadequate, and which lies against those magistrates who have either altogether omitted to take security from guardians or curators, or taken it to an insufficient amount. According to the doctrines stated by the jurists, as well as by imperial constitutions, this action may be brought against the magistrate's heirs as well as against him personally. **3**. And these same constitutions ordain that guardians or curators who make default in giving security may be compelled to do so by legal distraint of their goods. **4**. This action, however, will not lie against the prefect of the city, the praetor, or the governor of a province, or any other magistrate authorized to appoint guardians, but only against those to whose usual duties the taking of security belongs.

TITLE XXV

OF GUARDIANS AND CURATORS GROUNDS OF EXEMPTION

There are various grounds on which persons are exempted from serving the office of guardian or curator, of which the most common is their having a certain number of children, whether in power or emancipated. If, that is to say, a man has, in Rome, three children living, in Italy four, or in the provinces five, he may claim exemption from these, as from other public offices; for it is settled that the office of a guardian or curator is a public one. Adopted children cannot be reckoned for this purpose, though natural children given in adoption to others may: similarly grandchildren by a son may be reckoned, so as to represent their father, while those by a daughter may not. It is, however, only living children who avail to excuse their fathers from serving as guardian or curator; such as have died are of no account, though the question has arisen whether this rule does not admit of an exception where they have died in war; and it is agreed that this is so, but only where they have fallen on the field of battle: for these, because they have died for their country, are deemed to live eternally in fame. **1**. The Emperor Marcus, too, replied by rescript, as is recorded in his Semestria, that employment in the service of the Treasury is a valid excuse from serving as guardian or curator so long as that employment lasts. **2**. Again, those are excused from these offices who are absent in the service of the state; and a person already guardian or curator who has to absent himself on public business is excused from acting in either of these capacities during such absence, a curator being appointed to act temporarily in his stead. On his return, he has to resume the burden of the tutelage, without being entitled to claim a year's exemption, as has been settled since the opinion of Papinian was delivered in the fifth book of his replies; for the year's exemption or vacation

belongs only to such as are called to a new tutelage. **3**. By a rescript of the Emperor Marcus persons holding any magistracy may plead this as a ground of exemption, though it will not enable them to resign an office of this kind already entered upon. **4**. No guardian or curator can excuse himself on the ground of an action pending between himself and his ward, unless it relates to the latter's whole estate or to an inheritance. **5**. Again, a man who is already guardian or curator to three persons without having sought after the office is entitled to exemption from further burdens of the kind so long as he is actually engaged with these, provided that the joint guardianship of several pupils, or administration of an undivided estate, as where the wards are brothers, is reckoned as one only.

6. If a man can prove that through poverty he is unequal to the burden of the office, this, according to rescripts of the imperial brothers and of the Emperor Marcus, is a valid ground of excuse. **11**. Ill-health again is a sufficient excuse if it be such as to prevent a man from attending to even his own affairs. **8**. And the Emperor Pius decided by a rescript that persons unable to read ought to be excused, though even these are not incapable of transacting business. **9**. A man too is at once excused if he can show that a father has appointed him testamentary guardian out of enmity, while conversely no one can in any case claim exemption who promised the ward's father that he would act as guardian to them. **10**. And it was settled by a rescript of M. Aurelius and L. Verus that the allegation that one was unacquainted with the pupil's father cannot be admitted as a ground of excuse.

11. Enmity against the ward's father, if extremely bitter, and if there was no reconciliation, is usually accepted as a reason for exemption from the office of guardian. **12**. And similarly a person can claim to be excused whose status or civil rights have been disputed by the father of the ward in an action. **13**. Again, a person over seventy years of age can claim to be excused from acting as guardian or curator, and by the older law persons less than twenty-five were similarly exempted. But our constitution, having forbidden the latter to aspire to these functions, has made excuses unnecessary. The effect of this enactment is that no pupil or person under twenty-five years of age is to be called to a statutory guardianship; for it was most incongruous to place persons under the guardianship or administration of those who are known themselves to need assistance in the management of their own affairs, and are themselves governed by others. **14**. The same rule is to be observed with soldiers, who, even though they desire it, may not be admitted to the office of guardian. **15**. And finally grammarians, rhetoricians, and physicians at Rome, and those who follow these callings in their own country and are within the number fixed by law, are exempted from being guardians or curators.

16. If a person who has several grounds of excuse wishes to obtain exemption, and some of them are not allowed, he is not prohibited from alleging others, provided he does this within the time prescribed. Those desirous of excusing themselves do not appeal, but ought to allege their grounds of excuse, within fifty days next after they hear of their appointment, whatever the form of the latter, and whatever kind o! guardians they may be, if they are within a hundred miles of the place where they were appointed: if they live at a distance of more than a hundred miles, they are allowed a day for every twenty miles, and thirty days in addition, but this time, as Scaevola has said, must never be so reckoned as to amount to less than fifty days. **17**. A person appointed guardian is deemed to be appointed to the whole patrimony. **18**. And after he has once acted as guardian he cannot be compelled against his will to become the same person's curator—not even if the father who appointed him testamentary guardian added in the will that he made him curator too, as soon as the ward reached fourteen years of age—this having been decided by a rescript of the Emperors Severus and Antoninus. **1**. Another rescript of the same emperors settled that a man is entitled to be excused from becoming his own wife's curator, even after intermeddling with her affairs. **20**. No man is discharged from the burden of guardianship who has procured exemption by false allegations.

TITLE XXVI

OF GUARDIANS OR CURATORS WHO ARE SUSPECTED

The accusation of guardians or curators on suspicion originated in the statute of the Twelve Tables. **1**. the removal of those who are accused on suspicion is part of the jurisdiction, at Rome, of the praetor, and in the provinces of their governors and of the proconsul's legate. **2**. Having shown what magistrates can take cognizance of this subject, let us see what persons are liable to be accused on suspicion. All guardians are liable, whether appointed by testament or otherwise; consequently even a statutory guardian may be made the object of such an accusation. But what is to be said of a patron guardian ? Even here we must reply that he too is liable; though we must remember that his reputation must be spared in the event

of his removal on suspicion. **3**. The next point is to see what persons may bring this accusation; and it is to be observed that the action partakes of a public character, that is to say, is open to all. Indeed, by a rescript of Severus and Antoninus even women are made competent to bring it, but only those who can allege a close tie of affection as their motive; for instance, a mother, nurse, grandmother, or sister. And the praetor will allow any woman to prefer the accusation in whom he finds an affection real enough to induce her to save a pupil from suffering harm, without seeming to be more forward than becomes her sex. **4**. Persons below the age of puberty cannot accuse their guardians on suspicion; but by a rescript of Severus and Antoninus it has been permitted to those who have reached that age to deal thus with their curators, after taking the advice of their nearest relations. **5**. A guardian is 'suspected' who does not faithfully discharge his tutorial functions, though he may be perfectly solvent, as was the opinion also of Julian. Indeed, Julian writes that a guardian may be removed on suspicion before he commences his administration, and a constitution has been issued in accordance with this view. **6**. A person removed from office on suspicion incurs infamy if his offence was fraud, but not if it was merely negligence. **7**. As Papinian held, on a person being accused on suspicion he is suspended from the administration until the action is decided. **8**. If a guardian or curator who is accused on suspicion dies after the commencement of the action, but before it has been decided, the action is thereby extinguished. **9**. And if a guardian fails to appear to a summons of which the object is to fix by judicial order a certain rate of maintenance for the pupil, the rescript of the Emperors Severus and Antoninus provides that the pupil may be put in possession of the guardian's property, and orders the sale of the perishable portions thereof after appointment of a curator. Consequently, a guardian may be removed as suspected who does not provide his pupil with sufficient maintenance. **10**. If, on the other hand, the guardian appears, and alleges that the pupil's property is too inconsiderable to admit of maintenance being decreed, and it is shown that the allegation is false, the proper course is for him to be sent for punishment to the prefect of the city, like those who purchase a guardianship by bribery.

11. So too a freedman, convicted of having acted fraudulently as guardian of the sons or grandsons of his patron, should be sent to the prefect of the city for punishment. **12**. Finally, it is to be noted, that guardians or curators who are guilty of fraud in their administration must be removed from their office even though they offer to give security, for giving security does not change the evil intent of the guardian, but only gives him a larger space of time wherein he may injure the pupil's property. **13**. For a man's mere character or conduct may be such as to justify one's deeming him 'suspected'. No guardian or curator, however, may be removed on suspicion merely because he is poor, provided he is also faithful and diligent.

2. BOOK II

TITLE I

OF THE DIFFERENT KINDS OF THINGS

IN the preceding book we have expounded the law of Persons: now let us proceed to the law of Things. Of these, some admit of private ownership, while others, it is held, cannot belong to individuals: for some things are by natural law common to all, some are public, some belong to a society or corporation, and some belong to no one. But most things belong to individuals, being acquired by various titles, as will appear from what follows.

1. Thus, the following things are by natural law common all—the air, running water, the sea, and consequently the sea-shore. No one therefore is forbidden access to the seashore, provided he abstains from injury to houses, monuments, and buildings generally; for these are not, like the sea itself, subject to the law of nations. **2**. On the other hand, all rivers and harbours are public, so that all persons have a right to fish therein. **3**. The sea-shore extends to the limit of the highest tide in time of storm or winter. **4**. Again, the public use of the banks of a river, as of the river itself, is part of the law of nations; consequently every one is entitled to bring his vessel to the bank, and fasten cables to the trees growing there, and use it as a resting-place for the cargo, as freely as he may navigate the river itself. But the ownership of the bank is in the owner of the adjoining land, and consequently so too is the ownership of the trees which grow upon it.

5. Again, the public use of the sea-shore, as of the sea itself, is part of the law of nations; consequently every one is free to build a cottage upon it for purposes of retreat, as well as to dry his nets and haul them up from the sea. But they cannot be said to belong to any one as private property, but rather are subject to the same law as the sea itself, with the soil or sand which lies beneath it. **6**. As examples of things

C. THE ROMAN INSTITUTIONAL TREATISES: VOCABULARY CHARTS (CATEGORIES)

[§ numbers are to GI., unless otherwise noted]

Introduction

ius–§1	
ius civile	ius gentium

iura populi romani–§2					
lex–§3	plebiscitum–§3	SC–§4	constitutio–§5	edictum–§6	responsa prudentium–§7

omne ius–§8		
ad personas–bk. 1.9 to 200	ad res–bks. 2 and 3	ad actiones–bk 4

positio studii iuris–JI. 1.1.4			
publicum ius	privatum ius		
	praecepta naturalia	praecepta gentium	praecepta civilia

Cf. D.1.1.1.1–2:

> When a man means to give his attention to law (*ius*), he ought first to know whence the term *ius* is derived. Now *ius* is so called from *iustitia*; in fact according to the nice definition of Celsus, *ius* is the art of what is good and fair. 1. Of this art we may deservedly be called the priests; we cherish justice and profess the knowledge of what is good and fair; we separate what is fair from what is unfair,; we discriminate between what is allowed and what is forbidden; we desire to make men good, not by putting them in fear of penalties, but also by appealing to them through rewards, proceeding, if I am not mistaken, on a real and not a pretended philosophy. 2. Of this subject there are two departments, public law and private law. Public law is that which regards the constitution of the Roman state, private law looks at the interest of individuals; as a matter of fact, some things are beneficial from the point of view of the state, and some with reference to private persons. Public law is concerned with sacred rites, with priests, with public officers. Private law has a threefold division, it is deduced partly from the rules of natural law, partly from those of the *ius gentium*, partly from those of civil law.
>
> C. H. Monro trans. (modified), vol. 1, p. 3 (1909).

Persons

I. slaves vs. free			
freeborn	freed–§§36–47 (restrictions on manumission)		
	dediticii–§§13–15	Junii–§§22–25	citizens–§§16–21

II. **B.**sui iuris vs. **A.** alieni iuris

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

B. sui iuris: **1.** in general–§§142–143 **13.** actions against tutors and curators–§§199–200							
totally	tutela: **6.** conveyance of–§§168-172 **10.** in general–§§188–193 **11.** cessation–§§194–196				**12.** cura–§§197–198		
2. testamentaria–§§144–54	legitima	**5.** fiduciaria	[dativa]		prodigi	furiosi	minorum
3. children–§§155–64	**4.** freedmen–§§165–66	**7.** women–§§173–183	**8.** litigation–§184	**9.** those without–§§185–187			

Things (*res*)

res in patrimonio vs. res extra patrimonium–§1

res divini iuris vs. res humani iuris–§2				
res sacrae–§§3–5	res religiosae–§§6–7a	res sanctae–§§8–9	res publicae	res privatae–§§10–11

res corporales vs. res incorporales–§12 §13 §14

res mancipi–§14a vs. res nec mancipi–§§15–17

acquisition of *res singulae* bk. 2.19–96	vs. acquisition *per universitatem* bk. 2.97–289 and 3.1–87 (including legacies [§§191–245] and *fideicommissa* [§§246–289])	vs. acquisition of obligations bk. 3.88–225

res in patrimonio vs.	res extra patrimonium–JI.2.1pr				
communia–§1	publica–§§2–5	universitatis–§6	sacrae§§7–8 religiosae–§9	sanctae nullius–§10

"natural" modes of acquisition–JI.2.1.11					
occupatio–§§12–19	alluvio avulsio–§§20–24	specificatio confusio accessio–§§25–43	fruits–§§35–38	treasure–§39	traditio–§§40–48

res corporales vs.	res incorporales–JI.2.2.2		
	servitutes–§3	usufructus–§4	usus et habitatio–§5

acquisition of *res singulae*–alienation by those in *tutela*–GI.2.80–85 –acquisition by others–GI.2.86–96						
iure civili–usucapio–§§40–61 –capacity–§§62–64		vs.	iure naturali		
res corporales–§§19–27	res incorporales		occupatio–§§66–69	alluvio accessio–§§70–78	specificatio–§79
	servitutes usus fructus–§§28–33	hereditas–§§34–37	obligationes –§§38–39		

acquisition of things *per universitatem*–2.97–9			
si qui heredes facti sumus (hereditas)	bonorum possessio–scattered	bonorum emptio–3.77–81	adoptio, conventio in manum, [in iure cessio]–3.81–87
1. ex testamento –2.100–190	**2.** [legacies and *fideicommissa*] –2.191–289	**3.** ab intestato –3.1–76	

1. ex testamento–2.100–190		
form and capacity–2.101–13	requirements for validity–2.114–51a	heirs–2.152–90

1.a. forms of *testamentum*–2.101–11		
calatis comitiis–§101	in procinctu–§101	per aes et libram–§§102–4
restrictions on witnesses–§§105–8 soldiers' wills–§§105–8		

b. fragment concerning women's wills (the whole § may have dealt with capacity)–§§112–13
c. requirements for validity: *testamenti factio* and *secundum regulam iuris civilis*–§§114–46

initial requirements

heredis institutio–§§116–17	auctoritas tutoris–§§118–23 [with excursus on *bonorum possessio secundum tabulas*]	exheredatio–§§123–9

subsequent requirements		
postumi	subsequent will–§144	capitis deminutio–§§145–6
agnatio–§§130–7	quasi agnatio–§§138–43	

d. bonorum possessio cum re–§§147–51a

e. heredes–§§152		
necessarii–§§153–5	sui et necessarii–§§156–60	extranei *and* cretio–§§161–73

f. substitutio	
vulgaris–§§174–8	pupilaris–§§179–84

g. institution of slaves–§§185–90

2. legacies and *fideicommissa*–2.191–289

a. legacies			
vindication–§§193–200	damnation–§§201–8	permission–§§209–15	preception–§§216–23
ll. Furia (c. 200 B.C.), Voconia (169 B.C.), Falcidia (40 B.C.), Fufia Canina (2 B.C.)–lawyers' legal history–§§224–28			

void legacies				
ante heredis institutionem –§§229–31	post mortem heredis –§§223–4	poenae nomine –§§209–15	incertae personae –§§216–23	his qui in potestate sunt –§§216–23

b. fideicommissa		
of *hereditas*–§§247–59	of *res singulae*–§§260–2	of *libertas*–§§263–7
differences between *fideicommissa* and legacies–note parallels to the development of the use–§§268–89		

3. succession *ab intestato*–3.1–76	
a. ab ingenuis–§§1–38	**b.** a libertis–§§39–76

a. ab ingenuis					
[iure civili]			[iure honorario] bonorum possessio		
sui–§§1–9	agnati–§§9–16	gentiles–§17	emendandi *or* impugnandi iuris civilis–§§1–38	confrimandi iuris civilis–§§1–38	bonorum possessio sine re–§§1–38

b. a libertis–§39

cives–§54		Latini–§§55–72	cives tamquam Latini–§§72–3	dediticii–§§74–6
men–§§40–42	women–§§43–44			
descendants of patrons–§§45–48 descendants of patronesses–§§49–53				

other forms of acquisition *per universitatem*–3.77–87		
bonorum emptio–§§77–81	adoptio *and* conventio in manum–§§82–84	in iure cessio *of an* hereditas–§§185–7

Obligations–in general–§88	
ex contractu–3.88–181	ex delicto–3.182–225

acquisition of obligations *ex contractu*–§89							
re	verbis –§§92–127	litteris –§§128–34, 138	consensu–§§135–7				
mutuum–§§90–1			emptio venditio –§§102–4	locatio conductio –§§102–4	societas–§§102–4	mandatum–§§102–4	
acquisition of contractual obligations through others–§§163–67a							

extinction of obligations *ex contractu*				
solutio–§168	acceptilatio–§§169–72	per aes et libram–§§173–5	novatio–§§176–9	litis contestatio–§§180–1

acquisition of obligations *ex delicto*–§182			
furtum–§§183–208	vi bona rapta–§209	damnum iniuria datum–§§210–19	iniuria–§§220–5

JI.3.13 to JI.4.5

Obligations–in general–3.13, .28–9			
ex contractu–3.14–26	quasi ex contractu–3.27	ex delicto–4.1–4	quasi ex delicto–4.5

ex contractu									
re				verbis –3.15–20	litteris –3.21	consensu–§§135–7			
mutuum –3.14pr-1	commodatum –3.14.2	depositum –3.14.3	pignus –3.14.4			emptio venditio –3.23	locatio conductio –3.24	societas –3.25	mandatum –3.26
quasi-contract–*negotiorum gestio*–3.27									
acquistion of obligations through others–3.28									
discharge of obligations–3.29									

ex delicto			
furtum–4.1	vi bona rapta–4.2	damnum iniuria datum–4.3	iniuria–4.4
quasi-delict (mostly examples of absolute or vicarious liability)–4.5			

[Procedure]

[procedure]				
A. actions–§§1–114	**B.** exceptions–§§115–37	**C.** interdicts–§§139–70	**D.** abuse of process–§§171–82	**E.** summons and *vadimonium*–§§183–7

A. Actions–4.1–114

actions (in general)–§182		
in rem vs. in personam–§§1–5	rei persecutoriae vs. peonales–§§6–9	ad legis actiones vs. sua vi–§10

1. legis actiones–§§11–12				
sacramentum–§§13–17	iudicis postulatio–§17a	condictio–§§17b-20	manus iniectio–§§21–25	pignoris capio–§§26–9
in rem	in personam			

4.30–68	**2.** formulae	
	a.	substitution for *legis actiones*–§§30–1
	b.	formulae ficticiae–§§32–8
	c.	parts of the formula–§§39–44
	d.	conceptio in ius *and* in factum–§§45–7
	e.	condemnatio certae *or* incertae pecuniae–§§48–52
	f.	overclaim–§§53–60
	[**g.**?]	multiple claims–see JI.4.6.36–8]
	h.	cross-claims (including *bonae fidei iudicia*, *compensatio* against a banker, and *deductio* against a *bonorum emptor*)–§§61–8

4.69–87	**3.** actions by or on behalf of others	
	a.	actions against a *pater* or *dominus* on the contract of a son or slave–§§69–74
	b.	noxal actions (actions on the delict or a son, slave or animal)–§§75–9, 81
	c.	actions on the contract of one *in manu* or *in mancipio*–§80
	d.	representatives in litigation–§§82–7

4.88–102	**4.** security

4.103–114	**5.** extinction of actions	
	a.	iudicia legitima *and* imperio continentia–§§103–9
	b.	actiones perpetuae *and* temporales–§§110–11
	c.	active and passive transmissibility–§§112–13
	d.	satisfaction before judgment–§114

B. Exceptions and further pleas–4.115–37

	1.	exceptiones–§§115–25
	2.	replicationes–§§126–9
	3.	praescriptiones–§130–7

C. Interdicts–4.139–70

interdicts–§139–42		
decrees		interdicts (*stricto sensu*)
restitutory	exhibitory	prohibitory

1. possessory interdicts–§143		
acquiriing–§§144–7	retaining–§§148–53	recovering–§154–5

	2.	simple and double interdicts–§§156–60
	3.	procedure under interdicts–§161–70

D. Abuse of process–4.171–82

is restrained by		
pecuniary penalty	oath	fear of infamy

	1.	penalties on the defendant–§§171–3
	2.	penalties on the plaintiff–§§174–81
	3.	actions involving *infamia*–§182

E. Summons and *vadimonium*–4.183–7