5.BOOK II [of things: the acquisition of single things]

The Institutes of Gaius (F. de Zulueta ed. & trans., 1946, vol. 1)
Book II, §§ 1–96, pp. [odd nos.] 67–91 [footnotes omitted]

BOOK II

1. In the preceding book we treated of the law of persons. Let us now consider things. These are either in private ownership or regarded as outside private ownership.

2. The leading division of things is into two classes: they are subject either to divine right or to human. **3.** Subject to divine right are *res sacrae* and *res religiosae*. **4.** *Res sacrae* are those consecrated to the gods above; *res religiosae* are those dedicated to the gods below. **5.** That alone is considered *sacrum* which has been consecrated under the authority of the Roman people, for instance by *lex* or senatusconsult passed to that effect. **6.** On the other hand, a thing is made *religiosum* by the act of a private person, when he buries a corpse in his own land, provided that the dead man's funeral is his affair. **7.** In the provinces, however, the general opinion is that land does not become *religiosum*, because the ownership of provincial land belongs to the Roman people or to the emperor, and individuals have only possession and enjoyment of it. Still, even if it be not *religiosum*, it is considered as such. **7a.** Again, though a thing consecrated in the provinces otherwise than under the authority of the Roman people is not strictly *sacrum*, it is nevertheless considered as such. **8.** Moreover *res sanctae*, such as the walls and gates of a city, are in a manner subject to divine right. **9.** Now what is subject to divine right cannot belong to anyone, whereas what is subject to human right belongs in general to someone, though it may belong to no one: thus, things forming part of a deceased's estate belong to no one until someone qualifies as heir. . . .[1] **10.** Things subject to human right are either public or private. **11.** Public things are regarded as belonging to no individual, but as being the property of the corporate body. Private things are those belonging to individuals.

12. Further, things are divided into corporeal and incorporeal. **13.** Corporeal things are tangible things, such as land, a slave, a garment, gold, silver, and countless other things. **14.** Incorporeal are things that are intangible, such as exist merely in law, for example an inheritance, a usufruct, obligations however contracted. It matters not that corporeal things are comprised in an inheritance, or that the fruits gathered from land (subject to a usufruct) are corporeal, or that what is due under an obligation is commonly corporeal, for instance land, a slave, money; for the rights themselves, of inheritance, usufruct, and obligation, are incorporeal. Incorporeal also are rights attached to urban and rural lands. Examples of the former are the right to raise one's building and so obstruct a neighbour's lights, or that of preventing a building from being raised lest neighbouring lights be obstructed, also the right that a neighbour shall suffer rain-water to pass into his courtyard or into his house in a channel or by dripping; also the right to introduce a sewer into a neighbour's property or to open lights over it. Examples of rights attached to rural lands are the various rights of way for vehicles, men, and beasts; also that of watering cattle and that of watercourse. Such rights, whether of urban or rural lands, are called servitudes.

14a. Things are further divided into *mancipi* and *nec mancipi*. *Mancipi* are lands and houses on Italic soil; likewise slaves and animals that are commonly broken to draught or burden, such as oxen, horses, mules, and asses; likewise rustic praedial servitudes, whereas urban praedial servitudes are *nec mancipi*. *Nec mancipi* also are stipendiary and tributary lands. **15.** But the effect of the statement we have made, that animals commonly broken to draught or burden are *mancipi*, is disputed, because they are not broken in at once on birth. The writers of our school hold that they are *mancipi* as soon as born, but Nerva, Proculus, and the other authorities of the opposing school hold that they become *mancipi* only when they have been broken in, or, if they cannot be broken in owing to their extreme wildness, that they become *mancipi* when they reach the usual age for breaking in. **16.** Further, wild beasts such as bears and lions are *nec mancipi*, as are animals such as elephants and camels which are in much the same category; thus it does not matter that these last are commonly broken to draught or burden; for their very names did not exist in the times when the distinction between *res mancipi* and *nec mancipi* was being settled. **17.** Also *nec mancipi* are almost all incorporeal things, except rustic praedial servitudes, which, it is settled, are *mancipi*, though they are in the category of incorporeal things.

18. Now there is an important difference between *res mancipi* and *nec mancipi*. **19.** For *res nec mancipi* become the full property of another by mere delivery, provided that they are corporeal and thus

[1] Eleven lines of the ms. are illegible. Some restoration has been made from D.1.8.1pr. Whether the remainder concerned *res* that are *nullius* but *humani iuris* or *res hereditariae* is disputed.

admit of being delivered. **20.** Thus, if I deliver a garment or gold or silver to you, whether on account of a sale or a gift or any other title, it at once becomes yours, provided only that I am its owner. **21.** The same applies to provincial lands, some of which we call stipendiary and others tributary. Stipendiary are lands in the provinces that are considered as belonging to the Roman people, tributary those in the provinces that are held to belong to the emperor. **22.** *Res mancipi*, on the other hand, are those things that are conveyed by mancipation; and that is why they are called *mancipi*. But *in iure cessio* (surrender in court) is as effective as mancipation. **23.** How mancipation is performed we have explained in the previous book. **24.** *In iure cessio* is performed as follows: in the presence of a magistrate of the Roman people, such as a praetor, the party to whom the surrender is being made, holding the thing, says 'I declare that this slave is mine by Quiritary title'; then, after this vindication, the praetor asks the surrenderor whether he makes counter-vindication and, on his replying in the negative or keeping silence, adjudges the thing to the vindicant. This procedure is called a *legis actio*. It can also be performed in a province before the governor. **25.** Usually, however, indeed nearly always, we use mancipation, since there is no need for us to do with greater difficulty before a praetor or provincial governor what we can do for ourselves in the presence of friends. **26.** But if instead of being mancipated or surrendered *in iure* a *res mancipi* (is merely delivered,) . . .[2] **27.** . . . We must further note that the saying of the old lawyers, that there is *nexus* of Italic, but not of provincial land, means that Italic land is *mancipi* and provincial *nec mancipi*. For in ancient speech the act had a different name, and what for them was *nexus* is for us *mancipatio*.

28. That incorporeal things do not admit of delivery is obvious. **29.** But while urban praedial servitudes can only be surrendered *in iure*, rustic can also be mancipated. **30.** Usufruct is susceptible only of *in iure cessio*. For an owner can cede *in iure* to another person the usufruct of his thing, so that the other gets the usufruct whilst he himself retains bare property. If in his turn the usufructuary cedes the usufruct *in iure* to the owner of the property, he causes the usufruct to pass away from himself and to merge in the property; but if he makes the *cessio* to a third party, he retains his right none the less, it being held that such a *cessio* is of no effect. **31.** But these statements hold good in regard to Italic lands, because the lands themselves are susceptible of mancipation and *in iure cessio*. If, on the other hand, it is over provincial lands that a man wishes to create a usufruct, rights of way for man or beast, a right of watercourse, a right to raise buildings or to prevent buildings being raised to the detriment of neighbouring lights, or any similar rights, he can effect his purpose (only) by means of pacts and stipulations, because the lands themselves are not susceptible of either mancipation or *in iure cessio*. **32.** But as usufruct can be created over slaves and animals generally, it should be understood that even in the provinces this can be done by *in iure cessio*. **33.** Our statement that usufruct admits only of *in iure cessio* was made advisedly, although it can be created by means of mancipation also, in the sense that it can be deducted in mancipating the property; for though the usufruct is not mancipated, yet the result of its being deducted in a mancipation of the property is that the usufruct is vested in one person and the property in another.

34. An inheritance likewise is susceptible only of *in iure cessio*. **35.** For if one on whom an inheritance devolves by the statute-law of intestacy, before accepting it, that is before he qualifies as heir, surrenders it *in iure* to another, the surrenderee becomes heir exactly as if he had himself been called to the inheritance by the statute. But if the heir surrenders after accepting responsibility, he remains heir himself none the less, and will thus be liable to the creditors of the inheritance, whereas the debts due to it are wiped out and so the debtors of the inheritance are the gainers. But the corporeal things in the inheritance pass to the surrenderee exactly as though they had been surrendered to him *in iure* one by one. **36.** *In iure cessio* of an inheritance by a testamentary heir is of no effect if made before his acceptance of the inheritance; if made after his acceptance, it has the same effects as those we have just mentioned in the case of a statutory heir by intestacy, if he surrenders *in iure* after accepting responsibility. **37.** The writers of the opposite school hold the same in the case of involuntary heirs, because they see no difference between one who becomes heir by acceptance and one who becomes such without choice; this distinction will be explained in the proper place. But our teachers regard *in iure cessio* of an inheritance by an involuntary heir as of no effect.

38. Obligations however contracted are susceptible of none of these modes of transfer. For if I wish a debt owed by someone to me to be owed to you, I can effect my purpose by none of the methods whereby corporeal things are conveyed, but it is necessary that you should on my instruction take a stipulatory promise from the debtor. The result will be that he will be released from me and become liable to you.

[2] A whole page of the ms. is virtually illegible. Cf. Ulp. 19.4.5.

This is called a novation of the obligation. **39.** Without such a novation you will not be able to sue for the debt in your own name, but must proceed in my name as my *cognitor* or *procurator*.

40. Next we must observe that among *peregrini* there is only one ownership: a man either is owner or is not considered owner. In olden times the Roman people followed the same principle: a man was either owner *ex iure Quiritium* or not considered owner at all. But afterwards ownership was made divisible, so that one man may be owner by Quiritary title and another by bonitary. **41.** Thus, if I neither mancipate nor surrender *in iure*, but merely deliver a *res mancipi* to you, it becomes yours by bonitary title, but will remain mine by Quiritary until you have usucapted it by possession; for once *usucapio* is completed it becomes yours by full title, that is by both bonitary and Quiritary, just as if it had been mancipated or surrendered *in iure*.

42. Usucapion of movables is completed in one year, of lands and buildings in two: so the law of the Twelve Tables provides.

43. We may also acquire by usucapion things which have been delivered to us by one who is not their owner, whether they be *mancipi* or *nec mancipi*, provided we have received them in good faith, believing the deliverer to he their owner. **44.** This system appears to have been adopted in order to obviate the ownership of things being uncertain for too long, the periods of one or two years appointed for usucapion by the possessor being sufficient for the owner to seek out his property.

45. But sometimes, though a man possess another's property in the best of faith, usucapion does not run in his favour, for example if he is in possession of a thing which has been stolen or taken by violence; for the law of the Twelve Tables forbids usucapion of a stolen thing, and the *L. Iulia et Plautia* that of a thing taken by violence. **46.** Again, provincial lands are not susceptible of usucapion. **47.** Again, in former times the *res mancipi* of a woman who was in the *tutela* of her agnates could not he acquired by usucapion, except where she had delivered them with the *auctoritas* of her tutor; this was provided by the law of the Twelve Tables. **48.** Again, it is obvious that free men and *res sacrae* or *religiosae* cannot be acquired by usucapion. **49.** The saying that the usucapion of things stolen and of things taken by violence is forbidden by the law of the Twelve Tables does not mean that the actual thief or violent taker is unable so to acquire (for to him usucapion is closed for another reason, namely that he possesses in bad faith); what it means is that no further person, though he have bought from him in good faith, has the right so to acquire. **50.** Consequently in the case of movables it does not readily happen that usucapion is open to their possessor in good faith, seeing that one who sells and delivers another's property commits theft; and the same is equally true of delivery on some other account. Still, sometimes it is otherwise: thus, if an heir sells or makes a gift of a thing lent or hired to or deposited with the deceased in the belief that it belongs to the inheritance, he does not commit theft; neither does one who having a usufruct over a female slave sells or makes a gift of her offspring in the belief that it too belongs to him; for theft is not committed in the absence of theftous intention. And there are other occasions on which a man may transfer the property of another without taint of theft and enable the possessor to acquire it by usucapion. **51.** It may happen also that a man may without violence take possession of another's land, which is lying vacant, either through the owner's neglect, or because the owner has died without a successor or has been absent for a considerable time; if the taker transfers this possession to one who receives it in good faith, the transferee will he able to acquire the land by uscapion; and even though he who took the vacant possession knows that the land is another's, this is no obstacle to usucapion by the *bona fide* possessor, since the opinion once held that land can he stolen has been exploded.

52. On the other hand, there are cases where one who knows that he is in possession of another's property will acquire it by usucapion. Thus, where a man takes possession of a thing which belongs to an inheritance, but of which the heir has not yet obtained possession, he is allowed to acquire it by usucapion, provided that it is a thing that is susceptible of usucapion. This kind of possession and usucapion is termed *pro herede* (as heir). **53.** So liberally is this kind of usucapion allowed, that even land is thereby acquired in one year. **54.** The reason why in this case usucapion of land as well as of other things in one year has been admitted is that in former times through the possession of things comprised in an inheritance the inheritance itself was deemed to he acquired by usucapion, and this in one year. For the law of the Twelve Tables laid down that lands should be acquired by usucapion in two years and other things in one. Thus an inheritance, not being land, indeed not even corporeal, was held to be among other things. And though later it was held that an inheritance itself could not be acquired by usucapion, yet usucapion in one year survived for everything, including land, comprised in an inheritance. **55.** That so

dishonest a possession and usucapion should have been allowed at all is explained by the fact that the ancient lawyers wished inheritances to he accepted promptly, in order that there should he persons to carry on the family cults (*sacra*), to which the greatest importance was attached in those days, and in order that the creditors (of the inheritance) should have someone from whom to obtain their due. **56.** This kind of possession and usucapion is also termed *lucratiua* (gainful), because by it a man knowingly makes gain out of another's property. **57.** But at the present day it is no longer *lucratiua*. For a senatusconsult passed on the authority of Hadrian has provided for such usucapions to be revoked. Thus, by *hereditatis petitio* the heir can recover the thing from him who has acquired it by usucapion, just as if it had not been so acquired. **58.** However, if an involuntary heir exists, no usucapion *pro herede* is possible even at civil law. **59.** There are further cases in which a man knowingly acquires the property of another by usucapion. For if a man acquires possession of what he has mancipated or surrendered *in iure* to another by way of *fiducia* (trust), he can regain ownership of it by usucapion, and that in one year, even if it be land. This kind of usucapion is called *usureceptio*, because by the usucapion one recovers what one had previously owned. **60.** Now *fiducia* is contracted either with one's creditor by way of security or with a friend for the safer keeping of one's property in his hands. If it is contracted with a friend, *usureceptio* is allowed unconditionally, but if with a creditor, it is allowed unconditionally if the debt has been paid, but if the debt has not yet been paid, then only if the debtor has neither hired the thing from the creditor nor obtained his licence to possess it; in that case lucrative usucapion is admitted. **61.** Again, if a man obtains possession of property of his which has been mortgaged to the Roman people and sold by it, *usureceptio is* permitted; but in this case the period for land is two years. This is what is meant by the current saying that from *praediatura* there is *usureceptio*; for a purchaser from the people is called *praediator.*

62. It sometimes happens that an owner has not the power of alienation or that a non-owner has. **63.** Thus, a husband is forbidden by the *L. Iulia* to alienate dotal land without his wife's consent, although it belongs to him, having been acquired as *dos* by mancipation, *in iure cessio*, or usucapion. Whether this rule applies only to Italic lands, or to provincial as well, is doubtful. **64.** On the other hand, by the law of the Twelve Tables the agnate curator of a lunatic can alienate the lunatic's property; again a *procurator* who has been given full power of administration can alienate property of his absent principal, and a creditor can under his agreement alienate property pledged to him, although it is not his; but here the explanation may he that the pledge is deemed to he alienated with the assent of the debtor, he having previously agreed that the creditor should have power to sell the pledge, if the debt were not paid.

65. It appears, then, from what we have said, that alienation takes place sometimes under natural law, as where it is by delivery, and sometimes under civil law; for mancipation, *in iure cessio*, and usucapion are institutions confined to Roman citizens.

66. But it is not only those things that become ours by delivery that we acquire under natural law, but also those that we acquire by occupation (by being the first takers), because they were previously no one's property, for example everything captured on land, in the sea, or in the air. **67.** Thus, if we capture a wild animal, a bird, or a fish, what we so capture becomes ours forthwith and is held to remain ours so long as it is kept in our control; but when it escapes from our keeping and recovers its natural liberty, it is once more the property of the first taker, because it ceases to belong to us. It is deemed to recover its natural liberty when it has escaped from our sight or when, although it is still in sight, its pursuit is difficult. **68.** But as regards such animals as habitually haunt some place, for instance pigeons and bees, or deer haunting a wood, there is a traditional rule that they cease to he ours and belong to the first taker, if they have ceased to have the disposition to return. They are considered to have ceased to have this disposition when they have abandoned the habit of returning. **69.** By natural law also things captured from the enemy become ours.

70. Alluvial accretions to our land become ours, again by natural law. That is held to he an accretion by alluvion which a river adds to our land so gradually that it is impossible to estimate how much is being added at any particular moment; whence the common saying, that an addition is by alluvion if it is so gradual as to be invisible. **71.** Accordingly, if a river tears away a piece of your land and carries it down to mine, that piece remains yours. **72.** But if an island arises in the middle of a river, it is shared by all the riparian owners on either side of the river; if, however, it be not in the middle of the river, it belongs to the riparian owners on the nearer side. **73.** Furthermore, what a man builds on my land becomes mine by natural law, although he built on his own account, because a superstructure goes with the land. **74.** Much more is this the case with a slip which someone has planted in my land, provided it has taken root there.

75. The same holds likewise of corn sown by another in my land. **76.** But if l bring an action for the recovery of the land or the building against the other man, and refuse to pay him his expenses on the building, the young plants, or the seed, he will be able to defeat me with the *exceptio doli mali*, at any rate if he was a *bona fide* possessor. **77.** On the same principle it has been held that what another has written on my paper or parchment even in letters of gold is mine, because the lettering goes with the paper or parchment. Hence, if I sue for the rolls or parchments, but refuse to pay the cost of the writing, I can be defeated by the *exceptio doli mali*. **78.** But if, say, someone has painted a picture on my panel, the contrary is held, the opinion preferred being that the panel follows the picture. The reasoning supporting this distinction is hardly satisfactory, but at any rate according to this ruling, if you bring an action against me who am in possession, claiming the picture as yours, but refuse to pay the value of the panel, you can be defeated by the *exceptio doll mali*; if on the contrary you are in possession, it follows that I should be allowed an equitable action against you, in which case, if I refuse to pay the cost of the painting, you will be able to defeat me by the *exceptio doli mali*, at any rate if you are a *bona fide* possessor. Of course if you or anyone else have stolen the panel, I have an action of theft.

79. On a change of species also we have recourse to natural law. Thus, if you make wine, oil, or grain out of my grapes, olives, or ears of corn, the question arises whether this wine, oil, or grain is mine or yours. Or again, if you make some utensil out of my gold or silver, or fashion a boat, chest, or chair out of my planks, or make a garment out of my wool, mead out of my wine and honey, or a plaster or eyesalve out of my drugs, the question arises whether what you have thus made out of my property is yours or mine. Some hold that the material substance is what counts, in other words that the manufactured article should be held to belong to the owner of the material substance; this is the opinion preferred by Sabinus and Cassius. But others consider that it belongs to its maker; this is the opinion preferred by the authorities of the other school, who add, however, that the former owner of the material substance has the action of theft against one who stole it, and also an action for its value (*condictio*), because, though things that have perished cannot be vindicated, they may nevertheless be the object of a *condictio* against thieves and certain other possessors.

80. Here we must observe that neither a woman nor a ward can alienate a *res mancipi* without *tutoris auctoritas*, but that, while a woman can, a ward cannot so alienate a *res nec mancipi*. **81.** Hence, if a woman lends money without her tutor's *auctoritas*, her contract is effective, because she makes the money—a *res nec mancipi*—the property of the borrower. **82.** But a ward who does the same makes no contract, because without his tutor's *auctoritas* he does not make the money the property of the borrower. He can therefore vindicate his coins, assuming them to be extant, that is he can claim that they are his own *ex iure Quiritium*, whereas a woman cannot make such a claim, but only that the money is owed to her. Hence in the case of a ward it is a question whether, supposing the money lent by him to have been spent by the borrower, he has an action of some sort by which he can claim it, seeing that even without his tutor's *auctoritas* he can acquire the benefit of an obligation. **83.** On the other hand, *res mancipi* and *nec mancipi* without distinction can be paid to women and wards without their tutor's *auctoritas*, because even without it they are allowed to improve their position.. **84.** Thus a debtor who pays a ward money he owes him makes the money the property of the ward, but is not himself discharged, because without his tutor's *auctoritas* a ward cannot release an obligation; indeed, without it he is not allowed to part with anything. Still, if he is the richer for the money and yet sues for the debt, he can be defeated by the *exceptio doli mali*. **85.** But to a woman payment of a debt can properly be made even without her tutor's *auctoritas*: the payer is discharged, since, as we have just said, women can part with their *res nec mancipi* even without their tutor's auctoritas. At least this is true if she receives the money; but if she does not, but merely acknowledges its receipt, seeking to free her debtor by formal release without her tutor's *auctoritas*, this is beyond her power.

86. Acquisitions come to us not only by our own acts, but also through those whom we hold in *potestas*, *manus*, or *mancipium*; likewise through slaves over whom we have a usufruct, and again through free men and other people's slaves whom we possess *bona fide*. Let us consider these cases carefully one by one. **87.** Whatever children in our *potestas* or our slaves receive by mancipation or obtain by delivery, and whatever rights they acquire by their stipulations or any other title, are acquired for us, because a person in *potestas* can have nothing of his own. Thus such a person, if instituted heir, cannot accept the inheritance except with our sanction, and if he accepts it with that sanction, it is acquired for us exactly as if we had been instituted heirs ourselves; and of course any legacy left to them goes to us on the same principle. **88.** But we must bear in mind that if a slave belongs to one man by bonitary title and

to another by Quiritary, his acquisitions from all sources go solely to the owner with the bonitary title. **89.** Through those whom we hold in *potestas* not only ownership but also possession is acquired for us. For we are held to possess anything of which they have acquired possession; hence through them usucapion likewise takes place. **90.** But though through persons whom we hold in *manus* or *mancipium* ownership is acquired for us by every method of acquisition, as much as through those in our *potestas*, it is commonly questioned whether possession is acquired for us through them, since we do not possess the persons themselves. **91.** With regard to slaves in whom we have only a usufruct the rule is that whatever they acquire in connexion with our affairs or from their own work is acquired far us, but that anything they acquire outside these two accounts belongs to the owner of the property in them. Hence if such a slave is instituted *heres* or is given some legacy or present, this acquisition is for the owner of the property in him, not for me. **92.** The same rule applies to a person *bona fide* possessed by us, whether he be a free man or another's slave; for what has been held of a usufructuary is applied also to a *bona fide* possessor, so that whatever is acquired outside the two accounts above mentioned belongs either to the man himself if he is free, or to his owner if he is a slave. **93.** But once the *bona fide* possessor has acquired the slave by usucapion, he can, since he thereby becomes his owner, acquire for himself through the slave's instrumentality on every account. But a usufructuary cannot acquire the slave by usucapion, first because he has not possession of him, but only the right of using and taking profits, and secondly because he knows that the slave belongs to someone else. **94.** Through a slave in whom we have a usufruct it is a question whether we can possess a thing and acquire it by usucapion, because we have not possession of the slave himself. But through one whom we *bona fide* possess there is no doubt but that we can both possess and acquire by usucapion. In both cases what we are saying is subject to the limitation just explained, namely that acquisition by such persons is for us, when it is in connexion with our affairs or from their own work. **95.** From what we have said it is evident that through free men who are neither subject to our power nor *bona fide* possessed by us, and through the slaves of others of whom we have neither a usufruct nor a lawful possession, acquisition is impossible on any account. This is the meaning of the common saying that there cannot be acquisition for us through a stranger. The only doubt is whether possession can be acquired for us through a *procurator*. **96.** Finally it is to be noted that *in iure cessio* to persons in *potestas*, *manus*, or *mancipium* is impossible; for since such persons can have nothing of their own, it obviously follows that they cannot vindicate in court anything as their own.

6. BOOK II [of things: testaments]

The Institutes of Gaius (F. de Zulueta ed. & trans., 1946, vol. 1)
Book II, §§ 97–190, pp. [odd nos.] 91–121 [footnotes omitted]

97. For the present it suffices to have carried our exposition of the methods of acquiring single things thus far. For the law of legacies, under which likewise single things are acquired, will be treated of more conveniently in another place. Let us therefore now consider how things are acquired in mass (*per universitatem*). **98.** If we become heirs to some person or have been granted possession of his estate (*bonorum possessio*), or if we buy an insolvent's estate, or adopt someone, or take a woman into our *manus* as wife, that person's assets pass to us.

99. Let us consider first inheritances. Of these there are two kinds, according as they come to us by will or by intestacy. **100.** First let us consider those coming by will.

101. Originally there were two kinds of wills: men made them either in the *comitia calata*, which were held twice a year for the purpose of making wills, or *in procinctu*, that is when they were arming for battle, *procinctus* being the army mobilized and armed. Thus they made the former in the quiet of peace and the latter when on the point of sallying to battle. **102.** Later a third kind of will was added, that executed *per aes et libram*. A man who had not made a will either in the *comitia calata* or *in procinctu*, if threatened with sudden death, would mancipate his *familia*, that is his whole estate, to a friend, whom he would request to distribute it after his death to such persons as he desired. This is called the will *per aes et libram*, because it is executed by means of a mancipation. **103.** The two earlier kinds of will have fallen into desuetude, and that executed *per aes et libram* has alone remained in use. Its present scheme, however, is other than what it was of old. For then the *familiae emptor*, that is he who by mancipation received the estate from the testator, used to occupy the position of heir, and consequently it was to him that the testator gave instructions as to the distribution of the estate after his death; but at the present day one person is instituted heir and the legacies are charged on him, whilst another figures formally as *familiae emptor* in imitation of the ancient system.

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

belonging to a society or corporation, and not to individuals, may be cited buildings in cities—theatres, racecourses, and such other similar things as belong to cities in their corporate capacity.

7. Things which are sacred, devoted to superstitious uses, or sanctioned, belong to no one, for what is subject to divine law is no one's property.

8. Those things are sacred which have been duly consecrated to God by His ministers, such as churches and votive offerings which have been properly dedicated to His service; and these we have by our constitution forbidden to be alienated or pledged, except to redeem captives from bondage. If any one attempts to consecrate a thing for himself and by his own authority, its character is unaltered, and it does not become sacred. The ground on which a sacred building is erected remains sacred even after the destruction of the building, as was declared also by Papinian. **9**. Any one can devote a place to superstitious uses of his own free will, that is to say, by burying a dead body in his own land. It is not lawful, however, to bury in land which one owns jointly with some one else, and which has not hitherto been used for this purpose, without the other's consent, though one may lawfully bury in a common sepulchre even without such consent. Again, the owner may not devote a place to superstitious uses in which another has a usufruct, without the consent of the latter. It is lawful to bury in another man's ground, if he gives permission, and the ground thereby becomes religious even though he should not give his consent to the interment till after it has taken place. **10**. Sanctioned things too, such as city walls and gates, are, in a sense, subject to divine law, and therefore are not owned by any individual. Such walls are said to be 'sanctioned', because any offence against them is visited with capital punishment; for which reason those parts of the laws in which we establish a penalty for their transgressors are called sanctions.

11. Things become the private property of individuals in many ways; for the titles by which we acquire ownership in them are some of them titles of natural law, which, as we said, is called the law of nations, while some of them are titles of civil law. It will thus be most convenient to take the older law first: and natural law is clearly the older, having been instituted by nature at the first origin of mankind, whereas civil laws first came into existence when states began to be founded, magistrates to be created, and laws to be written.

12. Wild animals, birds, and fish, that is to say all the creatures which the land, the sea, and the sky produce, as soon as they are caught by any one become at once the property of their captor by the law of nations; for natural reason admits the title of the first occupant to that which previously had no owner. So far as the occupant's title is concerned, it is immaterial whether it is on his own land or on that of another that he catches wild animals or birds, though it is clear that if he goes on another man's land for the sake of hunting or fowling, the latter may forbid him entry if aware of his purpose. An animal thus caught by you is deemed your property so long as it is completely under your control; but so soon as it has escaped from your control, and recovered its natural liberty, it ceases to be yours, and belongs to the first person who subsequently catches it. It is deemed to have recovered its natural liberty when you have lost sight of it, or when, though it is still in your sight, it would be difficult to pursue it. **13**. It has been doubted whether a wild animal becomes your property immediately you have wounded it so severely as to be able to catch it. Some have thought that it becomes yours at once, and remains so as long as you pursue it, though it ceases to be yours when you cease the pursuit, and becomes again the property of any one who catches it: others have been of opinion that it does not belong to you till you have actually caught it. And we confirm this latter view, for it may happen in many ways that you will not capture it. **14**. Bees again are naturally wild; hence if a swarm settles on your tree, it is no more considered yours, until you have hived it, than the birds which build their nests there, and consequently if it is hived by some one else, it becomes his property. So too any one may take the honey-combs which bees may chance to have made, though, of course, if you see some one coming on your land for this purpose, you have a right to forbid him entry before that purpose is effected. A swarm which has flown from your hive is considered to remain yours so long as it is in your sight and easy of pursuit: otherwise it belongs to the first person who catches it. **15**. Peafowl too and pigeons are naturally wild, and it is no valid objection that they are used to return to the same spots from which they fly away, for bees do this, and it is admitted that bees are wild by nature; and some people have deer so tame that they will go into the woods and yet habitually come back again, and still no one denies that they are naturally wild. With regard, however, to animals which have this habit of going away and coming back again, the rule has been established that they are deemed yours so long as they have the intent to return: for if they cease to have this intention they cease to be yours, and belong to the first person who takes them; and when they lose the habit they seem also to have lost the intention of returning. **16**. Fowls and geese are not naturally wild, as is shown by the fact that

there are some kinds of fowls and geese which we call wild kinds. Hence if your geese or fowls are frightened and fly away, they are considered to continue yours wherever they may be, even though you have lost sight of them; and any one who keeps them intending thereby to make a profit is held guilty of theft. **17**. Things again which we capture from the enemy at once become ours by the law of nations, so that by this rule even free men become our slaves, though, if they escape from our power and return to their own people, they recover their previous condition. **18**. Precious stones too, and gems, and all other things found on the sea-shore, become immediately by natural law the property of the finder. **19**. And by the same law the young of animals of which you are the owner become your property also.

20. Moreover, soil which a river has added to your land by alluvion becomes yours by the law of nations. Alluvion is an imperceptible addition; and that which is added so gradually that you cannot perceive the exact increase from one moment of time to another is added by alluvion. **21**. If, however, the violence of the stream sweeps away a parcel of your land and carries it down to the land of your neighbour, it clearly remains yours; though of course if in process of time it becomes firmly attached to your neighbour's land, and the trees which it carried with it strike root in the latter, they are deemed from that time to have become part and parcel thereof. **22**. When an island rises in the sea, though this rarely happens, it belongs to the first occupant; for, until occupied, it is held to belong to no one. If, however (as often occurs), an island rises in a river, and it lies in the middle of the stream, it belongs in common to the landowners on either bank, in proportion to the extent of their riparian interest; but if it lies nearer to one bank than to the other, it belongs to the landowners on that bank only. If a river divides into two channels, and by uniting again these channels transform a man's land into an island, the ownership of that land is in no way altered.

23. But if a river entirely leaves its old channel, and begins to run in a new one, the old channel belongs to the landowners on either side of it in proportion to the extent of their riparian interest, while the new one acquires the same legal character as the river itself, and becomes public. But if after a while the river returns to its old channel, the new channel again becomes the property of those who possess the land along its banks. **24**. It is otherwise if one's land is wholly flooded, for a flood does not permanently alter the nature of the land, and consequently if the water goes back the soil clearly belongs to its previous owner.

25. When a man makes a new object out of materials belonging to another, the question usually arises, to which of them, by natural reason, does this new object belong—to the man who made it, or to the owner of the materials? For instance, one man may make wine, or oil, or corn, out of another man's grapes, olives, or sheaves; or a vessel out of his gold, silver, or bronze; or mead of his wine and honey; or a plaster or eyesalve out of his drugs; or cloth out of his wool; or a ship, a chest, or a chair out of his timber. After many controversies between the Sabinians and Proculians, the law has now been settled as follows, in accordance with the view of those who followed a middle course between the opinions of the two schools. If the new object can be reduced to the materials of which it was made, it belongs to the owner of the materials; if not, it belongs to the person who made it. For instance, a vessel can be melted down, and so reduced to the rude material—bronze, silver, or gold—of which it is made: but it is impossible to reconvert wine into grapes, oil into olives, or corn into sheaves, or even mead into the wine and honey of which it was compounded. But if a man makes a new object out of materials which belong partly to him and partly to another—for instance, mead of his own wine and another's honey, or a plaster or eyesalve of drugs which are not all his own, or cloth of wool which belongs only in part to him— in this case there can be no doubt that the new object belongs to its creator, for he has contributed not only part of the material, but the labour by which it was made. **26**. If, however, a man weaves into his own cloth another man's purple, the latter, though the more valuable, becomes part of the cloth by accession; but its former owner can maintain an action of theft against the purloiner, and also a condiction, or action for reparative damages, whether it was he who made the cloth, or some one else; for although the destruction of property is a bar to a real action for its recovery, it is no bar to a condiction against the thief and certain other possessors. **27**. If materials belonging to two persons are mixed by consent—for instance, if they mix their wines, or melt together their gold or their silver—the result of the mixture belongs to them in common. And the law is the same if the materials are of different kinds, and their mixture consequently results in a new object, as where mead is made by mixing wine and honey, or electrum by mixing gold and silver; for even here it is not doubted that the new object belongs in common to the owners of the materials. And if it is by accident, and not by the intention of the owners, that materials have become mixed, the law is the same, whether they were of the same or of different kinds.

28. But if the corn of Titius has become mixed with yours, and this by mutual consent, the whole will belong to you in common, because the separate bodies or grains, which before belonged to one or the other of you in severally, have by consent on both sides been made your joint property. If, however, the mixture was accidental, or if Titius mixed the two parcels of corn without your consent, they do not belong to you in common, because the separate grains remain distinct, and their substance is unaltered; and in such cases the corn no more becomes common property than does a flock formed by the accidental mixture of Titius's sheep with yours. But if either of you keeps the whole of the mixed corn, the other can bring a real action for the recovery of such part of it as belongs to him, it being part of the province of the judge to determine the quality of the wheat which belonged to each. **29**. If a man builds upon his own ground with another's materials, the building is deemed to be his property, for buildings become a part of the ground on which they stand. And yet he who was owner of the materials does not cease to own them, but he cannot bring a real action for their recovery, or sue for their production, by reason of a clause in the Twelve Tables providing that no one shall be compelled to take out of his house materials *tignum*, even though they belong to another, which have once been built into it, but that double their value may be recovered by the action called *de tigno iniuncto*. The term *tignum* includes every kind of material employed in building, and the object of this provision is to avoid the necessity of having buildings pulled down; but if through some cause or other they should be destroyed, the owner of the materials, unless he has already sued for double value, may bring a real action for recovery, or a personal action for production. **30**. On the other hand, if one man builds a house on another's land with his own materials, the house belongs to the owner of the land. In this case, however, the right of the previous owner in the materials is extinguished, because he is deemed to have voluntarily parted with them, though only, of course, if he was aware that the land on which he was building belonged to another man. Consequently, though the house should be destroyed, he cannot claim the materials by real action. Of course, if the builder of the house has possession of the land, and the owner of the latter claims the house by real action, but refuses to pay for the materials and the workmen's wages, he can be defeated by the plea of fraud, provided the builder's possession is in good faith: for if he knew that the land belonged to some one else it may be urged against him that he was to blame for rashly building on land owned to his knowledge by another man. **31**. If Titius plants another man's shrub in land belonging to himself, the shrub will become his; and, conversely, if he plants his own shrub in the land of Maevius, it will belong to Maevius. In neither case, however, will the ownership be transferred until the shrub has taken root: for, until it has done this, it continues to belong to its original owner. So strict indeed is the rule that the ownership of the shrub is transferred from the moment it has taken root, that if a neighbour's tree grows so close to the land of Titius that the soil of the latter presses round it, whereby it drives its roots entirely into the same, we say the tree becomes the property of Titius, on the ground that it would be unreasonable to allow the owner of a tree to be a different person from the owner of tile land in which it is rooted. Consequently, if a tree which grows on the boundaries of two estates drives its roots even partially into the neighbour's soil, it becomes the common property of the two landowners. **32**. On the same principle corn is reckoned to become a part of the soil in which it is sown. But exactly as (according to what we said) a man who builds on another's land can defend himself by the plea of fraud when sued for the building by the owner of the land, so here too one who has in good faith and at his own expense put crops into another man's soil can shelter himself behind the same plea, if refused compensation for labour and outlay.

33. Writing again, even though it be in letters of gold, becomes a part of the paper or parchment, exactly as buildings and sown crops become part of the soil, and consequently if Titius writes a poem, or a history, or a speech on your paper or parchment, the whole will be held to belong to you, and not to Titius. But if you sue Titius to recover your books or parchments, and refuse to pay the value of the writing, he will be able to defend himself by the plea of fraud, provided that he obtained possession of the paper or parchment in good faith. **34**. Where, on the other hand, one man paints a picture on another's board, some think that the board belongs, by accession, to the painter, others, that the painting, however great its excellence, becomes part of the board. The former appears to us the better opinion, for it is absurd that a painting by Apelles or Parrhasius should be an accessory of a board which, in itself, is thoroughly worthless. Hence, if the owner of the board has possession of the picture, and is sued for it by the painter, who nevertheless refuses to pay the cost of the board, he will be able to repel him by the plea of fraud. If, on the other hand, the painter has possession, it follows from what has been said that the former owner of the board, [if he is to be able to sue at all], must claim it by a modified and not by a direct action; and in this case, if he refuses to pay the cost of the picture, he can be repelled by the plea of

fraud, provided that the possession of the painter be in good faith; for it is clear, that if the board was stolen by the painter, or some one else, from its former owner, the latter can bring the action of theft.

35. If a man in good faith buys land from another who is not its owner, though he believed he was, or acquires it in good faith by gift or some other lawful title, natural reason directs that the fruits which he has gathered shall be his, in consideration of his care and cultivation: consequently if the owner subsequently appears and claims the land by real action, he cannot sue for fruits which the possessor has consumed. This, however, is not allowed to one who takes possession of land which to his knowledge belongs to another person, and therefore he is obliged not only to restore the land, but to make compensation for fruits even though they have been consumed. **36**. A person who has a usufruct in land does not become owner of the fruits which grow thereon until he has himself gathered them; consequently fruits which, at the moment of his decease, though ripe, are yet ungathered, do not belong to his heir, but to the owner of the land. What has been said applies also in the main to the lessee of land. **37**. The term 'fruits', when used of animals, comprises their young, as well as milk, hair, and wool; thus lambs, kids, calves, and foals, belong at once, by the natural law of ownership, to the fructuary. But the term does not include the offspring of a female slave, which consequently belongs to her master; for it seemed absurd to reckon human beings as fruits, when it is for their sake that all other fruits have been provided by nature. **38**. The usufructuary of a flock, as Julian held, ought to replace any of the animals which die from the young of the rest, and, if his usufruct be of land, to replace dead vines or trees; for it is his duty to cultivate according to law and use them like a careful head of a family.

39. If a man found a treasure in his own land, the Emperor Hadrian, following natural equity, adjudged to him the ownership of it, as he also did to a man who found one by accident in soil which was sacred or religious. If he found it in another man's land by accident, and without specially searching for it, he gave half to the finder, half to the owner of the soil; and upon this principle, if a treasure were found in land belonging to the Emperor, he decided that half should belong to the latter, and half to the finder; and consistently with this, if a man finds one in land which belongs to the imperial treasury or the people, half belongs to him, and half to the treasury or the State.

40. Delivery again is a mode in which we acquire things by natural law; for it is most agreeable to natural equity that where a Man wishes to transfer his property to another person his wish should be confirmed.[1] Consequently corporeal things, whatever be their nature, admit of delivery, and delivery by their owner makes them the property of the alienee; this, for instance, is the mode of alienating stipendiary and tributary estates, that is to say, estates lying in provincial soil; between which, however, and estates in Italy there now exists, according to our constitution, no difference. **41**. And ownership is transferred whether the motive of the delivery be the desire to make a gift, to confer a dowry, or any other motive whatsoever. When, however, a thing is sold and delivered, it does not become the purchaser's property until he has paid the price to the vendor, or satisfied him in some other way, as by getting some one else to accept liability for him,[2] or by pledge. And this rule, though laid down also in the statute of the Twelve Tables, is rightly said to be a dictate of the law of all nations, that is, of natural law. But if the vendor gives the purchaser credit, the goods sold belong to the latter at once. **42**. It is immaterial whether the person who makes delivery is the owner himself, or some one else acting with his consent.

43. Consequently, if any one is entrusted by an owner with the management of his business at his own free discretion, and in the execution of his commission sells and delivers any article, he makes the receiver its owner.

44. In some cases even the owner's bare will is sufficient, without delivery, to transfer ownership. For instance, if a man sells or makes you a present of a thing which he has previously lent or let to you or placed in your custody, though it was not from that motive he originally delivered it to you, yet by the very fact that he suffers it to be yours you at once become its owner as fully as if it had been originally delivered for the purpose of passing the property. **45**. So too if a man sells goods lying in a warehouse, he transfers the ownership of them to the purchaser immediately he has delivered to the latter the keys of the warehouse. **46**. Nay, in some cases the will of the owner, though directed only towards an uncertain person, transfers the ownership of the thing, as for instance when praetors and consuls throw money to a

[1] This sentence seems to be derived from D.41.1.9.3 (Gaius, *Aurea*, book 2).

[2] *veluti expromissore*. F. de Zulueta, *The Roman Law of Sale* (1945), 79, translates this as "as by giving a guarantor," and then queries his translation.

crowd: here they know not which specific coin each person will get, yet they make the unknown recipient immediate owner, because it is their will that each shall have what he gets. **47.** Accordingly, it is true that if a man takes possession of property abandoned by its previous owner, he at once becomes its owner himself: and a thing is said to be abandoned which its owner throws away with the deliberate intention that it shall no longer be part of his property, and of which, consequently, he immediately ceases to be owner.

48. It is otherwise with things which are thrown overboard during a storm, in order to lighten the ship; in the ownership of these things there is no change, because the reason for which they are thrown overboard is obviously not that the owner does not care to own them any longer, but that he and the ship besides may be more likely to escape the perils of the sea. Consequently any one who carries them off after they are washed on shore, or who picks them up at sea and keeps them, intending to make a profit thereby, commits a theft; for such things seem to be in much the same position as those which fall out of a carriage in motion unknown to their owners.

TITLE II

OF INCORPOREAL THINGS

Some things again are corporeal, and others incorporeal. **1**. Those are corporeal which in their own nature are tangible, such as land, slaves, clothing, gold, silver, and others innumerable. **2**. Things incorporeal are such as are intangible: rights, for instance, such as inheritance, usufruct, and obligations, however acquired. And it is no objection to this definition that an inheritance comprises things which are corporeal; for the fruits of land enjoyed by a usufructuary are corporeal too, and obligations generally relate to the conveyance of something corporeal, such as land, slaves, or money, and yet the right of succession, the right of usufruct, and the right existing in every obligation, are incorporeal. **3**. So too the rights appurtenant to land, whether in town or country, which are usually called servitudes, are incorporeal things.

TITLE III

OF SERVITUDES

The following are rights appurtenant to country estates: *iter*, the right of passage at will for a man only, not of driving beast or vehicles; *actus*, the right of driving beasts or vehicles (of which two the latter contains the former, though the former does not contain the latter, so that a man who has *iter* has not necessarily *actus*, while if he has *actus* he has also *iter*, and consequently can pass himself even though unaccompanied by cattle); *via*, which is the right of going, of driving any thing whatsoever, and of walking, and which thus contains both *iter* and *actus*; and fourthly, *aquaeductus*, the right of conducting water over another man's land. **1**. Servitudes appurtenant to town estates are rights which are attached to buildings; and they are said to appertain to town estates because all buildings are called 'town estates', even though they are actually in the country. The following are servitudes of this kind—the obligation of a man to support the weight of his neighbour's house, to allow a beam to be let into his wall, or to receive the rain from his neighbour's roof on to his own either in drops or from a shoot, or from a gutter into his yard; the converse right of exemption from any of these obligations; and the right of preventing a neighbour from raising his buildings, lest thereby one's ancient lights be obstructed. **2**. Some think that among servitudes appurtenant to country estates ought properly to be reckoned the rights of drawing water, of watering cattle, of pasture, of burning lime, and of digging sand.

3. These servitudes are called rights attached to estates, because without estates they cannot come into existence; for no one can acquire or own a servitude attached to a town or country estate unless he has an estate for it to be attached to. **4**. When a landowner wishes to create any of these rights in favour of his neighbour, the proper mode of creation is agreement followed by stipulation. By testament too one can impose on one's heir an obligation not to raise the height of his house so as to obstruct his neighbour's ancient lights, or bind him to allow a neighbour to let a beam into his wall, to receive the rain water from a neighbour's pipe, or allow a neighbour a right of way, of driving cattle or vehicles over his land, or conducting water over it.

TITLE IV

OF USUFRUCT

Usufruct is the right of using and taking the fruits of property not one's own, without impairing the substance of that property; for being a right over a corporeal thing, it is necessarily extinguished itself

along with the extinction of the latter. *1*. Usufruct is thus a right detached from the aggregate of rights involved in ownership, and this separation can be effected in very many ways: for instance, if one man gives another a usufruct by legacy, the legatee has the usufruct, while the heir has merely the bare ownership; and, conversely, if a man gives a legacy of an estate, reserving the usufruct, the usufruct belongs to the heir, while only the bare ownership is vested in the legatee. Similarly, he can give to one man a legacy of the usufruct, to another one of the estate, subject to the other's usufruct. If it is wished to create a usufruct in favour of another person otherwise than by testament, the proper mode is agreement followed by stipulation. However, lest ownership should be entirely valueless through the permanent separation from it of the usufruct, certain modes have been approved in which usufruct may be extinguished, and thereby revert to the owner. **2**. A usufruct may be created not only in land or buildings, but also in slaves, cattle, and other objects generally, except such as are actually consumed by being used, of which a genuine usufruct is impossible by both natural and civil law. Among them are wine, oil, grain, clothing, and perhaps we may also say coined money; for a sum of money is in a sense extinguished by changing hands, as it constantly does in simply being used. For convenience sake, however, the senate enacted that a usufruct could be created in such things, provided that due security be given to the heir. Thus if a usufruct of money be given by legacy, that money, on being delivered to the legatee, becomes his property, though he has to give security to the heir that he will repay an equivalent sum on his dying or undergoing a loss of status. And all things of this class, when delivered to the legatee, become his property, though they are first appraised, and the legatee then gives security that if he dies or undergoes a loss of status he will pay the value which was put upon them. Thus in point of fact the senate did not introduce a usufruct of such things, for that was beyond its power, but established a right analogous to usufruct by requiring security. **3**. Usufruct determines by the death of the usufructuary, by his undergoing either of the greater kinds of loss of status, by its improper exercise, and by its non-exercise during the time fixed by law; all of which points are settled by our constitution. It is also extinguished when surrendered to the owner by the usufructuary (though transfer to a third person is inoperative); and again, conversely, by the fructuary becoming owner of the thing, this being called consolidation. Obviously, a usufruct of a house is extinguished by the house being burnt down, or falling through an earthquake or faulty construction; and in such a case a usufruct of the site cannot be reclaimed. When a usufruct determines, it reverts to and is reunited with the ownership; and from that moment he who before was but bare owner of the thing begins to have full power over it.

TITLE V

OF USE AND HABITATION

A bare use, or right of using a thing, is created in the same mode as a usufruct, and the modes in which it may determine are the same as those just described. **1**. A use is a less right than a usufruct; for if a man has a bare use of an estate, he is deemed entitled to use the vegetables, fruit, flowers, hay, straw, and wood upon it only so far as his daily needs require: he may remain on the land only so long as he does not inconvenience its owner, or impede those who are engaged in its cultivation; but he cannot let or sell or give away his right to a third person, whereas a usufructuary may. **2**. Again, a man who has the use of a house is deemed entitled only to live in it himself; he cannot transfer his right to a third person, and it scarcely seems to be agreed that he may take in a guest; but besides himself he may lodge there his wife, children, and freedmen, and other free persons who form as regular a part of his establishment as his slaves. Similarly, if a woman has the use of a house, her husband may dwell there with her. **3**. When a man has the use of a slave, he has only the right of personally using his labour and services; in no way is he allowed to transfer his right to a third person, and the same applies to the use of beasts of burden. **4**. If a legacy be given of the use of a herd or of a flock of sheep, the usuary may not use the milk, lambs, or wool, for these are fruits; but of course he may use the animals for the purpose of manuring his land.

5. If a right of habitation be given to a man by legacy or in some other mode, this seems to be neither a use nor a usufruct, but a distinct and as it were independent right; and by a constitution which we have published in accordance with the opinion of Marcellus, and in the interests of utility, we have permitted persons possessed of this right not only to live in the building themselves, but also to let it out to others.

6. What we have here said concerning servitudes, and the rights of usufruct, use, and habitation, will be sufficient; of inheritance and obligations we will treat in their proper places respectively. And having now briefly expounded the modes in which we acquire things by the law of nations, let us turn and see in what modes they are acquired by statute or by civil law.

TITLE VI

OF USUCAPION AND LONG POSSESSION

It was a rule of the civil law that if a man in good faith bought a thing, or received it by way of gift, or on any other lawful ground, from a person who was not its owner, but whom he believed to be such, he should acquire it by usucapion—if a movable, by one year's possession, and by two years' possession if an immovable, though in this case only if it were in Italian soil;—the reason of the rule being the inexpediency of allowing ownership to be long unascertained. The ancients thus considered that the periods mentioned were sufficient to enable owners to look after their property; but we have arrived at a better opinion, in order to save people from being over-quickly defrauded of their own, and to prevent the benefit of this institution from being confined to only a certain part of the empire. We have consequently published a constitution on the subject, enacting that the period of usucapion for movables shall be three years, and that ownership of immovables shall be acquired by long possession—possession, that is to say, for ten years, if both parties dwell in the same province, and for twenty years if in different provinces; and things may in these modes be acquired in full ownership, provided the possession commences on a lawful ground, not only in Italy but in every land subject to our sway.

1. Some things, however, notwithstanding the good faith of the possessor, and the duration of his possession, cannot be acquired by usucapion; as is the case, for instance, if one possesses a free man, a thing sacred or religious, or a runaway slave. **2**. Things again of which the owner lost possession by theft, or possession of which was gained by violence, cannot be acquired by usucapion, even by a person who has possessed them in good faith for the specified period: for stolen things are declared incapable of usucapion by the statute of the Twelve Tables and by the lex Atinia, and things taken with violence by the lex Iulia et Plautia. **3**. The statement that things stolen or violently possessed cannot, by statute, be acquired by usucapion, means, not that the thief or violent dispossessor is incapable of usucapion—for these are barred by another reason, namely the fact that their possession is not in good faith; but that even a person who has purchased the thing from them in good faith, or received it on some other lawful ground, is incapable of acquiring by usucapion. Consequently, in things movable even a person who possesses in good faith can seldom acquire ownership by usucapion, for he who sells, or on some other ground delivers possession of a thing belonging to another, commits a theft. **4**. However, this admits of exception; for if an heir, who believes a thing lent or let to, or deposited with, the person whom he succeeds, to be a portion of the inheritance, sells or gives it by way of dowry to another who receives it in good faith, there is no doubt that the latter can acquire the ownership of it by usucapion; for the thing is here not tainted with the flaw attaching to stolen property, because an heir does not commit a theft who in good faith conveys a thing away believing it to be his own. **5**. Again, the usufructuary of a female slave, who believes her offspring to be his property, and sells or gives it away, does not commit a theft: for theft implies unlawful intention. **6**. There are also other ways in which one man can transfer to another property which is not his own, without committing a theft, and thereby enable the receiver to acquire by usucapion. **7**. Usucapion of property classed among things immovable is an easier matter; for it may easily happen that a man may, without violence, obtain possession of land which, owing to the absence or negligence of its owner, or to his having died and left no successor, is presently possessed by no one. Now this man himself does not possess in good faith, because he knows the land on which he has seized is certainly not his own: but if he delivers it to another who receives it in good faith, the latter can acquire it by long possession, because it has neither been stolen nor violently possessed; for the idea held by some of the ancients, that a piece of land or a place can be stolen, has now been exploded, and imperial constitutions have been enacted in the interests of persons possessing immovables, to the effect that no one ought to be deprived of a thing of which he has had long and unquestioned possession. **8**. Sometimes indeed even things which have been stolen or violently possessed can be acquired by usucapion, as for instance after they have agaiN come under the power of their real owner: for by this they are relieved from the taint which had attached to them, and so become capable of usucapion. **9**. Things belonging to our treasury cannot be acquired by usucapion. But there is on record an opinion of Papinian, supported by rescripts of the Emperors Pius, Severus, and Antoninus, that if, before the property of a deceased person who has left no heir is reported to the exchequer, some one has bought or received some part thereof, he can acquire it by usucapion. **10**. Finally, it is to be observed that things are incapable of being acquired through usucapion by a purchaser in good faith, or by one who possesses on some other lawful ground, unless they are free from all flaws which vitiate the usucapion.

11. If there be a mistake as to the ground on which possession is acquired, and which it is wrongly supposed will support usucapion, usucapion cannot take place. Thus a man's possession may be founded on a supposed sale or gift, whereas in point of fact there has been no sale or gift at all.

12. Long possession which has begun to run in favour of a deceased person continues to run on in favour of his heir or praetorian successor, even though he knows that the land belongs to another person. But if the deceased's possession had not a lawful inception, it is not available to the heir or praetorian successor, although ignorant of this. Our constitution has enacted that in usucapion too a similar rule shall be observed, and that the benefit of the possession shall continue in favour of the successor. **13**. The Emperors Severus and Antoninus have decided by a rescript that a purchaser too may reckon as his own the time during which his vendor has possessed the thing.

14. Finally, it is provided by an edict of the Emperor Marcus that after an interval of five years a purchaser from the treasury of property belonging to a third person may repel the owner, if sued by him, by an exception. But a constitution issued by Zeno of sacred memory has protected persons who acquire things from the treasury by purchase, gift, or other title, affording them complete security from the moment of the transfer, and guaranteeing their success in any action relating thereto, whether they be plaintiffs or defendants; while it allows those who claim any action in respect of such property as owners or pledgees to sue the imperial treasury at any time within four years from the transaction. A divine constitution which we ourselves have lately issued has extended the operation of Zeno's enactment, respecting conveyances by the treasury, to persons who have acquired anything from our palace or that of the Empress.

TITLE VII

OF GIFTS

Another mode in which property is acquired is gift. Gifts are of two kinds; those made in contemplation of death, and those not so made. **1**. Gifts of the first kind are those made in view of approaching death, the intention of the giver being that in the event of his decease the thing given should belong to the donee, but that if he should survive or should desire to revoke the gift, or if the donee should die first, the thing should be restored to him. These gifts in contemplation of death now stand on exactly the same footing as legacies; for as in some respects they were more like ordinary gifts, in others more like legacies, the jurists doubted under which of these two classes they should be placed, some being for gift, others for legacy: and consequently we have enacted by constitution that in nearly every respect they shall be treated like legacies, and shall be governed by the rules laid down respecting them in our constitution. In a word, a gift in contemplation of death is where the donor would rather have the thing himself than that the donee should have it, and that the latter should rather have it than his own heir. An illustration may be found in Homer, where Telemachus makes a gift to Piraeus.

2. Gifts which are made without contemplation of death, which we call gifts between the living, are of another kind, and have nothing in common with legacies. If the transaction be complete, they cannot be revoked at pleasure; and it is complete when the donor has manifested his intention, whether in writing or not. Our constitution has settled that such a manifestation of intention binds the donor to deliver, exactly as in the case of sale; so that even before delivery gifts are completely effectual, and the donor is under a legal obligation to deliver the object. Enactments of earlier emperors required that such gifts, if in excess of two hundred *solidi*, should be officially registered; but our constitution has raised this maximum to five hundred *solidi*, and dispensed with the necessity of registering gifts of this or of a less amount; indeed it has even specified some gifts which are completely valid, and require no registration, irrespective of their amount. We have devised many other regulations in order to facilitate and secure gifts, all of which may be gathered from the constitutions which we have issued on this topic. It is to be observed, however, that even where gifts have been completely executed we have by our constitution under certain circumstances enabled donors to revoke them, but only on proof of ingratitude on the part of the recipient of the bounty; the aim of this reservation being to protect persons, who have given their property to others, from suffering at the hands of these latter injury or loss in any of the modes detailed in our constitution. **3**. There is another specific kind of gift between the living, with which the earlier jurists were quite unacquainted, and which owed its later introduction to more recent emperors. It was called gift before marriage, and was subject to the implied condition that it should not be binding until the marriage had taken place; its name being due to the fact that it was always made before the union of the parties, and could never take place after the marriage had once been celebrated. The first change in this matter was

made by our imperial father Justin, who, as it had been allowed to increase dowries even after marriage, issued a constitution authorizing the increase of gifts before marriage during the continuance of the marriage tie in cases where an increase had been made to the dowry. The name 'gift before marriage' was, however, still retained, though now inappropriate, because the increase was made to it after the marriage. We, however, in our desire to perfect the law, and to make names suit the things which they are used to denote, have by a constitution permitted such gifts to be first made, and not merely increased, after the celebration of the marriage, and have directed that they shall be called gifts 'on account of' (and not 'before') marriage, thereby assimilating them to dowries; for as dowries are not only increased, but actually constituted, during marriage, so now gifts on account of marriage may be not only made before the union of the parties, but may be first made as well as increased during the continuance of that union.

4. There was formerly too another civil mode of acquisition, namely, by accrual, which operated in the following way: if a person who owned a slave jointly with Titius gave him his liberty himself alone by vindication or by testament, his share in the slave was lost, and went to the other joint owner by accrual. But as this rule was very bad as a precedent— for both the slave was cheated of his liberty, and the kinder masters suffered all the loss while the harsher ones reaped all the gain—we have deemed it necessary to suppress a usage which seemed so odious, and have by our constitution provided a merciful remedy, by discovering a means by which the manumitter, the other joint owner, and the liberated slave, may all alike be benefited. Freedom, in whose behalf even the ancient legislators clearly established many rules at variance with the general principles of law, will be actually acquired by the slave; the manumitter will have the pleasure of seeing the benefit of his kindness undisturbed; while the other joint owner, by receiving a money equivalent proportionate to his interest, and on the scale which we have fixed, will be indemnified against all loss.

TITLE VIII

OF PERSONS WHO MAY, AND WHO MAY NOT ALIENATE

It sometimes happens that an owner cannot alienate, and that a non-owner can. Thus the alienation of dowry land by the husband, without the consent of the wife, is prohibited by the lex Iulia, although. since it has been given to him as dowry, he is its owner. We, however, have amended the lex lulia, and thus introduced an improvement; for that statute applied only to land in Italy, and though it prohibited a mortgage of the land even with the wife's consent, it forbade it to be alienated only without her concurrence. To correct these two defects we have forbidden mortgages as well as alienations of dowry land even when it is situated in the provinces, so that such land can now be dealt with in neither of these ways, even if the wife concurs, lest the weakness of the female sex should be used as a means to the wasting of their property. **1**. Conversely a pledgee, in pursuance of his agreement, may alienate the pledge, though not its owner; this, however, may seem to rest on the assent of the pledgor given at the inception of the contract, in which it was agreed that the pledgee should have a power of sale in default of repayment. But in order that creditors may not be hindered from pursuing their lawful rights, or debtors be deemed to be overlightly deprived of their property, provisions have been inserted in our constitution and a definite procedure established for the sale of pledges, by which the interests of both creditors and debtors have been abundantly guarded. **2**. We must next observe that no pupil of either sex can alienate anything without his or her guardian's authority. Consequently, if a pupil attempts to lend money without such authority, no property passes, and he does not impose a contractual obligation; hence the money, if it exists, can be recovered by real action. If the money which he attempted to lend has been spent in good faith by the would-be borrower, it can be sued for by the personal action called condiction; if it has been fraudulently spent, the pupil can sue by personal action for its production. On the other hand, things can be validly conveyed to pupils of either sex without the guardian's authority; accordingly, if a debtor wishes to pay a pupil, he must obtain the sanction of the guardian to the transaction, else he will not be released. In a constitution which we issued to the advocates of Caesarea at the instance of the distinguished Tribonian, quaestor of our most sacred palace, it has with the clearest reason been enacted, that the debtor of a pupil may safely pay a guardian or curator by having first obtained permission by the order of a judge, for which no fee is to be payable: and if the judge makes the order, and the debtor in pursuance thereof makes payment, he is completely protected by this form of discharge. Supposing, however, that the form of payment be other than that which we have fixed, and that the pupil, though he still has the money in his possession, or has been otherwise enriched by it, attempts to recover the debt by action, he can be repelled by the plea of fraud. If on the other hand he has squandered the money or had it stolen from him, the plea of fraud will not avail the debtor, who will be condemned to pay again, as a

penalty for having carelessly paid without the guardian's authority, and not in accordance with our regulation. Pupils of either sex cannot validly satisfy a debt without their guardian's authority, because the money paid does not become the creditor's property; the principle being that no pupil is capable of alienation without his guardian's sanction.

TITLE IX

OF PERSONS THROUGH WHOM WE ACQUIRE

We acquire property not only by our own acts, but also by the acts of persons in our power, of slaves in whom we have a usufruct, and of freemen and slaves belonging to another but whom we possess in good faith. Let us now examine these cases in detail. **1**. Formerly, whatever was received by a child in power of either sex, with the exception of military peculium, was acquired for the parent without any distinction; and the parent was entitled to give away or sell to one child, or to a stranger, what had been acquired through another, or dispose of it in any other way that he pleased. This, however, seemed to us to be a cruel rule, and consequently by a general constitution which we have issued we have improved the children's position, and yet reserved to parents all that was their due. This enacts that whatever a child gains by and through property, of which his father allows him the control, is acquired, according to the old practice, for the father alone; for what unfairness is there in property derived from the father returning to him? But of anything which the child derives from any source other than his father, though his father will have a usufruct therein, the ownership is to belong to the child, that he may not have the mortification of seeing the gains which he has made by his own toil or good fortune transferred to another. **2**. We have also made a new rule relating to the right which a father had under earlier constitutions, when he emancipated a child, of retaining absolutely, if he pleased, a third part of such property of the child as he himself had no ownership in, as a kind of consideration for emancipating him. The harsh result of this was that a son was by emancipation deprived of the ownership of a third of his property; and thus the honour which he got by being emancipated and made independent was balanced by the diminution in his fortune. We have therefore enacted that the parent, in such a case, shall no longer retain the ownership of a third of the child's property, but, in lieu thereof, the usufruct of one half; and thus the son will remain absolute owner of the whole of his fortune, while the father will reap a greater benefit than before, by being entitled to the enjoyment of a half instead of a third. **3**. Again, all rights which your slaves acquire by tradition, stipulation, or any other title, are acquired for you, even though the acquisition be without your knowledge, or even against your will; for a slave, who is in the power of another person, can have nothing of his own. Consequently, if he is instituted heir, he must, in order to be able to accept the inheritance, have the command of his master; and if he has that command, and accepts the inheritance, it is acquired for his master exactly as if the latter had himself been instituted heir; and it is precisely the same with a legacy. And not only is ownership acquired for you by those in your power, but also possession; for you are deemed to possess everything of which they have obtained detention, and thus they are to you instruments through whom ownership may be acquired by usucapion or long possession. **4**. Respecting slaves in whom a person has only a usufruct, the rule is, that what they acquire by means of the property of the usufructuary, or by their own work, is acquired for him; but what they acquire by any other means belongs to their owner, to whom they belong themselves. Accordingly, if such a slave is instituted heir, or made legatee or donee, the succession, legacy, or gift is acquired, not for the usufructuary, but for the owner. And a man who in good faith possesses a free man or a slave belonging to another person has the same rights as a usufructuary; what they acquire by any other mode than the two we have mentioned belongs in the one case to the free man, in the other to the slave's real master. After a possessor in good faith has acquired the ownership of a slave by usucapion, everything which the slave acquires belongs to him without distinction; but a fructuary cannot acquire ownership of a slave in this way, because in the first place he does not possess the slave at all, but has merely a right of usufruct in him, and because in the second place he is aware of the existence of another owner. Moreover, you can acquire possession as well as ownership through slaves in whom you have a usufruct or whom you possess in good faith, and through free persons whom in good faith you believe to be your slaves, though as regards all these classes we must be understood to speak with strict reference to the distinction drawn above, and to mean only detention which they have obtained by means of your property or their own work. **5**. From this it appears that free men not subject to your power, or whom you do not possess in good faith, and other persons' slaves, of whom you are neither usufructuaries nor just possessors, cannot under any circumstances acquire for you; and this is the meaning of the maxim that a man cannot be the means of acquiring anything for one who is a stranger in relation to him. To this maxim there is but one

exception— namely, that, as is ruled in a constitution of the Emperor Severus, a free person, such as a general agent, can acquire possession for you, and that not only when you know, but even when you do not know of the fact of acquisition: and through this possession ownership can be immediately acquired also, if it was the owner who delivered the thing; and if it was not, it can be acquired ultimately by usucapion or by the plea of long possession.

6. So much at present concerning the modes of acquiring rights over single things: for direct and fiduciary bequests, which are also among such modes, will find a more suitable place in a later portion of our treatise. We proceed therefore to the titles whereby an aggregate of rights is acquired. If you become the successors, civil or praetorian, of a person deceased, or adopt an independent person by adrogation, or become assignees of a deceased's estate in order to secure their liberty to slaves manumitted by his will, the whole estate of those persons is transferred to you in an aggregate mass. Let us begin with inheritances, whose mode of devolution is twofold, according as a person dies testate or intestate; and of these two modes we will first treat of acquisition by will. The first point which here calls for exposition is the mode in which wills are made.

TITLE X

OF THE EXECUTION OF WILLS

The term testament is derived from two words which mean a signifying of intention.

1. Lest the antiquities of this branch of law should be entirely forgotten, it should be known that originally two kinds of testaments were in use, one of which our ancestors employed in times of peace and quiet, and which was called the will made in the *comitia calata*, while the other was resorted to when they were setting out to battle, and was called *procinctum*. More recently a third kind was introduced, called the will by bronze and balance, because it was made by mancipation, which was a sort of fictitious sale, in the presence of five witnesses and a balance holder, all Roman citizens above the age of puberty, together with the person who was called the purchaser of the family. The two first mentioned kinds of testament, however, went out of use even in ancient times, and even the third, or will by bronze and balance, though it has remained in vogue longer than they, a has become partly disused. **2**. All these three kinds of will which we have mentioned belonged to the civil law, but later still a fourth form was introduced by the praetor's edict; for the new law of the praetor, or *ius honorarium*, dispensed with mancipation, and rested content with the seals of seven witnesses, whereas the seals of witnesses were not required by the civil law. **3**. When, however, by a gradual process the civil and praetorian laws, partly by usage, partly by definite changes introduced by constitutions, came to be combined into a harmonious whole, it was enacted that a will should be valid which was wholly executed at one time and in the presence of seven witnesses (these two points being required, in a way, by the old civil law), to which the witnesses signed their names—a new formality imposed by imperial legislation—and affixed their seals, as had been required by the praetor's edict. Thus the present law of testament seems to be derived from three distinct sources; the witnesses, and the necessity of their all being present continuously through the execution of the will in order that that execution may be valid, coming from the civil law: the signing of the document by the testator and the witnesses being due to imperial constitutions, and the exact number of witnesses, and the sealing of the will by them, to the praetor's edict. **4**. An additional requirement imposed by our constitution, in order to secure the genuineness of testaments and prevent forgery, is that the name of the heir shall be written by either the testator or the witnesses, and generally that everything shall be done according to the tenor of that enactment.

5. The witnesses may all seal the testament with the same seal; for, as Pomponius remarks, what if the device on all seven seals were the same? It is also lawful for a witness to use a seal belonging to another person. **6**. Those persons only can be witnesses who are legally capable of witnessing a testament. Women, persons below the age of puberty, slaves, lunatics, persons dumb or deaf, and those who have been interdicted from the management of their property, or whom the law declares worthless and unfitted to perform this office, cannot witness a will. **7**. In cases where one of the witnesses to a will was thought free at the time of its execution, but was afterwards discovered to be a slave, the Emperor Hadrian, in his rescript to Catonius Verus, and afterwards the Emperors Severus and Antoninus declared that of their goodness they would uphold such a will as validly made; for, at the time when it was sealed, this witness was admitted by all to be free, and, as such, had had his civil position called in question by no man. **8**. A father and a son in his power, or two brothers who are both in the power of one father, can lawfully witness the same testament, for there can be no harm in several persons of the same family witnessing

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		
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	servitutes usus fructus–§§28–33	hereditas–§§34–37	obligationes –§§38–39		

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