LATIN SERIES · VOLUME 73

The Institutes of Gaius

Gaius

Institutiones

The Institutes of Gaius

Books I–IV

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with a word-for-word interlinear English translation

preserving the original word order



CANES NOBILES · MMXXVI

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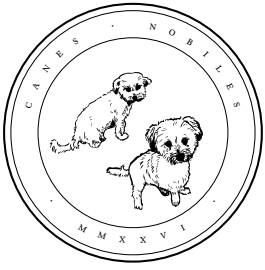

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BOOK I

I · THE SOURCES OF LAW

Every people uses partly its own law, the civil law of its state, and partly the law of nations that natural reason sets among all men. The law of the Roman people consists of statutes, plebiscites, decrees of the senate, imperial enactments, the edicts of magistrates, chiefly the two praetors and the curule aediles, and the opinions of the jurists, which bind the judge when they agree.

Omnes populi, qui legibus et moribus reguntur, partim 1
All peoples who by-laws and by-customs are-ruled partly
suo proprio, partim communi omnium hominum iure
their-own particular partly the-common of-all men law
utuntur; nam quod quisque populus ipse sibi ius
use for what each people itself for-itself as-law
constituit, id ipsius proprium est uocaturque ius ciuile,
establishes that of-it its-own is and-is-called law civil
quasi ius proprium ciuitatis; quod uero naturalis ratio inter
as-if law its-own of-the-state what however natural reason among
omnes homines constituit, id apud omnes populos peraeque
all men has-established that among all peoples equally
custoditur uocaturque ius gentium, quasi quo iure
is-observed and-is-called the-law of-nations as-if by-which law
omnes gentes utuntur. populus itaque Romanus partim suo
all nations use the-people therefore Roman partly its-own
proprio, partim communi omnium hominum iure utitur.
particular partly the-common of-all men law uses
quae singula qualia sint, suis locis proponemus.
which individually of-what-kind they-are in-their-own places we-shall-set-out

2 Constant autem iura populi Romani ex legibus, plebiscitis,
Consist however the-laws of-the-people Roman of statutes plebiscites
senatusconsultis, constitutionibus principum, edictis eorum
decrees-of-the-senate enactments of-the-emperors edicts of-those
qui ius edicendi habent, responsis prudentium.
who the-right of-issuing-edicts have opinions of-the-jurists

3 Lex est quod populus iubet atque constituit. Plebiscitum
A-statute is what the-people orders and establishes A-plebiscite
est quod plebs iubet atque constituit. plebs autem a
is what the-commons orders and establishes the-commons however from
populo eo distat, quod populi appellatione uniuersi ciues
the-people in-this differs that by-the-people's name all-together citizens
significantur connumeratis etiam patriciis; plebis autem
are-signified included even the-patricians by-the-commons' however
appellatione sine patriciis ceteri ciues significantur; unde
name without the-patricians the-other citizens are-signified whence
olim patricii dicebant plebiscitis se non teneri, quia
once the-patricians used-to-say by-plebiscites themselves not to-be-bound because
sine auctoritate eorum facta essent; sed postea lex
without the-authority of-them made they-had-been but afterward the-statute
Hortensia lata est, qua cautum est, ut plebiscita uniuersum
Hortensian carried was by-which provided it-was that the-plebiscites the-whole
populum tenerent; itaque eo modo legibus exaequata sunt.
people should-bind and-so in-this way to-statutes made-equal they-are

4 Senatusconsultum est, quod senatus iubet atque constituit,
A-decree-of-the-senate is what the-senate orders and establishes
idque legis uicem optinet, quamuis fuerit quaesitum.
and-it of-a-statute the-place holds although it-has-been questioned

5 Constitutio principis est, quod imperator decreto uel edicto
An-enactment of-the-emperor is what the-emperor by-decree or by-edict
uel epistula constituit. nec umquam dubitatum est, quin
or by-letter has-established nor ever doubted has-it-been but-that

id legis uicem optineat, cum ipse imperator per legem
it of-a-statute the-place holds since himself the-emperor through a-statute
imperium accipiat.
his-power receives

∗∗∗. ius autem edicendi habent magistratus populi 6
(lacuna) the-right however of-issuing-edicts have the-magistrates of-the-people
Romani; sed amplissimum ius est in edictis duorum
Roman but the-widest right is in the-edicts of-the-two
praetorum, urbani et peregrini, quorum in prouinciis
praetors urban and peregrine whose in the-provinces
iurisdictionem praesides earum habent; item in edictis
jurisdiction the-governors of-them have likewise in the-edicts
aedilium curulium, quorum iurisdictionem in prouinciis
of-the-aediles curule whose jurisdiction in the-provinces
populi Romani quaestores habent; nam in prouincias
of-the-people Roman the-quaestors have for into the-provinces
Caesaris omnino quaestores non mittuntur, et ob id
of-Caesar at-all quaestors not are-sent and on-account-of that
hoc edictum in his prouinciis non proponitur.
this edict in these provinces not is-published

Responsa prudentium sunt sententiae et opiniones eorum, 7
The-opinions of-the-jurists are the-judgments and views of-those
quibus permissum est iura condere. quorum omnium
to-whom permitted it-has-been laws to-frame of-whom of-all
si in unum sententiae concurrunt, id quod ita sentiunt
if into one the-judgments agree that which so they-hold
legis uicem optinet; si uero dissentiunt, iudici licet
of-a-statute the-place holds if however they-disagree for-the-judge it-is-allowed
quam uelit sententiam sequi; idque rescripto diui
which he-wishes judgment to-follow and-this by-a-rescript of-the-deified
Hadriani significatur.
Hadrian is-signified

All law concerns persons, things, or actions, and Gaius begins with persons. Men are free or slaves; the free are freeborn or freedmen; and freedmen are Roman citizens, Latins, or of the number of the dediticii.

8 Omne autem ius quo utimur uel ad personas pertinet uel
All however the-law which we-use either to persons relates or
ad res uel ad actiones. et prius uideamus de personis.
to things or to actions and first let-us-see about persons

9 Et quidem summa diuisio de iure personarum haec est,
And indeed the-chief division of the-law of-persons this is
quod omnes homines aut liberi sunt aut serui.
that all men either free are or slaves

10 Rursus liberorum hominum alii ingenui sunt, alii libertini.
Again of-free men some freeborn are others freedmen

11 Ingenui sunt qui liberi nati sunt; libertini, qui ex
Freeborn are (those)-who free born were freedmen (those)-who from
iusta seruitute manumissi sunt.
lawful slavery manumitted have-been

12 Rursus libertinorum tria sunt genera; nam aut ciues Romani
Again of-freedmen three are the-kinds for either citizens Roman
aut Latini aut dediticiorum numero sunt. de quibus
or Latins or of-the-dediticii in-the-number are about which
singulis dispiciamus; ac prius de dediticiis.
each let-us-look and first about the-dediticii

III · THE DEDITICII

The Aelian Sentian statute puts slaves punished in chains, branded, tortured and convicted, or sent to fight in the arena, once freed, among the foreign dediticii, the peoples who once surrendered after fighting Rome. Other freedmen become citizens if over thirty, owned by Quiritary right, and freed by the rod, the census, or a will, and Latins if anything is lacking.

Lege itaque Aelia Sentia cauetur, ut qui serui a 13
By-the-statute therefore Aelian Sentian it-is-provided that (those)-who slaves by
dominis poenae nomine uincti sint, quibusue stigmata
their-masters punishment by-way-of bound have-been or-on-whom brands
inscripta sint, deue quibus ob noxam quaestio tormentis
inscribed have-been or-about whom for wrongdoing an-inquiry under-torture
habita sit et in ea noxa fuisse conuicti sint, quiue
held has-been and in that wrongdoing to-have-been convicted have-been or-who
ut ferro aut cum bestiis depugnarent traditi sint,
that with-the-sword or with beasts they-might-fight handed-over have-been
inue ludum custodiamue coniecti fuerint, et postea uel
or-into a-gladiatorial-school or-prison thrown have-been and afterward either
ab eodem domino uel ab alio manumissi, eiusdem condicionis
by the-same master or by another manumitted of-the-same condition
liberi fiant, cuius condicionis sunt peregrini dediticii.
free become of-which condition are foreigners dediticii
Vocantur autem peregrini dediticii hi, qui quondam aduersus 14
Are-called however foreigners dediticii those who once against
populum Romanum armis susceptis pugnauerunt, deinde
the-people Roman arms taken-up have-fought then
uicti se dediderunt.
conquered themselves have-surrendered

15 Huius ergo turpitudinis seruos quocumque modo et
Of-this therefore disgrace slaves in-whatever way and
cuiuscumque aetatis manumissos, etsi pleno iure dominorum
of-whatever age manumitted even-if in-full right of-their-masters
fuerint, numquam aut ciues Romanos aut Latinos fieri
they-were never either citizens Roman or Latins to-become
dicemus, sed omni modo dediticiorum numero constitui
we-shall-say but in-every way of-the-dediticii in-the-number to-be-placed
intellegemus.
we-shall-understand

16 Si uero in nulla tali turpitudine sit seruus, manumissum
If however in no such disgrace is the-slave manumitted
modo ciuem Romanum modo Latinum fieri dicemus.
sometimes a-citizen Roman sometimes a-Latin to-become we-shall-say

17 nam in cuius persona tria haec concurrunt, ut maior
for in whose person three these-things concur that older
sit annorum triginta, et ex iure Quiritium domini, et
he-is than-years thirty and by the-law of-the-Quirites of-the-master and
iusta ac legitima manumissione liberetur, id est uindicta
by-just and lawful manumission is-freed that is by-the-rod
aut censu aut testamento, is ciuis Romanus fit; sin
or by-the-census or by-will he a-citizen Roman becomes but-if
uero aliquid eorum deerit, Latinus erit.
however any of-them is-lacking a-Latin he-will-be

A slave under thirty becomes a citizen only if freed by the rod before a council for a just cause, such as a natural child or a slave woman to be married; slaves over thirty may be freed anywhere, even in passing, and one left free and heir by an insolvent master also becomes a citizen. Junian Latins cannot make or take under a will, or be named tutors by one, though they take by trust; the dediticii have the worst freedom, barred from citizenship and, on pain of sale, from living near Rome.

Quod autem de aetate serui requiritur, lege Aelia 18
What however about the-age of-the-slave is-required by-the-statute Aelian
Sentia introductum est. nam ea lex minores XXX
Sentian introduced was for that statute younger-than thirty
annorum seruos non aliter uoluit manumissos ciues
years slaves not otherwise wished manumitted citizens
Romanos fieri, quam si uindicta, apud consilium iusta
Roman to-become than if by-the-rod before the-council a-just
causa manumissionis adprobata, liberati fuerint.
cause of-manumission approved freed they-have-been
Iusta autem causa manumissionis est ueluti si quis filium 19
A-just however cause of-manumission is for-example if someone a-son
filiamue aut fratrem sororemue naturalem, aut alumnum, aut
or-daughter or brother or-sister natural or foster-child or
paedagogum, aut seruum procuratoris habendi gratia, aut
attendant or a-slave of-an-agent to-be-had for-the-sake or
ancillam matrimonii causa apud consilium manumittat.
a-slave-woman of-marriage for-the-sake before the-council manumits
Consilium autem adhibetur in urbe Roma quidem quinque 20
The-council however is-convened in the-city Rome indeed of-five
senatorum et quinque equitum Romanorum; in prouinciis
senators and of-five knights Roman in the-provinces
autem uiginti recuperatorum ciuium Romanorum, idque
however of-twenty recuperators citizens Roman and-this

fit ultimo die conuentus; sed Romae certis diebus apud
is-done on-the-last day of-the-assize but at-Rome on-fixed days before
consilium manumittuntur. maiores uero triginta annorum
the-council are-manumitted older however than-thirty years
serui semper manumitti solent, adeo ut uel in transitu
slaves always to-be-manumitted are-wont so-much that even in passing
manumittantur, ueluti cum praetor aut pro consule in
they-are-manumitted as when the-praetor or pro- consul to
balneum uel in theatrum eat.
the-bath or to the-theater goes

21 Praeterea minor triginta annorum seruus potest ciuis
Besides younger than-thirty years a-slave can a-citizen
Romanus fieri, si ab eo domino qui soluendo non erat,
Roman become if by that master who solvent not was
testamento eum liberum et heredem relictum ∗∗∗
by-will him free and heir left (lacuna)

22 homines Latini Iuniani appellantur; Latini ideo, quia
men Latins Junian are-called Latins for-this-reason because
adsimulati sunt Latinis coloniariis; Iuniani ideo,
assimilated they-have-been to-the-Latins colonial Junian for-this-reason
quia per legem Iuniam libertatem acceperunt, cum olim
because through the-statute Junian freedom they-received when formerly
serui uiderentur esse.
slaves they-were-held to-be

23 Non tamen illis permittit lex Iunia uel ipsis
Not however to-them permits the-statute Junian either themselves
testamentum facere, uel ex testamento alieno capere, uel
a-will to-make or from a-will another's to-take or
tutores testamento dari.
tutors by-will to-be-given

Quod autem diximus ex testamento eos capere non 24
What however we-said from a-will them to-take not
posse, ita intellegemus, ne quid directo hereditatis
to-be-able thus we-shall-understand that-not anything directly of-inheritance
legatorumue nomine eos posse capere dicamus: alioquin
or-of-legacies by-title them to-be-able to-take we-may-say otherwise
per fideicommissum capere possunt.
through a-trust to-take they-can
Hi uero, qui dediticiorum numero sunt, nullo modo 25
Those however who of-the-dediticii in-the-number are in-no way
ex testamento capere possunt, non magis quam quilibet
from a-will to-take can not more than any
peregrinus, nec ipsi testamentum facere possunt secundum
foreigner nor themselves a-will to-make can according-to
id quod magis placuit.
that which rather has-been-approved
Pessima itaque libertas eorum est qui dediticiorum numero 26
The-worst therefore freedom of-those is who of-the-dediticii in-the-number
sunt; nec ulla lege aut senatusconsulto aut constitutione
are nor by-any statute or decree-of-the-senate or enactment
principali aditus illis ad ciuitatem Romanam datur.
imperial access to-them to citizenship Roman is-given
Quin etiam in urbe Roma uel intra centesimum urbis Romae 27
Indeed even in the-city Rome or within the-hundredth of-the-city of-Rome
miliarium morari prohibentur; et si qui contra ea fecerint,
milestone to-stay they-are-forbidden and if any against these-things have-done
ipsi bonaque eorum publice uenire iubentur ea
they-themselves and-their-goods of-them publicly to-be-sold are-ordered on-this
condicione, ut ne in urbe Roma uel intra centesimum urbis
condition that not in the-city Rome or within the-hundredth of-the-city
Romae miliarium seruiant neue umquam manumittantur; et
of-Rome milestone they-may-serve nor ever may-they-be-manumitted and

si manumissi fuerint, serui populi Romani esse iubentur.
if manumitted they-have-been slaves of-the-people Roman to-be they-are-ordered
et haec ita lege Aelia Sentia conprehensa sunt.
and these-things thus by-the-statute Aelian Sentian comprehended are

V · HOW LATINS BECOME CITIZENS

A Latin who marries before witnesses and has a year-old son may prove his case and become a citizen with wife and son, or the mother may prove it if he dies first; the senate extended this to those freed over thirty. Latins also gain the Quiritary right by service in the watch, by building a grain ship, by building a house in Rome, by working a mill in the city for three years, or by being freed again by their Quiritary owner.

28 Latini uero multis modis ad ciuitatem Romanam perueniunt.
Latins however in-many ways to citizenship Roman attain
29 Statim enim ex lege Aelia Sentia minores triginta annorum
At-once for by the-statute Aelian Sentian younger-than thirty years
manumissi et Latini facti si uxores duxerint uel ciues
manumitted and Latins made if wives they-have-married either citizens
Romanas uel Latinas coloniarias uel eiusdem condicionis,
Roman or Latins colonial or of-the-same condition
cuius et ipsi essent, idque testati fuerint adhibitis non
of-which also they-themselves were and-this attested they-have summoned not
minus quam septem testibus ciuibus Romanis puberibus, et
less than seven witnesses citizens Roman adult and
filium procreauerint, cum is filius anniculus esse coeperit,
a-son have-begotten when this son a-year-old to-be has-begun
datur eis potestas per eam legem adire praetorem
is-given to-them the-power through that statute to-approach the-praetor
uel in prouinciis praesidem prouinciae, et adprobare se
or in the-provinces the-governor of-the-province and to-prove themselves

ex lege Aelia Sentia uxorem duxisse et ex ea filium
by the-statute Aelian Sentian a-wife to-have-married and by her a-son
anniculum habere; et si is, apud quem causa probata est,
a-year-old to-have and if he before whom the-case proved has-been
id ita esse pronuntiauerit, tunc et ipse Latinus et uxor
that so to-be has-declared then both himself the-Latin and the-wife
eius, si et ipsa eiusdem condicionis sit, et filius, si et
his if also she-herself of-the-same condition is and the-son if also
ipse eiusdem condicionis sit, ciues Romani esse iubentur.
he-himself of-the-same condition is citizens Roman to-be are-ordered
Ideo autem in huius persona adiecimus 'si et ipse 30
For-this-reason however in his person we-added if also he-himself
eiusdem condicionis sit', quia si uxor Latini ciuis Romana
of-the-same condition is because if the-wife of-a-Latin a-citizen Roman
est, qui ex ea nascitur, ex nouo senatusconsulto, quod
is (he)-who from her is-born by a-new decree-of-the-senate which
auctore diuo Hadriano factum est, ciuis Romanus
on-the-motion-of the-deified Hadrian made was a-citizen Roman
nascitur.
is-born
Hoc tamen ius adipiscendae ciuitatis Romanae etiamsi soli 31
This however right of-acquiring citizenship Roman even-if alone
minores triginta annorum manumissi et Latini facti ex lege
younger-than thirty years manumitted and Latins made by the-statute
Aelia Sentia habuerunt, tamen postea senatusconsulto, quod
Aelian Sentian had yet afterward by-a-decree-of-the-senate which
Pegaso et Pusione consulibus factum est, etiam maioribus
Pegasus and Pusio being-consuls made was even to-older-than
triginta annorum manumissis Latinis factis concessum est.
thirty years manumitted Latins made granted it-was

32 Ceterum etiamsi ante decesserit Latinus, quam anniculi
Moreover even-if before dies the-Latin than of-the-year-old
filii causam probauerit, potest mater eius causam probare,
son the-case he-has-proved can the-mother his the-case prove
et sic et ipsa fiet ciuis Romana, si Latina fuerit
and so also she-herself will-become a-citizen Roman if a-Latin she-was
*** permissum *** quibusdam *** ipse filius ciuis
(lacuna) permitted (lacuna) to-some (lacuna) himself the-son a-citizen
Romanus sit, quia ex ciue Romana matre natus est, tamen
Roman is because of a-citizen Roman mother born he-is yet
debet causam probare, ut suus heres patri fiat.
he-must the-case prove that his-own heir to-his-father he-may-become

32a quae uero diximus de filio anniculo, eadem et de filia
what however we-have-said of a-son a-year-old the-same also of a-daughter
annicula dicta intellegemus.
a-year-old said we-shall-understand

32b *** id est fiunt ciues Romani, si Romae inter uigiles
(lacuna) that is they-become citizens Roman if at-Rome among the-watch
sex annis militauerint. postea dicitur factum esse
for-six years they-have-served afterward it-is-said made to-have-been
senatusconsultum, quo data est illis ciuitas Romana, si
a-decree-of-the-senate by-which given was to-them citizenship Roman if
triennium militiae expleuerint.
three-years of-service they-have-completed

32c Item edicto Claudii Latini ius Quiritium consecuntur,
Likewise by-the-edict of-Claudius Latins the-right of-the-Quirites obtain
si nauem marinam aedificauerint, quae non minus quam
if a-ship seagoing they-have-built which not less than
decem milia modiorum frumenti capiat, eaque nauis
ten thousand of-measures of-grain holds and-that ship

uel quae in eius locum substituta sit, sex annis
or (one)-which in its place substituted has-been for-six years
frumentum Romam portauerit.
grain to-Rome has-carried
Praeterea a Nerone constitutum est, ut si Latinus qui 33
Besides by Nero established it-was that if a-Latin who
patrimonium sestertium CC milium plurisue habebit,
a-fortune of-sesterces two-hundred thousand or-more will-have
in urbe Roma domum aedificauerit, in quam non minus
in the-city Rome a-house has-built on which not less
quam partem dimidiam patrimonii sui inpenderit, ius
than the-part half of-the-fortune his-own he-has-spent the-right
Quiritium consequatur.
of-the-Quirites he-should-obtain
Denique Traianus constituit, ut si Latinus in urbe triennio 34
Finally Trajan established that if a-Latin in the-city for-three-years
pistrinum exercuerit, in quo in dies singulos non minus
a-mill has-worked in which on days each not less
quam centenos modios frumenti pinseret, ad ius Quiritium
than a-hundred measures of-grain he-ground to the-right of-the-Quirites
perueniat.
he-should-attain
∗∗∗ sequi ∗∗∗ maiores triginta annorum manumissi et 35
(lacuna) to-follow (lacuna) older-than thirty years manumitted and
Latini facti ∗∗∗ ius Quiritium consequi ∗∗∗ triginta
Latins made (lacuna) the-right of-the-Quirites to-obtain (lacuna) thirty
annorum manumittant ∗∗∗ manumissus uindicta aut censu
years they-manumit (lacuna) manumitted by-the-rod or by-the-census
aut testamento ∗∗∗ ciuis Romanus ∗∗∗ libertus fit,
or by-will (lacuna) a-citizen Roman (lacuna) the-freedman becomes
qui eum iterauerit. ergo si seruus in bonis tuis, ex iure
(of-him)-who him has-repeated so if a-slave among the-goods yours by the-law

Quiritium meus erit, Latinus quidem a te solo fieri potest,
of-the-Quirites mine will-be a-Latin indeed by you alone be-made can
iterari autem a me, non etiam a te potest, et eo modo
be-repeated however by me not also by you can and in-this way
meus libertus fit. sed et ceteris modis ius Quiritium
my freedman he-becomes but also in-the-other ways the-right of-the-Quirites
consecutus meus libertus fit. bonorum autem quae ∗∗∗,
having-obtained my freedman he-becomes of-the-goods however which (lacuna)
cum is morietur, reliquerit, tibi possessio datur, quocumque
when he will-die he-has-left to-you possession is-given in-whatever
modo ius Quiritium fuerit consecutus. quodsi cuius et
way the-right of-the-Quirites he-has obtained but-if of-anyone both
in bonis et ex iure Quiritium sit manumissus, ab eodem
among the-goods and by the-law of-the-Quirites he-is manumitted by the-same
scilicet et Latinus fieri potest et ius Quiritium consequi.
of-course both a-Latin become he-can and the-right of-the-Quirites to-obtain

VI · LIMITS ON MANUMISSION

A manumission in fraud of creditors or of a patron is void, and a master under twenty may free only by the rod before the council for a just cause. The Fufian Caninian statute limits how many slaves a will may free, up to a hundred; a decree under Hadrian extends the fraud bar to foreigners.

36 Non tamen cuicumque uolenti manumittere licet.
Not however to-anyone wishing to-manumit it-is-allowed

37 nam is, qui in fraudem creditorum uel in fraudem patroni
for he who in fraud of-creditors or in fraud of-a-patron
manumittit, nihil agit, quia lex Aelia Sentia inpedit
manumits nothing does because the-statute Aelian Sentian hinders
libertatem.
the-freedom

Item eadem lege minori XX annorum domino 38
Likewise by-the-same statute to-a-younger-than twenty years master
non aliter manumittere permittitur, quam uindicta apud
not otherwise to-manumit is-permitted than by-the-rod before
consilium iusta causa manumissionis adprobata.
the-council a-just cause of-manumission approved
Iustae autem causae manumissionis sunt ueluti si quis 39
Just however causes of-manumission are for-example if someone
patrem aut matrem aut paedagogum aut conlactaneum
a-father or a-mother or an-attendant or a-foster-brother
manumittat. sed et illae causae, quas superius in seruo
manumits but also those causes which above in a-slave
minore XXX annorum exposuimus, ad hunc quoque casum
younger-than thirty years we-set-out to this also case
de quo loquimur adferri possunt. item ex diuerso hae
about which we-speak be-brought can likewise from the-opposite these
causae, quas in minore XX annorum domino rettulimus,
causes which in a-younger-than twenty years master we-related
porrigi possunt et ad seruum minorem XXX annorum.
be-extended can also to a-slave younger-than thirty years
Cum ergo certus modus manumittendi minoribus XX 40
Since therefore a-fixed limit of-manumitting for-younger-than twenty
annorum dominis per legem Aeliam Sentiam constitutus
years masters through the-statute Aelian Sentian established
sit, euenit ut qui XIIII annos aetatis expleuerit,
has-been it-comes-about that (he)-who fourteen years of-age has-completed
licet testamentum facere possit et in eo heredem sibi
although a-will to-make he-can and in it an-heir for-himself
instituere legataque relinquere possit, tamen si adhuc minor
to-institute and-legacies to-leave he-can yet if still younger
sit annorum XX, libertatem seruo dare non possit.
he-is than-years twenty freedom to-a-slave to-give not he-can

41 Et quamuis Latinum facere uelit minor XX annorum
And although a-Latin to-make he-wishes younger-than twenty years
dominus, tamen nihilo minus debet apud consilium causam
master yet none the-less he-must before the-council the-cause
probare et ita postea inter amicos manumittere.
prove and so afterward among friends manumit

42 Praeterea lege Fufia Caninia certus modus constitutus
Besides by-the-statute Fufian Caninian a-fixed limit established
est in seruis testamento manumittendis.
has-been in-the-case-of slaves by-will to-be-manumitted

43 nam ei, qui plures quam duos neque plures quam decem
for to-him who more than two nor more than ten
seruos habebit, usque ad partem dimidiam eius numeri
slaves will-have up to the-part half of-that number
manumittere permittitur; ei uero, qui plures quam X
to-manumit it-is-permitted to-him however who more than ten
neque plures quam XXX seruos habebit, usque ad tertiam
nor more than thirty slaves will-have up to the-third
partem eius numeri manumittere permittitur. at ei, qui
part of-that number to-manumit it-is-permitted but to-him who
plures quam XXX neque plures quam centum habebit, usque
more than thirty nor more than a-hundred will-have up
ad partem quartam potestas manumittendi datur. nouissime
to the-part fourth the-power of-manumitting is-given lastly
ei, qui plures quam C nec plures quam D
to-him who more than a-hundred nor more than five-hundred
habebit, non plures manumittere permittitur quam quintam
will-have not more to-manumit it-is-permitted than the-fifth
partem; neque plures ***tur: sed praescribit lex, ne
part nor more (…)tur but prescribes the-statute that-not
cui plures manumittere liceat quam C. quodsi quis
to-anyone more to-manumit be-allowed than a-hundred but-if someone

unum seruum omnino aut duos habet, ad hanc legem non
one slave in-all or two has to this statute not
pertinet et ideo liberam habet potestatem manumittendi.
he-pertains and therefore free he-has the-power of-manumitting
Ac ne ad eos quidem omnino haec lex pertinet, qui sine 44
And not to those indeed at-all this statute pertains who without
testamento manumittunt. itaque licet iis, qui uindicta
a-will manumit and-so it-is-allowed to-those who by-the-rod
aut censu aut inter amicos manumittunt, totam familiam
or by-the-census or among friends manumit the-whole household
liberare, scilicet si alia causa non inpediat libertatem.
to-free of-course if another cause not hinders the-freedom
Sed quod de numero seruorum testamento manumittendorum 45
But what about the-number of-slaves by-will to-be-manumitted
diximus, ita intellegemus, ne umquam ex eo numero,
we-have-said thus we-shall-understand that-not ever from that number
ex quo dimidia aut tertia aut quarta aut quinta pars liberari
from which a-half or a-third or a-fourth or a-fifth part be-freed
potest, pauciores manumittere liceat, quam ex antecedenti
can fewer to-manumit be-allowed than from the-preceding
numero licuit. et hoc ipsa lege prouisum est; erat
number was-allowed and this by-the-very statute provided was it-was
enim sane absurdum, ut X seruorum domino quinque
for clearly absurd that of-ten slaves to-the-master five
liberare liceret, quia usque ad dimidiam partem eius
to-free should-be-allowed because up to the-half part of-that
numeri manumittere ei conceditur, XII autem seruos
number to-manumit to-him it-is-granted twelve however slaves
habenti non plures liceret manumittere quam IIII;
to-one-having not more should-be-allowed to-manumit than four
item eis qui plures quam X neque ***
likewise to-those who more than ten nor (lacuna)

46 *** nam et si testamento scriptis in orbem seruis libertas
(lacuna) for even if by-will written in a-circle to-slaves freedom
data sit, quia nullus ordo manumissionis inuenitur, nulli
given has-been because no order of-manumission is-found none
liberi erunt, quia lex Fufia Caninia quae in
free will-be because the-statute Fufian Caninian (the-things)-which in
fraudem eius facta sint rescindit. sunt etiam specialia
fraud of-it done have-been rescinds there-are also special
senatusconsulta, quibus rescissa sunt ea, quae in
decrees-of-the-senate by-which rescinded have-been those-things which in
fraudem eius legis excogitata sunt.
fraud of-that statute devised have-been

47 In summa sciendum est, cum lege Aelia Sentia cautum
In sum to-be-known it-is since by-the-statute Aelian Sentian provided
sit, ut creditorum fraudandorum causa manumissi
it-has-been that of-creditors to-be-defrauded for-the-sake manumitted
liberi non fiant, hoc etiam ad peregrinos pertinere (senatus
free not become this also to foreigners to-pertain the-senate
ita censuit ex auctoritate Hadriani), cetera uero iura eius
so decreed on the-authority of-Hadrian the-other however rights of-that
legis ad peregrinos non pertinere.
statute to foreigners not to-pertain

Some persons are independent, others subject to another, in power, in hand, or in bondage. Slaves are in their masters' power, which belongs to the law of nations, but masters may no longer rage against them without cause: Antoninus made killing one's own slave punishable and ordered cruel masters to sell slaves who fled to statues. Bare Quiritary title gives no power.

Sequitur de iure personarum alia diuisio. nam quaedam 48
Follows about the-law of-persons another division for some
personae sui iuris sunt, quaedam alieno iuri subiectae
persons of-their-own right are others to-another's right subject
sunt.
are

Rursus earum personarum, quae alieno iuri subiectae sunt, 49
Again of-those persons who to-another's right subject are
aliae in potestate, aliae in manu, aliae in mancipio sunt.
some in power others in hand others in bondage are

Videamus nunc de his quae alieno iuri subiectae sint; 50
Let-us-see now about those who to-another's right subject are
nam si cognouerimus, quae istae personae sint, simul
for if we-learn which these persons are at-the-same-time
intellegemus, quae sui iuris sint.
we-shall-understand which of-their-own right are

ac prius dispiciamus de iis qui in aliena potestate sunt. 51
and first let-us-consider about those who in another's power are

In potestate itaque sunt serui dominorum. quae quidem 52
In power then are slaves of-their-masters which indeed
potestas iuris gentium est: nam apud omnes peraeque
power of-the-law of-nations is for among all equally
gentes animaduertere possumus dominis in seruos uitae
nations observe we-can for-masters over slaves of-life

necisque potestatem esse; et quodcumque per seruum
and-of-death the-power to-be and whatever through a-slave
adquiritur, id domino adquiritur.
is-acquired that for-the-master is-acquired

53 sed hoc tempore neque ciuibus Romanis nec ullis aliis
but at-this time neither for-citizens Roman nor for-any other
hominibus, qui sub imperio populi Romani sunt, licet
men who under the-rule of-the-people Roman are it-is-allowed
supra modum et sine causa in seruos suos saeuire;
beyond measure and without cause against slaves their-own to-rage
nam ex constitutione imperatoris Antonini qui sine causa
for by the-enactment of-the-emperor Antoninus (he)-who without cause
seruum suum occiderit, non minus teneri iubetur, quam
a-slave his-own has-killed not less to-be-liable is-ordered than
qui alienum seruum occiderit. sed et maior quoque asperitas
(he)-who another's slave has-killed but also greater too harshness
dominorum per eiusdem principis constitutionem coercetur;
of-masters through of-the-same emperor the-enactment is-restrained
nam consultus a quibusdam praesidibus prouinciarum de
for consulted by certain governors of-provinces about
his seruis, qui ad fana deorum uel ad statuas principum
those slaves who to the-shrines of-the-gods or to the-statues of-the-emperors
confugiunt, praecepit, ut si intolerabilis uideatur dominorum
take-refuge he-directed that if intolerable seems of-the-masters
saeuitia, cogantur seruos suos uendere. et utrumque
the-cruelty they-be-compelled slaves their-own to-sell and both
recte fit; male enim nostro iure uti non debemus; qua
rightly is-done badly for our-own right to-use not we-ought by-which
ratione et prodigis interdicitur bonorum suorum administratio.
reasoning also to-prodigals is-forbidden of-the-goods their-own the-administration

Ceterum cum apud ciues Romanos duplex sit dominium 54
Moreover since among citizens Roman twofold is ownership
(nam uel in bonis uel ex iure Quiritium uel ex
for either among the-goods or by the-law of-the-Quirites or by
utroque iure cuiusque seruus esse intellegitur), ita demum
both right of-anyone a-slave to-be is-understood so only-then
seruum in potestate domini esse dicemus, si in bonis
a-slave in the-power of-the-master to-be we-shall-say if among the-goods
eius sit, etiamsi simul ex iure Quiritium eiusdem
his be-is even-if at-the-same-time by the-law of-the-Quirites of-the-same
non sit; nam qui nudum ius Quiritium in seruo
not be-is for (he)-who bare the-right of-the-Quirites in a-slave
habet, is potestatem habere non intellegitur.
has he power to-have not is-understood

VIII · CHILDREN AND LAWFUL MARRIAGE

Children of a lawful marriage are in their father's power, a right almost peculiar to Romans, and veterans are often granted the right of marriage with Latin or foreign wives. Ascendants and descendants may never marry, even by adoption; brother and sister may not, though an adoptive sister may once the adoption ends; a brother's daughter may since Claudius, a sister's daughter may not, nor an aunt, nor a former mother-in-law, stepdaughter, or stepmother. Children of an incestuous union have no legal father.

Item in potestate nostra sunt liberi nostri, quos iustis 55
Likewise in power our are children our whom in-lawful
nuptiis procreauimus. quod ius proprium ciuium Romanorum
marriage we-have-begotten which right peculiar of-citizens Roman
est; fere enim nulli alii sunt homines, qui talem in
is hardly for any other are men who such over

filios suos habent potestatem, qualem nos habemus. idque
sons their-own have power as we have and-this
diuus Hadrianus edicto, quod proposuit de his, qui
the-deified Hadrian in-the-edict which be-issued about those who
sibi liberisque suis ab eo ciuitatem Romanam
for-themselves and-for-children their-own from him citizenship Roman
petebant, significauit. nec me praeterit Galatarum gentem
sought made-clear nor me escapes of-the-Galatians the-nation
credere in potestate parentum liberos esse.
to-believe in the-power of-parents children to-be

56 ***, si ciues Romanas uxores duxerint, uel etiam
(lacuna) if citizens Roman as-wives they-have-married or even
Latinas peregrinasue cum quibus conubium habeant; cum
Latins or-foreigners with whom right-of-marriage they-have since
enim conubium id efficiat, ut liberi patris condicionem
for right-of-marriage this effects that children the-father's condition
sequantur, euenit ut non solum ciues Romani fiant,
follow it-comes-about that not only citizens Roman they-become
sed etiam in potestate patris sint.
but also in the-power of-the-father they-are

57 Unde et ueteranis quibusdam concedi solet principalibus
Whence also to-veterans certain to-be-granted is-wont by-imperial
constitutionibus conubium cum his Latinis peregrinisue,
enactments right-of-marriage with those Latins or-foreigners
quas primas post missionem uxores duxerint; et qui
whom first after discharge as-wives they-have-married and (those)-who
ex eo matrimonio nascuntur, et ciues Romani et in
from that marriage are-born both citizens Roman and in
potestate parentum fiunt.
the-power of-their-parents become

Non tamen omnes nobis uxores ducere licet; nam a 58
Not however all for-us as-wives to-marry it-is-allowed for from
quarundam nuptiis abstinere debemus;
certain-women's marriages to-abstain we-must
inter eas enim personas, quae parentum liberorumue locum 59
between those for persons who of-parents or-children the-place
inter se optinent, nuptiae contrahi non possunt, nec
between themselves hold marriage be-contracted not can nor
inter eas conubium est, ueluti inter patrem et filiam,
between them right-of-marriage is as between father and daughter
uel inter matrem et filium, uel inter auum et neptem;
or between mother and son or between grandfather and granddaughter
et si tales personae inter se coierint, nefarias et
and if such persons between themselves have-united wicked and
incestas nuptias contraxisse dicuntur. et haec adeo ita
incestuous marriage to-have-contracted they-are-said and these-things so-far so
sunt, ut quamuis per adoptionem parentum liberorumue
are that although through adoption of-parents or-children
loco sibi esse coeperint, non possint inter se
in-the-place to-each-other to-be they-have-begun not they-can between themselves
matrimonio coniungi, in tantum, ut etiam dissoluta
in-marriage be-joined to such-an-extent that even dissolved
adoptione idem iuris maneat; itaque eam, quae mihi per
the-adoption the-same of-law remains and-so her who to-me through
adoptionem filiae aut neptis loco esse coeperit,
adoption of-a-daughter or granddaughter in-the-place to-be has-begun
non potero uxorem ducere, quamuis eam emancipauerim.
not I-shall-be-able as-wife to-marry although her I-have-emancipated

60 Inter eas quoque personas, quae ex transuerso gradu
Between those also persons who in the-transverse degree
cognatione iunguntur, est quaedam similis obseruatio, sed
by-blood are-joined there-is a-certain similar observance but
non tanta.
not as-great

61 sane inter fratrem et sororem prohibitae sunt nuptiae, siue
certainly between brother and sister forbidden are marriages whether
eodem patre eademque matre nati fuerint, siue alterutro eorum:
of-the-same father and-the-same mother born they-were or of-either of-them
sed si qua per adoptionem soror mihi esse coeperit,
but if some-woman through adoption a-sister to-me to-be has-begun
quamdiu quidem constat adoptio, sane inter me et eam
as-long indeed-as stands the-adoption certainly between me and her
nuptiae non possunt consistere; cum uero per emancipationem
marriage not can stand when however through emancipation
adoptio dissoluta sit, potero eam uxorem ducere; sed et si
the-adoption dissolved has-been I-shall-be-able her as-wife to-marry but also if
ego emancipatus fuero, nihil inpedimento erit nuptiis.
I emancipated shall-have-been nothing an-impediment will-be to-the-marriage

62 Fratris filiam uxorem ducere licet, idque primum in usum
A-brother's daughter as-wife to-marry is-allowed and-this first into use
uenit, cum diuus Claudius Agrippinam fratris sui filiam
came when the-deified Claudius Agrippina of-brother his-own the-daughter
uxorem duxisset; sororis uero filiam uxorem ducere non
as-wife had-married of-a-sister however the-daughter as-wife to-marry not
licet. et haec ita principalibus constitutionibus significantur.
is-allowed and these-things so by-imperial enactments are-made-clear

63 Item amitam et materteram uxorem ducere non licet.
Likewise a-father's-sister and a-mother's-sister as-wife to-marry not is-allowed
item eam quae mihi quondam socrus aut nurus
likewise her who to-me once mother-in-law or daughter-in-law

aut priuigna aut nouerca fuit. ideo autem diximus
or stepdaughter or stepmother was for-this-reason however we-said
'quondam', quia si adhuc constant eae nuptiae, per quas
once because if still stands that marriage through which
talis adfinitas quaesita est, alia ratione mihi nupta esse
such affinity acquired was for-another reason to-me married to-be
non potest, quia neque eadem duobus nupta esse
not she-can because neither the-same-woman to-two married be
potest, neque idem duas uxores habere.
can nor the-same-man two wives have
Ergo si quis nefarias atque incestas nuptias contraxerit, 64
Therefore if someone a-wicked and incestuous marriage has-contracted
neque uxorem habere uidetur neque liberos; itaque hi qui ex
neither a-wife to-have is-held nor children and-so those who from
eo coitu nascuntur matrem quidem habere uidentur, patrem
that union are-born a-mother indeed to-have are-held a-father
uero non utique: nec ob id in potestate eius sunt, sed
however not at-all nor on-account-of this in power his are but
tales sunt quales sunt hi, quos mater uulgo concepit;
such are as are those whom the-mother promiscuously conceived
nam et hi patrem habere non intelleguntur, cum is etiam
for also these a-father to-have not are-understood since he even
incertus sit; unde solent spurii filii appellari, uel a Graeca
uncertain is whence they-are-wont spurious sons to-be-called either from the-Greek
uoce quasi σποράδην concepti, uel quasi sine patre filii.
word as-if scattered conceived or as-if without a-father sons

Children born outside power may later come into it. A Latin who proves his case gains power over his son. A citizen who married a Latin or foreign woman believing her a citizen, or who thought himself a Latin or foreigner, may prove the error under the senate's decree, and the son comes into his power; a dediticius stays as he is. Gaius infers from a rescript of Antoninus that a foreigner too may prove the case; a marriage made knowingly is never cured.

65 Aliquando autem euenit, ut liberi, qui statim ut nati
Sometimes however it-happens that children who immediately when born
sunt parentum in potestate non fiant, ii postea tamen
they-are of-their-parents in the-power not come they afterward however
redigantur in potestatem.
are-brought into power

66 Veluti si Latinus ex lege Aelia Sentia uxore ducta
For-example if a-Latin by the-statute Aelian Sentian a-wife married
filium procreauerit aut Latinum ex Latina aut ciuem
a-son has-begotten either a-Latin from a-Latin-woman or a-citizen
Romanum ex ciue Romana, non habebit eum in potestate;
Roman from a-citizen Roman not he-will-have him in power
sed si postea causa probata ius Quiritium consecutus
but if afterward the-case proved the-right of-the-Quirites obtained
fuerit, simul eum in potestate sua habere incipit.
he-has at-once him in power his-own to-have he-begins

67 Item si ciuis Romanus Latinam aut peregrinam uxorem
Likewise if a-citizen Roman a-Latin or foreign wife
duxerit per ignorantiam, cum eam ciuem Romanam esse
has-married through ignorance when her a-citizen Roman to-be
crederet, et filium procreauerit, hic non est in potestate
he-believed and a-son has-begotten this-one not is in the-power
eius, quia ne quidem ciuis Romanus est, sed aut Latinus aut
his because not even a-citizen Roman is-he but either a-Latin or

peregrinus, id est eius condicionis cuius et mater fuerit,
a-foreigner that is of-that condition of-which also the-mother was
quia non aliter quisque ad patris condicionem accedit, quam
because not otherwise anyone to the-father's condition comes than
si inter patrem et matrem eius conubium sit; sed ex
if between the-father and mother his right-of-marriage there-is but by
senatusconsulto permittitur causam erroris probare, et ita uxor
a-decree-of-the-senate it-is-permitted the-case of-error to-prove and so the-wife
quoque et filius ad ciuitatem Romanam perueniunt, et ex eo
also and the-son to citizenship Roman attain and from that
tempore incipit filius in potestate patris esse. idem iuris est,
time begins the-son in the-power of-the-father to-be the-same of-law is
si eam per ignorantiam uxorem duxerit, quae dediticiorum
if her through ignorance as-wife he-has-married who of-the-dediticii
numero est, nisi quod uxor non fit ciuis Romana.
in-the-number is except that the-wife not becomes a-citizen Roman
Item si ciuis Romana per errorem nupta sit peregrino 68
Likewise if a-citizen Roman-woman through error married has-been to-a-foreigner
tamquam ciui Romano, permittitur ei causam erroris
as-if to-a-citizen Roman it-is-permitted to-her the-case of-error
probare, et ita filius quoque eius et maritus ad ciuitatem
to-prove and so the-son also her and the-husband to citizenship
Romanam perueniunt, et aeque simul incipit filius in
Roman attain and equally at-the-same-time begins the-son in
potestate patris esse. idem iuris est, si peregrino tamquam
the-power of-the-father to-be the-same of-law is if to-a-foreigner as-if
Latino ex lege Aelia Sentia nupta sit; nam et de
to-a-Latin by the-statute Aelian Sentian married she-has-been for also about
hoc specialiter senatusconsulto cauetur. idem iuris est
this specially by-a-decree-of-the-senate it-is-provided the-same of-law is
aliquatenus, si ei qui dediticiorum numero est tamquam
to-some-extent if to-him who of-the-dediticii in-the-number is as-if

ciui Romano aut Latino e lege Aelia Sentia nupta
to-a-citizen Roman or to-a-Latin by the-statute Aelian Sentian married
sit; nisi quod scilicet qui dediticiorum numero est,
she-has-been except that of-course (he)-who of-the-dediticii in-the-number is
in sua condicione permanet, et ideo filius, quamuis fiat
in his-own condition remains and therefore the-son although he-becomes
ciuis Romanus, in potestatem patris non redigitur.
a-citizen Roman into the-power of-the-father not is-brought

69 Item si Latina peregrino, cum eum Latinum esse crederet,
Likewise if a-Latin-woman to-a-foreigner when him a-Latin to-be she-believed
e lege Aelia Sentia nupserit, potest ex senatusconsulto
by the-statute Aelian Sentian has-married she-can by the-decree-of-the-senate
filio nato causam erroris probare, et ita omnes fiunt ciues
a-son born the-case of-error prove and so all become citizens
Romani et filius in potestate patris esse incipit.
Roman and the-son in the-power of-the-father to-be begins

70 Idem constitutum est, si Latinus per errorem peregrinam
The-same established was if a-Latin through error a-foreign-woman
quasi Latinam aut ciuem Romanam e lege Aelia Sentia
as-if a-Latin or a-citizen Roman by the-statute Aelian Sentian
uxorem duxerit.
as-wife has-married

71 Praeterea si ciuis Romanus, qui se credidisset Latinum
Besides if a-citizen Roman who himself had-believed a-Latin
esse, ob id Latinam uxorem duxerit, permittitur ei
to-be on-account-of this a-Latin wife has-married it-is-permitted to-him
filio nato erroris causam probare, tamquam si e lege Aelia
a-son born of-error the-case to-prove as if by the-statute Aelian
Sentia uxorem duxisset. Item his, qui cum ciues Romani
Sentian a-wife he-had-married Likewise to-those who when citizens Roman
essent, peregrinos se esse credidissent et peregrinas
they-were foreigners themselves to-be had-believed and foreign

uxores duxissent, permittitur ex senatusconsulto filio nato
wives had-married it-is-permitted by the-decree-of-the-senate a-son born
causam erroris probare; quo facto fiet uxor ciuis
the-case of-error to-prove which done will-become the-wife a-citizen
Romana et filius ∗∗∗ non solum ad ciuitatem Romanam
Roman and the-son (lacuna) not only to citizenship Roman
peruenit, sed etiam in potestatem patris redigitur.
attains but also into the-power of-the-father is-brought
Quaecumque de filio diximus, eadem et de filia dicta 72
Whatever about a-son we-have-said the-same also about a-daughter said
intellegemus.
we-shall-understand
Et quantum ad erroris causam probandam attinet, nihil 73
And as-far-as to of-error the-case to-be-proved pertains nothing
interest, cuius aetatis filius sit ∗∗∗, si minor anniculo sit
matters of-what age the-son is (lacuna) if younger than-a-year-old is
filius filiaue, causa probari non potest. nec me praeterit in
the-son or-daughter the-case be-proved not can nor me escapes in
aliquo rescripto diui Hadriani ita esse constitutum,
a-certain rescript of-the-deified Hadrian so to-have-been established
tamquam quod ad erroris quoque causam probandam ∗∗∗
as-if as to of-error also the-case to-be-proved (lacuna)
imperator ∗∗∗ dedit.
the-emperor (lacuna) gave
Sed si peregrinus ciuem Romanam uxorem duxerit, an 74
But if a-foreigner a-citizen Roman as-wife has-married whether
ex senatusconsulto causam probare possit, quaesitum est.
by the-decree-of-the-senate the-case to-prove he-can questioned it-has-been
∗∗∗ probare causam non potest, quamuis ipse ∗∗∗ hoc
(lacuna) to-prove the-case not he-can although himself (lacuna) this
ei specialiter concessum est. sed cum peregrinus ciuem
to-him specially granted has-been but when a-foreigner a-citizen

Romanam uxorem duxisset et filio nato alias ciuitatem
Roman as-wife had-married and a-son born otherwise citizenship
Romanam consecutus esset, deinde cum quaereretur, an
Roman obtained had then when it-was-asked whether
causam probare posset, rescripsit imperator Antoninus proinde
the-case to-prove he-could rescripted the-emperor Antoninus just-so
posse eum causam probare, atque si peregrinus mansisset.
to-be-able him the-case to-prove as if a-foreigner he-had-remained
ex quo colligimus etiam peregrinum causam probare posse.
from which we-gather even a-foreigner the-case to-prove to-be-able
75 Ex his quae diximus apparet, siue ciuis Romanus
From these-things which we-have-said it-appears whether a-citizen Roman
peregrinam siue peregrinus ciuem Romanam uxorem duxerit,
a-foreign-woman or a-foreigner a-citizen Roman as-wife has-married
eum qui nascitur peregrinum esse. sed siquidem per
him who is-born a-foreigner to-be but if-indeed through
errorem tale matrimonium contractum fuerit, emendari
error such marriage contracted has-been be-amended
uitium eius ex senatusconsulto licet secundum ea
the-defect its by the-decree-of-the-senate it-is-allowed according-to those-things
quae superius diximus. si uero nullus error interuenerit,
which above we-have-said if however no error has-intervened
sed scientes suam condicionem ita coierint, nullo casu
but knowing their-own condition so they-have-united in-no case
emendatur uitium eius matrimonii.
is-amended the-defect of-that marriage

With right of marriage the child follows the father, without it the mother, by the law of nations; the Minician statute makes a citizen woman's child by a foreigner a foreigner, and Hadrian's decree makes a Latin's child by a citizen woman a citizen. Hadrian undid a senate decree, and Vespasian part of a statute, that bent this for slaves' children. The illegitimate take status from birth, the legitimate from conception. A new citizen holds his children in power only by imperial grant, save by Latin right.

Loquimur autem de his scilicet, inter quos conubium non 76
We-speak however about those of-course between whom right-of-marriage not
sit; nam alioquin si ciuis Romanus peregrinam cum qua
there-is for otherwise if a-citizen Roman a-foreign-woman with whom
ei conubium est uxorem duxerit, sicut supra quoque
to-him right-of-marriage there-is as-wife has-married as above also
diximus, iustum matrimonium contrahitur; et tunc ex his
we-said a-lawful marriage is-contracted and then from them
qui nascitur ciuis Romanus est et in potestate patris erit.
(he)-who is-born a-citizen Roman is and in the-power of-the-father will-be
Item si ciuis Romana peregrino, cum quo ei 77
Likewise if a-citizen Roman-woman to-a-foreigner with whom to-her
conubium est, nupserit, peregrinum sane procreat et
right-of-marriage there-is has-married a-foreigner certainly she-begets and
is iustus patris filius est, tamquam si ex peregrina
he the-lawful father's son is as if from a-foreign-woman
eum procreasset. hoc tamen tempore ex senatusconsulto,
him he-had-begotten at-this however time by the-decree-of-the-senate
quod auctore diuo Hadriano factum est, etiamsi non
which on-the-motion-of the-deified Hadrian made was even-if not

fuerit conubium inter ciuem Romanam et peregrinum,
there-has-been right-of-marriage between a-citizen Roman-woman and a-foreigner
qui nascitur iustus patris filius est.
(he)-who is-born the-lawful father's son is

78 Quod autem diximus inter ciuem Romanam peregrinumque
What however we-said between a-citizen Roman-woman and-a-foreigner
*** qui nascitur peregrinum esse, lege Minicia
(lacuna) (he)-who is-born a-foreigner to-be by-the-statute Minician
cauetur, *** est, ut s*** parentis condicionem sequatur.
it-is-provided (lacuna) is that s(…) of-the-parent the-condition he-follow
eadem lege enim ex diuerso cauetur, ut si peregrinam,
by-the-same statute for from the-opposite it-is-provided that if a-foreign-woman
cum qua ei conubium non sit, uxorem duxerit
with whom to-him right-of-marriage not there-is as-wife has-married
ciuis Romanus, peregrinus ex eo coitu nascatur. sed hoc
a-citizen Roman a-foreigner from that union is-born but this
maxime casu necessaria lex Minicia; nam remota ea
most-of-all in-the-case necessary the-statute Minician for removed that
lege diuersam condicionem sequi debebat, quia ex eis,
statute the-other condition to-follow he-ought because of those
inter quos non est conubium, qui nascitur iure
between whom not there-is right-of-marriage (he)-who is-born by-the-law
gentium matris condicioni accedit. qua parte autem
of-nations to-the-mother's condition comes in-which part however
iubet lex ex ciue Romano et peregrina peregrinum
orders the-statute from a-citizen Roman and a-foreign-woman a-foreigner
nasci, superuacua uidetur; nam et remota ea lege hoc
to-be-born superfluous it-seems for even removed that statute this
utique iure gentium futurum erat.
in-any-case by-the-law of-nations going-to-be was

Adeo autem hoc ita est, ut *** non solum exterae 79
So-far however this so is that (lacuna) not only foreign
nationes et gentes, sed etiam qui Latini nominantur; sed
nations and peoples but also (those)-who Latins are-named but
ad alios Latinos pertinet, qui proprios populos propriasque
to other Latins it-pertains who their-own peoples and-their-own
ciuitates habebant et erant peregrinorum numero.
states had and were of-foreigners in-the-number
Eadem ratione ex contrario ex Latino et ciue 80
By-the-same reasoning from the-contrary from a-Latin and a-citizen
Romana, siue ex lege Aelia Sentia siue aliter
Roman-woman whether by the-statute Aelian Sentian or otherwise
contractum fuerit matrimonium, ciuis Romanus nascitur.
contracted has-been the-marriage a-citizen Roman is-born
fuerunt tamen qui putauerunt ex lege Aelia Sentia
there-were however (those)-who thought by the-statute Aelian Sentian
contracto matrimonio Latinum nasci, quia uidetur eo
contracted the-marriage a-Latin to-be-born because it-seems in-that
casu per legem Aeliam Sentiam et Iuniam conubium
case through the-statute Aelian Sentian and Junian right-of-marriage
inter eos dari, et semper conubium efficit, ut qui
between them to-be-given and always right-of-marriage effects that (he)-who
nascitur patris condicioni accedat; aliter uero contracto
is-born to-the-father's condition comes otherwise however contracted
matrimonio eum qui nascitur iure gentium matris
the-marriage him who is-born by-the-law of-nations the-mother's
condicionem sequi et ob id esse ciuem Romanum.
condition to-follow and on-account-of this to-be a-citizen Roman
sed hoc iure utimur ex senatusconsulto, quo auctore
but this law we-use by the-decree-of-the-senate by-which on-the-motion-of

diuo Hadriano significatur, ut quoquo modo ex Latino
the-deified Hadrian it-is-signified that in-whatever way from a-Latin
et ciue Romana natus ciuis Romanus nascatur.
and a-citizen Roman-woman born a-citizen Roman he-is-born

81 His conuenienter etiam illud senatusconsultum diuo
With-these consistently also that decree-of-the-senate the-deified
Hadriano auctore significauit, ut qui ex Latino et
Hadrian moving made-clear that (he)-who from a-Latin and
peregrina, item contra qui ex peregrino et Latina
a-foreign-woman likewise conversely (he)-who from a-foreigner and a-Latin-woman
nascitur, is matris condicionem sequatur.
is-born he the-mother's condition follows

82 Illud quoque his consequens est, quod ex ancilla
That also with-these consistent is that from a-slave-woman
et libero iure gentium seruus nascitur, et contra ex
and a-free-man by-the-law of-nations a-slave is-born and conversely from
libera et seruo liber nascitur.
a-free-woman and a-slave a-free-man is-born

83 Animaduertere tamen debemus, ne iuris gentium regulam
Observe however we-must lest of-the-law of-nations the-rule
uel lex aliqua uel quod legis uicem optinet, aliquo
either a-statute some or what of-a-statute the-place holds in-some
casu commutauerit.
case has-changed

84 ecce enim ex senatusconsulto Claudiano poterat ciuis
see for by the-decree-of-the-senate Claudian could a-citizen
Romana, quae alieno seruo uolente domino eius coiit,
Roman-woman who with-another's slave willing master his has-united
ipsa ex pactione libera permanere, sed seruum procreare;
herself by agreement free remain but a-slave beget
nam quod inter eam et dominum istius serui conuenerit,
for what between her and the-master of-that slave has-been-agreed

eo senatusconsulto ratum esse iubetur. sed postea diuus
by-that decree-of-the-senate valid to-be is-ordered but afterward the-deified
Hadrianus iniquitate rei et inelegantia iuris motus
Hadrian by-the-unfairness of-the-matter and the-inelegance of-the-law moved
restituit iuris gentium regulam, ut cum ipsa mulier
restored of-the-law of-nations the-rule that since herself the-woman
libera permaneat, liberum pariat.
free remains a-free-child she-bears

Item e lege *** ex ancilla et libero poterant 85
Likewise by the-statute (lacuna) from a-slave-woman and a-free-man could
liberi nasci; nam ea lege cauetur, ut si quis cum
free-children be-born for by-that statute it-is-provided that if someone with
aliena ancilla quam credebat liberam esse coierit, siquidem
another's slave-woman whom he-believed free to-be has-united if-indeed
masculi nascantur, liberi sint, si uero feminae, ad eum
males are-born free they-are if however females to him
pertineant, cuius mater ancilla fuerit. sed et in hac
they-belong whose the-mother slave-woman was but also in this
specie diuus Vespasianus inelegantia iuris motus restituit
case the-deified Vespasian by-the-inelegance of-the-law moved restored
iuris gentium regulam, ut omni modo, etiamsi masculi
of-the-law of-nations the-rule that in-every way even-if males
nascantur, serui sint eius cuius et mater fuerit.
are-born slaves they-are of-him whose also the-mother was

Sed illa pars eiusdem legis salua est, ut ex libera et 86
But that part of-the-same statute safe is that from a-free-woman and
seruo alieno, quem sciebat seruum esse, serui nascantur. itaque
a-slave another's whom she-knew a-slave to-be slaves are-born and-so
apud quos talis lex non est, qui nascitur iure gentium
among whom such statute not is (he)-who is-born by-the-law of-nations
matris condicionem sequitur et ob id liber est.
the-mother's condition follows and on-account-of this free is

87 Quibus autem casibus matris et non patris condicionem
In-which however cases the-mother's and not the-father's condition
sequitur qui nascitur, isdem casibus in potestate eum
follows (he)-who is-born in-the-same cases in the-power him
patris, etiamsi is ciuis Romanus sit, non esse plus quam
of-the-father even-if he a-citizen Roman is not to-be more than
manifestum est. et ideo superius rettulimus quibusdam
clear is and therefore above we-related in-certain
casibus per errorem non iusto contracto matrimonio senatum
cases through error not lawful contracted the-marriage the-senate
interuenire et emendare uitium matrimonii, eoque modo
to-intervene and to-amend the-defect of-the-marriage and-in-that way
plerumque efficere, ut in potestatem patris filius redigatur.
generally to-bring-about that into the-power of-the-father the-son is-brought

88 Sed si ancilla ex ciue Romano conceperit, deinde
But if a-slave-woman by a-citizen Roman has-conceived then
manumissa ciuis Romana facta sit et tunc pariat,
manumitted a-citizen Roman-woman made has-become and then bears
licet ciuis Romanus sit qui nascitur, sicut pater eius,
although a-citizen Roman is (he)-who is-born as the-father his
non tamen in potestate patris est, quia neque ex iusto
not however in the-power of-the-father he-is because neither from a-lawful
coitu conceptus est neque ex ullo senatusconsulto talis
union conceived was-he nor by any decree-of-the-senate such
coitus quasi iustus constituitur.
union as-if lawful is-established

89 Quod autem placuit, si ancilla ex ciue Romano
What however has-been-approved if a-slave-woman by a-citizen Roman
conceperit, deinde manumissa pepererit, qui nascitur liberum
has-conceived then manumitted has-given-birth (he)-who is-born free
nasci, naturali ratione fit; nam hi qui illegitime
to-be-born by-natural reason it-comes-about for those who illegitimately

concipiuntur, statum sumunt ex eo tempore quo nascuntur;
are-conceived status take from that time at-which they-are-born
itaque si ex libera nascuntur, liberi fiunt nec interest,
and-so if of a-free-woman they-are-born free they-become nor does-it-matter
ex quo mater eos conceperit, cum ancilla fuerit; at hi, qui
by whom the-mother them conceived when a-slave-woman she-was but those who
legitime concipiuntur, ex conceptionis tempore statum sumunt.
legitimately are-conceived from of-conception the-time status take
itaque si cui mulieri ciui Romanae praegnati aqua 90
and-so if to-any woman a-citizen Roman pregnant from-water
et igni interdictum fuerit, eoque modo peregrina facta
and fire interdicted it-has-been and-in-that way a-foreigner made
tunc pariat, conplures distinguunt et putant, siquidem ex
then she-bears very-many distinguish and think if-indeed from
iustis nuptiis conceperit, ciuem Romanum ex ea nasci, si
lawful marriage she-conceived a-citizen Roman of her to-be-born if
uero uulgo conceperit, peregrinum ex ea nasci.
however promiscuously she-conceived a-foreigner of her to-be-born
Item si qua mulier ciuis Romana praegnas ex senatusconsulto 91
Likewise if some woman a-citizen Roman pregnant by the-decree-of-the-senate
Claudiano ancilla facta sit ob id, quod alieno
Claudian a-slave-woman made has-become on-account-of this that with-another's
seruo inuito et denuntiante domino eius coierit, conplures
slave unwilling and giving-notice master his she-has-united very-many
distinguunt et existimant, siquidem ex iustis nuptiis conceptus
distinguish and consider if-indeed from lawful marriage conceived
sit, ciuem Romanum ex ea nasci, si uero uulgo conceptus
it-was a-citizen Roman of her to-be-born if however promiscuously conceived
sit, seruum nasci eius cuius mater facta esset ancilla.
it-was a-slave to-be-born of-him whose the-mother made had-been slave-woman

92 Peregrina quoque si uulgo conceperit, deinde ciuis
A-foreign-woman also if promiscuously she-has-conceived then a-citizen
Romana fiat et tunc pariat, ciuem Romanum parit; si
Roman-woman becomes and then bears a-citizen Roman she-bears if
uero ex peregrino secundum leges moresque peregrinorum
however by a-foreigner according-to the-laws and-customs of-foreigners
conceperit, ita uidetur ex senatusconsulto, quod auctore
she-has-conceived so it-seems by the-decree-of-the-senate which on-the-motion-of
diuo Hadriano factum est, ciuem Romanum parere, si
the-deified Hadrian made was a-citizen Roman to-bear if
et patri eius ciuitas Romana donetur.
also on-the-father his citizenship Roman is-bestowed

93 Si peregrinus sibi liberisque suis ciuitatem Romanam
If a-foreigner for-himself and-for-children his-own citizenship Roman
petierit, non aliter filii in potestate eius fient, quam
has-sought not otherwise the-sons in the-power his will-come than
si imperator eos in potestatem redegerit; quod ita
if the-emperor them into power has-brought which thus
demum is facit, si causa cognita aestimauerit hoc filiis
only he does if the-case examined he-has-judged this for-the-sons
expedire. diligentius autem exactiusque causam cognoscit
to-be-expedient more-carefully however and-more-exactly the-case he-examines
de inpuberibus absentibusque; et haec ita edicto
about the-under-age and-absent and these-things so by-the-edict
diui Hadriani significantur.
of-the-deified Hadrian are-made-clear

94 Item si quis cum uxore praegnate ciuitate Romana
Likewise if someone with a-wife pregnant with-citizenship Roman
donatus sit, quamuis is qui nascitur, ut supra diximus, ciuis
presented has-been although he who is-born as above we-said a-citizen
Romanus sit, tamen in potestate patris non fit; idque
Roman is yet in the-power of-the-father not he-comes and-this

subscriptione diui Hadriani significatur; qua de causa
by-a-subscript of-the-deified Hadrian is-made-clear which for reason
qui intellegit uxorem suam esse praegnatem, dum ciuitatem
(he)-who understands the-wife his-own to-be pregnant while citizenship
sibi et uxori ab imperatore petit, simul ab eodem
for-himself and for-the-wife from the-emperor he-seeks at-the-same-time from the-same
petere debet, ut eum qui natus erit in potestate sua habeat.
to-seek he-ought that him who born will-be in power his-own he-may-have
Alia causa est eorum, qui Latii iure cum liberis suis 95
Different the-case is of-those who of-Latium by-the-right with children their-own
ad ciuitatem Romanam perueniunt; nam horum in potestate
to citizenship Roman attain for their in power
fiunt liberi. quod ius quibusdam peregrinis ciuitatibus datum
come the-children which right to-certain foreign states given
est uel a populo Romano uel a senatu uel a Caesare.
has-been either by the-people Roman or by the-senate or by Caesar
*** aut maius est Latium aut minus: maius est 96
(lacuna) either greater is Latin-right or lesser greater is
Latium, cum et hi, qui decuriones leguntur, et ei,
Latin-right when both those who councilors are-chosen and those
qui honorem aliquem aut magistratum gerunt, ciuitatem
who office some or magistracy hold citizenship
Romanam consecuntur; minus Latium est, cum hi tantum,
Roman obtain lesser Latin-right is when those only
qui magistratum uel honorem gerunt, ad ciuitatem Romanam
who magistracy or office hold to citizenship Roman
perueniunt: idque conpluribus epistulis principum significatur.
attain and-this in-very-many letters of-the-emperors is-made-clear

XI · ADOPTION

We adopt either by the people's authority, which is adrogation and applies to an independent person, or by a magistrate's command, for one in power. Adrogation happens only at Rome, not of women, and of a child under age only under conditions; eunuchs may adopt, women may not; and an adrogated man brings his children with him into the new power.

97 Non solum tamen naturales liberi secundum ea quae
Not only however natural children according-to those-things which
diximus in potestate nostra sunt, uerum et hi quos
we-have-said in power our are but also those whom
adoptamus.
we-adopt

98 Adoptio autem duobus modis fit, aut populi auctoritate,
Adoption however in-two ways is-done either by-the-people's authority
aut imperio magistratus, ueluti praetoris.
or by-the-command of-a-magistrate for-example of-the-praetor

99 Populi auctoritate adoptamus eos qui sui iuris sunt;
By-the-people's authority we-adopt those who of-their-own right are
quae species adoptionis dicitur adrogatio, quia et is qui
which kind of-adoption is-called adrogation because both he who
adoptat rogatur, id est interrogatur, an uelit eum quem
adopts is-asked that is is-questioned whether he-wishes him whom
adoptaturus sit iustum sibi filium esse; et is qui adoptatur
about-to-adopt he-is a-lawful for-himself son to-be and he who is-adopted
rogatur, an id fieri patiatur; et populus rogatur, an
is-asked whether that to-be-done he-allows and the-people is-asked whether
id fieri iubeat. imperio magistratus adoptamus eos qui
that to-be-done it-orders by-the-command of-a-magistrate we-adopt those who
in potestate parentum sunt, siue primum gradum liberorum
in the-power of-parents are whether the-first degree of-children

optineant, qualis est filius et filia, siue inferiorem, qualis
they-hold such-as is a-son and a-daughter or a-lower such-as
est nepos neptis, pronepos proneptis.
is a-grandson granddaughter great-grandson great-granddaughter
Et quidem illa adoptio, quae per populum fit, nusquam 100
And indeed that adoption which through the-people is-done nowhere
nisi Romae fit; at haec etiam in prouinciis apud praesides
except at-Rome is-done but this also in the-provinces before the-governors
earum fieri solet.
of-them to-be-done is-wont
Item per populum feminae non adoptantur, nam id 101
Likewise through the-people women not are-adopted for that
magis placuit; apud praetorem uero uel in prouinciis
rather has-been-approved before the-praetor however or in the-provinces
apud proconsulem legatumue etiam feminae solent adoptari.
before the-proconsul or-legate even women are-wont to-be-adopted
Item inpuberem apud populum adoptari aliquando 102
Likewise one-under-age before the-people to-be-adopted sometimes
prohibitum est, aliquando permissum est; nunc ex epistula
forbidden was sometimes permitted was now by the-letter
optimi imperatoris Antonini, quam scripsit pontificibus,
of-the-best emperor Antoninus which he-wrote to-the-pontiffs
si iusta causa adoptionis esse uidebitur, cum quibusdam
if a-just cause of-adoption to-be it-shall-seem with certain
condicionibus permissum est. apud praetorem uero et in
conditions permitted it-is before the-praetor however and in
prouinciis apud proconsulem legatumue cuiuscumque aetatis
the-provinces before the-proconsul or-legate of-whatever age
personas adoptare possumus.
persons adopt we-can

103 Illud utriusque adoptionis commune est, quod et hi qui
That of-each adoption common is that also those who
generare non possunt, quales sunt spadones, adoptare possunt.
to-beget not can such-as are eunuchs to-adopt can
104 feminae uero nullo modo adoptare possunt, quia ne quidem
women however in-no way adopt can because not even
naturales liberos in potestate habent.
natural children in power they-have
105 Item si quis per populum siue apud praetorem uel apud
Likewise if someone through the-people or before the-praetor or before
praesidem prouinciae adoptauerit, potest eundem alii in
the-governor of-the-province has-adopted he-can the-same-one to-another in
adoptionem dare.
adoption give
106 Sed et illa quaestio, an minor natu maiorem natu
But also that question whether a-younger in-age an-older in-age
adoptare possit, utriusque adoptionis communis est.
adopt can of-each adoption common is
107 illud proprium est eius adoptionis quae per populum fit,
that peculiar is to-that adoption which through the-people is-done
quod is qui liberos in potestate habet, si se adrogandum
that he who children in power has if himself to-be-adrogated
dederit, non solum ipse potestati adrogatoris subicitur, sed
he-has-given not only himself to-the-power of-the-adrogator is-subjected but
etiam liberi eius in eiusdem fiunt potestate tamquam nepotes.
also the-children his in of-the-same come the-power as grandsons

Only women come into hand, in three ways: by use, a year's unbroken marriage, which three nights' absence each year interrupted and which is now abolished; by confarreatio, a sacrifice with a spelt loaf, still needed for the high flamens and kings of the rites; and by coemption, an imaginary sale. A woman may make a coemption with her husband for marriage, or with him or an outsider for a trust, to change her tutors or formerly to make a will, a need the senate remitted; a wife in hand holds a daughter's rights.

Nunc de his personis uideamus, quae in manu nostra sunt. 108
Now about those persons let-us-see who in hand our are
quod et ipsum ius proprium ciuium Romanorum est.
which also itself a-right peculiar of-citizens Roman is
Sed in potestate quidem et masculi et feminae esse solent; 109
But in power indeed both males and females to-be are-wont
in manum autem feminae tantum conueniunt.
into hand however women only come
Olim itaque tribus modis in manum conueniebant, usu 110
Formerly and-so in-three ways into hand they-came by-use
farreo coemptione.
by-spelt-cake by-purchase
Usu in manum conueniebat quae anno continuo 111
By-use into hand came (she)-who for-a-year continuous
nupta perseuerabat; quia enim ueluti annua possessione
married persisted because for as-if by-a-year's possession
usucapiebatur, in familiam uiri transibat filiaeque
she-was-acquired-by-use into the-family of-the-husband she-passed and-of-a-daughter
locum optinebat. itaque lege XII tabularum cautum
the-place held and-so by-the-statute of-the-Twelve Tables provided
est, ut si qua nollet eo modo in manum mariti
it-was that if any-woman were-unwilling in-that way into the-hand of-her-husband

conuenire, ea quotannis trinoctio abesset atque eo modo
to-come she each-year for-three-nights should-be-absent and in-that way
usum cuiusque anni interrumperet. sed hoc totum ius partim
the-use of-each year interrupt but this whole law partly
legibus sublatum est, partim ipsa desuetudine oblitteratum est.
by-statutes abolished is partly itself by-disuse effaced is
112 Farreo in manum conueniunt per quoddam genus sacrificii,
By-spelt-cake into hand they-come through a-certain kind of-sacrifice
quod Ioui Farreo fit; in quo farreus panis adhibetur,
which to-Jupiter Farreus is-made in which a-spelt loaf is-used
unde etiam confarreatio dicitur; conplura praeterea huius
whence also confarreatio it-is-called very-many-things besides of-this
iuris ordinandi gratia cum certis et sollemnibus uerbis
law of-ordering for-the-sake with fixed and solemn words
praesentibus decem testibus aguntur et fiunt. quod ius
in-the-presence-of ten witnesses are-performed and are-done which law
etiam nostris temporibus in usu est; nam flamines maiores,
even in-our times in use is for the-flamens major
id est Diales Martiales Quirinales, item reges sacrorum
that is of-Jupiter of-Mars of-Quirinus likewise the-kings of-the-sacred-rites
nisi ex farreatis nati non leguntur; ac ne ipsi
unless from confarreate-parents born not are-chosen and not themselves
quidem sine confarreatione sacerdotium habere possunt.
even without confarreatio a-priesthood hold can
113 Coemptione uero in manum conueniunt per mancipationem,
By-purchase however into hand they-come through mancipation
id est per quandam imaginariam uenditionem; nam adhibitis
that is through a-certain imaginary sale for summoned
non minus quam V testibus ciuibus Romanis puberibus,
not less than five witnesses citizens Roman adult
item libripende, emit is mulierem, cuius in manum conuenit.
likewise a-scale-holder buys he the-woman whose into hand she-comes

Potest autem coemptionem facere mulier non solum cum 114
Can however a-purchase make a-woman not only with
marito suo, sed etiam cum extraneo; scilicet aut matrimonii
husband her-own but also with an-outsider of-course either of-marriage
causa facta coemptio dicitur aut fiduciae; quae enim cum
for-the-sake made the-purchase is-called or of-trust (she)-who for with
marito suo facit coemptionen, ut apud eum filiae loco
husband her-own makes a-purchase that with him of-a-daughter in-the-place
sit, dicitur matrimonii causa fecisse coemptionem;
she-may-be is-said of-marriage for-the-sake to-have-made a-purchase
quae uero alterius rei causa facit coemptionem aut
(she)-who however of-another matter for-the-sake makes a-purchase either
cum uiro suo aut cum extraneo, ueluti tutelae euitandae
with husband her-own or with an-outsider for-example of-tutelage avoiding
causa, dicitur fiduciae causa fecisse coemptionem.
for-the-sake is-said of-trust for-the-sake to-have-made a-purchase
quod est tale: si qua uelit quos habet tutores deponere 115
which is such if any-woman wishes whom she-has tutors to-put-off
et alium nancisci, illis auctoribus coemptionem facit;
and another to-get with-them authorizing a-purchase she-makes
deinde a coemptionatore remancipata ei cui ipsa uelit,
then by the-purchaser remancipated to-him whom she-herself wishes
et ab eo uindicta manumissa incipit eum habere tutorem,
and by him by-the-rod manumitted she-begins him to-have as-tutor
a quo manumissa est; qui tutor fiduciarius dicitur,
by whom manumitted she-has-been who tutor fiduciary is-called
sicut inferius apparebit.
as below will-appear
Olim etiam testamenti faciendi gratia fiduciaria fiebat 115a
Formerly also of-a-will making for-the-sake fiduciary was-made
coemptio; tunc enim non aliter feminae testamenti faciendi
a-purchase then for not otherwise women of-a-will making

ius habebant, exceptis quibusdam personis, quam si
the-right had excepted certain persons than if
coemptionem fecissent remancipataeque et manumissae
a-purchase they-had-made and-remancipated and manumitted
fuissent: sed hanc necessitatem coemptionis faciendae ex
they-had-been but this necessity of-a-purchase being-made on
auctoritate diui Hadriani senatus remisit.
the-authority of-the-deified Hadrian the-senate remitted

115b *** femina *** fiduciae causa cum uiro suo
(lacuna) a-woman (lacuna) of-trust for-the-sake with husband her-own
fecerit coemptionem, nihilo minus filiae loco incipit
has-made a-purchase none the-less of-a-daughter in-the-place she-begins
esse; nam si omnino qualibet ex causa uxor in manu
to-be for if at-all whatever from cause a-wife in the-hand
uiri sit, placuit eam filiae iura nancisci.
of-the-husband is it-has-been-approved her a-daughter's rights to-get

XIII · BONDAGE AND MANCIPATION

Children in power and women in hand may be mancipated like slaves, by an imaginary sale before five witnesses and a scale-holder; persons in bondage stand in a slave's place.

116 Superest ut exponamus, quae personae in mancipio sint.
It-remains that we-set-out which persons in bondage are
117 Omnes igitur liberorum personae siue masculini siue feminini
All therefore of-children the-persons whether of-masculine or feminine
sexus, quae in potestate parentis sunt, mancipari ab hoc
sex who in the-power of-a-parent are be-mancipated by him
eodem modo possunt, quo etiam serui mancipari possunt.
in-the-same way can in-which also slaves be-mancipated can

Idem iuris est in earum personis quae in manu sunt; 118
The-same of-law is in of-those-women the-persons who in hand are
∗∗∗ coemptionatoribus eodem modo possunt ∗∗∗ apud
(lacuna) by-purchasers in-the-same way they-can (lacuna) with
coemptionatorem filiae loco sit ∗∗∗ nupta sit,
the-purchaser of-a-daughter in-the-place she-be (lacuna) married she-has-been
∗∗∗ nihilo minus etiam quae ei nupta non sit nec
(lacuna) none the-less even (she)-who to-him married not is nor
ob id filiae loco sit, ab eo mancipari possit.
on-account-of this of-a-daughter in-the-place is by him be-mancipated can
Plerumque uero tum solum et a parentibus et a 118a
Generally however then only both by parents and by
coemptionatoribus mancipantur, cum uelint parentes
purchasers they-are-mancipated when wish parents
coemptionatioresque ex suo iure eas personas dimittere,
and-purchasers from their-own right those persons to-release
sicut inferius euidentius apparebit.
as below more-plainly will-appear
Est autem mancipatio, ut supra quoque diximus, imaginaria 119
Is however mancipation as above also we-said an-imaginary
quaedam uenditio; quod et ipsum ius proprium ciuium
certain sale which also itself a-right peculiar of-citizens
Romanorum est, eaque res ita agitur: adhibitis non minus
Roman is and-this thing so is-done summoned not less
quam quinque testibus ciuibus Romanis puberibus et
than five witnesses citizens Roman adult and
praeterea alio eiusdem condicionis, qui libram aeneam teneat,
besides another of-the-same condition who a-scale of-bronze holds
qui appellatur libripens, is qui mancipio accipit, aes
who is-called the-scale-holder he who in-mancipation receives the-bronze
tenens ita dicit ‘hunc ego hominem ex iure Quiritium
holding thus says this I man by the-law of-the-Quirites

meum esse aio isque mihi emptus esto hoc aere
mine to-be declare and-be to-me bought be with-this bronze
aeneaque libra'; deinde aere percutit libram idque aes
and-bronze scale then with-the-bronze he-strikes the-scale and-that bronze
dat ei a quo mancipio accipit quasi pretii loco.
gives to-him from whom in-mancipation he-receives as-if of-the-price in-place
120 Eo modo et seruiles et liberae personae mancipantur;
In-that way both slave and free persons are-mancipated
animalia quoque quae mancipi sunt, quo in numero habentur
animals also which mancipable are which in number are-held
boues, equi, muli, asini; item praedia tam urbana quam
oxen horses mules asses likewise estates as urban as
rustica quae et ipsa mancipi sunt, qualia sunt Italica,
rustic which also themselves mancipable are such-as are Italian
eodem modo solent mancipari.
in-the-same way are-wont to-be-mancipated
121 In eo solo praediorum mancipatio a ceterorum mancipatione
In this alone of-estates the-mancipation from of-other-things the-mancipation
differt, quod personae seruiles et liberae, item animalia
differs that persons slave and free likewise animals
quae mancipi sunt, nisi in praesentia sint, mancipari
which mancipable are unless in presence they-are be-mancipated
non possunt; adeo quidem, ut eum qui mancipio accipit,
not can so-far indeed that him who in-mancipation receives
adprehendere id ipsum quod ei mancipio datur necesse
to-grasp that very-thing which to-him in-mancipation is-given necessary
sit; unde etiam mancipatio dicitur, quia manu res
it-is whence also mancipation it-is-called because by-hand the-thing
capitur; praedia uero absentia solent mancipari.
is-taken estates however absent are-wont to-be-mancipated

Ideo autem aes et libra adhibetur, quia olim 122
For-this-reason however bronze and scale are-used because formerly
aereis tantum nummis utebantur, et erant asses, dupundii,
bronze only coins they-used and there-were asses dupondii
semisses, quadrantes, nec ullus aureus uel argenteus nummus
semisses quadrantes nor any gold or silver coin
in usu erat, sicut ex lege XII tabularum intellegere
in use was as from the-statute of-the-Twelve Tables understand
possumus; eorumque nummorum uis et potestas non in
we-can and-of-those coins the-force and power not in
numero erat sed in pondere *** asses librales erant,
number was but in weight (lacuna) asses pound-weight were
et dupundii ***; unde etiam dupundius dictus est quasi
and dupondii (lacuna) whence also dupondius called it-was as-if
duo pondo, quod nomen adhuc in usu retinetur. semisses
two pounds which name still in use is-kept semisses
quoque et quadrantes pro rata scilicet portione ad pondus
also and quadrantes in a-fixed of-course share by weight
examinati erant. *** qui dabat olim pecuniam, non
assessed were (lacuna) (he)-who paid formerly money not
numerabat eam, sed appendebat; unde serui, quibus permittitur
counted it but weighed-out whence slaves to-whom is-entrusted
administratio pecuniae, dispensatores appellati sunt et ***
the-administration of-money paymasters called were and (lacuna)
*** coemptio *** a quidem quae coemptionem fac 123
(lacuna) a-purchase (lacuna) by indeed (she)-who a-purchase makes
*** seruilem condicionem a *** mancipati mancipataeue
(lacuna) a-slave's condition by (lacuna) mancipated-men or-mancipated-women
seruorum loco constituuntur, adeo quidem, ut ab eo
of-slaves in-the-place are-put so-far indeed that from him
cuius in mancipio sunt, neque hereditatem neque legata
whose in bondage they-are neither an-inheritance nor legacies

aliter capere possint, quam si simul eodem testamento
otherwise take they-can than if at-the-same-time by-the-same will
liberi esse iubeantur, sicut iuris est in persona seruorum.
free to-be they-are-ordered as of-law is in the-person of-slaves
sed differentiae ratio manifesta est, cum a parentibus et
but of-the-difference the-reason clear is since from parents and
a coemptionatoribus isdem uerbis mancipio accipiantur,
from purchasers by-the-same words in-mancipation they-are-received
quibus serui; quod non similiter fit in coemptione.
as slaves which not similarly is-done in a-purchase

XIV · RELEASE FROM POWER

Children become independent at the father's death (a grandchild only if not falling into his own father's power), by interdiction, when a son becomes flamen of Jupiter or a daughter a Vestal, once by joining a Latin colony, and by emancipation, three mancipations for a son, one for others, which with a praetor's award also give a son in adoption. Captivity suspends the power. Women leave hand by mancipation; those in bondage are freed by rod, census, or will, outside the Aelian Sentian statute, and may not be insulted.

124 Videamus nunc, quomodo hi qui alieno iuri subiecti sunt,
Let-us-see now how those who to-another's right subject are
eo iure liberentur.
from-that right are-freed
125 Ac prius de his dispiciamus qui in potestate sunt.
And first about those let-us-consider who in power are

Et quidem serui quemadmodum potestate liberentur, ex 126
And indeed slaves how from-power they-are-freed from
his intellegere possumus, quae de seruis manumittendis
those-things understand we-can which about slaves to-be-manumitted
superius exposuimus.
above we-set-out

Hi uero qui in potestate parentis sunt, mortuo eo 127
Those however who in the-power of-a-parent are dead he
sui iuris fiunt. sed hoc distinctionem recipit; nam
of-their-own right become but this a-distinction admits for
mortuo patre sane omni modo filii filiaeue sui
dead the-father certainly in-every way sons or-daughters of-their-own
iuris efficiuntur; mortuo uero auo non omni modo
right are-made dead however the-grandfather not in-every way
nepotes neptesue sui iuris fiunt, sed ita, si post
grandsons or-granddaughters of-their-own right become but so if after
mortem aui in patris sui potestatem recasuri
the-death of-the-grandfather into of-father their-own the-power going-to-fall-back
non sunt. itaque si moriente auo pater eorum et
not they-are and-so if at-the-death-of the-grandfather the-father their both
uiuat et in potestate patris sui fuerit, tunc post obitum
is-alive and in the-power of-father his-own was then after the-death
aui in patris sui potestate fiunt; si uero
of-the-grandfather in of-father their-own the-power they-come if however
is, quo tempore auus moritur, aut iam mortuus
he at-which time the-grandfather dies either already dead
est aut exiit de potestate patris, tunc hi, quia in
is or has-gone-out from the-power of-his-father then they because into
potestatem eius cadere non possunt, sui iuris fiunt.
power his fall not they-can of-their-own right become

128 Cum autem is, cui ob aliquod maleficium ex lege
Since however he to-whom on-account-of some crime by the-statute
Cornelia aqua et igni interdicitur, ciuitatem Romanam
Cornelian from-water and fire it-is-interdicted citizenship Roman
amittat, sequitur ut, quia eo modo ex numero ciuium
loses it-follows that because in-that way from the-number of-citizens
Romanorum tollitur, proinde ac mortuo eo desinant
Roman he-is-removed just as-if dead he cease
liberi in potestate eius esse; nec enim ratio patitur, ut
the-children in power his to-be nor for reason allows that
peregrinae condicionis homo ciuem Romanum in potestate
of-foreign condition a-man a-citizen Roman in power
habeat. pari ratione et si ei, qui in potestate parentis
should-have by-like reasoning also if to-him who in the-power of-a-parent
sit, aqua et igni interdictum fuerit, desinit in potestate
is from-water and fire interdicted it-has-been he-ceases in the-power
parentis esse, quia aeque ratio non patitur, ut peregrinae
of-the-parent to-be because equally reason not allows that of-foreign
condicionis homo in potestate sit ciuis Romani parentis.
condition a-man in the-power be of-a-citizen Roman parent
129 Quodsi ab hostibus captus fuerit parens, quamuis seruus
But-if by the-enemy captured has-been the-parent although a-slave
hostium fiat, tamen pendet ius liberorum propter ius
of-the-enemy he-becomes yet hangs the-right of-the-children on-account-of the-right
postliminii, quo hi qui ab hostibus capti sunt, si reuersi
of-postliminium by-which those who by the-enemy captured have-been if returned
fuerint, omnia pristina iura recipiunt; itaque reuersus habebit
they-have all former rights recover and-so returned he-will-have
liberos in potestate. si uero illic mortuus sit, erunt quidem
the-children in power if however there dead he-is will-be indeed
liberi sui iuris; sed utrum ex hoc tempore quo
the-children of-their-own right but whether from this time at-which

mortuus est apud hostes parens, an ex illo quo ab hostibus
dead is among the-enemy the-parent or from that at-which by the-enemy
captus est, dubitari potest. ipse quoque filius neposue si
captured he-was doubted it-can-be himself also the-son or-grandson if
ab hostibus captus fuerit, similiter dicemus propter ius
by the-enemy captured he-has-been similarly we-shall-say on-account-of the-right
postliminii potestatem quoque parentis in suspenso esse.
of-postliminium the-power also of-the-parent in suspense to-be
Praeterea exeunt liberi uirilis sexus de parentis potestate, si 130
Besides go-out children of-male sex from the-parent's power if
flamines Diales inaugurentur, et feminini sexus, si uirgines
flamens of-Jupiter they-are-inaugurated and of-female sex if virgins
Vestales capiantur.
Vestal they-are-taken
Olim quoque, quo tempore populus Romanus in Latinas 131
Formerly also at-which time the-people Roman into Latin
regiones colonias deducebat, qui iussu parentis in
regions colonies led-out (those)-who by-order of-the-parent into
coloniam Latinam nomen dedissent, desinebant in potestate
a-colony Latin their-name had-given ceased in the-power
parentis esse, quia efficerentur alterius ciuitatis ciues.
of-the-parent to-be because they-were-made of-another state citizens
Praeterea emancipatione desinunt liberi in potestate parentum 132
Besides by-emancipation cease children in the-power of-parents
esse. sed filius quidem tribus mancipationibus, ceteri uero
to-be but a-son indeed by-three mancipations the-other however
liberi siue masculini sexus siue feminini una mancipatione
children whether of-male sex or of-female by-one mancipation
exeunt de parentum potestate; lex enim XII
go-out from the-parents' power the-statute for of-the-Twelve
tabularum tantum in persona filii de tribus mancipationibus
Tables only in the-person of-a-son of three mancipations

loquitur his uerbis ‘si pater filium ter uenum duit,
speaks in-these words if a-father a-son three-times for-sale gives
a patre filius liber esto.’ eaque res ita agitur: mancipat
from the-father the-son free be and-this thing so is-done mancipates
pater filium alicui; is eum uindicta manumittit; eo facto
the-father the-son to-someone he him by-the-rod manumits this done
reuertitur in potestatem patris; is eum iterum mancipat
he-returns into the-power of-the-father he him again mancipates
uel eidem uel alii (sed in usu est eidem mancipari)
either to-the-same or to-another but in use it-is to-the-same to-be-mancipated
isque eum postea similiter uindicta manumittit; eo facto
and-he him afterward similarly by-the-rod manumits this done
rursus in potestatem patris reuertitur; tertio pater
again into the-power of-the-father he-returns a-third-time the-father
eum mancipat uel eidem uel alii (sed hoc in usu
him mancipates either to-the-same or to-another but this in use
est, ut eidem mancipetur), eaque mancipatione desinit
is that to-the-same he-be-mancipated and-by-that mancipation he-ceases
in potestate patris esse, etiamsi nondum manumissus sit
in the-power of-the-father to-be even-if not-yet manumitted he-is
sed adhuc in causa mancipii. si *** missi ***
but still in the-condition of-bondage if (lacuna) manumitted (lacuna)
132a *** patrono in bonis liberti *** feminae una
(lacuna) to-the-patron among the-goods of-the-freedman (lacuna) women by-one
mancipatione exeunt de patris potestate *** manumissae
mancipation go-out from the-father's power (lacuna) manumitted
fuerint s ***
they-have-been s(…) (lacuna)
133 Admonendi autem sumus liberum esse arbitrium ei qui
To-be-reminded however we-are free to-be the-choice for-him who
filium et ex eo nepotem in potestate habebit, filium
a-son and from him a-grandson in power shall-have the-son

quidem de potestate dimittere, nepotem uero in potestate
indeed from power to-release the-grandson however in power
retinere; uel ex diuerso filium quidem in potestate retinere,
to-retain or from the-opposite the-son indeed in power to-retain
nepotem uero manumittere, uel omnes sui iuris efficere.
the-grandson however to-manumit or all of-their-own right to-make
eadem et de pronepote dicta esse intellegemus. ***
the-same-things also about a-great-grandson said to-be we-shall-understand (lacuna)
*** et duae intercedentes manumissiones proinde fiunt, ac 134
(lacuna) and two intervening manumissions just-so are-done as
fieri solent, cum ita eum pater de potestate dimittit,
to-be-done they-are-wont when so him the-father from power releases
ut sui iuris efficiatur. deinde aut patri remancipatur,
that of-his-own right he-be-made then either to-the-father he-is-remancipated
et ab eo is qui adoptat uindicat apud praetorem filium suum
and from him he who adopts claims before the-praetor the-son his-own
esse, et illo contra non uindicante a praetore uindicanti
to-be and he in-turn not claiming by the-praetor to-the-claimant
filius addicitur; aut non remancipatur patri, sed ab eo
the-son is-adjudged or not he-is-remancipated to-the-father but from him
uindicat is qui adoptat, apud quem in tertia mancipatione
claims he who adopts with whom in the-third mancipation
est; sed sane commodius est patri remancipari. In
he-is but certainly more-convenient it-is to-the-father to-be-remancipated In
ceteris uero liberorum personis seu masculini seu feminini
the-other however of-children persons whether of-male or of-female
sexus una scilicet mancipatio sufficit, et aut remancipantur
sex one of-course mancipation suffices and either they-are-remancipated
parenti aut non remancipantur. Eadem et in prouinciis
to-the-parent or not are-remancipated The-same-things also in the-provinces
apud praesidem prouinciae solent fieri.
before the-governor of-the-province are-wont to-be-done

135 Qui ex filio semel iterumue mancipato conceptus est,
(He)-who from a-son once or-twice mancipated conceived was
licet post tertiam mancipationem patris sui nascatur,
although after the-third mancipation of-father his-own he-is-born
tamen in aui potestate est, et ideo ab eo et
yet in the-grandfather's power is and therefore by him both
emancipari et in adoptionem dari potest. At is, qui ex
emancipated and into adoption be-given he-can But he who from
eo filio conceptus est qui in tertia mancipatione est, non
that son conceived was who in the-third mancipation is not
nascitur in aui potestate. sed eum Labeo quidem
is-born in the-grandfather's power but him Labeo indeed
existimat in eiusdem mancipio esse, cuius et pater sit;
considers in the-same-man's bondage to-be in-whose also the-father is
utimur autem hoc iure, ut quamdiu pater eius in mancipio
we-follow however this law that as-long-as the-father his in bondage
sit, pendeat ius eius; et siquidem pater eius ex
is hangs the-right his and if-indeed the-father his from
mancipatione manumissus erit, cadat in eius potestatem; si
the-mancipation manumitted shall-be he-falls into his power if
uero is dum in mancipio sit, decesserit, sui iuris fiat.
however he while in bondage he-is has-died of-his-own right he-becomes

135a Eadem scilicet ∗∗∗ nam ut supra diximus, quod in filio
The-same of-course (lacuna) for as above we-said what in a-son
faciunt tres mancipationes, hoc facit una mancipatio in
do three mancipations this does one mancipation in
nepote.
a-grandson

136 ∗∗∗ Maximi et Tuberonis cautum est, ut haec quod ad
(lacuna) of-Maximus and of-Tubero provided it-was that this-woman as-far-as to
sacra tantum uideatur in manu esse, quod uero ad ceteras
sacred-rites only should-seem in hand to-be as-far-as however to the-other

causas proinde habeatur, atque si in manum non conuenisset.
matters just-so be-held as if into hand not she-had-come
∗∗∗ potestate parentis liberantur; nec interest, an in
(lacuna) from-the-power of-the-parent are-freed nor does-it-matter whether in
uiri sui manu sint an extranei, quamuis hae solae
of-husband their-own the-hand they-are or of-an-outsider although these alone
loco filiarum habeantur, quae in uiri manu sunt.
in-the-place of-daughters are-held who in the-husband's hand are
∗∗∗ mancipatione desinunt in manu esse, et si ex ea 137
(lacuna) by-mancipation they-cease in hand to-be and if from that
mancipatione manumissae fuerint, sui iuris efficiuntur.
mancipation manumitted they-have-been of-their-own right they-are-made
∗∗∗ quae ∗∗∗ cogere coemptionatorem potest, ut se 137a
(lacuna) (she)-who (lacuna) compel the-purchaser can that her
remancipet, cui ipsa uelit ∗∗∗ nihilo magis potest
be-remancipate to-whom she-herself wishes (lacuna) not-at-all more can
cogere, quam et filia patrem. sed filia quidem nullo
compel than also a-daughter her-father but a-daughter indeed in-no
modo patrem potest cogere, etiamsi adoptiua sit; haec
way her-father can compel even-if adoptive she-is she
autem uirum repudio misso proinde conpellere potest,
however her-husband a-repudiation sent just-so compel can
atque si ei numquam nupta fuisset.
as if to-him never married she-had-been
Ii qui in causa mancipii sunt, quia seruorum loco 138
Those who in the-condition of-bondage are because of-slaves in-the-place
habentur, uindicta censu testamento manumissi sui
they-are-held by-the-rod by-the-census by-will manumitted of-their-own
iuris fiunt.
right become

139 Nec tamen in hoc casu lex Aelia Sentia locum habet.
Nor however in this case the-statute Aelian Sentian place has
itaque nihil requirimus, cuius aetatis sit is qui manumittit
and-so nothing we-ask of-what age is he who manumits
et qui manumittitur; ac ne illud quidem, an patronum
and (he)-who is-manumitted and not that even whether a-patron
creditoremue manumissor habeat. ac ne numerus quidem
or-creditor the-manumitter has and not the-number even
lege Fufia Caninia finitus in his personis locum habet.
by-the-statute Fufian Caninian limited in these persons place has
140 Quin etiam inuito quoque eo cuius in mancipio sunt censu
Indeed even unwilling also he whose in bondage they-are by-the-census
libertatem consequi possunt, excepto eo, quem pater ea
freedom obtain they-can except him whom the-father on-this
lege mancipio dedit, ut sibi remancipetur; nam quodammodo
condition in-bondage gave that to-him he-be-remancipated for in-a-certain-way
tunc pater potestatem propriam reseruare sibi uidetur eo
then the-father power his-own to-reserve for-himself seems by-this
ipso, quod mancipio recipit. ac ne is quidem dicitur inuito eo
very-thing that in-bondage he-receives and not he even is-said unwilling he
cuius in mancipio est censu libertatem consequi, quem pater
whose in bondage he-is by-the-census freedom to-obtain whom the-father
ex noxali causa, ueluti quod furti eius nomine damnatus est,
from a-noxal cause for-example because of-theft on-his account condemned he-was
mancipio actori dedit; nam hunc actor pro pecunia habet.
in-bondage to-the-plaintiff gave for him the-plaintiff for money has
141 In summa admonendi sumus aduersus eos quos in mancipio
In sum to-be-reminded we-are against those whom in bondage
habemus nihil nobis contumeliose facere licere; alioquin
we-have nothing for-us insultingly to-do to-be-allowed otherwise
iniuriarum tenebimur. ac ne diu quidem in eo iure
for-outrages we-shall-be-liable and not long even in that right

detinentur homines, sed plerumque hoc fit dicis gratia
are-held men but generally this is-done for-form's sake
uno momento, nisi scilicet ex noxali causa mancipentur.
in-one moment unless of-course from a-noxal cause they-are-mancipated

XV · TESTAMENTARY TUTORS

Persons not in power, hand, or bondage are in tutelage or curatorship, or neither. A father may appoint tutors by will to his under-age sons and to daughters of any age, since women stay in tutelage for lightness of mind, save the Vestals and those with the right of children; to grandchildren not falling into their father's power, to posthumous children, and to a wife in hand. He may give the wife the choice of a tutor, full or narrow; named tutors are dative, chosen ones optive.

Transeamus nunc ad aliam diuisionem. nam ex his personis, 142
Let-us-pass now to another division for of those persons
quae neque in potestate neque in manu neque in mancipio
who neither in power nor in hand nor in bondage
sunt, quaedam uel in tutela sunt uel in curatione, quaedam
are some either in tutelage are or in curatorship some
neutro iure tenentur. uideamus igitur, quae in tutela, quae
by-neither right are-held let-us-see therefore which in tutelage which
in curatione sint; ita enim intellegemus ceteras personas
in curatorship are thus for we-shall-understand the-other persons
quae neutro iure tenentur.
who by-neither right are-held
Ac prius dispiciamus de his quae in tutela sunt. 143
And first let-us-consider about those who in tutelage are
Permissum est itaque parentibus, liberis quos in potestate 144
Permitted it-is and-so to-parents for-children whom in power
sua habent testamento tutores dare: masculini quidem
their-own they-have by-will tutors to-give of-male indeed

sexus inpuberibus, feminini autem sexus cuiuscumque aetatis
sex to-the-under-age of-female however sex of-whatever age
sint, et tum quoque, cum nuptae sint. ueteres enim
they-are and then also when married they-are the-ancients for
uoluerunt feminas, etiamsi perfectae aetatis sint, propter
wished women even-if of-full age they-are on-account-of
animi leuitatem in tutela esse.
of-mind the-lightness in tutelage to-be
145 Itaque si quis filio filiaeque testamento tutorem dederit
And-so if someone to-a-son and-daughter by-will a-tutor has-given
et ambo ad pubertatem peruenerint, filius quidem desinit
and both to puberty have-come the-son indeed ceases
habere tutorem, filia uero nihilo minus in tutela
to-have a-tutor the-daughter however none the-less in tutelage
permanet; tantum enim ex lege Iulia et Papia Poppaea
remains only for by the-statute Julian and Papian Poppaean
iure liberorum tutela liberantur feminae. loquimur
by-the-right of-children from-tutelage are-freed women we-speak
autem exceptis uirginibus Vestalibus, quas etiam ueteres
however excepting the-virgins Vestal whom even the-ancients
in honorem sacerdotii liberas esse uoluerunt, itaque etiam
in honor of-the-priesthood free to-be wished and-so even
lege XII tabularum cautum est.
by-the-statute of-the-Twelve Tables provided it-was
146 Nepotibus autem neptibusque ita demum possumus
For-grandsons however and-granddaughters thus only we-can
testamento tutores dare, si post mortem nostram in patris
by-will tutors give if after death our into of-father
sui potestatem recasuri non sint. itaque si filius
their-own the-power going-to-fall-back not they-are and-so if son
meus mortis meae tempore in potestate mea sit, nepotes
my of-death my at-the-time in power my is grandsons

ex eo non poterunt ex testamento meo habere tutorem,
from him not will-be-able from will my to-have a-tutor
quamuis in potestate mea fuerint; scilicet quia mortuo me
although in power my they-were of-course because dead I
in patris sui potestate futuri sunt.
in of-father their-own the-power going-to-be they-are
Cum tamen in conpluribus aliis causis postumi pro 147
Since however in very-many other matters posthumous-children as
iam natis habeantur, et in hac causa placuit non
already born are-held also in this matter it-has-been-approved not
minus postumis quam iam natis testamento
less to-posthumous-children than already to-those-born by-will
tutores dari posse, si modo in ea causa sint, ut si uiuis
tutors be-given can-be if only in that position they-are that if alive
nobis nascantur, in potestate nostra fiant. hos enim etiam
we they-be-born in power our they-become these for also
heredes instituere possumus, cum extraneos postumos
as-heirs institute we-can whereas outsider posthumous-children
heredes instituere permissum non sit.
as-heirs to-institute permitted not is
Uxori quae in manu est proinde ac filiae, item 148
To-a-wife who in hand is just as to-a-daughter likewise
nurui quae in filii manu est proinde ac nepti
to-a-daughter-in-law who in the-son's hand is just as to-a-granddaughter
tutor dari potest.
a-tutor be-given can
Rectissime autem tutor sic dari potest 'L. Titium liberis 149
Most-correctly however a-tutor thus be-given can Lucius Titius to-children
meis tutorem do.' sed et si ita scriptum sit 'liberis meis'
my as-tutor I-give but also if thus written it-is to-children my
uel 'uxori meae Titius tutor esto', recte datus intellegitur.
or to-wife my Titius tutor be rightly given be-is-understood

150 In persona tamen uxoris quae in manu est recepta est etiam
In the-person however of-a-wife who in hand is accepted is also
tutoris optio, id est ut liceat ei permittere quem uelit
of-a-tutor the-choice that is that it-be-allowed for-her to-permit whom she-wishes
ipsa tutorem sibi optare, hoc modo 'Titiae uxori meae
herself as-tutor for-herself to-choose in-this way to-Titia wife my
tutoris optionem do.' quo casu licet uxori tutorem
of-a-tutor the-choice I-give in-which case it-is-allowed for-the-wife a-tutor
optare uel in omnes res uel in unam forte aut duas.
to-choose either for all matters or for one perhaps or two
151 Ceterum aut plena optio datur aut angusta.
Moreover either a-full choice is-given or a-narrow
152 plena ita dari solet, ut proxime supra diximus. angusta
a-full thus to-be-given is-wont as just above we-said a-narrow
ita dari solet 'Titiae uxori meae tutoris optionem
thus to-be-given is-wont to-Titia wife my of-a-tutor the-choice
dumtaxat semel do', aut 'dumtaxat bis do.'
only once I-give or only twice I-give
153 Quae optiones plurimum inter se differunt. nam quae
Which choices very-much among themselves differ for (she)-who
plenam optionem habet, potest semel et bis et ter
a-full choice has can once and twice and three-times
et saepius tutorem optare; quae uero angustam habet
and more-often a-tutor choose (she)-who however a-narrow has
optionem, si dumtaxat semel data est optio, amplius quam
choice if only once given is the-choice more than
semel optare non potest; si dumtaxat bis, amplius quam
once choose not can if only twice more than
bis optandi facultatem non habet.
twice of-choosing the-power not she-has

Vocantur autem hi, qui nominatim testamento tutores 154
Are-called however those who by-name by-will tutors
dantur, datiui, qui ex optione sumuntur, optiui.
are-given dative (those)-who from the-choice are-taken optive

XVI · STATUTORY TUTORS AND LOSS OF STATUS

Where no tutor is given by will, the agnates are tutors under the Twelve Tables: kin through males, not cognates through females; the Claudian statute ended agnatic tutelage over women. Agnation is destroyed by loss of status, greatest when freedom and citizenship go, lesser when only citizenship, least when only one's family position changes.

Quibus testamento quidem tutor datus non sit, iis 155
To-whom by-will indeed a-tutor given not has-been to-them
ex lege XII tabularum agnati sunt tutores, qui
by the-statute of-the-Twelve Tables the-agnates are tutors who
uocantur legitimi.
are-called statutory
Sunt autem agnati per uirilis sexus personas cognatione 156
Are however agnates through of-male sex persons by-kinship
iuncti, quasi a patre cognati, ueluti frater eodem patre
joined as-if from the-father kinsmen for-example a-brother of-the-same father
natus, fratris filius neposue ex eo, item patruus et
born a-brother's son or-grandson from him likewise a-father's-brother and
patrui filius et nepos ex eo. at hi, qui per feminini
the-father's-brother's son and grandson from him but those who through of-female
sexus personas cognatione coniunguntur, non sunt agnati,
sex persons by-kinship are-joined not are agnates
sed alias naturali iure cognati. itaque inter auunculum et
but otherwise by-natural law cognates and-so between a-mother's-brother and

sororis filium non agnatio est, sed cognatio. item amitae,
a-sister's son not agnation there-is but cognation likewise of-a-father's-sister
materterae filius non est mihi agnatus, sed cognatus,
(or)-of-a-mother's-sister the-son not is to-me an-agnate but a-cognate
et inuicem scilicet ego illi eodem iure coniungor, quia
and in-turn of-course I to-him by-the-same law am-joined because
qui nascuntur patris, non matris familiam secuntur.
(those)-who are-born the-father's not the-mother's family follow
157 Et olim quidem, quantum ad legem XII tabularum
And formerly indeed as-far-as to the-statute of-the-Twelve Tables
attinet, etiam feminae agnatos habebant tutores. sed postea
pertains even women agnates had as-tutors but afterward
lex Claudia lata est, quae quod ad feminas attinet,
the-statute Claudian carried was which as-far-as to women pertains
agnatorum tutelas sustulit; itaque masculus quidem inpubes
of-agnates the-tutelages abolished and-so a-male indeed under-age
fratrem puberem aut patruum habet tutorem, femina
a-brother adult or a-father's-brother has as-tutor a-woman
uero talem habere tutorem non potest.
however such have as-tutor not can
158 Sed agnationis quidem ius capitis deminutione perimitur,
But of-agnation indeed the-right of-status by-loss is-destroyed
cognationis uero ius eo modo non commutatur, quia
of-cognation however the-right in-that way not is-changed because
ciuilis ratio ciuilia quidem iura corrumpere potest, naturalia
civil reason civil indeed rights corrupt can natural
uero non potest.
however not it-can

Est autem capitis deminutio prioris status permutatio. eaque 159
Is however of-status loss of-the-prior status a-change and-it
tribus modis accidit: nam aut maxima est capitis deminutio,
in-three ways happens for either greatest is of-status the-loss
aut minor, quam quidam mediam uocant, aut minima.
or lesser which some middle call or least
Maxima est capitis deminutio, cum aliquis simul et 160
The-greatest is of-status the-loss when someone at-the-same-time both
ciuitatem et libertatem amittit; quae accidit incensis,
citizenship and freedom loses which happens to-the-unregistered
qui ex forma censuali uenire iubentur; quod ius p ***
who by the-form of-the-census to-be-sold are-ordered which law p(…) (lacuna)
ex lege *** qui contra eam legem in urbe Roma
by the-statute (lacuna) who against that statute in the-city Rome
domicilium habuerint; item feminae, quae ex senatusconsulto
domicile have-had likewise women who by the-decree-of-the-senate
Claudiano ancillae fiunt eorum dominorum, quibus inuitis
Claudian slave-women become of-those masters whom unwilling
et denuntiantibus cum seruis eorum coierint.
and giving-notice with slaves their they-have-united
Minor siue media est capitis deminutio, cum ciuitas 161
The-lesser or middle is of-status the-loss when citizenship
amittitur, libertas retinetur; quod accidit ei cui aqua
is-lost freedom is-retained which happens to-him to-whom from-water
et igni interdictum fuerit.
and fire interdicted it-has-been
Minima est capitis deminutio, cum et ciuitas et libertas 162
The-least is of-status the-loss when both citizenship and freedom
retinetur, sed status hominis commutatur; quod accidit in his
is-retained but the-status of-the-man is-changed which happens in those
qui adoptantur, item in his quae coemptionem faciunt,
who are-adopted likewise in those-women who a-purchase make

et in his qui mancipio dantur quique ex mancipatione
and in those who in-bondage are-given and-who from mancipation
manumittuntur; adeo quidem, ut quotiens quisque mancipetur
are-manumitted so-far indeed that as-often-as anyone is-mancipated
aut manumittatur, totiens capite deminuatur.
or is-manumitted so-often in-status he-is-diminished

163 Nec solum maioribus capitis deminutionibus ius agnationis
Nor only by-the-greater of-status losses the-right of-agnation
corrumpitur, sed etiam minima; et ideo si ex duobus
is-destroyed but also by-the-least and therefore if of two
liberis alterum pater emancipauerit, post obitum eius neuter
children one the-father has-emancipated after the-death his neither
alteri agnationis iure tutor esse poterit.
to-the-other of-agnation by-right tutor to-be will-be-able

164 Cum autem ad agnatos tutela pertineat, non simul ad
When however to the-agnates the-tutelage pertains not at-once to
omnes pertinet, sed ad eos tantum qui proximo gradu sunt.
all it-pertains but to those only who in-the-nearest degree are

164a *** urbe *** in urbe Roma *** itaque ut seru
(lacuna) the-city (lacuna) in the-city Rome (lacuna) and-so that slave
*** est *** sunt *** esse *** simile ***.
(lacuna) is (lacuna) are (lacuna) to-be (lacuna) like (lacuna)

Patrons and their children are statutory tutors of freedmen by interpretation of the Twelve Tables, and a father who frees a remancipated child likewise; one who frees a person mancipated to him is a fiduciary tutor. A statutory tutor may cede a woman's tutelage in court but not a ward's, and it returns to him if the cessionary dies or loses status.

Ex eadem lege XII tabularum libertarum et inpuberum 165
By the-same statute of-the-Twelve Tables of-freedwomen and of-under-age
libertorum tutela ad patronos liberosque eorum pertinet. quae
freedmen the-tutelage to the-patrons and-children their pertains which
et ipsa tutela legitima uocatur, non quia nominatim ea lege
also itself tutelage statutory is-called not because by-name in-that statute
de hac tutela cauetur, sed quia proinde accepta est per
about this tutelage it-is-provided but because just-so accepted it-is through
interpretationem, atque si uerbis legis introducta esset.
interpretation as if by-the-words of-the-statute introduced it-had-been
eo enim ipso, quod hereditates libertorum libertarumque,
by-that for very-thing that the-inheritances of-freedmen and-freedwomen
si intestati decessissent, iusserat lex ad patronos liberosue
if intestate they-had-died had-ordered the-statute to the-patrons or-children
eorum pertinere, crediderunt ueteres uoluisse legem
their to-pertain believed the-ancients to-have-wished the-statute
etiam tutelas ad eos pertinere, quia et agnatos, quos ad
also the-tutelages to them to-pertain because also the-agnates whom to
hereditatem uocauit, eosdem et tutores esse iusserat.
the-inheritance it-called the-same also tutors to-be it-had-ordered
Exemplo patronorum receptae sunt et aliae tutelae, quae et 166
On-the-model of-the-patrons accepted have-been also other tutelages which also
ipsae legitimae uocantur. nam si quis filium nepotemue ex
themselves statutory are-called for if someone a-son or-grandson by

filio et ceteros deinceps inpuberes, aut filiam neptemue ex
a-son and the-rest in-turn under-age or a-daughter or-granddaughter by
filio et ceteras deinceps tam puberes quam inpuberes alteri
a-son and the-rest in-turn as adult as under-age to-another
ea lege mancipio dederit, ut sibi remanciparentur,
on-this condition in-bondage has-given that to-him they-be-remancipated
remancipatosque manumiserit, legitimus eorum tutor erit.
and-the-remancipated has-manumitted the-statutory their tutor he-will-be

166a Sunt et aliae tutelae, quae fiduciariae uocantur, id est quae
There-are also other tutelages which fiduciary are-called that is which
ideo nobis conpetunt, quia liberum caput mancipatum
on-this-account to-us belong because a-free person mancipated
nobis uel a parente uel a coemptionatore manumiserimus.
to-us either by a-parent or by a-purchaser we-have-manumitted

167 Sed Latinarum et Latinorum inpuberum tutela non omni
But of-Latin-women and of-Latins under-age the-tutelage not in-every
modo ad manumissores eorum pertinet, sed ad eos quorum
way to the-manumitters their pertains but to those whose
ante manumissionem ex iure Quiritium fuerunt; unde si
before manumission by the-law of-the-Quirites they-were whence if
ancilla ex iure Quiritium tua sit, in bonis mea, a me
a-slave-woman by the-law of-the-Quirites yours is among the-goods mine by me
quidem solo, non etiam a te manumissa, Latina fieri potest,
indeed alone not also by you manumitted a-Latin become can
et bona eius ad me pertinent, sed eius tutela tibi conpetit;
and the-goods her to me pertain but her tutelage to-you belongs
nam ita lege Iunia cauetur; itaque si ab eo, cuius et
for so by-the-statute Junian it-is-provided and-so if by him whose both
in bonis et ex iure Quiritium ancilla fuerit, facta
among the-goods and by the-law of-the-Quirites the-slave-woman was made
sit Latina, ad eundem et bona et tutela pertinent.
she-has-been a-Latin to the-same-man both the-goods and the-tutelage pertain

Agnatis et patronis et liberorum capitum manumissoribus 168
To-agnates and to-patrons and of-free persons to-manumitters
permissum est feminarum tutelam alii in iure cedere;
permitted it-is of-women the-tutelage to-another in court to-cede
pupillorum autem tutelam non est permissum cedere, quia
of-wards however the-tutelage not is permitted to-cede because
non uidetur onerosa, cum tempore pubertatis finiatur.
not it-seems burdensome since at-the-time of-puberty it-is-ended
Is autem, cui ceditur tutela, cessicius tutor uocatur; 169
He however to-whom is-ceded the-tutelage cessionary tutor is-called
quo mortuo aut capite deminuto reuertitur ad eum tutorem 170
who dead or in-status diminished returns to that tutor
tutela qui cessit; ipse quoque qui cessit si mortuus
the-tutelage who ceded himself also who ceded if dead
aut capite deminutus sit, a cessicio tutela discedit et
or in-status diminished he-is from the-cessionary the-tutelage departs and
reuertitur ad eum, qui post eum qui cesserat secundum
returns to him who after him who had-ceded the-second
gradum in ea tutela habuerit.
degree in that tutelage had
sed quantum ad agnatos pertinet, nihil hoc tempore de 171
but as-far-as to agnates pertains nothing at-this time about
cessicia tutela quaeritur, cum agnatorum tutelae in feminis
cessionary tutelage is-asked since of-agnates the-tutelages over women
lege Claudia sublatae sint.
by-the-statute Claudian abolished have-been
sed fiduciarios quoque quidam putauerunt cedendae tutelae 172
but fiduciary-tutors also some have-thought of-ceding the-tutelage
ius non habere, cum ipsi se oneri subiecerint.
the-right not to-have since they-themselves themselves to-the-burden have-subjected
quod etsi placeat, in parente tamen, qui filiam neptemue
which even-if it-be-approved in a-parent however who a-daughter or-granddaughter

aut proneptem alteri ea lege mancipio dedit, ut
or great-granddaughter to-another on-this condition in-bondage gave that
sibi remanciparetur, remancipatamque manumisit, idem dici
to-him she-be-remancipated and-the-remancipated manumitted the-same be-said
non debet, cum is et legitimus tutor habeatur, et non
not ought since he both statutory tutor is-held and not
minus huic quam patronis honor praestandus sit.
less to-him than to-patrons honor to-be-shown is

XVIII · TUTORS REQUESTED FOR ABSENCE

A woman may ask a new tutor in place of an absent one, though not a freedwoman in place of her absent patron, save to enter an inheritance; a woman in the statutory tutelage of a ward, a madman, or a mute may ask one to set up a dowry. A suspect or excused tutor is replaced, at Rome by the praetor and in the provinces by the governor, and formerly a praetorian tutor was given when a tutor and his woman or ward had to go to law.

173 Praeterea senatusconsulto mulieribus permissum est in
Besides by-a-decree-of-the-senate to-women permitted it-is in
absentis tutoris locum alium petere; quo petito prior
of-an-absent tutor the-place another to-request which requested the-former
desinit; nec interest, quam longe absit is tutor.
ceases nor does-it-matter how far is-absent that tutor
174 Sed excipitur, ne in absentis patroni locum liceat
But it-is-excepted that-not in of-an-absent patron the-place be-allowed
libertae tutorem petere.
for-a-freedwoman a-tutor to-request
175 Patroni autem loco habemus etiam parentem, qui ex
Of-a-patron however in-the-place we-hold also a-parent who from
eo, quod ipse sibi remancipatam filiam neptemue aut
this that himself to-himself remancipated a-daughter or-granddaughter or

proneptem manumisit, legitimam tutelam nactus est. sed
great-granddaughter manumitted the-statutory tutelage acquired has but
huius quidem liberi fiduciarii tutoris loco numerantur;
his indeed children of-a-fiduciary tutor in-the-place are-counted
patroni autem liberi eandem tutelam adipiscuntur, quam
of-a-patron however the-children the-same tutelage acquire as
et pater eorum habuit.
also the-father their had

Sed aliquando etiam in patroni absentis locum permittitur 176
But sometimes even in of-a-patron absent the-place it-is-permitted
tutorem petere, ueluti ad hereditatem adeundam.
a-tutor to-request for-example for an-inheritance to-be-entered

Idem senatus censuit et in persona pupilli patroni filii. 177
The-same the-senate decreed also in the-person of-a-ward a-patron's son

Nam et lege Iulia de maritandis ordinibus ei, quae 178
For also by-the-statute Julian on to-be-married the-orders to-her who
in legitima tutela pupilli sit, permittitur dotis constituendae
in the-statutory tutelage of-a-ward is it-is-permitted a-dowry of-establishing
gratia a praetore urbano tutorem petere.
for-the-sake from the-praetor urban a-tutor to-request

Sane patroni filius etiamsi inpubes sit, libertae efficietur 179
Certainly a-patron's son even-if under-age he-is of-the-freedwoman will-be-made
tutor, quamquam in nulla re auctor fieri potest, cum
tutor although in no matter authorizer become he-can since
ipsi nihil permissum sit sine tutoris auctoritate agere.
to-himself nothing permitted is without of-a-tutor the-authority to-do

Item si qua in tutela legitima furiosi aut muti 180
Likewise if any-woman in the-tutelage statutory of-a-madman or of-a-mute
sit, permittitur ei senatusconsulto dotis constituendae
is it-is-permitted to-her by-the-decree-of-the-senate a-dowry of-establishing
gratia tutorem petere.
for-the-sake a-tutor to-request

181 Quibus casibus saluam manere tutelam patrono patronique
In-which cases intact to-remain the-tutelage for-the-patron and-for-the-patron's
filio manifestum est.
son clear it-is

182 Praeterea senatus censuit, ut si tutor pupilli pupillaeue
Besides the-senate decreed that if the-tutor of-a-ward or-of-a-female-ward
suspectus a tutela remotus sit, siue ex iusta causa
as-suspect from the-tutelage removed has-been or for a-just cause
fuerit excusatus, in locum eius alius tutor detur, quo facto
has-been excused into the-place his another tutor be-given which done
prior tutor amittit tutelam.
the-former tutor loses the-tutelage

183 Haec omnia similiter et Romae et in prouinciis
These-things all similarly both at-Rome and in the-provinces
obseruantur, scilicet ut Romae a praetore et in prouinciis
are-observed namely that at-Rome from the-praetor and in the-provinces
a praeside prouinciae tutor peti debeat.
from the-governor of-the-province a-tutor be-requested must

184 Olim cum legis actiones in usu erant, etiam ex illa causa
Formerly when of-the-law the-actions in use were also for that cause
tutor dabatur, si inter tutorem et mulierem pupillumue
a-tutor was-given if between the-tutor and a-woman or-ward
lege agendum erat; nam quia ipse tutor in re
by-action-of-law to-be-proceeded it-was for because himself the-tutor in matter
sua auctor esse non poterat, alius dabatur, quo auctore
his-own authorizer to-be not could another was-given by-whom authorizing
legis actio perageretur; qui dicebatur praetorius
of-the-law the-action might-be-carried-through who was-called praetorian
tutor, quia a praetore urbano dabatur. sed post sublatas
tutor because by the-praetor urban he-was-given but after abolished
legis actiones quidam putant hanc speciem dandi tutoris
of-the-law the-actions some think this kind of-giving a-tutor

in usu esse desiisse, aliis autem placet adhuc in usu
in use to-be to-have-ceased to-others however it-seems still in use
esse, si legitimo iudicio agatur.
to-be if in-a-statutory proceeding one-sues

XIX · THE ATILIAN TUTOR

Anyone with no tutor receives one at Rome under the Atilian statute from the urban praetor and the tribunes, and in the provinces under the Julian and Titian statute, also while a testamentary tutor's condition is pending and when a tutor has been captured.

Si cui nullus omnino tutor sit, ei datur in urbe 185
If to-anyone no at-all tutor there-is to-him is-given in the-city
Roma ex lege Atilia a praetore urbano et maiore parte
Rome by the-statute Atilian by the-praetor urban and the-greater part
tribunorum plebis, qui Atilianus tutor uocatur; in prouinciis
of-the-tribunes of-the-commons who Atilian tutor is-called in the-provinces
uero a praesidibus prouinciarum ex lege Iulia et Titia.
however by the-governors of-the-provinces by the-statute Julian and Titian
Et ideo si cui testamento tutor sub condicione aut 186
And therefore if to-anyone by-will a-tutor under a-condition or
ex die certo datus sit, quamdiu condicio aut dies
from a-day fixed given has-been as-long-as the-condition or the-day
pendet, tutor dari potest; item si pure datus fuerit,
is-pending a-tutor be-given can likewise if unconditionally given he-has-been
quamdiu nemo heres existat, tamdiu ex his legibus tutor
as-long-as no-one heir appears so-long by these statutes a-tutor
petendus est; qui desinit tutor esse, posteaquam aliquis
to-be-requested is who ceases tutor to-be after-that someone
ex testamento tutor esse coeperit.
from the-will tutor to-be has-begun

187 Ab hostibus quoque tutore capto ex his legibus tutor
By the-enemy also the-tutor captured by these statutes a-tutor
peti debet; qui desinit tutor esse, si is qui captus est
be-requested must who ceases tutor to-be if he who captured was
in ciuitatem reuersus fuerit: nam reuersus recipit tutelam
into the-state returned has for returned he-recovers the-tutelage
iure postliminii.
by-the-right of-postliminium

XX · WOMEN'S TUTELAGE QUESTIONED

Jurists count the classes of tutelage differently. Children's tutelage is natural, but that of grown women rests on no sound reason, since they manage their own affairs; the patron's and parent's has force because it protects their inheritance. Women are freed by three or four children, and males at puberty, judged by body or, by the other school, at fourteen.

188 Ex his apparet, quot sint species tutelarum. si
From these-things it-appears how-many are the-kinds of-tutelages if
uero quaeramus, in quot genera hae species diducantur,
however we-ask into how-many classes these kinds are-divided
longa erit disputatio; nam de ea re ualde ueteres
long will-be the-discussion for about that matter greatly the-ancients
dubitauerunt, nosque diligentius hunc tractatum executi
doubted and-we more-carefully this treatise carried-out
sumus et in edicti interpretatione et in his libris quos
have both in the-edict's interpretation and in those books which
ex Q. Mucio fecimus. hoc tantisper sufficit admonuisse,
from Quintus Mucius we-made this for-the-present suffices to-have-pointed-out
quod quidam quinque genera esse dixerunt, ut Q. Mucius;
that some five classes to-be said as Quintus Mucius

alii tria, ut Ser. Sulpicius; alii duo, ut Labeo; alii tot
others three as Servius Sulpicius others two as Labeo others as-many
genera esse crediderunt, quot etiam species essent.
classes to-be believed as-many-as also kinds there-were
Sed inpuberes quidem in tutela esse omnium ciuitatium 189
But the-under-age indeed in tutelage to-be of-all states
iure contingit, quia id naturali rationi conueniens est, ut
by-the-law it-happens because this to-natural reason consistent is that
is qui perfectae aetatis non sit, alterius tutela regatur. nec
he who of-full age not is by-another's tutelage be-ruled nor
fere ulla ciuitas est, in qua non licet parentibus liberis
hardly any state is in which not it-is-allowed for-parents for-children
suis inpuberibus testamento tutorem dare; quamuis, ut
their-own under-age by-will a-tutor to-give although as
supra diximus, soli ciues Romani uideantur liberos suos
above we-said alone citizens Roman seem children their-own
in potestate habere.
in power to-have
feminas uero perfectae aetatis in tutela esse fere nulla 190
women however of-full age in tutelage to-be hardly any
pretiosa ratio suasisse uidetur; nam quae uulgo
valid reason to-have-persuaded seems for (the-reason)-which commonly
creditur, quia leuitate animi plerumque decipiuntur et
is-believed that by-lightness of-mind generally they-are-deceived and
aequum erat eas tutorum auctoritate regi, magis speciosa
fair it-was them by-the-tutors' authority to-be-ruled more specious
uidetur quam uera; mulieres enim, quae perfectae aetatis
it-seems than true women for who of-full age
sunt, ipsae sibi negotia tractant et in quibusdam
are themselves for-themselves their-business conduct and in certain

causis dicis gratia tutor interponit auctoritatem suam,
cases for-form's sake the-tutor interposes authority his
saepe etiam inuitus auctor fieri a praetore cogitur.
often even unwilling authorizer to-become by the-praetor he-is-compelled
191 unde cum tutore nullum ex tutela iudicium mulieri datur;
whence with the-tutor no from tutelage action to-a-woman is-given
at ubi pupillorum pupillarumue negotia tutores tractant,
but when of-wards or-of-female-wards the-business tutors conduct
ei post pubertatem tutelae iudicio rationem reddunt.
to-him after puberty of-tutelage in-the-action account they-render
192 Sane patronorum et parentum legitimae tutelae uim aliquam
Certainly of-patrons and of-parents the-statutory tutelages force some
habere intelleguntur eo, quod hi neque ad testamentum
to-have are-understood in-that that these neither for a-will
faciendum neque ad res mancipi alienandas neque ad
being-made nor for things mancipable being-alienated nor for
obligationes suscipiendas auctores fieri coguntur, praeterquam
obligations being-undertaken authorizers to-become are-compelled except
si magna causa alienandarum rerum mancipi obligationisque
if a-great cause of-alienating things mancipable and-of-an-obligation
suscipiendae interueniat; eaque omnia ipsorum causa
being-undertaken intervenes and-these all for-their-own sake
constituta sunt, ut, quia ad eos intestatarum mortuarum
established have-been that because to them of-intestate dead-women
hereditates pertinent, neque per testamentum excludantur ab
the-inheritances pertain neither by will they-be-excluded from
hereditate neque alienatis pretiosioribus rebus susceptoque
the-inheritance nor alienated the-more-valuable things and-undertaken
aere alieno minus locuples ad eos hereditas perueniat.
money another's less rich to them the-inheritance come

Apud peregrinos non similiter ut apud nos in tutela sunt 193
Among foreigners not similarly as among us in tutelage are
feminae; sed tamen plerumque quasi in tutela sunt; ut
women but yet generally as-if in tutelage they-are as
ecce lex Bithynorum, si quid mulier contrahat,
for-example the-statute of-the-Bithynians if anything a-woman contracts
maritum auctorem esse iubet aut filium eius puberem.
the-husband authorizer to-be orders or son her adult
Tutela autem liberantur ingenuae quidem trium liberorum 194
From-tutelage however are-freed freeborn-women indeed of-three children
iure, libertinae uero quattuor, si in patroni liberorumue
by-the-right freedwomen however four if in of-the-patron or-of-children
eius legitima tutela sint; nam ceterae quae alterius generis
his statutory tutelage they-are for the-others who of-another kind
tutores habent, trium liberorum iure tutela liberantur.
tutors have of-three children by-the-right from-tutelage are-freed
Potest autem pluribus modis libertina alterius generis tutorem 195
Can however in-several ways a-freedwoman of-another kind a-tutor
habere, ueluti si a femina manumissa sit; tunc enim
have for-example if by a-woman manumitted she-has-been then for
e lege Atilia petere debet tutorem, uel in prouinciis e
by the-statute Atilian request she-must a-tutor or in the-provinces by
lege Iulia et Titia; nam in patronae tutela esse non potest.
the-statute Julian and Titian for in the-patroness' tutelage to-be not she-can
Item si a masculo manumissa fuerit et auctore eo 195a
Likewise if by a-male manumitted she-has-been and on-the-authority-of him
coemptionem fecerit, deinde remancipata et manumissa sit,
a-purchase has-made then remancipated and manumitted she-has-been
patronum quidem habere tutorem desinit, incipit autem habere
the-patron indeed to-have as-tutor she-ceases she-begins however to-have
eum tutorem a quo manumissa est, qui fiduciarius dicitur.
him as-tutor by whom manumitted she-has-been who fiduciary is-called

195b Item si patronus eiusue filius in adoptionem se dedit,
Likewise if the-patron or-his son into adoption himself has-given
debet liberta e lege Atilia uel Iulia et Titia tutorem
must the-freedwoman by the-statute Atilian or Julian and Titian a-tutor
petere.
request

195c Similiter ex isdem legibus petere debet tutorem liberta,
Similarly by the-same statutes request must a-tutor the-freedwoman
si patronus decesserit nec ullum uirilis sexus liberorum in
if the-patron has-died nor any of-male sex of-children in
familia reliquerit.
the-family has-left

196 Masculi autem cum puberes esse coeperint, tutela
Males however when adult to-be they-have-begun from-tutelage
liberantur. puberem autem Sabinus quidem et Cassius ceterique
are-freed an-adult however Sabinus indeed and Cassius and-the-other
nostri praeceptores eum esse putant, qui habitu corporis
our teachers him to-be think who by-the-condition of-body
pubertatem ostendit, id est eum qui generare potest; sed in his
puberty shows that is him who to-beget can but in those
qui pubescere non possunt, quales sunt spadones, eam aetatem
who reach-puberty not can such-as are eunuchs that age
esse spectandam, cuius aetatis puberes fiunt; sed diuersae
to-be looked-to at-which age adults become but of-the-opposing
scholae auctores annis putant pubertatem aestimandam, id est
school the-authorities by-years think puberty to-be-judged that is
eum puberem esse existimant qui XIIII annos expleuit. ***
him adult to-be they-consider who fourteen years has-completed (lacuna)

XXI · CURATORS AND SECURITY

After a long gap, the text speaks of curators given until a young man reaches an age at which he can manage his affairs, as among foreign peoples, and in the provinces by the governors. The praetor makes tutors and curators give security that a ward's affairs will not be wasted, except testamentary tutors and curators chosen by magistrates, who are trusted.

∗∗∗ aetatem peruenerit, in qua res suas tueri 197
(lacuna) age he-has-reached in which affairs his-own look-after
possit; sicuti apud peregrinas gentes custodiri superius
he-can as among foreign nations to-be-observed above
indicauimus.
we-pointed-out

Ex isdem causis et in prouinciis a praesidibus earum 198
From the-same causes also in the-provinces by the-governors of-them
curatores dari solent.
curators to-be-given are-wont

Ne tamen et pupillorum et eorum qui in curatione 199
That-not however both of-wards and of-those who in curatorship
sunt negotia a tutoribus curatoribusque consumantur aut
are the-business by tutors and-curators be-consumed or
deminuantur, curat praetor, ut et tutores et curatores
be-diminished takes-care the-praetor that both tutors and curators
eo nomine satisdent.
on-that account give-security

sed hoc non est perpetuum; nam et tutores testamento 200
but this not is perpetual for both tutors by-will
dati satisdare non coguntur, quia fides eorum et
given to-give-security not are-compelled because the-good-faith their and
diligentia ab ipso testatore probata est; et curatores, ad
diligence by himself the-testator approved has-been and curators to

quos non e lege curatio pertinet, sed qui uel a consule
whom not by statute the-curatorship pertains but who either by the-consul
uel a praetore uel a praeside prouinciae dantur, plerumque
or by the-praetor or by the-governor of-the-province are-given generally
non coguntur satisdare, scilicet quia satis honesti electi
not are-compelled to-give-security of-course because sufficiently honorable chosen
sunt.
they-are

BOOK II

I · DIVISIONS OF THINGS

Things are of divine right, sacred, religious, and sanctioned, which belong to no one, or of human right, public or private; provincial soil is not properly sacred or religious but treated so. They are corporeal or incorporeal, like an inheritance, a usufruct, obligations, and servitudes; and mancipable, like buildings on Italian soil, draft animals, from birth or once broken as the schools differ, and rustic servitudes, or not, like provincial estates, urban servitudes, wild beasts, and most incorporeal things.

Superiore commentario de iure personarum exposuimus; 1
In-the-former commentary about the-law of-persons we-set-out
modo uideamus de rebus; quae uel in nostro patrimonio
now let-us-see about things which either in our patrimony
sunt uel extra nostrum patrimonium habentur.
are or outside our patrimony are-held
Summa itaque rerum diuisio in duos articulos diducitur: 2
The-chief therefore of-things division into two heads is-drawn
nam aliae sunt diuini iuris, aliae humani.
for some are of-divine right others of-human
Diuini iuris sunt ueluti res sacrae et religiosae. 3
Of-divine right are for-example things sacred and religious
Sacrae sunt quae diis superis consecratae sunt; 4
Sacred are (those)-which to-the-gods above consecrated are
religiosae quae diis Manibus relictae sunt.
religious (those)-which to-the-gods Manes left are

5 Sed sacrum quidem hoc solum existimatur quod ex auctoritate
But sacred indeed this alone is-considered which by the-authority
populi Romani consecratum est, ueluti lege de ea
of-the-people Roman consecrated has-been for-example a-statute about that
re lata aut senatusconsulto facto.
matter carried or a-decree-of-the-senate made

6 religiosum uero nostra uoluntate facimus mortuum inferentes
religious however by-our-own will we-make a-dead-man carrying
in locum nostrum, si modo eius mortui funus ad nos
into a-place our-own if only of-that dead-man the-funeral to us
pertineat.
pertains

7 sed in prouinciali solo placet plerisque solum religiosum
but in provincial soil it-is-approved by-most the-soil religious
non fieri, quia in eo solo dominium populi Romani
not to-become because in that soil the-ownership of-the-people Roman
est uel Caesaris, nos autem possessionem tantum uel
is or of-Caesar we however possession only or
usumfructum habere uidemur; utique tamen etiamsi non
usufruct to-have are-held in-any-case however even-if not
sit religiosum, pro religioso habetur.
it-is religious as religious it-is-held

7a item quod in prouinciis non ex auctoritate populi Romani
likewise what in the-provinces not by the-authority of-the-people Roman
consecratum est, proprie sacrum non est, tamen pro sacro
consecrated has-been properly sacred not is yet as sacred
habetur.
it-is-held

8 Sanctae quoque res, uelut muri et portae, quodammodo
Sanctioned also things such-as walls and gates in-a-certain-way
diuini iuris sunt.
of-divine right are

Quod autem diuini iuris est, id nullius in bonis est; id 9
What however of-divine right is that of-no-one among the-goods is that
uero, quod humani iuris est, plerumque alicuius in bonis est:
however which of-human right is generally of-someone among the-goods is
potest autem et nullius in bonis esse; nam res hereditariae,
it-can however also of-no-one among the-goods be for things of-an-inheritance
antequam aliquis heres existat, nullius in bonis sunt.
before someone heir appears of-no-one among the-goods are
∗∗∗e domino. 9b
(…)e from-the-master
Hae autem quae humani iuris sunt, aut publicae sunt aut 10
These however which of-human right are either public are or
priuatae.
private
Quae publicae sunt; nullius uidentur in bonis esse; 11
Those-which public are of-no-one are-held among the-goods to-be
ipsius enim uniuersitatis esse creduntur. priuatae sunt
of-the-very for of-the-community to-be they-are-believed private are
quae singulorum hominum sunt.
those-which of-individual men are
Quaedam praeterea res corporales sunt, quaedam incorporales. 12
Some besides things corporeal are some incorporeal
Corporales hae sunt quae tangi possunt, uelut fundus homo 13
Corporeal these are which be-touched can such-as land a-man
uestis aurum argentum et denique aliae res innumerabiles.
clothing gold silver and finally other things innumerable
Incorporales sunt quae tangi non possunt, qualia sunt ea 14
Incorporeal are which be-touched not can such-as are those
quae iure consistunt, sicut hereditas ususfructus obligationes
which in-law consist as an-inheritance a-usufruct obligations
quoquo modo contractae. nec ad rem pertinet, quod in
in-whatever way contracted nor to the-point does-it-pertain that in

hereditate res corporales continentur et fructus qui ex fundo
an-inheritance things corporeal are-contained and the-fruits which from land
percipiuntur corporales sunt, et quod ex aliqua obligatione
are-gathered corporeal are and what from some obligation
nobis debetur, id plerumque corporale est, ueluti fundus
to-us is-owed that generally corporeal is for-example land
homo pecunia; nam ipsum ius successionis et ipsum
a-man money for itself the-right of-succession and itself
ius utendi fruendi et ipsum ius obligationis incorporale
the-right of-using of-enjoying and itself the-right of-obligation incorporeal
est. eodem numero sunt iura praediorum urbanorum et
is in-the-same number are the-rights of-estates urban and
rusticorum. *** altius tollendi *** luminibus uicini
rustic (lacuna) higher of-raising (lacuna) the-lights of-a-neighbor
aed *** non extollendi, ne luminibus uicini
of-buildings (lacuna) not of-raising lest the-lights of-a-neighbor
officiatur. item fluminum et stilicidiorum *** ius, ut
be-obstructed likewise of-streams and of-eaves-drip (lacuna) the-right that
*** in aream *** ius aquae ducendae ***
(lacuna) into the-yard (lacuna) the-right of-water of-conducting (lacuna)
14a *** aut mancipi sunt aut nec mancipi. Mancipi sunt
(lacuna) either mancipable are or not mancipable Mancipable are
*** item aedes in Italico solo *** seruitutes praediorum
(lacuna) likewise buildings on Italian soil (lacuna) servitudes of-estates
urbanorum nec mancipi sunt.
urban not mancipable are
15 Item stipendiaria praedia et tributaria nec mancipi sunt.
Likewise stipendiary estates and tributary not mancipable are
sed quod diximus *** mancipi esse *** statim ut nata
but what we-said (lacuna) mancipable to-be (lacuna) at-once when born
sunt mancipi esse putant; Nerua uero et Proculus et ceteri
they-are mancipable to-be they-think Nerva however and Proculus and the-other

diuersae scholae auctores non aliter ea mancipi esse
of-the-opposing school the-authorities not otherwise them mancipable to-be
putant, quam si domita sunt; et si propter nimiam feritatem
think than if broken they-are and if on-account-of excessive wildness
domari non possunt, tunc uideri mancipi esse incipere, cum
be-broken not they-can then to-seem mancipable to-be to-begin when
ad eam aetatem peruenerint, qua domari solent.
to that age they-have-come at-which to-be-broken they-are-wont

Item ferae bestiae nec mancipi sunt uelut ursi leones, item ea 16
Likewise wild beasts not mancipable are such-as bears lions likewise those
animalia quae fere bestiarum numero sunt, ueluti elephanti
animals which nearly of-beasts in-the-number are for-example elephants
et cameli; et ideo ad rem non pertinet, quod haec
and camels and therefore to the-point not it-pertains that these
animalia etiam collo dorsoue domari solent; nam ne nomen
animals also by-neck or-back to-be-broken are-wont for not the-name
quidem eorum animalium illo tempore notum fuit, quo
even of-those animals at-that time known was at-which
constituebatur quasdam res mancipi esse, quasdam nec mancipi.
it-was-established some things mancipable to-be others not mancipable

Item fere omnia quae incorporalia sunt nec mancipi sunt, 17
Likewise nearly all-things which incorporeal are not mancipable are
exceptis seruitutibus praediorum rusticorum; nam eas mancipi
excepting the-servitudes of-estates rustic for them mancipable
esse constat, quamuis sint ex numero rerum incorporalium.
to-be it-is-agreed although they-are from the-number of-things incorporeal

Things not mancipable pass by delivery; mancipable things need mancipation or cession in court, where the claimant asserts ownership before the praetor and the owner is silent. Provincial land, stipendiary or tributary, passes by delivery. Mancipation is preferred, since it can be done among friends.

18 Magna autem differentia est inter mancipi res et nec
Great however a-difference is between mancipable things and not
mancipi.
mancipable

19 Nam res nec mancipi ipsa traditione pleno iure alterius
For things not mancipable itself by-delivery in-full right another's
fiunt, si modo corporales sunt et ob id recipiunt
become if only corporeal they-are and on-account-of this admit
traditionem.
delivery

20 Itaque si tibi uestem uel aurum uel argentum tradidero
And-so if to-you clothing or gold or silver I-shall-have-delivered
siue ex uenditionis causa siue ex donationis siue quauis
whether from of-sale a-cause or from of-gift or any
alia ex causa, statim tua fit ea res, si modo ego eius
other from cause at-once yours becomes that thing if only I its
dominus sim.
owner am

21 In eadem causa sunt prouincialia praedia, quorum alia
In the-same position are provincial estates of-which some
stipendiaria alia tributaria uocamus. stipendiaria sunt ea,
stipendiary others tributary we-call stipendiary are those
quae in his prouinciis sunt, quae propriae populi Romani
which in those provinces are which the-property of-the-people Roman

esse intelleguntur; tributaria sunt ea, quae in his prouinciis
to-be are-understood tributary are those which in those provinces
sunt, quae propriae Caesaris esse creduntur.
are which the-property of-Caesar to-be are-believed
Mancipi uero res sunt, quae per mancipationem ad 22
Mancipable however things are which through mancipation to
alium transferuntur; unde etiam mancipi res sunt dictae.
another are-transferred whence also mancipable things they-are called
quod autem ualet mancipatio, idem ualet et in iure cessio.
what however avails mancipation the-same avails also in court cession
Et mancipatio quidem quemadmodum fiat, superiore 23
And mancipation indeed how it-is-done in-the-former
commentario tradidimus.
commentary we-have-set-out
In iure cessio autem hoc modo fit: apud magistratum 24
In court cession however in-this way is-done before a-magistrate
populi Romani, ueluti praetorem, is cui res in
of-the-people Roman for-example the-praetor he to-whom the-thing in
iure ceditur rem tenens ita dicit 'hunc ego hominem
court is-ceded the-thing holding thus says this I man
ex iure Quiritium meum esse aio'; deinde postquam
by the-law of-the-Quirites mine to-be declare then after
hic uindicauerit, praetor interrogat eum qui cedit, an
this-one has-claimed the-praetor asks him who cedes whether
contra uindicet; quo negante aut tacente tunc ei qui
in-turn he-claims who denying or keeping-silent then to-him who
uindicauerit, eam rem addicit; idque legis actio uocatur.
has-claimed that thing he-adjudges and-this of-the-law an-action is-called
hoc fieri potest etiam in prouinciis apud praesides earum.
this be-done can even in the-provinces before the-governors of-them

25 Plerumque tamen et fere semper mancipationibus utimur.
Generally however and almost always mancipations we-use
quod enim ipsi per nos praesentibus amicis agere
what for ourselves through ourselves in-the-presence-of friends do
possumus, hoc non est necesse cum maiore difficultate apud
we-can this not is necessary with greater difficulty before
praetorem aut apud praesidem prouinciae agere.
the-praetor or before the-governor of-the-province to-do

26 Quodsi neque mancipata neque in iure cessa sit res
But-if neither mancipated nor in court ceded has-been a-thing
mancipi ***plena possessio concessa *** ex formula
mancipable (…)full possession granted (lacuna) by the-formula
qua hi qu *** fructus na ***
by-which those who (lacuna) the-fruits na(…) (lacuna)

27 Item adhuc i *** non fuissent *** s *** est
Likewise still i(…) (lacuna) not had-been (lacuna) s(…) (lacuna) is
quo nomine *** ere uel *** praedium *** dem
by-which name (lacuna) (…)ere or (lacuna) estate (lacuna) (…)dem
ulla libera ciuitas *** admonendi sumus *** esse,
any free state (lacuna) to-be-reminded we-are (lacuna) to-be
prouincialis soli nexum non e *** significationem solum
of-provincial soil a-binding not e(…) (lacuna) the-meaning the-soil
Italicum mancipi est, prouinciale nec mancipi est. aliter
Italian mancipable is provincial not mancipable is otherwise
enim ueteri lingua a *** mancipa ***
for in-the-old tongue a(…) (lacuna) mancipation (lacuna)

Incorporeal things are not delivered: urban servitudes pass by court cession, rustic ones also by mancipation, and a usufruct by cession or reserved in mancipation; in the provinces pacts and stipulations make them. A statutory heir ceding before entry makes the other heir; after it he stays heir and liable to creditors, the debts owed to the estate perish, and its things pass. A testamentary heir's cession before entry does nothing, and the schools differ on a necessary heir. Obligations pass only by novation.

Res incorporales traditionem non recipere manifestum est. 28
Things incorporeal delivery not to-admit clear is

Sed iura praediorum urbanorum in iure cedi tantum 29
But the-rights of-estates urban in court be-ceded only
possunt; rusticorum uero etiam mancipari possunt.
can of-rustic however also be-mancipated they-can

Ususfructus in iure cessionem tantum recipit. nam dominus 30
A-usufruct in court cession only admits for the-owner
proprietatis alii usumfructum in iure cedere potest, ut
of-the-property to-another a-usufruct in court cede can so-that
ille usumfructum habeat et ipse nudam proprietatem retineat.
he the-usufruct may-have and himself the-bare property may-retain
ipse usufructuarius in iure cedendo domino proprietatis
himself the-usufructuary in court by-ceding to-the-owner of-the-property
usumfructum efficit, ut a se discedat et conuertatur
the-usufruct brings-about that from him it-departs and is-merged
in proprietatem; alii uero in iure cedendo nihilo minus
in the-property to-another however in court ceding none the-less
ius suum retinet; creditur enim ea cessione nihil agi.
right his-own he-retains it-is-believed for by-that cession nothing to-be-done

31 Sed haec scilicet in Italicis praediis ita sunt, quia et
But these-things of-course in Italian estates so are because also
ipsa praedia mancipationem et in iure cessionem recipiunt.
themselves the-estates mancipation and in court cession admit
alioquin in prouincialibus praediis siue quis usumfructum
otherwise in provincial estates if anyone a-usufruct
siue ius eundi agendi aquamue ducendi uel altius tollendi
or a-right of-going of-driving or-water of-conducting or higher of-raising
aedes aut non tollendi, ne luminibus uicini officiatur,
the-buildings or of-not raising lest the-lights of-a-neighbor be-obstructed
ceteraque similia iura constituere uelit, pactionibus et
and-other similar rights establish wishes by-pacts and
stipulationibus id efficere potest, quia ne ipsa quidem
stipulations this bring-about he-can because not themselves even
praedia mancipationem aut in iure cessionem recipiunt.
the-estates mancipation or in court cession admit

32 Sed cum usufructus et hominum et ceterorum animalium
But since a-usufruct both of-men and of-other animals
constitui possit, intellegere debemus horum usumfructum
established can-be understand we-must of-them the-usufruct
etiam in prouinciis per in iure cessionem constitui posse.
even in the-provinces through in court cession be-established can

33 Quod autem diximus usumfructum in iure cessionem tantum
What however we-said a-usufruct in court cession only
recipere, non est temere dictum, quamuis etiam per
to-admit not is rashly said although also through
mancipationem constitui possit eo, quod in mancipanda
mancipation established it-can-be in-that that in mancipating
proprietate detrahi potest; non enim ipse usufructus
the-property be-deducted it-can not for itself the-usufruct

mancipatur, sed cum in mancipanda proprietate deducatur, eo
is-mancipated but since in mancipating the-property it-is-deducted thus
fit ut apud alium usufructus, apud alium proprietas sit.
it-comes-about that with one-man the-usufruct with another the-property is
Hereditas quoque in iure cessionem tantum recipit. 34
An-inheritance also in court cession only admits
nam si is, ad quem ab intestato legitimo iure pertinet 35
for if he to whom on intestacy by-statutory right pertains
hereditas, in iure eam alii ante aditionem cedat, id est
the-inheritance in court it to-another before entry cedes that is
antequam heres extiterit, proinde fit heres is cui in
before heir he-has-appeared just-so becomes heir he to-whom in
iure cesserit, ac si ipse per legem ad hereditatem uocatus
court he-has-ceded as if himself through the-statute to the-inheritance called
esset; post obligationem uero si cesserit, nihilo minus
he-had-been after the-obligation however if he-has-ceded none the-less
ipse heres permanet et ob id creditoribus tenebitur,
himself heir remains and on-account-of this to-the-creditors he-will-be-liable
debita uero pereunt eoque modo debitores hereditarii
the-debts however perish and-in-that way the-debtors of-the-inheritance
lucrum faciunt; corpora uero eius hereditatis proinde
gain make the-material-things however of-that inheritance just-so
transeunt ad eum cui cessa est hereditas, ac si ei
pass to him to-whom ceded is the-inheritance as if to-him
singula in iure cessa fuissent.
singly in court ceded they-had-been
Testamento autem scriptus heres ante aditam quidem 36
By-will however written an-heir before entered indeed
hereditatem in iure cedendo eam alii nihil agit; postea
the-inheritance in court by-ceding it to-another nothing does afterward
uero quam adierit si cedat, ea accidunt, quae
however that he-has-entered if he-cedes those-things happen which

proxime diximus de eo ad quem ab intestato legitimo
just we-said about him to whom on intestacy by-statutory
iure pertinet hereditas, si post obligationem in iure cedat.
right pertains the-inheritance if after the-obligation in court he-cedes
37 Idem et de necessariis heredibus diuersae scholae auctores
The-same also about necessary heirs of-the-opposing school the-authorities
existimant, quod nihil uidetur interesse, utrum aliquis adeundo
think that nothing seems to-matter whether someone by-entering
hereditatem fiat heres, an inuitus existat; quod quale sit,
on-the-inheritance becomes heir or unwilling appears which of-what-kind is
suo loco apparebit. sed nostri praeceptores putant nihil
in-its-own place will-appear but our teachers think nothing
agere necessarium heredem, cum in iure cedat hereditatem.
to-do a-necessary heir when in court he-cedes the-inheritance
38 Obligationes quoquo modo contractae nihil eorum recipiunt.
Obligations in-whatever way contracted none of-these admit
nam quod mihi ab aliquo debetur, id si uelim tibi
for what to-me by someone is-owed that if I-wish to-you
deberi, nullo eorum modo, quibus res corporales ad alium
to-be-owed in-none of-those ways by-which things corporeal to another
transferuntur, id efficere possum, sed opus est, ut iubente me
are-transferred this bring-about I-can but need is that ordering me
tu ab eo stipuleris; quae res efficit, ut a me liberetur
you from him should-stipulate which thing brings-about that from me he-is-freed
et incipiat tibi teneri; quae dicitur nouatio obligationis.
and begins to-you to-be-bound which is-called novation of-an-obligation
39 sine hac uero nouatione non poteris tuo nomine
without this however novation not you-will-be-able in-your-own name
agere, sed debes ex persona mea quasi cognitor aut
to-sue but you-must in the-person my as-if attorney or
procurator meus experiri.
agent my to-proceed

Romans split ownership: a thing delivered but not mancipated is in the receiver's goods and becomes his by usucapion, a year for movables, two for land. Good-faith possession from a non-owner ripens too, except for stolen or violently held things, provincial land, a woman's things in tutelage, free men, and sacred things. Since a seller of another's movable commits theft, movables rarely ripen unless passed without intent to steal; land, which cannot be stolen, ripens when vacant possession is taken without force.

Sequitur ut admoneamus apud peregrinos quidem unum 40
It-follows that we-point-out among foreigners indeed one
esse dominium; nam aut dominus quisque est, aut dominus
to-be ownership for either owner each-one is or owner
non intellegitur. quo iure etiam populus Romanus olim
not he-is-understood which law also the-people Roman formerly
utebatur: aut enim ex iure Quiritium unusquisque dominus
used either for by the-law of-the-Quirites each-one owner
erat, aut non intellegebatur dominus. sed postea diuisionem
was or not he-was-understood owner but afterward a-division
accepit dominium, ut alius possit esse ex iure Quiritium
admitted ownership so-that one-man can be by the-law of-the-Quirites
dominus, alius in bonis habere.
owner another among the-goods have
nam si tibi rem mancipi neque mancipauero neque in 41
for if to-you a-thing mancipable neither I-shall-have-mancipated nor in
iure cessero, sed tantum tradidero, in bonis quidem tuis
court ceded but only delivered among the-goods indeed yours
ea res efficitur, ex iure Quiritium uero mea permanebit,
that thing is-made by the-law of-the-Quirites however mine it-will-remain
donec tu eam possidendo usucapias; semel enim inpleta
until you it by-possessing usucapt once for completed

usucapione proinde pleno iure incipit, id est et in bonis
usucapion just-so in-full right it-begins that is both among the-goods
et ex iure Quiritium tua res esse, ac si ea mancipata
and by the-law of-the-Quirites your thing to-be as if it mancipated
uel in iure cessa esset.
or in court ceded had-been

42 Usucapio autem mobilium quidem rerum anno conpletur,
Usucapion however of-movable indeed things in-a-year is-completed
fundi uero et aedium biennio; et ita lege XII
of-land however and of-buildings in-two-years and so by-the-statute of-the-Twelve
tabularum cautum est.
Tables provided it-was

43 Ceterum etiam earum rerum usucapio nobis conpetit, quae
Moreover even of-those things usucapion to-us belongs which
non a domino nobis traditae fuerint, siue mancipi sint eae
not by the-owner to-us delivered have-been whether mancipable are those
res siue nec mancipi, si modo eas bona fide acceperimus,
things or not mancipable if only them in-good faith we-have-received
cum crederemus eum qui traderet dominum esse.
when we-believed him who delivered owner to-be

44 quod ideo receptum uidetur, ne rerum dominia
which on-this-account accepted it-seems lest of-things the-ownerships
diutius in incerto essent, cum sufficeret domino ad
too-long in uncertainty be since it-would-suffice for-the-owner for
inquirendam rem suam anni aut biennii spatium, quod
searching-out thing his-own of-a-year or of-two-years the-space which
tempus ad usucapionem possessori tributum est.
time for usucapion to-the-possessor allotted is

45 Sed aliquando etiamsi maxime quis bona fide alienam
But sometimes even-if in-the-highest-degree someone in-good faith another's
rem possideat, non tamen illi usucapio procedit, uelut
thing possesses not however for-him usucapion proceeds for-example

si quis rem furtiuam aut ui possessam possideat; nam
if someone a-thing stolen or by-force possessed possesses for
furtiuam lex XII tabularum usucapi prohibet,
stolen the-statute of-the-Twelve Tables to-be-usucapted forbids
ui possessam lex Iulia et Plautia.
by-force possessed the-statute Julian and Plautian
Item prouincialia praedia usucapionem non recipiunt. 46
Likewise provincial estates usucapion not admit
Item olim mulieris, quae in agnatorum tutela erat, 47
Likewise formerly of-a-woman who in of-agnates the-tutelage was
res mancipi usucapi non poterant, praeterquam si ab
the-things mancipable be-usucapted not could except if by
ipsa tutore auctore traditae essent; idque ita lege
herself the-tutor authorizing delivered they-had-been and-this so by-the-statute
XII tabularum cautum erat.
of-the-Twelve Tables provided it-was
Item liberos homines et res sacras et religiosas usucapi 48
Likewise free men and things sacred and religious be-usucapted
non posse manifestum est.
not can clear is
Quod ergo uulgo dicitur furtiuarum rerum et ui 49
What therefore commonly is-said of-stolen things and by-force
possessarum usucapionem per legem XII tabularum
possessed the-usucapion by the-statute of-the-Twelve Tables
prohibitam esse, non eo pertinet, ut ne ipse fur
forbidden to-be not to-this it-pertains that not himself the-thief
quiue per uim possidet usucapere possit (nam huic
or-who by force possesses usucapt can for to-this-one
alia ratione usucapio non conpetit, quia scilicet mala
for-another reason usucapion not belongs because of-course in-bad

fide possidet); sed nec ullus alius, quamquam ab eo bona
faith he-possesses but nor any other although from him in-good
fide emerit, usucapiendi ius habeat.
faith he-has-bought of-usucapting the-right should-have
50 Unde in rebus mobilibus non facile procedit, ut bonae
Whence in things movable not easily it-comes-about that to-a-good
fidei possessori usucapio conpetat, quia qui alienam rem
faith possessor usucapion should-belong because (he)-who another's thing
uendidit et tradidit, furtum committit; idemque accidit
has-sold and delivered theft commits and-the-same happens
etiam si ex alia causa tradatur. sed tamen hoc aliquando
also if from another cause it-is-delivered but however this sometimes
aliter se habet; nam si heres rem defuncto commodatam
otherwise itself has for if an-heir a-thing to-the-deceased lent
aut locatam uel apud eum depositam existimans eam esse
or hired or with him deposited thinking it to-be
hereditariam uendiderit aut donauerit, furtum non committit;
of-the-inheritance has-sold or given theft not he-commits
item si is, ad quem ancillae ususfructus pertinet,
likewise if he to whom of-a-slave-woman the-usufruct belongs
partum etiam suum esse credens uendiderit aut donauerit,
the-offspring also his-own to-be believing has-sold or given
furtum non committit; furtum enim sine adfectu furandi
theft not he-commits theft for without the-intent of-stealing
non committitur. aliis quoque modis accidere potest, ut
not is-committed in-other also ways happen it-can that
quis sine uitio furti rem alienam ad aliquem transferat
someone without the-taint of-theft a-thing another's to someone transfers
et efficiat, ut a possessore usucapiatur.
and brings-about that by-the possessor it-is-usucapted

Fundi quoque alieni potest aliquis sine ui possessionem 51
Of-land also another's can someone without force the-possession
nancisci, quae uel ex neglegentia domini uacet, uel quia
obtain which either from the-neglect of-the-owner is-vacant or because
dominus sine successore decesserit uel longo tempore
the-owner without a-successor has-died or for-a-long time
afuerit; quam si ad alium bona fide accipientem
has-been-absent which if to another in-good faith receiving
transtulerit, poterit usucapere possessor; et quamuis ipse,
he-has-transferred will-be-able to-usucapt the-possessor and although he-himself
qui uacantem possessionem nactus est, intellegat alienum
who the-vacant possession obtained has understands another's
esse fundum, tamen nihil hoc bonae fidei possessori ad
to-be the-land yet nothing this to-the-good faith possessor for
usucapionem nocet, cum inprobata sit eorum sententia, qui
usucapion harms since rejected is of-those the-opinion who
putauerint furtiuum fundum fieri posse.
thought stolen land become can

V · USUCAPION AS HEIR AND USURECEPTION

One may knowingly usucapt as heir the things of an inheritance not yet entered, within a year even land, though a decree under Hadrian lets the heir reclaim them. One who conveyed a thing in trust recovers it by a year's possession, usureception: always from a friend, from a creditor only if the debt is paid or the thing not hired back.

Rursus ex contrario accidit, ut qui sciat alienam rem 52
Again from the-contrary it-happens that (he)-who knows another's thing
se possidere, usucapiat, ueluti si rem hereditariam,
himself to-possess usucapts for-example if a-thing of-an-inheritance

cuius possessionem heres nondum nactus est, aliquis
of-which the-possession the-heir not-yet obtained has someone
possederit; nam ei concessum est usucapere, si modo ea
has-possessed for to-him granted it-is to-usucapt if only that
res est, quae recipit usucapionem; quae species possessionis
thing is which admits usucapion which kind of-possession
et usucapionis pro herede uocatur.
and of-usucapion as heir is-called

53 Et in tantum haec usucapio concessa est, ut et res
And to such-a-degree this usucapion granted is that even things
quae solo continentur, anno usucapiantur.
which by-the-soil are-held in-a-year are-usucapted

54 Quare autem hoc casu etiam soli rerum annua
Why however in-this case even of-the-soil of-things a-year's
constituta sit usucapio, illa ratio est, quod olim rerum
established has-been usucapion that the-reason is that formerly of-things
hereditariarum possessione uelut ipsae hereditates usucapi
of-the-inheritance by-possession as-if themselves the-inheritances to-be-usucapted
credebantur, scilicet anno. lex enim XII tabularum
were-believed namely in-a-year the-statute for of-the-Twelve Tables
soli quidem res biennio usucapi iussit, ceteras uero
of-the-soil indeed things in-two-years to-be-usucapted ordered the-other however
anno. ergo hereditas in ceteris rebus uidebatur esse,
in-a-year therefore an-inheritance among the-other things seemed to-be
quia soli non est, quia neque corporalis est. et quamuis
because of-the-soil not it-is because not-even corporeal it-is and although
postea creditum sit ipsas hereditates usucapi non posse,
afterward believed it-was themselves the-inheritances be-usucapted not can
tamen in omnibus rebus hereditariis, etiam quae solo
yet in all things of-the-inheritance even which by-the-soil
tenentur, annua usucapio remansit.
are-held a-year's usucapion has-remained

Quare autem omnino tam inproba possessio et usucapio 55
Why however at-all so dishonest possession and usucapion
concessa sit, illa ratio est, quod uoluerunt ueteres
granted has-been that the-reason is that wished the-ancients
maturius hereditates adiri, ut essent qui sacra
sooner inheritances to-be-entered so-that there-might-be (those)-who the-rites
facerent, quorum illis temporibus summa obseruatio fuit,
should-perform of-which in-those times the-highest observance was
et ut creditores haberent, a quo suum consequerentur.
and that the-creditors might-have from whom their-own they-might-obtain
Haec autem species possessionis et usucapionis etiam 56
This however kind of-possession and of-usucapion also
lucratiua uocatur; nam sciens quisque rem alienam lucri
lucrative is-called for knowingly each-one a-thing another's to-his-gain
facit.
makes
Sed hoc tempore iam non est lucratiua. nam ex auctoritate 57
But at-this time now not it-is lucrative for on the-authority
Hadriani senatusconsultum factum est, ut tales usucapiones
of-Hadrian a-decree-of-the-senate made was that such usucapions
reuocarentur. et ideo potest heres ab eo qui rem
should-be-revoked and therefore can the-heir from him who the-thing
usucepit hereditatem petendo proinde eam rem consequi,
usucapted the-inheritance by-claiming just-so that thing obtain
atque si usucapta non esset.
as if usucapted not it-had-been
necessario tamen herede extante nihil ipso iure pro herede 58
a-necessary however heir existing nothing by-itself law as heir
usucapi potest.
be-usucapted can

59 Adhuc etiam ex aliis causis sciens quisque rem alienam
Still also from other causes knowingly each-one a-thing another's
usucapit. nam qui rem alicui fiduciae causa mancipio
usucapts for (he)-who a-thing to-someone of-trust for-the-sake in-mancipation
dederit uel in iure cesserit, si eandem ipse possederit,
has-given or in court has-ceded if the-same he-himself has-possessed
potest usucapere, anno scilicet, etiam soli si sit. quae
he-can usucapt in-a-year of-course even of-the-soil if it-is which
species usucapionis dicitur usureceptio, quia id, quod
kind of-usucapion is-called usureception because that which
aliquando habuimus, recipimus per usucapionem.
once we-had we-recover through usucapion

60 Sed fiducia contrahitur aut cum creditore pignoris iure,
But a-trust is-contracted either with a-creditor of-a-pledge by-the-law
aut cum amico, quo tutius nostrae res apud eum sint;
or with a-friend that more-safely our things with him may-be
et siquidem cum amico contracta sit fiducia, sane omni
and if-indeed with a-friend contracted has-been the-trust certainly in-every
modo conpetit ususreceptio; si uero cum creditore, soluta
way belongs usureception if however with a-creditor paid
quidem pecunia omni modo conpetit, nondum uero soluta
indeed the-money in-every way it-belongs not-yet however paid
ita demum conpetit, si neque conduxerit eam rem a
thus only it-belongs if neither has-hired that thing from
creditore debitor, neque precario rogauerit, ut eam rem
the-creditor the-debtor nor by-sufferance has-asked that that thing
possidere liceret; quo casu lucratiua ususcapio conpetit.
to-possess be-allowed in-which case lucrative usucapion belongs

61 Item si rem obligatam sibi populus uendiderit eamque
Likewise if a-thing pledged to-itself the-people has-sold and-it
dominus possederit, concessa est ususreceptio; sed hoc casu
the-owner has-possessed granted is usureception but in-this case

praedium biennio usurecipitur. et hoc est quod uulgo
an-estate in-two-years is-usurecepted and this is what commonly
dicitur ex praediatura possessionem usurecipi; nam qui
is-said from praediatura possession to-be-usurecepted for (he)-who
mercatur a populo, praediator appellatur.
buys from the-people praediator is-called

VI · ACQUISITION BY NATURAL LAW

By natural law wild animals and spoils become ours by taking, while alluvion, an island, a building, and a plant fall to the land's owner. Writing yields to the parchment, a board to its picture, and the schools dispute the maker of a new thing. An owner sometimes cannot alienate, as a husband his dowry land, and a non-owner sometimes can, as a creditor.

Ergo ex his quae diximus apparet quaedam naturali 65
Therefore from these-things which we-have-said it-appears some-things by-natural
iure alienari, qualia sunt ea quae traditione alienantur;
law are-alienated such-as are those which by-delivery are-alienated
quaedam ciuili, nam mancipationis et in iure cessionis et
some by-civil for of-mancipation and in court of-cession and
usucapionis ius proprium est ciuium Romanorum.
of-usucapion the-right peculiar is of-citizens Roman
Nec tamen ea tantum, quae traditione nostra fiunt, 66
Nor however those-things only which by-delivery ours become
naturali nobis ratione adquiruntur, sed etiam *** occupando
by-natural for-us reason are-acquired but also (lacuna) by-occupying
ideo ***erimus, quia antea nullius essent; qualia sunt
therefore (…)we-shall-have because before of-no-one they-were such-as are
omnia quae terra mari caelo capiuntur.
all-things which on-land on-sea in-the-sky are-taken

67 Itaque si feram bestiam aut uolucrem aut piscem ∗∗∗
And-so if a-wild beast or a-bird or a-fish (lacuna)
captum ∗∗∗ eo usque nostrum esse intellegitur, donec nostra
taken (lacuna) so long ours to-be is-understood until by-our
custodia coerceatur; cum uero custodiam nostram euaserit
custody it-is-confined when however custody our it-has-escaped
et in naturalem libertatem se receperit, rursus occupantis
and into natural freedom itself has-taken-back again the-occupier's
fit, quia nostrum esse desinit; naturalem autem libertatem
it-becomes because ours to-be it-ceases natural however freedom
recipere uidetur, cum aut oculos nostros euaserit, aut licet
to-recover it-is-held when either eyes our it-has-escaped or although
in conspectu sit nostro, difficilis tamen eius persecutio sit.
in sight it-is our difficult however its pursuit is
68 In his autem animalibus, quae ex consuetudine abire et
In those however animals which from habit to-go-away and
redire solent, ueluti columbis et apibus, item ceruis, qui
to-return are-wont such-as pigeons and bees likewise deer which
in siluas ire et redire solent, talem habemus regulam
into the-woods to-go and to-return are-wont such we-have a-rule
traditam, ut si reuertendi animum habere desierint,
handed-down that if of-returning the-intention to-have they-have-ceased
etiam nostra esse desinant et fiant occupantium; reuertendi
also ours to-be they-cease and become the-occupiers' of-returning
autem animum uidentur desinere habere, cum reuertendi
however the-intention they-are-held to-cease to-have when of-returning
consuetudinem deseruerint.
the-habit they-have-abandoned
69 Ea quoque quae ex hostibus capiuntur naturali ratione
Those-things also which from the-enemy are-taken by-natural reason
nostra fiunt.
ours become

Sed et id, quod per adluuionem nobis adicitur, eodem iure 70
But also that which through alluvion to-us is-added by-the-same law
nostrum fit; per adluuionem autem id uidetur adici,
ours becomes through alluvion however that seems to-be-added
quod ita paulatim flumen agro nostro adicit, ut aestimare
which so gradually the-river to-land our adds that estimate
non possimus, quantum quoquo momento temporis adiciatur;
not we-can how-much at-each moment of-time is-added
hoc est quod uulgo dicitur per adluuionem id adici
this is what commonly is-said through alluvion that to-be-added
uideri, quod ita paulatim adicitur, ut oculos nostros fallat.
to-seem which so gradually is-added that eyes our it-deceives
Itaque si flumen partem aliquam ex tuo praedio resciderit 71
And-so if a-river part some from your estate has-torn-away
et ad meum praedium pertulerit, haec pars tua manet.
and to my estate has-carried this part yours remains
At si in medio flumine insula nata sit, haec eorum omnium 72
But if in the-middle-of the-river an-island arisen has this of-them all
communis est, qui ab utraque parte fluminis prope ripam praedia
common is who on either side of-the-river near the-bank estates
possident; si uero non sit in medio flumine, ad eos pertinet,
possess if however not it-is in the-middle-of the-river to them it-belongs
qui ab ea parte quae proxima est iuxta ripam praedia habent.
who on that side which nearest is along the-bank estates have
Praeterea id quod in solo nostro ab aliquo aedificatum 73
Besides that which on soil our by someone built
est, quamuis ille suo nomine aedificauerit, iure naturali
has-been although he in-his-own name has-built by-law natural
nostrum fit, quia superficies solo cedit.
ours becomes because the-building to-the-soil yields

74 Multoque magis id accidit et in planta, quam quis in solo
And-much more that happens also in a-plant which someone in soil
nostro posuerit, si modo radicibus terram conplexa fuerit.
our has-set if only with-its-roots the-earth embraced it-has

75 Idem contingit et in frumento, quod in solo nostro ab
The-same happens also in grain which in soil our by
aliquo satum fuerit.
someone sown has-been

76 Sed si ab eo petamus fundum uel aedificium et inpensas
But if from him we-claim the-land or the-building and the-expenses
in aedificium uel in seminaria uel in sementem factas ei
on the-building or on the-seedlings or on the-sowing made to-him
soluere nolimus, poterit nos per exceptionem doli
to-pay we-are-unwilling he-will-be-able us by the-defense of-fraud
mali repellere, utique si bonae fidei possessor fuerit.
bad to-repel in-any-case if of-good faith possessor be-has-been

77 Eadem ratione probatum est, quod in chartulis siue
By-the-same reasoning approved it-has-been what on papers or
membranis meis aliquis scripserit, licet aureis litteris, meum
parchments my someone has-written even-if in-golden letters mine
esse, quia litterae chartulis siue membranis cedunt. itaque si
to-be because the-letters to-the-papers or parchments yield and-so if
ego eos libros easue membranas petam nec inpensam scripturae
I those books or-those parchments claim nor the-expense of-the-writing
soluam, per exceptionem doli mali summoueri potero.
pay by the-defense of-fraud bad be-repelled I-shall-be-able

78 sed si in tabula mea aliquis pinxerit ueluti imaginem,
but if on board my someone has-painted for-example a-portrait
contra probatur; magis enim dicitur tabulam picturae
the-contrary is-approved rather for it-is-said the-board to-the-painting
cedere. cuius diuersitatis uix idonea ratio redditur; certe
to-yield of-which difference hardly a-fit reason is-given certainly

secundum hanc regulam si me possidente petas imaginem
according-to this rule if me possessing you-claim the-portrait
tuam esse, nec soluas pretium tabulae, poteris per
yours to-be nor pay the-price of-the-board you-will-be-able by
exceptionem doli mali summoueri; at si tu possideas,
the-defense of-fraud bad to-be-repelled but if you possess
consequens est, ut utilis mihi actio aduersum te
consequent it-is that an-equitable to-me action against you
dari debeat; quo casu nisi soluam inpensam picturae,
be-given should in-which case unless I-pay the-expense of-the-painting
poteris me per exceptionem doli mali repellere, utique
you-will-be-able me by the-defense of-fraud bad to-repel in-any-case
si bonae fidei possessor fueris. illud palam est, quod siue
if of-good faith possessor you-have-been that plain is that whether
tu subripueris tabulam siue alius, conpetit mihi furti actio.
you have-stolen the-board or another belongs to-me of-theft the-action
In aliis quoque speciebus naturalis ratio requiritur. proinde si 79
In other also cases natural reason is-required thus if
ex uuis aut oliuis aut spicis meis uinum aut oleum aut
from grapes or olives or ears-of-grain my wine or oil or
frumentum feceris, quaeritur, utrum meum sit id uinum
grain you-have-made it-is-asked whether mine is that wine
aut oleum aut frumentum, an tuum. item si ex auro aut
or oil or grain or yours likewise if from gold or
argento meo uas aliquod feceris, uel ex tabulis meis
silver my a-vessel some you-have-made or from boards my
nauem aut armarium aut subsellium fabricaueris; item si ex
a-ship or a-cupboard or a-bench you-have-constructed likewise if from
lana mea uestimentum feceris, uel si ex uino et melle meo
wool my a-garment you-have-made or if from wine and honey my
mulsum feceris, siue ex medicamentis meis emplastrum uel
mead you-have-made or from medicines my a-plaster or

collyrium feceris, quaeritur, utrum tuum sit id quod ex
an-eye-salve you-have-made it-is-asked whether yours is that which from
meo effeceris, an meum. quidam materiam et substantiam
mine you-have-made or mine some the-material and substance
spectandam esse putant, id est ut cuius materia sit, illius
to-be-regarded to-be think that is that whose the-material is his
et res quae facta sit uideatur esse, idque maxime
also the-thing which made has-been should-be-held to-be and-this most
placuit Sabino et Cassio. alii uero eius rem esse putant
was-approved by-Sabinus and Cassius others however his the-thing to-be think
qui fecerit, idque maxime diuersae scholae auctoribus
who has-made-it and-this most of-the-opposing school to-the-authorities
uisum est; sed eum quoque, cuius materia et substantia
seemed it-has but him also whose the-material and substance
fuerit, furti aduersus eum qui subripuerit habere actionem; nec
was of-theft against him who has-stolen to-have an-action nor
minus aduersus eundem condictionem ei conpetere, quia
less against the-same a-condiction to-him to-belong because
extinctae res, licet uindicari non possint, condici
destroyed things although be-claimed not can be-sued-for-by-condiction
tamen furibus et quibusdam aliis possessoribus possunt.
yet from-thieves and certain other possessors they-can

62 Accidit aliquando, ut qui dominus sit, alienandae rei
It-happens sometimes that (he)-who owner is of-alienating the-thing
potestatem non habeat, et qui dominus non sit, alienare
the-power not has and (he)-who owner not is alienate
possit.
can

63 nam dotale praedium maritus inuita muliere per legem
for dowry land the-husband unwilling the-wife by the-statute
Iuliam prohibetur alienare, quamuis ipsius sit uel mancipatum
Julian is-forbidden to-alienate although his it-is either mancipated

ei dotis causa uel in iure cessum uel usucaptum.
to-him of-dowry for-the-sake or in court ceded or usucapted
quod quidem ius utrum ad Italica tantum praedia an etiam
which indeed law whether to Italian only estates or also
ad prouincialia pertineat, dubitatur.
to provincial pertains is-doubted
Ex diuerso agnatus furiosi curator rem furiosi alienare 64
From the-opposite the-agnate of-a-madman as-curator the-thing of-the-madman alienate
potest ex lege XII tabularum; item procurator ∗∗∗
can by the-statute of-the-Twelve Tables likewise an-agent (lacuna)
est, item creditor pignus ex pactione, quamuis eius ea res non
is likewise a-creditor a-pledge by agreement although his that thing not
sit. sed hoc forsitan ideo uideatur fieri, quod uoluntate
is but this perhaps for-this-reason may-seem to-be-done because by-the-will
debitoris intellegitur pignus alienari, qui olim pactus est, ut
of-the-debtor is-understood the-pledge to-be-alienated who formerly agreed has that
liceret creditori pignus uendere, si pecunia non soluatur.
it-should-be-allowed for-the-creditor the-pledge to-sell if the-money not be-paid

VII · WOMEN AND WARDS ALIENATING

Neither a woman nor a ward may alienate a mancipable thing without the tutor; a woman may alienate other things, a ward nothing. A woman's loan binds, a ward's does not; a ward's debtor is not freed by paying him, save as the defense of fraud allows.

Nunc admonendi sumus neque feminam neque pupillum 80
Now to-be-reminded we-are neither a-woman nor a-ward
sine tutoris auctoritate rem mancipi alienare posse; nec
without of-a-tutor the-authority a-thing mancipable alienate to-be-able not
mancipi uero feminam quidem posse, pupillum non posse.
mancipable however a-woman indeed to-be-able a-ward not to-be-able

81 Ideoque si quando mulier mutuam pecuniam alicui sine
And-therefore if ever a-woman lent money to-someone without
tutoris auctoritate dederit, quia facit eam accipientis, cum
of-a-tutor the-authority has-given because she-makes it the-receiver's since
scilicet pecunia res nec mancipi sit, contrahit obligationem.
of-course money a-thing not mancipable is she-contracts an-obligation

82 At si pupillus idem fecerit, quia non facit accipientis
But if a-ward the-same has-done because not he-makes-it the-receiver's
s***, nullam contrahit obligationem; unde pupillus uindicare
s(…) no he-contracts obligation whence the-ward claim
quidem nummos suos potest, sicubi extent, id est
indeed coins his-own can wherever they-are-extant that is
eos petere suos ex iure Quiritium esse *** repetere
them to-sue-for as-his-own by the-law of-the-Quirites to-be (lacuna) reclaim
potest s***tere. unde de pupillo quidem quaeritur, an
he-can s(…)tere whence about the-ward indeed it-is-asked whether
num***quos mutuos dedit, ab eo qui accepit, ***
coins(…)which as-a-loan he-gave from him who received (lacuna)
actione eos persequi possit, quoniam *** potest.
by-an-action them pursue can since (lacuna) he-can

83 At ex contrario omnes res tam mancipi quam nec mancipi
But from the-contrary all things as mancipable as not mancipable
mulieribus et pupillis sine tutoris auctoritate solui possunt,
to-women and to-wards without of-a-tutor the-authority be-paid can
quoniam meliorem condicionem suam facere eis etiam
since better the-condition their-own to-make to-them even
sine tutoris auctoritate concessum est.
without of-a-tutor the-authority granted it-is

84 Itaque si debitor pecuniam pupillo soluat, facit quidem
And-so if a-debtor money to-a-ward pays he-makes indeed
pecuniam pupilli, sed ipse non liberatur, quia nullam
the-money the-ward's but he-himself not is-freed because no

obligationem pupillus sine tutoris auctoritate dissoluere
obligation a-ward without of-a-tutor the-authority dissolve
potest, quia nullius rei alienatio ei sine tutoris
can because of-no thing the-alienation to-him without of-a-tutor
auctoritate concessa est; sed tamen si ex ea pecunia
the-authority granted is but however if from that money
locupletior factus sit et adhuc petat, per exceptionem
richer made he-has-been and still sues by the-defense
doli mali summoueri potest.
of-fraud bad be-repelled he-can
Mulieri uero etiam sine tutoris auctoritate recte solui 85
To-a-woman however even without of-a-tutor the-authority rightly be-paid
potest; nam qui soluit, liberatur obligatione, quia res
it-can for (he)-who pays is-freed from-the-obligation because things
nec mancipi, ut proxime diximus, a se dimittere
not mancipable as just we-said from themselves to-release
mulieres etiam sine tutoris auctoritate possunt. quamquam
women even without of-a-tutor the-authority can although
hoc ita est, si accipiat pecuniam; at si non accipiat, sed
this so is if she-receives the-money but if not she-receives but
habere se dicat et per acceptilationem uelit debitorem
to-have herself says and by formal-release wishes the-debtor
sine tutoris auctoritate liberare, non potest.
without of-a-tutor the-authority to-free not she-can

We acquire through children in power and through slaves; through slaves in usufruct or held in good faith only from our property or their labor. Nothing is acquired through outsiders, save perhaps possession.

86 Adquiritur autem nobis non solum per nosmet ipsos, sed
Is-acquired however for-us not only through our-own selves but
etiam per eos quos in potestate manu mancipioue habemus;
also through those whom in power hand or-bondage we-have
item per eos seruos, in quibus usumfructum habemus;
likewise through those slaves in which the-usufruct we-have
item per homines liberos et seruos alienos quos bona
likewise through men free and slaves another's whom in-good
fide possidemus. de quibus singulis diligenter dispiciamus.
faith we-possess about which each carefully let-us-consider
87 Igitur quod liberi nostri quos in potestate habemus, item
Therefore what children our whom in power we-have likewise
quod serui nostri mancipio accipiunt uel ex traditione
what slaves our in-mancipation receive or from delivery
nanciscuntur, siue quid stipulentur, uel ex aliqualibet causa
obtain or whatever they-stipulate or from any-whatever cause
adquirunt, id nobis adquiritur; ipse enim, qui in potestate
acquire that for-us is-acquired he-himself for who in power
nostra est, nihil suum habere potest. et ideo si heres
our is nothing his-own have can and therefore if heir
institutus sit, nisi nostro iussu hereditatem adire non potest;
instituted has-been unless at-our order the-inheritance enter not he-can
et si iubentibus nobis adierit, hereditas nobis adquiritur
and if ordering us he-has-entered the-inheritance for-us is-acquired

proinde atque si nos ipsi heredes instituti essemus; et
just as if we ourselves heirs instituted had-been and
conuenienter scilicet legatum per eos nobis adquiritur.
consistently of-course a-legacy through them to-us is-acquired
dum tamen sciamus, si alterius in bonis sit seruus, 88
provided however we-know if of-one among the-goods is a-slave
alterius ex iure Quiritium, ex omnibus causis ei soli
of-another by the-law of-the-Quirites from all causes to-him alone
per eum adquiri, cuius in bonis est.
through him to-be-acquired whose among the-goods he-is
Non solum autem proprietas per eos quos in potestate 89
Not only however ownership through those whom in power
habemus adquiritur nobis, sed etiam possessio; cuius enim
we-have is-acquired for-us but also possession of-whatever for
rei possessionem adepti fuerint, id nos possidere uidemur;
thing the-possession obtained they-have that we to-possess are-held
unde etiam per eos usucapio procedit.
whence also through them usucapion proceeds
Per eas uero personas, quas in manu mancipioue habemus, 90
Through those however persons whom in hand or-bondage we-have
proprietas quidem adquiritur nobis ex omnibus causis, sicut
ownership indeed is-acquired for-us from all causes as
per eos qui in potestate nostra sunt; an autem possessio
through those who in power our are whether however possession
adquiratur, quaeri solet, quia ipsas non possidemus.
be-acquired to-be-asked is-wont because themselves not we-possess
De his autem seruis, in quibus tantum usumfructum 91
About those however slaves in which only the-usufruct
habemus, ita placuit, ut quidquid ex re nostra uel
we-have so it-has-been-approved that whatever from property our or
ex operis suis adquirant, id nobis adquiratur; quod uero
from labors their-own they-acquire that for-us be-acquired what however

extra eas causas, id ad dominum proprietatis pertineat. itaque
outside those causes that to the-owner of-the-property pertains and-so
si iste seruus heres institutus sit legatumue quod ei
if that slave heir instituted has-been or-a-legacy which to-him
datum fuerit, non mihi sed domino proprietatis adquiritur.
given has-been not for-me but for-the-owner of-the-property is-acquired
92 Idem placet de eo qui a nobis bona fide possidetur, siue
The-same is-approved about him who by us in-good faith is-possessed whether
liber sit siue alienus seruus. quod enim placuit de
free he-is or another's slave what for has-been-approved about
usufructuario, idem probatur etiam de bonae fidei possessore.
the-usufructuary the-same is-approved also about the-good faith possessor
itaque quod extra duas istas causas adquiritur, id uel ad
and-so what outside two those causes is-acquired that either to
ipsum pertinet, si liber est, uel ad dominum, si seruus est.
himself pertains if free he-is or to the-owner if a-slave he-is
93 Sed bonae fidei possessor cum usuceperit seruum, quia
But the-good faith possessor when he-has-usucapted the-slave because
eo modo dominus fit, ex omni causa per eum
in-that way owner he-becomes from every cause through him
sibi adquirere potest. usufructuarius uero usucapere non
for-himself acquire can the-usufructuary however usucapt not
potest: primum quia non possidet, sed habet ius utendi
can first because not he-possesses but has the-right of-using
fruendi; deinde quia scit alienum seruum esse.
of-enjoying then because he-knows another's the-slave to-be
94 De illo quaeritur, an per eum seruum, in quo
About that it-is-asked whether through that slave in which
usumfructum habemus, possidere aliquam rem et usucapere
the-usufruct we-have possess some thing and usucapt
possimus, quia ipsum non possidemus. per eum uero,
we-can because himself not we-possess through him however

quem bona fide possidemus, sine dubio et possidere et
whom in-good faith we-possess without doubt both possess and
usucapere possumus. loquimur autem in utriusque persona
usucapt we-can we-speak however in of-each the-person
secundum definitionem quam proxime exposuimus, id est
according-to the-definition which just we-set-out that is
si quid ex re nostra uel ex operis suis adquirant.
if anything from property our or from labors their-own they-acquire
Ex his apparet per liberos homines, quos neque iuri 95
From these-things it-appears through free men whom neither to-right
nostro subiectos habemus neque bona fide possidemus, item
our subject we-have nor in-good faith we-possess likewise
per alienos seruos, in quibus neque usumfructum habemus
through another's slaves in which neither the-usufruct we-have
neque iustam possessionem, nulla ex causa nobis adquiri
nor lawful possession no from cause to-us be-acquired
posse. et hoc est quod uulgo dicitur per extraneam
can and this is what commonly is-said through an-outside
personam nobis adquiri non posse. tantum de possessione
person to-us be-acquired not can only about possession
quaeritur, an per extraneam personam nobis adquiratur.
it-is-asked whether through an-outside person to-us it-be-acquired
In summa sciendum est his, qui in potestate manu 96
In sum to-be-known it-is to-those who in power hand
mancipioue sunt, nihil in iure cedi posse; cum enim
or-bondage are nothing in court be-ceded can since for
istarum personarum nihil suum esse possit, conueniens est
of-those persons nothing their-own to-be can fitting it-is
scilicet, ut nihil suum esse in iure uindicare possint.
of-course that nothing their-own to-be in court claim they-can

Gaius turns to acquisitions of a whole estate, by inheritance, possession of goods, purchase of an estate, adrogation, or hand. The old wills before the assembly or the army gave way to the will by bronze and scale, in which a household buyer receives the estate for form while the testator declares his tablets. No witness may be in the power of the testator or the buyer, though those in the heir's or a legatee's power may serve, a right best not used for the heir.

97 Hactenus tantisper admonuisse sufficit quemadmodum
So-far for-the-present to-have-pointed-out suffices how
singulae res nobis adquirantur. nam legatorum ius, quo
single things to-us are-acquired for of-legacies the-law by-which
et ipso singulas res adquirimus, opportunius alio
also itself single things we-acquire more-suitably in-another
loco referemus. uideamus itaque nunc, quibus modis per
place we-shall-relate let-us-see therefore now in-what ways through
uniuersitatem res nobis adquirantur.
the-whole things to-us are-acquired

98 Si cui heredes facti sumus, siue cuius bonorum
If to-anyone heirs made we-are or of-anyone of-the-goods
possessionem petierimus, siue cuius bona emerimus, siue
possession we-have-sought or of-anyone the-goods we-have-bought or
quem adoptauerimus, siue quam in manum ut uxorem
whom we-have-adopted or whom into hand as wife
receperimus, eius res ad nos transeunt.
we-have-received his things to us pass

99 Ac prius de hereditatibus dispiciamus, quarum duplex
And first about inheritances let-us-consider of-which twofold
condicio est: nam uel ex testamento uel ab intestato ad
the-condition is for either from a-will or on intestacy to
nos pertinent.
us they-pertain

Et prius est, ut de his dispiciamus quae nobis ex 100
And first it-is that about those we-consider which to-us from
testamento obueniunt.
a-will come

Testamentorum autem genera initio duo fuerunt: nam 101
Of-wills however the-kinds at-the-beginning two were for
aut calatis comitiis testamentum faciebant, quae comitia
either in-the-called assemblies a-will they-made which assemblies
bis in anno testamentis faciendis destinata erant, aut in
twice in the-year for-wills being-made appointed were or in
procinctu, id est cum belli causa arma sumebant; procinctus
battle-array that is when for-war's sake arms they-took-up the-battle-array
est enim expeditus et armatus exercitus. alterum itaque in
is for the-ready and armed army the-one therefore in
pace et in otio faciebant, alterum in proelium exituri.
peace and in leisure they-made the-other into battle about-to-go-out

Accessit deinde tertium genus testamenti, quod per aes 102
Was-added then a-third kind of-will which through bronze
et libram agitur. qui neque calatis comitiis neque in
and scale is-done (he)-who neither in-the-called assemblies nor in
procinctu testamentum fecerat, is si subita morte urguebatur,
battle-array a-will had-made he if by-sudden death he-was-pressed
amico familiam suam, id est patrimonium suum, mancipio
to-a-friend household his-own that is patrimony his-own in-mancipation
dabat, eumque rogabat quid cuique post mortem suam
gave and-him asked what to-each after death his
dari uellet. quod testamentum dicitur per aes et
to-be-given he-wished which will is-called through bronze and
libram, scilicet quia per mancipationem peragitur.
scale of-course because through mancipation it-is-carried-out

103 Sed illa quidem duo genera testamentorum in desuetudinem
But those indeed two kinds of-wills into disuse
abierunt; hoc uero solum, quod per aes et libram fit,
have-gone this however alone which through bronze and scale is-done
in usu retentum est. sane nunc aliter ordinatur, quam olim
in use retained is certainly now otherwise it-is-arranged than formerly
solebat. namque olim familiae emptor, id est qui a
it-was-wont for formerly the-household's buyer that is (he)-who from
testatore familiam accipiebat mancipio, heredis locum optinebat,
the-testator the-household received by-mancipation of-the-heir the-place held
et ob id ei mandabat testator, quid cuique post
and on-account-of this to-him entrusted the-testator what to-each after
mortem suam dari uellet; nunc uero alius heres testamento
death his to-be-given he-wished now however one-man heir by-the-will
instituitur, a quo etiam legata relinquuntur, alius dicis gratia
is-instituted by whom also legacies are-left another for-form's sake
propter ueteris iuris imitationem familiae emptor adhibetur.
on-account-of of-the-old law the-imitation the-household's buyer is-employed
104 Eaque res ita agitur: qui facit testamentum, adhibitis,
And-this thing so is-done (he)-who makes a-will summoned
sicut in ceteris mancipationibus, V testibus ciuibus Romanis
as in the-other mancipations five witnesses citizens Roman
puberibus et libripende, postquam tabulas testamenti
adult and a-scale-holder after the-tablets of-the-will
scripserit, mancipat alicui dicis gratia familiam suam;
he-has-written mancipates to-someone for-form's sake household his-own
in qua re his uerbis familiae emptor utitur ‘familia
in which matter these words the-household's buyer uses household
pecuniaque tua endo mandatelam custodelamque meam,
and-money your into charge and-custody my
quo tu iure testamentum facere possis secundum legem
by-which you law a-will make may according-to the-statute

publicam, hoc aere', et ut quidam adiciunt 'aeneaque libra,
public with-this bronze and as some add and-bronze scale
esto mihi empta'; deinde aere percutit libram, idque
be to-me bought then with-the-bronze he-strikes the-scale and-that
aes dat testatori uelut pretii loco; deinde testator tabulas
bronze gives to-the-testator as-if of-the-price in-place then the-testator the-tablets
testamenti tenens ita dicit 'haec ita ut in his tabulis
of-the-will holding thus says these-things so as in these tablets
cerisque scripta sunt, ita do ita lego ita testor itaque
and-waxes written are so I-give so I-bequeath so I-attest and-so
uos Quirites testimonium mihi perhibetote'; et hoc dicitur
you Quirites testimony to-me bear and this is-called
nuncupatio: nuncupare est enim palam nominare, et sane
the-nuncupation to-nuncupate is for openly to-name and indeed
quae testator specialiter in tabulis testamenti scripserit,
what-things the-testator specifically in the-tablets of-the-will has-written
ea uidetur generali sermone nominare atque confirmare.
those he-is-held by-general speech to-name and to-confirm
In testibus autem non debet is esse, qui in potestate est 105
Among the-witnesses however not ought he to-be who in power is
aut familiae emptoris aut ipsius testatoris, quia propter
either of-the-household's buyer or of-the-very testator because on-account-of
ueteris iuris imitationem totum hoc negotium, quod agitur
of-the-old law the-imitation all this business which is-done
testamenti ordinandi gratia, creditur inter familiae emptorem
of-the-will arranging for-the-sake is-believed between the-household's buyer
agi et testatorem; quippe olim, ut proxime diximus, is qui
to-be-done and the-testator since formerly as just we-said he who
familiam testatoris mancipio accipiebat, heredis loco erat;
the-household of-the-testator in-mancipation received of-the-heir in-the-place was
itaque reprobatum est in ea re domesticum testimonium.
and-so rejected it-has-been in that matter domestic testimony

106 unde et si is qui in potestate patris est familiae emptor
whence also if he who in the-power of-his-father is as-household's buyer
adhibitus sit, pater eius testis esse non potest; ac ne
employed has-been the-father his witness be not can and not
is quidem qui in eadem potestate est, uelut frater eius.
he even who in the-same power is such-as brother his
sed si filius familias ex castrensi peculio post missionem
but if a-son of-the-family from his-camp peculium after discharge
faciat testamentum, nec pater eius recte testis adhibetur
makes a-will neither the-father his rightly as-witness is-employed
nec is qui in potestate patris est.
nor he who in the-power of-the-father is

107 De libripende eadem quae et de testibus dicta esse
About the-scale-holder the-same-things which also about the-witnesses said to-be
intellegemus; nam et is testium numero est.
we-shall-understand for also he of-the-witnesses in-the-number is

108 Is uero, qui in potestate heredis aut legatarii est, cuiusue
He however who in the-power of-the-heir or of-a-legatee is or-in-whose
heres ipse aut legatarius in potestate est, quique in eiusdem
the-heir himself or the-legatee in power is and-who in the-same's
potestate est, adeo testis et libripens adhiberi potest, ut
power is so-far as-witness and scale-holder be-employed can that
ipse quoque heres aut legatarius iure adhibeantur. sed tamen
himself also the-heir or legatee rightly may-be-employed but however
quod ad heredem pertinet quique in eius potestate est
as-far-as to the-heir pertains and-who in his power is
cuiusue is in potestate erit, minime hoc iure uti debemus.
or-in-whose he in power shall-be very-little this law use we-ought

Soldiers are excused the formalities of the will and may name foreigners and Latins. Women over twelve may make wills with their tutor's authority, while a male under fourteen cannot. A valid will needs capacity, the civil forms, and an heir instituted in solemn words, Titius heres esto. *A defective will sealed by seven witnesses gives the written heirs possession of the goods, kept when no statutory heir exists, and by Antoninus' rescript even against one.*

Sed haec diligens obseruatio in ordinandis testamentis militibus 109
But this careful observance in arranging wills for-soldiers
propter nimiam inperitiam constitutionibus principum remissa
on-account-of excessive inexperience by-the-enactments of-the-emperors remitted
est. nam quamuis neque legitimum numerum testium
has-been for although neither the-lawful number of-witnesses
adhibuerint neque uendiderint familiam neque nuncupauerint
they-have-employed nor have-sold the-household nor have-nuncupated
testamentum, recte nihilo minus testantur.
the-will rightly none the-less they-make-a-will
Praeterea permissum est iis et peregrinos et Latinos 110
Besides permitted it-is to-them both foreigners and Latins
instituere heredes uel iis legare, cum alioquin peregrini
to-institute as-heirs or to-them to-bequeath although otherwise foreigners
quidem ratione ciuili prohibeantur capere hereditatem
indeed by-reason civil are-forbidden to-take an-inheritance
legataque, Latini uero per legem Iuniam.
and-legacies Latins however through the-statute Junian
Caelibes quoque, qui lege Iulia hereditatem legataque 111
The-unmarried also who by-the-statute Julian an-inheritance and-legacies
capere uetantur; item orbi, id est qui liberos non
to-take are-forbidden likewise the-childless that is who children not

habent, quos lex *** prohibentur hi *** eius more
have whom the-statute (lacuna) are-forbidden these (lacuna) his manner
faciant *** XXX annorum *** res ***
may-make (lacuna) thirty years (lacuna) things (lacuna)
112 *** ex auctoritate diui Hadriani senatusconsultum
(lacuna) on the-authority of-the-deified Hadrian a-decree-of-the-senate
factum est, quo permissum est *** feminis etiam
made was by-which permitted it-was (lacuna) to-women even
sine coemptione testamentum facere, si modo non minores
without purchase a-will to-make if only not younger
essent annorum XII, scilicet ut quae tutela liberatae
they-were than-years twelve of-course so-that (those)-who from-tutelage freed
non essent, tutore auctore testari deberent.
not had-been the-tutor authorizing make-their-will should
113 Videntur ergo melioris condicionis esse feminae quam masculi;
Seem therefore of-better condition to-be women than males
nam masculus minor annorum XIIII testamentum facere non
for a-male younger than-years fourteen a-will make not
potest, etiamsi tutore auctore testamentum facere uelit, femina
can even-if the-tutor authorizing a-will to-make he-wishes a-woman
uero post XII annum testamenti faciendi ius nanciscitur.
however after the-twelfth year of-a-will making the-right obtains
114 Igitur si quaeramus, an ualeat testamentum, inprimis
Therefore if we-ask whether is-valid a-will first
aduertere debemus, an is qui id fecerit habuerit testamenti
to-notice we-ought whether he who it made had of-a-will
factionem; deinde si habuerit, requiremus, an secundum
the-capacity then if he-had we-shall-inquire whether according-to
iuris ciuilis regulam testatus sit, exceptis militibus,
of-the-law civil the-rule made-his-will he-has excepting soldiers

quibus propter nimiam inperitiam, ut diximus, quomodo
to-whom on-account-of excessive inexperience as we-said in-whatever-way
uelint uel quomodo possint, permittitur testamentum facere.
they-wish or in-whatever-way they-can it-is-permitted a-will to-make
Non tamen, ut iure ciuili ualeat testamentum, sufficit ea 115
Not however that by-law civil be-valid the-will suffices that
obseruatio quam supra exposuimus de familiae uenditione
observance which above we-set-out about of-the-household the-sale
et de testibus et de nuncupationibus.
and about the-witnesses and about the-nuncupations
sed ante omnia requirendum est, an institutio heredis 116
but before all-things to-be-asked it-is whether the-institution of-the-heir
sollemni more facta sit; nam aliter facta institutione
in-solemn form made has-been for otherwise made the-institution
nihil proficit familiam testatoris ita uenire testesque ita
nothing it-profits the-household of-the-testator so to-be-sold and-the-witnesses so
adhibere et ita nuncupare testamentum, ut supra diximus.
to-employ and so to-nuncupate the-will as above we-said
sollemnis autem institutio haec est 'Titius heres esto'; sed 117
solemn however institution this is Titius heir be but
et illa iam conprobata uidetur 'Titium heredem esse iubeo';
also that now approved seems Titius heir to-be I-order
at illa non est conprobata 'Titium heredem esse uolo';
but that not is approved Titius heir to-be I-wish
sed et illae a plerisque inprobatae sunt 'Titium heredem
but also those by most disapproved are Titius heir
instituo', item 'heredem facio.'
I-institute likewise heir I-make

118 Obseruandum praeterea est, ut si mulier quae in tutela est
To-be-observed besides it-is that if a-woman who in tutelage is
faciat testamentum, tutore auctore facere debeat; alioquin
makes a-will the-tutor authorizing make she-must otherwise
inutiliter iure ciuili testabitur.
uselessly by-law civil she-will-make-her-will

119 Praetor tamen si septem signis testium signatum sit
The-praetor however if with-seven seals of-witnesses sealed has-been
testamentum, scriptis heredibus secundum tabulas testamenti
the-will to-the-written heirs according-to the-tablets of-the-will
bonorum possessionem pollicetur: et si nemo sit, ad quem ab
of-the-goods possession promises and if no-one there-is to whom on
intestato iure legitimo pertineat hereditas, uelut frater eodem
intestacy by-right statutory pertains the-inheritance such-as a-brother of-the-same
patre natus aut patruus aut fratris filius, ita poterunt
father born or a-father's-brother or a-brother's son so will-be-able
scripti heredes retinere hereditatem. nam idem iuris est et si
the-written heirs to-retain the-inheritance for the-same of-law is also if
alia ex causa testamentum non ualeat, uelut quod familia
another from cause the-will not is-valid for-example because the-household
non uenierit aut nuncupationis uerba testator locutus non sit.
not has-been-sold or of-the-nuncupation the-words the-testator spoken not has

120 Sed uideamus, an etiamsi frater aut patruus extent,
But let-us-see whether even-if a-brother or father's-brother be-extant
potiores scriptis heredibus habeantur. rescripto enim
preferable to-the-written heirs they-are-held by-a-rescript for
imperatoris Antonini significatur eos, qui secundum tabulas
of-the-emperor Antoninus it-is-made-clear those who according-to the-tablets
testamenti non iure factas bonorum possessionem petierint,
of-a-will not lawfully made of-the-goods possession have-sought

posse aduersus eos qui ab intestato uindicant hereditatem,
to-be-able against those who on intestacy claim the-inheritance
defendere se per exceptionem doli mali.
to-defend themselves by the-defense of-fraud bad
Quod sane quidem ad masculorum testamenta pertinere 121
Which certainly indeed to of-males the-wills to-pertain
certum est; item ad feminarum, quae ideo non
certain is likewise to of-women who on-this-account not
utiliter testatae sunt, quia uerbi gratia familiam non
effectively made-their-wills have because of-example for-the-sake the-household not
uendiderint aut nuncupationis uerba locutae non sint; an
they-have-sold or of-the-nuncupation the-words spoken not have whether
autem et ad ea testamenta feminarum, quae sine tutoris
however also to those wills of-women which without of-the-tutor
auctoritate fecerint, haec constitutio pertineat, uidebimus.
the-authority they-have-made this enactment pertains we-shall-see
Loquimur autem de his scilicet feminis, quae non in 122
We-speak however about those of-course women who not in
legitima parentum aut patronorum tutela sunt, sed quae
the-statutory of-parents or of-patrons tutelage are but who
alterius generis tutores habent, qui etiam inuiti coguntur
of-another kind tutors have who even unwilling are-compelled
auctores fieri; alioquin parentem et patronum sine
authorizers to-become otherwise a-parent and a-patron without
auctoritate eius facto testamento non summoueri palam est.
the-authority his made the-will not to-be-excluded plain is

A son in power must be instituted or disinherited by name or the will fails; other children passed over take a share by accrual, and the praetor gives them possession against the will, though by Antoninus' rescript women gain by it no more than accrual gives. Posthumous children and grandsons stepping into a dead son's place must be provided for, males by name and females at least among the rest. The praetor requires emancipated children to be named, and adopted children count only while in the adoptive family.

123 Item qui filium in potestate habet, curare debet, ut eum
Likewise (he)-who a-son in power has take-care must that him
uel heredem instituat uel nominatim exheredet; alioquin
either as-heir he-institutes or by-name disinherits otherwise
si eum silentio praeterierit, inutiliter testabitur, adeo
if him in-silence he-has-passed-over uselessly he-will-make-his-will so-far
quidem, ut nostri praeceptores existiment, etiamsi uiuo patre
indeed that our teachers consider even-if living the-father
filius defunctus sit, neminem heredem ex eo testamento
the-son dead has-become no-one heir from that will
existere posse, quia scilicet statim ab initio non constiterit
to-appear can because of-course at-once from the-beginning not has-stood
institutio. sed diuersae scholae auctores, siquidem filius
the-institution but of-the-opposing school the-authorities if-indeed the-son
mortis patris tempore uiuat, sane inpedimento eum esse
of-death of-the-father at-the-time is-alive certainly an-impediment him to-be
scriptis heredibus et illum ab intestato heredem fieri
to-the-written heirs and him on intestacy heir to-become
confitentur; si uero ante mortem patris interceptus sit,
admit if however before the-death of-the-father cut-off he-has-been
posse ex testamento hereditatem adiri putant, nullo
to-be-able from the-will the-inheritance to-be-entered they-think no

iam filio inpedimento; quia scilicet existimant non statim
now the-son an-impediment because of-course they-consider not at-once
ab initio inutiliter fieri testamentum filio praeterito.
from the-beginning uselessly to-be-made the-will the-son passed-over
Ceteras uero liberorum personas si praeterierit testator, 124
The-other however of-children persons if has-passed-over the-testator
ualet testamentum, sed praeteritae istae personae scriptis
is-valid the-will but passed-over those persons to-the-written
heredibus in partem adcrescunt, si sui heredes sint,
heirs for a-share accrue if own heirs they-are
in uirilem, si extranei, in dimidiam. id est si quis
for an-equal-share if outsiders for a-half that is if someone
tres uerbi gratia filios heredes instituerit et filiam
three of-example for-the-sake sons as-heirs has-instituted and a-daughter
praeterierit, filia adcrescendo pro quarta parte fit
has-passed-over the-daughter by-accruing for a-fourth part becomes
heres, et ea ratione idem consequitur, quod ab intestato
heir and by-that reasoning the-same obtains which on intestacy
patre mortuo habitura esset; at si extraneos ille heredes
the-father dead about-to-have she-would-be but if outsiders he as-heirs
instituerit et filiam praeterierit, filia adcrescendo ex
has-instituted and the-daughter has-passed-over the-daughter by-accruing for
dimidia parte fit heres. quae de filia diximus, eadem
a-half part becomes heir what about a-daughter we-have-said the-same
et de nepote deque omnibus liberorum personis seu
also about a-grandson and-about all of-children persons whether
masculini seu feminini sexus dicta intellegemus.
of-male or of-female sex said we-shall-understand
Quid ergo est? licet eae secundum ea quae diximus 125
What then is-it although they according-to those-things which we-have-said
scriptis heredibus dimidiam partem detrahant, tamen
from-the-written heirs a-half part take yet

praetor eis contra tabulas bonorum possessionem promittit,
the-praetor to-them against the-tablets of-the-goods possession promises
qua ratione extranei heredes a tota hereditate
by-which reasoning outside heirs from the-whole inheritance
repelluntur et efficiuntur sine re heredes.
are-repelled and are-made without substance heirs

126 Et hoc iure utebamur, quasi nihil inter feminas et masculos
And this law we-used as-if nothing between women and males
interesset; sed nuper imperator Antoninus significauit
differed but lately the-emperor Antoninus made-clear
rescripto suas non plus nancisci feminas per bonorum
by-a-rescript their-own not more to-obtain women through of-the-goods
possessionem, quam quod iure adcrescendi consequerentur.
possession than what by-the-right of-accruing they-would-obtain
quod in emancipatarum quoque persona obseruandum est,
which in of-emancipated-women also the-person to-be-observed is
ut hae quoque, quod adcrescendi iure habiturae essent,
that they also what of-accruing by-right about-to-have they-would-be
si in potestate fuissent, id ipsum etiam per bonorum
if in power they-had-been that very-thing also through of-the-goods
possessionem habeant.
possession may-have

127 Sed siquidem filius a patre exheredetur, nominatim
But if-indeed a-son by the-father is-disinherited by-name
exheredari debet; alioquin non uidetur exheredari. nominatim
be-disinherited he-must otherwise not he-seems to-be-disinherited by-name
autem exheredari uidetur, siue ita exheredetur ‘Titius
however to-be-disinherited he-seems whether thus he-is-disinherited Titius
filius meus exheres esto’, siue ita ‘filius meus exheres esto’,
son my disinherited be or thus son my disinherited be
non adiecto proprio nomine.
not added his-own name

Ceterae uero liberorum personae uel feminini sexus uel 128
The-other however of-children persons either of-female sex or
masculini satis inter ceteros exheredantur, id est his
of-male sufficiently among the-rest are-disinherited that is by-these
uerbis 'ceteri omnes exheredes sunto', quae uerba ***
words the-rest all disinherited be which words (lacuna)
post institutionem heredum adici solent.
after the-institution of-the-heirs to-be-added are-wont
sed hoc ita ***. nam praetor omnes uirilis sexus liberorum 129
but this so (lacuna) for the-praetor all of-male sex of-children
personas, id est nepotes quoque et pronepotes ***.
persons that is grandsons also and great-grandsons (lacuna)
Postumi quoque liberi uel heredes institui debent uel 130
Posthumous also children either as-heirs be-instituted must or
exheredari.
be-disinherited
Et in eo par omnium condicio est, quod et in filio 131
And in this equal of-all the-condition is that both in a-son
postumo et in quolibet ex ceteris liberis siue feminini
posthumous and in any-one of the-other children whether of-female
sexus siue masculini praeterito ualet quidem testamentum,
sex or of-male passed-over is-valid indeed the-will
sed postea agnatione postumi siue postumae
but afterward by-the-birth of-the-posthumous-son or of-the-posthumous-daughter
rumpitur, et ea ratione totum infirmatur. ideoque si
it-is-broken and by-that reasoning wholly is-invalidated and-therefore if
mulier, ex qua postumus aut postuma sperabatur,
the-woman from whom a-posthumous-son or a-posthumous-daughter was-hoped-for
abortum fecerit, nihil inpedimento est scriptis heredibus
an-abortion has-had nothing an-impediment is to-the-written heirs
ad hereditatem adeundam.
for the-inheritance to-be-entered

132 Sed feminini quidem sexus personae uel nominatim uel
But of-female indeed sex persons either by-name or
inter ceteros exheredari solent, dum tamen si inter
among the-rest to-be-disinherited are-wont provided however if among
ceteros exheredentur, aliquid eis legetur, ne uideantur
the-rest they-are-disinherited something to-them be-bequeathed lest they-seem
per obliuionem praeteritae esse. masculini uero sexus
through forgetfulness passed-over to-have-been of-male however sex
personas placuit non aliter recte exheredari, quam
persons it-has-been-approved not otherwise rightly to-be-disinherited than
si nominatim exheredentur, hoc scilicet modo 'quicumque
if by-name they-are-disinherited in-this of-course way whatever
mihi filius genitus fuerit exheres esto.'
to-me son born shall-have-been disinherited be

132a *** potest u *** agat *** n ***.
(lacuna) can u(…) (lacuna) may-do (lacuna) n(…) (lacuna)

133 Postumorum autem loco sunt et hi, qui in sui
Of-posthumous-children however in-the-place are also those who into of-an-own
heredis locum succedendo quasi agnascendo fiunt parentibus sui
heir the-place by-succeeding as-if by-being-born become to-their-parents own
heredes. ut ecce si filium et ex eo nepotem neptemue
heirs as for-example if a-son and from him a-grandson or-granddaughter
in potestate habeam, quia filius gradu praecedit, is solus
in power I-have because the-son in-degree precedes he alone
iura sui heredis habet, quamuis nepos quoque et
the-rights of-an-own heir has although the-grandson also and
neptis ex eo in eadem potestate sint; sed si filius meus
the-granddaughter from him in the-same power are but if son my
me uiuo moriatur, aut qualibet ratione exeat de potestate mea,
me alive dies or for-any reason goes-out from power my

incipit nepos neptisue in eius locum succedere, et eo
begins the-grandson or-granddaughter into his place to-succeed and in-that
modo iura suorum heredum quasi agnatione nanciscuntur.
way the-rights of-own heirs as-if by-birth they-obtain
Ne ergo eo modo rumpatur mihi testamentum, 134
That-not therefore in-that way be-broken for-me the-will
sicut ipsum filium uel heredem instituere uel exheredare
just-as himself the-son either as-heir to-institute or to-disinherit
debeo, ne non iure faciam testamentum, ita et nepotem
I-ought lest not lawfully I-make the-will so also the-grandson
neptemue ex eo necesse est mihi uel heredem instituere
or-granddaughter from him necessary it-is for-me either as-heir to-institute
uel exheredare, ne forte, me uiuo filio mortuo, succedendo
or to-disinherit lest perhaps me alive the-son dead by-succeeding
in locum eius nepos neptisue quasi agnatione rumpat
into place his the-grandson or-granddaughter as-if by-birth should-break
testamentum; idque lege Iunia Vellaea prouisum est,
the-will and-this by-the-statute Junian Vellaean provided was
in qua simul exheredationis modus notatur, ut uirilis
in which at-the-same-time of-disinheritance the-manner is-marked that of-male
sexus postumi nominatim, feminini uel nominatim uel
sex posthumous-children by-name of-female either by-name or
inter ceteros exheredentur, dum tamen iis qui inter
among the-rest be-disinherited provided however to-those who among
ceteros exheredantur aliquid legetur.
the-rest are-disinherited something be-bequeathed
Emancipatos liberos iure ciuili neque heredes instituere neque 135
Emancipated children by-law civil neither as-heirs to-institute nor
exheredare necesse est, quia non sunt sui heredes; sed
to-disinherit necessary it-is because not they-are own heirs but
praetor omnes tam feminini quam masculini sexus, si heredes
the-praetor all as of-female as of-male sex if as-heirs

non instituantur, exheredari iubet, uirilis sexus nominatim,
not they-are-instituted to-be-disinherited orders of-male sex by-name
feminini uel nominatim uel inter ceteros; quodsi neque heredes
of-female either by-name or among the-rest but-if neither as-heirs
instituti fuerint neque ita ut supra diximus exheredati,
instituted they-have-been nor so as above we-said disinherited
praetor promittit eis contra tabulas bonorum possessionem.
the-praetor promises to-them against the-tablets of-the-goods possession

135a In potestate patris non sunt, qui cum eo ciuitate
In the-power of-the-father not are (those)-who with him with-citizenship
Romana donati sunt nec in accipienda ciuitate Romana
Roman presented have-been nor in receiving citizenship Roman
pater petiit, ut eos in potestate haberet, aut, si petiit,
the-father asked that them in power he-might-have or if he-asked
non inpetrauit, nam qui in potestatem patris ab
not he-obtained-it for (those)-who into the-power of-the-father by
imperatore rediguntur, nihil differunt a ***.
the-emperor are-brought nothing differ from (lacuna)

136 Adoptiui filii quamdiu manent in adoptione, naturalium
Adoptive sons as-long-as they-remain in adoption of-natural-sons
loco sunt; emancipati uero a patre adoptiuo neque
in-the-place are emancipated however by the-father adoptive neither
iure ciuili neque quod ad edictum praetoris pertinet, inter
by-law civil nor as-far-as to the-edict of-the-praetor pertains among
liberos numerantur.
the-children are-counted

137 qua ratione accidit, ut ex diuerso quod ad naturalem
by-which reasoning it-happens that from the-opposite as-far-as to the-natural
parentem pertinet, quamdiu quidem sint in adoptiua familia,
parent pertains as-long-as indeed they-are in the-adoptive family
extraneorum numero habeantur; si uero emancipati fuerint
of-outsiders in-the-number they-are-held if however emancipated they-have-been

ab adoptiuo patre, tunc incipiant in ea causa esse, qua
by the-adoptive father then they-begin in that position to-be in-which
futuri essent, si ab ipso naturali patre emancipati fuissent.
going-to-be they-would-be if by the-very natural father emancipated they-had-been

XII · BROKEN AND VOID WILLS

A will is broken by the birth of an own heir, an adoption, a wife's entry into hand, a son's return to power from mancipation, or proof of a child's status under the decree on error, and by a later valid will even if no heir takes under it; it becomes void by the testator's loss of status. Such wills may still give the written heir possession of the goods, with or without substance, and a will is not revoked merely by cutting its thread.

Si quis post factum testamentum adoptauerit sibi filium 138
If someone after made the-will has-adopted for-himself a-son
aut per populum eum qui sui iuris est, aut per
either through the-people him who of-his-own right is or through
praetorem eum qui in potestate parentis fuerit, omni modo
the-praetor him who in the-power of-a-parent was in-every way
testamentum eius rumpitur quasi agnatione sui heredis.
the-will his is-broken as-if by-the-birth of-an-own heir
Idem iuris est, si cui post factum testamentum uxor 139
The-same of-law is if to-anyone after made the-will a-wife
in manum conueniat, uel quae in manu fuit nubat; nam
into hand comes or (she)-who in hand was marries for
eo modo filiae loco esse incipit et quasi sua.
in-that way of-a-daughter in-the-place to-be she-begins and as-if own
nec prodest, siue haec siue ille qui adoptatus est in eo 140
nor does-it-help whether she or he who adopted was in that
testamento sit institutus institutaue; nam de exheredatione
will has-been instituted or-instituted for about the-disinheritance

eius superuacuum uidetur quaerere, cum testamenti faciendi
his superfluous it-seems to-ask since of-the-will of-making
tempore suorum heredum numero non fuerit.
at-the-time of-own heirs in-the-number not he-was

141 Filius quoque, qui ex prima secundaue mancipatione
A-son also who from the-first or-second mancipation
manumittitur, quia reuertitur in potestatem patriam, rumpit
is-manumitted because he-returns into power paternal breaks
ante factum testamentum; nec prodest, si in eo testamento
previously made the-will nor does-it-help if in that will
heres institutus uel exheredatus fuerit.
heir instituted or disinherited he-has-been

142 Simile ius olim fuit in eius persona, cuius nomine
A-like law formerly was in of-him the-person in-whose name
ex senatusconsulto erroris causa probatur, quia forte ex
by the-decree-of-the-senate of-error the-case is-proved because perhaps of
peregrina uel Latina quae per errorem quasi ciuis
a-foreign-woman or a-Latin who through error as-if a-citizen
Romana uxor ducta esset natus esset; nam siue heres
Roman as-wife married had-been born he-had-been for whether heir
institutus esset a parente siue exheredatus, siue uiuo
instituted he-had-been by the-parent or disinherited whether alive
patre causa probata siue post mortem eius, omni modo
the-father the-case proved or after the-death his in-every way
quasi agnatione rumpebat testamentum.
as-if by-birth he-broke the-will

143 nunc uero ex nouo senatusconsulto, quod auctore diuo
now however by the-new decree-of-the-senate which on-the-motion-of the-deified
Hadriano factum est, siquidem uiuo patre causa probatur,
Hadrian made was if-indeed alive the-father the-case is-proved
aeque ut olim omni modo rumpit testamentum; si uero
equally as formerly in-every way he-breaks the-will if however

post mortem patris, praeteritus quidem rumpit testamentum,
after the-death of-the-father passed-over indeed he-breaks the-will
si uero heres in eo scriptus est uel exheredatus, non
if however heir in it written he-is or disinherited not
rumpit testamentum; ne scilicet diligenter facta testamenta
he-breaks the-will that-not of-course carefully made wills
rescinderentur eo tempore, quo renouari non possent.
should-be-rescinded at-that time at-which be-renewed not they-could
Posteriore quoque testamento quod iure factum est superius 144
By-a-later also will which lawfully made has-been the-earlier
rumpitur. nec interest, an extiterit aliquis ex eo heres, an
is-broken nor does-it-matter whether has-appeared anyone from it heir or
non extiterit; hoc enim solum spectatur, an existere potuerit.
not has-appeared this for alone is-regarded whether to-appear he-could
ideoque si quis ex posteriore testamento quod iure factum
and-therefore if someone from the-later will which lawfully made
est aut noluerit heres esse, aut uiuo testatore aut
has-been either has-been-unwilling heir to-be or living the-testator or
post mortem eius, antequam hereditatem adiret, decesserit,
after the-death his before the-inheritance he-entered has-died
aut per cretionem exclusus fuerit, aut condicione sub qua
or by cretion excluded has-been or by-the-condition under which
heres institutus est defectus sit, aut propter caelibatum
heir instituted he-was failed has or on-account-of celibacy
ex lege Iulia summotus fuerit ab hereditate: quibus
by the-statute Julian excluded has-been from the-inheritance in-which
casibus pater familias intestatus moritur, nam et prius
cases the-father of-the-family intestate dies for both the-former
testamentum non ualet ruptum a posteriore, et posterius
will not is-valid broken by the-later and the-later
aeque nullas uires habet, cum ex eo nemo heres extiterit.
equally no force has since from it no-one heir has-appeared

145 Alio quoque modo testamenta iure facta infirmantur,
In-another also way wills lawfully made are-invalidated
ueluti cum is qui fecerit testamentum capite deminutus sit;
for-example when he who has-made the-will in-status diminished has-been
quod quibus modis accidat, primo commentario relatum est.
which in-what ways happens in-the-first commentary related was
146 hoc autem casu inrita fieri testamenta dicemus, cum
in-this however case void to-become wills we-shall-say since
alioquin et quae rumpuntur inrita fiant, et quae
otherwise both (those)-which are-broken void become and (those)-which
statim ab initio non iure fiunt inrita sint; sed et
at-once from the-beginning not lawfully are-made void are but also
ea, quae iure facta sunt et postea propter capitis
those which lawfully made have-been and afterward on-account-of of-status
deminutionem inrita fiunt, possunt nihilo minus rupta dici.
loss void become can none the-less broken be-said
sed quia sane commodius erat singulas causas singulis
but because certainly more-convenient it-was single causes by-single
appellationibus distingui, ideo quaedam non iure fieri
names to-be-distinguished therefore some not lawfully to-be-made
dicuntur, quaedam iure facta rumpi uel inrita fieri.
are-said some lawfully made to-be-broken or void to-become
147 Non tamen per omnia inutilia sunt ea testamenta, quae
Not however in all-respects useless are those wills which
uel ab initio non iure facta sunt uel iure facta
either from the-beginning not lawfully made have-been or lawfully made
postea inrita facta aut rupta sunt. nam si septem testium
afterward void made or broken are for if of-seven witnesses
signis signata sint testamenta, potest scriptus heres
with-the-seals sealed they-are the-wills can the-written heir
secundum tabulas bonorum possessionem petere, si modo
according-to the-tablets of-the-goods possession seek if only

defunctus testator et ciuis Romanus et suae potestatis
the-deceased testator both a-citizen Roman and of-his-own power
mortis tempore fuerit. nam si ideo inritum factum
of-death at-the-time was for if for-this-reason void made
sit testamentum, quod puta ciuitatem uel etiam libertatem
has-been the-will because say citizenship or even freedom
testator amisit, aut is in adoptionem se dedit et mortis
the-testator lost or he into adoption himself gave and of-death
tempore in adoptiui patris potestate fuit, non potest scriptus
at-the-time in of-the-adoptive father the-power was not can the-written
heres secundum tabulas bonorum possessionem petere.
heir according-to the-tablets of-the-goods possession seek
Itaque qui secundum tabulas testamenti, quae aut statim 148
And-so (those)-who according-to the-tablets of-a-will which either at-once
ab initio non iure factae sint, aut iure factae postea
from the-beginning not lawfully made were or lawfully made afterward
ruptae uel inritae erunt, bonorum possessionem accipiunt,
broken or void shall-be of-the-goods possession receive
si modo possunt hereditatem optinere, habebunt bonorum
if only they-can the-inheritance hold will-have of-the-goods
possessionem cum re; si uero ab iis auocari hereditas
possession with substance if however from them be-called-away the-inheritance
potest, habebunt bonorum possessionem sine re.
can they-will-have of-the-goods possession without substance
nam si quis heres iure ciuili institutus sit uel ex 149
for if someone heir by-law civil instituted has-been either from
primo uel ex posteriore testamento, uel ab intestato iure
the-first or from the-later will or on intestacy by-right
legitimo heres sit, is potest ab iis hereditatem auocare;
statutory heir is he can from them the-inheritance call-away
si uero nemo sit alius iure ciuili heres, ipsi retinere
if however no-one there-is other by-law civil heir themselves to-retain

hereditatem possunt, nec ullum ius aduersus eos habent
the-inheritance they-can nor any right against them have
cognati, qui legitimo iure deficiuntur.
the-cognates who by-statutory right are-lacking
149a Aliquando tamen, sicut supra quoque notauimus, etiam
Sometimes however as above also we-noted even
legitimis heredibus potiores scripti habentur, ueluti si
to-statutory heirs preferable the-written are-held for-example if
ideo non iure factum sit testamentum, quod familia
for-this-reason not lawfully made has-been the-will because the-household
non uenierit aut nuncupationis uerba testator locutus non
not has-been-sold or of-the-nuncupation the-words the-testator spoken not
sit; *** agnati petant hereditatem *** ex constitutione
has (lacuna) the-agnates sue-for the-inheritance (lacuna) from the-enactment
150 *** ueri *** lege Iulia *** possessores ***ea
(lacuna) (…)ueri (lacuna) the-statute Julian (lacuna) possessors (…)that
lege bona caduca fiunt et ad populum deferri
statute the-goods lapsed become and to the-people to-be-handed-over
iubentur, si defuncto nemo ***.
are-ordered if for-the-deceased no-one (lacuna)
151 Potest ut iure facta testamenta contraria uoluntate
It-can-happen that lawfully made wills by-a-contrary will
infirmentur. apparet autem non posse ex eo solo infirmari
be-invalidated it-appears however not to-be-able from this alone to-be-invalidated
testamentum, quod postea testator id noluerit ualere,
a-will that afterward the-testator it has-not-wished to-be-valid
usque adeo, ut si linum eius inciderit, nihilo minus iure
so far that if the-thread its he-has-cut none the-less by-law
ciuili ualeat. quin etiam si deleuerit quoque aut conbusserit
civil it-is-valid indeed even if he-has-erased also or burned

tabulas testamenti, nihilo minus non desinent ualere quae
the-tablets of-the-will none the-less not will-cease to-be-valid what-things
ibi fuerunt scripta, licet eorum probatio difficilis sit.
there were written although their proof difficult is
Quid ergo est? si quis ab intestato bonorum possessionem 151a
What then is-it if someone on intestacy of-the-goods possession
petierit et is qui ex eo testamento heres est, petat
has-sought and he who from that will heir is sues-for
hereditatem, ∗∗∗ peruenit hereditas; et hoc ita rescripto
the-inheritance (lacuna) comes the-inheritance and this so by-a-rescript
imperatoris Antonini significatur.
of-the-emperor Antoninus is-made-clear

XIII · KINDS OF HEIRS

Heirs are necessary, own and necessary, or outside. A slave freed and instituted is a necessary heir and bears the disgrace of a bankrupt estate, though what he acquires afterward is kept for him. Own heirs, children in power, take whether they wish or not, though the praetor lets them abstain. Outside heirs may deliberate, and those under twenty-five may be released from a ruinous inheritance.

Heredes autem aut necessarii dicuntur aut sui et necessarii 152
Heirs however either necessary are-called or own and necessary
aut extranei.
or outside
Necessarius heres est seruus cum libertate heres institutus, 153
A-necessary heir is a-slave with freedom heir instituted
ideo sic appellatus, quia siue uelit siue nolit,
for-this-reason so called because whether he-wishes or he-is-unwilling
omni modo post mortem testatoris protinus liber et heres est.
in-every way after the-death of-the-testator immediately free and heir he-is

154 Unde qui facultates suas suspectas habet, solet seruum
Whence (he)-who resources his-own suspect holds is-wont a-slave
suum primo aut secundo uel etiam ulteriore gradu liberum
his-own in-the-first or second or even further degree free
et heredem instituere, ut si creditoribus satis non fiat,
and heir to-institute so-that if to-the-creditors satisfaction not be-made
potius huius heredis quam ipsius testatoris bona ueneant,
rather of-this heir than of-the-very of-the-testator the-goods be-sold
id est ut ignominia, quae accidit ex uenditione bonorum,
that is so-that the-disgrace which happens from the-sale of-the-goods
hunc potius heredem quam ipsum testatorem contingat;
this-one rather the-heir than the-very testator may-touch
quamquam apud Fufidium Sabino placeat eximendum eum
although in Fufidius to-Sabinus it-seems-right to-be-exempted him
esse ignominia, quia non suo uitio sed necessitate iuris
to-be from-the-disgrace because not by-his-own fault but by-necessity of-law
bonorum uenditionem pateretur; sed alio iure utimur.
of-the-goods the-sale he-suffers but another law we-use
155 Pro hoc tamen incommodo illud ei commodum praestatur,
For this however disadvantage that to-him advantage is-afforded
ut ea, quae post mortem patroni sibi adquisierit,
that those-things which after the-death of-the-patron for-himself he-has-acquired
siue ante bonorum uenditionem siue postea, ipsi reseruentur;
whether before of-the-goods the-sale or afterward for-him be-reserved
et quamuis pro portione bona uenierint, iterum ex
and although for a-share the-goods have-been-sold again from
hereditaria causa bona eius non uenient, nisi si quid
the-inheritance cause the-goods his not will-be-sold unless if anything
ei ex hereditaria causa fuerit adquisitum, uelut si †
to-him from the-inheritance cause has-been acquired as if (corrupt)
Latinus adquisierit, locupletior factus sit; cum ceterorum
a-Latin he-has-acquired richer made he-has-become while of-other

hominum, quorum bona uenierint pro portione, si quid
men whose goods have-been-sold for a-share if anything
postea adquirant, etiam saepius eorum bona uenire solent.
afterward they-acquire even more-often their goods to-be-sold are-wont
Sui autem et necessarii heredes sunt uelut filius filiaue, 156
Own however and necessary heirs are for-example a-son or-daughter
nepos neptisue ex filio, et deinceps ceteri qui modo
a-grandson or-granddaughter by a-son and in-turn the-others who provided
in potestate morientis fuerunt. sed uti nepos neptisue
in the-power of-the-dying-man they-were but that a-grandson or-granddaughter
suus heres sit, non sufficit eum in potestate aui
own heir be not it-suffices him in the-power of-the-grandfather
mortis tempore fuisse, sed opus est, ut pater quoque
of-death at-the-time to-have-been but need is that the-father also
eius uiuo patre suo desierit suus heres esse aut morte
his alive father his-own has-ceased own heir to-be either by-death
interceptus aut qualibet ratione liberatus potestate; tum enim
cut-off or for-any reason freed from-power then for
nepos neptisue in locum sui patris succedunt.
the-grandson or-granddaughter into the-place of-their-own father succeed
Sed sui quidem heredes ideo appellantur, quia domestici 157
But own indeed heirs for-this-reason are-called because domestic
heredes sunt et uiuo quoque parente quodammodo domini
heirs they-are and living also the-parent in-a-certain-way owners
existimantur; unde etiam si quis intestatus mortuus sit, prima
they-are-considered whence also if someone intestate dead is the-first
causa est in successione liberorum. necessarii uero ideo
ground is in the-succession of-the-children necessary however for-this-reason
dicuntur, quia omni modo, siue uelint siue nolint,
they-are-called because in-every way whether they-wish or they-are-unwilling
tam ab intestato quam ex testamento heredes fiunt.
as on intestacy as from a-will heirs they-become

158 sed his praetor permittit abstinere se ab hereditate,
but to-these the-praetor permits to-abstain themselves from the-inheritance
ut potius parentis bona ueneant.
so-that rather the-parent's goods be-sold

159 Idem iuris est et in uxoris persona quae in manu est,
The-same of-law is also in the-wife's person who in hand is
quia filiae loco est, et in nuru quae in
because of-a-daughter in-the-place she-is and in a-daughter-in-law who in
manu filii est, quia neptis loco est.
the-hand of-a-son is because of-a-granddaughter in-the-place she-is

160 Quin etiam similiter abstinendi potestatem facit praetor
Indeed even similarly of-abstaining the-power grants the-praetor
etiam ei qui in causa mancipii est, si cum libertate
also to-him who in the-condition of-bondage is if with freedom
heres institutus sit, quamuis necessarius, non etiam
heir instituted he-has-been although necessary not also
suus heres sit, tamquam seruus.
own heir he-is as-a slave

161 Ceteri, qui testatoris iuri subiecti non sunt, extranei heredes
The-others who to-the-testator's right subject not are outside heirs
appellantur. itaque liberi quoque nostri, qui in potestate nostra
are-called and-so children also our who in power our
non sunt, heredes a nobis instituti extranei uidentur. qua
not are heirs by us instituted outsiders are-held which
de causa et qui a matre heredes instituuntur, eodem
for reason also (those)-who by a-mother as-heirs are-instituted in-the-same
numero sunt, quia feminae liberos in potestate non habent.
number are because women children in power not have
serui quoque, qui cum libertate heredes instituti sunt et
slaves also who with freedom heirs instituted have-been and
postea a domino manumissi, eodem numero habentur.
afterward by their-master manumitted in-the-same number are-held

Extraneis autem heredibus deliberandi potestas data est 162
To-outside however heirs of-deliberating the-power given has-been
de adeunda hereditate uel non adeunda.
about entering the-inheritance or not entering
Sed siue is cui abstinendi potestas est, inmiscuerit 163
But whether he to-whom of-abstaining the-power is has-meddled
se bonis hereditariis, siue is, cui de adeunda
himself with-the-goods of-the-inheritance or he to-whom about entering
hereditate deliberare licet, adierit, postea relinquendae
the-inheritance to-deliberate is-allowed has-entered afterward of-relinquishing
hereditatis facultatem non habet, nisi si minor sit annorum
the-inheritance the-power not he-has unless if younger he-is than-years
XXV. nam huius aetatis hominibus, sicut in ceteris
twenty-five for of-this age to-men as in other
omnibus causis deceptis, ita etiam si temere damnosam
all matters deceived so also if rashly a-ruinous
hereditatem susceperint, praetor succurrit. scio quidem
inheritance they-have-taken-up the-praetor comes-to-aid I-know indeed
diuum Hadrianum etiam maiori XXV annorum
the-deified Hadrian even to-one-older-than twenty-five years
ueniam dedisse, cum post aditam hereditatem grande aes
indulgence to-have-given when after entered the-inheritance a-great money
alienum, quod aditae hereditatis tempore latebat, apparuisset.
another's which entered of-the-inheritance at-the-time was-hidden had-appeared

An outside heir is often given cretion, a fixed time to accept by formal words, a hundred days with the words of disinheritance if he fails. Without cretion one may accept by acting as heir or by bare intention. Cretion may be common, counted from knowledge and ability, or of fixed days, which are continuous and harsh.

164 Extraneis heredibus solet cretio dari, id est finis deliberandi,
To-outside heirs is-wont cretion to-be-given that is a-limit of-deliberating
ut intra certum tempus uel adeant hereditatem, uel si non
so-that within a-fixed time either they-enter the-inheritance or if not
adeant, temporis fine summoueantur. ideo autem cretio
they-enter by-the-time's end they-are-excluded for-this-reason however cretion
appellata est, quia cernere est quasi decernere et constituere.
called it-is because cernere is as-if to-decide and to-determine
165 Cum ergo ita scriptum sit 'heres Titius esto', adicere
When therefore thus written it-is heir Titius be add
debemus 'cernitoque in centum diebus proximis quibus
we-ought and-make-cretion within a-hundred days next in-which
scies poterisque. quodni ita creueris, exheres esto.'
you-shall-know and-be-able but-if-not thus you-make-cretion disinherited be
166 Et qui ita heres institutus est, si uelit heres esse, debebit
And (he)-who thus heir instituted is if he-wishes heir to-be will-have-to
intra diem cretionis cernere, id est haec uerba dicere 'quod me
within the-day of-cretion make-cretion that is these words say whereas me
P. Meuius testamento suo heredem instituit, eam hereditatem
Publius Mevius in-will his heir instituted that inheritance
adeo cernoque.' quodsi ita non creuerit, finito tempore
I-enter and-make-cretion but-if thus not he-has-made-cretion ended the-time

cretionis excluditur; nec quicquam proficit, si pro herede
of-cretion he-is-excluded nor anything does-it-profit if as heir
gerat, id est si rebus hereditariis tamquam heres utatur.
he-acts that is if the-things of-the-inheritance as heir he-uses
At is qui sine cretione heres institutus sit, aut qui 167
But he who without cretion heir instituted has-been or who
ab intestato legitimo iure ad hereditatem uocatur, potest
on intestacy by-statutory right to the-inheritance is-called can
aut cernendo aut pro herede gerendo uel etiam nuda
either by-making-cretion or as heir by-acting or even by-bare
uoluntate suscipiendae hereditatis heres fieri; eique liberum
will of-taking-up the-inheritance heir become and-for-him free
est quocumque tempore uoluerit, adire hereditatem; sed
it-is at-whatever time he-wishes to-enter the-inheritance but
solet praetor postulantibus hereditariis creditoribus tempus
is-wont the-praetor on-the-demand-of the-inheritance's creditors a-time
constituere, intra quod si uelit adeat hereditatem, si
to-fix within which if he-wishes he-may-enter the-inheritance if
minus, ut liceat creditoribus bona defuncti uendere.
not that it-be-allowed for-the-creditors the-goods of-the-deceased to-sell
Sicut autem qui cum cretione heres institutus est, nisi 168
As however (he)-who with cretion heir instituted is unless
creuerit hereditatem, non fit heres, ita non aliter
he-has-made-cretion-for the-inheritance not becomes heir so not otherwise
excluditur, quam si non creuerit intra id tempus
he-is-excluded than if not he-has-made-cretion within that time
quo cretio finita est; itaque licet ante diem cretionis
at-which the-cretion ended is and-so although before the-day of-cretion
constituerit hereditatem non adire, tamen paenitentia actus
he-has-determined the-inheritance not to-enter yet by-repentance moved
superante die cretionis cernendo heres esse potest.
remaining the-day of-cretion by-making-cretion heir be he-can

169 At is, qui sine cretione heres institutus est, quiue ab intestato
But he who without cretion heir instituted is or-who on intestacy
per legem uocatur, sicut uoluntate nuda heres fit,
through the-statute is-called as by-will bare heir he-becomes
ita et contraria destinatione statim ab hereditate repellitur.
so also by-a-contrary decision at-once from the-inheritance is-repelled

170 Omnis autem cretio certo tempore constringitur. in quam
Every however cretion by-a-fixed time is-confined for which
rem tolerabile tempus uisum est centum dierum. potest
matter a-tolerable time seemed is of-a-hundred days it-can
tamen nihilo minus iure ciuili aut longius aut breuius
yet none the-less by-law civil either longer or shorter
tempus dari; longius tamen interdum praetor coartat.
a-time be-given a-longer however sometimes the-praetor shortens

171 Et quamuis omnis cretio certis diebus constringatur, tamen
And although every cretion by-fixed days is-confined yet
alia cretio uulgaris uocatur, alia certorum dierum: uulgaris
one cretion common is-called another of-fixed days common
illa, quam supra exposuimus, id est in qua adiciuntur haec
that which above we-set-out that is in which are-added these
uerba ‘quibus sciet poteritque’; certorum dierum, in qua
words in-which he-shall-know and-be-able of-fixed days in which
detractis his uerbis cetera scribuntur.
removed these words the-rest are-written

172 Quarum cretionum magna differentia est. nam uulgari cretione
Of-which cretions great the-difference is for common cretion
data nulli dies conputantur, nisi quibus scierit quisque
given no days are-counted except those-on-which has-known each-one
se heredem esse institutum et possit cernere. certorum
himself heir to-be instituted and can make-cretion of-fixed
uero dierum cretione data etiam nescienti se heredem
however days cretion given even to-one-not-knowing himself heir

institutum esse numerantur dies continui; item ei
instituted to-be are-counted the-days continuous likewise to-him
quoque, qui aliqua ex causa cernere prohibetur, et eo
also who for-some from cause to-make-cretion is-prevented and still
amplius ei, qui sub condicione heres institutus est, tempus
more to-him who under a-condition heir instituted is the-time
numeratur; unde melius et aptius est uulgari cretione uti.
is-counted whence better and more-fitting it-is common cretion to-use
continua haec cretio uocatur, quia continui dies numerantur. 173
continuous this cretion is-called because continuous days are-counted
sed quia dura est haec cretio, altera in usu habetur; unde
but because harsh is this cretion the-other in use is-held whence
etiam uulgaris dicta est.
also common called it-has-been

XV · SUBSTITUTIONS AND SLAVES AS HEIRS

One may name heirs in degrees, each substituted if the one before fails to take; where cretion is given without disinheritance, a first heir who acts as heir shares with the substitute. A father may also name an heir for his under-age son, even a disinherited or posthumous one, should he die before puberty, writing that substitution on sealed lower tablets; for an outside heir only a trust does this. A slave may be heir, one's own only with freedom; another's must make cretion at his master's order.

Interdum duos pluresue gradus heredum facimus, hoc modo 174
Sometimes two or-more degrees of-heirs we-make in-this way
'L. Titius heres esto cernitoque in diebus centum proximis
Lucius Titius heir be and-make-cretion within days a-hundred next
quibus scies poterisque. quodni ita creueris, exheres
in-which you-shall-know and-be-able but-if-not thus you-make-cretion disinherited

esto. tum Meuius heres esto cernitoque in diebus centum' et
be then Mevius heir be and-make-cretion within days a-hundred and
reliqua. et deinceps in quantum uelimus substituere possumus.
the-rest and in-turn to how-much we-wish substitute we-can
175 Et licet nobis uel unum in unius locum substituere
And it-is-allowed for-us either one in one's place to-substitute
pluresue, et contra in plurium locum uel unum uel plures
or-several and conversely in several's place either one or several
substituere.
to-substitute
176 Primo itaque gradu scriptus heres hereditatem cernendo
In-the-first therefore degree the-written heir the-inheritance by-making-cretion
fit heres et substitutus excluditur; non cernendo
becomes heir and the-substitute is-excluded by-not making-cretion
summouetur, etiamsi pro herede gerat, et in locum eius
he-is-removed even-if as heir he-acts and into place his
substitutus succedit. et deinceps si plures gradus sint, in
the-substitute succeeds and in-turn if several degrees there-are in
singulis simili ratione idem contingit.
each by-like reasoning the-same happens
177 Sed si cretio sine exheredatione sit data, id est in haec
But if cretion without disinheritance has-been given that is in these
uerba 'si non creueris, tum P. Meuius heres esto',
words if not you-make-cretion then Publius Mevius heir be
illud diuersum inuenitur, quod si prior omissa cretione pro
this difference is-found that if the-first omitted the-cretion as
herede gerat, substitutum in partem admittit et fiunt ambo
heir acts the-substitute for a-share he-admits and become both
aequis partibus heredes. quodsi neque cernat neque
in-equal shares heirs but-if neither he-makes-cretion nor

pro herede gerat, tum sane in uniuersum summouetur,
as heir acts then certainly in whole he-is-removed
et substitutus in totam hereditatem succedit.
and the-substitute into the-whole inheritance succeeds
Sed Sabino quidem placuit, quamdiu cernere et eo 178
But to-Sabinus indeed it-seemed-right as-long-as make-cretion and in-that
modo heres fieri possit prior, etiamsi pro herede gesserit,
way heir become can the-first even-if as heir he-has-acted
non tamen admitti substitutum; cum uero cretio finita
not however to-be-admitted the-substitute when however the-cretion ended
sit, tum pro herede gerente admitti substitutum. aliis
is then as heir by-(him)-acting to-be-admitted the-substitute to-others
uero placuit etiam superante cretione posse eum pro
however it-seemed-right even remaining the-cretion to-be-able him as
herede gerendo in partem substitutum admittere et amplius
heir by-acting for a-share the-substitute to-admit and further
ad cretionem reuerti non posse.
to the-cretion return not to-be-able
Liberis nostris inpuberibus, quos in potestate habemus, non 179
To-children our under-age whom in power we-have not
solum ita ut supra diximus substituere possumus, id est ut
only so as above we-said substitute we-can that is that
si heredes non extiterint, alius nobis heres sit; sed eo
if heirs not they-have-appeared another for-us heir be but by-this
amplius ut, etiamsi heredes nobis extiterint et adhuc
further so-that even-if heirs to-us they-have-appeared and still
inpuberes mortui fuerint, sit iis aliquis heres; uelut
under-age dead they-have-become there-be for-them someone heir as
hoc modo 'Titius filius meus mihi heres esto. si filius meus
in-this way Titius son my to-me heir be if son my

mihi heres non erit siue heres erit et prius moriatur
to-me heir not shall-be or heir shall-be and before dies
quam in suam tutelam uenerit, tunc Seius heres esto.'
than into his-own tutelage he-has-come then Seius heir be
180 quo casu siquidem non extiterit heres filius, substitutus
in-which case if-indeed not has-appeared as-heir the-son the-substitute
patri fit heres; si uero heres extiterit filius et ante
to-the-father becomes heir if however heir has-appeared the-son and before
pubertatem decesserit, ipsi filio fit heres substitutus.
puberty has-died himself to-the-son becomes heir the-substitute
quam ob rem duo quodammodo sunt testamenta, aliud patris,
which for matter two in-a-certain-way are wills one the-father's
aliud filii, tamquam si ipse filius sibi heredem instituisset;
another the-son's as if himself the-son for-himself an-heir had-instituted
aut certe unum est testamentum duarum hereditatum.
or certainly one is the-will of-two inheritances
181 Ceterum ne post obitum parentis periculo insidiarum
However lest after the-death of-the-parent to-the-danger of-plots
subiectus uideatur pupillus, in usu est uulgarem quidem
subjected seem the-ward in use it-is the-common indeed
substitutionem palam facere, id est eo loco quo pupillum
substitution openly to-make that is in-that place in-which the-ward
heredem instituimus; nam uulgaris substitutio ita uocat
heir we-institute for the-common substitution so calls
ad hereditatem substitutum, si omnino pupillus heres non
to the-inheritance the-substitute if at-all the-ward heir not
extiterit; quod accidit, cum uiuo parente moritur, quo casu
has-appeared which happens when alive the-parent he-dies in-which case
nullum substituti maleficium suspicari possumus, cum scilicet
no of-the-substitute crime suspect we-can since of-course
uiuo testatore omnia quae in testamento scripta sint ignorentur.
alive the-testator all-things which in the-will written are are-unknown

illam autem substitutionem, per quam, etiamsi heres extiterit
that however substitution by which even-if heir has-appeared
pupillus et intra pubertatem decesserit, substitutum uocamus,
the-ward and within puberty has-died the-substitute we-call
separatim in inferioribus tabulis scribimus, easque tabulas
separately on lower tablets we-write and-those tablets
proprio lino propriaque cera consignamus, et in prioribus
with-their-own thread and-their-own wax we-seal and in the-former
tabulis cauemus, ne inferiores tabulae uiuo filio et
tablets we-provide that-not the-lower tablets alive the-son and
adhuc inpubere aperiantur. sed longe tutius est utrumque
still under-age be-opened but far safer it-is each
genus substitutionis in inferioribus tabulis consignari, quod si
kind of-substitution on the-lower tablets to-be-sealed because if
ita separatae fuerint substitutiones, ut diximus, ex priore
thus separated have-been the-substitutions as we-said from the-former
potest intellegi in altera quoque idem esse substitutus.
it-can be-understood in the-other also the-same to-be the-substitute
Non solum autem heredibus institutis inpuberibus liberis 182
Not only however for-heirs instituted under-age children
ita substituere possumus, ut si ante pubertatem mortui
thus substitute we-can that if before puberty dead
fuerint, sit is heres quem nos uoluerimus, sed etiam
they-have-become be he heir whom we have-wished but also
exheredatis. itaque eo casu si quid pupillo ex
for-the-disinherited and-so in-that case if anything to-the-ward from
hereditatibus legatisue aut donationibus propinquorum
inheritances or-legacies or gifts of-relatives
adquisitum fuerit, id omne ad substitutum pertinet.
acquired has-been that all to the-substitute pertains

183 Quaecumque diximus de substitutione inpuberum liberorum
Whatever we-have-said about the-substitution of-under-age children
uel heredum institutorum uel exheredatorum, eadem etiam
either heirs instituted or disinherited the-same also
de postumis intellegemus.
about posthumous-children we-shall-understand

184 Extraneo uero heredi instituto ita substituere non possumus,
For-an-outside however heir instituted thus substitute not we-can
ut si heres extiterit et intra aliquod tempus decesserit,
that if heir he-has-appeared and within some time has-died
alius ei heres sit; sed hoc solum nobis permissum est,
another to-him heir be but this alone to-us permitted is
ut eum per fideicommissum obligemus, ut hereditatem
that him through a-trust we-bind that inheritance
nostram totam uel pro parte restituat; quod ius quale
our whole or for a-share he-hand-over which law of-what-kind
sit, suo loco trademus.
is in-its-own place we-shall-set-out

185 Sicut autem liberi homines, ita et serui, tam nostri quam
As however free men so also slaves as our-own as
alieni, heredes scribi possunt.
another's heirs be-written can

186 Sed noster seruus simul et liber et heres esse
But our slave at-the-same-time both free and heir to-be
iuberi debet, id est hoc modo 'Stichus seruus meus liber
be-ordered must that is in-this way Stichus slave my free
heresque esto', uel 'heres liberque esto.'
and-heir be or heir and-free be

187 nam si sine libertate heres institutus sit, etiamsi postea
for if without freedom heir instituted he-has-been even-if afterward
manumissus fuerit a domino, heres esse non potest,
manumitted he-has-been by his-master heir be not he-can

quia institutio in persona eius non constitit; ideoque
because the-institution in the-person his not stood and-therefore
licet alienatus sit, non potest iussu domini noui
although alienated he-has-been not he-can at-the-order of-the-master new
cernere hereditatem.
make-cretion-for the-inheritance
cum libertate uero heres institutus siquidem in eadem causa 188
with freedom however heir instituted if-indeed in the-same position
durauerit, fit ex testamento liber et inde necessarius
he-has-continued becomes by the-will free and thence a-necessary
heres. si uero ab ipso testatore manumissus fuerit,
heir if however by the-very testator manumitted he-has-been
suo arbitrio hereditatem adire potest. quodsi alienatus
at-his-own discretion the-inheritance enter he-can but-if alienated
sit, iussu noui domini adire hereditatem debet,
he-has-been at-the-order of-the-new master enter the-inheritance he-must
qua ratione per eum dominus fit heres; nam ipse
by-which reasoning through him the-master becomes heir for he-himself
neque heres neque liber esse potest.
neither heir nor free be can
Alienus quoque seruus heres institutus si in eadem causa 189
Another's also slave heir instituted if in the-same position
durauerit, iussu domini hereditatem adire debet; si
he-has-continued at-the-order of-the-master the-inheritance enter must if
uero alienatus ab eo fuerit aut uiuo testatore aut post
however alienated by him he-has-been either alive the-testator or after
mortem eius, antequam cernat, debet iussu noui
the-death his before he-makes-cretion he-must at-the-order of-the-new
domini cernere; si uero manumissus est, suo arbitrio
master make-cretion if however manumitted he-is at-his-own discretion
adire hereditatem potest.
enter the-inheritance he-can

190 Si autem seruus alienus heres institutus est uulgari
If however a-slave another's heir instituted is common
cretione data, ita intellegitur dies cretionis cedere, si ipse
cretion given thus is-understood the-day of-cretion to-begin if himself
seruus scierit se heredem institutum esse, nec ullum
the-slave has-known himself heir instituted to-be nor any
inpedimentum sit, quominus certiorem dominum faceret,
impediment there-is to-prevent more-informed the-master he-should-make
ut illius iussu cernere possit.
so-that at-his order make-cretion he-can

XVI · LEGACIES BY VINDICATION

Legacies are of four kinds. A legacy by vindication, in words like do lego, *gives the legatee Quiritary ownership on entry, so the thing must be the testator's; the schools differ on when it passes. Nero's decree saves legacies in the wrong form. A thing left to several by vindication is shared, and one under condition belongs meanwhile to the heir or to no one.*

191 Post haec uideamus de legatis. quae pars iuris extra
After these-things let-us-see about legacies which part of-law outside
propositam quidem materiam uidetur; nam loquimur de
the-proposed indeed subject seems-to-be for we-speak about
his iuris figuris, quibus per uniuersitatem res nobis
those of-law forms by-which through the-whole things to-us
adquiruntur; sed cum omni modo de testamentis deque
are-acquired but since in-every way about wills and-about
heredibus qui testamento instituuntur locuti sumus, non
heirs who by-will are-instituted spoken we-have not
sine causa sequenti loco poterit haec iuris materia tractari.
without cause in-the-following place can this of-law matter be-treated

Legatorum itaque genera sunt quattuor: aut enim per 192
Of-legacies therefore the-kinds are four either for by
uindicationem legamus aut per damnationem aut sinendi
vindication we-bequeath or by condemnation or of-permitting
modo aut per praeceptionem.
by-way or by preception
Per uindicationem hoc modo legamus 'Titio' uerbi 193
By vindication in-this way we-bequeath to-Titius of-example
gratia 'hominem Stichum do lego'; sed et si alterutrum
for-the-sake the-man Stichus I-give I-bequeath but also if either-one
uerbum positum sit, ueluti 'do' aut 'lego', aeque per
word placed has-been for-example I-give or I-bequeath equally by
uindicationem legatum est; item, ut magis uisum est, si
vindication bequeathed it-is likewise as rather seemed-right it-is if
ita legatum fuerit 'sumito', uel ita 'sibi habeto', uel
thus bequeathed it-has-been let-him-take or thus for-himself let-him-have or
ita 'capito', aeque per uindicationem legatum est.
thus let-him-take equally by vindication bequeathed it-is
Ideo autem per uindicationem legatum appellatur, quia 194
For-this-reason however by vindication a-legacy is-called because
post aditam hereditatem statim ex iure Quiritium res
after entered the-inheritance at-once by the-law of-the-Quirites the-thing
legatarii fit; et si eam rem legatarius uel ab herede
the-legatee's becomes and if that thing the-legatee either from the-heir
uel ab alio quocumque qui eam possidet petat, uindicare
or from another whoever who it possesses claims vindicate
debet, id est intendere suam rem ex iure Quiritium esse.
he-must that is to-assert his-own the-thing by the-law of-the-Quirites to-be
In eo solo dissentiunt prudentes, quod Sabinus quidem et 195
On this alone disagree the-jurists that Sabinus indeed and
Cassius ceterique nostri praeceptores quod ita legatum sit
Cassius and-the-other our teachers what thus bequeathed has-been

statim post aditam hereditatem putant fieri legatarii, etiamsi
at-once after entered the-inheritance think to-become the-legatee's even-if
ignoret sibi legatum esse, sed posteaquam scierit et
he-is-unaware to-him bequeathed it-to-be but after he-has-learned and
*** legatum, proinde esse atque si legatum non esset;
(lacuna) the-legacy just-so to-be as if bequeathed not it-were
Nerua uero et Proculus ceterique illius scholae auctores
Nerva however and Proculus and-the-other of-that school authorities
non aliter putant rem legatarii fieri, quam si uoluerit
not otherwise think the-thing the-legatee's to-become than if he-has-wished
eam ad se pertinere. sed hodie ex diui Pii Antonini
it to himself to-belong but today by of-the-deified Pius Antoninus
constitutione hoc magis iure uti uidemur, quod Proculo
the-enactment this rather law to-use we-seem which to-Proculus
placuit; nam cum legatus fuisset Latinus per uindicationem
seemed-right for when bequeathed had-been a-Latin by vindication
coloniae, Deliberent, inquit, decuriones, an ad se
to-a-colony Let-them-deliberate he-says the-councilors whether to themselves
uelint pertinere, proinde ac si uni legatus esset.
they-wish to-belong just as if to-one-man bequeathed he-were
196 Eae autem solae res per uindicationem legantur recte, quae
Those however alone things by vindication are-bequeathed rightly which
ex iure Quiritium ipsius testatoris sunt. sed eas quidem
by the-law of-the-Quirites of-the-very of-the-testator are but those indeed
res quae pondere numero mensura constant placuit
things which by-weight number measure consist it-has-been-approved
sufficere, si mortis tempore sint ex iure Quiritium testatoris,
to-suffice if of-death at-the-time they-are by the-law of-the-Quirites the-testator's
ueluti uinum oleum frumentum pecuniam numeratam.
for-example wine oil grain money counted
ceteras res uero placuit utroque tempore testatoris
the-other things however it-has-been-approved at-each time the-testator's

ex iure Quiritium esse debere, id est et quo faceret
by the-law of-the-Quirites to-be to-have-to that is both when he-made
testamentum et quo moreretur; alioquin inutile est legatum.
the-will and when he-died otherwise useless is the-legacy
Sed sane hoc ita est iure ciuili. postea uero auctore 197
But certainly this so is by-law civil afterward however on-the-motion-of
Nerone Caesare senatusconsultum factum est, quo cautum
Nero Caesar a-decree-of-the-senate made was by-which provided
est, ut si eam rem quisque legauerit quae eius numquam
it-was that if that thing anyone has-bequeathed which his never
fuerit, proinde utile sit legatum, atque si optimo iure relictum
was just-so valid be the-legacy as if by-the-best right left
esset; optimum autem ius est per damnationem legati, quo
it-had-been the-best however right is by condemnation of-a-legacy by-which
genere etiam aliena res legari potest, sicut inferius apparebit.
kind even another's thing be-bequeathed can as below will-appear
Sed si quis rem suam legauerit, deinde post testamentum 198
But if someone thing his-own has-bequeathed then after the-will
factum eam alienauerit, plerique putant non solum iure ciuili
made it he-has-alienated most think not only by-law civil
inutile esse legatum, sed nec ex senatusconsulto confirmari.
useless to-be the-legacy but nor by the-decree-of-the-senate to-be-confirmed
quod ideo dictum est, quia et si per damnationem
which for-this-reason said was because even if by condemnation
aliquis rem suam legauerit eamque postea alienauerit,
someone thing his-own has-bequeathed and-it afterward has-alienated
plerique putant, licet ipso iure debeatur legatum, tamen
most think although by-itself law be-owed the-legacy yet
legatarium petentem posse per exceptionem doli mali
the-legatee suing to-be-able by the-defense of-fraud bad
repelli, quasi contra uoluntatem defuncti petat.
to-be-repelled as-if against the-will of-the-deceased he-sues

199 Illud constat, si duobus pluribusue per uindicationem eadem
That is-agreed if to-two or-more by vindication the-same
res legata sit, siue coniunctim siue disiunctim, et
thing bequeathed has-been whether jointly or separately and
omnes ueniant ad legatum, partes ad singulos pertinere
all come to the-legacy shares to each-one to-belong
et deficientis portionem collegatario adcrescere. coniunctim
and of-the-one-failing the-portion to-the-co-legatee to-accrue jointly
autem ita legatur 'Titio et Seio hominem Stichum do
however thus it-is-bequeathed to-Titius and Seius the-man Stichus I-give
lego'; disiunctim ita 'L. Titio hominem Stichum do
I-bequeath separately thus to-Lucius Titius the-man Stichus I-give
lego. Seio eundem hominem do lego.'
I-bequeath to-Seius the-same man I-give I-bequeath

200 Illud quaeritur, quod sub condicione per uindicationem
That is-asked what under a-condition by vindication
legatum est, pendente condicione cuius sit. nostri praeceptores
bequeathed is pending the-condition whose it-is our teachers
heredis esse putant exemplo statuliberi, id est eius serui,
the-heir's to-be think on-the-model of-the-statuliber that is of-that slave
qui testamento sub aliqua condicione liber esse iussus est;
who by-will under some condition free to-be ordered was
quem constat interea heredis seruum esse. sed diuersae
whom it-is-agreed meanwhile the-heir's slave to-be but of-the-opposing
scholae auctores putant nullius interim eam rem esse;
school the-authorities think of-no-one meanwhile that thing to-be
quod multo magis dicunt de eo quod pure legatum
which much more they-say about that which unconditionally bequeathed
est, antequam legatarius admittat legatum.
is before the-legatee accepts the-legacy

A legacy by condemnation, heres damnas esto*, binds the heir to give even another's thing or one yet to exist, and the legatee sues him* in personam*. Left separately to several, it is owed whole to each; left jointly, a failing share stays with the heir, or since the Papian statute lapses to those with children.*

Per damnationem hoc modo legamus 'heres meus Stichum 201
By condemnation in-this way we-bequeath heir my Stichus
seruum meum dare damnas esto'; sed et si 'dato'
slave my to-give condemned be but also if let-him-give
scriptum fuerit, per damnationem legatum est.
written has-been by condemnation bequeathed it-is
Eoque genere legati etiam aliena res legari potest, ita 202
And-by-this kind of-legacy even another's thing be-bequeathed can so
ut heres redimere rem et praestare aut aestimationem
that the-heir to-buy the-thing and to-furnish-it or the-valuation
eius dare debeat.
its to-give must
Ea quoque res quae in rerum natura non est, si modo futura 203
That also thing which in of-things the-nature not is if only future
est, per damnationem legari potest, uelut 'fructus qui in
it-is by condemnation be-bequeathed can as the-fruits which on
illo fundo nati erunt', aut 'quod ex illa ancilla natum erit.'
that land born shall-be or what from that slave-woman born shall-be
Quod autem ita legatum est, post aditam hereditatem, etiamsi 204
What however thus bequeathed is after entered the-inheritance even-if
pure legatum est, non, ut per uindicationem legatum,
unconditionally bequeathed it-is not as by vindication bequeathed
continuo legatario adquiritur, sed nihilo minus heredis est.
immediately for-the-legatee is-acquired but none the-less the-heir's it-is

et ideo legatarius in personam agere debet, id est intendere
and therefore the-legatee in personam sue must that is to-assert
heredem sibi dare oportere; et tum heres, si res mancipi
the-heir to-him to-give ought and then the-heir if the-thing mancipable
sit, mancipio dare aut in iure cedere possessionemque
is in-mancipation to-give or in court to-cede and-possession
tradere debet; si nec mancipi sit, sufficit si tradiderit. nam si
to-deliver must if not mancipable it-is it-suffices if he-has-delivered for if
mancipi rem tantum tradiderit nec mancipauerit, usucapione
a-mancipable thing only he-has-delivered nor mancipated by-usucapion
pleno iure fit legatarii; conpletur autem usucapio, sicut
in-full right it-becomes the-legatee's is-completed however usucapion as
alio quoque loco diximus, mobilium quidem rerum anno,
in-another also place we-said of-movable indeed things in-a-year
earum uero quae solo tenentur biennio.
of-those however which by-the-soil are-held in-two-years
205 Est et illa differentia huius et per uindicationem legati,
There-is also that difference of-this and by vindication legacy
quod si eadem res duobus pluribusue per damnationem
that if the-same thing to-two or-more by condemnation
legata sit, siquidem coniunctim, plane singulis partes
bequeathed has-been if-indeed jointly plainly to-each shares
debentur, sicut in illo quod per uindicationem legatum est,
are-owed as in that which by vindication bequeathed is
si uero disiunctim, singulis solidum debetur. ita fit,
if however separately to-each the-whole is-owed so it-comes-about
ut scilicet heres alteri rem, alteri aestimationem eius
that of-course the-heir to-one the-thing to-the-other the-valuation its
praestare debeat. et in coniunctis deficientis portio non
furnish must and in the-joint of-the-one-failing the-portion not
ad collegatarium pertinet, sed in hereditate remanet.
to the-co-legatee belongs but in the-inheritance remains

Quod autem diximus deficientis portionem in per 206
What however we-said of-the-one-failing the-portion in by
damnationem quidem legato in hereditate retineri, in per
condemnation indeed legacy in the-inheritance to-be-retained in by
uindicationem uero collegatario adcrescere, admonendi sumus
vindication however to-the-co-legatee to-accrue to-be-reminded we-are
ante legem Papiam hoc iure ciuili ita fuisse; post
before the-statute Papian this by-law civil so to-have-been after
legem uero Papiam deficientis portio caduca fit et
the-statute however Papian of-the-one-failing the-portion lapsed becomes and
ad eos pertinet, qui in eo testamento liberos habent.
to those belongs who in that will children have
Et quamuis prima causa sit in caducis uindicandis heredum 207
And although the-first claim is in lapsed-shares to-be-vindicated of-heirs
liberos habentium, deinde si heredes liberos non habeant,
children having then if the-heirs children not have
legatariorum liberos habentium, tamen ipsa lege Papia
of-legatees children having yet by-the-very statute Papian
significatur, ut collegatarius coniunctus, si liberos habeat,
it-is-made-clear that a-co-legatee joint if children he-has
potior sit heredibus, etiamsi liberos habebunt.
preferred is to-the-heirs even-if children they-shall-have
Sed plerisque placuit, quantum ad hoc ius, quod 208
But to-most it-has-seemed-right as-far-as to this law which
lege Papia coniunctis constituitur, nihil interesse, utrum
by-the-statute Papian for-the-joint is-established nothing to-matter whether
per uindicationem an per damnationem legatum sit.
by vindication or by condemnation bequeathed it-has-been

A legacy by permission, the heir being bound to let the legatee take the thing, reaches the heir's own property too; some hold that it binds the heir only to allow the taking, and when it is left separately to several, jurists differ whether each is owed the whole or the first taker is safe. A legacy by preception, take first, our teachers allow only to a co-heir, enforced in the action to divide the household; the other school treats it as vindication and allows it to anyone.

209 Sinendi modo ita legamus 'heres meus damnas esto sinere
Of-permitting by-way thus we-bequeath heir my condemned be to-permit
L. Titium hominem Stichum sumere sibique habere.'
Lucius Titius the-man Stichus to-take and-for-himself to-have

210 Quod genus legati plus quidem habet quam per uindicationem
Which kind of-legacy more indeed has than by vindication
legatum, minus autem quam per damnationem. nam eo
a-legacy less however than by condemnation for in-that
modo non solum suam rem testator utiliter legare potest,
way not only his-own thing the-testator validly bequeath can
sed etiam heredis sui; cum alioquin per uindicationem
but also of-heir his-own whereas otherwise by vindication
nisi suam rem legare non potest, per damnationem autem
except his-own thing bequeath not he-can by condemnation however
cuiuslibet extranei rem legare potest.
of-any outsider the-thing bequeath he-can

211 Sed siquidem mortis testatoris tempore res uel ipsius
But if-indeed of-death of-the-testator at-the-time the-thing either of-the-very
testatoris sit uel heredis, plane utile legatum est, etiamsi
testator is or of-the-heir plainly valid the-legacy is even-if
testamenti faciendi tempore neutrius fuerit.
of-the-will of-making at-the-time of-neither it-was

Quodsi post mortem testatoris ea res heredis esse coeperit, 212
But-if after the-death of-the-testator that thing the-heir's to-be has-begun
quaeritur an utile sit legatum. et plerique putant inutile
it-is-asked whether valid be the-legacy and most think invalid
esse. quid ergo est? licet aliquis eam rem legauerit,
to-be what then is-it although someone that thing has-bequeathed
quae neque eius umquam fuerit neque postea heredis eius
which neither his ever was nor afterward of-heir his
umquam esse coeperit, ex senatusconsulto Neroniano proinde
ever to-be has-begun by the-decree-of-the-senate Neronian just-so
uidetur, ac si per damnationem relicta esset.
it-seems as if by condemnation left it-had-been
Sicut autem per damnationem legata res non statim post 213
As however by condemnation a-bequeathed thing not at-once after
aditam hereditatem legatarii efficitur, sed manet heredis eo
entered the-inheritance the-legatee's is-made but remains the-heir's so
usque, donec is tradendo uel mancipando uel in iure cedendo
long until he by-delivering or by-mancipating or in court by-ceding
legatarii eam fecerit, ita et in sinendi modo legato iuris est;
the-legatee's it he-has-made so also in of-permitting by-way a-legacy of-law it-is
et ideo huius quoque legati nomine in personam actio
and therefore of-this also legacy on-account-of in personam the-action
est 'quidquid heredem ex testamento dare facere oportet.'
is whatever the-heir from the-will to-give to-do ought
Sunt tamen qui putant ex hoc legato non uideri 214
There-are however (those)-who think from this legacy not to-seem
obligatum heredem, ut mancipet aut in iure cedat aut
bound the-heir that he-mancipate or in court cede or
tradat, sed sufficere, ut legatarium rem sumere patiatur;
deliver but to-suffice that the-legatee the-thing to-take he-allow

quia nihil ultra ei testator imperauit, quam ut sinat,
because nothing beyond to-him the-testator commanded than that he-permit
id est patiatur, legatarium rem sibi habere.
that is allow the-legatee the-thing for-himself to-have
215 Maior illa dissensio in hoc legato interuenit, si eandem rem
Greater that dissension in this legacy arises if the-same thing
duobus pluribusue disiunctim legasti; quidam putant
to-two or-more separately you-have-bequeathed some think
utrisque solidam deberi, nonnulli occupantis esse meliorem
to-both the-whole to-be-owed some of-the-occupier to-be the-better
condicionem aestimant, quia cum eo genere legati damnetur
condition judge because since in-that kind of-legacy is-condemned
heres patientiam praestare, ut legatarius rem habeat, sequitur,
the-heir sufferance to-furnish that the-legatee the-thing may-have it-follows
ut si priori patientiam praestiterit et is rem sumpserit,
that if to-the-first sufferance he-has-furnished and he the-thing has-taken
securus sit aduersus eum qui postea legatum petierit, quia
safe he-is against him who afterward the-legacy has-sued-for because
neque habet rem, ut patiatur eam ab eo sumi,
neither he-has the-thing so-that he-may-allow it from him to-be-taken
neque dolo malo fecit, quominus eam rem haberet.
nor by-fraud bad has-be-acted that-not that thing he-should-have
216 Per praeceptionem hoc modo legamus ‘L. Titius hominem
By preception in-this way we-bequeath Lucius Titius the-man
Stichum praecipito.’
Stichus let-him-take-first
217 Sed nostri quidem praeceptores nulli alii eo modo
But our indeed teachers to-no other in-that way
legari posse putant, nisi ei qui aliqua ex parte heres
be-bequeathed can think except to-him who some from part heir
scriptus esset; praecipere enim esse praecipuum sumere;
written was to-take-first for to-be as-a-preference to-take

quod tantum in eius persona procedit, qui aliqua ex parte
which only in his person proceeds who some from part
heres institutus est, quod is extra portionem hereditatis
heir instituted is that he outside the-portion of-the-inheritance
praecipuum legatum habiturus sit.
a-preferential legacy about-to-have is
Ideoque si extraneo legatum fuerit, inutile est 218
And-therefore if to-an-outsider bequeathed it-has-been invalid is
legatum; adeo ut Sabinus existimauerit ne quidem ex
the-legacy so-far that Sabinus considered not even by
senatusconsulto Neroniano posse conualescere: nam eo,
the-decree-of-the-senate Neronian to-be-able to-recover for by-that
inquit, senatusconsulto ea tantum confirmantur, quae
he-says decree-of-the-senate those-things only are-confirmed which
uerborum uitio iure ciuili non ualent, non quae propter
of-words by-a-fault by-law civil not are-valid not (those)-which on-account-of
ipsam personam legatarii non deberentur sed Iuliano et
the-very person of-the-legatee not would-be-owed but to-Julian and
Sexto placuit etiam hoc casu ex senatusconsulto confirmari
Sextus it-seemed-right even in-this case by the-decree-of-the-senate to-be-confirmed
legatum: nam ex uerbis etiam hoc casu accidere, ut iure
the-legacy for from the-words even in-this case to-happen that by-law
ciuili inutile sit legatum, inde manifestum esse, quod eidem
civil invalid be the-legacy thence clear to-be that to-the-same
aliis uerbis recte legatur, ueluti per uindicationem, per
in-other words rightly it-is-bequeathed for-example by vindication by
damnationem, sinendi modo; tunc autem uitio personae
condemnation of-permitting by-way then however by-a-fault of-the-person
legatum non ualere, cum ei legatum sit, cui nullo modo
the-legacy not to-be-valid when to-him bequeathed it-is to-whom in-no way

legari possit, uelut peregrino, cum quo testamenti factio
be-bequeathed it-can such-as a-foreigner with whom of-a-will the-capacity
non sit; quo plane casu senatusconsulto locus non est.
not there-is in-which plainly case for-the-decree-of-the-senate place not there-is
219 Item nostri praeceptores quod ita legatum est nulla alia
Likewise our teachers what thus bequeathed is by-no other
ratione putant posse consequi eum cui ita fuerit
means think to-be-able to-obtain him to-whom thus it-has-been
legatum quam iudicio familiae erciscundae, quod inter
bequeathed than by-the-action of-the-household dividing which between
heredes de hereditate erciscunda, id est diuidunda, accipi
heirs about the-inheritance being-divided that is being-shared to-be-granted
solet; officio enim iudicis id contineri, ut ei quod
is-wont by-the-duty for of-the-judge that to-be-contained that to-him what
per praeceptionem legatum est adiudicetur.
by preception bequeathed is be-adjudged
220 Unde intellegimus nihil aliud secundum nostrorum
Whence we-understand nothing else according-to of-our
praeceptorum opinionem per praeceptionem legari posse,
teachers the-opinion by preception be-bequeathed can
nisi quod testatoris sit; nulla enim alia res quam hereditaria
except what the-testator's is no for other thing than of-the-inheritance
deducitur in hoc iudicium. itaque si non suam rem eo
is-brought into this action and-so if not his-own thing in-that
modo testator legauerit, iure quidem ciuili inutile erit
way the-testator has-bequeathed by-law indeed civil invalid will-be
legatum; sed ex senatusconsulto confirmabitur. aliquo tamen
the-legacy but by the-decree-of-the-senate it-will-be-confirmed in-some however
casu etiam alienam rem per praeceptionem legari posse
case even another's thing by preception be-bequeathed can
fatentur; ueluti si quis eam rem legauerit, quam creditori
they-admit for-example if someone that thing has-bequeathed which to-a-creditor

fiduciae causa mancipio dederit; nam officio iudicis
of-trust for-the-sake in-mancipation he-has-given for by-the-duty of-the-judge
coheredes cogi posse existimant soluta pecunia luere
the-co-heirs be-compelled can they-consider paid the-money to-redeem
eam rem, ut possit praecipere is cui ita legatum sit.
that thing so-that can take-first he to-whom thus bequeathed it-has-been
Sed diuersae scholae auctores putant etiam extraneo per 221
But of-the-opposing school the-authorities think even to-an-outsider by
praeceptionem legari posse proinde ac si ita scribatur
preception be-bequeathed can just as if thus be-written
'Titius hominem Stichum capito', superuacuo adiecta 'prae'
Titius the-man Stichus let-him-take superfluously added the-prae
syllaba; ideoque per uindicationem eam rem legatam
syllable and-therefore by vindication that thing bequeathed
uideri. quae sententia dicitur diui Hadriani constitutione
to-seem which opinion is-said of-the-deified Hadrian by-the-enactment
confirmata esse.
confirmed to-have-been
Secundum hanc igitur opinionem si ea res ex iure Quiritium 222
According-to this therefore opinion if that thing by the-law of-the-Quirites
defuncti fuerit, potest a legatario uindicari, siue is unus
the-deceased's was it-can by the-legatee be-vindicated whether be one
ex heredibus sit siue extraneus; quodsi in bonis tantum
of the-heirs is or an-outsider but-if among the-goods only
testatoris fuerit, extraneo quidem ex senatusconsulto utile
of-the-testator it-was to-an-outsider indeed by the-decree-of-the-senate valid
erit legatum, heredi uero familiae erciscundae iudicis
will-be the-legacy to-an-heir however of-the-household dividing by-the-judge's
officio praestabitur; quodsi nullo iure fuerit testatoris, tam
duty it-will-be-furnished but-if by-no right it-was the-testator's as
heredi quam extraneo ex senatusconsulto utile erit.
to-an-heir as to-an-outsider by the-decree-of-the-senate valid it-will-be

223 Siue tamen heredibus secundum nostrorum opinionem,
Whether however to-heirs according-to of-ours the-opinion
siue etiam extraneis secundum illorum opinionem, duobus
or also to-outsiders according-to of-them the-opinion to-two
pluribusue eadem res coniunctim aut disiunctim legata
or-more the-same thing jointly or separately bequeathed
fuerit, singuli partes habere debent.
has-been each shares have must

XIX · LIMITS ON LEGACIES

The Twelve Tables let a testator exhaust his estate in legacies, so heirs refused; the Furian statute capped each legacy at a thousand asses, the Voconian tied it to the heirs' share, and the Falcidian, still in force, keeps a quarter for the heir. Legacies and grants of freedom before the institution or after the heir's death are invalid, though a legacy may be left for the moment the heir dies; whether a tutor may be so appointed is disputed.

224 Sed olim quidem licebat totum patrimonium legatis
But formerly indeed it-was-allowed the-whole patrimony in-legacies
atque libertatibus erogare nec quicquam heredi relinquere
and in-grants-of-freedom to-pay-out nor anything to-the-heir to-leave
praeterquam inane nomen heredis; idque lex XII
except the-empty name of-heir and-this the-statute of-the-Twelve
tabularum permittere uidebatur, qua cauetur, ut quod
Tables to-permit seemed in-which it-is-provided that what
quisque de re sua testatus esset, id ratum haberetur,
each-one about property his-own disposed had that valid should-be-held
his uerbis 'uti legassit suae rei, ita ius esto.'
in-these words as he-has-bequeathed of-his-own property so law be

quare qui scripti heredes erant, ab hereditate se
wherefore (those)-who written heirs were from the-inheritance themselves
abstinebant, et idcirco plerique intestati moriebantur.
abstained and therefore most intestate died
Itaque lata est lex Furia, qua, exceptis personis 225
And-so carried was the-statute Furian by-which excepting persons
quibusdam, ceteris plus mille assibus legatorum nomine
certain for-the-others more-than a-thousand asses of-legacies by-title
mortisue causa capere permissum non est. sed et haec lex
or-of-death by-reason to-take permitted not is but also this statute
non perfecit quod uoluit; qui enim uerbi gratia quinque
not achieved what it-wished (he)-who for of-example for-the-sake of-five
milium aeris patrimonium habebat, poterat quinque hominibus
thousand of-bronze a-patrimony had could to-five men
singulis millenos asses legando totum patrimonium erogare.
each a-thousand asses by-bequeathing the-whole patrimony pay-out
Ideo postea lata est lex Voconia, qua cautum est, 226
Therefore afterward carried was the-statute Voconian by-which provided it-was
ne cui plus legatorum nomine mortisue causa capere
that-not to-anyone more of-legacies by-title or-of-death by-reason to-take
liceret, quam heredes caperent. ex qua lege plane quidem
be-allowed than the-heirs took by which statute plainly indeed
aliquid utique heredes habere uidebantur; sed tamen fere
something in-any-case the-heirs to-have seemed but yet nearly
uitium simile nascebatur; nam in multas legatariorum
a-fault similar arose for among many of-legatees
personas distributo patrimonio poterat testator adeo heredi
persons distributed the-patrimony could the-testator so-much to-the-heir
minimum relinquere, ut non expediret heredi huius lucri
very-little leave that not it-was-expedient for-the-heir of-this gain
gratia totius hereditatis onera sustinere.
for-the-sake of-the-whole inheritance the-burdens to-sustain

227 Lata est itaque lex Falcidia, qua cautum est, ne
Carried was therefore the-statute Falcidian by-which provided it-was that-not
plus ei legare liceat quam dodrantem. itaque necesse
more to-him to-bequeath be-allowed than three-quarters and-so necessary
est, ut heres quartam partem hereditatis habeat. et hoc
it-is that the-heir a-fourth part of-the-inheritance have and this
nunc iure utimur.
now law we-use

228 In libertatibus quoque dandis nimiam licentiam conpescuit
In grants-of-freedom also being-given excessive license restrained
lex Fufia Caninia, sicut in primo commentario rettulimus.
the-statute Fufian Caninian as in the-first commentary we-related

229 Ante heredis institutionem inutiliter legatur, scilicet
Before the-heir's institution invalidly it-is-bequeathed of-course
quia testamenta uim ex institutione heredis accipiunt,
because wills force from the-institution of-the-heir receive
et ob id uelut caput et fundamentum intellegitur
and on-account-of this as-if the-head and foundation is-understood
totius testamenti heredis institutio.
of-the-whole will of-the-heir the-institution

230 Pari ratione nec libertas ante heredis institutionem dari
By-like reasoning nor freedom before the-heir's institution be-given
potest.
can

231 Nostri praeceptores nec tutorem eo loco dari posse
Our teachers not-even a-tutor in-that place be-given can
existimant; sed Labeo et Proculus tutorem posse dari,
consider but Labeo and Proculus a-tutor can be-given
quod nihil ex hereditate erogatur tutoris datione.
because nothing from the-inheritance is-paid-out of-a-tutor by-the-appointment

Post mortem quoque heredis inutiliter legatur, id est hoc 232
After the-death also of-the-heir invalidly it-is-bequeathed that is in-this
modo 'cum heres meus mortuus erit, do lego', aut 'dato'.
way when heir my dead shall-be I-give I-bequeath or let-him-give
ita autem recte legatur 'cum heres meus morietur', quia non
thus however rightly it-is-bequeathed when heir my shall-die because not
post mortem heredis relinquitur, sed ultimo uitae eius tempore.
after the-death of-the-heir it-is-left but at-the-last of-life his time
rursum ita non potest legari 'pridie quam heres
again thus not can it-be-bequeathed on-the-day-before than heir
meus morietur'; quod non pretiosa ratione receptum uidetur.
my shall-die which not by-weighty reason accepted it-seems
Eadem et de libertatibus dicta intellegemus. 233
The-same-things also about grants-of-freedom said we-shall-understand
Tutor uero an post mortem heredis dari possit 234
A-tutor however whether after the-death of-the-heir be-given can
quaerentibus eadem forsitan poterit esse quaestio, quae de
for-those-asking the-same perhaps can be the-question which about
eo agitatur qui ante heredum institutionem datur.
him is-discussed who before the-heirs' institution is-given

XX · INVALID LEGACIES

Legacies by way of penalty are invalid, and so are those to an uncertain person or a posthumous outsider; one to a person in the heir's power is disputed.

Poenae quoque nomine inutiliter legatur. poenae autem 235
Of-penalty also by-title invalidly it-is-bequeathed of-penalty however
nomine legari uidetur, quod coercendi heredis causa
by-title to-be-bequeathed seems what of-coercing the-heir for-the-sake

relinquitur, quo magis heres aliquid faciat aut non faciat;
is-left so-that more the-heir something may-do or not do
ueluti quod ita legatur 'si heres meus filiam suam Titio
for-example what thus is-bequeathed if heir my daughter his to-Titius
in matrimonium conlocauerit, X milia Seio dato', uel
in marriage has-placed ten thousand to-Seius let-him-give or
ita 'si filiam Titio in matrimonium non conlocaueris, X
thus if the-daughter to-Titius in marriage not you-have-placed ten
milia Titio dato'; sed et si heredem, si uerbi gratia
thousand to-Titius let-him-give but also if the-heir if of-example for-the-sake
intra biennium monumentum sibi non fecerit, X milia
within two-years a-monument for-him not has-made ten thousand
Titio dare iusserit, poenae nomine legatum est; et denique
to-Titius to-give he-has-ordered of-penalty by-title bequeathed it-is and finally
ex ipsa definitione multas similes species *** possumus.
from the-very definition many similar cases (lacuna) we-can
236 Nec libertas quidem poenae nomine dari potest, quamuis
Nor freedom even of-penalty by-title be-given can although
de ea re fuerit quaesitum.
about that matter it-has-been questioned
237 De tutore uero nihil possumus quaerere, quia non potest
About a-tutor however nothing we-can ask because not can
datione tutoris heres conpelli quicquam facere aut non
by-the-appointment of-a-tutor the-heir be-compelled anything to-do or not
facere; ideoque *** datur, poenae nomine tutor datus fuerit,
to-do and-therefore (lacuna) is-given of-penalty by-title a-tutor given has-been
magis sub condicione quam poenae nomine datus uidebitur.
rather under a-condition than of-penalty by-title given he-will-seem
238 Incertae personae legatum inutiliter relinquitur. incerta
To-an-uncertain person a-legacy invalidly is-left uncertain
autem uidetur persona, quam per incertam opinionem animo
however seems a-person whom through an-uncertain opinion to-mind

suo testator subicit, uelut cum ita legatum sit 'qui primus
his-own the-testator presents as when thus bequeathed it-is who first
ad funus meum uenerit ei heres meus X milia dato.'
to funeral my has-come to-him heir my ten thousand let-him-give
idem iuris est, si generaliter omnibus legauerit 'quicumque
the-same of-law is if generally to-all he-has-bequeathed whoever
ad funus meum uenerit.' in eadem causa est, quod ita
to funeral my has-come in the-same position is what thus
relinquitur 'quicumque filio meo in matrimonium filiam suam
is-left whoever to-son my in marriage daughter his
conlocauerit, ei heres meus X milia dato.' illud quoque
has-placed to-him heir my ten thousand let-him-give that also
quod ita relinquitur 'qui post testamentum scriptum primi
what thus is-left (to-those)-who after the-will written first
consules designati erunt', aeque incertis personis legari
consuls designated shall-be equally to-uncertain persons to-be-bequeathed
uidetur. et denique aliae multae huiusmodi species sunt.
seems and finally other many of-this-kind cases are
sub certa uero demonstratione incertae personae recte
under a-certain however description to-an-uncertain person rightly
legatur, ueluti 'ex cognatis meis qui nunc sunt qui primus
it-is-bequeathed for-example of kinsmen my who now are who first
ad funus meum uenerit, ei X milia heres meus dato.'
to funeral my has-come to-him ten thousand heir my let-him-give
Libertas quoque non uidetur incertae personae dari 239
Freedom also not seems to-an-uncertain person be-given
posse, quia lex Fufia Caninia iubet nominatim seruos
to-be-able because the-statute Fufian Caninian orders by-name slaves
liberari.
to-be-freed
Tutor quoque certus dari debet. 240
A-tutor also certain be-given must

241 Postumo quoque alieno inutiliter legatur. Est autem
To-a-posthumous-child also outside invalidly it-is-bequeathed Is however
alienus postumus, qui natus inter suos heredes testatori
an-outside posthumous-child (he)-who born among own heirs to-the-testator
futurus non est. ideoque ex emancipato quoque filio
going-to-be not is and-therefore from an-emancipated also son
conceptus nepos extraneus postumus est; item qui
conceived a-grandson an-outside posthumous-child is likewise (he)-who
in utero est eius quae iure ciuili non intellegitur uxor,
in the-womb is of-her who by-law civil not is-understood a-wife
extraneus postumus patris intellegitur.
an-outside posthumous-child of-the-father is-understood

242 Ac ne heres quidem potest institui postumus alienus;
And not heir even can be-instituted a-posthumous-child outside
est enim incerta persona.
it-is for an-uncertain person

243 Cetera uero quae supra diximus ad legata proprie
The-other however things-which above we-said to legacies properly
pertinent. quamquam non inmerito quibusdam placeat
pertain although not undeservedly to-some it-seems-right
poenae nomine heredem institui non posse; nihil enim
of-penalty by-title an-heir be-instituted not can nothing for
interest, utrum legatum dare iubeatur heres, si fecerit
matters whether a-legacy to-give be-ordered the-heir if he-has-done
aliquid aut non fecerit, an coheres ei adiciatur, quia
something or not done or a-co-heir to-him be-added because
tam coheredis adiectione quam legati datione conpellitur,
as-much of-a-co-heir by-the-addition as of-a-legacy by-the-giving he-is-compelled
ut aliquid contra propositum suum faciat aut non faciat.
that something against purpose his-own he-do or not do

An ei, qui in potestate sit eius quem heredem instituimus, 244
Whether to-him who in power is of-him whom as-heir we-institute
recte legemus, quaeritur. Seruius recte legari putat, sed
rightly we-bequeath it-is-asked Servius rightly to-be-bequeathed thinks but
euanescere legatum, si quo tempore dies legatorum cedere
to-vanish the-legacy if at-any time the-day of-legacies to-vest
solet, adhuc in potestate sit; ideoque siue pure legatum
is-wont still in power he-is and-therefore whether unconditionally bequeathed
sit et uiuo testatore in potestate heredis esse desierit, siue sub
it-is and alive the-testator in the-power of-the-heir to-be he-has-ceased or under
condicione et ante condicionem id acciderit, deberi legatum.
a-condition and before the-condition that has-happened to-be-owed the-legacy
Sabinus et Cassius sub condicione recte legari, pure
Sabinus and Cassius under a-condition rightly to-be-bequeathed unconditionally
non recte, putant; licet enim uiuo testatore possit desinere
not rightly think although for alive the-testator he-can cease
in potestate heredis esse, ideo tamen inutile legatum
in the-power of-the-heir to-be for-that-reason however invalid the-legacy
intellegi oportere, quia quod nullas uires habiturum foret,
to-be-understood it-ought because what no force about-to-have would-be
si statim post testamentum factum decessisset testator, hoc
if at-once after the-will made had-died the-testator this
ideo ualere, quia uitam longius traxerit, absurdum
for-this-reason to-be-valid because life longer he-has-drawn-out absurd
esset. sed diuersae scholae auctores nec sub condicione
would-be but of-the-opposing school the-authorities not-even under a-condition
recte legari, quia, quos in potestate habemus, eis
rightly to-be-bequeathed because (those)-whom in power we-have to-them
non magis sub condicione quam pure debere possumus.
not more under a-condition than unconditionally owe we-can

245 Ex diuerso constat ab eo qui in potestate tua est herede
From the-opposite it-is-agreed by him who in power yours is as-heir
instituto recte tibi legari; sed si tu per eum heres
instituted rightly to-you to-be-bequeathed but if you through him heir
extiteris, euanescere legatum, quia ipse tibi legatum
have-appeared to-vanish the-legacy because yourself to-yourself a-legacy
debere non possis; si uero filius emancipatus aut seruus
owe not you-can if however the-son emancipated or the-slave
manumissus erit uel in alium translatus, et ipse heres
manumitted shall-be or into another transferred and himself heir
extiterit aut alium fecerit, deberi legatum.
has-appeared or another has-made to-be-owed the-legacy

XXI · TRUSTS OF INHERITANCES

A valid heir may be asked, in words like peto*, to hand over the inheritance; the Trebellian and Pegasian decrees gave the recipient actions and the heir a quarter.*

246 Nunc transeamus ad fideicommissa.
Now let-us-pass to trusts
247 Et prius de hereditatibus uideamus.
And first about inheritances let-us-see
248 Inprimis igitur sciendum est opus esse, ut aliquis heres
First therefore to-be-known it-is need to-be that someone heir
recto iure instituatur eiusque fidei committatur, ut eam
by-proper law be-instituted and-to-his good-faith it-be-entrusted that that
hereditatem alii restituat; alioquin inutile est testamentum,
inheritance to-another be-hand-over otherwise invalid is the-will
in quo nemo recto iure heres instituitur.
in which no-one by-proper law heir is-instituted

Verba autem fideicommissorum haec maxime in usu esse 249
The-words however of-trusts these most in use to-be
uidentur ‘peto, rogo, uolo, fidei committo’; quae proinde
seem I-ask I-request I-wish to-good-faith I-commit which just-as
firma singula sunt, atque si omnia in unum congesta sint.
firm each are as if all into one gathered they-were
Cum igitur scripserimus ‘L. Titius heres esto’, possumus 250
When therefore we-have-written Lucius Titius heir be we-can
adicere ‘rogo te L. Titi petoque a te, ut cum primum
add I-request you Lucius Titius and-I-ask of you that when first
possis hereditatem meam adire, C. Seio reddas
you-can inheritance my enter to-Gaius Seius you-give-back
restituas.’ possumus autem et de parte restituenda rogare;
you-hand-over we-can however also about part being-handed-over request
et liberum est uel sub condicione uel pure relinquere
and free it-is either under a-condition or unconditionally to-leave
fideicommissa, uel ex die certa.
trusts or from a-day fixed
Restituta autem hereditate is qui restituit nihilo minus 251
Handed-over however the-inheritance he who hands-over none the-less
heres permanet; is uero qui recipit hereditatem aliquando
heir remains he however who receives the-inheritance sometimes
heredis loco est, aliquando legatarii.
of-an-heir in-the-place is sometimes of-a-legatee
Olim autem nec heredis loco erat nec legatarii, sed potius 252
Formerly however neither of-an-heir in-the-place was-he nor of-a-legatee but rather
emptoris. tunc enim in usu erat ei cui restituebatur
of-a-buyer then for in use it-was to-him to-whom was-handed-over
hereditas, nummo uno eam hereditatem dicis causa uenire; et
the-inheritance for-a-coin one that inheritance for-form's sake to-be-sold and
quae stipulationes inter uenditorem hereditatis et emptorem
which stipulations between the-seller of-an-inheritance and the-buyer

interponi solent, eaedem interponebantur inter heredem et
to-be-interposed are-wont the-same were-interposed between the-heir and
eum cui restituebatur hereditas, id est hoc modo: heres
him to-whom was-handed-over the-inheritance that is in-this way the-heir
quidem stipulabatur ab eo cui restituebatur hereditas, ut
indeed stipulated from him to-whom was-handed-over the-inheritance that
quidquid hereditario nomine condemnatus fuisset, siue quid
whatever by-the-inheritance's title condemned he-had-been or what
alias bona fide dedisset, eo nomine indemnis esset,
otherwise in-good faith he-had-given on-that account unharmed he-should-be
et omnino si quis cum eo hereditario nomine ageret,
and in-general if anyone with him by-the-inheritance's title should-sue
ut recte defenderetur; ille uero qui recipiebat hereditatem
that properly he-should-be-defended he however who received the-inheritance
inuicem stipulabatur, ut si quid ex hereditate ad heredem
in-turn stipulated that if anything from the-inheritance to the-heir
peruenisset, id sibi restitueretur, ut etiam pateretur eum
had-come that to-him should-be-handed-over that also he-should-allow him
hereditarias actiones procuratorio aut cognitorio nomine exequi.
the-inheritance's actions in-an-agent's or in-an-attorney's name to-pursue
253 Sed posterioribus temporibus Trebellio Maximo et Annaeo
But in-later times Trebellius Maximus and Annaeus
Seneca consulibus senatusconsultum factum est, quo
Seneca being-consuls a-decree-of-the-senate made was by-which
cautum est, ut si cui hereditas ex fideicommissi causa
provided it-was that if to-anyone an-inheritance from of-a-trust cause
restituta sit, actiones quae iure ciuili heredi et in
handed-over has-been the-actions which by-law civil to-the-heir and against
heredem conpeterent, ei et in eum darentur, cui
the-heir belonged to-him and against him should-be-given to-whom
ex fideicommisso restituta esset hereditas. per quod
from the-trust handed-over had-been the-inheritance through which

senatusconsultum desierunt illae cautiones in usu haberi.
decree-of-the-senate ceased those securities in use to-be-held
praetor enim utiles actiones ei et in eum qui recepit
the-praetor for equitable actions to-him and against him who has-received
hereditatem quasi heredi et in heredem dare coepit,
the-inheritance as-if to-an-heir and against an-heir to-give began
eaeque in edicto proponuntur.
and-those in the-edict are-set-forth
Sed rursus quia heredes scripti, cum aut totam hereditatem 254
But again because heirs written since either the-whole inheritance
aut paene totam plerumque restituere rogabantur, adire
or almost the-whole generally to-hand-over were-requested to-enter
hereditatem ob nullum aut minimum lucrum recusabant,
the-inheritance for no or very-little gain they-refused
atque ob id extinguebantur fideicommissa, postea
and on-account-of this were-extinguished trusts afterward
Pegaso et Pusione consulibus senatus censuit, ut ei
Pegasus and Pusio being-consuls the-senate decreed that to-him
qui rogatus esset hereditatem restituere, proinde liceret
who requested had-been the-inheritance to-hand-over just-so it-be-allowed
quartam partem retinere, atque e lege Falcidia in legatis
a-fourth part to-retain as by the-statute Falcidian in legacies
retinere conceditur. (ex singulis quoque rebus, quae per
to-retain is-granted from single also things which through
fideicommissum relincuntur, eadem retentio permissa est.)
a-trust are-left the-same retention permitted is
per quod senatusconsultum ipse heres onera hereditaria
through which decree-of-the-senate himself the-heir the-burdens of-the-inheritance
sustinet. ille autem, qui ex fideicommisso reliquam partem
sustains he however who from the-trust the-remaining part
hereditatis recipit, legatarii partiarii loco est, id est
of-the-inheritance receives of-a-legatee partial in-the-place is that is

eius legatarii cui pars bonorum legatur; quae species
of-that legatee to-whom a-share of-the-goods is-bequeathed which kind
legati partitio uocatur, quia cum herede legatarius partitur
of-legacy partition is-called because with the-heir the-legatee divides
hereditatem. unde effectum est, ut quae solent stipulationes
the-inheritance whence effected it-is that which are-wont stipulations
inter heredem et partiarium legatarium interponi, eaedem
between the-heir and a-partial legatee to-be-interposed the-same
interponantur inter eum, qui ex fideicommissi causa recipit
be-interposed between him who from of-a-trust cause receives
hereditatem, et heredem, id est ut et lucrum et damnum
the-inheritance and the-heir that is that both the-gain and the-loss
hereditarium pro rata parte inter eos commune sit.
of-the-inheritance in proportional part between them common be
255 Ergo siquidem non plus quam dodrantem hereditatis
Therefore if-indeed not more than three-quarters of-the-inheritance
scriptus heres rogatus sit restituere, tum ex Trebelliano
the-written heir requested has-been to-hand-over then by the-Trebellian
senatusconsulto restituitur hereditas, et in utrumque
decree-of-the-senate is-handed-over the-inheritance and against each
actiones hereditariae pro rata parte dantur, in heredem
the-actions of-the-inheritance in proportional part are-given against the-heir
quidem iure ciuili, in eum uero, qui recipit hereditatem,
indeed by-law civil against him however who receives the-inheritance
ex senatusconsulto Trebelliano. quamquam heres etiam pro ea
by the-decree-of-the-senate Trebellian although the-heir even for that
parte quam restituit heres permanet eique et in eum
part which he-hands-over heir remains and-to-him and against him
solidae actiones conpetunt; sed non ulterius oneratur nec
whole actions belong but not further he-is-burdened nor

ulterius illi dantur actiones, quam apud eum commodum
further to-him are-given actions than with him the-advantage
hereditatis remanet.
of-the-inheritance remains
At si quis plus quam dodrantem uel etiam totam 256
But if someone more than three-quarters or even the-whole
hereditatem restituere rogatus sit, locus est Pegasiano
inheritance to-hand-over requested has-been place there-is for-the-Pegasian
senatusconsulto.
decree-of-the-senate
Sed is qui semel adierit hereditatem, si modo sua uoluntate 257
But he who once has-entered the-inheritance if only by-his-own will
adierit, siue retinuerit quartam partem siue noluerit
he-has-entered whether he-has-retained a-fourth part or has-been-unwilling
retinere, ipse uniuersa onera hereditaria sustinet; sed quarta
to-retain himself all the-burdens of-the-inheritance sustains but the-fourth
quidem retenta quasi partis et pro parte stipulationes interponi
indeed retained as-if of-part and for part stipulations be-interposed
debent tamquam inter partiarium legatarium et heredem; si
must as between a-partial legatee and the-heir if
uero totam hereditatem restituerit, ad exemplum emptae
however the-whole inheritance he-has-handed-over after the-model of-a-bought
et uenditae hereditatis stipulationes interponendae sunt.
and sold inheritance stipulations to-be-interposed are
Sed si recuset scriptus heres adire hereditatem ob 258
But if refuses the-written heir to-enter the-inheritance on-account-of
id, quod dicat eam sibi suspectam esse quasi damnosam,
this that he-says it to-himself suspect to-be as-if ruinous
cauetur Pegasiano senatusconsulto, ut desiderante eo, cui
it-is-provided by-the-Pegasian decree-of-the-senate that desiring-it him to-whom
restituere rogatus est, iussu praetoris adeat et restituat,
to-hand-over requested he-was at-the-order of-the-praetor he-enter and hand-over

proindeque ei et in eum qui receperit hereditatem,
and-just-so to-him and against him who has-received the-inheritance
actiones dentur, ac iuris est ex senatusconsulto Trebelliano.
actions be-given as the-law is by the-decree-of-the-senate Trebellian
quo casu nullis stipulationibus opus est, quia simul et
in-which case of-no stipulations need there-is because at-once both
huic qui restituit securitas datur, et actiones hereditariae
to-this-one who hands-over security is-given and the-actions of-the-inheritance
ei et in eum transferuntur qui receperit hereditatem.
to-him and against him are-transferred who has-received the-inheritance

259 Nihil autem interest, utrum aliquis ex asse heres institutus
Nothing however matters whether someone from the-whole-as heir instituted
aut totam hereditatem aut pro parte restituere rogetur, an
either the-whole inheritance or for a-part to-hand-over be-requested or
ex parte heres institutus aut totam eam partem aut partis
for a-part heir instituted either the-whole that part or of-the-part
partem restituere rogetur; nam et hoc casu de quarta parte
a-part to-hand-over be-requested for also in-this case about the-fourth part
eius partis ratio ex Pegasiano senatusconsulto haberi solet.
of-that part account by the-Pegasian decree-of-the-senate to-be-had is-wont

XXII · TRUSTS OF SINGLE THINGS

Single things may be left by trust, but no one is asked to give more than he took, and a slave may be freed through a trust. Trusts bind an intestate's heir and need no confirmed codicils.

260 Potest autem quisque etiam res singulas per fideicommissum
Can however each-one also things single through a-trust
relinquere, uelut fundum hominem uestem argentum pecuniam,
leave as land a-man clothing silver money

et uel ipsum heredem rogare, ut alicui restituat, uel
and either himself the-heir request that to-someone he-hand-over or
legatarium, quamuis a legatario legari non possit.
a-legatee although by a-legatee be-bequeathed not it-can
Item potest non solum propria testatoris res per 261
Likewise can not only own testator's thing through
fideicommissum relinqui, sed etiam heredis aut legatarii aut
a-trust be-left but also of-the-heir or of-a-legatee or
cuiuslibet alterius. itaque et legatarius non solum de ea re
of-anyone else and-so also a-legatee not only about that thing
rogari potest, ut eam alicui restituat quae ei legata
be-requested can that it to-someone he-hand-over which to-him bequeathed
sit, sed etiam de alia, siue ipsius legatarii siue
has-been but also about another whether of-the-very of-the-legatee or
aliena sit. hoc solum obseruandum est, ne plus quisquam
another's it-be this alone to-be-observed is lest more anyone
rogetur aliis restituere, quam ipse ex testamento ceperit;
be-requested to-others to-hand-over than himself from the-will he-has-taken
nam quod amplius est, inutiliter relinquitur.
for what more is invalidly is-left
Cum autem aliena res per fideicommissum relinquitur, 262
When however another's thing through a-trust is-left
necesse est ei qui rogatus est aut ipsam redimere
necessary it-is for-him who requested has-been either the-thing-itself to-buy
et praestare, aut aestimationem eius soluere, sicut iuris est,
and to-furnish or the-valuation its to-pay as the-law is
si per damnationem aliena res legata sit. sunt tamen
if by condemnation another's thing bequeathed has-been there-are however
qui putant, si rem per fideicommissum relictam
(those)-who think if the-thing through a-trust left

dominus non uendat, extingui fideicommissum; sed aliam
the-owner not sells to-be-extinguished the-trust but other
esse causam per damnationem legati.
to-be the-case by condemnation of-a-legacy

263 Libertas quoque seruo per fideicommissum dari potest,
Freedom also to-a-slave through a-trust be-given can
ut uel heres rogetur manumittere uel legatarius.
so-that either the-heir be-requested to-manumit or a-legatee

264 Nec interest, utrum de suo proprio seruo testator roget,
Nor does-it-matter whether about his-own own slave the-testator requests
an de eo qui ipsius heredis aut legatarii uel etiam
or about him who of-the-very of-the-heir or of-a-legatee or even
extranei sit.
of-an-outsider is

265 Itaque et alienus seruus redimi et manumitti debet. quodsi
And-so also another's slave be-bought and be-manumitted must but-if
dominus eum non uendat, sane extinguitur fideicommissaria
the-owner him not sells certainly is-extinguished the-trust
libertas, quia hoc casu pretii conputatio nulla interuenit.
freedom because in-this case of-the-price reckoning no intervenes

266 Qui autem ex fideicommisso manumittitur, non testatoris
(He)-who however from a-trust is-manumitted not the-testator's
fit libertus, etiamsi testatoris seruus fuerit, sed eius qui
becomes freedman even-if the-testator's slave he-was but his who
manumittit.
manumits

267 at qui directo testamento liber esse iubetur, uelut hoc modo
but (he)-who directly by-will free to-be is-ordered as in-this way
'Stichus seruus meus liber esto', uel hoc 'Stichum seruum
Stichus slave my free be or this Stichus slave
meum liberum esse iubeo', is ipsius testatoris fit libertus.
my free to-be I-order he of-the-very of-the-testator becomes the-freedman

nec alius ullus directo ex testamento libertatem habere potest,
nor other any directly from the-will freedom have can
quam qui utroque tempore testatoris ex iure Quiritium
than (he)-who at-each time the-testator's by the-law of-the-Quirites
fuerit, et quo faceret testamentum et quo moreretur.
was both when he-made the-will and when he-died
Multum autem differunt ea, quae per fideicommissum 268
Much however differ those-things which through a-trust
relincuntur, ab his quae directo iure legantur.
are-left from those which by-direct right are-bequeathed
Nam ecce per fideicommissum etiam ∗∗∗ heredis relinqui 269
For see through a-trust even (lacuna) of-the-heir be-left
potest; cum alioquin legatum ∗∗∗ inutile sit.
can whereas otherwise a-legacy (lacuna) invalid is
Item intestatus moriturus potest ab eo, ad quem bona 270
Likewise intestate (one)-about-to-die can from him to whom the-goods
eius pertinent, fideicommissum alicui relinquere; cum
his pertain a-trust to-someone leave whereas
alioquin ab eo legari non possit.
otherwise from him be-bequeathed not it-can
Item legatum codicillis relictum non aliter ualet, quam si 270a
Likewise a-legacy by-codicils left not otherwise is-valid than if
a testatore confirmati fuerint, id est nisi in testamento
by the-testator confirmed they-have-been that is unless in the-will
cauerit testator, ut quidquid in codicillis scripserit, id
has-provided the-testator that whatever in codicils he-has-written that
ratum sit; fideicommissum uero etiam non confirmatis
valid be a-trust however even not confirmed
codicillis relinqui potest.
by-codicils be-left can

271 Item a legatario legari non potest; sed fideicommissum
Likewise by a-legatee be-bequeathed not it-can but a-trust
relinqui potest. quin etiam ab eo quoque, cui
be-left can indeed even from him also to-whom
per fideicommissum relinquimus, rursus alii per
through a-trust we-leave again to-another through
fideicommissum relinquere possumus.
a-trust leave we-can

272 Item seruo alieno directo libertas dari non potest; sed
Likewise to-a-slave another's directly freedom be-given not can but
per fideicommissum potest.
through a-trust it-can

273 Item codicillis nemo heres institui potest neque exheredari,
Likewise by-codicils no-one heir be-instituted can nor be-disinherited
quamuis testamento confirmati sint. at is qui testamento
although by-will confirmed they-are but he who by-will
heres institutus est, potest codicillis rogari, ut eam
heir instituted is can by-codicils be-requested that that
hereditatem alii totam uel ex parte restituat, quamuis
inheritance to-another whole or in part he-hand-over although
testamento codicilli confirmati non sint.
by-will the-codicils confirmed not are

Trusts reach where legacies cannot: women barred by the Voconian statute, Latins, slaves under thirty, the heir's own heir. They are pursued before a consul or special praetor, carry interest, may be in Greek, and are not doubled on denial, but many old advantages ended under Hadrian and the Pegasian decree, and a tutor can be given only directly.

Item mulier, quae ab eo qui centum milia aeris census 274
Likewise a-woman who by him who at-a-hundred thousand of-bronze rated
est per legem Voconiam heres institui non potest, tamen
is through the-statute Voconian heir be-instituted not can yet
fideicommisso relictam sibi hereditatem capere potest.
by-trust left to-her the-inheritance take can
Latini quoque, qui hereditates legataque directo iure lege 275
Latins also who inheritances and-legacies by-direct right by-the-statute
Iunia capere prohibentur, ex fideicommisso capere possunt.
Junian to-take are-forbidden by trust to-take can
Item cum senatusconsulto prohibitum sit proprium seruum 276
Likewise since by-a-decree-of-the-senate forbidden it-is one's-own slave
minorem annis XXX liberum et heredem instituere, plerisque
younger than-years thirty free and heir to-institute to-most
placet posse nos iubere liberum esse, cum annorum
it-seems-right to-be-able us to-order free to-be when of-years
XXX erit, et rogare, ut tunc illi restituatur hereditas.
thirty he-shall-be and to-request that then to-him be-handed-over the-inheritance
Item quamuis non possimus post mortem eius, qui nobis 277
Likewise although not we-can after the-death of-him who to-us
heres extiterit, alium in locum eius heredem instituere,
heir has-appeared another into place his as-heir institute
tamen possumus eum rogare, ut cum morietur alii eam
yet we-can him request that when he-dies to-another that

hereditatem totam uel ex parte restituat. et quia post mortem
inheritance whole or in part he-hand-over and because after the-death
quoque heredis fideicommissum dari potest, idem efficere
also of-the-heir a-trust be-given can the-same bring-about
possumus et si ita scripserimus 'cum Titius heres meus mortuus
we-can also if thus we-have-written when Titius heir my dead
erit, uolo hereditatem meam ad P. Meuium pertinere.'
shall-be I-wish inheritance my to Publius Mevius to-pertain
utroque autem modo, tam hoc quam illo, Titius heredem
in-each however way as this as that Titius heir
suum obligatum relinquit de fideicommisso restituendo.
his-own bound leaves about the-trust to-be-handed-over

278 Praeterea legata per formulam petimus; fideicommissa uero
Besides legacies by formula we-claim trusts however
Romae quidem apud consulem uel apud eum praetorem,
at-Rome indeed before the-consul or before that praetor
qui praecipue de fideicommissis ius dicit, persequimur, in
who especially about trusts law declares we-pursue in
prouinciis uero apud praesidem prouinciae.
the-provinces however before the-governor of-the-province

279 Item de fideicommissis semper in urbe ius dicitur; de
Likewise about trusts always in the-city law is-declared about
legatis uero, cum res aguntur.
legacies however when the-cases are-heard

280 Item fideicommissorum usurae et fructus debentur, si modo
Likewise of-trusts interest and fruits are-owed if only
moram solutionis fecerit qui fideicommissum debebit;
delay of-payment has-made (he)-who the-trust shall-owe
legatorum uero usurae non debentur; idque rescripto
of-legacies however interest not are-owed and-this by-a-rescript
diui Hadriani significatur. scio tamen Iuliano placuisse,
of-the-deified Hadrian is-made-clear I-know however to-Julian it-seemed-right

in eo legato quod sinendi modo relinquitur idem iuris
in that legacy which of-permitting by-way is-left the-same of-law
esse quod in fideicommissis; quam sententiam et his
to-be as in trusts which opinion also in-these
temporibus magis optinere uideo.
times rather to-prevail I-see

Item legata Graece scripta non ualent; fideicommissa uero 281
Likewise legacies in-Greek written not are-valid trusts however
ualent.
are-valid

Item si legatum per damnationem relictum heres infitietur, 282
Likewise if a-legacy by condemnation left the-heir denies
in duplum cum eo agitur; fideicommissi uero nomine
for double with him one-sues of-a-trust however by-title
semper in simplum persecutio est.
always for single the-suit is

Item quod quisque ex fideicommisso plus debito per 283
Likewise what each-one from a-trust more-than owed through
errorem soluerit, repetere potest; at id quod ex causa falsa
error has-paid reclaim he-can but that which from cause false
per damnationem legati plus debito solutum sit, repeti
by condemnation of-a-legacy more-than owed paid has-been be-reclaimed
non potest. idem scilicet iuris est de eo, quod non debitum
not can the-same of-course of-law is about that which not owed
uel ex hac uel ex illa causa per errorem solutum fuerit.
either from this or from that cause through error paid has-been

Erant etiam aliae differentiae, quae nunc non sunt. 284
There-were also other differences which now not are

ut ecce peregrini poterant fideicommissa capere; et fere 285
as for-example foreigners could trusts take and nearly
haec fuit origo fideicommissorum. sed postea id prohibitum
this was the-origin of-trusts but afterward that forbidden

est; et nunc ex oratione diui Hadriani senatusconsultum
was and now on the-speech of-the-deified Hadrian a-decree-of-the-senate
factum est, ut ea fideicommissa fisco uindicarentur.
made was that those trusts for-the-treasury should-be-claimed

286 Caelibes quoque, qui per legem Iuliam hereditates
The-unmarried also who through the-statute Julian inheritances
legataque capere prohibentur, olim fideicommissa uidebantur
and-legacies to-take are-forbidden formerly trusts seemed
capere posse.
to-take to-be-able

286a Item orbi, qui per legem Papiam dimidias partes
Likewise the-childless who through the-statute Papian half shares
hereditatum legatorumque perdunt, olim solida fideicommissa
of-inheritances and-of-legacies lose formerly whole trusts
uidebantur capere posse. sed postea senatusconsulto
seemed to-take to-be-able but afterward by-the-decree-of-the-senate
Pegasiano proinde fideicommissa quoque ac legata
Pegasian just-as trusts also as legacies
hereditatesque capere posse prohibiti sunt; eaque translata
and-inheritances to-take to-be-able forbidden were and-those transferred
sunt ad eos, qui in eo testamento liberos habent, aut si nullus
were to those who in that will children have or if no-one
liberos habebit, ad populum, sicut iuris est in legatis et in
children shall-have to the-people as the-law is in legacies and in
hereditatibus, quae eadem aut simili ex causa caduca fiunt.
inheritances which by-the-same or similar from cause lapsed become

287 Item olim incertae personae uel postumo alieno
Likewise formerly to-an-uncertain person or to-a-posthumous-child outside
per fideicommissum relinqui poterat, quamuis neque heres
through a-trust be-left it-could although neither heir
institui neque legari ei posset; sed senatusconsulto,
be-instituted nor be-bequeathed to-him could but by-the-decree-of-the-senate

quod auctore diuo Hadriano factum est, idem in
which on-the-motion-of the-deified Hadrian made was the-same in
fideicommissis quod in legatis hereditatibusque constitutum est.
trusts as in legacies and-inheritances established was
Item poenae nomine iam non dubitatur nec per 288
Likewise of-penalty by-title now not it-is-doubted not through
fideicommissum quidem relinqui posse.
a-trust even to-be-left to-be-able
Sed quamuis in multis iuris partibus longe latior causa 289
But although in many of-law parts far wider the-scope
sit fideicommissorum quam eorum quae directo relincuntur,
is of-trusts than of-those which directly are-left
in quibusdam tantumdem ualeant, tamen tutor non aliter
in some equally they-are-valid yet a-tutor not otherwise
testamento dari potest quam directo, ueluti hoc modo
by-will be-given can than directly for-example in-this way
'liberis meis Titius tutor esto', uel ita 'liberis meis Titium
to-children my Titius tutor be or thus to-children my Titius
tutorem do'; per fideicommissum uero dari non potest.
as-tutor I-give through a-trust however be-given not it-can

BOOK III

I · OWN HEIRS ON INTESTACY

By the Twelve Tables an intestate's inheritance goes first to his own heirs: the children in his power, a wife or daughter-in-law in hand, posthumous children, those whose cause is proved after the father's death, and a son manumitted from a first or second mancipation after it; grandchildren only when no parent stands before them. Children and grandchildren are called together, and the estate is divided by stocks, not by heads.

Intestatorum hereditates ex lege XII tabularum 1
Of-intestates the-inheritances by the-statute of-the-Twelve Tables
primum ad suos heredes pertinent.
first to own heirs pertain
Sui autem heredes existimantur liberi qui in potestate 2
Own however heirs are-considered the-children who in the-power
morientis fuerunt, ueluti filius filiaue, nepos neptisue
of-the-dying-man were for-example a-son or-daughter a-grandson or-granddaughter
ex filio, pronepos proneptisue ex nepote filio nato
by a-son a-great-grandson or-great-granddaughter by a-grandson by-a-son born
prognatus prognataue. nec interest, utrum naturales sint
descended or-descended nor does-it-matter whether natural are
liberi an adoptiui. ita demum tamen nepos neptisue et
the-children or adoptive so only however a-grandson or-granddaughter and
pronepos proneptisue suorum heredum numero sunt,
a-great-grandson or-great-granddaughter of-own heirs in-the-number are
si praecedens persona desierit in potestate parentis esse, siue
if the-preceding person has-ceased in the-power of-the-parent to-be whether
morte id acciderit, siue alia ratione, ueluti emancipatione.
by-death that has-happened or by-another means for-example by-emancipation
nam si per id tempus quo quisque moritur filius in potestate
for if at that time at-which each-one dies the-son in the-power

eius sit, nepos ex eo suus heres esse non potest. idem
his is the-grandson from him own heir be not can the-same
et in ceteris deinceps liberorum personis dictum intellegemus.
also in the-other in-turn of-children persons said we-shall-understand
3 Uxor quoque quae in manu uiri est ei sua heres
A-wife also who in the-hand of-the-husband is to-him own heir
est, quia filiae loco est. item nurus quae
is because of-a-daughter in-the-place she-is likewise a-daughter-in-law who
in filii manu est, nam et haec neptis loco
in the-son's hand is for also she of-a-granddaughter in-the-place
est. sed ita demum erit sua heres, si filius, cuius in
is but thus only she-will-be own heir if the-son whose in
manu fuerit, cum pater moritur, in potestate eius non
hand she-has-been when the-father dies in power his not
sit. idemque dicemus et de ea quae in nepotis manu
is and-the-same we-shall-say also about her who in of-a-grandson the-hand
matrimonii causa sit, quia proneptis loco est.
of-marriage for-the-sake is because of-a-great-granddaughter in-the-place she-is
4 Postumi quoque, qui si uiuo parente nati essent, in
Posthumous-children also who if alive the-parent born they-had-been in
potestate eius futuri forent, sui heredes sunt.
power his going-to-be would-be own heirs are
5 Idem iuris est de his, quorum nomine ex lege Aelia
The-same of-law is about those in-whose name by the-statute Aelian
Sentia uel ex senatusconsulto post mortem patris causa
Sentian or by the-decree-of-the-senate after the-death of-the-father the-case
probatur. nam et hi uiuo patre causa probata in potestate
is-proved for also these alive the-father the-case proved in power
eius futuri essent.
his going-to-be would-be

Quod etiam de eo filio, qui ex prima secundaue mancipatione 6
Which also about that son who from the-first or-second mancipation
post mortem patris manumittitur, intellegemus.
after the-death of-the-father is-manumitted we-shall-understand
Igitur cum filius filiaue et ex altero filio nepotes 7
Therefore when a-son or-daughter and from another son grandsons
neptesue extant, pariter ad hereditatem uocantur; nec
or-granddaughters are-extant equally to the-inheritance they-are-called nor
qui gradu proximior est, ulteriorem excludit. aequum
(he)-who in-degree nearer is the-further excludes fair
enim uidebatur nepotes neptesue in patris sui
for it-seemed grandsons or-granddaughters into father's their-own
locum portionemque succedere. pari ratione et si nepos
place and-portion to-succeed by-like reasoning also if a-grandson
neptisue sit ex filio et ex nepote pronepos
or-granddaughter there-is by a-son and by a-grandson a-great-grandson
proneptisue, simul omnes uocantur ad hereditatem.
or-great-granddaughter at-once all are-called to the-inheritance
Et quia placebat nepotes neptesue, item pronepotes 8
And because it-was-approved grandsons or-granddaughters likewise great-grandsons
proneptesue in parentis sui locum succedere, conueniens
or-great-granddaughters into parent's their-own place to-succeed fitting
esse uisum est non in capita, sed in stirpes hereditatem
to-be seemed it-has not by heads but by stocks the-inheritance
diuidi; ita ut filius partem dimidiam hereditatis ferat et
be-divided so that the-son the-part half of-the-inheritance takes and
ex altero filio duo pluresue nepotes alteram dimidiam; item
from the-other son two or-more grandsons the-other half likewise
si ex duobus filiis nepotes extent, ex altero filio unus forte
if from two sons grandsons are-extant from one son one perhaps

uel duo, ex altero tres aut quattuor, ad unum aut ad duos
or two from the-other three or four to the-one or to the-two
dimidia pars pertineat et ad tres aut quattuor altera dimidia.
the-half part pertains and to the-three or four the-other half

II · AGNATES AND GENTILES

Failing own heirs, the Twelve Tables give the inheritance to the nearest agnates, kin through males, counted when intestacy becomes certain. If the nearest declines or dies first, the next takes nothing, and women agnates beyond sisters are excluded. Brothers' children divide by heads. Failing agnates the gentiles took, a law now obsolete. The old law was strict: it shut out emancipated children, agnates who lost status, and cognates through women.

9 Si nullus sit suorum heredum, tunc hereditas pertinet
If none there-is of-own heirs then the-inheritance pertains
ex eadem lege XII tabularum ad agnatos.
by the-same statute of-the-Twelve Tables to the-agnates
10 Vocantur autem agnati, qui legitima cognatione iuncti
Are-called however agnates (those)-who by-statutory kinship joined
sunt. legitima autem cognatio est ea, quae per uirilis
are statutory however kinship is that which through of-male
sexus personas coniungitur. itaque eodem patre nati fratres
sex persons is-joined and-so of-the-same father born brothers
agnati sibi sunt, qui etiam consanguinei uocantur, nec
agnates to-each-other are who also consanguineous are-called nor
requiritur, an etiam matrem eandem habuerint. item
is-it-asked whether also the-mother same they-had likewise
patruus fratris filio et inuicem is illi agnatus
a-father's-brother to-a-brother's son and in-turn this-one to-him agnate
est. eodem numero sunt fratres patrueles inter se,
is in-the-same number are brothers paternal-cousins among themselves

id est qui ex duobus fratribus progenerati sunt, quos
that is who from two brothers begotten have-been whom
plerique etiam consobrinos uocant. qua ratione scilicet
most also consobrini call by-which reasoning of-course
etiam ad plures gradus agnationis peruenire poterimus.
also to more degrees of-agnation reach we-shall-be-able
Non tamen omnibus simul agnatis dat lex XII 11
Not however to-all at-once agnates gives the-statute of-the-Twelve
tabularum hereditatem, sed his qui tum, cum certum est
Tables the-inheritance but to-those who then when certain it-is
aliquem intestatum decessisse, proximo gradu sunt.
someone intestate to-have-died in-the-nearest degree are
Nec in eo iure successio est. ideoque si agnatus proximus 12
Nor in this law succession is-there and-therefore if the-agnate nearest
hereditatem omiserit uel antequam adierit decesserit,
the-inheritance has-passed-up or before he-entered has-died
sequentibus nihil iuris ex lege conpetit.
to-the-following no right by the-statute belongs
Ideo autem non mortis tempore quis proximus fuerit 13
For-this-reason however not of-death at-the-time who nearest was
requirimus, sed eo tempore, quo certum fuerit aliquem
we-ask but at-that time at-which certain it-has-been someone
intestatum decessisse, quia si quis testamento facto decesserit,
intestate to-have-died because if someone a-will made has-died
melius esse uisum est tunc requiri proximum, cum certum
better to-be seemed it-has then to-be-sought the-nearest when certain
esse coeperit neminem ex eo testamento fore heredem.
to-be it-has-begun no-one from that will to-be-going-to-be heir
Quod ad feminas tamen attinet, in hoc iure aliud in ipsarum 14
As-far-as to women however pertains in this law one-thing in their-own
hereditatibus capiendis placuit, aliud in ceterorum ab his
inheritances being-taken was-approved another in of-others from them

capiendis. nam feminarum hereditates proinde ad nos agnationis
being-taken for of-women the-inheritances just-as to us by-agnation's
iure redeunt atque masculorum; nostrae uero hereditates ad
right return as of-males our however inheritances to
feminas ultra consanguineorum gradum non pertinent. itaque
women beyond of-the-consanguineous the-degree not pertain and-so
soror fratri sororiue legitima heres est, amita uero et
a-sister to-a-brother or-to-a-sister statutory heir is a-father's-sister however and
fratris filia legitima heres esse non potest. sororis autem nobis
a-brother's daughter statutory heir be not can of-a-sister however to-us
loco est etiam mater aut nouerca, quae per in manum
in-the-place is also a-mother or a-stepmother who through into hand
conuentionem apud patrem nostrum iura filiae nacta est.
coming with father our the-rights of-a-daughter obtained has
15 Si ei qui defunctus erit, sit frater et alterius fratris
If to-him who dead shall-be there-is a-brother and of-another brother
filius, sicut ex superioribus intellegitur, frater potior est,
a-son as from the-above is-understood the-brother preferable is
quia gradu praecedit. sed alia facta est iuris interpretatio
because in-degree he-precedes but another made has-been of-law interpretation
inter suos heredes.
among own heirs
16 Quodsi defuncti nullus frater extet, sed sint liberi
But-if of-the-deceased no brother be-extant but there-be children
fratrum, ad omnes quidem hereditas pertinet; sed quaesitum
of-brothers to all indeed the-inheritance pertains but questioned
est, si dispari forte numero sint nati, ut ex uno
it-has-been if in-unequal perhaps number they-are born as from one
unus uel duo, ex altero tres uel quattuor, utrum in stirpes
one or two from another three or four whether by stocks
diuidenda sit hereditas, sicut inter suos heredes iuris
to-be-divided be the-inheritance as among own heirs the-law

est, an potius in capita. iam dudum tamen placuit in
is or rather by heads now long-since however it-was-approved by
capita diuidendam esse hereditatem. itaque quotquot erunt
heads to-be-divided to-be the-inheritance and-so as-many-as shall-be
ab utraque parte personae, in tot portiones hereditas
on each side persons into so-many portions the-inheritance
diuidetur, ita ut singuli singulas portiones ferant.
will-be-divided so that each single portions take

Si nullus agnatus sit, eadem lex XII tabularum 17
If no agnate there-is the-same statute of-the-Twelve Tables
gentiles ad hereditatem uocat. qui sint autem gentiles, primo
the-gentiles to the-inheritance calls who are however gentiles in-the-first
commentario rettulimus; et cum illic admonuerimus totum
commentary we-related and since there we-have-pointed-out the-whole
gentilicium ius in desuetudinem abiisse, superuacuum est
gentile law into disuse to-have-gone superfluous it-is
hoc quoque loco de eadem re curiosius tractare.
in-this also place about the-same matter more-curiously to-treat

Hactenus lege XII tabularum finitae sunt 18
So-far by-the-statute of-the-Twelve Tables bounded are
intestatorum hereditates. quod ius quemadmodum strictum
of-intestates the-inheritances which law how strict
fuerit, palam est intellegere.
was plain it-is to-understand

Statim enim emancipati liberi nullum ius in hereditatem 19
At-once for emancipated children no right to the-inheritance
parentis ex ea lege habent, cum desierint sui heredes
of-the-parent by that statute have since they-have-ceased own heirs
esse.
to-be

20 Idem iuris est, si ideo liberi non sint in potestate
The-same of-law is if for-this-reason children not are in the-power
patris, quia sint cum eo ciuitate Romana donati
of-the-father because they-have-been with him with-citizenship Roman presented
nec ab imperatore in potestatem redacti fuerint.
nor by the-emperor into power brought have-been

21 Item agnati capite deminuti non admittuntur ex ea lege
Likewise agnates in-status diminished not are-admitted by that statute
ad hereditatem, quia nomen agnationis capitis deminutione
to the-inheritance because the-name of-agnation of-status by-loss
perimitur.
is-destroyed

22 Item proximo agnato non adeunte hereditatem nihilo magis
Likewise the-nearest agnate not entering the-inheritance not-at-all more
sequens iure legitimo admittitur.
the-next by-statutory right is-admitted

23 Item feminae agnatae, quaecumque consanguineorum gradum
Likewise women agnates whoever of-the-consanguineous the-degree
excedunt, nihil iuris ex lege habent.
exceed no right by the-statute have

24 Similiter non admittuntur cognati, qui per feminini sexus
Similarly not are-admitted cognates who through of-female sex
personas necessitudine iunguntur; adeo quidem, ut nec
persons by-relationship are-joined so-far indeed that not-even
inter matrem et filium filiamue ultro citroque hereditatis
between a-mother and son or-daughter to-and fro of-inheritance
capiendae ius conpetat, praeterquam si per in manum
taking the-right belongs except if through into hand
conuentionem consanguinitatis iura inter eos constiterint.
coming of-consanguinity the-rights between them have-been-established

The praetor corrects these inequities by possession of the goods, calling emancipated children with own heirs, agnates who lost status, women agnates, cognates, and adopted-out children in later degrees. Those he calls do not become heirs at law, since he cannot make heirs, but stand in the place of heirs. Sometimes he confirms the old law, and possession may be granted without substance.

Sed hae iuris iniquitates edicto praetoris emendatae sunt. 25
But these of-law inequities by-the-edict of-the-praetor amended have-been

Nam liberos omnes, qui legitimo iure deficiuntur, uocat 26
For children all who by-statutory right are-lacking he-calls
ad hereditatem, proinde ac si in potestate parentis mortis
to the-inheritance just as if in the-power of-the-parent of-death
tempore fuissent, siue soli sint siue etiam sui heredes,
at-the-time they-had-been whether alone they-are or also own heirs
id est qui in potestate patris fuerunt, concurrant.
that is (those)-who in the-power of-the-father were concur

Agnatos autem capite deminutos non secundo gradu post 27
Agnates however in-status diminished not in-the-second degree after
suos heredes uocat, id est non eo gradu uocat, quo per
own heirs he-calls that is not in-that degree he-calls in-which by
legem uocarentur, si capite deminuti non essent, sed
the-statute they-would-be-called if in-status diminished not they-had-been but
tertio proximitatis nomine; licet enim capitis deminutione
in-the-third of-nearness by-title although for of-status by-loss
ius legitimum perdiderint, certe cognationis iura
the-statutory right they-have-lost certainly of-cognation the-rights
retinent. itaque si quis alius sit qui integrum ius agnationis
they-retain and-so if any other there-be who an-intact right of-agnation
habebit, is potior erit, etiamsi longiore gradu fuerit.
shall-have he preferable will-be even-if in-a-further degree he-has-been

28 Idem iuris est, ut quidam putant, in eius agnati persona,
The-same of-law is as some think in of-that agnate the-person
qui proximo agnato omittente hereditatem nihilo magis
who the-nearest agnate passing-up the-inheritance not-at-all more
iure legitimo admittitur. sed sunt qui putant hunc
by-statutory right is-admitted but there-are (those)-who think this-one
eodem gradu a praetore uocari, quo etiam per legem
in-the-same degree by the-praetor to-be-called in-which also through the-statute
agnatis hereditas datur.
to-agnates the-inheritance is-given

29 Feminae certe agnatae, quae consanguineorum gradum
Women certainly agnates who of-the-consanguineous the-degree
excedunt, tertio gradu uocantur, id est si neque suus
exceed in-the-third degree are-called that is if neither own
heres neque agnatus ullus erit.
heir nor agnate any there-shall-be

30 Eodem gradu uocantur etiam eae personae, quae per
In-the-same degree are-called also those persons who through
feminini sexus personas copulatae sunt.
of-female sex persons connected are

31 Liberi quoque qui in adoptiua familia sunt ad naturalium
Children also who in an-adoptive family are to of-natural
parentum hereditatem hoc eodem gradu uocantur.
parents the-inheritance in-this same degree are-called

32 Quos autem praetor uocat ad hereditatem, hi heredes ipso
Those-whom however the-praetor calls to the-inheritance they heirs by-itself
quidem iure non fiunt; nam praetor heredes facere non potest;
indeed law not become for the-praetor heirs make not can
per legem enim tantum uel similem iuris constitutionem
through a-statute for only or a-similar of-law enactment
heredes fiunt, ueluti per senatusconsultum et
heirs they-become for-example through a-decree-of-the-senate and

constitutionem principalem. sed cum eis praetor dat
an-enactment imperial but when to-them the-praetor gives
bonorum possessionem, loco heredum constituuntur.
of-the-goods possession in-the-place of-heirs they-are-established
Adhuc autem etiam alios conplures gradus praetor facit 33
Still however also other very-many degrees the-praetor makes
in bonorum possessionibus dandis, dum id agit,
in of-the-goods possessions being-given while this he-aims-at
ne quis sine successore moriatur. de quibus in his
that-not anyone without a-successor die about which in these
commentariis consulto non agimus, cum hoc ius totum
commentaries deliberately not we-treat since this law whole
propriis commentariis executi simus.
in-its-own commentaries pursued we-have
Hoc solum admonuisse sufficit *** tabulis *** 33a
This alone to-have-pointed-out suffices (lacuna) tablets (lacuna)
hereditatem *** inuidiosum *** per in manum
the-inheritance (lacuna) invidious (lacuna) through into hand
conuentionem iura consanguinitatis nacta *** fratre
coming the-rights of-consanguinity obtained (lacuna) brother
. *** nam *** hereditas non pertine
(lacuna) (lacuna) for (lacuna) the-inheritance not pertain(…)
Aliquando tamen neque emendandi neque inpugnandi ueteris 33b
Sometimes however neither of-amending nor of-attacking the-old
iuris sed magis confirmandi gratia pollicetur bonorum
law but rather of-confirming for-the-sake he-promises of-the-goods
possessionem. nam illis quoque, qui recte facto testamento
possession for to-those also who properly made a-will
heredes instituti sunt, dat secundum tabulas bonorum
heirs instituted are he-gives according-to the-tablets of-the-goods
possessionem.
possession

34 item ab intestato heredes suos et agnatos ad bonorum
likewise on intestacy heirs own and agnates to of-the-goods
possessionem uocat. quibus casibus beneficium eius in eo
possession he-calls in-which cases the-benefit his in this
solo uidetur aliquam utilitatem habere, ut is, qui ita
alone seems some usefulness to-have that he who thus
bonorum possessionem petit, interdicto cuius principium
of-the-goods possession seeks by-the-interdict whose beginning
est 'quorum bonorum' uti possit. cuius interdicti quae sit
is of-which goods use may-be-able of-which interdict what is
utilitas, suo loco proponemus. alioquin remota quoque
the-usefulness in-its-own place we-shall-set-out otherwise removed also
bonorum possessione ad eos hereditas pertinet iure ciuili.
of-the-goods possession to them the-inheritance pertains by-law civil
35 Ceterum saepe quibusdam ita datur bonorum possessio, ut
However often to-some thus is-given of-the-goods possession that
is cui data sit non optineat hereditatem; quae bonorum
he to-whom given it-is not obtains the-inheritance which of-the-goods
possessio dicitur sine re.
possession is-called without substance
36 Nam si uerbi gratia iure facto testamento heres
For if of-example for-the-sake lawfully made the-will the-heir
institutus creuerit hereditatem, sed bonorum possessionem
instituted has-made-cretion-for the-inheritance but of-the-goods possession
secundum tabulas testamenti petere noluerit, contentus
according-to the-tablets of-the-will to-seek has-been-unwilling content
eo quod iure ciuili heres sit, nihilo minus ii, qui nullo
with-this that by-law civil heir he-is none the-less those who no
facto testamento ad intestati bona uocantur, possunt petere
made will to of-the-intestate the-goods are-called can seek

bonorum possessionem; sed sine re ad eos pertinet,
of-the-goods possession but without substance to them it-pertains
cum testamento scriptus heres euincere hereditatem possit.
since by-the-will the-written heir evict the-inheritance can
Idem iuris est, si intestato aliquo mortuo suus heres 37
The-same of-law is if intestate someone dead own heir
noluerit petere bonorum possessionem, contentus legitimo
has-been-unwilling to-seek of-the-goods possession content with-statutory
iure *** et agnato conpetit quidem bonorum possessio,
right (lacuna) and to-the-agnate belongs indeed of-the-goods possession
sed sine re, quia euinci hereditas a suo herede potest.
but without substance because be-evicted the-inheritance by own heir can
et conuenienter, si ad agnatum iure ciuili pertinet hereditas
and consistently if to the-agnate by-law civil pertains the-inheritance
et is adierit hereditatem, sed bonorum possessionem petere
and he has-entered the-inheritance but of-the-goods possession to-seek
noluerit, et cognatus petierit, sine re habebit
has-been-unwilling and a-cognate has-sought without substance he-will-have
bonorum possessionem propter eandem rationem.
of-the-goods possession on-account-of the-same reason
Sunt et alii quidam similes casus, quorum aliquos superiore 38
There-are also other certain similar cases of-which some in-the-former
commentario tradidimus.
commentary we-have-set-out

Formerly a freedman could pass over his patron by will. The praetor gave the patron half against an adoptive son, a wife, or a will; the Papian statute gave a share against wealthy freedmen with fewer than three children, and against freedwomen with four. The patron's children, and patronesses and their children under conditions, share these rights.

39 Nunc de libertorum bonis uideamus.
Now about of-freedmen the-goods let-us-see

40 Olim itaque licebat liberto patronum suum inpune
Formerly and-so it-was-allowed for-a-freedman patron his-own with-impunity
testamento praeterire. nam ita demum lex XII
by-will to-pass-over for thus only the-statute of-the-Twelve
tabularum ad hereditatem liberti uocabat patronum, si
Tables to the-inheritance of-a-freedman called the-patron if
intestatus mortuus esset libertus nullo suo herede relicto.
intestate dead had the-freedman no own heir left
itaque intestato quoque mortuo liberto, si is suum heredem
and-so intestate also dead the-freedman if he an-own heir
reliquerat, nihil in bonis eius patrono iuris erat. et
had-left nothing in the-goods his to-the-patron of-right was and
siquidem ex naturalibus liberis aliquem suum heredem
if-indeed of natural children some own heir
reliquisset, nulla uidebatur esse querella; si uero uel adoptiuus
he-had-left no seemed to-be complaint if however either an-adoptive
filius filiaue uel uxor quae in manu esset sua heres esset,
son or-daughter or a-wife who in hand was own heir was
aperte iniquum erat nihil iuris patrono superesse.
openly unfair it-was nothing of-right to-the-patron to-remain

Qua de causa postea praetoris edicto haec iuris iniquitas 41
Which for reason afterward by-the-praetor's edict this of-law inequity
emendata est. siue enim faciat testamentum libertus, iubetur
amended was whether for makes a-will the-freedman he-is-ordered
ita testari, ut patrono suo partem dimidiam bonorum
so to-make-his-will that to-patron his-own the-part half of-goods
suorum relinquat, et si aut nihil aut minus quam partem
his-own he-leave and if either nothing or less than the-part
dimidiam reliquerit, datur patrono contra tabulas testamenti
half he-has-left is-given to-the-patron against the-tablets of-the-will
partis dimidiae bonorum possessio; si uero intestatus moriatur
of-the-part half of-the-goods possession if however intestate he-dies
suo herede relicto adoptiuo filio uel uxore quae in manu ipsius
an-own heir left an-adoptive son or a-wife who in hand his
esset, uel nuru quae in manu filii eius fuerit, datur
was or a-daughter-in-law who in the-hand of-son his was is-given
aeque patrono aduersus hos suos heredes partis dimidiae
equally to-the-patron against these own heirs of-the-part half
bonorum possessio. prosunt autem liberto ad excludendum
of-the-goods possession avail however to-the-freedman for excluding
patronum naturales liberi, non solum quos in potestate mortis
the-patron natural children not only whom in power of-death
tempore habet, sed etiam emancipati et in adoptionem dati,
at-the-time he-has but also emancipated and into adoption given
si modo aliqua ex parte heredes scripti sint, aut praeteriti
if only some from part heirs written they-are or passed-over
contra tabulas testamenti bonorum possessionem ex edicto
against the-tablets of-the-will of-the-goods possession by the-edict
petierint; nam exheredati nullo modo repellunt patronum.
they-have-sought for the-disinherited in-no way repel the-patron

42 Postea lege Papia aucta sunt iura patronorum, quod
Afterward by-the-statute Papian increased were the-rights of-patrons as-far-as
ad locupletiores libertos pertinet. cautum est enim ea lege,
to wealthier freedmen pertains provided it-is for by-that statute
ut ex bonis eius, qui sestertiorum centum milium plurisue
that from the-goods of-him who of-sesterces a-hundred thousand or-more
patrimonium reliquerit, et pauciores quam tres liberos
a-patrimony has-left and fewer than three children
habebit, siue is testamento facto siue intestato mortuus
shall-have whether he a-will made or intestate dead
erit, uirilis pars patrono debeatur. itaque cum unum filium
shall-be a-man's share to-the-patron be-owed and-so when one son
unamue filiam heredem reliquerit libertus, proinde pars
or-one daughter as-heir has-left the-freedman just-so the-part
dimidia patrono debetur, ac si sine ullo filio filiaue
half to-the-patron is-owed as if without any son or-daughter
moreretur; cum uero duos duasue heredes reliquerit,
he-died when however two-sons or-two-daughters as-heirs he-has-left
tertia pars debetur; si tres relinquat, repellitur patronus.
a-third part is-owed if three he-leaves is-repelled the-patron

43 In bonis libertinarum nullam iniuriam antiquo iure patiebantur
In the-goods of-freedwomen no injury by-the-old law suffered
patroni. cum enim hae in patronorum legitima tutela essent,
patrons since for they in of-patrons the-statutory tutelage were
non aliter scilicet testamentum facere poterant quam patrono
not otherwise of-course a-will make they-could than the-patron
auctore. itaque siue auctor ad testamentum faciendum factus
authorizing and-so either authorizer for a-will making made
erat *** relict***ctus erat, sequebatur hereditas; si
he-was (lacuna) left(…)made he-was followed the-inheritance if
uero auctor ei factus non erat, et intestata liberta
however authorizer for-her made not he-was and intestate the-freedwoman

moriebatur, ad ∗∗∗pertinebat; nec enim ullus olim∗∗∗
died to (…)it-pertained nor for any formerly(…)
possit patronum a bonis libertae ∗∗∗ repellere.
could the-patron from the-goods of-the-freedwoman (lacuna) repel
Sed postea lex Papia cum quattuor liberorum iure 44
But afterward the-statute Papian when of-four children by-the-right
libertinas tutela patronorum liberaret et eo modo
freedwomen from-the-tutelage of-patrons freed and in-that way
concederet eis etiam sine tutoris auctoritate condere
granted to-them even without of-a-tutor the-authority to-make
testamentum, prospexit, ut pro numero liberorum,
a-will provided that in-proportion-to the-number of-children
quos liberta mortis tempore habuerit, uirilis pars
whom the-freedwoman of-death at-the-time has-had a-man's share
patrono debeatur ergo ex bonis eius quae ∗∗∗ liberos
to-the-patron be-owed therefore from the-goods of-her who (lacuna) children
reli∗∗∗ a possid∗∗∗ hereditas ad patronum pertinet.
left(…) a(…) possess(…) the-inheritance to the-patron pertains
Quae diximus de patrono, eadem intellegemus et de 45
What-things we-have-said about the-patron the-same we-shall-understand also about
filio patroni; item de nepote ex filio et de pronepote
the-son of-the-patron likewise about a-grandson by a-son and about a-great-grandson
ex nepote filio nato prognato.
by a-grandson by-a-son born descended
Filia uero patroni et neptis ex filio et 46
The-daughter however of-a-patron and a-granddaughter by a-son and
proneptis ex nepote filio nato prognata olim
a-great-granddaughter by a-grandson by-a-son born descended formerly
quidem eo iure, quod lege XII tabularum
indeed by-that right which by-the-statute of-the-Twelve Tables
patrono datum est, ∗∗∗ sexus patronorum liberos
to-the-patron given was (lacuna) sex of-patrons the-children

*** testamenti liberti aut ab intestato contra filium
(lacuna) of-the-will of-the-freedman or on intestacy against son
adoptiuum uel uxorem nurumue quae in manu fuerit,
an-adoptive or a-wife or-daughter-in-law who in hand has-been
bonorum possessionem petat, trium liberorum iure
of-the-goods possession she-seeks of-three children by-the-right
lege Papia consequitur; aliter hoc ius non habet.
by-the-statute Papian she-obtains otherwise this right not she-has

47 Sed ut ex bonis libertae testatae quattuor liberos
But that from the-goods of-a-freedwoman testate four children
habentis uirilis pars ei debeatur, ne liberorum quidem
having a-man's share to-her be-owed not of-children even
iure consequitur, ut quidam putant. sed tamen intestata
by-the-right does-she-obtain as some think but however intestate
liberta mortua uerba legis Papiae faciunt, ut ei
the-freedwoman dead the-words of-the-statute Papian bring-about that to-her
uirilis pars debeatur. si uero testamento facto mortua sit
a-man's share be-owed if however a-will made dead is
liberta, tale ius ei datur, quale datum est contra tabulas
the-freedwoman such right to-her is-given as given is against the-tablets
testamenti liberti, id est quale et uirilis sexus patronorum
of-the-will of-a-freedman that is such-as also of-male sex of-patrons
liberi contra tabulas testamenti liberti habent; quamuis
the-children against the-tablets of-the-will of-a-freedman have although
parum diligenter ea pars legis scripta sit.
too-little carefully that part of-the-statute written is

48 Ex his apparet extraneos heredes patronorum longe
From these-things it-appears outside heirs of-patrons far
remotos esse ab omni eo iure, quod uel in intestatorum
removed to-be from all that right which either in of-intestates
bonis uel contra tabulas testamenti patrono conpetit.
the-goods or against the-tablets of-the-will to-the-patron belongs

Patronae olim ante legem Papiam hoc solum ius habebant 49
Patronesses formerly before the-statute Papian this only right had
in bonis libertorum, quod etiam patronis ex lege
in the-goods of-freedmen which also to-patrons by the-statute
XII tabularum datum est. nec enim ut contra tabulas
of-the-Twelve Tables given is nor for that against the-tablets
testamenti ingrati liberti uel ab intestato contra filium
of-the-will of-an-ungrateful freedman or on intestacy against son
adoptiuum uel uxorem nurumue bonorum possessionem
an-adoptive or a-wife or-daughter-in-law of-the-goods possession
partis dimidiae peterent, praetor similiter ut de
of-the-part half they-might-seek did-the-praetor similarly as about
patrono liberisque eius curabat.
the-patron and-children his take-care
Sed lex Papia duobus liberis honoratae ingenuae 50
But the-statute Papian with-two children honored freeborn
patronae, libertinae tribus, eadem fere iura dedit, quae
to-the-patroness to-the-freedwoman with-three the-same nearly rights gave which
ex edicto praetoris patroni habent; trium uero liberorum
by the-edict of-the-praetor patrons have of-three however children
iure honoratae ingenuae patronae ea iura dedit, quae
by-the-right honored freeborn to-the-patroness those rights it-gave which
per eandem legem patrono data sunt; libertinae autem
through the-same statute to-the-patron given are to-the-freedwoman however
patronae non idem iuris praestitit.
patroness not the-same of-right it-afforded
Quod autem ad libertinarum bona pertinet, siquidem 51
As-far-as however to of-freedwomen the-goods pertains if-indeed
intestatae decesserint, nihil noui patronae liberis honoratae
intestate they-have-died nothing new to-the-patroness with-children honored
lex Papia praestat. itaque si neque ipsa patrona neque
the-statute Papian affords and-so if neither herself the-patroness nor

liberta capite deminuta sit, ex lege XII tabularum
the-freedwoman in-status diminished has-been by the-statute of-the-Twelve Tables
ad eam hereditas pertinet et excluduntur libertae liberi;
to her the-inheritance pertains and are-excluded the-freedwoman's children
quod iuris est etiam si liberis honorata non sit patrona;
which of-law is even if with-children honored not is the-patroness
numquam enim, sicut supra diximus, feminae suum heredem
never for as above we-said women an-own heir
habere possunt. si uero uel huius uel illius capitis deminutio
have can if however either of-this-one or of-that of-status a-loss
interueniat, rursus liberi libertae excludunt patronam,
intervenes again the-children of-the-freedwoman exclude the-patroness
quia legitimo iure capitis deminutione perempto euenit, ut
because the-statutory right of-status by-loss destroyed it-comes-about that
liberi libertae cognationis iure potiores habeantur.
the-children of-the-freedwoman of-cognation by-the-right preferable are-held

52 Cum autem testamento facto moritur liberta, ea quidem
When however a-will made dies the-freedwoman that indeed
patrona quae liberis honorata non est nihil iuris habet
patroness who with-children honored not is no right has
contra libertae testamentum; ei uero quae liberis
against the-freedwoman's will to-her however who with-children
honorata est hoc ius tribuitur per legem Papiam, quod
honored is this right is-granted through the-statute Papian which
habet ex edicto patronus contra tabulas liberti.
has by the-edict the-patron against the-tablets of-a-freedman

53 Eadem lex patronae filio liberis honorato fere patroni
The-same statute to-a-patroness's son with-children honored nearly a-patron's
iura dedit; sed in huius persona etiam unius filii filiaeue
rights gave but in his person even of-one son or-daughter
ius sufficit.
the-right suffices

Hactenus omnia iura quasi per indicem tetigisse satis 54
So-far all rights as-if by an-index to-have-touched enough
est; alioquin diligentior interpretatio propriis commentariis
it-is otherwise a-more-careful interpretation in-its-own commentaries
exposita est.
set-out is

V · LATINS' ESTATES

The Junian statute made praetor-protected freedmen free as Junian Latins but, lest patrons lose, let their goods pass to the manumitters as a slave's peculium. A citizen freedman's estate never reaches a patron's outside heirs but goes to the patron's descendants even if disinherited, to patrons equally, by heads, nearer excluding further, and accrues to a co-patron. Latins' goods reach outside heirs but not disinherited children, go by shares of ownership, and a failing patron's share lapses to the people.

Sequitur ut de bonis Latinorum libertinorum dispiciamus. 55
It-follows that about the-goods of-Latin freedmen we-consider
Quae pars iuris ut manifestior fiat, admonendi sumus, 56
Which part of-law that clearer may-become to-be-reminded we-are
id quod alio loco diximus, eos qui nunc Latini Iuniani
of-that which in-another place we-said those who now Latins Junian
dicuntur olim ex iure Quiritium seruos fuisse, sed auxilio
are-called formerly by the-law of-the-Quirites slaves to-have-been but by-the-help
praetoris in libertatis forma seruari solitos; unde etiam
of-the-praetor in of-freedom the-form to-be-kept wont whence also
res eorum peculii iure ad patronos pertinere solita est;
the-property their of-peculium by-right to the-patrons to-pertain wont was
postea uero per legem Iuniam eos omnes, quos praetor in
afterward however through the-statute Junian them all whom the-praetor in

libertate tuebatur, liberos esse coepisse et appellatos esse
freedom protected free to-be to-have-begun and called to-have-been
Latinos Iunianos: Latinos ideo, quia lex eos liberos
Latins Junian Latins for-this-reason because the-statute them free
perinde esse uoluit atque qui ex urbe Roma in Latinas
just-so to-be wished as (those)-who from the-city Rome into Latin
colonias deducti Latini coloniarii esse coeperunt; Iunianos
colonies led-out Latin colonials to-be began Junian
ideo, quia per legem Iuniam liberi facti sunt. legis
for-this-reason because through the-statute Junian free made they-were of-the-statute
itaque Iuniae lator cum intellegeret futurum, ut ea
and-so Junian the-proposer since he-understood it-would-happen that by-that
fictione res Latinorum defunctorum ad patronos pertinere
fiction the-property of-Latins dead to the-patrons to-pertain
desinerent, quia scilicet neque ut serui decederent, ut possent
should-cease because of-course neither as slaves they-died so-that could
iure peculii res eorum ad patronos pertinere, neque
by-right of-peculium the-property their to the-patrons pertain nor
liberti Latini hominis bona possent manumissionis iure
of-a-freedman Latin man the-goods could by-manumission's right
ad patronos pertinere, necessarium existimauit, ne beneficium
to the-patrons pertain necessary he-considered lest the-benefit
istis datum in iniuriam patronorum conuerteretur, cauere,
to-them given into injury of-the-patrons be-turned to-provide
ut bona eorum proinde ad manumissores pertinerent, ac si
that the-goods their just-so to the-manumitters should-pertain as if
lex lata non esset; itaque iure quodammodo peculii
the-statute carried not had-been and-so by-right in-a-certain-way of-peculium
bona Latinorum ad manumissores ea lege pertinent.
the-goods of-Latins to the-manumitters by-that statute pertain

Unde accidit, ut longe differant ea iura quae in bonis 57
Whence it-happens that far differ those rights which in the-goods
Latinorum ex lege Iunia constituta sunt, ab his quae
of-Latins by the-statute Junian established are from those which
in hereditate ciuium Romanorum libertorum obseruantur.
in the-inheritance of-citizen Roman freedmen are-observed
Nam ciuis Romani liberti hereditas ad extraneos 58
For of-a-citizen Roman freedman the-inheritance to outside
heredes patroni nullo modo pertinet; ad filium autem
heirs of-the-patron in-no way pertains to the-son however
patroni nepotesque ex filio et pronepotes ex nepote filio
of-the-patron and-grandsons by a-son and great-grandsons by a-grandson by-a-son
nato prognatos omni modo pertinet, etiamsi a parente
born descended in-every way it-pertains even-if by their-parent
fuerint exheredati. Latinorum autem bona tamquam
they-have-been disinherited of-Latins however the-goods as
peculia seruorum etiam ad extraneos heredes pertinent, et
peculia of-slaves even to outside heirs pertain and
ad liberos manumissoris exheredatos non pertinent.
to the-children of-the-manumitter disinherited not they-pertain
Item ciuis Romani liberti hereditas ad duos pluresue 59
Likewise of-a-citizen Roman freedman the-inheritance to two or-more
patronos aequaliter pertinet, licet dispar in eo seruo
patrons equally pertains although unequal in that slave
dominium habuerint; bona uero Latinorum pro ea parte
ownership they-have-had the-goods however of-Latins in that part
pertinent, pro qua parte quisque eorum dominus fuerit.
pertain in which part each of-them owner was
Item in hereditate ciuis Romani liberti patronus alterius 60
Likewise in the-inheritance of-a-citizen Roman freedman a-patron of-the-other
patroni filium excludit, et filius patroni alterius patroni
patron the-son excludes and the-son of-a-patron of-the-other patron

nepotem repellit; bona autem Latinorum et ad alterius
the-grandson repels the-goods however of-Latins both to of-the-other
patroni heredem simul pertinent, pro qua parte ad
patron the-heir at-the-same-time pertain in which part to
ipsum manumissorem pertinerent.
himself the-manumitter they-would-pertain

61 Item si unius patroni tres forte liberi sunt et alterius
Likewise if of-one patron three perhaps children there-are and of-the-other
unus, hereditas ciuis Romani liberti in capita diuiditur,
one the-inheritance of-a-citizen Roman freedman by heads is-divided
id est tres fratres tres portiones ferunt et unus quartam;
that is the-three brothers three portions take and the-one a-fourth
bona uero Latinorum pro ea parte ad successores pertinent,
the-goods however of-Latins in that part to the-successors pertain
pro qua parte ad ipsum manumissorem pertinerent.
in which part to himself the-manumitter they-would-pertain

62 Item si alter ex his patronis suam partem in hereditate ciuis
Likewise if one of these patrons his-own part in the-inheritance of-a-citizen
Romani liberti spernat, uel ante moriatur quam cernat,
Roman freedman spurns or before dies than he-makes-cretion
tota hereditas ad alterum pertinet; bona autem Latini pro
the-whole inheritance to the-other pertains the-goods however of-a-Latin for
parte deficientis patroni caduca fiunt et ad populum pertinent.
the-part of-the-failing patron lapsed become and to the-people pertain

The Largian decree gave a Latin's goods first to his manumitter, then to the manumitter's children not disinherited by name, before outside heirs; it did not make them pass as a citizen freedman's. Children passed over, abstaining, or emancipated still take, and jurists differ when outside heirs share. A Latin made citizen without his patron's consent dies a Latin, by Trajan's ruling, which Hadrian eased. The goods of dediticii pass as a citizen freedman's or a Latin's, by what they would otherwise have been.

Postea Lupo et Largo consulibus senatus censuit, ut bona 63
Afterward Lupus and Largus being-consuls the-senate decreed that the-goods
Latinorum primum ad eum pertinerent qui eos liberasset;
of-Latins first to him should-pertain who them had-freed
deinde ad liberos eorum non nominatim exheredatos, uti
then to the-children their not by-name disinherited as
quisque proximus esset; tunc antiquo iure ad heredes eorum
each nearest was then by-the-old law to the-heirs of-those
qui liberassent pertinerent.
who had-freed they-should-pertain
Quo senatusconsulto quidam id actum esse putant, 64
By-which decree-of-the-senate some this done to-have-been think
ut in bonis Latinorum eodem iure utamur, quo utimur in
that in the-goods of-Latins the-same law we-use which we-use in
hereditate ciuium Romanorum libertinorum. idque maxime
the-inheritance of-citizen Roman freedmen and-this most
Pegaso placuit. quae sententia aperte falsa est. nam ciuis
to-Pegasus seemed-right which opinion plainly false is for of-a-citizen
Romani liberti hereditas numquam ad extraneos patroni
Roman freedman the-inheritance never to outside of-the-patron
heredes pertinet, bona autem Latinorum ex hoc ipso
heirs pertains the-goods however of-Latins by this very

senatusconsulto non obstantibus liberis manumissoris
decree-of-the-senate not standing-in-the-way the-children of-the-manumitter
etiam ad extraneos heredes pertinent. item in hereditate
even to outside heirs pertain likewise in the-inheritance
ciuis Romani liberti liberis manumissoris nulla
of-a-citizen Roman freedman to-the-children of-the-manumitter no
exheredatio nocet, in bonis Latinorum nocere nominatim
disinheritance harms in the-goods of-Latins to-harm by-name
factam exheredationem ipso senatusconsulto significatur.
made disinheritance by-the-very decree-of-the-senate is-made-clear
64a uerius est ergo hoc solum eo senatusconsulto actum
truer it-is therefore this alone by-that decree-of-the-senate done
esse, ut manumissoris liberi, qui nominatim exheredati
to-have-been that the-manumitter's children who by-name disinherited
non sint, praeferantur extraneis heredibus.
not are be-preferred to-outside heirs
65 Itaque emancipatus filius patroni praeteritus quamuis contra
And-so an-emancipated son of-the-patron passed-over although against
tabulas testamenti parentis sui bonorum possessionem non
the-tablets of-the-will of-parent his of-the-goods possession not
petierit, tamen extraneis heredibus in bonis Latinorum
he-has-sought yet to-outside heirs in the-goods of-Latins
potior habetur.
preferable is-held
66 Item filia ceterique sui heredes licet iure ciuili inter
Likewise a-daughter and-the-other own heirs although by-law civil among
ceteros exheredati sint et ab omni hereditate patris
the-rest disinherited they-have-been and from all the-inheritance of-father
sui summoueantur, tamen in bonis Latinorum, nisi
their-own be-removed yet in the-goods of-Latins unless

nominatim a parente fuerint exheredati, potiores erunt
by-name by their-parent they-have-been disinherited preferable will-be
extraneis heredibus.
to-outside heirs
Item ad liberos, qui ab hereditate parentis se 67
Likewise to children who from the-inheritance of-the-parent themselves
abstinuerunt, nihilo minus bona Latinorum pertinent; nam
have-abstained none the-less the-goods of-Latins pertain for
hi quoque exheredati nullo modo dici possunt, non magis
these also disinherited in-no way be-said can not more
quam qui testamento silentio praeteriti sunt.
than (those)-who in-a-will in-silence passed-over have-been
Ex his omnibus satis illud apparet, si is qui Latinum 68
From these all sufficiently that appears if he who a-Latin
fecerit, ∗∗∗sse; hunc enim solum ∗∗∗ in bonis Latinorum
has-made (…)sse this-one for alone (lacuna) in the-goods of-Latins
∗∗∗ quaeritur, an exheredes ∗∗∗ et libe∗∗∗ constat
(lacuna) it-is-asked whether disinherited (lacuna) and children(…) it-is-agreed
∗∗∗ bona Latinorum ∗∗∗ est ut ∗∗∗ ab alteri ∗∗∗
(lacuna) the-goods of-Latins (lacuna) is that (lacuna) from another (lacuna)
Item illud quoque constare uidetur, si solos liberos ex 69
Likewise that also agreed seems if alone children in
disparibus partibus patronus ∗∗∗ tant, ad eos pertinere,
unequal shares the-patron (lacuna) (…)tant to them to-pertain
quia nullo interueniente extraneo herede senatusconsulto
because no intervening outside heir for-the-decree-of-the-senate
locus non est.
place not there-is
Sed si cum liberis suis etiam extraneum heredem patronus 70
But if with children his-own also an-outside heir the-patron
reliquerit, Caelius Sabinus ait tota bona pro uirilibus
has-left Caelius Sabinus says all the-goods in equal

partibus ad liberos defuncti pertinere, quia cum extraneus
shares to the-children of-the-deceased to-pertain because when an-outside
heres interuenit, non habet lex Iunia locum, sed
heir intervenes not has the-statute Junian place but
senatusconsultum. Iauolenus autem ait tantum eam partem
the-decree-of-the-senate Javolenus however says only that part
ex senatusconsulto liberos patroni pro uirilibus partibus
by the-decree-of-the-senate the-children of-the-patron in equal shares
habituros esse, quam extranei heredes ante senatusconsultum
going-to-have to-be which the-outside heirs before the-decree-of-the-senate
lege Iunia habituri essent, reliquas uero partes
by-the-statute Junian going-to-have would-have-been the-remaining however parts
pro hereditariis partibus ad eos pertinere.
in hereditary shares to them to-pertain

71 Item quaeritur, an hoc senatusconsultum ad eos patroni
Likewise it-is-asked whether this decree-of-the-senate to those of-the-patron
liberos pertineat, qui ex filia nepteue procreantur, id
children pertains who from a-daughter or-granddaughter are-begotten that
est ut nepos meus ex filia potior sit in bonis Latini
is that grandson my by a-daughter preferable be in the-goods of-Latin
mei quam extraneus heres. item an ad maternos Latinos
my than an-outside heir likewise whether to maternal Latins
hoc senatusconsultum pertineat quaeritur, id est ut in
this decree-of-the-senate pertains it-is-asked that is that in
bonis Latini materni potior sit patronae filius quam heres
the-goods of-a-Latin maternal preferable be the-patroness's son than the-heir
extraneus matris. Cassio placuit utroque casu locum esse
outside of-the-mother to-Cassius it-seemed-right in-each case place to-be
senatusconsulto. sed huius sententiam plerique inprobant,
for-the-decree-of-the-senate but his opinion most disapprove
quia senatus de his liberis nihil sentiat, qui aliam
because the-senate about those children nothing intends who another

familiam sequerentur. idque ex eo apparet, quod nominatim
family followed and-this from this appears that by-name
exheredatos summouet; nam uidetur de his sentire qui
disinherited it-removes for it-seems about those to-intend who
exheredari a parente solent, si heredes non instituantur;
to-be-disinherited by their-parent are-wont if as-heirs not they-are-instituted
neque autem matri filium filiamue, neque auo
nor however for-a-mother a-son or-daughter nor for-a-grandfather
materno nepotem neptemue, si eum eamue heredem non
maternal a-grandson or-granddaughter if him or-her as-heir not
instituat, exheredare necesse est, siue de iure ciuili
she-institute to-disinherit necessary is whether about law civil
quaeramus, siue de edicto praetoris, quo praeteritis liberis
we-ask or about the-edict of-the-praetor by-which to-passed-over children
contra tabulas testamenti bonorum possessio promittitur.
against the-tablets of-the-will of-the-goods possession is-promised
Aliquando tamen ciuis Romanus libertus tamquam Latinus 72
Sometimes however a-citizen Roman freedman as a-Latin
moritur, uelut si Latinus saluo iure patroni ab
dies for-example if a-Latin intact the-right of-the-patron from
imperatore ius Quiritium consecutus fuerit. nam, ut
the-emperor the-right of-the-Quirites obtained has for as
diuus Traianus constituit, si Latinus inuito uel ignorante
the-deified Trajan established if a-Latin unwilling or unaware
patrono ius Quiritium ab imperatore consecutus sit, dum
the-patron the-right of-the-Quirites from the-emperor obtained has while
uiuit iste libertus, ceteris ciuibus Romanis libertis similis
lives that freedman to-the-other citizen Roman freedmen like
est et iustos liberos procreat, moritur autem Latini iure,
he-is and lawful children begets he-dies however by-a-Latin's right
nec ei liberi eius heredes esse possunt; et in hoc tantum
nor to-him children his heirs be can and in this only

habet testamenti factionem, ut patronum heredem instituat
he-has of-a-will capacity that the-patron as-heir he-institute
eique, si heres esse noluerit, alium substituere possit.
and-to-him if heir to-be he-has-been-unwilling another substitute he-can
73 Et quia hac constitutione uidebatur effectum, ut ne umquam
And because by-this enactment it-seemed effected that not ever
isti homines tamquam ciues Romani morerentur, quamuis eo
these men as citizens Roman should-die although by-that
iure postea usi essent, quo uel ex lege Aelia Sentia uel
law afterward used they-had by-which either by the-statute Aelian Sentian or
ex senatusconsulto ciues Romani essent, diuus Hadrianus
by the-decree-of-the-senate citizens Roman they-would-be the-deified Hadrian
iniquitate rei motus auctor fuit senatusconsulti
by-the-unfairness of-the-matter moved the-mover was of-a-decree-of-the-senate
faciendi, ut qui ignorante uel recusante patrono ab
being-made that (those)-who unaware or refusing the-patron from
imperatore ius Quiritium consecuti essent, si eo iure postea
the-emperor the-right of-the-Quirites obtained had if that law afterward
usi essent, quo ex lege Aelia Sentia uel ex senatusconsulto,
used they-had by-which by the-statute Aelian Sentian or by the-decree-of-the-senate
si Latini mansissent, ciuitatem Romanam consequerentur,
if Latins they-had-remained citizenship Roman they-would-obtain
proinde ipsi haberentur ac si lege Aelia Sentia
just-so they-themselves should-be-held as if by-the-statute Aelian Sentian
uel senatusconsulto ad ciuitatem Romanam peruenissent.
or by-the-decree-of-the-senate to citizenship Roman they-had-come
74 Eorum autem, quos lex Aelia Sentia dediticiorum
Of-those however whom the-statute Aelian Sentian of-the-dediticii
numero facit, bona modo quasi ciuium Romanorum
in-the-number makes the-goods sometimes as-if of-citizen Roman
libertorum, modo quasi Latinorum ad patronos pertinent.
freedmen sometimes as-if of-Latins to the-patrons pertain

Nam eorum bona qui, si in aliquo uitio non essent, manumissi 75
For of-those the-goods who if in some fault not they-were manumitted
ciues Romani futuri essent, quasi ciuium Romanorum
citizens Roman going-to-be would-be as-if of-citizens Roman
patronis eadem lege tribuuntur. non tamen hi habent etiam
to-the-patrons by-the-same statute are-assigned not however these have also
testamenti factionem; nam id plerisque placuit, nec inmerito:
of-a-will capacity for that to-most seemed-right nor undeservedly
nam incredibile uidebatur pessimae condicionis hominibus
for incredible it-seemed of-the-worst condition men
uoluisse legis latorem testamenti faciendi ius concedere.
to-have-wished of-the-statute the-proposer of-a-will making the-right to-grant
Eorum uero bona qui, si non in aliquo uitio essent, 76
Of-those however the-goods who if not in some fault they-were
manumissi futuri Latini essent, proinde tribuuntur patronis,
manumitted going-to-be Latins would-be just-so are-assigned to-the-patrons
ac si Latini decessissent. nec me praeterit non satis in ea
as if Latins they-had-died nor me escapes not sufficiently in that
re legis latorem uoluntatem suam uerbis expressisse.
matter of-the-statute the-proposer will his-own in-words to-have-expressed

VII · PURCHASE OF GOODS AND OTHER SUCCESSIONS

Goods of debtors in hiding, ceding, condemned, or dead without successor are sold by a master the creditors choose. Adrogation and coming into hand pass an estate with its debts; a statutory heir ceding in court before entry passes it whole.

Videamus autem et de ea successione quae nobis ex 77
Let-us-see however also about that succession which to-us from
emptione bonorum conpetit.
the-purchase of-goods belongs

78 Bona autem ueneunt aut uiuorum aut mortuorum: uiuorum
Goods however are-sold either of-the-living or of-the-dead of-the-living
ueluti eorum qui fraudationis causa latitant nec absentes
for-example of-those who of-fraud for-the-sake lie-hidden nor absent
defenduntur; item eorum qui ex lege Iulia bonis cedunt;
are-defended likewise of-those who by the-statute Julian their-goods cede
item iudicatorum post tempus quod eis partim lege
likewise of-judgment-debtors after the-time which to-them partly by-the-statute
XII tabularum partim edicto praetoris ad expediendam
of-the-Twelve Tables partly by-the-edict of-the-praetor for raising
pecuniam tribuitur. mortuorum bona ueneunt ueluti
money is-allotted of-the-dead the-goods are-sold for-example
eorum, quibus certum est neque heredes neque bonorum
of-those to-whom certain it-is neither heirs nor of-the-goods
possessores neque ullum alium iustum successorem existere.
possessors nor any other lawful successor to-appear
79 Siquidem uiui bona ueneant, iubet ea praetor
If-indeed of-a-living-man the-goods are-sold orders them the-praetor
per dies continuos XXX possideri et proscribi; si uero
for days continuous thirty to-be-possessed and to-be-advertised if however
mortui, per dies XV. postea iubet conuenire creditores
of-a-dead-man for days fifteen afterward he-orders to-assemble the-creditors
et ex eo numero magistrum creari, id est eum
and from that number a-master to-be-appointed that is him
per quem bona ueneant. itaque si uiui bona
through whom the-goods are-sold and-so if of-a-living-man the-goods
ueneant, in diebus X bonorum uenditionem fieri
are-sold within days ten of-the-goods the-sale to-be-made
iubet, si mortui, in dimidio. diebus itaque uiui
he-orders if of-a-dead-man in half the-days and-so of-a-living-man
bona XXXX, mortui uero XX emptori addici
the-goods in-forty of-a-dead-man however in-twenty to-the-buyer to-be-assigned

iubet. quare autem tardius uiuentium bonorum uenditionem
he-orders why however more-slowly of-the-living of-the-goods the-sale
conpleri iubet, illa ratio est, quia de uiuis curandum
to-be-completed he-orders that the-reason is because for the-living to-be-cared-for
erat, ne facile bonorum uenditiones paterentur.
it-was lest easily of-goods sales they-should-suffer
Neque autem bonorum possessorum neque bonorum emptorum 80
Neither however of-the-goods of-possessors nor of-the-goods of-buyers
res pleno iure fiunt, sed in bonis efficiuntur; ex iure
the-things in-full right become but in the-goods are-made by the-law
Quiritium autem ita demum adquiruntur, si usuceperunt.
of-the-Quirites however thus only they-are-acquired if they-have-usucapted
interdum quidem bonorum emptoribus ne usus quidem capio
sometimes indeed of-the-goods to-buyers not use even taking
contingit, ueluti si ∗∗∗ bonorum emptor ∗∗∗
happens for-example if (lacuna) of-the-goods the-buyer (lacuna)
Item quae debita sunt ∗∗∗ aut ipse debuit, neque 81
Likewise what-things owed are (lacuna) or he-himself owed neither
bonorum possessor neque bonorum emptor ipso iure debet
of-the-goods the-possessor nor of-the-goods the-buyer by-itself law owes
aut ipsis debentur, ∗∗∗ de omnibus rebus ∗∗∗ in
or to-themselves are-owed (lacuna) about all things (lacuna) in
sequenti commentario proponemus.
the-following commentary we-shall-set-out
Sunt autem etiam alterius generis successiones, quae neque 82
There-are however also of-another kind successions which neither
lege XII tabularum neque praetoris edicto, sed
by-the-statute of-the-Twelve Tables nor by-the-praetor's edict but
eo iure quod consensu receptum est introductae sunt.
by-that law which by-consent accepted is introduced were

83 Etenim cum pater familias se in adoptionem dedit
For when a-father of-a-family himself into adoption has-given
mulierue in manum conuenit, omnes eius res incorporales
or-a-woman into hand has-come all his things incorporeal
et corporales quaeque ei debitae sunt, patri adoptiuo
and corporeal and-what-things to-him owed are to-the-father adoptive
coemptionatoriue adquiruntur, exceptis his quae per capitis
or-to-the-purchaser are-acquired excepting those which through of-status
deminutionem pereunt, quales sunt ususfructus, operarum
loss perish such-as are a-usufruct of-services
obligatio libertinorum quae per iusiurandum contracta est,
the-obligation of-freedmen which by oath contracted is
et lites contestatae legitimo iudicio.
and suits joined in-a-statutory proceeding

84 Ex diuerso quod is debuit, qui se in adoptionem dedit
From the-opposite what he owed who himself into adoption has-given
quaeue in manum conuenit, non transit ad coemptionatorem
or-she-who into hand has-come not passes to the-purchaser
aut ad patrem adoptiuum, nisi si hereditarium aes
or to the-father adoptive unless if of-the-inheritance money
alienum fuerit. tunc enim quia ipse pater adoptiuus aut
another's it-has-been then for because himself the-father adoptive or
coemptionator heres fit, directo tenetur iure; is uero, qui
the-purchaser heir becomes directly he-is-bound by-law he however who
se adoptandum dedit quaeue in manum conuenit, desinit
himself to-be-adopted has-given or-she-who into hand has-come ceases
esse heres. de eo uero quod proprio nomine eae personae
to-be heir about that however which in-their-own name those persons
debuerint, licet neque pater adoptiuus teneatur neque
have-owed although neither the-father adoptive is-bound nor
coemptionator, et ne ipse quidem, qui se in adoptionem
the-purchaser and not himself even who himself into adoption

dedit quaeue in manum conuenit, maneat obligatus obligataue,
has-given or-she-who into hand has-come remains bound or-bound
quia scilicet per capitis deminutionem liberetur, tamen in
because of-course through of-status loss he-is-freed yet against
eum eamue utilis actio datur rescissa capitis deminutione;
him or-her an-equitable action is-given rescinded of-status the-loss
et si aduersus hanc actionem non defendantur, quae
and if against this action not they-are-defended what-things
bona eorum futura fuissent, si se alieno iuri non
goods their going-to-be would-have-been if themselves to-another's right not
subiecissent, uniuersa uendere creditoribus praetor permittit.
they-had-subjected all to-sell to-the-creditors the-praetor permits
Item si legitimam hereditatem heres, antequam cernat 85
Likewise if a-statutory inheritance the-heir before he-makes-cretion
aut pro herede gerat, alii in iure cedat, pleno iure fit
or as heir acts to-another in court he-cedes in-full right becomes
ille heres, cui cessa est hereditas, proinde ac si ipse
that-one heir to-whom ceded is the-inheritance just as if himself
per legem ad hereditatem uocaretur. quodsi posteaquam
through the-statute to the-inheritance he-were-called but-if after
heres extiterit, cesserit, adhuc heres manet et ob id
heir he-has-appeared he-has-ceded still heir he-remains and on-account-of this
creditoribus ipse tenebitur; sed res corporales transferet
to-the-creditors himself will-be-bound but the-things corporeal he-will-transfer
proinde ac si singulas in iure cessisset, debita uero
just as if singly in court he-had-ceded-them the-debts however
pereunt, eoque modo debitores hereditarii lucrum faciunt.
perish and-in-that way the-debtors of-the-inheritance gain make

86 Idem iuris est, si testamento scriptus heres, posteaquam
The-same of-law is if by-will written heir after
heres extiterit, in iure cesserit hereditatem; ante aditam
heir he-has-appeared in court has-ceded the-inheritance before entered
uero hereditatem cedendo nihil agit.
however the-inheritance by-ceding nothing he-does

87 Suus autem et necessarius heres an aliquid agant in
An-own however and necessary heir whether anything they-do in
iure cedendo, quaeritur. nostri praeceptores nihil eos agere
court by-ceding it-is-asked our teachers nothing them to-do
existimant; diuersae scholae auctores idem eos agere
consider of-the-opposing school the-authorities the-same them to-do
putant, quod ceteri post aditam hereditatem; nihil enim
think as the-others after entered the-inheritance nothing for
interest, utrum aliquis cernendo aut pro herede gerendo
matters whether someone by-making-cretion or as heir by-acting
heres fiat, an iuris necessitate hereditati adstringatur.
heir becomes or by-law's necessity to-the-inheritance is-bound

VIII · OBLIGATIONS BY DELIVERY AND BY WORDS

Obligations arise from contract or delict; contracts are made by delivery, words, writing, or consent. A loan binds by delivery; words bind by question and answer, spondes? spondeo for citizens alone, other forms for all.

88 Nunc transeamus ad obligationes. quarum summa diuisio
Now let-us-pass to obligations of-which the-chief division
in duas species diducitur: omnis enim obligatio uel ex
into two kinds is-drawn every for obligation either from
contractu nascitur uel ex delicto.
contract arises or from delict

Et prius uideamus de his quae ex contractu nascuntur. 89
And first let-us-see about those which from contract arise
harum autem quattuor genera sunt: aut enim re
of-these however four kinds are either for by-a-thing
contrahitur obligatio aut uerbis aut litteris aut consensu.
is-contracted the-obligation or by-words or by-letters or by-consent
Re contrahitur obligatio uelut mutui datione. mutui 90
By-a-thing is-contracted an-obligation for-example of-a-loan by-the-giving of-a-loan
autem datio proprie in his rebus contingit quae pondere
however the-giving properly in those things happens which by-weight
numero mensura constant, qualis est pecunia numerata uinum
number measure consist such-as is money counted wine
oleum frumentum aes argentum aurum. quas res aut
oil grain bronze silver gold which things either
numerando aut metiendo aut pendendo in hoc damus, ut
by-counting or by-measuring or by-weighing to this-end we-give that
accipientium fiant et quandoque nobis non eaedem, sed
the-receivers' they-may-become and at-some-time to-us not the-same but
aliae eiusdem naturae reddantur. unde etiam mutuum appellatum
other of-the-same nature be-returned whence also mutuum called
est, quia quod ita tibi a me datum est, ex meo tuum fit.
it-is because what thus to-you by me given is from mine yours becomes
Is quoque, qui non debitum accepit ab eo qui 91
He also who what-was-not owed has-received from him who
per errorem soluit, re obligatur. nam proinde ei
through error paid by-a-thing is-bound for just-so from-him
condici potest 'si paret eum dare oportere', ac si mutuum
be-claimed it-can if it-appears him to-give to-be-bound as if a-loan
accepisset. unde quidam putant pupillum aut mulierem, cui
he-had-received whence some think a-ward or a-woman to-whom
sine tutoris auctoritate non debitum per errorem
without of-a-tutor the-authority what-was-not owed through error

datum est, non teneri condictione, non magis quam
given has-been not to-be-bound by-condiction not more than
mutui datione. sed haec species obligationis non uidetur
of-a-loan by-the-giving but this kind of-obligation not seems
ex contractu consistere, quia is qui soluendi animo
from contract to-arise because he who of-paying with-the-intent
dat, magis distrahere uult negotium quam contrahere.
gives rather to-dissolve wishes a-transaction than to-contract

92 Verbis obligatio fit ex interrogatione et responsione,
By-words an-obligation is-made from question and answer
ueluti 'dari spondes? spondeo, dabis? dabo, promittis?
for-example to-be-given do-you-promise I-promise will-you-give I-will-give do-you-promise
promitto, fidepromittis? fidepromitto, fideiubes? fideiubeo,
I-promise do-you-pledge-your-faith I-pledge-my-faith do-you-stand-surety I-stand-surety
facies? faciam.'
will-you-do I-will-do

93 Sed haec quidem uerborum obligatio 'dari spondes?
But this indeed of-words obligation to-be-given do-you-promise
spondeo' propria ciuium Romanorum est; ceterae uero
I-promise peculiar of-citizens Roman is the-others however
iuris gentium sunt, itaque inter omnes homines siue ciues
of-the-law of-nations are and-so among all men whether citizens
Romanos siue peregrinos ualent. et quamuis ad Graecam
Roman or foreigners they-are-valid and although in a-Greek
uocem expressae fuerint, ueluti hoc modo Δώσεις;
word expressed they-have-been as in-this way Will-you-give
Δωσω· Ὁμολογεῖς; Ὁμολογῶ· Πίστει κελεύεις; Πίστει κελεύω·
I-will-give Do-you-agree I-agree On-faith do-you-order On-faith I-order
Ποιήσεις; Ποιήσω, tamen inter ciues Romanos ualent, si
Will-you-do I-will-do yet among citizens Roman they-are-valid if
modo Graeci sermonis intellectum habeant. et e contrario
only of-the-Greek speech understanding they-have and from the-contrary

quamuis Latine enuntientur, tamen etiam inter peregrinos
although in-Latin they-be-spoken yet even among foreigners
ualent, si modo Latini sermonis intellectum habeant.
they-are-valid if only of-the-Latin speech understanding they-have
at illa uerborum obligatio ‘dari spondes? spondeo’ adeo
but that of-words obligation to-be-given do-you-promise I-promise so-far
propria ciuium Romanorum est, ut ne quidem in Graecum
peculiar of-citizens Roman is that not even into the-Greek
sermonem per interpretationem proprie transferri possit,
speech by translation properly be-transferred it-can
quamuis dicatur a Graeca uoce figurata esse.
although it-is-said from a-Greek word formed to-be
Unde dicitur uno casu hoc uerbo peregrinum quoque obligari 94
Whence it-is-said in-one case by-this word a-foreigner also be-bound
posse, ueluti si imperator noster principem alicuius peregrini
to-be-able for-example if emperor our the-chief of-some foreign
populi de pace ita interroget ‘pacem futuram spondes?’ uel
people about peace thus asks peace going-to-be do-you-promise or
ipse eodem modo interrogetur. quod nimium subtiliter
he-himself in-the-same way be-asked which too subtly
dictum est, quia si quid aduersus pactionem fiat, non
said is because if anything against the-pact be-done not
ex stipulatu agitur, sed iure belli res uindicatur.
on the-stipulation is-sued but by-the-law of-war the-matter is-avenged
Illud dubitari potest, si quis *** 95
That be-doubted can if someone (lacuna)
*** Sunt et aliae obligationes *** corporal *** item 95a
(lacuna) There-are also other obligations (lacuna) corporeal (lacuna) likewise
si debitor mulieris iussu eius, dum ***, doti dicat
if the-debtor of-a-woman at-the-order her while (lacuna) as-dowry declares

quod debet; alius autem obligari hoc modo non potest.
what he-owes another however be-bound in-this way not can
et ideo si quis alius *** communi iure obliga ***.
and therefore if any other (lacuna) by-common law bound (lacuna)
96 Item uno loquente *** haec sola causa est, ex qua
Likewise one-alone speaking (lacuna) this sole case is from which
iureiurando contrahitur obligatio. sane ex alia nulla causa
by-oath is-contracted an-obligation certainly from other no case
iureiurando homines obligantur, utique cum quaeritur de iure
by-oath men are-bound at-least when it-is-asked about the-law
Romanorum. nam apud peregrinos quid iuris sit, singularum
of-the-Romans for among foreigners what of-law is of-single
ciuitatium iura requirentes aliud intellegere poterimus ***.
states the-laws seeking other understand we-shall-be-able (lacuna)

IX · INVALID STIPULATIONS

A stipulation fails if its object cannot be given or cannot exist, if its condition is impossible (a legacy so left stands), if it is for one's own thing, if it falls due after either party's death or on the day before, if the answer does not match the question, if made for one to whose power one is not subject, or between a person and the one in whose power he is. The mute, the deaf, and the mad cannot stipulate; a ward, and a woman in tutelage, need the tutor to bind themselves, and an infant is like a madman.

97 Si id quod dari stipulamur tale sit, ut dari non
If that which to-be-given we-stipulate such is that be-given not
possit, inutilis est stipulatio, uelut si quis hominem liberum
it-can invalid is the-stipulation as if someone a-man free
quem seruum esse credebat, aut mortuum quem uiuum esse
whom a-slave to-be he-believed or dead whom alive to-be

credebat, aut locum sacrum uel religiosum quem putabat
he-believed or a-place sacred or religious which he-thought
humani iuris esse, dari stipuletur.
of-human right to-be to-be-given stipulates

Item si quis rem quae in rerum natura esse non potest, 97a
Likewise if someone a-thing which in of-things the-nature be not can
uelut hippocentaurum, stipuletur, aeque inutilis est stipulatio.
as a-hippocentaur stipulates equally invalid is the-stipulation

Item si quis sub ea condicione stipuletur quae existere 98
Likewise if someone under such condition stipulates which come-about
non potest, ueluti si digito caelum tetigerit, inutilis
not can for-example if with-his-finger the-sky he-has-touched invalid
est stipulatio. sed legatum sub inpossibili condicione relictum
is the-stipulation but a-legacy under an-impossible condition left
nostri praeceptores proinde deberi putant, ac si sine
our teachers just-so to-be-owed think as if without
condicione relictum esset; diuersae scholae auctores
condition left it-had-been of-the-opposing school the-authorities
nihilo minus legatum inutile existimant quam stipulationem.
not-at-all less the-legacy invalid consider than the-stipulation
et sane uix idonea diuersitatis ratio reddi potest.
and certainly hardly a-fit of-the-difference reason be-given can

Praeterea inutilis est stipulatio, si quis ignorans rem suam 99
Besides invalid is the-stipulation if someone not-knowing the-thing his-own
esse dari sibi eam stipuletur; quippe quod alicuius
to-be to-be-given to-himself it stipulates since what of-someone
est, id ei dari non potest.
is that to-him be-given not can

Denique inutilis est talis stipulatio, si quis ita dari 100
Finally invalid is such stipulation if someone thus to-be-given
stipuletur ‘post mortem meam dari spondes’; uel ita
stipulates after death my to-be-given do-you-promise or thus

'post mortem tuam dari spondes?'; ualet autem, si quis
after death your to-be-given do-you-promise it-is-valid however if someone
ita dari stipuletur 'cum moriar dari spondes?' uel ita
thus to-be-given stipulates when I-shall-die to-be-given do-you-promise or thus
'cum morieris dari spondes?' id est ut in nouissimum
when you-shall-die to-be-given do-you-promise that is that to the-last
uitae tempus stipulatoris aut promissoris obligatio conferatur.
of-life time of-the-stipulator or of-the-promisor the-obligation be-put
nam inelegans esse uisum est ab heredis persona incipere
for inelegant to-be seemed it-has from the-heir's person to-begin
obligationem. rursum ita stipulari non possumus 'pridie
an-obligation again thus stipulate not we-can on-the-day-before
quam moriar', aut 'pridie quam morieris dari
than I-shall-die or on-the-day-before than you-shall-die to-be-given
spondes?' quia non potest aliter intellegi 'pridie quam
do-you-promise because not can otherwise be-understood the-day-before than
aliquis morietur', quam si mors secuta sit; rursus morte secuta
someone shall-die than if death followed has again death following
in praeteritum reducitur stipulatio et quodammodo talis
into the-past is-brought-back the-stipulation and in-a-certain-way such
est 'heredi meo dari spondes?' quae sane inutilis est.
is to-heir my to-be-given do-you-promise which certainly invalid is

101 Quaecumque de morte diximus, eadem et de capitis
Whatever about death we-have-said the-same also about of-status
deminutione dicta intellegemus.
loss said we-shall-understand

102 Adhuc inutilis est stipulatio, si quis ad id quod interrogatus
Still invalid is the-stipulation if someone to that which asked
erit, non responderit, ueluti si sestertia X a te
he-shall-have-been not has-answered for-example if sesterces ten from you

dari stipuler et tu sestertia V promittas, aut si ego
to-be-given I-stipulate and you sesterces five promise or if I
pure stipuler, tu sub condicione promittas.
unconditionally stipulate you under a-condition promise
Praeterea inutilis est stipulatio, si ei dari stipulemur, 103
Besides invalid is the-stipulation if to-him to-be-given we-stipulate
cuius iuri subiecti non sumus. unde illud quaesitum est, si
to-whose right subject not we-are whence that questioned was if
quis sibi et ei cuius iuri subiectus non est dari
someone to-himself and to-him to-whose right subject not he-is to-be-given
stipuletur, in quantum ualeat stipulatio. nostri praeceptores
stipulates in how-far is-valid the-stipulation our teachers
putant in uniuersum ualere et proinde ei soli qui stipulatus
think in whole to-be-valid and just-so to-him alone who stipulated
sit solidum deberi, atque si extranei nomen non adiecisset.
has the-whole to-be-owed as if of-the-outsider the-name not be-had-added
sed diuersae scholae auctores dimidium ei deberi
but of-the-opposing school the-authorities half to-him to-be-owed
existimant, pro altera uero parte inutilem esse stipulationem.
consider for the-other however part invalid to-be the-stipulation
Alia causa est *** ‘dari spondes?’ *** solidum 103a
Other the-case is (lacuna) to-be-given do-you-promise (lacuna) the-whole
deberi et me solum *** etiam Titio ***.
to-be-owed and me alone (lacuna) also to-Titius (lacuna)
Praeterea inutilis est stipulatio, si ab eo stipuler qui iuri meo 104
Besides invalid is the-stipulation if from him I-stipulate who to-right my
subiectus est, item si is a me stipuletur. sed seruus quidem
subject is likewise if he from me stipulates but a-slave indeed
et qui in mancipio est et filia familias et quae in
and (he)-who in bondage is and a-daughter of-a-family and (she)-who in

manu est non solum ipsi, cuius iuri subiecti subiectaeue
hand is not only to-him-himself to-whose right subject or-subject
sunt, obligari non possunt, sed ne alii quidem ulli.
they-are be-bound not can but not to-another even any
105 Mutum neque stipulari neque promittere posse palam est.
A-mute neither to-stipulate nor to-promise be-able plain is
idem etiam in surdo receptum est; quia et is
the-same also in-the-case-of a-deaf-man accepted is because both he
qui stipulatur uerba promittentis, et qui promittit uerba
who stipulates the-words of-the-promisor and (he)-who promises the-words
stipulantis exaudire debet.
of-the-stipulator hear must
106 Furiosus nullum negotium gerere potest, quia non intellegit
A-madman no business transact can because not he-understands
quid agat.
what he-does
107 Pupillus omne negotium recte gerit, ut tamen, sicubi
A-ward all business validly transacts provided however wherever
tutoris auctoritas necessaria sit, adhibeatur tutor, ueluti
of-a-tutor the-authority necessary is be-employed the-tutor for-example
si ipse obligetur; nam alium sibi obligare etiam sine
if he-himself is-bound for another to-himself bind even without
tutoris auctoritate potest.
of-a-tutor the-authority he-can
108 Idem iuris est in feminis quae in tutela sunt.
The-same of-law is in women who in tutelage are
109 Sed quod diximus de pupillo, utique de eo uerum est qui
But what we-have-said about a-ward at-least about him true is who
iam aliquem intellectum habet. nam infans et qui infanti
already some understanding has for an-infant and (one)-who to-an-infant
proximus est non multum a furioso differt, quia huius
next is not much from a-madman differs because of-this

aetatis pupilli nullum intellectum habent; sed in his pupillis
age wards no understanding have but in these wards
propter utilitatem benignior iuris interpretatio facta est.
on-account-of utility a-more-indulgent of-law interpretation made has-been

X · ADSTIPULATORS

A second creditor, the adstipulator, may stipulate the same thing or less, chiefly so that someone can sue after the stipulator's death, and hands over what he recovers. Others bind themselves for a promisor as sponsors, fidepromissors, or fideiussors.

Possumus tamen ad id quod stipulamur alium adhibere, 110
We-can however to that which we-stipulate another employ
qui idem stipuletur; quem uulgo adstipulatorem uocamus.
who the-same may-stipulate whom commonly an-adstipulator we-call
Et huic proinde actio conpetit proindeque ei recte 111
And to-this-one just-so an-action belongs and-just-so to-him validly
soluitur ac nobis; sed quidquid consecutus erit, mandati
it-is-paid as to-us but whatever obtained he-shall-have of-mandate
iudicio nobis restituere cogetur.
by-the-action to-us to-hand-over he-will-be-compelled
Ceterum potest etiam aliis uerbis uti adstipulator, quam 112
Moreover can also other words use the-adstipulator than
quibus nos usi sumus. itaque si uerbi gratia ego ita
those-which we used have and-so if of-example for-the-sake I thus
stipulatus sim 'dari spondes?', ille sic adstipulari potest
stipulated have to-be-given do-you-promise he thus adstipulate can
'idem fide tua promittis?' uel 'idem fideiubes?' uel contra.
the-same on-faith your do-you-promise or the-same do-you-stand-surety or conversely

113 Item minus adstipulari potest, plus non potest. itaque si
Likewise less adstipulate he-can more not he-can and-so if
ego sestertia X stipulatus sim, ille sestertia V stipulari
I sesterces ten stipulated have he sesterces five stipulate
potest; contra uero plus non potest. item si ego pure
can conversely however more not he-can likewise if I unconditionally
stipulatus sim, ille sub condicione stipulari potest; contra
stipulated have he under condition stipulate can conversely
uero non potest. non solum autem in quantitate, sed etiam
however not he-can not only however in quantity but also
in tempore minus et plus intellegitur; plus est enim statim
in time less and more is-understood more is for at-once
aliquid dare, minus est post tempus dare.
something to-give less is after a-time to-give

114 In hoc autem iure quaedam singulari iure obseruantur.
In this however law certain-things by-special law are-observed
nam adstipulatoris heres non habet actionem. item seruus
for of-the-adstipulator the-heir not has an-action likewise a-slave
adstipulando nihil agit, quamuis ex ceteris omnibus causis
by-adstipulating nothing does although from other all causes
stipulatione domino adquirat. idem de eo qui in
by-stipulation for-his-master he-acquires the-same about him who in
mancipio est magis placuit; nam et is serui loco
bondage is rather has-been-approved for also he of-a-slave in-the-place
est. is autem qui in potestate patris est agit aliquid,
is he however who in the-power of-his-father is does something
sed parenti non adquirit, quamuis ex omnibus ceteris
but for-the-parent not acquires although from all other
causis stipulando ei adquirat. ac ne ipsi quidem
causes by-stipulating for-him he-acquires and not to-himself even
aliter actio conpetit, quam si sine capitis deminutione
otherwise an-action belongs than if without of-status loss

exierit de potestate parentis, ueluti morte eius aut
he-has-gone-out from the-power of-the-parent for-example by-the-death his or
quod ipse flamen Dialis inauguratus est. eadem de
because he-himself flamen of-Jupiter inaugurated is the-same-things about
filia familias et quae in manu est dicta intellegemus.
a-daughter of-a-family and (she)-who in hand is said we-shall-understand
Pro eo quoque qui promittit solent alii obligari; quorum 115
For him also who promises are-wont others to-be-bound of-whom
alios sponsores, alios fidepromissores, alios fideiussores
some sponsors others fidepromissors others fideiussors
appellamus.
we-call
Sponsor ita interrogatur 'idem dari spondes?' fidepromissor 116
A-sponsor thus is-asked the-same to-be-given do-you-promise a-fidepromissor
ita 'idem fidepromittis?' fideiussor ita 'idem fide tua
thus the-same do-you-pledge-your-faith a-fideiussor thus the-same on-faith your
esse iubes?' uidebimus autem, quo nomine possint
to-be do-you-order we-shall-see however by-what name they-can
proprie appellari, qui ita interrogantur 'idem dabis? idem
properly be-called who thus are-asked the-same will-you-give the-same
promittis? idem facies?'
do-you-promise the-same will-you-do
Sponsores quidem et fidepromissores et fideiussores saepe 117
Sponsors indeed and fidepromissors and fideiussors often
solemus accipere, dum curamus, ut diligentius nobis cautum
we-are-wont to-accept while we-take-care that more-carefully to-us provided
sit; adstipulatorem uero fere tunc solum adhibemus,
it-has-been an-adstipulator however generally then only we-employ
cum ita stipulamur, ut aliquid post mortem nostram detur.
when thus we-stipulate that something after death our be-given
∗∗∗ stipulando nihil agimus, adhibetur adstipulator, ut is
(lacuna) by-stipulating nothing we-do is-employed an-adstipulator that he

post mortem nostram agat; qui si quid fuerit consecutus,
after death our may-sue who if anything he-has obtained
de restituendo eo mandati iudicio heredi tenetur.
about handing-over it of-mandate by-the-action to-the-heir is-bound

XI · SURETIES

Sponsors and fidepromissors attach only to verbal obligations and bind no heir; fideiussors attach to any and bind their heirs. Statutes limit their liability and divide the debt; sureties owe no more than the debtor and recover by mandate.

118 Sponsoris uero et fidepromissoris similis condicio est,
Of-a-sponsor however and of-a-fidepromissor similar the-condition is
fideiussoris ualde dissimilis.
of-a-fideiussor very dissimilar

119 Nam illi quidem nullis obligationibus accedere possunt nisi
For those indeed to-no obligations be-added can except
uerborum, (quamuis interdum ipse qui promiserit non
of-words although sometimes he-himself who has-promised not
fuerit obligatus, uelut si mulier aut pupillus sine tutoris
has-been bound as if a-woman or a-ward without of-a-tutor
auctoritate aut quilibet post mortem suam dari promiserit.
the-authority or anyone after death his-own to-be-given has-promised
at illud quaeritur, si seruus aut peregrinus spoponderit,
but that is-asked if a-slave or a-foreigner has-promised
an pro eo sponsor aut fidepromissor obligetur).
whether for him a-sponsor or a-fidepromissor be-bound

119a Fideiussor uero omnibus obligationibus, id est siue re
A-fideiussor however to-all obligations that is whether by-a-thing
siue uerbis siue litteris siue consensu contractae fuerint
or by-words or by-letters or by-consent contracted have-been

obligationes, adici potest. ac ne illud quidem interest,
the-obligations be-added can and not that even matters
utrum ciuilis an naturalis obligatio sit cui adiciatur; adeo
whether civil or natural the-obligation is to-which be-is-added so-far
quidem, ut pro seruo quoque obligetur, siue extraneus sit
indeed that for a-slave also he-is-bound whether an-outsider it-is
qui a seruo fideiussorem accipiat, siue ipse dominus in
who from a-slave a-fideiussor accepts or himself the-master for
id quod sibi debeatur.
that which to-himself is-owed

Praeterea sponsoris et fidepromissoris heres non tenetur, 120
Besides of-a-sponsor and of-a-fidepromissor the-heir not is-bound
nisi si de peregrino fidepromissore quaeramus, et alio iure
unless if about a-foreign fidepromissor we-ask and other law
ciuitas eius utatur. fideiussoris autem etiam heres tenetur.
the-state his uses of-a-fideiussor however even the-heir is-bound

Item sponsor et fidepromissor lege Furia biennio 121
Likewise a-sponsor and a-fidepromissor by-the-statute Furian in-two-years
liberantur, et quotquot erunt numero eo tempore,
are-freed and however-many they-shall-be in-number at-that time
quo pecunia peti potest, in tot partes diducitur
at-which the-money be-claimed can into so-many parts is-divided
inter eos obligatio et singuli in uiriles partes obligantur.
among them the-obligation and each for equal parts are-bound
fideiussores uero perpetuo tenentur, et quotquot erunt
fideiussors however perpetually are-bound and however-many they-shall-be
numero, singuli in solidum obligantur. itaque liberum est
in-number each for the-whole are-bound and-so free it-is
creditori a quo uelit solidum petere. sed nunc ex
for-the-creditor from whom he-wishes the-whole to-claim but now by
epistula diui Hadriani conpellitur creditor a singulis
the-letter of-the-deified Hadrian is-compelled the-creditor from each

qui modo soluendo sint partes petere. eo igitur distat haec
who provided solvent are shares to-claim in-this therefore differs this
epistula a lege Furia, quod si quis ex sponsoribus aut
letter from the-statute Furian that if any of the-sponsors or
fidepromissoribus soluendo non sit, hoc onus ad ceteros non
fidepromissors solvent not is this burden to the-others not
pertinet; sed ex fideiussoribus etsi unus tantum soluendo
pertains but of the-fideiussors even-if one only solvent
sit, ad hunc onus ceterorum quoque pertinet.
is to this-one the-burden of-the-others also pertains

121a Sed cum lex Furia tantum in Italia locum habeat,
But since the-statute Furian only in Italy place has
euenit ut in ceteris prouinciis sponsores quoque et
it-comes-about that in the-other provinces sponsors also and
fidepromissores proinde ac fideiussores perpetuo teneantur
fidepromissors just as fideiussors perpetually are-bound
et singuli in solidum obligentur, nisi ex epistula diui
and each for the-whole are-bound unless by the-letter of-the-deified
Hadriani hi quoque adiuuentur in parte.
Hadrian these also are-helped in part

122 Praeterea inter sponsores et fidepromissores lex Appuleia
Besides among sponsors and fidepromissors the-statute Appuleian
quandam societatem introduxit. nam si quis horum plus
a-certain partnership introduced for if any of-these more-than
sua portione soluerit, de eo quod amplius dederit
his-own portion has-paid about that which more he-has-given
aduersus ceteros actiones constituit. quae lex ante legem
against the-others actions it-established which statute before the-statute
Furiam lata est, quo tempore in solidum obligabantur.
Furian carried was at-which time for the-whole they-were-bound
unde quaeritur, an post legem Furiam adhuc legis
whence it-is-asked whether after the-statute Furian still of-the-statute

Appuleiae beneficium supersit. et utique extra Italiam
Appuleian the-benefit remains and at-least outside Italy
superest. nam lex quidem Furia tantum in Italia ualet,
it-remains for the-statute indeed Furian only in Italy is-valid
Appuleia uero etiam in ceteris prouinciis. sed an etiam in
the-Appuleian however also in the-other provinces but whether also in
Italia beneficium legis Appuleiae supersit, ualde quaeritur.
Italy the-benefit of-the-statute Appuleian remains much it-is-asked
ad fideiussores autem lex Appuleia non pertinet. itaque
to fideiussors however the-statute Appuleian not pertains and-so
si creditor ab uno totum consecutus fuerit, huius solius
if the-creditor from one the-whole obtained has of-this-one alone
detrimentum erit, scilicet si is pro quo fideiussit soluendo
the-loss will-be of-course if he for whom he-stood-surety solvent
non sit. sed ut ex supra dictis apparet, is a quo
not is but as from the-above said it-appears he from whom
creditor totum petit poterit ex epistula diui Hadriani
the-creditor the-whole claims will-be-able by the-letter of-the-deified Hadrian
desiderare, ut pro parte in se detur actio.
to-request that for a-share against himself be-given the-action
Praeterea lege Cicereia cautum est, ut is, qui sponsores 123
Besides by-the-statute Cicereian provided it-is that he who sponsors
aut fidepromissores accipiat, praedicat palam et declaret, et de
or fidepromissors accepts announce openly and declare both for
qua re satis accipiat et quot sponsores aut fidepromissores
what matter security he-accepts and how-many sponsors or fidepromissors
in eam obligationem accepturus sit; et nisi praedixerit,
for that obligation about-to-accept he-is and unless he-has-announced
permittitur sponsoribus et fidepromissoribus intra diem XXX
it-is-permitted to-the-sponsors and fidepromissors within days thirty
praeiudicium postulare, quo quaeratur, an ex ea lege
a-preliminary-trial to-demand by-which it-be-asked whether by that statute

praedictum sit; et si iudicatum fuerit praedictum non
announced it-has-been and if judged it-has-been announced not
esse, liberantur. qua lege fideiussorum mentio nulla fit.
to-have-been they-are-freed in-which statute of-fideiussors mention none is-made
sed in usu est, etiam si fideiussores accipiamus, praedicere.
but in use it-is even if fideiussors we-accept to-announce
124 Sed beneficium legis Corneliae omnibus commune est.
But the-benefit of-the-statute Cornelian to-all common is
qua lege idem pro eodem apud eundem eodem
by-which statute the-same-man for the-same-man with the-same-man in-the-same
anno uetatur in ampliorem summam obligari creditae
year is-forbidden for a-larger sum to-be-bound of-lent
pecuniae quam in XX milia. et quamuis sponsores uel
money than for twenty thousand and although sponsors or
fidepromissores in amplam pecuniam, ueluti si sestertium
fidepromissors for a-large sum for-example if for-sesterces
C milium se obligauerint, tamen dumtaxat XX
a-hundred thousand themselves they-have-bound yet only for-twenty
tenentur. pecuniam autem creditam dicimus non solum eam,
they-are-bound money however lent we-call not only that
quam credendi causa damus, sed omnem, quam tum cum
which of-lending for-the-sake we-give but all which then when
contrahitur obligatio certum est debitum iri, id est quae
is-contracted the-obligation certain it-is owed to-be-going that is which
sine ulla condicione deducitur in obligationem. itaque et ea
without any condition is-brought into the-obligation and-so also that
pecunia, quam in diem certum dari stipulamur, eodem
money which on a-day fixed to-be-given we-stipulate in-the-same
numero est, quia certum est eam debitum iri, licet post
number is because certain it-is it owed to-be-going although after
tempus petatur. appellatione autem pecuniae omnes res in
a-time it-be-claimed by-the-name however of-money all things in

ea lege significantur. itaque si uinum uel frumentum aut si
that statute are-signified and-so if wine or grain or if
fundum uel hominem stipulemur, haec lex obseruanda est.
land or a-man we-stipulate this statute to-be-observed is
Ex quibusdam tamen causis permittit ea lex in infinitum 125
For certain however causes permits that statute in unlimited-amount
satis accipere, ueluti si dotis nomine, uel eius quod
security to-accept for-example if of-dowry by-title or of-that which
ex testamento tibi debeatur, aut iussu iudicis satis
by will to-you is-owed or at-the-order of-a-judge security
accipiatur. et adhuc lege Iulia de uicesima hereditatium
be-accepted and moreover by-the-statute Julian on the-twentieth of-inheritances
cauetur, ut ad eas satisdationes, quae ex ea lege
it-is-provided that to those securities which under that statute
proponuntur, lex Cornelia non pertineat.
are-set-forth the-statute Cornelian not pertain
In eo quoque iure par condicio est omnium, sponsorum 126
In this also law equal the-condition is of-all sponsors
fidepromissorum fideiussorum, quod ita obligari non possunt,
fidepromissors fideiussors that so be-bound not they-can
ut plus debeant, quam debet is pro quo obligantur. at
that more they-owe than owes he for whom they-are-bound but
ex diuerso ut minus debeant, obligari possunt, sicut in
from the-opposite that less they-owe be-bound they-can as in
adstipulatoris persona diximus. nam ut adstipulatoris, ita
the-adstipulator's person we-said for as of-the-adstipulator so
et horum obligatio accessio est principalis obligationis, nec
also of-these the-obligation an-accessory is of-the-principal obligation nor
plus in accessione esse potest quam in principali re.
more in an-accessory be can than in the-principal matter

127 In eo quoque par omnium causa est, quod si quid
In this also equal of-all the-position is that if anything
pro reo soluerint, eius reciperandi causa habent cum
for the-debtor they-have-paid of-it of-recovering for-the-sake they-have with
eo mandati iudicium. et hoc amplius sponsores ex lege
him the-mandate's action and this more sponsors by the-statute
Publilia propriam habent actionem in duplum, quae appellatur
Publilian their-own have an-action for double which is-called
depensi.
of-money-paid-out

XII · OBLIGATIONS BY WRITING

Written obligations arise from transcriptitious entries, from a thing to a person or from person to person; cash entries only evidence a loan. Chirographs and syngraphs are the foreigners' written obligation.

128 Litteris obligatio fit ueluti in nominibus transscripticiis.
By-letters an-obligation is-made for-example in entries transcriptitious
fit autem nomen transscripticium duplici modo, uel a
is-made however an-entry transcriptitious in-two way either from
re in personam uel a persona in personam.
a-thing to a-person or from a-person to a-person
129 A re in personam transscriptio fit, ueluti si id,
From a-thing to a-person a-transcription is-made for-example if that
quod tu ex emptionis causa aut conductionis aut societatis
which you from of-sale a-cause or of-hire or of-partnership
mihi debeas, id expensum tibi tulero.
to-me owe that as-paid-out to-you I-shall-have-entered

A persona in personam transscriptio fit, ueluti si id 130
From a-person to a-person a-transcription is-made for-example if that
quod mihi Titius debet tibi id expensum tulero,
which to-me Titius owes to-you that as-paid-out I-shall-have-entered
id est si Titius te delegauerit mihi.
that is if Titius you has-delegated to-me
Alia causa est eorum nominum quae arcaria uocantur. in his 131
Other the-case is of-those entries which cash-entries are-called in these
enim rei, non litterarum obligatio consistit, quippe non
for of-the-thing not of-the-letters the-obligation consists since not
aliter ualent, quam si numerata sit pecunia; numeratio
otherwise they-are-valid than if counted has-been money the-counting
autem pecuniae re facit obligationem. qua de causa
however of-money by-the-thing makes an-obligation which for reason
recte dicemus arcaria nomina nullam facere obligationem,
rightly we-shall-say cash entries no to-make obligation
sed obligationis factae testimonium praebere.
but of-an-obligation made testimony to-afford
Unde non proprie dicitur arcariis nominibus etiam peregrinos 132
Whence not properly it-is-said by-cash entries even foreigners
obligari, quia non ipso nomine, sed numeratione pecuniae
to-be-bound because not itself by-the-entry but by-the-counting of-the-money
obligantur; quod genus obligationis iuris gentium est.
they-are-bound which kind of-obligation of-the-law of-nations is
Transscripticiis uero nominibus an obligentur peregrini, 133
By-transcriptitious however entries whether are-bound foreigners
merito quaeritur, quia quodammodo iuris ciuilis est
rightly it-is-asked because in-a-certain-way of-the-law civil is
talis obligatio; quod Neruae placuit. Sabino autem et
such obligation which to-Nerva seemed-right to-Sabinus however and
Cassio uisum est, si a re in personam fiat nomen
Cassius seemed it-has if from a-thing to a-person be-made an-entry

transscripticium, etiam peregrinos obligari; si uero a
transcriptitious even foreigners to-be-bound if however from
persona in personam, non obligari.
a-person to a-person not to-be-bound

134 Praeterea litterarum obligatio fieri uidetur chirographis
Besides of-letters an-obligation to-be-made seems by-chirographs
et syngraphis, id est si quis debere se aut daturum
and syngraphs that is if someone to-owe himself or to-be-about-to-give
se scribat; ita scilicet si eo nomine stipulatio non
himself writes thus of-course if on-that account a-stipulation not
fiat. quod genus obligationis proprium peregrinorum est.
be-made which kind of-obligation peculiar of-foreigners is

XIII · CONSENT AND SALE

Sale, hire, partnership, and mandate bind by consent alone, even between the absent. Sale is made when the price is agreed, the earnest only proving it. Labeo and Cassius deny a sale at whatever Titius values the thing; Ofilius and Proculus allow it. The price must be in money, though the Sabinians count barter as sale; Caelius Sabinus distinguishes the thing sold from that given as price.

135 Consensu fiunt obligationes in emptionibus uenditionibus,
By-consent are-made obligations in purchases sales
locationibus conductionibus, societatibus, mandatis.
lettings hirings partnerships mandates

136 Ideo autem istis modis consensu dicimus obligationes
For-this-reason however in-those ways by-consent we-say obligations
contrahi, quia neque uerborum neque scripturae ulla
to-be-contracted because neither of-words nor of-writing any
proprietas desideratur, sed sufficit eos qui negotium gerunt
peculiarity is-required but it-suffices those who the-business transact

consensisse. unde inter absentes quoque talia negotia
to-have-agreed whence between absent-persons also such business
contrahuntur, ueluti per epistulam aut per internuntium; cum
is-contracted for-example by letter or by go-between whereas
alioquin uerborum obligatio inter absentes fieri non possit.
otherwise of-words an-obligation between absent-persons be-made not can
Item in his contractibus alter alteri obligatur de eo, 137
Likewise in these contracts one to-the-other is-bound about that
quod alterum alteri ex bono et aequo praestare oportet;
which the-one to-the-other from good and fair to-furnish ought
cum alioquin in uerborum obligationibus alius stipuletur,
whereas otherwise in of-words obligations one stipulates
alius promittat, et in nominibus alius expensum ferendo
another promises and in entries one as-paid-out by-entering
obliget, alius obligetur.
binds another is-bound
Emptio et uenditio contrahitur, cum de pretio conuenerit, 139
Purchase and sale is-contracted when about the-price it-has-been-agreed
quamuis nondum pretium numeratum sit, ac ne arra
although not-yet the-price counted has-been and not earnest-money
quidem data fuerit; nam quod arrae nomine datur,
even given has-been for what of-earnest-money by-title is-given
argumentum est emptionis et uenditionis contractae.
proof is of-purchase and sale contracted
Pretium autem certum esse debet. nam alioquin si ita inter nos 140
The-price however certain to-be must for otherwise if thus between us
conuenerit, ut quanti Titius rem aestimauerit, tanti
it-has-been-agreed that at-as-much-as Titius the-thing shall-have-valued at-so-much
sit empta, Labeo negauit ullam uim hoc negotium habere;
it-be bought Labeo denied any force this transaction to-have

cuius opinionem Cassius probat. Ofilius et eam emptionem
whose opinion Cassius approves Ofilius both that a-purchase
et uenditionem; cuius opinionem Proculus secutus est.
and a-sale whose opinion Proculus followed has

141 Item pretium in numerata pecunia consistere debet. nam in
Likewise the-price in counted money consist must for in
ceteris rebus an pretium esse possit, ueluti homo aut toga
other things whether a-price be can for-example a-man or a-toga
aut fundus alterius rei pretium esse possit, ualde quaeritur.
or land of-another thing the-price be can much it-is-asked
nostri praeceptores putant etiam in alia re posse consistere
our teachers think also in another thing to-be-able to-consist
pretium. unde illud est, quod uulgo putant per permutationem
the-price whence that is which commonly they-think by exchange
rerum emptionem et uenditionem contrahi, eamque speciem
of-things a-purchase and sale to-be-contracted and-that kind
emptionis uenditionisque uetustissimam esse; argumentoque
of-purchase and-sale the-most-ancient to-be and-as-proof
utuntur Graeco poeta Homero qui aliqua parte sic ait:
they-use the-Greek poet Homer who in-some part thus says

ἔνθεν ἄρ᾽ οἰνίζοντο καρηκομόωντες Ἀχαιοί,
thence then bought-wine the-long-haired Achaeans
ἄλλοι μὲν χαλκῷ, ἄλλοι δ᾽ αἴθωνι σιδήρῳ,
some indeed with-bronze others and with-gleaming iron
ἄλλοι δὲ ῥινοῖς, ἄλλοι δ᾽ αὐτῇσι βόεσσιν,
others and with-hides others and with-the-very oxen
ἄλλοι δ᾽ ἀνδραπόδεσσι.
others and with-captives

diuersae scholae auctores dissentiunt aliudque esse
of-the-opposing school the-authorities disagree and-one-thing to-be
existimant permutationem rerum, aliud emptionem et
consider exchange of-things another purchase and
uenditionem; alioquin non posse rem expediri permutatis
sale otherwise not to-be-able the-matter to-be-settled exchanged
rebus, quae uideatur res uenisse et quae pretii
things which should-seem the-thing to-have-been-sold and which of-price
nomine data esse, sed rursus utramque rem uideri et
by-title given to-be but again each thing to-seem both
uenisse et utramque pretii nomine datam esse absurdum
to-have-been-sold and each of-price by-title given to-be absurd
uideri. sed ait Caelius Sabinus, si rem tibi uenalem
to-seem but says Caelius Sabinus if a-thing to-you for-sale
habenti, ueluti fundum, pretii nomine hominem forte
having for-example land of-price by-title a-man perhaps
dederim, fundum quidem uideri uenisse, hominem autem
I-have-given the-land indeed to-seem to-have-been-sold the-man however
pretii nomine datum esse, ut fundus acciperetur.
of-price by-title given to-be so-that the-land might-be-received

XIV · HIRE

Hire needs a fixed rent; a rent left to another's judgment or work done with no price set is doubtful. Gladiators delivered for a fee are hire if they survive and sale if killed, and rings from the goldsmith's gold are sale.

142 Locatio autem et conductio similibus regulis constituitur;
Letting however and hiring by-similar rules is-established
nisi enim merces certa statuta sit, non uidetur locatio
unless for a-rent fixed set has-been not seems a-letting
et conductio contrahi.
and hiring to-be-contracted

143 Unde si alieno arbitrio merces permissa sit, uelut quanti
Whence if to-another's judgment the-rent left has-been as at-as-much-as
Titius aestimauerit, quaeritur, an locatio et conductio
Titius shall-have-valued it-is-asked whether a-letting and hiring
contrahatur. qua de causa si fulloni polienda curandaue,
be-contracted which for reason if to-a-fuller to-be-cleaned or-to-be-looked-after
sarcinatori sarcienda uestimenta dederim, nulla statim
to-a-tailor to-be-mended clothes I-have-given no at-once
mercede constituta, postea tantum daturus, quanti inter nos
rent fixed afterward as-much about-to-give as between us
conuenerit, quaeritur, an locatio et conductio contrahatur.
shall-have-been-agreed it-is-asked whether a-letting and hiring be-contracted

144 item si rem tibi utendam dederim et inuicem aliam rem
likewise if a-thing to-you to-be-used I-have-given and in-turn another thing
utendam acceperim, quaeritur, an locatio et conductio
to-be-used I-have-received it-is-asked whether a-letting and hiring
contrahatur.
be-contracted

145 Adeo autem emptio et uenditio et locatio et conductio
So-far however purchase and sale and letting and hiring
familiaritatem aliquam inter se habere uidentur, ut in
kinship some among themselves to-have seem that in
quibusdam causis quaeri soleat, utrum emptio et uenditio
certain cases to-be-asked it-is-wont whether a-purchase and sale
contrahatur an locatio et conductio. ueluti si qua res in
be-contracted or a-letting and hiring for-example if some thing in

perpetuum locata sit, quod euenit in praediis municipum,
perpetuity let has-been which happens in the-lands of-municipalities
quae ea lege locantur, ut quamdiu uectigal praestetur,
which on-this condition are-let that as-long-as the-rent is-paid
neque ipsi conductori neque heredi eius praedium auferatur.
neither himself from-the-hirer nor from-the-heir his the-land be-taken-away
sed magis placuit locationem conductionemque esse.
but rather it-has-been-approved letting and-hiring to-be
Item si gladiatores ea lege tibi tradiderim, ut in 146
Likewise if gladiators on-this condition to-you I-have-delivered that for
singulos qui integri exierint pro sudore denarii XX mihi
each who unharmed have-come-out for the-sweat denarii twenty to-me
darentur, in eos uero singulos qui occisi aut debilitati fuerint
should-be-given for those however each who killed or disabled have-been
denarii mille, quaeritur, utrum emptio et uenditio an locatio
denarii a-thousand it-is-asked whether purchase and sale or letting
et conductio contrahatur. et magis placuit eorum qui
and hiring be-contracted and rather it-has-been-approved of-those who
integri exierint locationem et conductionem contractam
unharmed have-come-out a-letting and hiring contracted
uideri, at eorum qui occisi aut debilitati sunt emptionem et
to-seem but of-those who killed or disabled have-been a-purchase and
uenditionem esse; idque ex accidentibus apparet, tamquam sub
sale to-be and-this from the-events appears as-if under
condicione facta cuiusque uenditione an locatione. iam enim non
a-condition made of-each by-sale or by-letting now for not
dubitatur, quin sub condicione res ueniri aut locari possint.
it-is-doubted but-that under a-condition things be-sold or be-let can
Item quaeritur, si cum aurifice mihi conuenerit, ut is 147
Likewise it-is-asked if with a-goldsmith with-me it-has-been-agreed that he
ex auro suo certi ponderis certaeque formae anulos mihi
from gold his-own of-fixed weight and-of-fixed shape rings for-me

faceret, et acciperet uerbi gratia denarios CC, utrum
should-make and should-receive of-example for-the-sake denarii two-hundred whether
emptio et uenditio an locatio et conductio contrahatur.
purchase and sale or letting and hiring be-contracted
Cassius ait materiae quidem emptionem uenditionemque
Cassius says of-the-material indeed a-purchase and-sale
contrahi, operarum autem locationem et conductionem. sed
to-be-contracted of-the-labor however a-letting and hiring but
plerisque placuit emptionem et uenditionem contrahi.
to-most it-has-seemed-right a-purchase and sale to-be-contracted
atqui si meum aurum ei dedero mercede pro opera
but if my gold to-him I-shall-have-given a-wage for the-labor
constituta, conuenit locationem conductionem contrahi.
fixed it-is-agreed a-letting hiring to-be-contracted

XV · PARTNERSHIP

Partnership covers all goods or a single venture, and may give one partner more of the gain or none of the loss if his labor is worth it, as Servius held against Mucius. Shares are equal unless fixed. It ends by renunciation, though a partner who renounces to keep a coming gain must share it, and by death, loss of status, or the sale of a partner's goods.

148 Societatem coire solemus aut totorum bonorum aut unius
Partnership to-form we-are-wont either of-whole goods or of-one
alicuius negotii, ueluti mancipiorum emendorum aut
some business for-example of-slaves being-bought or
uendendorum.
being-sold

Magna autem quaestio fuit, an ita coiri possit societas, 149
Great however a-question has-been whether so be-formed can a-partnership
ut quis maiorem partem lucretur, minorem damni praestet.
that someone a-greater share gains a-lesser of-loss bears
quod Q. Mucius contra naturam societatis esse existimauit.
which Quintus Mucius against the-nature of-partnership to-be considered
sed Ser. Sulpicius, cuius etiam praeualuit sententia, adeo ita
but Servius Sulpicius whose also prevailed the-opinion so-far so
coiri posse societatem existimauit, ut dixerit illo quoque
be-formed to-be-able a-partnership considered that he-said in-that also
modo coiri posse, ut quis nihil omnino damni praestet, sed
way be-formed to-be-able that someone no at-all of-loss bears but
lucri partem capiat, si modo opera eius tam pretiosa uideatur,
of-gain a-share takes if only labor his so valuable seems
ut aequum sit eum cum hac pactione in societatem admitti.
that fair it-is him with this agreement into partnership to-be-admitted
nam et ita posse coiri societatem constat, ut unus
for also so to-be-able be-formed a-partnership it-is-agreed that one
pecuniam conferat, alter non conferat, et tamen lucrum inter
money contributes the-other not contributes and yet the-gain between
eos commune sit; saepe enim opera alicuius pro pecunia ualet.
them common is often for the-labor of-someone for money avails
Illud certum est, si de partibus lucri et damni nihil 150
That certain is if about the-shares of-gain and of-loss nothing
inter eos conuenerit, aequis ex partibus commodum et
between them has-been-agreed in-equal from shares advantage and
incommodum inter eos commune esse. sed si in altero partes
disadvantage between them common to-be but if in one the-shares
expressae fuerint, uelut in lucro, in altero uero omissae,
expressed have-been as in gain in the-other however omitted
in eo quoque quod omissum est similes partes erunt.
in that also which omitted is similar the-shares will-be

151 Manet autem societas eo usque, donec in eodem consensu
Lasts however a-partnership so long until in the-same consent
perseuerant. at cum aliquis renuntiauerit societati, societas
they-persevere but when someone has-renounced the-partnership the-partnership
soluitur. sed plane si quis in hoc renuntiauerit societati,
is-dissolved but plainly if someone for this-purpose has-renounced the-partnership
ut obueniens aliquod lucrum solus habeat, ueluti si
that coming some gain alone he-may-have for-example if
mihi totorum bonorum socius, cum ab aliquo heres esset
my of-whole goods partner when by someone heir he-had-been
relictus, in hoc renuntiauerit societati, ut hereditatem
left for this-purpose has-renounced the-partnership that the-inheritance
solus lucri faciat, cogetur hoc lucrum communicare.
alone of-gain may-make he-will-be-compelled this gain to-share
si quid uero aliud lucri fecerit quod non captauerit,
if anything however other of-gain he-has-made which not he-has-sought-for
ad ipsum solum pertinet. mihi uero, quidquid omnino post
to him alone it-pertains to-me however whatever at-all after
renuntiatam societatem adquiritur, soli conceditur.
renounced the-partnership is-acquired alone is-granted

152 Soluitur adhuc societas etiam morte socii, quia qui
Is-dissolved moreover a-partnership also by-death of-a-partner because (he)-who
societatem contrahit certam personam sibi eligit.
a-partnership contracts a-certain person for-himself chooses

153 Dicitur etiam capitis deminutione solui societatem, quia
It-is-said also of-status by-loss to-be-dissolved the-partnership because
ciuili ratione capitis deminutio morti coaequatur; sed utique si
by-civil reason of-status loss to-death is-made-equal but at-least if
adhuc consentiant in societatem, noua uidetur incipere societas.
still they-agree in the-partnership a-new seems to-begin partnership

Item si cuius ex sociis bona publice aut priuatim uenierint, 154
Likewise if of-anyone of the-partners the-goods publicly or privately have-been-sold
soluitur societas. sed haec quoque societas, de qua loquimur,
is-dissolved the-partnership but this also partnership about which we-speak
id est quae consensu contrahitur nudo, iuris gentium est,
that is which by-consent is-contracted bare of-the-law of-nations is
itaque inter omnes homines naturali ratione consistit.
and-so among all men by-natural reason it-consists

XVI · MANDATE

A mandate for my sake or another's binds, but not one in your sole interest, nor advice to invest or buy; a mandate to lend to Titius binds, by Sabinus against Servius. An immoral mandate or one to be done after death is void. It ends by revocation or death, though an agent who acts in ignorance may sue. One who overpays loses his claim; one who buys cheaper may claim. Whatever I give to be done gratis that would be hire for a wage is mandate.

Mandatum consistit, siue nostra gratia mandemus siue 155
A-mandate arises whether for-our sake we-give-a-mandate or
aliena. itaque siue ut mea negotia geras, siue
for-another's and-so whether that my affairs you-should-manage or
ut alterius, mandauerim, contrahitur mandati obligatio,
that another's I-have-given-a-mandate is-contracted of-mandate the-obligation
et inuicem alter alteri tenebimur in id, quod uel me
and in-turn one to-the-other we-shall-be-bound for that which either I
tibi uel te mihi bona fide praestare oportet.
to-you or you to-me in-good faith to-furnish ought
Nam si tua gratia tibi mandem, superuacuum est 156
For if for-your sake to-you I-give-a-mandate superfluous is
mandatum; quod enim tu tua gratia facturus sis, id
the-mandate what for you for-your-own sake about-to-do are that

de tua sententia, non ex meo mandatu facere debes. itaque
of your judgment not from my mandate do you-ought and-so
si otiosam pecuniam domi te habentem hortatus fuerim, ut
if idle money at-home you having urged I-have that
eam faenerares, quamuis eam ei mutuam dederis,
it you-should-lend-at-interest although it to-him as-a-loan you-have-given
a quo seruare non potueris, non tamen habebis mecum
from whom recover not you-could not however you-will-have with-me
mandati actionem. item si hortatus sim, ut rem aliquam
of-mandate an-action likewise if urged I-have that a-thing some
emeres, quamuis non expedierit tibi eam emisse, non
you-should-buy although not it-has-profited you it to-have-bought not
tamen tibi mandati tenebor. et adeo haec ita sunt,
however to-you on-mandate I-shall-be-bound and so-far these-things so are
ut quaeratur, an mandati teneatur qui mandauit tibi, ut
that it-is-asked whether on-mandate he-is-bound who gave-a-mandate to-you that
Titio pecuniam faenerares. Seruius negauit nec magis
to-Titius money you-should-lend-at-interest Servius denied nor more
hoc casu obligationem consistere putauit, quam si generaliter
in-this case an-obligation to-arise he-thought than if generally
alicui mandetur, uti pecuniam suam faeneraret.
to-someone a-mandate-be-given that money his-own he-should-lend-at-interest
sed sequimur Sabini opinionem contra sentientis, quia non
but we-follow of-Sabinus the-opinion the-contrary holding because not
aliter Titio credidisses, quam si tibi mandatum esset.
otherwise to-Titius you-would-have-lent than if to-you mandated it-had-been
157 Illud constat, si quis de ea re mandet, quae contra
That is-agreed if someone about that matter gives-a-mandate which against
bonos mores est, non contrahi obligationem; ueluti si
good morals is not to-be-contracted an-obligation for-example if
tibi mandem, ut Titio furtum aut iniuriam facias.
to-you I-give-a-mandate that to-Titius theft or outrage you-do

Item si quid post mortem meam faciendum mihi mandetur, 158
Likewise if anything after death my to-be-done to-me be-mandated
inutile mandatum est, quia generaliter placuit ab
invalid the-mandate is because generally it-has-been-approved from
heredis persona obligationem incipere non posse.
of-the-heir the-person an-obligation to-begin not to-be-able
Sed recte quoque consummatum mandatum si, dum adhuc 159
But validly also concluded a-mandate if while still
integra res sit, reuocatum fuerit, euanescit.
whole the-matter is revoked it-has-been vanishes
Item si adhuc integro mandato mors alterutrius alicuius 160
Likewise if still whole the-mandate the-death of-either-one some
interueniat, id est uel eius qui mandauerit uel eius
intervenes that is either of-him who has-given-the-mandate or of-him
qui mandatum susceperit, soluitur mandatum. sed utilitatis
who the-mandate has-undertaken is-dissolved the-mandate but of-utility
causa receptum est, ut si mortuo eo qui mihi mandauerit
for-the-sake accepted it-is that if dead him who to-me gave-the-mandate
ignorans eum decessisse executus fuero mandatum, posse
not-knowing him to-have-died carried-out I-shall-have the-mandate to-be-able
me agere mandati actione; alioquin iusta et probabilis
me to-sue of-mandate by-the-action otherwise just and probable
ignorantia damnum mihi adferret. et huic simile est quod
ignorance loss to-me would-bring and to-this similar is what
plerisque placuit, si debitor meus manumisso dispensatori
to-most has-seemed-right if debtor my to-manumitted paymaster
meo per ignorantiam soluerit, liberari eum, cum alioquin
my through ignorance has-paid to-be-freed him whereas otherwise
stricta iuris ratione non posset liberari eo, quod alii
by-strict of-law reason not could he-be-freed in-this that to-another
soluisset quam cui soluere deberet.
he-had-paid than to-whom to-pay he-ought

161 Cum autem is cui recte mandauerim egressus fuerit
When however he to-whom rightly I-have-given-a-mandate overstepped has
mandatum, ego quidem eatenus cum eo habeo mandati
the-mandate I indeed so-far with him have of-mandate
actionem, quatenus mea interest inplesse eum mandatum, si
an-action as-far-as to-me it-matters to-have-fulfilled him the-mandate if
modo inplere potuerit; at ille mecum agere non potest. itaque
only fulfill he-could but he with-me sue not can and-so
si mandauerim tibi, ut uerbi gratia fundum mihi sestertiis
if I-have-mandated to-you that of-example for-the-sake land for-me for-sesterces
C emeres, tu sestertiis CL
a-hundred-thousand you-should-buy you for-sesterces a-hundred-and-fifty-thousand
emeris, non habebis mecum mandati actionem, etiamsi
have-bought not you-will-have with-me of-mandate an-action even-if
tanti uelis mihi dare fundum, quanti emendum tibi
for-so-much you-wish to-me to-give the-land for-as-much-as to-be-bought to-you
mandassem; idque maxime Sabino et Cassio placuit. quodsi
I-had-mandated and-this most to-Sabinus and Cassius seemed-right but-if
minoris emeris, habebis mecum scilicet actionem, quia
for-less you-have-bought you-will-have with-me of-course an-action because
qui mandat, ut C milibus emeretur, is utique
(he)-who mandates that for-a-hundred thousand it-be-bought he certainly
mandare intellegitur, uti minoris, si posset, emeretur.
to-mandate is-understood that for-less if possible it-be-bought

162 In summa sciendum est, quotiens aliquid gratis faciendum
In sum to-be-known it-is as-often-as something gratis to-be-done
dederim, quo nomine, si mercedem statuissem, locatio
I-have-given on-which account if a-wage I-had-fixed a-letting
et conductio contraheretur, mandati esse actionem; ueluti
and hiring would-be-contracted of-mandate to-be the-action for-example

si fulloni polienda curandaue uestimenta dederim aut
if to-a-fuller to-be-cleaned or-to-be-looked-after clothes I-have-given or
sarcinatori sarcienda.
to-a-tailor to-be-mended

XVII · ACQUISITION OF OBLIGATIONS THROUGH OTHERS

We acquire obligations through those in our power, hand, or bondage, and through free men and others' slaves possessed in good faith, or slaves held in usufruct, only from our property or their labor. A bare Quiritary owner has less right than they: nothing is acquired for him, some holding not even when he is named. A common slave acquires for his masters by shares, but for one alone when named in a stipulation or mancipation; whether one owner's order does the same, our teachers say yes, the other school no.

Expositis generibus obligationum quae ex contractu nascuntur 163
Set-out the-kinds of-obligations which from contract arise
admonendi sumus adquiri nobis non solum per nosmet
to-be-reminded we-are to-be-acquired for-us not only through our-own
ipsos, sed etiam per eas personas quae in nostra potestate
selves but also through those persons who in our power
manu mancipioue sunt.
hand or-bondage are
Per liberos quoque homines et alienos seruos quos bona fide 164
Through free also men and another's slaves whom in-good faith
possidemus adquiritur nobis, sed tantum ex duabus causis, id
we-possess it-is-acquired for-us but only from two causes that
est si quid ex operis suis uel ex re nostra adquirant.
is if anything from labors their-own or from property our they-acquire

165 Per eum quoque seruum, in quo usumfructum habemus,
Through that also slave in which the-usufruct we-have
similiter ex duabus istis causis nobis adquiritur.
similarly from two those causes for-us it-is-acquired

166 Sed qui nudum ius Quiritium in seruo habet, licet
But (he)-who bare right of-the-Quirites in a-slave has although
dominus sit, minus tamen iuris in ea re habere intellegitur
owner he-is less however of-right in that thing to-have is-understood
quam usufructuarius et bonae fidei possessor. nam placet
than the-usufructuary and of-good faith the-possessor for it-is-approved
ex nulla causa ei adquiri posse; adeo ut, etsi
from no cause for-him to-be-acquired to-be-able so-far that even-if
nominatim ei dari stipulatus fuerit seruus mancipioue
by-name to-him to-be-given stipulated has the-slave or-in-mancipation
nomine eius acceperit, quidam existiment nihil ei adquiri.
in-name his has-received some consider nothing for-him to-be-acquired

167 Communem seruum pro dominica parte dominis
A-common slave in-proportion-to the-owner's share for-the-owners
adquirere certum est; excepto eo quod uni nominatim
to-acquire certain is excepting that which for-one by-name
stipulando aut mancipio accipiendo illi soli adquirit, uelut
by-stipulating or in-mancipation by-receiving for-him alone he-acquires as
cum ita stipuletur 'Titio domino meo dari spondes?' aut
when thus he-stipulates to-Titius master my to-be-given do-you-promise or
cum ita mancipio accipiat 'hanc rem ex iure Quiritium
when thus in-mancipation he-receives this thing by the-right of-the-Quirites
L. Titii domini mei esse aio eaque ei empta esto
of-Lucius Titius master my to-be I-declare and-it to-him bought be
hoc aere aeneaque libra.'
with-this bronze and-bronze scale

Illud quaeritur, an quod domini nomen adiectum 167a
That is-asked whether what of-the-master the-name added
efficit, idem faciat unius ex dominis iussum intercedens.
effects the-same does of-one of the-owners the-order intervening
nostri praeceptores perinde ei qui iusserit soli adquiri
our teachers just-so to-him who has-ordered alone to-be-acquired
existimant, atque si nominatim ei soli stipulatus esset seruus
consider as if by-name for-him alone stipulated had the-slave
mancipioue accepisset. diuersae scholae auctores proinde
or-in-mancipation received of-the-opposing school the-authorities just-so
utrisque adquiri putant, ac si nullius iussum interuenisset.
to-both to-be-acquired think as if of-no-one the-order had-intervened

XVIII · PAYMENT AND RELEASE

An obligation ends chiefly by payment; the schools dispute whether paying one thing for another frees by law or by the defense of fraud. Formal release, an imaginary payment by question and answer, ends only verbal obligations, though another debt may be turned into a stipulation and released; a woman needs her tutor for it. Part may be paid; partial release is questioned. A judgment or bronze-and-scale debt, and a legacy by condemnation, may be released by bronze and scale.

Tollitur autem obligatio praecipue solutione eius quod 168
Is-removed however an-obligation chiefly by-payment of-that which
debetur. unde quaeritur, si quis consentiente creditore aliud
is-owed whence it-is-asked if someone consenting the-creditor one-thing
pro alio soluerit, utrum ipso iure liberetur, quod nostris
for another has-paid whether by-itself law he-is-freed which to-our
praeceptoribus placuit, an ipso iure maneat obligatus, sed
teachers seemed-right or by-itself law he-remains bound but

aduersus petentem exceptione doli mali defendi debeat,
against the-claimant by-the-defense of-fraud bad be-defended ought
quod diuersae scholae auctoribus uisum est.
which of-the-opposing school to-the-authorities seemed it-has

169 Item per acceptilationem tollitur obligatio. acceptilatio autem
Likewise by formal-release is-removed an-obligation formal-release however
est ueluti imaginaria solutio; quod enim ex uerborum
is as-it-were an-imaginary payment what for from of-words
obligatione tibi debeam, id si uelis mihi remittere, poterit
an-obligation to-you I-owe that if you-wish to-me to-remit it-will-be-able
sic fieri, ut patiaris haec uerba me dicere 'quod ego
thus to-be-done that you-allow these words me to-say what I
tibi promisi, habesne acceptum?' et tu respondeas 'habeo'.
to-you promised have-you as-received and you answer I-have

170 Quo genere, ut diximus, tantum eae obligationes soluuntur,
By-which kind as we-said only those obligations are-dissolved
quae ex uerbis consistunt, non etiam ceterae; consentaneum
which from words arise not also the-others consistent
enim uisum est uerbis factam obligationem posse aliis
for seemed it-has by-words made an-obligation to-be-able by-other
uerbis dissolui. sed id, quod ex alia causa debeatur, potest
words to-be-dissolved but that which from another cause is-owed can
in stipulationem deduci et per acceptilationem dissolui.
into a-stipulation be-brought and by formal-release be-dissolved

171 Quamuis autem dixerimus fieri acceptilationem imaginaria
Although however we-have-said to-be-made formal-release by-imaginary
solutione, tamen mulier sine tutoris auctoritate acceptum
payment yet a-woman without of-a-tutor the-authority as-received
facere non potest, cum alioquin solui ei sine tutoris
enter not can whereas otherwise be-paid to-her without of-a-tutor
auctoritate possit.
the-authority can

Item quod debetur, pro parte recte soluitur; an autem 172
Likewise what is-owed for a-part rightly is-paid whether however
in partem acceptum fieri possit, quaesitum est.
for a-part as-received be-entered it-can questioned it-has-been
Est etiam alia species imaginariae solutionis per aes et 173
There-is also another kind of-imaginary payment by bronze and
libram. quod et ipsum genus certis in causis receptum est,
scale which also itself kind certain in cases accepted is
ueluti si quid eo nomine debeatur, quod per aes et
for-example if anything on-that account is-owed which by bronze and
libram gestum sit, siue quid ex iudicati causa debeatur.
scale transacted has-been or anything from of-judgment the-cause is-owed
Eaque res ita agitur: adhibentur non minus quam quinque 174
And-this thing thus is-done are-employed not fewer than five
testes et libripens. deinde is qui liberatur ita oportet loquatur
witnesses and a-scale-holder then he who is-freed thus ought to-speak
'quod ego tibi tot milibus condemnatus sum, me eo
whereas I to-you in-so-many thousands condemned am myself on-that
nomine a te soluo liberoque hoc aere aeneaque libra.
account from you I-release and-free with-this bronze and-bronze scale
hanc tibi libram primam postremamque expendo secundum
this to-you scale first and-last I-weigh-out according-to
legem publicam.' deinde asse percutit libram eumque
the-statute public then with-an-as he-strikes the-scale and-it
dat ei a quo liberatur, ueluti soluendi causa.
gives to-him by whom he-is-freed as-if of-paying for-the-sake
Similiter legatarius heredem eodem modo liberat de legato 175
Similarly a-legatee the-heir in-the-same way frees from a-legacy
quod per damnationem relictum est, ut tamen scilicet, sicut
which by condemnation left is so however of-course as
iudicatus condemnatum se esse significat, ita heres
the-judgment-debtor condemned himself to-be signifies so the-heir

testamento se dare damnatum esse dicat. de eo tamen
by-the-will himself to-give condemned to-be says about that however
tantum potest heres eo modo liberari, quod pondere
only can the-heir in-that way be-freed which by-weight
numero constet; et ita si certum sit. quidam et de eo
number consists and so if certain it-be some also about that
quod mensura constat idem existimant.
which by-measure consists the-same consider

XIX · NOVATION AND JOINDER OF ISSUE

Novation transfers a debt into a new stipulation, with a new person even when the new stipulation is invalid, though not one taken from a slave, or with the same person if a condition, term, or sponsor is new; the other school denies the sponsor. A condition delays it, though Servius Sulpicius held it immediate. Joinder of issue in a statutory proceeding ends the obligation, so the claim cannot be renewed; in a proceeding on the imperium only a defense bars it.

176 Praeterea nouatione tollitur obligatio; ueluti si quod tu mihi
Besides by-novation is-removed an-obligation for-example if what you to-me
debeas, a Titio dari stipulatus sim. nam interuentu
owe from Titius to-be-given stipulated I-have for by-the-intervention
nouae personae noua nascitur obligatio et prima tollitur
of-a-new person a-new arises obligation and the-first is-removed
translata in posteriorem, adeo ut interdum, licet posterior
transferred into the-later so-far that sometimes although the-later
stipulatio inutilis sit, tamen prima nouationis iure tollatur;
stipulation invalid be yet the-first by-novation's right is-removed
ueluti si quod mihi debes, a Titio post mortem eius
for-example if what to-me you-owe from Titius after death his
uel a muliere pupilloue sine tutoris auctoritate stipulatus
or from a-woman or-ward without of-a-tutor the-authority stipulated

fuero. quo casu rem amitto; nam et prior debitor
I-shall-have in-which case the-claim I-lose for both the-former debtor
liberatur et posterior obligatio nulla est. non idem iuris est,
is-freed and the-later obligation none is not the-same of-law is
si a seruo stipulatus fuero; nam tunc prior proinde adhuc
if from a-slave stipulated I-shall-have for then the-former just-so still
obligatus tenetur, ac si postea a nullo stipulatus fuissem.
bound is-held as if afterward from no-one stipulated I-had
Sed si eadem persona sit, a qua postea stipuler, ita demum 177
But if the-same person it-be from whom afterward I-stipulate thus only
nouatio fit, si quid in posteriore stipulatione noui sit,
novation is-made if anything in the-later stipulation new there-be
forte si condicio aut dies aut sponsor adiciatur aut detrahatur.
perhaps if a-condition or a-day or a-sponsor be-added or be-removed
Sed quod de sponsore diximus, non constat; nam diuersae 178
But what about a-sponsor we-have-said not is-agreed for of-the-opposing
scholae auctoribus placuit nihil ad nouationem
school to-the-authorities it-has-seemed-right nothing toward novation
proficere sponsoris adiectionem aut detractionem.
to-avail of-a-sponsor the-addition or removal
Quod autem diximus, si condicio adiciatur, nouationem 179
What however we-said if a-condition be-added novation
fieri, sic intellegi oportet, ut ita dicamus factam
to-be-made thus to-be-understood it-ought that so we-say made
nouationem, si condicio extiterit; alioquin si defecerit, durat
novation if the-condition has-come-about otherwise if it-has-failed lasts
prior obligatio. sed uideamus, num is qui eo nomine agat
the-former obligation but let-us-see whether he who on-that account sues
doli mali aut pacti conuenti exceptione possit summoueri,
of-fraud bad or of-pact agreed by-the-defense can be-repelled
quia uidetur inter eos id actum, ut ita ea res peteretur,
because it-seems between them this done that thus that thing should-be-claimed

si posterioris stipulationis extiterit condicio. Ser. tamen
if of-the-later stipulation has-come-about the-condition Servius however
Sulpicius existimauit statim et pendente condicione nouationem
Sulpicius considered at-once and pending the-condition novation
fieri, et si defecerit condicio, ex neutra causa agi
to-be-made and if fails the-condition from neither cause to-be-sued
posse et eo modo rem perire. qui consequenter et
to-be-able and in-that way the-claim to-perish who consequently also
illud respondit, si quis id, quod sibi L. Titius deberet,
that answered if someone that which to-himself Lucius Titius owed
a seruo fuerit stipulatus, nouationem fieri et rem
from a-slave had stipulated novation to-be-made and the-claim
perire, quia cum seruo agi non posset. sed in utroque casu
to-perish because with a-slave be-sued not could but in each case
alio iure utimur. nec magis his casibus nouatio fit, quam
other law we-use nor more in-these cases novation is-made than
si id, quod tu mihi debeas, a peregrino, cum quo sponsus
if that which you to-me owe from a-foreigner with whom of-sponsio
communio non est, 'spondes' uerbo stipulatus sim.
community not is do-you-promise by-the-word stipulated I-have
180 Tollitur adhuc obligatio litis contestatione, si modo
Is-removed moreover an-obligation of-issue by-joinder if only
legitimo iudicio fuerit actum. nam tunc obligatio quidem
in-a-statutory proceeding it-has-been sued for then the-obligation indeed
principalis dissoluitur, incipit autem teneri reus litis
principal is-dissolved begins however to-be-bound the-defendant of-issue
contestatione; sed si condemnatus sit, sublata litis
by-joinder but if condemned he-has-been removed of-issue
contestatione incipit ex causa iudicati teneri. et hoc
the-joinder he-begins from the-cause of-judgment to-be-bound and this
est, quod apud ueteres scriptum est ante litem contestatam
is what among the-ancients written is before issue joined

dare debitorem oportere, post litem contestatam condemnari
to-give the-debtor ought after issue joined to-be-condemned
oportere, post condemnationem iudicatum facere oportere.
ought after condemnation the-judgment to-satisfy ought
Unde fit, ut si legitimo iudicio debitum petiero, 181
Whence it-comes-about that if in-a-statutory proceeding a-debt I-have-claimed
postea de eo ipso iure agere non possim, quia inutiliter
afterward about that by-itself law sue not I-can because invalidly
intendo ‘dari mihi oportere’, quia litis contestatione
I-assert to-be-given to-me to-be-owed because of-issue by-joinder
dari oportere desiit. aliter atque si imperio continenti
to-be-given to-be-owed it-has-ceased otherwise than if on-the-imperium resting
iudicio egerim; tunc enim nihilo minus obligatio durat,
in-a-proceeding I-have-sued then for none the-less the-obligation lasts
et ideo ipso iure postea agere possum, sed debeo per
and therefore by-itself law afterward sue I-can but I-ought by
exceptionem rei iudicatae uel in iudicium deductae
the-defense of-a-thing adjudged or into proceeding brought
summoueri. quae autem legitima iudicia et quae imperio
to-be-repelled which however statutory proceedings and which on-the-imperium
continentia sint, sequenti commentario referemus.
resting are in-the-following commentary we-shall-relate

Theft, robbery, damage, and outrage give one kind of obligation. Servius and Sabinus count four kinds of theft; Labeo, more truly, two, manifest and not, conceived and offered being actions. Manifest theft is caught in the act or on the spot. The Twelve Tables punished it capitally, the praetor fourfold; non-manifest double, conceived and offered triple, prohibited fourfold. The licium *search makes theft manifest by statute, truly only by nature. Theft is handling another's thing against the owner's will.*

182 Transeamus nunc ad obligationes quae ex delicto nascuntur,
Let-us-pass now to obligations which from delict arise
ueluti si quis furtum fecerit, bona rapuerit, damnum
for-example if someone theft has-committed goods has-seized loss
dederit, iniuriam commiserit; quarum omnium rerum uno
has-given outrage has-committed of-which all things in-one
genere consistit obligatio, cum ex contractu obligationes
kind consists the-obligation whereas from contract obligations
in IIII genera diducantur, sicut supra exposuimus.
into four kinds are-divided as above we-set-out

183 Furtorum autem genera Ser. Sulpicius et Masurius Sabinus
Of-thefts however the-kinds Servius Sulpicius and Masurius Sabinus
IIII esse dixerunt, manifestum et nec manifestum, conceptum
four to-be said manifest and not manifest conceived
et oblatum; Labeo duo, manifestum et nec manifestum;
and offered Labeo two manifest and not manifest
nam conceptum et oblatum species potius actionis esse
for conceived and offered kinds rather of-action to-be
furto cohaerentes quam genera furtorum; quod sane uerius
with-theft connected than kinds of-thefts which certainly truer
uidetur, sicut inferius apparebit.
seems as below will-appear

Manifestum furtum quidam id esse dixerunt, quod dum fit 184
Manifest theft some that to-be said which while it-is-done
deprehenditur. alii uero ulterius, quod eo loco deprehenditur,
is-caught others however further which in-that place is-caught
ubi fit, ueluti si in oliueto oliuarum, in uineto uuarum
where it-is-done for-example if in an-olive-grove of-olives in a-vineyard of-grapes
furtum factum est, quamdiu in eo oliueto aut uineto fur
theft made has-been as-long-as in that olive-grove or vineyard the-thief
sit; aut si in domo furtum factum sit, quamdiu in ea domo
is or if in a-house theft made has-been as-long-as in that house
fur sit. alii adhuc ulterius eo usque manifestum furtum esse
the-thief is others still further so long manifest theft to-be
dixerunt, donec perferret eo, quo perferre fur destinasset.
said until he-should-carry-it thither where to-carry-it the-thief had-intended
alii adhuc ulterius, quandoque eam rem fur tenens uisus
others still further whenever that thing the-thief holding seen
fuerit; quae sententia non optinuit. sed et illorum sententia, qui
has-been which opinion not prevailed but also of-those the-opinion who
existimauerunt, donec perferret eo quo fur destinasset,
considered until he-should-carry-it thither where the-thief had-intended
deprehensum furtum manifestum esse, ideo non uidetur
caught the-theft manifest to-be for-this-reason not seems
probari, quia magnam recipit dubitationem, utrum unius
to-be-approved because great it-admits doubt whether of-one
diei an etiam plurium dierum spatio id terminandum sit.
day or also of-several days by-the-space this to-be-bounded is
quod eo pertinet, quia saepe in aliis ciuitatibus subreptas
which to-this pertains because often in other states stolen
res in alias ciuitates uel in alias prouincias destinant fures
things into other states or into other provinces intend thieves

perferre. ex duabus itaque superioribus opinionibus alterutra
to-carry of two therefore former opinions one-or-the-other
adprobatur; magis tamen plerique posteriorem probant.
is-approved more however most the-latter approve

185 Nec manifestum furtum quid sit, ex iis quae diximus
Not manifest theft what is from those-things which we-have-said
intellegitur. nam quod manifestum non est, id nec
is-understood for what manifest not is that not
manifestum est.
manifest is

186 Conceptum furtum dicitur, cum apud aliquem testibus
Conceived theft is-called when in-the-house-of someone witnesses
praesentibus furtiua res quaesita et inuenta sit. nam
present a-stolen thing searched-for and found has-been for
in eum propria actio constituta est, quamuis fur non
against him a-proper action established is although thief not
sit, quae appellatur concepti.
he-be which is-called of-the-conceived

187 Oblatum furtum dicitur, cum res furtiua tibi ab aliquo
Offered theft is-called when a-thing stolen to-you by someone
oblata sit eaque apud te concepta sit; utique si ea
offered has-been and-it with you conceived has-been at-least if with-this
mente data tibi fuerit, ut apud te potius quam apud eum
intent given to-you it-has-been that with you rather than with him
qui dederit conciperetur. nam tibi, apud quem concepta
who gave-it it-should-be-conceived for to-you with whom conceived
est, propria aduersus eum qui optulit, quamuis fur non sit,
it-is a-proper against him who offered-it although thief not he-be
constituta est actio, quae appellatur oblati.
established is an-action which is-called of-the-offered

Est etiam prohibiti furti actio aduersus eum qui furtum 188
There-is also of-prohibited theft an-action against him who the-theft
quaerere uolentem prohibuerit.
to-seek wishing has-prohibited
Poena manifesti furti ex lege XII tabularum capitalis 189
The-penalty of-manifest theft by the-statute of-the-Twelve Tables capital
erat. nam liber uerberatus addicebatur ei cui
was for a-free-man scourged was-assigned to-him from-whom
furtum fecerat; utrum autem seruus efficeretur ex
the-theft he-had-committed whether however a-slave he-was-made by
addictione, an adiudicati loco constitueretur, ueteres
the-assignment or of-a-judgment-debtor in-the-place he-was-put the-ancients
quaerebant. in seruum aeque uerberatum animaduertebatur.
asked against a-slave equally scourged punishment-was-inflicted
sed postea inprobata est asperitas poenae et tam
but afterward disapproved was the-harshness of-the-penalty and as-much
ex serui persona quam ex liberi quadrupli actio
from the-slave's person as from the-free-man's of-fourfold an-action
praetoris edicto constituta est.
by-the-praetor's edict established was
Nec manifesti furti poena per legem XII tabularum 190
Of-not manifest theft the-penalty through the-statute of-the-Twelve Tables
dupli inrogatur, eamque etiam praetor conseruat.
of-double is-imposed and-it also the-praetor preserves
Concepti et oblati poena ex lege XII tabularum 191
Of-conceived and offered the-penalty by the-statute of-the-Twelve Tables
tripli est, eaque similiter a praetore seruatur.
of-triple is and-it similarly by the-praetor is-kept
Prohibiti actio quadrupli est ex edicto praetoris 192
Of-the-prohibited the-action of-fourfold is by the-edict of-the-praetor
introducta; lex autem eo nomine nullam poenam
introduced the-statute however on-that account no penalty

constituit. hoc solum praecipit, ut qui quaerere uelit,
established this only it-prescribes that (he)-who to-search wishes
nudus quaerat, licio cinctus, lancem habens; qui si
naked should-search with-a-licium girt a-dish holding who if
quid inuenerit, iubet id lex furtum manifestum esse.
anything he-has-found orders it the-statute theft manifest to-be
193 Quid sit autem licium, quaesitum est. sed uerius est
What is however the-licium questioned it-has-been but truer it-is
consuti genus esse, quo necessariae partes tegerentur.
of-something-sewn a-kind to-be by-which the-necessary parts were-covered
quae res ridicula est. nam qui uestitum quaerere prohibet,
which thing ridiculous is for (he)-who clothed to-search forbids
is et nudum quaerere prohibiturus est, eo magis quod ita
he also naked to-search about-to-forbid is by-that more because thus
quaesita re et inuenta maiori poenae subiciatur. deinde
searched-for a-thing and found to-a-greater penalty he-is-subjected then
quod lancem siue ideo haberi iubeat, ut manibus
because a-dish whether for-this-reason to-be-held it-orders that with-hands
occupatis nihil subiciat, siue ideo, ut quod inuenerit
occupied nothing he-may-plant or for-this-reason that what he-has-found
ibi inponat, neutrum eorum procedit, si id quod quaeratur,
there he-may-put neither of-them succeeds if that which is-sought
eius magnitudinis aut naturae sit, ut neque subici neque
of-such size or nature be that neither be-planted nor
ibi inponi possit. certe non dubitatur, cuiuscumque materiae
there be-put it-can certainly not it-is-doubted of-whatever material
sit ea lanx, satis legi fieri.
be that dish satisfaction to-the-statute to-be-made
194 Propter hoc tamen, quod lex ex ea causa manifestum
On-account-of this however that the-statute from that cause manifest
furtum esse iubet, sunt qui scribunt furtum manifestum
theft to-be orders there-are (those)-who write theft manifest

aut lege intellegi aut natura: lege id ipsum de
either by-statute to-be-understood or by-nature by-statute that itself about
quo loquimur, natura illud de quo superius exposuimus. sed
which we-speak by-nature that about which above we-set-out but
uerius est natura tantum manifestum furtum intellegi. neque
truer it-is by-nature only manifest theft to-be-understood nor
enim lex facere potest, ut qui manifestus fur non sit,
for the-statute bring-about can that (he)-who manifest thief not is
manifestus sit, non magis quam qui omnino fur non sit,
manifest be not more than (he)-who at-all thief not is
fur sit, et qui adulter aut homicida non sit, adulter uel
thief be and (he)-who adulterer or murderer not is adulterer or
homicida sit. at illud sane lex facere potest, ut proinde
murderer be but that certainly the-statute bring-about can that just-so
aliquis poena teneatur, atque si furtum uel adulterium uel
someone by-the-penalty be-bound as if theft or adultery or
homicidium admisisset, quamuis nihil eorum admiserit.
murder he-had-committed although none of-them he-has-committed
Furtum autem fit non solum cum quis intercipiendi 195
Theft however is-done not only when someone of-intercepting
causa rem alienam amouet, sed generaliter cum quis
for-the-sake a-thing another's removes but generally when someone
rem alienam inuito domino contrectat.
a-thing another's unwilling the-owner handles

Misusing a deposited or lent thing is theft if the user knows the owner would refuse; there is no theft when the owner consents. Free persons in one's power can be stolen, an owner can steal his own pledged thing, and some taking and usucapion of another's things is no theft. One whose aid and counsel made the theft is liable. The action belongs to whoever has an interest, a creditor, a fuller, or a borrower, but not a depositary, and a child near puberty may be liable.

196 Itaque si quis re quae apud eum deposita sit utatur,
And-so if someone a-thing which with him deposited has-been uses
furtum committit. et si quis utendam rem acceperit
theft he-commits and if someone to-be-used a-thing has-received
eamque in alium usum transtulerit, furti obligatur, ueluti
and-it to another use has-transferred for-theft he-is-bound for-example
si quis argentum utendum acceperit, quasi amicos ad cenam
if someone silver to-be-used has-received as-if friends to dinner
inuitaturus, et id peregre secum tulerit, aut si quis
going-to-invite and it abroad with-himself has-carried or if someone
equum gestandi gratia commodatum longius aliquo duxerit,
a-horse of-riding for-the-sake lent further somewhere has-led
quod ueteres scripserunt de eo qui in aciem perduxisset.
which the-ancients wrote about him who into battle-line had-led-it
197 Placuit tamen eos, qui rebus commodatis aliter
It-has-been-approved however those who things lent otherwise
uterentur, quam utendas accepissent, ita furtum committere,
used than to-be-used they-had-received so theft to-commit
si intellegant id se inuito domino facere, eumque, si
if they-understand that themselves unwilling the-owner to-do and-him if
intellexisset, non permissurum; at si permissurum credant,
he-had-understood not going-to-permit-it but if going-to-permit-it they-believe

extra furti crimen uideri; optima sane distinctione, quod
outside of-theft the-charge to-seem by-a-very-good certainly distinction because
furtum sine dolo malo non committitur.
theft without fraud bad not is-committed
Sed et si credat aliquis inuito domino se rem contrectare, 198
But also if believes someone unwilling the-owner himself a-thing to-handle
domino autem uolente id fiat, dicitur furtum non fieri. unde
the-owner however willing it be-done it-is-said theft not to-be-done whence
illud quaesitum est, cum Titius seruum meum sollicitauerit,
that questioned was when Titius slave my has-tempted
ut quasdam res mihi subriperet et ad eum perferret, et
that certain things from-me he-should-steal and to him should-carry and
seruus id ad me pertulerit, ego, dum uolo Titium in ipso
the-slave that to me has-reported I while I-wish Titius in the-very
delicto deprehendere permiserim seruo quasdam res ad eum
offense to-catch have-permitted to-the-slave certain things to him
perferre, utrum furti an serui corrupti iudicio teneatur
to-carry whether of-theft or of-a-slave corrupted by-the-action is-bound
Titius mihi, an neutro. responsum neutro eum teneri, furti
Titius to-me or by-neither it-was-answered by-neither him to-be-bound of-theft
ideo quod non inuito me res contrectauerit, serui
for-this-reason that not unwilling me the-things he-has-handled of-a-slave
corrupti ideo quod deterior seruus factus non est.
corrupted for-this-reason that worse the-slave made not has-been
Interdum autem etiam liberorum hominum furtum fit, 199
Sometimes however even of-free men theft is-done
ueluti si quis liberorum nostrorum qui in potestate nostra
for-example if any of-children our who in power our
sint, siue etiam uxor quae in manu nostra sit, siue etiam
are or even a-wife who in hand our is or even
iudicatus uel auctoratus meus subreptus fuerit.
a-judgment-debtor or a-hired-gladiator my stolen has-been

200 Aliquando etiam suae rei quisque furtum committit, ueluti
Sometimes even of-his-own thing anyone theft commits for-example
si debitor rem quam creditori pignori dedit subtraxerit, uel
if a-debtor a-thing which to-a-creditor as-a-pledge he-gave has-taken-away or
si bonae fidei possessori rem meam possidenti subripuerim.
if of-good faith from-a-possessor thing my possessing I-have-stolen
unde placuit eum, qui seruum suum quem alius bona
whence it-has-been-approved him who slave his-own whom another in-good
fide possidebat ad se reuersum celauerit, furtum committere.
faith possessed to himself returned has-concealed theft to-commit
201 Rursus ex diuerso interdum alienas res occupare et
Again from the-opposite sometimes another's things to-occupy and
usucapere concessum est, nec creditur furtum fieri, ueluti
to-usucapt granted it-is nor is-it-believed theft to-be-done for-example
res hereditarias, quarum heres non est nactus possessionem,
things of-the-inheritance of-which the-heir not has obtained possession
nisi necessarius heres extet; nam necessario herede extante
unless a-necessary heir be-extant for a-necessary heir being-extant
placuit nihil pro herede usucapi posse. item debitor
it-has-been-approved nothing as heir to-be-usucapted to-be-able likewise a-debtor
rem, quam fiduciae causa creditori mancipauerit aut in
a-thing which of-trust for-the-sake to-the-creditor he-has-mancipated or in
iure cesserit, secundum ea quae in superiore commentario
court has-ceded according-to those-things which in the-former commentary
rettulimus, sine furto possidere et usucapere potest.
we-related without theft possess and usucapt can
202 Interdum furti tenetur qui ipse furtum non fecerit,
Sometimes for-theft is-bound (he)-who himself theft not has-done
qualis est cuius ope consilio furtum factum est. in
such-as is (he)-by-whose aid (and)-counsel the-theft done has-been in
quo numero est qui nummos tibi excussit, ut eos
which number is (he)-who coins from-you knocked-out so-that them

alius subriperet, uel obstitit tibi, ut alius subriperet, aut
another might-steal or blocked you so-that another might-steal or
oues aut boues tuas fugauit, ut alius eas exciperet. et
sheep or oxen your put-to-flight so-that another them might-catch and
hoc ueteres scripserunt de eo qui panno rubro fugauit
this the-ancients wrote about him who with-a-cloth red put-to-flight
armentum. sed si quid per lasciuiam et non data opera,
a-herd but if anything through wantonness and not given effort
ut furtum committeretur, factum sit, uidebimus, an
that theft be-committed done has-been we-shall-see whether
utilis actio dari debeat, cum per legem Aquiliam
an-equitable action be-given ought since through the-statute Aquilian
quae de damno lata est etiam culpa puniatur.
which about damage carried was even negligence is-punished

Furti autem actio ei conpetit, cuius interest rem 203
Of-theft however the-action to-him belongs whose it-concerns the-thing
saluam esse, licet dominus non sit. itaque nec domino
safe to-be although owner not he-be and-so not to-the-owner
aliter conpetit, quam si eius intersit rem non perire.
otherwise does-it-belong than if his it-concerns the-thing not to-perish

Unde constat creditorem de pignore subrepto furti agere 204
Whence it-is-agreed a-creditor about a-pledge stolen for-theft to-sue
posse; adeo quidem, ut quamuis ipse dominus, id est
to-be-able so-far indeed that although himself the-owner that is
ipse debitor, eam rem subripuerit, nihilo minus creditori
himself the-debtor that thing has-stolen none the-less to-the-creditor
conpetat actio furti.
belongs the-action of-theft

Item si fullo polienda curandaue aut sarcinator sarcienda 205
Likewise if a-fuller to-be-cleaned or-to-be-looked-after or a-tailor to-be-mended
uestimenta mercede certa acceperit eaque furto amiserit,
clothes for-a-wage fixed has-received and-them by-theft has-lost

ipse furti habet actionem, non dominus, quia domini
he-himself of-theft has the-action not the-owner because for-the-owner
nihil interest ea non periisse, cum iudicio locati a
nothing it-matters them not to-have-perished since by-the-action of-letting from
fullone aut sarcinatore suum consequi possit, si modo is
the-fuller or tailor his-own obtain he-can if only that
fullo aut sarcinator rei praestandae sufficiat; nam si
fuller or tailor for-the-thing to-be-made-good suffices for if
soluendo non est, tunc quia ab eo dominus suum consequi
solvent not he-is then because from him the-owner his-own obtain
non potest, ipsi furti actio conpetit, quia hoc casu
not can to-himself of-theft the-action belongs because in-this case
ipsius interest rem saluam esse.
to-himself it-matters the-thing safe to-be

206 Quae de fullone aut sarcinatore diximus, eadem
What-things about the-fuller or tailor we-have-said the-same
transferemus et ad eum cui rem commodauimus. nam
we-shall-transfer also to him to-whom a-thing we-have-lent for
ut illi mercedem capiendo custodiam praestant, ita hic
as they a-wage by-taking safekeeping furnish so this-one
quoque utendi commodum percipiendo similiter necesse habet
also of-using the-advantage by-gaining similarly necessity has
custodiam praestare.
safekeeping to-furnish

207 Sed is apud quem res deposita est custodiam non praestat
But he with whom a-thing deposited is safekeeping not furnishes
tantumque in eo obnoxius est, si quid ipse dolo
and-only in this liable is if anything he-himself by-fraud
malo fecerit. qua de causa si res ei subrepta fuerit,
bad has-done which for reason if the-thing from-him stolen has-been
quia restituendae eius nomine depositi non tenetur nec
because for-restoring it on-account-of the-deposit not he-is-bound nor

ob id eius interest rem saluam esse, furti agere
on-account-of this to-him does-it-matter the-thing safe to-be for-theft sue
non potest, sed ea actio domino conpetit.
not he-can but that action to-the-owner belongs
In summa sciendum est quaesitum esse, an inpubes 208
In sum to-be-known it-is questioned to-have-been whether one-under-age
rem alienam amouendo furtum faciat. plerisque placet,
a-thing another's by-removing theft commits to-most it-seems-right
quia furtum ex adfectu consistit, ita demum obligari eo
because theft from intent consists thus only to-be-bound by-that
crimine inpuberem, si proximus pubertati sit et ob
charge one-under-age if next to-puberty he-be and on-account-of
id intellegat se delinquere.
this he-understand himself to-do-wrong

XXII · ROBBERY AND UNLAWFUL DAMAGE

A robber is liable for theft, and the praetor added a fourfold action within the year. The Aquilian statute makes one who wrongfully kills another's slave or herd beast pay its highest value in the year, consequent loss included; the owner may bring a capital charge instead. A second chapter reaches a defrauding adstipulator, and the third all other damage at its value in thirty days, with equitable actions for harm not done with the body.

Qui res alienas rapit, tenetur etiam furti. quis enim 209
(He)-who things another's seizes is-bound also for-theft who for
magis alienam rem inuito domino contrectat quam qui
more another's thing unwilling the-owner handles than (he)-who
ui rapit? itaque recte dictum est eum inprobum furem
by-force seizes and-so rightly said it-is him a-shameless thief
esse. sed propriam actionem eius delicti nomine praetor
to-be but a-proper action of-that delict on-account-of the-praetor

introduxit, quae appellatur ui bonorum raptorum, et
introduced which is-called by-force of-goods seized and
est intra annum quadrupli, post annum simpli. quae actio
is within a-year of-fourfold after a-year of-single which action
utilis est, etsi quis unam rem, licet minimam, rapuerit.
available is even-if someone one thing although very-small has-seized

210 Damni iniuriae actio constituitur per legem Aquiliam,
Of-damage wrongful the-action is-established through the-statute Aquilian
cuius primo capite cautum est, ut si quis hominem
in-whose first chapter provided it-is that if someone a-man
alienum alienamue quadrupedem quae pecudum numero
another's or-another's four-footed-beast which of-cattle in-the-number
sit iniuria occiderit, quanti ea res in eo anno plurimi
is wrongfully has-killed at-as-much-as that thing in that year the-most
fuerit, tantum domino dare damnetur.
was-worth so-much to-the-owner to-give he-be-condemned

211 Iniuria autem occidere intellegitur, cuius dolo aut culpa
Wrongfully however to-kill is-understood (he)-by-whose fraud or fault
id acciderit; nec ulla alia lege damnum, quod sine iniuria
that has-happened nor by-any other statute damage which without wrong
datur, reprehenditur; itaque inpunitus est, qui sine culpa
is-given is-censured and-so unpunished is (he)-who without fault
et dolo malo casu quodam damnum committit.
and fraud bad by-accident some damage commits

212 Nec solum corpus in actione huius legis aestimatur; sed sane
Nor only the-body in the-action of-this statute is-valued but certainly
si seruo occiso plus dominus capiat damni quam pretium
if the-slave killed more the-owner takes of-loss than the-price
serui sit, id quoque aestimatur, ueluti si seruus meus
of-the-slave be that also is-valued for-example if slave my
ab aliquo heres institutus, antequam iussu meo hereditatem
by someone heir instituted before at-order my the-inheritance

cerneret, occisus fuerit; non enim tantum ipsius pretium
he-made-cretion-for killed has-been not for only his-own price
aestimatur, sed et hereditatis amissae quantitas. item si
is-valued but also of-the-inheritance lost the-amount likewise if
ex gemellis uel ex comoedis uel ex symphoniacis unus
of twins or of comedians or of musicians one
occisus fuerit, non solum occisi fit aestimatio, sed eo
killed has-been not only of-the-killed is-made the-valuation but by-this
amplius id quoque conputatur, quod ceteri qui supersunt
further that also is-reckoned by-which the-others who remain
depretiati sunt. idem iuris est etiam si ex pari mularum
lessened-in-value are the-same of-law is also if of a-pair of-mules
unam uel etiam ex quadrigis equorum unum occiderit.
one or even of a-four-horse-team of-horses one he-has-killed
Cuius autem seruus occisus est, is liberum arbitrium habet 213
Whose however slave killed is he free choice has
uel capitali crimine reum facere eum qui occiderit, uel
either on-a-capital charge accused to-make him who killed or
hac lege damnum persequi.
by-this statute the-damage to-pursue
Quod autem adiectum est in hac lege ‘quanti in eo 214
What however added is in this statute at-as-much-as in that
anno plurimi ea res fuerit’, illud efficit, si clodum puta aut
year the-most that thing was-worth that effects if a-lame say or
luscum seruum occiderit, qui in eo anno integer fuerit, ut
one-eyed slave he-has-killed who in that year whole was that
non quanti fuerit, cum occideretur, sed quanti in eo anno
not at-what he-was-worth when he-was-killed but at-what in that year
plurimi fuerit, aestimatio fiat; quo fit, ut quis
the-most he-was-worth the-valuation be-made whence it-happens that someone
plus interdum consequatur quam ei damnum datum est.
more sometimes obtains than to-him damage given is

215 Capite secundo aduersus adstipulatorem, qui pecuniam in
In-chapter second against an-adstipulator who money in
fraudem stipulatoris acceptam fecerit, quanti ea res
fraud of-the-stipulator as-received has-entered at-as-much-as that thing
est, tanti actio constituitur.
is-worth so-much an-action is-established

216 Qua et ipsa parte legis damni nomine actionem
In-which also itself part of-the-statute of-damage on-account-of an-action
introduci manifestum est. sed id caueri non fuit
to-be-introduced clear is but this to-be-provided not was
necessarium, cum actio mandati ad eam rem sufficeret;
necessary since the-action of-mandate for that matter would-suffice
nisi quod ea lege aduersus infitiantem in duplum agitur.
except that by-that statute against one-denying for double it-is-sued

217 Capite tertio de omni cetero damno cauetur. itaque si quis
In-chapter third about all other damage it-is-provided and-so if someone
seruum uel eam quadrupedem quae pecudum numero est
a-slave or that four-footed-beast which of-cattle in-the-number is
uulnerauerit, siue eam quadrupedem quae pecudum numero
has-wounded or that four-footed-beast which of-cattle in-the-number
non est, ueluti canem, aut feram bestiam, ueluti ursum leonem,
not is as a-dog or a-wild beast as a-bear a-lion
uulnerauerit uel occiderit, hoc capite actio constituitur. in
has-wounded or killed by-this chapter an-action is-established in
ceteris quoque animalibus, item in omnibus rebus quae anima
other also animals likewise in all things which of-life
carent damnum iniuria datum hac parte uindicatur. si quid
lack damage wrongfully given by-this part is-avenged if anything
enim ustum aut ruptum aut fractum fuerit, actio hoc
for burned or broken or smashed has-been an-action by-this
capite constituitur, quamquam potuerit sola rupti appellatio
chapter is-established although could alone of-broken the-name

in omnes istas causas sufficere; ruptum enim intellegitur quod
for all these cases suffice broken for is-understood what
quoquo modo corruptum est. unde non solum usta aut fracta,
in-whatever way spoiled is whence not only burned or smashed
sed etiam scissa et conlisa et effusa et quoquo modo uitiata
but also torn and bruised and spilled and in-whatever way damaged
aut perempta atque deteriora facta hoc uerbo continentur.
or destroyed and worse made by-this word are-contained
Hoc tamen capite non quanti in eo anno, sed quanti 218
By-this however chapter not at-as-much-as in that year but at-as-much-as
in diebus XXX proximis ea res fuerit, damnatur is qui
in days thirty next that thing was-worth is-condemned he who
damnum dederit. ac ne 'plurimi' quidem uerbum adicitur.
damage has-given and not the-most even the-word is-added
et ideo quidam putauerunt liberum esse iudici uel ad
and therefore some thought free to-be for-the-judge either to
id tempus ex diebus XXX aestimationem redigere, quo
that time from days thirty the-valuation to-bring at-which
plurimi res fuerit, uel ad id quo minoris fuerit. sed
the-most the-thing was-worth or to that at-which less it-was-worth but
Sabino placuit proinde habendum, ac si etiam hac parte
to-Sabinus it-seemed-right just-so to-be-held as if also in-this part
'plurimi' uerbum adiectum esset; nam legis latorem
the-most the-word added had-been for of-the-statute the-proposer
contentum fuisse, quod prima parte eo uerbo usus esset.
content to-have-been that in-the-first part that word used he-had
Ceterum placuit ita demum ex ista lege actionem 219
However it-has-been-approved thus only under that statute an-action
esse, si quis corpore suo damnum dederit; ideoque alio
to-be if someone with-body his-own damage has-given and-therefore in-another
modo damno dato utiles actiones dantur, ueluti si quis
way damage given equitable actions are-given for-example if someone

alienum hominem aut pecudem incluserit et fame necauerit,
another's man or beast has-shut-in and by-hunger has-killed
aut iumentum tam uehementer egerit, ut rumperetur; item
or a-beast-of-burden so violently has-driven that it-was-ruptured likewise
si quis alieno seruo persuaserit, ut in arborem ascenderet
if someone another's slave has-persuaded that into a-tree he-should-climb
uel in puteum descenderet, et is ascendendo aut descendendo
or into a-well should-descend and he by-climbing or descending
ceciderit et aut mortuus fuerit aut aliqua parte corporis laesus
has-fallen and either dead has-been or in-some part of-body injured
sit; sed si quis alienum seruum de ponte aut ripa in
has-been but if someone another's slave from a-bridge or bank into
flumen proiecerit et is suffocatus fuerit, corpore suo damnum
a-river has-thrown and he drowned has-been with-body his-own damage
dedisse eo quod proiecerit non difficiliter intellegi potest.
to-have-given in-that that he-threw-him not with-difficulty be-understood can

XXIII · OUTRAGE

Outrage includes blows, abuse, advertising a man's goods as a debtor's, lampoons, and following a matron or a boy in the praetexta; we suffer it through our children and wives, and through slaves only when gross. The Twelve Tables fixed retaliation and money penalties; now the injured party values the outrage, an atrocious one is assessed by the praetor, and atrocity is judged by deed, place, or person.

220 Iniuria autem committitur non solum cum quis pugno
Outrage however is-committed not only when someone with-a-fist
puta aut fuste percussus uel etiam uerberatus erit,
say or with-a-club struck or even flogged shall-have-been
sed etiam si cui conuicium factum fuerit, siue quis
but also if to-anyone abuse made has-been or someone

bona alicuius quasi debitoris sciens eum nihil sibi debere
the-goods of-someone as-if of-a-debtor knowing him nothing to-him to-owe
proscripserit, siue quis ad infamiam alicuius libellum
has-advertised or someone to the-disgrace of-someone a-lampoon
aut carmen scripserit, siue quis matrem familias aut
or poem has-written or someone a-mother of-a-family or
praetextatum adsectatus fuerit, et denique aliis pluribus
a-boy-in-the-praetexta followed has and finally in-other several
modis.
ways

Pati autem iniuriam uidemur non solum per nosmet 221
To-suffer however outrage we-are-held not only through our-own
ipsos, sed etiam per liberos nostros quos in potestate
selves but also through children our whom in power
habemus; item per uxores nostras, quamuis in manu
we-have likewise through wives our although in hand
nostra non sint. itaque si filiae meae quae Titio nupta
our not they-be and-so if to-daughter my who to-Titius married
est iniuriam feceris, non solum filiae nomine tecum
is outrage you-have-done not only in-the-daughter's name with-you
agi iniuriarum potest, uerum etiam meo quoque et Titii
be-sued for-outrages can but also in-my also and Titius'
nomine.
name

Seruo autem ipsi quidem nulla iniuria intellegitur fieri, 222
To-a-slave however himself indeed no outrage is-understood to-be-done
sed domino per eum fieri uidetur; non tamen isdem
but to-the-master through him to-be-done it-seems not however in-the-same
modis, quibus etiam per liberos nostros uel uxores iniuriam
ways in-which also through children our or wives outrage
pati uidemur, sed ita cum quid atrocius commissum
to-suffer we-are-held but so when anything more-atrocious committed

fuerit, quod aperte in contumeliam domini fieri uidetur,
has-been which openly for insult of-the-master to-be-done seems
ueluti si quis alienum seruum uerberauerit; et in hunc
for-example if someone another's slave has-flogged and for this
casum formula proponitur. at si quis seruo conuicium
case a-formula is-set-forth but if someone to-a-slave abuse
fecerit uel pugno eum percusserit, non proponitur ulla
has-made or with-a-fist him has-struck not is-set-forth any
formula nec temere petenti datur.
formula nor lightly to-a-claimant is-it-given

223 Poena autem iniuriarum ex lege XII tabularum
The-penalty however of-outrages by the-statute of-the-Twelve Tables
propter membrum quidem ruptum talio erat; propter os
for a-limb indeed broken retaliation was for a-bone
uero fractum aut conlisum trecentorum assium poena erat,
however broken or bruised of-three-hundred asses the-penalty was
si libero os fractum erat; at si seruo, CL;
if to-a-free-man the-bone broken was but if to-a-slave a-hundred-and-fifty
propter ceteras uero iniurias XXV assium poena
for other however outrages of-twenty-five asses the-penalty
erat constituta. et uidebantur illis temporibus in magna
was established and seemed in-those times in great
paupertate satis idoneae istae pecuniariae poenae.
poverty sufficiently fit those monetary penalties

224 Sed nunc alio iure utimur. permittitur enim nobis a
But now other law we-use it-is-permitted for to-us by
praetore ipsis iniuriam aestimare, et iudex uel tanti
the-praetor ourselves the-outrage to-value and the-judge either at-so-much
condemnat quanti nos aestimauerimus, uel minoris, prout
condemns at-as-much-as we have-valued or at-less as
ei uisum fuerit. sed cum atrocem iniuriam praetor
to-him seemed-good it-has but when an-atrocious outrage the-praetor

aestimare soleat, si simul constituerit, quantae pecuniae
to-value is-wont if at-the-same-time he-has-fixed of-how-much money
eo nomine fieri debeat uadimonium, hac ipsa quantitate
on-that account be-made ought the-recognizance at-this very amount
taxamus formulam, et iudex quamuis possit uel minoris
we-assess the-formula and the-judge although he-can even at-less
damnare, plerumque tamen propter ipsius praetoris
condemn generally however on-account-of of-the-very of-the-praetor
auctoritatem non audet minuere condemnationem.
the-authority not dares to-reduce the-condemnation
Atrox autem iniuria aestimatur uel ex facto, ueluti si 225
Atrocious however an-outrage is-judged either from the-deed for-example if
quis ab aliquo uulneratus aut uerberatus fustibusue caesus
someone by someone wounded or flogged or-with-clubs beaten
fuerit; uel ex loco, ueluti si cui in theatro aut
has-been or from the-place for-example if to-anyone in the-theater or
in foro iniuria facta sit; uel ex persona, ueluti si
in the-forum outrage done has-been or from the-person for-example if
magistratus iniuriam passus fuerit, uel senatori ab humili
a-magistrate outrage suffered has or to-a-senator by a-humble
persona facta sit iniuria.
person done has-been outrage

BOOK IV

I · ACTIONS IN REM AND IN PERSONAM

Gaius sets actions in two kinds, in rem and in personam; those who counted four mistook species of actions for kinds. In personam claims one bound by contract or delict must give or do; in rem asserts a thing or a right, and is called vindication, the other condiction. One cannot claim one's own thing by condiction, though thieves are liable to both. Some actions pursue the thing, some the penalty, some both, doubling against those who deny.

∗∗∗ quot genera actionum sint, uerius uidetur duo 1
(lacuna) how-many kinds of-actions there-are truer it-seems two
esse, in rem et in personam; nam qui IIII esse
to-be in rem and in personam for (those)-who four to-be
dixerunt ex sponsionum generibus, non animaduerterunt
said from of-wagers the-kinds not noticed
quasdam species actionum inter genera se rettulisse.
certain species of-actions among the-kinds themselves to-have-reckoned
In personam actio est, qua agimus cum aliquo, qui 2
In personam an-action is by-which we-sue with someone who
nobis uel ex contractu uel ex delicto obligatus est, id
to-us either from contract or from delict bound is that
est cum intendimus 'dare facere praestare oportere.'
is when we-assert to-give to-do to-furnish to-be-bound
In rem actio est, cum aut corporalem rem intendimus 3
In rem an-action is when either a-corporeal thing we-assert
nostram esse, aut ius aliquod nobis conpetere, ueluti
ours to-be or a-right some to-us to-belong as
utendi aut utendi fruendi, eundi agendi aquamue ducendi
of-using or of-using of-enjoying of-going of-driving or-water of-conducting
uel altius tollendi prospiciendiue;
or higher of-raising or-of-prospect

4 aut cum actio ex diuerso aduersario est negatiua. Sic itaque
or when the-action from the-opposite for-the-opponent is negative So therefore
discretis actionibus certum est non posse nos rem nostram
distinguished the-actions certain it-is not to-be-able us thing our
ab alio ita petere 'si paret eum dare oportere.' nec enim
from another so to-claim if it-appears him to-give to-be-bound nor for
quod nostrum est nobis dari potest, cum scilicet id dari
what ours is to-us be-given can since of-course that to-be-given
nobis intellegatur, quod ita datur, ut nostrum fiat; nec
to-us is-understood which so is-given that ours it-becomes nor
res quae nostra iam est nostra amplius fieri potest. plane
a-thing which ours already is ours more become can plainly
odio furum, quo magis pluribus actionibus teneantur,
from-hatred of-thieves that more by-several actions they-may-be-bound
receptum est, ut extra poenam dupli aut quadrupli rei
accepted it-is that besides the-penalty of-double or fourfold of-the-thing
recipiendae nomine fures etiam hac actione teneantur 'si
to-be-recovered on-account-of thieves also by-this action are-bound if
paret eos dare oportere', quamuis sit etiam aduersus eos
it-appears them to-give to-be-bound although there-is also against them
haec actio, qua rem nostram esse petimus.
this action by-which thing our to-be we-claim

5 Appellantur autem in rem quidem actiones uindicationes, in
Are-called however in rem indeed actions vindications in
personam uero actiones, quibus 'dari fieriue oportere'
personam however actions by-which to-be-given or-to-be-done to-be-owed
intendimus, condictiones.
we-assert condictions

Agimus autem interdum, ut rem tantum consequamur, 6
We-sue however sometimes that the-thing only we-obtain
interdum ut poenam tantum, alias ut rem et
sometimes that the-penalty only at-other-times that the-thing and
poenam.
the-penalty
Rem tantum persequimur uelut actionibus, quibus ex 7
The-thing only we-pursue as by-actions by-which from
contractu agimus.
contract we-sue
Poenam tantum persequimur uelut actione furti et 8
The-penalty only we-pursue as by-the-action of-theft and
iniuriarum et secundum quorundam opinionem actione
of-outrages and according-to of-some the-opinion by-the-action
ui bonorum raptorum; nam ipsius rei et uindicatio
by-force of-goods seized for of-the-very of-the-thing both vindication
et condictio nobis conpetit.
and condiction to-us belongs
Rem uero et poenam persequimur uelut ex his 9
The-thing however and the-penalty we-pursue as from those
causis, ex quibus aduersus infitiantem in duplum agimus;
causes from which against one-denying for double we-sue
quod accidit per actionem iudicati, depensi, damni
which happens through the-action of-judgment of-money-paid-out of-damage
iniuriae legis Aquiliae, aut legatorum nomine quae per
wrongful of-the-statute Aquilian or of-legacies on-account-of which by
damnationem certa relicta sunt.
condemnation fixed left have-been

The old actions of the law were bound to the statutes' words: one who said vines for trees lost. They were five. The sacramentum, a stake of fifty or five hundred asses forfeit to the public (fifty always for freedom), served where no other was provided; in rem the parties laid a rod on the thing or a token of it, the praetor gave interim possession on sureties, and a judge came on the thirtieth day. Condiction, by notice, came with the Silian and Calpurnian statutes.

10 Quaedam praeterea sunt actiones quae ad legis actionem
Certain besides are actions which after of-the-law the-action
exprimuntur, quaedam sua ui ac potestate constant.
are-framed certain by-their-own force and power stand
quod ut manifestum fiat, opus est ut prius de legis
which that clear may-become need is that first about of-the-law
actionibus loquamur.
the-actions we-speak

11 Actiones, quas in usu ueteres habuerunt, legis actiones
The-actions which in use the-ancients had of-the-law actions
appellabantur uel ideo, quod legibus proditae erant
were-called either for-this-reason that by-statutes established they-were
(quippe tunc edicta praetoris, quibus conplures actiones
since then the-edicts of-the-praetor by-which very-many actions
introductae sunt, nondum in usu habebantur), uel ideo,
introduced were not-yet in use were-held or for-this-reason
quia ipsarum legum uerbis accommodatae erant et ideo
that of-the-very of-the-statutes words adapted they-were and therefore
inmutabiles proinde atque leges obseruabantur. unde eum,
unchangeable just as statutes they-were-observed whence him
qui de uitibus succisis ita egisset, ut in actione uites
who about vines cut-down so had-sued that in the-action vines
nominaret, responsum est rem perdidisse, cum debuisset
he-named answered it-was the-matter to-have-lost since he-ought

arbores nominare eo, quod lex XII tabularum,
trees to-have-named in-that that the-statute of-the-Twelve Tables
ex qua de uitibus succisis actio conpeteret, generaliter
under which about vines cut-down the-action lay generally
de arboribus succisis loqueretur.
about trees cut-down spoke
Lege autem agebatur modis quinque: sacramento, 12
By-action-of-law however it-was-proceeded in-ways five by-sacramentum
per iudicis postulationem, per condictionem, per manus
by of-a-judge request by condiction by of-hand
iniectionem, per pignoris capionem.
laying-on by of-a-pledge taking
Sacramenti actio generalis erat; de quibus enim rebus ut 13
Of-the-sacramentum the-action general was about which for things that
aliter ageretur lege cautum non erat, de his sacramento
otherwise it-be-proceeded by-statute provided not it-was about these by-sacramentum
agebatur. eaque actio proinde periculosa erat falsi***, atque
it-was-proceeded and-that action just-as dangerous was of-false(…) as
hoc tempore periculosa est actio certae creditae pecuniae
at-this time dangerous is the-action of-certain lent money
propter sponsionem qua periclitatur reus, si temere
on-account-of the-wager by-which is-imperilled the-defendant if rashly
neget, et restipulationem qua periclitatur actor, si non
he-denies and the-counter-wager by-which is-imperilled the-plaintiff if not
debitum petat; nam qui uictus erat, summam sacramenti
owed he-claims for (he)-who defeated was the-sum of-the-sacramentum
praestabat poenae nomine, eaque in publicum cedebat praedesque
paid of-penalty by-title and-it to the-public went and-sureties
eo nomine praetori dabantur, non ut nunc sponsionis et
on-that account to-the-praetor were-given not as now of-the-wager and
restipulationis poena lucro cedit aduersarii qui uicerit.
counter-wager the-penalty to-the-gain goes of-the-opponent who has-won

14 Poena autem sacramenti aut quingenaria erat aut
The-penalty however of-the-sacramentum either of-five-hundred was or
quinquagenaria. nam de rebus mille aeris plurisue
of-fifty for about things of-a-thousand of-bronze or-more
quingentis assibus, de minoris uero quinquaginta assibus
with-five-hundred asses about less however with-fifty asses
sacramento contendebatur; nam ita lege XII
by-sacramentum it-was-contended for so by-the-statute of-the-Twelve
tabularum cautum erat. at si de libertate hominis
Tables provided it-was but if about the-freedom of-a-man
controuersia erat, etiamsi pretiosissimus homo esset, tamen ut
the-dispute was even-if most-valuable the-man was yet that
L assibus sacramento contenderetur, eadem lege cautum
with-fifty asses by-sacramentum it-be-contended by-the-same statute provided
est fauore scilicet libertatis, ne onerarentur adsertores. ***
it-is in-favor of-course of-freedom lest be-burdened the-champions (lacuna)
15 *** omnes actiones *** captus *** ad iudicem
(lacuna) all actions (lacuna) taken (lacuna) to a-judge
accipiendum uenirent; postea uero reuersis dabatur.
to-be-taken they-should-come afterward however to-those-returning was-given
ut autem die XXX iudex daretur, per legem Pinariam
that however on-the-day thirtieth a-judge be-given through the-statute Pinarian
factum est; ante eam autem legem statim dabatur iudex.
brought-about was before that however statute at-once was-given a-judge
illud ex superioribus intellegimus, si de re minoris quam
that from the-above we-understand if about a-thing less than
M aeris agebatur, quinquagenario sacramento, non
a-thousand of-bronze it-was-proceeded by-a-fifty sacramentum not
quingenario eos contendere solitos fuisse. postea tamen
by-a-five-hundred them to-contend wont to-have-been afterward however
quam iudex datus esset, conperendinum diem, ut ad iudicem
that a-judge given had-been the-after-next day that to the-judge

uenirent, denuntiabant. deinde cum ad iudicem uenerant,
they-should-come they-gave-notice then when to the-judge they-had-come
antequam apud eum causam perorarent, solebant breuiter
before before him the-case they-pleaded-out they-were-wont briefly
ei et quasi per indicem rem exponere; quae dicebatur
to-him and as-if by an-index the-matter to-set-out which was-called
causae coniectio, quasi causae suae in breue coactio.
of-the-case the-coniectio as-if of-case his-own into brief a-gathering
Si in rem agebatur, mobilia quidem et mouentia, quae modo 16
If in rem it-was-proceeded movables indeed and moving-things which only
in ius adferri adduciue possent, in iure uindicabantur ad
into court be-brought or-be-led could in court were-vindicated after
hunc modum: qui uindicabat, festucam tenebat; deinde ipsam
this way (he)-who vindicated a-rod held then itself
rem adprehendebat, ueluti hominem, et ita dicebat 'hunc
the-thing grasped for-example a-man and thus said this
ego hominem ex iure Quiritium meum esse aio secundum
I man by the-right of-the-Quirites mine to-be declare according-to
suam causam. sicut dixi, ecce tibi, uindictam inposui', et
its cause as I-have-said see on-you the-rod I-have-laid and
simul homini festucam inponebat; aduersarius eadem
at-the-same-time on-the-man the-rod laid the-opponent the-same-things
similiter dicebat et faciebat; cum uterque uindicasset, praetor
similarly said and did when each had-vindicated the-praetor
dicebat 'mittite ambo hominem'; illi mittebant; qui prior
said release both the-man they released (he)-who first
uindicauerat, ita alterum interrogabat 'postulo anne dicas,
had-vindicated thus the-other asked I-demand whether you-would-state
qua ex causa uindicaueris'; ille respondebat 'ius feci sicut
what from ground you-have-vindicated he answered the-right I-have-done as
uindictam inposui'; deinde qui prior uindicauerat, dicebat
the-rod I-have-laid then (he)-who first had-vindicated said

'quando tu iniuria uindicauisti, D aeris sacramento
since you wrongfully have-vindicated with-five-hundred of-bronze by-sacramentum
te prouoco'; aduersarius quoque dicebat similiter 'et ego te';
you I-challenge the-opponent also said similarly and I you
scilicet si de re M aeris plurisue agebatur,
of-course if about a-thing of-a-thousand of-bronze or-more it-was-proceeded
D, si de minoris. L asses sacramenti nominabant;
five-hundred if about less fifty asses of-the-sacramentum they-named
deinde eadem sequebantur quae cum in personam
then the-same-things followed which when in personam
ageretur; postea praetor secundum alterum eorum
it-was-proceeded afterward the-praetor in-favor-of one of-them
uindicias dicebat, id est interim aliquem possessorem
interim-possession declared that is meanwhile someone possessor
constituebat, eumque iubebat praedes aduersario dare litis
he-established and-him ordered sureties to-the-opponent to-give of-the-suit
et uindiciarum, id est rei et fructuum; alios autem
and of-the-interim-possession that is of-the-thing and of-the-fruits other however
praedes ipse praetor ab utroque accipiebat sacramenti,
sureties himself the-praetor from each received of-the-sacramentum
quod id in publicum cedebat. festuca autem utebantur quasi
because it to the-public went a-rod however they-used as-if
hastae loco, signo quodam iusti dominii, quod maxime
of-a-spear in-place as-a-sign some of-lawful ownership because most
sua esse credebant quae ex hostibus cepissent; unde
their-own to-be they-believed what-things from the-enemy they-had-taken whence
in centumuiralibus iudiciis hasta praeponitur.
in centumviral courts a-spear is-set-before

17 Si qua res talis erat, ut sine incommodo non posset in
If some thing such was that without inconvenience not could into
ius adferri uel adduci, ueluti si columna aut grex alicuius
court be-brought or be-led for-example if a-column or a-herd of-some

pecoris esset, pars aliqua inde sumebatur; deinde in eam
cattle it-was a-part some thence was-taken then on that
partem quasi in totam rem praesentem fiebat uindicatio.
part as-if on the-whole thing present was-made the-vindication
itaque ex grege uel una ouis aut capra in ius adducebatur,
and-so from a-herd either one sheep or goat into court was-led
uel etiam pilus inde sumebatur et in ius adferebatur, ex
or even a-hair thence was-taken and into court was-brought from
naue uero et columna aliqua pars defringebatur. similiter si
a-ship however and a-column some part was-broken-off similarly if
de fundo uel de aedibus siue de hereditate controuersia
about land or about a-building or about an-inheritance a-dispute
erat, pars aliqua inde sumebatur et in ius adferebatur et
there-was a-part some thence was-taken and into court was-brought and
in eam partem perinde atque in totam rem praesentem fiebat
on that part just as on the-whole thing present was-made
uindicatio, ueluti ex fundo gleba sumebatur et ex aedibus
the-vindication for-example from land a-clod was-taken and from a-building
tegula, et si de hereditate controuersia erat, aeque ***
a-tile and if about an-inheritance a-dispute there-was equally (lacuna)
*** qualem *** capiendum iudicio *** die 17a
(lacuna) such (lacuna) to-be-taken in-a-proceeding (lacuna) on-the-day
XXX ad iudicem capiendum praesto esse debebant.
thirtieth for a-judge to-be-taken at-hand to-be they-were-bound
condicere autem denuntiare est prisca lingua. itaque haec 18
condicere however to-give-notice is in-the-old tongue and-so this
quidem actio proprie condictio uocabatur; nam actor
indeed action properly condiction was-called for the-plaintiff
aduersario denuntiabat, ut ad iudicem capiendum die
to-the-opponent gave-notice that for a-judge to-be-taken on-the-day
XXX adesset. nunc uero non proprie condictionem
thirtieth he-should-be-present now however not properly condiction

dicimus actionem in personam esse, qua intendimus
we-call the-action in personam to-be by-which we-assert
'dari nobis oportere'; nulla enim hoc tempore eo
to-be-given to-us to-be-owed no for at-this time on-that
nomine denuntiatio fit.
account notice is-made

19 Haec autem legis actio constituta est per legem Siliam
This however of-the-law action established was through the-statute Silian
et Calpurniam, lege quidem Silia certae pecuniae,
and Calpurnian by-the-statute indeed Silian of-certain money
lege uero Calpurnia de omni certa re.
by-the-statute however Calpurnian about every certain thing

20 Quare autem haec actio desiderata sit, cum de eo quod
Why however this action wanted was since about that which
nobis dari oportet, potuerimus aut sacramento aut per
to-us be-given ought we-could either by-sacramentum or by
iudicis postulationem agere, ualde quaeritur.
of-a-judge request proceed much it-is-asked

III · LAYING ON OF HAND AND TAKING OF PLEDGE

Laying on of hand let a creditor seize a judgment debtor, who needed a champion; later statutes extended it, some without a champion, and the Vallian statute let most defend themselves. Taking a pledge was granted by custom to soldiers and by statute to sellers of victims and tax farmers, though some deny it was an action of the law.

21 Per manus iniectionem aeque de his rebus agebatur, de
By of-hand laying-on equally about those matters it-was-proceeded about
quibus ut ita ageretur, lege aliqua cautum est, ueluti
which that so it-be-proceeded by-statute some provided was for-example

iudicati lege XII tabularum. quae actio talis erat:
of-a-judgment by-the-statute of-the-Twelve Tables which action such was
qui agebat, sic dicebat 'quod tu mihi iudicatus' (siue
(he)-who proceeded thus said whereas you to-me adjudged or
'damnatus') 'es sestertium X milia, quandoc non soluisti,
condemned are in-sesterces ten thousand since not you-have-paid
ob eam rem ego tibi sestertium X milium iudicati
on-account-of that thing I on-you of-sesterces ten thousand of-judgment
manum inicio', et simul aliquam partem corporis eius
a-hand I-lay and at-the-same-time some part of-body his
prehendebat. nec licebat iudicato manum sibi
he-seized nor was-it-allowed for-the-judgment-debtor the-hand from-himself
depellere et pro se lege agere; sed uindicem
to-push-off and for himself by-action-of-law to-proceed but a-champion
dabat, qui pro se causam agere solebat; qui uindicem
he-gave who for him the-case to-plead was-wont (he)-who a-champion
non dabat, domum ducebatur ab actore et uinciebatur.
not gave home was-led by the-plaintiff and was-bound
Postea quaedam leges ex aliis quibusdam causis pro 22
Afterward certain statutes from other certain causes as
iudicato manus iniectionem in quosdam dederunt: sicut
on-a-judgment of-hand laying-on against certain-persons gave as
lex Publilia in eum, pro quo sponsor dependisset,
the-statute Publilian against him for whom a-sponsor had-paid-out
si in sex mensibus proximis, quam pro eo depensum
if within six months next after for him paid-out
esset, non soluisset sponsori pecuniam; item lex
it-had-been not he-had-paid to-the-sponsor the-money likewise the-statute
Furia de sponsu aduersus eum, qui a sponsore plus quam
Furian on sponsorship against him who from a-sponsor more than

uirilem partem exegisset; et denique conplures aliae leges
an-equal part had-exacted and finally very-many other statutes
in multis causis talem actionem dederunt.
in many cases such action gave

23 Sed aliae leges ex quibusdam causis constituerunt quasdam
But other statutes from certain causes established certain
actiones per manus iniectionem, sed puram, id est non
actions by of-hand laying-on but simple that is not
pro iudicato: ueluti lex Furia testamentaria aduersus
as on-a-judgment for-example the-statute Furian testamentary against
eum, qui legatorum nomine mortisue causa plus M
him who of-legacies by-title or-of-death by-reason more-than a-thousand
assibus cepisset, cum ea lege non esset exceptus, ut
asses had-taken since by-that statute not he-was excepted so-that
ei plus capere liceret; item lex Marcia aduersus
for-him more to-take be-allowed likewise the-statute Marcian against
faeneratores, ut si usuras exegissent, de his reddendis
moneylenders that if interest they-had-exacted about them being-returned
per manus iniectionem cum eis ageretur.
by of-hand laying-on with them it-should-be-proceeded

24 Ex quibus legibus et si quae aliae similes essent, cum
Under which statutes and if any other similar were when
agebatur, reo licebat manum sibi depellere
it-was-proceeded for-the-defendant it-was-allowed the-hand from-himself to-push-off
et pro se lege agere. nam et actor in ipsa
and for himself by-action-of-law to-proceed for also the-plaintiff in the-very
legis actione non adiciebat hoc uerbum ‘pro iudicato’, sed
of-the-law action not added this word as on-a-judgment but
nominata causa ex qua agebat ita dicebat ‘ob eam
named the-cause from which he-proceeded thus said on-account-of that
rem ego tibi manum inicio’; cum hi, quibus pro iudicato
thing I on-you a-hand lay whereas those to-whom as on-a-judgment

actio data erat, nominata causa ex qua agebant ita
the-action given was named the-cause from which they-proceeded thus
inferebant ‘ob eam rem ego tibi pro iudicato
brought-in on-account-of that thing I on-you as on-a-judgment
manum inicio.’ nec me praeterit in forma legis Furiae
a-hand lay nor me escapes in the-form of-the-statute Furian
testamentariae ‘pro iudicato’ uerbum inseri, cum in
testamentary as on-a-judgment the-word to-be-inserted although in
ipsa lege non sit: quod uidetur nulla ratione factum.
the-very statute not it-is which seems by-no reason done
Sed postea lege Vallia, excepto iudicato et eo 25
But afterward by-the-statute Vallian excepted the-judgment-debtor and him
pro quo depensum est, ceteris omnibus, cum quibus
for whom paid-out it-has-been to-the-others all with whom
per manus iectionem agebatur, permissum est sibi
by of-hand laying-on it-was-proceeded permitted it-was from-themselves
manum depellere et pro se agere. itaque iudicatus
the-hand to-push-off and for themselves to-proceed and-so the-judgment-debtor
et is pro quo depensum est etiam post hanc legem
and he for whom paid-out it-has-been even after this statute
uindicem dare debebant, et nisi darent, domum ducebantur.
a-champion to-give were-bound and unless they-gave home they-were-led
idque quamdiu legis actiones in usu erant, semper ita
and-this as-long-as of-the-law the-actions in use were always so
obseruabatur; unde nostris temporibus is, cum quo iudicati
was-observed whence in-our times he with whom of-judgment
depensiue agitur, iudicatum solui satisdare cogitur.
or-of-money-paid-out it-is-sued that-the-judgment be-paid to-give-security is-compelled
Per pignoris capionem lege agebatur de quibusdam 26
By of-a-pledge taking by-action-of-law it-was-proceeded about certain
rebus moribus, de quibusdam rebus lege.
matters by-custom about certain matters by-statute

27 Introducta est moribus rei militaris. nam et propter
Introduced it-was by-custom of-the-matter military for also on-account-of
stipendium licebat militi ab eo qui aes tribuebat,
pay it-was-allowed for-a-soldier from him who the-money distributed
nisi daret, pignus capere; dicebatur autem ea pecunia, quae
unless he-paid a-pledge to-take was-called however that money which
stipendii nomine dabatur, aes militare. item propter eam
of-pay by-title was-given bronze military likewise on-account-of that
pecuniam licebat pignus capere, ex qua equus emendus
money it-was-allowed a-pledge to-take from which a-horse to-be-bought
erat; quae pecunia dicebatur aes equestre. item propter
was which money was-called bronze equestrian likewise on-account-of
eam pecuniam, ex qua hordeum equis erat conparandum;
that money from which barley for-the-horses was to-be-procured
quae pecunia dicebatur aes hordiarium.
which money was-called bronze barley

28 Lege autem introducta est pignoris capio ueluti lege
By-statute however introduced was of-a-pledge the-taking for-example by-the-statute
XII tabularum aduersus eum, qui hostiam emisset
of-the-Twelve Tables against him who a-victim had-bought
nec pretium redderet; item aduersus eum, qui mercedem
nor the-price paid likewise against him who the-hire
non redderet pro eo iumento, quod quis ideo
not paid for that beast-of-burden which someone for-this-reason
locasset, ut inde pecuniam acceptam in dapem, id est in
had-let that thence the-money received on a-feast that is on
sacrificium, inpenderet. item lege censoria data est
a-sacrifice he-might-spend likewise by-the-statute of-the-censors given was
pignoris capio publicanis uectigalium publicorum populi
of-a-pledge the-taking to-the-tax-farmers of-the-revenues public of-the-people
Romani aduersus eos qui aliqua lege uectigalia deberent.
Roman against those who by-some statute revenues owed

Ex omnibus autem istis causis certis uerbis pignus 29
From all however these causes with-fixed words a-pledge
capiebatur, et ob id plerisque placebat hanc quoque
was-taken and on-account-of this to-most it-seemed-right this also
actionem legis actionem esse; quibusdam autem contra
action of-the-law an-action to-be to-some however the-contrary
placebat, primum quod pignoris capio extra ius peragebatur,
seemed-right first because of-a-pledge the-taking outside court was-carried-out
id est non apud praetorem, plerumque etiam absente
that is not before the-praetor generally even absent
aduersario, cum alioquin ceteris actionibus non aliter uti
the-opponent whereas otherwise the-other actions not otherwise use
possent quam apud praetorem praesente aduersario, praeterea
they-could than before the-praetor present the-opponent besides
quod nefasto quoque die, id est quo non licebat
because on-a-forbidden also day that is on-which not it-was-allowed
lege agere, pignus capi poterat.
by-action-of-law to-proceed a-pledge be-taken could

IV · FORMULAS AND FICTIONS

The actions of the law were abolished by the Aebutian and two Julian statutes in favor of formulas, save for threatened damage and the centumviral court. Some formulas feign an old action, heirship for the possessor or buyer of goods, usucapion in the Publician, citizenship for a foreigner, or no loss of status.

Sed istae omnes legis actiones paulatim in odium uenerunt. 30
But those all of-the-law actions gradually into hatred came
namque ex nimia subtilitate ueterum qui tunc iura
for from the-excessive subtlety of-the-ancients who then the-laws
condiderunt eo res perducta est, ut uel qui minimum
founded to-that the-matter brought was that even (he)-who the-least

errasset, litem perderet. itaque per legem Aebutiam et
had-erred the-suit lost and-so through the-statute Aebutian and
duas Iulias sublatae sunt istae legis actiones effectumque
two Julian abolished were those of-the-law actions and-brought-about
est, ut per concepta uerba, id est per formulas litigemus.
it-was that by conceived words that is by formulas we-litigate

31 Tantum ex duabus causis permissum est lege
Only from two causes permitted it-is by-action-of-law
agere: damni infecti et si centumuirale iudicium futurum
to-proceed of-damage threatened and if a-centumviral proceeding about-to-be
est. sane quidem cum ad centumuiros itur, ante
is certainly indeed when to the-centumviri one-goes first
lege agitur sacramento apud praetorem urbanum
by-action-of-law it-is-proceeded by-sacramentum before the-praetor urban
uel peregrinum. damni uero infecti nemo uult lege
or peregrine of-damage however threatened no-one wishes by-action-of-law
agere, sed potius stipulatione quae in edicto proposita est
to-proceed but rather by-the-stipulation which in the-edict set-forth is
obligat aduersarium suum, idque et commodius ius et
binds opponent his-own and-that both more-convenient a-right and
plenius est. per pignoris capionem *** apparet.
fuller is by of-a-pledge taking (lacuna) it-appears

32 Item in ea forma, quae publicano proponitur, talis fictio
Likewise in that form which to-the-tax-farmer is-set-forth such the-fiction
est, ut quanta pecunia olim, si pignus captum esset, id
is that as-much-as money formerly if a-pledge taken had-been that
pignus is a quo captum erat luere deberet, tantam
pledge he from whom taken it-had-been to-redeem ought so-much
pecuniam condemnetur.
money he-be-condemned

Nulla autem formula ad condictionis fictionem exprimitur. 33
No however formula on the-condiction's fiction is-framed
siue enim pecuniam siue rem aliquam certam debitam nobis
whether for money or a-thing some certain owed to-us
petamus, eam ipsam 'dari nobis oportere' intendimus; nec
we-claim that itself to-be-given to-us to-be-owed we-assert nor
ullam adiungimus condictionis fictionem. itaque simul
any we-add of-condiction fiction and-so at-the-same-time
intellegimus eas formulas, quibus pecuniam aut rem aliquam
we-understand those formulas by-which money or a-thing some
nobis dari oportere intendimus, sua ui ac potestate
to-us to-be-given to-be-owed we-assert by-their-own force and power
ualere. eiusdem naturae sunt actiones commodati, fiduciae,
to-be-valid of-the-same nature are the-actions of-loan-for-use of-trust
negotiorum gestorum et aliae innumerabiles.
of-affairs managed and other innumerable
Habemus adhuc alterius generis fictiones in quibusdam 34
We-have moreover of-another kind fictions in certain
formulis, ueluti cum is, qui ex edicto bonorum
formulas for-example when he who under the-edict of-the-goods
possessionem petiit, ficto se herede agit. cum enim
possession has-sought feigned himself heir sues since for
praetorio iure, non legitimo succedat in locum defuncti,
by-praetorian right not statutory he-succeeds into the-place of-the-deceased
non habet directas actiones, et neque id quod defuncti fuit
not he-has direct actions and neither that which the-deceased's was
potest intendere 'suum esse' neque id quod ei debebatur
can-be assert his-own to-be nor that which to-him was-owed
potest intendere 'dari sibi oportere'; itaque ficto se
can-he assert to-be-given to-himself to-be-owed and-so feigned himself
herede intendit uelut hoc modo 'iudex esto. si A. Agerius'
heir he-asserts as in-this way judge be if Aulus Agerius

(id est si ipse actor) ‘L. Titio heres esset, tum si
that is if himself the-plaintiff to-Lucius Titius heir were then if
eum fundum de quo agitur ex iure Quiritium eius
that land about which it-is-proceeded by the-law of-the-Quirites his
esse oporteret’; et si *** de ***, praeposita simili
to-be ought and if (lacuna) about (lacuna) set-before with-a-similar
fictione heredis ita subicitur ‘tum si pareret N. Negidium
fiction of-heir thus is-subjoined then if it-appeared Numerius Negidius
A. Agerio sestertium X milia dare oportere.’
to-Aulus Agerius sesterces ten thousand to-give to-be-bound
35 Similiter et bonorum emptor ficto se herede agit; sed
Similarly also of-the-goods the-buyer feigned himself heir sues but
interdum et alio modo agere solet. nam ex persona
sometimes also in-another way to-sue he-is-wont for from the-person
eius cuius bona emerit sumpta intentione conuertit
of-him whose goods he-has-bought taken the-intentio he-turns
condemnationem in suam personam, id est ut, quod
the-condemnation onto his-own person that is that what
illius esset uel illi dari oporteret, eo nomine
his would-be or to-him to-be-given would-be-owed on-that account
aduersarius huic condemnetur; quae species actionis
the-opponent to-this-one be-condemned which kind of-action
appellatur Rutiliana, quia a praetore P. Rutilio, qui et
is-called Rutilian because by the-praetor Publius Rutilius who also
bonorum uenditionem introduxisse dicitur, conparata est.
of-goods the-sale to-have-introduced is-said devised it-was
superior autem species actionis, qua ficto se herede
the-former however kind of-action by-which feigned himself heir
bonorum emptor agit, Seruiana uocatur.
of-the-goods the-buyer sues Servian is-called

Item usucapio fingitur in ea actione quae Publiciana uocatur. 36
Likewise usucapion is-feigned in that action which Publician is-called
datur autem haec actio ei qui ex iusta causa traditam sibi
is-given however this action to-him who on just ground delivered to-him
rem nondum usucepit eamque amissa possessione petit. nam
a-thing not-yet has-usucapted and-it lost the-possession claims for
quia non potest eam 'ex iure Quiritium suam esse' intendere,
because not he-can it by the-law of-the-Quirites his-own to-be assert
fingitur rem usucepisse et ita quasi ex iure Quiritium
it-is-feigned the-thing to-have-usucapted and so as-if by the-law of-the-Quirites
dominus factus esset intendit, ueluti hoc modo 'iudex esto.
owner made he-had-been he-asserts as in-this way judge be
si quem hominem A. Agerius emit et is ei traditus
if what man Aulus Agerius has-bought and he to-him delivered
est, anno possedisset, tum si eum hominem de quo
was for-a-year had-possessed then if that man about whom
agitur ex iure Quiritium eius esse oporteret' et reliqua.
it-is-proceeded by the-law of-the-Quirites his to-be ought and so-on
Item ciuitas Romana peregrino fingitur, si eo nomine 37
Likewise citizenship Roman for-a-foreigner is-feigned if on-that account
agat aut cum eo agatur, quo nomine nostris legibus actio
he-sues or with him one-sues on-which account by-our statutes an-action
constituta est, si modo iustum sit eam actionem etiam
established is if only just it-be that action also
ad peregrinum extendi: ueluti si furti agat peregrinus
to a-foreigner to-be-extended for-example if for-theft sues a-foreigner
aut cum eo agatur. nam si cum peregrino agatur, formula
or with him one-sues for if with a-foreigner one-sues the-formula
ita concipitur 'iudex esto. si paret L. Titio ope
thus is-conceived judge be if it-appears to-Lucius Titius by-the-help
consilioue Dionis Hermaei filii furtum factum esse
or-counsel of-Dio of-Hermaeus the-son theft done to-have-been

paterae aureae, quam ob rem eum, si ciuis Romanus esset,
of-a-bowl golden which for thing him if a-citizen Roman he-were
pro fure damnum decidere oporteret' et reliqua. item si
as a-thief for-the-damage to-compound ought and so-on likewise if
peregrinus furti agat, ciuitas ei Romana fingitur. similiter
a-foreigner for-theft sues citizenship to-him Roman is-feigned similarly
si ex lege Aquilia peregrinus damni iniuriae agat aut
if under the-statute Aquilian a-foreigner for-damage wrongful sues or
cum eo agatur, ficta ciuitate Romana iudicium datur.
with him one-sues feigned citizenship Roman the-action is-given

38 Praeterea aliquando fingimus aduersarium nostrum capite
Besides sometimes we-feign opponent our in-status
deminutum non esse. nam si ex contractu nobis obligatus
diminished not to-be for if from contract to-us bound
obligataue sit et capite deminutus deminutaue fuerit, uelut
or-bound he-be and in-status diminished or-diminished has-been as
mulier per coemptionem, masculus per adrogationem, desinit
a-woman by purchase a-male by adrogation he-ceases
iure ciuili debere nobis, nec directo intendi potest sibi
by-law civil to-owe to-us nor directly be-asserted can to-himself
dare eum eamue oportere; sed ne in potestate eius sit ius
to-give him or-her to-be-bound but lest in the-power his be right
nostrum corrumpere, introducta est contra eum eamue actio
our to-destroy introduced is against him or-her action
utilis rescissa capitis deminutione, id est in qua fingitur
an-equitable rescinded of-status the-loss that is in which it-is-feigned
capite deminutus deminutaue non esse.
in-status diminished or-diminished not to-be

A formula has a demonstratio stating the matter, an intentio stating the claim, an adiudicatio letting the judge assign property, and a condemnatio empowering condemnation or acquittal. Not all occur together: the intentio alone stands by itself, in preliminary formulas. Formulas framed in law assert a civil right; those framed on fact name the deed, as the patron's against a freedman who summoned him to court. Deposit and loan for use have both kinds.

Partes autem formularum hae sunt: demonstratio intentio 39
The-parts however of-formulas these are the-demonstratio the-intentio
adiudicatio condemnatio.
the-adiudicatio the-condemnatio

Demonstratio est ea pars formulae quae ∗∗∗, ut 40
The-demonstratio is that part of-the-formula which (lacuna) that
demonstretur res de qua agitur: uelut haec pars
be-shown the-matter about which it-is-proceeded as this part
formulae 'quod A. Agerius N. Negidio hominem
of-the-formula whereas Aulus Agerius to-Numerius Negidius a-man
uendidit'; item haec 'quod A. Agerius apud N.
sold likewise this whereas Aulus Agerius with Numerius
Negidium hominem deposuit.'
Negidius a-man deposited

Intentio est ea pars formulae, qua actor desiderium 41
The-intentio is that part of-the-formula by-which the-plaintiff desire
suum concludit: uelut haec pars formulae 'si paret N.
his-own encloses as this part of-the-formula if it-appears Numerius
Negidium A. Agerio sestertium X milia dare oportere';
Negidius to-Aulus Agerius sesterces ten thousand to-give to-be-bound
item haec 'quidquid paret N. Negidium A. Agerio
likewise this whatever it-appears Numerius Negidius to-Aulus Agerius

dare facere oportere'; item haec 'si paret hominem ex
to-give to-do to-be-bound likewise this if it-appears the-man by
iure Quiritium A. Agerii esse.'
the-law of-the-Quirites of-Aulus Agerius to-be

42 Adiudicatio est ea pars formulae, qua permittitur iudici
The-adiudicatio is that part of-the-formula by-which it-is-permitted to-the-judge
rem alicui ex litigatoribus adiudicare: uelut si inter coheredes
a-thing to-someone of the-litigants to-adjudge as if among co-heirs
familiae erciscundae agatur, aut inter socios communi
of-the-household dividing it-is-proceeded or among partners of-common-property
diuidundo, aut inter uicinos finium regundorum. nam illic
dividing or among neighbors of-boundaries regulating for there
ita est 'quantum adiudicari oportet, iudex Titio adiudicato.'
thus it-is as-much-as to-be-adjudged ought judge to-Titius adjudge

43 Condemnatio est ea pars formulae, qua iudici
The-condemnatio is that part of-the-formula by-which to-the-judge
condemnandi absoluendiue potestas permittitur: uelut haec
of-condemning or-of-absolving the-power is-permitted as this
pars formulae 'iudex N. Negidium A. Agerio
part of-the-formula judge Numerius Negidius to-Aulus Agerius
sestertium X milia condemna. si non paret, absolue'; item
in-sesterces ten thousand condemn if not it-appears absolve likewise
haec 'iudex N. Negidium A. Agerio dumtaxat X
this judge Numerius Negidius to-Aulus Agerius not-more-than ten
milia condemna. si non paret, absoluito'; item haec 'iudex
thousand condemn if not it-appears absolve likewise this judge
N. Negidium A. Agerio condemnato' et reliqua, ut
Numerius Negidius to-Aulus Agerius condemn and so-on so-that
non adiciatur 'dumtaxat X milia.'
not be-added not-more-than ten thousand

Non tamen istae omnes partes simul inueniuntur, sed 44
Not however these all parts at-once are-found but
quaedam inueniuntur, quaedam non inueniuntur. certe
some are-found some not are-found certainly
intentio aliquando sola inuenitur, sicut in praeiudicialibus
the-intentio sometimes alone is-found as in preliminary
formulis, qualis est qua quaeritur, aliquis libertus sit uel
formulas such-as is (that)-by-which it-is-asked someone a-freedman be or
quanta dos sit et aliae conplures. demonstratio autem et
how-great the-dowry be and others very-many the-demonstratio however and
adiudicatio et condemnatio numquam solae inueniuntur, nihil
the-adiudicatio and the-condemnatio never alone are-found nothing
enim omnino demonstratio sine intentione uel condemnatione
for at-all a-demonstratio without intentio or condemnatio
ualet; item condemnatio sine demonstratione uel intentione,
avails likewise a-condemnatio without demonstratio or intentio
uel adiudicatio sine demonstratione uel intentione nullas
or an-adiudicatio without demonstratio or intentio no
uires habet, et ob id numquam solae inueniuntur.
force has and on-account-of this never alone are-found
Sed eas quidem formulas, in quibus de iure quaeritur, in 45
But those indeed formulas in which about law it-is-asked in
ius conceptas uocamus, quales sunt, quibus intendimus
law conceived we-call such-as are (those)-by-which we-assert
'nostrum esse aliquid ex iure Quiritium' aut 'nobis dari
ours to-be something by the-law of-the-Quirites or to-us to-be-given
oportere' aut 'pro fure damnum decidi oportere';
to-be-owed or as-a thief for-the-damage to-be-compounded ought
sunt et aliae, in quibus iuris ciuilis intentio est.
there-are also others in which of-law civil the-intentio is

46 Ceteras uero in factum conceptas uocamus, id est in quibus
The-others however on fact conceived we-call that is in which
nulla talis intentio concepta est, sed initio formulae
no such intentio conceived is but at-the-beginning of-the-formula
nominato eo quod factum est adiciuntur ea uerba, per
named that which done has-been are-added those words through
quae iudici damnandi absoluendiue potestas datur: qualis
which to-the-judge of-condemning or-of-absolving the-power is-given such-as
est formula, qua utitur patronus contra libertum, qui eum
is the-formula which uses a-patron against a-freedman who him
contra edictum praetoris in ius uocauit; nam in ea ita est
against the-edict of-the-praetor into court has-summoned for in it so it-is
'recuperatores sunto. si paret illum patronum ab illo liberto
recuperators be if it-appears that patron by that freedman
contra edictum illius praetoris in ius uocatum esse,
against the-edict of-that praetor into court summoned to-have-been
recuperatores illum libertum illi patrono sestertium X milia
recuperators that freedman to-that patron in-sesterces ten thousand
condemnate. si non paret, absoluite.' ceterae quoque formulae,
condemn if not it-appears absolve the-other also formulas
quae sub titulo 'de in ius uocando' propositae sunt, in factum
which under the-title on into court summoning set-forth are on fact
conceptae sunt, uelut aduersus eum, qui in ius uocatus
conceived are as against him who into court summoned
neque uenerit neque uindicem dederit; item contra eum,
neither has-come nor a-champion has-given likewise against him
qui ui exemerit eum qui in ius uocatur; et denique
who by-force has-taken-away him who into court is-summoned and finally
innumerabiles eius modi aliae formulae in albo proponuntur.
innumerable of-this kind other formulas in the-album are-set-forth

Sed ex quibusdam causis praetor et in ius et in factum 47
But from certain causes the-praetor both in law and on fact
conceptas formulas proponit, ueluti depositi et commodati.
conceived formulas sets-forth for-example of-deposit and of-loan-for-use
illa enim formula, quae ita concepta est 'iudex esto. quod A.
that for formula which thus conceived is judge be whereas Aulus
Agerius apud N. Negidium mensam argenteam deposuit,
Agerius with Numerius Negidius a-table silver deposited
qua de re agitur, quidquid ob eam rem N.
which about matter it-is-proceeded whatever on-account-of that thing Numerius
Negidium A. Agerio dare facere oportet ex fide bona, eius
Negidius to-Aulus Agerius to-give to-do ought from faith good for-that
iudex N. Negidium A. Agerio condemnato, nisi restituat.
judge Numerius Negidius to-Aulus Agerius condemn unless he-restores
si non paret, absoluito', in ius concepta est. at illa formula,
if not it-appears absolve in law conceived is but that formula
quae ita concepta est 'iudex esto. si paret A. Agerium apud
which thus conceived is judge be if it-appears Aulus Agerius with
N. Negidium mensam argenteam deposuisse eamque dolo
Numerius Negidius a-table silver to-have-deposited and-it by-fraud
malo N. Negidii A. Agerio redditam non esse,
bad of-Numerius Negidius to-Aulus Agerius returned not to-have-been
quanti ea res erit, tantam pecuniam iudex N.
at-as-much-as that thing shall-be-worth so-much money judge Numerius
Negidium A. Agerio condemnato. si non paret, absoluito',
Negidius to-Aulus Agerius condemn if not it-appears absolve
in factum concepta est. similes etiam commodati formulae sunt.
on fact conceived is similar also of-loan-for-use the-formulas are

Every condemnation is in money, certain, limited by an assessment, or unlimited, and the judge must keep within it. One who claims more in the intentio, by thing, time, place, or cause, loses the case; no overclaim is possible in uncertain formulas, and claiming one thing for another risks nothing. One who claims less may not sue for the rest in that praetorship. An excessive condemnation is reduced for the defendant; a false demonstratio does no harm, though some hold it loses the suit in actions bringing infamy.

48 Omnium autem formularum, quae condemnationem habent,
Of-all however formulas which a-condemnatio have
ad pecuniariam aestimationem condemnatio concepta est.
to a-monetary valuation the-condemnatio conceived is
itaque et si corpus aliquod petamus, ueluti fundum
and-so even if a-body some we-claim for-example land
hominem uestem aurum argentum, iudex non ipsam rem
a-man clothing gold silver the-judge not the-very thing
condemnat eum cum quo actum est, sicut olim fieri
condemns him with whom proceeded it-has-been as formerly to-be-done
solebat, sed aestimata re pecuniam eum condemnat.
it-was-wont but valued the-thing in-money him he-condemns

49 Condemnatio autem uel certae pecuniae in formula
The-condemnatio however either of-certain money in the-formula
proponitur uel incertae.
is-set-forth or of-uncertain

50 Certae pecuniae uelut in ea formula, qua certam
Of-certain money as in that formula by-which certain
pecuniam petimus; nam illic ima parte formulae ita
money we-claim for there in-the-lowest part of-the-formula thus

est ‘iudex N. Negidium A. Agerio sestertium X
it-is judge Numerius Negidius to-Aulus Agerius in-sesterces ten
milia condemna. si non paret, absolue.’
thousand condemn if not it-appears absolve
Incertae uero condemnatio pecuniae duplicem significationem 51
Of-uncertain however the-condemnatio money a-twofold meaning
habet. est enim una cum aliqua praefinitione, quae uulgo
has it-is for one with some prior-limit which commonly
dicitur cum taxatione, uelut si incertum aliquid petamus; nam
is-called with assessment as if uncertain something we-claim for
illic ima parte formulae ita est ‘iudex N. Negidium
there in-the-lowest part of-the-formula thus it-is judge Numerius Negidius
A. Agerio dumtaxat sestertium X milia condemna. si
to-Aulus Agerius not-more-than in-sesterces ten thousand condemn if
non paret, absolue.’ uel incerta est et infinita, uelut si rem
not it-appears absolve or uncertain it-is and unlimited as if a-thing
aliquam a possidente nostram esse petamus, id est si in
some from the-possessor ours to-be we-claim that is if in
rem agamus uel ad exhibendum; nam illic ita est ‘quanti
rem we-proceed or for production for there thus it-is at-as-much-as
ea res erit, tantam pecuniam, iudex, N. Negidium
that thing shall-be-worth so-much money judge Numerius Negidius
A. Agerio condemna. si non paret, absoluito.’ quid
to-Aulus Agerius condemn if not it-appears absolve what
ergo est? iudex si condemnet, certam pecuniam condemnare
then is-it the-judge if he-condemns in-certain money condemn
debet, etsi certa pecunia in condemnatione posita non sit.
ought even-if certain money in the-condemnatio set not be
Debet autem iudex attendere, ut cum certae pecuniae 52
Ought however the-judge to-take-care that when of-certain money
condemnatio posita sit, neque maioris neque minoris
the-condemnatio set is neither in-a-greater nor in-a-lesser

summa posita condemnet, alioquin litem suam facit. item
than-the-sum set he-condemn otherwise the-suit his-own he-makes likewise
si taxatio posita sit, ne pluris condemnet quam
if an-assessment set has-been that-not for-more he-condemn than
taxatum sit; alias enim similiter litem suam facit. minoris
assessed it-is otherwise for similarly the-suit his-own he-makes for-less
autem damnare ei permissum est. at si etiam *** qui
however to-condemn to-him permitted it-is but if also (lacuna) who
formulam accipit, intendere debet, nec amplius *** certa
the-formula receives assert ought nor more (lacuna) by-certain
condemnatione constringi *** usque uelit.
condemnatio be-confined (lacuna) as-far-as he-wishes

53 Si quis intentione plus conplexus fuerit, causa cadit, id est
If someone in-the-intentio more embraced has from-the-case he-falls that is
rem perdit, nec a praetore in integrum restituitur exceptis
the-matter he-loses nor by the-praetor to the-whole is-he-restored excepting
quibusdam casibus, in quibus *** praetor non patitur ***
certain cases in which (lacuna) the-praetor not allows (lacuna)

53a *** Plus autem quattuor modis petitur: re, tempore,
(lacuna) More however in-four ways is-claimed by-thing by-time
loco, causa. re, ueluti si quis pro X milibus quae ei
by-place by-cause by-thing for-example if someone for ten thousand which to-him
debentur XX milia petierit, aut si is, cuius ex parte res
are-owed twenty thousand has-claimed or if he whose in part the-thing
est, totam eam aut maiore ex parte suam esse intenderit.
is the-whole it or greater in part his-own to-be has-asserted

53b Tempore plus petitur, ueluti si quis ante diem petierit.
By-time more is-claimed for-example if someone before the-day has-claimed

53c Loco plus petitur, ueluti si quod certo loco dari
By-place more is-claimed for-example if what at-a-certain place to-be-given
promissum est, id alio loco sine commemoratione eius
promised is that in-another place without mention of-that

loci petatur, uelut si quis ita stipulatus fuerit ‘Ephesi dare
place is-claimed as if someone thus stipulated has at-Ephesus to-give
spondes?’, deinde Romae pure intendat ‘dari sibi
do-you-promise then at-Rome unconditionally asserts to-be-given to-himself
oportere.’ ∗∗∗ dare mihi oportere ∗∗∗ petere id est
to-be-owed (lacuna) to-give to-me to-be-bound (lacuna) to-claim that is
non adiecto loco.
not added the-place

Causa plus petitur, uelut si quis in intentione tollat 53d
By-cause more is-claimed as if someone in the-intentio removes
electionem debitoris quam is habet obligationis iure: uelut
the-choice of-the-debtor which he has by-the-obligation's right as
si quis ita stipulatus sit ‘sestertium X milia aut hominem
if someone thus stipulated has sesterces ten thousand or the-man
Stichum dare spondes?’, deinde alterutrum ex his petat; nam
Stichus to-give do-you-promise then one of these claims for
quamuis petat quod minus est, plus tamen petere uidetur,
although he-claims what less is more however to-claim he-seems
quia potest aduersarius interdum facilius id praestare quod
because can the-opponent sometimes more-easily that furnish which
non petitur. similiter si quis genus stipulatus sit, deinde
not is-claimed similarly if someone a-genus stipulated has then
speciem petat: ueluti si quis purpuram stipulatus sit
a-species claims for-example if someone purple stipulated has
generaliter, deinde Tyriam specialiter petat; quin etiam licet
generally then Tyrian specifically claims nay even although
uilissimam petat, idem iuris est propter eam rationem
the-cheapest he-claims the-same of-law is on-account-of that reason
quam proxime diximus. idem iuris est, si quis generaliter
which just we-said the-same of-law is if someone generally
hominem stipulatus sit, deinde nominatim aliquem petat, uelut
a-man stipulated has then by-name someone claims as

Stichum, quamuis uilissimum. itaque sicut ipsa stipulatio
Stichus although the-cheapest and-so as itself the-stipulation
concepta est, ita et intentio formulae concipi debet.
conceived is so also the-intentio of-the-formula be-conceived ought

54 Illud satis apparet in incertis formulis plus peti non
That sufficiently appears in uncertain formulas more be-claimed not
posse, quia, cum certa quantitas non petatur, sed 'quidquid'
to-be-able because since a-certain quantity not is-claimed but whatever
aduersarium 'dare facere oportet' intendatur, nemo potest
the-opponent to-give to-do ought is-asserted no-one can
plus intendere. idem iuris est et si in rem incertae
more assert the-same of-law is also if in rem of-an-uncertain
partis actio data sit: uelut talis 'quantam partem paret
part an-action given has-been as such what part it-appears
in eo fundo quo de agitur' actoris 'esse'; quod genus
in that land which about it-is-proceeded the-plaintiff's to-be which kind
actionis in paucissimis causis dari solet.
of-action in very-few cases to-be-given is-wont

55 Item palam est, si quis aliud pro alio intenderit, nihil eum
Likewise plain it-is if someone one-thing for another has-asserted nothing him
periclitari eumque ex integro agere posse, quia nihil ante
to-risk and-him from whole to-sue to-be-able because nothing before
uidetur egisse: ueluti si is, qui hominem Stichum petere
he-seems to-have-done for-example if he who the-man Stichus claim
deberet, Erotem petierit; aut si quis 'ex testamento dari'
ought Eros has-claimed or if someone from a-will to-be-given
sibi 'oportere' intenderit, cui ex stipulatu debebatur; aut
to-himself to-be-owed has-asserted to-whom from a-stipulation it-was-owed or
si cognitor aut procurator intenderit sibi 'dari oportere.'
if an-attorney or agent has-asserted to-himself to-be-given to-be-owed

Sed plus quidem intendere, sicut supra diximus, periculosum est; 56
But more indeed to-assert as above we-said dangerous is
minus autem intendere licet; sed de reliquo intra eiusdem
less however to-assert it-is-allowed but about the-remainder within the-same
praeturam agere non permittitur. nam qui ita agit, per
praetorship to-sue not is-permitted for (he)-who so sues by
exceptionem excluditur, quae exceptio appellatur litis diuiduae.
a-defense is-excluded which defense is-called of-suit divided
At si in condemnatione plus positum sit quam oportet, 57
But if in the-condemnatio more set has-been than ought
actoris quidem periculum nullum est, sed reus cum
of-the-plaintiff indeed the-risk none is but the-defendant since
iniquam formulam acceperit, in integrum restituitur, ut
an-unfair formula he-has-received to the-whole is-restored that
minuatur condemnatio. si uero minus positum fuerit quam
be-reduced the-condemnatio if however less set has-been than
oportet, hoc solum consequitur actor quod posuit; nam
ought this only obtains the-plaintiff which he-set for
tota quidem res in iudicium deducitur, constringitur
the-whole indeed matter into the-proceeding is-brought is-confined
autem condemnationis fine, quam iudex egredi non potest.
however by-the-condemnatio's limit which the-judge overstep not can
nec ex ea parte praetor in integrum restituit; facilius enim
nor from that part the-praetor to the-whole restores more-readily for
reis praetor succurrit quam actoribus. loquimur autem
defendants the-praetor helps than plaintiffs we-speak however
exceptis minoribus XXV annorum; nam huius aetatis
excepting the-younger-than twenty-five years for of-this age
hominibus in omnibus rebus lapsis praetor succurrit.
to-men in all matters having-slipped the-praetor comes-to-aid

58 Si in demonstratione plus aut minus positum sit, nihil in
If in the-demonstratio more or less set has-been nothing into
iudicium deducitur, et ideo res in integro manet; et hoc
the-proceeding is-brought and therefore the-matter in whole remains and this
est quod dicitur falsa demonstratione rem non perimi.
is what is-said by-a-false demonstratio the-matter not to-be-destroyed

59 Sed sunt qui putant minus recte conprehendi, ut
But there-are (those)-who think less rightly to-be-included so-that
qui forte Stichum et Erotem emerit, recte uideatur ita
(he)-who perhaps Stichus and Eros has-bought rightly seems thus
demonstrare 'quod ego de te hominem Erotem emi', et
to-show whereas I from you the-man Eros bought and
si uelit, de Sticho alia formula agat, quia uerum
if he-wishes about Stichus by-another formula he-may-sue because true
est eum qui duos emerit singulos quoque emisse; idque
it-is him who two has-bought each also to-have-bought and-this
ita maxime Labeoni uisum est. sed si is qui unum emerit
so most to-Labeo seemed it-has but if he who one has-bought
de duobus egerit, falsum demonstrat. idem et in aliis
about two has-sued falsely he-shows the-same also in other
actionibus est, ueluti commodati et depositi.
actions is for-example of-loan-for-use and of-deposit

60 Sed nos apud quosdam scriptum inuenimus, in actione
But we in certain-writers written we-find in the-action
depositi et denique in ceteris omnibus, ex quibus damnatus
of-deposit and finally in the-other all from which condemned
unusquisque ignominia notatur, eum qui plus quam oporteret
each-one with-infamy is-marked him who more than he-ought
demonstrauerit, litem perdere: ueluti si quis una re
has-shown the-suit to-lose for-example if someone one thing
deposita duas pluresue se deposuisse demonstrauerit; aut si
deposited two or-more himself to-have-deposited has-shown or if

is, cui pugno mala percussa est, in actione iniuriarum etiam
he on-whom with-a-fist the-jaw struck was in the-action of-outrages also
aliam partem corporis percussam sibi demonstrauerit. quod
another part of-body struck to-himself has-shown which
an debeamus credere uerius esse, diligentius requiremus.
whether we-ought to-believe truer to-be more-carefully we-shall-inquire
certe cum duae sint depositi formulae, alia in ius concepta,
certainly since two are of-deposit the-formulas one in law conceived
alia in factum, sicut supra quoque notauimus, et in ea
the-other on fact as above also we-noted and in that
quidem formula, quae in ius concepta est, initio res
indeed formula which in law conceived is at-the-beginning the-matter
de qua agitur demonstratorio modo designetur, deinde
about which it-is-proceeded in-demonstrative way is-designated then
inferatur iuris contentio his uerbis 'quidquid ob eam
is-brought-in of-law the-claim in-these words whatever on-account-of that
rem illum illi dare facere oportet'; in ea uero quae
thing that-one to-that-one to-give to-do ought in that however which
in factum concepta est, statim initio intentionis alio
on fact conceived is at-once at-the-beginning of-the-intentio in-another
modo res de qua agitur designetur his uerbis 'si
way the-matter about which it-is-proceeded is-designated in-these words if
paret illum apud illum rem illam deposuisse': dubitare
it-appears that-one with that-one the-thing that to-have-deposited doubt
non debemus, quin si quis in formula, quae in factum
not we-ought but-that if someone in the-formula which on fact
conposita est, plures res designauerit quam deposuerit, litem
composed is more things has-designated than he-has-deposited the-suit
perdat, quia in intentione plus pos***
he-loses because in the-intentio more set(…)

In good-faith actions, which the section lists, the judge may set off what the plaintiff owes in turn, though he is free not to. A banker must sue with compensation stated in the intentio, of like things due now, so an overclaim by one coin loses all; the buyer of a debtor's estate sues with deduction in the condemnation, which takes in things of other kinds and debts not yet due, at no such risk.

61 *** continetur, ut habita ratione eius, quod inuicem
(lacuna) is-contained that regard had of-that which in-turn
actorem ex eadem causa praestare oporteret, in reliquum
the-plaintiff from the-same cause to-furnish ought for the-remainder
eum cum quo actum est condemnare.
him with whom proceeded it-has-been to-condemn

62 Sunt autem bonae fidei iudicia haec: ex empto uendito,
Are however of-good faith actions these from purchase sale
locato conducto, negotiorum gestorum, mandati, depositi,
letting hiring of-affairs managed of-mandate of-deposit
fiduciae, pro socio, tutelae, rei uxoriae, commodati,
of-trust for partner of-tutelage of-property wifely of-loan-for-use
pigneraticium, familiae erciscundae, communi diuidundo.
of-pledge of-the-household dividing of-common-property dividing

63 Liberum est tamen iudici nullam omnino inuicem
Free it-is however for-the-judge no at-all in-turn
conpensationis rationem habere; nec enim aperte formulae
of-compensation account to-take nor for openly in-the-formula's
uerbis praecipitur, sed quia id bonae fidei iudicio conueniens
words is-it-prescribed but because that to-a-good faith action fitting
uidetur, ideo officio eius contineri creditur.
seems for-that-reason in-the-duty his to-be-contained it-is-believed

Alia causa est illius actionis qua argentarius experitur: 64
Other the-case is of-that action by-which a-banker sues
nam is cogitur cum conpensatione agere, et ea conpensatio
for he is-compelled with compensation to-sue and that compensation
uerbis formulae exprimitur: adeo quidem, ut ab initio
in-the-words of-the-formula is-expressed so-far indeed that from the-beginning
conpensatione facta minus intendat sibi dari oportere.
compensation made less he-asserts to-himself to-be-given to-be-owed
ecce enim si sestertium X milia debeat Titio, atque ei
see for if sesterces ten thousand he-owes to-Titius and to-him
XX debeantur, sic intendit 'si paret Titium sibi X
twenty are-owed thus he-asserts if it-appears Titius to-himself ten
milia dare oportere amplius quam ipse Titio debet.'
thousand to-give to-be-bound more than he-himself to-Titius owes
Item bonorum emptor cum deductione agere iubetur, id 65
Likewise of-the-goods the-buyer with deduction to-sue is-ordered that
est ut in hoc solum aduersarius eius condemnetur quod
is that in this alone the-opponent his be-condemned which
superest, deducto eo quod inuicem ei bonorum emptor
remains deducted that which in-turn to-him of-the-goods the-buyer
defraudatoris nomine debet.
of-the-defrauder on-account-of owes
Inter conpensationem autem quae argentario opponitur, et 66
Between the-compensation however which to-a-banker is-opposed and
deductionem quae obicitur bonorum emptori, illa differentia
the-deduction which is-set-against of-the-goods to-the-buyer that difference
est, quod in conpensationem hoc solum uocatur, quod
is that into compensation this only is-called which
eiusdem generis et naturae est: ueluti pecunia cum pecunia
of-the-same kind and nature is for-example money with money
conpensatur, triticum cum tritico, uinum cum uino; adeo ut
is-compensated wheat with wheat wine with wine so-far that

quibusdam placeat non omni modo uinum cum uino aut
to-some it-seems-right not in-every way wine with wine or
triticum cum tritico conpensandum, sed ita si eiusdem naturae
wheat with wheat to-be-compensated but thus if of-the-same nature
qualitatisque sit. in deductionem autem uocatur et quod
and-quality it-be into deduction however is-called also what
non est eiusdem generis. itaque si***; si uero pecuniam
not is of-the-same kind and-so if(…) if however money
petat bonorum emptor et inuicem frumentum aut uinum is
claims of-the-goods the-buyer and in-turn grain or wine he
debeat, deducto quanti id erit in reliquum experitur.
owes deducted how-much that shall-be-worth for the-remainder he-sues

67 Item uocatur in deductionem et id quod in diem debetur;
Likewise is-called into deduction also that which on a-day is-owed
conpensatur autem hoc solum quod praesenti die debetur.
is-compensated however this only which on-the-present day is-owed

68 Praeterea conpensationis quidem ratio in intentione ponitur;
Besides of-compensation indeed the-account in the-intentio is-put
quo fit, ut si facta conpensatione plus nummo
by-which it-comes-about that if made compensation more by-a-coin
uno intendat argentarius, causa cadat et ob id
one asserts the-banker from-the-case he-falls and on-account-of this
rem perdat. deductio uero ad condemnationem ponitur,
the-matter he-loses the-deduction however at the-condemnatio is-put
quo loco plus petenti periculum non interuenit; utique
in-which place more for-one-claiming risk not intervenes at-least
bonorum emptore agente, qui licet de certa pecunia agat,
of-the-goods the-buyer suing who although about certain money he-sues
incerti tamen condemnationem concipit.
of-uncertain yet a-condemnatio conceives

For what a son or slave transacts, the father or master is liable in full if he ordered it or set him, or an outsider, over a ship or a shop, and must share the merchandise pro rata with the creditors if he knew of the trading; otherwise he answers up to the peculium, less what is owed to himself, or for what reached his estate. A creditor with a full action may also use these but would be foolish to; one with the tributory action often prefers the peculium action, which reaches the whole peculium.

Quia tamen superius mentionem habuimus de actione, 69
Since however above mention we-had about the-action
qua in peculium filiorum familias seruorumque agitur,
by-which up-to the-peculium of-sons of-the-family and-of-slaves it-is-proceeded
opus est, ut de hac actione et de ceteris, quae eorundem
need is that about this action and about the-others which of-the-same
nomine in parentes dominosue dari solent, diligentius
on-account-of against fathers or-masters to-be-given are-wont more-carefully
admoneamus.
we-give-notice

Inprimis itaque si iussu patris dominiue negotium gestum 70
First therefore if at-the-order of-the-father or-master business transacted
erit, in solidum praetor actionem in patrem dominumue
shall-have-been for the-whole the-praetor an-action against the-father or-master
conparauit; et recte, quia qui ita negotium gerit, magis
devised and rightly because (he)-who so business transacts rather
patris dominiue quam filii seruiue fidem sequitur.
of-the-father or-master than of-the-son or-slave the-credit follows

Eadem ratione conparauit duas alias actiones, exercitoriam et 71
By-the-same reasoning he-devised two other actions the-exercitorian and
institoriam. tunc autem exercitoria locum habet, cum pater
the-institorian then however the-exercitorian place has when the-father
dominusue filium seruumue magistrum naui praeposuerit,
or-master a-son or-slave as-master to-a-ship has-set

et quid cum eo eius rei gratia cui praepositus
and anything with him of-that matter for-the-sake over-which set
fuerit gestum erit. cum enim ea quoque res ex
he-was transacted shall-have-been since for that also matter from
uoluntate patris dominiue contrahi uideatur, aequissimum
the-will of-the-father or-master to-be-contracted seems most-fair
esse uisum est in solidum actionem in eum dari.
to-be seemed it-has for the-whole an-action against him to-be-given
quin etiam, licet extraneum quisque magistrum naui
indeed even although an-outsider anyone as-master to-a-ship
praeposuerit siue seruum siue liberum, tamen ea praetoria
has-set whether a-slave or a-free-man yet that praetorian
actio in eum redditur. ideo autem exercitoria actio
action against him is-given for-this-reason however exercitorian the-action
appellatur, quia exercitor uocatur is, ad quem cottidianus
is-called because the-exercitor is-called he to whom the-daily
nauis quaestus peruenit. institoria uero formula tum
of-the-ship profit comes the-institorian however formula then
locum habet, cum quis tabernae aut cuilibet negotiationi
place has when someone over-a-shop or any business
filium seruumue aut quemlibet extraneum siue seruum siue
a-son or-slave or any outsider whether slave or
liberum praeposuerit, et quid cum eo eius rei gratia
free-man has-set and anything with him of-that matter for-the-sake
cui praepositus est contractum fuerit. ideo autem
over-which set he-is contracted has-been for-this-reason however
institoria uocatur, quia qui tabernae praeponitur institor
institorian it-is-called because (he)-who over-a-shop is-set an-institor
appellatur. quae et ipsa formula in solidum est.
is-called which also itself formula for the-whole is

Praeterea tributoria quoque actio in patrem dominumue 72
Besides the-tributorian also action against the-father or-master
constituta est, cum filius seruusue in peculiari merce sciente
established is when a-son or-slave with peculium merchandise knowing-it
patre dominoue negotietur. nam si quid eius rei gratia
the-father or-master trades for if anything of-that matter for-the-sake
cum eo contractum fuerit, ita praetor ius dicit, ut quidquid
with him contracted has-been thus the-praetor law declares that whatever
in his mercibus erit quodque inde receptum erit,
in those wares shall-be and-whatever thence received shall-have-been
id inter patrem dominumue, si quid ei debebitur, et
that between the-father or-master if anything to-him shall-be-owed and
ceteros creditores pro rata portione distribuatur.
the-other creditors in proportional share be-distributed
Cum autem quaeritur, quantum in peculio sit, ante deducitur, 73
When however it-is-asked how-much in the-peculium there-is first is-deducted
quod patri dominoue quique in eius potestate sit a filio
what to-the-father or-master and-to-whoever in his power is by the-son
seruoue debetur, et quod superest, hoc solum peculium esse
or-slave is-owed and what remains this alone the-peculium to-be
intellegitur. aliquando tamen id, quod ei debet filius seruusue
is-understood sometimes however that which to-him owes the-son or-slave
qui in potestate patris dominiue sit, non deducitur ex
who in the-power of-the-father or-master is not is-deducted from
peculio, uelut si is cui debet in huius ipsius peculio sit.
the-peculium as if he to-whom he-owes in of-this very-one the-peculium is
Ceterum dubium non est, quin et is, qui iussu patris 74
Moreover doubtful not it-is but-that also he who at-the-order of-the-father
dominiue contraxit cuique exercitoria uel institoria formula
or-master contracted and-to-whom the-exercitorian or institorian formula
conpetit, de peculio aut de in rem uerso agere possit.
belongs about the-peculium or about into property applied sue can

sed nemo tam stultus erit, ut qui aliqua illarum actionum
but no-one so foolish will-be that (he)-who by-some of-those actions
sine dubio solidum consequi possit, in difficultatem se
without doubt the-whole obtain can into difficulty himself
deducat probandi habere peculium eum cum quo contraxerit,
he-bring of-proving to-have a-peculium him with whom he-has-contracted
exque eo peculio posse sibi satisfieri, uel id quod
and-from that peculium to-be-able to-himself to-be-satisfied or that which
persequitur in rem patris dominiue uersum esse.
he-pursues into the-property of-the-father or-master applied to-have-been
74a Is quoque, cui tributoria actio conpetit, de peculio
He also to-whom the-tributorian action belongs about the-peculium
uel de in rem uerso agere potest. sed huic sane
or about into property applied sue can but for-this-one certainly
plerumque expedit hac potius actione uti quam tributoria.
generally it-is-expedient this rather action to-use than the-tributorian
nam in tributoria eius solius peculii ratio habetur, quod
for in the-tributorian of-that alone peculium account is-had which
in his mercibus est quibus negotiatur filius seruusue
in those wares is with-which trades the-son or-slave
quodque inde receptum erit; at in actione de peculio
and-what thence received shall-have-been but in the-action about the-peculium
peculii totius. et potest quisque tertia forte aut quarta
of-the-peculium whole and can anyone with-a-third perhaps or a-fourth
uel etiam minore parte peculii negotiari, maximam uero
or even a-smaller part of-the-peculium trade the-greatest however
partem peculii in aliis rebus habere; longe magis si
part of-the-peculium in other things have much more if
potest adprobari, id quod dederit is qui cum filio seruoue
it-can be-proved that which has-given he who with the-son or-slave
contraxit in rem patris dominiue uersum esse, ad
contracted into the-property of-the-father or-master applied to-have-been to

hanc actionem transire debet; nam, ut supra diximus, eadem
this action pass he-ought for as above we-said by-the-same
formula et de peculio et de in rem uerso agitur.
formula both about the-peculium and about into property applied it-is-proceeded

IX · NOXAL ACTIONS

For a son's or slave's delict, under statute or edict, the father or master must pay or surrender him, and the liability follows the wrongdoer's person. No action arises between master and slave; when another's dependent who wronged me comes into my power, the schools dispute whether the action dies or only sleeps. Our teachers think one mancipation suffices for noxal surrender of a son; a damaged passage treats persons in hand or bondage, and surrendering a dead wrongdoer also frees.

Ex maleficiis filiorum familias seruorumque, ueluti si 75
From the-misdeeds of-sons of-the-family and-of-slaves for-example if
furtum fecerint aut iniuriam commiserint, noxales
theft they-have-committed or outrage have-committed noxal
actiones proditae sunt, uti liceret patri dominoue
actions established were so-that it-might-be-allowed for-the-father or-master
aut litis aestimationem sufferre aut noxae dedere.
either the-suit's valuation to-bear or in-noxal-surrender to-give
erat enim iniquum nequitiam eorum ultra ipsorum corpora
it-was for unfair the-wickedness their beyond their-own bodies
parentibus dominisue damnosam esse.
to-parents or-masters ruinous to-be
Constitutae sunt autem noxales actiones aut legibus aut 76
Established were however noxal actions either by-statutes or
edicto praetoris: legibus, uelut furti lege XII
by-the-edict of-the-praetor by-statutes as of-theft by-the-statute of-the-Twelve

tabularum, damni iniuriae lege Aquilia; edicto
Tables of-damage wrongful by-the-statute Aquilian by-the-edict
praetoris, uelut iniuriarum et ui bonorum raptorum.
of-the-praetor as of-outrages and by-force of-goods seized
77 Omnes autem noxales actiones caput secuntur. nam si filius
All however noxal actions the-person follow for if son
tuus seruusue noxam commiserit, quamdiu in tua potestate
your or-slave a-wrong has-committed as-long-as in your power
est, tecum est actio; si in alterius potestatem peruenerit,
he-is with-you is the-action if into another's power he-has-come
cum illo incipit actio esse; si sui iuris coeperit esse,
with him begins the-action to-be if of-his-own right he-has-begun to-be
directa actio cum ipso est, et noxae deditio extinguitur.
the-direct action with himself is and the-noxal surrender is-extinguished
ex diuerso quoque directa actio noxalis esse incipit.
from the-opposite also a-direct action noxal to-be begins
nam si pater familias noxam commiserit, et is se in
for if a-father of-a-family a-wrong has-committed and he himself into
adrogationem tibi dederit aut seruus tuus esse coeperit, quod
adrogation to-you has-given or slave your to-be has-begun which
quibusdam casibus accidere primo commentario tradidimus,
in-certain cases to-happen in-the-first commentary we-set-out
incipit tecum noxalis actio esse quae ante directa fuit.
begins with-you noxal the-action to-be which before direct was
78 Sed si filius patri aut seruus domino noxam commiserit,
But if a-son to-his-father or a-slave to-his-master a-wrong has-committed
nulla actio nascitur; nulla enim omnino inter me et eum
no action arises no for at-all between me and him
qui in potestate mea est obligatio nasci potest. ideoque
who in power my is obligation arise can and-therefore
etsi in alienam potestatem peruenerit aut sui iuris esse
even-if into another's power he-has-come or of-his-own right to-be

coeperit, neque cum ipso neque cum eo cuius nunc in
has-begun neither with himself nor with him whose now in
potestate est agi potest. unde quaeritur, si alienus seruus
power he-is be-sued can-he whence it-is-asked if another's slave
filiusue noxam commiserit mihi, et is postea in mea esse
or-son a-wrong has-committed to-me and he afterward in my to-be
coeperit potestate, utrum intercidat actio an quiescat. nostri
has-begun power whether falls-away the-action or lies-dormant our
praeceptores intercidere putant, quia in eum casum deducta
teachers to-fall-away think because into that condition brought
sit, in quo consistere non potuerit, ideoque, licet
it-has-been in which subsist not it-could and-therefore although
exierit de mea potestate, agere me non posse; diuersae
he-has-gone-out from my power to-sue me not to-be-able of-the-opposing
scholae auctores; quamdiu in mea potestate sit, quiescere
school the-authorities as-long-as in my power he-is to-lie-dormant
actionem putant, quia ipse mecum agere non possum, cum
the-action think because I-myself with-myself sue not can when
uero exierit de mea potestate, tunc eam resuscitari.
however he-has-gone-out from my power then it to-be-revived
Cum autem filius familias ex noxali causa mancipio datur, 79
When however a-son of-the-family from a-noxal cause in-mancipation is-given
diuersae scholae auctores putant ter eum mancipio
of-the-opposing school the-authorities think three-times him in-mancipation
dari debere, quia lege XII tabularum cautum
to-be-given ought because by-the-statute of-the-Twelve Tables provided
sit, ne aliter filius de potestate patris exeat, quam
it-is that-not otherwise a-son from the-power of-the-father go-out than
si ter fuerit mancipatus; Sabinus et Cassius ceterique
if three-times he-has-been mancipated Sabinus and Cassius and-the-other
nostrae scholae auctores sufficere unam mancipationem
of-our school authorities to-suffice one mancipation

crediderunt, et illas tres legis XII tabularum ad
believed and those three of-the-statute of-the-Twelve Tables to
uoluntarias mancipationes pertinere.
voluntary mancipations to-pertain

80 Haec ita de his personis quae in potestate sunt, siue ex
These-things so about those persons who in power are whether from
contractu siue ex maleficio earum∗∗∗. quod uero ad eas
contract or from misdeed of-them(…) as-far-as however to those
personas quae in manu mancipioue sunt ∗∗∗, ita ius dicitur,
persons who in hand or-bondage are (lacuna) thus law is-declared
ut cum ex contractu earum agatur, nisi ab eo cuius iuri
that when from contract their it-is-sued unless by him to-whose right
subiectae sint in solidum defendantur, bona quae earum
subject they-are for the-whole they-are-defended the-goods which theirs
futura forent, si eius iuri subiectae non essent, ueneant.
going-to-be would-be if to-his right subject not they-were be-sold
sed cum rescissa capitis deminutione cum iis imperio
but when rescinded of-status the-loss with them on-the-imperium
continenti iudicio agitur, ∗∗∗ XII tabularum ∗∗∗
resting in-a-proceeding it-is-sued (lacuna) of-the-Twelve Tables (lacuna)

81 ∗∗∗ Quid ergo est? ∗∗∗ diximus ∗∗∗ non permissum
(lacuna) What then is-it (lacuna) we-have-said (lacuna) not permitted
fuerit ei mortuos homines dedere, tamen etsi quis eum
it-has-been to-him dead men to-surrender yet even-if someone him
dederit qui fato suo uita excesserit, aeque liberatur.
has-surrendered who by-fate his-own from-life has-departed equally he-is-freed

One may sue in another's name as attorney, agent, tutor, or curator, which the actions of the law mostly forbade. An attorney is named in fixed words before the opponent, an agent by mandate alone. Whoever acts for another takes the intentio from the principal and the condemnation in his own name.

Nunc admonendi sumus agere nos aut nostro nomine aut 82
Now to-be-reminded we-are to-sue ourselves either in-our-own name or
alieno, ueluti cognitorio, procuratorio, tutorio, curatorio, cum
in-another's as as-attorney as-agent as-tutor as-curator whereas
olim, quo tempore legis actiones in usu fuissent, alieno
formerly at-which time of-the-law the-actions in use had-been in-another's
nomine agere non liceret, praeterquam ex certis causis.
name to-sue not it-was-allowed except from certain causes
Cognitor autem certis uerbis in litem coram aduersario 83
An-attorney however in-fixed words for the-suit in-the-presence-of the-opponent
substituitur. nam actor ita cognitorem dat 'quod ego a
is-substituted for the-plaintiff thus an-attorney gives whereas I from
te' uerbi gratia 'fundum peto, in eam rem L. Titium
you of-example for-the-sake land claim for that matter Lucius Titius
tibi cognitorem do'; aduersarius ita 'quia tu a me fundum
to-you as-attorney I-give the-opponent thus since you from me land
petis, in eam rem tibi P. Meuium cognitorem do.' potest
claim for that matter to-you Publius Mevius as-attorney I-give it-can-be
ut actor ita dicat 'quod ego tecum agere uolo, in eam
that the-plaintiff thus says whereas I with-you to-sue wish for that
rem cognitorem do', aduersarius ita 'quia tu mecum agere
matter an-attorney I-give the-opponent thus since you with-me to-sue
uis, in eam rem cognitorem do.' nec interest, praesens an
wish for that matter an-attorney I-give nor does-it-matter present or

absens cognitor detur; sed si absens datus fuerit, cognitor
absent the-attorney be-given but if absent given he-has-been an-attorney
ita erit, si cognouerit et susceperit officium cognitoris.
so he-will-be if he-has-learned-of-it and undertaken the-office of-attorney

84 Procurator uero nullis certis uerbis in litem substituitur,
An-agent however in-no fixed words for the-suit is-substituted
sed ex solo mandato et absente et ignorante aduersario
but from a-mere mandate and absent and not-knowing the-opponent
constituitur. quin etiam sunt qui putant eum quoque
is-appointed indeed even there-are (those)-who think him also
procuratorem uideri, cui non sit mandatum, si modo
an-agent to-seem to-whom not it-be mandated if only
bona fide accedat ad negotium et caueat ratam rem
in-good faith he-comes to the-business and gives-security that-ratified the-matter
dominum habiturum; quamquam et ille cui mandatum est
the-principal will-hold although also he to-whom mandated it-is
plerumque satisdare debet, quia saepe mandatum initio
generally to-give-security ought because often the-mandate at-the-beginning
litis in obscuro est et postea apud iudicem ostenditur.
of-the-suit in obscurity is and afterward before the-judge is-shown

85 Tutores autem et curatores quemadmodum constituantur,
Tutors however and curators how they-are-appointed
primo commentario rettulimus.
in-the-first commentary we-related

86 Qui autem alieno nomine agit, intentionem quidem ex
(He)-who however in-another's name sues the-intentio indeed from
persona domini sumit, condemnationem autem in suam
the-person of-the-principal takes the-condemnatio however into his-own
personam conuertit. nam si uerbi gratia L. Titius pro
person turns for if of-example for-the-sake Lucius Titius for
P. Meuio agat, ita formula concipitur 'si paret N.
Publius Mevius sues thus the-formula is-conceived if it-appears Numerius

Negidium P. Meuio sestertium X milia dare oportere,
Negidius to-Publius Mevius sesterces ten thousand to-give to-be-bound
iudex N. Negidium L. Titio sestertium X milia
judge Numerius Negidius to-Lucius Titius in-sesterces ten thousand
condemna. si non paret, absolue'; in rem quoque si agat,
condemn if not it-appears absolve in rem also if he-sues
intendit 'P. Meuii rem esse ex iure Quiritium', et
he-asserts of-Publius Mevius the-thing to-be by the-law of-the-Quirites and
condemnationem in suam personam conuertit.
the-condemnatio into his-own person turns
Ab aduersarii quoque parte si interueniat aliquis cum quo 87
On the-opponent's also side if intervenes someone with whom
actio constituitur, intenditur dominum 'dare oportere',
the-action is-established it-is-asserted the-principal to-give to-be-bound
condemnatio autem in eius personam conuertitur qui
the-condemnatio however into his person is-turned who
iudicium accipit; sed cum in rem agitur, nihil in
the-action accepts but when in rem it-is-proceeded nothing in
intentione facit eius persona cum quo agitur, siue
the-intentio does his person with whom it-is-proceeded whether
suo nomine siue alieno aliquis iudicio interueniat;
in-his-own name or in-another's someone in-the-action intervenes
tantum enim intenditur 'rem actoris esse.'
only for it-is-asserted the-thing the-plaintiff's to-be

The possessor sued in rem gives security that the judgment be paid, or, under a wager, for the thing and its fruits. A principal suing in his own name gives none; agents, tutors, and curators must. In personal actions another's defense is always secured; one defending himself gives it only for the kind of action or his person.

88 Videamus nunc, quibus ex causis is cum quo agitur
Let-us-see now what from causes he with whom it-is-proceeded
uel hic qui agit cogatur satisdare.
or this-one who sues is-compelled to-give-security

89 Igitur si uerbi gratia in rem tecum agam, satis mihi dare
Therefore if of-example for-the-sake in rem with-you I-proceed security to-me to-give
debes; aequum enim uisum est te ideo, quod interea
you-ought fair for seemed it-has you for-this-reason that meanwhile
tibi rem, quae an ad te pertineat dubium est, possidere
to-you a-thing which whether to you it-belongs doubtful is to-possess
conceditur, cum satisdatione cauere, ut si uictus sis nec
is-granted with security to-guarantee that if defeated you-are nor
rem ipsam restituas nec litis aestimationem sufferas, sit
the-thing itself you-restore nor the-suit's valuation you-bear there-be
mihi potestas aut tecum agendi aut cum sponsoribus tuis.
for-me the-power either with-you of-suing or with sponsors your

90 Multoque magis debes satisdare mihi, si alieno nomine
And-much more you-ought to-give-security to-me if in-another's name
iudicium accipias.
the-action you-accept

91 Ceterum cum in rem actio duplex sit, aut enim per
However since in rem the-action twofold is either for by
formulam petitoriam agitur aut per sponsionem, siquidem
formula petitory it-is-proceeded or by wager if-indeed

per formulam petitoriam agitur, illa stipulatio locum habet
by formula petitory it-is-proceeded that stipulation place has
quae appellatur 'iudicatum solui', si uero per sponsionem,
which is-called that-the-judgment be-paid if however by wager
illa quae appellatur 'pro praede litis et uindiciarum.'
that which is-called in-place-of a-surety of-the-suit and of-the-interim-possession
Petitoria autem formula haec est, qua actor intendit 92
The-petitory however formula this is by-which the-plaintiff asserts
'rem suam esse.'
the-thing his-own to-be
Per sponsionem uero hoc modo agimus: prouocamus 93
By wager however in-this way we-proceed we-challenge
aduersarium tali sponsione 'si homo quo de agitur
the-opponent with-such a-wager if the-man whom about it-is-proceeded
ex iure Quiritium meus est, sestertios XXV nummos
by the-law of-the-Quirites mine is sesterces twenty-five coins
dare spondes?'; deinde formulam edimus, qua intendimus
to-give do-you-promise then a-formula we-issue by-which we-assert
sponsionis summam nobis dari oportere; qua formula
of-the-wager the-sum to-us to-be-given to-be-owed by-which formula
ita demum uincimus, si probauerimus rem nostram esse.
thus only we-win if we-have-proved the-thing ours to-be
Non tamen haec summa sponsionis exigitur. non enim 94
Not however this sum of-the-wager is-exacted not for
poenalis est, sed praeiudicialis, et propter hoc solum
penal it-is but preliminary and on-account-of this alone
fit, ut per eam de re iudicetur. unde etiam
it-is-made that through it about the-thing it-be-judged whence also
is cum quo agitur non restipulatur. ideo autem
he with whom it-is-proceeded not counter-stipulates for-this-reason however
appellata est 'pro praede litis uindiciarum' stipulatio,
called it-is in-place-of a-surety of-the-suit of-the-interim-possession the-stipulation

quia in locum praedium successit, qui olim, cum lege
because into the-place of-the-sureties it-succeeded who formerly when by-action-of-law
agebatur, pro lite et uindiciis, id est pro re
it-was-proceeded for the-suit and the-interim-possession that is for the-thing
et fructibus, a possessore petitori dabantur.
and the-fruits by the-possessor to-the-claimant were-given

95 Ceterum si apud centumuiros agitur, summam sponsionis
However if before the-centumviri it-is-proceeded the-sum of-the-wager
non per formulam petimus, sed per legis actionem;
not by formula we-claim but by of-the-law action
sacramento enim reum prouocamus; eaque sponsio
by-sacramentum for the-defendant we-challenge and-that wager
sestertium CXXV nummum fit scilicet propter
of-sesterces a-hundred-and-twenty-five coins is-made of-course on-account-of
legem Crepereiam.
the-statute Crepereian

96 Ipse autem qui in rem agit, si suo nomine agat,
He-himself however who in rem sues if in-his-own name he-sues
satis non dat.
security not gives

97 Ac nec si per cognitorem quidem agatur, ulla satisdatio
And not-even if through an-attorney indeed it-is-proceeded any security
uel ab ipso uel a domino desideratur. cum enim
either from himself or from the-principal is-required since for
certis et quasi sollemnibus uerbis in locum domini
in-fixed and as-it-were solemn words into the-place of-the-principal
substituatur cognitor, merito domini loco habetur.
is-substituted the-attorney rightly of-the-principal in-the-place he-is-held

98 Procurator uero si agat, satisdare iubetur ratam rem
An-agent however if he-sues to-give-security is-ordered that-ratified the-matter
dominum habiturum; periculum enim est, ne iterum dominus
the-principal will-hold the-danger for is lest again the-principal

de eadem re experiatur, quod periculum non interuenit,
about the-same matter sue which danger not intervenes
si per cognitorem actum fuerit, quia de qua re
if through an-attorney proceeded it-has-been because about which matter
quisque per cognitorem egerit, de ea non magis amplius
each-one through an-attorney has-sued about that not more further
actionem habet, quam si ipse egerit.
an-action he-has than if himself he-had-sued

Tutores et curatores eo modo quo et procuratores 99
Tutors and curators in-that way in-which also agents
satisdare debere uerba edicti faciunt; sed aliquando
to-give-security to-be-bound the-words of-the-edict make but sometimes
illis satisdatio remittitur.
for-them the-security is-remitted

Haec ita, si in rem agatur; si uero in personam, ab 100
These-things so if in rem it-is-proceeded if however in personam on
actoris quidem parte quando satisdari debeat quaerentes,
the-plaintiff's indeed side when security-be-given ought for-those-asking
eadem repetemus quae diximus in actione qua in rem
the-same-things we-shall-repeat which we-said in the-action by-which in rem
agitur.
it-is-proceeded

Ab eius uero parte cum quo agitur, siquidem alieno 101
On his however side with whom it-is-proceeded if-indeed in-another's
nomine aliquis interueniat, omni modo satisdari debet,
name someone intervenes in-every way security-be-given ought
quia nemo alienae rei sine satisdatione defensor idoneus
because no-one of-another's thing without security a-defender fit
intellegitur. sed siquidem cum cognitore agatur, dominus
is-understood but if-indeed with an-attorney it-is-proceeded the-principal

satisdare iubetur; si uero cum procuratore, ipse procurator.
to-give-security is-ordered if however with an-agent himself the-agent
idem et de tutore et de curatore iuris est.
the-same also about a-tutor and about a-curator of-law is
102 Quodsi proprio nomine aliquis iudicium accipiat in personam,
But-if in-his-own name someone an-action accepts in personam
certis ex causis satisdare solet, quas ipse praetor significat.
certain from causes to-give-security he-is-wont which himself the-praetor makes-known
quarum satisdationum duplex causa est: nam aut propter
of-which securities twofold the-cause is for either on-account-of
genus actionis satisdatur, aut propter personam, quia suspecta
the-kind of-action security-is-given or on-account-of the-person because suspect
sit; propter genus actionis, ueluti iudicati depensiue
it-be on-account-of the-kind of-action for-example of-judgment or-of-money-paid-out
aut cum de moribus mulieris agitur; propter personam,
or when about the-morals of-a-woman it-is-proceeded on-account-of the-person
ueluti si cum eo agitur qui decoxerit, cuiusue bona
for-example if with him it-is-proceeded who has-gone-bankrupt or-whose goods
a creditoribus possessa proscriptaue sunt, siue cum eo
by the-creditors possessed or-advertised are or with that
herede agatur quem praetor suspectum aestimauerit.
heir it-is-proceeded whom the-praetor suspect has-judged

Proceedings are statutory, at Rome before one judge among citizens and lapsing in eighteen months, or rest on the imperium. A statutory personal action consumes the claim by law; after others a defense bars a second suit. Statutory actions are granted always, praetorian mostly within a year; penal actions lie for heirs but not against them.

Omnia autem iudicia aut legitimo iure consistunt aut 103
All however proceedings either by-statutory right stand or
imperio continentur.
on-the-imperium rest

Legitima sunt iudicia, quae in urbe Roma uel intra primum 104
Statutory are proceedings which in the-city Rome or within the-first
urbis Romae miliarium inter omnes ciues Romanos sub
of-the-city of-Rome milestone between all citizens Roman under
uno iudice accipiuntur; eaque e lege Iulia iudiciaria, nisi
one judge are-accepted and-they by the-statute Julian on-courts unless
in anno et sex mensibus iudicata fuerint, expirant. et
within a-year and six months judged they-have-been expire and
hoc est quod uulgo dicitur e lege Iulia litem anno
this is what commonly is-said by the-statute Julian the-suit in-a-year
et sex mensibus mori.
and six months to-die

Imperio uero continentur recuperatoria et quae 105
On-the-imperium however rest the-recuperatorial and (those)-which
sub uno iudice accipiuntur interueniente peregrini persona
under one judge are-accepted intervening of-a-foreigner the-person
iudicis aut litigatoris. in eadem causa sunt, quaecumque
of-judge or of-litigant in the-same position are whatever
extra primum urbis Romae miliarium tam inter ciues
outside the-first of-the-city of-Rome milestone as between citizens

Romanos quam inter peregrinos accipiuntur. ideo
Roman as between foreigners are-accepted for-this-reason
autem imperio contineri iudicia dicuntur, quia tamdiu
however on-the-imperium to-rest the-proceedings are-said because so-long
ualent, quamdiu is qui ea praecepit imperium habebit.
they-are-valid as-long-as he who them ordered the-imperium shall-have

106 Et siquidem imperio continenti iudicio actum fuerit,
And if-indeed on-the-imperium resting in-a-proceeding proceeded it-has-been
siue in rem siue in personam, siue ea formula quae
whether in rem or in personam whether by-that formula which
in factum concepta est, siue ea quae in ius habet
on fact conceived is or by-that which in law has
intentionem, postea nihilo minus ipso iure de eadem
the-intentio afterward none the-less by-itself law about the-same
re agi potest; et ideo necessaria est exceptio rei
matter be-sued can and therefore necessary is the-defense of-a-matter
iudicatae uel in iudicium deductae.
judged or into proceeding brought

107 Si uero legitimo iudicio in personam actum sit ea
If however in-a-statutory proceeding in personam proceeded it-has-been by-that
formula quae iuris ciuilis habet intentionem, postea ipso
formula which of-law civil has the-intentio afterward by-itself
iure de eadem re agi non potest, et ob id
law about the-same matter be-sued not can and on-account-of this
exceptio superuacua est; si uero uel in rem uel in factum
the-defense superfluous is if however either in rem or on fact
actum fuerit, ipso iure nihilo minus postea agi potest,
proceeded it-has-been by-itself law none the-less afterward be-sued it-can
et ob id exceptio necessaria est rei iudicatae
and on-account-of this the-defense necessary is of-a-matter judged
uel in iudicium deductae.
or into proceeding brought

Alia causa fuit olim legis actionum: nam qua de 108
Other the-case was formerly of-the-law of-the-actions for which about
re actum semel erat, de ea postea ipso iure agi
matter proceeded once it-had-been about that afterward by-itself law be-sued
non poterat; nec omnino ita, ut nunc, usus erat illis
not could nor at-all so as now use was in-those
temporibus exceptionum.
times of-defenses
Ceterum potest ex lege quidem esse iudicium, sed legitimum 109
However can from statute indeed be a-proceeding but statutory
non esse; et contra ex lege non esse, sed legitimum esse.
not be and conversely from statute not be but statutory be
nam si uerbi gratia ex lege Aquilia uel †Ollinia
for if of-example for-the-sake under the-statute Aquilian or Ollinian
uel Furia in prouinciis agatur, imperio continebitur
or Furian in the-provinces it-is-proceeded on-the-imperium will-rest
iudicium; idemque iuris est et si Romae apud recuperatores
the-proceeding the-same of-law is also if at-Rome before recuperators
agamus, uel apud unum iudicem interueniente peregrini
we-proceed or before one judge intervening of-a-foreigner
persona; et ex diuerso si ex ea causa, ex qua nobis
the-person and from the-opposite if from that cause from which to-us
edicto praetoris datur actio, Romae sub uno iudice inter
by-the-edict of-the-praetor is-given an-action at-Rome under one judge between
omnes ciues Romanos accipiatur iudicium, legitimum est.
all citizens Roman be-accepted the-proceeding statutory is
Quo loco admonendi sumus eas quidem actiones, quae 110
In-which place to-be-reminded we-are those indeed actions which
ex lege senatusue consultis proficiscuntur, perpetuo solere
from statute or-of-the-senate decrees proceed perpetually to-be-wont

praetorem accommodare, eas uero quae ex propria ipsius
the-praetor to-grant those however which from own his
iurisdictione pendent plerumque intra annum dare.
jurisdiction hang generally within a-year to-give

111 Aliquando tamen *** imitatur ius legitimum: quales
Sometimes however (lacuna) imitates the-law statutory such-as
sunt eae, quas bonorum possessoribus ceterisque qui heredis
are those which of-the-goods to-possessors and-to-the-others who of-an-heir
loco sunt accommodat. furti quoque manifesti actio,
in-the-place are he-grants of-theft also manifest the-action
quamuis ex ipsius praetoris iurisdictione proficiscatur,
although from of-the-very of-the-praetor jurisdiction it-proceeds
perpetuo datur; et merito, cum pro capitali poena
perpetually is-given and deservedly since in-place-of a-capital penalty
pecuniaria constituta sit.
a-monetary established has-been

112 Non omnes actiones, quae in aliquem aut ipso iure
Not all actions which against someone either by-itself law
conpetunt aut a praetore dantur, etiam in heredem aeque
lie or by the-praetor are-given also against an-heir equally
conpetunt aut dari solent. est enim certissima iuris
lie or to-be-given are-wont it-is for a-most-certain of-law
regula, ex maleficiis poenales actiones in heredem nec
rule from misdeeds penal actions against an-heir neither
conpetere nec dari solere, ueluti furti, ui bonorum
to-lie nor to-be-given to-be-wont for-example of-theft by-force of-goods
raptorum, iniuriarum, damni iniuriae. sed heredibus huius
seized of-outrages of-damage wrongful but to-heirs of-this
modi actiones conpetunt nec denegantur, excepta iniuriarum
kind actions lie nor are-refused excepted of-outrages
actione et si qua alia similis inueniatur actio.
the-action and if any other similar be-found action

Aliquando tamen etiam ex contractu actio neque heredi 113
Sometimes however even from contract an-action neither to-the-heir
neque in heredem conpetit; nam adstipulatoris heres non
nor against the-heir lies for of-an-adstipulator the-heir not
habet actionem, et sponsoris et fidepromissoris heres non
has an-action and of-a-sponsor and of-a-fidepromissor the-heir not
tenetur.
is-bound

Superest ut dispiciamus, si ante rem iudicatam is cum 114
It-remains that we-consider if before the-matter judged he with
quo agitur post acceptum iudicium satisfaciat actori, quid
whom it-is-proceeded after accepted the-action satisfies the-plaintiff what
officio iudicis conueniat, utrum absoluere, an ideo
to-the-duty of-the-judge is-fitting whether to-absolve or for-that-reason
potius damnare, quia iudicii accipiendi tempore in ea causa
rather to-condemn because of-the-action accepting at-the-time in that position
fuerit, ut damnari debeat. nostri praeceptores absoluere eum
he-was that be-condemned he-ought our teachers to-absolve him
debere existimant, nec interesse cuius generis sit iudicium; et
to-be-bound consider nor to-matter of-what kind be the-action and
hoc est quod uulgo dicitur Sabino et Cassio placere omnia
this is what commonly is-said to-Sabinus and Cassius to-seem-right all
iudicia absolutoria esse. *** de bonae fidei iudiciis autem
actions absolutory to-be (lacuna) about of-good faith actions however
idem sentiunt, quia in eiusmodi iudiciis liberum est officium
the-same they-think because in of-this-kind actions free is the-duty
iudicis. tantumdem et de in rem actionibus putant, quia
of-the-judge equally also about in rem actions they-think because
formulae uerbis id ipsum exprimatur *** quibus ***
by-the-formula's words that very-thing is-expressed (lacuna) which (lacuna)
petentur et ad *** interdum enim *** sunt etiam in
will-be-claimed and to (lacuna) sometimes for (lacuna) there-are also in

personam tales actiones in quibus exprimitur ∗∗∗ actori
personam such actions in which is-expressed (lacuna) to-the-plaintiff
qu∗∗∗ paratus ad actoris ∗∗∗ actum fuerit.
wh(…) ready to the-plaintiff's (lacuna) proceeded it-shall-have-been

XIII · DEFENSES

Defenses protect a defendant bound at civil law but unfairly sued, for fraud, fear, or a pact not to sue, in real actions too, and are framed as the opposite of what he asserts, making the condemnation conditional. They are peremptory, always valid, or dilatory, for a time or by person, like the cognitorial; a plaintiff who sues against a dilatory defense loses his case. A defendant who omitted a peremptory defense by error is restored; whether one who omitted a dilatory one is, is asked.

115 Sequitur ut de exceptionibus dispiciamus.
It-follows that about defenses we-consider

116 Conparatae sunt autem exceptiones defendendorum eorum
Devised were however defenses of-defending those
gratia cum quibus agitur. saepe enim accidit, ut quis
for-the-sake with whom it-is-proceeded often for it-happens that someone
iure ciuili teneatur, sed iniquum sit eum iudicio condemnari.
by-law civil be-bound but unfair it-be him in-the-action to-be-condemned

116a Veluti si stipulatus sim a te pecuniam tamquam
For-example if stipulated I-have from you money as-if
credendi causa numeraturus, nec numerauerim; nam eam
of-lending for-the-sake about-to-count-it-out nor have-counted for that
pecuniam a te peti posse certum est, dare enim te
money from you be-claimed can certain it-is to-give for you
oportet, cum ex stipulatu teneris; sed quia iniquum
ought since from the-stipulation you-are-bound but because unfair

est te eo nomine condemnari, placet per exceptionem
it-is you on-that account to-be-condemned it-is-approved by the-defense
doli mali te defendi debere.
of-fraud bad you to-be-defended ought
Item si pactus fuero tecum, ne id quod mihi debeas 116b
Likewise if agreed I-shall-have with-you that-not that which to-me you-owe
a te petam, nihilo minus a te petere possum dari
from you I-claim none the-less from you claim I-can to-be-given
mihi oportere, quia obligatio pacto conuento non tollitur;
to-me to-be-owed because the-obligation by-pact agreed not is-removed
sed placet debere me petentem per exceptionem pacti
but it-is-approved to-be-bound me claiming by the-defense of-pact
conuenti repelli.
agreed to-be-repelled
In his quoque actionibus quae non in personam sunt exceptiones 117
In those also actions which not in personam are defenses
locum habent. ueluti si metu me coegeris aut dolo
place have for-example if by-fear me you-have-compelled or by-fraud
induxeris, ut tibi rem aliquam mancipio darem; nam si
induced that to-you a-thing some in-mancipation I-should-give for if
eam rem a me petas, datur mihi exceptio, per quam, si metus
that thing from me you-claim is-given to-me a-defense by which if of-fear
causa te fecisse uel dolo malo arguero, repelleris.
by-reason you to-have-acted or by-fraud bad I-have-proved you-will-be-repelled
Item si fundum litigiosum sciens a non possidente 117a
Likewise if land in-litigation knowing from not possessing
emeris eumque a possidente petas, opponitur tibi
you-have-bought and-it from the-possessor you-claim is-opposed to-you
exceptio, per quam omni modo summoueris.
a-defense by which in-every way you-are-excluded

118 Exceptiones autem alias in edicto praetor habet propositas,
Defenses however some in the-edict the-praetor has set-forth
alias causa cognita accommodat. quae omnes uel ex legibus
others the-case examined he-grants which all either from statutes
uel ex his quae legis uicem optinent, substantiam
or from those which of-a-statute the-place hold substance
capiunt, uel ex iurisdictione praetoris proditae sunt.
take or from the-jurisdiction of-the-praetor established are
119 Omnes autem exceptiones in contrarium concipiuntur, quam
All however defenses into the-contrary are-conceived than-what
adfirmat is cum quo agitur. nam si uerbi gratia
asserts he with whom it-is-proceeded for if of-example for-the-sake
reus dolo malo aliquid actorem facere dicat, qui forte
the-defendant by-fraud bad something the-plaintiff to-do says who perhaps
pecuniam petit quam non numerauit, sic exceptio concipitur 'si
money claims which not be-counted-out thus the-defense is-conceived if
in ea re nihil dolo malo A. Agerii factum sit neque
in that matter nothing by-fraud bad of-Aulus Agerius done has-been nor
fiat': item si dicat contra pactionem pecuniam peti, ita
is-done likewise if he-says against an-agreement the-money to-be-claimed thus
concipitur exceptio 'si inter A. Agerium et N. Negidium
is-conceived the-defense if between Aulus Agerius and Numerius Negidius
non conuenit, ne ea pecunia peteretur'; et denique in
not it-was-agreed that-not that money be-claimed and finally in
ceteris causis similiter concipi solet; ideo scilicet quia
the-other cases similarly to-be-conceived it-is-wont for-this-reason of-course because
omnis exceptio obicitur quidem a reo, sed ita formulae
every defense is-set-against indeed by the-defendant but so into-the-formula
inseritur, ut condicionalem faciat condemnationem, id est
is-inserted that conditional it-makes the-condemnatio that is
ne aliter iudex eum cum quo agitur condemnet, quam
that-not otherwise the-judge him with whom it-is-proceeded condemn than

si nihil in ea re qua de agitur dolo actoris factum
if nothing in that matter which about it-is-proceeded by-fraud of-the-plaintiff done
sit; item ne aliter iudex eum condemnet, quam si nullum
has-been likewise that-not otherwise the-judge him condemn than if no
pactum conuentum de non petenda pecunia factum fuerit.
pact agreed about not claiming the-money made has-been
Dicuntur autem exceptiones aut peremptoriae aut dilatoriae. 120
Are-called however defenses either peremptory or dilatory
Peremptoriae sunt quae perpetuo ualent nec euitari 121
Peremptory are (those)-which perpetually are-valid nor be-avoided
possunt, ueluti quod metus causa aut dolo malo, aut quod
can for-example that of-fear by-reason or by-fraud bad or that
contra legem senatusue consultum factum est, aut quod
against a-statute or-of-the-senate a-decree done has-been or that
res iudicata est uel in iudicium deducta est, item pacti
the-matter judged is or into proceeding brought is likewise of-pact
conuenti quod factum est, ne omnino pecunia peteretur.
agreed which made has-been that-not at-all the-money be-claimed
Dilatoriae sunt exceptiones quae ad tempus ualent, ueluti 122
Dilatory are defenses which for a-time are-valid for-example
illius pacti conuenti quod factum est uerbi gratia, ne
of-that pact agreed which made has-been of-example for-the-sake that-not
intra quinquennium peteretur; finito enim eo tempore non
within five-years it-should-be-claimed ended for that time not
habet locum exceptio. cui similis exceptio est litis diuiduae
has place the-defense to-which similar a-defense is of-suit divided
et rei residuae. nam si quis partem rei petierit
and of-matter remaining for if someone part of-a-thing has-claimed
et intra eiusdem praeturam reliquam partem petat, hac
and within the-same praetorship the-remaining part claims by-this
exceptione summouetur quae appellatur litis diuiduae; item
defense he-is-excluded which is-called of-suit divided likewise

si is, qui cum eodem plures lites habebat, de quibusdam
if he who with the-same-man several suits had about some
egerit, de quibusdam distulerit, ut ad alios iudices eant,
has-sued about some has-deferred that to other judges they-may-go
si intra eiusdem praeturam de his quas distulerit, agat, per
if within the-same praetorship about those which he-deferred he-sues by
hanc exceptionem quae appellatur rei residuae summouetur.
this defense which is-called of-matter remaining he-is-excluded

123 Obseruandum est autem ei cui dilatoria obicitur exceptio,
To-be-observed is however by-him to-whom a-dilatory is-set-against defense
ut differat actionem; alioquin si obiecta exceptione egerit,
that he-defer the-action otherwise if set-against the-defense he-has-sued
rem perdit; non enim post illud tempus, quo integra
the-matter he-loses not for after that time at-which whole
re eam euitare poterat, adhuc ei potestas agendi superest
the-matter it to-avoid he-could still to-him the-power of-suing remains
re in iudicium deducta et per exceptionem perempta.
the-matter into proceeding brought and by the-defense destroyed

124 Non solum autem ex tempore, sed etiam ex persona dilatoriae
Not only however from time but also from person dilatory
exceptiones intelleguntur, quales sunt cognitoriae: ueluti si is,
defenses are-understood such-as are the-cognitorial for-example if he
qui per edictum cognitorem dare non potest, per cognitorem
who by the-edict an-attorney to-give not can through an-attorney
agat, uel dandi quidem cognitoris ius habeat, sed eum det
sues or of-giving indeed an-attorney the-right has but him gives
cui non licet cognituram suscipere. nam si obiciatur
to-whom not it-is-allowed the-attorneyship to-undertake for if is-set-against
exceptio cognitoria, si ipse talis erit, ut ei non liceat
the-defense cognitorial if he-himself such shall-be that to-him not be-allowed
cognitorem dare, ipse agere potest; si uero cognitori non
an-attorney to-give he-himself to-sue can if however for-the-attorney not

liceat cognituram suscipere, per alium cognitorem aut
it-be-allowed the-attorneyship to-undertake through another attorney or
per semet ipsum liberam habet agendi potestatem, et tam
through himself self free he-has of-suing the-power and as
hoc quam illo modo euitare potest exceptionem; quodsi
in-this as in-that way avoid he-can the-defense but-if
dissimulauerit eam et per cognitorem egerit, rem perdit.
he-has-concealed it and through the-attorney has-sued the-matter he-loses
Sed peremptoria quidem exceptione si reus per 125
But a-peremptory indeed defense if the-defendant through
errorem non fuerit usus, in integrum restituitur adiciendae
error not has used to the-whole he-is-restored of-adding
exceptionis gratia; dilatoria uero si non fuerit usus, an
a-defense for-the-sake a-dilatory however if not he-has used whether
in integrum restituatur, quaeritur.
to the-whole he-be-restored it-is-asked

XIV · REPLICATIONS

A replication answers a defense that is just on its face but unfair, as a later pact allowing the claim, or a banker's auction terms that the buyer pay before delivery. A duplication answers the replication for the defendant, a triplication answers the duplication for the plaintiff, and so further as the business requires.

Interdum euenit, ut exceptio, quae prima facie iusta uideatur, 126
Sometimes it-happens that a-defense which at-first sight just seems
inique noceat actori. quod cum accidat, alia adiectione
unfairly harms the-plaintiff which when it-happens another addition
opus est adiuuandi actoris gratia; quae adiectio replicatio
need is of-helping the-plaintiff for-the-sake which addition replication
uocatur, quia per eam replicatur atque resoluitur uis
is-called because through it is-unfolded and dissolved the-force

exceptionis. nam si uerbi gratia pactus sum tecum,
of-the-defense for if of-example for-the-sake agreed I-have with-you
ne pecuniam quam mihi debes a te peterem, deinde
that-not the-money which to-me you-owe from you I-should-claim then
postea in contrarium pacti sumus, id est ut petere mihi
afterward into the-contrary agreed we-have that is that to-claim for-me
liceat, et, si agam tecum, excipias tu, ut ita demum
be-allowed and if I-sue with-you you-plead-in-defense you that thus only
mihi condemneris, 'si non conuenerit, ne eam pecuniam
to-me you-be-condemned if not it-was-agreed that-not that money
peterem', nocet mihi exceptio pacti conuenti; namque nihilo
I-should-claim harms me the-defense of-pact agreed for none
minus hoc uerum manet, etiamsi postea in contrarium
the-less this true remains even-if afterward into the-contrary
pacti sumus; sed quia iniquum est me excludi exceptione,
agreed we-have but because unfair it-is me to-be-excluded by-the-defense
replicatio mihi datur ex posteriore pacto hoc modo 'si non
a-replication to-me is-given from the-later pact in-this way if not
postea conuenit, ut mihi eam pecuniam petere liceret.'
afterward it-was-agreed that for-me that money to-claim were-allowed

126a Item si argentarius pretium rei quae in auctionem uenerit
Likewise if a-banker the-price of-a-thing which into auction has-come
persequatur, obicitur ei exceptio, ut ita demum emptor
pursues is-set-against him a-defense that thus only the-buyer
damnetur, si ei res quam emerit, tradita est; et est
be-condemned if to-him the-thing which he-has-bought delivered is and it-is
iusta exceptio; sed si in auctione praedictum est, ne ante
a-just defense but if at the-auction announced it-was that-not before
emptori res traderetur, quam si pretium soluerit, replicatione
to-the-buyer the-thing be-delivered than if the-price he-has-paid by-a-replication

tali argentarius adiuuatur ‘aut si praedictum est, ne aliter
such the-banker is-helped or if announced it-was that-not otherwise
emptori res traderetur, quam si pretium emptor soluerit.’
to-the-buyer the-thing be-delivered than if the-price the-buyer has-paid
Interdum autem euenit, ut rursus replicatio, quae prima facie 127
Sometimes however it-happens that again a-replication which at-first sight
iusta sit, inique reo noceat. quod cum accidat, adiectione
just is unfairly the-defendant harms which when it-happens an-addition
opus est adiuuandi rei gratia, quae duplicatio uocatur.
need is of-helping the-defendant for-the-sake which duplication is-called
Et si rursus ea prima facie iusta uideatur, sed propter 128
And if again it at-first sight just seems but on-account-of
aliquam causam inique actori noceat, rursus adiectione
some cause unfairly the-plaintiff harms again an-addition
opus est qua actor adiuuetur, quae dicitur triplicatio.
need is by-which the-plaintiff may-be-helped which is-called triplication
Quarum omnium adiectionum usum interdum etiam ulterius 129
Of-which all additions the-use sometimes even further
quam diximus uarietas negotiorum introduxit.
than we-have-said the-variety of-transactions has-introduced

XV · PREFATORY CLAUSES: PRAESCRIPTIONES

A praescriptio before the formula limits the claim, to the installments now due or to the mancipation of land, lest the whole obligation be consumed. Once some served the defendant; now all serve the plaintiff.

Videamus etiam de praescriptionibus quae receptae sunt pro 130
Let-us-see also about the-praescriptiones which accepted are for
actore.
the-plaintiff

131 Saepe enim ex una eademque obligatione aliquid iam
Often for from one and-the-same obligation something already
praestari oportet, aliquid in futura praestatione est: ueluti
to-be-furnished ought something in future furnishing is for-example
cum in singulos annos uel menses certam pecuniam stipulati
when for each years or months a-certain money stipulated
fuerimus; nam finitis quibusdam annis aut mensibus huius
we-shall-have for ended certain years or months of-this
quidem temporis pecuniam praestari oportet, futurorum
indeed time the-money to-be-furnished ought of-future
autem annorum sane quidem obligatio contracta intellegitur,
however years certainly indeed the-obligation contracted is-understood
praestatio uero adhuc nulla est. si ergo uelimus id
the-furnishing however as-yet none is if therefore we-wish that
quidem quod praestari oportet petere et in iudicium
indeed which to-be-furnished ought to-claim and into the-proceeding
deducere, futuram uero obligationis praestationem in integro
to-bring the-future however of-the-obligation furnishing in whole
relinquere, necesse est ut cum hac praescriptione agamus
to-leave necessary it-is that with this praescriptio we-proceed
'ea res agatur cuius rei dies fuit'; alioquin si sine
that matter be-tried of-which matter the-day has-been otherwise if without
hac praescriptione egerimus, ea scilicet formula qua
this praescriptio we-have-proceeded with-that of-course formula by-which
incertum petimus, cuius intentio his uerbis concepta est
an-uncertain-thing we-claim whose intentio in-these words conceived is
'quidquid paret N. Negidium A. Agerio dare facere
whatever it-appears Numerius Negidius to-Aulus Agerius to-give to-do
oportere', totam obligationem, id est etiam futuram in hoc
to-be-bound the-whole obligation that is even the-future into this
iudicium deducimus, et quae ante tempus obligatio***
proceeding we-bring and which before the-time the-obligation(…)

∗∗∗. Item si uerbi gratia ex empto agamus, ut nobis 131a
(lacuna) Likewise if of-example for-the-sake from purchase we-proceed that to-us
fundus mancipio detur, debemus hoc modo praescribere ‘ea
the-land in-mancipation be-given we-ought in-this way to-prescribe that
res agatur de fundo mancipando’, ut postea, si uelimus
matter be-tried about the-land to-be-mancipated so-that afterward if we-wish
uacuam possessionem nobis tradi, ∗∗∗ trad ∗∗∗ sumus,
vacant possession to-us to-be-delivered (lacuna) deliver (lacuna) we-are
totius illius iuris obligatio illa incerta actione ‘quidquid
of-the-whole of-that right the-obligation by-that uncertain action whatever
ob eam rem N. Negidium A. Agerio dare facere
on-account-of that thing Numerius Negidius to-Aulus Agerius to-give to-do
oportet’, per intentionem consumitur, ut postea nobis agere
ought through the-intentio is-consumed so-that afterward for-us to-sue
uolentibus de uacua possessione tradenda nulla supersit actio.
wishing about vacant possession to-be-delivered no may-remain action
Praescriptiones autem appellatas esse ab eo, quod ante 132
The-praescriptiones however called to-have-been from this that before
formulas praescribuntur, plus quam manifestum est.
the-formulas they-are-prescribed more than clear is
Sed his quidem temporibus, sicut supra quoque notauimus, 133
But in-these indeed times as above also we-noted
omnes praescriptiones ab actore proficiscuntur. olim autem
all praescriptiones from the-plaintiff proceed formerly however
quaedam et pro reo opponebantur, qualis illa erat
some also for the-defendant were-opposed such-as that was
praescriptio ‘ea res agatur, si in ea re praeiudicium
the-praescriptio that matter be-tried if in that matter prejudice
hereditati non fiat’, quae nunc in speciem exceptionis
to-the-inheritance not be-made which now into the-form of-a-defense
deducta est et locum habet, cum petitor hereditatis alio
brought is and place has when the-claimant of-the-inheritance by-another

genere iudicii praeiudicium hereditati faciat, ueluti cum
kind of-proceeding prejudice to-the-inheritance makes for-example when
singulas res petat; est enim iniquum per unius rei***
single things he-claims it-is for unfair through of-one thing(…)
134 *** intentione formulae det***m est, cui dari
(lacuna) in-the-intentio of-the-formula det(…)m is to-whom to-be-given
oporteat; et sane domino dari oportet quod seruus
it-ought and certainly to-the-master to-be-given ought what the-slave
stipulatur; at in praescriptione de facto quaeritur, quod
stipulates but in the-praescriptio about fact it-is-asked which
secundum naturalem significationem uerum esse debet.
according-to natural meaning true to-be ought
135 Quaecumque autem diximus de seruis, eadem de ceteris
Whatever however we-have-said about slaves the-same about the-other
quoque personis quae nostro iuri subiectae sunt dicta
also persons who to-our right subject are said
intellegemus.
we-shall-understand
136 Item admonendi sumus, si cum ipso agamus
Likewise to-be-reminded we-are if with him-himself we-proceed
qui incertum promiserit, ita nobis formulam esse
who an-uncertain-thing has-promised so for-us the-formula to-be
propositam, ut praescriptio inserta sit formulae loco
set-forth that the-praescriptio inserted has-been in-the-formula in-the-place
demonstrationis hoc modo ‘iudex esto. quod A. Agerius
of-the-demonstratio in-this way judge be whereas Aulus Agerius
de N. Negidio incertum stipulatus est, cuius rei
from Numerius Negidius an-uncertain-thing stipulated has of-which matter
dies fuit, quidquid ob eam rem N. Negidium
the-day has-been whatever on-account-of that thing Numerius Negidius
A. Agerio dare facere oportet’ et reliqua.
to-Aulus Agerius to-give to-do ought and so-on

Si cum sponsore aut fideiussore agatur, praescribi solet 137
If with a-sponsor or fideiussor it-is-proceeded to-be-prescribed it-is-wont
in persona quidem sponsoris hoc modo ‘ea res agatur,
in the-person indeed of-a-sponsor in-this way that matter be-tried
quod A. Agerius de L. Titio incertum stipulatus
whereas Aulus Agerius from Lucius Titius an-uncertain-thing stipulated
est, quo nomine N. Negidius sponsor est, cuius rei
has on-which account Numerius Negidius sponsor is of-which matter
dies fuit’, in persona uero fideiussoris ‘ea res agatur,
the-day has-been in the-person however of-a-fideiussor that matter be-tried
quod N. Negidius pro L. Titio incertum fide sua
whereas Numerius Negidius for Lucius Titius an-uncertain-thing on-faith his
esse iussit, cuius rei dies fuit’; deinde formula subicitur.
to-be ordered of-which matter the-day has-been then the-formula is-subjoined

XVI · INTERDICTS

In possession disputes the praetor or proconsul orders or forbids by decrees and interdicts, which are prohibitory, restitutory, or exhibitory, and are pursued by wager or, for the last two, by an arbitrary formula. They are also divided by whether they obtain, retain, or recover possession; those to obtain it are the quorum bonorum for the possessor of goods, the possessory and sectorian for buyers of goods, and the Salvian for a landlord.

Superest ut de interdictis dispiciamus. 138
It-remains that about interdicts we-consider
Certis igitur ex causis praetor aut proconsul principaliter 139
Certain therefore from causes the-praetor or proconsul directly
auctoritatem suam finiendis controuersiis interponit. quod tum
authority his-own for-ending disputes interposes which then
maxime facit, cum de possessione aut quasi possessione inter
most he-does when about possession or as-if possession between

aliquos contenditur. et in summa aut iubet aliquid fieri aut
some it-is-contended and in sum either he-orders something to-be-done or
fieri prohibet. formulae autem et uerborum conceptiones,
to-be-done forbids the-formulas however and of-words the-framings
quibus in ea re utitur, interdicta *** decretaque.
which in that matter he-uses interdicts (lacuna) and-decrees
140 Vocantur autem decreta, cum fieri aliquid iubet, ueluti
Are-called however decrees when to-be-done something he-orders for-example
cum praecipit, ut aliquid exhibeatur aut restituatur; interdicta
when he-directs that something be-produced or be-restored interdicts
uero, cum prohibet fieri, ueluti cum praecipit, ne
however when he-forbids to-be-done for-example when he-directs that-not
sine uitio possidenti uis fiat, neue in loco sacro aliquid
without fault to-one-possessing force be-done nor in a-place sacred something
fiat. unde omnia interdicta aut restitutoria aut exhibitoria
be-done whence all interdicts either restitutory or exhibitory
aut prohibitoria uocantur.
or prohibitory are-called
141 Nec tamen cum quid iusserit fieri aut fieri
Nor however when anything he-has-ordered to-be-done or to-be-done
prohibuerit, statim peractum est negotium, sed ad iudicem
has-forbidden at-once carried-through is the-business but to a-judge
recuperatoresue itur et ibi editis formulis quaeritur, an
or-recuperators one-goes and there issued formulas it-is-asked whether
aliquid aduersus praetoris edictum factum sit, uel an
anything against the-praetor's edict done has-been or whether
factum non sit, quod is fieri iusserit. et modo cum
done not has-been what he to-be-done ordered and sometimes with
poena agitur, modo sine poena: cum poena, ueluti
penalty it-is-proceeded sometimes without penalty with penalty for-example
cum per sponsionem agitur, sine poena, ueluti cum
when by wager it-is-proceeded without penalty for-example when

arbiter petitur. et quidem ex prohibitoriis interdictis
an-arbiter is-requested and indeed from prohibitory interdicts
semper per sponsionem agi solet; ex restitutoriis
always by wager to-be-proceeded it-is-wont from restitutory
uero uel exhibitoriis modo per sponsionem, modo per
however or exhibitory sometimes by wager sometimes by
formulam agitur quae arbitraria uocatur.
formula it-is-proceeded which arbitrary is-called

Principalis igitur diuisio in eo est, quod aut prohibitoria 142
The-principal therefore division in this is that either prohibitory
sunt interdicta aut restitutoria aut exhibitoria.
are interdicts or restitutory or exhibitory

Sequens in eo est diuisio, quod uel adipiscendae possessionis 143
The-next in this is division that either of-obtaining possession
causa conparata sunt uel retinendae uel reciperandae.
for-the-sake devised they-are or of-retaining or of-recovering

Adipiscendae possessionis causa interdictum accommodatur 144
Of-obtaining possession for-the-sake an-interdict is-granted
bonorum possessori, cuius principium est 'quorum bonorum';
of-the-goods to-the-possessor whose beginning is of-which goods
eiusque uis et potestas haec est, ut quod quisque ex his
and-its force and power this is that what each-one of those
bonis quorum possessio alicui data est, pro herede aut pro
goods of-which possession to-someone given has-been as heir or as
possessore possideat, id ei cui bonorum possessio data
possessor possesses that to-him to-whom of-the-goods possession given
est restituatur. pro herede autem possidere uidetur tam is qui
has-been be-restored as heir however to-possess seems as he who
heres est, quam is qui putat se heredem esse: pro possessore
heir is as he who thinks himself heir to-be as possessor
is possidet qui sine causa aliquam rem hereditariam uel etiam
he possesses who without ground some thing of-the-inheritance or even

totam hereditatem sciens ad se non pertinere possidet.
the-whole inheritance knowing to himself not to-belong possesses
ideo autem adipiscendae possessionis uocatur interdictum,
for-this-reason however of-obtaining possession is-called the-interdict
quia ei tantum utile est, qui nunc primum conatur
because to-him only useful it-is who now first tries
adipisci rei possessionem. itaque si quis adeptus
to-obtain of-the-thing possession and-so if someone having-obtained
possessionem amiserit, desinit ei id interdictum utile esse.
possession has-lost-it ceases for-him that interdict useful to-be
145 Bonorum quoque emptori similiter proponitur interdictum
Of-the-goods also to-the-buyer similarly is-set-forth an-interdict
quod quidam possessorium uocant.
which some possessory call
146 Item ei, qui publica bona emerit, eiusdem condicionis
Likewise to-him who public goods has-bought of-the-same condition
interdictum proponitur quod appellatur sectorium, quod
an-interdict is-set-forth which is-called sectorian because
sectores uocantur qui publice bona mercantur.
sectores are-called (those)-who publicly goods buy
147 Interdictum quoque quod appellatur Saluianum adipiscendae
The-interdict also which is-called Salvian of-obtaining
possessionis causa conparatum est, eoque utitur dominus
possession for-the-sake devised is and-it uses the-owner
fundi de rebus coloni, quas is pro mercedibus fundi
of-land about the-things of-a-tenant which he for the-rents of-the-land
pignori futuras pepigisset.
as-pledge to-be had-agreed

Uti possidetis protects the faultless present possessor of land, utrubi the one who held a movable longer in the past year. We possess through tenants and depositaries, and retain by intention. Unde vi restores one violently ejected. Interdicts are simple, or double, as uti possidetis and utrubi, where each party is both.

Retinendae possessionis causa solet interdictum reddi, 148
Of-retaining possession for-the-sake is-wont an-interdict to-be-given
cum ab utraque parte de proprietate alicuius rei controuersia
when on each side about the-ownership of-some thing a-dispute
est, et ante quaeritur, uter ex litigatoribus possidere et
is and first it-is-asked which of the-litigants possess and
uter petere debeat; cuius rei gratia conparata sunt 'uti
which claim ought of-which thing for-the-sake devised are as
possidetis' et 'utrubi'.
you-possess and in-which-of-the-two
Et quidem 'uti possidetis' interdictum de fundi uel 149
And indeed as you-possess the-interdict about of-land or
aedium possessione redditur, 'utrubi' uero de
of-a-building possession is-given the-in-which-of-the-two however about
rerum mobilium possessione.
of-things movable possession
Et siquidem de fundo uel aedibus interdicitur, eum 150
And if-indeed about land or a-building an-interdict-is-issued him
potiorem esse praetor iubet, qui eo tempore quo
preferable to-be the-praetor orders who at-that time at-which
interdictum redditur nec ui nec clam nec precario
the-interdict is-given neither by-force nor secretly nor by-sufferance
ab aduersario possideat; si uero de re mobili, eum
from the-opponent possesses if however about a-thing movable him

potiorem esse iubet, qui maiore parte eius anni nec
preferable to-be he-orders who for-the-greater part of-that year neither
ui nec clam nec precario ab aduersario possederit; idque
by-force nor secretly nor by-sufferance from the-opponent has-possessed and-this
satis ipsis uerbis interdictorum significatur.
sufficiently by-the-very words of-the-interdicts is-made-clear

151 Sed in 'utrubi' interdicto non solum sua cuique
But in the-in-which-of-the-two interdict not only his-own to-each-one
possessio prodest, sed etiam alterius, quam iustum est ei
possession avails but also of-another which right is to-him
accedere, ueluti eius cui heres extiterit, eiusque a quo
to-be-added for-example of-him to-whom heir he-has-appeared and-of-him from whom
emerit uel ex donatione aut dotis nomine acceperit. itaque
he-has-bought or by gift or of-dowry by-title he-has-received and-so
si nostrae possessioni iuncta alterius iusta possessio exuperat
if to-our possession joined of-another a-just possession exceeds
aduersarii possessionem, nos eo interdicto uincimus. nullam
the-opponent's possession we by-that interdict win no
autem propriam possessionem habenti accessio temporis nec
however own possession to-one-having addition of-time neither
datur nec dari potest; nam ei quod nullum est nihil
is-given nor be-given can for to-that which nothing is nothing
accedere potest. sed et si uitiosam habeat possessionem, id
be-added can but also if faulty he-has possession that
est aut ui aut clam aut precario ab aduersario adquisitam,
is either by-force or secretly or by-sufferance from the-opponent acquired
non datur accessio; nam ei possessio sua nihil prodest.
not is-given addition for to-him the-possession his-own nothing avails

152 Annus autem retrorsus numeratur. itaque si tu uerbi gratia
The-year however backward is-counted and-so if you of-example for-the-sake
VIII mensibus possederis prioribus, et ego VII posterioribus,
for-eight months have-possessed the-former and I for-seven the-latter

ego potior ero, quod trium priorum mensium possessio nihil
I preferable shall-be because of-the-three former months the-possession nothing
tibi in hoc interdicto prodest, quod alterius anni possessio est.
to-you in this interdict avails because of-another year the-possession it-is
Possidere autem uidemur non solum si ipsi possideamus, 153
To-possess however we-are-held not only if ourselves we-possess
sed etiam si nostro nomine aliquis in possessione sit, licet
but also if in-our name someone in possession is although
is nostro iuri subiectus non sit, qualis est colonus et
he to-our right subject not be such-as is a-tenant and
inquilinus; per eos quoque, apud quos deposuerimus, aut
a-lodger through those also with whom we-have-deposited or
quibus commodauerimus, aut quibus gratuitam habitationem
to-whom we-have-lent or to-whom free lodging
praestiterimus, ipsi possidere uidemur. et hoc est quod
we-have-furnished ourselves to-possess we-are-held and this is what
uulgo dicitur retineri possessionem posse per quemlibet,
commonly is-said to-be-retained possession can through anyone
qui nostro nomine sit in possessione. quin etiam plerique
who in-our name is in possession indeed even most
putant animo quoque retineri possessionem, id est
think by-intention also to-be-retained possession that is
ut quamuis neque ipsi simus in possessione neque
that although neither we-ourselves are in possession nor
nostro nomine alius, tamen si non relinquendae possessionis
in-our name another yet if not of-relinquishing possession
animo, sed postea reuersuri inde discesserimus, retinere
with-the-intention but afterward about-to-return thence we-have-departed to-retain
possessionem uideamur. adipisci uero possessionem per quos
possession we-seem to-obtain however possession through whom

possimus, secundo commentario rettulimus. nec ulla dubitatio
we-can in-the-second commentary we-related nor any doubt
est, quin animo possessionem adipisci non possimus.
is but-that by-intention possession obtain not we-can
154 Reciperandae possessionis causa solet interdictum dari,
Of-recovering possession for-the-sake is-wont an-interdict to-be-given
si quis ex possessione ui deiectus sit; nam ei
if someone from possession by-force ejected has-been for to-him
proponitur interdictum, cuius principium est 'unde tu illum
is-set-forth the-interdict whose beginning is whence you that-one
ui deiecisti', per quod is qui deiecit cogitur ei restituere
by-force ejected through which he who ejected is-compelled to-him to-restore
rei possessionem, si modo is qui deiectus est nec ui
of-the-thing the-possession if only he who ejected was neither by-force
nec clam nec precario ab eo possederit; ∗∗∗ eum, qui a
nor secretly nor by-sufferance from him has-possessed (lacuna) him who from
me ui aut clam aut precario possidet, inpune deicio.
me by-force or secretly or by-sufferance possesses with-impunity I-eject
155 Interdum tamen etsi eum ui deiecerim, qui a me ui
Sometimes however even-if him by-force I-have-ejected who from me by-force
aut clam aut precario possederit, cogor ei restituere
or secretly or by-sufferance has-possessed I-am-compelled to-him to-restore
possessionem, ueluti si armis eum ui deiecerim; nam
the-possession for-example if with-arms him by-force I-have-ejected for
propter atrocitatem delicti in tantum patior actionem, ut
on-account-of the-atrocity of-the-delict to so-much I-suffer the-action that
omni modo debeam ei restituere possessionem. armorum
in-every way I-ought to-him to-restore the-possession of-arms
autem appellatione non solum scuta et gladios et galeas
however by-the-name not only shields and swords and helmets
significari intellegemus, sed et fustes et lapides.
to-be-signified we-shall-understand but also clubs and stones

Tertia diuisio interdictorum in hoc est, quod aut simplicia 156
The-third division of-interdicts in this is that either simple
sunt aut duplicia.
they-are or double

Simplicia sunt ueluti in quibus alter actor, alter reus 157
Simple are for-example (those)-in which one plaintiff the-other defendant
est, qualia sunt omnia restitutoria aut exhibitoria; namque
is such-as are all restitutory or exhibitory for
actor est, qui desiderat aut exhiberi aut restitui,
plaintiff is (he)-who desires either to-be-produced or to-be-restored
reus is est, a quo desideratur, ut exhibeat aut restituat.
defendant he is from whom it-is-desired that he-produce or restore

Prohibitoriorum autem interdictorum alia duplicia, alia 158
Of-prohibitory however interdicts some double others
simplicia sunt.
simple are

Simplicia sunt ueluti quibus prohibet praetor in loco 159
Simple are for-example (those)-by-which forbids the-praetor in a-place
sacro aut in flumine publico ripaue eius aliquid facere
sacred or in a-river public or-bank its anything to-do
reum; nam actor est qui desiderat, ne quid fiat,
the-defendant for plaintiff is (he)-who desires that-not anything be-done
reus is qui aliquid facere conatur.
defendant he who something to-do tries

Duplicia sunt ueluti 'uti possidetis' interdictum et 160
Double are for-example as you-possess the-interdict and
'utrubi'. ideo autem duplicia uocantur, quod
the-in-which-of-the-two for-this-reason however double they-are-called because
par utriusque litigatoris in his condicio est, nec quisquam
equal of-each litigant in these the-condition is nor anyone
praecipue reus uel actor intellegitur, sed unusquisque
specially defendant or plaintiff is-understood but each-one

tam rei quam actoris partes sustinet; quippe praetor
as-much of-defendant as of-plaintiff the-parts sustains since the-praetor
pari sermone cum utroque loquitur. nam summa conceptio
in-equal speech with each speaks for the-chief framing
eorum interdictorum haec est 'uti nunc possidetis, quominus
of-those interdicts this is as now you-possess that-not
ita possideatis, uim fieri ueto'; item alterius 'utrubi
so you-possess force to-be-done I-forbid likewise of-the-other in-which-of-the-two
hic homo de quo agitur maiore parte huius anni
this man about whom it-is-proceeded for-the-greater part of-this year
fuit, quominus is eum ducat, uim fieri ueto.'
has-been that-not he him lead-away force to-be-done I-forbid

XVIII · PROCEDURE ON INTERDICTS

On a restitutory or exhibitory interdict the defendant may ask an arbiter and risk nothing, or face wager and counter-wager. On uti possidetis the parties bid for interim possession, wager on the violence, and the winner of the bidding who loses must restore with penalties; secondary interdicts compel the reluctant.

161 Expositis generibus interdictorum sequitur, ut de ordine
Set-out the-kinds of-interdicts it-follows that about the-order
et de exitu eorum dispiciamus. et incipiamus a
and about the-outcome of-them we-consider and let-us-begin from
simplicibus.
the-simple

162 Si igitur restitutorium uel exhibitorium interdictum redditur,
If therefore a-restitutory or exhibitory interdict is-given
ueluti ut restituatur ei possessio qui ui deiectus
for-example that be-restored to-him the-possession who by-force ejected
est, aut exhibeatur libertus cui patronus operas indicere
has-been or be-produced a-freedman on-whom the-patron services to-impose

uellet, modo sine periculo res ad exitum perducitur,
wished sometimes without risk the-matter to the-outcome is-brought
modo cum periculo.
sometimes with risk
Namque si arbitrum postulauerit is cum quo agitur, 163
For if an-arbiter has-requested he with whom it-is-proceeded
accipit formulam quae appellatur arbitraria, et iudicis
he-receives a-formula which is-called arbitrary and at-the-judge's
arbitrio si quid restitui uel exhiberi debeat, id sine periculo
discretion if anything be-restored or be-produced ought that without risk
exhibet aut restituit, et ita absoluitur; quodsi nec restituat
he-produces or restores and so is-absolved but-if neither he-restores
neque exhibeat, quanti ea res est condemnatur. sed
nor produces at-as-much-as that thing is-worth he-is-condemned but
et actor sine poena experitur cum eo, quem neque
also the-plaintiff without penalty sues with him whom neither
exhibere neque restituere quicquam oportet, praeterquam
to-produce nor to-restore anything ought except
si calumniae iudicium ei oppositum fuerit decimae
if of-vexatious-suit an-action against-him set-against has-been of-a-tenth
partis. quamquam Proculo placuit denegandum calumniae
part although to-Proculus it-seemed-right to-be-refused of-vexatious-suit
iudicium ei qui arbitrum postulauerit, quasi hoc ipso
the-action to-him who an-arbiter has-requested as-if by-this very-act
confessus uideatur restituere se uel exhibere debere. sed
confessed he-may-seem to-restore himself or to-produce to-be-bound but
alio iure utimur, et recte; potius enim ut modestiore
other law we-use and rightly rather for that in-a-more-moderate
uia litiget, arbitrum quisque petit, quam quia confitetur.
way he-may-litigate an-arbiter each-one asks than because he-confesses

164 Obseruare autem debet is qui uult arbitrum petere, ut
Observe however ought he who wishes an-arbiter to-request that
statim petat, antequam ex iure exeat, id est antequam
at-once he-request before from court he-goes-out that is before
a praetore discedat; sero enim petentibus non indulgetur.
from the-praetor he-departs late for to-those-requesting not it-is-indulged
165 Itaque si arbitrum non petierit, sed tacitus de iure exierit,
And-so if an-arbiter not he-has-requested but silent from court has-gone-out
cum periculo res ad exitum perducitur. nam actor
with risk the-matter to the-outcome is-brought for the-plaintiff
prouocat aduersarium sponsione, quod contra edictum praetoris
challenges the-opponent with-a-wager that against the-edict of-the-praetor
non exhibuerit aut non restituerit; ille autem aduersus
not he-has-produced or not restored he however against
sponsionem aduersarii restipulatur. deinde actor quidem
the-wager of-the-opponent counter-stipulates then the-plaintiff indeed
sponsionis formulam edit aduersario, ille huic inuicem
of-the-wager the-formula issues to-the-opponent he to-this-one in-turn
restipulationis. sed actor sponsionis formulae subicit et
of-the-counter-stipulation but the-plaintiff to-the-wager's formula subjoins also
aliud iudicium de re restituenda uel exhibenda, ut si
another action about the-thing to-be-restored or to-be-produced so-that if
sponsione uicerit, nisi ei res exhibeatur aut restituatur,
by-the-wager he-has-won unless to-him the-thing be-produced or be-restored
∗∗∗ aliud facere quam qu∗∗∗dicat qu∗∗∗ appellata ∗∗∗
(lacuna) other to-do than wh(…)says wh(…) called (lacuna)
intelle ∗∗∗ qua ∗∗∗ modis ∗∗∗ paratus fuit ∗∗∗
understand (lacuna) by-which (lacuna) in-ways (lacuna) ready he-was (lacuna)
166 ∗∗∗ fructus licitando, is tantisper in possessione constituitur,
(lacuna) the-fruits by-bidding-for he meanwhile in possession is-placed
si modo aduersario suo fructuaria stipulatione cauerit,
if only to-opponent his by-fructuary stipulation he-has-given-security

cuius uis et potestas haec est, ut si contra eum de possessione
whose force and power this is that if against him about possession
pronuntiatum fuerit, eam summam aduersario soluat. haec
pronounced it-has-been that sum to-the-opponent he-pay this
autem licendi contentio fructus licitatio uocatur, scilicet quia
however bidding contest of-the-fruits bidding is-called of-course because
∗∗∗. postea alter alterum sponsione prouocat, quod aduersus
(lacuna) afterward one the-other with-a-wager challenges that against
edictum praetoris possidenti sibi uis facta sit, et inuicem
the-edict of-the-praetor possessing to-himself force done has-been and in-turn
ambo restipulantur aduersus sponsionem; uel ∗∗∗ una inter
both counter-stipulate against the-wager or (lacuna) one between
eos sponsio itemque restipulatio una ∗∗∗ ad eam fit. ∗∗∗
them wager and-likewise counter-stipulation one (lacuna) to it is-made (lacuna)
∗∗∗ resti ∗∗∗ iudex, apud quem de ea re 166a
(lacuna) counter-stipulation (lacuna) the-judge before whom about that matter
agitur, illud scilicet requirit, quod praetor interdicto
it-is-proceeded that of-course inquires which the-praetor in-the-interdict
conplexus est, id est uter eorum eum fundum easue aedes
embraced has that is which of-them that land or-that building
per id tempus quo interdictum redditur, nec ui nec
during that time at-which the-interdict is-given neither by-force nor
clam nec precario possederit. cum iudex id explorauerit
secretly nor by-sufferance has-possessed when the-judge that has-examined
et forte secundum me iudicatum sit, aduersarium
and perhaps in-favor-of me judged it-has-been the-opponent
mihi et sponsionis et restipulationis summas quas cum
to-me both of-the-wager and of-the-counter-stipulation in-the-sums which with
eo feci condemnat, et conuenienter me sponsionis et
him I-made he-condemns and consistently me of-the-wager and
restipulationis, quae mecum factae sunt, absoluit. et hoc
of-the-counter-stipulation which with-me made were he-absolves and this

amplius si apud aduersarium meum possessio est. quia is
further if with opponent my the-possession is because he
fructus licitatione uicit, nisi restituat mihi possessionem,
in-the-fruits' bidding won unless he-restores to-me the-possession
Cascelliano siue secutorio iudicio condemnatur.
by-the-Cascellian or secutory action he-is-condemned

167 Ergo is qui fructus licitatione uicit, si non probat ad
Therefore he who in-the-fruits' bidding won if not he-proves to
se pertinere possessionem, sponsionis et restipulationis
himself to-belong the-possession of-the-wager and of-the-counter-stipulation
et fructus licitationis summam poenae nomine soluere et
and of-the-fruits' bidding the-sum of-penalty by-title to-pay and
praeterea possessionem restituere iubetur; et hoc amplius
besides the-possession to-restore is-ordered and this further
fructus quos interea percepit reddit. summa enim fructus
the-fruits which meanwhile he-gathered he-returns the-sum for of-the-fruits'
licitationis non pretium est fructuum, sed poenae nomine
bidding not the-price is of-the-fruits but of-penalty by-title
soluitur, quod quis alienam possessionem per hoc tempus
is-paid because someone another's possession through this time
retinere et facultatem fruendi nancisci conatus est.
to-retain and the-power of-enjoying to-obtain tried has

168 Ille autem, qui fructus licitatione uictus est, si non
He however who in-the-fruits' bidding defeated has-been if not
probauerit ad se pertinere possessionem, tantum sponsionis
he-has-proved to himself to-belong the-possession only of-the-wager
et restipulationis summam poenae nomine debe.
and of-the-counter-stipulation the-sum of-penalty by-title owes

169 Admonendi tamen sumus liberum esse ei, qui fructus
To-be-reminded however we-are free to-be for-him who in-the-fruits'
licitatione uictus erit, omissa fructuaria stipulatione, sicut
bidding defeated shall-have-been omitted the-fructuary stipulation as

Cascelliano siue secutorio iudicio de possessione reciperanda
by-the-Cascellian or secutory action about possession being-recovered
experitur, ita similiter de fructus licitatione agere. in quam
he-sues so similarly about the-fruits' bidding to-sue for which
rem proprium iudicium conparatum est quod appellatur
matter a-proper action devised has-been which is-called
fructuarium, quo nomine actor iudicatum solui satis
fructuary by-which title the-plaintiff that-the-judgment be-paid security
accipit. dicitur autem et hoc iudicium secutorium, quod sequitur
receives is-called however also this action secutory because it-follows
sponsionis uictoriam; sed non aeque Cascellianum uocatur.
of-the-wager the-victory but not equally Cascellian it-is-called
Sed quia nonnulli interdicto reddito cetera ex interdicto 170
But because some the-interdict given the-rest from the-interdict
facere nolebant, atque ob id non poterat res
to-do were-unwilling and on-account-of this not could the-matter
expediri, praetor in eam rem prospexit et conparauit
be-settled the-praetor for that matter provided and devised
interdicta quae secundaria appellamus, quod secundo loco
interdicts which secondary we-call because in-the-second place
redduntur. quorum uis et potestas haec est, ut qui
they-are-given of-which the-force and power this is that (he)-who
cetera ex interdicto non faciat, ueluti qui uim non
the-rest from the-interdict not does for-example (he)-who force not
faciat aut fructus non liceatur aut qui fructus licitationis
does or the-fruits not bids-for or (he)-who of-the-fruits' bidding
satis non det aut si sponsiones non faciat sponsionumue
security not gives or if the-wagers not he-makes or-of-the-wagers
iudicia non accipiat, siue possideat, restituat aduersario
the-actions not accepts whether he-possesses let-him-restore to-the-opponent
possessionem, siue non possideat, uim illi possidenti
the-possession or not possesses force to-him possessing

ne faciat. itaque etsi alias potuerit interdicto 'uti
that-not he-do and-so even-if otherwise he-could by-the-interdict as
possidetis' uincere, si cetera ex interdicto *** per
you-possess win if the-rest from the-interdict (lacuna) through
interdictum secundarium *** secundarium *** quamuis
the-interdict secondary (lacuna) secondary (lacuna) although
hanc opinionem *** Sabinus et Cassius secuti fuerint ***
this opinion (lacuna) Sabinus and Cassius followed have (lacuna)

XIX · RESTRAINING VEXATIOUS SUITS

Defendants who deny are restrained by double actions, wagers, or the oath against vexation, and some actions are multiple from the start. Plaintiffs are restrained by the action for vexation at a tenth, which condemns only one who knew his suit was wrong, by oath, or by a counter-action or the counter-stipulation's penalty, which condemn any loser; only one is available at a time.

171 *** modo pecuniaria poena modo iurisiurandi religione
(lacuna) sometimes by-a-monetary penalty sometimes by-an-oath's religious-bond
***; eaque praetor *** aduersus infitiantes ex quibusdam
(lacuna) and-it the-praetor (lacuna) against those-denying from certain
causis dupli actio constituitur, ueluti si iudicati
causes of-double an-action is-established for-example if of-judgment
aut depensi aut damni iniuriae aut legatorum per
or of-money-paid-out or of-damage wrongful or of-legacies by
damnationem relictorum nomine agitur; ex quibusdam causis
condemnation left on-account-of it-is-sued from certain causes
sponsionem facere permittitur, ueluti de pecunia certa credita
a-wager to-make it-is-permitted for-example about money certain lent

et pecunia constituta; sed certae quidem creditae pecuniae
and money undertaken but of-certain indeed lent money
tertiae partis, constitutae uero pecuniae partis dimidiae.
of-a-third part of-undertaken however money of-the-part half
Quodsi neque sponsionis neque dupli actionis periculum 172
But-if neither of-a-wager nor of-a-double action the-risk
ei cum quo agitur iniungatur, ac ne statim quidem
on-him with whom it-is-proceeded is-imposed and not at-once even
ab initio pluris quam simpli sit actio, permittit praetor
from the-beginning of-more than single is the-action permits the-praetor
iusiurandum exigere 'non calumniae causa infitias ire.' unde
an-oath to-exact not of-vexation for-the-sake denial to-go whence
quamuis heredes uel qui heredum loco habentur,
although heirs or (those)-who of-heirs in-the-place are-held
∗∗∗ obligati sint, item feminae pupillique eximantur
(lacuna) bound are likewise women and-wards are-exempted
periculo sponsionis, iubet tamen eos iurare.
from-the-risk of-a-wager he-orders however them to-swear
Statim autem ab initio pluris quam simpli actio est 173
At-once however from the-beginning of-more than single the-action is
ueluti furti manifesti quadrupli, nec manifesti dupli,
for-example of-theft manifest of-fourfold of-not manifest of-double
concepti et oblati tripli. nam ex his causis et aliis quibusdam,
of-conceived and offered of-triple for from these causes and other certain
siue quis neget siue fateatur, pluris quam simpli est actio.
whether someone denies or confesses of-more than single is the-action
Actoris quoque calumnia coercetur modo calumniae 174
Of-the-plaintiff also the-vexation is-restrained sometimes of-vexation
iudicio, modo contrario, modo iureiurando, modo
by-the-action sometimes by-the-counter-action sometimes by-oath sometimes
restipulatione.
by-counter-stipulation

175 Et quidem calumniae iudicium aduersus omnes actiones
And indeed of-vexation the-action against all actions
locum habet, et est decimae partis, praeterquam quod
place has and is of-a-tenth part except that
aduersus adsertorem tertiae partis est.
against a-claimant-of-freedom of-a-third part it-is

176 Liberum est autem ei cum quo agitur, aut calumniae
Free it-is however for-him with whom it-is-proceeded either of-vexation
iudicium opponere aut iusiurandum exigere, non calumniae
the-action to-oppose or an-oath to-exact not of-vexation
causa agere.
for-the-sake to-sue

177 Contrarium autem iudicium ex certis causis constituitur,
The-counter however action from certain causes is-established
ueluti si iniuriarum agatur, et si cum muliere eo nomine
for-example if for-outrages it-is-sued and if with a-woman on-that account
agatur, quod dicatur uentris nomine in possessionem
it-is-sued that she-is-said of-the-womb on-account-of into possession
missa dolo malo ad alium possessionem transtulisse, et
sent by-fraud bad to another the-possession to-have-transferred and
si quis eo nomine agat, quod dicat se a praetore in
if someone on-that account sues that he-says himself by the-praetor into
possessionem missum ab alio quo admissum non esse.
possession sent by another anyone admitted not to-have-been
sed aduersus iniuriarum quidem actionem decimae partis
but against of-outrages indeed the-action of-a-tenth part
datur, aduersus uero duas istas quintae.
it-is-given against however two those of-a-fifth

178 Seuerior autem coercitio est per contrarium iudicium. nam
More-severe however the-restraint is by the-counter action for
calumniae iudicio decimae partis nemo damnatur nisi
of-vexation in-the-action of-a-tenth part no-one is-condemned except

qui intellegit non recte se agere, sed uexandi aduersarii
(he)-who understands not rightly himself to-sue but of-harassing the-opponent
gratia actionem instituit, potiusque ex iudicis errore uel
for-the-sake the-action has-instituted and-rather from of-the-judge the-error or
iniquitate uictoriam sperat quam ex causa ueritatis; calumnia
unfairness victory hopes than from the-cause of-truth vexation
enim in adfectu est, sicut furti crimen. contrario uero
for in intent is as of-theft the-charge in-the-counter however
iudicio omni modo damnatur actor, si causam non tenuerit,
action in-every way is-condemned the-plaintiff if the-case not he-has-held
licet aliqua opinione inductus crediderit se recte agere.
although by-some opinion induced he-believed himself rightly to-sue
Utique autem ex quibus causis contrario iudicio agi 179
Certainly however from which causes by-the-counter action to-be-proceeded
potest, etiam calumniae iudicium locum habet; sed alterutro
it-can also of-vexation the-action place has but by-one-or-other
tantum iudicio agere permittitur. qua ratione si iusiurandum
only action to-sue it-is-permitted by-which reasoning if an-oath
de calumnia exactum fuerit, quemadmodum calumniae
about vexation exacted has-been as of-vexation
iudicium non datur, ita et contrarium dari non debet.
the-action not is-given so also the-counter be-given not ought
Restipulationis quoque poena ex certis causis fieri 180
Of-counter-stipulation also the-penalty from certain causes to-be-made
solet; et quemadmodum contrario iudicio omni modo
is-wont and as by-the-counter action in-every way
condemnatur actor, si causam non tenuerit, nec requiritur,
is-condemned the-plaintiff if the-case not he-has-held nor is-it-asked
an scierit non recte se agere, ita etiam restipulationis
whether he-knew not rightly himself to-sue so also by-counter-stipulation's
poena omni modo damnatur actor, si uincere non potuerit.
penalty in-every way is-condemned the-plaintiff if win not he-could

181 Qui autem restipulationis poenam patitur, ei neque
(He)-who however of-counter-stipulation the-penalty suffers to-him neither
calumniae iudicium opponitur neque iurisiurandi religio
of-vexation the-action is-opposed nor of-an-oath the-religious-bond
iniungitur; nam contrarium iudicium ex his causis locum
is-imposed for the-counter action from these causes place
non habere palam est.
not to-have plain is

XX · INFAMY AND SUMMONS

Condemnation for theft, robbery, outrage, partnership, trust, tutelage, mandate, or deposit brings infamy, as does compounding for theft, robbery, or outrage; the infamous may not plead or act for others. One summoned must come, though parents and patrons may be summoned only with the praetor's leave. An unfinished case requires a recognizance, simple, with security, by oath, or before recuperators; those not to be summoned cannot be bound by one either.

182 Quibusdam iudiciis damnati ignominiosi fiunt, ueluti furti,
In-certain actions condemned infamous become for-example of-theft
ui bonorum raptorum, iniuriarum; item pro socio, fiduciae,
by-force of-goods seized of-outrages likewise for partner of-trust
tutelae, mandati, depositi. sed furti aut ui bonorum raptorum
of-tutelage of-mandate of-deposit but of-theft or by-force of-goods seized
aut iniuriarum non solum damnati notantur ignominia, sed
or of-outrages not only the-condemned are-marked with-infamy but
etiam pacti, ut in edicto praetoris scriptum est;
also (those)-who-compounded as in the-edict of-the-praetor written is
et recte: plurimum enim interest, utrum ex delicto aliquis
and rightly very-much for it-matters whether from delict someone
an ex contractu debitor sit. nec tamen ulla parte edicti
or from contract a-debtor is nor however in-any part of-the-edict

id ipsum nominatim exprimitur, ut aliquis ignominiosus sit;
that itself by-name is-expressed that someone infamous be
sed qui prohibetur et pro alio postulare et cognitorem
but (he)-who is-forbidden both for another to-plead and an-attorney
dare procuratoremue habere, item procuratorio aut cognitorio
to-give or-an-agent to-have likewise in-an-agent's or attorney's
nomine iudicio interuenire, ignominiosus esse dicitur.
name in-an-action to-intervene infamous to-be is-said

In summa sciendum est eum qui cum aliquo consistere 183
In sum to-be-known it-is him who with someone to-stand-trial
uelit in ius uocare oportere et eum qui uocatus est,
wishes into court to-summon to-be-bound and him who summoned is
si non uenerit, poenam ex edicto praetoris committere.
if not he-has-come a-penalty under the-edict of-the-praetor to-incur
quasdam tamen personas sine permissu praetoris in ius
certain however persons without the-permission of-the-praetor into court
uocare non licet, ueluti parentes patronos patronas,
to-summon not it-is-allowed for-example parents patrons patronesses
item liberos et parentes patroni patronaeue; et in
likewise the-children and parents of-a-patron or-patroness and against
eum qui aduersus ea egerit poena constituitur.
him who against these-rules has-acted a-penalty is-established

Cum autem in ius uocatus fuerit aduersarius neque eo 184
When however into court summoned has-been the-opponent nor on-that
die finiri potuerit negotium, uadimonium ei faciendum
day be-finished could the-business a-recognizance by-him to-be-made
est, id est ut promittat se certo die sisti.
is that is that he-promise himself on-a-fixed day to-appear

Fiunt autem uadimonia quibusdam ex causis pura, id est 185
Are-made however recognizances certain from causes simple that is
sine satisdatione, quibusdam cum satisdatione, quibusdam
without security in-certain with security in-certain

iureiurando, quibusdam recuperatoribus suppositis, id est
by-oath in-certain with-recuperators appointed that is
ut qui non steterit, is protinus a recuperatoribus in
that (he)-who not has-appeared be at-once by the-recuperators into
summam uadimonii condemnetur; eaque singula diligenter
the-sum of-the-recognizance be-condemned and-these each carefully
praetoris edicto significantur.
by-the-praetor's edict are-made-known

186 Et siquidem iudicati depensiue agetur, tanti fit
And if-indeed of-judgment or-of-money-paid-out it-shall-be-sued for-so-much is-made
uadimonium, quanti ea res erit; si uero ex ceteris
the-recognizance at-as-much-as that thing shall-be-worth if however from other
causis, quanti actor iurauerit non calumniae causa
causes at-as-much-as the-plaintiff has-sworn not of-vexation for-the-sake
postulare sibi uadimonium promitti. nec tamen pluris
to-demand to-himself the-recognizance to-be-promised nor however for-more
quam partis dimidiae, nec pluribus quam sestertium C
than of-the-part half nor for-more than sesterces a-hundred
M fit uadimonium. itaque si centum milium res
thousand is-made the-recognizance and-so if of-a-hundred thousand the-matter
erit, nec iudicati depensiue agetur, non plus quam
shall-be nor of-judgment or-of-money-paid-out it-shall-be-sued not more than
sestertium quinquaginta milium fit uadimonium.
sesterces fifty thousand is-made the-recognizance

187 Quas autem personas sine permissu praetoris inpune in
Which however persons without the-permission of-the-praetor with-impunity into
ius uocare non possumus, easdem nec uadimonio inuitas
court summon not we-can the-same not-even by-recognizance unwilling
obligare possumus praeterquam si praetor aditus permittat.
bind we-can except if the-praetor approached permits