LATIN SERIES · VOLUME 74

# The Institutes of Justinian

Justinian

# Institutiones

*The Institutes of Justinian*

*Books I–IV*

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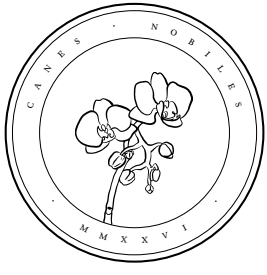
with a word-for-word interlinear English translation

preserving the original word order

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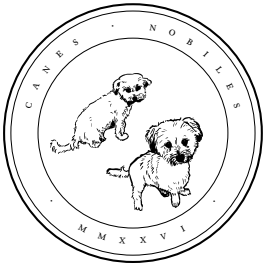


Volume 74 of the Canes Nobiles Latin interlinear texts

The Latin text follows Krüger's text in the Berlin
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## THE PROEM

*Justinian addresses the young students of law. Having subdued the barbarians and set the constitutions and the fifty books of the Digest in order, he had Tribonian, Theophilus, and Dorotheus compose these four books of Institutes from the old institutes, chiefly those of Gaius, so that students learn law from the emperor's voice from the first.*

Imperatoriam maiestatem non solum armis decoratam,
*The-imperial majesty not only with-arms adorned*
sed etiam legibus oportet esse armatam, ut utrumque
*but also with-laws it-behooves to-be armed so-that each*
tempus et bellorum et pacis recte possit gubernari et
*time and of-wars and of-peace rightly can be-governed and*
princeps Romanus victor existat non solum in hostilibus
*the-emperor Roman victor may-stand-forth not only in hostile*
proeliis, sed etiam per legitimos tramites calumniantium
*battles but also through lawful paths of-the-slanderers*
iniquitates expellens, et fiat tam iuris religiosissimus
*the-iniquities driving-out and may-become as of-justice most-scrupulous*
quam victis hostibus triumphator.
*as over-the-conquered enemies triumphant*
Quorum utramque viam cum summis vigiliis et summa 1
*Of-which each way with utmost vigils and utmost*
providentia adnuente deo perfecimus. et bellicos quidem
*foresight assenting God we-have-accomplished and warlike indeed*
sudores nostros barbaricae gentes sub iuga nostra deductae
*sweats our barbarous nations under the-yoke our brought*
cognoscunt et tam Africa quam aliae innumerosae provinciae
*know and both Africa and other countless provinces*
post tanta temporum spatia nostris victoriis a caelesti
*after so-great of-times spans by-our victories by heavenly*

numine praestitis iterum dicioni Romanae nostroque
*power granted again to-the-dominion Roman and-to-our*
additae imperio protestantur. omnes vero populi legibus
*added empire bear-witness all moreover peoples by-laws*
iam a nobis vel promulgatis vel compositis reguntur.
*now by us either promulgated or compiled are-ruled*

2 Et cum sacratissimas constitutiones antea confusas in
*And when the-most-sacred constitutions before confused into*
luculentam ereximus consonantiam, tunc nostram extendimus
*brilliant we-had-raised harmony then our we-extended*
curam et ad immensa prudentiae veteris volumina, et opus
*care also to the-immense of-the-prudence old volumes and the-work*
desperatum quasi per medium profundum euntes caelesti
*despaired-of as-if through the-middle deep going by-heavenly*
favore iam adimplevimus.
*favor now we-have-fulfilled*

3 Cumque hoc deo propitio peractum est, Triboniano viro
*And-when this God propitious accomplished was to-Tribonian a-man*
magnifico magistro et exquaestore sacri palatii nostri nec
*magnificent master and ex-quaestor of-the-sacred palace our and*
non Theophilo et Dorotheo viris illustribus antecessoribus,
*also to-Theophilus and Dorotheus men illustrious professors*
quorum omnium sollertiam et legum scientiam et circa
*of-whom of-all the-skill and of-the-laws the-knowledge and toward*
nostras iussiones fidem iam ex multis rerum argumentis
*our commands the-fidelity already from many of-matters proofs*
accepimus, convocatis specialiter mandavimus, ut nostra
*we-have-received summoned specially we-commanded that by-our*
auctoritate nostrisque suasionibus componant institutiones:
*authority and-by-our urgings they-should-compose institutes*
ut liceat vobis prima legum cunabula non ab
*so-that it-may-be-allowed for-you the-first of-the-laws cradles not from*

antiquis fabulis discere, sed ab imperiali splendore appetere et
*ancient fables to-learn but from imperial splendor to-seek and*
tam aures quam animae vestrae nihil inutile nihilque perperam
*both the-ears and the-minds your nothing useless and-nothing wrongly*
positum, sed quod in ipsis rerum optinet argumentis
*placed but what in the-very of-matters prevails proofs*
accipiant: et quod in priore tempore vix post quadriennium
*may-receive and what in former time scarcely after four-years*
prioribus contingebat, ut tunc constitutiones imperatorias
*to-earlier-men befell that then the-constitutions imperial*
legerent, hoc vos a primordio ingrediamini digni tanto
*they-read this you from the-beginning may-enter worthy of-so-great*
honore tantaque reperti felicitate, ut et initium vobis
*honor and-of-so-great found happiness that both the-beginning for-you*
et finis legum eruditionis a voce principali procedat.
*and the-end of-the-laws of-learning from the-voice of-the-prince may-proceed*
Igitur post libros quinquaginta digestorum seu pandectarum, 4
*Therefore after books fifty of-the-digest or of-the-pandects*
in quos omne ius antiquum collatum est (quos per
*into which all law ancient collected has-been which through*
eundem virum excelsum Tribonianum nec non ceteros viros
*the-same man exalted Tribonian and also other men*
illustres et facundissimos confecimus), in hos quattuor
*illustrious and most-eloquent we-completed into these four*
libros easdem institutiones partiri iussimus, ut sint
*books the-same institutes to-be-divided we-ordered so-that they-may-be*
totius legitimae scientiae prima elementa.
*of-all lawful knowledge the-first elements*

5 Quibus breviter expositum est et quod antea optinebat et
*In-which briefly set-forth is both what before prevailed and*
quod postea desuetudine inumbratum ab imperiali remedio
*what afterward by-disuse overshadowed by imperial remedy*
illuminatum est.
*lit-up has-been*

6 Quas ex omnibus antiquorum institutionibus et praecipue ex
*Which from all of-the-ancients institutes and especially from*
commentariis Gaii nostri tam institutionum quam rerum
*the-commentaries of-Gaius our both of-the-institutes and of-the-matters*
cottidianarum aliisque multis commentariis compositas cum
*daily and-other many commentaries composed when*
tres praedicti viri prudentes nobis optulerunt, et legimus
*the-three aforesaid men prudent to-us offered both we-read*
et cognovimus et plenissimum nostrarum constitutionum
*and we-examined and the-fullest of-our constitutions*
robur eis accommodavimus.
*force to-them we-have-applied*

7 Summa itaque ope et alacri studio has leges nostras accipite
*With-utmost therefore power and eager zeal these laws our accept*
et vosmet ipsos sic eruditos ostendite, ut spes vos pulcherrima
*and you yourselves so learned show that hope you most-beautiful*
foveat toto legitimo opere perfecto posse etiam nostram
*may-cherish the-whole legal work completed to-be-able also our*
rem publicam in partibus eius vobis credendis gubernare.
*the-thing public in the-parts its to-you to-be-entrusted to-govern*
Data undecimo kalendas Decembres Constantinopoli domino
*Given on-the-eleventh kalends of-December at-Constantinople the-lord*
nostro Iustiniano perpetuo Augusto tertium consule.
*our Justinian perpetual Augustus for-the-third-time consul*

# BOOK I

## I · JUSTICE AND LAW

*Justice is the constant will to give each his right; jurisprudence the knowledge of things divine and human and of the just and unjust. The law is best taught simply first and in detail afterward. Its precepts are to live honorably, harm no one, and give each his own; it is public or private, and the private is drawn from natural law, the law of nations, and civil law.*

Iustitia est constans et perpetua voluntas ius suum cuique
*Justice is the-constant and perpetual will right his-own to-each*
tribuens.
*assigning*

Iuris prudentia est divinarum atque humanarum rerum 1
*Of-law the-wisdom is of-divine and human things*
notitia, iusti atque iniusti scientia.
*the-knowledge of-the-just and unjust the-science*

His generaliter cognitis et incipientibus nobis exponere iura 2
*These generally learned and beginning we to-expound the-laws*
populi Romani ita maxime videntur posse tradi
*of-the-people Roman thus most they-seem to-be-able to-be-handed-on*
commodissime, si primo levi ac simplici, post deinde
*most-conveniently if first in-a-light and simple then next*
diligentissima atque exactissima interpretatione singula
*in-a-most-careful and most-exact interpretation the-several-points*
tradantur. alioquin si statim ab initio rudem adhuc et
*are-handed-on otherwise if at-once from the-beginning the-untrained still and*
infirmum animum studiosi multitudine ac varietate rerum
*weak mind of-the-student with-a-multitude and variety of-things*
oneraverimus, duorum alterum aut desertorem studiorum
*we-shall-have-burdened of-two one either a-deserter of-studies*

efficiemus aut cum magno labore eius, saepe etiam cum
*we-shall-make or with great toil his often also with*
diffidentia, quae plerumque iuvenes avertit, serius ad id
*distrust which most-often the-young turns-away later to that*
perducamus, ad quod leniore via ductus sine magno
*we-shall-bring to which by-a-gentler road led without great*
labore et sine ulla diffidentia maturius perduci potuisset.
*toil and without any distrust sooner brought he-could-have-been*

3 Iuris praecepta sunt haec: honeste vivere, alterum non
*Of-law the-precepts are these honorably to-live another not*
laedere, suum cuique tribuere.
*to-harm his-own to-each to-assign*

4 Huius studii duae sunt positiones, publicum et privatum.
*Of-this study two are the-branches public and private*
publicum ius est, quod ad statum rei Romanae spectat,
*public law is what to the-state of-the-thing Roman looks*
privatum, quod ad singulorum utilitatem pertinet. dicendum
*private what to of-individuals the-advantage pertains to-be-spoken-of*
est igitur de iure privato, quod est tripertitum: collectum
*it-is therefore of law private which is threefold collected*
est enim ex naturalibus praeceptis aut gentium aut civilibus
*it-is for from natural precepts or of-nations or civil*

*Natural law is what nature teaches all animals; the law of nations is what natural reason sets among all men, the source of wars, slavery, and most contracts; civil law is each state's own. Roman law is written, in statutes, plebiscites, decrees of the senate, the emperor's enactments, magistrates' edicts, and jurists' opinions, or unwritten, in custom. Natural laws are fixed; civil laws change. All law concerns persons, things, or actions.*

Ius naturale est, quod natura omnia animalia docuit. nam
*Law natural is what nature all animals has-taught for*
ius istud non humani generis proprium est, sed omnium
*law that not of-the-human race peculiar is but of-all*
animalium, quae in caelo, quae in terra, quae in mari
*animals which in the-sky which on the-earth which in the-sea*
nascuntur. hinc descendit maris atque feminae coniugatio,
*are-born hence descends of-male and female the-union*
quam nos matrimonium appellamus, hinc liberorum procreatio
*which we matrimony call hence of-children the-procreation*
et educatio: videmus etenim cetera quoque animalia istius
*and rearing we-see indeed the-other also animals of-that*
iuris peritia censeri.
*law with-the-skill to-be-reckoned*

Ius autem civile vel gentium ita dividitur: omnes populi, 1
*Law however civil or of-nations thus is-divided all peoples*
qui legibus et moribus reguntur, partim suo proprio,
*who by-laws and by-customs are-ruled partly their-own particular*
partim communi omnium hominum iure utuntur: nam quod
*partly the-common of-all men law use for what*
quisque populus ipse sibi ius constituit, id ipsius
*each people itself for-itself as-law establishes that of-that-very*
proprium civitatis est vocaturque ius civile, quasi ius
*the-own of-the-state is and-is-called law civil as-if law*

proprium ipsius civitatis: quod vero naturalis ratio inter
*the-own of-that-very state what however natural reason among*
omnes homines constituit, id apud omnes populos peraeque
*all men has-established that among all peoples equally*
custoditur vocaturque ius gentium, quasi quo iure omnes
*is-observed and-is-called law of-nations as-if by-which law all*
gentes utuntur. et populus itaque Romanus partim suo
*nations use and 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 sunt, suis locis proponemus.
*which individually of-what-kind they-are in-their-own places we-shall-set-out*

2 Sed ius quidem civile ex unaquaque civitate appellatur,
*But law indeed civil from each state is-named*
veluti Atheniensium: nam si quis velit Solonis vel
*for-example of-the-Athenians for if anyone should-wish of-Solon or*
Draconis leges appellare ius civile Atheniensium, non
*of-Draco the-laws to-call law civil of-the-Athenians not*
erraverit. sic enim et ius, quo populus Romanus
*he-will-have-erred thus for also the-law which the-people Roman*
utitur, ius civile Romanorum appellamus: vel ius Quiritium,
*uses law civil of-the-Romans we-call or law of-the-Quirites*
quo Quirites utuntur: Romani enim a Quirino Quirites
*which the-Quirites use the-Romans for from Quirinus Quirites*
appellantur. sed quotiens non addimus, cuius sit civitatis,
*are-called but whenever not we-add of-which it-is state*
nostrum ius significamus: sicuti cum poetam dicimus nec
*our law we-signify just-as when the-poet we-say and-not*
addimus nomen, subauditur apud Graecos egregius Homerus,
*we-add the-name it-is-understood among the-Greeks the-excellent Homer*
apud nos Vergilius. ius autem gentium omni humano generi
*among us Virgil law however of-nations to-all human race*

commune est. nam usu exigente et humanis necessitatibus
*common is for by-use requiring and by-human necessities*
gentes humanae quaedam sibi constituerunt: bella etenim
*nations human certain-things for-themselves established wars indeed*
orta sunt et captivitates secutae et servitutes, quae sunt iuri
*arisen have and captivities followed and slaveries which are to-law*
naturali contrariae. iure enim naturali ab initio omnes
*natural contrary by-law for natural from the-beginning all*
homines liberi nascebantur. ex hoc iure gentium et omnes
*men free were-born from this law of-nations also all*
paene contractus introducti sunt, ut emptio venditio, locatio
*almost contracts introduced were as purchase sale letting*
conductio, societas, depositum, mutuum et alii innumerabiles.
*hiring partnership deposit loan and others innumerable*
Constat autem ius nostrum aut ex scripto aut ex non 3
*Consists however law our either of written or of not*
scripto, ut apud Graecos: τῶν νόμων οἱ μὲν
*written as among the-Greeks of-the laws some on-the-one-hand*
ἔγγραφοι, οἱ δὲ ἄγραφοι. Scriptum ius est lex,
*written others on-the-other unwritten Written law is statute*
plebi scita, senatus consulta, principum placita,
*of-the-commons resolutions of-the-senate decrees of-the-emperors pleasures*
magistratuum edicta, responsa prudentium.
*of-the-magistrates edicts the-opinions of-the-jurists*
Lex est, quod populus Romanus senatore magistratu 4
*A-statute is what the-people Roman a-senator magistrate*
interrogante, veluti consule, constituebat. plebi scitum
*questioning for-example a-consul used-to-establish of-the-commons a-resolution*
est, quod plebs plebeio magistratu interrogante, veluti
*is what the-commons a-plebeian magistrate questioning for-example*
tribuno, constituebat. plebs autem a populo eo
*a-tribune used-to-establish the-commons however from the-people in-this*

differt, quo species a genere: nam appellatione populi
*differs in-which the-species from the-genus for by-the-name of-the-people*
universi cives significantur connumeratis etiam patriciis
*all-together the-citizens are-signified included also the-patricians*
et senatoribus: plebis autem appellatione sine patriciis
*and senators of-the-commons however by-the-name without the-patricians*
et senatoribus ceteri cives significantur. sed et plebi
*and senators the-other citizens are-signified but also of-the-commons*
scita lege Hortensia lata non minus valere quam
*the-resolutions by-the-statute Hortensian passed not less to-be-valid than*
leges coeperunt.
*statutes began*

5 Senatus consultum est, quod senatus iubet atque constituit.
*Of-the-senate a-decree is what the-senate orders and establishes*
nam cum auctus est populus Romanus in eum modum,
*for when increased was the-people Roman to that measure*
ut difficile sit in unum eum convocare legis sanciendae
*that difficult it-is into one it to-convoke of-a-statute to-be-sanctioned*
causa, aequum visum est senatum vice populi consuli.
*for-the-sake fair seemed it-has the-senate in-place of-the-people to-be-consulted*

6 Sed et quod principi placuit, legis habet vigorem, cum
*But also what to-the-emperor has-pleased of-a-statute has the-force since*
lege regia, quae de imperio eius lata est, populus
*by-the-statute royal which concerning the-command his passed was the-people*
ei et in eum omne suum imperium et potestatem
*to-him and onto him all its-own command and power*
concessit. quodcumque igitur imperator per epistulam
*has-conceded whatever therefore the-emperor by letter*
constituit vel cognoscens decrevit vel edicto praecepit, legem
*has-established or examining has-decreed or by-edict has-commanded a-statute*
esse constat: haec sunt, quae constitutiones appellantur. plane
*to-be it-is-agreed these are what constitutions are-called clearly*

ex his quaedam sunt personales, quae nec ad exemplum
*of these some are personal which not to a-precedent*
trahuntur, quoniam non hoc princeps vult: nam quod alicui
*are-drawn since not this the-emperor wishes for what to-someone*
ob merita indulsit, vel si cui poenam irrogavit, vel si
*for merits he-has-granted or if on-someone a-penalty he-has-imposed or if*
cui sine exemplo subvenit, personam non egreditur. aliae
*someone without precedent he-has-helped the-person not goes-beyond others*
autem, cum generales sunt, omnes procul dubio tenent.
*however since general they-are all beyond doubt hold*
Praetorum quoque edicta non modicam iuris optinent 7
*Of-the-praetors also the-edicts no modest of-law hold*
auctoritatem. haec etiam ius honorarium solemus appellare,
*authority these also law honorary we-are-accustomed to-call*
quod qui honores gerunt, id est magistratus, auctoritatem
*because those-who honors bear that is the-magistrates authority*
huic iuri dederunt. proponebant et aediles curules edictum de
*to-this law gave used-to-publish also the-aediles curule an-edict about*
quibusdam casibus, quod edictum iuris honorarii portio est.
*certain cases which edict of-the-law honorary a-portion is*
Responsa prudentium sunt sententiae et opiniones eorum, 8
*The-opinions of-the-jurists are the-judgments and views of-those*
quibus permissum erat iura condere. nam antiquitus
*to-whom permitted it-was laws to-found for anciently*
institutum erat, ut essent qui iura publice
*established it-was that there-should-be those-who the-laws publicly*
interpretarentur, quibus a Caesare ius respondendi datum
*should-interpret to-whom by Caesar the-right of-answering given*
est, qui iuris consulti appellabantur. quorum omnium
*was who of-law consultants were-called of-whom of-all*

sententiae et opiniones eam auctoritatem tenent, ut iudici
*the-judgments and views that authority hold that for-a-judge*
recedere a responso eorum non liceat, ut est constitutum.
*to-depart from the-opinion of-them not it-is-allowed as it-is established*

9 Ex non scripto ius venit, quod usus comprobavit. nam
*From not written law comes which use has-approved for*
diuturni mores consensu utentium comprobati legem
*long-standing customs by-the-consent of-those-using approved a-statute*
imitantur.
*imitate*

10 Et non ineleganter in duas species ius civile distributum
*And not inelegantly into two species law civil divided*
videtur. nam origo eius ab institutis duarum civitatium,
*it-seems for the-origin its from the-institutions of-two states*
Athenarum scilicet et Lacedaemonis, fluxisse videtur:
*of-Athens namely and of-Lacedaemon to-have-flowed it-seems*
in his enim civitatibus ita agi solitum erat, ut
*in these for states thus to-be-done accustomed it-was that*
Lacedaemonii quidem magis ea, quae pro legibus
*the-Lacedaemonians indeed rather those-things which for laws*
observarent, memoriae mandarent, Athenienses vero ea,
*they-observed to-memory entrusted the-Athenians however those-things*
quae in legibus scripta reprehendissent, custodirent.
*which in the-laws written they-had-found kept*

11 Sed naturalia quidem iura, quae apud omnes gentes peraeque
*But natural indeed laws which among all nations equally*
servantur, divina quadam providentia constituta semper firma
*are-observed by-divine a-certain providence established always firm*
atque immutabilia permanent: ea vero, quae ipsa sibi
*and immutable remain those however which itself for-itself*

quaeque civitas constituit, saepe mutari solent vel
*each state establishes often to-be-changed are-accustomed either*
tacito consensu populi vel alia postea lege lata.
*by-tacit consent of-the-people or another afterward a-statute passed*
Omne autem ius, quo utimur, vel ad personas pertinet 12
*All however the-law which we-use either to persons pertains*
vel ad res vel ad actiones. ac prius de personis videamus.
*or to things or to actions and first about persons let-us-see*
nam parum est ius nosse, si personae, quarum causa
*for little it-is the-law to-know if the-persons for-whose sake*
statutum est, ignorentur.
*established it-is are-unknown*

## III · THE LAW OF PERSONS

*All men are free or slaves. Freedom is the natural power to do what one pleases unless force or law forbids; slavery is an institution of the law of nations against nature. Slaves are born of slave women or made by capture or by a free man's selling himself; among the free some are freeborn, some freedmen.*

Summa itaque divisio de iure personarum haec est,
*The-chief therefore division concerning the-law of-persons this is*
quod omnes homines aut liberi sunt aut servi.
*that all men either free are or slaves*
Et libertas quidem est, ex qua etiam liberi vocantur, 1
*And freedom indeed is from which also free they-are-called*
naturalis facultas eius quod cuique facere libet, nisi si
*the-natural faculty of-that which to-each to-do it-pleases unless if*
quid aut vi aut iure prohibetur.
*anything either by-force or by-law is-prevented*

2 Servitus autem est constitutio iuris gentium, qua quis
*Slavery however is an-institution of-the-law of-nations by-which anyone*
dominio alieno contra naturam subicitur.
*to-the-ownership of-another against nature is-subjected*

3 Servi autem ex eo appellati sunt, quod imperatores
*Slaves however from this named have-been that the-commanders*
captivos vendere iubent ac per hoc servare nec occidere
*captives to-sell order and through this to-preserve and-not to-kill*
solent. qui etiam mancipia dicti sunt, quod ab hostibus
*are-accustomed who also mancipia called have-been because from the-enemy*
manu capiuntur.
*by-hand they-are-taken*

4 Servi autem aut nascuntur aut fiunt. nascuntur ex
*Slaves however either are-born or are-made they-are-born of*
ancillis nostris: fiunt aut iure gentium, id est
*female-slaves our they-are-made either by-the-law of-nations that is*
ex captivitate, aut iure civili, cum homo liber maior
*from captivity or by-the-law civil when a-man free older*
viginti annis ad pretium participandum sese venumdari
*than-twenty years to the-price to-be-shared himself to-be-sold*
passus est. in servorum condicione nulla differentia est.
*allowed has in of-slaves the-condition no difference is*

5 In liberis multae differentiae sunt. aut enim ingenui
*Among the-free many differences there-are either for freeborn*
sunt aut libertini.
*they-are or freedmen*

## IV · THE FREEBORN

*The freeborn are free from birth, of free or freed parents; a child is free if its mother was free at birth, conception, or any time between, and Marcellus holds the same of a slave woman freed while pregnant. A freeborn person who has been in slavery and then manumitted keeps his birth.*

Ingenuus is est, qui statim ut natus est liber est, sive ex
*Freeborn he is who immediately as born he-is free is whether from*
duobus ingenuis matrimonio editus, sive ex libertinis, sive
*two freeborn in-matrimony brought-forth or from freedmen or*
ex altero libertino altero ingenuo. sed et si quis ex matre
*from one a-freedman the-other freeborn but even if anyone from a-mother*
libera nascatur, patre servo, ingenuus nihilo minus nascitur:
*free is-born the-father a-slave freeborn by-nothing less he-is-born*
quemadmodum qui ex matre libera et incerto patre
*just-as he-who from a-mother free and an-uncertain father*
natus est, quoniam vulgo conceptus est. sufficit autem
*born is since promiscuously conceived he-is it-suffices however*
liberam fuisse matrem eo tempore quo nascitur, licet
*free to-have-been the-mother at-that time at-which he-is-born although*
ancilla conceperit. et ex contrario si libera conceperit,
*a-slave-woman she-conceived and on the-contrary if free she-conceived*
deinde ancilla facta pariat, placuit eum qui nascitur
*then a-slave-woman made she-gives-birth it-was-held him who is-born*
liberum nasci, quia non debet calamitas matris ei nocere,
*free to-be-born because not ought the-misfortune of-the-mother him to-harm*
qui in utero est. ex his et illud quaesitum est, si ancilla
*who in the-womb is from these also that asked was if a-slave-woman*
praegnans manumissa sit, deinde ancilla postea facta
*pregnant manumitted has-been then a-slave-woman afterward made*

peperit, liberum an servum pariat? et Marcellus probat
*has-given-birth free or slave she-bears and Marcellus approves*
liberum nasci: sufficit enim ei qui in ventre est liberam
*free to-be-born it-suffices for for-him who in the-belly is a-free*
matrem vel medio tempore habuisse: quod et verum est.
*mother even in-the-middle time to-have-had which also true is*
1 Cum autem ingenuus aliquis natus sit, non officit illi in
*When however freeborn someone born has-been not it-harms him in*
servitute fuisse et postea manumissum esse: saepissime
*slavery to-have-been and afterward manumitted to-have-been very-often*
enim constitutum est natalibus non officere manumissionem.
*for established it-has-been to-birth not to-harm manumission*

## V · FREEDMEN

*Freedmen are those manumitted from lawful slavery, a grant of the law of nations. Manumission is made in church, by the rod, among friends, by letter, or by will. The old three grades, citizens, Junian Latins, and dediticii, are abolished: Justinian has made every freedman a Roman citizen.*

Libertini sunt, qui ex iusta servitute manumissi sunt.
*Freedmen are those-who from lawful slavery manumitted have-been*
manumissio autem est datio libertatis: nam quamdiu quis
*manumission however is the-giving of-freedom for as-long-as anyone*
in servitute est, manui et potestati suppositus est, et
*in slavery is to-the-hand and power subject he-is and*
manumissus liberatur potestate. quae res a iure gentium
*manumitted he-is-freed from-the-power which thing from the-law of-nations*
originem sumpsit, utpote cum iure naturali omnes liberi
*origin took inasmuch-as since by-law natural all free*
nascerentur nec esset nota manumissio, cum servitus
*were-born and-not was known manumission since slavery*

esset incognita: sed posteaquam iure gentium servitus
*was unknown but after-that by-the-law of-nations slavery*
invasit, secutum est beneficium manumissionis. et cum uno
*invaded followed has the-benefit of-manumission and while by-one*
communi nomine homines appellaremur, iure gentium tria
*common name men we-were-called by-the-law of-nations three*
genera hominum esse coeperunt, liberi et his contrarium
*kinds of-men to-be began the-free and their opposite*
servi et tertium genus libertini, qui desierant esse servi.
*slaves and a-third kind freedmen who had-ceased to-be slaves*
Multis autem modis manumissio procedit: aut enim ex 1
*In-many however ways manumission proceeds either for from*
sacris constitutionibus in sacrosanctis ecclesiis aut vindicta
*sacred constitutions in most-holy churches or by-the-rod*
aut inter amicos aut per epistulam aut per testamentum
*or among friends or by letter or by testament*
aut aliam quamlibet ultimam voluntatem. sed et aliis
*or another any last will but also in-other*
multis modis libertas servo competere potest, qui tam ex
*many ways freedom to-a-slave belong can which both from*
veteribus quam nostris constitutionibus introducti sunt.
*old and our constitutions introduced have-been*
Servi vero a dominis semper manumitti solent: adeo 2
*Slaves moreover by masters always to-be-manumitted are-accustomed so-far*
ut vel in transitu manumittantur, veluti cum praetor
*that even in passing they-may-be-manumitted for-example when the-praetor*
aut proconsul aut praeses in balneum vel in theatrum eat.
*or proconsul or governor into the-bath or into the-theater goes*
Libertinorum autem status tripertitus antea fuerat: nam 3
*Of-freedmen however the-status threefold before had-been for*
qui manumittebantur, modo maiorem et iustam libertatem
*those-who were-manumitted sometimes a-greater and lawful freedom*

consequebantur et fiebant cives Romani, modo minorem et
*obtained and became citizens Roman sometimes a-lesser and*
Latini ex lege Iunia Norbana fiebant, modo inferiorem
*Latins by the-statute Junian Norbanan they-became sometimes an-inferior*
et fiebant ex lege Aelia Sentia dediticiorum numero.
*and they-became by the-statute Aelian Sentian of-the-dediticii in-the-number*
sed dediticiorum quidem pessima condicio iam ex multis
*but of-the-dediticii indeed the-worst condition already from many*
temporibus in desuetudinem abiit, Latinorum vero nomen
*times into disuse has-gone of-the-Latins moreover the-name*
non frequentabatur: ideoque nostra pietas omnia augere et in
*not was-frequented and-therefore our piety all-things to-increase and into*
meliorem statum reducere desiderans in duabus constitutionibus
*a-better state to-bring-back desiring in two constitutions*
hoc emendavit et in pristinum statum reduxit, quia
*this has-amended and to the-former state has-brought-back because*
et a primis urbis Romae cunabulis una atque simplex
*also from the-first of-the-city of-Rome cradles one and simple*
libertas competebat, id est eadem, quam habebat manumissor,
*freedom belonged that is the-same which had the-manumitter*
nisi quod scilicet libertinus fit qui manumittitur,
*except that namely a-freedman becomes he-who is-manumitted*
licet manumissor ingenuus sit. et dediticios quidem per
*although the-manumitter freeborn be and the-dediticii indeed through*
constitutionem expulimus, quam promulgavimus inter nostras
*a-constitution we-have-expelled which we-promulgated among our*
decisiones, per quas suggerente nobis Triboniano viro excelso
*decisions through which suggesting to-us Tribonian a-man exalted*
quaestore antiqui iuris altercationes placavimus: Latinos
*the-quaestor of-the-ancient law the-disputes we-have-calmed the-Latins*
autem Iunianos et omnem quae circa eos fuerit observantiam
*however Junian and all which around them has-been observance*

alia constitutione per eiusdem quaestoris suggestionem
*by-another constitution through of-the-same quaestor the-suggestion*
correximus, quae inter imperiales radiat sanctiones, et
*we-have-corrected which among the-imperial shines enactments and*
omnes libertos nullo nec aetatis manumissi nec dominii
*all freedmen no neither of-age of-the-manumitted nor of-ownership*
manumissoris nec in manumissionis modo discrimine habito,
*of-the-manumitter nor in of-manumission the-manner distinction held*
sicuti antea observabatur, civitate Romana donavimus:
*as before was-observed with-the-citizenship Roman we-have-presented*
multis additis modis, per quos possit libertas servis cum
*many added ways through which can freedom to-slaves with*
civitate Romana, quae sola in praesenti est, praestari.
*the-citizenship Roman which alone at present is to-be-granted*

## VI · WHO MAY NOT MANUMIT

*A manumission in fraud of creditors is void under the Aelian Sentian statute, though an insolvent may make his slave his free and necessary heir, and a slave instituted heir without a grant of freedom is free all the same. Fraud needs both intent and insolvency. A master under twenty frees only by the rod, for a lawful cause approved before the council, and an approved cause is not reopened; Justinian lets a master of seventeen free by will.*

Non tamen cuicumque volenti manumittere licet. nam
*Not however to-anyone wishing to-manumit it-is-allowed for*
is qui in fraudem creditorum manumittit nihil agit, quia
*he who in fraud of-creditors manumits nothing achieves because*
lex Aelia Sentia impedit libertatem.
*the-statute Aelian Sentian prevents freedom*

1 Licet autem domino, qui solvendo non est, testamento
*It-is-allowed however for-a-master who solvent not is by-testament*
servum suum cum libertate heredem instituere, ut
*slave his-own with freedom heir to-institute so-that*
fiat liber heresque ei solus et necessarius, si modo
*he-may-become free and-heir to-him sole and necessary if only*
nemo alius ex eo testamento heres extiterit, aut quia
*no-one else from that testament heir has-become either because*
nemo heres scriptus sit, aut quia is qui scriptus est qualibet
*no-one heir written is or because he who written is any*
ex causa heres non extiterit. idque eadem lege Aelia
*from cause heir not has-become and-this by-the-same statute Aelian*
Sentia provisum est et recte: valde enim prospiciendum
*Sentian provided-for has-been and rightly very for to-be-provided-for*
erat, ut egentes homines, quibus alius heres extaturus non
*it-was that needy men to-whom another heir about-to-be not*
esset, vel servum suum necessarium heredem habeant,
*was at-least slave their-own as-necessary heir may-have*
qui satisfacturus esset creditoribus, aut hoc eo non faciente
*who about-to-satisfy should-be the-creditors or this he not doing*
creditores res hereditarias servi nomine vendant, ne
*the-creditors the-things of-the-inheritance the-slave's in-name may-sell lest*
iniuria defunctus afficiatur.
*with-injury the-deceased be-affected*

2 Idemque iuris est et si sine libertate servus heres institutus
*And-the-same of-law it-is also if without freedom a-slave heir instituted*
est. quod nostra constitutio non solum in domino, qui
*has-been which our constitution not only in a-master who*
solvendo non est, sed generaliter constituit nova humanitatis
*solvent not is but generally has-established by-a-new of-humanity*
ratione, ut ex ipsa scriptura institutionis etiam libertas
*reason so-that from the-very writing of-the-institution also freedom*

ei competere videatur, cum non est verisimile eum, quem
*to-him to-belong may-seem since not it-is likely that-he whom*
heredem sibi elegit, si praetermiserit libertatis dationem,
*heir for-himself he-chose if he-had-omitted of-freedom the-giving*
servum remanere voluisse et neminem sibi heredem fore.
*a-slave to-remain to-have-wished and no-one for-himself heir to-be*
In fraudem autem creditorum manumittere videtur, qui 3
*In fraud however of-creditors to-manumit he-seems who*
vel iam eo tempore quo manumittit solvendo non
*either already at-that time at-which he-manumits solvent not*
est, vel qui datis libertatibus desiturus est solvendo esse.
*is or who given the-freedoms about-to-cease is solvent to-be*
praevaluisse tamen videtur, nisi animum quoque fraudandi
*to-have-prevailed however it-seems unless the-intention also of-defrauding*
manumissor habuit, non impediri libertatem, quamvis bona
*the-manumitter had not to-be-hindered freedom although the-goods*
eius creditoribus non sufficiant: saepe enim de facultatibus
*his for-the-creditors not suffice often for about the-means*
suis amplius quam in his est sperant homines. itaque
*their-own more than in them there-is hope men therefore*
tunc intellegimus impediri libertatem, cum utroque modo
*then we-understand to-be-hindered freedom when in-both ways*
fraudantur creditores, id est et consilio manumittentis et
*are-defrauded the-creditors that is both by-the-design of-the-manumitter and*
ipsa re, eo quod bona non suffectura sunt creditoribus.
*by-the-very fact in-this that the-goods not about-to-suffice are for-the-creditors*
Eadem lege Aelia Sentia domino minori annis viginti 4
*By-the-same statute Aelian Sentian for-a-master younger than-years twenty*
non aliter manumittere permittitur, quam si vindicta apud
*not otherwise to-manumit is-permitted than if by-the-rod before*

consilium iusta causa manumissionis adprobata fuerint
*the-council a-lawful cause of-manumission approved they-shall-have-been*
manumissi.
*manumitted*

5 Iustae autem manumissionis causae sunt, veluti si
*Lawful however of-manumission causes are for-example if*
quis patrem aut matrem aut filium filiamve aut fratrem
*anyone a-father or mother or son or-daughter or brother*
sororemve naturales aut paedagogum nutricem educatorem
*or-sister natural or tutor nurse foster-father*
aut alumnum alumnamve aut collactaneum manumittat, aut
*or foster-son or-foster-daughter or foster-brother manumits or*
servum procuratoris habendi gratia, aut ancillam matrimonii
*a-slave an-agent to-have for-the-sake or a-female-slave of-matrimony*
causa, dum tamen intra sex menses uxor ducatur, nisi iusta
*for-the-sake provided however within six months a-wife she-is-taken unless a-lawful*
causa impediat, et qui manumittitur procuratoris habendi
*cause prevents and who is-manumitted an-agent to-have*
gratia ne minor septem et decem annis manumittatur.
*for-the-sake not younger than-seven and ten years be-manumitted*

6 Semel autem causa adprobata, sive vera sive falsa sit, non
*Once however the-cause approved whether true or false it-be not*
retractatur.
*is-reopened*

7 Cum ergo certus modus manumittendi minoribus viginti
*Since therefore a-fixed limit of-manumitting for-younger than-twenty*
annis dominis per legem Aeliam Sentiam constitutus sit,
*years masters by the-statute Aelian Sentian established was*
eveniebat, ut, qui quattuordecim annos aetatis expleverit,
*it-came-about that he-who fourteen years of-age has-completed*
licet testamentum facere possit et in eo heredem sibi
*although a-testament 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 annis viginti, libertatem servo dare non poterat.
*he-is than-years twenty freedom to-a-slave to-give not he-could*
quod non erat ferendum, si is, cui totorum bonorum in
*which not was to-be-borne if he to-whom of-all-the goods in*
testamento dispositio data erat, uni servo libertatem dare
*a-testament the-disposition given was to-one slave freedom to-give*
non permittebatur. quare nos similiter ei quemadmodum
*not was-permitted wherefore we likewise to-him just-as*
alias res ita et servos suos in ultima voluntate disponere
*other things so also slaves his-own in his-last will to-dispose*
quemadmodum voluerit permittimus, ut et libertatem
*as he-wishes permit so-that also freedom*
eis possit praestare. sed cum libertas inaestimabilis est
*to-them he-can grant but since freedom inestimable is*
et propter hoc ante vicesimum aetatis annum antiquitas
*and on-account-of this before the-twentieth of-age year antiquity*
libertatem servo dari prohibebat: ideo nos mediam
*freedom to-a-slave to-be-given forbade therefore we a-middle*
quodammodo viam eligentes non aliter minori viginti
*in-some-measure road choosing not otherwise to-a-younger than-twenty*
annis libertatem in testamento dare servo suo concedimus,
*years freedom in a-testament to-give to-a-slave his-own we-concede*
nisi septimum et decimum annum impleverit et octavum
*unless the-seventh and tenth year has-completed and the-eighth*
decimum tetigerit. cum enim antiquitas huiusmodi aetati et
*tenth has-touched since for antiquity of-this-kind to-an-age even*
pro aliis postulare concessit, cur non etiam sui iudicii
*for others to-plead has-conceded why not also of-his-own judgment*

stabilitas ita eos adiuvare credatur, ut et ad libertates
*the-firmness so them to-help is-believed that also to freedoms*
dandas servis suis possint provenire
*to-be-given to-slaves their-own they-can come-forward*

## VII · THE FUFIAN CANINIAN STATUTE ABOLISHED

*The Fufian Caninian statute limited the number of slaves freed by will; Justinian abolishes it, since it was inhuman to let the living free a whole household and deny the dying the same.*

Lege Fufia Caninia certus modus constitutus erat in servis
*By-the-statute Fufian Caninian a-fixed limit established had-been in slaves*
testamento manumittendis. quam quasi libertatibus impedientem
*by-testament to-be-manumitted which as-if freedoms hindering*
et quodammodo invidam tollendam esse censuimus, cum satis
*and in-some-measure invidious to-be-abolished to-be we-have-decided since quite*
fuerat inhumanum vivos quidem licentiam habere totam
*it-had-been inhuman the-living indeed the-license to-have their-whole*
suam familiam libertate donare, nisi alia causa impediat
*own household with-freedom to-present unless another cause prevent*
libertati, morientibus autem huiusmodi licentiam adimere.
*freedom to-the-dying however of-this-kind a-license to-take-away*

## VIII · PERSONS INDEPENDENT AND DEPENDENT

*Some persons are independent, some subject to another, either to parents or to masters. Masters' power over slaves is of the law of nations, and what a slave acquires is the master's; but Antoninus Pius punished a master's killing his own slave, and his rescript to Aelius Marcianus orders cruelly treated slaves sold.*

Sequitur de iure personarum alia divisio. nam quaedam
*Follows concerning the-law of-persons another division for some*
personae sui iuris sunt, quaedam alieno iuri subiectae
*persons of-their-own right are some to-another's right subject*
sunt: rursus earum, quae alieno iuri subiectae sunt, aliae
*are again of-those who to-another's right subject are some*
in potestate parentum, aliae in potestate dominorum sunt.
*in the-power of-parents others in the-power of-masters are*
videamus itaque de his quae alieno iuri subiectae sunt:
*let-us-see therefore about those who to-another's right subject are*
nam si cognoverimus, quae istae personae sint, simul
*for if we-shall-have-learned what those persons are at-once*
intellegemus, quae sui iuris sunt. ac prius dispiciamus
*we-shall-understand which of-their-own right are and first let-us-consider*
de his qui in potestate dominorum sunt.
*about those who in the-power of-masters are*
In potestate itaque dominorum sunt servi (quae quidem 1
*In the-power therefore of-masters are slaves which indeed*
potestas iuris gentium est: nam apud omnes peraeque
*power of-the-law of-nations is for among all equally*
gentes animadvertere possumus dominis in servos vitae
*nations to-notice we-can for-masters over slaves of-life*

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

2 Sed hoc tempore nullis hominibus, qui sub imperio nostro
*But at-this time to-no men who under the-rule our*
sunt, licet sine causa legibus cognita et supra modum
*are it-is-allowed without a-cause by-the-laws recognized and beyond measure*
in servos suos saevire. nam ex constitutione divi Pii
*against slaves their-own to-rage for from the-constitution of-the-deified Pius*
Antonini qui sine causa servum suum occiderit, non minus
*Antoninus who without cause a-slave his-own has-killed not less*
puniri iubetur, quam qui servum alienum occiderit. sed et
*to-be-punished is-ordered than he-who a-slave another's has-killed but also*
maior asperitas dominorum eiusdem principis constitutione
*the-greater harshness of-masters of-the-same emperor by-a-constitution*
coercetur. nam consultus a quibusdam praesidibus provinciarum
*is-restrained for consulted by certain governors of-provinces*
de his servis, qui ad aedem sacram vel ad statuas principum
*about those slaves who to the-temple sacred or to the-statues of-the-emperors*
confugiunt, praecepit ut, si intolerabilis videatur dominorum
*flee he-instructed that if intolerable seem of-the-masters*
saevitia, cogantur servos bonis condicionibus vendere, ut
*the-cruelty they-be-compelled the-slaves on-good terms to-sell so-that*
pretium dominis daretur, et recte: expedit enim rei
*the-price to-the-masters be-given and rightly it-is-expedient for for-the-thing*
publicae, ne quis re sua male utatur. cuius rescripti
*public that-not anyone thing his-own badly use of-which rescript*
ad Aelium Marcianum emissi verba haec sunt: 'Dominorum
*to Aelius Marcianus issued the-words these are Of-masters*
quidem potestatem in suos servos illibatam esse oportet
*indeed the-power over their-own slaves unimpaired to-be it-behooves*

nec cuiquam hominum ius suum detrahi. sed dominorum
*nor from-any of-men right his-own to-be-taken-away but of-the-masters*
interest, ne auxilium contra saevitiam vel famem vel
*it-concerns that-not help against cruelty or hunger or*
intolerabilem iniuriam denegetur his qui iuste deprecantur.
*intolerable injury be-denied to-those who justly entreat*
ideoque cognosce de querellis eorum, qui ex familia
*and-therefore examine about the-complaints of-those who from the-household*
Iulii Sabini ad statuam confugerunt, et si vel durius
*of-Julius Sabinus to the-statue have-fled and if either more-harshly*
habitos, quam aequum est, vel infami iniuria affectos
*treated than fair is or with-infamous injury afflicted*
cognoveris, veniri iube. ita ut in potestatem domini
*you-shall-have-found to-be-sold order so that into the-power of-the-master*
non revertantur. qui Sabinus, si meae constitutioni fraudem
*not they-return who Sabinus if my constitution fraud*
fecerit, sciet me admissum severius exsecuturum.'
*he-shall-have-made he-will-know me the-offense more-severely about-to-pursue*

## IX · PATERNAL POWER

*Children of lawful marriage are in their father's power. Marriage is the union of man and woman in an undivided life. Such power is peculiar to Roman citizens; a son's children are in the grandfather's power, a daughter's in their own father's.*

In potestate nostra sunt liberi nostri, quos ex iustis
*In the-power our are the-children our whom from lawful*
nuptiis procreaverimus.
*marriage we-have-begotten*

1 Nuptiae autem sive matrimonium est viri et mulieris
*Marriage however or matrimony is of-a-man and of-a-woman*
coniunctio, individuam consuetudinem vitae continens.
*the-union an-undivided intimacy of-life containing*

2 Ius autem potestatis, quod in liberos habemus, proprium
*The-right however of-power which over children we-have peculiar*
est civium Romanorum: nulli enim alii sunt homines, qui
*is of-citizens Roman no for other are men who*
talem in liberos habeant potestatem, qualem nos habemus.
*such over children have power as we have*

3 Qui igitur ex te et uxore tua nascitur, in tua potestate est:
*Who therefore from you and wife your is-born in your power is*
item qui ex filio tuo et uxore eius nascitur, id est nepos
*likewise who from a-son your and wife his is-born that is grandson*
tuus et neptis, aeque in tua sunt potestate, et pronepos
*your and granddaughter equally in your are power and great-grandson*
et proneptis et deinceps ceteri. qui tamen ex filia
*and great-granddaughter and in-succession the-rest who however from a-daughter*
tua nascitur, in tua potestate non est, sed in patris eius.
*your is-born in your power not is but in of-the-father his*

## X · MARRIAGE

*Citizens marry lawfully at puberty with their parents' consent. Marriage is barred between ascendants and descendants, siblings, and certain in-laws; a union against these rules is no marriage, and a natural son is legitimated by a later dowry deed.*

Iustas autem nuptias inter se cives Romani contrahunt,
*Lawful however marriage among themselves citizens Roman contract*
qui secundum praecepta legum coeunt, masculi quidem
*who according-to the-precepts of-the-laws unite males indeed*

puberes, feminae autem viripotentes, sive patres familias sint
*of-age females however marriageable whether fathers of-families they-be*
sive filii familias, dum tamen filii familias et consensum
*or sons of-families provided however sons of-families also the-consent*
habeant parentum, quorum in potestate sunt. nam hoc fieri
*have of-the-parents of-whom in power they-are for this to-be-done*
debere et civilis et naturalis ratio suadet in tantum, ut
*ought both civil and natural reason urges so far that*
iussum parentis praecedere debeat. unde quaesitum est, an
*the-order of-the-parent precede ought whence asked it-was whether*
furiosi filia nubere aut furiosi filius uxorem ducere
*of-a-madman the-daughter to-marry or of-a-madman the-son a-wife to-take*
possit? cumque super filio variabatur, nostra processit decisio,
*could and-since concerning the-son opinion-varied our came-forth decision*
qua permissum est ad exemplum filiae furiosi
*by-which permitted it-was on the-pattern of-the-daughter of-a-madman*
filium quoque posse et sine patris interventu matrimonium
*the-son also to-be-able even without the-father's intervention matrimony*
sibi copulare secundum datum ex constitutione modum.
*for-himself to-join according-to the-given by the-constitution manner*
Ergo non omnes nobis uxores ducere licet: nam quarundam 1
*Therefore not all to-us wives to-take is-allowed for from-certain*
nuptiis abstinendum est. inter eas enim personas, quae
*marriages to-be-abstained it-is between those for persons who*
parentum liberorumve locum inter se optinent, nuptiae
*of-parents or-of-children the-place between themselves hold marriages*
contrahi non possunt, veluti inter patrem et filiam vel
*be-contracted not can as between father and daughter or*
avum et neptem vel matrem et filium vel aviam et
*grandfather and granddaughter or mother and son or grandmother and*
nepotem et usque ad infinitum: et si tales personae inter
*grandson and even to infinity and if such persons between*

se coierint, nefarias atque incestas nuptias contraxisse
*themselves have-united unspeakable and incestuous marriage to-have-contracted*
dicuntur. et haec adeo ita sunt, ut, quamvis per adoptionem
*they-are-said and these so-far thus are that although through adoption*
parentum liberorumve loco sibi esse coeperint, non
*of-parents or-of-children in-the-place to-each-other to-be they-have-begun not*
possint inter se matrimonio iungi in tantum, ut etiam
*they-can between themselves in-matrimony be-joined so far that even*
dissoluta adoptione idem iuris maneat: itaque eam, quae
*dissolved the-adoption the-same of-law remains therefore her who*
tibi per adoptionem filia aut neptis esse coeperit,
*to-you through adoption daughter or granddaughter to-be has-begun*
non poteris uxorem ducere, quamvis eam emancipaveris.
*not you-will-be-able as-wife to-take although her you-have-emancipated*
2 Inter eas quoque personas, quae ex transverso gradu
*Between those also persons who from the-transverse degree*
cognationis iunguntur, est quaedam similis observatio, sed
*of-kinship are-joined there-is a-certain similar observance but*
non tanta. sane enim inter fratrem sororemque nuptiae
*not so-great indeed for between brother and-sister marriages*
prohibitae sunt, sive ab eodem patre eademque matre
*forbidden are whether from the-same father and-the-same mother*
nati fuerint, sive ex alterutro eorum. sed si qua
*born they-be or from either of-them but if any-woman*
per adoptionem soror tibi esse coeperit, quamdiu quidem
*through adoption sister to-you to-be has-begun as-long-as indeed*
constat adoptio, sane inter te et eam nuptiae consistere
*stands the-adoption indeed between you and her marriage exist*
non possunt: cum vero per emancipationem adoptio
*not can when however through emancipation the-adoption*
dissoluta sit, poteris eam uxorem ducere: sed et si
*dissolved has-been you-will-be-able her as-wife to-take but also if*

tu emancipatus fueris, nihil est impedimento nuptiis. et
*you emancipated have-been nothing is in-the-way to-the-marriage and*
ideo constat, si quis generum adoptare velit, debere eum
*therefore it-is-agreed if anyone a-son-in-law to-adopt wishes to-be-obliged him*
ante filiam suam emancipare: et si quis velit nurum
*first daughter his-own to-emancipate and if anyone wishes a-daughter-in-law*
adoptare, debere eum ante filium emancipare.
*to-adopt to-be-obliged him first son to-emancipate*

Fratris vel sororis filiam uxorem ducere non licet. sed 3
*Of-a-brother or of-a-sister the-daughter as-wife to-take not is-allowed but*
nec neptem fratris vel sororis ducere quis potest,
*neither the-granddaughter of-a-brother or of-a-sister to-take anyone can*
quamvis quarto gradu sint. cuius enim filiam uxorem
*although in-the-fourth degree they-are of-whom for the-daughter as-wife*
ducere non licet, eius neque neptem permittitur. eius
*to-take not is-allowed of-him neither the-granddaughter it-is-permitted of-that*
vero mulieris, quam pater tuus adoptavit, filiam non
*however woman whom father your has-adopted the-daughter not*
videris impediri uxorem ducere, quia neque naturali neque
*you-seem to-be-prevented as-wife to-take because neither by-natural nor*
civili iure tibi coniungitur.
*by-civil law to-you she-is-joined*

Duorum autem fratrum vel sororum liberi vel fratris 4
*Of-two however brothers or sisters the-children or of-a-brother*
et sororis iungi possunt.
*and of-a-sister be-joined can*

Item amitam licet adoptivam uxorem ducere non licet, 5
*Likewise a-paternal-aunt although adoptive as-wife to-take not is-allowed*
item materteram, quia parentum loco habentur. qua
*likewise a-maternal-aunt because of-parents in-the-place they-are-held by-which*

ratione verum est magnam quoque amitam et materteram
*reasoning true it-is a-great also paternal-aunt and maternal-aunt*
magnam prohiberi uxorem ducere.
*great to-be-forbidden as-wife to-take*

6 Adfinitatis quoque veneratione quarundam nuptiis abstinere
*Of-affinity also out-of-respect from-certain marriages to-abstain*
necesse est. ut ecce privignam aut nurum uxorem
*necessary it-is as for-instance a-stepdaughter or a-daughter-in-law as-wife*
ducere non licet, quia utraeque filiae loco sunt.
*to-take not it-is-allowed because both of-a-daughter in-the-place are*
quod scilicet ita accipi debeat, si fuit nurus aut
*which namely so to-be-understood ought if she-was a-daughter-in-law or*
privigna: nam si adhuc nurus est, id est si adhuc
*a-stepdaughter for if still daughter-in-law she-is that is if still*
nupta est filio tuo, alia ratione uxorem eam ducere
*married she-is to-son your for-another reason as-wife her to-take*
non possis, quia eadem duobus nupta esse non potest:
*not you-could because the-same-woman to-two married to-be not can*
item si adhuc privigna tua est, id est si mater eius
*likewise if still stepdaughter your she-is that is if the-mother her*
tibi nupta est, ideo eam uxorem ducere non poteris,
*to-you married is therefore her as-wife to-take not you-will-be-able*
quia duas uxores eodem tempore habere non licet.
*because two wives at-the-same time to-have not is-allowed*

7 Socrum quoque et novercam prohibitum est uxorem ducere,
*A-mother-in-law also and a-stepmother forbidden it-is as-wife to-take*
quia matris loco sunt quod et ipsum dissoluta demum
*because of-a-mother in-the-place they-are which also itself dissolved only-then*
adfinitate procedit: alioquin si adhuc noverca est, id est si adhuc
*the-affinity holds otherwise if still stepmother she-is that is if still*
patri tuo nupta est, communi iure impeditur tibi nubere,
*to-father your married she-is by-common law she-is-prevented to-you to-marry*

quia eadem duobus nupta esse non potest: item si adhuc
*because the-same-woman to-two married to-be not can likewise if still*
socrus est, id est si adhuc filia eius tibi nupta est,
*mother-in-law she-is that is if still the-daughter her to-you married is*
ideo impediuntur nuptiae, quia duas uxores habere non possis.
*therefore are-prevented the-marriage because two wives to-have not you-could*
Mariti tamen filius ex alia uxore et uxoris filia ex alio 8
*Of-a-husband however the-son by another wife and of-a-wife the-daughter by another*
marito vel contra matrimonium recte contrahunt, licet habeant
*husband or the-reverse matrimony rightly contract although they-have*
fratrem sororemve ex matrimonio postea contracto natos.
*a-brother or-sister from the-matrimony afterward contracted born*
Si uxor tua post divortium ex alio filiam procreaverit, 9
*If wife your after divorce by another a-daughter has-begotten*
haec non est quidem privigna tua: sed Iulianus huiusmodi
*she not is indeed stepdaughter your but Julian of-this-kind*
nuptiis abstinere debere ait: nam nec sponsam filii
*from-marriages to-abstain to-be-obliged says for neither the-betrothed of-a-son*
nurum esse nec patris sponsam novercam esse,
*a-daughter-in-law to-be nor of-a-father the-betrothed a-stepmother to-be*
rectius tamen et iure facturos eos, qui huiusmodi
*more-rightly however and lawfully to-be-about-to-act those who of-this-kind*
nuptiis se abstinuerint.
*from-marriages themselves have-abstained*
Illud certum est serviles quoque cognationes impedimento 10
*That certain is servile also kinships an-impediment*
esse nuptiis, si forte pater et filia aut frater et soror
*to-be to-marriage if perchance father and daughter or brother and sister*
manumissi fuerint.
*manumitted have-been*

11 Sunt et aliae personae, quae propter diversas rationes
*There-are also other persons who on-account-of various reasons*
nuptias contrahere prohibentur, quas in libris digestorum
*marriage to-contract are-forbidden whom in the-books of-the-digest*
seu pandectarum ex veteri iure collectarum enumerari
*or of-the-pandects from ancient law collected to-be-listed*
permisimus.
*we-have-permitted*

12 Si adversus ea quae diximus aliqui coierint, nec vir
*If against those-things which we-have-said any have-united neither husband*
nec uxor nec nuptiae nec matrimonium nec dos intellegitur.
*nor wife nor marriage nor matrimony nor dowry is-understood*
itaque ii, qui ex eo coitu nascuntur, in potestate patris
*therefore those who from that union are-born in the-power of-the-father*
non sunt, sed tales sunt, quantum ad patriam potestatem
*not are but such they-are as-far-as to paternal power*
pertinet, quales sunt ii, quos mater vulgo concepit. nam
*pertains as are those whom the-mother promiscuously conceived for*
nec hi patrem habere intelleguntur, cum is etiam incertus est:
*neither these a-father to-have are-understood since he also uncertain is*
unde solent filii spurii appellari, vel a Graeca voce
*whence they-are-accustomed sons spurious to-be-called either from the-Greek word*
quasi σποράδην concepti vel quasi sine patre filii. sequitur
*as-if sporadically conceived or as-if without a-father sons it-follows*
ergo, ut et dissoluto tali coitu nec dotis exactioni
*therefore that also dissolved such a-union neither for-the-dowry's recovery*
locus sit. qui autem prohibitas nuptias coeunt, et alias
*room there-is those-who however forbidden marriages contract also other*
poenas patiuntur, quae sacris constitutionibus continentur.
*penalties suffer which in-the-sacred constitutions are-contained*

Aliquando autem evenit, ut liberi, qui statim ut nati sunt 13
*Sometimes however it-happens that children who immediately as born they-are*
in potestate parentum non fiant, postea tamen redigantur
*in the-power of-the-parents not become afterward however are-brought*
in potestatem. qualis est is, qui, dum naturalis fuerat,
*into power such is he who while natural he-had-been*
postea curiae datus potestati patris subicitur. nec non
*afterward to-the-council given to-the-power of-the-father is-subjected and also*
is, qui a muliere libera procreatus, cuius matrimonium
*he who from a-woman free begotten whose matrimony*
minime legibus interdictum fuerat, sed ad quam pater
*not-at-all by-the-laws forbidden had-been but with whom the-father*
consuetudinem habuerat, postea ex nostra constitutione
*intimacy had-had afterward by our constitution*
dotalibus instrumentis compositis in potestate patris
*dowry instruments drawn-up in the-power of-the-father*
efficitur: quod et aliis, si ex eodem matrimonio fuerint
*is-made which also to-others if from the-same matrimony they-have-been*
procreati, similiter nostra constitutio praebuit.
*begotten likewise our constitution has-afforded*

*Adoption is by imperial rescript, which adrogates an independent person, or by a magistrate's command, for one in power. A son given in adoption to an outsider stays in his natural father's power; given to an ascendant he passes into the adopter's. Adrogating a child under age needs inquiry, security, and a quarter of the goods if he is cast off. The adopter must be older by full puberty; eunuchs may adopt, women only by imperial grace, and a slave whom his master names his son is free.*

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

1 Adoptio autem duobus modis fit, aut principali rescripto
*Adoption however in-two ways takes-place either by-the-imperial rescript*
aut imperio magistratus. imperatoris auctoritate adoptamus
*or by-the-command of-a-magistrate the-emperor's by-authority we-adopt*
eos easve, qui quaeve sui iuris sunt. quae species
*those or-those who or-who of-their-own right are which species*
adoptionis dicitur adrogatio. imperio magistratus adoptamus
*of-adoption is-called adrogation by-the-command of-a-magistrate we-adopt*
eos easve, qui quaeve in potestate parentium sunt, sive
*those or-those who or-who in the-power of-parents are whether*
primum gradum liberorum optineant, qualis est filius filia, sive
*the-first degree of-children they-hold such-as is son daughter or*
inferiorem, qualis est nepos neptis, pronepos proneptis.
*a-lower such-as is grandson granddaughter great-grandson great-granddaughter*

2 Sed hodie ex nostra constitutione, cum filius familias a
*But today by our constitution when a-son of-a-family by*
patre naturali extraneae personae in adoptionem datur, iura
*the-father natural to-an-outside person in adoption is-given the-rights*

potestatis naturalis patris minime dissolvuntur nec quidquam
*of-the-power natural of-the-father not-at-all are-dissolved nor anything*
ad patrem adoptivum transit nec in potestate eius est, licet
*to the-father adoptive passes nor in power his he-is although*
ab intestato iura successionis ei a nobis tributa sunt. si
*on intestacy rights of-succession to-him by us granted have-been if*
vero pater naturalis non extraneo, sed avo filii sui
*however the-father natural not to-an-outsider but to-the-grandfather of-son his*
materno, vel si ipse pater naturalis fuerit emancipatus, etiam
*maternal or if himself the-father natural has-been emancipated also*
paterno, vel proavo simili modo paterno vel materno
*paternal or to-the-great-grandfather in-like manner paternal or maternal*
filium suum dederit in adoptionem: in hoc casu quia in
*son his-own gives in adoption in this case because in*
unam personam concurrunt et naturalia et adoptionis iura,
*one person concur both the-natural and of-adoption rights*
manet stabile ius patris adoptivi et naturali vinculo
*remains firm the-right of-the-father adoptive both by-natural bond*
copulatum et legitimo adoptionis modo constrictum, ut
*joined and by-the-lawful of-adoption mode bound so-that*
et in familia et in potestate huiusmodi patris adoptivi sit.
*both in the-family and in the-power of-such a-father adoptive he-is*
Cum autem impubes per principale rescriptum adrogatur, 3
*When however one-under-age through imperial rescript is-adrogated*
causa cognita adrogatio permittitur et exquiritur causa
*the-cause examined the-adrogation is-permitted and is-inquired the-cause*
adrogationis, an honesta sit expediatque pupillo, et
*of-the-adrogation whether honorable it-is and-it-benefits the-ward and*
cum quibusdam condicionibus adrogatio fit, id est ut
*with certain conditions the-adrogation takes-place that is that*
caveat adrogator personae publicae, hoc est tabulario,
*should-give-security the-adrogator to-a-person public that is to-a-notary*

si intra pubertatem pupillus decesserit, restituturum se
*if within puberty the-ward has-died to-be-about-to-restore himself*
bona illis, qui, si adoptio facta non esset, ad successionem
*the-goods to-those who if the-adoption made not had-been to the-succession*
eius venturi essent. item non alias emancipare eos potest
*his about-to-come would-be likewise not otherwise to-emancipate them can*
adrogator, nisi causa cognita digni emancipatione fuerint
*the-adrogator unless the-cause examined worthy of-emancipation they-have-been*
et tunc sua bona eis reddat. sed et si decedens
*and then their-own goods to-them he-is-to-return but also if dying*
pater eum exheredaverit vel vivus sine iusta causa eum
*the-father him has-disinherited or living without a-lawful cause him*
emancipaverit, iubetur quartam partem ei suorum bonorum
*has-emancipated he-is-ordered the-fourth part to-him of-his-own goods*
relinquere, videlicet praeter bona, quae ad patrem adoptivum
*to-leave namely besides the-goods which to the-father adoptive*
transtulit et quorum commodum ei adquisivit postea.
*he-transferred and of-which the-profit for-him he-acquired afterward*

4 Minorem natu non posse maiorem adoptare placet: adoptio
*The-younger by-birth not to-be-able the-elder to-adopt it-is-held adoption*
enim naturam imitatur et pro monstro est, ut maior
*for nature imitates and as a-monstrosity it-is that older*
sit filius quam pater. debet itaque is, qui sibi per
*should-be the-son than the-father ought therefore he who for-himself through*
adrogationem vel adoptionem filium facit, plena pubertate,
*adrogation or adoption a-son makes by-full puberty*
id est decem et octo annis praecedere.
*that is ten and eight years to-precede*

Licet autem et in locum nepotis vel neptis vel 5
*It-is-allowed however also in the-place of-a-grandson or of-a-granddaughter or*
in locum pronepotis vel proneptis vel deinceps
*in the-place of-a-great-grandson or of-a-great-granddaughter or further-on*
adoptare, quamvis filium quis non habeat.
*to-adopt although a-son anyone not has*
Et tam filium alienum quis in locum nepotis potest 6
*And both a-son another's anyone in the-place of-a-grandson can*
adoptare, quam nepotem in locum filii.
*adopt and a-grandson in the-place of-a-son*
Sed si quis nepotis loco adoptet vel quasi ex eo filio, 7
*But if anyone a-grandson's in-place adopts either as-if from that son*
quem habet iam adoptatum, vel quasi ex illo, quem
*whom he-has already adopted or as-if from that-one whom*
naturalem in sua potestate habet: in eo casu et filius
*natural in his-own power he-has in that case also the-son*
consentire debet, ne ei invito suus heres adgnascatur.
*to-consent ought lest to-him unwilling an-own heir be-born-in*
sed ex contrario si avus ex filio nepotem dat in
*but on the-contrary if a-grandfather from a-son a-grandson gives in*
adoptionem, non est necesse filium consentire.
*adoption not is necessary the-son to-consent*
In plurimis autem causis adsimilatur is, qui adoptatus vel 8
*In very-many however cases is-likened he who adopted or*
adrogatus est, ei qui ex legitimo matrimonio natus est.
*adrogated is to-him who from lawful matrimony born is*
et ideo si quis per imperatorem sive apud praetorem
*and therefore if anyone through the-emperor or before the-praetor*
vel apud praesidem provinciae non extraneum adoptaverit,
*or before the-governor of-the-province not an-outsider has-adopted*
potest eundem alii in adoptionem dare.
*he-can the-same to-another in adoption give*

9 Sed et illud utriusque adoptionis commune est, quod et
*But also that of-each adoption common is that also*
hi, qui generare non possunt, quales sunt spadones, adoptare
*those who to-beget not are-able such-as are eunuchs to-adopt*
possunt, castrati autem non possunt.
*can castrated however not can*

10 Feminae quoque adoptare non possunt, quia nec naturales
*Women also to-adopt not can because not-even natural*
liberos in potestate sua habent: sed ex indulgentia
*children in power their-own they-have but by indulgence*
principis ad solatium liberorum amissorum adoptare possunt.
*of-the-emperor for the-comfort of-children lost to-adopt they-can*

11 Illud proprium est illius adoptionis, quae per sacrum
*That peculiar is to-that adoption which through the-sacred*
oraculum fit, quod is, qui liberos in potestate habet,
*oracle takes-place that he who children in power has*
si se adrogandum dederit, non solum ipse potestati
*if himself to-be-adrogated he-has-given not only himself to-the-power*
adrogatoris subicitur, sed etiam liberi eius in eiusdem
*of-the-adrogator is-subjected but also the-children his in the-same*
fiunt potestate tamquam nepotes. sic enim et divus
*become power as grandsons thus for also the-deified*
Augustus non ante Tiberium adoptavit, quam is Germanicum
*Augustus not before Tiberius adopted than he Germanicus*
adoptavit: ut protinus adoptione facta incipiat Germanicus
*adopted so-that at-once adoption made should-begin Germanicus*
Augusti nepos esse.
*of-Augustus grandson to-be*

12 Apud Catonem bene scriptum refert antiquitas, servi si a
*In Cato well written reports antiquity slaves if by*
domino adoptati sint, ex hoc ipso posse liberari.
*the-master adopted they-have-been by this very-fact to-be-able to-be-freed*

unde et nos eruditi in nostra constitutione etiam eum
*whence also we instructed in our constitution also that*
servum, quem dominus actis intervenientibus filium suum
*slave whom the-master records intervening son his-own*
nominaverit, liberum esse constituimus, licet hoc ad ius
*has-named free to-be have-established although this for the-right*
filii accipiendum ei non sufficit.
*of-a-son to-be-received to-him not suffices*

## XII · HOW POWER ENDS

*Power ends by the parent's death, deportation, or penal slavery, and is suspended by captivity under the right of postliminium; it ends by a son's patrician dignity and by emancipation, now made simply before a judge. A father cannot be compelled to emancipate.*

Videamus nunc, quibus modis ii, qui alieno iuri subiecti
*Let-us-see now by-what ways those who to-another's right subject*
sunt, eo iure liberantur. et quidem servi quemadmodum
*are from-that right are-freed and indeed slaves how*
potestate liberantur, ex his intellegere possumus, quae de
*from-power they-are-freed from those to-understand we-can which about*
servis manumittendis superius exposuimus. hi vero, qui in
*slaves to-be-manumitted above we-have-set-out those however who in*
potestate parentis sunt, mortuo eo sui iuris fiunt. sed
*the-power of-a-parent are dead he of-their-own right become but*
hoc distinctionem recipit. nam mortuo patre sane omnimodo
*this a-distinction admits for dead the-father indeed in-every-way*
filii filiaeve sui iuris efficiuntur. mortuo vero avo
*sons or-daughters of-their-own right are-made dead however the-grandfather*
non omnimodo nepotes neptesque sui iuris fiunt, sed
*not in-every-way grandsons and-granddaughters of-their-own right become but*

ita, si post mortem avi in potestatem patris sui
*only if after the-death of-the-grandfather into the-power of-father their*
recasuri non sunt: itaque si moriente avo pater
*about-to-fall-back not they-are therefore if dying the-grandfather father*
eorum et vivit et in potestate patris sui est, tunc post
*their both lives and in the-power of-father his is then after*
obitum avi in patris sui potestate fiunt: si vero
*the-death of-the-grandfather in of-father their the-power they-come if however*
is, quo tempore avus moritur, aut iam mortuus
*he at-what 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 these because into*
potestatem eius cadere non possunt, sui iuris fiunt.
*power his to-fall not they-can of-their-own right become*

1 Cum autem is, qui ob aliquod maleficium in insulam deportatur,
*When however he who for some crime to an-island is-deported*
civitatem amittit, sequitur ut, quia eo modo ex numero
*citizenship loses it-follows that because in-that way from the-number*
civium Romanorum tollitur, perinde acsi mortuo eo desinant
*of-citizens Roman he-is-removed just as-if dead he cease*
liberi in potestate eius esse. pari ratione et si is, qui
*the-children in power his to-be by-equal reason also if he who*
in potestate parentis sit, in insulam deportatus fuerit, desinit
*in the-power of-a-parent is to an-island deported has-been he-ceases*
in potestate parentis esse. sed si ex indulgentia principali
*in the-power of-the-parent to-be but if by indulgence imperial*
restituti fuerint, per omnia pristinum statum recipiunt.
*restored they-have-been in all-things the-former status they-recover*

Relegati autem patres in insulam in potestate sua liberos 2
*Relegated however fathers to an-island in power their-own children*
retinent: et e contrario liberi relegati in potestate parentum
*retain and on the-contrary children relegated in the-power of-parents*
remanent.
*remain*

Poenae servus effectus filios in potestate habere desinit. 3
*Of-punishment a-slave made sons in power to-have ceases*
servi autem poenae efficiuntur, qui in metallum
*slaves however of-punishment are-made those-who to the-mine*
damnantur et qui bestiis subiciuntur.
*are-condemned and who to-the-beasts are-exposed*

Filius familias si militaverit, vel si senator vel consul 4
*A-son of-the-family if he-has-served or if senator or consul*
fuerit factus, manet in patris potestate. militia enim
*he-has-been made remains in of-the-father the-power military-service for*
vel consularia dignitas patris potestate filium non liberat.
*or consular dignity the-father's from-power the-son not frees*
sed ex constitutione nostra summa patriciatus dignitas
*but by constitution our the-highest of-the-patriciate dignity*
ilico ab imperialibus codicillis praestitis a patria potestate
*at-once by the-imperial codicils furnished from paternal power*
liberat. quis enim patiatur patrem quidem posse per
*frees who for would-endure a-father indeed to-be-able through*
emancipationis modum suae potestatis nexibus filium
*of-emancipation the-mode of-his power from-the-bonds a-son*
relaxare, imperatoriam autem celsitudinem non valere
*to-release the-imperial however loftiness not to-be-strong-enough*
eum quem sibi patrem elegit ab aliena eximere potestate?
*him whom for-itself as-father it-chose from another's to-remove power*

5 Si ab hostibus captus fuerit parens, quamvis servus hostium
*If by the-enemy captured has-been a-parent although a-slave of-the-enemy*
fiat, tamen pendet ius liberorum propter ius
*he-becomes yet is-suspended the-right over-the-children on-account-of the-right*
postliminii: quia hi, qui ab hostibus capti sunt, si reversi
*of-postliminium because those who by the-enemy captured are if returned*
fuerint, omnia pristina iura recipiunt. idcirco reversus et
*they-have all former rights recover therefore returned also*
liberos habebit in potestate, quia postliminium fingit eum
*the-children he-will-have in power because postliminium feigns him*
qui captus est semper in civitate fuisse: si vero ibi
*who captured was always in the-state to-have-been if however there*
decesserit, exinde, ex quo captus est pater, filius sui
*he-has-died thenceforth from which-time captured was the-father the-son of-his-own*
iuris fuisse videtur. ipse quoque filius neposve si ab hostibus
*right to-have-been seems himself also a-son or-grandson if by the-enemy*
captus fuerit, similiter dicimus propter ius postliminii
*captured has-been likewise we-say on-account-of the-right of-postliminium*
ius quoque potestatis parentis in suspenso esse. dictum est
*the-right also of-the-power of-the-parent in suspense to-be named it-is*
autem postliminium a limine et post, ut eum, qui ab
*however postliminium from threshold and after so-that him who by*
hostibus captus in fines nostros postea pervenit, postliminio
*the-enemy captured into the-borders our afterward has-come by-postliminium*
reversum recte dicimus. nam limina sicut in domibus finem
*returned rightly we-say for thresholds just-as in houses an-end*
quendam faciunt, sic et imperii finem limen esse veteres
*certain make so also of-the-empire the-end a-threshold to-be the-ancients*
voluerunt. hinc et limes dictus est quasi finis quidam et
*wished hence also boundary called it-is as-if an-end certain and*
terminus. ab eo postliminium dictum, quia eodem limine
*limit from this postliminium named because by-the-same threshold*

revertebatur, quo amissus erat. sed et qui victis
*he-returned by-which lost he-had-been but also he-who conquered*
hostibus recuperatur, postliminio rediisse existimatur.
*the-enemy is-recovered by-postliminium to-have-returned is-thought*
Praeterea emancipatione quoque desinunt liberi in potestate 6
*Moreover by-emancipation also cease children in the-power*
parentum esse. sed ea emancipatio antea quidem vel
*of-parents to-be but that emancipation before indeed either*
per antiquam legis observationem procedebat, quae
*through the-ancient of-the-law observance proceeded which*
per imaginarias venditiones et intercedentes manumissiones
*through imaginary sales and intervening manumissions*
celebrabatur, vel ex imperiali rescripto. nostra autem
*was-performed or by imperial rescript our however*
providentia et hoc in melius per constitutionem reformavit,
*providence also this for the-better by a-constitution has-reformed*
ut fictione pristina explosa recta via apud competentes
*so-that the-fiction former exploded by-a-straight road before competent*
iudices vel magistratus parentes intrent et filios suos vel
*judges or magistrates the-parents should-enter and sons their or*
filias vel nepotes vel neptes ac deinceps sua manu
*daughters or grandsons or granddaughters and further-on from-their-own hand*
dimitterent. et tunc ex edicto praetoris in huius filii vel
*should-release and then by the-edict of-the-praetor in of-this son or*
filiae, nepotis vel neptis bonis, qui vel quae a parente
*daughter grandson or granddaughter the-goods who or she-who by the-parent*
manumissus vel manumissa fuerit, eadem iura praestantur
*manumitted or manumitted has-been the-same rights are-afforded*
parenti, quae tribuuntur patrono in bonis liberti: et
*to-the-parent which are-granted to-the-patron in the-goods of-a-freedman and*

praeterea si impubes sit filius vel filia vel ceteri, ipse
*moreover if under-age is the-son or daughter or the-others himself*
parens ex manumissione tutelam eius nanciscitur.
*the-parent from the-manumission the-tutelage of-him obtains*

7 Admonendi autem sumus liberum esse arbitrium ei, qui
*To-be-reminded however we-are free to-be the-choice to-him who*
filium et ex eo nepotem vel neptem in potestate
*a-son and from him a-grandson or granddaughter in power*
habebit, filium quidem de potestate dimittere, nepotem vero
*shall-have the-son indeed from power to-release the-grandson however*
vel neptem in potestate retinere: et ex diverso filium
*or granddaughter in power to-retain and on the-contrary the-son*
quidem in potestate retinere, nepotem vero vel neptem
*indeed in power to-retain the-grandson however or granddaughter*
manumittere (eadem et de pronepote vel pronepte
*to-manumit the-same-things also about a-great-grandson or great-granddaughter*
dicta esse intellegantur), vel omnes sui iuris efficere.
*said to-be let-them-be-understood or all of-their-own right to-make*

8 Sed et si pater filium, quem in potestate habet, avo
*But also if a-father the-son whom in power he-has to-the-grandfather*
vel proavo naturali secundum nostras constitutiones super
*or great-grandfather natural according-to our constitutions about*
his habitas in adoptionem dederit, id est si hoc ipsum
*these made in adoption has-given that is if this very-thing*
actis intervenientibus apud competentem iudicem manifestavit,
*records intervening before a-competent judge he-has-declared*
praesente eo qui adoptatur et non contradicente nec non
*present he who is-adopted and not contradicting and also*
eo qui adoptat, solvitur quidem ius potestatis patris
*he who adopts is-dissolved indeed the-right of-the-power of-the-father*

naturalis, transit autem in huiusmodi parentem adoptivum, in
*natural it-passes however into such a-parent adoptive in*
cuius persona et adoptionem plenissimam esse antea diximus.
*whose person also the-adoption fullest to-be before we-have-said*
Illud autem scire oportet, quod, si nurus tua ex filio tuo 9
*That however to-know it-behooves that if daughter-in-law your by son your*
conceperit et filium postea emancipaveris vel in adoptionem
*has-conceived and the-son afterward you-have-emancipated or in adoption*
dederis praegnante nuru tua, nihilo minus quod
*you-have-given pregnant daughter-in-law your by-nothing less what*
ex ea nascitur in potestate tua nascitur: quod si post
*from her is-born in power your is-born but if after*
emancipationem vel adoptionem fuerit conceptum, patris
*the-emancipation or adoption it-has-been conceived of-father*
sui emancipati vel avi adoptivi potestati subicitur:
*its emancipated or of-the-grandfather adoptive to-the-power it-is-subjected*
et quod neque naturales liberi neque adoptivi ullo paene 10
*and that neither natural children nor adoptive by-any almost*
modo possunt cogere parentem de potestate sua eos
*means can compel the-parent from power his-own them*
dimittere.
*to-release*

*Of persons not in power some are in tutelage or curatorship, some in neither. Tutelage is a power over a free head to protect one too young to defend himself. Parents may appoint tutors by will to children under age in their power, including the posthumous, but to grandchildren only if they will not fall back into their father's power; a tutor a father names by will for an emancipated son is confirmed without inquiry.*

Transeamus nunc ad aliam divisionem. nam ex his personis,
*Let-us-pass now to another division for of these persons*
quae in potestate non sunt, quaedam vel in tutela sunt vel
*who in power not are some either in tutelage are or*
in curatione, quaedam neutro iure tenentur. videamus igitur
*in curatorship some by-neither right are-held let-us-see therefore*
de his, quae in tutela vel in curatione sunt: ita enim
*about those who in tutelage or in curatorship are thus for*
intellegemus ceteras personas, quae neutro iure tenentur.
*we-shall-understand the-other persons who by-neither right are-held*
ac prius dispiciamus de his quae in tutela sunt.
*and first let-us-consider about those who in tutelage are*

1 Est autem tutela, ut Servius definivit, ius ac potestas in
*Is however tutelage as Servius defined a-right and power over*
capite libero ad tuendum eum, qui propter aetatem se
*a-head free for protecting him who on-account-of age himself*
defendere nequit, iure civili data ac permissa.
*to-defend cannot by-law civil given and permitted*

2 Tutores autem sunt, qui eam vim ac potestatem habent,
*Tutors however are those-who that force and power have*
ex qua re ipsa nomen ceperunt. itaque appellantur tutores
*from which thing itself the-name they-took therefore are-called tutors*

quasi tuitores atque defensores, sicut aeditui dicuntur qui
*as-if protectors and defenders as temple-keepers are-called who*
aedes tuentur.
*temples protect*

Permissum est itaque parentibus liberis impuberibus, quos 3
*Permitted it-is therefore to-parents for-children under-age whom*
in potestate habent, testamento tutores dare. et hoc in filio
*in power they-have by-testament tutors to-give and this in a-son*
filiaque omnimodo procedit; nepotibus tamen neptibusque
*and-daughter in-every-way holds for-grandsons however and-granddaughters*
ita demum parentes possunt testamento tutores dare, si
*thus only-then parents can by-testament tutors to-give if*
post mortem eorum in patris sui potestatem recasuri
*after death their into of-father their the-power about-to-fall-back*
non sunt. itaque si filius tuus mortis tuae tempore in
*not they-are therefore if son your of-death your at-the-time in*
potestate tua sit, nepotes ex eo non poterunt testamento
*power your is the-grandsons from him not will-be-able by-testament*
tuo tutorem habere, quamvis in potestate tua fuerint; scilicet
*your a-tutor to-have although in power your they-were namely*
quia mortuo te in patris sui potestatem recasuri sunt.
*because dead you into of-father their the-power about-to-fall-back they-are*

Cum autem in compluribus aliis causis postumi pro 4
*Since however in very-many other cases posthumous-children as*
iam natis habentur, et in hac causa placuit non minus
*already born are-held also in this case it-was-held not less*
postumis quam iam natis testamento tutores
*to-posthumous-children than already to-those-born by-testament tutors*
dari posse, si modo in ea causa sint, ut, si vivis
*to-be-given to-be-able if only in that position they-be that if living*
parentibus nascerentur, sui et in potestate eorum fierent.
*the-parents they-were-born own-heirs and in power their would-become*

5 Sed si emancipato filio tutor a patre testamento datus
*But if to-an-emancipated son a-tutor by the-father by-testament given*
fuerit, confirmandus est ex sententia praesidis omnimodo,
*has-been to-be-confirmed he-is by the-decision of-the-governor in-every-way*
id est sine inquisitione.
*that is without inquiry*

## XIV · WHO MAY BE APPOINTED TUTOR BY WILL

*A son of the family may be appointed tutor by will, and so may the testator's own slave, who is tacitly freed even without a grant; a madman or one under twenty-five becomes tutor when sane or of age. A tutor may be appointed from or to a set time or on condition, but not for a single matter; a tutor given to sons is given to posthumous sons too, and to grandsons only if the will says children.*

Dari autem potest tutor non solum pater familias, sed
*Be-given however can as-tutor not only a-father of-a-family but*
etiam filius familias.
*also a-son of-a-family*

1 Sed et servus proprius testamento cum libertate recte tutor
*But also a-slave one's-own by-testament with freedom rightly tutor*
dari potest. sed sciendum est eum et sine libertate
*be-given can but to-be-known it-is that-he even without freedom*
tutorem datum tacite et libertatem directam accepisse
*tutor given tacitly also freedom direct to-have-received*
videri et per hoc recte tutorem esse. plane si per
*to-seem and through this rightly tutor to-be clearly if through*
errorem quasi liber tutor datus sit, aliud dicendum est.
*mistake as-if free tutor given be-be otherwise to-be-said it-is*
servus autem alienus pure inutiliter datur testamento
*a-slave however another's unconditionally uselessly is-given by-testament*

tutor: sed ita ‘cum liber erit’ utiliter datur. proprius
*as-tutor but thus when free he-shall-be usefully he-is-given one's-own*
autem servus inutiliter eo modo datur tutor.
*however slave uselessly in-that manner is-given as-tutor*
Furiosus vel minor viginti quinque annis tutor testamento 2
*A-madman or younger than-twenty five years tutor by-testament*
datus tutor erit, cum compos mentis aut maior viginti
*given tutor will-be when sound of-mind or older than-twenty*
quinque annis fuerit factus.
*five years he-has-been made*
Ad certum tempus et ex certo tempore vel sub condicione 3
*To a-certain time and from a-certain time or under a-condition*
vel ante heredis institutionem posse dari tutorem non
*or before of-the-heir the-institution to-be-able to-be-given a-tutor not*
dubitatur.
*is-doubted*
Certae autem rei vel causae tutor dari non potest, quia 4
*For-a-certain however thing or matter a-tutor be-given not can because*
personae, non causae vel rei datur.
*for-a-person not for-a-matter or thing he-is-given*
Si quis filiabus suis vel filiis tutores dederit, etiam 5
*If anyone to-daughters his or to-sons tutors has-given also*
postumae vel postumo videtur dedisse, quia
*to-a-posthumous-daughter or to-a-posthumous-son he-seems to-have-given because*
filii vel filiae appellatione et postumus et postuma
*of-son or of-daughter in-the-term both posthumous-son and posthumous-daughter*
continentur. quid si nepotes sint, an appellatione filiorum
*are-contained what if grandsons there-be whether in-the-term of-sons*
et ipsis tutores dati sunt? dicendum est, ut ipsis quoque
*also to-them tutors given have-been to-be-said it-is that to-them also*
dati videantur, si modo liberos dixit. ceterum si filios, non
*given they-seem if only children he-said but if sons not*

continebuntur: aliter enim filii, aliter nepotes appellantur.
*they-will-be-contained otherwise for sons otherwise grandsons are-called*
plane si postumis dederit, tam filii postumi quam
*clearly if to-posthumous-children he-gave both sons posthumous and*
ceteri liberi continebuntur.
*the-other children will-be-contained*

## XV · THE STATUTORY TUTELAGE OF AGNATES

*Where no tutor is appointed, the Twelve Tables give tutelage to the agnates, relatives through males. It falls to them when a man dies intestate as to tutelage; agnatic right ends with loss of status, cognatic does not always.*

Quibus autem testamento tutor datus non sit, his
*To-whom however by-testament a-tutor given not has-been to-them*
ex lege duodecim tabularum adgnati sunt tutores, qui
*by the-statute of-the-twelve tables the-agnates are tutors who*
vocantur legitimi.
*are-called statutory*

1 Sunt autem adgnati per virilis sexus cognationem
*Are however agnates through of-the-male sex kinship*
coniuncti, quasi a patre cognati, veluti frater eodem
*joined as-if from the-father kin as-for-example a-brother by-the-same*
patre natus, fratris filius neposve ex eo, item patruus
*father born of-a-brother the-son or-grandson from him likewise a-paternal-uncle*
et patrui filius neposve ex eo. at qui per
*and of-a-paternal-uncle the-son or-grandson from him but those-who through*
feminini sexus personas cognatione iunguntur, non sunt
*of-the-female sex persons by-kinship are-joined not are*
adgnati, sed alias naturali iure cognati. itaque amitae
*agnates but otherwise by-natural law kin therefore of-a-paternal-aunt*

tuae filius non est tibi adgnatus, sed cognatus (et invicem
*your the-son not is to-you agnate but kin and in-turn*
scilicet tu illi eodem iure coniungeris), quia qui
*namely you to-him by-the-same law are-joined because those-who*
nascuntur patris, non matris familiam sequuntur.
*are-born the-father's not the-mother's family follow*

Quod autem lex ab intestato vocat ad tutelam adgnatos, non 2
*That however the-statute on intestacy calls to tutelage the-agnates not*
hanc habet significationem, si omnino non fecerit testamentum
*this it-has meaning if at-all not has-made a-testament*
is qui poterat tutores dare, sed si quantum ad tutelam pertinet
*he who could tutors give but if as-far-as to tutelage pertains*
intestatus decesserit. quod tunc quoque accidere intellegitur,
*intestate he-has-died which then also to-happen is-understood*
cum is qui datus est tutor vivo testatore decesserit.
*when he who given was as-tutor while-living the-testator has-died*

Sed adgnationis quidem ius omnibus modis capitis 3
*But of-agnation indeed the-right in-all ways of-status*
deminutione plerumque perimitur: nam adgnatio iuris
*by-loss mostly is-destroyed for agnation of-law*
est nomen. cognationis vero ius non omnibus modis
*is a-name of-kinship however the-right not in-all ways*
commutatur, quia civilis ratio civilia quidem iura corrumpere
*is-changed because civil reason civil indeed rights corrupt*
potest, naturalia vero non utique
*can natural however not at-all*

*Loss of status is a change of former status: greatest when liberty and citizenship are lost, middle when citizenship alone, least when status changes without either, as on passing into or out of another's power. A manumitted slave and a senator removed from the senate suffer none, and kinship survives only the least. Tutelage goes to the agnates of the nearest degree, or to all of them if equal.*

Est autem capitis deminutio prioris status commutatio. eaque
*Is however of-status loss of-the-former status a-change and-it*
tribus modis accidit: nam aut maxima est capitis deminutio
*in-three ways happens for either the-greatest is of-status loss*
aut minor, quam quidam mediam vocant, aut minima.
*or the-lesser which some the-middle call or the-least*

1 Maxima est capitis deminutio, cum aliquis simul et
*The-greatest is of-status loss when someone at-once both*
civitatem et libertatem amittit. quod accidit in his, qui
*citizenship and freedom loses which happens in those who*
servi poenae efficiuntur atrocitate sententiae, vel liberti
*slaves of-punishment are-made by-the-atrocity of-the-sentence or freedmen*
ut ingrati circa patronos condemnati, vel qui ad pretium
*as ungrateful toward patrons condemned or those-who to the-price*
participandum se venumdari passi sunt.
*to-be-shared themselves to-be-sold allowed have*

2 Minor sive media est capitis deminutio, cum civitas quidem
*The-lesser or middle is of-status loss when citizenship indeed*
amittitur, libertas vero retinetur. quod accidit ei, cui
*is-lost freedom however is-kept which happens to-him to-whom*
aqua et igni interdictum fuerit, vel ei, qui in insulam
*from-water and fire interdicted it-has-been or to-him who to an-island*
deportatus est.
*deported is*

Minima est capitis deminutio, cum et civitas et libertas 3
*The-least is of-status loss when both citizenship and freedom*
retinetur, sed status hominis commutatur. quod accidit in
*is-kept but the-status of-the-man is-changed which happens in*
his, qui, cum sui iuris fuerunt, coeperunt alieno iuri
*those who when of-their-own right they-were began to-another's right*
subiecti esse, vel contra.
*subject to-be or the-reverse*

Servus autem manumissus capite non minuitur, quia nullum 4
*A-slave however manumitted in-status not is-diminished because no*
caput habuit.
*status he-had*

Quibus autem dignitas magis quam status permutatur, 5
*Those-for-whom however dignity rather than status is-changed*
capite non minuuntur: et ideo senatu motos capite
*in-status not are-diminished and therefore from-the-senate removed in-status*
non minui constat.
*not to-be-diminished it-is-agreed*

Quod autem dictum est manere cognationis ius et 6
*That however said it-was to-remain of-kinship the-right also*
post capitis deminutionem, hoc ita est, si minima capitis
*after of-status loss this so is if the-least of-status*
deminutio interveniat: manet enim cognatio. nam si maxima
*loss intervene remains for kinship for if the-greatest*
capitis deminutio incurrat, ius quoque cognationis perit,
*of-status loss befalls the-right also of-kinship perishes*
ut puta servitute alicuius cognati, et ne quidem, si
*as for-instance by-the-slavery of-some kinsman and not even if*
manumissus fuerit, recipit cognationem. sed et si in
*manumitted he-has-been he-recovers the-kinship but also if to*
insulam deportatus quis sit, cognatio solvitur.
*an-island deported anyone has-been the-kinship is-dissolved*

7 Cum autem ad adgnatos tutela pertineat, non simul ad
*Since however to the-agnates tutelage belongs not at-once to*
omnes pertinet, sed ad eos tantum, qui proximo gradu
*all it-belongs but to those only who in-the-nearest degree*
sunt, vel, si eiusdem gradus sint, ad omnes.
*are or if of-the-same degree they-be to all*

## XVII · THE STATUTORY TUTELAGE OF PATRONS

*Patrons and their children hold the statutory tutelage of their freedmen, by interpretation of the Twelve Tables, since those who inherit should bear the burden of tutelage.*

Ex eadem lege duodecim tabularum libertorum et libertarum
*By the-same statute of-the-twelve tables of-freedmen and of-freedwomen*
tutela ad patronos liberosque eorum pertinet, quae et
*the-tutelage to the-patrons and-children their belongs which also*
ipsa legitima tutela vocatur: non quia nominatim ea lege
*itself statutory tutelage is-called not because by-name in-that statute*
de hac tutela cavetur, sed quia perinde accepta est per
*about this tutelage it-is-provided but because just-as accepted it-is through*
interpretationem, atque si verbis legis introducta esset.
*interpretation as if by-the-words of-the-statute introduced it-had-been*
eo enim ipso, quo hereditates libertorum libertarumque,
*by-that for very-fact that the-inheritances of-freedmen and-freedwomen*
si intestati decessissent, iusserat lex ad patronos liberosve
*if intestate they-had-died had-ordered the-statute to the-patrons or-children*
eorum pertinere, crediderunt veteres voluisse legem
*their to-belong believed the-ancients to-have-wished the-statute*
etiam tutelas ad eos pertinere, cum et adgnatos, quos
*also the-tutelages to them to-belong since also the-agnates whom*

ad hereditatem vocat, eosdem et tutores esse iussit et
*to the-inheritance it-calls the-same also tutors to-be it-ordered and*
quia plerumque, ubi successionis est emolumentum, ibi et
*because mostly where of-succession is the-profit there also*
tutelae onus esse debet. ideo autem diximus plerumque,
*of-tutelage the-burden to-be ought therefore however we-have-said mostly*
quia, si a femina impubes manumittatur, ipsa ad
*because if by a-woman one-under-age be-manumitted she-herself to*
hereditatem vocatur, cum alius est tutor.
*the-inheritance is-called while another is tutor*

## XVIII · THE STATUTORY TUTELAGE OF PARENTS

*A parent who emancipates a child under age is its statutory tutor, as a patron is.*

Exemplo patronorum recepta est et alia tutela, quae
*On-the-pattern of-patrons received is also another tutelage which*
et ipsa legitima vocatur. nam si quis filium aut filiam,
*also itself statutory is-called for if anyone a-son or daughter*
nepotem aut neptem ex filio et deinceps impuberes
*grandson or granddaughter by a-son and further-on under-age*
emancipaverit, legitimus eorum tutor erit.
*has-emancipated statutory their tutor he-will-be*

*On a manumitting parent's death his adult sons become fiduciary tutors of their brothers and sisters, while a patron's children are statutory tutors; such tutors are called only when of full age.*

Est et alia tutela, quae fiduciaria appellatur. nam si
*There-is also another tutelage which fiduciary is-called for if*
parens filium vel filiam, nepotem vel neptem et deinceps
*a-parent a-son or daughter grandson or granddaughter and further-on*
impuberes manumiserit, legitimam nanciscitur eorum tutelam:
*under-age has-manumitted statutory he-obtains their tutelage*
quo defuncto si liberi virilis sexus extant, fiduciarii tutores
*who dead if children of-the-male sex survive fiduciary tutors*
filiorum suorum vel fratris vel sororis et ceterorum efficiuntur.
*of-sons his-own or of-brother or of-sister and the-others they-are-made*
atqui patrono legitimo tutore mortuo, liberi quoque eius
*but the-patron statutory tutor dead the-children also his*
legitimi sunt tutores: quoniam filius quidem defuncti, si
*statutory are tutors since the-son indeed of-the-deceased if*
non esset a vivo patre emancipatus, post obitum
*not he-had-been by the-living father emancipated after the-death*
eius sui iuris efficeretur nec in fratrum potestatem
*his of-his-own right would-be-made and-not into of-the-brothers the-power*
recideret ideoque nec in tutelam, libertus autem si servus
*would-fall-back and-therefore nor into tutelage the-freedman however if a-slave*
mansisset, utique eodem iure apud liberos domini post
*he-had-remained certainly by-the-same right with the-children of-the-master after*
mortem eius futurus esset. ita tamen ii ad tutelam vocantur,
*the-death his about-to-be would-be thus however they to tutelage are-called*

si perfectae aetatis sint. quod nostra constitutio generaliter
*if of-full age they-be which our constitution generally*
in omnibus tutelis et curationibus observari praecepit.
*in all tutelages and curatorships to-be-observed has-instructed*

## XX · THE ATILIAN TUTOR

*Tutors were once given by the urban praetor and tribunes under the Atilian statute and by governors under the Julian and Titian, also while a testamentary tutor's condition was pending or a tutor was captive, then by consuls and praetors after inquiry; now the prefect, praetor, or governors appoint, and for small estates the city defenders with the bishop. Tutors account at the ward's puberty.*

Si cui nullus omnino tutor fuerat, ei dabatur in
*If to-someone no at-all tutor had-been to-him was-given in*
urbe quidem Roma a praetore urbano et maiore parte
*the-city indeed Rome by the-praetor urban and the-greater part*
tribunorum plebis tutor ex lege Atilia, in provinciis
*of-the-tribunes of-the-commons a-tutor by the-statute Atilian in the-provinces*
vero a praesidibus provinciarum ex lege Iulia et Titia.
*however by the-governors of-the-provinces by the-statute Julian and Titian*
Sed et si testamento tutor sub condicione aut die certo 1
*But also if by-testament a-tutor under condition or day certain*
datus fuerat, quamdiu condicio aut dies pendebat. ex isdem
*given had-been as-long-as the-condition or the-day was-pending by the-same*
legibus tutor dari poterat. item si pure datus fuerit,
*statutes a-tutor be-given could likewise if unconditionally given he-had-been*
quamdiu nemo ex testamento, heres existat, tamdiu ex
*as-long-as no-one from the-testament heir is-forthcoming so-long by*

isdem legibus tutor petendus erat, qui desinebat tutor esse,
*the-same statutes a-tutor to-be-sought was who ceased tutor to-be*
si condicio existeret aut dies veniret aut heres existeret.
*if the-condition came-to-pass or the-day came or an-heir was-forthcoming*

2 Ab hostibus quoque tutore capto ex his legibus tutor
*By the-enemy also the-tutor captured by these statutes a-tutor*
petebatur, qui desinebat esse tutor, si is qui captus erat
*was-sought who ceased to-be tutor if he who captured had-been*
in civitatem reversus fuerat: nam reversus recipiebat tutelam
*into the-state returned had for returned he-recovered the-tutelage*
iure postliminii.
*by-the-right of-postliminium*

3 Sed ex his legibus pupillis tutores desierunt dari, posteaquam
*But by these statutes to-wards tutors ceased to-be-given after*
primo consules pupillis utriusque sexus tutores ex inquisitione
*first the-consuls to-wards of-each sex tutors after inquiry*
dare coeperunt, deinde praetores ex constitutionibus. nam
*to-give began then the-praetors by constitutions for*
supra scriptis legibus neque de cautione a tutoribus
*in-the-above written statutes neither about security by tutors*
exigenda rem salvam pupillis fore neque de compellendis
*to-be-required the-property safe for-the-wards to-be nor about compelling*
tutoribus ad tutelae administrationem quidquam cavetur.
*tutors to of-tutelage the-administration anything is-provided*

4 Sed hoc iure utimur, ut Romae quidem praefectus urbis vel
*But this law we-use that at-Rome indeed the-prefect of-the-city or*
praetor secundum suam iurisdictionem, in provinciis autem
*the-praetor according-to his-own jurisdiction in the-provinces however*
praesides ex inquisitione tutores crearent, vel magistratus
*the-governors after inquiry tutors should-appoint or the-magistrates*
iussu praesidum, si non sint magnae pupilli facultates.
*by-the-order of-the-governors if not be great of-the-ward the-means*

Nos autem per constitutionem nostram et huiusmodi 5
*We however through constitution our also of-this-kind*
difficultates hominum resecantes nec exspectata iussione
*difficulties of-men cutting-away and-not awaited the-order*
praesidum disposuimus, si facultas pupilli vel adulti
*of-the-governors have-arranged if the-means of-the-ward or adolescent*
usque ad quingentos solidos valeat, defensores civitatum
*up to five-hundred solidi amount the-defenders of-the-cities*
una cum eiusdem civitatis religiosissimo antistite vel apud
*together with of-the-same city the-most-religious bishop or before*
alias publicas personas, id est magistratus, vel iuridicum
*other public persons that is the-magistrates or the-juridicus*
Alexandrinae civitatis tutores vel curatores creare, legitima
*of-the-Alexandrian city tutors or curators to-appoint lawful*
cautela secundum eiusdem constitutionis normam praestanda,
*security according-to of-the-same constitution the-rule to-be-furnished*
videlicet eorum periculo qui eam accipiant.
*namely of-those at-the-risk who it receive*
Impuberes autem in tutela esse naturali iure conveniens est, 6
*Those-under-age however in tutelage to-be by-natural law fitting it-is*
ut is qui perfectae aetatis non sit alterius tutela regatur.
*that he who of-full age not is of-another by-the-tutelage be-ruled*
Cum igitur pupillorum pupillarumque tutores negotia gerunt, 7
*When therefore of-male-wards and-female-wards the-tutors the-affairs conduct*
post pubertatem tutelae iudicio rationem reddunt.
*after puberty of-tutelage in-the-action account they-render*

## XXI · THE AUTHORITY OF TUTORS

*A ward may better his condition without the tutor's authority but not worsen it, so in mutual contracts the other party is bound and the ward not; nor may he enter on an inheritance without it, however profitable. The tutor must authorize in person at the time; where tutor and ward sue each other a curator is given.*

Auctoritas autem tutoris in quibusdam causis necessaria
*The-authority however of-the-tutor in certain cases necessary*
pupillis est, in quibusdam non est necessaria. ut ecce si
*for-wards is in certain not is necessary as for-instance if*
quid dari sibi stipulentur, non est necessaria tutoris
*anything to-be-given to-themselves they-stipulate not is necessary of-the-tutor*
auctoritas: quod si aliis pupilli promittant, necessaria est:
*the-authority but if to-others wards promise necessary it-is*
namque placuit meliorem quidem suam condicionem licere
*for it-was-held better indeed their-own condition to-be-allowed*
eis facere etiam sine tutoris auctoritate, deteriorem
*for-them to-make even without of-the-tutor the-authority worse*
vero non aliter quam tutore auctore. unde in his causis,
*however not otherwise than the-tutor authorizing whence in those cases*
ex quibus mutuae obligationes nascuntur, in emptionibus
*from which mutual obligations arise in purchases*
venditionibus, locationibus conductionibus, mandatis, depositis,
*sales lettings hirings mandates deposits*
si tutoris auctoritas non interveniat, ipsi quidem qui cum
*if of-the-tutor the-authority not intervene they indeed who with*
his contrahunt obligantur, at invicem pupilli non obligantur.
*them contract are-bound but in-turn the-wards not are-bound*

Neque tamen hereditatem adire neque bonorum 1
*Neither however an-inheritance to-enter-upon nor of-the-goods*
possessionem petere neque hereditatem ex fideicommisso
*possession to-seek nor an-inheritance from a-trust*
suscipere aliter possunt nisi tutoris auctoritate, quamvis
*to-take-up otherwise can-they unless the-tutor's by-authority although*
lucrosa sit neque ullum damnum habeat.
*profitable it-be nor any loss it-have*
Tutor autem statim in ipso negotio praesens debet auctor 2
*The-tutor however at-once in the-very transaction present ought authorizer*
fieri, si hoc pupillo prodesse existimaverit. post tempus
*to-become if this to-the-ward to-benefit he-has-judged after time*
vero aut per epistulam interposita auctoritas nihil agit.
*however or by letter interposed authority nothing achieves*
Si inter tutorem pupillumve iudicium agendum sit, quia 3
*If between the-tutor or-the-ward an-action to-be-tried there-be because*
ipse tutor in rem suam auctor esse non potest, non
*himself the-tutor in matter his-own authorizer to-be not can not*
praetorius tutor ut olim constituitur, sed curator in locum
*a-praetorian tutor as formerly is-appointed but a-curator in place*
eius datur, quo interveniente iudicium peragitur et eo
*his is-given who intervening the-action is-carried-through and it*
peracto curator esse desinit.
*carried-through curator to-be he-ceases*

*Tutelage ends at puberty, now fourteen for males and twelve for females, by the ward's adrogation, deportation, slavery, or capture, by the condition or term of the appointment, by death, by loss of status, and by removal or excuse.*

Pupilli pupillaeque cum puberes esse coeperint, tutela
*Male-wards and-female-wards when of-age to-be they-have-begun from-tutelage*
liberantur. pubertatem autem veteres quidem non solum ex
*are-freed puberty however the-ancients indeed not only from*
annis, sed etiam ex habitu corporis in masculis aestimari
*the-years but also from the-condition of-the-body in males to-be-judged*
volebant. nostra autem maiestas dignum esse castitate
*wished our however majesty worthy to-be of-the-chastity*
temporum nostrorum bene putavit, quod in feminis et
*of-times our well thought what in females even*
antiquis impudicum esse visum est, id est inspectionem
*by-the-ancients indecent to-be seemed it-has that is the-inspection*
habitudinis corporis, hoc etiam in masculos extendere: et
*of-the-condition of-the-body this also to males to-extend and*
ideo sancta constitutione promulgata pubertatem in masculis
*therefore a-holy constitution promulgated puberty in males*
post quartum decimum annum completum ilico initium
*after the-fourth tenth year completed at-once beginning*
accipere disposuimus, antiquitatis normam in femininis
*to-take we-have-arranged of-antiquity the-rule in female*
personis bene positam suo ordine relinquentes, ut post
*persons well laid-down in-its-own order leaving so-that after*
duodecimum annum completum viripotentes esse credantur.
*the-twelfth year completed marriageable to-be they-are-believed*

Item finitur tutela, si adrogati sint adhuc impuberes vel 1
*Likewise is-ended tutelage if adrogated they-be still under-age or*
deportati: item si in servitutem pupillus redigatur vel ab
*deported likewise if into slavery the-ward be-reduced or by*
hostibus fuerit captus.
*the-enemy has-been captured*

Sed et si usque ad certam condicionem datus sit testamento, 2
*But also if up to a-certain condition given he-be by-testament*
aeque evenit, ut desinat esse tutor existente condicione.
*equally it-happens that he-ceases to-be tutor coming-to-pass the-condition*

Simili modo finitur tutela morte vel tutorum vel 3
*In-like manner is-ended tutelage by-the-death either of-the-tutors or*
pupillorum.
*of-the-wards*

Sed et capitis deminutione tutoris, per quam libertas vel 4
*But also of-status by-the-loss of-the-tutor through which freedom or*
civitas eius amittitur, omnis tutela perit. minima autem
*citizenship his is-lost all tutelage perishes by-the-least however*
capitis deminutione tutoris, veluti si se in adoptionem
*of-status loss of-the-tutor as-for-instance if himself in adoption*
dederit, legitima tantum tutela perit, ceterae non pereunt:
*he-has-given statutory only tutelage perishes the-others not perish*
sed pupilli et pupillae capitis deminutio licet
*but of-the-male-ward and of-the-female-ward of-status the-loss although*
minima sit, omnes tutelas tollit.
*least it-be all tutelages removes*

Praeterea qui ad certum tempus testamento dantur tutores, 5
*Moreover those-who to a-certain time by-testament are-given as-tutors*
finito eo deponunt tutelam.
*ended that they-lay-down the-tutelage*

6 Desinunt autem esse tutores, qui vel removentur a
*Cease however to-be tutors those-who either are-removed from*
tutela ob id quod suspecti visi sunt, vel ex iusta
*tutelage on-account-of this that suspect seemed they-have or for a-lawful*
causa sese excusant et onus administrandae tutelae
*cause themselves excuse and the-burden of-administering of-tutelage*
deponunt secundum ea quae inferius proponemus.
*lay-down according-to those-things which below we-shall-set-out*

## XXIII · CURATORS

*Adults under twenty-five receive curators, from the same magistrates, and only willingly except for a suit; madmen, prodigals, and the infirm receive them too, and wards when the tutor is unsuitable or excused for a time.*

Masculi puberes et feminae viripotentes usque ad vicesimum
*Males of-age and females marriageable up to the-twenty*
quintum annum completum curatores accipiunt: qui, licet
*fifth year completed curators receive who although*
puberes sint, adhuc tamen huius aetatis sunt, ut negotia
*of-age they-be still however of-this age are that the-affairs*
sua tueri non possint.
*their-own to-protect not they-can*

1 Dantur autem curatores ab isdem magistratibus, a quibus
*Are-given however curators by the-same magistrates by whom*
et tutores. sed curator testamento non datur, sed datus
*also tutors but a-curator by-testament not is-given but given*
confirmatur decreto praetoris vel praesidis.
*is-confirmed by-the-decree of-the-praetor or of-the-governor*

Item inviti adulescentes curatores non accipiunt praeterquam 2
*Likewise unwilling adolescents curators not receive except*
in litem: curator enim et ad certam causam dari potest.
*for a-lawsuit a-curator for even for a-certain matter be-given can*
Furiosi quoque et prodigi, licet maiores viginti quinque annis 3
*Madmen also and prodigals although older than-twenty five years*
sint, tamen in curatione sunt adgnatorum ex lege duodecim
*they-be yet in the-curatorship are of-the-agnates by the-statute of-the-twelve*
tabularum. sed solent Romae praefectus urbis vel praetor
*tables but are-accustomed at-Rome the-prefect of-the-city or the-praetor*
et in provinciis praesides ex inquisitione eis dare curatores.
*and in the-provinces the-governors after inquiry to-them to-give curators*
Sed et mente captis et surdis et mutis et qui 4
*But also to-the-mentally deranged and to-the-deaf and to-the-mute and to-those-who*
morbo perpetuo laborant, quia rebus suis superesse
*from-a-disease lasting suffer because affairs their-own to-manage*
non possunt, curatores dandi sunt.
*not they-can curators to-be-given are*
Interdum autem et pupilli curatores accipiunt, ut puta 5
*Sometimes however also wards curators receive as for-instance*
si legitimus tutor non sit idoneus, quia habenti tutorem
*if the-statutory tutor not be suitable because to-one-having a-tutor*
tutor dari non potest. item si testamento datus tutor vel a
*a-tutor be-given not can likewise if by-testament given a-tutor or by*
praetore vel a praeside idoneus non sit ad administrationem
*the-praetor or by the-governor suitable not be for administration*
nec tamen fraudulenter negotia administrat, solet ei curator
*nor however fraudulently the-affairs administers is-wont to-him a-curator*
adiungi. item in locum tutorum, qui non in perpetuum, sed
*to-be-joined likewise in place of-tutors who not in perpetuity but*
ad tempus a tutela excusantur, solent curatores dari.
*for a-time from tutelage are-excused are-wont curators to-be-given*

6 Quodsi tutor adversa valetudine vel alia necessitate
*But-if a-tutor by-adverse health or by-another necessity*
impeditur, quo minus negotia pupilli administrare possit, et
*is-prevented whereby not the-affairs of-the-ward to-administer be-can and*
pupillus vel absit vel infans sit, quem velit actorem periculo
*the-ward either be-absent or an-infant be whom he-wishes as-agent at-the-risk*
ipsius praetor vel qui provinciae praeerit decreto constituet.
*of-himself the-praetor or he-who over-the-province shall-preside by-decree will-appoint*

## XXIV · SECURITY FROM TUTORS AND CURATORS

*Tutors and curators give security unless appointed by will or after inquiry; among several, one may offer security to administer alone, and failing that the testator's choice or the majority decides. Tutors who will not give it are coerced by pledges, and a subsidiary action lies against the officials who took none or too little, though not against the prefect, praetor, or governor.*

Ne tamen pupillorum pupillarumve et eorum, qui quaeve in
*Lest however of-male-wards or-female-wards and of-those who or-who in*
curatione sunt, negotia a tutoribus curatoribusve consumantur
*curatorship are the-affairs by tutors or-curators be-consumed*
aut deminuantur, curat praetor, ut et tutores et curatores
*or be-diminished takes-care the-praetor that both tutors and curators*
eo nomine satisdent. sed hoc non est perpetuum: nam
*on-that account give-security but this not is perpetual for*
tutores testamento dati satisdare non coguntur, quia
*tutors by-testament given to-give-security not are-compelled because*
fides eorum et diligentia ab ipso testatore probata
*the-good-faith their and diligence by the-very testator approved*

est: item ex inquisitione tutores vel curatores dati
*has-been likewise after inquiry tutors or curators given*
satisdatione non onerantur, quia idonei electi sunt.
*with-giving-security not are-burdened because suitable chosen they-are*
Sed et si ex testamento vel inquisitione duo pluresve dati 1
*But also if by testament or inquiry two or-more given*
fuerint, potest unus offerre satis de indemnitate pupilli vel
*have-been can one offer security for the-indemnity of-the-ward or*
adulescentis et contutori vel concuratori praeferri, ut solus
*of-the-adolescent and to-his-co-tutor or co-curator be-preferred that alone*
administret, vel ut contutor satis offerens praeponatur ei,
*he-may-administer or that the-co-tutor security offering be-put-before him*
ut ipse solus administret. itaque per se non potest petere
*so-that himself alone may-administer therefore by himself not he-can demand*
satis a contutore vel concuratore suo, sed offerre debet, ut
*security from the-co-tutor or co-curator his but offer he-ought so-that*
electionem det contutori suo, utrum velit satis accipere
*the-choice he-may-give to-co-tutor his whether he-wishes security to-accept*
an satis dare. quodsi nemo eorum satis offerat, si quidem
*or security to-give but-if none of-them security offer if indeed*
adscriptum fuerit a testatore, quis gerat, ille gerere debet:
*written-down it-has-been by the-testator who should-act he to-act ought*
quodsi non fuerit adscriptum, quem maior pars elegerit,
*but-if not it-has-been written-down whom the-greater part has-chosen*
ipse gerere debet, ut edicto praetoris cavetur. sin autem
*he to-act ought as by-the-edict of-the-praetor is-provided but-if however*
ipsi tutores dissenserint circa eligendum eum vel eos qui
*themselves the-tutors have-disagreed about choosing him or them who*
gerere debent, praetor partes suas interponere debet. idem
*to-act ought the-praetor part his-own to-interpose ought the-same*

et in pluribus ex inquisitione datis probandum est, id est ut
*also in several by inquiry given to-be-approved is that is that*
maior pars eligere possit, per quem administratio fieret.
*the-greater part to-choose can through whom the-administration should-be-done*

2 Sciendum autem est non solum tutores vel curatores pupillis
*To-be-known however it-is not only tutors or curators to-wards*
et adultis ceterisque personis ex administratione teneri,
*and adolescents and-to-the-other persons from the-administration to-be-bound*
sed etiam in eos qui satisdationes accipiunt subsidiariam
*but also against those who securities accept a-subsidiary*
actionem esse, quae ultimum eis praesidium possit afferre.
*action to-be which the-last to-them protection can bring*
subsidiaria autem actio datur in eos, qui vel omnino
*the-subsidiary however action is-given against those who either at-all*
a tutoribus vel curatoribus satisdari non curaverint aut
*by tutors or curators to-be-secured not have-taken-care or*
non idonee passi essent caveri. quae quidem tam ex
*not suitably allowed had to-be-guaranteed which indeed both from*
prudentium responsis quam ex constitutionibus imperialibus
*of-the-jurists the-opinions and from constitutions imperial*
et in heredes eorum extenditur.
*also to heirs their is-extended*

3 Quibus constitutionibus et illud exprimitur, ut, nisi caveant
*By-which constitutions also that is-expressed that unless they-give-security*
tutores vel curatores, pignoribus captis coerceantur.
*tutors or curators pledges taken they-be-coerced*

4 Neque autem praefectus urbis neque praetor neque
*Neither however the-prefect of-the-city nor the-praetor nor*
praeses provinciae neque quis alius cui tutores dandi
*the-governor of-a-province nor any other to-whom tutors of-giving*

ius est hac actione tenebitur, sed hi tantummodo qui
*the-right is by-this action will-be-bound but those only who*
satisdationem exigere solent.
*the-giving-of-security to-require are-wont*

## XXV · EXCUSES OF TUTORS AND CURATORS

*Excuses include three children at Rome, four in Italy, or five in the provinces, administering the fisc, absence on public business, power, a suit with the ward over all the goods or the inheritance, three tutelages, poverty, illness, illiteracy, capital enmity with the father, a dispute over status, age over seventy, and certain professions; minors and soldiers may not serve. Excuses are pleaded within fifty days, or longer for those living far off; a husband may decline his wife's curatorship, and an excuse won by false allegations frees no one.*

Excusantur autem tutores vel curatores variis ex causis:
*Are-excused however tutors or curators various from causes*
plerumque autem propter liberos, sive in potestate sint
*mostly however on-account-of children whether in power they-be*
sive emancipati. si enim tres liberos quis superstites Romae
*or emancipated if for three children anyone surviving at-Rome*
habeat vel in Italia quattuor vel in provinciis quinque,
*has or in Italy four or in the-provinces five*
a tutela vel cura possunt excusari exemplo ceterorum
*from tutelage or curatorship they-can be-excused on-the-pattern of-the-other*
munerum: nam et tutelam et curam placuit publicum
*public-duties for both tutelage and curatorship it-was-held a-public*
munus esse. sed adoptivi liberi non prosunt, in adoptionem
*duty to-be but adoptive children not avail in adoption*
autem dati naturali patri prosunt. item nepotes ex filio
*however given to-the-natural father they-avail likewise grandsons by a-son*

prosunt, ut in locum patris succedant, ex filia
*avail so-that into the-place of-the-father they-succeed by a-daughter*
non prosunt. filii autem superstites tantum ad tutelae
*not they-avail sons however surviving only for of-tutelage*
vel curae muneris excusationem prosunt, defuncti non
*or of-curatorship of-the-duty the-excuse avail dead not*
prosunt. sed si in bello amissi sunt, quaesitum est,
*avail but if in war lost they-have-been asked it-has-been*
an prosint. et constat eos solos prodesse qui in acie
*whether they-avail and it-is-agreed them alone to-avail who in the-battle-line*
amittuntur: hi enim, quia pro re publica ceciderunt,
*are-lost these for because for the-thing public they-fell*
in perpetuum per gloriam vivere intelleguntur.
*in perpetuity through glory to-live are-understood*

1 Item divus Marcus in semestribus rescripsit eum, qui
*Likewise the-deified Marcus in the-semestria rescribed that-he who*
res fisci administrat, a tutela vel cura quamdiu
*the-affairs of-the-fisc administers from tutelage or curatorship as-long-as*
administrat excusari posse.
*he-administers be-excused can*

2 Item qui rei publicae causa absunt, a tutela et
*Likewise those-who of-the-thing public for-the-sake are-absent from tutelage and*
cura excusantur. sed et si fuerunt tutores vel curatores,
*curatorship are-excused but also if they-were tutors or curators*
deinde rei publicae causa abesse coeperunt, a
*then of-the-thing public for-the-sake to-be-absent began from*
tutela et cura excusantur, quatenus rei publicae
*tutelage and curatorship they-are-excused in-so-far-as of-the-thing public*
causa absunt, et interea curator loco eorum datur.
*for-the-sake they-are-absent and meanwhile a-curator in-place their is-given*
qui si reversi fuerint, recipiunt onus tutelae nec anni
*who if returned they-have they-take-back the-burden of-tutelage nor of-a-year*

habent vacationem, ut Papinianus responsorum libro quinto
*have-they exemption as Papinian of-the-opinions in-book fifth*
scripsit: nam hoc spatium habent ad novas tutelas vocati.
*wrote for this interval they-have to new tutelages called*
Et qui potestatem aliquam habent, excusare se 3
*And those-who power some hold excuse themselves*
possunt, ut divus Marcus rescripsit, sed coeptam tutelam
*can as the-deified Marcus rescribed but a-begun tutelage*
deserere non possunt.
*abandon not they-can*
Item propter litem, quam cum pupillo vel adulto tutor 4
*Likewise on-account-of a-lawsuit which with the-ward or adolescent the-tutor*
vel curator habet, excusare se nemo potest: nisi forte
*or curator has excuse himself no-one can unless perhaps*
de omnibus bonis vel hereditate controversia sit.
*about all the-goods or the-inheritance the-dispute be*
Item tria onera tutelae non affectatae vel curae praestant 5
*Likewise three burdens of-tutelage not sought or of-curatorship furnish*
vacationem, quamdiu administrantur: ut tamen plurium
*exemption as-long-as they-are-administered so-that however of-several*
pupillorum tutela vel cura eorundem bonorum, veluti
*wards the-tutelage or curatorship of-the-same goods as-for-instance*
fratrum, pro una computetur.
*of-brothers as one be-counted*
Sed et propter paupertatem excusationem tribui tam 6
*But also on-account-of poverty an-excuse to-be-granted both*
divi fratres quam per se divus Marcus rescripsit, si
*the-deified brothers and by himself the-deified Marcus rescribed if*
quis imparem se oneri iniuncto possit docere.
*anyone unequal himself to-the-burden imposed can show*

7 Item propter adversam valetudinem, propter quam nec
*Likewise on-account-of adverse health on-account-of which not-even*
suis quidem negotiis interesse potest, excusatio locum habet.
*his-own indeed affairs to-attend-to he-can the-excuse place has*

8 Similiter eum qui litteras nesciret excusandum esse divus
*Likewise him who letters knew-not to-be-excused to-be the-deified*
Pius rescripsit: quamvis et imperiti litterarum possunt ad
*Pius rescribed although even those-unskilled in-letters can for*
administrationem negotiorum sufficere.
*the-administration of-affairs suffice*

9 Item si propter inimicitiam aliquem testamento tutorem
*Likewise if on-account-of enmity someone by-testament tutor*
pater dederit, hoc ipsum praestat ei excusationem: sicut
*the-father has-given this very-thing furnishes him an-excuse just-as*
per contrarium non excusantur, qui se tutelam
*on the-contrary not are-excused those-who themselves the-tutelage*
patri pupillorum administraturos promiserunt.
*to-the-father of-the-wards about-to-administer promised*

10 Non esse autem admittendam excusationem eius, qui hoc
*Not to-be however to-be-admitted the-excuse of-him who this*
solo utitur, quod ignotus patri pupillorum sit, divi
*alone uses that unknown to-the-father of-the-wards he-is the-deified*
fratres rescripserunt.
*brothers rescribed*

11 Inimicitiae, quas quis cum patre pupillorum vel adultorum
*Enmities which anyone with the-father of-the-wards or of-the-adolescents*
exercuit, si capitales fuerunt nec reconciliatio intervenit, a
*has-exercised if capital they-were and-no reconciliation intervened from*
tutela solent excusare.
*tutelage are-accustomed to-excuse*

Item si quis status controversiam a pupillorum patre 12
*Likewise if anyone of-status a-dispute from of-the-wards the-father*
passus est, excusatur a tutela.
*suffered has he-is-excused from tutelage*
Item maior septuaginta annis a tutela vel cura se 13
*Likewise one-older than-seventy years from tutelage or curatorship himself*
potest excusare. minores autem viginti et quinque annis
*can excuse those-younger however than-twenty and five years*
olim quidem excusabantur: a nostra autem constitutione
*formerly indeed were-excused by our however constitution*
prohibentur ad tutelam vel curam aspirare, adeo ut nec
*they-are-forbidden to tutelage or curatorship to-aspire so-far that not-even*
excusatione opus fiat. qua constitutione cavetur, ut
*of-excuse need be-made by-which constitution it-is-provided that*
nec pupillus ad legitimam tutelam vocetur nec adultus:
*neither a-ward to statutory tutelage be-called nor an-adolescent*
cum erat incivile eos, qui alieno auxilio in rebus
*since it-was improper that-those who of-another's help in affairs*
suis administrandis egere noscuntur et sub aliis reguntur,
*their-own to-be-administered to-need are-known and under others are-ruled*
aliorum tutelam vel curam subire.
*of-others the-tutelage or curatorship to-undertake*
Idem et in milite observandum est, ut nec volens ad 14
*The-same also in a-soldier to-be-observed is that not-even willing to*
tutelae munus admittatur.
*of-tutelage the-duty he-be-admitted*
Item Romae grammatici rhetores et medici et qui in 15
*Likewise at-Rome grammarians rhetoricians and physicians and those-who in*
patria sua id exercent et intra numerum sunt, a tutela
*country their-own it practice and within the-number are from tutelage*
vel cura habent vacationem.
*or curatorship have exemption*

16 Qui autem se vult excusare, si plures habeat excusationes
*He-who however himself wishes to-excuse if several he-has excuses*
et de quibusdam non probaverit, aliis uti intra tempora
*and about some not he-has-proved others to-use within the-times*
non prohibetur. qui excusare se volunt, non appellant:
*not is-forbidden those-who to-excuse themselves wish not appeal*
sed intra dies quinquaginta continuos, ex quo cognoverunt,
*but within days fifty continuous from when they-learned*
excusare se debent (cuiuscumque generis sunt, id est
*to-excuse themselves ought of-whatever kind they-are that is*
qualitercumque dati fuerint tutores), si intra centesimum
*in-whatever-way given they-have-been as-tutors if within the-hundredth*
lapidem sunt ab eo loco, ubi tutores dati sunt: si
*milestone they-are from that place where the-tutors given were if*
vero ultra centesimum habitant, dinumeratione facta viginti
*however beyond the-hundredth they-live a-reckoning made of-twenty*
millium diurnorum et amplius triginta dierum. quod tamen,
*miles a-day and more thirty days which however*
ut Scaevola dicebat, sic debet computari, ne minus sint
*as Scaevola used-to-say so ought to-be-reckoned that-not fewer they-be*
quam quinquaginta dies.
*than fifty days*

17 Datus autem tutor ad universum patrimonium datus esse
*Given however a-tutor for the-whole patrimony given to-be*
creditur.
*is-believed*

18 Qui tutelam alicuius gessit, invitus curator eiusdem
*He-who the-tutelage of-someone has-conducted unwilling curator of-the-same*
fieri non compellitur, in tantum ut, licet pater, qui
*to-become not is-compelled so far that although the-father who*
testamento tutorem dederit, adiecit se eundem curatorem
*by-testament a-tutor has-given has-added himself the-same as-curator*

dare, tamen invitum eum curam suscipere non cogendum
*to-give yet unwilling him the-curatorship to-undertake not to-be-compelled*
divi Severus et Antoninus rescripserunt.
*the-deified Severus and Antoninus rescribed*
Idem rescripserunt maritum uxori suae curatorem datum 19
*The-same rescribed a-husband to-wife his as-curator given*
excusare se posse, licet se immisceat.
*to-excuse himself to-be-able although himself he-may-involve*
Si quis autem falsis allegationibus excusationem tutelae 20
*If anyone however by-false allegations an-excuse from-tutelage*
meruit, non est liberatus onere tutelae.
*has-earned not he-is freed from-the-burden of-tutelage*

## XXVI · SUSPECT TUTORS AND CURATORS

*The charge of suspect tutor comes from the Twelve Tables and is heard by the praetor or governor. Any tutor may be accused, by anyone, women moved by affection included, though wards may not accuse their own tutors; one removed for fraud is infamous, for negligence not. A tutor who hides to avoid supporting the ward may be removed, one who lies about poverty is punished, security does not save a fraudulent one, and a poor but faithful one stays.*

Sciendum est suspecti crimen e lege duodecim
*To-be-known it-is of-the-suspect-tutor the-charge from the-statute of-the-twelve*
tabularum descendere.
*tables to-descend*
Datum est autem ius removendi suspectos tutores 1
*Given has-been however the-right of-removing suspect tutors*
Romae praetori et in provinciis praesidibus earum et
*at-Rome to-the-praetor and in the-provinces to-the-governors of-them and*
legato proconsulis.
*to-the-legate of-the-proconsul*

2 Ostendimus, qui possunt de suspecto cognoscere: nunc
*We-have-shown who can about a-suspect-tutor take-cognizance now*
videamus, qui suspecti fieri possunt. Et quidem omnes
*let-us-see who suspect become can And indeed all*
tutores possunt, sive testamentarii sint sive non, sed
*tutors can whether testamentary they-be or not but*
alterius generis tutores. quare et si legitimus sit tutor,
*of-another kind tutors wherefore even if statutory be the-tutor*
accusari poterit. quid si patronus? adhuc idem erit
*accused he-can-be what if a-patron still the-same will-be*
dicendum: dummodo meminerimus famae patroni
*to-be-said provided-that we-remember the-reputation of-the-patron*
parcendum, licet ut suspectus remotus fuerit.
*to-be-spared although that suspect removed he-has-been*

3 Consequens est, ut videamus, qui possint suspectos postulare.
*Consequent it-is that we-see who can suspect-tutors accuse*
et sciendum est quasi publicam esse hanc actionem, hoc
*and to-be-known it-is as-if public to-be this action that*
est omnibus patere. quin immo et mulieres admittuntur ex
*is to-all to-lie-open nay even also women are-admitted by*
rescripto divorum Severi et Antonini, sed hae solae, quae
*the-rescript of-the-deified Severus and Antoninus but those only who*
pietatis necessitudine ductae ad hoc procedunt, ut puta
*of-affection by-the-bond led to this proceed as for-instance*
mater: nutrix quoque et avia possunt, potest et soror:
*a-mother a-nurse also and a-grandmother can can also a-sister*
sed et si qua mulier fuerit, cuius praetor perpensam
*but even if any woman there-has-been whose the-praetor weighed*
pietatem intellexerit non sexus verecundiam egredientis,
*affection has-perceived not of-sex the-modesty overstepping*

sed pietate productam non continere iniuriam pupillorum,
*but by-affection brought-forward not to-endure the-wrong of-the-wards*
admittit eam ad accusationem.
*he-admits her to the-accusation*
Impuberes non possunt tutores suos suspectos postulare: 4
*Those-under-age not can tutors their-own as-suspect accuse*
puberes autem curatores suos ex consilio necessariorum
*those-of-age however curators their-own on the-advice of-relatives*
suspectos possunt arguere: et ita divi Severus et
*as-suspect can charge and so the-deified Severus and*
Antoninus rescripserunt.
*Antoninus rescribed*
Suspectus est autem, qui non ex fide tutelam gerit, 5
*Suspect is however he-who not in good-faith the-tutelage conducts*
licet solvendo est, ut et Iulianus quoque scripsit. sed et
*although solvent he-is as also Julian too wrote but also*
ante, quam incipiat gerere tutelam tutor, posse eum quasi
*before than he-begins to-conduct the-tutelage a-tutor to-be-able him as-if*
suspectum removeri idem Iulianus scripsit et secundum
*suspect to-be-removed the-same Julian wrote and according-to*
eum constitutum est.
*him established it-has*
Suspectus autem remotus, si quidem ob dolum, famosus est: 6
*A-suspect-tutor however removed if indeed for fraud infamous is*
si ob culpam, non aeque.
*if for negligence not equally*
Si quis autem suspectus postulatur, quoad cognitio finiatur, 7
*If anyone however as-suspect is-accused until the-inquiry be-ended*
interdicitur ei administratio, ut Papiniano visum est.
*is-forbidden him the-administration as to-Papinian seemed it-has*

8 Sed si suspecti cognitio suscepta fuerit posteaque tutor
*But if of-a-suspect-tutor the-inquiry undertaken has-been and-afterward the-tutor*
vel curator decesserit, extinguitur cognitio suspecti.
*or curator has-died is-extinguished the-inquiry of-the-suspect*

9 Si quis tutor copiam sui non faciat, ut alimenta pupillo
*If any tutor access to-himself not give so-that maintenance for-the-ward*
decernantur, cavetur epistula divorum Severi et Antonini, ut
*be-decreed it-is-provided by-the-letter of-the-deified Severus and Antoninus that*
in possessionem bonorum eius pupillus mittatur: et quae
*into possession of-the-goods his the-ward be-sent and what-things*
mora deteriora futura sunt, dato curatore distrahi iubentur.
*by-delay worse about-to-be are given a-curator to-be-sold are-ordered*
ergo ut suspectus removeri poterit qui non praestat alimenta.
*therefore as suspect be-removed can he-who not furnishes maintenance*

10 Sed si quis praesens negat propter inopiam alimenta
*But if anyone present denies on-account-of want maintenance*
posse decerni, si hoc per mendacium dicat, remittendum
*to-be-able to-be-decreed if this through a-lie he-says to-be-sent*
eum esse ad praefectum urbis puniendum placuit, sicut
*him to-be to the-prefect of-the-city to-be-punished it-was-held just-as*
ille remittitur, qui data pecunia ministerium tutelae redemit.
*he is-sent who given money the-office of-tutelage bought*

11 Libertus quoque, si fraudulenter gessisse tutelam filiorum
*A-freedman also if fraudulently to-have-conducted the-tutelage of-the-sons*
vel nepotum patroni probetur, ad praefectum urbis
*or of-the-grandsons of-his-patron he-be-proved to the-prefect of-the-city*
remittitur puniendus.
*is-sent to-be-punished*

12 Novissime sciendum est eos, qui fraudulenter tutelam vel
*Finally to-be-known it-is that-those who fraudulently tutelage or*
curam administrant, etiamsi satis offerant, removendos a
*curatorship administer even-if security they-offer are-to-be-removed from*

tutela, quia satisdatio propositum tutoris malevolum
*tutelage because the-giving-of-security the-purpose of-the-tutor malevolent*
non mutat, sed diutius grassandi in re familiari
*not changes but longer of-raging in the-property household*
facultatem praestat.
*the-opportunity furnishes*
Suspectum enim eum putamus, qui moribus talis est, ut 13
*Suspect for him we-think who in-character such is that*
suspectus sit: enimvero tutor vel curator quamvis pauper est,
*suspect he-is for-indeed a-tutor or curator although poor he-is*
fidelis tamen et diligens, removendus non est quasi suspectus.
*faithful however and diligent to-be-removed not is as-if suspect*

# BOOK II

## I · THE DIVISION OF THINGS

*Things are common, public, corporate, of no one, or private: air, flowing water, the sea, and its shores are common; rivers and harbors public; sacred, religious, and sanctioned things no one's. Ownership comes by capture of wild things and of the enemy's goods, finding, offspring, alluvion, islands, specification and mixture, accession, the fruits of a good-faith possessor or usufructuary, treasure, and delivery; an abandoned thing goes to its taker, but cargo jettisoned in a storm stays its owners'.*

Superiore libro de iure personarum exposuimus: modo
*In-the-former book about the-law of-persons we-have-set-out now*
videamus de rebus. quae vel in nostro patrimonio vel
*let-us-see about things which either in our patrimony or*
extra nostrum patrimonium habentur quaedam enim naturali
*outside our patrimony are-held some for by-natural*
iure communia sunt omnium, quaedam publica, quaedam
*law common are of-all some public some*
universitatis, quaedam nullius, pleraque singulorum, quae variis
*of-a-corporation some of-no-one most of-individuals which for-various*
ex causis cuique adquiruntur, sicut ex subiectis apparebit.
*from causes to-each are-acquired as from the-following will-appear*
Et quidem naturali iure communia sunt omnium haec: aer 1
*And indeed by-natural law common are of-all these the-air*
et aqua profluens et mare et per hoc litora maris.
*and water flowing and the-sea and through this the-shores of-the-sea*
nemo igitur ad litus maris accedere prohibetur, dum
*no-one therefore to the-shore of-the-sea to-approach is-forbidden provided*
tamen villis et monumentis et aedificiis abstineat, quia
*however from-villas and monuments and buildings he-keep-away because*
non sunt iuris gentium, sicut et mare.
*not they-are of-the-law of-nations as also the-sea*

2 Flumina autem omnia et portus publica sunt: ideoque ius
*Rivers however all and harbors public are and-therefore the-right*
piscandi omnibus commune est in portubus fluminibusque.
*of-fishing to-all common is in harbors and-rivers*

3 Est autem litus maris, quatenus hibernus fluctus maximus
*Is however the-shore of-the-sea as-far-as the-winter wave greatest*
excurrit.
*runs-up*

4 Riparum quoque usus publicus est iuris gentium, sicut
*Of-the-banks also the-use public is of-the-law of-nations as*
ipsius fluminis: itaque navem ad eas appellere, funes ex
*itself of-the-river therefore a-ship to them to-bring-in ropes from*
arboribus ibi natis religare, onus aliquid in his reponere
*trees there grown to-tie a-load any on them to-put-down*
cuilibet liberum est, sicuti per ipsum flumen navigare. sed
*for-anyone free it-is as through the-very river to-sail but*
proprietas earum illorum est, quorum praediis haerent: qua
*the-ownership of-them of-those is to-whose estates they-adjoin which*
de causa arbores quoque in isdem natae eorundem sunt.
*for reason the-trees also on the-same grown of-the-same-people are*

5 Litorum quoque usus publicus iuris gentium est, sicut
*Of-the-shores also the-use public of-the-law of-nations is as*
ipsius maris: et ob id quibuslibet liberum est casam ibi
*itself of-the-sea and for this to-anyone-whatever free it-is a-hut there*
imponere, in qua se recipiant, sicut retia siccare et
*to-put in which themselves they-may-shelter as nets to-dry and*
ex mare deducere. proprietas autem eorum potest intellegi
*from the-sea to-haul the-ownership however of-them can be-understood*
nullius esse, sed eiusdem iuris esse, cuius et mare et
*of-no-one to-be but of-the-same law to-be of-which also the-sea and*
quae subiacent mari, terra vel harena.
*which lie-under the-sea earth or sand*

Universitatis sunt, non singulorum veluti quae in civitatibus 6
*Of-a-corporation are not of-individuals for-example what in the-cities*
sunt, ut theatra stadia et similia et si qua alia sunt
*are as theaters stadiums and similar-things and if any other there-are*
communia civitatium.
*common of-the-cities*

Nullius autem sunt res sacrae et religiosae et sanctae: 7
*Of-no-one however are things sacred and religious and sanctioned*
quod enim divini iuris est, id nullius in bonis est.
*what for of-divine law is that of-no-one in the-goods is*

Sacra sunt, quae rite et per pontifices deo consecrata 8
*Sacred are those-which duly and through the-pontiffs to-God consecrated*
sunt, veluti aedes sacrae et dona, quae rite ad ministerium
*have-been such-as temples sacred and gifts which duly to the-service*
dei dedicata sunt, quae etiam per nostram constitutionem
*of-God dedicated have-been which also through our constitution*
alienari et obligari prohibuimus, excepta causa redemptionis
*to-be-alienated and to-be-pledged we-have-forbidden excepting the-cause of-the-ransom*
captivorum. si quis vero auctoritate sua quasi sacrum
*of-captives if anyone however by-authority his-own as-if sacred*
sibi constituerit, sacrum non est, sed profanum. locus
*for-himself has-made-it sacred not it-is but profane the-place*
autem, in quo sacrae aedes aedificatae sunt, etiam diruto
*however in which sacred temples built have-been even destroyed*
aedificio adhuc sacer manet, ut et Papinianus scripsit.
*the-building still sacred remains as also Papinian wrote*

Religiosum locum unusquisque sua voluntate facit, dum 9
*A-religious place each-man his-own by-will makes while*
mortuum infert in locum suum. in communem autem
*a-dead-man he-brings into place his-own into a-common however*
locum purum invito socio inferre non licet:
*place pure against-the-will-of a-partner to-bring-in not it-is-allowed*

in commune vero sepulcrum etiam invitis ceteris
*into a-common however tomb even against-the-will-of the-others*
licet inferre. item si alienus usus fructus est,
*it-is-allowed to-bring-in likewise if another's the-use (and)-enjoyment is*
proprietarium placet nisi consentiente usufructuario locum
*the-owner it-is-held unless consenting the-usufructuary the-place*
religiosum non facere. in alienum locum concedente domino
*religious not to-make into another's place the-owner granting*
licet inferre: et licet postea ratum habuerit, quam
*it-is-allowed to-bring-in and although afterward ratified he-has than*
illatus est mortuus, tamen religiosus locus fit.
*brought-in was the-dead-man yet religious the-place becomes*
10 Sanctae quoque res, veluti muri et portae, quodammodo
*Sanctioned also things such-as walls and gates in-some-measure*
divini iuris sunt et ideo nullius in bonis sunt. ideo
*of-divine law are and therefore of-no-one in the-goods are therefore*
autem muros sanctos dicimus, quia poena capitis constituta
*however walls sanctioned we-call because a-penalty of-death established*
sit in eos, qui aliquid in muros deliquerint. ideo et
*is against those who anything against the-walls have-offended therefore also*
legum eas partes, quibus poenas constituimus adversus eos
*of-the-laws those parts by-which penalties we-establish against those*
qui contra leges fecerint, sanctiones vocamus.
*who against the-laws have-acted sanctions we-call*
11 Singulorum autem hominum multis modis res fiunt:
*Of-individual however men in-many ways things become*
quarundam enim rerum dominium nanciscimur iure naturali,
*of-some for things the-ownership we-obtain by-law natural*
quod, sicut diximus, appellatur ius gentium, quarundam
*which as we-have-said is-called the-law of-nations of-some*
iure civili. commodius est itaque a vetustiore iure
*by-law civil more-convenient it-is therefore from the-more-ancient law*

incipere. palam est autem vetustius esse naturale ius, quod
*to-begin evident it-is however more-ancient to-be natural law which*
cum ipso genere humano rerum natura prodidit: civilia
*with the-very race human of-things the-nature brought-forth civil*
enim iura tunc coeperunt, cum et civitates condi et
*for laws then began when both states to-be-founded and*
magistratus creari et leges scribi coeperunt.
*magistrates to-be-created and laws to-be-written began*
Ferae igitur bestiae et volucres et pisces, id est omnia 12
*Wild therefore beasts and birds and fish that is all*
animalia, quae in terra mari caelo nascuntur, simulatque
*animals which on land in-the-sea in-the-sky are-born as-soon-as*
ab aliquo capta fuerint, iure gentium statim illius esse
*by someone captured they-have-been by-the-law of-nations at-once his to-be*
incipiunt: quod enim ante nullius est, id naturali ratione
*begin what for before of-no-one is that by-natural reason*
occupanti conceditur. nec interest, feras bestias et volucres
*to-the-occupier is-granted nor does-it-matter wild beasts and birds*
utrum in suo fundo quisque capiat, an in alieno: plane qui
*whether on his-own estate each-man catch or on another's clearly he-who*
in alienum fundum ingreditur venandi aut aucupandi gratia,
*into another's estate enters of-hunting or of-fowling for-the-sake*
potest a domino, si is providerit, prohiberi ne ingrediatur.
*can by the-owner if he has-foreseen-it be-forbidden that-not he-enter*
quidquid autem eorum ceperis, eo usque tuum esse
*whatever however of-them you-have-caught so long yours to-be*
intellegitur, donec tua custodia coercetur: cum vero evaserit
*is-understood as-long-as by-your guard it-is-restrained when however it-has-escaped*
custodiam tuam et in naturalem libertatem se receperit,
*guard your and into natural freedom itself has-taken-back*
tuum esse desinit et rursus occupantis fit. naturalem autem
*yours to-be it-ceases and again of-the-occupier becomes natural however*

libertatem recipere intellegitur, cum vel oculos tuos effugerit
*freedom to-recover it-is-understood when either eyes your it-has-escaped*
vel ita sit in conspectu tuo, ut difficilis sit eius persecutio.
*or so is in sight your that difficult be its pursuit*

13 Illud quaesitum est, an, si fera bestia ita vulnerata sit,
*That asked has-been whether if a-wild beast so wounded has-been*
ut capi possit, statim tua esse intellegatur. quibusdam
*that be-taken it-can at-once yours to-be it-be-understood to-some*
placuit statim tuam esse et eo usque tuam videri, donec
*it-seemed-good at-once yours to-be and so long yours to-seem as-long-as*
eam persequaris, quodsi desieris persequi, desinere tuam
*it you-pursue but-if you-have-ceased to-pursue to-cease yours*
esse et rursus fieri occupantis. alii non aliter putaverunt
*to-be and again to-become of-the-occupier others not otherwise thought*
tuam esse, quam si ceperis. sed posteriorem sententiam
*yours to-be than if you-have-caught-it but the-latter opinion*
nos confirmamus, quia multa accidere solent, ut
*we confirm because many-things to-happen are-accustomed so-that*
eam non capias.
*it not you-catch*

14 Apium quoque natura fera est. itaque quae in arbore tua
*Of-bees also the-nature wild is therefore those-which on tree your*
consederint, antequam a te alveo includantur, non magis
*have-settled before by you in-a-hive they-are-enclosed not more*
tuae esse intelleguntur, quam volucres, quae in tua arbore
*yours to-be are-understood than birds which in your tree*
nidum fecerint: ideoque si alius eas incluserit, is earum
*a-nest have-made and-therefore if another them has-enclosed he of-them*
dominus erit. favos quoque si quos hae fecerint, quilibet
*owner will-be honeycombs also if any these have-made anyone*
eximere potest. plane integra re si provideris
*take-out can clearly untouched the-matter if you-have-foreseen-him*

ingredientem in fundum tuum, potes eum iure prohibere
*entering into estate your you-can him by-right forbid*
ne ingrediatur. examen, quod ex alveo tuo evolaverit, eo
*that-not he-enter a-swarm which from hive your has-flown-out so*
usque tuum esse intellegitur, donec in conspectu tuo est
*long yours to-be is-understood as-long-as in sight your it-is*
nec difficilis eius persecutio est: alioquin occupantis fit.
*nor difficult its pursuit is otherwise of-the-occupier it-becomes*
Pavonum et columbarum fera natura est. nec ad rem 15
*Of-peacocks and of-doves wild the-nature is nor to the-matter*
pertinet, quod ex consuetudine avolare et revolare
*does-it-pertain that by habit to-fly-away and to-fly-back*
solent: nam et apes idem faciunt, quarum constat
*they-are-accustomed for also bees the-same do whose it-is-agreed*
feram esse naturam: cervos quoque ita quidam mansuetos
*wild to-be the-nature deer also so some tame*
habent, ut in silvas ire et redire soleant, quorum
*have that into the-woods to-go and to-return they-are-accustomed whose*
et ipsorum feram esse naturam nemo negat. in his
*also themselves wild to-be the-nature no-one denies in these*
autem animalibus, quae ex consuetudine abire et redire
*however animals which by habit to-go-away and to-return*
solent, talis regula comprobata est, ut eo usque tua
*are-accustomed such a-rule approved has-been that so long yours*
esse intellegantur, donec animum revertendi habeant: nam si
*to-be they-are-understood as-long-as the-intention of-returning they-have for if*
revertendi animum habere desierint, etiam tua esse desinunt
*of-returning the-intention to-have they-have-ceased also yours to-be they-cease*
et fiunt occupantium. revertendi autem animum videntur
*and become of-the-occupiers of-returning however the-intention they-seem*
desinere habere, cum revertendi consuetudinem deseruerint.
*to-cease to-have when of-returning the-habit they-have-abandoned*

16 Gallinarum et anserum non est fera natura idque ex eo
*Of-hens and of-geese not is wild the-nature and-this from this*
possumus intellegere, quod aliae sunt gallinae, quas feras
*we-can understand that other are hens which wild*
vocamus, item alii anseres, quos feros appellamus. ideoque
*we-call likewise other geese which wild we-call and-therefore*
si anseres tui aut gallinae tuae aliquo casu turbati turbataeve
*if geese your or hens your by-some chance disturbed or-disturbed*
evolaverint, licet conspectum tuum effugerint, quocumque
*have-flown-away although sight your they-have-escaped in-whatever*
tamen loco sint, tui tuaeve esse intelleguntur: et qui lucrandi
*however place they-are yours or-yours to-be are-understood and he-who of-profiting*
animo ea animalia retinet, furtum committere intellegitur.
*with-intent those animals retains theft to-commit is-understood*

17 Item ea, quae ex hostibus capimus, iure gentium
*Likewise those-things which from the-enemy we-take by-the-law of-nations*
statim nostra fiunt: adeo quidem, ut et liberi homines in
*at-once ours become so-far indeed that even free men into*
servitutem nostram deducantur, qui tamen, si evaserint
*slavery our are-brought who however if they-have-escaped*
nostram potestatem et ad suos reversi fuerint, pristinum
*our power and to their-own returned have their-former*
statum recipiunt.
*status they-recover*

18 Item lapilli gemmae et cetera, quae in litore inveniuntur,
*Likewise pebbles gems and the-other-things which on the-shore are-found*
iure naturali statim inventoris fiunt.
*by-natural law at-once of-the-finder become*

19 Item ea, quae ex animalibus dominio tuo subiectis
*Likewise those-things which from animals to-ownership your subject*
nata sunt, eodem iure tibi adquiruntur.
*born are by-the-same law to-you are-acquired*

Praeterea quod per alluvionem agro tuo flumen adiecit, 20
*Moreover what through alluvion to-field your the-river has-added*
iure gentium tibi adquiritur. est autem alluvio incrementum
*by-the-law of-nations to-you is-acquired is however alluvion an-increase*
latens. per alluvionem autem id videtur adici, quod
*hidden through alluvion however that seems to-be-added which*
ita paulatim adicitur, ut intellegere non possis, quantum
*so gradually is-added that to-perceive not you-can how-much*
quoquo momento temporis adiciatur.
*at-each moment of-time is-added*
Quodsi vis fluminis partem aliquam ex tuo praedio 21
*But-if the-force of-the-river part some from your estate*
detraxerit et vicini praedio appulerit, palam est eam
*has-torn-away and of-a-neighbor to-the-estate has-carried evident it-is it*
tuam permanere. plane si longiore tempore fundo vicini
*yours to-remain clearly if for-a-longer time to-the-estate of-the-neighbor*
haeserit arboresque, quas secum traxerit, in eum fundum
*it-has-stuck and-the-trees which with-itself it-dragged into that estate*
radices egerint, ex eo tempore videntur vicini
*roots have-put-down from that time they-seem of-the-neighbor*
fundo adquisitae esse.
*to-the-estate acquired to-be*
Insula, quae in mari nata est, quod raro accidit, occupantis 22
*An-island which in the-sea arisen is which rarely happens of-the-occupier*
fit: nullius enim esse creditur. at in flumine nata, quod
*becomes of-no-one for to-be it-is-believed but in a-river arisen which*
frequenter accidit, si quidem mediam partem fluminis teneat,
*often happens if indeed the-middle part of-the-river it-holds*
communis est eorum, qui ab utraque parte fluminis prope
*common it-is of-those who on each side of-the-river near*
ripam praedia possident, pro modo latitudinis cuiusque
*the-bank estates possess according-to the-measure of-the-breadth of-each*

fundi, quae latitudo prope ripam sit. quodsi alteri parti
*estate which breadth near the-bank is but-if to-one side*
proximior sit, eorum est tantum, quia ab ea parte prope
*nearer it-be of-those it-is only because on that side near*
ripam praedia possident. quodsi aliqua parte divisum flumen,
*the-bank estates they-possess but-if at-some part divided the-river*
deinde infra unitum agrum alicuius in formam insulae
*then below reunited the-field of-someone into the-form of-an-island*
redegerit, eiusdem permanet is ager, cuius et fuerat.
*has-brought of-the-same remains that field whose also it-had-been*

23 Quodsi naturali alveo in universum derelicto alia parte
*But-if the-natural channel in entirety abandoned in-another part*
fluere coeperit, prior quidem alveus eorum est, qui prope
*to-flow it-has-begun the-former indeed channel of-those is who near*
ripam eius praedia possident, pro modo scilicet
*bank its estates possess according-to the-measure namely*
latitudinis cuiusque agri, quae latitudo prope ripam sit,
*of-the-breadth of-each field which breadth near the-bank is*
novus autem alveus eius iuris esse incipit, cuius et ipsum
*the-new however channel of-that law to-be begins of-which also itself*
flumen, id est publicus. quodsi post aliquod tempus ad
*the-river that is public but-if after some time to*
priorem alveum reversum fuerit flumen, rursus novus alveus
*the-former channel returned has the-river again the-new channel*
eorum esse incipit, qui prope ripam eius praedia possident.
*of-those to-be begins who near bank its estates possess*

24 Alia sane causa est, si cuius totus ager inundatus fuerit.
*Another indeed case it-is if of-someone the-whole field flooded has-been*
neque enim inundatio speciem fundi commutat et ob
*nor for the-flooding the-form of-the-estate changes and for*

id, si recesserit aqua, palam est eum fundum eius manere,
*this if has-receded the-water evident it-is that estate his to-remain*
cuius et fuit.
*whose also it-was*
Cum ex aliena materia species aliqua facta sit ab aliquo, 25
*When from another's material a-form some made has-been by someone*
quaeri solet, quis eorum naturali ratione dominus sit, utrum
*to-be-asked it-is-wont which of-them by-natural reason owner is whether*
is qui fecerit, an ille potius qui materiae dominus fuerit: ut
*he who made-it or he rather who of-the-material owner was as*
ecce si quis ex alienis uvis aut olivis aut spicis vinum
*for-instance if anyone from another's grapes or olives or ears-of-grain wine*
aut oleum aut frumentum fecerit, aut ex alieno auro vel argento
*or oil or grain has-made or from another's gold or silver*
vel aere vas aliquod fecerit, vel ex alieno vino et melle
*or bronze a-vessel some has-made or from another's wine and honey*
mulsum miscuerit, vel ex alienis medicamentis emplastrum aut
*mead has-mixed or from another's drugs a-plaster or*
collyrium composuerit, vel ex aliena lana vestimentum fecerit,
*an-eye-salve has-compounded or from another's wool a-garment has-made*
vel ex alienis tabulis navem vel armarium vel subsellium
*or from another's planks a-ship or a-cupboard or a-bench*
fabricaverit. et post multas Sabinianorum et Proculianorum
*has-built and after many of-the-Sabinians and Proculians*
ambiguitates placuit media sententia existimantium, si ea
*doubts it-was-held the-middle opinion of-those-thinking if that*
species ad materiam reduci possit, eum videri dominum
*form to the-material be-brought-back can that-he seems owner*
esse, qui materiae dominus fuerat, si non possit reduci,
*to-be who of-the-material owner had-been if not it-can be-brought-back*
eum potius intellegi dominum qui fecerit: ut ecce vas
*that-he rather to-be-understood the-owner who made-it as for-instance a-vessel*

conflatum potest ad rudem massam aeris vel argenti vel auri
*melted-down can to a-rough mass of-bronze or silver or gold*
reduci, vinum autem aut oleum aut frumentum ad uvas et
*be-brought-back wine however or oil or grain to grapes and*
olivas et spicas reverti non potest ac ne mulsum quidem
*olives and ears-of-grain to-return not can and not mead even*
ad vinum et mel resolvi potest. quodsi partim ex sua
*to wine and honey be-resolved can but-if partly from his-own*
materia, partim ex aliena speciem aliquam fecerit quisque,
*material partly from another's a-form some has-made anyone*
veluti ex suo vino et alieno melle mulsum aut ex suis et
*as from his-own wine and another's honey mead or from his-own and*
alienis medicamentis emplastrum aut collyrium aut ex sua
*another's drugs a-plaster or an-eye-salve or from his-own*
et aliena lana vestimentum fecerit, dubitandum non est hoc
*and another's wool a-garment has-made to-be-doubted not it-is in-this*
casu eum esse dominum qui fecerit: cum non solum operam
*case him to-be owner who made-it since not only work*
suam dedit, sed et partem eiusdem materiae praestavit.
*his-own he-gave but also part of-the-same material furnished*

26 Si tamen alienam purpuram quis intexuit suo vestimento,
*If however another's purple anyone has-woven-into his-own garment*
licet pretiosior est purpura, accessionis vice cedit vestimento:
*although more-precious is the-purple of-an-accession by-way yields to-the-garment*
et qui dominus fuit purpurae, adversus eum qui subripuit
*and he-who owner was of-the-purple against him who stole-it*
habet furti actionem et condictionem, sive ipse est
*has of-theft the-action and the-condiction whether he-himself is*
qui vestimentum fecit, sive alius. nam extinctae res licet
*who the-garment made or another for destroyed things although*

vindicari non possint, condici tamen a furibus
*be-vindicated not they-can be-claimed-by-condiction however from thieves*
et a quibusdam aliis possessoribus possunt.
*and from certain other possessors they-can*
Si duorum materiae ex voluntate dominorum confusae sint, 27
*If of-two the-materials by the-will of-the-owners mixed have-been*
totum id corpus, quod ex confusione fit, utriusque commune
*the-whole that body which from the-mixture arises of-both common*
est, veluti si qui vina sua confuderint aut massas argenti
*is as if any wines their-own have-poured-together or masses of-silver*
vel auri conflaverint. sed si diversae materiae sint et ob id
*or of-gold have-melted-together but if different the-materials are and for that*
propria species facta sit, forte ex vino et melle mulsum aut
*its-own form made has-been perhaps from wine and honey mead or*
ex auro et argento electrum, idem iuris est: nam et eo casu
*from gold and silver electrum the-same law is for also in-that case*
communem esse speciem non dubitatur. quodsi fortuitu et non
*common to-be the-form not is-doubted but-if by-chance and not*
voluntate dominorum confusae fuerint vel diversae materiae
*by-the-will of-the-owners mixed they-have-been either different materials*
vel quae eiusdem generis sunt, idem iuris esse placuit.
*or those-which of-the-same kind are the-same law to-be it-was-held*
Quodsi frumentum Titii tuo frumento mixtum fuerit, si 28
*But-if the-grain of-Titius with-your grain mixed has-been if*
quidem ex voluntate vestra, commune erit, quia singula
*indeed by will your common it-will-be because the-single*
corpora, id est singula grana, quae cuiusque propria fuerunt, ex
*bodies that is the-single grains which of-each own were by*
consensu vestro communicata sunt. quodsi casu id mixtum
*consent your made-common have-been but-if by-chance it mixed*
fuerit vel Titius id miscuerit sine voluntate tua, non videtur
*has-been or Titius it has-mixed without will your not it-seems*

commune esse, quia singula corpora in sua substantia
*common to-be because the-single bodies in their-own substance*
durant nec magis istis casibus commune fit frumentum,
*endure nor more in-these cases common becomes the-grain*
quam grex communis esse intellegitur, si pecora Titii tuis
*than a-flock common to-be is-understood if the-cattle of-Titius with-your*
pecoribus mixta fuerint: sed si ab alterutro vestrum id totum
*cattle mixed have-been but if by either of-you that whole*
frumentum retineatur, in rem quidem actio pro modo
*grain be-retained in rem indeed an-action according-to the-measure*
frumenti cuiusque competat, arbitrio autem iudicis
*of-the-grain of-each lies in-the-discretion however of-the-judge*
continetur, ut is aestimet, quale cuiusque frumentum fuerit.
*it-is-contained that he assess of-what-sort of-each the-grain was*

29 Cum in suo solo aliquis aliena materia aedificaverit, ipse
*When on his-own soil anyone with-another's material has-built he-himself*
dominus intellegitur aedificii, quia omne quod inaedificatur
*the-owner is-understood of-the-building because everything which is-built-on*
solo cedit. nec tamen ideo is, qui materiae dominus
*to-the-soil yields nor however therefore he who of-the-material owner*
fuerat, desinit eius dominus esse: sed tantisper neque vindicare
*had-been ceases its owner to-be but meanwhile neither vindicate*
eam potest neque ad exhibendum de ea re agere propter
*it he-can nor for production about that thing sue on-account-of*
legem duodecim tabularum, qua cavetur, ne quis
*the-statute of-the-twelve tables by-which it-is-provided that-not anyone*
tignum alienum aedibus suis iniunctum eximere cogatur, sed
*a-beam another's to-house his-own joined to-remove be-compelled but*
duplum pro eo praestet per actionem quae vocatur de tigno
*double for it he-pay through the-action which is-called about the-beam*
iuncto (appellatione autem tigni omnis materia significatur, ex
*joined by-the-name however of-beam all material is-signified from*

qua aedificia fiunt): quod ideo provisum est, ne aedificia
*which buildings are-made which therefore provided has-been lest buildings*
rescindi necesse sit. sed si aliqua ex causa dirutum sit
*be-pulled-down necessary it-be but if some from cause demolished has-been*
aedificium, poterit materiae dominus, si non fuerit duplum
*the-building will-be-able of-the-material the-owner if not he-has the-double*
iam persecutus, tunc eam vindicare et ad exhibendum agere.
*already sued-for then it to-vindicate and for production to-sue*
Ex diverso si quis in alieno solo sua materia domum 30
*On the-contrary if anyone on another's soil with-his-own material a-house*
aedificaverit, illius fit domus, cuius et solum est. sed
*has-built his becomes the-house whose also the-soil is but*
hoc casu materiae dominus proprietatem eius amittit, quia
*in-this case of-the-material the-owner the-ownership of-it loses because*
voluntate eius alienata intellegitur, utique si non ignorabat
*by-will his alienated it-is-understood certainly if not he-was-unaware*
in alieno solo se aedificare: et ideo, licet diruta sit
*on another's soil himself to-build and therefore although demolished be*
domus, vindicare materiam non possit. certe illud constat,
*the-house to-vindicate the-material not he-can certainly that is-agreed*
si in possessione constituto aedificatore soli dominus petat
*if in possession established the-builder of-the-soil the-owner claims*
domum suam esse nec solvat pretium materiae et mercedes
*the-house his to-be nor pays the-price of-the-material and the-wages*
fabrorum, posse eum per exceptionem doli mali repelli,
*of-the-workmen to-be-able him by the-defense of-fraud bad to-be-repelled*
utique si bonae fidei possessor fuit qui aedificasset: nam
*certainly if of-good faith a-possessor was he-who had-built for*
scienti alienum esse solum potest culpa obici, quod
*to-one-knowing another's to-be the-soil can the-fault be-charged that*
temere aedificaverit in eo solo, quod intellegeret alienum esse.
*rashly he-built on that soil which he-understood another's to-be*

31 Si Titius alienam plantam in suo solo posuerit, ipsius erit:
*If Titius another's plant on his-own soil has-placed his it-will-be*
et ex diverso si Titius suam plantam in Maevii solo posuerit,
*and on the-contrary if Titius his-own plant on Maevius' soil has-placed*
Maevii planta erit, si modo utroque casu radices egerit.
*Maevius' the-plant will-be if only in-each case roots it-has-put-down*
antequam autem radices egerit, eius permanet, cuius et
*before however roots it-has-put-down his it-remains whose also*
fuerat. adeo autem ex eo, ex quo radices agit planta,
*it-had-been so-far however from that from which roots puts-down the-plant*
proprietas eius commutatur, ut, si vicini arborem ita terra
*the-ownership of-it is-changed that if a-neighbor's tree so the-earth*
Titii presserit, ut in eius fundum radices ageret, Titii
*of-Titius has-pressed that into his estate roots it-put-down Titius'*
effici arborem dicimus: rationem etenim non permittere, ut
*to-be-made the-tree we-say reason for not to-permit that*
alterius arbor esse intellegatur, quam cuius in fundum radices
*another's the-tree to-be be-understood than whose into estate roots*
egisset. et ideo prope confinium arbor posita si etiam
*it-had-put-down and therefore near the-boundary a-tree placed if also*
in vicini fundum radices egerit, communis fit.
*into the-neighbor's estate roots it-has-put-down common it-becomes*

32 Qua ratione autem plantae, quae terra coalescunt, solo
*By-which reason however plants which with-the-earth grow-together to-the-soil*
cedunt, eadem ratione frumenta quoque, quae sata sunt,
*yield by-the-same reason crops also which sown are*
solo cedere intelleguntur. ceterum sicut is qui in alieno
*to-the-soil to-yield are-understood moreover just-as he who on another's*
solo aedificaverit, si ab eo dominus petat aedificium, defendi
*soil has-built if from him the-owner claims the-building be-defended*
potest per exceptionem doli mali secundum ea quae
*can through the-defense of-fraud bad according-to those-things which*

diximus: ita eiusdem exceptionis auxilio tutus esse potest
*we-have-said so of-the-same defense by-the-help safe to-be can*
is qui alienum fundum sua impensa bona fide consevit.
*he who another's estate at-his-own expense in-good faith has-sown*
Litterae quoque, licet aureae sint, perinde chartis 33
*Letters also although golden they-be just-as to-papers*
membranisque cedunt, acsi solo cedere solent ea quae
*and-parchments yield as-if to-the-soil to-yield are-wont those-things which*
inaedificantur aut inseruntur: ideoque si in chartis membranisve
*are-built-on or are-planted and-therefore if on papers or-parchments*
tuis carmen vel historiam vel orationem Titius scripserit,
*your a-poem or a-history or a-speech Titius has-written*
huius corporis non Titius, sed tu dominus esse iudiceris. sed
*of-this body not Titius but you owner to-be are-judged but*
si a Titio petas tuos libros tuasve membranas esse nec
*if from Titius you-claim your books or-your parchments to-be nor*
impensam scripturae solvere paratus sis, poterit se Titius
*the-cost of-the-writing to-pay ready you-are will-be-able himself Titius*
defendere per exceptionem doli mali, utique si bona fide
*to-defend through the-defense of-fraud bad certainly if in-good faith*
earum chartarum membranarumve possessionem nanctus est.
*of-those papers or-parchments the-possession obtained he-has*
Si quis in aliena tabula pinxerit, quidam putant tabulam 34
*If anyone on another's panel has-painted some think the-panel*
picturae cedere: aliis videtur picturam, qualiscumque
*to-the-painting to-yield to-others it-seems the-painting of-whatever-sort*
sit, tabulae cedere. sed nobis videtur melius esse tabulam
*it-be to-the-panel to-yield but to-us it-seems better to-be the-panel*
picturae cedere: ridiculum est enim picturam Apellis vel
*to-the-painting to-yield ridiculous it-is for a-painting of-Apelles or*
Parrhasii in accessionem vilissimae tabulae cedere. unde si
*of-Parrhasius as an-accession of-a-most-worthless panel to-yield whence if*

a domino tabulae imaginem possidente is qui pinxit eam
*from the-owner of-the-panel the-picture possessing he who painted-it it*
petat nec solvat pretium tabulae, poterit per exceptionem
*claims nor pays the-price of-the-panel he-will-be-able by the-defense*
doli mali summoveri: at si is qui pinxit possideat,
*of-fraud bad to-be-barred but if he who painted-it possesses*
consequens est, ut utilis actio domino tabulae adversus
*consequent it-is that an-analogous action to-the-owner of-the-panel against*
eum detur, quo casu, si non solvat impensam picturae,
*him be-given in-which case if not he-pays the-cost of-the-painting*
poterit per exceptionem doli mali repelli, utique si
*he-will-be-able by the-defense of-fraud bad to-be-repelled certainly if*
bona fide possessor fuerit ille qui picturam imposuit. illud
*in-good faith possessor was he who the-painting put-on that*
enim palam est, quod, sive is qui pinxit subripuit tabulas
*for evident it-is that whether he who painted-it stole the-panels*
sive alius, competit domino tabularum furti actio.
*or another belongs to-the-owner of-the-panels of-theft the-action*

35 Si quis a non domino, quem dominum esse crederet, bona
*If anyone from a-non owner whom owner to-be he-believed in-good*
fide fundum emerit vel ex donatione aliave qua iusta causa
*faith an-estate has-bought or by gift or-by-another any lawful cause*
aeque bona fide acceperit: naturali ratione placuit fructus quos
*equally in-good faith has-received by-natural reason it-was-held the-fruits which*
percepit eius esse pro cultura et cura. et ideo si postea
*he-has-gathered his to-be for cultivation and care and therefore if afterward*
dominus supervenerit et fundum vindicet, de fructibus ab eo
*the-owner has-turned-up and the-estate vindicates about the-fruits by him*
consumptis agere non potest. ei vero, qui sciens alienum
*consumed sue not he-can to-him however who knowing another's*

fundum possederit, non idem concessum est. itaque cum fundo
*the-estate has-possessed not the-same granted is therefore with the-estate*
etiam fructus, licet consumpti sint, cogitur restituere.
*also the-fruits although consumed they-be he-is-compelled to-restore*
Is, ad quem usus fructus fundi pertinet, non aliter 36
*He to whom the-use (and)-enjoyment of-the-estate belongs not otherwise*
fructuum dominus efficitur, quam si eos ipse perceperit.
*of-the-fruits owner is-made than if them himself has-gathered*
et ideo licet maturis fructibus, nondum tamen perceptis
*and therefore although ripe the-fruits not-yet however gathered*
decesserit, ad heredem eius non pertinent, sed domino
*he-has-died to heir his not they-belong but to-the-owner*
proprietatis adquiruntur. eadem fere et de colono dicuntur.
*of-the-ownership are-acquired the-same nearly also about the-tenant are-said*
In pecudum fructu etiam fetus est, sicuti lac et pilus et 37
*In of-cattle the-fruit also the-offspring is as milk and hair and*
lana: itaque agni et haedi et vituli et equuli statim naturali
*wool therefore lambs and kids and calves and foals at-once by-natural*
iure dominii sunt fructuarii. partus vero ancillae
*law of-the-ownership are of-the-usufructuary the-offspring however of-a-slave-woman*
in fructu non est itaque ad dominum proprietatis pertinet:
*in fruit not is therefore to the-owner of-the-ownership it-belongs*
absurdum enim videbatur hominem in fructu esse, cum
*absurd for it-seemed a-man in fruit to-be since*
omnes fructus rerum natura hominum gratia comparavit.
*all the-fruits of-things nature of-men for-the-sake has-provided*
Sed si gregis usum fructum quis habeat, in locum 38
*But if of-a-flock the-use (and)-enjoyment anyone has in place*
demortuorum capitum ex fetu fructuarius summittere
*of-dead heads from the-offspring the-usufructuary to-supply*
debet, ut et Iuliano visum est, et in vinearum demortuarum
*ought as also to-Julian seemed it-has and in of-vines dead*

vel arborum locum alias debet substituere. recte enim
*or of-trees the-place others he-ought to-substitute rightly for*
colere debet et quasi bonus pater familias uti debet.
*to-cultivate he-ought and like a-good father of-a-family to-use ought*
39 Thesauros, quos quis in suo loco invenerit, divus
*Treasures which anyone in his-own place has-found the-deified*
Hadrianus naturalem aequitatem secutus ei concessit qui
*Hadrian natural equity following to-him granted who*
invenerit. idemque statuit, si quis in sacro aut in religioso
*found-them and-the-same he-ruled if anyone in a-sacred or in a-religious*
loco fortuito casu invenerit. at si quis in alieno loco non
*place by-fortuitous chance has-found-them but if anyone in another's place not*
data ad hoc opera, sed fortuitu invenerit, dimidium domino
*given to this effort but by-chance has-found-them half to-the-owner*
soli concessit. et convenienter, si quis in Caesaris loco
*of-the-soil he-granted and consistently if anyone in Caesar's place*
invenerit, dimidium inventoris, dimidium Caesaris esse statuit.
*has-found-them half of-the-finder half Caesar's to-be he-ruled*
cui conveniens est, ut, si quis in publico loco vel fiscali
*to-which consistent it-is that if anyone in a-public place or a-fiscal*
invenerit, dimidium ipsius esse, dimidium fisci vel civitatis.
*has-found-them half his to-be half of-the-fisc or of-the-city*
40 Per traditionem quoque iure naturali res nobis adquiruntur:
*Through delivery also by-law natural things to-us are-acquired*
nihil enim tam conveniens est naturali aequitati, quam
*nothing for so fitting is to-natural equity as*
voluntatem domini, volentis rem suam in alium transferre,
*the-will of-an-owner wishing thing his-own to another to-transfer*
ratam haberi. et ideo cuiuscumque generis sit corporalis
*ratified to-be-held and therefore of-whatever kind it-be a-corporeal*
res, tradi potest et a domino tradita alienatur. itaque
*thing be-delivered can and by the-owner delivered is-alienated therefore*

stipendiaria quoque et tributaria praedia eodem modo
*stipendiary also and tributary estates in-the-same way*
alienantur. vocantur autem stipendiaria et tributaria praedia,
*are-alienated are-called however stipendiary and tributary estates*
quae in provinciis sunt, inter quae nec non Italica praedia
*which in the-provinces are between which and also Italian estates*
ex nostra constitutione nulla differentia est.
*by our constitution no difference there-is*

Sed si quidem ex causa donationis aut dotis aut qualibet 41
*But if indeed by reason of-gift or of-dowry or any*
alia ex causa tradantur, sine dubio transferuntur: venditae
*other from cause they-are-delivered without doubt they-are-transferred sold*
vero et traditae non aliter emptori adquiruntur, quam
*however and delivered not otherwise to-the-buyer are-acquired than*
si is venditori pretium solverit vel alio modo ei
*if he to-the-seller the-price has-paid or in-another way him*
satisfecerit, veluti expromissore aut pignore dato. quod
*has-satisfied as-for-instance a-surety or a-pledge given which*
cavetur quidem etiam lege duodecim tabularum: tamen
*is-provided indeed also by-the-statute of-the-twelve tables yet*
recte dicitur et iure gentium, id est iure naturali,
*rightly it-is-said also by-the-law of-nations that is by-law natural*
id effici. sed si is qui vendidit fidem emptoris secutus
*this to-be-effected but if he who sold the-credit of-the-buyer followed*
fuerit, dicendum est statim rem emptoris fieri.
*has to-be-said it-is at-once the-thing the-buyer's to-become*

Nihil autem interest, utrum ipse dominus tradat alicui 42
*Nothing however it-matters whether himself the-owner delivers to-someone*
rem, an voluntate eius alius.
*the-thing or by-will his another*

43 Qua ratione, si cui libera negotiorum administratio
*By-which reason if to-someone free of-affairs the-administration*
a domino permissa fuerit isque ex his negotiis rem
*by the-owner permitted has-been and-he from these affairs a-thing*
vendiderit et tradiderit, facit eam accipientis.
*has-sold and has-delivered he-makes it the-receiver's*

44 Interdum etiam sine traditione nuda voluntas sufficit domini
*Sometimes even without delivery bare will suffices of-the-owner*
ad rem transferendam, veluti si rem, quam tibi aliquis
*for a-thing to-be-transferred as-for-instance if a-thing which to-you someone*
commodavit aut locavit aut apud te deposuit, vendiderit tibi aut
*has-lent or has-let or with you has-deposited he-has-sold to-you or*
donaverit. quamvis enim ex ea causa tibi eam non tradiderit,
*given although for from that cause to-you it not he-has-delivered*
eo tamen ipso, quod patitur tuam esse, statim adquiritur
*by-that however very-fact that he-allows yours to-be at-once is-acquired*
tibi proprietas perinde ac si eo nomine tradita fuisset.
*to-you the-ownership just as if on-that account delivered it-had-been*

45 Item si quis merces in horreo depositas vendiderit,
*Likewise if anyone goods in a-warehouse deposited has-sold*
simul atque claves horrei tradiderit emptori, transfert
*as-soon as the-keys of-the-warehouse he-has-delivered to-the-buyer he-transfers*
proprietatem mercium ad emptorem.
*the-ownership of-the-goods to the-buyer*

46 Hoc amplius interdum et in incertam personam collocata
*This further sometimes also on an-uncertain person placed*
voluntas domini transfert rei proprietatem: ut ecce
*the-will of-the-owner transfers of-the-thing the-ownership as for-instance*
praetores vel consules, qui missilia iactant in vulgus,
*praetors or consuls who largesse throw among the-crowd*
ignorant, quid eorum quisque excepturus sit, et tamen,
*know-not what of-them each about-to-catch is and yet*

quia volunt quod quisque exceperit eius esse, statim eum
*because they-wish that-which each has-caught his to-be at-once him*
dominum efficiunt.
*owner they-make*

Qua ratione verius esse videtur et, si rem pro derelicto 47
*By-which reason truer to-be it-seems also if a-thing as abandoned*
a domino habitam occuparit quis, statim eum dominum
*by the-owner held has-seized anyone at-once him owner*
effici. pro derelicto autem habetur, quod dominus ea
*to-be-made as abandoned however is-held what the-owner with-that*
mente abiecerit, ut id rerum suarum esse nollet,
*intention has-thrown-away that it of-things his-own to-be he-would-not-wish*
ideoque statim dominus esse desinit.
*and-therefore at-once owner to-be he-ceases*

Alia causa est earum rerum, quae in tempestate maris levandae 48
*Another case it-is of-those things which in a-storm of-the-sea of-lightening*
navis causa eiciuntur. hae enim dominorum permanent, quia
*the-ship for-the-sake are-thrown-out these for of-the-owners remain because*
palam est eas non eo animo eici, quo quis eas
*evident it-is them not with-that intention to-be-thrown-out with-which anyone them*
habere non vult, sed quo magis cum ipsa nave periculum
*to-have not wishes but with-which rather with the-very ship the-danger*
maris effugiat: qua de causa si quis eas fluctibus expulsas
*of-the-sea he-may-escape which for reason if anyone them by-the-waves cast-out*
vel etiam in ipso mari nactus lucrandi animo abstulerit,
*or even in the-very sea having-found of-profiting with-intention has-carried-off*
furtum committit. nec longe discedere videntur ab his, quae
*theft he-commits nor far to-differ they-seem from those which*
de rheda currente non intellegentibus dominis cadunt.
*from a-carriage running not perceiving the-owners fall*

## II · INCORPOREAL THINGS

*Corporeal things can be touched; incorporeal ones, such as an inheritance, a usufruct, and obligations, exist in law, and among them are the servitudes of estates.*

Quaedam praeterea res corporales sunt, quaedam incorporales.
*Some moreover things corporeal are some incorporeal*

1 Corporales eae sunt, quae sui natura tangi possunt:
*Corporeal those are which by-their-own nature be-touched can*
veluti fundus homo vestis aurum argentum et denique aliae
*as an-estate a-man clothing gold silver and finally other*
res innumerabiles.
*things innumerable*

2 Incorporales autem sunt, quae tangi non possunt.
*Incorporeal however are those-which be-touched not can*
qualia sunt ea, quae in iure consistunt: sicut hereditas,
*such-as are those which in law consist as an-inheritance*
usus fructus, obligationes quoquo modo contractae. nec
*the-use (and)-enjoyment obligations in-whatever way contracted nor*
ad rem pertinet, quod in hereditate res corporales
*to the-matter does-it-pertain that in an-inheritance things corporeal*
continentur: nam et fructus, qui ex fundo percipiuntur,
*are-contained for also the-fruits which from an-estate are-gathered*
corporales sunt et id, quod ex aliqua obligatione nobis
*corporeal are and that which from some obligation to-us*
debetur, plerumque corporale est. veluti fundus homo
*is-owed mostly corporeal is as an-estate a-man*
pecunia: nam ipsum ius hereditatis et ipsum ius utendi
*money for the-very right of-inheritance and the-very right of-using*
fruendi et ipsum ius obligationis incorporale est.
*of-enjoying and the-very right of-obligation incorporeal is*

Eodem numero sunt iura praediorum urbanorum et 3
*In-the-same number are the-rights of-estates urban and*
rusticorum, quae etiam servitutes vocantur.
*rustic which also servitudes are-called*

## III · SERVITUDES

*Rustic servitudes are footpath, driveway, road, and aqueduct, with water-drawing and pasture; urban ones concern bearing loads, beams, drip, and light. They attach only to estates and are set up by pact and stipulation or by will.*

Rusticorum praediorum iura sunt haec: iter actus via aquae
*Of-rustic estates the-rights are these footpath driveway road of-water*
ductus. iter est ius eundi ambulandi homini, non etiam
*conduit a-footpath is the-right of-going of-walking for-a-man not also*
iumentum agendi vel vehiculum: actus est ius agendi vel
*a-beast-of-burden of-driving or a-vehicle a-driveway is the-right of-driving either*
iumentum vel vehiculum. itaque qui iter habet, actum
*a-beast-of-burden or a-vehicle therefore he-who a-footpath has a-driveway*
non habet. qui actum habet, et iter habet eoque uti
*not has he-who a-driveway has also a-footpath has and-it to-use*
potest etiam sine iumento. via est ius eundi et agendi
*can even without a-beast-of-burden a-road is the-right of-going and of-driving*
et ambulandi: nam et iter et actum in se via continet.
*and of-walking for both footpath and driveway in itself a-road contains*
aquae ductus est ius aquae ducendae per fundum alienum.
*of-water a-conduit is the-right of-water to-be-led through an-estate another's*
Praediorum urbanorum sunt servitutes, quae aedificiis inhaerent, 1
*Of-estates urban are servitudes which to-buildings adhere*
ideo urbanorum praediorum dictae, quoniam aedificia omnia
*therefore of-urban estates called since buildings all*

urbana praedia appellantur, etsi in villa aedificata sunt.
*urban estates are-called even-if in the-country built they-are*
item praediorum urbanorum servitutes sunt hae: ut vicinus
*likewise of-estates urban servitudes are these that a-neighbor*
onera vicini sustineat: ut in parietem eius liceat
*the-loads of-a-neighbor support that into wall his it-be-allowed*
vicino tignum immittere: ut stillicidium vel flumen recipiat
*for-the-neighbor a-beam to-insert that the-drip or stream receive*
quis in aedes suas vel in aream, vel non recipiat: et ne
*anyone into house his-own or into yard or not receive and that-not*
altius tollat quis aedes suas, ne luminibus vicini officiatur.
*higher raise anyone house his-own lest the-lights of-a-neighbor be-obstructed*

2 In rusticorum praediorum servitutes quidam computari
*Among of-rustic estates the-servitudes some to-be-counted*
recte putant aquae haustum, pecoris ad aquam adpulsum,
*rightly think of-water drawing of-cattle to water driving*
ius pascendi, calcis coquendae, harenae fodiendae.
*the-right of-pasturing of-lime burning of-sand digging*

3 Ideo autem hae servitutes praediorum appellantur, quoniam
*Therefore however these servitudes of-estates are-called since*
sine praediis constitui non possunt. nemo enim potest
*without estates be-established not they-can no-one for can*
servitutem adquirere urbani vel rustici praedii, nisi qui habet
*a-servitude acquire of-an-urban or rustic estate except he-who has*
praedium, nec quisquam debere, nisi qui habet praedium.
*an-estate nor anyone owe except he-who has an-estate*

4 Si quis velit vicino aliquod ius constituere, pactionibus
*If anyone wishes for-a-neighbor some right to-establish by-pacts*
atque stipulationibus id efficere debet. potest etiam in
*and stipulations it to-effect he-ought he-can also in*
testamento quis heredem suum damnare, ne altius tollat,
*a-testament anyone heir his-own condemn that-not higher he-raise*

ne luminibus aedium vicini officiat: vel ut patiatur eum
*lest the-lights of-the-house of-the-neighbor he-obstruct or that he-allow him*
tignum in parietem immittere vel stillicidium habere: vel ut
*a-beam into the-wall to-insert or the-drip to-have or that*
patiatur eum per fundum ire agere aquamve ex eo ducere.
*he-allow him through the-estate to-go to-drive or-water from it to-lead*

## IV · USUFRUCT

*Usufruct is the right to use and enjoy another's things, their substance saved. It is set up by legacy or by pact and stipulation, on all things but those consumed by use, where the senate allowed a quasi-usufruct secured by guarantee. It ends by death, the two greater losses of status, non-use as Justinian's constitution sets, surrender, merger, or the thing's destruction.*

Usus fructus est ius alienis rebus utendi fruendi
*The-use (and)-enjoyment is the-right of-another's things of-using of-enjoying*
salva rerum substantia. est enim ius in corpore: quo
*saved of-the-things the-substance it-is for a-right in a-body which*
sublato et ipsum tolli necesse est.
*removed also itself to-be-removed necessary is*
Usus fructus a proprietate separationem recipit idque 1
*The-use (and)-enjoyment from the-ownership separation admits and-this*
plurimis modis accidit. ut ecce si quis alicui usum
*in-very-many ways happens as for-instance if anyone to-someone the-use*
fructum legaverit: nam heres nudam habet proprietatem,
*(and)-enjoyment has-bequeathed for the-heir bare has ownership*
legatarius usum fructum: et contra si fundum legaverit
*the-legatee the-use (and)-enjoyment and conversely if an-estate he-has-bequeathed*
deducto usu fructu, legatarius nudam habet proprietatem,
*deducted the-use (and)-enjoyment the-legatee bare has ownership*

heres vero usum fructum: item alii usum fructum,
*the-heir however the-use (and)-enjoyment likewise to-one the-use (and)-enjoyment*
alii deducto eo fundum legare potest. sine testamento
*to-another deducted it the-estate to-bequeath he-can without a-testament*
vero si quis velit alii usum fructum constituere,
*however if anyone wishes for-another the-use (and)-enjoyment to-establish*
pactionibus et stipulationibus id efficere debet. ne tamen
*by-pacts and stipulations it to-effect he-ought lest however*
in universum inutiles essent proprietates semper abscedente
*in entirety useless should-be ownerships always departing*
usu fructu, placuit certis modis extingui usum
*the-use (and)-enjoyment it-was-held in-certain ways to-be-extinguished the-use*
fructum et ad proprietatem reverti.
*(and)-enjoyment and to the-ownership to-return*

2 Constituitur autem usus fructus non tantum in fundo
*Is-established however the-use (and)-enjoyment not only in an-estate*
et aedibus, verum etiam in servis et iumentis ceterisque
*and houses but also in slaves and beasts-of-burden and-the-other*
rebus exceptis his quae ipso usu consumuntur: nam eae
*things except those which by-the-very use are-consumed for these*
neque naturali ratione neque civili recipiunt usum fructum.
*neither by-natural reason nor by-civil admit the-use (and)-enjoyment*
quo numero sunt vinum oleum frumentum vestimenta.
*in-which number are wine oil grain clothes*
quibus proxima est pecunia numerata: namque in ipso usu
*to-which nearest is money counted for in the-very use*
adsidua permutatione quodammodo extinguitur. sed utilitatis
*by-constant exchange in-some-measure it-is-extinguished but of-utility*
causa senatus censuit posse etiam earum rerum usum
*for-the-sake the-senate decreed to-be-able also of-those things the-use*
fructum constitui, ut tamen eo nomine heredi
*(and)-enjoyment to-be-established so-that however on-that account to-the-heir*

utiliter caveatur. itaque si pecuniae usus fructus legatus
*effectively security-be-given therefore if of-money the-use (and)-enjoyment bequeathed*
sit, ita datur legatario, ut eius fiat, et legatarius
*has-been thus it-is-given to-the-legatee that his it-become and the-legatee*
satisdat heredi de tanta pecunia restituenda, si morietur
*gives-security to-the-heir for so-much money to-be-restored if he-dies*
aut capite minuetur. ceterae quoque res ita traduntur
*or in-status is-diminished the-other also things so are-delivered*
legatario, ut eius fiant: sed aestimatis his satisdatur, ut,
*to-the-legatee that his they-become but valued these security-is-given that*
si morietur aut capite minuetur, tanta pecunia restituatur,
*if he-dies or in-status is-diminished so-much money be-restored*
quanti eae fuerint aestimatae. ergo senatus non fecit
*as-much-as they had-been valued therefore the-senate not made*
quidem earum rerum usum fructum (nec enim poterat),
*indeed of-those things the-use (and)-enjoyment nor for could-it*
sed per cautionem quasi usum fructum constituit.
*but through security a-quasi use (and)-enjoyment it-established*
Finitur autem usus fructus morte fructuarii et 3
*Is-ended however the-use (and)-enjoyment by-the-death of-the-usufructuary and*
duabus capitis deminutionibus, maxima et media, et
*by-two of-status losses the-greatest and the-middle and*
non utendo per modum et tempus. quae omnia nostra
*by-not using through the-manner and time which all our*
statuit constitutio. item finitur usus fructus, si domino
*has-established constitution likewise is-ended the-use (and)-enjoyment if to-the-owner*
proprietatis ab usufructuario cedatur (nam extraneo cedendo
*of-the-ownership by the-usufructuary it-be-ceded for to-an-outsider by-ceding*
nihil agitur): vel ex contrario si fructuarius proprietatem
*nothing is-achieved or on the-contrary if the-usufructuary the-ownership*
rei adquisierit, quae res consolidatio appellatur. eo
*of-the-thing has-acquired which thing consolidation is-called by-this*

amplius constat, si aedes incendio consumptae fuerint vel etiam
*further it-is-agreed if the-house by-fire consumed has-been or even*
terrae motu aut vitio suo corruerint, extingui usum
*of-earth by-quake or by-defect its-own has-collapsed to-be-extinguished the-use*
fructum et ne areae quidem usum fructum deberi.
*(and)-enjoyment and not of-the-site even the-use (and)-enjoyment to-be-owed*
4 Cum autem finitus fuerit usus fructus, revertitur scilicet
*When however ended has-been the-use (and)-enjoyment it-returns namely*
ad proprietatem et ex eo tempore nudae proprietatis
*to the-ownership and from that time of-the-bare ownership*
dominus incipit plenam habere in re potestatem.
*the-owner begins full to-have over the-thing power*

## V · USE AND HABITATION

*Bare use is set up and ends as usufruct does but gives less: the user of an estate may take only for daily needs, of a house may live in it with his family and guests, of a slave may use his work, and of a flock may not take milk, lambs, or wool. Habitation, by Justinian's decision, may also be let.*

Isdem istis modis, quibus usus fructus constituitur,
*In-the-same these ways in-which the-use (and)-enjoyment is-established*
etiam nudus usus constitui solet isdemque illis modis
*also bare use to-be-established is-wont and-in-the-same those ways*
finitur, quibus et usus fructus desinit.
*it-is-ended in-which also the-use (and)-enjoyment ceases*
1 Minus autem scilicet iuris in usu est quam in usu
*Less however namely of-right in use there-is than in use*
fructu. namque is, qui fundi nudum usum habet, nihil
*(and)-enjoyment for he who of-an-estate bare use has nothing*
ulterius habere intellegitur, quam ut oleribus pomis floribus
*further to-have is-understood than that vegetables fruit flowers*

feno stramentis lignis ad usum cottidianum utatur: in eoque
*hay straw wood for use daily he-use in and-that*
fundo hactenus ei morari licet, ut neque domino
*estate so-far to-him to-stay it-is-allowed that neither to-the-owner*
fundi molestus sit neque his, per quos opera rustica
*of-the-estate troublesome he-be nor to-those through whom the-works rustic*
fiunt, impedimento sit: nec ulli alii ius quod habet
*are-done a-hindrance he-be nor to-anyone else the-right which he-has*
aut vendere aut locare aut gratis concedere potest, cum
*either to-sell or to-let or freely to-grant can-he while*
is qui usum fructum habet potest haec omnia facere.
*he who the-use (and)-enjoyment has can these all do*
Item is, qui aedium usum habet, hactenus iuris habere 2
*Likewise he who of-a-house the-use has so-much of-right to-have*
intellegitur, ut ipse tantum habitet, nec hoc ius ad alium
*is-understood that he-himself only dwell nor this right to another*
transferre potest: et vix receptum videtur, ut hospitem ei
*to-transfer can-he and scarcely accepted it-seems that a-guest for-him*
recipere liceat. et cum uxore sua liberisque suis, item libertis
*to-receive be-allowed and with wife his and-children his likewise freedmen*
nec non aliis liberis personis, quibus non minus quam servis
*and also other free persons whom not less than slaves*
utitur, habitandi ius habeat: et convenienter si ad mulierem
*he-uses of-dwelling the-right he-have and consistently if to a-woman*
usus aedium pertineat, cum marito habitare liceat.
*the-use of-a-house belongs with her-husband to-dwell it-is-allowed*
Item is, ad quem servi usus pertinet, ipse tantum operis 3
*Likewise he to whom of-a-slave the-use belongs himself only the-work*
atque ministerio eius uti potest: ad alium vero nullo modo
*and service his use can to another however in-no way*

ius suum transferre ei concessum est. idem scilicet iuris
*right his-own to-transfer to-him granted is the-same namely of-law*
est et in iumento.
*it-is also in a-beast-of-burden*

4 Sed si pecoris vel ovium usus legatus fuerit, neque lacte
*But if of-cattle or of-sheep the-use bequeathed has-been neither the-milk*
neque agnis neque lana utetur usuarius, quia ea in fructu
*nor the-lambs nor the-wool will-use the-user because these in fruit*
sunt. plane ad stercorandum agrum suum pecoribus uti potest.
*are clearly for manuring field his-own the-cattle to-use he-can*

5 Sed si cui habitatio legata sive aliquo modo constituta
*But if to-someone a-dwelling bequeathed or in-some way established*
sit, neque usus videtur neque usus fructus, sed quasi
*be neither use it-seems nor use (and)-enjoyment but as-it-were*
proprium aliquod ius. quam habitationem habentibus propter
*own some right which dwelling to-those-having on-account-of*
rerum utilitatem secundum Marcelli sententiam nostra
*of-things the-utility according-to Marcellus' opinion by-our*
decisione promulgata permisimus non solum in ea degere,
*decision promulgated we-have-permitted not only in it to-live*
sed etiam aliis locare.
*but also to-others to-let*

6 Haec de servitutibus et usu fructu et usu et
*These-things about servitudes and use (and)-enjoyment and use and*
habitatione dixisse sufficiat. de hereditate autem et
*dwelling to-have-said let-it-suffice about inheritance however and*
de obligationibus suis locis proponamus. exposuimus
*about obligations in-their-own places let-us-set-out we-have-set-out*
summatim, quibus modis iure gentium res adquiruntur:
*summarily in-what ways by-the-law of-nations things are-acquired*

modo videamus, quibus modis legitimo et civili iure
*now let-us-see in-what ways by-lawful and civil law*
adquiruntur.
*they-are-acquired*

## VI · USUCAPION AND LONG POSSESSION

*Justinian sets usucapion at three years for movables and long possession at ten years between those present and twenty between those absent, everywhere in the empire. Stolen things, things taken by force, free men, and sacred things cannot be usucapted; the taint is purged by return to the owner. Possession continues to heir and buyer, and those buying from the fisc are secure.*

Iure civili constitutum fuerat, ut, qui bona fide ab eo, qui
*By-law civil established it-had-been that he-who in-good faith from him who*
dominus non erat, cum crediderit eum dominum esse, rem
*owner not was when he-believed him owner to-be a-thing*
emerit vel ex donatione aliave qua iusta causa acceperit,
*has-bought or by gift or-by-another any lawful cause has-received*
is eam rem, si mobilis erat, anno ubique, si immobilis,
*he that thing if movable it-was in-a-year everywhere if immovable*
biennio tantum in Italico solo usucapiat, ne rerum dominia
*in-two-years only on Italian soil should-usucapt lest of-things the-ownerships*
in incerto essent. et cum hoc placitum erat, putantibus
*in uncertainty should-be and when this held it-was thinking*
antiquioribus dominis sufficere ad inquirendas res suas
*the-more-ancient to-owners to-suffice for seeking things their-own*
praefata tempora, nobis melior sententia resedit, ne domini
*the-aforesaid times to-us a-better opinion has-settled lest owners*
maturius suis rebus defraudentur neque certo loco
*too-early of-their-own things be-defrauded nor in-a-certain place*

beneficium hoc concludatur. et ideo constitutionem super hoc
*benefit this be-confined and therefore a-constitution about this*
promulgavimus, qua cautum est, ut res quidem mobiles per
*we-have-promulgated by-which provided it-is that things indeed movable through*
triennium usucapiantur, immobiles vero per longi temporis
*three-years be-usucapted immovable however through of-long time*
possessionem, id est inter praesentes decennio, inter absentes
*possession that is between those-present in-ten-years between those-absent*
viginti annis usucapiantur et his modis non solum in Italia,
*in-twenty years be-usucapted and in-these ways not only in Italy*
sed in omni terra, quae nostro imperio gubernatur, dominium
*but in every land which by-our empire is-governed ownership*
rerum iusta causa possessionis praecedente adquiratur.
*of-things a-lawful cause of-possession preceding be-acquired*

1 Sed aliquando etiamsi maxime quis bona fide rem
*But sometimes even-if most-fully anyone in-good faith a-thing*
possederit, non tamen illi usucapio ullo tempore procedit,
*has-possessed not however for-him usucapion in-any time proceeds*
veluti si quis liberum hominem vel rem sacram vel
*as if anyone a-free man or a-thing sacred or*
religiosam vel servum fugitivum possideat.
*religious or a-slave runaway possesses*

2 Furtivae quoque res et quae vi possessae sunt,
*Stolen also things and those-which by-force possessed have-been*
nec si praedicto longo tempore bona fide possessae
*not-even if for-the-aforesaid long time in-good faith possessed*
fuerint, usucapi possunt: nam furtivarum rerum lex
*they-have-been be-usucapted can for of-stolen things the-statute*
duodecim tabularum et lex Atinia inhibet usucapionem,
*of-the-twelve tables and the-statute Atinian prevents the-usucapion*
vi possessarum lex Iulia et Plautia.
*by-force of-those-possessed the-statute Julian and Plautian*

Quod autem dictum est furtivarum et vi possessarum 3
*That however said it-has-been of-stolen and by-force possessed*
rerum usucapionem per legem prohibitam esse, non eo
*things the-usucapion by statute forbidden to-be not to-this*
pertinet, ut ne ipse fur quive per vim possidet usucapere
*pertains that not-even himself the-thief or-he-who by force possesses usucapt*
possit: nam his alia ratione usucapio non competit, quia
*can for to-these for-another reason usucapion not belongs because*
scilicet mala fide possident: sed ne ullus alius, quamvis ab
*namely in-bad faith they-possess but that-not any other although from*
eis bona fide emerit vel ex alia causa acceperit, usucapiendi
*them in-good faith he-has-bought or for another cause has-received of-usucapting*
ius habeat. unde in rebus mobilibus non facile procedit, ut
*the-right have whence in things movable not easily it-comes-about that*
bonae fidei possessori usucapio competat. nam qui alienam
*of-good faith to-a-possessor usucapion belong for he-who another's*
rem vendidit vel ex alia causa tradidit, furtum eius committit.
*thing has-sold or for another cause has-delivered theft of-it commits*
Sed tamen id aliquando aliter se habet. nam si heres 4
*But however that sometimes otherwise itself has for if an-heir*
rem defuncto commodatam aut locatam vel apud eum
*a-thing to-the-deceased lent or let or with him*
depositam existimans hereditariam esse bona fide accipienti
*deposited thinking of-the-inheritance to-be in-good faith to-one-receiving*
vendiderit aut donaverit aut dotis nomine dederit, quin is
*has-sold or given or of-dowry by-way has-given that he*
qui acceperit usucapere possit, dubium non est, quippe ea
*who has-received usucapt can doubtful not it-is since that*
res in furti vitium non ceciderit, cum utique heres, qui
*thing into of-theft the-taint not has-fallen since certainly an-heir who*
bona fide tamquam suam alienaverit, furtum non committit.
*in-good faith as his-own has-alienated theft not commits*

5 Item si is, ad quem ancillae usus fructus pertinet,
*Likewise if he to whom of-a-slave-woman the-use (and)-enjoyment belongs*
partum suum esse credens vendiderit aut donaverit, furtum non
*the-offspring his-own to-be believing has-sold or given theft not*
committit: furtum enim sine affectu furandi non committitur.
*he-commits theft for without the-intention of-stealing not is-committed*

6 Aliis quoque modis accidere potest, ut quis sine vitio
*In-other also ways happen it-can that anyone without the-taint*
furti rem alienam ad aliquem transferat et efficiat, ut a
*of-theft a-thing another's to someone transfer and bring-about that by*
possessore usucapiatur.
*the-possessor it-be-usucapted*

7 Quod autem ad eas res, quae solo continentur, expeditius
*As however to those things which in-the-soil are-contained more-readily*
procedit, ut quis loci vacantis possessionem propter
*it-comes-about that anyone of-a-place vacant the-possession on-account-of*
absentiam aut neglegentiam domini, aut quia sine
*the-absence or neglect of-the-owner or because without*
successore decesserit, sine vi nanciscatur. qui quamvis ipse
*successor he-has-died without force obtain who although himself*
mala fide possidet, quia intellegit se alienum fundum
*in-bad faith possesses because he-knows himself another's estate*
occupasse, tamen, si alii bona fide accipienti tradiderit,
*to-have-seized yet if to-another in-good faith receiving he-has-delivered-it*
poterit ei longa possessione res adquiri, quia neque
*can for-him by-long possession the-thing be-acquired because neither*
furtivum neque vi possessum accepit abolita est enim
*stolen nor by-force possessed has-he-received abolished is for*
quorundam veterum sententia existimantium etiam fundi
*of-certain ancients the-opinion thinking even of-an-estate*
locive furtum fieri et eorum, qui res soli
*or-a-place theft to-be-committed and for-those who things of-the-soil*

possident, principalibus constitutionibus prospicitur, ne
*possess by-imperial constitutions it-is-provided that-not*
cui longa et indubitata possessio auferri debeat.
*from-anyone long and undoubted possession to-be-taken-away ought*
Aliquando etiam furtiva vel vi possessa res usucapi 8
*Sometimes also stolen or by-force possessed a-thing be-usucapted*
potest: veluti si in domini potestatem reversa fuerit. tunc
*can as if into the-owner's power returned it-has then*
enim vitio rei purgato procedit eius usucapio.
*for the-taint of-the-thing purged proceeds its usucapion*
Res fisci nostri usucapi non potest. sed Papinianus scribit 9
*Things of-the-fisc our be-usucapted not can but Papinian writes*
bonis vacantibus fisco nondum nuntiatis bona fide emptorem
*the-goods vacant to-the-fisc not-yet reported in-good faith a-buyer*
sibi traditam rem ex his bonis usucapere posse: et ita
*to-him delivered a-thing from these goods to-usucapt to-be-able and so*
divus Pius et divus Severus et Antoninus rescripserunt.
*the-deified Pius and the-deified Severus and Antoninus rescribed*
Novissime sciendum est rem talem esse debere, ut in 10
*Finally to-be-known it-is the-thing such to-be ought that in*
se non habeat vitium, ut a bona fide emptore usucapi
*itself not it-has a-taint so-that by a-good faith buyer be-usucapted*
possit vel qui ex alia iusta causa possidet.
*it-can or by-one-who for another lawful cause possesses*
Error autem falsae causae usucapionem non parit. veluti si quis, 11
*Error however of-a-false cause usucapion not produces as if anyone*
cum non emerit, emisse se existimans possideat: vel
*when not he-has-bought to-have-bought himself thinking possesses or*
cum ei donatum non fuerat, quasi ex donatione possideat.
*when to-him given not it-had-been as-if by gift possesses*

12 Diutina possessio, quae prodesse coeperat defuncto, et
*Long-continued possession which to-benefit had-begun the-deceased both*
heredi et bonorum possessori continuatur, licet ipse
*for-the-heir and of-the-goods for-the-possessor is-continued although himself*
sciat praedium alienum: quodsi ille initium iustum non
*he-know the-estate another's but-if he a-beginning lawful not*
habuit, heredi et bonorum possessori licet ignoranti
*had for-the-heir and of-the-goods for-the-possessor although unaware*
possessio non prodest. quod nostra constitutio similiter et in
*the-possession not avails which our constitution likewise also in*
usucapionibus observari constituit, ut tempora continuentur.
*usucapions to-be-observed has-established that the-times be-joined*

13 Inter venditorem quoque et emptorem coniungi tempora
*Between seller also and buyer to-be-joined the-times*
divus Severus et Antoninus rescripserunt.
*the-deified Severus and Antoninus rescribed*

14 Edicto divi Marci cavetur eum, qui a fisco
*By-the-edict of-the-deified Marcus it-is-provided that-he who from the-fisc*
rem alienam emit, si post venditionem quinquennium
*a-thing another's buys if after the-sale five-years*
praeterierit, posse dominum rei per exceptionem
*has-passed to-be-able the-owner of-the-thing by a-defense*
repellere. constitutio autem divae memoriae Zenonis bene
*to-repel the-constitution however of-deified memory of-Zeno well*
prospexit his, qui a fisco per venditionem vel donationem
*provided for-those who from the-fisc by sale or gift*
vel alium titulum aliquid accipiunt, ut ipsi quidem
*or other title anything receive that they-themselves indeed*
securi statim fiant et victores existant, sive conveniantur
*secure at-once become and victors stand-forth whether they-are-sued*
sive experiantur: adversus sacratissimum autem aerarium
*or they-sue against the-most-sacred however treasury*

usque ad quadriennium liceat intendere his, qui pro
*up to four-years it-be-allowed to-bring-claim for-those who for*
dominio vel hypotheca earum rerum, quae alienatae sunt,
*ownership or mortgage of-those things which alienated have-been*
putaverint sibi quasdam competere actiones. nostra autem
*have-thought to-themselves certain to-belong actions our however*
divina constitutio, quam nuper promulgavimus, etiam de
*divine constitution which lately we-promulgated also about*
his, qui a nostra vel venerabilis Augustae domo aliquid
*those who from our or of-the-venerable Augusta household anything*
acceperint, haec statuit, quae in fiscalibus alienationibus
*have-received these-things has-established which in fiscal alienations*
praefatae Zenonianae constitutioni continentur.
*in-the-aforesaid Zenonian constitution are-contained*

## VII · GIFTS

*Gifts are made in contemplation of death, now treated like legacies, or between the living, binding without delivery and valid without registration up to five hundred solidi, though revocable for ingratitude. Gifts before marriage may now be made and increased during it, as gifts on account of marriage. Accrual between co-owners on a slave's manumission is reformed.*

Est etiam aliud genus adquisitionis donatio. donationum
*There-is also another kind of-acquisition gift of-gifts*
autem duo genera sunt: mortis causa et non mortis
*however two kinds there-are of-death in-contemplation and not of-death*
causa.
*in-contemplation*

1 Mortis causa donatio est, quae propter mortis fit
*Of-death in-contemplation a-gift is that-which on-account-of of-death is-made*
suspicionem, cum quis ita donat, ut, si quid humanitus ei
*the-apprehension when anyone so gives that if anything by-human-lot to-him*
contigisset, haberet is qui accepit: sin autem supervixisset
*should-have-befallen would-have-(it) he who received-it but-if however should-have-survived*
qui donavit, reciperet, vel si eum donationis poenituisset
*he-who gave should-take-it-back or if him of-the-gift should-have-repented*
aut prior decesserit is cui donatum sit. hae mortis causa
*or first has-died he to-whom given it-be these of-death in-contemplation*
donationes ad exemplum legatorum redactae sunt per omnia.
*gifts to the-pattern of-legacies brought have-been in all-things*
nam cum prudentibus ambiguum fuerat, utrum donationis
*for since among-the-jurists doubtful it-had-been whether of-a-gift*
an legati instar eam optinere oporteret, et utriusque
*or of-a-legacy in-the-likeness it to-hold it-behooved and of-each*
causae quaedam habebat insignia et alii ad aliud genus eam
*case certain it-had marks and some to another kind it*
retrahebant: a nobis constitutum est, ut per omnia fere
*drew-back by us established it-has-been that in all-things almost*
legatis connumeretur et sic procedat, quemadmodum eam
*with-legacies it-be-counted and so proceed as it*
nostra formavit constitutio. et in summa mortis causa
*our has-formed constitution and in sum of-death in-contemplation*
donatio est, cum magis se quis velit habere, quam eum
*a-gift is when rather himself anyone would-wish to-have than him*
cui donatur, magisque eum cui donat, quam heredem
*to-whom it-is-given and-rather him to-whom he-gives than heir*
suum. sic et apud Homerum Telemachus donat Piraeo.
*his-own so also in Homer Telemachus gives to-Piraeus*

Aliae autem donationes sunt, quae sine ulla mortis 2
*Other however gifts are which without any of-death*
cogitatione fiunt, quas inter vivos appellamus. quae omnino
*thought are-made which between the-living we-call which at-all*
non comparantur legatis: quae si fuerint perfectae, temere
*not are-compared to-legacies which if they-have-been completed rashly*
revocari non possunt. perficiuntur autem, cum donator
*be-revoked not can they-are-completed however when the-giver*
suam voluntatem scriptis aut sine scriptis manifestaverit:
*his will in-writing or without writing has-shown*
et ad exemplum venditionis nostra constitutio eas etiam
*and on the-pattern of-sale our constitution them also*
in se habere necessitatem traditionis voluit, ut, et si
*in themselves to-have the-necessity of-delivery willed that even if*
non tradantur, habeant plenissimum et perfectum robur
*not they-are-delivered they-have the-fullest and perfect force*
et traditionis necessitas incumbat donatori. et cum retro
*and of-delivery the-necessity lie-upon the-giver and since formerly*
principum dispositiones insinuari eas actis intervenientibus
*of-the-emperors the-enactments to-be-registered them records intervening*
volebant, si maiores ducentorum fuerant solidorum, nostra
*wished if greater-than two-hundred they-were solidi our*
constitutio et quantitatem usque ad quingentos solidos
*constitution also the-amount up to five-hundred solidi*
ampliavit, quam stare et sine insinuatione statuit,
*has-enlarged which to-stand also without registration it-has-established*
et quasdam donationes invenit, quae penitus insinuationem
*and certain gifts has-found which at-all registration*
fieri minime desiderant, sed in se plenissimam
*to-be-made not-at-all require but in themselves the-fullest*
habent firmitatem. alia insuper multa ad uberiorem
*have firmness other besides many-things for a-richer*

exitum donationum invenimus, quae omnia ex nostris
*outcome of-gifts we-have-found which all from our*
constitutionibus, quas super his posuimus, colligenda sunt.
*constitutions which about these we-have-laid-down to-be-gathered are*
sciendum tamen est, quod, etsi plenissimae sint donationes,
*to-be-known however it-is that although fullest be the-gifts*
tamen si ingrati existant homines, in quos beneficium collatum
*yet if ungrateful prove the-men on whom the-benefit conferred*
est, donatoribus per nostram constitutionem licentiam
*has-been to-the-givers through our constitution the-license*
praestavimus certis ex causis eas revocare, ne, qui suas res
*we-have-furnished certain from causes them to-revoke lest those-who their things*
in alios contulerunt, ab his quandam patiantur iniuriam vel
*to others have-conferred from them some suffer wrong or*
iacturam, secundum enumeratos in nostra constitutione modos.
*loss according-to the-enumerated in our constitution ways*

3 Est et aliud genus inter vivos donationum, quod veteribus
*There-is also another kind between the-living of-gifts which to-the-old*
quidem prudentibus penitus erat incognitum, postea autem a
*indeed jurists wholly was unknown afterward however by*
iunioribus divis principibus introductum est, quod ante nuptias
*the-younger deified emperors introduced was which before marriage*
vocabatur et tacitam in se condicionem habebat, ut tunc
*was-called and a-tacit in itself condition had that then*
ratum esset, cum matrimonium fuerit insecutum: ideoque
*ratified it-should-be when matrimony had followed and-therefore*
ante nuptias appellabatur, quod ante matrimonium efficiebatur
*before marriage it-was-called because before matrimony it-was-effected*
et nusquam post nuptias celebratas talis donatio procedebat.
*and nowhere after marriage celebrated such a-gift proceeded*
sed primus quidem divus Iustinus pater noster, cum
*but first indeed the-deified Justin father our since*

augeri dotes et post nuptias fuerat permissum, si quid
*to-be-increased dowries even after marriage it-had-been permitted if anything*
tale evenit, etiam ante nuptias donationem augeri et
*such happened also before marriage the-gift to-be-increased even*
constante matrimonio sua constitutione permisit: sed tamen
*existing the-matrimony by-his constitution permitted but however*
nomen inconveniens remanebat, cum ante nuptias quidem
*the-name unfitting remained since before marriage indeed*
vocabatur, post nuptias autem tale accipiebat incrementum. sed
*it-was-called after marriage however such it-received increase but*
nos plenissimo fini tradere sanctiones cupientes et consequentia
*we to-the-fullest end to-bring the-enactments desiring and consistent*
nomina rebus esse studentes constituimus, ut tales donationes
*names to-things to-be being-eager have-established that such gifts*
non augeantur tantum, sed et constante matrimonio initium
*not be-increased only but also existing the-matrimony beginning*
accipiant et non ante nuptias, sed propter nuptias vocentur
*may-take and not before marriage but on-account-of marriage be-called*
et dotibus in hoc exaequentur, ut, quemadmodum dotes et
*and to-dowries in this be-made-equal that as dowries even*
constante matrimonio non solum augentur, sed etiam fiunt,
*existing the-matrimony not only are-increased but also are-made*
ita et istae donationes, quae propter nuptias introductae
*so also these gifts which on-account-of marriage introduced*
sunt, non solum antecedant matrimonium, sed etiam eo
*have-been not only precede the-matrimony but also it*
contracto et augeantur et constituantur.
*contracted both be-increased and be-established*

Erat olim et alius modus civilis adquisitionis per ius 4
*There-was formerly also another mode of-civil acquisition through the-right*
adcrescendi, quod est tale: si communem servum habens
*of-accrual which is such if a-common slave having*

aliquis cum Titio solus libertatem ei imposuit vel vindicta
*someone with Titius alone freedom on-him imposed either by-the-rod*
vel testamento, eo casu pars eius amittebatur et socio
*or by-testament in-that case part his was-lost and to-the-partner*
adcrescebat. sed cum pessimo fuerat exemplo et libertate
*accrued but since of-the-worst it-had-been example both of-freedom*
servum defraudari et ex ea humanioribus quidem dominis
*the-slave to-be-defrauded and from it on-the-more-humane indeed masters*
damnum inferri, severioribus autem lucrum adcrescere:
*loss to-be-inflicted to-the-severer however gain to-accrue*
hoc quasi invidiae plenum pio remedio per nostram
*this as-if of-odium full by-a-pious remedy through our*
constitutionem mederi necessarium duximus et invenimus
*constitution to-heal necessary we-thought and we-found*
viam, per quam et manumissor et socius eius et qui
*a-way through which both the-manumitter and partner his and he-who*
libertatem accepit nostro fruantur beneficio, libertate cum
*freedom received our may-enjoy benefit freedom with*
effectu procedente (cuius favore et antiquos legislatores multa
*effect proceeding in-whose favor also the-ancient legislators many-things*
et contra communes regulas statuisse manifestissimum
*even against common rules to-have-established most-manifest*
est) et eo qui eam imposuit suae liberalitatis stabilitate
*is and he who it imposed of-his-own liberality in-the-firmness*
gaudente et socio indemni conservato pretiumque servi
*rejoicing and the-partner unharmed preserved and-the-price of-the-slave*
secundum partem dominii, quod nos definivimus, accipiente.
*according-to the-share of-ownership which we have-fixed receiving*

*An owner sometimes cannot alienate, as a husband the dotal estate, now in the provinces too and not even with the wife's consent; a non-owner sometimes can, as a creditor the pledge under Justinian's rules. A ward can alienate nothing without the tutor's authority, so he can neither lend nor pay, though he may receive; a debtor who pays him unauthorized is not freed, and a tutor or curator may be paid safely only after a judge's sentence allows it.*

Accidit aliquando, ut qui dominus sit alienare non possit
*It-happens sometimes that he-who owner is to-alienate not can*
et contra qui dominus non sit alienandae rei potestatem
*and conversely he-who owner not is of-alienating a-thing the-power*
habeat. nam dotale praedium maritus invita muliere per
*has for a-dotal estate the-husband unwilling the-wife by*
legem Iuliam prohibetur alienare, quamvis ipsius sit dotis
*the-statute Julian is-forbidden to-alienate although his-own it-be of-dowry*
causa ei datum. quod nos legem Iuliam corrigentes in
*by-reason to-him given which we the-statute Julian correcting into*
meliorem statum deduximus. cum enim lex in soli
*a-better state have-brought for since the-statute in of-the-soil*
tantummodo rebus locum habebat, quae Italicae fuerant, et
*only things place had which Italian were and*
alienationes inhibebat, quae invita muliere fiebant, hypothecas
*alienations forbade which unwilling the-wife were-made mortgages*
autem earum etiam volente: utrisque remedium imposuimus,
*however of-them even willing-she for-both a-remedy we-have-imposed*
ut etiam in eas res, quae in provinciali solo positae sunt,
*that even in those things which in provincial soil situated are*
interdicta fiat alienatio vel obligatio et neutrum eorum neque
*forbidden be alienation or pledging and neither of-them not-even*

consentientibus mulieribus procedat, ne sexus muliebris
*consenting the-women proceed lest of-the-sex female*
fragilitas in perniciem substantiae earum converteretur.
*the-frailty to the-ruin of-the-substance their be-turned*

1 Contra autem creditor pignus ex pactione, quamvis eius ea res
*Conversely however a-creditor a-pledge by agreement although his that thing*
non sit, alienare potest. sed hoc forsitan ideo videtur fieri,
*not is to-alienate can but this perhaps therefore seems to-be-done*
quod voluntate debitoris intellegitur pignus alienare, qui ab
*because by-the-will of-the-debtor is-understood the-pledge to-alienate who from*
initio contractus pactus est, ut liceret creditori
*the-beginning of-the-contract agreed has that it-should-be-allowed for-the-creditor*
pignus vendere, si pecunia non solvatur. sed ne creditores ius
*the-pledge to-sell if the-money not be-paid but lest the-creditors right*
suum persequi impedirentur neque debitores temere suarum
*their-own to-pursue be-hindered nor the-debtors rashly of-their*
rerum dominium amittere videantur, nostra constitutione
*things the-ownership to-lose seem by-our constitution*
consultum est et certus modus impositus est, per quem
*provided-for it-has-been and a-certain manner imposed has-been through which*
pignorum distractio possit procedere, cuius tenore utrique parti
*of-pledges the-sale can proceed whose by-tenor for-each party*
creditorum et debitorum satis abundeque provisum est.
*of-creditors and debtors sufficiently and-abundantly provided it-has-been*

2 Nunc admonendi sumus neque pupillum neque pupillam
*Now to-be-reminded we-are neither a-male-ward nor a-female-ward*
ullam rem sine tutoris auctoritate alienare posse. ideoque
*any thing without of-the-tutor the-authority to-alienate to-be-able and-therefore*
si mutuam pecuniam alicui sine tutoris auctoritate dederit,
*if lent money to-anyone without of-the-tutor the-authority he-has-given*
non contrahit obligationem, quia pecuniam non facit
*not he-contracts an-obligation because the-money not he-makes*

accipientis. ideoque vindicare nummos possunt, sicubi extent:
*the-receiver's and-therefore vindicate the-coins they-can wherever they-exist*
sed si nummi, quos mutuos dedit, ab eo qui accepit bona
*but if the-coins which as-loan he-gave by him who received-them in-good*
fide consumpti sunt, condici possunt, si mala fide,
*faith consumed have-been be-claimed-by-condiction they-can if in-bad faith*
ad exhibendum de his agi potest. at ex contrario omnes
*for production about them be-sued it-can but on the-contrary all*
res pupillo et pupillae sine tutoris auctoritate
*things to-a-male-ward and to-a-female-ward without of-the-tutor the-authority*
recte dari possunt. ideoque si debitor pupillo solvat,
*rightly be-given can and-therefore if a-debtor to-the-ward pays*
necessaria est tutoris auctoritas: alioquin non liberabitur.
*necessary is of-the-tutor the-authority otherwise not he-will-be-freed*
sed etiam hoc evidentissima ratione statutum est in
*but even this by-the-most-evident reason established has-been in*
constitutione, quam ad Caesareenses advocatos ex suggestione
*the-constitution which to the-Caesarean advocates at the-suggestion*
Triboniani viri eminentissimi quaestoris sacri palatii
*of-Tribonian a-man most-eminent quaestor of-the-sacred palace*
nostri promulgavimus, qua dispositum est ita licere
*our we-promulgated by-which arranged it-has-been so to-be-allowed*
tutori vel curatori debitorem pupillarem solvere, ut prius
*to-the-tutor or curator a-debtor of-a-ward to-pay that first*
sententia iudicialis sine omni damno celebrata hoc permittat.
*a-sentence judicial without any expense pronounced this permit*
quo subsecuto, si et iudex pronuntiaverit et debitor solverit,
*which having-followed if both the-judge has-pronounced and the-debtor has-paid*
sequitur huiusmodi solutionem plenissima securitas. sin autem
*follows of-this-kind payment the-fullest security but-if however*
aliter quam disposuimus solutio facta fuerit et pecuniam
*otherwise than we-have-arranged payment made has-been and the-money*

salvam habeat pupillus aut ex ea locupletior sit et adhuc
*safe have the-ward or from it richer be and still*
eandem summam pecuniae petat, per exceptionem doli mali
*the-same sum of-money claim by the-defense of-fraud bad*
summoveri poterit: quodsi aut male consumpserit aut furto
*be-barred he-will-be-able but-if either badly he-has-consumed-it or by-theft*
amiserit, nihil proderit debitori doli mali exceptio, sed nihilo
*lost-it nothing will-avail the-debtor of-fraud bad the-defense but by-nothing*
minus damnabitur, quia temere sine tutoris auctoritate et
*less he-will-be-condemned because rashly without of-the-tutor the-authority and*
non secundum nostram dispositionem solverit. sed ex diverso
*not according-to our arrangement he-paid but on the-contrary*
pupilli vel pupillae solvere sine tutore auctore non possunt,
*male-wards or female-wards pay without the-tutor authorizing not can*
quia id quod solvunt non fit accipientis, cum scilicet nullius
*because that which they-pay not becomes the-receiver's since namely of-no*
rei alienatio eis sine tutoris auctoritate concessa est.
*thing alienation to-them without of-the-tutor the-authority granted is*

## IX · THROUGH WHOM WE ACQUIRE

*We acquire through children in power, now only a usufruct in what they gain otherwise than from the father's property, and an emancipating father keeps half in usufruct; through slaves we acquire whatever they take, possession included, and through slaves held in usufruct or good faith only from our property or their labor. An outsider acquires nothing for us, save possession through an agent.*

Adquiritur nobis non solum per nosmet ipsos, sed etiam
*It-is-acquired for-us not only through ourselves in-person but also*
per eos quos in potestate habemus: item per eos servos,
*through those whom in power we-have likewise through those slaves*

in quibus usum fructum habemus: item per homines
*in whom the-use (and)-enjoyment we-have likewise through men*
liberos et servos alienos quos bona fide possidemus. de
*free and slaves another's whom in-good faith we-possess about*
quibus singulis diligentius dispiciamus.
*which each more-carefully let-us-consider*
Igitur liberi vestri utriusque sexus, quos in potestate habetis, 1
*Therefore children your of-each sex whom in power you-have*
olim quidem, quidquid ad eos pervenerat (exceptis videlicet
*formerly indeed whatever to them had-come except namely*
castrensibus peculiis), hoc parentibus suis adquirebant sine
*camp peculia this for-parents their acquired without*
ulla distinctione: et hoc ita parentum fiebat, ut esset eis
*any distinction and this so of-the-parents became that there-was for-them*
licentia, quod per unum vel unam eorum adquisitum
*license what through one or one-female of-them acquired*
est, alii vel extraneo donare vel vendere vel quocumque
*was to-another or to-an-outsider to-give or to-sell or in-whatever*
modo voluerant applicare. quod nobis inhumanum visum
*way they-had-wished to-apply which to-us inhuman seemed*
est et generali constitutione emissa et liberis pepercimus
*it-has and a-general constitution issued both the-children we-have-spared*
et patribus debitum reservavimus. sancitum etenim a nobis
*and to-fathers what-is-owed we-have-reserved enacted for by us*
est, ut, si quid ex re patris ei obveniat, hoc
*it-is that if anything from the-property of-the-father to-him come this*
secundum antiquam observationem totum parenti adquirat
*according-to the-ancient observance wholly for-the-parent he-acquire*
(quae enim invidia est, quod ex patris occasione profectum
*what for odium is that from the-father's occasion proceeded*
est, hoc ad eum reverti?): quod autem ex alia causa sibi
*it-has this to him return what however from another cause for-himself*

filius familias adquisivit, huius usum fructum quidem
*a-son of-the-family has-acquired of-this the-use (and)-enjoyment indeed*
patri adquiret, dominium autem apud eum remaneat,
*for-the-father he-will-acquire the-ownership however with him remain*
ne, quod ei suis laboribus vel prospera fortuna accessit,
*lest what to-him by-his-own labors or by-prosperous fortune has-come*
hoc in alium perveniens luctuosum ei procedat.
*this into another coming grievous to-him prove*

2 Hocque a nobis dispositum est et in ea specie, ubi
*And-this by us arranged has-been also in that case where*
parens emancipando liberum ex rebus quae adquisitionem
*a-parent emancipating a-child from the-things which acquisition*
effugiunt sibi partem tertiam retinere si voluerat licentiam
*escape for-himself a-part third to-retain if he-wished license*
ex anterioribus constitutionibus habebat quasi pro pretio
*from earlier constitutions had as-if for a-price*
quodammodo emancipationis et inhumanum quid accidebat,
*in-some-measure of-emancipation and inhuman something happened*
ut filius rerum suarum ex hac emancipatione dominio pro
*that the-son of-things his-own from this emancipation of-the-ownership in*
parte defraudetur et, quod honoris ei ex emancipatione
*part be-defrauded and what of-honor to-him from the-emancipation*
additum est, quod sui iuris effectus est, hoc per
*added has-been that of-his-own right become he-has this through*
rerum deminutionem decrescat. ideoque statuimus, ut
*of-things diminution decrease and-therefore we-have-established that*
parens pro tertia bonorum parte dominii, quam
*the-parent instead-of the-third of-the-goods part of-the-ownership which*
retinere poterat, dimidiam non dominii rerum, sed
*to-retain he-could a-half not of-the-ownership of-the-things but*
usus fructus retineat: ita etenim et res intactae
*of-the-use (and)-enjoyment retain thus for both the-things untouched*

apud filium remanebunt et pater ampliore summa fruetur
*with the-son will-remain and the-father of-a-larger sum will-enjoy*
pro tertia dimidia potiturus.
*instead-of a-third a-half about-to-get*
Item vobis adquiritur, quod servi vestri ex traditione 3
*Likewise for-you is-acquired what slaves your by delivery*
nanciscuntur sive quid stipulentur vel ex qualibet alia
*obtain whether anything they-stipulate or from any other*
causa adquirunt. hoc enim vobis et ignorantibus et invitis
*cause acquire this for to-you both unaware and unwilling*
obvenit. ipse enim servus qui in potestate alterius est
*comes himself for the-slave who in the-power of-another is*
nihil suum habere potest. sed si heres institutus sit, non
*nothing his-own to-have can but if heir instituted he-be not*
alias nisi iussu vestro hereditatem adire potest: et si
*otherwise except by-order your an-inheritance to-enter-upon he-can and if*
iubentibus vobis adierit, vobis hereditas adquiritur, perinde
*ordering you he-has-entered for-you the-inheritance is-acquired just*
ac si vos ipsi heredes instituti essetis. et convenienter
*as if you yourselves heirs instituted had-been and consistently*
scilicet legatum per eos vobis adquiritur. non solum autem
*namely a-legacy through them for-you is-acquired not only however*
proprietas per eos quos in potestate habetis adquiritur vobis,
*ownership through those whom in power you-have is-acquired for-you*
sed etiam possessio: cuiuscumque enim rei possessionem
*but also possession of-whatever for thing the-possession*
adepti fuerint, id vos possidere videmini. unde etiam per
*obtained they-have that you to-possess seem whence also through*
eos usucapio vel longi temporis possessio vobis accedit
*them usucapion or of-long time possession to-you accrues*

4 De his autem servis, in quibus tantum usum fructum
*About those however slaves in which only the-use (and)-enjoyment*
habetis, ita placuit, ut, quidquid ex re vestra vel ex
*you-have so it-was-held that whatever from property your or from*
operibus suis adquirant, id vobis adiciatur, quod vero
*works their-own they-acquire that to-you be-added what however*
extra eas causas persecuti sunt, id ad dominum proprietatis
*outside those causes obtained they-have that to the-owner of-the-ownership*
pertineat. itaque si is servus heres institutus sit legatumve
*belong therefore if that slave heir instituted has-been or-a-legacy*
quid ei aut donatum fuerit, non usufructuario, sed domino
*anything to-him or given has-been not to-the-usufructuary but to-the-owner*
proprietatis adquiritur. idem placet et de eo, qui a vobis
*of-the-ownership it-is-acquired the-same is-held also about him who by you*
bona fide possidetur, sive is liber sit sive alienus servus: quod
*in-good faith is-possessed whether he free be or another's slave what*
enim placuit de usufructuario, idem placet et de bonae fidei
*for was-held about the-usufructuary the-same is-held also about of-good faith*
possessore. itaque quod extra duas istas causas adquiritur, id
*the-possessor therefore what outside two those causes is-acquired that*
vel ad ipsum pertinet, si liber est, vel ad dominum, si servus
*either to himself belongs if free he-is or to the-owner if a-slave*
est. sed bonae fidei possessor cum usuceperit servum, quia
*he-is but of-good faith the-possessor when he-has-usucapted the-slave because*
eo modo dominus fit, ex omnibus causis per eum
*in-that way owner he-becomes from all causes through him*
sibi adquirere potest: fructuarius vero usucapere non potest,
*for-himself acquire can the-usufructuary however usucapt not can*
primum quia non possidet, sed habet ius utendi fruendi,
*first because not he-possesses but has the-right of-using of-enjoying*
deinde quia scit servum alienum esse. non solum autem
*next because he-knows the-slave another's to-be not only however*

proprietas per eos servos, in quibus usum fructum habetis
*ownership through those slaves in which the-use (and)-enjoyment you-have*
vel quos bona fide possidetis, vel per liberam personam, quae
*or whom in-good faith you-possess or through a-free person who*
bona fide vobis servit, adquiritur vobis, sed etiam possessio:
*in-good faith you serves is-acquired for-you but also possession*
loquimur autem in utriusque persona secundum definitionem,
*we-speak however in of-each the-person according-to the-definition*
quam proxime exposuimus, id est si quam possessionem
*which most-recently we-have-set-out that is if any possession*
ex re vestra vel ex operibus suis adepti fuerint.
*from property your or from works their-own obtained they-have*
Ex his itaque apparet per liberos homines, quos neque iuri 5
*From these therefore it-is-plain through free men whom neither to-right*
vestro subiectos habetis neque bona fide possidetis, item per
*your subject you-have nor in-good faith you-possess likewise through*
alienos servos, in quibus neque usum fructum habetis neque
*another's slaves in which neither the-use (and)-enjoyment you-have nor*
iustam possessionem, nulla ex causa vobis adquiri posse.
*lawful possession no from cause for-you be-acquired can-(anything)*
et hoc est, quod dicitur per extraneam personam nihil
*and this is what is-said through an-outside person nothing*
adquiri posse: excepto eo, quod per liberam personam veluti
*be-acquired can except that that through a-free person as*
per procuratorem placet non solum scientibus, sed etiam
*through an-agent it-is-held not only knowing but even*
ignorantibus vobis adquiri possessionem secundum divi
*unaware you be-acquired possession according-to of-the-deified*
Severi constitutionem et per hanc possessionem etiam
*Severus the-constitution and through this possession also*

dominium, si dominus fuit qui tradidit, vel usucapionem
*ownership if owner was he-who delivered or usucapion*
aut longi temporis praescriptionem, si dominus non sit.
*or of-long time the-prescription if owner not he-be*
6 Hactenus tantisper admonuisse sufficiat, quemadmodum
*So-far for-the-moment to-have-reminded let-it-suffice how*
singulae res adquiruntur: nam legatorum ius, quo et
*single things are-acquired for of-legacies the-law by-which also*
ipso singulae res vobis adquiruntur, item fideicommissorum,
*itself single things to-you are-acquired likewise of-trusts*
ubi singulae res vobis relinquuntur, opportunius inferiori
*where single things to-you are-left more-fittingly in-a-later*
loco referemus. videamus itaque nunc, quibus modis per
*place we-shall-report let-us-see therefore now in-what ways by*
universitatem res vobis adquiruntur. si cui ergo heredes
*universality things to-you are-acquired if to-someone therefore heirs*
facti sitis sive cuius bonorum possessionem petieritis
*made you-are or of-someone of-the-goods possession you-have-sought*
vel si quem adrogaveritis vel si cuius bona libertatum
*or if someone you-have-adrogated or if of-someone the-goods of-freedoms*
conservandarum causa vobis addicta fuerint, eius res omnes
*to-be-preserved for-the-sake to-you assigned have-been his things all*
ad vos transeunt. ac prius de hereditatibus dispiciamus.
*to you pass and first about inheritances let-us-consider*
quarum duplex condicio est: nam vel ex testamento vel ab
*of-which twofold the-condition is for either by testament or on*
intestato ad vos pertinent. et prius est, ut de his dispiciamus,
*intestacy to you they-belong and first it-is that about those we-consider*
quae vobis ex testamento obveniunt. qua in re necessarium
*which to-you by testament come which in matter necessary*
est initio de ordinandis testamentis exponere.
*it-is at-the-beginning about to-be-ordered testaments to-set-out*

*A will,* testatio mentis, *once made before the assembly, in battle array, or by bronze and scale, now combines civil, praetorian, and imperial forms: seven witnesses present at one time, their subscriptions with the testator's, and their seals. Witnesses must have testamentary capacity and not be in the testator's or heir's household; legatees may witness. A will may be oral before seven witnesses.*

Testamentum ex eo appellatur, quod testatio mentis est.
*A-testament from this is-named that the-witnessing of-the-mind it-is*
Sed ut nihil antiquitatis penitus ignoretur, sciendum est 1
*But that nothing of-antiquity wholly be-unknown to-be-known it-is*
olim quidem duo genera testamentorum in usu fuisse,
*formerly indeed two kinds of-testaments in use to-have-been*
quorum altero in pace et in otio utebantur, quod calatis
*of-which one in peace and in leisure they-used which in-the-assembled*
comitiis appellabatur, altero, cum in proelium exituri
*comitia was-called the-other when into battle about-to-go-out*
essent, quod procinctum dicebatur. accessit deinde tertium
*they-were which in-battle-array was-called was-added then a-third*
genus testamentorum, quod dicebatur per aes et libram,
*kind of-testaments which was-called by bronze and scale*
scilicet quia per emancipationem, id est imaginariam
*namely because through emancipation that is an-imaginary*
quandam venditionem, agebatur quinque testibus et libripende
*certain sale it-was-done five witnesses and a-scale-holder*
civibus Romanis puberibus praesentibus et eo qui familiae
*citizens Roman of-age present and him who of-the-household*
emptor dicebatur. sed illa quidem priora duo genera
*the-buyer was-called but those indeed former two kinds*
testamentorum ex veteribus temporibus in desuetudinem
*of-testaments from ancient times into disuse*

abierunt: quod vero per aes et libram fiebat, licet
*have-gone that however by bronze and scale was-made although*
diutius permansit, attamen partim et hoc in usu esse desiit.
*longer it-remained nevertheless partly also this in use to-be has-ceased*
2 Sed praedicta quidem nomina testamentorum ad ius civile
*But the-aforesaid indeed names of-testaments to law civil*
referebantur. postea vero ex edicto praetoris alia forma
*were-referred afterward however by the-edict of-the-praetor another form*
faciendorum testamentorum introducta est: iure enim honorario
*of-making testaments introduced was by-law for honorary*
nulla emancipatio desiderabatur, sed septem testium signa
*no emancipation was-required but of-seven witnesses the-seals*
sufficiebant, cum iure civili signa testium non erant necessaria.
*sufficed since by-law civil the-seals of-witnesses not were necessary*
3 Sed cum paulatim tam ex usu hominum quam ex
*But when gradually both from the-usage of-men and from*
constitutionum emendationibus coepit in unam consonantiam
*of-the-constitutions the-amendments began into one harmony*
ius civile et praetorium iungi, constitutum est, ut uno
*the-law civil and praetorian to-be-joined established it-was that at-one*
eodemque tempore, quod ius civile quodammodo exigebat,
*and-the-same time what the-law civil in-some-measure required*
septem testibus adhibitis et subscriptione testium, quod
*seven witnesses being-called-in and the-subscription of-the-witnesses what*
ex constitutionibus inventum est, et ex edicto praetoris
*from the-constitutions found was and from the-edict of-the-praetor*
signacula testamentis imponerentur: ut hoc ius tripertitum
*seals on-testaments be-imposed so-that this law threefold*
esse videatur, ut testes quidem et eorum praesentia
*to-be seem that the-witnesses indeed and their presence*
uno contextu testamenti celebrandi gratia a iure civili
*in-one sequence of-the-testament to-be-performed for-the-sake from the-law civil*

descendant, subscriptiones autem testatoris et testium ex
*descend the-subscriptions however of-the-testator and of-the-witnesses from*
sacrarum constitutionum observatione adhibeantur, signacula
*of-the-sacred constitutions the-observance be-applied the-seals*
autem et numerus testium ex edicto praetoris.
*however and the-number of-witnesses from the-edict of-the-praetor*
Sed his omnibus ex nostra constitutione propter 4
*But to-these all by our constitution for-the-sake-of*
testamentorum sinceritatem, ut nulla fraus adhibeatur, hoc
*of-testaments the-genuineness that no fraud be-applied this*
additum est, ut per manum testatoris vel testium
*added has-been that by the-hand of-the-testator or of-the-witnesses*
nomen heredis exprimatur et omnia secundum illius
*the-name of-the-heir be-expressed and all-things according-to of-that*
constitutionis tenorem procedant.
*constitution the-tenor proceed*
Possunt autem testes omnes et uno anulo signare 5
*Can however the-witnesses all even with-one ring seal*
testamentum (quid enim, si septem anuli una sculptura
*the-testament what for if seven rings of-one engraving*
fuerint?) secundum quod Pomponio visum est. sed et
*have-been according-to what to-Pomponius seemed it-has but also*
alieno quoque anulo licet signare.
*with-another's also ring it-is-allowed to-seal*
Testes autem adhiberi possunt ii, cum quibus testamenti 6
*As-witnesses however be-used can those with whom of-testament*
factio est. sed neque mulier neque impubes neque servus
*the-capacity there-is but neither a-woman nor one-under-age nor a-slave*
neque mutus neque surdus neque furiosus nec cui
*nor a-mute nor a-deaf-man nor a-madman nor one-from-whom*

bonis interdictum est nec is, quem leges iubent improbum
*from-his-goods interdicted it-is nor he whom the-laws order wicked*
intestabilemque esse, possunt in numero testium adhiberi.
*and-incapable-of-witnessing to-be can in the-number of-witnesses be-used*

7 Sed cum aliquis ex testibus testamenti quidem faciendi
*But when someone of the-witnesses of-the-testament indeed of-making*
tempore liber existimabatur, postea vero servus apparuit, tam
*at-the-time free was-thought afterward however a-slave appeared both*
divus Hadrianus Catonio Vero quam postea divi Severus
*the-deified Hadrian to-Catonius Verus and afterward the-deified Severus*
et Antoninus rescripserunt subvenire se ex sua liberalitate
*and Antoninus rescribed to-help they out-of their liberality*
testamento, ut sic habeatur, atque si ut oportet factum
*the-testament so-that thus it-be-held as if as it-ought made*
esset, cum eo tempore, quo testamentum signaretur,
*it-had-been since at-that time at-which the-testament was-sealed*
omnium consensu hic testis liberorum loco fuerit nec
*of-all by-the-consent this witness of-free-men in-the-place was nor*
quisquam esset, qui ei status quaestionem moveat.
*anyone there-was who against-him of-status a-question should-raise*

8 Pater nec non is, qui in potestate eius est, item duo
*A-father and also he who in power his is likewise two*
fratres, qui in eiusdem patris potestate sunt, utrique testes
*brothers who in of-the-same father the-power are both witnesses*
in unum testamentum fieri possunt: quia nihil nocet ex
*in one testament become can because nothing harms from*
una domo plures testes alieno negotio adhiberi.
*one house several witnesses in-another's business to-be-used*

9 In testibus autem non debet esse qui in potestate
*Among the-witnesses however not ought to-be one-who in the-power*
testatoris est. sed si filius familias de castrensi peculio
*of-the-testator is but if a-son of-the-family about the-camp peculium*

post missionem faciat testamentum, nec pater eius recte
*after discharge makes a-testament neither the-father his rightly*
testis adhibetur nec is qui in potestate eiusdem patris est:
*as-witness is-used nor he who in the-power of-the-same father is*
reprobatum est enim in ea re domesticum testimonium.
*rejected has-been for in that matter domestic testimony*
Sed neque heres scriptus neque is qui in potestate eius est
*But neither the-heir written nor he who in power his is*
neque pater eius qui habet eum in potestate neque fratres qui
*nor father his who has him in power nor brothers who*
in eiusdem patris potestate sunt testes adhiberi possunt, quia
*in of-the-same father the-power are as-witnesses be-used can because*
totum hoc negotium, quod agitur testamenti ordinandi gratia,
*the-whole this business which is-done of-a-testament to-be-ordered for-the-sake*
creditur hodie inter heredem et testatorem agi. licet enim
*is-believed today between the-heir and the-testator to-be-done although for*
totum ius tale conturbatum fuerat et veteres, qui familiae
*the-whole law such confused had-been and the-ancients who of-the-household*
emptorem et eos, qui per potestatem ei coadunati fuerant,
*the-buyer and those who through power to-him united had-been*
testamentariis testimoniis repellebant, heredi et his, qui
*from-testamentary testimonies excluded for-the-heir and for-those who*
coniuncti ei per potestatem fuerant, concedebant testimonia
*joined to-him through power had-been granted testimony*
in testamentis praestare, licet hi, qui id permittebant, hoc
*in testaments to-furnish although those who it permitted this*
iure minime abuti debere eos suadebant: tamen nos eandem
*right not-at-all to-abuse to-be-obliged them advised yet we the-same*
observationem corrigentes et, quod ab illis suasum est, in legis
*observance correcting and what by them advised was into of-law*
necessitatem transferentes ad imitationem pristini familiae
*the-necessity transferring in imitation of-the-former of-the-household*

emptoris merito nec heredi, qui imaginem vetustissimi
*buyer deservedly neither to-the-heir who the-image of-the-most-ancient*
familiae emptoris optinet, nec aliis personis, quae ei ut
*of-the-household buyer holds nor to-other persons who to-him as*
dictum est coniunctae sunt, licentiam concedimus sibi
*said it-has-been joined are the-license we-grant for-himself*
quodammodo testimonia praestare: ideoque nec eiusmodi
*in-some-measure testimony to-furnish and-therefore neither of-this-kind*
veterem constitutionem nostro codici inseri permisimus.
*old constitution into-our code to-be-inserted have-we-permitted*

11 Legatariis autem et fideicommissariis, quia non iuris
*To-legatees however and to-beneficiaries-of-trusts because not of-right*
successores sunt, et aliis personis eis coniunctis
*successors they-are and to-other persons to-them joined*
testimonium non denegamus, immo in quadam nostra
*testimony not we-deny nay in a-certain our*
constitutione et hoc specialiter concessimus, et multo magis
*constitution also this specially we-have-granted and much more*
his, qui in eorum potestate sunt, vel qui eos habent in
*to-those who in their power are or who them have in*
potestate, huiusmodi licentiam damus.
*power of-this-kind license we-give*

12 Nihil autem interest, testamentum in tabulis an in chartis
*Nothing however it-matters (whether)-a-testament on tablets or on papers*
membranisve vel in alia materia fiat.
*or-parchments or on other material be-made*

13 Sed et unum testamentum pluribus codicibus conficere quis
*But also one testament in-several copies to-make anyone*
potest, secundum optinentem tamen observationem omnibus
*can according-to the-prevailing however observance with-all*
factis. quod interdum et necessarium est, si quis navigaturus
*made which sometimes also necessary is if anyone about-to-sail*

et secum ferre et domi relinquere iudiciorum suorum
*both with-himself to-carry and at-home to-leave of-judgments his*
contestationem velit, vel propter alias innumerabiles causas,
*the-attestation wishes or on-account-of other innumerable causes*
quae humanis necessitatibus imminent.
*which to-human necessities are-imminent*
Sed haec quidem de testamentis, quae in scriptis 14
*But these-things indeed about testaments which in writing*
conficiuntur. si quis autem voluerit sine scriptis ordinare
*are-made if anyone however has-wished without writing to-order*
iure civili testamentum, septem testibus adhibitis et sua
*by-law civil a-testament seven witnesses being-called-in and his*
voluntate coram eis nuncupata sciat hoc perfectissimum
*will before them declared let-him-know this most-perfect*
testamentum iure civili firmumque constitutum.
*testament by-law civil and-firm established*

## XI · SOLDIERS' WILLS

*Soldiers on campaign may make wills without formality, written or not, if their intent is shown, as Trajan's rescript explains; casual words do not suffice. A will made in camp holds for a year after discharge, a civilian will a soldier revises in camp and one surviving adrogation stand as a soldier's, deaf and mute soldiers may make wills, and anyone may bequeath a quasi-camp peculium.*

Supra dicta diligens observatio in ordinandis testamentis
*The-above said careful observance in ordering testaments*
militibus propter nimiam imperitiam constitutionibus
*for-soldiers on-account-of (their)-excessive inexperience by-constitutions*
principalibus remissa est. nam quamvis hi neque legitimum
*imperial remitted has-been for although they neither the-lawful*

numerum testium adhibuerint neque aliam testamentorum
*number of-witnesses have-used nor other of-testaments*
sollemnitatem observaverint, recte nihilo minus testantur,
*formality have-observed rightly by-nothing less they-make-wills*
videlicet cum in expeditionibus occupati sunt: quod merito
*namely when on expeditions occupied they-are which deservedly*
nostra constitutio induxit. quoquo enim modo voluntas eius
*our constitution introduced in-whatever for way the-will his*
suprema sive scripta inveniatur sive sine scriptura, valet
*last whether written be-found or without writing is-valid*
testamentum ex voluntate eius. illis autem temporibus,
*the-testament from the-will his in-those however times*
per quae citra expeditionum necessitatem in aliis locis
*during which apart-from of-expeditions the-necessity in other places*
vel in suis sedibus degunt, minime ad vindicandum tale
*or in their-own homes they-live not-at-all for claiming such*
privilegium adiuvantur: sed testari quidem et si filii
*a-privilege are-they-helped but to-make-wills indeed even if sons*
familias sunt propter militiam conceduntur, iure tamen
*of-the-family they-are on-account-of military-service they-are-permitted by-law however*
communi, ea observatione et in eorum testamentis adhibenda,
*common that observance also in their testaments to-be-applied*
quam et in testamentis paganorum proxime exposuimus.
*which also in the-testaments of-civilians most-recently we-have-set-out*

1 Plane de militum testamentis divus Traianus Statilio Severo
*Clearly about of-soldiers testaments the-deified Trajan to-Statilius Severus*
ita rescripsit: 'Id privilegium, quod militantibus datum est,
*thus rescribed That privilege which to-those-serving given has-been*
ut quoquo modo facta ab his testamenta rata sint, sic
*that in-whatever way made by them testaments ratified be thus*
intellegi debet, ut utique prius constare debeat testamentum
*be-understood ought that certainly first be-established ought a-testament*

factum esse, quod et sine scriptura a non militantibus
*made to-have-been which even without writing by not serving-men*
quoque fieri potest. is ergo miles, de cuius bonis apud te
*also be-made can that therefore soldier about whose goods before you*
quaeritur, si convocatis ad hoc hominibus, ut voluntatem suam
*it-is-inquired if called-together for this men that will his-own*
testaretur, ita locutus est, ut declararet, quem vellet sibi
*he-might-witness so spoken he-has that he-declared whom he-wished for-himself*
esse heredem et cui libertatem tribuere, potest videri sine
*to-be heir and to-whom freedom to-grant he-can seem without*
scripto hoc modo esse testatus et voluntas eius rata habenda
*writing in-this way to-have made-a-will and the-will his ratified to-be-held*
est. ceterum si, ut plerumque sermonibus fieri solet, dixit
*is but if as mostly in-conversations to-happen is-wont he-said*
alicui: 'ego te heredem facio' aut 'tibi bona mea relinquo',
*to-someone I you heir make or to-you goods my I-leave*
non oportet hoc pro testamento observari. nec ullorum magis
*not it-behooves this as a-testament to-be-observed nor of-any more*
interest quam ipsorum, quibus id privilegium datum est,
*does-it-concern than of-themselves to-whom that privilege given has-been*
eiusmodi exemplum non admitti: alioquin non difficulter
*of-this-kind a-precedent not to-be-admitted otherwise not with-difficulty*
post mortem alicuius militis testes existerent, qui adfirmarent
*after the-death of-some soldier witnesses would-stand-forth who would-affirm*
se audisse dicentem aliquem relinquere se bona,
*themselves to-have-heard saying someone to-leave himself the-goods*
cui visum sit, et per hoc iudicia vera subvertantur.'
*to-whom seemed-good it-be and through this judgments true be-overturned*
Quin immo et mutus et surdus miles testamentum facere 2
*Nay even both a-mute and a-deaf soldier a-testament make*
possunt.
*can*

3 Sed hactenus hoc illis a principalibus constitutionibus
*But so-far this to-them by imperial constitutions*
conceditur, quatenus militant et in castris degunt: post
*is-granted as-long-as they-serve and in camp live after*
missionem vero veterani vel extra castra si faciant
*discharge however veterans or outside the-camp if they-make*
adhuc militantes testamentum, communi omnium civium
*still serving a-testament by-the-common of-all citizens*
Romanorum iure facere debent. et quod in castris fecerint
*Roman law make they-ought and what in camp they-have-made*
testamentum non communi iure, sed quomodo voluerint, post
*a-testament not by-common law but as they-wished after*
missionem intra annum tantum valebit. quid igitur, si intra
*discharge within a-year only will-be-valid what then if within*
annum quidem decesserit, condicio autem heredi adscripta
*the-year indeed he-has-died the-condition however to-the-heir attached*
post annum extiterit? an quasi militis testamentum
*after the-year has-come-to-pass whether as-if of-a-soldier the-testament*
valeat? et placet valere quasi militis.
*be-valid and it-is-held to-be-valid as-if of-a-soldier*

4 Sed et si quis ante militiam non iure fecit testamentum
*But also if anyone before military-service not by-law made a-testament*
et miles factus et in expeditione degens resignavit illud
*and soldier made and on expedition living has-unsealed it*
et quaedam adiecit sive detraxit vel alias manifesta est
*and some-things added or removed or otherwise manifest is*
militis voluntas hoc valere volentis, dicendum est valere
*of-the-soldier the-will this to-be-valid wishing to-be-said it-is to-be-valid*
testamentum quasi ex nova militis voluntate.
*the-testament as-if from new of-the-soldier will*

Denique et si in adrogationem datus fuerit miles vel filius 5
*Finally also if in adrogation given has-been a-soldier or a-son*
familias emancipatus est, testamentum eius quasi militis
*of-the-family emancipated is the-testament his as-if of-a-soldier*
ex nova voluntate valet nec videtur capitis deminutione
*from new will is-valid nor seems-it of-status by-loss*
irritum fieri.
*void to-become*

Sciendum tamen est, quod ad exemplum castrensis peculii tam 6
*To-be-known however it-is that on the-pattern of-the-camp peculium both*
anteriores leges quam principales constitutiones quibusdam
*earlier statutes and imperial constitutions to-certain*
quasi castrensia dederunt peculia, quorum quibusdam
*quasi camp gave peculia of-whom to-some*
permissum erat etiam in potestate degentibus testari.
*permitted it-was even in power living to-make-wills*
quod nostra constitutio latius extendens permisit omnibus
*which our constitution more-widely extending has-permitted to-all*
in his tantummodo peculiis testari quidem, sed iure
*in these only peculia to-make-wills indeed but by-law*
communi: cuius constitutionis tenore perspecto licentia
*common of-which constitution the-tenor having-been-examined license*
est nihil eorum quae ad praefatum ius pertinent ignorare.
*it-is nothing of-those which to the-aforesaid law pertain to-be-ignorant-of*

*Persons in power cannot make wills except of a camp or quasi-camp peculium; nor can those under age, madmen except in lucid intervals, prodigals under interdiction, or the deaf and mute save by Justinian's rules; the blind may make one only in the form Justin's statute set; a captive's will made in captivity is void, though one made before captivity stands.*

Non tamen omnibus licet facere testamentum. statim
*Not however to-all it-is-allowed to-make a-testament at-once*
enim hi, qui alieno iuri subiecti sunt, testamenti faciendi
*for those who to-another's law subject are of-testament making*
ius non habent, adeo quidem ut, quamvis parentes eis
*the-right not have so-far indeed that although parents to-them*
permiserint, nihilo magis iure testari possint: exceptis
*have-permitted by-nothing more lawfully make-wills they-can except*
his quos antea enumeravimus et praecipue militibus qui
*those whom before we-have-listed and especially soldiers who*
in potestate parentum sunt, quibus de eo quod in castris
*in the-power of-parents are to-whom about that which in camp*
adquisierint permissum est ex constitutionibus principum
*they-have-acquired permitted it-is by constitutions of-the-emperors*
testamentum facere. quod quidem initio tantum militantibus
*a-testament to-make which indeed at-first only to-those-serving*
datum est tam ex auctoritate divi Augusti quam
*given was both by the-authority of-the-deified Augustus and*
Nervae nec non optimi imperatoris Traiani, postea vero
*of-Nerva and also of-the-best emperor Trajan afterward however*
subscriptione divi Hadriani etiam dimissis militia,
*by-the-rescript of-the-deified Hadrian even to-those-discharged from-service*
id est veteranis, concessum est. itaque si quidem fecerint
*that is to-veterans granted was therefore if indeed they-have-made*

de castrensi peculio testamentum, pertinebit hoc ad eum
*about the-camp peculium a-testament it-will-belong this to him*
quem heredem reliquerint: si vero intestati decesserint nullis
*whom heir they-have-left if however intestate they-have-died no*
liberis vel fratribus superstitibus, ad parentes eorum iure
*children or brothers surviving to parents their by-law*
communi pertinebit. ex hoc intellegere possumus, quod in
*common it-will-belong from this understand we-can what in*
castris adquisierit miles, qui in potestate patris est, neque
*camp has-acquired a-soldier who in the-power of-his-father is neither*
ipsum patrem adimere posse neque patris creditores id
*the-very father to-take-away to-be-able nor the-father's creditors it*
vendere vel aliter inquietare neque patre mortuo cum
*to-sell or otherwise to-disturb nor the-father dead with*
fratribus esse commune, sed scilicet proprium eius esse id
*the-brothers to-be common but namely own his to-be that*
quod in castris adquisierit, quamquam iure civili omnium
*which in camp he-has-acquired although by-law civil of-all*
qui in potestate parentum sunt peculia perinde in bonis
*who in the-power of-parents are the-peculia just-as in the-goods*
parentum computantur, acsi servorum peculia in bonis
*of-parents are-counted as-if of-slaves the-peculia in the-goods*
dominorum numerantur: exceptis videlicet his, quae ex sacris
*of-masters are-reckoned except namely those which by sacred*
constitutionibus et praecipue nostris propter diversas causas
*constitutions and especially ours on-account-of various causes*
non adquiruntur. praeter hos igitur, qui castrense peculium vel
*not are-acquired besides these therefore who a-camp peculium or*
quasi castrense habent, si quis alius filius familias testamentum
*quasi camp have if any other son of-the-family a-testament*
fecerit, inutile est, licet suae potestatis factus decesserit.
*has-made void it-is although of-his-own power made he-has-died*

1 Praeterea testamentum facere non possunt impuberes, quia
*Moreover a-testament make not can those-under-age because*
nullum eorum animi iudicium est: item furiosi, quia
*no of-them of-the-mind judgment there-is likewise madmen because*
mente carent. nec ad rem pertinet, si impubes
*of-mind they-are-without nor to the-matter does-it-pertain if one-under-age*
postea pubes factus aut furiosus postea compos mentis
*afterward of-age made or a-madman afterward sound of-mind*
factus fuerit et decesserit. furiosi autem si per id tempus
*made has-been and has-died madmen however if during that time*
fecerint testamentum, quo furor eorum intermissus
*they-have-made a-testament in-which madness their intermitted*
est, iure testati esse videntur, certe eo quod ante
*is lawfully having-made-wills to-be they-seem certainly that which before*
furorem fecerint testamento valente: nam neque testamenta
*madness they-made the-testament being-valid for neither testaments*
recte facta neque aliud ullum negotium recte gestum postea
*rightly made nor other any business rightly done afterward*
furor interveniens peremit.
*madness intervening destroys*

2 Item prodigus, cui bonorum suorum administratio
*Likewise a-prodigal to-whom of-goods his-own the-administration*
interdicta est, testamentum facere non potest, sed id quod
*interdicted is a-testament make not can but that which*
ante fecerit, quam interdictio ei bonorum fiat, ratum est.
*before he-made than the-interdiction to-him of-the-goods be-made ratified is*

3 Item mutus et surdus non semper facere testamentum
*Likewise a-mute and a-deaf-man not always make a-testament*
possunt. utique autem de eo surdo loquimur, qui omnino
*can certainly however about that deaf-man we-speak who at-all*
non exaudit, non qui tarde exaudit: nam et mutus is
*not hears not who slowly hears for also mute he*

intellegitur, qui eloqui nihil potest, non qui tarde loquitur.
*is-understood who utter nothing can not who slowly speaks*
saepe autem etiam litterati et eruditi homines variis casibus
*often however even lettered and learned men by-various mischances*
et audiendi et loquendi facultatem amittunt: unde nostra
*both of-hearing and of-speaking the-faculty lose whence our*
constitutio etiam his subvenit, ut certis casibus et modis
*constitution also these helps that in-certain cases and ways*
secundum normam eius possint testari aliaque facere
*according-to the-rule of-it they-can make-wills and-other-things do*
quae eis permissa sunt. sed si quis post testamentum
*which to-them permitted are but if anyone after the-testament*
factum valetudine aut quolibet alio casu mutus aut surdus
*made by-illness or any other chance mute or deaf*
esse coeperit, ratum nihilo minus eius remanet testamentum.
*to-be has-begun ratified by-nothing less his remains testament*
Caecus autem non potest facere testamentum nisi per 4
*A-blind-man however not can make a-testament except through*
observationem, quam lex divi Iustini patris mei
*the-observance which the-statute of-the-deified Justin father my*
introduxit.
*introduced*
Eius, qui apud hostes est, testamentum quod ibi fecit 5
*Of-him who among the-enemy is the-testament which there he-made*
non valet, quamvis redierit: sed quod dum in civitate
*not is-valid although he-has-returned but what while in the-state*
fuerat fecit, sive redierit, valet iure postliminii,
*he-had-been he-made whether he-has-returned it-is-valid by-the-right of-postliminium*
sive illic decesserit, valet ex lege Cornelia.
*or there he-has-died it-is-valid by the-statute Cornelian*

*A son in power must be instituted or disinherited by name, or the will is void; daughters and grandchildren could once be disinherited among the rest, and a posthumous child or a grandchild stepping into a son's place broke a will that passed him over. The praetor required emancipated children to be named, and adopted ones count while in the adoptive family. Justinian treats sons and daughters, own and emancipated, born and posthumous alike; a soldier's knowing silence disinherits; mothers need not disinherit.*

Non tamen, ut omnimodo valeat testamentum, sufficit haec
*Not however that in-every-way be-valid a-testament suffices this*
observatio, quam supra exposuimus. sed qui filium in potestate
*observance which above we-have-set-out but he-who a-son in power*
habet, curare debet, ut eum heredem instituat vel exheredem
*has take-care ought that him heir he-institute or disinherited*
nominatim faciat: alioquin si eum silentio praeterierit, inutiliter
*by-name make otherwise if him in-silence he-has-passed-over uselessly*
testabitur, adeo quidem ut, etsi vivo patre filius mortuus
*he-will-make-a-will so-far indeed that even-if living the-father the-son dead*
sit, nemo ex eo testamento heres existere possit, quia
*be no-one from that testament heir become can because*
scilicet ab initio non constiterit testamentum. sed non
*namely from the-beginning not it-stood the-testament but not*
ita de filiabus vel aliis per virilem sexum descendentibus
*so about daughters or other through the-male sex descending*
liberis utriusque sexus fuerat antiquitati observatum: sed
*children of-each sex had-been by-antiquity observed but*
si non fuerant heredes scripti scriptaeve vel exheredati
*if not they-had-been heirs written or-written or disinherited*
exheredataeve, testamentum quidem non infirmabatur, ius
*or-disinherited the-testament indeed not was-invalidated the-right*

autem adcrescendi eis ad certam portionem praestabatur.
*however of-accrual to-them to a-certain portion was-afforded*
sed nec nominatim eas personas exheredare parentibus
*but nor by-name those persons to-disinherit for-parents*
necesse erat, sed licebat et inter ceteros hoc facere.
*necessary was but it-was-allowed even among the-rest this to-do*
Nominatim autem exheredari quis videtur, sive ita 1
*By-name however to-be-disinherited anyone seems whether thus*
exheredetur 'Titius filius meus exheres esto', sive ita
*he-be-disinherited Titius son my disinherited let-him-be or thus*
'filius meus exheres esto' non adiecto proprio nomine,
*son my disinherited let-him-be not added his-own name*
scilicet si alius filius non extet. postumi quoque liberi
*namely if another son not exist posthumous also children*
vel heredes institui debent vel exheredari. et in eo par
*either heirs be-instituted ought or be-disinherited and in this equal*
omnium condicio est, quod et in filio postumo et in
*of-all the-condition is that both in a-son posthumous and in*
quolibet ex ceteris liberis sive feminini sexus sive masculini
*any of the-other children whether of-female sex or of-male*
praeterito valet quidem testamentum, sed postea adgnatione
*passed-over is-valid indeed the-testament but afterward by-the-birth*
postumi sive postumae rumpitur et ea ratione
*of-a-posthumous-son or of-a-posthumous-daughter it-is-broken and by-that reason*
totum infirmatur: ideoque si mulier, ex qua postumus aut
*wholly is-invalidated and-therefore if the-woman from whom a-posthumous-son or*
postuma sperabatur, abortum fecerit, nihil impedimento
*posthumous-daughter was-expected an-abortion has-made nothing in-the-way*
est scriptis heredibus ad hereditatem adeundam. sed
*is for-the-written heirs to the-inheritance to-be-entered but*
feminini quidem sexus personae vel nominatim vel inter
*of-the-female indeed sex persons either by-name or among*

ceteros exheredari solebant, dum tamen, si inter ceteros
*the-rest to-be-disinherited were-wont provided however if among the-rest*
exheredentur, aliquid eis legetur, ne videantur per
*they-are-disinherited something to-them be-bequeathed lest they-seem through*
oblivionem praeteritae esse, masculos vero postumos,
*forgetfulness passed-over to-have-been male however posthumous-children*
id est filium et deinceps, placuit non aliter recte
*that is a-son and further it-was-held not otherwise rightly*
exheredari, nisi nominatim exheredentur, hoc scilicet modo:
*to-be-disinherited unless by-name they-are-disinherited in-this namely way*
'quicumque mihi filius genitus fuerit, exheres esto'.
*whatever to-me son born shall-have-been disinherited let-him-be*

2 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 adgnascendo fiunt parentibus
*heir the-place by-succeeding as-if by-being-born-in become to-parents*
sui heredes. ut ecce si quis filium et ex eo nepotem
*own heirs as for-instance if anyone a-son and from him a-grandson*
neptemve in potestate habeat, quia filius gradu praecedit,
*or-granddaughter in power has because the-son in-degree precedes*
is solus iura sui heredis habet, quamvis nepos
*he alone the-rights of-an-own heir has although the-grandson*
quoque et neptis ex eo in eadem potestate sunt:
*also and the-granddaughter from him in the-same power are*
sed si filius eius vivo eo moriatur aut qualibet alia ratione
*but if the-son his living him die or by-any other reason*
exeat de potestate eius, incipit nepos neptisve in
*go-out from power his begins the-grandson or-granddaughter into*
eius locum succedere et eo modo iura suorum heredum
*his place to-succeed and in-that way the-rights of-own heirs*
quasi adgnatione nanciscuntur. ne ergo eo modo rumpatur
*as-if by-birth-in they-obtain lest therefore in-that way be-broken*

eius testamentum, sicut ipsum filium vel heredem instituere
*his testament just-as the-very son either heir to-institute*
vel nominatim exheredare debet testator, ne non iure faciat
*or by-name to-disinherit ought the-testator lest not lawfully he-make*
testamentum, ita et nepotem neptemve ex filio necesse est
*the-testament so also the-grandson or-granddaughter by the-son necessary it-is*
ei vel heredem instituere vel exheredare, ne forte vivo eo
*for-him either heir to-institute or to-disinherit lest perhaps living him*
filio mortuo, succedendo in locum eius nepos neptisve
*the-son dead by-succeeding into place his the-grandson or-granddaughter*
quasi adgnatione rumpant testamentum. idque lege
*as-if by-birth-in break the-testament and-this by-the-statute*
Iunia Velleia provisum est, in qua simul exheredationis
*Junian Vellaean provided-for is in which at-the-same-time of-disinheritance*
modus ad similitudinem postumorum demonstratur.
*the-manner on the-likeness of-posthumous-children is-shown*
Emancipatos liberos iure civili neque heredes instituere neque 3
*Emancipated children by-law civil neither 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 both of-female and of-male sex if heirs*
non instituantur, exheredari iubet, virilis sexus nominatim,
*not they-be-instituted to-be-disinherited orders of-male sex by-name*
feminini vero et inter ceteros. quodsi neque heredes instituti
*of-female however even among the-rest but-if neither heirs instituted*
fuerint neque ita ut diximus exheredati, promittit praetor
*they-have-been nor so as we-have-said disinherited promises the-praetor*
eis contra tabulas testamenti bonorum possessionem.
*to-them against the-tablets of-the-testament of-the-goods possession*

4 Adoptivi liberi quamdiu sunt in potestate patris adoptivi,
*Adoptive children as-long-as they-are in the-power of-the-father adoptive*
eiusdem iuris habentur, cuius sunt iustis nuptiis quaesiti:
*of-the-same law are-held of-which they-are in-lawful marriage begotten*
itaque heredes instituendi vel exheredandi sunt secundum
*therefore heirs to-be-instituted or to-be-disinherited they-are according-to*
ea quae de naturalibus exposuimus: emancipati vero
*those-things which about natural-children we-have-set-out emancipated however*
a patre adoptivo neque iure civili neque quod ad edictum
*by the-father adoptive neither by-law civil nor as-far-as to the-edict*
praetoris attinet inter liberos numerantur. qua ratione
*of-the-praetor pertains among children are-they-counted by-which reason*
accidit, ut ex diverso quod ad naturalem parentem attinet,
*it-happens that on the-contrary as-far-as to the-natural parent pertains*
quamdiu quidem sint in adoptiva familia, extraneorum
*as-long-as indeed they-are in the-adoptive family of-outsiders*
numero habeantur, ut eos neque heredes instituere neque
*in-the-number they-are-held so-that them neither heirs to-institute nor*
exheredare necesse sit: cum vero emancipati fuerint ab
*to-disinherit necessary be when however emancipated they-have-been by*
adoptivo patre, tunc incipiant in ea causa esse, in qua futuri
*the-adoptive father then they-begin in that position to-be in which about-to-be*
essent, si ab ipso naturali patre emancipati fuissent.
*they-would-be if by the-very natural father emancipated they-had-been*
5 Sed haec vetustas introducebat. nostra vero constitutio
*But these-things antiquity introduced our however constitution*
inter masculos et feminas in hoc iure nihil interesse
*between males and females in this law nothing to-differ*
existimans, quia utraque persona in hominum procreatione
*thinking because each person in of-men the-procreation*
similiter naturae officio fungitur et lege antiqua
*alike of-nature the-office performs and by-the-statute ancient*

duodecim tabularum omnes similiter ad successiones ab
*of-the-twelve tables all alike to successions on*
intestato vocabantur, quod et praetores postea secuti esse
*intestacy were-called which also the-praetors afterward followed to-have*
videntur, ideo simplex ac simile ius et in filiis et in filiabus
*seem therefore a-simple and alike law both in sons and in daughters*
et in ceteris descendentibus per virilem sexum personis
*and in the-other descending through the-male sex persons*
non solum natis, sed etiam postumis introduxit, ut omnes,
*not only born but also posthumous it-has-introduced that all*
sive sui sive emancipati sunt, et nominatim exheredentur
*whether own or emancipated they-are both by-name be-disinherited*
et eundem habeant effectum circa testamenta parentum
*and the-same have effect regarding the-testaments of-parents*
suorum infirmanda et hereditatem auferendam, quem filii
*their-own to-be-invalidated and the-inheritance to-be-taken-away which sons*
sui vel emancipati habent, sive iam nati sunt sive adhuc
*own or emancipated have whether already born they-are or still*
in utero constituti postea nati sunt. circa adoptivos
*in the-womb placed afterward born they-are regarding adoptive-children*
autem certam induximus divisionem, quae constitutioni
*however a-certain we-have-introduced division which in-the-constitution*
nostrae, quam super adoptivis tulimus, continetur.
*our which about adoptive-children we-issued is-contained*
Sed si expeditione occupatus miles testamentum faciat et 6
*But if on-expedition occupied a-soldier a-testament makes and*
liberos suos iam natos vel postumos nominatim non
*children his-own already born or posthumous by-name not*
exheredaverit, sed silentio praeterierit non ignorans, an
*has-disinherited but in-silence has-passed-over not unaware whether*

habeat liberos, silentium eius pro exheredatione nominatim
*he-has children the-silence his for disinheritance by-name*
facta valere constitutionibus principum cautum est.
*made to-be-valid by-constitutions of-the-emperors provided it-is*

7 Mater vel avus maternus necesse non habent liberos
*A-mother or a-grandfather maternal necessity not have children*
suos aut heredes instituere aut exheredare, sed possunt
*their-own either heirs to-institute or to-disinherit but they-can*
eos omittere. nam silentium matris aut avi materni
*them omit for the-silence of-a-mother or of-a-grandfather maternal*
ceterorumque per matrem ascendentium tantum facit,
*and-of-the-others through the-mother ascending as-much does*
quantum exheredatio patris. neque enim matri filium
*as disinheritance of-a-father nor for for-a-mother a-son*
filiamve neque avo materno nepotem neptemve ex
*or-daughter nor for-a-grandfather maternal a-grandson or-granddaughter by*
filia, si eum eamve heredem non instituat, exheredare
*a-daughter if him or-her heir not (one)-institute to-disinherit*
necesse est, sive de iure civili quaeramus, sive de edicto
*necessary it-is whether about law civil we-inquire or about the-edict*
praetoris, quo praeteritis liberis contra tabulas bonorum
*of-the-praetor by-which to-passed-over children against the-tablets of-the-goods*
possessionem promittit. sed aliud eis adminiculum servatur,
*possession he-promises but another for-them support is-kept*
quod paulo post vobis manifestum fiat.
*which a-little later to-you manifest will-become*

*Free men and slaves, one's own or another's, may be heirs, one's own now even without freedom; a slave instituted who stays a slave becomes free and a necessary heir, one alienated enters at his new master's order. The inheritance is usually divided into twelve unciae, unnamed shares are equal or fill what is vacant, and an heir may be instituted on condition but not from or to a date, an impossible condition counting as unwritten.*

Heredes instituere permissum est tam liberos homines quam
*As-heirs to-institute permitted it-is both free men and*
servos tam proprios quam alienos. proprios autem olim quidem
*slaves both one's-own and another's one's-own however formerly indeed*
secundum plurium sententias non aliter quam cum libertate
*according-to of-the-majority the-opinions not otherwise than with freedom*
recte instituere licebat. hodie vero etiam sine libertate ex
*rightly to-institute it-was-allowed today however even without freedom by*
nostra constitutione heredes eos instituere permissum est. quod
*our constitution heirs them to-institute permitted it-is which*
non per innovationem induximus, sed quoniam et aequius
*not through innovation we-have-introduced but since both fairer*
erat et Atilicino placuisse Paulus suis libris, quos tam ad
*it-was and to-Atilicinus to-have-seemed-good Paulus in-his books which both on*
Massurium Sabinum quam ad Plautium scripsit, refert. proprius
*Massurius Sabinus and on Plautius he-wrote reports one's-own*
autem servus etiam is intellegitur, in quo nudam proprietatem
*however slave also he is-understood in whom bare ownership*
testator habet, alio usum fructum habente. est autem
*the-testator has another the-use (and)-enjoyment having there-is however*
casus, in quo nec cum libertate utiliter servus a domina
*a-case in which not-even with freedom effectively a-slave by his-mistress*
heres instituitur, ut constitutione divorum Severi et Antonini
*heir is-instituted as by-the-constitution of-the-deified Severus and Antoninus*

cavetur, cuius verba haec sunt: 'Servum adulterio maculatum
*is-provided whose words these are A-slave by-adultery stained*
non iure testamento manumissum ante sententiam ab ea
*not lawfully by-testament manumitted before sentence by that*
muliere videri, quae rea fuerat eiusdem criminis postulata,
*woman to-seem who accused had-been of-the-same crime charged*
rationis est: quare sequitur, ut in eundem a domina
*of-reason it-is wherefore it-follows that on the-same-man by his-mistress*
collata institutio nullius momenti habeatur.' alienus servus
*conferred the-institution of-no weight be-held another's slave*
etiam is intellegitur, in quo usum fructum testator habet.
*also he is-understood in whom the-use (and)-enjoyment the-testator has*
1 Servus autem a domino suo heres institutus, si quidem in
*A-slave however by master his heir instituted if indeed in*
eadem causa manserit, fit ex testamento liber heresque
*the-same position he-has-remained becomes by the-testament free and-heir*
necessarius. si vero a vivo testatore manumissus fuerit,
*necessary if however by the-living testator manumitted he-has-been*
suo arbitrio adire hereditatem potest, quia non fit
*by-his-own choice enter-upon the-inheritance he-can because not he-becomes*
necessarius, cum utrumque ex domini testamento non
*necessary since both from the-master's testament not*
consequitur. quodsi alienatus fuerit, iussu novi domini
*he-obtains but-if alienated he-has-been by-order of-the-new master*
adire hereditatem debet et ea ratione per eum
*to-enter-upon the-inheritance he-ought and by-that reason through him*
dominus fit heres: nam ipse alienatus neque liber neque
*the-master becomes heir for himself alienated neither free nor*
heres esse potest, etiamsi cum libertate heres institutus fuerit:
*heir be can even-if with freedom heir instituted he-has-been*
destitisse etenim a libertatis datione videtur dominus qui
*to-have-desisted for from of-freedom the-giving seems the-master who*

eum alienavit. alienus quoque servus heres institutus si in
*him alienated another's also slave heir instituted if in*
eadem causa duraverit, iussu domini adire hereditatem
*the-same position he-has-continued by-order of-the-master to-enter-upon the-inheritance*
debet. si vero alienatus ab eo fuerit aut vivo testatore
*he-ought if however alienated by him he-has-been either living the-testator*
aut post mortem eius antequam adeat, debet iussu novi
*or after death his before he-enters he-ought by-order of-the-new*
domini adire. at si manumissus est vivo testatore, vel mortuo
*master to-enter but if manumitted he-is living the-testator or dead*
antequam adeat, suo arbitrio adire hereditatem potest.
*before he-enters by-his-own choice enter-upon the-inheritance he-can*
Servus alienus post domini mortem recte heres instituitur, 2
*A-slave another's after the-master's death rightly heir is-instituted*
quia et cum hereditariis servis est testamenti factio:
*because also with hereditary slaves there-is of-testament capacity*
nondum enim adita hereditas personae vicem sustinet, non
*not-yet for entered the-inheritance of-a-person the-place sustains not*
heredis futuri, sed defuncti, cum et eius, qui in utero
*of-the-heir future but of-the-deceased since also of-him who in the-womb*
est, servus recte heres instituitur.
*is a-slave rightly heir is-instituted*
Servus plurium, cum quibus testamenti factio est, ab 3
*A-slave of-several with whom of-testament capacity there-is by*
extraneo institutus heres unicuique dominorum, cuius iussu
*an-outsider instituted heir for-each of-the-masters whose by-order*
adierit, pro portione dominii adquirit hereditatem.
*he-has-entered in-proportion to-the-share of-ownership acquires the-inheritance*
Et unum hominem et plures in infinitum, quot quis 4
*Both one man and several to infinity as-many-as anyone*
velit, heredes facere licet.
*wishes as-heirs to-make it-is-allowed*

5 Hereditas plerumque dividitur in duodecim uncias, quae assis
*An-inheritance mostly is-divided into twelve unciae which of-the-as*
appellatione continentur. habent autem et hae partes propria
*under-the-name are-contained have however also these parts their-own*
nomina ab uncia usque ad assem, ut puta haec: sextans,
*names from the-uncia up to the-as as for-instance these sextans*
quadrans, triens, quincunx, semis, septunx, bes, dodrans,
*quadrans triens quincunx semis septunx bes dodrans*
dextans, deunx, as. non autem utique duodecim uncias esse
*dextans deunx as not however necessarily twelve unciae to-be*
oportet. nam tot unciae assem efficiunt, quot testator
*it-behooves for as-many unciae an-as make as the-testator*
voluerit, et si unum tantum quis ex semisse verbi gratia
*has-wished and if one only anyone for a-semis of-example for-the-sake*
heredem scripserit, totus as in semisse erit: neque enim
*heir has-written the-whole as in the-semis will-be nor for*
idem ex parte testatus et ex parte intestatus decedere
*the-same-man in part testate and in part intestate die*
potest, nisi sit miles, cuius sola voluntas in testando
*can unless he-be a-soldier whose alone will in making-a-will*
spectatur. et e contrario potest quis in quantascumque
*is-regarded and on the-contrary can anyone into as-many-as*
voluerit plurimas uncias suam hereditatem dividere.
*he-has-wished very-many unciae his-own inheritance divide*

6 Si plures instituantur, ita demum partium distributio necessaria
*If several be-instituted so only-then of-the-parts the-distribution necessary*
est, si nolit testator eos ex aequis partibus heredes esse:
*is if not-wish the-testator them in equal parts heirs to-be*
satis enim constat nullis partibus nominatis aequis ex
*sufficiently for it-is-agreed no parts named equal in*
partibus eos heredes esse. partibus autem in quorundam
*parts them heirs to-be parts however in of-some*

personis expressis, si quis alius sine parte nominatus erit,
*the-persons expressed if any other without a-part named shall-be*
si quidem aliqua pars assi deerit, ex ea parte heres
*if indeed any part from-the-as shall-be-lacking from that part heir*
fit: et si plures sine parte scripti sunt, omnes in eadem
*he-becomes and if several without a-part written are all in the-same*
parte concurrent. si vero totus as completus sit, in partem
*part will-concur if however the-whole as completed be into the-part*
dimidiam vocatur et ille vel illi omnes in alteram dimidiam.
*half he-is-called and he or those all into the-other half*
nec interest, primus an medius an novissimus sine parte
*nor does-it-matter first or middle or last without a-part*
scriptus sit: ea enim pars data intellegitur quae vacat.
*written he-be that for part given is-understood which is-vacant*
Videamus, si pars aliqua vacet nec tamen quisquam sine 7
*Let-us-see if part some be-vacant nor however anyone without*
parte heres institutus sit, quid iuris sit? veluti si tres ex
*a-part heir instituted be what of-law it-is as if three for*
quartis partibus heredes scripti sunt. et constat vacantem
*quarter parts heirs written are and it-is-agreed the-vacant*
partem singulis tacite pro hereditaria parte accedere
*part to-each tacitly according-to hereditary share to-accrue*
et perinde haberi, ac si ex tertiis partibus heredes scripti
*and just to-be-held as if for third parts heirs written*
essent: et ex diverso si plus in portionibus sit, tacite
*they-had-been and on the-contrary if more in the-portions be tacitly*
singulis decrescere, ut, si verbi gratia quattuor ex
*from-each to-decrease so-that if of-example for-the-sake four for*
tertiis partibus heredes scripti sint, perinde habeantur, ac
*third parts heirs written be just they-are-held as*
si unusquisque ex quarta parte scriptus fuisset.
*if each for a-fourth part written had-been*

8 Et si plures unciae quam duodecim distributae sunt, is, qui
*And if more unciae than twelve distributed are he who*
sine parte institutus est, quod dipondio deest habebit:
*without a-part instituted is what from-the-dupondius is-lacking will-have*
idemque erit, si dipondius expletus sit. quae omnes partes
*and-the-same will-be if the-dupondius filled be which all parts*
ad assem postea revocantur, quamvis sint plurium unciarum.
*to the-as afterward are-reduced although they-be of-more unciae*

9 Heres et pure et sub condicione institui potest. ex
*An-heir both unconditionally and under condition be-instituted can from*
certo tempore aut ad certum tempus non potest, veluti
*a-certain time or to a-certain time not he-can as*
'post quinquennium quam moriar' vel 'ex kalendis illis' aut
*after five-years after I-die or from the-kalends those or*
'usque ad kalendas illas heres esto': diemque adiectum pro
*up to the-kalends those heir let-him-be and-the-day added as*
supervacuo haberi placet et perinde esse, ac si pure
*superfluous to-be-held it-is-held and just to-be as if unconditionally*
heres institutus esset.
*heir instituted he-had-been*

10 Impossibilis condicio in institutionibus et legatis nec non
*An-impossible condition in institutions and legacies and also*
in fideicommissis et libertatibus pro non scripto habetur.
*in trusts and freedoms as not written is-held*

11 Si plures condiciones institutioni adscriptae sunt, si quidem
*If several conditions to-the-institution attached are if indeed*
coniunctim, ut puta 'si illud et illud factum erit',
*jointly as for-instance if this and this done shall-have-been*
omnibus parendum est: si separatim, veluti 'si illud aut
*to-all to-be-obeyed it-is if separately as if this or*
illud factum erit', cuilibet obtemperare satis est.
*this done shall-have-been to-any-one to-comply-with enough it-is*

Hi, quos numquam testator vidit, heredes institui possunt. 12
*Those whom never the-testator saw heirs be-instituted can*
veluti si fratris filios peregri natos ignorans qui essent
*as if of-a-brother the-sons abroad born not-knowing who they-were*
heredes instituerit: ignorantia enim testantis inutilem
*heirs he-has-instituted the-ignorance for of-the-testator a-useless*
institutionem non facit.
*institution not makes*

## XV · COMMON SUBSTITUTION

*Several degrees of heirs may be named, a slave last as necessary heir; several may be substituted for one or one for several, with shares as in the institution, and a substitute named for a slave thought free shares when the slave enters.*

Potest autem quis in testamento suo plures gradus heredum
*Can however anyone in testament his several degrees of-heirs*
facere, ut puta 'si ille heres non erit, ille heres esto':
*make as for-instance if he heir not shall-be he heir let-him-be*
et deinceps in quantum velit testator substituere potest
*and further in how-much wishes the-testator substitute he-can*
et novissimo loco in subsidium vel servum necessarium
*and in-the-last place as a-fallback even a-slave as-necessary*
heredem instituere.
*heir institute*
Et plures in unius locum possunt substitui, vel unus 1
*And several in of-one the-place can be-substituted or one*
in plurium, vel singuli singulis, vel invicem ipsi qui
*in of-several or individuals for-individuals or in-turn themselves who*
heredes instituti sunt.
*heirs instituted are*

2 Et si ex disparibus partibus heredes scriptos invicem
*And if in unequal parts heirs written in-turn*
substituerit et nullam mentionem in substitutione habuerit
*he-has-substituted and no mention in the-substitution has-made*
partium, eas videtur partes in substitutione dedisse, quas
*of-the-parts those he-seems parts in the-substitution to-have-given which*
in institutione expressit: et ita divus Pius rescripsit.
*in the-institution he-expressed and so the-deified Pius rescribed*

3 Sed si instituto heredi et coheredi suo substituto dato
*But if to-an-instituted heir and to-the-co-heir his substituted given*
alius substitutus fuerit, divi Severus et Antoninus sine
*another substituted has-been the-deified Severus and Antoninus without*
distinctione rescripserunt ad utramque partem substitutum
*distinction rescribed to each part the-substitute*
admitti.
*to-be-admitted*

4 Si servum alienum quis patrem familias arbitratus heredem
*If a-slave another's anyone a-father of-a-family thinking-him heir*
scripserit et, si heres non esset, Maevium ei substituerit
*has-written and if heir not he-should-be Maevius to-him has-substituted*
isque servus iussu domini adierit hereditatem, Maevius in
*and-that slave by-order of-his-master has-entered the-inheritance Maevius to*
partem admittitur. illa enim verba 'si heres non erit' in eo
*a-part is-admitted those for words if heir not he-shall-be in him*
quidem, quem alieno iuri subiectum esse testator scit, sic
*indeed whom to-another's right subject to-be the-testator knows thus*
accipiuntur: si neque ipse heres erit neque alium heredem
*are-taken if neither himself heir he-shall-be nor another heir*
effecerit: in eo vero, quem patrem familias esse arbitratur,
*shall-have-made in him however whom a-father of-a-family to-be he-thinks*
illud significant: si hereditatem sibi eive, cuius iuri
*that signify if the-inheritance for-himself or-for-him to-whose right*

postea subiectus esse coeperit, non adquisierit. idque Tiberius
*afterward subject to-be he-has-begun not he-has-acquired and-this Tiberius*
Caesar in persona Parthenii servi sui constituit.
*Caesar in the-person of-Parthenius slave his-own established*

## XVI · PUPILLARY SUBSTITUTION

*A father may name an heir for a child in his power, instituted or disinherited, who dies under age, and may seal that part of the will separately for the child's safety; Justinian allows the same for mentally incapable children. The pupillary will stands or falls with the father's and ends at fourteen for males and twelve for females, and an outsider or adult son can be bound only by trust.*

Liberis suis impuberibus, quos in potestate quis habet,
*To-children his-own under-age whom in power anyone has*
non solum ita ut supra diximus substituere potest, id est
*not only thus as above we-have-said substitute he-can that is*
ut, si heredes ei non extiterint, alius ei sit heres, sed
*that if heirs to-him not they-have-become another to-him be heir but*
eo amplius ut et, si heredes ei extiterint et adhuc
*by-this further that even if heirs to-him they-have-become and still*
impuberes mortui fuerint, sit eis aliquis heres. veluti si
*under-age dead they-have-been be to-them someone heir as if*
quis dicat hoc modo: 'Titius filius meus heres mihi esto:
*anyone says in-this way Titius son my heir to-me let-him-be*
si filius meus heres mihi non erit, sive heres erit et prius
*if son my heir to-me not shall-be or heir shall-be and first*
moriatur, quam in suam tutelam venerit' (id est pubes factus
*die before into his-own tutelage he-has-come that is of-age made*
sit), 'tunc Seius heres esto.' quo casu si quidem non
*he-be then Seius heir let-him-be in-which case if indeed not*

extiterit heres filius, tunc substitutus patri fit heres:
*has-become heir the-son then the-substitute to-the-father becomes heir*
si vero extiterit heres filius et ante pubertatem decesserit,
*if however has-become heir the-son and before puberty has-died*
ipsi filio fit heres substitutus. nam moribus institutum
*to-the-very son becomes heir the-substitute for by-custom established*
est, ut, cum eius aetatis sunt, in qua ipsi sibi
*it-has-been that when of-that age they-are in which themselves for-themselves*
testamentum facere non possunt, parentes eis faciant.
*a-testament make not they-can parents for-them make-it*

1 Qua ratione excitati etiam constitutionem in nostro
*By-which reasoning roused also a-constitution in our*
posuimus codice, qua prospectum est, ut, si mente
*we-have-placed code by-which provided it-has-been that if mentally*
captos habeant filios vel nepotes vel pronepotes cuiuscumque
*deranged they-have sons or grandsons or great-grandsons of-whatever*
sexus vel gradus, liceat eis, etsi puberes sint, ad
*sex or degree it-be-allowed for-them even-though of-age they-be on*
exemplum pupillaris substitutionis certas personas substituere:
*the-pattern of-pupillary substitution certain persons to-substitute*
sin autem resipuerint, eandem substitutionem
*but-if however they-have-recovered-their-senses the-same substitution*
infirmari, et hoc ad exemplum pupillaris substitutionis,
*to-be-invalidated and this on the-pattern of-pupillary substitution*
quae postquam pupillus adoleverit infirmatur.
*which after the-ward has-grown-up is-invalidated*

2 Igitur in pupillari substitutione secundum praefatum modum
*Therefore in pupillary substitution according-to the-aforesaid manner*
ordinata duo quodammodo sunt testamenta, alterum patris,
*ordered two in-some-measure are testaments one of-the-father*
alterum filii, tamquam si ipse filius sibi heredem
*the-other of-the-son just as-if himself the-son for-himself an-heir*

instituisset: aut certe unum est testamentum duarum
*had-instituted or certainly one is testament of-two*
causarum, id est duarum hereditatum.
*causes that is of-two inheritances*
Sin autem quis ita formidolosus sit, ut timeret, ne filius 3
*But-if however anyone so fearful is that he-fear lest son*
eius pupillus adhuc ex eo, quod palam substitutum accepit,
*his a-ward still from this that openly a-substitute he-received*
post obitum eius periculo insidiarum subiceretur: vulgarem
*after death his to-the-danger of-plots be-exposed the-common*
quidem substitutionem palam facere et in primis testamenti
*indeed substitution openly to-make and in the-first of-the-testament*
partibus debet, illam autem substitutionem, per quam et
*parts he-ought that however substitution through which even*
si heres extiterit pupillus et intra pubertatem decesserit
*if heir has-become the-ward and within puberty has-died*
substitutus vocatur, separatim in inferioribus partibus scribere
*the-substitute is-called separately in the-lower parts to-write*
eamque partem proprio lino propriaque cera consignare et
*and-that part with-its-own thread and-its-own wax to-seal and*
in priore parte testamenti cavere, ne inferiores tabulae
*in the-former part of-the-testament to-provide that-not the-lower tablets*
vivo filio et adhuc impubere aperiantur. illud palam
*while-living the-son and still under-age be-opened that plain*
est non ideo minus valere substitutionem impuberis filii,
*is not therefore less to-be-valid the-substitution of-an-under-age son*
quod in isdem tabulis scripta sit, quibus sibi quisque
*because on the-same tablets written it-is on-which for-himself each*
heredem instituisset, quamvis hoc pupillo periculosum sit.
*an-heir had-instituted although this to-the-ward dangerous be*

4 Non solum autem heredibus institutis impuberibus liberis
*Not only however to-heirs instituted under-age children*
ita substituere parentes possunt, ut et si heredes eis
*so substitute parents can that even if heirs to-them*
extiterint et ante pubertatem mortui fuerint, sit eis heres
*they-have-become and before puberty dead have-been be to-them heir*
is quem ipsi voluerint, sed etiam exheredatis. itaque
*he whom they-themselves have-wished but also to-the-disinherited and-so*
eo casu si quid pupillo ex hereditatibus legatisve aut
*in-that case if anything for-the-ward from inheritances or-legacies or*
donationibus propinquorum atque amicorum adquisitum fuerit,
*gifts of-relatives and friends acquired has-been*
id omne ad substitutum pertineat. quaecumque diximus de
*that all to the-substitute belong whatever-things we-have-said about*
substitutione impuberum liberorum vel heredum institutorum
*the-substitution of-under-age children either heirs instituted*
vel exheredatorum, eadem etiam de postumis intellegimus.
*or disinherited the-same also about posthumous-children we-understand*
5 Liberis autem suis testamentum facere nemo potest, nisi
*For-children however his-own a-testament make no-one can unless*
et sibi faciat: nam pupillare testamentum pars et sequela
*also for-himself be-make for the-pupillary testament a-part and sequel*
est paterni testamenti, adeo ut, si patris testamentum
*is of-the-paternal testament so-far that if of-the-father the-testament*
non valeat, ne filii quidem valebit.
*not be-valid not of-the-son even will-it-be-valid*
6 Vel singulis autem liberis vel qui eorum novissimus
*Either to-individual however children or to-him-who of-them last*
impubes morietur substitui potest. singulis quidem, si
*under-age shall-die be-substituted can to-individuals indeed if*

neminem eorum intestato decedere voluit: novissimo, si ius
*no-one of-them intestate to-die he-wished to-the-last if the-right*
legitimarum hereditatium integrum inter eos custodiri velit.
*of-statutory inheritances intact among them to-be-kept he-wishes*
Substituitur autem impuberi aut nominatim, veluti 'Titius', 7
*Is-substituted however to-one-under-age either by-name as Titius*
aut generaliter 'quisquis mihi heres erit': quibus verbis vocantur
*or generally whoever to-me heir shall-be by-which words are-called*
ex substitutione impubere filio mortuo, qui et scripti sunt
*by the-substitution the-under-age son dead those-who both written are*
heredes et extiterunt, et pro qua parte heredes facti sunt.
*heirs and have-become and for which share heirs made they-are*
Masculo igitur usque ad quattuordecim annos substitui 8
*To-a-male therefore up to fourteen years a-substitute-be-made*
potest, feminae usque ad duodecim annos: et si hoc tempus
*can to-a-female up to twelve years and if this time*
excesserit, substitutio evanescit.
*it-has-passed the-substitution vanishes*
Extraneo vero vel filio puberi heredi instituto ita 9
*To-an-outsider however or to-a-son of-age heir instituted so*
substituere nemo potest, ut, si heres extiterit et intra
*substitute no-one can that if heir he-has-become and within*
aliquod tempus decesserit, alius ei sit heres: sed hoc
*some time has-died another to-him be heir but this*
solum permissum est, ut eum per fideicommissum testator
*only permitted is that him through a-trust the-testator*
obliget alii hereditatem eius vel totam vel pro parte
*bind to-another the-inheritance his either whole or in part*
restituere: quod ius quale sit, suo loco trademus.
*to-restore which law of-what-kind it-is in-its-own place we-shall-teach*

*A will is broken by a later adoption or a later valid will, even one naming an heir to certain things only, though by Severus and Antoninus' rescript that heir must hand the inheritance to the earlier heirs; it becomes void by the testator's loss of status, though the heir may still claim possession of goods. Mere change of mind or an unfinished later will does not undo it, and Pertinax refused inheritances left him to bring a lawsuit.*

Testamentum iure factum usque eo valet, donec rumpatur
*A-testament lawfully made so long is-valid until it-be-broken*
irritumve fiat.
*or-void become*

1 Rumpitur autem testamentum, cum in eodem statu manente
*Is-broken however a-testament when in the-same status remaining*
testatore ipsius testamenti ius vitiatur. si quis enim
*the-testator of-the-very testament the-right is-impaired if anyone for*
post factum testamentum adoptaverit sibi filium per
*after the-made testament has-adopted for-himself a-son through*
imperatorem eum, qui sui iuris est, aut per praetorem
*the-emperor one who of-his-own right is or through the-praetor*
secundum nostram constitutionem eum, qui in potestate
*according-to our constitution one who in the-power*
parentis fuerit, testamentum eius rumpitur quasi adgnatione
*of-a-parent was the-testament his is-broken as-if by-the-birth-in*
sui heredis.
*of-an-own heir*

2 Posteriore quoque testamento, quod iure perfectum est,
*By-a-later also testament which lawfully completed is*
superius rumpitur. nec interest, an extiterit aliquis
*the-earlier is-broken nor does-it-matter whether has-become any*
heres ex eo, an non extiterit: hoc enim solum spectatur,
*heir from it or not has-become this for alone is-regarded*

an aliquo casu existere potuerit. ideoque si quis
*whether in-any case become he-could and-therefore if anyone*
aut noluerit heres esse, aut vivo testatore aut post
*either has-been-unwilling heir to-be or living the-testator or after*
mortem eius antequam hereditatem adiret decesserit, aut
*death his before the-inheritance he-entered has-died or*
condicione, sub qua heres institutus est, defectus sit, in his
*by-the-condition under which heir instituted he-is failed has in these*
casibus pater familias intestatus moritur: nam et prius
*cases the-father of-the-family intestate dies for both the-earlier*
testamentum non valet ruptum a posteriore et posterius
*testament not is-valid broken by the-later and the-later*
aeque nullas vires habet, cum ex eo nemo heres extiterit.
*equally no force has since from it no-one heir has-become*
Sed si quis priore testamento iure perfecto posterius 3
*But if anyone the-earlier testament lawfully completed a-later*
aeque iure fecerit, etiamsi ex certis rebus in eo heredem
*equally lawfully has-made even-if for certain things in it an-heir*
instituerit, superius testamentum sublatum esse divi
*he-has-instituted the-earlier testament removed to-be the-deified*
Severus et Antoninus rescripserunt. cuius constitutionis
*Severus and Antoninus rescribed of-which constitution*
inseri verba iussimus, cum aliud quoque praeterea
*to-be-inserted the-words we-have-ordered since another-thing also besides*
in ea constitutione expressum est. ‘Imperatores Severus et
*in that constitution expressed is The-Emperors Severus and*
Antoninus Cocceio Campano. Testamentum secundo loco
*Antoninus to-Cocceius Campanus A-testament in-second place*
factum, licet in eo certarum rerum heres scriptus sit,
*made although in it of-certain things heir written he-be*
iure valere, perinde ac si rerum mentio facta non esset,
*lawfully to-be-valid just as if of-the-things mention made not had-been*

sed teneri heredem scriptum, ut contentus rebus sibi
*but to-be-bound the-heir written that content with-the-things to-him*
datis aut suppleta quarta ex lege Falcidia hereditatem
*given or made-up the-fourth by the-statute Falcidian the-inheritance*
restituat his, qui in priore testamento scripti fuerant,
*he-restore to-those who in the-earlier testament written had-been*
propter inserta verba secundo testamento, quibus ut
*on-account-of the-inserted words in-the-second testament by-which that*
valeret prius testamentum expressum est, dubitari non
*be-valid the-earlier testament expressed it-is to-be-doubted not*
oportet.' et ruptum quidem testamentum hoc modo efficitur.
*it-behooves and broken indeed a-testament in-this way is-made*
4 Alio quoque modo testamenta iure facta infirmantur,
*In-another also way testaments lawfully made are-invalidated*
veluti cum is qui fecerit testamentum capite deminutus sit.
*as when he who made the-testament in-status diminished is*
quod quibus modis accidit, primo libro rettulimus.
*which in-what ways it-happens in-the-first book we-have-reported*
5 Hoc autem casu irrita fieri testamenta dicuntur, cum
*In-this however case void to-become testaments are-said although*
alioquin et quae rumpuntur irrita fiant et quae
*otherwise both those-which are-broken void become and those-which*
statim ab initio non iure fiunt irrita sunt: et ea,
*at-once from the-beginning not lawfully are-made void are and those*
quae iure facta sunt, postea propter capitis deminutionem
*which lawfully made are afterward on-account-of of-status loss*
irrita fiunt, possumus nihilo minus rupta dicere. sed quia
*void become we-can by-nothing less broken call-them but because*
sane commodius erat singulas causas singulis appellationibus
*indeed more-convenient it-was single causes by-single names*

distingui, ideo quaedam non iure facta dicuntur,
*to-be-distinguished therefore some not lawfully made are-called*
quaedam iure facta rumpi vel irrita fieri.
*some lawfully made to-be-broken or void to-become*
Non tamen per omnia inutilia sunt ea testamenta, quae ab 6
*Not however in all-things useless are those testaments which from*
initio iure facta propter capitis deminutionem irrita
*the-beginning lawfully made on-account-of of-status loss void*
facta sunt. nam si septem testium signis signata sunt,
*made have-been for if of-seven witnesses with-the-seals sealed they-are*
potest scriptus heres secundum tabulas testamenti bonorum
*can the-written heir according-to the-tablets of-the-testament of-the-goods*
possessionem agnoscere, si modo defunctus et civis Romanus
*possession claim if only the-deceased both a-citizen Roman*
et suae potestatis mortis tempore fuerit: nam si ideo
*and of-his-own power of-death at-the-time was for if for-this*
irritum factum sit testamentum, quod civitatem vel etiam
*void made has-been the-testament that citizenship or even*
libertatem testator amisit, aut quia in adoptionem se dedit
*freedom the-testator has-lost or because in adoption himself he-gave*
et mortis tempore in adoptivi patris potestate sit, non potest
*and of-death at-the-time in the-adoptive father's power is not can*
scriptus heres secundum tabulas bonorum possessionem petere.
*the-written heir according-to the-tablets of-the-goods possession seek*
Ex eo autem solo non potest infirmari testamentum, quod 7
*From this however alone not can be-invalidated a-testament that*
postea testator id noluit valere: usque adeo ut et, si quis
*afterward the-testator it not-wished to-be-valid so far that even if anyone*
post factum prius testamentum posterius facere coeperit
*after made the-earlier testament a-later to-make has-begun*
et aut mortalitate praeventus, aut quia eum eius rei
*and either by-death forestalled or because him of-that thing*

paenituit, id non perfecisset, divi Pertinacis oratione
*repented it not he-had-completed by-the-deified Pertinax's speech*
cautum est, ne alias tabulae priores iure factae irritae
*provided it-is that-not otherwise the-tablets earlier lawfully made void*
fiant, nisi sequentes iure ordinatae et perfectae fuerint.
*become unless the-following lawfully ordered and completed have-been*
nam imperfectum testamentum sine dubio nullum est.
*for an-incomplete testament without doubt null is*

8 Eadem oratione expressit non admissurum se hereditatem
*In-the-same speech he-expressed not about-to-admit himself the-inheritance*
eius, qui litis causa principem heredem reliquerit, neque
*of-him who of-a-lawsuit for-the-sake the-emperor as-heir has-left nor*
tabulas non legitimae factas, in quibus ipse ob eam causam
*tablets not lawfully made in which he-himself for that cause*
heres institutus erat, probaturum neque ex nuda voce
*heir instituted had-been about-to-approve nor from bare word*
heredis nomen admissurum neque ex ulla scriptura, cui iuris
*of-an-heir the-name about-to-admit nor from any writing which of-law*
auctoritas desit, aliquid adepturum. secundum haec divi
*the-authority lacks anything about-to-obtain according-to these the-deified*
quoque Severus et Antoninus saepissime rescripserunt: 'licet
*also Severus and Antoninus very-often rescribed although*
enim' inquiunt 'legibus soluti sumus, attamen legibus vivimus'.
*for they-say from-the-laws exempt we-are nevertheless by-the-laws we-live*

*Children passed over or disinherited without cause may impeach the will as undutiful, as if made by one not of sound mind; parents, and brothers and sisters against base heirs, may too. One who has received anything gets the fourth made up instead, and those who have a quarter by any title cannot sue.*

Quia plerumque parentes sine causa liberos suos vel
*Because mostly parents without cause children their-own either*
exheredant vel omittunt, inductum est, ut de inofficioso
*disinherit or omit introduced it-has-been that about an-undutiful*
testamento agere possint liberi, qui queruntur aut inique
*testament to-sue can children who complain either unfairly*
se exheredatos aut inique praeteritos, hoc colore, quasi
*themselves disinherited or unfairly passed-over under-this color as-if*
non sanae mentis fuerunt, cum testamentum ordinarent. sed
*not of-sound mind they-were when the-testament they-ordered but*
hoc dicitur, non quasi vere furiosus sit, sed recte quidem
*this is-said not as-if truly mad he-be but rightly indeed*
fecit testamentum, non autem ex officio pietatis: nam si
*he-made the-testament not however from the-duty of-affection for if*
vere furiosus est, nullum est testamentum.
*truly mad he-is null is the-testament*
Non tantum autem liberis permissum est parentum 1
*Not only however to-children permitted it-is of-parents*
testamentum inofficiosum accusare, verum etiam parentibus
*the-testament as-undutiful to-accuse but also to-parents*
liberorum. soror autem et frater turpibus personis scriptis
*of-children a-sister however and a-brother disreputable persons written*
heredibus ex sacris constitutionibus praelati sunt: non ergo
*as-heirs by sacred constitutions preferred have-been not therefore*

contra omnes heredes agere possunt. ultra fratres et sorores
*against all heirs sue they-can beyond brothers and sisters*
cognati nullo modo aut agere possunt aut agentes vincere.
*kinsmen in-no way either sue can or suing win*

2 Tam autem naturales liberi, quam secundum nostrae
*Both however natural children and according-to of-our*
constitutionis divisionem adoptati ita demum de inofficioso
*constitution the-division adopted so only-then about an-undutiful*
testamento agere possunt, si nullo alio iure ad bona
*testament sue can if by-no other right to the-goods*
defuncti venire possunt. nam qui alio iure veniunt
*of-the-deceased come they-can for those-who by-another right come*
ad totam hereditatem vel partem eius, de inofficioso agere
*to the-whole inheritance or a-part of-it about undutifulness sue*
non possunt. postumi quoque, qui nullo alio iure
*not can posthumous-children also who by-no other right*
venire possunt, de inofficioso agere possunt.
*come can about undutifulness sue can*

3 Sed haec ita accipienda sunt, si nihil eis penitus a
*But these-things so to-be-taken are if nothing to-them at-all by*
testatoribus testamento relictum est. quod nostra constitutio
*the-testators by-testament left is which our constitution*
ad verecundiam naturae introduxit. sin vero quantacumque
*for the-respect of-nature introduced but-if however whatever*
pars hereditatis vel res eis fuerit relicta, de inofficiosi
*part of-the-inheritance or thing to-them has-been left about of-the-undutiful*
querela quiescente id quod eis deest usque ad quartam
*the-plaint being-at-rest that which to-them is-lacking up to a-quarter*
legitimae partis repletur, licet non fuerit adiectum boni
*of-the-statutory share is-made-up although not it-has-been added by-a-good*
viri arbitratu debere eam repleri.
*man's judgment ought it to-be-made-up*

Si tutor nomine pupilli, cuius tutelam gerebat, ex 4
*If a-tutor in-the-name of-the-ward whose tutelage he-conducted by*
testamento patris sui legatum acceperit, cum nihil erat
*the-testament of-father his-own a-legacy has-received while nothing was*
ipsi tutori relictum a patre suo, nihilo minus possit
*himself to-the-tutor left by father his-own by-nothing less he-can*
nomine suo de inofficioso patris testamento agere.
*in-name his-own about the-undutiful father's testament sue*
Sed et si e contrario pupilli nomine, cui nihil relictum 5
*But also if on the-contrary of-the-ward in-the-name to-whom nothing left*
fuerit, de inofficioso egerit et superatus est, ipse quod
*has-been about undutifulness he-has-sued and defeated is he-himself what*
sibi in eodem testamento legatum relictum est non amittit.
*to-himself in the-same testament as-legacy left is not loses*
Igitur quartam quis debet habere, ut de inofficioso 6
*Therefore a-quarter anyone ought to-have so-that about an-undutiful*
testamento agere non possit: sive iure hereditario sive
*testament sue not he-can whether by-right hereditary or*
iure legati vel fideicommissi, vel si mortis causa ei
*by-right of-legacy or of-trust or if of-death in-contemplation to-him*
quarta donata fuerit, vel inter vivos in his tantummodo
*the-quarter given has-been or between the-living in those only*
casibus, quorum nostra constitutio mentionem facit, vel
*cases of-which our constitution mention makes or*
aliis modis qui constitutionibus continentur.
*in-other ways which in-the-constitutions are-contained*
Quod autem de quarta diximus, ita intellegendum est, ut, 7
*What however about the-quarter we-have-said so to-be-understood is that*
sive unus fuerit sive plures, quibus agere de inofficioso
*whether one there-has-been or several to-whom to-sue about an-undutiful*

testamento permittitur, una quarta eis dari possit, ut pro
*testament it-is-permitted one quarter to-them be-given can so-that in*
rata distribuatur eis, id est pro virili portione quarta.
*proportion it-be-distributed to-them that is by per-head share the-quarter*

## XIX · KINDS OF HEIRS

*Heirs are necessary, own and necessary, or outside. A slave heir becomes free and heir whether he wishes or not, keeping what he acquires after; own heirs succeed of right but may abstain by the praetor's leave; outside heirs must have testamentary capacity at three times, may deliberate, and accept by acting as heir or by bare will; heirs under twenty-five may be relieved, and under Justinian's constitution any heir's liability may be limited to the estate's value.*

Heredes autem aut necessarii dicuntur aut sui et necessarii
*Heirs however either necessary are-called or own and necessary*
aut extranei.
*or outside*

1 Necessarius heres est servus heres institutus: ideo sic
*A-necessary heir is a-slave heir instituted therefore so*
appellatus, quia, sive velit sive nolit, omnimodo post
*called because whether he-wishes or not-wishes in-every-way after*
mortem testatoris protinus liber et necessarius heres fit.
*the-death of-the-testator at-once free and necessary heir he-becomes*
unde qui facultates suas suspectas habent, solent
*whence those-who resources their-own suspect hold are-wont*
servum suum primo aut secundo vel etiam ulteriore
*a-slave their-own in-the-first or second or even further*
gradu heredem instituere, ut, si creditoribus satis non
*degree heir to-institute so-that if to-the-creditors satisfaction not*
fiat, potius eius heredis bona quam ipsius testatoris
*be-made rather of-that heir the-goods than of-the-very testator*

a creditoribus possideantur vel distrahantur vel inter eos
*by the-creditors be-possessed or be-sold or among them*
dividantur. pro hoc tamen incommodo illud ei commodum
*be-divided for this however disadvantage this to-him advantage*
praestatur, ut ea, quae post mortem patroni sui sibi
*is-afforded that those-things which after the-death of-patron his for-himself*
adquisierit, ipsi reserventur: et quamvis non sufficiant
*he-has-acquired for-himself be-reserved and although not suffice*
bona defuncti creditoribus, iterum ex ea causa res
*the-goods of-the-deceased for-the-creditors again for that cause the-things*
eius, quas sibi adquisierit, non veneunt.
*his which for-himself he-has-acquired not are-sold*

Sui autem et necessarii heredes sunt veluti filius filia nepos 2
*Own however and necessary heirs are as a-son a-daughter a-grandson*
neptisque ex filio et deinceps ceteri liberi, qui modo in
*and-granddaughter by a-son and further the-other children who only in*
potestate morientis fuerint. sed ut nepos neptisve sui
*the-power of-the-dying-man were but that a-grandson or-granddaughter own*
heredes sint, non sufficit eum eamve in potestate avi
*heirs be not it-suffices him or-her in the-power of-the-grandfather*
mortis tempore fuisse, sed opus est, ut pater eius vivo
*of-death at-the-time to-have-been but need it-is that father his while-living*
patre suo desierit suus heres esse aut morte interceptus aut
*father his-own has-ceased own heir to-be either by-death cut-off or*
qualibet alia ratione liberatus potestate: tunc enim nepos
*by-any other reason freed from-power then for the-grandson*
neptisve in locum patris sui succedit. sed sui quidem
*or-granddaughter into the-place of-father his succeeds but own indeed*
heredes ideo appellantur, quia domestici heredes sunt et
*heirs therefore are-called because domestic heirs they-are and*
vivo quoque patre quodammodo domini existimantur.
*while-living also the-father in-some-measure owners are-thought*

unde etiam, si quis intestatus mortuus sit, prima causa est in
*whence also if anyone intestate dead be the-first place is in*
successione liberorum. necessarii vero ideo dicuntur, quia
*the-succession of-the-children necessary however therefore they-are-called because*
omnimodo, sive velint sive nolint, tam ab intestato quam
*in-every-way whether they-wish or not-wish both on intestacy and*
ex testamento heredes fiunt. sed his praetor permittit
*from a-testament heirs they-become but to-these the-praetor permits*
volentibus abstinere se ab hereditate, ut potius parentis
*wishing to-keep-away themselves from the-inheritance so-that rather of-the-parent*
quam ipsorum bona similiter a creditoribus possideantur.
*than their-own the-goods likewise by the-creditors be-possessed*

3 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 heredes videntur.
*not are heirs by us instituted outside heirs seem*
qua de causa et qui heredes a matre instituuntur, eodem
*which for reason also those-who heirs by a-mother are-instituted in-the-same*
numero sunt, quia feminae in potestate liberos non habent.
*number are because women in power children not have*
servus quoque a domino heres institutus et post testamentum
*a-slave also by his-master heir instituted and after the-testament*
factum ab eo manumissus eodem numero habetur.
*made by him manumitted in-the-same number is-held*

4 In extraneis heredibus illud observatur, ut sit cum eis
*In outside heirs this is-observed that there-be with them*
testamenti factio, sive ipsi heredes instituantur sive
*of-testament capacity whether they-themselves heirs be-instituted or*
hi qui in potestate eorum sunt. et id duobus temporibus
*those who in power their are and this at-two times*

inspicitur, testamenti quidem facti, ut constiterit institutio,
*is-regarded of-the-testament indeed made that be-valid the-institution*
mortis vero testatoris, ut effectum habeat. hoc amplius et
*of-the-death however of-the-testator that effect it-have this further also*
cum adit hereditatem, esse debet cum eo testamenti factio,
*when he-enters the-inheritance to-be there-ought with him of-testament capacity*
sive pure sive sub condicione heres institutus sit: nam
*whether unconditionally or under condition heir instituted he-be for*
ius heredis eo vel maxime tempore inspiciendum est, quo
*the-right of-the-heir at-that even most time to-be-regarded is at-which*
adquirit hereditatem. medio autem tempore inter factum
*he-acquires the-inheritance in-the-middle however time between the-made*
testamentum et mortem testatoris vel condicionem institutionis
*testament and the-death of-the-testator or the-condition of-the-institution*
existentem mutatio iuris heredi non nocet, quia ut diximus
*coming-to-pass a-change of-status to-the-heir not harms because as we-have-said*
tria tempora inspici debent. testamenti autem factionem non
*three times be-regarded ought of-testament however capacity not*
solum is habere videtur, qui testamentum facere potest, sed
*only he to-have seems who a-testament make can but*
etiam qui ex alieno testamento vel ipse capere potest vel
*also he-who from another's testament either himself take can or*
alii adquirere, licet non potest facere testamentum. et
*for-another acquire although not he-can make a-testament and*
ideo et furiosus et mutus et postumus et infans et
*therefore both a-madman and a-mute and a-posthumous-child and an-infant and*
filius familias et servus alienus testamenti factionem habere
*a-son of-a-family and a-slave another's of-testament capacity to-have*
dicuntur: licet enim testamentum facere non possunt, attamen
*are-said although for a-testament make not they-can nevertheless*
ex testamento vel sibi vel alii adquirere possunt.
*from a-testament either for-themselves or for-another acquire they-can*

5 Extraneis autem heredibus deliberandi potestas est de adeunda
*To-outside however heirs of-deliberating the-power is about entering*
hereditate vel non adeunda. sed sive is, cui abstinendi
*the-inheritance or not entering but whether he to-whom of-abstaining*
potestas est, immiscuerit se bonis hereditariis, sive
*the-power is has-meddled himself with-the-goods hereditary or*
extraneus, cui de adeunda hereditate deliberare licet,
*an-outsider to-whom about entering the-inheritance to-deliberate it-is-allowed*
adierit, postea relinquendae hereditatis facultatem non habet,
*has-entered afterward of-giving-up the-inheritance the-ability not he-has*
nisi minor sit annis viginti quinque: nam huius aetatis
*unless younger he-be than-years twenty five for of-this age*
hominibus sicut in ceteris omnibus causis deceptis, ita et si
*to-men as in other all cases deceived so also if*
temere damnosam hereditatem susceperint, praetor succurrit.
*rashly a-ruinous inheritance they-have-taken-up the-praetor helps*

6 Sciendum tamen est divum Hadrianum etiam maiori viginti
*To-be-known however it-is the-deified Hadrian even to-one-older than-twenty*
quinque annis veniam dedisse, cum post aditam hereditatem
*five years relief to-have-given when after the-entered inheritance*
grande aes alienum, quod aditae hereditatis tempore latebat,
*a-great money another's which of-the-entered inheritance at-the-time lay-hidden*
emersisset. sed hoc divus quidem Hadrianus speciali beneficio
*had-emerged but this the-deified indeed Hadrian by-special benefit*
cuidam praestitit: divus autem Gordianus postea in militibus
*to-someone afforded the-deified however Gordian afterward to soldiers*
tantummodo hoc extendit: sed nostra benevolentia commune
*only this extended but our benevolence common*
omnibus subiectis imperio nostro hoc praestavit beneficium
*to-all subject to-empire our this has-afforded benefit*
et constitutionem tam aequissimam quam nobilem scripsit,
*and a-constitution both most-fair and noble has-written*

cuius tenorem si observaverint homines, licet eis adire
*whose tenor if they-observe men it-is-allowed for-them to-enter*
hereditatem et in tantum teneri, in quantum valere bona
*the-inheritance and to so-much be-bound in how-much to-be-worth the-goods*
hereditatis contingit: ut ex hac causa neque deliberationis
*of-the-inheritance it-happens so-that for this cause neither of-deliberation*
auxilium eis fiat necessarium, nisi omissa observatione
*the-help for-them be-made necessary unless omitted the-observance*
nostrae constitutionis et deliberandum existimaverint et
*of-our constitution both to-deliberate they-have-thought-fit and*
sese veteri gravamini aditionis supponere maluerint.
*themselves to-the-old burden of-entry to-subject have-preferred*
Item extraneus heres testamento institutus aut ab intestato 7
*Likewise an-outside heir by-testament instituted or on intestacy*
ad legitimam hereditatem vocatus potest aut pro herede
*to the-statutory inheritance called can either as heir*
gerendo vel etiam nuda voluntate suscipiendae hereditatis
*by-acting or even by-bare will of-taking-up the-inheritance*
heres fieri. pro herede autem gerere quis videtur, si
*heir become as heir however to-act anyone seems if*
rebus hereditariis tamquam heres utatur vel vendendo res
*the-things hereditary as heir he-uses either by-selling things*
hereditarias aut praedia colendo locandove et quoquo modo
*hereditary or estates by-cultivating or-by-letting and in-whatever way*
si voluntatem suam declaret vel re vel verbis de adeunda
*if will his he-declare either by-deed or by-words about entering*
hereditate, dummodo sciat eum, in cuius bonis pro herede
*the-inheritance provided-that he-know him in whose goods as heir*
gerit, testato intestatove obiisse et se ei heredem esse.
*he-acts testate or-intestate to-have-died and himself his heir to-be*
pro herede enim gerere est pro domino gerere: veteres enim
*as heir for to-act is as owner to-act the-ancients for*

heredes pro dominis appellabant. sicut autem nuda voluntate
*heirs as owners called just-as however by-bare will*
extraneus heres fit, ita et contraria destinatione statim ab
*an-outside heir becomes so also by-contrary intention at-once from*
hereditate repellitur. eum, qui mutus vel surdus natus est vel
*the-inheritance he-is-excluded him who mute or deaf born is or*
postea factus, nihil prohibet pro herede gerere et adquirere
*afterward made nothing prevents as heir to-act and to-acquire*
sibi hereditatem, si tamen intellegit quod agitur.
*for-himself the-inheritance if however he-understands what is-done*

## XX · LEGACIES

*A legacy is a gift left by the deceased. Justinian gave legacies one nature, joined to trusts. Another's thing may be bequeathed if the testator knew it was another's; legacies of things pledged, future, joint, the legatee's own, or later sold, of a release, a debt, dowry, peculium, flocks, and choice are treated in turn, then legacies to uncertain persons, posthumous strangers, misnamed legatees, and the heir's slave. Legacies before the heir's institution, after a death, or by way of penalty are now valid.*

Post haec videamus de legatis. quae pars iuris extra
*After these-things let-us-see about legacies which part of-law outside*
propositam quidem materiam videtur: nam loquimur de his
*the-proposed indeed subject seems for we-speak about those*
iuris figuris, quibus per universitatem res nobis adquiruntur.
*of-law forms by-which by universality things to-us are-acquired*
sed cum omnino de testamentis deque heredibus qui
*but since altogether about testaments and-about heirs who*

testamento instituuntur locuti sumus, non sine causa
*by-testament are-instituted spoken we-have not without cause*
sequenti loco potest haec iuris materia tractari.
*in-the-following place can this of-law subject be-treated*
Legatum itaque est donatio quaedam a defuncto relicta. 1
*A-legacy therefore is a-gift of-a-kind by the-deceased left*
Sed olim quidem erant legatorum genera quattuor: 2
*But formerly indeed there-were of-legacies kinds four*
per vindicationem, per damnationem, sinendi modo, per
*by vindication by condemnation of-permitting by-way by*
praeceptionem: et certa quaedam verba cuique generi
*preception and certain particular words to-each kind*
legatorum adsignata erant, per quae singula genera
*of-legacies assigned were through which the-single kinds*
legatorum significabantur. sed ex constitutionibus divorum
*of-legacies were-signified but by the-constitutions of-the-deified*
principum sollemnitas huiusmodi verborum penitus sublata
*emperors the-formality of-such words wholly removed*
est. nostra autem constitutio, quam cum magna fecimus
*was our however constitution which with great we-made*
lucubratione, defunctorum voluntates validiores esse cupientes
*toil of-the-deceased the-wills more-valid to-be desiring*
et non verbis, sed voluntatibus eorum faventes, disposuit,
*and not the-words but the-wills their favoring has-arranged*
ut omnibus legatis una sit natura et, quibuscumque verbis
*that for-all legacies one be nature and by-whatever words*
aliquid derelictum sit, liceat legatariis id persequi non
*anything left be it-be-allowed for-legatees it to-pursue not*
solum per actiones personales, sed etiam per in rem et
*only through actions personal but also through in rem and*

per hypothecariam: cuius constitutionis perpensum modum
*through the-hypothecary of-which constitution the-weighed manner*
ex ipsius tenore perfectissime accipere possibile est.
*from its-very tenor most-perfectly to-take possible it-is*
3 Sed non usque ad eam constitutionem standum esse
*But not up to that constitution to-be-stopped to-be*
existimavimus. cum enim antiquitatem invenimus legata
*we-thought since for antiquity we-found legacies*
quidem stricte concludentem, fideicommissis autem, quae
*indeed strictly confining to-trusts however which*
ex voluntate magis descendebant defunctorum, pinguiorem
*from the-will rather descended of-the-deceased a-richer*
naturam indulgentem: necessarium esse duximus omnia legata
*nature allowing necessary to-be we-thought all legacies*
fideicommissis exaequare, ut nulla sit inter ea differentia, sed
*with-trusts to-make-equal so-that no be between them difference but*
quod deest legatis, hoc repleatur ex natura fideicommissorum
*what is-lacking to-legacies this be-made-up from the-nature of-trusts*
et, si quid amplius est in legatis, per hoc crescat
*and if anything more there-is in legacies through this grow*
fideicommissi natura. sed ne in primis legum cunabulis
*of-the-trust the-nature but lest in the-first of-the-laws cradle*
permixte de his exponendo studiosis adulescentibus quandam
*confusedly about these by-expounding for-studious young-men some*
introducamus difficultatem, operae pretium esse duximus interim
*we-introduce difficulty of-effort worth to-be we-thought meanwhile*
separatim prius de legatis et postea de fideicommissis
*separately first about legacies and afterward about trusts*
tractare, ut natura utriusque iuris cognita facile possint
*to-treat so-that the-nature of-each law known easily they-can*
permixtionem eorum eruditi suptilioribus auribus accipere.
*the-mingling of-them learned with-subtler ears receive*

Non solum autem testatoris vel heredis res, sed et aliena 4
*Not only however of-the-testator or of-the-heir a-thing but also another's*
legari potest: ita ut heres cogatur redimere eam et
*be-bequeathed can so that the-heir be-compelled to-buy it and*
praestare vel, si non potest redimere, aestimationem eius
*to-furnish-it or if not he-can buy-it the-value its*
dare. sed si talis res sit, cuius non est commercium,
*to-give but if such a-thing be of-which not there-is commerce*
nec aestimatio eius debetur, sicuti si campum Martium
*neither the-value its is-owed as if the-field of-Mars*
vel basilicas vel templa vel quae publico usui destinata sunt
*or basilicas or temples or what to-public use dedicated are*
legaverit: nam nullius momenti legatum est. quod autem
*he-has-bequeathed for of-no weight the-legacy is that however*
diximus alienam rem posse legari, ita intellegendum est,
*we-have-said another's thing to-be-able to-be-bequeathed so to-be-understood is*
si defunctus sciebat alienam rem esse, non et si ignorabat:
*if the-deceased knew another's the-thing to-be not also if he-was-unaware*
forsitan enim, si scisset alienam, non legasset. et
*perhaps for if he-had-known another's not he-would-have-bequeathed and*
ita divus Pius rescripsit. et verius est ipsum qui agit, id
*so the-deified Pius rescribed and truer it-is the-very-one who sues that*
est legatarium, probare oportere scisse alienam rem legare
*is the-legatee to-prove to-be-obliged to-have-known another's thing to-bequeath*
defunctum, non heredem probare oportere ignorasse
*the-deceased not the-heir to-prove to-be-obliged to-have-been-unaware*
alienam, quia semper necessitas probandi incumbit illi qui agit.
*another's because always the-necessity of-proving lies-upon him who sues*
Sed et si rem obligatam creditori aliquis legaverit, necesse 5
*But also if a-thing pledged to-a-creditor anyone has-bequeathed necessity*
habet heres luere. et hoc quoque casu idem placet, quod
*has the-heir to-redeem-it and in-this also case the-same is-held as*

in re aliena, ut ita demum luere necesse habeat heres, si
*in a-thing another's so-that so only-then to-redeem necessity have the-heir if*
sciebat defunctus rem obligatam esse: et ita divi Severus
*knew the-deceased the-thing pledged to-be and so the-deified Severus*
et Antoninus rescripserunt. si tamen defunctus voluit legatarium
*and Antoninus rescribed if however the-deceased wished the-legatee*
luere et hoc expressit, non debet heres eam luere.
*to-redeem-it and this he-expressed not ought the-heir it to-redeem*

6 Si res aliena legata fuerit et eius vivo testatore legatarius
*If a-thing another's bequeathed has-been and of-it living the-testator the-legatee*
dominus factus fuerit, si quidem ex causa emptionis, ex
*owner made has-been if indeed by cause of-purchase from*
testamento actione pretium consequi potest: si vero ex causa
*the-testament by-action the-price obtain he-can if however from cause*
lucrativa, veluti ex donatione vel ex alia simili causa, agere non
*lucrative as by gift or by another similar cause sue not*
potest. nam traditum est duas lucrativas causas in eundem
*he-can for handed-down it-has-been two lucrative causes in the-same*
hominem et in eandem rem concurrere non posse. hac ratione
*man and in the-same thing concur not to-be-able by-this reasoning*
si ex duobus testamentis eadem res eidem debeatur,
*if from two testaments the-same thing to-the-same-man be-owed*
interest, utrum rem an aestimationem ex testamento
*it-matters whether the-thing or the-value from the-testament*
consecutus est: nam si rem, agere non potest, quia habet
*obtained he-has for if the-thing sue not he-can because he-has*
eam ex causa lucrativa, si aestimationem, agere potest.
*it from a-cause lucrative if the-value sue he-can*

Ea quoque res, quae in rerum natura non est, si modo 7
*That also thing which in of-things the-nature not is if only*
futura est, recte legatur, veluti fructus qui in illo fundo
*about-to-be it-is rightly is-bequeathed as the-fruits which on that estate*
nati erunt, aut quod ex illa ancilla natum erit.
*grown shall-be or what from that slave-woman born shall-be*
Si eadem res duobus legata sit sive coniunctim sive 8
*If the-same thing to-two bequeathed be whether jointly or*
disiunctim, si ambo perveniant ad legatum, scinditur inter
*separately if both come to the-legacy is-split between*
eos legatum: si alter deficiat, quia aut spreverit legatum aut
*them the-legacy if one fail because either he-has-spurned the-legacy or*
vivo testatore decesserit aut alio quolibet modo defecerit,
*while-living the-testator has-died or by-another any way has-failed*
totum ad collegatarium pertinet. coniunctim autem legatur,
*the-whole to the-co-legatee belongs jointly however it-is-bequeathed*
veluti si quis dicat 'Titio et Seio hominem Stichum do
*as if anyone says to-Titius and Seius the-man Stichus I-give*
lego': disiunctim ita 'Titio hominem Stichum do lego,
*I-bequeath separately thus to-Titius the-man Stichus I-give I-bequeath*
Seio Stichum do lego'. sed et si expresserit 'eundem
*to-Seius Stichus I-give I-bequeath but even if he-has-expressed the-same*
hominem Stichum', aeque disiunctim legatum intellegitur.
*man Stichus equally separately bequeathed it-is-understood*
Si cui fundus alienus legatus fuerit et emerit 9
*If to-someone an-estate another's bequeathed has-been and he-has-bought*
proprietatem detracto usu fructu et usus fructus
*the-ownership deducted the-use (and)-enjoyment and the-use (and)-enjoyment*
ad eum pervenerit et postea ex testamento agat, recte
*to him has-come and afterward on the-testament he-sues rightly*
eum agere et fundum petere Iulianus ait, quia usus
*him to-sue and the-estate to-claim Julian says because the-use*

fructus in petitione servitutis locum optinet: sed officio
*(and)-enjoyment in a-claim of-servitude the-place holds but by-the-office*
iudicis contineri, ut deducto usu fructu iubeat
*of-the-judge it-to-be-contained that deducted the-use (and)-enjoyment he-order*
aestimationem praestari.
*the-value to-be-furnished*

10 Sed si rem legatarii quis ei legaverit, inutile legatum
*But if a-thing of-the-legatee anyone to-him has-bequeathed void the-legacy*
est, quia quod proprium est ipsius, amplius eius fieri non
*is because what own is his further his become not*
potest: et licet alienaverit eam, non debetur nec ipsa
*can and although he-has-alienated it not is-owed neither itself*
nec aestimatio eius.
*nor the-value its*

11 Si quis rem suam quasi alienam legaverit, valet legatum:
*If anyone thing his-own as-if another's has-bequeathed is-valid the-legacy*
nam plus valet, quod in veritate est, quam quod in opinione.
*for more avails what in truth is than what in opinion*
sed et si legatarii putavit, valere constat, quia exitum
*but even if the-legatee's he-thought to-be-valid it-is-agreed because effect*
voluntas defuncti potest habere.
*the-will of-the-deceased can have*

12 Si rem suam legaverit testator posteaque eam alienaverit,
*If thing his-own has-bequeathed the-testator and-afterward it has-alienated*
Celsus existimat, si non adimendi animo vendidit,
*Celsus thinks if not of-revoking with-intention he-sold-it*
nihilo minus deberi, idque divi Severus et Antoninus
*by-nothing less to-be-owed and-this the-deified Severus and Antoninus*
rescripserunt. idem rescripserunt eum, qui post testamentum
*rescribed the-same rescribed that-he who after the-testament*
factum praedia quae legata erant pignori dedit, ademisse
*made estates which bequeathed had-been in-pledge gave to-have-revoked*

legatum non videri et ideo legatarium cum herede agere
*the-legacy not to-seem and therefore the-legatee with the-heir to-sue*
posse, ut praedia a creditore luantur. si vero quis
*to-be-able that the-estates from the-creditor be-redeemed if however anyone*
partem rei legatae alienaverit, pars quae non est
*part of-the-thing bequeathed has-alienated the-part which not is*
alienata omnimodo debetur, pars autem alienata ita debetur,
*alienated in-every-way is-owed the-part however alienated so is-owed*
si non adimendi animo alienata sit.
*if not of-revoking with-intention alienated it-be*

Si quis debitori suo liberationem legaverit, legatum utile 13
*If anyone to-debtor his-own release has-bequeathed the-legacy effective*
est et neque ab ipso debitore neque ab herede eius
*is and neither from the-very debtor nor from heir his*
potest heres petere nec ab alio qui heredis loco est:
*can the-heir claim nor from another who of-the-heir in-the-place is*
sed et potest a debitore conveniri, ut liberet eum. potest
*but also he-can by the-debtor be-sued that he-release him can*
autem quis vel ad tempus iubere ne heres petat.
*however anyone even for a-time order that-not the-heir claim*

Ex contrario si debitor creditori suo quod debet legaverit, 14
*On the-contrary if a-debtor to-creditor his-own what he-owes has-bequeathed*
inutile est legatum, si nihil plus est in legato quam in
*void is the-legacy if nothing more there-is in the-legacy than in*
debito, quia nihil amplius habet per legatum. quodsi in
*the-debt because nothing more he-has through the-legacy but-if to*
diem vel sub condicione debitum ei pure legaverit,
*a-day or under condition a-debt to-him unconditionally he-has-bequeathed*
utile est legatum propter repraesentationem. quodsi vivo
*effective is the-legacy on-account-of the-earlier-payment but-if while-living*
testatore dies venerit aut condicio extiterit, Papinianus
*the-testator the-day has-come or the-condition has-come-to-pass Papinian*

scripsit utile esse nihilo minus legatum, quia semel
*wrote effective to-be by-nothing less the-legacy because once*
constitit. quod et verum est: non enim placuit
*it-stood which also true is not for has-been-approved*
sententia existimantium extinctum esse legatum, quia in
*the-opinion of-those-thinking extinguished to-be the-legacy because into*
eam causam pervenit, a qua incipere non potest.
*that position it-has-come from which to-begin not it-can*

15 Sed si uxori maritus dotem legaverit, valet legatum,
*But if to-wife a-husband the-dowry has-bequeathed is-valid the-legacy*
quia plenius est legatum quam de dote actio. sed si
*because fuller is the-legacy than about dowry the-action but if*
quam non acceperit dotem legaverit, divi Severus
*what not he-has-received as-dowry he-has-bequeathed the-deified Severus*
et Antoninus rescripserunt, si quidem simpliciter legaverit,
*and Antoninus rescribed if indeed simply he-bequeathed*
inutile esse legatum: si vero certa pecunia vel certum
*void to-be the-legacy if however certain money or a-certain*
corpus aut instrumentum dotis in praelegando demonstrata
*body or the-instrument of-dowry in pre-bequeathing pointed-out*
sunt, valere legatum.
*are to-be-valid the-legacy*

16 Si res legata sine facto heredis perierit, legatario decedit.
*If a-thing bequeathed without act of-the-heir has-perished to-the-legatee it-is-lost*
et si servus alienus legatus sine facto heredis manumissus
*and if a-slave another's bequeathed without act of-the-heir manumitted*
fuerit, non tenetur heres. si vero heredis servus legatus
*has-been not is-bound the-heir if however of-the-heir the-slave bequeathed*
fuerit et ipse eum manumiserit, teneri eum Iulianus
*has-been and he-himself him has-manumitted to-be-bound him Julian*
scripsit, nec interest, scierit an ignoraverit a se
*wrote nor does-it-matter whether-he-knew or was-unaware by himself*

legatum esse. sed et si alii donaverit servum et is
*bequeathed to-have-been but even if to-another he-has-given the-slave and he*
cui donatus est eum manumiserit, tenetur heres, quamvis
*to-whom given he-is him has-manumitted is-bound the-heir although*
ignoraverit a se eum legatum esse.
*he-was-unaware by himself him bequeathed to-have-been*
Si quis ancillas cum suis natis legaverit, etiamsi ancillae 17
*If anyone slave-women with their offspring has-bequeathed even-if the-slave-women*
mortuae fuerint, partus legato cedunt. idem est, si
*dead have-been the-offspring to-the-legacy go the-same it-is if*
ordinarii servi cum vicariis legati fuerint, ut, licet
*principal slaves with their-under-slaves bequeathed have-been that although*
mortui sint ordinarii, tamen vicarii legato cedant. sed
*dead be the-principals yet the-under-slaves to-the-legacy go but*
si servus cum peculio fuerit legatus, mortuo servo vel
*if a-slave with his-peculium has-been bequeathed dead the-slave or*
manumisso vel alienato et peculii legatum extinguitur.
*manumitted or alienated also of-the-peculium the-legacy is-extinguished*
idem est, si fundus instructus vel cum instrumento legatus
*the-same it-is if an-estate equipped or with equipment bequeathed*
fuerit: nam fundo alienato et instrumenti legatum extinguitur.
*has-been for the-estate alienated also of-the-equipment the-legacy is-extinguished*
Si grex legatus fuerit posteaque ad unam ovem pervenerit, 18
*If a-flock bequeathed has-been and-afterward to one sheep it-has-come*
quod superfuerit vindicari potest. Grege autem legato etiam
*what has-survived be-vindicated can The-flock however bequeathed also*
eas oves, quae post testamentum factum gregi adiciuntur,
*those sheep which after the-testament made to-the-flock are-added*
legato cedere Iulianus ait: esse enim gregis unum corpus
*to-the-legacy to-go Julian says to-be for of-a-flock one body*

ex distantibus capitibus, sicuti aedium unum corpus est
*from separate heads just-as of-a-house one body is*
ex cohaerentibus lapidibus:
*from cohering stones*
19 aedibus denique legatis columnas et marmora, quae post
*a-house finally bequeathed the-columns and marbles which after*
testamentum factum adiecta sunt, legato cedere.
*the-testament made added have-been to-the-legacy go*
20 Si peculium legatum fuerit, sine dubio quidquid peculio
*If a-peculium bequeathed has-been without doubt whatever to-the-peculium*
accedit vel decedit vivo testatore, legatarii lucro vel
*accrues or is-lost while-living the-testator of-the-legatee to-the-gain or*
damno est. quodsi post mortem testatoris ante aditam
*loss is but-if after the-death of-the-testator before the-entered*
hereditatem servus adquisierit, Iulianus ait, si quidem ipsi
*inheritance the-slave has-acquired-anything Julian says if indeed to-him*
manumisso peculium legatum fuerit, omne, quod ante aditam
*manumitted the-peculium bequeathed has-been all which before the-entered*
hereditatem adquisitum est, legatario cedere, quia dies
*inheritance acquired has-been to-the-legatee to-go because the-day*
huius legati adita hereditate cedit: sed si extraneo peculium
*of-this legacy entered the-inheritance vests but if to-an-outsider the-peculium*
legatum fuerit, non cedere ea legato, nisi ex rebus
*bequeathed has-been not to-go those-things to-the-legacy unless from things*
peculiaribus auctum fuerit peculium. peculium autem nisi
*peculiar increased has-been the-peculium the-peculium however unless*
legatum fuerit, manumisso non debetur, quamvis si vivus
*bequeathed it-has-been to-the-manumitted not is-owed although if while-living*
manumiserit, sufficit, si non adimatur: et ita divi
*he-has-manumitted-him it-suffices if not it-be-taken-away and so the-deified*
Severus et Antoninus rescripserunt. idem rescripserunt
*Severus and Antoninus rescribed the-same rescribed*

peculio legato non videri id relictum, ut petitionem
*the-peculium bequeathed not to-seem that left that a-claim*
habeat pecuniae, quam in rationes dominicas impendit.
*he-have of-the-money which on the-accounts of-his-master he-spent*
idem rescripserunt peculium videri legatum, cum rationibus
*the-same rescribed the-peculium to-seem bequeathed when the-accounts*
redditis liber esse iussus est et ex eo reliquas inferre.
*rendered free to-be ordered he-is and from it the-balance to-pay-in*
Tam autem corporales res quam incorporales legari 21
*Both however corporeal things and incorporeal be-bequeathed*
possunt. et ideo et quod defuncto debetur, potest alicui
*can and therefore also what to-the-deceased is-owed can to-someone*
legari, ut actiones suas heres legatario praestet, nisi
*be-bequeathed so-that actions his the-heir to-the-legatee make-over unless*
exegerit vivus testator pecuniam: nam hoc casu legatum
*has-collected while-living the-testator the-money for in-this case the-legacy*
extinguitur. sed et tale legatum valet: 'damnas esto heres
*is-extinguished but also such a-legacy is-valid condemned let-be the-heir*
domum illius reficere' vel 'illum aere alieno liberare'.
*the-house of-that-man to-repair or that-man from-money another's to-free*
Si generaliter servus vel alia res legetur, electio legatarii 22
*If generally a-slave or other thing be-bequeathed the-choice of-the-legatee*
est, nisi aliud testator dixerit.
*is unless otherwise the-testator has-said*
Optionis legatum, id est ubi testator ex servis suis 23
*Of-option the-legacy that is where the-testator from slaves his-own*
vel aliis rebus optare legatarium iusserat, habebat in se
*or other things to-choose the-legatee had-ordered had in itself*
condicionem, et ideo nisi ipse legatarius vivus optaverat,
*a-condition and therefore unless himself the-legatee alive had-chosen*
ad heredem legatum non transmittebat. sed ex constitutione
*to the-heir the-legacy not passed but by constitution*

nostra et hoc in meliorem statum reformatum est et
*our also this into a-better state reformed has-been and*
data est licentia et heredi legatarii optare, licet vivus
*given is license also to-the-heir of-the-legatee to-choose although alive*
legatarius hoc non fecit. et diligentiore tractatu habito
*the-legatee this not did and more-careful treatment having-been-had*
et hoc in nostra constitutione additum est, ut, sive plures
*also this in our constitution added has-been that whether several*
legatarii existant, quibus optio relicta est, et dissentiant
*legatees exist to-whom the-option left has-been and they-disagree*
in corpore eligendo, sive unius legatarii plures heredes, et
*in the-body to-be-chosen or of-one legatee several heirs and*
inter se circa optandum dissentiant alio aliud corpus
*among themselves about choosing they-disagree one another body*
eligere cupiente, ne pereat legatum (quod plerique prudentium
*to-choose wishing lest perish the-legacy which most of-the-jurists*
contra benivolentiam introducebant), fortunam esse huius
*against benevolence introduced fortune to-be of-this*
optionis iudicem et sorte esse hoc dirimendum, ut, ad
*option the-judge and by-lot to-be this to-be-settled so-that to*
quem sors perveniat, illius sententia in optione praecellat.
*whom the-lot comes his opinion in the-option prevail*

24 Legari autem illis solis potest, cum quibus testamenti
*Be-bequeathed however to-those alone can with whom of-testament*
factio est.
*capacity there-is*

25 Incertis vero personis neque legata neque fideicommissa olim
*To-uncertain however persons neither legacies nor trusts formerly*
relinqui concessum erat: nam nec miles quidem incertae
*to-be-left granted was for not a-soldier even to-an-uncertain*
personae poterat relinquere, ut divus Hadrianus rescripsit.
*person could leave as the-deified Hadrian rescribed*

incerta autem persona videbatur, quam incerta opinione
*uncertain however a-person seemed whom by-uncertain opinion*
animo suo testator subiciebat, veluti si quis ita dicat:
*to-mind his-own the-testator subjected as if anyone thus says*
'quicumque filio meo in matrimonium filiam suam collocaverit,
*whoever to-son my in marriage daughter his-own has-placed*
ei heres meus illum fundum dato': illud quoque, quod
*to-him heir my that estate let-him-give that also which*
his relinquebatur, qui post testamentum scriptum primi
*to-those was-left who after the-testament written first*
consules designati erunt, aeque incertae personae legari
*consuls designated shall-be equally to-an-uncertain person to-be-bequeathed*
videbatur: et denique multae aliae huiusmodi species sunt.
*seemed and finally many other of-this-kind cases there-are*
libertas quoque non videbatur posse incertae personae
*freedom also not seemed to-be-able to-an-uncertain person*
dari, quia placebat nominatim servos liberari. tutor quoque
*to-be-given because it-was-held by-name slaves to-be-freed a-tutor also*
certus dari debebat. sub certa vero demonstratione, id est
*certain to-be-given ought under a-certain however description that is*
ex certis personis incertae personae, recte legabatur, veluti
*from certain persons to-an-uncertain person rightly it-was-bequeathed as*
'ex cognatis meis qui nunc sunt si quis filiam meam
*from-among kinsmen my who now are if anyone daughter my*
uxorem duxerit, ei heres meus illam rem dato'. incertis
*as-wife has-taken to-him heir my that thing let-him-give to-uncertain*
autem personis legata vel fideicommissa relicta et per errorem
*however persons legacies or trusts left and by mistake*
soluta repeti non posse sacris constitutionibus cautum erat.
*paid be-recovered not to-be-able by-sacred constitutions provided it-was*

26 Postumo quoque alieno inutiliter legabatur: est
*To-a-posthumous-child also outside uselessly it-was-bequeathed is*
autem alienus postumus, qui natus inter suos heredes
*however outside a-posthumous-child who born among the-own heirs*
testatoris futurus non est: ideoque ex emancipato filio
*of-the-testator about-to-be not is and-therefore from an-emancipated son*
conceptus nepos extraneus erat postumus avo.
*conceived a-grandson outside was posthumous to-the-grandfather*

27 Sed nec huiusmodi species penitus est sine iusta emendatione
*But nor of-this-kind case wholly is without just amendment*
derelicta, cum in nostro codice constitutio posita est, per
*left since in our code a-constitution placed is through*
quam et huic parti medevimus non solum in hereditatibus,
*which also this part we-have-healed not only in inheritances*
sed etiam in legatis et fideicommissis: quod evidenter ex
*but also in legacies and trusts which evidently from*
ipsius constitutionis lectione clarescit. tutor autem nec
*of-the-very constitution the-reading becomes-clear a-tutor however not-even*
per nostram constitutionem incertus dari debeat, quia
*through our constitution uncertain be-given ought because*
certo iudicio debet quis pro tutela suae posteritati cavere.
*by-certain judgment ought anyone for tutelage his-own to-posterity to-provide*

28 Postumus autem alienus heres institui et antea poterat
*A-posthumous-child however outside heir be-instituted both before could*
et nunc potest, nisi in utero eius sit, quae iure nostra
*and now can unless in the-womb of-her he-be who by-law our*
uxor esse non potest.
*wife be not can*

29 Si quid in nomine cognomine praenomine legatarii erraverit
*If anything in the-name cognomen praenomen of-the-legatee has-erred*
testator, si de persona constat, nihilo minus valet
*the-testator if about the-person it-is-agreed by-nothing less is-valid*

legatum: idem in heredibus servatur et recte: nomina enim
*the-legacy the-same in heirs is-observed and rightly names for*
significandorum hominum gratia reperta sunt, qui si
*of-signifying men for-the-sake found have-been who if*
quolibet alio modo intellegantur, nihil interest.
*in-any other way they-be-understood nothing it-matters*
Huic proxima est illa iuris regula falsa demonstratione 30
*To-this next is that of-law rule by-false description*
legatum non peremi. veluti si quis ita legaverit 'Stichum
*a-legacy not to-be-destroyed as if anyone thus has-bequeathed Stichus*
servum meum vernam do lego': licet enim non verna,
*slave my home-born I-give I-bequeath although for not home-born*
sed emptus sit, de servo tamen constat, utile est legatum.
*but bought he-be about the-slave however it-is-agreed effective is the-legacy*
et convenienter si ita demonstraverit 'Stichum servum, quem
*and consistently if so he-has-described Stichus the-slave whom*
a Seio emi', sitque ab alio emptus, utile legatum est,
*from Seius I-bought and-he-be from another bought effective the-legacy is*
si de servo constat.
*if about the-slave it-is-agreed*
Longe magis legato falsa causa non nocet. veluti cum ita quis 31
*Far more to-a-legacy a-false reason not harms as when thus anyone*
dixerit: 'Titio, quia absente me negotia mea curavit, Stichum
*has-said to-Titius because absent me the-affairs my he-managed Stichus*
do lego', vel ita: 'Titio, quia patrocinio eius capitali
*I-give I-bequeath or thus to-Titius because by-the-advocacy his from-a-capital*
crimine liberatus sum, Stichum do lego': licet enim neque
*charge freed I-was Stichus I-give I-bequeath although for neither*
negotia testatoris umquam gessit Titius neque patrocinio eius
*the-affairs of-the-testator ever managed Titius nor by-advocacy his*
liberatus est, legatum tamen valet. sed si condicionaliter
*freed was-he the-legacy nevertheless is-valid but if conditionally*

enuntiata fuerit causa, aliud iuris est, veluti hoc modo:
*expressed has-been the-reason other of-law it-is as in-this way*
'Titio, si negotia mea curaverit, fundum do lego'.
*to-Titius if the-affairs my he-has-managed the-estate I-give I-bequeath*
32 An servo heredis recte legamus, quaeritur. et constat
*Whether to-a-slave of-the-heir rightly we-bequeath is-asked and it-is-agreed*
pure inutiliter legari nec quidquam proficere, si
*unconditionally uselessly to-be-bequeathed nor anything to-avail if*
vivo testatore de potestate heredis exierit, quia quod
*while-living the-testator from the-power of-the-heir he-has-gone-out because what*
inutile foret legatum, si statim post factum testamentum
*useless would-be the-legacy if at-once after the-made testament*
decessisset testator, hoc non debet ideo valere, quia
*had-died the-testator this not ought therefore to-be-valid because*
diutius testator vixerit. sub condicione vero recte legatur,
*longer the-testator has-lived under condition however rightly it-is-bequeathed*
ut requiramus, an, quo tempore dies legati cedit,
*so-that we-ask whether at-what time the-day of-the-legacy vests*
in potestate heredis non sit.
*in the-power of-the-heir not he-be*
33 Ex diverso herede instituto servo quin domino recte
*On the-contrary the-heir instituted a-slave that to-the-master rightly*
etiam sine condicione legetur, non dubitatur. nam
*even without condition it-be-bequeathed not is-doubted for*
et si statim post factum testamentum decesserit testator,
*even if at-once after the-made testament has-died the-testator*
non tamen apud eum qui heres sit dies legati cedere
*not however with him who heir is the-day of-the-legacy to-vest*
intellegitur, cum hereditas a legato separata sit et possit
*is-understood since the-inheritance from the-legacy separated is and can*
per eum servum alius heres effici, si prius, quam iussu
*through that slave another heir be-made if sooner than by-order*

domini adeat, in alterius potestatem translatus sit,
*of-the-master he-enters into another's power transferred he-has-been*
vel manumissus ipse heres efficitur: quibus casibus utile
*or manumitted himself heir is-made in-which cases effective*
est legatum: quodsi in eadem causa permanserit et iussu
*is the-legacy but-if in the-same position he-has-remained and by-order*
legatarii adierit, evanescit legatum.
*of-the-legatee has-entered vanishes the-legacy*
Ante heredis institutionem inutiliter antea legabatur, scilicet 34
*Before the-heir's institution uselessly formerly it-was-bequeathed namely*
quia testamenta vim ex institutione heredum accipiunt et
*because testaments force from the-institution of-heirs receive and*
ob id veluti caput atque fundamentum intellegitur totius
*for that as the-head and foundation is-understood of-the-whole*
testamenti heredis institutio. pari ratione nec libertas
*testament the-heir's institution by-equal reason nor freedom*
ante heredis institutionem dari poterat. sed quia incivile
*before the-heir's institution be-given could but because improper*
esse putavimus ordinem quidem scripturae sequi (quod
*to-be we-thought the-order indeed of-the-writing to-follow which*
et ipsi antiquitati vituperandum fuerat visum), sperni
*even itself to-antiquity to-be-blamed had seemed to-be-spurned*
autem testatoris voluntatem: per nostram constitutionem
*however of-the-testator the-will through our constitution*
et hoc vitium emendavimus, ut liceat et ante heredis
*also this fault we-have-amended so-that it-be-allowed both before of-the-heir*
institutionem et inter medias heredum institutiones legatum
*the-institution and among the-middle of-heirs institutions a-legacy*
relinquere et multo magis libertatem, cuius usus favorabilior est.
*to-leave and much more freedom whose use more-favored is*

35 Post mortem quoque heredis aut legatarii simili modo
*After the-death also of-the-heir or of-the-legatee in-like manner*
inutiliter legabatur: veluti si quis ita dicat: 'cum heres
*uselessly it-was-bequeathed as if anyone thus says when heir*
meus mortuus erit, do lego': item 'pridie quam
*my dead shall-be I-give I-bequeath likewise on-the-day-before that*
heres aut legatarius morietur'. sed simili modo et hoc
*the-heir or the-legatee shall-die but in-like manner also this*
correximus firmitatem huiusmodi legatis ad fideicommissorum
*we-have-corrected firmness of-this-kind to-legacies on of-trusts*
similitudinem praestantes, ne vel in hoc casu deterior
*the-likeness furnishing lest even in this case worse*
causa legatorum quam fideicommissorum inveniatur.
*the-position of-legacies than of-trusts be-found*

36 Poenae quoque nomine inutiliter legabatur et adimebatur
*Of-a-penalty also by-way uselessly it-was-bequeathed and taken-away*
vel transferebatur. poenae autem nomine legari videtur,
*or transferred of-a-penalty however by-way to-be-bequeathed seems*
quod coercendi heredis causa relinquitur, quo magis is
*what of-coercing the-heir for-the-sake is-left that the-more he*
aliquid faciat aut non faciat: veluti si quis ita scripserit:
*something do or not do as if anyone thus has-written*
'heres meus si filiam suam in matrimonium Titio collocaverit'
*heir my if daughter his-own in marriage to-Titius has-placed*
(vel ex diverso 'si non collocaverit'), 'dato decem aureos
*or on the-contrary if not he-has-placed let-him-give ten gold-pieces*
Seio', aut si ita scripserit 'heres meus si servum Stichum
*to-Seius or if thus he-has-written heir my if the-slave Stichus*
alienaverit' (vel ex diverso 'si non alienaverit'), 'Titio decem
*he-has-alienated or on the-contrary if not he-has-alienated to-Titius ten*
aureos dato'. et in tantum haec regula observabatur, ut
*gold-pieces let-him-give and so far this rule was-observed that*

perquam pluribus principalibus constitutionibus significetur
*in-very many imperial constitutions it-is-signified*
nec principem quidem agnoscere, quod ei poenae
*that-not the-emperor even to-accept what to-him of-a-penalty*
nomine legatum sit. nec ex militis quidem testamento talia
*by-way bequeathed be nor from a-soldier's even testament such*
legata valebant, quamvis aliae militum voluntates in ordinandis
*legacies were-valid although other of-soldiers wills in ordering*
testamentis valde observantur. quin etiam nec libertatem
*testaments greatly are-observed nay even not freedom*
poenae nomine dari posse placebat. eo amplius nec
*of-a-penalty by-way to-be-given to-be-able it-was-held by-this further nor*
heredem poenae nomine adici posse Sabinus existimabat,
*an-heir of-a-penalty by-way to-be-added to-be-able Sabinus thought*
veluti si quis ita dicat: 'Titius heres esto: si Titius filiam
*as if anyone thus says Titius heir let-him-be if Titius daughter*
suam Seio in matrimonium collocaverit, Seius quoque heres
*his-own to-Seius in marriage has-placed Seius also heir*
esto': nihil enim intererat, qua ratione Titius coerceatur,
*let-him-be nothing for it-mattered by-what reason Titius be-coerced*
utrum legati datione an coheredis adiectione. at huiusmodi
*whether a-legacy's by-giving or a-co-heir's by-addition but of-this-kind*
scrupulositas nobis non placuit et generaliter ea quae
*scrupulousness to-us not was-pleasing and generally those-things which*
relinquuntur, licet poenae nomine fuerint relicta vel
*are-left although of-a-penalty by-way they-have-been left or*
adempta vel in alios translata, nihil distare a ceteris legatis
*taken-away or to others transferred nothing to-differ from other legacies*
constituimus vel in dando vel in adimendo vel in transferendo:
*we-have-established either in giving or in taking-away or in transferring*
exceptis his videlicet, quae impossibilia sunt vel legibus
*except those namely which impossible are or by-the-laws*

interdicta aut alias probrosa: huiusmodi enim testatorum
*forbidden or otherwise disgraceful such for of-testators*
dispositiones valere secta temporum meorum non patitur.
*dispositions to-be-valid the-way of-times my not allows*

## XXI · TAKING AWAY AND TRANSFERRING LEGACIES

*A legacy may be taken away by contrary or any words, in the will or codicils, and transferred from one legatee to another.*

Ademptio legatorum, sive eodem testamento adimantur
*The-taking-away of-legacies whether in-the-same testament they-be-taken-away*
sive codicillis, firma est, sive contrariis verbis fiat
*or in-codicils valid is whether by-contrary words it-be-done*
ademptio, veluti si, quod ita quis legaverit 'do lego',
*the-taking-away as if what thus anyone has-bequeathed I-give I-bequeath*
ita adimatur 'non do non lego', sive non contrariis,
*thus it-be-taken-away not I-give not I-bequeath or by-not contrary*
id est aliis quibuscumque verbis.
*that is by-other any words*

1 Transferri quoque legatum ab alio ad alium potest, veluti
*Be-transferred also a-legacy from one to another can as*
si quis ita dixerit: 'hominem Stichum, quem Titio legavi,
*if anyone thus has-said the-man Stichus whom to-Titius I-bequeathed*
Seio do lego', sive in eodem testamento sive in
*to-Seius I-give I-bequeath whether in the-same testament or in*
codicillis hoc fecerit: quo casu simul Titio adimi
*codicils this he-has-done in-which case at-once from-Titius to-be-taken-away*
videtur et Seio dari.
*it-seems and to-Seius to-be-given*

*The Falcidian statute, after the Furian and Voconian failed, keeps a quarter of the estate for the heirs, reckoned for each heir separately on the estate at death, after debts, funeral costs, and the price of freed slaves; legacies beyond three-quarters abate proportionally.*

Superest, ut de lege Falcidia dispiciamus, qua modus
*It-remains that about the-statute Falcidian we-consider by-which a-limit*
novissime legatis impositus est. cum enim olim lege
*most-recently on-legacies imposed has-been since for formerly by-the-statute*
duodecim tabularum libera erat legandi potestas, ut
*of-the-twelve tables free was of-bequeathing the-power so-that*
liceret vel totum patrimonium legatis erogare (quippe
*it-was-allowed even the-whole patrimony in-legacies to-pay-out since*
ea lege ita cautum esset: 'uti legassit suae rei, ita
*by-that statute thus provided it-was as he-has-bequeathed of-his-own thing so*
ius esto'): visum est hanc legandi licentiam coartare,
*law let-it-be seemed-good it-has this of-bequeathing license to-restrict*
idque ipsorum testatorum gratia provisum est ob id,
*and-this of-the-very testators for-the-sake provided has-been for this*
quod plerumque intestati moriebantur, recusantibus scriptis
*that mostly intestate they-died refusing the-written*
heredibus pro nullo aut minimo lucro hereditates adire. et
*heirs for no or the-least gain the-inheritances to-enter and*
cum super hoc tam lex Furia quam lex Voconia latae
*since about this both the-statute Furian and the-statute Voconian passed*
sunt, quarum neutra sufficiens ad rei consummationem
*were of-which neither sufficient for of-the-matter the-completion*
videbatur: novissime lata est lex Falcidia, qua cavetur,
*seemed most-recently passed was the-statute Falcidian by-which it-is-provided*

ne plus legare liceat, quam dodrantem totorum
*that-not more to-bequeath be-allowed than three-quarters of-all-the*
bonorum, id est ut, sive unus heres institutus esset sive
*goods that is that whether one heir instituted be or*
plures, apud eum eosve pars quarta remaneret.
*several with him or-them a-part fourth remain*

1 Et cum quaesitum esset, duobus heredibus institutis,
*And when asked it-had-been two heirs instituted*
veluti Titio et Seio, si Titii pars aut tota exhausta
*as Titius and Seius if of-Titius the-part either wholly exhausted*
sit legatis, quae nominatim ab eo data sunt, aut supra
*be by-legacies which by-name from him given are or beyond*
modum onerata, a Seio vero aut nulla relicta sint
*measure burdened from Seius however either no left be*
legata, aut quae partem eius dumtaxat in partem dimidiam
*legacies or such-as the-part his only to the-part half*
minuunt, an, quia is quartam partem totius hereditatis
*diminish whether because he a-fourth part of-the-whole inheritance*
aut amplius habet, Titio nihil ex legatis, quae ab eo
*or more has for-Titius nothing from the-legacies which from him*
relicta sunt, retinere liceret: placuit retinere licere, ut
*left are to-retain be-allowed it-was-held to-retain to-be-allowed so-that*
quartam partem suae partis salvam habeat: etenim in
*a-fourth part of-his-own part safe he-have for in*
singulis heredibus ratio legis Falcidiae ponenda est.
*individual heirs the-reckoning of-the-statute Falcidian to-be-made is*

2 Quantitas autem patrimonii, ad quam ratio legis
*The-amount however of-the-patrimony to which the-reckoning of-the-statute*
Falcidiae redigitur, mortis tempore spectatur. itaque si verbi
*Falcidian is-applied of-death at-the-time is-regarded therefore if of-example*
gratia is, qui centum aureorum patrimonium habebat,
*for-the-sake he who of-a-hundred gold-pieces a-patrimony had*

centum aureos legaverit, nihil legatariis prodest, si ante
*a-hundred gold-pieces has-bequeathed nothing to-the-legatees avails-it if before*
aditam hereditatem per servos hereditarios aut ex partu
*the-entered inheritance through slaves hereditary or from the-offspring*
ancillarum hereditariarum aut ex fetu pecorum tantum
*of-slave-women hereditary or from the-young of-cattle so-much*
accesserit hereditati, ut centum aureis legatorum nomine
*has-accrued to-the-inheritance that a-hundred gold-pieces of-legacies by-way*
erogatis heres quartam partem hereditatis habiturus sit,
*paid-out the-heir a-fourth part of-the-inheritance about-to-have be*
sed necesse est, ut nihilo minus quarta pars legatis
*but necessary it-is that by-nothing less a-fourth part from-the-legacies*
detrahatur. ex diverso si septuaginta quinque legaverit
*be-deducted on the-contrary if seventy five he-has-bequeathed*
et ante aditam hereditatem in tantum decreverint bona
*and before the-entered inheritance to such-an-extent have-decreased the-goods*
incendiis forte aut naufragiis aut morte servorum, ut non
*by-fires perhaps or shipwrecks or the-death of-slaves that not*
amplius quam septuaginta quinque aureorum substantia vel
*more than seventy five gold-pieces' substance or*
etiam minus relinquatur, solida legata debentur. nec ea res
*even less be-left whole the-legacies are-owed nor that thing*
damnosa est heredi, cui liberum est non adire hereditatem:
*harmful is to-the-heir to-whom free it-is not to-enter the-inheritance*
quae res efficit, ut necesse sit legatariis, ne destituto
*which thing brings-about that necessary it-be for-the-legatees lest abandoned*
testamento nihil consequantur, cum herede in portione pacisci.
*the-testament nothing they-obtain with the-heir for a-portion to-bargain*
Cum autem ratio legis Falcidiae ponitur, ante 3
*When however the-reckoning of-the-statute Falcidian is-made first*
deducitur aes alienum, item funeris impensa et pretia
*is-deducted money another's likewise of-the-funeral the-cost and the-prices*

servorum manumissorum, tunc deinde in reliquo ita
*of-slaves manumitted then next in the-remainder so*
ratio habetur, ut ex eo quarta pars apud heredes
*the-reckoning is-held that from it a-fourth part with the-heirs*
remaneat, tres vero partes inter legatarios distribuantur, pro
*remain three however parts among the-legatees be-distributed in*
rata scilicet portione eius, quod cuique eorum legatum
*proportion namely to-the-portion of-that which to-each of-them bequeathed*
fuerit. itaque si fingamus quadringentos aureos legatos
*has-been therefore if we-imagine four-hundred gold-pieces bequeathed*
esse et patrimonii quantitatem, ex qua legata erogari
*to-be and of-the-patrimony the-amount from which the-legacies to-be-paid-out*
oportet, quadringentorum esse, quarta pars singulis
*it-behooves of-four-hundred to-be a-fourth part from-the-individual*
legatariis detrahi debet. quodsi trecentos quinquaginta
*legatees be-deducted ought but-if three-hundred fifty*
legatos fingamus, octava debet detrahi. quodsi quingentos
*bequeathed we-imagine an-eighth ought be-deducted but-if five-hundred*
legaverit, initio quinta, deinde quarta detrahi debet: ante
*he-has-bequeathed at-first a-fifth then a-fourth be-deducted ought first*
enim detrahendum est, quod extra bonorum quantitatem
*for to-be-deducted is what outside of-the-goods the-amount*
est, deinde quod ex bonis apud heredem remanere oportet.
*is then what from the-goods with the-heir to-remain behooves*

*Trusts, first binding only on good faith, were enforced when Augustus had the consuls intervene, and later by a trust praetor. The Trebellian decree passed actions to the beneficiary; the Pegasian let the heir keep a quarter and compelled entry. Justinian merges the two in the Trebellian; an heir who denies an unwitnessed trust must swear or pay.*

Nunc transeamus ad fideicommissa. et prius de hereditatibus
*Now let-us-pass to trusts and first about inheritances*
fideicommissariis videamus.
*held-in-trust let-us-see*

Sciendum itaque est omnia fideicommissa primis temporibus 1
*To-be-known therefore it-is all trusts in-the-first times*
infirma esse, quia nemo invitus cogebatur praestare
*weak to-have-been because no-one unwilling was-compelled to-furnish*
id de quo rogatus erat: quibus enim non poterant
*that about which asked he-had-been to-whom for not they-could*
hereditates vel legata relinquere, si relinquebant, fidei
*inheritances or legacies leave if they-left-them to-the-good-faith*
committebant eorum, qui capere ex testamento poterant: et
*they-entrusted-them of-those who to-take from the-testament could and*
ideo fideicommissa appellata sunt, quia nullo vinculo iuris,
*therefore trusts called were because by-no bond of-law*
sed tantum pudore eorum qui rogabantur continebantur.
*but only by-the-shame of-those who were-asked they-were-held*
postea primus divus Augustus semel iterumque gratia
*afterward first the-deified Augustus once and-again by-favor*
personarum motus, vel quia per ipsius salutem rogatus quis
*of-persons moved or because by his safety asked anyone*
diceretur, aut ob insignem quorundam perfidiam iussit
*was-said or on-account-of the-notable of-certain-men faithlessness ordered*

consulibus auctoritatem suam interponere. quod quia iustum
*the-consuls authority their-own to-interpose which because just*
videbatur et populare erat, paulatim conversum est in
*it-seemed and popular was gradually turned was into*
adsiduam iurisdictionem: tantusque favor eorum factus est, ut
*constant jurisdiction and-so-great the-favor of-them made was that*
paulatim etiam praetor proprius crearetur, qui fideicommissis
*gradually even a-praetor of-their-own was-created who for-trusts*
ius diceret, quem fideicommissarium appellabant.
*law should-declare whom the-trust-praetor they-called*

2 In primis igitur sciendum est opus esse, ut aliquis recto
*In the-first-place therefore to-be-known it-is need to-be that someone by-proper*
iure testamento heres instituatur eiusque fidei committatur,
*right in-a-testament heir be-instituted and-to-his good-faith it-be-entrusted*
ut eam hereditatem alii restituat: alioquin inutile est
*that that inheritance to-another he-restore otherwise void is*
testamentum, in quo nemo heres instituitur. cum igitur aliquis
*the-testament in which no-one heir is-instituted when therefore someone*
scripserit: 'Lucius Titius heres esto', poterit adicere: 'rogo
*has-written Lucius Titius heir let-him-be he-will-be-able to-add I-ask*
te, Luci Titi, ut, cum primum possis hereditatem meam adire,
*you Lucius Titius that when first you-can the-inheritance my to-enter*
eam Gaio Seio reddas restituas'. potest autem quisque et de
*it to-Gaius Seius you-render restore can however anyone also about*
parte restituenda heredem rogare: et liberum est vel pure
*a-part to-be-restored the-heir ask and free it-is either unconditionally*
vel sub condicione relinquere fideicommissum vel ex die certo.
*or under condition to-leave a-trust or from a-day certain*

Restituta autem hereditate is quidem qui restituit nihilo 3
*Restored however the-inheritance he indeed who has-restored-it by-nothing*
minus heres permanet: is vero qui recipit hereditatem
*less heir remains he however who receives the-inheritance*
aliquando heredis aliquando legatarii loco habebatur.
*sometimes of-an-heir sometimes of-a-legatee in-the-place was-held*
Et in Neronis quidem temporibus Trebellio Maximo et 4
*And in Nero's indeed times Trebellius Maximus and*
Annaeo Seneca consulibus senatus consultum factum est,
*Annaeus Seneca consuls of-the-senate a-decree made was*
quo cautum est, ut, si hereditas ex fideicommissi causa
*by-which provided it-was that if an-inheritance by of-a-trust cause*
restituta sit, omnes actiones, quae iure civili heredi et in
*restored be all actions which by-law civil to-the-heir and against*
heredem competerent, ei et in eum darentur, cui ex
*the-heir belonged to-him and against him be-given to-whom by*
fideicommisso restituta esset hereditas. post quod senatus
*trust restored had-been the-inheritance after which of-the-senate*
consultum praetor utiles actiones ei et in eum qui
*decree the-praetor analogous actions to-him and against him who*
recepit hereditatem quasi heredi et in heredem dare coepit.
*received the-inheritance as-if to-an-heir and against an-heir to-give began*
Sed quia heredes scripti, cum aut totam hereditatem 5
*But because heirs written when either the-whole inheritance*
aut paene totam plerumque restituere rogabantur, adire
*or almost the-whole mostly to-restore they-were-asked to-enter*
hereditatem ob nullum vel minimum lucrum recusabant atque
*the-inheritance for no or the-least gain refused and*
ob id extinguebantur fideicommissa: postea Vespasiani Augusti
*for this were-extinguished the-trusts afterward of-Vespasian of-Augustus*
temporibus Pegaso et Pusione consulibus senatus censuit,
*times Pegasus and Pusio consuls the-senate decreed*

ut ei, qui rogatus esset hereditatem restituere, perinde
*that for-him who asked had-been the-inheritance to-restore just*
liceret quartam partem retinere, atque lege Falcidia ex
*it-be-allowed a-fourth part to-retain as by-the-statute Falcidian from*
legatis retinere conceditur. ex singulis quoque rebus, quae
*legacies to-retain is-granted from individual also things which*
per fideicommissum relinquuntur, eadem retentio permissa
*through trust are-left the-same retention permitted*
est. post quod senatus consultum ipse heres onera
*was after which of-the-senate decree himself the-heir the-burdens*
hereditaria sustinebat: ille autem, qui ex fideicommisso
*hereditary bore he however who by trust*
recepit partem hereditatis, legatarii partiarii loco erat,
*received part of-the-inheritance of-a-legatee partiary in-the-place was*
id est eius legatarii, cui pars bonorum legabatur. quae
*that is of-that legatee to-whom a-part of-the-goods was-bequeathed which*
species legati partitio vocabatur, quia cum herede legatarius
*kind of-legacy partition was-called because with the-heir the-legatee*
partiebatur hereditatem. unde quae solebant stipulationes
*divided the-inheritance whence which were-wont stipulations*
inter heredem et partiarium legatarium interponi, eaedem
*between the-heir and the-partiary legatee to-be-interposed the-same*
interponebantur inter eum, qui ex fideicommisso recepit
*were-interposed between him who by trust received*
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.
*hereditary in proportionate part between them common be*

6 Ergo si quidem non plus quam dodrantem hereditatis
*Therefore if indeed not more than three-quarters of-the-inheritance*
scriptus heres rogatus sit restituere, tunc ex Trebelliano
*the-written heir asked be to-restore then by the-Trebellian*

senatus consulto restituebatur hereditas et in utrumque
*of-the-senate decree was-restored the-inheritance and against each*
actiones hereditariae pro rata parte dabantur: in heredem
*actions hereditary in proportionate part were-given against the-heir*
quidem iure civili, in eum vero qui recipiebat hereditatem
*indeed by-law civil against him however who received the-inheritance*
ex senatus consulto Trebelliano tamquam in heredem. at si
*by of-the-senate the-decree Trebellian as against an-heir but if*
plus quam dodrantem vel etiam totam hereditatem restituere
*more than three-quarters or even the-whole inheritance to-restore*
rogatus sit, locus erat Pegasiano senatus consulto, et
*asked he-be room there-was for-the-Pegasian of-the-senate decree and*
heres, qui semel adierit hereditatem, si modo sua
*the-heir who once has-entered the-inheritance if only by-his-own*
voluntate adierit, sive retinuerit quartam partem sive
*will he-has-entered whether he-has-retained a-fourth part or*
noluerit retinere, ipse universa onera hereditaria sustinebat. sed
*has-refused to-retain himself all-the burdens hereditary bore but*
quarta quidem retenta quasi partis et pro parte stipulationes
*the-fourth indeed retained as-if of-part and for part stipulations*
interponebantur tamquam inter partiarium legatarium et
*were-interposed as between a-partiary legatee and*
heredem: si vero totam hereditatem restituerit, emptae et
*the-heir if however the-whole inheritance he-has-restored of-a-bought and*
venditae hereditatis stipulationes interponebantur. sed si recuset
*sold inheritance the-stipulations were-interposed but if refuses*
scriptus heres adire hereditatem ob id, quod dicat eam
*the-written heir to-enter the-inheritance on-account-of this that he-says it*
sibi suspectam esse quasi damnosam, cavetur Pegasiano
*to-himself suspect to-be as-if ruinous it-is-provided by-the-Pegasian*
senatus consulto, ut desiderante eo, cui restituere rogatus
*of-the-senate decree that desiring him to-whom to-restore asked*

est, iussu praetoris adeat et restituat hereditatem perindeque
*he-is by-order of-the-praetor he-enter and restore the-inheritance and-just*
ei et in eum qui recipit hereditatem actiones dentur,
*to-him and against him who receives the-inheritance actions be-given*
acsi iuris est ex Trebelliano senatus consulto: quo casu
*as-if of-law it-is by the-Trebellian of-the-senate decree in-which case*
nullis stipulationibus opus est, quia simul et huic
*for-no stipulations need there-is because at-the-same-time both to-him*
qui restituit securitas datur et actiones hereditariae ei
*who restores security is-given and actions hereditary to-him*
et in eum transferuntur qui recipit hereditatem, utroque
*and against him are-transferred who receives the-inheritance each*
senatus consulto in hac specie concurrente.
*of-the-senate decree in this case concurring*

7 Sed quia stipulationes ex senatus consulto Pegasiano
*But because the-stipulations from of-the-senate the-decree Pegasian*
descendentes et ipsi antiquitati displicuerunt et quibusdam
*descending both itself to-antiquity were-displeasing and in-certain*
casibus captiosas eas homo excelsi ingenii Papinianus appellat
*cases captious them a-man of-lofty genius Papinian calls*
et nobis in legibus magis simplicitas quam difficultas
*and to-us in laws rather simplicity than difficulty*
placet, ideo omnibus nobis suggestis tam similitudinibus
*is-pleasing therefore all to-us suggested both the-likenesses*
quam differentiis utriusque senatus consulti placuit exploso
*and the-differences of-each of-the-senate decree it-pleased exploded*
senatus consulto Pegasiano, quod postea supervenit, omnem
*of-the-senate the-decree Pegasian which afterward came-in all*
auctoritatem Trebelliano senatus consulto praestare, ut ex eo
*authority to-the-Trebellian of-the-senate decree to-grant that by it*
fideicommissariae hereditates restituantur, sive habeat heres ex
*trust inheritances be-restored whether have the-heir by*

voluntate testatoris quartam sive plus sive minus sive penitus
*the-will of-the-testator a-fourth or more or less or wholly*
nihil, ut tunc, quando vel nihil vel minus quarta apud eum
*nothing so-that then when either nothing or less-than a-fourth with him*
remaneat, liceat ei vel quartam vel quod deest ex nostra
*remains it-be-allowed for-him either the-fourth or what is-lacking by our*
auctoritate retinere vel repetere solutum, quasi ex Trebelliano
*authority to-retain or to-reclaim what-was-paid as-if from the-Trebellian*
senatus consulto pro rata portione actionibus tam in
*of-the-senate decree in proportionate share the-actions both against*
heredem quam in fideicommissarium competentibus. si
*the-heir and against the-beneficiary-of-the-trust lying if*
vero totam hereditatem sponte restituerit, omnes hereditariae
*however the-whole inheritance voluntarily he-has-restored all hereditary*
actiones fideicommissario et adversus eum competunt.
*actions to-the-beneficiary-of-the-trust and against him lie*
sed etiam id, quod praecipuum Pegasiani senatus consulti
*but also that which the-chief-point of-the-Pegasian of-the-senate decree*
fuerat, ut, quando recusabat heres scriptus sibi datam
*had-been that when refused the-heir written to-himself given*
hereditatem adire, necessitas ei imponeretur totam
*inheritance to-enter necessity on-him be-imposed the-whole*
hereditatem volenti fideicommissario restituere et omnes ad
*inheritance to-the-wishing beneficiary-of-the-trust to-restore and all to*
eum et contra eum transire actiones, et hoc transponimus
*him and against him to-pass actions also this we-transfer*
ad senatus consultum Trebellianum, ut ex hoc solo
*to of-the-senate the-decree Trebellian so-that from this alone*
et necessitas heredi imponatur, si ipso nolente adire
*also necessity on-the-heir be-imposed if himself unwilling to-enter*

fideicommissarius desiderat restitui sibi hereditatem,
*the-beneficiary-of-the-trust desires to-be-restored to-himself the-inheritance*
nullo nec damno nec commodo apud heredem manente.
*no neither loss nor gain with the-heir remaining*

8 Nihil autem interest, utrum aliquis ex asse heres institutus
*Nothing however it-matters whether someone in the-whole-as heir instituted*
aut totam hereditatem aut pro parte restituere rogatur, an
*either the-whole inheritance or in part to-restore is-asked or*
ex parte heres institutus aut totam eam partem aut partis
*in part heir instituted either the-whole that part or of-the-part*
partem restituere rogatur: nam et hoc casu eadem observari
*a-part to-restore is-asked for also in-this case the-same to-be-observed*
praecipimus, quae in totius hereditatis restitutione diximus.
*we-direct which in of-the-whole inheritance the-restoration we-have-said*

9 Si quis una aliqua re deducta sive praecepta, quae quartam
*If anyone one some thing deducted or taken-first which a-fourth*
continet, veluti fundo vel alia re rogatus sit restituere
*contains as an-estate or other thing asked be to-restore*
hereditatem, simili modo ex Trebelliano senatus consulto
*the-inheritance in-like manner by the-Trebellian of-the-senate decree*
restitutio fiat, perinde ac si quarta parte retenta rogatus
*the-restoration be-made just as if a-fourth part retained asked*
esset reliquam hereditatem restituere. sed illud interest,
*he-had-been the-remaining inheritance to-restore but that differs*
quod altero casu, id est cum deducta sive praecepta aliqua
*that in-one case that is when deducted or taken-first some*
re restituitur hereditas, in solidum ex eo senatus consulto
*thing is-restored the-inheritance in whole by that of-the-senate decree*
actiones transferuntur et res quae remanet apud heredem
*the-actions are-transferred and the-thing which remains with the-heir*
sine ullo onere hereditario apud eum manet quasi ex
*without any burden hereditary with him stays as-if from*

legato ei adquisita, altero vero casu, id est cum
*a-legacy to-him acquired in-the-other however case that is when*
quarta parte retenta rogatus est heres restituere hereditatem
*a-fourth part retained asked is the-heir to-restore the-inheritance*
et restituit, scindantur actiones et pro dodrante quidem
*and restores are-split the-actions and for three-quarters indeed*
transferantur ad fideicommissarium, pro quadrante remaneant
*are-transferred to the-beneficiary-of-the-trust for a-quarter they-remain*
apud heredem. quin etiam licet in una re, qua deducta
*with the-heir nay even although in one thing which deducted*
aut praecepta restituere aliquis hereditatem rogatus est,
*or taken-first to-restore anyone the-inheritance asked is*
maxima pars hereditatis contineatur, aeque in solidum
*the-greatest part of-the-inheritance be-contained equally in whole*
transferuntur actiones et secum deliberare debet is, cui
*are-transferred the-actions and with-himself to-deliberate ought he to-whom*
restituitur hereditas, an expediat sibi restitui. eadem
*is-restored the-inheritance whether it-be-expedient for-himself to-be-restored the-same*
scilicet interveniunt et si duabus pluribusve rebus deductis
*namely apply also if two or-more things deducted*
praeceptisve restituere hereditatem rogatus sit. sed et si
*or-taken-first to-restore the-inheritance asked he-be but also if*
certa summa deducta praeceptave, quae quartam vel etiam
*a-certain sum deducted or-taken-first which a-fourth or even*
maximam partem hereditatis continet, rogatus sit aliquis
*the-greatest part of-the-inheritance contains asked be someone*
hereditatem restituere, idem iuris est. quae diximus de eo
*the-inheritance to-restore the-same of-law it-is what we-have-said about him*
qui ex asse heres institutus est, eadem transferimus
*who in the-whole-as heir instituted is the-same-things we-transfer*
et ad eum qui ex parte heres scriptus est.
*also to him who in part heir written is*

10 Praeterea intestatus quoque moriturus potest rogare eum,
*Moreover intestate also about-to-die can ask him*
ad quem bona sua vel legitimo iure vel honorario pertinere
*to whom goods his either by-statutory right or by-honorary to-belong*
intellegit, ut hereditatem suam totam partemve eius aut
*he-understands that the-inheritance his-own whole or-part its or*
rem aliquam, veluti fundum hominem pecuniam, alicui
*a-thing some as an-estate a-man money to-someone*
restituat: cum alioquin legata nisi ex testamento non valeant.
*he-restore since otherwise legacies unless by testament not are-valid*

11 Eum quoque, cui aliquid restituitur, potest rogare, ut id
*Him also to-whom something is-restored he-can ask that it*
rursus alii totum aut pro parte vel etiam aliud aliquid
*again to-another wholly or in part or even another something*
restituat.
*he-restore*

12 Et quia prima fideicommissorum cunabula a fide
*And because the-first of-trusts cradles on the-good-faith*
heredum pendent et tam nomen quam substantiam acceperunt
*of-heirs hang and both their-name and substance they-received*
et ideo divus Augustus ad necessitatem iuris ea detraxit:
*and therefore the-deified Augustus to the-necessity of-law them drew-down*
nuper et nos eundem principem superare contendentes ex
*recently also we that-same emperor to-surpass striving from*
facto, quod Tribonianus vir excelsus quaestor sacri palatii
*a-case which Tribonian a-man exalted quaestor of-the-sacred palace*
suggessit, constitutionem fecimus, per quam disposuimus: si
*suggested a-constitution we-made through which we-have-arranged if*
testator fidei heredis sui commisit, ut vel hereditatem
*the-testator to-the-good-faith of-heir his entrusted that either the-inheritance*
vel speciale fideicommissum restituat, et neque ex scriptura
*or a-special trust he-restore and neither from writing*

neque ex quinque testium numero, qui in fideicommissis
*nor from of-five witnesses the-number which in trusts*
legitimus esse noscitur, res possit manifestari, sed vel
*lawful to-be is-known the-matter can be-made-manifest but either*
pauciores quam quinque vel nemo penitus testis intervenerit,
*fewer than five or no-one at-all witness has-intervened*
tunc sive pater heredis sive alius quicumque sit, qui
*then whether the-father of-the-heir or another whoever be who*
fidem elegit heredis et ab eo aliquid restitui voluerit,
*the-good-faith chose of-the-heir and from him something to-be-restored wished*
si heres perfidia tentus adimplere fidem recusat negando
*if the-heir by-faithlessness held to-fulfill the-trust refuses denying*
rem ita esse subsecutam, si fideicommissarius iusiurandum
*the-thing so to-have followed if the-beneficiary-of-the-trust an-oath*
ei detulerit, cum prius ipse de calumnia iuraverit,
*to-him has-tendered when first he-himself about chicanery has-sworn*
necesse eum habere vel iusiurandum subire, quod nihil
*necessity him to-have either the-oath to-undergo that nothing*
tale a testatore audivit, vel recusantem ad fideicommissi
*such from the-testator he-heard or refusing to of-the-trust*
vel universitatis vel specialis solutionem coartari, ne depereat
*either universal or special the-payment to-be-forced lest perish*
ultima voluntas testatoris fidei heredis commissa. eadem
*the-last will of-the-testator to-the-good-faith of-the-heir entrusted the-same*
observari censuimus et si a legatario vel fideicommissario
*to-be-observed we-have-decreed also if by a-legatee or a-beneficiary-of-a-trust*
aliquid similiter relictum sit. quod si is, a quo relictum
*something likewise left be but if he by whom left*
dicitur, confiteatur quidem aliquid a se relictum esse, sed ad
*it-is-said admits indeed something by himself left to-be but to*
legis suptilitatem decurrat, omnimodo cogendus est solvere.
*of-law the-subtlety has-recourse in-every-way to-be-compelled he-is to-pay*

*Single things, the testator's, the heir's, or another's, and freedom itself may be left in trust; one freed by trust is the manumitter's freedman, one freed directly the testator's. The words of trust include* peto, rogo, volo, mando, *and* fidei tuae committo.

Potest autem quis etiam singulas res per fideicommissum
*Can however anyone also single things through trust*
relinquere, veluti fundum hominem vestem argentum pecuniam
*leave as an-estate a-man clothing silver money*
numeratam, et vel ipsum heredem rogare, ut alicui restituat,
*counted and either himself the-heir ask that to-someone he-restore-it*
vel legatarium, quamvis a legatario legari non possit.
*or a-legatee although from a-legatee be-bequeathed not it-can*

1 Potest autem non solum proprias testator res per
*Can however not only his-own the-testator things through*
fideicommissum relinquere, sed et heredis aut legatarii aut
*trust leave but also of-the-heir or of-the-legatee or*
fideicommissarii aut cuiuslibet alterius. itaque et legatarius
*of-the-beneficiary-of-the-trust or of-anyone else therefore both the-legatee*
et fideicommissarius non solum de ea re rogari potest,
*and the-beneficiary-of-the-trust not only about that thing be-asked can*
ut eam alicui restituat, quae ei relicta sit, sed etiam de
*that it to-someone he-restore which to-him left was but also about*
alia, sive ipsius sive aliena sit. hoc solum observandum est,
*another whether his-own or another's it-be this alone to-be-observed is*
ne plus quisquam rogetur alicui restituere, quam ipse
*that-not more anyone be-asked to-someone to-restore than he-himself*
ex testamento ceperit: nam quod amplius est, inutiliter
*from the-testament has-taken for what more is uselessly*

relinquitur. cum autem aliena res per fideicommissum
*is-left when however another's thing through trust*
relinquitur, necesse est ei qui rogatus est aut ipsam
*is-left necessary it-is for-him who asked is either the-thing-itself*
redimere et praestare aut aestimationem eius solvere.
*to-buy and to-furnish or the-value its to-pay*
Libertas quoque servo per fideicommissum dari potest, 2
*Freedom also to-a-slave through trust be-given can*
ut heres eum rogetur manumittere vel legatarius vel
*so-that the-heir him be-asked to-manumit or the-legatee or*
fideicommissarius. nec interest, utrum de suo proprio servo
*the-beneficiary-of-the-trust nor does-it-matter whether about his own slave*
testator roget, an de eo qui ipsius heredis aut legatarii
*the-testator asks or about one who of-the-very heir or of-the-legatee*
vel etiam extranei sit. itaque alienus servus redimi et
*or even of-an-outsider be therefore another's slave to-be-bought and*
manumitti debet: quod si dominus eum non vendat, si modo
*to-be-manumitted ought but if the-owner him not sells if only*
nihil ex iudicio eius qui reliquit libertatem percepit,
*nothing from the-judgment of-him who left the-freedom he-has-received*
non statim extinguitur fideicommissaria libertas, sed differtur,
*not at-once is-extinguished the-trust freedom but is-postponed*
quia possit tempore procedente, ubicumque occasio redimendi
*because it-can time proceeding whenever occasion of-buying*
servi fuerit, praestari libertas. qui autem ex causa
*the-slave there-has-been be-furnished the-freedom he-who however by reason*
fideicommissi manumittitur, non testatoris fit libertus,
*of-trust is-manumitted not of-the-testator becomes the-freedman*
etiamsi testatoris servus sit, sed eius qui manumittit: at is,
*even-if the-testator's slave he-be but of-him who manumits but he*
qui directo testamento liber esse iubetur, ipsius testatoris
*who directly by-testament free to-be is-ordered of-the-very testator*

fit libertus, qui etiam orcinus appellatur. nec alius ullus
*becomes the-freedman who also of-Orcus is-called nor other any*
directo ex testamento libertatem habere potest, quam qui
*directly from a-testament freedom have can than he-who*
utroque tempore testatoris fuerit, et quo faceret testamentum
*at-both times the-testator's was both when he-made the-testament*
et quo moreretur. directo autem libertas tunc dari
*and when he-died directly however freedom then to-be-given*
videtur, cum non ab alio servum manumitti rogat, sed
*seems when not by another the-slave to-be-manumitted he-asks but*
velut ex suo testamento libertatem ei competere vult.
*as-if from his-own testament freedom to-him to-belong he-wishes*

3 Verba autem fideicommissorum haec maxime in usu habeantur:
*The-words however of-trusts these most in use be-held*
peto, rogo, volo, mando, fidei tuae committo. quae perinde
*I-request I-ask I-wish I-charge to-good-faith your I-commit which just*
singula firma sunt, atque si omnia in unum congesta essent.
*individually firm are as if all into one heaped they-had-been*

## XXV · CODICILS

*Codicils began with Lucius Lentulus and were approved by Augustus on Trebatius' advice. They may be made with or without a will; those made before a will support a trust if the testator did not later depart from them. They cannot give or take away an inheritance directly, nor disinherit, impose a condition, or substitute; several may be made, without formality.*

Ante Augusti tempora constat ius codicillorum non
*Before Augustus' times it-is-agreed the-law of-codicils not*
fuisse, sed primus Lucius Lentulus, ex cuius persona
*to-have-existed but first Lucius Lentulus from whose person*

etiam fideicommissa coeperunt, codicillos introduxit. nam
*also trusts began codicils introduced for*
cum decederet in Africa, scripsit codicillos testamento
*when he-was-dying in Africa he-wrote codicils by-testament*
confirmatos, quibus ab Augusto petiit per fideicommissum,
*confirmed in-which from Augustus he-asked through trust*
ut faceret aliquid: et cum divus Augustus voluntatem
*that he-should-do something and when the-deified Augustus the-will*
eius implesset, deinceps reliqui auctoritatem eius secuti
*his had-fulfilled thereafter the-rest the-authority his following*
fideicommissa praestabant et filia Lentuli legata, quae
*trusts furnished and the-daughter of-Lentulus legacies which*
iure non debebat, solvit. dicitur Augustus convocasse
*by-law not she-owed paid it-is-said Augustus to-have-called-together*
prudentes, inter quos Trebatium quoque, cuius tunc auctoritas
*jurists among whom Trebatius also whose then authority*
maxima erat, et quaesisse, an possit hoc recipi nec
*greatest was and to-have-asked whether could this be-accepted nor*
absonans a iuris ratione codicillorum usus esset: et
*discordant with of-law the-reason of-codicils the-use were and*
Trebatium suasisse Augusto, quod diceret utilissimum
*Trebatius to-have-persuaded Augustus in-that he-said most-useful*
et necessarium hoc civibus esse propter magnas et
*and necessary this for-citizens to-be on-account-of the-great and*
longas peregrinationes, quae apud veteres fuissent, ubi,
*long journeys which among the-ancients had-been where*
si quis testamentum facere non posset, tamen codicillos
*if anyone a-testament make not could yet codicils*
posset. post quae tempora cum et Labeo codicillos fecisset,
*he-could after which times when also Labeo codicils had-made*

iam nemini dubium erat, quin codicilli iure optimo
*now to-no-one doubtful was that codicils by-the-best law*
admitterentur.
*were-admitted*

1 Non tantum autem testamento facto potest quis codicillos
*Not only however a-testament made can anyone codicils*
facere, sed et intestatus quis decedens fideicommittere
*make but even intestate anyone dying entrust-in-trust*
codicillis potest. sed cum ante testamentum factum
*by-codicils can but when before the-testament made*
codicilli facti erant, Papinianus ait non aliter vires
*codicils made had-been Papinian says not otherwise force*
habere, quam si speciali postea voluntate confirmentur.
*to-have than if by-a-special afterward will they-be-confirmed*
sed divi Severus et Antoninus rescripserunt ex his
*but the-deified Severus and Antoninus rescribed from those*
codicillis qui testamentum praecedunt posse fideicommissum
*codicils which the-testament precede to-be-able a-trust*
peti, si appareat eum, qui postea testamentum
*to-be-claimed if it-appears him who afterward the-testament*
fecerat, a voluntate quam codicillis expresserat non
*had-made from the-will which in-the-codicils he-had-expressed not*
recessisse.
*to-have-departed*

2 Codicillis autem hereditas neque dari neque adimi
*By-codicils however an-inheritance neither be-given nor be-taken-away*
potest, ne confundatur ius testamentorum et
*can lest be-confounded the-law of-testaments and*
codicillorum, et ideo nec exheredatio scribi.
*of-codicils and therefore not-even disinheritance be-written*
directo autem hereditas codicillis neque dari neque
*directly however an-inheritance by-codicils neither be-given nor*

adimi potest: nam per fideicommissum hereditas
*be-taken-away can for through trust an-inheritance*
codicillis iure relinquitur. nec condicionem heredi
*by-codicils lawfully is-left nor a-condition to-the-heir*
instituto codicillis adicere neque substituere directo
*instituted by-codicils add nor substitute directly*
potest.
*can-one*
Codicillos autem etiam plures quis facere potest: et nullam 3
*Codicils however even several anyone make can and no*
sollemnitatem ordinationis desiderant.
*formality of-arrangement they-require*

# BOOK III

## I · INHERITANCES ON INTESTACY

*A man dies intestate when no heir takes under a valid will. His estate goes first to his own heirs: children in his power, natural or adopted, and those legitimated, with grandchildren taking a dead parent's place by stocks. The praetor calls emancipated children with them, but not adopted children emancipated; Justinian keeps a child given in adoption to an outsider in his natural family and gives daughters' children their parent's whole share, without the old deduction of a third.*

Intestatus decedit, qui aut omnino testamentum non fecit
*Intestate dies he-who either at-all a-testament not made*
aut non iure fecit aut id quod fecerat ruptum irritumve
*or not lawfully made or that which he-had-made broken or-void*
factum est aut nemo ex eo heres extitit.
*made has-been or no-one from it heir has-become*

Intestatorum autem hereditates ex lege duodecim tabularum 1
*Of-intestates however the-inheritances by the-statute of-the-twelve tables*
primum ad suos heredes pertinent.
*first to the-own heirs belong*

Sui autem heredes existimantur, ut et supra diximus, qui 2
*Own however heirs are-held as also above we-have-said those-who*
in potestate morientis fuerunt: veluti filius filia, nepos
*in the-power of-the-dying-man were as a-son a-daughter a-grandson*
neptisve ex filio, pronepos proneptisve ex nepote
*or-granddaughter by a-son a-great-grandson or-great-granddaughter by a-grandson*
filio nato, prognatus prognatave. nec interest, utrum
*by-a-son born descended or-descended nor does-it-matter whether*
naturales sunt liberi an adoptivi.
*natural are the-children or adoptive*

2a Quibus connumerari necesse est etiam eos, qui ex legitimis
*With-whom to-be-counted necessary it-is also those who from lawful*
quidem matrimoniis non sunt progeniti, curiis tamen
*indeed marriages not are begotten to-the-councils however*
civitatum dati secundum divalium constitutionum, quae super
*of-the-cities given according-to of-the-imperial constitutions which about*
his positae sunt, tenorem suorum iura nanciscuntur: nec
*these laid-down have-been the-tenor of-own-heirs the-rights obtain and*
non eos, quos nostrae amplexae sunt constitutiones, per quas
*also those whom our embraced have constitutions through which*
iussimus, si quis mulierem in suo contubernio copulaverit
*we-have-ordered if anyone a-woman in his-own cohabitation has-joined*
non ab initio affectione maritali, eam tamen, cum qua
*not from the-beginning with-affection marital her however with whom*
poterat habere coniugium, et ex ea liberos sustulerit, postea
*he-could have marriage and from her children has-raised afterward*
vero affectione procedente etiam nuptialia instrumenta cum ea
*however the-affection proceeding also nuptial instruments with her*
fecerit filiosque vel filias habuerit: non solum eos liberos, qui
*has-made and-sons or daughters has-had not only those children who*
post dotem editi sunt, iustos et in potestate esse patribus, sed
*after the-dowry born are lawful and in power to-be to-the-fathers but*
etiam anteriores, qui et his qui postea nati sunt occasionem
*also the-earlier who also to-those who afterward born are the-occasion*
legitimi nominis praestiterunt: quod optinere censuimus,
*of-the-lawful name have-furnished which to-hold we-have-decreed*
etiamsi non progeniti fuerint post dotale instrumentum
*even-if not begotten have-been after the-dotal instrument*
confectum liberi vel etiam nati ab hac luce subtracti fuerint.
*drawn-up children or even born from this light withdrawn have-been*

Ita demum tamen nepos neptisve et pronepos 2b
*So only-then however a-grandson or-granddaughter and a-great-grandson*
proneptisve suorum heredum numero sunt, si praecedens
*or-great-granddaughter of-own heirs in-the-number are if the-preceding*
persona desierit in potestate parentis esse, sive morte id
*person has-ceased in the-power of-the-parent to-be whether by-death that*
acciderit sive alia ratione, veluti emancipatione: nam si
*has-happened or by-another reason as by-emancipation for if*
per id tempus, quo quis moreretur, filius in potestate
*during that time in-which anyone was-dying the-son in power*
eius sit, nepos ex eo suus heres esse non potest.
*his be the-grandson from him own heir be not can*
idque et in ceteris deinceps liberorum personis dictum
*and-this also in the-other further of-children persons said*
intellegimus. postumi quoque, qui, si vivo parente
*we-understand posthumous-children also who if while-living the-parent*
nati essent, in potestate futuri forent, sui heredes sunt.
*born they-had-been in power about-to-be would-be own heirs are*
Sui autem etiam ignorantes fiunt heredes et, licet furiosi sint, 3
*Own however even unaware become heirs and although mad they-be*
heredes possunt existere: quia quibus ex causis ignorantibus
*heirs they-can become because what by causes for-the-unaware*
adquiritur nobis, ex his causis et furiosis adquiri potest.
*it-is-acquired for-us by those causes also for-madmen be-acquired it-can*
et statim morte parentis quasi continuatur dominium:
*and at-once by-the-death of-the-parent as-it-were is-continued the-ownership*
et ideo nec tutoris auctoritate opus est in pupillis,
*and therefore not-even of-the-tutor the-authority need is in wards*
cum etiam ignorantibus adquiritur suis heredibus hereditas:
*since even to-the-unaware is-acquired for-own heirs the-inheritance*
nec curatoris consensu adquiritur furioso, sed ipso iure.
*nor the-curator's by-consent is-it-acquired for-a-madman but by-the-very law*

4 Interdum autem, licet in potestate mortis tempore suus
*Sometimes however although in power of-death at-the-time own*
heres non fuit, tamen suus heres parenti efficitur, veluti
*heir not he-was yet own heir to-the-parent he-becomes as*
si ab hostibus quis reversus fuerit post mortem patris
*if from the-enemy anyone returned has after the-death of-father*
sui: ius enim postliminii hoc facit.
*his the-right for of-postliminium this does*

5 Per contrarium evenit ut, licet quis in familia defuncti
*By the-contrary it-happens that although anyone in the-family of-the-deceased*
sit mortis tempore, tamen suus heres non fiat, veluti si
*be of-death at-the-time yet own heir not he-become as if*
post mortem suam pater iudicatus fuerit reus perduellionis
*after death his the-father adjudged has-been guilty of-treason*
ac per hoc memoria eius damnata fuerit: suum enim
*and through this memory his condemned has-been own for*
heredem habere non potest, cum fiscus ei succedit. sed
*heir to-have not he-can since the-fisc to-him succeeds but*
potest dici ipso iure esse suum heredem, sed desinere.
*it-can be-said by-the-very law him-to-be own heir but to-cease*

6 Cum filius filiave et ex altero filio nepos neptisve
*When a-son or-daughter and from another son a-grandson or-granddaughter*
extant, pariter ad hereditatem vocantur nec qui gradu
*exist equally to the-inheritance they-are-called nor he-who in-degree*
proximior est ulteriorem excludit: aequum enim esse videtur
*nearer is the-further excludes fair for to-be it-seems*
nepotes neptesque in patris sui locum succedere.
*that-grandsons and-granddaughters into of-father their the-place succeed*
pari ratione et si nepos neptisque sit ex filio
*by-equal reason also if a-grandson and-granddaughter there-be by a-son*
et ex nepote pronepos proneptisve, simul vocantur.
*and from a-grandson a-great-grandson or-great-granddaughter together they-are-called*

et quia placuit nepotes neptesque, item pronepotes
*and because it-was-held grandsons and-granddaughters likewise great-grandsons*
proneptesque in parentis sui locum succedere, conveniens
*and-great-granddaughters into of-parent their the-place to-succeed fitting*
esse visum est non in capita, sed in stirpes hereditatem
*to-be seemed it-has not by heads but by stocks the-inheritance*
dividi, ut filius partem dimidiam hereditatis habeat et
*to-be-divided so-that the-son the-part half of-the-inheritance have and*
ex altero filio duo pluresve nepotes alteram dimidiam. item
*from the-other son two or-more grandsons the-other half likewise*
si ex duobus filiis nepotes extant et ex altero unus forte
*if from two sons grandsons exist and from one one perhaps*
aut duo, ex altero tres aut quattuor, ad unum aut duos
*or two from the-other three or four to the-one or two*
dimidia pars pertinet, ad tres vel ad quattuor altera dimidia.
*the-half part belongs to the-three or to the-four the-other half*
Cum autem quaeritur, an quis suus heres existere potest: 7
*When however it-is-asked whether anyone own heir become can*
eo tempore quaerendum est, quo certum est aliquem sine
*at-that time to-be-asked it-is at-which certain it-is that-someone without*
testamento decessisse: quod accidit et destituto testamento. hac
*testament has-died which happens also abandoned the-testament in-this*
ratione si filius exheredatus fuerit et extraneus heres institutus
*way if a-son disinherited has-been and an-outsider heir instituted*
est, filio mortuo postea certum fuerit heredem institutum
*is the-son dead afterward certain it-has-become the-heir instituted*
ex testamento non fieri heredem, aut quia noluit esse
*from the-testament not to-become heir either because he-would-not be*
heres aut quia non potuit: nepos avo suus heres
*heir or because not he-could the-grandson to-the-grandfather own heir*

existet, quia quo tempore certum est intestatum decessisse
*will-become because at-what time certain it-is intestate to-have-died*
patrem familias, solus invenitur nepos. et hoc certum est.
*the-father of-the-family alone is-found the-grandson and this certain is*
8 Et licet post mortem avi natus sit, tamen avo
*And although after the-death of-the-grandfather born he-be yet the-grandfather*
vivo conceptus, mortuo patre eius posteaque deserto avi
*alive conceived dead father his and-afterward abandoned the-grandfather's*
testamento suus heres efficitur. plane si et conceptus et natus
*testament own heir he-becomes clearly if both conceived and born*
fuerit post mortem avi, mortuo patre suo desertoque
*he-has-been after the-death of-the-grandfather dead father his and-abandoned*
postea avi testamento suus heres avo non
*afterward the-grandfather's testament own heir to-the-grandfather not*
existit, quia nullo iure cognationis patrem sui patris tetigit.
*he-becomes because by-no right of-kinship the-father of-his father he-touched*
sic nec ille est inter liberos avo, quem filius
*so neither he is among the-children to-the-grandfather whom the-son*
emancipatus adoptaverat. hi autem cum non sunt quantum
*emancipated had-adopted these however since not they-are as-far-as*
ad hereditatem liberi, neque bonorum possessionem petere
*to the-inheritance children neither of-the-goods possession seek*
possunt quasi proximi cognati. haec de suis heredibus.
*can-they as nearest kin these-things about own heirs*
9 Emancipati autem liberi iure civili nihil iuris habent: neque
*Emancipated however children by-law civil nothing of-right have neither*
enim sui heredes sunt, quia in potestate esse desierunt
*for own heirs are-they because in power to-be they-have-ceased*
parentis, neque alio ullo iure per legem duodecim
*of-the-parent nor by-other any right through the-statute of-the-twelve*
tabularum vocantur. sed praetor naturali aequitate motus
*tables are-they-called but the-praetor by-natural equity moved*

dat eis bonorum possessionem unde liberi, perinde ac
*gives to-them of-the-goods possession by-which children just as*
si in potestate parentis mortis tempore fuissent, sive
*if in the-power of-the-parent of-death at-the-time they-had-been whether*
soli sint sive cum suis heredibus concurrant. itaque duobus
*alone they-be or with own heirs they-concur therefore two*
liberis extantibus, emancipato et qui mortis tempore in
*children existing an-emancipated and one-who of-death at-the-time in*
potestate fuerit, sane quidem is qui in potestate fuerit
*power was certainly indeed he who in power was*
solus iure civili heres est, id est solus suus heres est: sed
*alone by-law civil heir is that is alone own heir is but*
cum emancipatus beneficio praetoris in partem admittitur,
*when the-emancipated by-the-favor of-the-praetor to a-part is-admitted*
evenit, ut suus heres pro parte heres fiat.
*it-comes-about that the-own heir for a-part heir becomes*
At hi, qui emancipati a parente in adoptionem se 10
*But those who emancipated by a-parent into adoption themselves*
dederunt, non admittuntur ad bona naturalis patris quasi
*have-given not are-admitted to the-goods of-the-natural father as*
liberi, si modo cum is moreretur in adoptiva familia sint.
*children if only when he was-dying in the-adoptive family they-be*
nam vivo eo emancipati ab adoptivo patre perinde
*for while-living him emancipated by the-adoptive father equally*
admittuntur ad bona naturalis patris, ac si emancipati
*they-are-admitted to the-goods of-the-natural father as if emancipated*
ab ipso essent nec umquam in adoptiva familia
*by himself they-had-been and-not ever in the-adoptive family*
fuissent: et convenienter quod ad adoptivum patrem pertinet
*had-been and consistently as-far-as to the-adoptive father pertains*
extraneorum loco esse incipiunt. post mortem vero
*of-outsiders in-the-place to-be they-begin after the-death however*

naturalis patris emancipati ab adoptivo et quantum ad hunc
*of-the-natural father emancipated by the-adoptive both as-far-as to him*
aeque extraneorum loco fiunt et quantum ad naturalis
*equally of-outsiders in-the-place they-become and as-far-as to of-the-natural*
parentis bona pertinet nihilo magis liberorum gradum
*parent the-goods pertains by-nothing more of-children the-degree*
nanciscuntur: quod ideo sic placuit, quia iniquum erat
*they-obtain which therefore so was-held because unfair it-was*
esse in potestate patris adoptivi, ad quos bona naturalis
*it-to-be in the-power of-the-father adoptive to whom the-goods of-the-natural*
patris pertinerent, utrum ad liberos eius an ad adgnatos.
*father should-belong whether to the-children his or to the-agnates*
11 Minus ergo iuris habent adoptivi quam naturales. namque
*Less therefore of-right have adoptive-children than natural for*
naturales emancipati beneficio praetoris gradum liberorum
*natural emancipated by-the-favor of-the-praetor the-degree of-children*
retinent, licet iure civili perdunt: adoptivi vero emancipati
*retain although by-law civil they-lose-it adoptive however emancipated*
et iure civili perdunt gradum liberorum et a praetore non
*both by-law civil lose the-degree of-children and by the-praetor not*
adiuvantur. et recte: naturalia enim iura civilis ratio peremere
*are-helped and rightly natural for rights civil reason destroy*
non potest nec, quia desinunt sui heredes esse, desinere
*not can nor because they-cease own heirs to-be cease*
possunt filii filiaeve aut nepotes neptesve esse: adoptivi
*can sons or-daughters or grandsons or-granddaughters to-be adoptive*
vero emancipati extraneorum loco incipiunt esse, quia
*however emancipated of-outsiders in-the-place begin to-be because*
ius nomenque filii filiaeve, quod per adoptionem consecuti
*the-right and-name of-son or-daughter which through adoption obtained*
sunt, alia civili ratione, id est emancipatione, perdunt.
*they-have by-another civil reason that is by-emancipation they-lose*

Eadem haec observantur et in ea bonorum possessione, 12
*The-same these-things are-observed also in that of-the-goods possession*
quam contra tabulas testamenti parentis liberis praeteritis,
*which against the-tablets of-the-testament of-the-parent to-children passed-over*
id est neque heredibus institutis neque ut oportet exheredatis,
*that is neither as-heirs instituted nor as is-proper disinherited*
praetor pollicetur. nam eos quidem, qui in potestate parentis
*the-praetor promises for those indeed who in the-power of-the-parent*
mortis tempore fuerunt, et emancipatos vocat praetor ad
*of-death at-the-time were and the-emancipated calls the-praetor to*
eam bonorum possessionem: eos vero, qui in adoptiva familia
*that of-the-goods possession those however who in the-adoptive family*
fuerunt per hoc tempus, quo naturalis parens moreretur,
*were during this time at-which the-natural parent was-dying*
repellit. item adoptivos liberos emancipatos ab adoptivo patre
*he-repels likewise adoptive children emancipated by the-adoptive father*
sicut ab intestato, ita longe minus contra tabulas testamenti ad
*as on intestacy so far less against the-tablets of-the-testament to*
bona eius admittit, quia desinunt in liberorum numero esse.
*the-goods his he-admits because they-cease in of-children the-number to-be*
Admonendi tamen sumus eos, qui in adoptiva familia 13
*To-be-reminded however we-are that-those who in the-adoptive family*
sunt quive post mortem naturalis parentis ab adoptivo patre
*are or-who after the-death of-the-natural parent by the-adoptive father*
emancipati fuerint, intestato parente naturali mortuo licet
*emancipated have-been intestate the-parent natural dead although*
ea parte edicti, qua liberi ad bonorum possessionem
*in-that part of-the-edict in-which children to of-the-goods possession*
vocantur, non admittantur, alia tamen parte vocari, id
*are-called not they-be-admitted in-another however part to-be-called that*
est qua cognati defuncti vocantur. ex qua parte ita
*is in-which the-kin of-the-deceased are-called by which part so*

admittuntur, si neque sui heredes liberi neque emancipati
*they-are-admitted if neither own heirs children nor emancipated*
obstent neque adgnatus quidem ullus interveniat: ante enim
*stand-in-the-way nor an-agnate even any intervene first for*
praetor liberos vocat tam suos heredes quam emancipatos,
*the-praetor children calls both own heirs and emancipated*
deinde legitimos heredes, deinde proximos cognatos.
*then statutory heirs then the-nearest kin*

14 Sed ea omnia antiquitati quidem placuerunt: aliquam autem
*But those all-things to-antiquity indeed were-pleasing some however*
emendationem a nostra constitutione acceperunt, quam super
*amendment from our constitution they-have-received which about*
his personis posuimus, quae a patribus suis naturalibus
*these persons we-have-laid-down who by fathers their natural*
in adoptionem aliis dantur. invenimus etenim nonnullos
*into adoption to-others are-given we-found for some*
casus, in quibus filii et naturalium parentum successionem
*cases in which sons both of-natural parents the-succession*
propter adoptionem amittebant et adoptione facile per
*on-account-of adoption were-losing and the-adoption easily through*
emancipationem soluta ad neutrius patris successionem
*emancipation dissolved to of-neither father the-succession*
vocabantur. hoc solito more corrigentes constitutionem
*were-called this in-the-usual manner correcting a-constitution*
scripsimus, per quam definivimus, quando parens naturalis
*we-have-written through which we-have-defined when a-parent natural*
filium suum adoptandum alii dederit, integra omnia
*son his to-be-adopted to-another has-given intact all*
iura ita servari, atque si in patris naturalis potestate
*rights so to-be-preserved as if in of-the-father natural the-power*
permansisset nec penitus adoptio fuerit subsecuta: nisi in hoc
*he-had-remained nor at-all adoption had followed except in this*

tantummodo casu, ut possit ab intestato ad patris adoptivi
*only case that he-can on intestacy to of-the-father adoptive*
venire successionem. testamento autem ab eo facto neque
*come the-succession a-testament however by him made neither*
iure civili neque praetorio aliquid ex hereditate eius persequi
*by-law civil nor praetorian anything from the-inheritance his pursue*
potest neque contra tabulas bonorum possessione agnita
*can-be neither against the-tablets of-the-goods possession claimed*
neque inofficiosi querella instituta, cum nec necessitas
*nor of-the-undutiful the-plaint brought since not-even necessity*
patri adoptivo imponitur vel heredem eum instituere vel
*on-the-father adoptive is-imposed either heir him to-institute or*
exheredatum facere utpote nullo naturali vinculo copulatum.
*disinherited to-make as-being by-no natural bond joined*
neque si ex Afiniano senatus consulto ex tribus maribus
*nor if by the-Afinian of-the-senate decree out-of three males*
fuerit adoptatus: nam et in huiusmodi casu neque quarta
*he-has-been adopted for also in such case neither a-fourth*
ei servatur nec ulla actio ad eius persecutionem ei
*to-him is-kept nor any action for its pursuit to-him*
competit. nostra autem constitutione exceptus est is, quem
*belongs by-our however constitution excepted is he whom*
parens naturalis adoptandum susceperit: utroque enim iure
*a-parent natural to-be-adopted has-taken-up each for right*
tam naturali quam legitimo in hanc personam concurrente
*both natural and lawful in this person concurring*
pristina iura tali adoptioni servavimus, quemadmodum si
*the-former rights to-such adoption we-have-preserved just-as if*
pater familias sese dederit adrogandum. quae specialiter et
*a-father of-a-family himself has-given to-be-adrogated which specially and*
singillatim ex praefatae constitutionis tenore possunt colligi.
*individually from of-the-aforesaid constitution the-tenor can be-gathered*

15 Item vetustas ex masculis progenitos plus diligens solos
*Likewise antiquity from males those-begotten more loving only*
nepotes vel neptes, qui ex virili sexu descendunt, ad
*grandsons or granddaughters who from the-male sex descend to*
suorum vocabat successionem et iuri adgnatorum eos
*of-own-heirs called the-succession and to-the-right of-agnates them*
anteponebat: nepotes autem, qui ex filiabus nati sunt, et
*preferred grandsons however who from daughters born are and*
pronepotes ex neptibus cognatorum loco numerans
*great-grandsons from granddaughters of-kin in-the-place reckoning*
post adgnatorum lineam eos vocabat tam in avi
*after of-the-agnates the-line them it-called both in of-the-grandfather*
vel proavi materni quam in aviae vel
*or of-the-great-grandfather maternal and in of-the-grandmother or*
proaviae sive paternae sive maternae successionem.
*of-the-great-grandmother whether paternal or maternal the-succession*
divi autem principes non passi sunt talem contra naturam
*the-deified however emperors not suffered have such against nature*
iniuriam sine competenti emendatione relinquere: sed cum
*a-wrong without suitable amendment to-leave but since*
nepotis et pronepotis nomen commune est utrisque, qui
*of-grandson and of-great-grandson the-name common is to-both who*
tam ex masculis quam ex feminis descendunt, ideo
*both from males and from females descend therefore*
eundem gradum et ordinem successionis eis donaverunt:
*the-same degree and order of-succession to-them they-granted*
sed ut aliquid amplius sit eis, qui non solum naturae, sed
*but that something more be for-those who not only of-nature but*
etiam veteris iuris suffragio muniuntur, portionem nepotum
*also of-the-old law by-the-support are-fortified the-portion of-grandsons*
et neptium vel deinceps, de quibus supra diximus, paulo
*and of-granddaughters or further about whom above we-have-said a-little*

minuendam esse existimaverunt, ut minus tertiam partem
*to-be-diminished to-be they-thought so-that less-by a-third part*
acciperent, quam mater eorum vel avia fuerat
*they-should-receive than the-mother their or the-grandmother would-have-been*
acceptura, vel pater eorum vel avus paternus sive maternus,
*about-to-receive or father their or grandfather paternal or maternal*
quando femina mortua sit cuius de hereditate agitur,
*when the-woman dead be about whose inheritance it-is-treated*
hisque, licet soli sint, adeuntibus adgnatos minime vocabant.
*and-these although alone they-be entering the-agnates not-at-all they-called*
et quemadmodum lex duodecim tabularum filio mortuo
*and just-as the-statute of-the-twelve tables the-son dead*
nepotes vel neptes vel pronepotes et proneptes in
*grandsons or granddaughters or great-grandsons and great-granddaughters into*
locum patris sui ad successionem avi vocat: ita et
*the-place of-father their to the-succession of-the-grandfather calls so also*
principalis dispositio in locum matris suae vel aviae
*the-imperial enactment into the-place of-mother their or of-the-grandmother*
eos cum iam designata partis tertiae deminutione vocat.
*them with now designated of-the-part third diminution calls*
Sed nos, cum adhuc dubitatio manebat inter adgnatos et 16
*But we since still doubt remained between the-agnates and*
memoratos nepotes, partem quartam defuncti substantiae
*the-mentioned grandsons a-part fourth of-the-deceased's substance*
adgnatis sibi vindicantibus ex cuiusdam constitutionis
*the-agnates for-themselves claiming by of-a-certain constitution*
auctoritate, memoratam quidem constitutionem a nostro
*the-authority the-mentioned indeed constitution from our*
codice segregavimus neque inseri eam ex Theodosiano
*code we-have-separated nor to-be-inserted it from the-Theodosian*
codice in eo concessimus. nostra autem constitutione promulgata
*code in it have-we-granted by-our however constitution promulgated*

toti iuri eius derogatum est: et sanximus talibus
*to-the-whole law its derogated it-has-been and we-have-enacted such*
nepotibus ex filia vel pronepotibus ex nepte et
*grandsons by a-daughter or great-grandsons by a-granddaughter and*
deinceps superstitibus adgnatos nullam partem mortui
*further surviving the-agnates no part of-the-dead-man's*
successionis sibi vindicare, ne hi, qui ex transversa linea
*succession for-themselves claim lest those who from the-transverse line*
veniunt, potiores his habeantur, qui recto iure descendunt.
*come preferred to-those be-held who by-direct right descend*
quam constitutionem nostram optinere secundum sui vigorem
*which constitution our to-hold according-to its-own force*
et tempora et nunc sancimus: ita tamen ut, quemadmodum
*and the-times and now we-enact so however that just-as*
inter filios et nepotes ex filio antiquitas statuit non in capita
*between sons and grandsons by a-son antiquity established not by heads*
sed in stirpes dividi hereditatem, similiter nos inter filios
*but by stocks to-be-divided the-inheritance likewise we between sons*
et nepotes ex filia distributionem fieri iubemus, vel
*and grandsons by a-daughter the-distribution to-be-made order or*
inter omnes nepotes et neptes et alias deinceps personas,
*between all grandsons and granddaughters and other further persons*
ut utraque progenies matris suae vel patris, aviae vel
*so-that each offspring of-mother their or of-father of-grandmother or*
avi portionem sine ulla deminutione consequantur,
*of-grandfather the-portion without any diminution obtain*
ut, si forte unus vel duo ex una parte, ex altera tres
*so-that if perhaps one or two from one side from the-other three*
aut quattuor extent, unus aut duo dimidiam, alteri tres
*or four exist the-one or two half the-others three*
aut quattuor alteram dimidiam hereditatis habeant.
*or four the-other half of-the-inheritance have*

*Failing own heirs, the Twelve Tables call the nearest agnates, kin through males, counted when intestacy is certain. The jurists excluded women beyond sisters and the praetor called them as cognates; Justinian restores the Tables' equality, admits a brother's or sister's children, lets succession pass to the next degree, and calls a parent who emancipated.*

Si nemo suus heres vel eorum, quos inter suos heredes
*If no own heir or of-those whom among own heirs*
praetor vel constitutiones vocant, extat et successionem
*the-praetor or the-constitutions call exists and the-succession*
quoquo modo amplectatur: tunc ex lege duodecim
*in-any way embraces then by the-statute of-the-twelve*
tabularum ad adgnatum proximum hereditas pertinet.
*tables to the-agnate nearest the-inheritance belongs*
Sunt autem adgnati, ut primo quoque libro tradidimus, 1
*Are however agnates as in-the-first also book we-have-taught*
cognati per virilis sexus personas cognatione iuncti, quasi
*kin through of-the-male sex persons by-kinship joined as-if*
a patre cognati. itaque eodem patre nati fratres adgnati
*from the-father kin therefore of-the-same father born brothers agnates*
sibi sunt, qui et consanguinei vocantur, nec requiritur,
*to-each-other are who also consanguineous are-called nor is-it-required*
an etiam eandem matrem habuerint. item patruus
*whether also the-same mother they-had likewise a-paternal-uncle*
fratris filio et invicem is illi adgnatus est. eodem
*a-brother's to-the-son and in-turn he to-him agnate is in-the-same*
numero sunt fratres patrueles, id est qui ex duobus fratribus
*number are brothers cousins that is who from two brothers*
procreati sunt, qui etiam consobrini vocantur. qua ratione
*begotten are who also cousins-german are-called by-which reasoning*

etiam ad plures gradus adgnationis pervenire poterimus. hi
*also to more degrees of-agnation come we-shall-be-able those*
quoque, qui post mortem patris nascuntur, nanciscuntur
*also who after the-death of-the-father are-born obtain*
consanguinitatis iura. non tamen omnibus simul adgnatis
*of-consanguinity the-rights not however to-all together the-agnates*
dat lex hereditatem, sed his, qui tunc proximo gradu
*gives the-statute the-inheritance but to-those who then in-the-nearest degree*
sunt, cum certum esse coeperit aliquem intestatum decessisse.
*are when certain to-be has-begun that-someone intestate has-died*

2 Per adoptionem quoque adgnationis ius consistit, veluti
*Through adoption also of-agnation the-right exists as*
inter filios naturales et eos quos pater eorum adoptavit
*between sons natural and those whom father their adopted*
(nec dubium est, quin proprie consanguinei appellentur):
*nor doubtful is-it that properly consanguineous they-be-called*
item si quis ex ceteris adgnatis tuis, veluti frater aut
*likewise if anyone of the-other agnates your as a-brother or*
patruus aut denique is qui longiore gradu est, aliquem
*a-paternal-uncle or finally he who in-a-further degree is someone*
adoptaverit, adgnatos inter suos esse non dubitatur.
*has-adopted agnates among his-own to-be not it-is-doubted*

3 Ceterum inter masculos quidem adgnationis iure hereditas
*Moreover among males indeed of-agnation by-right the-inheritance*
etiam longissimo gradu ultro citroque capitur. quod ad
*even in-the-furthest degree to and-fro is-taken as-far-as to*
feminas vero ita placebat, ut ipsae consanguinitatis iure
*females however so it-was-held that they of-consanguinity by-right*
tantum capiant hereditatem, si sorores sint, ulterius non
*only take an-inheritance if sisters they-be further not*
capiant: masculi vero ad earum hereditates, etiam si
*they-take males however to their inheritances even if*

longissimo gradu sint, admittantur. qua de causa fratris tui
*in-the-furthest degree they-be are-admitted which for reason of-brother your*
aut patrui tui filiae vel amitae tuae hereditas ad
*or of-paternal-uncle your daughter's or of-paternal-aunt your the-inheritance to*
te pertinet, tua vero ad illas non pertinebat. quod ideo
*you belongs yours however to them not belonged which therefore*
ita constitutum erat, quia commodius videbatur ita iura
*so established was because more-convenient it-seemed so rights*
constitui, ut plerumque hereditates ad masculos confluerent.
*to-be-established that mostly inheritances to males should-flow*
sed quia sane iniquum erat in universum eas quasi
*but because indeed unfair it-was in general them as-if*
extraneas repelli, praetor eas ad bonorum possessionem
*outsiders to-be-repelled the-praetor them to of-the-goods possession*
admittit ea parte, qua proximitatis nomine bonorum
*admits in-that part in-which of-nearness on-account of-the-goods*
possessionem pollicetur: ex qua parte ita scilicet admittuntur,
*possession he-promises by which part so namely they-are-admitted*
si neque adgnatus ullus nec proximior cognatus interveniat.
*if neither an-agnate any nor a-nearer kinsman intervene*
Et haec quidem lex duodecim tabularum nullo modo 3a
*And this indeed the-statute of-the-twelve tables in-no way*
introduxit, sed simplicitatem legibus amicam amplexa
*introduced but simplicity to-laws friendly embracing*
simili modo omnes adgnatos sive masculos sive feminas
*in-like manner all agnates whether males or females*
cuiuscumque gradus ad similitudinem suorum invicem
*of-whatever degree on the-likeness of-own-heirs in-turn*
ad successionem vocabat: media autem iurisprudentia,
*to succession called the-middle however jurisprudence*
quae erat lege quidem duodecim tabularum iunior,
*which was than-the-statute indeed of-the-twelve tables younger*

imperiali autem dispositione anterior, suptilitate quadam
*than-the-imperial however enactment earlier by-a-subtlety certain*
excogitata praefatam differentiam inducebat et penitus eas
*devised the-aforesaid difference introduced and wholly them*
a successione adgnatorum repellebat, omni alia successione
*from the-succession of-agnates repelled every other succession*
incognita, donec praetores, paulatim asperitatem iuris civilis
*unknown until the-praetors gradually the-harshness of-law civil*
corrigentes sive quod deest adimplentes, humano proposito
*correcting or what is-lacking filling-up with-humane purpose*
alium ordinem suis edictis addiderunt et cognationis linea
*another order to-their edicts added and of-kinship the-line*
proximitatis nomine introducta per bonorum possessionem
*of-nearness on-account introduced through of-the-goods possession*
eas adiuvabant et pollicebantur his bonorum possessionem,
*them helped and promised them of-the-goods possession*
quae unde cognati appellatur.
*which by-which kin is-called*

3b Nos vero legem duodecim tabularum sequentes et eius
*We however the-statute of-the-twelve tables following and its*
vestigia in hac parte conservantes laudamus quidem praetores
*traces in this part preserving praise indeed the-praetors*
suae humanitatis, non tamen eos in plenum causae mederi
*their-own for-humanity not however them in full the-case to-heal*
invenimus: quare etenim uno eodemque gradu naturali
*we-have-found why for in-one and-the-same degree natural*
concurrente et adgnationis titulis tam in masculis quam
*concurring and of-agnation the-titles both in males and*
in feminis aequa lance constitutis masculis quidem dabatur
*in females in-equal balance established to-males indeed it-was-given*
ad successionem venire omnium adgnatorum, ex adgnatis
*to the-succession to-come of-all agnates of agnate*

autem mulieribus nullis penitus nisi soli sorori ad
*however women to-none at-all except alone to-the-sister to*
adgnatorum successionem patebat aditus? ideo in plenum
*of-agnates the-succession lay-open access therefore in full*
omnia reducentes et ad ius duodecim tabularum eandem
*all-things bringing-back and to the-law of-the-twelve tables the-same*
dispositionem exaequantes nostra constitutione sanximus
*arrangement making-equal by-our constitution we-have-enacted*
omnes legitimas personas, id est per virilem sexum
*all statutory persons that is through the-male sex*
descendentes, sive masculini sive feminini generis sunt, simili
*descending whether of-masculine or of-feminine gender they-be in-like*
modo ad iura successionis legitimae ab intestato vocari
*manner to the-rights of-succession statutory on intestacy to-be-called*
secundum gradus sui praerogativam nec ideo excludendas,
*according-to of-degree their the-prerogative nor therefore to-be-excluded*
quia consanguinitatis iura sicuti germanae non habent.
*because of-consanguinity the-rights as full-sisters not they-have*
Hoc etiam addendum nostrae constitutioni existimavimus, ut 4
*This also to-be-added to-our constitution we-have-thought that*
transferatur unus tantummodo gradus a iure cognationis
*be-transferred one only degree from the-law of-kinship*
in legitimam successionem, ut non solum fratris filius et
*into statutory succession so-that not only of-a-brother the-son and*
filia secundum quod iam definivimus ad successionem
*the-daughter according-to what already we-have-defined to the-succession*
patrui sui vocentur, sed etiam germanae consanguineae
*of-paternal-uncle their be-called but also of-a-full-sister consanguineous*
vel sororis uterinae filius et filia soli et non deinceps
*or of-a-sister uterine the-son and the-daughter alone and not further*
personae una cum his ad iura avunculi sui perveniant
*persons together with these to the-rights of-maternal-uncle their come*

et mortuo eo, qui patruus quidem est fratris sui filiis,
*and dead him who paternal-uncle indeed is brother's his to-sons*
avunculus autem sororis suae suboli, simili modo ab utroque
*maternal-uncle however sister's his to-offspring in-like manner from each*
latere succedant, tamquam si omnes ex masculis descendentes
*side they-succeed as if all from males descending*
legitimo iure veniant, scilicet ubi frater et soror superstites
*by-statutory right they-came namely where a-brother and a-sister surviving*
non sunt (his etenim personis praecedentibus et successionem
*not are those for persons preceding and the-succession*
admittentibus ceteri gradus remanent penitus semoti):
*accepting the-other degrees remain wholly removed*
videlicet hereditate non ad stirpes, sed in capita dividenda.
*namely the-inheritance not by stocks but by heads to-be-divided*
5 Si plures sint gradus adgnatorum, aperte lex duodecim
*If several there-be degrees of-agnates openly the-statute of-the-twelve*
tabularum proximum vocat: itaque si verbi gratia sit
*tables the-nearest calls therefore if of-example for-the-sake there-be*
frater defuncti et alterius fratris filius aut patruus,
*a-brother of-the-deceased and of-another brother a-son or a-paternal-uncle*
frater potior habetur. et quamvis singulari numero usa
*the-brother preferred is-held and although singular number having-used*
lex proximum vocet, tamen dubium non est, quin et,
*the-statute the-nearest calls yet doubtful not it-is that even*
si plures sint eiusdem gradus, omnes admittantur: nam et
*if several there-be of-the-same degree all are-admitted for also*
proprie proximus ex pluribus gradibus intellegitur et tamen
*properly nearest out-of several degrees is-understood and yet*
dubium non est, quin, licet unus sit gradus adgnatorum,
*doubtful not it-is that although one be the-degree of-agnates*
pertineat ad eos hereditas.
*belongs to them the-inheritance*

Proximus autem, si quidem nullo testamento facto quisque 6
*The-nearest however if indeed no testament made anyone*
decesserit, per hoc tempus requiritur, quo mortuus est is
*has-died during this time is-sought at-which dead is he*
cuius de hereditate quaeritur. quod si facto testamento
*whose about inheritance it-is-asked but if having-made a-testament*
quisquam decesserit, per hoc tempus requiritur, quo certum
*anyone has-died during this time is-sought at-which certain*
esse coeperit nullum ex testamento heredem extaturum: tum
*to-be has-begun no-one from the-testament heir about-to-be then*
enim proprie quisque intellegitur intestatus decessisse. quod
*for properly each is-understood intestate to-have-died which*
quidem aliquando longo tempore declaratur: in quo spatio
*indeed sometimes after-long time is-declared in which interval*
temporis saepe accidit, ut proximiore mortuo proximus esse
*of-time often it-happens that the-nearer dead the-nearest to-be*
incipiat, qui moriente testatore non erat proximus.
*begins he-who when-dying the-testator not was nearest*
Placebat autem in eo genere percipiendarum hereditatum 7
*It-was-held however in that kind of-taking inheritances*
successionem non esse, id est ut, quamvis proximus, qui
*succession not to-be that is that although the-nearest who*
secundum ea quae diximus vocatur ad hereditatem, aut
*according-to those-things which we-have-said is-called to the-inheritance either*
spreverit hereditatem aut antequam adeat decesserit, nihilo
*has-spurned the-inheritance or before he-enters has-died by-nothing*
magis legitimo iure sequentes admittuntur. quod iterum
*more by-statutory right the-following are-admitted which again*
praetores imperfecto iure corrigentes non in totum sine
*the-praetors the-imperfect law correcting not in full without*
adminiculo relinquebant, sed ex cognatorum ordine eos
*support left but from of-the-kin the-order them*

vocabant, utpote adgnationis iure eis recluso. sed nos
*they-called as-being of-agnation the-right to-them closed but we*
nihil deesse perfectissimo iuri cupientes nostra constitutione
*nothing to-be-lacking to-the-most-perfect law desiring by-our constitution*
sanximus, quam de iure patronatus humanitate suggerente
*have-enacted which about the-law of-patronage humanity suggesting*
protulimus, successionem in adgnatorum hereditatibus non
*we-issued succession in of-agnates inheritances not*
esse eis denegandam, cum satis absurdum erat, quod
*to-be to-them to-be-denied since quite absurd it-was that*
cognatis a praetore apertum est, hoc adgnatis esse reclusum,
*to-kin by the-praetor opened is this to-agnates to-be closed*
maxime cum in onere quidem tutelarum et primo gradu
*especially since in the-burden indeed of-tutelages also the-first degree*
deficiente sequens succedit et, quod in onere optinebat,
*failing the-following succeeds and what in the-burden held*
non erat in lucro permissum.
*not was in the-gain permitted*

8 Ad legitimam successionem nihilo minus vocatur etiam parens,
*To statutory succession by-nothing less is-called also the-parent*
qui contracta fiducia filium vel filiam, nepotem vel neptem
*who contracted trust a-son or a-daughter a-grandson or a-granddaughter*
ac deinceps emancipat. quod ex nostra constitutione omnimodo
*and further emancipates which by our constitution in-every-way*
inducitur, ut emancipationes liberorum semper videantur
*is-introduced that the-emancipations of-children always seem*
contracta fiducia fieri, cum apud antiquos non aliter hoc
*contracted trust to-be-made since among the-ancients not otherwise this*
optinebat, nisi specialiter contracta fiducia parens manumisisset.
*held unless specially contracted trust the-parent had-manumitted*

*The Tables barred a mother and her children from each other's estates; the praetor called them as cognates. Claudius gave a mother her children's estate as solace, and the Tertullian decree admitted a freeborn mother of three or a freedwoman of four, after the children's own heirs and their father, and to an illegitimate child's estate. Justinian gives every mother the full right, sharing only with brothers and sisters, but bars one who failed to seek tutors for her children.*

Lex duodecim tabularum ita stricto iure utebatur et
*The-statute of-the-twelve tables so strict law used and*
praeponebat masculorum progeniem et eos, qui per feminini
*preferred of-males the-offspring and those who through of-the-female*
sexus necessitudinem sibi iunguntur, adeo expellebat, ut
*sex the-relationship to-themselves are-joined so-far it-expelled that*
ne quidem inter matrem et filium filiamve ultro citroque
*not even between mother and son or-daughter to and-fro*
hereditatis capiendae ius daret, nisi quod praetores
*of-inheritance to-be-taken the-right it-gave except that the-praetors*
ex proximitate cognatorum eas personas ad successionem
*from the-nearness of-kin those persons to the-succession*
bonorum possessione unde cognati accommodata vocabant.
*of-the-goods by-the-possession by-which kin accommodated called*
Sed hae iuris angustiae postea emendatae sunt. et primus 1
*But these of-law narrownesses afterward amended were and first*
quidem divus Claudius matri ad solacium liberorum
*indeed the-deified Claudius to-a-mother for the-comfort of-children*
amissorum legitimam eorum detulit hereditatem.
*lost the-statutory their conferred inheritance*
Postea autem senatus consulto Tertulliano, quod divi 2
*Afterward however of-the-senate by-the-decree Tertullian which of-the-deified*
Hadriani temporibus factum est, plenissime de tristi
*Hadrian in-the-times made was most-fully about the-sad*

successione matri, non etiam aviae deferenda
*succession to-the-mother not also to-the-grandmother to-be-conferred*
cautum est: ut mater ingenua trium liberorum ius
*provided it-was that the-mother freeborn of-three children the-right*
habens, libertina quattuor ad bona filiorum filiarumve
*having freedwoman of-four to the-goods of-sons or-daughters*
admittatur intestatorum mortuorum, licet in potestate
*be-admitted intestate dead although in the-power*
parentis est, ut scilicet, cum alieno iuri subiecta est,
*of-a-parent she-is so-that namely when to-another's right subject she-is*
iussu eius adeat, cuius iuri subiecta est.
*by-order his she-enter to-whose right subject she-is*

3 Praeferuntur autem matri liberi defuncti, qui sui sunt
*Are-preferred however to-the-mother the-children of-the-deceased who own are*
quive suorum loco, sive primi gradus sive ulterioris.
*or-who of-own in-the-place whether of-the-first degree or further*
sed et filiae suae mortuae filius vel filia opponitur
*but also of-a-daughter her dead the-son or daughter is-set-before*
ex constitutionibus matri defunctae, id est aviae
*by the-constitutions to-the-mother of-the-deceased that is to-the-grandmother*
suae. pater quoque utriusque, non etiam avus vel
*their the-father also of-each not also the-grandfather or*
proavus matri anteponitur, scilicet cum inter eos
*great-grandfather to-the-mother is-preferred namely when between them*
solos de hereditate agitur. frater autem consanguineus
*alone about the-inheritance it-is-treated a-brother however consanguineous*
tam filii quam filiae excludebat matrem: soror autem
*both of-a-son and of-a-daughter excluded the-mother a-sister however*
consanguinea pariter cum matre admittebatur: sed si fuerat
*consanguineous equally with the-mother was-admitted but if there-was*
frater et soror consanguinei et mater liberis honorata,
*a-brother and a-sister consanguineous and the-mother with-children honored*

frater quidem matrem excludebat, communis autem erat
*the-brother indeed the-mother excluded common however was*
hereditas ex aequis partibus fratri et sorori.
*the-inheritance in equal parts to-the-brother and to-the-sister*
Sed nos constitutione, quam in codice nostro nomine 4
*But we by-the-constitution which in code our with-name*
decorato posuimus, matri subveniendum esse existimavimus,
*adorned we-have-placed the-mother to-be-helped to-be we-thought*
respicientes ad naturam et puerperium et periculum et saepe
*looking to nature and childbirth and the-danger and often*
mortem ex hoc casu matribus illatam. ideoque impium esse
*death from this occurrence to-mothers brought and-therefore impious to-be*
credidimus casum fortuitum in eius admitti detrimentum:
*we-believed a-chance fortuitous to her to-be-admitted detriment*
si enim ingenua ter vel libertina quater non peperit,
*if for freeborn thrice or freedwoman four-times not she-has-given-birth*
immerito defraudabatur successione suorum liberorum: quid
*undeservedly she-was-defrauded of-the-succession of-her children what*
enim peccavit, si non plures, sed paucos pepererit? et
*for has-she-sinned if not more but few she-has-borne and*
dedimus ius legitimum plenum matribus sive ingenuis
*we-have-given the-right statutory full to-mothers whether freeborn*
sive libertinis, etsi non ter enixae fuerint vel quater, sed
*or freedwomen even-if not thrice delivered they-have-been or four-times but*
eum tantum vel eam, qui quaeve morte intercepti sunt, ut
*him only or her who or-who by-death cut-off are so-that*
et sic vocentur in liberorum suorum legitimam successionem.
*also thus they-be-called to children's their statutory succession*
Sed cum antea constitutiones iura legitima perscrutantes 5
*But since before the-constitutions the-rights statutory examining*
partim matrem adiuvabant, partim eam praegravabant et
*partly the-mother helped partly her burdened and*

non in solidum eam vocabant, sed in quibusdam casibus
*not in whole her called but in certain cases*
tertiam partem ei abstrahentes certis legitimis dabant
*a-third part from-her taking-away to-certain statutory they-gave*
personis, in aliis autem contrarium faciebant: nobis visum
*persons in others however the-contrary they-did to-us seemed-good*
est recta et simplici via matrem omnibus legitimis
*it-has by-a-straight and simple way the-mother to-all statutory*
personis anteponi et sine ulla deminutione filiorum suorum
*persons to-be-preferred and without any diminution of-sons her*
successionem accipere, excepta fratris et sororis persona,
*the-succession to-receive excepted of-a-brother and of-a-sister the-person*
sive consanguinei sint sive sola cognationis iura habentes,
*whether consanguineous they-be or only of-kinship the-rights having*
ut quemadmodum eam toto alio ordini legitimo
*so-that just-as her to-the-whole other order statutory*
praeposuimus, ita omnes fratres et sorores, sive legitimi
*we-have-preferred so all brothers and sisters whether statutory*
sint sive non, ad capiendas hereditates simul vocemus, ita
*they-be or not to taking inheritances together we-call so*
tamen ut, si quidem solae sorores cognatae vel adgnatae et
*however that if indeed only sisters cognate or agnate and*
mater defuncti vel defunctae supersint, dimidiam
*the-mother of-the-deceased-man or of-the-deceased-woman survive half*
quidem mater, alteram vero dimidiam partem omnes sorores
*indeed the-mother the-other however half part all the-sisters*
habeant, si vero matre superstite et fratre vel fratribus
*have if however the-mother surviving and a-brother or brothers*
solis vel etiam cum sororibus sive legitima sive sola
*alone or even with sisters whether statutory or only*

cognationis iura habentibus intestatus quis vel intestata
*of-kinship the-rights having intestate anyone or intestate-woman*
moriatur, in capita distribuatur eius hereditas.
*die by heads be-distributed his inheritance*
Sed quemadmodum nos matribus prospeximus, ita eas 6
*But just-as we for-mothers have-provided so them*
oportet suae suboli consulere: scituris eis, quod, si
*it-behooves their-own for-offspring to-take-thought about-to-know they that if*
tutores liberis non petierint vel in locum remoti
*tutors for-the-children not they-have-sought or in place of-one-removed*
vel excusati intra annum petere neglexerint, ab eorum
*or excused within a-year to-seek they-have-neglected from their*
impuberum morientium successione merito repellentur.
*under-age dying the-succession deservedly they-will-be-repelled*
Licet autem vulgo quaesitus sit filius filiave, potest ad 7
*Although however promiscuously begotten be the-son or-daughter can to*
bona eius mater ex Tertulliano senatus consulto admitti.
*the-goods his the-mother by the-Tertullian of-the-senate decree be-admitted*

## IV · THE ORFITIAN DECREE OF THE SENATE

*The Orfitian decree admitted children to their mother's intestate estate, before her kin and agnates, and later constitutions admitted grandchildren; these successions survive loss of status, and children born out of wedlock share in them. When one of several statutory heirs fails to take, his share accrues to those who entered, even to their heirs.*

Per contrarium autem ut liberi ad bona matrum
*By the-contrary however that children to the-goods of-mothers*
intestatarum admittantur, senatus consulto Orfitiano effectum
*intestate be-admitted of-the-senate by-the-decree Orfitian effected*

est, quod latum est Orfito et Rufo consulibus, divi
*it-was which passed was Orfitus and Rufus consuls of-the-deified*
Marci temporibus. et data est tam filio quam filiae
*Marcus in-the-times and given was both to-the-son and to-the-daughter*
legitima hereditas, etiamsi alieno iuri subiecti sunt: et
*statutory the-inheritance even-if to-another's right subject they-are and*
praeferuntur et consanguineis et adgnatis defunctae matris.
*they-are-preferred both to-the-consanguineous and to-the-agnates of-the-deceased mother*

1 Sed cum ex hoc senatus consulto nepotes ad aviae
*But since by this of-the-senate decree grandsons to the-grandmother's*
successionem legitimo iure non vocabantur, postea hoc
*succession by-statutory right not were-called afterward this*
constitutionibus principalibus emendatum est, ut ad
*by-constitutions imperial amended was so-that on*
similitudinem filiorum filiarumque et nepotes et neptes
*the-likeness of-sons and-daughters both grandsons and granddaughters*
vocentur.
*be-called*

2 Sciendum autem est huiusmodi successiones, quae a
*To-be-known however it-is of-this-kind successions which by*
Tertulliano et Orfitiano deferuntur, capitis deminutione non
*the-Tertullian and Orfitian are-conferred of-status by-loss not*
peremi propter illam regulam, qua novae hereditates
*to-be-destroyed on-account-of that rule by-which new inheritances*
legitimae capitis deminutione non pereunt, sed illae solae
*statutory of-status by-loss not perish but those only*
quae ex lege duodecim tabularum deferuntur.
*which by the-statute of-the-twelve tables are-conferred*

Novissime sciendum est etiam illos liberos, qui vulgo 3
*Finally to-be-known it-is also those children who promiscuously*
quaesiti sunt, ad matris hereditatem ex hoc senatus
*begotten are to the-mother's inheritance by this of-the-senate*
consulto admitti.
*decree to-be-admitted*

Si ex pluribus legitimis heredibus quidam omiserint hereditatem 4
*If of several statutory heirs some have-given-up the-inheritance*
vel morte vel alia causa impediti fuerint quominus adeant:
*or by-death or other cause prevented have-been from entering*
reliquis qui adierint adcrescit illorum portio et, licet ante
*to-the-rest who have-entered accrues their portion and although before*
decesserint qui adierint, ad heredes tamen eorum pertinet.
*have-died those-who have-entered to heirs however their it-belongs*

## V · THE SUCCESSION OF COGNATES

*After own and statutory heirs the praetor calls the nearest cognates, among them agnates who lost status, kin through women, children given in adoption, and children born out of wedlock, who have no agnates; the Anastasian statute calls emancipated brothers and sisters to a brother's or sister's statutory estate with a reduced share. Agnates take even in the tenth degree, but cognates only to the sixth and a second cousin's child in the seventh.*

Post suos heredes eosque, quos inter suos heredes praetor
*After the-own heirs and-those whom among the-own heirs the-praetor*
et constitutiones vocant, et post legitimos (quo numero
*and the-constitutions call and after the-statutory in-which number*
sunt adgnati et hi, quos in locum adgnatorum tam supra
*are the-agnates and those whom into the-place of-agnates both the-above*

dicta senatus consulta quam nostra erexit constitutio)
*mentioned of-the-senate decrees and our has-raised constitution*
proximos cognatos praetor vocat.
*the-nearest kin the-praetor calls*

1 Qua parte naturalis cognatio spectatur. nam adgnati capite
*In-which part natural kinship is-regarded for agnates in-status*
deminuti quique ex his progeniti sunt ex lege
*diminished and-those-who from them begotten are by the-statute*
duodecim tabularum inter legitimos non habentur, sed a
*of-the-twelve tables among the-statutory not are-held but by*
praetore tertio ordine vocantur, exceptis solis tantummodo
*the-praetor in-the-third order are-called excepting alone only*
fratre et sorore emancipatis, non etiam liberis eorum,
*the-brother and sister emancipated not also the-children their*
quos lex Anastasiana cum fratribus integri iuris constitutis
*whom the-statute Anastasian with brothers of-intact right established*
vocat quidem ad legitimam fratris hereditatem sive sororis,
*calls indeed to the-statutory of-a-brother inheritance or of-a-sister*
non aequis tamen partibus, sed cum aliqua deminutione, quam
*not in-equal however parts but with some diminution which*
facile est ex ipsius constitutionis verbis colligere, aliis vero
*easy it-is from of-the-very constitution the-words to-gather to-other however*
adgnatis inferioris gradus, licet capitis deminutionem passi
*agnates of-a-lower degree although of-status loss suffered*
non sunt, tamen eos anteponit et procul dubio cognatis.
*not they-have yet them it-prefers and beyond doubt to-kin*

2 Hos etiam, qui per feminini sexus personas ex transverso
*Those also who through of-the-female sex persons from the-transverse*
cognatione iunguntur, tertio gradu proximitatis nomine
*by-kinship are-joined in-the-third degree of-nearness on-account*
praetor ad successionem vocat.
*the-praetor to the-succession calls*

Liberi quoque, qui in adoptiva familia sunt, ad naturalium 3
*Children also who in the-adoptive family are to of-the-natural*
parentum hereditatem hoc eodem gradu vocantur.
*parents the-inheritance in-this same degree are-called*
Vulgo quaesitos nullum habere adgnatum manifestum 4
*Promiscuously begotten no to-have agnate manifest*
est, cum adgnatio a patre, cognatio sit a matre, hi
*it-is since agnation from the-father kinship is from the-mother these*
autem nullum patrem habere intelleguntur. eadem ratione
*however no father to-have are-understood by-the-same reasoning*
nec inter se quidem possunt videri consanguinei esse,
*not among themselves even can to-seem consanguineous to-be*
quia consanguinitatis ius species est adgnationis: tantum
*because of-consanguinity the-right a-species is of-agnation only*
igitur cognati sunt sibi, sicut et matris cognatis.
*therefore kin they-are to-each-other as also to-the-mother's kin*
itaque omnibus istis ea parte competit bonorum possessio,
*therefore to-all these in-that part belongs of-the-goods possession*
qua proximitatis nomine cognati vocantur.
*in-which of-nearness on-account kin are-called*
Hoc loco et illud necessario admonendi sumus adgnationis 5
*In-this place also that necessarily to-be-reminded we-are of-agnation*
quidem iure admitti aliquem ad hereditatem et si
*indeed by-right to-be-admitted someone to the-inheritance even if*
decimo gradu sit, sive de lege duodecim tabularum
*in-the-tenth degree he-be whether about the-statute of-the-twelve tables*
quaeramus, sive de edicto quo praetor legitimis heredibus
*we-inquire or about the-edict in-which the-praetor to-statutory heirs*
daturum se bonorum possessionem pollicetur. proximitatis
*about-to-give himself of-the-goods possession promises of-nearness*
vero nomine his solis praetor promittit bonorum
*however on-account to-those alone the-praetor promises of-the-goods*

possessionem, qui usque ad sextum gradum cognationis
*possession who up to the-sixth degree of-kinship*
sunt, et ex septimo a sobrino sobrinaque nato nataeve.
*are and of the-seventh from a-second-cousin or-a-female-one a-son or-daughter*

## VI · DEGREES OF KINSHIP

*Kinship runs upward, downward, and sideways; the names for each degree are given up to the sixth, from parents and children through uncles, aunts, and cousins of every kind. Justinian lets children born in slavery and later freed succeed to their parents and to each other. Nearness alone does not decide: own heirs, however remote, and agnates come before nearer cognates.*

Hoc loco necessarium est exponere, quemadmodum gradus
*In-this place necessary it-is to-set-out how the-degrees*
cognationis numerentur. qua in re inprimis admonendi sumus
*of-kinship are-counted which in matter first to-be-reminded we-are*
cognationem aliam supra numerari, aliam infra, aliam ex
*kinship some upward to-be-counted some downward some from*
transverso, quae etiam a latere dicitur. superior cognatio est
*the-transverse which also from the-side is-called the-upper kinship is*
parentium, inferior liberorum, ex transverso fratrum sororumve
*of-parents the-lower of-children from the-transverse of-brothers or-sisters*
eorumque, qui ex his progenerantur, et convenienter
*and-of-those who from them are-begotten and consistently*
patrui amitae avunculi materterae. et
*of-a-paternal-uncle of-a-paternal-aunt of-a-maternal-uncle of-a-maternal-aunt and*
superior quidem et inferior cognatio a primo gradu
*the-upper indeed and the-lower kinship from the-first degree*
incipit: at ea, quae ex transverso numeratur, a secundo.
*begins but that which from the-transverse is-counted from the-second*

Primo gradu est supra pater mater, infra filius filia. 1
*In-the-first degree is upward the-father the-mother downward the-son the-daughter*
Secundo supra avus avia, infra nepos 2
*In-the-second upward the-grandfather the-grandmother downward the-grandson*
neptis, ex transverso frater soror.
*the-granddaughter from the-transverse the-brother the-sister*
Tertio supra proavus proavia, infra 3
*In-the-third upward the-great-grandfather the-great-grandmother downward*
pronepos proneptis, ex transverso fratris sororisque
*the-great-grandson the-great-granddaughter from the-transverse of-a-brother and-of-a-sister*
filius filia et convenienter patruus amita
*the-son the-daughter and consistently the-paternal-uncle the-paternal-aunt*
avunculus matertera. patruus est patris frater, qui
*the-maternal-uncle the-maternal-aunt the-paternal-uncle is the-father's brother who*
Graece πάτρως vocatur: avunculus est matris frater, qui
*in-Greek patros is-called the-maternal-uncle is the-mother's brother who*
apud Graecos proprie μήτρως appellatur: et promiscue θεῖος
*among the-Greeks properly metros is-called and indiscriminately theios*
dicitur. amita est patris soror, matertera vero
*is-called the-paternal-aunt is the-father's sister the-maternal-aunt however*
matris soror: utraque θεία vel apud quosdam τηθίς appellatur.
*the-mother's sister each theia or among some tethis is-called*
Quarto gradu supra abavus abavia, 4
*In-the-fourth degree upward the-great-great-grandfather the-great-great-grandmother*
infra abnepos abneptis, ex transverso
*downward the-great-great-grandson the-great-great-granddaughter from the-transverse*
fratris sororisque nepos neptis et convenienter
*of-a-brother and-of-a-sister the-grandson the-granddaughter and consistently*
patruus magnus amita magna (id est avi
*the-paternal-uncle great the-paternal-aunt great that is of-the-grandfather*
frater et soror), item avunculus magnus matertera
*the-brother and sister likewise the-maternal-uncle great the-maternal-aunt*

magna (id est aviae frater et soror), consobrinus
*great that is of-the-grandmother the-brother and sister a-cousin-german*
consobrina (id est qui quaeve ex fratribus aut
*a-cousin-german-female that is who or-who-female from brothers or*
sororibus progenerantur). sed quidam recte consobrinos
*sisters are-begotten but some rightly cousins-german*
eos proprie putant dici, qui ex duabus sororibus
*them properly think to-be-called who from two sisters*
progenerantur, quasi consororinos: eos vero, qui ex duobus
*are-begotten as-if consororini those however who from two*
fratribus progenerantur, proprie fratres patrueles vocari
*brothers are-begotten properly brothers patruel to-be-called*
(si autem ex duobus fratribus filiae nascantur, sorores
*if however from two brothers daughters are-born sisters*
patrueles appellantur): at eos, qui ex fratre et sorore
*patruel they-are-called but those who from a-brother and a-sister*
propagantur, amitinos proprie dici (amitae tuae filii
*are-propagated amitini properly to-be-called of-paternal-aunt your the-sons*
consobrinum te appellant, tu illos amitinos).
*cousin-german you call you them amitini*
5 Quinto supra atavus atavia,
*In-the-fifth upward the-great-great-great-grandfather the-great-great-great-grandmother*
infra adnepos adneptis, ex
*downward the-great-great-great-grandson the-great-great-great-granddaughter from*
transverso fratris sororisque pronepos proneptis
*the-transverse of-a-brother and-of-a-sister the-great-grandson the-great-granddaughter*
et convenienter propatruus proamita (id
*and consistently the-great-great-paternal-uncle the-great-great-paternal-aunt that*
est proavi frater et soror), proavunculus
*is of-the-great-grandfather the-brother and sister the-great-great-maternal-uncle*
promatertera (id est proaviae frater et soror),
*the-great-great-maternal-aunt that is of-the-great-grandmother the-brother and sister*

item fratris patruelis sororis patruelis, consobrini et
*likewise of-a-brother patruel of-a-sister patruel of-a-cousin-german and*
consobrinae, amitini amitinae filius filia, proprior
*of-a-cousin-german-female of-an-amitinus of-an-amitina the-son the-daughter nearer*
sobrinus sobrina (hi sunt patrui magni
*a-second-cousin a-second-cousin-female these are of-the-paternal-uncle great*
amitae magnae avunculi magni materterae
*of-the-paternal-aunt great of-the-maternal-uncle great of-the-maternal-aunt*
magnae filius filia).
*great the-son the-daughter*
Sexto gradu sunt supra tritavus 6
*In-the-sixth degree are upward the-great-great-great-great-grandfather*
tritavia, infra trinepos
*the-great-great-great-great-grandmother downward the-great-great-great-great-grandson*
trineptis, ex transverso fratris sororisque
*the-great-great-great-great-granddaughter from the-transverse of-a-brother and-of-a-sister*
abnepos abneptis et convenienter
*the-great-great-grandson the-great-great-granddaughter and consistently*
abpatruus abamita (id est
*the-great-great-great-paternal-uncle the-great-great-great-paternal-aunt that is*
abavi frater et soror) abavunculus
*of-the-great-great-grandfather the-brother and sister the-great-great-great-maternal-uncle*
abmatertera (id est abaviae frater
*the-great-great-great-maternal-aunt that is of-the-great-great-grandmother the-brother*
et soror), item sobrini sobrinaeque (id est qui
*and sister likewise second-cousins and-second-cousins-female that is who*
quaeve ex fratribus vel sororibus patruelibus vel
*or-who-female from brothers or sisters patruel or*
consobrinis vel amitinis progenerantur).
*cousins-german or amitini are-begotten*

7 Hactenus ostendisse sufficiet, quemadmodum gradus
*So-far to-have-shown will-suffice how the-degrees*
cognationis numerentur. namque ex his palam est intellegere,
*of-kinship are-counted for from these plain it-is to-understand*
quemadmodum ulterius quoque gradus numerare debemus:
*how further also the-degrees to-count we-ought*
quippe semper generata quaeque persona gradum adiciat,
*since always begotten every person a-degree adds*
ut longe facilius sit respondere, quoto quisque gradu sit,
*so-that far easier it-be to-answer in-what each degree he-is*
quam propria cognationis appellatione quemquam denotare.
*than by-the-proper of-kinship name anyone to-denote*

8 Adgnationis quoque gradus eodem modo numerantur.
*Of-agnation also the-degrees in-the-same way are-counted*

9 Sed cum magis veritas oculata fide quam per aures
*But since rather truth by-eyewitness faith than through the-ears*
animis hominum infigitur, ideo necessarium duximus post
*in-the-minds of-men is-fixed therefore necessary we-thought after*
narrationem graduum etiam eos praesenti libro inscribi,
*the-account of-the-degrees also them in-the-present book to-be-drawn*
quatenus possint et auribus et inspectione adulescentes
*so-that they-can both by-ears and by-inspection young-men*
perfectissimam graduum doctrinam adipisci.
*the-most-perfect of-degrees doctrine obtain*

10 Illud certum est ad serviles cognationes illam partem edicti,
*That certain is to servile kinships that part of-the-edict*
qua proximitatis nomine bonorum possessio promittitur,
*in-which of-nearness on-account of-the-goods possession is-promised*
non pertinere: nam nec ulla antiqua lege talis cognatio
*not to-pertain for neither by-any ancient statute such kinship*
computabatur. sed nostra constitutione, quam pro iure
*was-reckoned but by-our constitution which for the-law*

patronatus fecimus (quod ius usque ad nostra tempora satis
*of-patronage we-made which law up to our times quite*
obscurum atque nube plenum et undique confusum fuerat) et
*obscure and of-cloud full and on-all-sides confused had-been also*
hoc humanitate suggerente concessimus, ut si quis in servili
*this humanity suggesting we-have-granted that if anyone in servile*
consortio constitutus liberum vel liberos habuerit sive ex
*union placed a-child or children has-had whether from*
libera sive servilis condicionis muliere, vel contra serva mulier
*a-free or of-servile condition woman or conversely a-slave woman*
ex libero vel servo habuerit liberos cuiuscumque sexus, et
*from a-free-man or a-slave has-had children of-whatever sex and*
ad libertatem his pervenientibus et hi, qui ex servili ventre
*to freedom they coming both those who from a-servile womb*
nati sunt, libertatem meruerunt, vel dum mulieres liberae erant,
*born are freedom have-earned or while the-women free were*
ipsi in servitutem eos habuerunt et postea ad libertatem
*they-themselves in slavery them had and afterward to freedom*
pervenerunt, ut hi omnes ad successionem vel patris vel
*have-come that these all to the-succession either of-the-father or*
matris veniant, patronatus iure in hac parte sopito: hos
*of-the-mother come of-patronage the-right in this part lulled-to-sleep these*
enim liberos non solum in suorum parentium successionem,
*for children not only into of-their-own parents the-succession*
sed etiam alterum in alterius mutuam successionem vocavimus,
*but also one into of-the-other the-mutual succession we-have-called*
ex illa lege specialiter eos vocantes, sive soli inveniantur
*by that statute specially them calling whether alone they-be-found*
qui in servitute nati et postea manumissi sunt, sive una
*who in slavery born and afterward manumitted are or together*
cum aliis, qui post libertatem parentium concepti sunt sive
*with others who after the-freedom of-the-parents conceived are whether*

ex eadem matre vel eodem patre sive ex aliis nuptiis, ad
*from the-same mother or the-same father or from other marriages on*
similitudinem eorum qui ex iustis nuptiis procreati sunt.
*the-likeness of-those who from lawful marriage begotten are*
11 Repetitis itaque omnibus quae iam tradidimus apparet non
*Repeated therefore all-things which already we-have-taught it-appears not*
semper eos, qui parem gradum cognationis optinent, pariter
*always those who an-equal degree of-kinship hold equally*
vocari eoque amplius nec eum quidem, qui proximior
*to-be-called and further not him even who nearer*
sit cognatus, semper potiorem esse. cum enim prima causa
*be kinsman always preferred to-be since for the-first place*
sit suorum heredum quosque inter suos heredes iam
*is of-own heirs and-those-whom among own heirs already*
enumeravimus, apparet pronepotem vel abnepotem defuncti
*we-have-listed it-appears the-great-grandson or great-great-grandson of-the-deceased*
potiorem esse quam fratrem aut patrem matremque defuncti,
*preferred to-be than the-brother or the-father and-mother of-the-deceased*
cum alioquin pater quidem et mater, ut supra quoque
*since otherwise the-father indeed and the-mother as above also*
tradidimus, primum gradum cognationis optineant, frater
*we-have-taught the-first degree of-kinship hold the-brother*
vero secundum, pronepos autem tertio gradu sit cognatus
*however the-second the-great-grandson however in-the-third degree be kin*
et abnepos quarto: nec interest, in potestate
*and the-great-great-grandson in-the-fourth nor does-it-matter in the-power*
morientis fuerit an non fuerit, quod vel emancipatus vel
*of-the-dying-man he-was or not was because either emancipated or*
ex emancipato aut ex feminino sexu propagatus est.
*from an-emancipated or from the-female sex propagated he-is*

Amotis quoque suis heredibus quosque inter suos heredes 12
*Removed also the-own heirs and-those-whom among own heirs*
vocari diximus, adgnatus, qui integrum ius adgnationis
*to-be-called we-have-said an-agnate who intact the-right of-agnation*
habet, etiamsi longissimo gradu sit, plerumque potior habetur
*has even-if in-the-furthest degree he-be mostly preferred is-held*
quam proximior cognatus: nam patrui nepos vel
*to a-nearer kinsman for of-a-paternal-uncle the-grandson or*
pronepos avunculo vel materterae praefertur. totiens
*great-grandson to-the-maternal-uncle or to-the-maternal-aunt is-preferred so-often*
igitur dicimus aut potiorem haberi eum qui proximiorem
*therefore we-say either preferred to-be-held him who a-nearer*
gradum cognationis optinet, aut pariter vocari eos qui
*degree of-kinship holds or equally to-be-called those who*
cognati sint, quotiens neque suorum heredum iure quique
*kin are as-often-as neither of-own heirs by-right and-those-who*
inter suos heredes sunt neque adgnationis iure aliquis
*among own heirs are nor of-agnation by-right anyone*
praeferri debeat secundum ea quae tradidimus, exceptis
*be-preferred ought according-to those-things which we-have-taught except*
fratre et sorore emancipatis, qui ad successionem fratrum
*the-brother and sister emancipated who to the-succession of-brothers*
vel sororum vocantur, qui et si capite deminuti sunt,
*or sisters are-called who even if in-status diminished they-are*
tamen praeferuntur ceteris ulterioris gradus adgnatis.
*yet are-preferred to-the-other of-further degree agnates*

*The Twelve Tables and the praetor gave a patron rights in his freedman's estate; Justinian lets a poorer freedman will freely and gives the patron a third of a richer one's.*

Nunc de libertorum bonis videamus. olim itaque licebat
*Now about of-freedmen the-goods let-us-see formerly and-so it-was-allowed*
liberto patronum suum impune testamento praeterire:
*for-a-freedman patron his-own with-impunity in-his-testament to-pass-over*
nam ita demum lex duodecim tabularum ad hereditatem
*for so only-then the-statute of-the-twelve tables to the-inheritance*
liberti vocabat patronum, si intestatus mortuus esset
*of-the-freedman called the-patron if intestate dead had-been*
libertus nullo suo herede relicto. itaque intestato quoque
*the-freedman no own heir left therefore intestate also*
mortuo liberto, si is suum heredem reliquisset, nihil in
*dead the-freedman if he own heir had-left nothing in*
bonis eius patrono ius erat. et si quidem ex naturalibus
*goods his for-the-patron right there-was and if indeed of natural*
liberis aliquem suum heredem reliquisset, nulla videbatur
*children some own heir he-had-left no seemed*
querella: si vero adoptivus filius esset, aperte iniquum erat
*complaint if however an-adopted son were openly unfair it-was*
nihil iuris patrono superesse.
*nothing of-right for-the-patron to-remain*

1 Qua de causa postea praetoris edicto haec iuris iniquitas
*Which for reason afterward the-praetor's by-edict this of-law unfairness*
emendata est. sive enim faciebat testamentum libertus,
*amended was whether for made a-testament the-freedman*
iubebatur ita testari, ut patrono partem dimidiam
*he-was-ordered so to-make-his-will that to-the-patron the-part half*

bonorum suorum relinqueret: et si aut nihil aut minus
*of-the-goods his he-should-leave and if either nothing or less-than*
partis dimidiae reliquerat, dabatur patrono contra tabulas
*the-part half he-had-left was-given to-the-patron against the-tablets*
testamenti partis dimidiae bonorum possessio. si vero
*of-the-testament of-the-part half of-the-goods possession if however*
intestatus moriebatur suo herede relicto filio adoptivo,
*intestate he-died as-own heir left a-son adopted*
dabatur aeque patrono contra hunc suum heredem partis
*was-given equally to-the-patron against this own heir of-the-part*
dimidiae bonorum possessio. prodesse autem liberto solebant
*half of-the-goods possession to-avail however the-freedman were-wont*
ad excludendum patronum naturales liberi, non solum quos in
*for excluding the-patron natural children not only whom in*
potestate mortis tempore habebat, sed etiam emancipati et in
*power of-death at-the-time he-had but also the-emancipated and into*
adoptionem dati, si modo ex aliqua parte heredes scripti erant
*adoption given if only in some part heirs written they-were*
aut praeteriti contra tabulas bonorum possessionem ex edicto
*or passed-over against the-tablets of-the-goods possession by the-edict*
petierant: nam exheredati nullo modo repellebant patronum.
*had-sought for the-disinherited in-no way repelled the-patron*
Postea lege Papia adaucta sunt iura patronorum, qui 2
*Afterward by-the-statute Papian increased were the-rights of-patrons who*
locupletiores libertos habebant. cautum est enim, ut ex
*wealthier freedmen had provided it-was for that from*
bonis eius, qui sestertiorum centum millium patrimonium
*the-goods of-him who of-sesterces a-hundred thousand a-patrimony*
reliquerit et pauciores quam tres liberos habebat, sive
*has-left and fewer than three children had whether*
is testamento facto sive intestato mortuus erat, virilis
*he a-testament made or intestate dead was a-per-head*

pars patrono debebatur. itaque cum unum filium filiamve
*share to-the-patron was-owed therefore when one son or-daughter*
heredem reliquerit libertus, perinde pars dimidia patrono
*as-heir had-left the-freedman equally the-part half to-the-patron*
debebatur, ac si is sine ullo filio filiave decessisset: cum
*was-owed as if he without any son or-daughter had-died when*
duos duasve heredes reliquerat, tertia pars debebatur
*two or-two-daughters as-heirs he-had-left a-third part was-owed*
patrono: si tres reliquerat, repellebatur patronus.
*to-the-patron if three he-had-left was-repelled the-patron*

3 Sed nostra constitutio, quam pro omnium notione Graeca
*But our constitution which for of-all the-understanding in-the-Greek*
lingua compendioso tractatu habito composuimus, ita
*language a-concise treatment having-been-had we-have-composed so*
huiusmodi causas definivit, ut si quidem libertus vel liberta
*of-this-kind cases defined that if indeed the-freedman or freedwoman*
minores centenariis sint, id est minus centum aureis habeant
*less than-centenarians be that is less-than a-hundred gold-pieces have*
substantiam (sic enim legis Papiae summam interpretati
*substance thus for of-the-statute Papian the-sum interpreted*
sumus, ut pro mille sestertiis unus aureus computetur),
*we-have that for a-thousand sesterces one gold-piece be-reckoned*
nullum locum habeat patronus in eorum successionem, si
*no place have the-patron in their succession if*
tamen testamentum fecerint. sin autem intestati decesserint
*however a-testament they-have-made but-if however intestate they-have-died*
nullo liberorum relicto, tunc patronatus ius, quod erat ex
*none of-children left then of-patronage the-right which was by*
lege duodecim tabularum, integrum reservavit. cum vero
*the-statute of-the-twelve tables intact it-has-reserved when however*
maiores centenariis sint, si heredes vel bonorum possessores
*greater than-centenarians they-be if as-heirs or of-the-goods possessors*

liberos habeant sive unum sive plures cuiuscumque sexus vel
*children they-have whether one or several of-whatever sex or*
gradus, ad eos successionem parentum deduximus, omnibus
*degree to them the-succession of-the-parents we-have-brought all*
patronis una cum sua progenie semotis. sin autem sine
*patrons together with their offspring set-aside but-if however without*
liberis decesserint, si quidem intestati, ad omnem hereditatem
*children they-have-died if indeed intestate to the-whole inheritance*
patronos patronasque vocavimus: si vero testamentum quidem
*patrons and-patronesses we-have-called if however a-testament indeed*
fecerint, patronos autem vel patronas praeterierint, cum
*they-have-made patrons however or patronesses have-passed-over when*
nullos liberos haberent vel habentes eos exheredaverint, vel
*no children they-had or having them have-disinherited or*
mater sive avus maternus eos praeterierit, ita ut non
*the-mother or the-grandfather maternal them has-passed-over so that not*
possint argui inofficiosa eorum testamenta: tunc ex nostra
*they-can be-charged as-undutiful their testaments then by our*
constitutione per bonorum possessionem contra tabulas non
*constitution through of-the-goods possession against the-tablets not*
dimidiam, ut ante, sed tertiam partem bonorum liberti
*half as before but a-third part of-the-goods of-the-freedman*
consequantur, vel quod deest eis ex constitutione nostra
*they-obtain or what is-lacking to-them by constitution our*
repleatur, si quando minus tertia parte bonorum suorum
*be-made-up if ever less-than a-third part of-goods his-own*
libertus vel liberta eis reliquerint, ita sine onere,
*the-freedman or the-freedwoman to-them has-left so without burden*
ut nec liberis liberti libertaeve ex ea parte
*that not to-the-children of-the-freedman or-of-the-freedwoman from that part*
legata vel fideicommissa praestentur, sed ad coheredes hoc
*legacies or trusts be-furnished but to the-co-heirs this*

onus redundaret: multis aliis casibus a nobis in praefata
*burden should-flow-over many other cases by us in the-aforesaid*
constitutione congregatis, quos necessarios esse ad huiusmodi
*constitution gathered which necessary to-be for of-this-kind*
iuris dispositionem perspeximus: ut tam patroni patronaeque
*of-law the-arrangement we-saw that both patrons and-patronesses*
quam liberi eorum nec non qui ex transverso latere
*and children their and also those-who from the-transverse side*
veniunt usque ad quintum gradum ad successionem libertorum
*come up to the-fifth degree to the-succession of-freedmen*
vocentur, sicut ex ea constitutione intellegendum est: ut
*be-called as from that constitution to-be-understood it-is that*
si eiusdem patroni vel patronae vel duorum duarum
*if of-the-same patron or patroness or of-two-men of-two-women*
pluriumve sint liberi, qui proximior est, ad liberti
*or-more there-be children he-who nearer is to of-the-freedman*
seu libertae vocetur successionem et in capita, non in
*or of-the-freedwoman be-called the-succession and by heads not by*
stirpes dividatur successio, eodem modo et in his qui ex
*stocks be-divided the-succession in-the-same way also in those who from*
transverso latere veniunt servando. paene enim consonantia
*the-transverse side come to-be-observed almost for consonant*
iura ingenuitatis et libertinitatis in successionibus fecimus.
*the-rights of-free-birth and of-freedmanship in successions we-have-made*
4 Sed haec de his libertinis hodie dicenda sunt, qui in
*But these-things about those freedmen today to-be-said are who to*
civitatem Romanam pervenerunt, cum nec sunt alii liberti
*citizenship Roman have-come since not are-there other freedmen*
simul et dediticiis et Latinis sublatis, cum Latinorum
*at-once both the-dediticii and the-Latins abolished since of-the-Latins*
legitimae successiones nullae penitus erant, qui licet ut
*statutory successions none at-all were who although as*

liberi vitam suam peragebant, attamen ipso ultimo spiritu
*free-men life their they-passed nevertheless at-the-very last breath*
simul animam atque libertatem amittebant, et quasi servorum
*at-once the-soul and freedom they-lost and as-if of-slaves*
ita bona eorum iure quodammodo peculii ex lege
*so goods their by-the-right in-some-measure of-peculium by the-statute*
Iunia manumissores detinebant. postea vero senatus consulto
*Junian the-manumitters held afterward however of-the-senate by-decree*
Largiano cautum fuerat, ut liberi manumissoris non
*Largian provided it-had-been that the-children of-the-manumitter not*
nominatim exheredati facti extraneis heredibus eorum in bonis
*by-name disinherited made to-outside heirs their in the-goods*
Latinorum praeponerentur. quibus supervenit etiam divi
*of-the-Latins be-preferred on-which came also of-the-deified*
Traiani edictum, quod eundem hominem, si invito vel
*Trajan the-edict which the-same man if unwilling or*
ignorante patrono ad civitatem venire ex beneficio principis
*unaware the-patron to citizenship to-come by the-favor of-the-emperor*
festinavit, faciebat vivum quidem civem Romanum, Latinum
*he-hastened made living indeed a-citizen Roman a-Latin*
autem morientem. sed nostra constitutione propter huiusmodi
*however dying but by-our constitution on-account-of of-this-kind*
condicionum vices et alias difficultates cum ipsis Latinis
*conditions the-changes and other difficulties with the-very Latins*
etiam legem Iuniam et senatus consultum Largianum et
*also the-statute Junian and of-the-senate decree Largian and*
edictum divi Traiani in perpetuum deleri censuimus,
*the-edict of-the-deified Trajan in perpetuity to-be-abolished we-have-decreed*
ut omnes liberti civitate Romana fruantur, et mirabili
*so-that all freedmen citizenship Roman enjoy and in-a-wonderful*

modo quibusdam adiectionibus ipsas vias, quae in Latinitatem
*way by-certain additions the-very ways which into Latinity*
ducebant, ad civitatem Romanam capiendam transposuimus.
*led to citizenship Roman to-be-taken we-have-transferred*

## VIII · THE ASSIGNMENT OF FREEDMEN

*The senate, under Claudius, let a patron with two or more children in his power assign a freedman or freedwoman to one of them, who alone then succeeds as patron unless he dies childless; emancipating that child ends the assignment, which may be made by will or in any words.*

In summa quod ad bona libertorum admonendi sumus
*In sum as-far-as to the-goods of-freedmen to-be-reminded we-are*
senatum censuisse, ut quamvis ad omnes patroni liberos,
*the-senate to-have-decreed that although to all the-patron's children*
qui eiusdem gradus sint, aequaliter bona libertorum
*who of-the-same degree be equally the-goods of-freedmen*
pertineant, tamen liceret parenti uni ex liberis
*belong yet it-should-be-allowed for-a-parent to-one of the-children*
adsignare libertum, ut post mortem eius solus is patronus
*to-assign a-freedman so-that after death his alone he patron*
habeatur, cui adsignatus est, et ceteri liberi, qui ipsi
*be-held to-whom assigned be-is and the-other children who themselves*
quoque ad eadem bona nulla adsignatione interveniente
*also to the-same goods no assignment intervening*
pariter admitterentur, nihil iuris in his bonis habeant. sed
*equally would-be-admitted nothing of-right in those goods have but*
ita demum pristinum ius recipiunt, si is cui adsignatus
*so only-then the-former right they-recover if he to-whom assigned*
est decesserit nullis liberis relictis.
*he-is has-died no children left*

Nec tantum libertum, sed etiam libertam, et non tantum 1
*Nor only a-freedman but also a-freedwoman and not only*
filio nepotive, sed etiam filiae neptive adsignare
*to-a-son or-grandson but also to-a-daughter or-granddaughter to-assign*
permittitur.
*it-is-permitted*

Datur autem haec adsignandi facultas ei, qui duos pluresve 2
*Is-given however this of-assigning power to-him who two or-more*
liberos in potestate habebit, ut eis, quos in potestate
*children in power shall-have so-that to-those whom in power*
habet, adsignare ei libertum libertamve liceat. unde
*he-has to-assign for-him a-freedman or-freedwoman be-allowed whence*
quaerebatur, si eum cui adsignaverit postea emancipaverit,
*it-was-asked if him to-whom he-has-assigned afterward he-has-emancipated*
num evanescat adsignatio? sed placuit evanescere, quod et
*whether vanishes the-assignment but it-was-held to-vanish which also*
Iuliano et aliis plerisque visum est.
*to-Julian and to-others very-many seemed-good it-has*

Nec interest, testamento quis adsignet an sine testamento: 3
*Nor does-it-matter by-testament anyone assigns or without testament*
sed etiam quibuscumque verbis hoc patronis permittitur
*but even by-whatever words this to-patrons is-permitted*
facere ex ipso senatus consulto, quod Claudianis temporibus
*to-do by the-very of-the-senate decree which in-Claudian times*
factum est Suillo Rufo et Ostorio Scapula consulibus.
*made was Suillus Rufus and Ostorius Scapula consuls*

*The praetor's possession of goods corrected, confirmed, and extended the civil law: against and according to the will, then on intestacy to children, statutory heirs, the ten persons, cognates, and others. Justinian keeps the possessions against and according to the will, for children, statutory heirs, cognates, and husband and wife, with the one granted by statute. The praetor gave children and parents a year to claim and others a hundred days, after which the claim passes on; any sign of acceptance suffices.*

Ius bonorum possessionis introductum est a praetore
*The-law of-the-goods possession introduced was by the-praetor*
emendandi veteris iuris gratia. nec solum in intestatorum
*of-amending the-old law for-the-sake nor only in intestates'*
hereditatibus vetus ius eo modo praetor emendavit, sicut
*inheritances the-old law in-that way the-praetor amended as*
supra dictum est, sed in eorum quoque, qui testamento
*above said it-has-been but in those also who a-testament*
facto decesserint. nam si alienus postumus heres fuerit
*made have-died for if an-outside posthumous-child heir had-been*
institutus, quamvis hereditatem iure civili adire non poterat,
*instituted although the-inheritance by-law civil enter not he-could*
cum institutio non valebat, honorario tamen iure bonorum
*since the-institution not was-valid by-honorary however law of-the-goods*
possessor efficiebatur, videlicet cum a praetore adiuvabatur:
*possessor he-was-made namely when by the-praetor he-was-helped*
sed et hic a nostra constitutione hodie recte heres
*but also this-one by our constitution today rightly heir*
instituitur, quasi et iure civili non incognitus.
*is-instituted as-if also by-law civil not unrecognized*

Aliquando tamen neque emendandi neque impugnandi veteris 1
*Sometimes however neither of-amending nor of-impugning 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 rightly made testament*
heredes instituti sunt, dat secundum tabulas bonorum
*heirs instituted are he-gives according-to the-tablets of-the-goods*
possessionem: item ab intestato suos heredes et adgnatos
*possession likewise on intestacy own heirs and agnates*
ad bonorum possessionem vocat: sed et remota quoque
*to of-the-goods possession he-calls but also removed also*
bonorum possessione ad eos hereditas pertinet iure civili.
*of-the-goods the-possession to them the-inheritance belongs by-law civil*
Quos autem praetor solus vocat ad hereditatem, heredes 2
*Those-whom however the-praetor alone calls to the-inheritance heirs*
quidem ipso iure non fiunt (nam praetor heredem facere
*indeed by-the-very law not become for the-praetor an-heir make*
non potest: per legem enim tantum vel similem iuris
*not can by statute for only or a-similar of-law*
constitutionem heredes fiunt, veluti per senatus consultum
*establishment heirs become as by of-the-senate decree*
et constitutiones principales): sed cum eis praetor dat
*and constitutions 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*
et vocantur bonorum possessores. adhuc autem et alios
*and are-called of-the-goods possessors moreover however also other*
complures gradus praetor fecit in bonorum possessionibus
*several degrees the-praetor made in of-the-goods possessions*
dandis, dum id agebat, ne quis sine successore
*to-be-given while this he-was-doing that-not anyone without successor*

moriatur: nam angustissimis finibus constitutum per legem
*die for by-the-narrowest bounds established by the-statute*
duodecim tabularum ius percipiendarum hereditatum praetor
*of-the-twelve tables the-law of-taking inheritances the-praetor*
ex bono et aequo dilatavit.
*from the-good and fair widened*

3 Sunt autem bonorum possessiones ex testamento quidem hae.
*Are however of-the-goods possessions by testament indeed these*
prima, quae praeteritis liberis datur vocaturque contra tabulas.
*the-first which to-passed-over children is-given and-is-called against the-tablets*
secunda, quam omnibus iure scriptis heredibus praetor
*the-second which to-all lawfully written heirs the-praetor*
pollicetur ideoque vocatur secundum tabulas. et cum de
*promises and-therefore it-is-called according-to the-tablets and when about*
testamentis prius locutus est, ad intestatos transitum fecit. et
*testaments first spoken he-has to intestates the-transition he-made and*
primo loco suis heredibus et his, qui ex edicto praetoris
*in-the-first place to-own heirs and to-those who by the-edict of-the-praetor*
suis connumerantur, dat bonorum possessionem quae
*with-own-heirs are-counted he-gives of-the-goods possession which*
vocatur unde liberi: secundo legitimis heredibus: tertio decem
*is-called by-which children second to-statutory heirs third to-ten*
personis, quas extraneo manumissori praeferebat (sunt autem
*persons whom to-an-outside manumitter he-preferred are however*
decem personae hae: pater mater, avus avia tam paterni
*the-ten persons these father mother grandfather grandmother both paternal*
quam materni, item filius filia, nepos neptis tam ex filio
*and maternal likewise son daughter grandson granddaughter both by a-son*
quam ex filia, frater soror sive consanguinei sive uterini):
*and by a-daughter brother sister whether consanguineous or uterine*
quarto cognatis proximis: quinto tum quam ex familia: sexto
*fourth to-kin nearest fifth then which from the-family sixth*

patrono et patronae liberisque eorum et parentibus:
*to-the-patron and to-the-patroness and-to-the-children their and parents*
septimo viro et uxori: octavo cognatis manumissoris.
*seventh to-husband and wife eighth to-the-kin of-the-manumitter*
Sed eas quidem praetoria induxit iurisdictio. nobis 4
*But these indeed the-praetorian introduced jurisdiction by-us*
tamen nihil incuriosum praetermissum est, sed nostris
*however nothing uncared-for passed-over has-been but by-our*
constitutionibus omnia corrigentes contra tabulas quidem et
*constitutions all-things correcting against the-tablets indeed and*
secundum tabulas bonorum possessiones admisimus utpote
*according-to the-tablets of-the-goods possessions we-have-admitted as*
necessarias constitutas, nec non ab intestato unde liberi
*necessary established and also on intestacy by-which children*
et unde legitimi bonorum possessiones.
*and by-which statutory-heirs of-the-goods possessions*
Quae autem in praetoris edicto quinto loco posita 5
*Which however in the-praetor's edict in-fifth place placed*
fuerat, id est unde decem personae, eam pio
*had-been that is by-which ten persons it with-pious*
proposito et compendioso sermone supervacuam ostendimus:
*purpose and concise speech superfluous we-have-shown*
cum enim praefata bonorum possessio decem personas
*since for the-aforesaid of-the-goods possession ten persons*
praeponebat extraneo manumissori, nostra constitutio, quam
*preferred to-an-outside manumitter our constitution which*
de emancipatione liberorum fecimus, omnibus parentibus
*about the-emancipation of-children we-made to-all parents*
eisdemque manumissoribus contracta fiducia manumissionem
*and-the-same manumitters with-contracted trust the-manumission*
facere dedit, ut ipsa manumissio eorum hoc in se habeat
*to-make has-given so-that the-very manumission of-them this in itself have*

privilegium et supervacua fiat praedicta bonorum possessio.
*privilege and superfluous become the-aforesaid of-the-goods possession*
sublata igitur praefata quinta bonorum possessione in gradum
*removed therefore the-aforesaid fifth of-the-goods possession into the-degree*
eius sextam antea bonorum possessionem reduximus et
*its the-sixth before of-the-goods possession we-have-brought-back and*
quintam fecimus, quam praetor proximis cognatis pollicetur.
*fifth have-made which the-praetor to-the-nearest kin promises*
6 Cumque antea septimo loco fuerat bonorum possessio
*And-since before in-the-seventh place had-been of-the-goods possession*
tum quam ex familia et octavo unde liberi
*then which from the-family and in-the-eighth by-which the-children*
patroni patronaeque et parentes eorum, utramque per
*of-the-patron and-of-the-patroness and the-parents their each through*
constitutionem nostram, quam de iure patronatus fecimus,
*constitution our which about the-law of-patronage we-made*
penitus vacuavimus: cum enim ad similitudinem successionis
*wholly we-have-emptied since for on the-likeness of-the-succession*
ingenuorum libertinorum successiones posuimus, quas usque
*of-the-freeborn of-freedmen the-successions we-have-placed which up*
ad quintum tantummodo gradum coartavimus, ut sit
*to the-fifth only degree we-have-confined so-that there-be*
aliqua inter ingenuos et libertos differentia, sufficiunt eis
*some between the-freeborn and freedmen difference suffice for-them*
tam contra tabulas bonorum possessio quam unde legitimi
*both against the-tablets of-the-goods possession and by-which statutory-heirs*
et unde cognati, ex quibus possint sua iura vindicare,
*and by-which kin from which they-can their-own rights claim*
omni scrupulositate et inextricabili errore duarum istarum
*all scrupulousness and inextricable error of-two those*
bonorum possessionum resoluta.
*of-the-goods possessions resolved*

Aliam vero bonorum possessionem, quae unde vir et uxor 7
*Another however of-the-goods possession which by-which husband and wife*
appellatur et nono loco inter veteres bonorum possessiones
*is-called and in-the-ninth place among the-old of-the-goods possessions*
posita fuerat, et in suo vigore servavimus et altiore
*placed had-been both in its-own force we-have-preserved and in-a-higher*
loco, id est sexto, eam posuimus, decima veteri bonorum
*place that is the-sixth it we-have-placed the-tenth old of-the-goods*
possessione quae erat unde cognati manumissoris propter
*possession which was by-which kin of-the-manumitter for*
causas enarratas merito sublata: ut sex tantummodo bonorum
*the-causes recounted deservedly removed so-that six only of-the-goods*
possessiones ordinariae permaneant suo vigore pollentes.
*possessions ordinary remain in-their-own force prevailing*
Septima eas secuta, quam optima ratione praetores 8
*A-seventh them followed which by-the-best reason the-praetors*
introduxerunt. novissime enim promittitur edicto his
*introduced last for is-promised by-the-edict to-those*
etiam bonorum possessio, quibus ut detur lege vel
*also of-the-goods possession to-whom that it-be-given by-statute or*
senatus consulto vel constitutione comprehensum est, quam
*of-the-senate by-decree or by-constitution provided it-is which*
neque bonorum possessionibus quae ab intestato veniunt
*neither of-the-goods with-the-possessions which on intestacy come*
neque eis quae ex testamento sunt praetor stabili
*nor with-those which from a-testament are the-praetor by-fixed*
iure connumeravit, sed quasi ultimum et extraordinarium
*law counted but as-if a-last and extraordinary*
auxilium, prout res exigit, accommodavit scilicet his,
*help as the-matter requires accommodated namely for-those*

qui ex legibus senatus consultis constitutionibus principum
*who from statutes of-the-senate decrees constitutions of-the-emperors*
ex novo iure vel ex testamento vel ab intestato veniunt.
*from new law either from a-testament or on intestacy come*
9 Cum igitur plures species successionum praetor introduxisset
*When therefore several kinds of-successions the-praetor had-introduced*
easque per ordinem disposuisset et in unaquaque specie
*and-them in order had-arranged and in each kind*
successionis saepe plures extent dispari gradu personae: ne
*of-succession often several exist of-unequal degree persons lest*
actiones creditorum differantur, sed haberent quos convenirent,
*the-actions of-the-creditors be-delayed but they-should-have whom to-sue*
et ne facile in possessionem bonorum defuncti mittantur
*and lest easily into the-possession of-the-goods of-the-deceased they-be-sent*
et eo modo sibi consulerent, ideo petendae bonorum
*and in-that way for-themselves provide therefore for-seeking of-the-goods*
possessioni certum tempus praefinivit. liberis itaque et
*possession a-fixed time he-has-prescribed to-children therefore and*
parentibus tam naturalibus quam adoptivis in petenda bonorum
*to-parents both natural and adoptive in seeking of-the-goods*
possessione anni spatium, ceteris centum dierum dedit.
*possession of-a-year the-space to-the-others of-a-hundred days he-gave*
10 Et si intra hoc tempus aliquis bonorum possessionem non
*And if within this time anyone of-the-goods possession not*
petierit, eiusdem gradus personis adcrescit: vel si nemo
*has-sought of-the-same degree to-persons it-accrues or if no-one*
sit, deinceps ceteris proinde bonorum possessionem ex
*there-be next to-the-others just of-the-goods possession by*
successorio edicto pollicetur, ac si is qui praecedebat ex eo
*the-successory edict he-promises as if he who preceded of that*
numero non esset. si quis itaque delatam sibi bonorum
*number not were if anyone therefore offered to-him of-the-goods*

possessionem repudiaverit, non quousque tempus bonorum
*possession has-repudiated not until the-time of-the-goods*
possessioni praefinitum excesserit exspectatur, sed statim
*for-the-possession prescribed has-passed it-is-awaited but at-once*
ceteri ex eodem edicto admittuntur.
*the-others by the-same edict are-admitted*

In petenda autem bonorum possessione dies utiles singuli 11
*In seeking however of-the-goods possession the-days available individually*
considerantur.
*are-considered*

Sed bene anteriores principes et huic causae providerunt, 12
*But well the-earlier emperors also for-this matter provided*
ne quis pro petenda bonorum possessione curet, sed,
*that-not anyone about seeking of-the-goods possession be-anxious but*
quocumque modo si admittentis eam indicium intra statuta
*in-whatever way if of-one-accepting it the-sign within the-established*
tamen tempora ostenderit, plenum habeat earum beneficium.
*however times he-has-shown full he-have of-them the-benefit*

## X · ACQUISITION BY ADROGATION

*Adrogation passed the adrogated person's property to the adrogator; Justinian gives him only the usufruct, as with natural children. The adrogator is not bound by the adrogated person's debts at civil law, but the creditors may seize the goods if he does not defend.*

Est et alterius generis per universitatem successio, quae
*There-is also of-another kind by universality a-succession which*
neque lege duodecim tabularum neque praetoris edicto,
*neither by-the-statute of-the-twelve tables nor the-praetor's by-edict*
sed eo iure, quod consensu receptum est, introducta est.
*but by-that law which by-consent accepted is introduced is*

1 Ecce enim cum pater familias sese in adrogationem
*Behold for when a-father of-a-family himself into adrogation*
dat, omnes res eius corporales et incorporales quaeque
*gives all things his corporeal and incorporeal and-what*
ei debitae sunt adrogatori ante quidem pleno iure
*to-him owed are to-the-adrogator formerly indeed by-full right*
adquirebantur, exceptis his quae per capitis deminutionem
*were-acquired except those which through of-status loss*
pereunt quales sunt operarum obligationes et ius
*perish such-as are of-services obligations and the-right*
adgnationis. usus etenim et usus fructus, licet his
*of-agnation use for and the-use (and)-enjoyment although among-these*
antea connumerabantur, attamen capitis deminutione minima
*formerly were-counted nevertheless of-status by-loss the-least*
eos tolli nostra prohibuit constitutio.
*them to-be-removed our has-forbidden constitution*

2 Nunc autem nos eandem adquisitionem, quae per
*Now however we the-same acquisition which through*
adrogationem fiebat, coartavimus ad similitudinem naturalium
*adrogation was-made have-confined on the-likeness of-natural*
parentum: nihil etenim aliud nisi tantummodo usus fructus
*parents nothing for other except only the-use (and)-enjoyment*
tam naturalibus patribus quam adoptivis per filios familias
*both for-natural fathers and adoptive through sons of-the-family*
adquiritur in his rebus quae extrinsecus filiis obveniunt,
*is-acquired in those things which from-outside to-sons come*
dominio eis integro servato: mortuo autem filio adrogato in
*the-ownership for-them intact preserved dead however the-son adrogated in*
adoptiva familia etiam dominium eius ad adrogatorem transit,
*the-adoptive family also the-ownership his to the-adrogator passes*

nisi supersint aliae personae, quae ex nostra constitutione
*unless survive other persons who by our constitution*
patrem in his quae adquiri non possunt antecedunt.
*the-father in those-things which be-acquired not can precede*
Sed ex diverso pro eo, quod is debuit qui se in 3
*But on the-contrary for that which he owed who himself in*
adoptionem dedit, ipso quidem iure adrogator non
*adoption gave by-the-very indeed law the-adrogator not*
tenetur, sed nomine filii convenietur et, si noluerit
*is-bound but in-the-name of-the-son he-will-be-sued and if he-is-unwilling*
eum defendere, permittitur creditoribus per competentes
*him to-defend it-is-permitted to-the-creditors through competent*
nostros magistratus bona, quae eorum cum usu fructu
*our magistrates the-goods which theirs with the-use (and)-enjoyment*
futura fuissent, si se alieno iuri non subiecissent,
*about-to-be would-have-been if themselves to-another's right not they-had-subjected*
possidere et legitimo modo ea disponere.
*to-possess and in-lawful way them to-dispose*

## XI · ASSIGNMENT OF GOODS TO PRESERVE FREEDOMS

*By Marcus' rescript, when a will freeing slaves is not entered and no one succeeds on intestacy, the goods may be assigned to one of those freed who gives the creditors security for the whole, so that the freedoms stand. The rule reaches freedoms given by codicil or in life, and waits until it is certain no successor exists.*

Accessit novus casus successionis ex constitutione divi
*Was-added a-new case of-succession by the-constitution of-the-deified*
Marci. nam si hi, qui libertatem acceperunt a domino in
*Marcus for if those who freedom received from the-master in*
testamento, ex quo non aditur hereditas, velint bona sibi
*a-testament from which not is-entered the-inheritance wish the-goods to-themselves*

addici libertatium conservandarum causa, audiuntur. et
*to-be-assigned of-freedoms to-be-preserved for-the-sake they-are-heard and*
ita rescripto divi Marci ad Popilium Rufum continetur.
*so in-the-rescript of-the-deified Marcus to Popilius Rufus it-is-contained*
1 Verba rescripti ita se habent: 'Si Virginio Valenti,
*The-words of-the-rescript so themselves have If of-Virginius Valens*
qui testamento suo libertatem quibusdam adscripsit, nemine
*who in-testament his freedom to-certain-persons wrote no*
successore ab intestato existente in ea causa bona esse
*successor on intestacy existing in that position the-goods to-be*
coeperunt, ut veniri debeant: is cuius de ea re notio
*have-begun that be-sold they-ought he whose about that matter the-cognizance*
est aditus rationem desiderii tui habebit, ut libertatium
*is approached account of-desire your will-take that of-freedoms*
tam earum, quae directo, quam earum, quae per speciem
*both of-those which directly and of-those which by the-form*
fideicommissi relictae sunt, tuendarum gratia addicantur tibi,
*of-trust left are to-be-protected for-the-sake they-be-assigned to-you*
si idonee creditoribus caveris de solido quod cuique
*if suitably to-the-creditors you-have-given-security about the-whole which to-each*
debetur solvendo. et hi quidem, quibus directa libertas data
*is-owed to-be-paid and those indeed to-whom direct freedom given*
est, perinde liberi erunt, ac si hereditas adita esset: hi
*is just free will-be as if the-inheritance entered had-been those*
autem, quos heres rogatus est manumittere, a te libertatem
*however whom the-heir asked was to-manumit from you freedom*
consequantur: ita ut si non alia condicione velis bona
*shall-obtain so that if not on-other condition you-wish the-goods*
tibi addici, quam ut etiam qui directo libertatem
*to-you to-be-assigned than that also those-who directly freedom*
acceperunt tui liberti fiant, nam huic etiam voluntati tuae,
*received your freedmen become for to-this also wish your*

si ii de quorum statu agitur consentiant, auctoritatem
*if they about whose status it-is-treated consent the-authority*
nostram accommodamus. et ne huius rescriptionis nostrae
*our we-accommodate and lest of-this rescript our*
emolumentum alia ratione irritum fiat, si fiscus bona
*the-benefit by-another reason void become if the-fisc the-goods*
agnoscere voluerit: et hi qui rebus nostris attendunt
*to-claim shall-have-wished also those who to-affairs our attend*
scient commodo pecuniario praeferendam libertatis causam
*will-know to-advantage pecuniary to-be-preferred of-freedom the-cause*
et ita bona cogenda, ut libertas his salva sit, qui eam
*and so the-goods to-be-collected that freedom to-those safe be who it*
adipisci potuerunt, si hereditas ex testamento adita esset.'
*obtain could if the-inheritance by testament entered had-been*
Hoc rescripto subventum est et libertatibus et defunctis, 2
*By-this rescript helped it-was both to-freedoms and to-the-deceased*
ne bona eorum a creditoribus possideantur et veneant.
*lest the-goods their by the-creditors be-possessed and be-sold*
certe si fuerint ex hac causa bona addicta, cessat bonorum
*certainly if have-been for this cause the-goods assigned ceases of-the-goods*
venditio: extitit enim defuncti defensor, et quidem
*the-sale has-stood-forth for of-the-deceased a-defender and indeed*
idoneus, qui de solido creditoribus cavet.
*suitable who about the-whole to-the-creditors gives-security*
Inprimis hoc rescriptum totiens locum habet, quotiens 3
*In-the-first-place this rescript as-often place has as-often-as*
testamento libertates datae sunt. quid ergo si quis intestatus
*by-testament freedoms given are what then if anyone intestate*
decedens codicillis libertates dederit neque adita sit ab
*dying by-codicils freedoms has-given nor entered be on*
intestato hereditas? favor constitutionis debet locum habere.
*intestacy the-inheritance the-favor of-the-constitution ought place to-have*

certe si testatus decedat et codicillis dederit libertatem,
*certainly if testate he-die and by-codicils has-given freedom*
competere eam nemini dubium est.
*to-belong it to-no-one doubtful is*

4 Tunc constitutioni locum esse verba ostendunt, cum nemo
*Then for-the-constitution place to-be the-words show when no*
successor ab intestato existat: ergo quamdiu incertum sit,
*successor on intestacy exists therefore as-long-as uncertain it-is*
utrum existat an non, cessabit constitutio: si certum esse
*whether he-exists or not will-be-inactive the-constitution if certain to-be*
coeperit neminem extare, tunc erit constitutioni locus.
*it-has-begun no-one to-exist then there-will-be for-the-constitution place*

5 Si is, qui in integrum restitui potest, abstinuit se ab
*If he who in full be-restored can has-abstained himself from*
hereditate, an, quamvis potest in integrum restitui, potest
*the-inheritance whether although he-can in full be-restored can*
admitti constitutio et addictio bonorum fieri? quid
*be-admitted the-constitution and the-assignment of-the-goods be-made what*
ergo, si post addictionem libertatum conservandarum causa
*then if after the-assignment of-freedoms to-be-preserved for-the-sake*
factam in integrum sit restitutus? utique non erit
*made in full be-has-been restored certainly not it-will-be*
dicendum revocari libertates, quae semel competierunt.
*to-be-said to-be-revoked the-freedoms which once have-belonged*

6 Haec constitutio libertatum tuendarum causa introducta
*This constitution of-freedoms to-be-protected for-the-sake introduced*
est: ergo si libertates nullae sint datae, cessat constitutio.
*was therefore if freedoms none have-been given ceases the-constitution*
quid ergo, si vivus dedit libertates vel mortis causa
*what then if while-living he-gave freedoms or of-death in-contemplation*
et, ne de hoc quaeratur, utrum in fraudem creditorum
*and lest about this it-be-asked whether in fraud of-creditors*

an non factum sit, idcirco velint addici sibi bona,
*or not done it-was therefore they-wish to-be-assigned to-themselves the-goods*
an audiendi sunt? et magis est, ut audiri debeant,
*whether to-be-heard are-they and more-correct it-is that be-heard they-ought*
etsi deficiant verba constitutionis.
*even-if fail the-words of-the-constitution*
Sed cum multas divisiones eiusmodi constitutioni deesse 7
*But since many distinctions of-this-kind to-a-constitution to-be-lacking*
perspeximus, lata est a nobis plenissima constitutio, in
*we-saw issued was by us a-most-full constitution into*
quam multae species collatae sunt, quibus ius huiusmodi
*which many cases brought have-been by-which the-law of-this-kind*
successionis plenissimum est effectum: quas ex ipsa
*of-succession most-full has-been made which from the-very*
lectione constitutionis potest quis cognoscere.
*reading of-the-constitution can anyone learn*

## XII · SUCCESSIONS ABOLISHED

*Universal succession by purchase of a debtor's goods ended with the ordinary procedure, and the Claudian decree enslaving a free woman who consorted with a slave is abolished.*

Erant ante praedictam successionem olim et aliae per
*There-were before the-aforesaid succession formerly also other by*
universitatem successiones. qualis fuerat bonorum emptio,
*universality successions such-as had-been of-goods the-purchase*
quae de bonis debitoris vendendis per multas ambages
*which about the-goods of-a-debtor to-be-sold through many windings*
fuerat introducta et tunc locum habebat, quando iudicia
*had-been introduced and then place had when the-trials*

ordinaria in usu fuerunt: sed cum extraordinariis iudiciis
*ordinary in use were but since the-extraordinary trials*
posteritas usa est, ideo cum ipsis ordinariis iudiciis
*posterity used has therefore with the-very ordinary trials*
etiam bonorum venditiones exspiraverunt et tantummodo
*also of-goods the-sales have-expired and only*
creditoribus datur officio iudicis bona possidere et
*to-creditors it-is-given by-the-office of-the-judge the-goods to-possess and*
prout eis utile visum fuerit ea disponere, quod ex
*as to-them useful seemed it-has them to-dispose which from*
latioribus digestorum libris perfectius apparebit.
*the-broader of-the-digest books more-perfectly will-appear*

1 Erat et ex senatus consulto Claudiano miserabilis per
*There-was also by of-the-senate decree Claudian a-pitiable by*
universitatem adquisitio, cum libera mulier servili amore
*universality acquisition when a-free woman by-servile love*
bacchata ipsam libertatem per senatus consultum amittebat
*maddened her-very freedom by of-the-senate decree lost*
et cum libertate substantiam: quod indignum nostris
*and with freedom her-substance which unworthy for-our*
temporibus esse existimantes et a nostra civitate deleri
*times to-be thinking both from our state to-be-abolished*
et non inseri nostris digestis concessimus.
*and not to-be-inserted in-our digests we-have-granted*

*An obligation is a bond of law binding us to perform. Obligations are civil or praetorian, and arise from contract, quasi-contract, delict, or quasi-delict; contracts are made by delivery, words, writing, or consent.*

Nunc transeamus ad obligationes. obligatio est iuris
*Now let-us-pass to obligations an-obligation is of-law*
vinculum, quo necessitate adstringimur alicuius solvendae
*a-bond by-which by-necessity we-are-bound of-some to-be-paid*
rei secundum nostrae civitatis iura.
*thing according-to of-our state the-laws*

Omnium autem obligationum summa divisio in duo genera 1
*Of-all however obligations the-chief division into two kinds*
diducitur: namque aut civiles sunt aut praetoriae. civiles
*is-drawn for either civil they-are or praetorian civil*
sunt, quae aut legibus constitutae aut certe iure civili
*are those-which either by-statutes established or certainly by-law civil*
comprobatae sunt. praetoriae sunt, quas praetor ex sua
*approved are praetorian are those-which the-praetor from his-own*
iurisdictione constituit, quae etiam honorariae vocantur.
*jurisdiction has-established which also honorary are-called*

Sequens divisio in quattuor species diducitur: aut enim 2
*The-following division into four species is-drawn either for*
ex contractu sunt aut quasi ex contractu aut ex maleficio
*from contract they-are or quasi from contract or from delict*
aut quasi ex maleficio. prius est, ut de his quae ex
*or quasi from delict first it-is that about those which from*
contractu sunt dispiciamus. harum aeque quattuor species
*contract are we-consider of-these equally four species*

sunt: aut enim re contrahuntur aut verbis aut litteris
*there-are either for by-delivery they-are-contracted or by-words or by-writing*
aut consensu. de quibus singulis dispiciamus.
*or by-consent about which each let-us-consider*

## XIV · OBLIGATIONS BY DELIVERY

*Loan for consumption binds by delivery of things weighed, counted, or measured; payment of what is not owed binds by condiction; loan for use binds the borrower to strict care, deposit only against fraud, and pledge the creditor to exact care.*

Re contrahitur obligatio veluti mutui datione. mutui
*By-delivery is-contracted an-obligation as of-a-loan by-the-giving of-a-loan*
autem obligatio in his rebus consistit, quae pondere numero
*however the-obligation in those things consists which by-weight by-number*
mensurave constant, veluti vino oleo frumento pecunia
*or-by-measure are-determined as wine oil grain money*
numerata aere argento auro, quas res aut numerando aut
*counted bronze silver gold which things either by-counting or*
metiendo aut pendendo in hoc damus, ut accipientium
*by-measuring or by-weighing for this-purpose we-give that of-the-receivers*
fiant et quandoque nobis non eaedem res, sed aliae
*they-become and at-some-time to-us not the-same things but others*
eiusdem naturae et qualitatis reddantur. unde etiam mutuum
*of-the-same nature and quality be-returned whence also mutuum*
appellatum sit, quia ita a me tibi datur, ut ex meo tuum
*named it-is because so from me to-you it-is-given that from mine yours*
fiat. ex eo contractu nascitur actio quae vocatur condictio.
*it-becomes from that contract arises an-action which is-called the-condiction*

Is quoque, qui non debitum accepit ab eo qui 1
*He also who what-is-not owed has-received from him who*
per errorem solvit, re obligatur: daturque agenti
*by mistake pays by-delivery is-bound and-is-given to-the-one-suing*
contra eum propter repetitionem condicticia actio. nam
*against him for recovery the-condictitious action for*
proinde ei condici potest 'si paret eum dare oportere'
*just from-him be-claimed it-can if it-appears him to-give to-be-bound*
ac si mutuum accepisset: unde pupillus, si ei sine
*as if a-loan he-had-received whence a-ward if to-him without*
tutoris auctoritate non debitum per errorem datum
*of-the-tutor the-authority what-was-not owed by mistake given*
est, non tenetur indebiti condictione non magis quam
*was not is-bound of-the-unowed by-the-condiction no more than*
mutui datione. sed haec species obligationis non videtur
*of-a-loan by-the-giving but this kind of-obligation not seems*
ex contractu consistere, cum is qui solvendi animo dat
*from contract to-arise since he who of-paying with-intention gives*
magis distrahere voluit negotium quam contrahere.
*rather to-dissolve wished a-transaction than to-contract*
Item is cui res aliqua utenda datur, id est commodatur, 2
*Likewise he to-whom a-thing some for-use is-given that is is-lent-for-use*
re obligatur et tenetur commodati actione. sed is ab
*by-delivery is-bound and is-held of-loan-for-use by-the-action but he from*
eo qui mutuum accepit longe distat: namque non ita res
*him who a-loan received far differs for not so the-thing*
datur, ut eius fiat, et ob id de ea re ipsa restituenda
*is-given that his it-becomes and for that about that thing itself to-be-restored*
tenetur. et is quidem qui mutuum accepit, si quolibet fortuito
*he-is-bound and he indeed who a-loan received if by-any fortuitous*
casu quod accepit amiserit, veluti incendio ruina naufragio
*chance what he-received he-has-lost as by-fire collapse shipwreck*

aut latronum hostiumve incursu, nihilo minus obligatus
*or of-robbers or-enemies by-an-attack by-nothing less bound*
permanet. at is qui utendum accepit sane quidem exactam
*remains but he who for-use received indeed certainly exact*
diligentiam custodiendae rei praestare iubetur nec sufficit
*diligence of-guarding the-thing to-furnish is-ordered nor suffices-it*
ei tantam diligentiam adhibuisse, quantam suis rebus
*for-him so-much diligence to-have-applied as-much-as to-his-own things*
adhibere solitus est, si modo alius diligentior poterit eam
*to-apply accustomed he-is if only another more-diligent could that*
rem custodire: sed propter maiorem vim maioresve casus
*thing guard but for greater force or-greater mischances*
non tenetur, si modo non huius culpa is casus intervenerit:
*not he-is-bound if only not his by-fault that mischance has-intervened*
alioquin si id quod tibi commodatum est peregre ferre
*otherwise if that which to-you lent-for-use is abroad to-carry*
tecum malueris et vel incursu hostium praedonumve vel
*with-you you-have-preferred and either by-an-attack of-enemies or-pirates or*
naufragio amiseris, dubium non est, quin de restituenda ea
*by-shipwreck you-have-lost doubtful not it-is that about restoring that*
re tenearis. commodata autem res tunc proprie intellegitur,
*thing you-are-bound lent-for-use however a-thing then properly is-understood*
si nulla mercede accepta vel constituta res tibi utenda
*if no payment received or fixed the-thing to-you for-use*
data est. alioquin mercede interveniente locatus tibi usus
*given is otherwise payment intervening let to-you the-use*
rei videtur: gratuitum enim debet esse commodatum.
*of-the-thing seems free for ought to-be a-loan-for-use*

3 Praeterea et is, apud quem res aliqua deponitur, re
*Moreover also he with whom a-thing some is-deposited by-delivery*
obligatur et actione depositi, qui et ipse de ea re
*is-bound and by-the-action on-deposit who also himself about that thing*

quam accepit restituenda tenetur. sed is ex eo solo tenetur,
*which he-received to-be-restored is-bound but he from that alone is-bound*
si quid dolo commiserit, culpae autem nomine, id est
*if anything by-fraud he-has-committed of-fault however by-reason that is*
desidiae atque neglegentiae, non tenetur: itaque securus est
*of-sloth and negligence not he-is-bound therefore safe is*
qui parum diligenter custoditam rem furto amisit, quia,
*he-who too-little diligently guarded the-thing by-theft has-lost because*
qui neglegenti amico rem custodiendam tradit, suae
*he-who to-a-negligent friend a-thing to-be-guarded hands-over to-his-own*
facilitati id imputare debet.
*easiness it impute ought*

Creditor quoque qui pignus accepit re obligatur, qui 4
*A-creditor also who a-pledge has-received by-delivery is-bound who*
et ipse de ea ipsa re quam accepit restituenda tenetur
*also himself about that very thing which he-received to-be-restored is-bound*
actione pigneraticia. sed quia pignus utriusque gratia
*by-the-action pledge-related but because a-pledge of-each for-the-sake*
datur, et debitoris, quo magis ei pecunia crederetur, et
*is-given both of-the-debtor that the-more to-him money be-lent and*
creditoris, quo magis ei in tuto sit creditum, placuit
*of-the-creditor that the-more for-him in safety be the-loan it-was-held*
sufficere, quod ad eam rem custodiendam exactam diligentiam
*to-suffice that for that thing to-be-guarded exact diligence*
adhiberet: quam si praestiterit et aliquo fortuitu casu rem
*he-apply which if he-has-furnished and by-some fortuitous chance the-thing*
amiserit, securum esse nec impediri creditum petere.
*has-lost safe to-be nor to-be-prevented the-loan to-claim*

*The stipulation is contracted by question and answer and gives the condiction or the action on stipulation; once in set words, it now takes any agreeing words under Leo's constitution, in any language. It may be unconditional, for a day, or conditional, and a yearly sum for life is barred against the heir by a defense; a place may be added, conditions on the past or present bind or fail at once, and acts may be stipulated, best with a penalty.*

Verbis obligatio contrahitur ex interrogatione et responsu,
*By-words an-obligation is-contracted from question and answer*
cum quid dari fierive nobis stipulamur. ex qua duae
*when anything to-be-given or-done for-us we-stipulate from which two*
proficiscuntur actiones, tam condictio, si certa sit stipulatio,
*proceed actions both the-condiction if certain be the-stipulation*
quam ex stipulatu, si incerta. quae hoc nomine inde
*and the-one-from stipulation if uncertain which this name thence*
utitur, quia stipulum apud veteres firmum appellabatur,
*uses because stipulum among the-ancients firm was-called*
forte a stipite descendens.
*perhaps from stipes descending*

1 In hac re olim talia verba tradita fuerunt: spondes?
*In this matter formerly such words handed-down were do-you-pledge*
spondeo, promittis? promitto, fidepromittis? fidepromitto,
*I-pledge do-you-promise I-promise do-you-promise-on-faith I-promise-on-faith*
fideiubes? fideiubeo, dabis? dabo, facies? faciam.
*do-you-guarantee I-guarantee will-you-give I-will-give will-you-do I-will-do*
utrum autem Latina an Graeca vel qua alia lingua
*whether however in-Latin or in-Greek or in-what other language*
stipulatio concipiatur, nihil interest, scilicet si uterque
*the-stipulation be-framed nothing it-matters namely if each*
stipulantium intellectum huius linguae habeat: nec necesse
*of-the-stipulating-parties understanding of-this language have nor necessary*

est eadem lingua utrumque uti, sed sufficit congruenter
*is-it the-same language each to-use but it-suffices consistently*
ad interrogatum respondere: quin etiam duo Graeci Latina
*to the-question to-answer nay even two Greeks in-the-Latin*
lingua obligationem contrahere possunt. sed haec sollemnia
*language an-obligation contract can but these formal*
verba olim quidem in usu fuerunt: postea autem Leoniana
*words formerly indeed in use were afterward however the-Leonian*
constitutio lata est, quae sollemnitate verborum sublata
*constitution issued was which the-formality of-words removed*
sensum et consonantem intellectum ab utraque parte solum
*the-sense and consonant understanding from each side alone*
desiderat, licet quibuscumque verbis expressus est.
*requires although in-whatever words expressed it-is*
Omnis stipulatio aut pure aut in diem aut sub condicione 2
*Every stipulation either unconditionally or for a-day or under condition*
fit. pure veluti 'quinque aureos dare spondes?' idque
*is-made unconditionally as five gold-pieces to-give do-you-pledge and-this*
confestim peti potest. in diem, cum adiecto die quo
*at-once be-claimed can for a-day when added a-day on-which*
pecunia solvatur stipulatio fit: veluti 'decem aureos primis
*the-money be-paid the-stipulation is-made as ten gold-pieces on-the-first*
kalendis Martiis dare spondes?' id autem, quod in diem
*kalends of-March to-give do-you-pledge that however which for a-day*
stipulamur, statim quidem debetur, sed peti prius quam
*we-stipulate at-once indeed is-owed but be-claimed sooner than*
dies veniat non potest: ac ne eo quidem ipso die, in quem
*the-day comes not can and not on-that even very day for which*
stipulatio facta est, peti potest, quia totus dies arbitrio
*the-stipulation made is be-claimed it-can because the-whole day to-the-discretion*

solventis tribui debet. neque enim certum est eo die, in
*of-the-payer be-allowed ought nor for certain is-it on-that day for*
quem promissum est, datum non esse, priusquam praetereat.
*which promised it-is given not to-be before it-passes*

3 At si ita stipuleris ‘decem aureos annuos quoad vivam
*But if so you-stipulate ten gold-pieces yearly as-long-as I-live*
dare spondes?’, et pure facta obligatio intellegitur et
*to-give do-you-pledge both unconditionally made the-obligation is-understood and*
perpetuatur, quia ad tempus deberi non potest. sed heres
*is-perpetuated because for a-time be-owed not it-can but the-heir*
petendo pacti exceptione submovebitur.
*by-claiming the-pact's by-defense will-be-barred*

4 Sub condicione stipulatio fit, cum in aliquem casum
*Under condition a-stipulation is-made when into some event*
differtur obligatio, ut, si aliquid factum fuerit aut non
*is-deferred the-obligation so-that if something done shall-have-been or not*
fuerit, stipulatio committatur, veluti ‘si Titius consul
*shall-have-been the-stipulation take-effect as if Titius consul*
factus fuerit, quinque aureos dare spondes?’ si quis
*made shall-have-been five gold-pieces to-give do-you-pledge if anyone*
ita stipuletur ‘si in Capitolium non ascendero, dare
*so stipulates if into the-Capitol not I-shall-have-gone-up to-give*
spondes?’ perinde erit, ac si stipulatus esset cum morietur
*do-you-pledge just it-will-be as if stipulated he-had when he-shall-die*
dari sibi. ex condicionali stipulatione tantum spes
*to-be-given to-himself from a-conditional stipulation only hope*
est debitum iri, eamque ipsam spem transmittimus, si,
*is owed to-be-going and-that very hope we-transmit if*
priusquam condicio existat, mors nobis contigerit.
*before the-condition comes-to-pass death to-us has-befallen*

Loca etiam inseri stipulationi solent, veluti ‘Carthagine 5
*Places also to-be-inserted in-a-stipulation are-wont as at-Carthage*
dare spondes?’ quae stipulatio licet pure fieri
*to-give do-you-pledge which stipulation although unconditionally to-be-made*
videatur, tamen re ipsa habet tempus iniectum, quo
*it-seem yet in-the-thing itself has a-time thrown-in which*
promissor utatur ad pecuniam Carthagine dandam. et ideo
*the-promisor may-use for the-money at-Carthage to-be-given and therefore*
si quis ita Romae stipuletur ‘hodie Carthagine dare spondes?’
*if anyone so at-Rome stipulates today at-Carthage to-give do-you-pledge*
inutilis erit stipulatio, cum impossibilis sit repromissio.
*void will-be the-stipulation since impossible is the-promise*
Condiciones, quae ad praeteritum vel ad praesens tempus 6
*Conditions which to the-past or to the-present time*
referuntur, aut statim infirmant obligationem aut omnino
*are-referred either at-once invalidate the-obligation or at-all*
non differunt: veluti ‘si Titius consul fuit’ vel ‘si Maevius
*not defer-it as if Titius consul was or if Maevius*
vivit, dare spondes?’ nam si ea ita non sunt, nihil
*lives to-give do-you-pledge for if those-things so not are nothing*
valet stipulatio: sin autem ita se habent, statim valet.
*avails the-stipulation but-if however so themselves they-hold at-once it-is-valid*
quae enim per rerum naturam certa sunt, non
*those-things-which for by of-things nature certain are not*
morantur obligationem, licet apud nos incerta sint.
*delay the-obligation although among us uncertain they-be*
Non solum res in stipulatum deduci possunt, sed etiam 7
*Not only things into the-stipulation be-brought can but also*
facta: ut si stipulemur fieri aliquid vel non fieri. et in
*acts as if we-stipulate to-be-done something or not to-be-done and in*
huiusmodi stipulationibus optimum erit poenam subicere,
*of-this-kind stipulations best it-will-be a-penalty to-add*

ne quantitas stipulationis in incerto sit ac necesse sit
*lest the-amount of-the-stipulation in uncertainty be and necessary be*
actori probare, quid eius intersit. itaque si quis ut fiat
*for-the-plaintiff to-prove what to-him it-matters therefore if anyone that be-done*
aliquid stipuletur, ita adici poena debet: 'si ita factum non
*something stipulates so to-be-added a-penalty ought if so done not*
erit, tum poenae nomine decem aureos dare spondes?'
*it-shall-be then of-a-penalty by-way ten gold-pieces to-give do-you-pledge*
sed si quaedam fieri, quaedam non fieri una eademque
*but if some-things to-be-done some not to-be-done in-one and-the-same*
conceptione stipuletur, clausula erit huiusmodi adicienda: 'si
*formulation he-stipulates a-clause will-be of-this-kind to-be-added if*
adversus ea factum erit sive quid ita factum non
*against those-things done it-shall-be or anything so done not*
erit, tunc poenae nomine decem aureos dare spondes?'
*it-shall-be then of-a-penalty by-way ten gold-pieces to-give do-you-pledge*

## XVI · TWO CREDITORS OR TWO DEBTORS

*Two or more may be joint creditors or joint debtors by one question and answer; each may claim or owe the whole, and one payment ends the obligation for all. The other's day or condition does not stop a claim against the one bound unconditionally.*

Et stipulandi et promittendi duo pluresve rei fieri
*Both of-stipulating and of-promising two or-more parties become*
possunt. stipulandi ita, si post omnium interrogationem
*can of-stipulating so if after of-all the-question*
promissor respondeat 'spondeo'. ut puta cum duobus
*the-promisor answers I-pledge as for-instance when to-two*
separatim stipulantibus ita promissor respondeat 'utrique
*separately stipulating so the-promisor answers to-each*

vestrum dare spondeo': nam si prius Titio spoponderit,
*of-you to-give I-pledge for if first to-Titius he-has-pledged*
deinde alio interrogante spondeat, alia atque alia erit
*then another asking he-pledges one and another will-be*
obligatio nec creduntur duo rei stipulandi esse. duo
*the-obligation nor are-they-believed two parties of-stipulating to-be two*
pluresve rei promittendi ita fiunt: 'Maevi, quinque aureos
*or-more parties of-promising thus become Maevius five gold-pieces*
dare spondes? Sei, eosdem quinque aureos dare spondes?'
*to-give do-you-pledge Seius the-same five gold-pieces to-give do-you-pledge*
respondeant singuli separatim 'spondeo'.
*they-answer each separately I-pledge*

Ex huiusmodi obligationibus et stipulantibus solidum 1
*From of-this-kind obligations both to-the-stipulating the-whole*
singulis debetur et promittentes singuli in solidum tenentur.
*to-each is-owed and the-promising each for the-whole are-bound*
in utraque tamen obligatione una res vertitur: et vel alter
*in each however obligation one thing is-concerned and either one*
debitum accipiendo vel alter solvendo omnium peremit
*the-debt by-receiving or the-other by-paying of-all destroys*
obligationem et omnes liberat.
*the-obligation and all frees*

Ex duobus reis promittendi alius pure, alius in diem 2
*Of two parties of-promising one unconditionally the-other for a-day*
vel sub condicione obligari potest: nec impedimento erit
*or under condition be-bound can nor a-hindrance will-be*
dies aut condicio, quo minus ab eo qui pure
*the-day or condition whereby not from him who unconditionally*
obligatus est petatur.
*bound is it-be-claimed*

*A slave stipulates by his master's right, and a slave of the inheritance for the inheritance; for whomever he names, he acquires for his master, as children in power do for their father, though a right of way he stipulates for himself is his to use. A common slave acquires for his masters by shares unless he stipulates by one master's order or name, or the thing cannot be acquired for one.*

Servus ex persona domini ius stipulandi habet. sed
*A-slave from the-person of-his-master the-right of-stipulating has but*
hereditas in plerisque personae defuncti vicem sustinet:
*an-inheritance in most-things of-the-person of-the-deceased the-place sustains*
ideoque quod servus hereditarius ante aditam hereditatem
*and-therefore what a-slave of-the-inheritance before the-entered inheritance*
stipulatur, adquirit hereditati ac per hoc etiam heredi
*stipulates he-acquires for-the-inheritance and through this also for-the-heir*
postea facto adquiritur.
*afterward made it-is-acquired*

1 Sive autem domino sive sibi sive conservo suo sive
*Whether however for-the-master or for-himself or for-fellow-slave his or*
impersonaliter servus stipuletur, domino adquirit. idem
*impersonally a-slave stipulates for-the-master he-acquires the-same*
iuris est et in liberis, qui in potestate patris sunt, ex
*of-law it-is also in children who in the-power of-the-father are from*
quibus causis adquirere possunt.
*which causes acquire they-can*

2 Sed cum factum in stipulatione continebitur, omnimodo
*But when an-act in the-stipulation shall-be-contained in-every-way*
persona stipulantis continetur, veluti si servus stipuletur,
*the-person of-the-stipulator is-contained as if a-slave stipulates*

ut sibi ire agere liceat: ipse enim tantum prohiberi
*that for-himself to-go to-drive be-allowed he-himself for only be-prevented*
non debet, non etiam dominus eius.
*not ought not also master his*
Servus communis stipulando unicuique dominorum pro 3
*A-slave common by-stipulating for-each of-the-masters in-proportion*
portione dominii adquirit, nisi si unius eorum iussu aut
*to-the-share of-ownership acquires unless if of-one of-them by-order or*
nominatim cui eorum stipulatus est: tunc enim soli
*by-name for-whom of-them stipulated he-has then for alone*
ei adquiritur. quod servus communis stipulatur, si alteri
*to-him it-is-acquired what a-slave common stipulates if for-one*
ex dominis adquiri non potest, solidum alteri adquiritur,
*of the-masters be-acquired not it-can wholly for-the-other it-is-acquired*
veluti si res quam dari stipulatus est unius domini sit.
*as if the-thing which to-be-given stipulated he-has of-one master be*

## XVIII · KINDS OF STIPULATION

*Stipulations are judicial, praetorian, conventional, or common to praetor and judge, as the guarantee that a ward's property will be safe.*

Stipulationum aliae iudiciales sunt, aliae praetoriae, aliae
*Of-stipulations some judicial are others praetorian others*
conventionales, aliae communes tam praetoriae quam iudiciales.
*conventional others common both praetorian and judicial*

1 Iudiciales sunt dumtaxat, quae a mero iudicis officio
*Judicial are only which from the-mere judge's office*
proficiscuntur: veluti de dolo cautio vel de persequendo
*proceed as about fraud a-guarantee or about pursuing*
servo qui in fuga est restituendove pretio.
*a-slave who in flight is or-restoring the-price*

2 Praetoriae, quae a mero praetoris officio proficiscuntur,
*Praetorian those-which from the-mere praetor's office proceed*
veluti damni infecti vel legatorum. praetorias autem
*as of-damage threatened or of-legacies praetorian however*
stipulationes sic exaudiri oportet, ut in his contineantur
*stipulations so to-be-understood it-behooves that in them be-contained*
etiam aedilitiae: nam et hae ab iurisdictione veniunt.
*also the-aedilician for also these from jurisdiction come*

3 Conventionales sunt, quae ex conventione utriusque partis
*Conventional are those-which from the-agreement of-each party*
concipiuntur, hoc est neque iussu iudicis neque iussu
*are-framed that is neither by-order of-a-judge nor by-order*
praetoris, sed ex conventione contrahentium. quarum totidem
*of-the-praetor but from the-agreement of-the-contracting-parties of-which as-many*
genera sunt, quot paene dixerim rerum contrahendarum.
*kinds there-are as-many-as almost I-should-say of-things to-be-contracted*

4 Communes sunt stipulationes veluti rem salvam fore
*Common are stipulations as the-property safe to-be*
pupilli: nam et praetor iubet rem salvam fore pupillo
*of-the-ward for both the-praetor orders the-property safe to-be for-the-ward*
caveri et interdum iudex, si aliter expediri haec res
*to-be-guaranteed and sometimes the-judge if otherwise be-settled this matter*
non potest: vel de rato stipulatio.
*not can or about ratification the-stipulation*

*A stipulation fails for things that do not exist or cannot be owned, for another's act, for a stranger, on an answer that does not match or a misunderstood thing, between those in one power, by the mute, deaf, mad, or infants, on impossible conditions or a disgraceful cause, or between the absent, though a writing that says both were present is believed. Justinian upholds stipulations for after death and preposterous ones; a penalty secures one for another.*

Omnis res, quae dominio nostro subicitur, in stipulationem
*Every thing which to-ownership our is-subject into stipulation*
deduci potest, sive illa mobilis sive soli sit.
*be-brought can whether it movable or of-the-soil be*
At si quis rem, quae in rerum natura non est aut esse 1
*But if anyone a-thing which in of-things the-nature not is or to-be*
non potest, dari stipulatus fuerit, veluti Stichum, qui
*not can to-be-given stipulated has as Stichus who*
mortuus sit, quem vivere credebat, aut hippocentaurum,
*dead be whom to-be-alive he-believed or a-hippocentaur*
qui esse non possit, inutilis erit stipulatio.
*which to-be not can void will-be the-stipulation*
Idem iuris est, si rem sacram aut religiosam, quam humani 2
*The-same of-law it-is if a-thing sacred or religious which of-human*
iuris esse credebat, vel publicam, quae usibus populi
*law to-be he-believed or public which to-the-uses of-the-people*
perpetuo exposita sit, ut forum vel theatrum, vel liberum
*perpetually set-out be as the-forum or the-theater or a-free*
hominem, quem servum esse credebat, vel cuius commercium
*man whom a-slave to-be he-believed or of-which commerce*
non habuit, vel rem suam dari quis stipuletur. nec in
*not he-had or a-thing his-own to-be-given anyone stipulate nor in*
pendenti erit stipulatio ob id, quod publica res in privatum
*suspense will-be the-stipulation for this that a-public thing into private*

deduci et ex libero servus fieri potest et commercium
*be-brought and from free a-slave be-made can and commerce*
adipisci stipulator potest et res stipulatoris esse desinere
*obtain the-stipulator can and the-thing the-stipulator's to-be cease*
potest: sed protinus inutilis est. item contra licet initio
*can but at-once void it-is likewise conversely although at-the-beginning*
utiliter res in stipulatum deducta sit, si postea in earum
*effectively a-thing into stipulation brought be if afterward into of-them*
qua causa, de quibus supra dictum est, sine facto
*any condition about which above said it-has-been without act*
promissoris devenerit: extinguitur stipulatio. ac ne statim ab
*of-the-promisor it-has-come is-extinguished the-stipulation and not at-once from*
initio talis stipulatio valebit 'Lucium Titium cum servus
*the-beginning such a-stipulation will-be-valid Lucius Titius when a-slave*
erit dare spondes?' et similia: quia natura sui dominio
*be-shall-be to-give do-you-pledge and similar-things because by-nature their from-ownership*
nostro exempta in obligationem deduci nullo modo possunt.
*our exempted into obligation be-brought in-no way can*

3 Si quis alium daturum facturumve quid spoponderit,
*If anyone another about-to-give or-about-to-do something has-pledged*
non obligabitur, veluti si spondeat Titium quinque aureos
*not he-will-be-bound as if he-pledges Titius five gold-pieces*
daturum. quodsi effecturum se, ut Titius daret,
*about-to-give but-if about-to-bring-about himself that Titius give*
spoponderit, obligatur.
*he-has-pledged he-is-bound*

4 Si quis alii, quam cuius iuri subiectus sit, stipuletur,
*If anyone for-another than of-whom right subject he-is stipulates*
nihil agit. plane solutio etiam in extranei personam
*nothing he-achieves clearly payment even into an-outsider's person*
conferri potest (veluti si quis ita stipuletur 'mihi aut Seio
*be-directed can as if anyone so stipulates to-me or to-Seius*

dare spondes?'), ut obligatio quidem stipulatori adquiratur,
*to-give do-you-pledge so-that the-obligation indeed for-the-stipulator be-acquired*
solvi tamen Seio etiam invito eo recte possit, ut liberatio
*be-paid however to-Seius even unwilling him rightly it-can so-that release*
ipso iure contingat, sed ille adversus Seium habeat mandati
*by-the-very law come-about but he against Seius have of-mandate*
actionem. quod si quis sibi et alii, cuius iuri subiectus
*the-action but if anyone for-himself and for-another to-whose right subject*
non sit, decem dari aureos stipulatus est, valebit quidem
*not he-is ten to-be-given gold-pieces stipulated has will-be-valid indeed*
stipulatio: sed utrum totum debetur quod in stipulatione
*the-stipulation but whether the-whole is-owed which in the-stipulation*
deductum est, an vero pars dimidia, dubitatum est: sed
*brought is or rather a-part half doubted it-has-been but*
placet non plus quam partem dimidiam ei adquiri. ei
*it-is-held not more than a-part half for-him to-be-acquired for-one*
qui tuo iuri subiectus est si stipulatus sis, tibi adquiris,
*who to-your right subject is if stipulated you-have for-yourself you-acquire*
quia vox tua tamquam filii sit, sicuti filii vox tamquam
*because voice your as of-a-son be just-as of-a-son the-voice as*
tua intellegitur in his rebus quae tibi adquiri possunt.
*yours is-understood in those things which for-you be-acquired can*
Praeterea inutilis est stipulatio, si quis ad ea quae 5
*Moreover void is the-stipulation if anyone to those-things which*
interrogatus erit non responderit, veluti si decem
*asked he-shall-have-been not has-answered as if ten*
aureos a te dari stipuletur, tu quinque promittas, vel
*gold-pieces by you to-be-given he-stipulates you five promise or*
contra: aut si ille pure stipuletur, tu sub condicione
*conversely or if he unconditionally stipulates you under condition*
promittas, vel contra, si modo scilicet id exprimas, id est si
*promise or conversely if only namely it you-express that is if*

cui sub condicione vel in diem stipulanti tu respondeas:
*to-one-who under condition or for a-day stipulating you answer*
'praesenti die spondeo.' nam si hoc solum respondeas
*for-the-present day I-pledge for if this only you-answer*
'promitto', breviter videris in eandem diem aut condicionem
*I-promise briefly you-seem for the-same day or condition*
spopondisse: nec enim necesse est in respondendo eadem
*to-have-pledged nor for necessary is-it in answering the-same*
omnia repeti, quae stipulator expresserit.
*all-things to-be-repeated which the-stipulator has-expressed*

6 Item inutilis est stipulatio, si ab eo stipuleris, qui iuri tuo
*Likewise void is the-stipulation if from him you-stipulate who to-right your*
subiectus est, vel si is a te stipuletur. sed servus quidem
*subject is or if he from you stipulates but a-slave indeed*
non solum domino suo obligari non potest, sed ne alii
*not only to-master his be-bound not can but not to-another*
quidem ulli: filii vero familias aliis obligari possunt.
*even any sons however of-the-family to-others be-bound can*

7 Mutum neque stipulari neque promittere posse palam est.
*A-mute neither stipulate nor promise to-be-able plain it-is*
quod et in surdo receptum est: quia et is qui stipulatur
*which also in a-deaf-man accepted is because both he who stipulates*
verba promittentis et is qui promittit verba stipulantis
*the-words of-the-promisor and he who promises the-words of-the-stipulator*
audire debet. unde apparet non de eo nos loqui qui
*hear ought whence it-appears not about him we to-speak who*
tardius exaudit, sed de eo qui omnino non exaudit.
*more-slowly hears but about him who at-all not hears*

8 Furiosus nullum negotium gerere potest, quia non intellegit
*A-madman no business conduct can because not he-understands*
quid agit.
*what he-does*

Pupillus omne negotium recte gerit: ut tamen, sicubi 9
*A-ward every business rightly conducts so-that however wherever*
tutoris auctoritas necessaria sit, adhibeatur tutor, veluti
*of-the-tutor the-authority necessary be be-applied the-tutor as*
si ipse obligetur: nam alium sibi obligare etiam sine
*if himself he-be-bound for another to-himself to-bind even without*
tutoris auctoritate potest.
*of-the-tutor the-authority he-can*

Sed quod diximus de pupillis, utique de his verum est, 10
*But what we-have-said about wards certainly about those true is*
qui iam aliquem intellectum habent: nam infans et qui
*who already some understanding have for an-infant and he-who*
infanti proximus est non multum a furioso distant,
*to-an-infant nearest is not much from a-madman differ*
quia huius aetatis pupilli nullum intellectum habent: sed
*because of-this age wards no understanding have but*
in proximis infanti propter utilitatem eorum benignior
*in-those nearest to-infancy on-account-of the-utility their a-more-benign*
iuris interpretatio facta est, ut idem iuris habeant,
*of-law interpretation made has-been so-that the-same of-law they-have*
quod pubertati proximi. sed qui in parentis potestate est
*as to-puberty those-near but he-who in a-parent's power is*
impubes, nec auctore quidem patre obligatur.
*under-age not with-the-authorization even of-the-father is-bound*

Si impossibilis condicio obligationibus adiciatur, nihil valet 11
*If an-impossible condition to-obligations be-added nothing avails*
stipulatio. impossibilis autem condicio habetur, cui natura
*the-stipulation impossible however a-condition is-held to-which nature*
impedimento est, quo minus existat, veluti si quis ita
*a-hindrance is whereby not it-comes-to-pass as if anyone so*
dixerit: 'si digito caelum attigero, dare spondes?'
*has-said if with-my-finger the-sky I-shall-have-touched to-give do-you-pledge*

at si ita stipuletur, 'si digito caelum non attigero,
*but if so he-stipulates if with-my-finger the-sky not I-shall-have-touched*
dare spondes?' pure facta obligatio intellegitur ideoque
*to-give do-you-pledge unconditionally made the-obligation is-understood and-therefore*
statim petere potest.
*at-once claim he-can*

12 Item verborum obligatio inter absentes concepta inutilis
*Likewise of-words an-obligation between the-absent framed void*
est. sed cum hoc materiam litium contentiosis hominibus
*is but since this the-material of-lawsuits to-contentious men*
praestabat, forte post tempus tales allegationes opponentibus
*furnished perhaps after a-time such allegations objecting*
et non praesentes esse vel se vel adversarios suos
*and not present to-have-been either themselves or adversaries their*
contendentibus: ideo nostra constitutio propter celeritatem
*contending therefore our constitution for the-speed*
dirimendarum litium introducta est, quam ad Caesareenses
*to-be-settled of-lawsuits introduced was which to the-Caesarean*
advocatos scripsimus, per quam disposuimus tales scripturas,
*advocates we-wrote through which we-have-arranged such writings*
quae praesto esse partes indicant, omnimodo esse credendas,
*which present to-be the-parties indicate in-every-way to-be to-be-believed*
nisi ipse, qui talibus utitur improbis allegationibus,
*unless he-himself who such uses wicked allegations*
manifestissimis probationibus vel per scripturam vel per
*by-most-manifest proofs either by writing or by*
testes idoneos approbaverit in ipso toto die quo conficiebatur
*witnesses suitable has-proved on that whole day on-which was-drawn-up*
instrumentum sese vel adversarium suum in aliis locis esse.
*the-instrument himself or adversary his in other places to-have-been*

Post mortem suam dari sibi nemo stipulari poterat, 13
*After death his-own to-be-given to-himself no-one stipulate could*
non magis quam post eius mortem a quo stipulabatur.
*no more than after his death from whom he-stipulated*
ac ne is, qui in alicuius potestate est, post mortem eius
*and not-even he who in someone's power is after death his*
stipulari poterat, quia patris vel domini voce loqui
*stipulate could because of-the-father or of-the-master with-the-voice to-speak*
videtur. sed et si quis ita stipuletur, 'pridie quam moriar'
*he-seems but also if anyone so stipulates on-the-day before I-die*
vel 'pridie quam morieris dari?' inutilis erat stipulatio. sed
*or on-the-day before you-die to-be-given void was the-stipulation but*
cum, ut iam dictum est, ex consensu contrahentium
*since as already said it-has-been from the-consent of-the-contracting-parties*
stipulationes valent, placuit nobis etiam in hunc iuris
*stipulations are-valid it-pleased us also into this of-law*
articulum necessariam inducere emendationem, ut, sive
*point a-necessary to-introduce amendment so-that whether*
post mortem sive pridie quam morietur stipulator sive
*after death or on-the-day before shall-die the-stipulator or*
promissor stipulatio concepta est, valeat stipulatio.
*the-promisor the-stipulation framed is be-valid the-stipulation*
Item si quis ita stipulatus erat: 'si navis ex Asia venerit, 14
*Likewise if anyone so stipulated had if the-ship from Asia has-come*
hodie dare spondes?' inutilis erat stipulatio, quia praepostere
*today to-give do-you-pledge void was the-stipulation because preposterously*
concepta est. sed cum Leo inclitae recordationis in dotibus
*framed it-is but since Leo of-renowned memory in dowries*
eandem stipulationem quae praepostera nuncupatur non esse
*the-same stipulation which preposterous is-called not to-be*
reiciendam existimavit, nobis placuit et huic perfectum robur
*to-be-rejected thought to-us it-pleased also to-this perfect strength*

accommodare, ut non solum in dotibus, sed etiam in
*to-accommodate so-that not only in dowries but also in*
omnibus valeat huiusmodi conceptio stipulationis.
*all be-valid such framing of-stipulation*

15 Ita autem concepta stipulatio, veluti si Titius dicat 'cum
*So however framed a-stipulation as if Titius says when*
moriar, dare spondes?' vel 'cum morieris', et apud veteres
*I-die to-give do-you-pledge or when you-die both among the-ancients*
utilis erat et nunc valet.
*effective was and now is-valid*

16 Item post mortem alterius recte stipulamur.
*Likewise after the-death of-another rightly we-stipulate*

17 Si scriptum fuerit in instrumento promisisse aliquem,
*If written it-has-been in the-instrument to-have-promised someone*
perinde habetur, atque si interrogatione praecedente responsum
*just it-is-held as if a-question preceding answer-given*
sit.
*there-had-been*

18 Quotiens plures res una stipulatione comprehenduntur,
*As-often-as several things in-one stipulation are-comprised*
si quidem promissor simpliciter respondeat 'dare spondeo',
*if indeed the-promisor simply answers to-give I-pledge*
propter omnes tenetur: si vero unam ex his vel quasdam
*for all he-is-bound if however one of these or some*
daturum se spoponderit, obligatio in his pro quibus
*about-to-give himself he-has-pledged the-obligation in those for which*
spoponderit contrahitur. ex pluribus enim stipulationibus
*he-has-pledged is-contracted out-of several for stipulations*
una vel quaedam videntur esse perfectae: singulas enim res
*one or some seem to-be completed single for things*
stipulari et ad singulas respondere debemus.
*to-stipulate and to single to-answer we-ought*

Alteri stipulari, ut supra dictum est, nemo potest: 19
*For-another to-stipulate as above said it-has-been no-one can*
inventae sunt enim huiusmodi obligationes ad hoc, ut
*devised were for of-this-kind obligations for this that*
unusquisque sibi adquirat quod sua interest: ceterum si
*each for-himself acquire what to-him matters but if*
alii detur, nihil interest stipulatoris. plane si quis velit hoc
*to-another it-be-given nothing it-matters to-the-stipulator clearly if anyone wishes this*
facere, poenam stipulari conveniet, ut, nisi ita factum sit, ut
*to-do a-penalty to-stipulate it-will-be-fitting so-that unless so done it-be as*
comprehensum esset, committetur poenae stipulatio etiam
*comprised it-was will-take-effect of-the-penalty the-stipulation even*
ei cuius nihil interest: poenam enim cum stipulatur quis,
*for-him to-whom nothing it-matters a-penalty for when stipulates anyone*
non illud inspicitur, quid intersit eius, sed quae sit quantitas in
*not that is-regarded what matters to-him but what be the-amount in*
condicione stipulationis. ergo si quis stipuletur Titio dari,
*the-condition of-the-stipulation therefore if anyone stipulates to-Titius to-be-given*
nihil agit, sed si addiderit de poena 'nisi dederis,
*nothing he-achieves but if he-has-added about a-penalty unless you-have-given*
tot aureos dare spondes?' tunc committitur stipulatio.
*so-many gold-pieces to-give do-you-pledge then takes-effect the-stipulation*
Sed et si quis stipuletur alii, cum eius interesset, 20
*But also if anyone stipulates for-another when to-him it-mattered*
placuit stipulationem valere. nam si is, qui pupilli tutelam
*it-was-held the-stipulation to-be-valid for if he who of-a-ward the-tutelage*
administrare coeperat, cessit administratione contutori suo et
*to-administer had-begun has-ceded the-administration to-co-tutor his and*
stipulatus est rem pupilli salvam fore, quoniam interest
*stipulated has the-property of-the-ward safe to-be since it-matters*
stipulatoris fieri quod stipulatus est, cum obligatus
*to-the-stipulator to-be-done what stipulated he-has since bound*

futurus esset pupillo, si male res gesserit, tenet
*about-to-be he-would-be to-the-ward if badly the-affairs he-has-managed holds*
obligatio. ergo et si quis procuratori suo dari stipulatus
*the-obligation therefore also if anyone to-agent his to-be-given stipulated*
sit, stipulatio vires habebit. et si creditori suo quod
*has the-stipulation force will-have and if to-creditor his what*
sua interest, ne forte vel poena committatur vel praedia
*to-him matters lest perhaps either a-penalty be-incurred or estates*
distrahantur quae pignori data erant, valet stipulatio.
*be-sold which in-pledge given had-been is-valid the-stipulation*

21 Versa vice qui alium facturum promisit, videtur in ea
*Turned the-other-way he-who another about-to-do has-promised seems in that*
esse causa, ut non teneatur, nisi poenam ipse promiserit.
*to-be position that not he-is-bound unless a-penalty he-himself has-promised*

22 Item nemo rem suam futuram in eum casum quo sua
*Likewise no-one a-thing his-own about-to-be for that event in-which his*
fit utiliter stipulatur.
*it-becomes effectively stipulates*

23 Si de alia re stipulator senserit, de alia promissor, perinde
*If about one thing the-stipulator has-thought about another the-promisor just*
nulla contrahitur obligatio, ac si ad interrogatum responsum non
*no is-contracted obligation as if to the-question answer-given not*
esset, veluti si hominem Stichum a te stipulatus quis fuerit,
*had-been as if the-man Stichus from you stipulated anyone has*
tu de Pamphilo senseris, quem Stichum vocari credideris.
*you about Pamphilus have-thought whom Stichus to-be-called you-have-believed*

24 Quod turpi ex causa promissum est, veluti si quis
*What disgraceful from cause promised is as if anyone*
homicidium vel sacrilegium se facturum promittat, non
*a-homicide or a-sacrilege himself about-to-do promises not*
valet.
*is-valid*

Cum quis sub aliqua condicione fuerit stipulatus, licet 25
*When anyone under some condition has stipulated although*
ante condicionem decesserit, postea existente condicione
*before the-condition he-has-died afterward coming-to-pass the-condition*
heres eius agere potest. idem est et a promissoris parte.
*heir his sue can the-same it-is also on the-promisor's side*
Qui hoc anno aut hoc mense dari stipulatus sit, nisi 26
*He-who this year or this month to-be-given stipulated has unless*
omnibus partibus praeteritis anni vel mensis non recte
*all parts passed of-the-year or of-the-month not rightly*
petet.
*will-claim*
Si fundum dari stipuleris vel hominem, non poteris 27
*If an-estate to-be-given you-stipulate or a-man not you-will-be-able*
continuo agere, nisi tantum spatii praeterierit, quo traditio
*at-once to-sue unless so-much of-time has-passed in-which delivery*
fieri possit.
*be-made can*

## XX · SURETIES

*Fideiussors may be added to any obligation, bind their heirs, and may precede or follow it; by Hadrian's letter the creditor sues each for his share, and they may owe less but not more than the debtor. A surety who pays recovers by the action on mandate; written attestation of suretyship suffices.*

Pro eo qui promittit solent alii obligari, qui fideiussores
*For him who promises are-wont others to-be-bound who fideiussors*
appellantur, quos homines accipere solent, dum curant, ut
*are-called whom men to-accept are-wont while they-take-care that*
diligentius sibi cautum sit.
*more-carefully for-themselves security-given be*

1 In omnibus autem obligationibus adsumi possunt, id
*In all however obligations be-taken-on they-can that*
est sive re sive verbis sive litteris sive consensu
*is whether by-delivery or by-words or by-writing or by-consent*
contractae fuerint. ac ne illud quidem interest, utrum
*contracted they-have-been and not that even it-matters whether*
civilis an naturalis sit obligatio, cui adiciatur fideiussor,
*civil or natural be the-obligation to-which be-added a-fideiussor*
adeo quidem, ut pro servo quoque obligetur, sive extraneus
*so-far indeed that for a-slave also he-be-bound whether an-outsider*
sit qui fideiussorem a servo accipiat, sive ipse dominus
*be he-who a-fideiussor from the-slave accepts or himself the-master*
in id quod sibi naturaliter debetur.
*for that which to-him naturally is-owed*

2 Fideiussor non tantum ipse obligatur, sed etiam heredem
*A-fideiussor not only himself is-bound but also the-heir*
obligatum relinquit.
*bound leaves*

3 Fideiussor et praecedere obligationem et sequi potest.
*A-fideiussor both precede the-obligation and follow can*

4 Si plures sint fideiussores, quotquot erunt numero,
*If several there-be fideiussors however-many they-shall-be in-number*
singuli in solidum tenentur. itaque liberum est creditori
*each for the-whole are-bound therefore free it-is for-the-creditor*
a quo velit solidum petere. sed ex epistula divi
*from whom he-wishes the-whole to-claim but by the-letter of-the-deified*
Hadriani compellitur creditor a singulis, qui modo solvendo
*Hadrian is-compelled the-creditor from each-one who only solvent*
sint litis contestatae tempore, partes petere. ideoque si
*be of-issue joined at-the-time shares to-claim and-therefore if*
quis ex fideiussoribus eo tempore solvendo non sit, hoc
*anyone of the-fideiussors at-that time solvent not be this*

ceteros onerat. sed et si ab uno fideiussore creditor totum
*the-others burdens but also if from one fideiussor the-creditor the-whole*
consecutus fuerit, huius solius detrimentum erit, si is pro
*obtained has of-him alone the-loss will-be if he for*
quo fideiussit solvendo non sit: et sibi imputare debet,
*whom he-stood-surety solvent not be and to-himself impute-it he-ought*
cum potuerit adiuvari ex epistula divi Hadriani et
*since he-could be-helped by the-letter of-the-deified Hadrian and*
desiderare, ut pro parte in se detur actio.
*request that for a-part against himself be-given the-action*
Fideiussores ita obligari non possunt, ut plus debeant, quam 5
*Fideiussors so be-bound not can that more they-owe than*
debet is pro quo obligantur: nam eorum obligatio accessio est
*owes he for whom they-are-bound for their obligation an-accessory is*
principalis obligationis nec plus in accessione esse potest quam
*of-the-principal obligation nor more in the-accessory be can than*
in principali re. at ex diverso, ut minus debeant, obligari
*in the-principal matter but on the-contrary that less they-owe be-bound*
possunt. itaque si reus decem aureos promiserit, fideiussor
*they-can therefore if the-debtor ten gold-pieces has-promised the-fideiussor*
in quinque recte obligatur: contra vero non potest obligari.
*for five rightly is-bound conversely however not he-can be-bound*
item si ille pure promiserit, fideiussor sub condicione
*likewise if he unconditionally has-promised the-fideiussor under condition*
promittere potest: contra vero non potest. non solum enim
*promise can conversely however not he-can not only for*
in quantitate, sed etiam in tempore minus et plus intellegitur.
*in amount but also in time less and more is-understood*
plus est enim statim aliquid dare, minus est post tempus dare.
*more is for at-once something to-give less is after a-time to-give*

6 Si quid autem fideiussor pro reo solverit, eius reciperandi
*If anything however the-fideiussor for the-debtor has-paid it of-recovering*
causa habet cum eo mandati iudicium.
*for-the-sake he-has with him of-mandate the-action*

7 Graece fideiussor plerumque ita accipitur: τῇ ἐμῇ πίστει
*In-Greek a-fideiussor mostly so is-accepted on my faith*
κελεύω, λέγω, θέλω sive βούλομαι: sed et si φημί dixerit,
*I-order I-say I-wish or I-want but also if I-affirm he-has-said*
pro eo erit, ac si dixerit λέγω.
*for it it-will-be as if he-had-said I-say*

8 In stipulationibus fideiussorum sciendum est generaliter hoc
*In the-stipulations of-fideiussors to-be-known it-is generally this*
accipi, ut, quodcumque scriptum sit quasi actum, videatur
*to-be-accepted that whatever written be as-if done it-seem*
etiam actum: ideoque constat, si quis se scripserit
*also done and-therefore it-is-agreed if anyone himself has-written*
fideiussisse, videri omnia sollemniter acta.
*to-have-stood-surety to-seem all formally done*

## XXI · THE WRITTEN OBLIGATION

*The old entries are out of use, but one who writes that he owes money not paid is bound by the writing once the defense of money not counted lapses, now after two years.*

Olim scriptura fiebat obligatio, quae nominibus fieri
*Formerly by-writing was-made an-obligation which by-entries to-be-made*
dicebatur, quae nomina hodie non sunt in usu. plane si quis
*was-said which entries today not are in use clearly if anyone*
debere se scripserit, quod numeratum ei non est, de
*to-owe himself has-written what counted to-him not is about*

pecunia minime numerata post multum temporis exceptionem
*money not-at-all counted after much time a-defense*
opponere non potest: hoc enim saepissime constitutum
*oppose not he-can this for very-often established*
est. sic fit, ut et hodie, dum queri non potest,
*it-has-been thus it-comes-about that also today while complain not he-can*
scriptura obligetur: et ex ea nascitur condictio, cessante
*by-the-writing he-is-bound and from it arises the-condiction ceasing*
scilicet verborum obligatione. multum autem tempus in hac
*namely of-words the-obligation much however time in this*
exceptione antea quidem ex principalibus constitutionibus
*defense formerly indeed by imperial constitutions*
usque ad quinquennium procedebat: sed ne creditores diutius
*up to five-years extended but lest the-creditors longer*
possint suis pecuniis forsitan defraudari, per constitutionem
*can of-their money perhaps be-defrauded through constitution*
nostram tempus coartatum est, ut ultra biennii metas
*our the-time restricted has-been so-that beyond of-two-years the-bounds*
huiusmodi exceptio minime extendatur.
*such a-defense not-at-all be-extended*

## XXII · OBLIGATIONS BY CONSENT

*Sale, hire, partnership, and mandate bind by consent alone, without writing or presence, even between the absent, and bind each side to what is good and fair.*

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

1 Ideo autem istis modis consensu dicitur obligatio contrahi,
*Therefore however in-these ways by-consent is-said an-obligation to-be-contracted*
quia neque scriptura neque praesentia omnimodo opus est,
*because neither writing nor presence in-every-way need there-is*
ac ne dari quidquam necesse est, ut substantiam capiat
*and not to-be-given anything necessary is that substance take*
obligatio, sed sufficit eos qui negotium gerunt consentire.
*the-obligation but it-suffices that-those who the-business conduct consent*

2 Unde inter absentes quoque talia negotia contrahuntur,
*Whence between the-absent also such transactions are-contracted*
veluti per epistulam aut per nuntium.
*as by letter or by messenger*

3 Item in his contractibus alter alteri obligatur in id,
*Likewise in these contracts one to-the-other is-bound for that*
quod alterum alteri ex bono et aequo praestare oportet,
*which the-one to-the-other from the-good and fair to-furnish ought*
cum alioquin in verborum obligationibus alius stipuletur,
*whereas otherwise in of-words obligations one stipulates*
alius promittat.
*the-other promises*

## XXIII · PURCHASE AND SALE

*A sale is made when the price is agreed, in money and certain; the risk passes to the buyer at once.*

Emptio et venditio contrahitur, simulatque de pretio
*Purchase and sale is-contracted as-soon-as about the-price*
convenerit, quamvis nondum pretium numeratum sit ac ne
*it-has-been-agreed although not-yet the-price counted be and not*

arra quidem data fuerit. nam quod arrae nomine
*earnest-money even given has-been for what of-earnest-money by-way*
datur, argumentum est emptionis et venditionis contractae.
*is-given evidence is of-a-purchase and sale contracted*
sed haec quidem de emptionibus et venditionibus, quae
*but these-things indeed about purchases and sales which*
sine scriptura consistunt, optinere oportet: nam nihil a
*without writing consist to-hold ought for nothing by*
nobis in huiusmodi venditionibus innovatum est. in his
*us in of-this-kind sales innovated has-been in those*
autem quae scriptura conficiuntur non aliter perfectam
*however which in-writing are-drawn-up not otherwise complete*
esse emptionem et venditionem constituimus, nisi et
*to-be the-purchase and sale we-have-established unless both*
instrumenta emptionis fuerint conscripta vel manu propria
*the-instruments of-the-purchase have-been written either by-the-hand own*
contrahentium, vel ab alio quidem scripta, a contrahente
*of-the-contracting-parties or by another indeed written by the-contracting-party*
autem subscripta et, si per tabellionem fiunt, nisi
*however subscribed and if through a-notary they-are-made unless*
et completiones acceperint et fuerint partibus absoluta.
*also completions they-have-received and have-been by-the-parties finished*
donec enim aliquid ex his deest, et poenitentiae locus
*until for anything of these is-lacking both of-repentance room*
est et potest emptor vel venditor sine poena recedere ab
*there-is and can the-buyer or the-seller without penalty withdraw from*
emptione. ita tamen impune recedere eis concedimus, nisi
*the-purchase so however with-impunity to-withdraw to-them we-grant unless*
iam arrarum nomine aliquid fuerit datum: hoc etenim
*already of-earnest-money by-way anything has-been given this for*
subsecuto, sive in scriptis sive sine scriptis venditio celebrata
*having-followed whether in writing or without writing the-sale concluded*

est, is qui recusat adimplere contractum, si quidem emptor
*was he who refuses to-fulfill the-contract if indeed the-buyer*
est, perdit quod dedit, si vero venditor, duplum restituere
*he-is loses what he-gave if however the-seller double to-restore*
compellitur, licet nihil super arris expressum est.
*is-compelled although nothing about earnest-money expressed is*

1 Pretium autem constitui oportet: nam nulla emptio sine
*A-price however to-be-fixed it-behooves for no purchase without*
pretio esse potest. sed et certum pretium esse debet.
*a-price be can but also certain the-price be ought*
alioquin si ita inter aliquos convenerit, ut, quanti
*otherwise if so between some-persons it-has-been-agreed that for-as-much-as*
Titius rem aestimaverit, tanti sit empta: inter veteres
*Titius the-thing has-valued for-so-much it-be bought among the-ancients*
satis abundeque hoc dubitabatur, sive constat venditio sive
*quite and-abundantly this was-doubted whether stands the-sale or*
non. sed nostra decisio ita hoc constituit, ut, quotiens sic
*not but our decision so this has-established that whenever thus*
composita sit venditio 'quanti ille aestimaverit', sub hac
*composed be the-sale for-as-much-as he has-valued under this*
condicione staret contractus, ut, si quidem ipse qui
*condition should-stand the-contract that if indeed he-himself who*
nominatus est pretium definierit, omnimodo secundum eius
*named was the-price has-fixed in-every-way according-to his*
aestimationem et pretium persolvatur et res tradatur, ut
*valuation both the-price be-paid and the-thing be-delivered so-that*
venditio ad effectum perducatur, emptore quidem ex empto
*the-sale to effect be-brought the-buyer indeed from purchase*
actione, venditore autem ex vendito agente. sin autem ille
*by-action the-seller however from sale suing but-if however he*
qui nominatus est vel noluerit vel non potuerit pretium
*who named was either has-been-unwilling or not has-been-able the-price*

definire, tunc pro nihilo esse venditionem quasi nullo pretio
*to-fix then for nothing to-be the-sale as-if no price*
statuto. quod ius cum in venditionibus nobis placuit, non
*fixed which law since in sales to-us it-has-pleased not*
est absurdum et in locationibus et conductionibus trahere.
*it-is absurd also into lettings and hirings to-draw*
Item pretium in numerata pecunia consistere debet. nam in 2
*Likewise the-price in counted money consist ought for in*
ceteris rebus an pretium esse possit, veluti homo aut fundus
*other things whether a-price be can as a-man or an-estate*
aut toga alterius rei pretium esse possit, valde quaerebatur.
*or a-toga of-another thing the-price be could greatly was-asked*
Sabinus et Cassius etiam in alia re putant posse pretium
*Sabinus and Cassius even in another thing think to-be-able the-price*
consistere: unde illud est, quod vulgo dicebatur per
*to-consist whence that is what commonly was-said through*
permutationem rerum emptionem et venditionem contrahi
*exchange of-things purchase and sale to-be-contracted*
eamque speciem emptionis venditionisque vetustissimam esse:
*and-that kind of-purchase and-sale most-ancient to-be*
argumentoque utebantur Graeco poeta Homero, qui aliqua
*and-as-argument they-used the-Greek poet Homer who in-some*

parte exercitum Achivorum vinum sibi comparasse ait
*part the-army of-the-Achaeans wine for-itself to-have-procured says*
permutatis quibusdam rebus, his verbis:
*exchanged certain things in-these words*

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

Diversae scholae auctores contra sentiebant aliudque
*Of-the-other school the-authorities to-the-contrary held and-another*
esse existimabant permutationem rerum, aliud emptionem et
*to-be thought exchange of-things another purchase and*
venditionem. alioquin non posse rem expediri permutatis
*sale otherwise not to-be-able the-matter to-be-resolved exchanged*
rebus, quae videatur res venisse et quae pretii nomine
*things which seem the-thing to-have-been-sold and which of-price by-way*
data esse: nam utramque videri et venisse et pretii
*given to-have-been for each to-seem both to-have-been-sold and of-price*
nomine datam esse rationem non pati. sed Proculi
*by-way given to-have-been reason not allows but of-Proculus*
sententia dicentis permutationem propriam esse speciem
*the-opinion saying exchange its-own to-be a-kind*
contractus a venditione separatam merito praevaluit, cum
*of-contract from sale separate deservedly has-prevailed since*
et ipsa aliis Homericis versibus adiuvatur et validioribus
*also itself by-other Homeric verses it-is-supported and by-stronger*

rationibus argumentatur. quod et anteriores divi principes
*reasons it-argues which also the-earlier deified emperors*
admiserunt et in nostris digestis latius significatur.
*admitted and in our digests more-broadly is-signified*
Cum autem emptio et venditio contracta sit (quod 3
*When however the-purchase and sale contracted has-been which*
effici diximus, simulatque de pretio convenerit, cum
*to-be-effected we-have-said as-soon-as about the-price it-has-been-agreed when*
sine scriptura res agitur), periculum rei venditae
*without writing the-matter is-done the-risk of-the-thing sold*
statim ad emptorem pertinet, tametsi adhuc ea res emptori
*at-once to the-buyer belongs although still that thing to-the-buyer*
tradita non sit. itaque si homo mortuus sit vel aliqua parte
*delivered not be therefore if the-slave dead be or in-some part*
corporis laesus fuerit, aut aedes totae aut aliqua ex parte
*of-the-body injured has-been or the-house wholly or some in part*
incendio consumptae fuerint, aut fundus vi fluminis
*by-fire consumed have-been or the-estate by-the-force of-a-river*
totus vel aliqua ex parte ablatus sit, sive etiam inundatione
*wholly or some in part carried-away be or even by-flooding*
aquae aut arboribus turbine deiectis longe minor aut
*of-water or by-trees by-a-whirlwind thrown-down far smaller or*
deterior esse coeperit: emptoris damnum est, cui necesse
*worse to-be has-begun the-buyer's loss it-is for-whom necessary*
est, licet rem non fuerit nactus, pretium solvere. quidquid
*it-is although the-thing not he-have obtained the-price to-pay whatever*
enim sine dolo et culpa venditoris accidit, in eo venditor
*for without fraud and fault of-the-seller happens in that the-seller*
securus est. sed et si post emptionem fundo aliquid
*safe is but also if after the-purchase to-the-estate something*

per alluvionem accessit, ad emptoris commodum pertinet:
*through alluvion has-accrued to the-buyer's advantage it-belongs*
nam et commodum eius esse debet, cuius periculum est.
*for also the-advantage his to-be ought whose the-risk is*
3a Quod si fugerit homo qui veniit aut subreptus fuerit,
*But if has-fled the-slave who was-sold or stolen has-been*
ita ut neque dolus neque culpa venditoris interveniat,
*so that neither fraud nor fault of-the-seller intervene*
animadvertendum erit, an custodiam eius usque ad
*to-be-considered it-will-be whether the-keeping his up to*
traditionem venditor susceperit. sane enim, si susceperit,
*delivery the-seller undertook indeed for if he-has-undertaken*
ad ipsius periculum is casus pertinet: si non susceperit,
*to his-own risk that mischance belongs if not he-has-undertaken*
securus erit. idem et in ceteris animalibus ceterisque
*safe he-will-be the-same also in other animals and-other*
rebus intellegimus. utique tamen vindicationem rei et
*things we-understand certainly however the-vindication of-the-thing and*
condictionem exhibere debebit emptori, quia sane, qui
*the-condiction make-over he-will-be-bound to-the-buyer because indeed he-who*
rem nondum emptori tradidit, adhuc ipse dominus est.
*the-thing not-yet to-the-buyer has-delivered still himself owner is*
idem est etiam de furti et de damni iniuriae actione.
*the-same it-is also about of-theft and about of-damage wrongful the-action*
4 Emptio tam sub condicione quam pure contrahi
*A-purchase both under condition and unconditionally be-contracted*
potest. sub condicione veluti 'si Stichus intra certum diem
*can under condition as if Stichus within a-certain day*
tibi placuerit, erit tibi emptus aureis tot.'
*to-you shall-have-pleased he-will-be by-you bought for-gold-pieces so-many*

Loca sacra vel religiosa, item publica, veluti forum basilicam, 5
*Places sacred or religious likewise public as the-forum a-basilica*
frustra quis sciens emit, quas tamen si pro privatis vel
*in-vain anyone knowingly buys which however if as private or*
profanis deceptus a venditore emerit, habebit actionem ex
*profane deceived by the-seller he-has-bought he-will-have the-action from*
empto, quod non habere ei liceat, ut consequatur,
*purchase that not to-have-them for-him it-be-allowed so-that he-obtain*
quod sua interest deceptum eum non esse. idem iuris
*what to-him matters deceived him not to-be the-same of-law*
est, si hominem liberum pro servo emerit.
*it-is if a-man free as a-slave he-has-bought*

## XXIV · HIRE

*Hire follows the rules of sale, with a fixed rent; rent left to another's judgment or work done for a later price gives an action on prescribed words, as does exchange of use. Emphyteusis, by Zeno's statute, is its own contract, the risk of total loss on the owner and of partial loss on the holder; rings made from the goldsmith's own gold are sale, from the customer's gold hire. The hirer owes the care of a most diligent father, and his heir succeeds to the hire.*

Locatio et conductio proxima est emptioni et venditioni
*Letting and hiring next is to-purchase and sale*
isdemque iuris regulis consistunt. nam ut emptio et
*and-by-the-same of-law rules they-stand for as purchase and*
venditio ita contrahitur, si de pretio convenerit, sic etiam
*sale so is-contracted if about the-price it-has-been-agreed so also*
locatio et conductio ita contrahi intellegitur, si merces
*letting and hiring so to-be-contracted is-understood if a-rent*

constituta sit. et competit locatori quidem locati actio,
*fixed be and belongs to-the-lessor indeed of-letting the-action*
conductori vero conducti.
*to-the-hirer however of-hiring*

1 Et quae supra diximus, si alieno arbitrio pretium permissum
*And what above we-have-said if to-another's judgment the-price left*
fuerit, eadem et de locatione et conductione dicta esse
*has-been the-same also about letting and hiring said to-have-been*
intellegamus, si alieno arbitrio merces permissa fuerit. qua
*let-us-understand if to-another's judgment the-rent left has-been which*
de causa si fulloni polienda curandave aut sarcinatori
*for reason if to-a-fuller to-be-cleaned or-to-be-cared-for or to-a-tailor*
sarcienda vestimenta quis dederit nulla statim mercede
*to-be-mended clothes anyone has-given no at-once payment*
constituta, sed postea tantum daturus, quantum inter eos
*fixed but afterward so-much about-to-give as-much-as between them*
convenerit, non proprie locatio et conductio contrahi
*shall-have-been-agreed not properly letting and hiring to-be-contracted*
intellegitur, sed eo nomine praescriptis verbis actio datur.
*is-understood but on-that account with-prescribed words an-action is-given*

2 Praeterea sicut vulgo quaerebatur, an permutatis rebus
*Moreover just-as commonly it-was-asked whether exchanged things*
emptio et venditio contrahitur: ita quaeri solebat de
*a-purchase and sale is-contracted so to-be-asked it-was-wont about*
locatione et conductione, si forte rem aliquam tibi utendam
*letting and hiring if perhaps a-thing some to-you for-use*
sive fruendam quis dederit et invicem a te aliam utendam
*or for-enjoyment anyone has-given and in-turn from you another for-use*
sive fruendam acceperit. et placuit non esse locationem et
*or for-enjoyment has-received and it-was-held not to-be letting and*
conductionem, sed proprium genus esse contractus. veluti si,
*hiring but its-own kind to-be of-contract as if*

cum unum quis bovem haberet et vicinus eius unum, placuerit
*when one anyone ox had and neighbor his one it-was-agreed*
inter eos, ut per denos dies invicem boves commodarent,
*between them that for ten days in-turn the-oxen they-should-lend*
ut opus facerent, et apud alterum bos periit: neque locati
*so-that work they-might-do and with the-other the-ox has-died neither of-letting*
vel conducti neque commodati competit actio, quia non fuit
*or of-hiring nor of-loan-for-use belongs the-action because not was*
gratuitum commodatum, verum praescriptis verbis agendum est.
*free the-loan-for-use but with-prescribed words to-be-sued it-is*
Adeo autem familiaritatem aliquam inter se habere videntur 3
*So-far however a-relationship some between themselves to-have they-seem*
emptio et venditio, item locatio et conductio, ut in quibusdam
*purchase and sale likewise letting and hiring that in certain*
causis quaeri soleat, utrum emptio et venditio contrahatur,
*cases to-be-asked it-is-wont whether purchase and sale is-contracted*
an locatio et conductio. ut ecce de praediis, quae perpetuo
*or letting and hiring as for-instance about estates which in-perpetuity*
quibusdam fruenda traduntur, id est ut, quamdiu pensio sive
*to-certain-persons to-be-enjoyed are-delivered that is that as-long-as the-rent or*
reditus pro his domino praestetur, neque ipsi conductori
*income for them to-the-owner is-furnished neither from-the-very hirer*
neque heredi eius, cuive conductor heresve eius
*nor from-the-heir his or-from-one-to-whom the-hirer or-heir his*
id praedium vendiderit aut donaverit aut dotis nomine
*that estate has-sold or given or of-dowry by-way*
dederit aliove quo modo alienaverit, auferre liceat.
*given or-in-another any way alienated to-take-away-it be-allowed*
sed talis contractus, quia inter veteres dubitabatur et a
*but such contract because among the-ancients it-was-doubted and by*
quibusdam locatio, a quibusdam venditio existimabatur: lex
*some letting by some sale it-was-thought the-statute*

Zenoniana lata est, quae emphyteuseos contractui propriam
*Zenonian passed was which of-emphyteusis for-the-contract its-own*
statuit naturam neque ad locationem neque ad venditionem
*established nature neither to letting nor to sale*
inclinantem, sed suis pactionibus fulciendam, et si quidem
*inclining but by-its-own pacts to-be-supported and if indeed*
aliquid pactum fuerit, hoc ita optinere, ac si naturalis esset
*anything agreed has-been this so to-hold as if natural were*
contractus, sin autem nihil de periculo rei fuerit
*the-contract but-if however nothing about the-risk of-the-thing has-been*
pactum, tunc si quidem totius rei interitus accesserit, ad
*agreed then if indeed of-the-whole thing destruction has-befallen to*
dominum super hoc redundare periculum, sin particularis, ad
*the-owner over this to-flow-back the-risk but-if partial to*
emphyteuticarium huiusmodi damnum venire. quo iure utimur.
*the-emphyteuticary such loss to-come which law we-use*

4 Item quaeritur, si cum aurifice Titio convenerit, ut is ex
*Likewise it-is-asked if with the-goldsmith Titius it-has-been-agreed that he from*
auro suo certi ponderis certaeque formae anulos ei
*gold his-own of-a-certain weight and-of-a-certain form rings for-him*
faceret et acciperet verbi gratia aureos decem, utrum
*should-make and should-receive of-example for-the-sake gold-pieces ten whether*
emptio et venditio an locatio et conductio contrahi videatur?
*purchase and sale or letting and hiring to-be-contracted seem*
Cassius ait materiae quidem emptionem venditionemque
*Cassius says of-the-material indeed a-purchase and-sale*
contrahi, operae autem locationem et conductionem. sed
*to-be-contracted of-the-work however a-letting and hiring but*
placuit tantum emptionem et venditionem contrahi. quodsi
*it-was-held only purchase and sale to-be-contracted but-if*

suum aurum Titius dederit mercede pro opera constituta,
*his-own gold Titius has-given a-payment for the-work fixed*
dubium non est, quin locatio et conductio sit.
*doubtful not it-is that letting and hiring it-be*
Conductor omnia secundum legem conductionis facere debet 5
*The-hirer all-things according-to the-terms of-the-hiring do ought*
et, si quid in lege praetermissum fuerit, id ex bono et
*and if anything in the-terms omitted has-been that from the-good and*
aequo debet praestare. qui pro usu aut vestimentorum aut
*fair he-ought to-furnish he-who for the-use either of-clothes or*
argenti aut iumenti mercedem aut dedit aut promisit,
*of-silver or of-a-beast-of-burden payment either has-given or promised*
ab eo custodia talis desideratur, qualem diligentissimus pater
*from him keeping such is-required as the-most-diligent father*
familias suis rebus adhibet. quam si praestiterit et aliquo
*of-a-family to-his-own things applies which if he-has-furnished and by-some*
casu rem amiserit, de restituenda ea non tenebitur.
*chance the-thing has-lost about restoring it not he-will-be-bound*
Mortuo conductore intra tempora conductionis heres eius 6
*Dead the-hirer within the-times of-the-hiring heir his*
eodem iure in conductionem succedit.
*by-the-same right into the-hiring succeeds*

*Partners share gain and loss equally unless agreed; renunciation or death ends it.*

Societatem coire solemus aut totorum bonorum, quam
*A-partnership to-enter we-are-wont either of-all-the goods which*
Graeci specialiter κοινοπραξίαν appellant, aut unius alicuius
*the-Greeks specially koinopraxia call or of-one some*
negotiationis, veluti mancipiorum emendorum vendendorumque,
*business as of-slaves to-be-bought and-to-be-sold*
aut olei vini frumenti emendi vendendique.
*or of-oil of-wine of-grain to-be-bought and-to-be-sold*

1 Et quidem si nihil de partibus lucri et damni nominatim
*And indeed if nothing about the-shares of-gain and of-loss by-name*
convenerit, aequales scilicet partes et in lucro et in damno
*has-been-agreed equal namely shares both in gain and in loss*
spectantur. quod si expressae fuerint partes, hae servari
*are-regarded but if expressed have-been the-shares these be-observed*
debent: nec enim umquam dubium fuit, quin valeat conventio,
*ought nor for ever doubtful was-it that be-valid the-agreement*
si duo inter se pacti sunt, ut ad unum quidem duae
*if two between themselves agreed have that to one indeed two*
partes et damni et lucri pertineant, ad alium tertia.
*parts both of-loss and of-gain belong to the-other a-third*

2 De illa sane conventione quaesitum est, si Titius et
*About that indeed agreement asked it-has-been if Titius and*
Seius inter se pacti sunt, ut ad Titium lucri duae partes
*Seius between themselves agreed have that to Titius of-gain two parts*
pertineant, damni tertia, ad Seium duae partes damni, lucri
*belong of-loss a-third to Seius two parts of-loss of-gain*
tertia, an rata debet haberi conventio? Quintus Mucius
*a-third whether ratified ought be-held the-agreement Quintus Mucius*

contra naturam societatis talem pactionem esse existimavit
*against the-nature of-partnership such a-pact to-be thought*
et ob id non esse ratam habendam. Servius Sulpicius, cuius
*and for this not to-be ratified to-be-held Servius Sulpicius whose*
sententia praevaluit, contra sentit, quia saepe quorundam
*opinion has-prevailed the-contrary holds because often of-some*
ita pretiosa est opera in societate, ut eos iustum sit meliore
*so valuable is the-work in a-partnership that them just it-be on-better*
condicione in societatem admitti: nam et ita coiri
*condition into the-partnership to-be-admitted for also so to-be-entered*
posse societatem non dubitatur, ut alter pecuniam conferat,
*can a-partnership not it-is-doubted that one money contribute*
alter non conferat et tamen lucrum inter eos commune
*the-other not contribute and yet the-gain between them common*
sit, quia saepe opera alicuius pro pecunia valet. et adeo
*be because often the-work of-someone for money counts and so-far*
contra Quinti Mucii sententiam optinuit, ut illud quoque
*against Quintus Mucius' opinion it-has-prevailed that this also*
constiterit posse convenire, ut quis lucri partem ferat,
*has-been-established to-be-able to-be-agreed that anyone of-gain a-part take*
damno non teneatur, quod et ipsum Servius convenienter
*for-loss not be-liable which also itself Servius consistently*
sibi existimavit: quod tamen ita intellegi oportet, ut,
*with-himself thought which however so to-be-understood it-behooves that*
si in aliqua re lucrum, in aliqua damnum allatum sit,
*if in some matter gain in some loss brought be*
compensatione facta solum quod superest intellegatur lucri esse.
*set-off made only what remains be-understood of-gain to-be*

3 Illud expeditum est, si in una causa pars fuerit expressa, veluti
*That plain is if in one case a-share has-been expressed as*
in solo lucro vel in solo damno, in altera vero omissa: in
*in sole gain or in sole loss in the-other however omitted in*
eo quoque quod praetermissum est eandem partem servari.
*that also which omitted is the-same share to-be-observed*

4 Manet autem societas eo usque, donec in eodem consensu
*Remains however the-partnership so long until in the-same consent*
perseveraverint: at cum aliquis renuntiaverit societati, solvitur
*they-have-persevered but when someone has-renounced the-partnership is-dissolved*
societas. sed plane si quis callide in hoc renuntiaverit
*the-partnership but clearly if anyone craftily for this has-renounced*
societati, ut obveniens aliquod lucrum solus habeat, veluti
*the-partnership that coming some gain alone he-may-have as*
si totorum bonorum socius, cum ab aliquo heres esset
*if of-all-the goods a-partner when by someone heir he-had-been*
relictus, in hoc renuntiaverit societati, ut hereditatem solus
*left for this has-renounced the-partnership that the-inheritance alone*
lucrifaceret, cogitur hoc lucrum communicare: si quid
*he-might-gain he-is-compelled this gain to-share if anything*
vero aliud lucrifaceret, quod non captaverit, ad ipsum solum
*however else he-should-gain which not he-has-angled-for to himself alone*
pertinet: ei vero, cui renuntiatum est, quidquid omnino
*it-belongs to-him however to-whom renounced it-is whatever at-all*
post renuntiatam societatem adquiritur, soli conceditur.
*after the-renounced partnership is-acquired alone is-granted*

5 Solvitur adhuc societas etiam morte socii, quia qui
*Is-dissolved further a-partnership also by-the-death of-a-partner because he-who*
societatem contrahit certam personam sibi eligit. sed
*a-partnership contracts a-certain person for-himself chooses but*
et si consensu plurium societas coita sit, morte unius
*also if by-the-consent of-several a-partnership entered be by-the-death of-one*

socii solvitur, etsi plures supersint, nisi si in coeunda
*partner it-is-dissolved even-if several survive unless if in entering*
societate aliter convenerit.
*the-partnership otherwise it-has-been-agreed*
Item si alicuius rei contracta societas sit et finis 6
*Likewise if of-some thing contracted a-partnership be and an-end*
negotio impositus est, finitur societas.
*on-the-business imposed is is-ended the-partnership*
Publicatione quoque distrahi societatem manifestum est, 7
*By-confiscation also to-be-dissolved a-partnership manifest it-is*
scilicet si universa bona socii publicentur: nam cum in
*namely if all-the goods of-a-partner be-confiscated for since into*
eius locum alius succedit, pro mortuo habetur.
*his place another succeeds as dead he-is-held*
Item si quis ex sociis mole debiti praegravatus bonis 8
*Likewise if anyone of the-partners by-the-weight of-debt weighed-down from-goods*
suis cesserit et ideo propter publica aut propter privata
*his-own has-ceded and therefore on-account-of public or on-account-of private*
debita substantia eius veneat, solvitur societas. sed hoc casu si
*debts the-substance his be-sold is-dissolved the-partnership but in-this case if*
adhuc consentiant in societatem, nova videtur incipere societas.
*still they-agree into partnership a-new seems to-begin partnership*
Socius socio utrum eo nomine tantum teneatur pro 9
*A-partner to-a-partner whether on-that account only be-bound for*
socio actione, si quid dolo commiserit, sicut is qui
*partner by-the-action if anything by-fraud he-has-committed as he who*
deponi apud se passus est, an etiam culpae, id
*to-be-deposited with himself allowed has or also of-fault that*
est desidiae atque neglegentiae nomine, quaesitum est:
*is of-sloth and of-negligence on-account asked it-has-been*
praevaluit tamen etiam culpae nomine teneri eum. culpa
*it-has-prevailed however also of-fault on-account to-be-bound him fault*

autem non ad exactissimam diligentiam dirigenda est: sufficit
*however not to the-most-exact diligence to-be-directed is it-suffices*
enim talem diligentiam in communibus rebus adhibere socium,
*for such diligence in common things to-apply a-partner*
qualem suis rebus adhibere solet. nam qui parum
*as to-his-own things to-apply he-is-wont for he-who a-too-little*
diligentem socium sibi adsumit, de se queri debet
*diligent partner to-himself takes-on of himself complain ought*

## XXVI · MANDATE

*Mandate binds when made for the mandator's sake, another's, or any two of the three parties', but not for the mandatary's alone, which is advice; an immoral mandate does not bind. The mandatary must keep its bounds, though against Sabinus and Cassius the other school lets him sue up to the limit; it ends by revocation or death unless carried out unaware of the death, may be refused but must be renounced in time, and must be gratuitous.*

Mandatum contrahitur quinque modis, sive sua tantum
*A-mandate is-contracted in-five ways whether for-his-own only*
gratia aliquis tibi mandet, sive sua et tua, sive aliena
*sake someone you charge or for-his-own and yours or for-another's*
tantum, sive sua et aliena, sive tua et aliena. at
*only or for-his-own and another's or for-yours and another's but*
si tua tantum gratia tibi mandatum sit, supervacuum est
*if for-yours only sake to-you the-mandate be superfluous is*
mandatum et ob id nulla ex eo obligatio nec mandati
*the-mandate and for that no from it obligation nor of-mandate*
inter vos actio nascitur.
*between you action arises*

Mandantis tantum gratia intervenit mandatum, veluti si 1
*Of-the-mandator only for-the-sake intervenes a-mandate as if*
quis tibi mandet, ut negotia eius gereres, vel ut
*anyone you charges that the-affairs his you-should-manage or that*
fundum ei emeres, vel ut pro eo sponderes.
*an-estate for-him you-should-buy or that for him you-should-pledge*
Tua et mandantis, veluti si mandet tibi, ut pecuniam sub usuris 2
*Yours and the-mandator's as if he-charges you that money at interest*
crederes ei, qui in rem ipsius mutuaretur, aut
*you-should-lend to-him who for the-affairs of-the-mandator-himself should-borrow or*
si volente te agere cum eo ex fideiussoria causa mandet tibi, ut
*if wishing you to-sue with him on a-fideiussory ground he-charges you that*
cum reo agas periculo mandantis, vel ut ipsius periculo
*with the-debtor you-sue at-the-risk of-the-mandator or that at-his-own risk*
stipuleris ab eo, quem tibi deleget in id quod tibi debuerat.
*you-stipulate from him whom to-you he-delegates for that which to-you he-had-owed*
Aliena autem causa intervenit mandatum, veluti si tibi 3
*For-another's however sake intervenes a-mandate as if you*
mandet, ut Titii negotia gereres, vel ut Titio fundum
*he-charges that Titius' affairs you-should-manage or that for-Titius an-estate*
emeres, vel ut pro Titio sponderes.
*you-should-buy or that for Titius you-should-pledge*
Sua et aliena, veluti si de communibus suis et Titii 4
*His-own and another's as if about common his-own and Titius'*
negotiis gerendis tibi mandet, vel ut sibi et Titio
*affairs to-be-managed you he-charges or that for-himself and for-Titius*
fundum emeres, vel ut pro eo et Titio sponderes.
*an-estate you-should-buy or that for him and Titius you-should-pledge*

5 Tua et aliena, veluti si tibi mandet, ut Titio sub usuris
*Yours and another's as if you he-charges that to-Titius at interest*
crederes. quodsi ut sine usuris crederes, aliena tantum
*you-should-lend but-if that without interest you-should-lend for-another's only*
gratia intercedit mandatum.
*sake intervenes the-mandate*

6 Tua gratia intervenit mandatum, veluti si tibi mandet, ut
*For-your sake intervenes a-mandate as if you he-charges that*
pecunias tuas potius in emptiones praediorum colloces, quam
*monies your rather in purchases of-estates you-place than*
feneres, vel ex diverso ut feneres potius, quam
*you-lend-at-interest or on the-contrary that you-lend-at-interest rather than*
in emptiones praediorum colloces. cuius generis mandatum
*in purchases of-estates you-place of-which kind a-mandate*
magis consilium est quam mandatum et ob id non est
*rather advice is than a-mandate and for that not is*
obligatorium, quia nemo ex consilio mandati obligatur,
*binding because no-one from advice by-mandate is-bound*
etiamsi non expediat ei cui dabitur, cum liberum
*even-if not it-benefit him to-whom it-will-be-given since free*
cuique sit apud se explorare, an expediat consilium.
*for-each it-be with himself to-explore whether it-benefits the-advice*
itaque si otiosam pecuniam domi te habentem hortatus
*therefore if idle money at-home you having urged*
fuerit aliquis, ut rem aliquam emeres vel eam credas,
*has someone that a-thing some you-should-buy or it you-lend*
quamvis non expediet tibi eam emisse vel credidisse, non
*although not it-will-benefit you it to-have-bought or to-have-lent not*
tamen tibi mandati tenetur. et adeo haec ita sunt, ut
*however to-you by-mandate he-is-bound and so-far these-things so are that*
quaesitum sit, an mandati teneatur qui mandavit tibi,
*asked it-has-been whether by-mandate be-bound he-who charged you*

ut Titio pecuniam fenerares: sed optinuit Sabini
*that to-Titius money you-should-lend-at-interest but prevailed Sabinus'*
sententia obligatorium esse in hoc casu mandatum, quia non
*opinion binding to-be in this case the-mandate because not*
aliter Titio credidisses, quam si tibi mandatum esset.
*otherwise to-Titius you-would-have-lent than if to-you charged it-had-been*
Illud quoque mandatum non est obligatorium, quod contra 7
*That also mandate not is binding which against*
bonos mores est, veluti si Titius de furto aut damno
*good morals is as if Titius about theft or damage*
faciendo aut de iniuria facienda tibi mandet. licet enim
*to-be-done or about outrage to-be-done you charges although for*
poenam istius facti nomine praestiteris, non tamen ullam
*the-penalty of-that act on-account you-have-furnished not however any*
habes adversus Titium actionem.
*you-have against Titius action*
Is qui exsequitur mandatum non debet excedere fines 8
*He who carries-out a-mandate not ought to-exceed the-bounds*
mandati. ut ecce si quis usque ad centum aureos
*of-the-mandate as for-instance if anyone up to a-hundred gold-pieces*
mandaverit tibi, ut fundum emeres vel ut pro Titio
*has-charged you that an-estate you-should-buy or that for Titius*
sponderes, neque pluris emere debes neque in ampliorem
*you-should-pledge neither for-more to-buy you-ought nor for a-larger*
pecuniam fideiubere, alioquin non habebis cum eo mandati
*money to-guarantee otherwise not you-will-have with him of-mandate*
actionem: adeo quidem, ut Sabino et Cassio placuerit,
*the-action so-far indeed that to-Sabinus and Cassius it-seemed-good*
etiam si usque ad centum aureos cum eo agere velis,
*even if up to a-hundred gold-pieces with him to-sue you-wish*
inutiliter te acturum: diversae scholae auctores recte te
*uselessly you about-to-sue of-the-other school the-authorities rightly you*

usque ad centum aureos acturum existimant: quae sententia
*up to a-hundred gold-pieces about-to-sue think which opinion*
sane benignior est. quod si minoris emeris, habebis
*indeed more-benign is but if for-less you-have-bought you-will-have*
scilicet cum eo actionem, quoniam qui mandat, ut sibi
*namely with him the-action since he-who charges that for-himself*
centum aureorum fundus emeretur, is utique mandasse
*of-a-hundred gold-pieces an-estate be-bought he certainly to-have-charged*
intellegitur, ut minoris si posset emeretur.
*is-understood that for-less if it-could it-be-bought*

9 Recte quoque mandatum contractum, si, dum adhuc integra
*Rightly also a-mandate contracted if while still intact*
res sit, revocatum fuerit, evanescit.
*the-matter be revoked it-has-been vanishes*

10 Item si adhuc integro mandato mors alterutrius interveniat,
*Likewise if still intact the-mandate the-death of-either intervene*
id est vel eius qui mandaverit, vel eius qui mandatum
*that is either of-him who has-charged or of-him who the-mandate*
susceperit, solvitur mandatum. sed utilitatis causa receptum
*undertook is-dissolved the-mandate but of-utility for-the-sake accepted*
est, si mortuo eo, qui tibi mandaverit, tu ignorans eum
*it-has-been if dead him who you has-charged you unaware him*
decessisse exsecutus fueras mandatum, posse te agere mandati
*to-have-died carried-out had the-mandate to-be-able you to-sue of-mandate*
actione: alioquin iusta et probabilis ignorantia damnum tibi
*by-the-action otherwise just and excusable ignorance loss to-you*
afferat. et huic simile est, quod placuit, si debitores manumisso
*would-bring and to-this similar is what was-held if debtors manumitted*
dispensatore Titii per ignorantiam liberto solverint,
*the-steward of-Titius through ignorance to-the-freedman have-paid*

liberari eos: cum alioquin stricta iuris ratione non possent
*to-be-freed them since otherwise by-strict of-law reason not they-could*
liberari, quia alii solvissent, quam cui solvere deberent.
*be-freed because to-another they-had-paid than to-whom to-pay they-ought*
Mandatum non suscipere liberum est: susceptum autem 11
*A-mandate not to-undertake free it-is undertaken however*
consummandum aut quam primum renuntiandum est, ut
*to-be-completed or as soon to-be-renounced it-is so-that*
aut per semet ipsum aut per alium eandem rem
*either through himself in-person or through another the-same matter*
mandator exsequatur. nam nisi ita renuntiatur, ut integra
*the-mandator carry-out for unless so it-is-renounced that intact*
causa mandatori reservetur eandem rem explicandi,
*the-situation for-the-mandator be-reserved the-same matter of-dealing-with*
nihilo minus mandati actio locum habet, nisi si iusta causa
*by-nothing less of-mandate the-action place has unless if a-just cause*
intercessit aut non renuntiandi aut intempestive renuntiandi.
*has-intervened either not of-renouncing or untimely of-renouncing*
Mandatum et in diem differri et sub condicione fieri 12
*A-mandate both to a-day be-deferred and under condition be-made*
potest.
*can*
In summa sciendum est mandatum, nisi gratuitum sit, in aliam 13
*In sum to-be-known it-is a-mandate unless free it-be into another*
formam negotii cadere: nam mercede constituta incipit locatio
*form of-transaction to-fall for a-payment fixed begins letting*
et conductio esse. et ut generaliter dixerimus: quibus casibus
*and hiring to-be and that generally we-may-say in-which cases*
sine mercede suscepto officio mandati aut depositi contrahitur
*without payment undertaken the-office of-mandate or of-deposit is-contracted*
negotium, his casibus interveniente mercede locatio et
*the-transaction in-those cases intervening payment letting and*

conductio contrahi intellegitur. et ideo si fulloni polienda
*hiring to-be-contracted is-understood and therefore if to-a-fuller to-be-cleaned*
curandave vestimenta dederis aut sarcinatori sarcienda nulla
*or-to-be-cared-for clothes you-have-given or to-a-tailor to-be-mended no*
mercede constituta neque promissa, mandati competit actio.
*payment fixed nor promised of-mandate belongs the-action*

## XXVII · OBLIGATIONS AS IF FROM CONTRACT

*Obligations arise as if from contract in managing an absent man's affairs, in tutelage, in common property without partnership and between co-heirs, in an heir's liability for legacies, and in payment of what is not owed, recoverable except where denial doubles the claim or the legacy was to churches.*

Post genera contractuum enumerata dispiciamus etiam de
*After the-kinds of-contracts enumerated let-us-consider also about*
his obligationibus, quae non proprie quidem ex contractu
*those obligations which not properly indeed from contract*
nasci intelleguntur, sed tamen, quia non ex maleficio
*to-arise are-understood but yet because not from delict*
substantiam capiunt, quasi ex contractu nasci videntur.
*substance they-take as-if from contract to-arise they-seem*
1 Igitur cum quis absentis negotia gesserit, ultro citroque
*Therefore when anyone of-an-absent-man the-affairs has-managed to and-fro*
inter eos nascuntur actiones, quae appellantur negotiorum
*between them arise actions which are-called of-affairs*
gestorum: sed domino quidem rei gestae adversus eum
*managed but to-the-owner indeed of-the-affair managed against him*
qui gessit directa competit actio, negotiorum autem gestori
*who managed the-direct belongs action of-affairs however to-the-manager*
contraria. quas ex nullo contractu proprie nasci manifestum est:
*the-contrary which from no contract properly to-arise manifest it-is*

quippe ita nascuntur istae actiones, si sine mandato quisque
*since so arise those actions if without mandate anyone*
alienis negotiis gerendis se optulerit: ex qua causa ii
*to-another's affairs to-be-managed himself has-offered from which cause those*
quorum negotia gesta fuerint etiam ignorantes obligantur.
*whose affairs managed have-been even unaware are-bound*
idque utilitatis causa receptum est, ne absentium, qui subita
*and-this of-utility for-the-sake accepted was lest of-the-absent who by-sudden*
festinatione coacti nulli demandata negotiorum suorum
*haste compelled to-no-one entrusted of-affairs their*
administratione peregre profecti essent, desererentur negotia:
*the-administration abroad set-out had be-abandoned the-affairs*
quae sane nemo curaturus esset, si de eo quod quis
*which indeed no-one about-to-care-for would-be if about that which anyone*
impendisset nullam habiturus esset actionem. sicut autem is qui
*had-spent no about-to-have would-be action just-as however he who*
utiliter gesserit negotia habet obligatum dominum negotiorum,
*usefully has-managed the-affairs has bound the-owner of-the-affairs*
ita et contra iste quoque tenetur, ut administrationis rationem
*so also conversely he also is-bound that of-the-administration account*
reddat. quo casu ad exactissimam quisque diligentiam
*he-render in-which case to the-most-exact each diligence*
compellitur reddere rationem: nec sufficit talem diligentiam
*is-compelled to-render account nor suffices-it such diligence*
adhibere, qualem suis rebus adhibere soleret, si modo
*to-apply as to-his-own affairs to-apply he-was-wont if only*
alius diligentior commodius administraturus esset negotia.
*another more-diligent more-advantageously about-to-administer would-be the-affairs*
Tutores quoque, qui tutelae iudicio tenentur, non proprie 2
*Tutors also who of-tutelage by-the-action are-bound not properly*
ex contractu obligati intelleguntur (nullum enim negotium
*from contract bound are-understood no for transaction*

inter tutorem et pupillum contrahitur): sed quia sane
*between the-tutor and the-ward is-contracted but because indeed*
non ex maleficio tenentur, quasi ex contractu teneri
*not from delict they-are-bound as-if from contract to-be-bound*
videntur. et hoc autem casu mutuae sunt actiones: non
*they-seem also in-this however case mutual are the-actions not*
tantum enim pupillus cum tutore habet tutelae actionem,
*only for the-ward with the-tutor has of-tutelage the-action*
sed et ex contrario tutor cum pupillo habet contrariam
*but also on the-contrary the-tutor with the-ward has the-contrary*
tutelae, si vel impenderit aliquid in rem pupilli vel pro
*of-tutelage if either he-has-spent something on the-affairs of-the-ward or for*
eo fuerit obligatus aut rem suam creditori eius obligaverit.
*him has-been bound or a-thing his-own to-creditor his has-pledged*

3 Item si inter aliquos communis sit res sine societate,
*Likewise if between some-persons common be a-thing without partnership*
veluti quod pariter eis legata donatave esset, et alter
*as because equally to-them bequeathed or-given it-had-been and one*
eorum alteri ideo teneatur communi dividundo iudicio,
*of-them to-the-other therefore be-bound common for-dividing by-the-action*
quod solus fructus ex ea re perceperit, aut quod socius
*because alone the-fruits from that thing he-has-gathered or because partner*
eius in eam rem necessarias impensas fecerit: non intellegitur
*his on that thing necessary expenses has-made not he-is-understood*
proprie ex contractu obligatus esse, quippe nihil inter
*properly from contract bound to-be since nothing between*
se contraxerunt: sed quia non ex maleficio tenetur,
*themselves they-have-contracted but because not from delict he-is-bound*
quasi ex contractu teneri videtur.
*as-if from contract to-be-bound he-seems*

Idem iuris est de eo, qui coheredi suo familiae erciscundae 4
*The-same of-law it-is about him who to-co-heir his of-the-family for-dividing*
iudicio ex his causis obligatus est.
*by-the-action from these causes bound is*
Heres quoque legatorum nomine non proprie ex contractu 5
*The-heir also of-legacies on-account not properly from contract*
obligatus intellegitur (neque enim cum herede neque cum
*bound is-understood neither for with the-heir nor with*
defuncto ullum negotium legatarius gessisse proprie dici
*the-deceased any transaction the-legatee to-have-done properly be-said*
potest): et tamen, quia ex maleficio non est obligatus
*can and yet because from delict not is bound*
heres, quasi ex contractu debere intellegitur.
*the-heir as-if from contract to-owe is-understood*
Item is, cui quis per errorem non debitum solvit, quasi 6
*Likewise he to-whom anyone by mistake what-is-not owed has-paid as-if*
ex contractu debere videtur. adeo enim non intellegitur proprie
*from contract to-owe seems so-far for not he-is-understood properly*
ex contractu obligatus, ut, si certiorem rationem sequamur,
*from contract bound that if a-surer reasoning we-follow*
magis ut supra diximus ex distractu, quam ex contractu
*rather as above we-have-said from dissolution than from contract*
possit dici obligatus esse: nam qui solvendi animo
*he-can be-said bound to-be for he-who of-paying with-intention*
pecuniam dat, in hoc dare videtur, ut distrahat potius negotium
*money gives for this to-give seems that he-dissolve rather a-transaction*
quam contrahat. sed tamen proinde is qui accepit obligatur,
*than contract but yet just he who received is-bound*
ac si mutuum illi daretur, et ideo condictione tenetur.
*as if a-loan to-him were-given and therefore by-condiction he-is-held*

7 Ex quibusdam tamen causis repeti non potest, quod per
*From certain however causes be-recovered not can what by*
errorem non debitum solutum sit. sic namque definiverunt
*mistake not owed paid be so for defined*
veteres: ex quibus causis infitiando lis crescit, ex his causis
*the-ancients from which causes by-denying the-suit grows from those causes*
non debitum solutum repeti non posse, veluti ex lege
*what-is-not owed paid be-recovered not can as from the-statute*
Aquilia, item ex legato. quod veteres quidem in his legatis
*Aquilian likewise from a-legacy which the-ancients indeed in those legacies*
locum habere voluerunt, quae certa constituta per damnationem
*place to-have wished which certain established by condemnation*
cuicumque fuerant legata: nostra autem constitutio cum
*to-anyone had-been bequeathed our however constitution since*
unam naturam omnibus legatis et fideicommissis indulsit,
*one nature to-all legacies and trusts has-granted*
huiusmodi augmentum in omnibus legatis et fideicommissis
*such increase in all legacies and trusts*
extendi voluit: sed non omnibus legatariis praebuit,
*to-be-extended willed but not to-all legatees it-has-afforded*
sed tantummodo in his legatis et fideicommissis, quae
*but only in those legacies and trusts which*
sacrosanctis ecclesiis ceterisque venerabilibus locis, quae
*to-most-holy churches and-other venerable places which*
religionis vel pietatis intuitu honorificantur, derelicta sunt,
*of-religion or of-piety in-view are-honored left are*
quae si indebita solvantur, non repetuntur.
*which if not-owed they-be-paid not are-recovered*

## XXVIII · THROUGH WHOM WE ACQUIRE OBLIGATIONS

*We acquire obligations through slaves wholly and through children in power by Justinian's division of ownership and usufruct; through free men and others' slaves held in good faith, or slaves in usufruct, only from our property or their labor. A common slave acquires for his masters by shares, but for one alone when named or, by Justinian's decision, by his order.*

Expositis generibus obligationum, quae ex contractu vel
*Set-forth the-kinds of-obligations which from contract or*
quasi ex contractu nascuntur, admonendi sumus adquiri
*as-if from contract arise to-be-reminded we-are to-be-acquired*
vobis non solum per vosmet ipsos, sed etiam per eas
*for-you not only through yourselves in-person but also through those*
quoque personas, quae in vestra potestate sunt, veluti per
*also persons who in your power are as through*
servos vestros et filios: ut tamen, quod per servos
*slaves your and sons so-that however what through slaves*
quidem vobis adquiritur, totum vestrum fiat, quod autem
*indeed for-you is-acquired wholly yours become what however*
per liberos, quos in potestate habetis, ex obligatione
*through children whom in power you-have from obligation*
fuerit adquisitum, hoc dividatur secundum imaginem rerum
*has-been acquired this be-divided according-to the-image of-things*
proprietatis et usus fructus, quam nostra discrevit
*of-ownership and of-use (and)-enjoyment which our has-distinguished*
constitutio: ut, quod ab actione commodum perveniat,
*constitution so-that what from the-action advantage comes*
huius usum fructum quidem habeat pater, proprietas
*of-this the-use (and)-enjoyment indeed have the-father the-ownership*

autem filio servetur, scilicet patre actionem movente
*however for-the-son be-kept namely the-father the-action moving*
secundum novellae nostrae constitutionis divisionem.
*according-to of-the-new our constitution the-division*

1 Item per liberos homines et alienos servos, quos bona fide
*Likewise through free men and another's slaves whom in-good faith*
possidetis, adquiritur vobis, sed tantum ex duabus causis, id
*you-possess is-acquired for-you but only from two causes that*
est si quid ex operis suis vel ex re vestra adquirant.
*is if anything from works their-own or from property your they-acquire*

2 Per eum quoque servum, in quo usum fructum
*Through that also slave in whom the-use (and)-enjoyment*
vel usum habetis, similiter ex duabus istis causis vobis
*or use you-have likewise from two those causes for-you*
adquiritur.
*is-acquired*

3 Communem servum pro dominica parte dominis
*A-common slave in-proportion-to the-master's share for-the-masters*
adquirere certum est, excepto eo, quod uni nominatim
*to-acquire certain is except that that for-one by-name*
stipulando aut per traditionem accipiendo illi soli adquirit,
*by-stipulating or by delivery receiving for-him alone he-acquires*
veluti cum ita stipuletur: 'Titio domino meo dare spondes?'
*as when so he-stipulates to-Titius master my to-give do-you-pledge*
sed si unius domini iussu servus fuerit stipulatus, licet
*but if of-one master's by-order the-slave has stipulated although*
antea dubitabatur, tamen post nostram decisionem res
*formerly it-was-doubted yet after our decision the-matter*
expedita est, ut illi tantum adquirat, qui hoc ei facere
*settled is that for-him only he-acquire who this him to-do*
iussit, ut supra dictum est.
*ordered as above said it-has-been*

*Obligations end by payment, by anyone; by formal release, which ends verbal obligations and others through the Aquilian stipulation; by novation, now only when the parties express it; and by contrary consent in consensual contracts.*

Tollitur autem omnis obligatio solutione eius quod debetur,
*Is-removed however every obligation by-payment of-that which is-owed*
vel si quis consentiente creditore aliud pro alio solverit.
*or if anyone consenting the-creditor another-thing for another has-paid*
nec tamen interest, quis solvat, utrum ipse qui debet
*nor however does-it-matter who pays whether himself who owes*
an alius pro eo: liberatur enim et alio solvente, sive
*or another for him he-is-freed for even another paying whether*
sciente debitore sive ignorante vel invito solutio fiat.
*knowing the-debtor or unaware or unwilling the-payment be-made*
item si reus solverit, etiam ii qui pro eo intervenerunt
*likewise if the-debtor has-paid also those who for him intervened*
liberantur. idem ex contrario contingit, si fideiussor solverit:
*are-freed the-same on the-contrary happens if the-fideiussor has-paid*
non enim solus ipse liberatur, sed etiam reus.
*not for alone himself is-freed but also the-debtor*
Item per acceptilationem tollitur obligatio. est autem 1
*Likewise by formal-release is-removed an-obligation is however*
acceptilatio imaginaria solutio. quod enim ex verborum
*formal-release an-imaginary payment what for from of-words*
obligatione Titio debetur, id si velit Titius remittere, poterit
*obligation to-Titius is-owed that if wishes Titius to-remit he-will-be-able*
sic fieri, ut patiatur haec verba debitorem dicere: 'quod
*so to-be-done that he-allow these words the-debtor to-say what*
ego tibi promisi habesne acceptum?' et Titius respondeat
*I to-you promised do-you-have-it received and Titius answer*

'habeo': sed et Graece potest acceptum fieri, dummodo sic
*I-have-it but also in-Greek can received be-made provided-that so*
fiat, ut Latinis verbis solet: ἔχεις λαβὼν δηνάρια
*it-be-made as in-Latin words it-is-wont do-you-have having-received denarii*
τόσα; ἔχω λαβών. quo genere ut diximus tantum
*so-many I-have having-received in-which kind as we-have-said only*
eae obligationes solvuntur, quae ex verbis consistunt, non
*those obligations are-dissolved which from words consist not*
etiam ceterae: consentaneum enim visum est verbis factam
*also the-others consistent for seemed it-has by-words made*
obligationem posse aliis verbis dissolvi: sed id, quod ex
*an-obligation to-be-able by-other words to-be-dissolved but that which from*
alia causa debetur, potest in stipulationem deduci et per
*another cause is-owed can into stipulation be-brought and by*
acceptilationem dissolvi. sicut autem quod debetur pro parte
*formal-release be-dissolved just-as however what is-owed in part*
recte solvitur, ita in partem debiti acceptilatio fieri potest.
*rightly is-paid so for a-part of-the-debt a-formal-release be-made can*

2 Est prodita stipulatio, quae vulgo Aquiliana appellatur,
*Has-been published a-stipulation which commonly Aquilian is-called*
per quam stipulationem contingit, ut omnium rerum
*through which stipulation it-happens that of-all things*
obligatio in stipulatum deducatur et ea per acceptilationem
*the-obligation into the-stipulation be-brought and it by formal-release*
tollatur. stipulatio enim Aquiliana novat omnes obligationes
*be-removed the-stipulation for Aquilian novates all obligations*
et a Gallo Aquilio ita composita est: 'quidquid te mihi
*and by Gallus Aquilius so composed is whatever you to-me*
ex quacumque causa dare facere oportet oportebit praesens
*from any cause to-give to-do ought will-be-obliged at-once*
in diemve quarumque rerum mihi tecum actio quaeque
*for or-a-day of-whatever things to-me with-you an-action and-whatever*

abs te petitio vel adversus te persecutio est erit quodque
*from you claim or against you suit is will-be and-whatever*
tu meum habes tenes possides possideresve dolove malo
*you mine have hold possess or-would-possess or-by-fraud bad*
fecisti, quo minus possideas: quanti quaeque earum rerum
*have-done whereby less you-possess as-much-as each of-those things*
res erit, tantam pecuniam dari stipulatus est Aulus
*the-thing shall-be so-much money to-be-given stipulated has Aulus*
Agerius, spopondit Numerius Negidius.' item e diverso
*Agerius promised Numerius Negidius likewise on the-contrary*
Numerius Negidius interrogavit Aulum Agerium: 'quidquid
*Numerius Negidius asked Aulus Agerius whatever*
tibi hodierno die per Aquilianam stipulationem spopondi,
*to-you on-this-very day through the-Aquilian stipulation I-have-promised*
id omne habesne acceptum?' respondit Aulus Agerius:
*that all do-you-have received answered Aulus Agerius*
'habeo acceptumque tuli.'
*I-have-it and-received I-have-taken-it*
Praeterea novatione tollitur obligatio. veluti si id, quod 3
*Moreover by-novation is-removed an-obligation as if that which*
tu Seio debeas, a Titio dari stipulatus sit. nam
*you to-Seius owe from Titius to-be-given stipulated he-has for*
interventu novae personae nova nascitur obligatio et prima
*by-the-intervention of-a-new person a-new arises obligation and the-first*
tollitur translata in posteriorem, adeo ut interdum, licet
*is-removed transferred into the-later so-far that sometimes although*
posterior stipulatio inutilis sit, tamen prima novationis iure
*the-later stipulation void be yet the-first of-novation by-right*
tollatur. veluti si id, quod Titio tu debebas, a pupillo
*be-removed as if that which to-Titius you owed from a-ward*
sine tutoris auctoritate stipulatus fuerit, quo casu res
*without of-the-tutor the-authority stipulated he-has in-which case the-thing*

amittitur: nam et prior debitor liberatur et posterior
*is-lost for both the-former debtor is-freed and the-later*
obligatio nulla est. non idem iuris est, si a servo quis
*obligation null is not the-same of-law it-is if from a-slave anyone*
stipulatus fuerit: nam tunc prior proinde obligatus manet, ac
*stipulated has for then the-former just bound remains as*
si postea a nullo stipulatus fuisset. sed si eadem persona sit,
*if afterward from no-one stipulated he-had but if the-same person be*
a qua postea stipuleris, ita demum novatio fit, si quid
*from whom afterward you-stipulate so only-then novation is-made if anything*
in posteriore stipulatione novi sit, forte si condicio aut dies
*in the-later stipulation new be perhaps if a-condition or a-day*
aut fideiussor adiciatur aut detrahatur. quod autem diximus,
*or a-fideiussor be-added or be-removed what however we-have-said*
si condicio adiciatur, novationem fieri, sic intellegi
*if a-condition be-added novation to-be-made so to-be-understood*
oportet, ut ita dicamus factam novationem, si condicio
*it-behooves that so we-say made novation if the-condition*
extiterit: alioquin si defecerit, durat prior obligatio.
*has-come-to-pass otherwise if it-has-failed lasts the-former obligation*

3a Sed cum hoc quidem inter veteres constabat tunc fieri
*But since this indeed among the-ancients was-agreed then to-be-made*
novationem, cum novandi animo in secundam obligationem
*novation when of-novating with-intention into a-second obligation*
itum fuerat: per hoc autem dubium erat, quando novandi
*gone it-had-been through this however doubtful it-was when of-novating*
animo videretur hoc fieri et quasdam de hoc
*with-intention seemed this to-be-done and certain about this*
praesumptiones alii in aliis casibus introducebant: ideo nostra
*presumptions some in some cases introduced therefore our*
processit constitutio, quae apertissime definivit tunc solum
*came-forth constitution which most-openly defined then only*

fieri novationem, quotiens hoc ipsum inter contrahentes
*to-be-made novation whenever this very-thing between the-contracting-parties*
expressum fuerit, quod propter novationem prioris obligationis
*expressed has-been that for novation of-the-former obligation*
convenerunt, alioquin manere et pristinam obligationem
*they-agreed otherwise to-remain both the-original obligation*
et secundam ei accedere, ut maneat ex utraque causa
*and the-second to-it to-be-added so-that remain from each cause*
obligatio secundum nostrae constitutionis definitiones, quas
*the-obligation according-to of-our constitution the-definitions which*
licet ex ipsius lectione apertius cognoscere.
*it-is-allowed from its-own reading more-openly to-learn*
Hoc amplius eae obligationes, quae consensu contrahuntur, 4
*This further those obligations which by-consent are-contracted*
contraria voluntate dissolvuntur. nam si Titius et Seius
*by-contrary will are-dissolved for if Titius and Seius*
inter se consenserunt, ut fundum Tusculanum emptum
*between themselves have-agreed that the-estate Tusculan bought*
Seius haberet centum aureorum, deinde re nondum
*Seius should-have for-a-hundred gold-pieces then the-matter not-yet*
secuta, id est neque pretio soluto neque fundo tradito,
*followed that is neither the-price paid nor the-estate delivered*
placuerit inter eos, ut discederetur ab emptione et
*it-has-been-agreed between them that they-withdraw from the-purchase and*
venditione, invicem liberantur. idem est et in conductione
*sale mutually they-are-freed the-same it-is also in hiring*
et locatione et omnibus contractibus, qui ex consensu
*and letting and all contracts which from consent*
descendunt, sicut iam dictum est.
*descend as already said it-has-been*

# BOOK IV

## I · OBLIGATIONS FROM DELICT

*Obligations from delict arise from theft, robbery, damage, and outrage. Theft is the fraudulent handling of a thing, its use, or its possession, even of a child in power or of one's own pledge; manifest theft takes a fourfold penalty, non-manifest twofold, and the old actions for things found or planted are out of use. A borrower who knowingly misuses a thing steals; the action, for the penalty alone, lies to whoever has an interest, and against one whose aid made the theft.*

Cum expositum sit superiore libro de obligationibus ex
*Since set-out it-has-been in-the-former book about obligations from*
contractu et quasi ex contractu, sequitur ut de obligationibus
*contract and as-if from contract it-follows that about obligations*
ex maleficio dispiciamus. sed illae quidem, ut suo loco
*from delict we-consider but those indeed as in-their-own place*
tradidimus, in quattuor genera dividuntur: hae vero unius
*we-have-taught into four kinds are-divided these however of-one*
generis sunt, nam omnes ex re nascuntur, id est ex ipso
*kind are for all from the-fact arise that is from the-very*
maleficio, veluti ex furto aut rapina aut damno aut iniuria.
*delict as from theft or robbery or damage or outrage*

Furtum est contrectatio rei fraudulosa vel ipsius rei 1
*Theft is a-handling of-a-thing fraudulent either itself of-the-thing*
vel etiam usus eius possessionisve, quod lege naturali
*or even of-the-use its or-of-the-possession which by-law natural*
prohibitum est admittere.
*forbidden is to-commit*

Furtum autem vel a furvo id est nigro dictum est, 2
*Theft however either from furvus that is black named is*
quod clam et obscure fit et plerumque nocte: vel a
*because secretly and obscurely it-is-done and mostly by-night or from*

fraude: vel a ferendo, id est auferendo: vel a Graeco
*fraud or from ferre that is carrying-off or from the-Greek*
sermone, qui φῶρας appellant fures. immo etiam Graeci
*speech who phores call thieves nay even the-Greeks*
ἀπὸ τοῦ φέρειν φῶρας dixerunt.
*from the pherein phores have-called-them*

3 Furtorum autem genera duo sunt, manifestum et nec
*Of-thefts however the-kinds two are manifest and non*
manifestum. nam conceptum et oblatum species potius actionis
*manifest for conceived and offered species rather of-action*
sunt furto cohaerentes quam genera furtorum, sicut inferius
*are to-theft attaching than kinds of-thefts as below*
apparebit. manifestus fur est, quem Graeci ἐπ' αὐτοφώρῳ
*will-appear a-manifest thief is he-whom the-Greeks in the-very-act*
appellant: nec solum is qui in ipso furto deprehenditur, sed
*call nor only he who in the-very theft is-caught but*
etiam is qui eo loco deprehenditur, quo fit, veluti qui in
*also he who in-that place is-caught where it-is-done as he-who in*
domo furtum fecit et nondum egressus ianuam deprehensus
*a-house theft has-done and not-yet having-gone-out the-door caught*
fuerit, et qui in oliveto olivarum aut in vineto uvarum
*has-been and he-who in an-olive-grove of-olives or in a-vineyard of-grapes*
furtum fecit, quamdiu in eo oliveto aut in vineto fur
*theft has-done as-long-as in that olive-grove or in the-vineyard the-thief*
deprehensus sit: immo ulterius furtum manifestum extendendum
*caught is nay further theft manifest to-be-extended*
est, quamdiu eam rem fur tenens visus vel deprehensus
*is as-long-as that thing the-thief holding seen or caught*
fuerit sive in publico sive in privato vel a domino vel
*has-been whether in public or in private either by the-owner or*
ab alio, antequam eo perveniret, quo perferre ac deponere
*by another before there he-came where to-carry and to-deposit*

rem destinasset. sed si pertulit quo destinavit, tametsi
*the-thing he-had-intended but if he-has-carried-it where he-intended even-if*
deprehendatur cum re furtiva, non est manifestus fur. nec
*he-be-caught with the-thing stolen not he-is a-manifest thief non*
manifestum furtum quid sit, ex his quae diximus intellegitur:
*manifest theft what it-is from those which we-have-said is-understood*
nam quod manifestum non est, id scilicet nec manifestum est.
*for what manifest not is that namely non manifest is*
Conceptum furtum dicitur, cum apud aliquem testibus 4
*Conceived theft is-called when with someone witnesses*
praesentibus furtiva res quaesita et inventa sit: nam in
*present a-stolen thing sought and found has-been for against*
eum propria actio constituta est, quamvis fur non sit, quae
*him an-own action established is although thief not he-be which*
appellatur concepti. oblatum furtum dicitur, cum res furtiva ab
*is-called of-conceived offered theft is-called when a-thing stolen by*
aliquo tibi oblata sit eaque apud te concepta sit, utique si
*someone to-you offered has-been and-it with you conceived has-been certainly if*
ea mente tibi data fuerit, ut apud te potius quam apud
*with-that intention to-you given it-has-been that with you rather than with*
eum qui dederit conciperetur: nam tibi, apud quem concepta
*him who gave-it it-should-be-conceived for to-you with whom conceived*
sit, propria adversus eum qui optulit, quamvis fur non sit,
*it-has-been an-own against him who offered-it although thief not he-be*
constituta est actio, quae appellatur oblati. est etiam prohibiti
*established is an-action which is-called of-offered there-is also of-prohibited*
furti actio adversus eum, qui furtum quaerere testibus
*theft an-action against him who theft to-search-for witnesses*
praesentibus volentem prohibuerit. praeterea poena constituitur
*present one-wishing has-prohibited moreover a-penalty is-established*
edicto praetoris per actionem furti non exhibiti adversus
*by-the-edict of-the-praetor through the-action of-theft not produced against*

eum, qui furtivam rem apud se quaesitam et inventam
*him who a-stolen thing with himself sought and found*
non exhibuit. sed hae actiones, id est concepti et oblati et
*not produced but these actions that is of-conceived and of-offered and*
furti prohibiti nec non furti non exhibiti, in desuetudinem
*of-theft prohibited and also of-theft not produced into disuse*
abierunt. cum enim requisitio rei furtivae hodie secundum
*have-gone since for the-search of-a-thing stolen today according-to*
veterem observationem non fit: merito ex consequentia
*the-old observance not is-made deservedly in consequence*
etiam praefatae actiones ab usu communi recesserunt, cum
*also the-aforesaid actions from use common have-withdrawn since*
manifestissimum est, quod omnes, qui scientes rem furtivam
*most-manifest it-is that all who knowingly a-thing stolen*
susceperint et celaverint, furti nec manifesti obnoxii sunt.
*have-received and have-hidden-it to-theft non manifest liable are*
5 Poena manifesti furti quadrupli est tam ex servi persona
*The-penalty of-manifest theft fourfold is both from of-a-slave person*
quam ex liberi, nec manifesti dupli.
*and from of-a-free-man of-non manifest double*
6 Furtum autem fit non solum, cum quis intercipiendi
*Theft however is-committed not only when anyone of-intercepting*
causa rem alienam amovet, sed generaliter cum quis alienam
*for-the-sake a-thing another's removes but generally when anyone another's*
rem invito domino contractat. itaque sive creditor pignore
*thing unwilling the-owner handles therefore whether a-creditor the-pledge*
sive is apud quem res deposita est ea re utatur sive is qui
*or he with whom a-thing deposited is that thing uses or he who*
rem utendam accepit in alium usum eam transferat, quam
*a-thing for-use received to another use it transfers than*
cuius gratia ei data est, furtum committit. veluti si quis
*for-whose sake to-him given it-was theft he-commits as if anyone*

argentum utendum acceperit quasi amicos ad cenam invitaturus
*silver for-use has-received as-if friends to dinner about-to-invite*
et id peregre secum tulerit, aut si quis equum gestandi
*and it abroad with-himself has-carried or if anyone a-horse for-riding*
causa commodatum sibi longius aliquo duxerit, quod
*for-the-sake lent to-himself farther somewhere has-led which*
veteres scripserunt de eo, qui in aciem equum perduxisset.
*the-ancients wrote about him who into battle a-horse had-led*
Placuit tamen eos, qui rebus commodatis aliter uterentur, 7
*It-was-held however that-those who things lent otherwise use*
quam utendas acceperint, ita furtum committere, si se
*than for-use they-received so theft to-commit if themselves*
intellegant id invito domino facere eumque si intellexisset
*they-understand it unwilling the-owner to-do and-him if he-had-understood*
non permissurum, ac si permissurum credant, extra crimen
*not about-to-permit and if about-to-permit they-believe outside the-charge*
videri: optima sane distinctione, quia furtum sine affectu
*to-seem by-the-best indeed distinction because theft without the-intention*
furandi non committitur.
*of-stealing not is-committed*
Sed et si credat aliquis invito domino se rem commodatam 8
*But also if believes someone unwilling the-owner himself a-thing lent*
sibi contrectare, domino autem volente id fiat, dicitur
*to-himself to-handle the-owner however willing it be-done it-is-said*
furtum non fieri. unde illud quaesitum est, cum Titius
*theft not to-be-committed whence that asked it-was when Titius*
servum Maevii sollicitaverit, ut quasdam res domino
*the-slave of-Maevius has-solicited that certain things from-the-master*
subriperet et ad eum perferret, et servus id ad Maevium
*he-should-steal and to him should-carry and the-slave this to Maevius*
pertulerit, Maevius, dum vult Titium in ipso delicto
*has-reported Maevius while he-wishes Titius in the-very offense*

deprehendere, permisit servo quasdam res ad eum perferre,
*to-catch permitted the-slave certain things to him to-carry*
utrum furti an servi corrupti iudicio teneatur Titius, an
*whether of-theft or of-slave corrupted by-the-action be-bound Titius or*
neutro? et cum nobis super hac dubitatione suggestum est
*by-neither and since to-us about this doubt suggested it-has-been*
et antiquorum prudentium super hoc altercationes perspeximus,
*and of-the-ancient jurists about this the-disputes we-have-examined*
quibusdam neque furti neque servi corrupti actionem
*some neither of-theft nor of-slave corrupted the-action*
praestantibus, quibusdam furti tantummodo: nos huiusmodi
*granting some of-theft only we such*
calliditati obviam euntes per nostram decisionem sanximus
*craftiness in-the-way going through our decision have-enacted*
non solum furti actionem, sed etiam servi corrupti contra eum
*not only of-theft the-action but also of-slave corrupted against him*
dari: licet enim is servus deterior a sollicitatore minime
*to-be-given although for that slave worse by the-solicitor not-at-all*
factus est et ideo non concurrant regulae, quae servi
*made has-been and therefore not concur the-rules which of-slave*
corrupti actionem introducerent, tamen consilium corruptoris ad
*corrupted the-action would-introduce yet the-design of-the-corrupter for*
perniciem probitatis servi introductum est, ut sit ei
*the-ruin of-the-honesty of-the-slave introduced has-been so-that be on-him*
poenalis actio imposita, tamquam re ipsa fuisset servus
*a-penal action imposed as-if in-the-thing itself had-been the-slave*
corruptus, ne ex huiusmodi impunitate et in alium servum,
*corrupted lest from such impunity also against another slave*
qui possit corrumpi, tale facinus a quibusdam perpetretur.
*who can be-corrupted such a-crime by some be-perpetrated*

Interdum etiam liberorum hominum furtum fit, veluti 9
*Sometimes even of-free men theft is-committed as*
si quis liberorum nostrorum, qui in potestate nostra sit,
*if any of-children our who in power our is*
subreptus fuerit.
*stolen has-been*
Aliquando autem etiam suae rei quisque furtum committit, 10
*Sometimes however even of-his-own thing each-man theft commits*
veluti si debitor rem quam creditori pignoris causa dedit
*as if a-debtor a-thing which to-the-creditor of-pledge for-the-sake he-gave*
subtraxerit.
*has-withdrawn*
Interdum furti tenetur, qui ipse furtum non fecerit: qualis 11
*Sometimes of-theft is-liable he-who himself theft not has-done such*
est, cuius ope et consilio furtum factum est. in quo numero
*is whose by-aid and counsel theft done is in which number*
est, qui tibi nummos excussit, ut alius eos raperet, aut
*is he-who from-you coins has-knocked that another them might-snatch or*
obstitit tibi, ut alius rem tuam exciperet, vel oves aut
*has-stood-in-the-way you that another thing your might-intercept or sheep or*
boves tuas fugaverit, ut alius eas exciperet: et hoc veteres
*oxen your has-put-to-flight that another them might-intercept and this the-ancients*
scripserunt de eo, qui panno rubro fugavit armentum. sed
*wrote about him who with-a-cloth red put-to-flight a-herd but*
si quid eorum per lasciviam et non data opera, ut furtum
*if anything of-these through wantonness and not given effort that theft*
admitteretur, factum est, in factum actio dari debeat. at
*be-committed done is on the-facts an-action to-be-given ought but*
ubi ope Maevii Titius furtum fecerit, ambo furti tenentur.
*where by-the-aid of-Maevius Titius theft has-done both of-theft are-liable*
ope consilio eius quoque furtum admitti videtur, qui scalas
*by-aid by-counsel his also theft to-be-committed seems who ladders*

forte fenestris supponit aut ipsas fenestras vel ostium effringit,
*perhaps to-windows sets-under or the-very windows or the-door breaks-open*
ut alius furtum faceret, quive ferramenta ad effringendum
*that another theft might-do or-who iron-tools for breaking*
aut scalas ut fenestris supponerentur commodaverit, sciens
*or ladders that to-windows they-be-set-under has-lent knowing*
cuius gratia commodaverit. certe qui nullam operam ad
*for-whose sake he-has-lent certainly he-who no work for*
furtum faciendum adhibuit, sed tantum consilium dedit
*theft to-be-done has-applied but only counsel gave*
atque hortatus est ad furtum faciendum, non tenetur furti.
*and urged has to theft to-be-done not is-liable of-theft*

12 Hi, qui in parentium vel dominorum potestate sunt, si
*Those who in of-parents or of-masters the-power are if*
rem eis subripiant, furtum quidem illis faciunt
*a-thing from-them they-steal theft indeed on-them they-commit*
et res in furtivam causam cadit nec ob id ab ullo
*and the-thing into stolen condition falls nor for that by anyone*
usucapi potest, antequam in domini potestatem revertatur,
*be-usucapted can-it before into the-owner's power it-return*
sed furti actio non nascitur, quia nec ex alia ulla
*but of-theft the-action not arises because not-even from other any*
causa potest inter eos actio nasci: si vero ope
*cause can between them an-action arise if however by-the-aid*
consilio alterius furtum factum fuerit, quia utique furtum
*by-the-counsel of-another the-theft done has-been because certainly theft*
committitur, convenienter ille furti tenetur, quia verum est
*is-committed consistently he of-theft is-liable because true it-is*
ope consilio eius furtum factum esse.
*by-the-aid by-the-counsel his theft done to-have-been*

Furti autem actio ei competit, cuius interest rem 13
*Of-theft however the-action to-him belongs to-whom it-matters the-thing*
salvam esse, licet dominus non sit: itaque nec domino
*safe to-be although owner not he-be therefore not-even to-the-owner*
aliter competit, quam si eius intersit rem non perire.
*otherwise does-it-belong than if to-him it-matter the-thing not to-perish*
Unde constat creditorem de pignore subrepto furti agere 14
*Whence it-is-agreed a-creditor about a-pledge stolen of-theft to-sue*
posse, etiamsi idoneum debitorem habeat, quia expedit
*to-be-able even-if a-solvent debtor he-have because it-benefits*
ei pignori potius incumbere quam in personam agere:
*him on-the-pledge rather to-rely than against the-person to-sue*
adeo quidem ut, quamvis ipse debitor eam rem subripuerit,
*so-far indeed that although himself the-debtor that thing has-stolen*
nihilo minus creditori competit actio furti.
*by-nothing less to-the-creditor belongs the-action of-theft*
Item si fullo polienda curandave aut sarcinator sarcienda 15
*Likewise if a-fuller to-be-cleaned or-to-be-cared-for or a-tailor to-be-mended*
vestimenta mercede certa acceperit eaque furto amiserit,
*clothes for-a-payment 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 to-the-owner*
nihil interest eam rem non perire, cum iudicio locati
*nothing it-matters that thing not to-perish since by-the-action of-letting*
a fullone aut sarcinatore rem suam persequi potest. sed
*from the-fuller or the-tailor thing his-own pursue he-can but*
et bonae fidei emptori subrepta re quam emerit,
*also of-good faith to-a-buyer stolen the-thing which he-has-bought*
quamvis dominus non sit, omnimodo competit furti actio,
*although owner not he-be in-every-way belongs of-theft the-action*
quemadmodum et creditori. fulloni vero et sarcinatori
*as also to-the-creditor to-the-fuller however and to-the-tailor*

non aliter furti competere placuit, quam si solvendo sint,
*not otherwise of-theft to-belong it-was-held than if solvent they-be*
hoc est si domino rei aestimationem solvere possint:
*that is if to-the-owner of-the-thing the-value to-pay they-can*
nam si solvendo non sunt, tunc quia ab eis suum dominus
*for if solvent not they-are then because from them his-own the-owner*
consequi non possit, ipsi domino furti actio competit,
*obtain not can to-the-very owner of-theft the-action belongs*
quia hoc casu ipsius interest rem salvam esse. idem
*because in-this case to-him-himself it-matters the-thing safe to-be the-same*
est et si in parte solvendo sint fullo aut sarcinator.
*it-is also if in part solvent be the-fuller or the-tailor*

16 Quae de fullone et sarcinatore diximus, eadem et ad eum
*What about the-fuller and the-tailor we-have-said the-same also to him*
cui commodata res est transferenda veteres existimabant:
*to-whom lent a-thing is to-be-transferred the-ancients thought*
nam ut ille fullo mercedem accipiendo custodiam praestat, ita
*for as that fuller a-payment by-receiving custody furnishes so*
is quoque, qui commodum utendi percipit, similiter necesse
*he also who the-advantage of-using receives likewise necessity*
habet custodiam praestare. sed nostra providentia etiam
*has custody to-furnish but our providence also*
hoc in decisionibus nostris emendavit, ut in domini sit
*this in decisions our has-amended that in of-the-owner be*
voluntate, sive commodati actionem adversus eum qui rem
*the-will whether of-loan-for-use the-action against him who the-thing*
commodatam accepit movere desiderat, sive furti adversus
*lent received to-move he-desires or of-theft against*
eum qui rem subripuit, et alterutra earum electa dominum
*him who the-thing stole and either of-them chosen the-owner*
non posse ex paenitentia ad alteram venire actionem. sed
*not to-be-able from repentance to the-other to-come action but*

si quidem furem elegerit, illum qui rem utendam accepit
*if indeed the-thief he-has-chosen him who the-thing for-use received*
penitus liberari. sin autem commodator veniat adversus eum
*wholly to-be-freed but-if however the-lender comes against him*
qui rem utendam accepit, ipsi quidem nullo modo
*who the-thing for-use received to-him-himself indeed in-no way*
competere posse adversus furem furti actionem, eum autem,
*to-belong to-be-able against the-thief of-theft the-action him however*
qui pro re commodata convenitur, posse adversus furem
*who for the-thing lent is-sued to-be-able against the-thief*
furti habere actionem, ita tamen, si dominus sciens rem esse
*of-theft to-have the-action so however if the-owner knowing the-thing to-be*
subreptam adversus eum cui res commodata fuit pervenit:
*stolen against him to-whom the-thing lent was has-come*
sin autem nescius et dubitans rem non esse apud eum
*but-if however not-knowing and doubting the-thing not to-be with him*
commodati actionem instituit, postea autem re comperta
*of-loan-for-use the-action he-has-brought afterward however the-thing discovered*
voluit remittere quidem commodati actionem, ad furti autem
*he-wished to-remit indeed of-loan-for-use the-action to of-theft however*
pervenire, tunc licentia ei concedatur et adversus furem
*to-come then license to-him be-granted also against the-thief*
venire nullo obstaculo ei opponendo, quoniam incertus
*to-come no obstacle to-him being-put-in-the-way since uncertain*
constitutus movit adversus eum qui rem utendam accepit
*placed he-moved against him who the-thing for-use received*
commodati actionem (nisi domino ab eo satisfactum est: tunc
*of-loan-for-use the-action unless to-the-owner by him satisfaction-made is then*
etenim omnimodo furem a domino quidem furti actione
*for in-every-way the-thief from the-owner indeed of-theft by-the-action*
liberari, suppositum autem esse ei, qui pro re sibi
*to-be-freed subjected however to-be to-him who for the-thing to-himself*

commodata domino satisfecit), cum manifestissimum est, etiam
*lent to-the-owner has-satisfied since most-manifest it-is even*
si ab initio dominus actionem instituit commodati ignarus
*if from the-beginning the-owner the-action brought of-loan-for-use unaware*
rem esse subreptam, postea autem hoc ei cognito adversus
*the-thing to-be stolen afterward however this to-him known against*
furem transivit, omnimodo liberari eum qui rem commodatam
*the-thief has-passed in-every-way to-be-freed him who the-thing lent*
accepit, quemcumque causae exitum dominus adversus furem
*received whatever of-the-case outcome the-owner against the-thief*
habuerit: eadem definitione optinente, sive in partem sive
*has-had the-same definition holding whether in part or*
in solidum solvendo sit is qui rem commodatam accepit.
*in whole solvent be he who the-thing lent received*

17 Sed is, apud quem res deposita est, custodiam non
*But he with whom a-thing deposited is custody not*
praestat, sed tantum in eo obnoxius est, si quid ipse
*furnishes but only in that liable is if anything he-himself*
dolo malo fecerit: qua de causa si res ei subrepta
*by-fraud bad has-done which for reason if the-thing from-him stolen*
fuerit, quia restituendae eius nomine depositi non tenetur
*has-been because for-restoring it by-reason of-deposit not he-is-bound*
nec ob id eius interest rem salvam esse, furti agere
*nor for that to-him it-matters the-thing safe to-be of-theft sue*
non potest, sed furti actio domino competit.
*not he-can but of-theft the-action to-the-owner belongs*

18 In summa sciendum est quaesitum esse, an impubes
*In sum to-be-known it-is asked to-have-been whether one-under-age*
rem alienam amovendo furtum faciat. et placet, quia
*a-thing another's by-removing theft commits and it-is-held because*
furtum ex affectu consistit, ita demum obligari eo
*theft from intention consists so only-then to-be-bound by-that*

crimine impuberem, si proximus pubertati sit et ob id
*crime the-one-under-age if nearest to-puberty he-be and for that*
intellegat se delinquere.
*he-understand himself to-do-wrong*
Furti actio sive dupli sive quadrupli tantum ad poenae 19
*Of-theft the-action whether double or fourfold only to the-penalty's*
persecutionem pertinet: nam ipsius rei persecutionem
*pursuit pertains for itself of-the-thing the-pursuit*
extrinsecus habet dominus, quam aut vindicando aut
*separately has the-owner which either by-vindicating or*
condicendo potest auferre. sed vindicatio quidem adversus
*by-condiction he-can take-away but the-vindication indeed against*
possessorem est, sive fur ipse possidet sive alius
*the-possessor is whether the-thief himself possesses or another*
quilibet: condictio autem adversus ipsum furem heredemve
*anyone the-condiction however against himself the-thief or-heir*
eius, licet non possideat, competit.
*his although not he-possess belongs*

## II · GOODS TAKEN BY FORCE

*Robbery gives an action for fourfold within a year and single after, the thing included, against one who takes goods by force, even a single item. By the emperors' constitutions one who seizes his own thing by force, even believing it his, loses it, and one who seizes another's restores it with its value, land included; the action lies to anyone with an interest in the thing, owner or not.*

Qui res alienas rapit, tenetur quidem etiam furti (quis enim
*He-who things another's seizes is-liable indeed also of-theft who for*
magis alienam rem invito domino contrectat, quam qui
*more another's thing unwilling the-owner handles than he-who*

vi rapit? ideoque recte dictum est eum improbum
*by-force seizes and-therefore rightly said it-has-been him a-shameless*
furem esse): sed tamen propriam actionem eius delicti
*thief to-be but however an-own action of-that delict*
nomine praetor introduxit, quae appellatur vi bonorum
*on-account the-praetor introduced which is-called by-force of-goods*
raptorum et est intra annum quadrupli, post annum simpli.
*seized and it-is within a-year fourfold after a-year single*
quae actio utilis est, etiamsi quis unam rem licet minimam
*which action available is even-if anyone one thing although the-smallest*
rapuerit. quadruplum autem non totum poena est et extra
*has-seized the-fourfold however not wholly the-penalty is and outside*
poenam rei persecutio, sicut in actione furti manifesti
*the-penalty of-the-thing the-pursuit as in the-action of-theft manifest*
diximus: sed in quadruplo inest et rei persecutio,
*we-have-said but in the-fourfold is-contained also of-the-thing the-pursuit*
ut poena tripli sit, sive comprehendatur raptor in
*so-that the-penalty threefold be whether be-caught the-robber in*
ipso delicto sive non. ridiculum est enim levioris esse
*the-very offense or not ridiculous it-is for of-easier to-be*
condicionis eum qui vi rapit, quam qui clam amovet.
*condition him who by-force seizes than he-who secretly removes*
1 Quia tamen ita competit haec actio, si dolo malo quisque
*Because however so lies this action if by-fraud bad anyone*
rapuerit: qui aliquo errore inductus suam rem esse et
*has-seized he-who by-some error led his-own the-thing to-be and*
imprudens iuris eo animo rapuit, quasi domino liceat
*ignorant of-law with-that intention seized as-if for-the-owner it-be-allowed*
rem suam etiam per vim auferre possessoribus, absolvi
*thing his-own even through force to-take-away from-the-possessors be-acquitted*
debet. cui scilicet conveniens est nec furti teneri eum, qui
*ought to-which namely fitting it-is neither of-theft to-be-liable him who*

eodem hoc animo rapuit. sed ne, dum talia excogitentur,
*with-the-same this intention seized but lest while such-things are-devised*
inveniatur via, per quam raptores impune suam exerceant
*be-found a-way through which robbers with-impunity their-own exercise*
avaritiam: melius divalibus constitutionibus pro hac parte
*greed better by-imperial constitutions for this part*
prospectum est, ut nemini liceat vi rapere rem
*provided-for it-has-been that for-no-one it-be-allowed by-force to-seize a-thing*
mobilem vel se moventem, licet suam eandem rem existimet:
*movable or itself moving although his-own that-same thing he-think*
sed si quis contra statuta fecerit, rei quidem suae
*but if anyone against the-statutes has-done of-the-thing indeed his-own*
dominio cadere, sin autem aliena sit, post restitutionem
*the-ownership to-forfeit but-if however another's it-be after restoration*
etiam aestimationem eiusdem rei praestare. quod non solum
*also the-value of-the-same thing to-furnish which not only*
in mobilibus rebus, quae rapi possunt, constitutiones optinere
*in movable things which be-seized can the-constitutions to-hold*
censuerunt, sed etiam in invasionibus, quae circa res soli
*have-decreed but also in invasions which about things of-the-soil*
fiunt, ut ex hac causa omni rapina homines abstineant.
*are-made so-that for this cause from-all robbery men abstain*
In hac actione non utique exspectatur rem in bonis actoris 2
*In this action not necessarily it-is-required the-thing in the-goods of-the-plaintiff*
esse: nam sive in bonis sit sive non sit, si tamen ex
*to-be for whether in the-goods it-be or not it-be if however from*
bonis sit, locum haec actio habebit. quare sive commodata
*the-goods it-be place this action will-have wherefore whether lent-for-use*
sive locata sive etiam pignerata sive deposita sit apud Titium
*or let or even pledged or deposited it-be with Titius*
sic, ut intersit eius eam non auferri, veluti si in re
*so that it-matter to-him it not to-be-carried-off as if in a-thing*

deposita culpam quoque promisit, sive bona fide possideat,
*deposited fault also he-promised or in-good faith he-possess*
sive usum fructum in ea quis habeat vel quod aliud ius,
*or the-use (and)-enjoyment in it anyone have or some other right*
ut intersit eius non rapi: dicendum est competere ei
*so-that it-matter to-him not to-be-seized to-be-said it-is to-belong to-him*
hanc actionem, ut non dominium accipiat, sed illud solum,
*this action so-that not the-ownership he-receive but that only*
quod ex bonis eius qui rapinam passus est, id est quod
*which from the-goods of-him who robbery suffered has that is what*
ex substantia eius ablatum esse proponatur. et generaliter
*from the-substance his taken to-be is-alleged and generally*
dicendum est, ex quibus causis furti actio competit in re
*to-be-said it-is from what causes of-theft the-action belongs in a-thing*
clam facta, ex isdem causis omnes habere hanc actionem.
*secretly done from the-same causes all to-have this action*

## III · THE AQUILIAN STATUTE

*The Aquilian statute's first chapter makes one who wrongfully kills a slave or a grazing beast pay its highest value in the past year; the second is out of use; the third covers other damage at its highest value in the thirty days before. Fault suffices, as with the javelin thrower, the pruner who gives no warning, or the unskilled physician; the statute's own action needs damage done by the body, and other cases take an analogous action or one on the facts.*

Damni iniuriae actio constituitur per legem Aquiliam.
*Of-damage wrongful the-action is-established by the-statute Aquilian*
cuius primo capite cautum est, ut si quis hominem
*of-which in-the-first chapter provided it-is that if anyone a-man*
alienum alienamve 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
*be wrongfully has-killed as-much-as that thing in that year the-most*
fuit, tantum domino dare damnetur.
*was-worth so-much to-the-owner to-give he-be-condemned*
Quod autem non praecise de quadrupede, sed de ea tantum 1
*That however not precisely about a-four-footed-beast but about that only*
quae pecudum numero est cavetur, eo pertinet, ut neque
*which of-cattle in-the-number is it-is-provided to-this pertains that neither*
de feris bestiis neque de canibus cautum esse intellegamus,
*about wild beasts nor about dogs provided to-be we-understand*
sed de his tantum, quae proprie pasci dicuntur, quales sunt
*but about those only which properly to-graze are-said such-as are*
equi muli asini boves oves caprae. de suibus quoque idem
*horses mules asses oxen sheep goats about pigs also the-same*
placuit: nam et sues pecorum appellatione continentur, quia
*was-held for also pigs of-cattle by-the-name are-contained because*
et hi gregatim pascuntur: sic denique et Homerus in Odyssea
*also they in-herds graze thus finally also Homer in the-Odyssey*
ait, sicut Aelius Marcianus in suis institutionibus refert:
*says as Aelius Marcianus in his institutes reports*

δήεις τόν γε σύεσσι παρήμενον· αἱ δὲ νέμονται
*you-will-find him indeed by-the-pigs sitting they and graze*
πὰρ Κόρακος πέτρῃ, ἐπί τε κρήνῃ Ἀρεθούσῃ.
*by Corax's rock at and the-spring Arethusa*

Iniuria autem occidere intellegitur, qui nullo iure occidit. 2
*Wrongfully however to-kill is-understood he-who by-no right kills*
itaque qui latronem occidit, non tenetur, utique si aliter
*therefore he-who a-robber kills not is-liable certainly if otherwise*
periculum effugere non potest.
*the-danger escape not he-can*

3 Ac ne is quidem hac lege tenetur, qui casu occidit, si
*And not he even by-this statute is-liable who by-chance kills if*
modo culpa eius nulla invenitur: nam alioquin non minus
*only fault his none is-found for otherwise not less*
ex dolo quam ex culpa quisque hac lege tenetur.
*from fraud than from fault anyone by-this statute is-liable*

4 Itaque si quis, dum iaculis ludit vel exercitatur, transeuntem
*Therefore if anyone while with-javelins he-plays or exercises passing*
servum tuum traiecerit, distinguitur. nam si id a milite
*slave your has-pierced a-distinction-is-made for if it by a-soldier*
quidem in campo eoque, ubi solitum est exercitari, admissum
*indeed in the-field and-that where customary it-is to-exercise committed*
est, nulla culpa eius intellegitur: si alius tale quid admisit,
*has-been no fault his is-understood if another such something has-committed*
culpae reus est. idem iuris est de milite, si is in alio loco,
*of-fault guilty he-is the-same of-law it-is about the-soldier if he in another place*
quam qui exercitandis militibus destinatus est, id admisit.
*than which for-exercising soldiers assigned is it has-committed*

5 Item si putator ex arbore deiecto ramo servum tuum
*Likewise if a-pruner from a-tree a-thrown-down branch slave your*
transeuntem occiderit, si prope viam publicam aut vicinalem id
*passing has-killed if near a-road public or local this*
factum est neque praeclamavit, ut casus evitari possit, culpae
*done was and-not he-called-out that the-accident be-avoided could of-fault*
reus est: si praeclamavit neque ille curavit cavere, extra culpam
*guilty he-is if he-called-out and-not he took-care to-beware outside fault*
est putator. aeque extra culpam esse intellegitur, si seorsum
*is the-pruner equally outside fault to-be is-understood if apart*
a via forte vel in medio fundo caedebat, licet non
*from the-road perhaps or in the-middle-of the-estate he-was-cutting although not*
praeclamavit, quia eo loco nulli extraneo ius fuerat versandi.
*he-called-out because in-that place for-no outsider right had-been of-being-about*

Praeterea si medicus, qui servum tuum secuit, dereliquerit 6
*Moreover if a-physician who slave your operated-on has-abandoned*
curationem atque ob id mortuus fuerit servus, culpae reus
*the-treatment and for that dead has-been the-slave of-fault guilty*
est.
*he-is*

Imperitia quoque culpae adnumeratur, veluti si medicus 7
*Unskillfulness also to-fault is-reckoned as if a-physician*
ideo servum tuum occiderit, quod eum male secuerit aut
*therefore slave your has-killed because him badly he-operated-on or*
perperam ei medicamentum dederit.
*wrongly to-him a-drug he-has-given*

Impetu quoque mularum, quas mulio propter imperitiam 8
*By-the-rush also of-mules which the-muleteer on-account-of unskillfulness*
retinere non potuerit, si servus tuus oppressus fuerit, culpae
*to-hold-back not has-been-able if slave your crushed has-been of-fault*
reus est mulio. sed et si propter infirmitatem retinere eas
*guilty is the-muleteer but also if on-account-of weakness to-hold-back them*
non potuerit, cum alius firmior retinere potuisset, aeque
*not he-has-been-able while another stronger to-hold-back could-have equally*
culpae tenetur. eadem placuerunt de eo quoque, qui, cum
*of-fault he-is-liable the-same-things were-held about him also who when*
equo veheretur, impetum eius aut propter infirmitatem
*on-a-horse he-rode the-rush its either on-account-of weakness*
aut propter imperitiam suam retinere non potuerit.
*or on-account-of unskillfulness his-own to-hold-back not has-been-able*

His autem verbis legis ‘quanti id in eo anno plurimi 9
*By-these however words of-the-statute as-much-as it in that year the-most*
fuerit’ illa sententia exprimitur, ut si quis hominem tuum,
*was-worth this meaning is-expressed that if anyone a-slave your*
qui hodie claudus aut luscus aut mancus erit, occiderit, qui
*who today lame or one-eyed or maimed shall-be has-killed who*

in eo anno integer aut pretiosus fuerit, non tanti teneatur,
*in that year whole or valuable was not for-so-much he-is-liable*
quanti is hodie erit, sed quanti in eo anno plurimi
*as-much-as he today shall-be-worth but as-much-as in that year the-most*
fuerit. qua ratione creditum est poenalem esse huius legis
*he-was-worth by-which reasoning believed it-is penal to-be of-this statute*
actionem, quia non solum tanti quisque obligatur, quantum
*the-action because not only for-so-much each is-bound as-much*
damni dederit, sed aliquando longe pluris: ideoque constat
*of-loss he-has-caused but sometimes far more and-therefore it-is-agreed*
in heredem eam actionem non transire, quae transitura
*against the-heir that action not to-pass which about-to-pass*
fuisset, si ultra damnum numquam lis aestimaretur.
*it-would-have-been if beyond the-loss never the-suit were-assessed*
10 Illud non ex verbis legis, sed ex interpretatione placuit
*That not from the-words of-the-statute but from interpretation was-held*
non solum perempti corporis aestimationem habendam esse
*not only of-the-destroyed body the-value to-be-had to-be*
secundum ea quae diximus, sed eo amplius quidquid
*according-to those-things which we-have-said but by-this further whatever*
praeterea perempto eo corpore damni vobis adlatum fuerit,
*besides destroyed that body of-loss to-you brought has-been*
veluti si servum tuum heredem ab aliquo institutum ante
*as if a-slave your heir by someone instituted before*
quis occiderit, quam is iussu tuo adiret: nam hereditatis
*anyone has-killed than he by-order your entered for of-the-inheritance*
quoque amissae rationem esse habendam constat. item si ex
*also lost account to-be to-be-had it-is-agreed likewise if out-of*
pari mularum unam vel ex quadriga equorum unum
*a-pair of-mules one or out-of a-four-horse-team of-horses one*
occiderit, vel ex comoedis unus servus fuerit occisus: non
*he-has-killed or out-of comic-actors one slave has-been killed not*

solum occisi fit aestimatio, sed eo amplius id quoque
*only of-the-killed is-made the-valuation but by-this further that also*
computatur, quanto depretiati sunt qui supersunt.
*is-reckoned by-how-much depreciated are those-who survive*
Liberum est autem ei, cuius servus fuerit occisus, et 11
*Free it-is however for-him whose slave has-been killed both*
privato iudicio legis Aquiliae damnum persequi et
*by-private action of-the-statute Aquilian the-loss to-pursue and*
capitalis criminis eum reum facere.
*of-a-capital crime him accused to-make*
Caput secundum legis Aquiliae in usu non est. 12
*The-chapter second of-the-statute Aquilian in use not is*
Capite tertio de omni cetero damno cavetur. Itaque 13
*In-the-chapter third about all other damage it-is-provided Therefore*
si quis servum vel eam quadrupedem quae pecudum
*if anyone a-slave or that four-footed-beast which of-cattle*
numero est vulneraverit, sive eam quadrupedem quae
*in-the-number is has-wounded or that four-footed-beast which*
pecudum numero non est, veluti canem aut feram bestiam,
*of-cattle in-the-number not is as a-dog or a-wild beast*
vulneraverit aut occiderit, hoc capite actio constituitur. in
*has-wounded or has-killed by-this chapter an-action is-established in*
ceteris quoque omnibus animalibus, item in omnibus rebus
*other also all animals likewise in all things*
quae anima carent damnum iniuria datum hac parte
*which of-life are-without damage wrongfully caused by-this part*
vindicatur. si quid enim ustum aut ruptum aut fractum
*is-avenged if anything for burnt or broken or fractured*
fuerit, actio ex hoc capite constituitur: quamquam poterit
*has-been an-action from this chapter is-established although can*
sola rupti appellatio in omnes istas causas sufficere: ruptum
*the-sole of-broken the-term to all those cases suffice broken*

enim intellegitur, quoquo modo corruptum est. unde non
*for is-understood in-whatever way spoiled it-is whence not*
solum usta aut fracta, sed etiam scissa et collisa et effusa
*only burnt or fractured but also torn and crushed and spilled*
et quoquo modo perempta atque deteriora facta hoc verbo
*and in-whatever way destroyed and worse made by-this word*
continentur: denique responsum est, si quis in alienum
*are-contained finally answered it-has-been if anyone into another's*
vinum aut oleum id immiserit, quo naturalis bonitas vini
*wine or oil that has-put by-which the-natural goodness of-the-wine*
vel olei corrumperetur, ex hac parte legis eum teneri.
*or of-the-oil might-be-spoiled from this part of-the-statute him to-be-liable*
14 Illud palam est, sicut ex primo capite ita demum quisque
*That plain is as from the-first chapter so only-then anyone*
tenetur, si dolo aut culpa eius homo aut quadrupes
*is-liable if by-the-fraud or fault his a-man or four-footed-beast*
occisus occisave fuerit, ita ex hoc capite ex dolo aut culpa
*killed or-killed has-been so from this chapter from fraud or fault*
de cetero damno quemque teneri. hoc tamen capite non
*about other damage anyone to-be-liable by-this however chapter not*
quanti in eo anno, sed quanti in diebus triginta
*for-as-much-as in that year but for-as-much-as in the-days thirty*
proximis res fuerit, obligatur is qui damnum dederit.
*nearest the-thing was-worth is-bound he who the-damage caused*
15 Ac ne plurimi quidem verbum adicitur. sed Sabino recte
*And not most even the-word is-added but to-Sabinus rightly*
placuit perinde habendam aestimationem, ac si etiam
*it-seemed-good just to-be-had the-valuation as if also*
hac parte plurimi verbum adiectum fuisset: nam plebem
*in-this part the-most word added had-been for the-commons*

Romanam, quae Aquilio tribuno rogante hanc legem tulit,
*Roman which Aquilius the-tribune proposing this statute passed*
contentam fuisse, quod prima parte eo verbo usa est.
*satisfied to-have-been that in-the-first part that word it-used has*
Ceterum placuit ita demum ex hac lege actionem esse, si quis 16
*Moreover it-was-held so only-then from this statute an-action to-be if anyone*
praecipue corpore suo damnum dederit. ideoque in eum,
*especially by-body his-own damage has-caused and-therefore against him*
qui alio modo damnum dederit, utiles actiones dari
*who in-another way damage has-caused analogous actions to-be-given*
solent: veluti si quis hominem alienum aut pecus ita incluserit,
*are-wont as if anyone a-man another's or cattle so has-shut-in*
ut fame necaretur, aut iumentum tam vehementer
*that by-hunger he-should-be-killed or a-beast-of-burden so violently*
egerit, ut rumperetur, aut pecus in tantum exagitaverit,
*has-driven that it-should-be-ruptured or cattle so far has-stirred-up*
ut praecipitaretur, aut si quis alieno servo persuaserit,
*that it-should-be-thrown-headlong or if anyone another's slave has-persuaded*
ut in arborem ascenderet vel in puteum descenderet, et is
*that into a-tree he-should-climb or into a-well he-should-descend and he*
ascendendo vel descendendo aut mortuus fuerit aut aliqua
*in-climbing or in-descending either dead has-been or in-some*
parte corporis laesus erit, utilis in eum actio datur.
*part of-the-body injured shall-have-been an-analogous against him action is-given*
sed si quis alienum servum de ponte aut ripa in flumen
*but if anyone another's slave from a-bridge or bank into the-river*
deiecerit et is suffocatus fuerit, eo quod proiecerit corpore
*has-thrown and he drowned has-been in-this that he-threw-him by-body*
suo damnum dedisse non difficiliter intellegi poterit
*his-own damage to-have-caused not with-difficulty be-understood it-will-be-able*
ideoque ipsa lege Aquilia tenetur. sed si non corpore
*and-therefore by-the-very statute Aquilian he-is-liable but if not by-body*

damnum fuerit datum neque corpus laesum fuerit, sed alio
*damage has-been caused nor a-body injured has-been but in-another*
modo damnum alicui contigit, cum non sufficit neque
*way loss to-someone has-happened since not suffices neither*
directa neque utilis Aquilia, placuit eum qui obnoxius
*the-direct nor the-analogous Aquilian it-was-held him who liable*
fuerit in factum actione teneri: veluti si quis misericordia
*has-been on the-facts by-an-action to-be-bound as if anyone by-pity*
ductus alienum servum compeditum solverit, ut fugeret.
*led another's slave fettered has-loosed that he-might-flee*

## IV · OUTRAGES

*Outrage is done by blows, abuse, defamation, or pursuit of a matron; one suffers it through children in power and a wife, and a slave's master through the slave. The Twelve Tables' fixed penalties gave way to the praetor's assessment, and the Cornelian statute added an action; atrocious outrage is judged by the act, the place, or the person. The injured may sue civilly or criminally, and one who lets the outrage pass loses the action.*

Generaliter iniuria dicitur omne quod non iure fit:
*Generally wrong is-called everything which not by-right is-done*
specialiter alias contumelia, quae a contemnendo dicta
*specially sometimes insult which from contemning named*
est, quam Graeci ὕβριν appellant, alias culpa, quam
*is which the-Greeks hybris call sometimes fault which*
Graeci ἀδίκημα dicunt, sicut in lege Aquilia damnum
*the-Greeks adikema call as in the-statute Aquilian damage*
iniuria accipitur, alias iniquitas et iniustitia, quam Graeci
*wrongful is-understood sometimes iniquity and injustice which the-Greeks*

ἀδικίαν vocant. cum enim praetor vel iudex non iure
*adikia call when for the-praetor or judge not by-right*
contra quem pronuntiat, iniuriam accepisse dicitur.
*against someone pronounces a-wrong to-have-received he-is-said*
Iniuria autem committitur non solum, cum quis pugno 1
*Outrage however is-committed not only when anyone with-a-fist*
puta aut fustibus caesus vel etiam verberatus erit, sed
*for-example or with-clubs beaten or even flogged has-been but*
etiam si cui convicium factum fuerit, sive cuius bona
*also if on-someone abuse made has-been or whose goods*
quasi debitoris possessa fuerint ab eo, qui intellegebat nihil
*as-if of-a-debtor possessed have-been by him who knew nothing*
eum sibi debere, vel si quis ad infamiam alicuius libellum
*him to-himself to-owe or if anyone for the-infamy of-someone a-pamphlet*
aut carmen scripserit composuerit ediderit dolove malo
*or a-poem has-written composed published or-by-fraud bad*
fecerit, quo quid eorum fieret, sive quis matrem familias
*has-acted that anything of-these be-done or anyone a-mother of-a-family*
aut praetextatum praetextatamve adsectatus fuerit, sive
*or a-boy-in-the-praetexta or-a-girl-in-the-praetexta followed has or*
cuius pudicitia attemptata esse dicetur: et denique aliis
*whose chastity attempted to-have-been will-be-said and finally in-other*
pluribus modis admitti iniuriam manifestum est.
*many ways to-be-committed outrage manifest it-is*
Patitur autem quis iniuriam non solum per semet ipsum, 2
*Suffers however anyone outrage not only through himself in-person*
sed etiam per liberos suos quos in potestate habet: item
*but also through children his-own whom in power he-has likewise*
per uxorem suam, id enim magis praevaluit. itaque si
*through wife his this for rather has-prevailed therefore if*
filiae alicuius, quae Titio nupta est, iniuriam feceris,
*to-the-daughter of-someone who to-Titius married is outrage you-have-done*

non solum filiae nomine tecum iniuriarum agi potest,
*not only the-daughter's in-name with-you for-outrages be-sued can*
sed etiam patris quoque et mariti nomine. contra
*but also of-the-father too and of-the-husband in-the-name conversely*
autem, si viro iniuria facta sit, uxor iniuriarum agere
*however if to-a-husband outrage done be a-wife for-outrages sue*
non potest: defendi enim uxores a viris, non viros
*not can to-be-defended for wives by husbands not husbands*
ab uxoribus aequum est. sed et socer nurus
*by wives fair it-is but also a-father-in-law the-daughter-in-law's*
nomine, cuius vir in potestate est, iniuriarum agere potest.
*in-name whose husband in power is for-outrages sue can*
3 Servis autem ipsis quidem nulla iniuria fieri intellegitur,
*To-slaves however themselves indeed no outrage to-be-done is-understood*
sed domino per eos fieri videtur: non tamen isdem
*but to-the-master through them to-be-done it-seems not however in-the-same*
modis, quibus etiam per liberos et uxores, sed ita cum
*ways in-which also through children and wives but so when*
quid atrocius commissum fuerit et quod aperte ad
*anything more-atrocious committed has-been and which openly to*
contumeliam domini respicit. veluti si quis alienum servum
*the-insult of-the-master looks as if anyone another's slave*
verberaverit, et in hunc casum actio proponitur: at si
*has-flogged and for this case an-action is-set-out but if*
quis servo convicium fecerit vel pugno eum percusserit,
*anyone on-a-slave abuse has-made or with-a-fist him has-struck*
nulla in eum actio domino competit.
*no against him action to-the-master belongs*
4 Si communi servo iniuria facta sit, aequum est non pro
*If on-a-common slave outrage done be fair it-is not in-proportion-to*
ea parte, qua dominus quisque est, aestimationem iniuriae
*that share in-which owner each is the-assessment of-the-outrage*

fieri, sed ex dominorum persona, quia ipsis fit
*to-be-made but from the-masters' person because on-themselves is-done*
iniuria.
*the-outrage*
Quodsi usus fructus in servo Titii est, proprietas Maevii 5
*But-if the-use (and)-enjoyment in the-slave Titius' is the-ownership Maevius'*
est, magis Maevio iniuria fieri intellegitur.
*is rather to-Maevius outrage to-be-done is-understood*
Sed si libero, qui tibi bona fide servit, iniuria facta sit, 6
*But if to-a-free-man who to-you in-good faith serves outrage done be*
nulla tibi actio dabitur, sed suo nomine is experiri poterit:
*no to-you action will-be-given but in-his-own name he sue will-be-able*
nisi in contumeliam tuam pulsatus sit, tunc enim competit
*unless into insult your struck he-was then for belongs*
et tibi iniuriarum actio. idem ergo est et in servo alieno
*also to-you of-outrages the-action the-same therefore it-is also in a-slave another's*
bona fide tibi serviente, ut totiens admittatur iniuriarum
*in-good faith to-you serving that as-often be-admitted of-outrages*
actio, quotiens in tuam contumeliam iniuria ei facta sit.
*the-action as-often-as into your insult outrage on-him done be*
Poena autem iniuriarum ex lege duodecim tabularum 7
*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*
vero fractum nummariae poenae erant constitutae quasi in
*however fractured money penalties were established as-if in*
magna veterum paupertate. sed postea praetores permittebant
*the-great of-the-ancients poverty but afterward the-praetors permitted*
ipsis qui iniuriam passi sunt eam aestimare, ut
*to-those-themselves who outrage suffered have it to-assess so-that*
iudex vel tanti condemnet, quanti iniuriam passus
*the-judge either for-so-much condemn as-much-as the-outrage he-who-suffered*

aestimaverit, vel minoris, prout ei visum fuerit. sed
*has-assessed or for-less as to-him seemed-good it-shall-have but*
poena quidem iniuriae, quae ex lege duodecim tabularum
*the-penalty indeed of-outrage which by the-statute of-the-twelve tables*
introducta est, in desuetudinem abiit: quam autem praetores
*introduced was into disuse has-gone which however the-praetors*
introduxerunt, quae etiam honoraria appellatur, in iudiciis
*introduced which also honorary is-called in the-courts*
frequentatur. nam secundum gradum dignitatis vitaeque
*is-frequented for according-to the-rank of-dignity and-of-life*
honestatem crescit aut minuitur aestimatio iniuriae: qui
*the-honor grows or is-lessened the-assessment of-the-outrage which*
gradus condemnationis et in servili persona non immerito
*degree of-condemnation also in a-servile person not undeservedly*
servatur, ut aliud in servo actore, aliud in medii actus
*is-observed so-that one-thing in a-slave steward another in of-middling station*
homine, aliud in vilissimo vel compedito constituatur.
*a-man another in the-meanest or fettered be-established*

8 Sed et lex Cornelia de iniuriis loquitur et iniuriarum
*But also the-statute Cornelian about outrages speaks and of-outrages*
actionem introduxit. quae competit ob eam rem, quod
*an-action has-introduced which belongs on-account-of that matter that*
se pulsatum quis verberatumve domumve suam vi
*himself struck anyone or-flogged or-house his-own by-force*
introitum esse dicat. domum autem accipimus, sive in
*entered to-have-been says a-house however we-understand whether in*
propria domo quis habitat sive in conducta vel gratis sive
*his-own house anyone lives or in a-hired-one or free or*
hospitio receptus sit.
*as-guest received he-be*

Atrox iniuria aestimatur vel ex facto, veluti si quis ab 9
*An-atrocious outrage is-assessed either from the-deed as if anyone by*
aliquo vulneratus fuerit vel fustibus caesus: vel ex loco, veluti
*someone wounded has-been or with-clubs beaten or from the-place as*
si cui in theatro vel in foro vel in conspectu praetoris
*if on-someone in the-theater or in the-forum or in the-sight of-the-praetor*
iniuria facta sit: vel ex persona, veluti si magistratus iniuriam
*outrage done be or from the-person as if a-magistrate outrage*
passus fuerit, vel si senatori ab humili iniuria facta sit, aut
*suffered has or if on-a-senator by a-low-person outrage done be or*
parenti patronoque fiat a liberis vel libertis: aliter enim
*on-a-parent and-patron it-be-done by children or freedmen otherwise for*
senatoris et parentis patronique, aliter extranei et humilis
*of-a-senator and of-a-parent and-of-a-patron otherwise of-an-outsider and of-a-low*
personae iniuria aestimatur. nonnumquam et locus vulneris
*person the-outrage is-assessed sometimes also the-place of-the-wound*
atrocem iniuriam facit, veluti si in oculo quis percussus sit.
*an-atrocious outrage makes as if in the-eye anyone struck be*
parvi autem refert, utrum patri familias an filio familias
*of-little however it-matters whether on-a-father of-a-family or on-a-son of-a-family*
talis iniuria facta sit: nam et haec atrox aestimabitur.
*such outrage done be for also this atrocious will-be-assessed*
In summa sciendum est de omni iniuria eum qui passus est 10
*In sum to-be-known it-is about every outrage him who suffered has*
posse vel criminaliter agere vel civiliter. et si quidem civiliter
*to-be-able either criminally to-sue or civilly and if indeed civilly*
agatur, aestimatione facta secundum quod dictum est
*it-be-sued an-assessment made according-to what said it-has-been*
poena imponitur. sin autem criminaliter, officio iudicis
*a-penalty is-imposed but-if however criminally by-the-office of-the-judge*
extraordinaria poena reo irrogatur: hoc videlicet
*an-extraordinary penalty on-the-defendant is-imposed this namely*

observando, quod Zenoniana constitutio introduxit, ut viri
*being-observed which the-Zenonian constitution introduced that men*
illustres quique supra eos sunt et per procuratores possint
*illustrious and-those-who above them are also through agents can*
actionem iniuriarum criminaliter vel persequi vel suscipere
*the-action of-outrages criminally either pursue or undertake*
secundum eius tenorem, qui ex ipsa manifestius apparet.
*according-to its tenor which from it more-manifestly appears*

11 Non solum autem is iniuriarum tenetur qui fecit iniuriam, hoc
*Not only however he for-outrages is-liable who did the-outrage that*
est qui percussit: verum ille quoque continebitur, qui dolo
*is who struck but he also will-be-held who by-fraud*
fecit vel qui curavit, ut cui mala pugno percuteretur.
*did or who took-care that on-someone the-jaw with-a-fist be-struck*

12 Haec actio dissimulatione aboletur: et ideo, si quis iniuriam
*This action by-dissimulation is-abolished and therefore if anyone the-outrage*
dereliquerit, hoc est statim passus ad animum suum
*has-let-pass that is at-once having-suffered to mind his-own*
non revocaverit, postea ex paenitentia remissam iniuriam
*not has-recalled-it afterward from repentance the-remitted outrage*
non poterit recolere.
*not he-will-be-able to-revive*

*A judge who makes a case his own, a dweller from whose house something is thrown or poured, one who keeps something placed or hung over a way, a son in power living apart, and shipmasters, innkeepers, and stablekeepers for fraud or theft by their people, are liable as if from delict.*

Si iudex litem suam fecerit, non proprie ex maleficio obligatus
*If a-judge the-suit his-own has-made not properly from delict bound*
videtur. sed quia neque ex contractu obligatus est et utique
*he-seems but because neither from contract bound he-is and certainly*
peccasse aliquid intellegitur, licet per imprudentiam: ideo
*to-have-sinned something he-is-understood although through imprudence therefore*
videtur quasi ex maleficio teneri, et in quantum de ea re
*he-seems as-if from delict to-be-bound and to how-much about that matter*
aequum religioni iudicantis videbitur, poenam sustinebit.
*fair to-the-conscience of-the-one-judging shall-seem a-penalty he-will-bear*
Item is, ex cuius cenaculo vel proprio ipsius vel conducto 1
*Likewise he from whose upper-room either own of-himself or hired*
vel in quo gratis habitabat deiectum effusumve aliquid
*or in which free he-lived thrown-down or-poured-out something*
est, ita ut alicui noceretur, quasi ex maleficio obligatus
*has-been so that to-someone harm-was-done as-if from delict bound*
intellegitur: ideo autem non proprie ex maleficio obligatus
*is-understood therefore however not properly from delict bound*
intellegitur, quia plerumque ob alterius culpam tenetur aut
*he-is-understood because mostly for another's fault he-is-held either*
servi aut liberi. cui similis est is, qui ea parte,
*of-a-slave or of-a-free-man to-whom similar is he who in-that part*
qua vulgo iter fieri solet, id positum aut suspensum
*where commonly a-way to-be-made is-wont that placed or hung*

habet, quod potest, si ceciderit, alicui nocere: quo casu
*has which can if it-has-fallen to-someone do-harm in-which case*
poena decem aureorum constituta est. de eo vero quod
*a-penalty of-ten gold-pieces established is about that however which*
deiectum effusumve est dupli quanti damnum datum sit
*thrown-down or-poured-out is of-double as-much-as the-damage caused be*
constituta est actio. ob hominem vero liberum occisum
*established is an-action for a-man however free killed*
quinquaginta aureorum poena constituitur: si vero vivet
*of-fifty gold-pieces a-penalty is-established if however he-will-live*
nocitumque ei esse dicetur, quantum ob eam rem aequum
*and-harm-done to-him to-be will-be-said as-much-as for that matter fair*
iudici videtur, actio datur: iudex enim computare debet
*to-the-judge seems an-action is-given the-judge for to-reckon ought*
mercedes medicis praestitas ceteraque impendia, quae in
*the-fees to-physicians furnished and-the-other expenses which in*
curatione facta sunt, praeterea operarum, quibus caruit
*treatment made have-been moreover of-the-labors which he-has-lacked*
aut cariturus est ob id quod inutilis factus est.
*or about-to-lack is on-account-of this that useless made he-has-been*

2 Si filius familias seorsum a patre habitaverit et quid
*If a-son of-a-family apart from the-father has-lived and anything*
ex cenaculo eius deiectum effusumve sit, sive quid positum
*from upper-room his thrown-down or-poured-out be or anything placed*
suspensumve habuerit, cuius casus periculosus est: Iuliano
*or-hung he-has whose fall dangerous is to-Julian*
placuit in patrem nullam esse actionem, sed cum ipso
*it-seemed-good against the-father no to-be action but with himself*
filio agendum. quod et in filio familias iudice observandum
*the-son to-be-sued which also in a-son of-a-family judge to-be-observed*
est, qui litem suam fecerit.
*is who the-suit his-own has-made*

Item exercitor navis aut cauponae aut stabuli de dolo aut 3
*Likewise the-operator of-a-ship or of-an-inn or of-a-stable for fraud or*
furto, quod in nave aut in caupona aut in stabulo factum
*theft which in the-ship or in the-inn or in the-stable done*
erit, quasi ex maleficio teneri videtur, si modo
*shall-have-been as-if from delict to-be-bound seems if only*
ipsius nullum est maleficium, sed alicuius eorum, quorum
*his-own none is delict but of-some of-those whose*
opera navem aut cauponam aut stabulum exerceret: cum
*by-work the-ship or the-inn or the-stable be-operated since*
enim neque ex contractu sit adversus eum constituta haec
*for neither from contract be against him established this*
actio et aliquatenus culpae reus est, quod opera malorum
*action and to-some-extent of-fault guilty he-is that the-work of-bad*
hominum uteretur, ideo quasi ex maleficio teneri videtur.
*men he-used therefore as-if from delict to-be-bound he-seems*
in his autem casibus in factum actio competit, quae
*in these however cases on the-facts an-action lies which*
heredi quidem datur, adversus heredem autem non competit.
*to-the-heir indeed is-given against the-heir however not it-lies*

*An action is the right to sue for what is owed. Actions are real or personal, civil or praetorian, as the Publician, the Servian, the rescissory, and the creditors' against a fraudulent transfer; for the thing, for a penalty, or mixed; simple, double, triple, or fourfold; in good faith, strict, or arbitrary. Claiming too much by thing, time, place, or ground once lost the case and is now punished under Zeno and Justinian; some defendants are condemned only as far as they can pay, and set-off is allowed.*

Superest, ut de actionibus loquamur. actio autem nihil
*It-remains that about actions we-speak an-action however nothing*
aliud est, quam ius persequendi iudicio quod sibi
*else is than the-right of-pursuing in-court what to-oneself*
debetur.
*is-owed*

1 Omnium actionum, quibus inter aliquos apud iudices
*Of-all actions by-which between some-persons before judges*
arbitrosve de quaque re quaeritur, summa divisio in duo
*or-arbiters about any matter it-is-asked the-chief division into two*
genera deducitur: aut enim in rem sunt aut in personam.
*kinds is-drawn either for in rem they-are or in personam*
namque agit unusquisque aut cum eo, qui ei obligatus
*for sues each either with him who to-him bound*
est vel ex contractu vel ex maleficio, quo casu proditae
*is either from contract or from delict in-which case the-published*
actiones in personam sunt, per quas intendit adversarium ei
*actions in personam are through which he-claims the-adversary to-him*
dare aut dare facere oportere et aliis quibusdam modis: aut
*to-give or to-give to-do to-be-bound and in-other certain ways or*
cum eo agit, qui nullo iure ei obligatus est, movet tamen
*with him he-sues who by-no right to-him bound is moves however*
alicui de aliqua re controversiam. quo casu proditae
*against-someone about some thing a-dispute in-which case the-published*

actiones in rem sunt. veluti si rem corporalem possideat quis,
*actions in rem are as if a-thing corporeal possesses anyone*
quam Titius suam esse affirmet, et possessor dominum se
*which Titius his-own to-be affirms and the-possessor owner himself*
esse dicat: nam si Titius suam esse intendat, in rem actio est.
*to-be says for if Titius his-own it-to-be claims in rem an-action it-is*
Aeque si agat ius sibi esse fundo forte vel aedibus 2
*Equally if he-sues the-right to-himself to-be an-estate perhaps or a-house*
utendi fruendi vel per fundum vicini eundi agendi
*of-using of-enjoying or through the-estate of-the-neighbor of-going of-driving*
vel ex fundo vicini aquam ducendi, in rem actio est.
*or from the-estate of-the-neighbor water of-leading in rem an-action it-is*
eiusdem generis est actio de iure praediorum urbanorum,
*of-the-same kind is the-action about the-right of-estates urban*
veluti si agat ius sibi esse altius aedes suas tollendi
*as if he-sues the-right to-himself to-be higher house his-own of-raising*
prospiciendive vel proiciendi aliquid vel immittendi in vicini
*or-of-looking-out or of-projecting something or of-inserting into the-neighbor's*
aedes. contra quoque de usu fructu et de servitutibus
*house conversely also about the-use (and)-enjoyment and about the-servitudes*
praediorum rusticorum, item praediorum urbanorum invicem
*of-estates rustic likewise of-estates urban in-turn*
quoque proditae sunt actiones, ut quis intendat ius non
*also published are actions so-that anyone claims the-right not*
esse adversario utendi fruendi, eundi agendi aquamve ducendi,
*to-be for-the-adversary of-using of-enjoying of-going of-driving or-water of-leading*
item altius tollendi prospiciendi proiciendi immittendi: istae
*likewise higher of-raising of-looking-out of-projecting of-inserting these*
quoque actiones in rem sunt, sed negativae. quod genus actionis
*also actions in rem are but negative which kind of-action*
in controversiis rerum corporalium proditum non est: nam in
*in disputes of-things corporeal published not is for in*

his is agit qui non possidet: ei vero qui possidet non est
*these he sues who not possesses for-him however who possesses not is*
actio prodita, per quam neget rem actoris esse. sane
*an-action published through which he-may-deny the-thing the-plaintiff's to-be indeed*
uno casu qui possidet nihilo minus actoris partes optinet,
*in-one case he-who possesses by-nothing less of-the-plaintiff the-part holds*
sicut in latioribus digestorum libris opportunius apparebit.
*as in the-broader of-the-digest books more-fittingly will-appear*

3 Sed istae quidem actiones, quarum mentionem habuimus, et si
*But those indeed actions of-which mention we-have-had and if*
quae sunt similes, ex legitimis et civilibus causis descendunt.
*any are similar from statutory and civil causes descend*
aliae autem sunt, quas praetor ex sua iurisdictione
*others however there-are which the-praetor from his-own jurisdiction*
comparatas habet tam in rem quam in personam, quas et
*prepared has both in rem and in personam which also*
ipsas necessarium est exemplis ostendere. ecce plerumque ita
*themselves necessary it-is by-examples to-show behold mostly so*
permittit in rem agere, ut vel actor diceret se quasi usu
*he-permits in rem to-sue that either the-plaintiff should-say himself as-if by-use*
cepisse, quod usu non ceperit, vel ex diverso possessor
*to-have-taken what by-use not he-has-taken or on the-contrary the-possessor*
diceret adversarium suum usu non cepisse quod usu ceperit.
*should-say adversary his by-use not to-have-taken what by-use he-has-taken*

4 Namque si cui ex iusta causa res aliqua tradita fuerit,
*For if to-someone for a-lawful cause a-thing some delivered has-been*
veluti ex causa emptionis aut donationis aut dotis aut
*as by reason of-purchase or of-gift or of-dowry or*
legatorum, necdum eius rei dominus effectus est, si eius
*of-legacies and-not-yet of-that thing owner made he-is if of-that*
rei casu possessionem amiserit, nullam habet directam
*thing by-chance possession he-has-lost no he-has direct*

in rem actionem ad eam rem persequendam: quippe ita
*in rem action for that thing to-be-pursued since so*
proditae sunt iure civili actiones, ut quis dominium suum
*published are by-law civil actions that anyone ownership his-own*
vindicet. sed quia sane durum erat eo casu deficere
*vindicate but because indeed hard it-was in-that case to-fail*
actionem, inventa est a praetore actio, in qua dicit is, qui
*the-action found was by the-praetor an-action in which says he who*
possessionem amisit, eam rem se usu cepisse et ita
*possession lost that thing himself by-use to-have-taken and so*
vindicat suam esse. quae actio Publiciana appellatur, quoniam
*vindicates his-own to-be which action Publician is-called since*
primum a Publicio praetore in edicto proposita est.
*first by Publicius the-praetor in the-edict set-out it-was*
Rursus ex diverso si quis, cum rei publicae causa 5
*Again on the-contrary if anyone while of-the-thing public for-the-sake*
abesset vel in hostium potestate esset, rem eius qui in
*he-was-absent or in of-the-enemy the-power was a-thing of-him who in*
civitate esset usu ceperit, permittitur domino, si possessor
*the-state was by-use has-taken it-is-permitted to-the-owner if the-possessor*
rei publicae causa abesse desierit, tunc intra annum
*of-the-thing public for-the-sake to-be-absent has-ceased then within a-year*
rescissa usucapione eam petere, id est ita petere, ut dicat
*rescinded the-usucapion it to-claim that is so to-claim that he-say*
possessorem usu non cepisse et ob id suam esse rem.
*the-possessor by-use not to-have-taken and for that his-own to-be the-thing*
quod genus actionis et aliis quibusdam simili aequitate
*which kind of-action also to-others certain by-similar equity*
motus praetor accommodat, sicut ex latiore digestorum
*moved the-praetor accommodates as from the-broader of-the-digest*
seu pandectarum volumine intellegere licet.
*or of-the-pandects volume to-understand it-is-allowed*

6 Item si quis in fraudem creditorum rem suam alicui
*Likewise if anyone in fraud of-creditors thing his-own to-someone*
tradiderit, bonis eius a creditoribus ex sententia praesidis
*has-delivered the-goods his by the-creditors by the-decision of-the-governor*
possessis permittitur ipsis creditoribus rescissa traditione
*possessed it-is-permitted themselves to-the-creditors rescinded the-delivery*
eam rem petere, id est dicere eam rem traditam non esse
*that thing to-claim that is to-say that thing delivered not to-be*
et ob id in bonis debitoris mansisse.
*and for that in the-goods of-the-debtor to-have-remained*

7 Item Serviana et quasi Serviana, quae etiam hypothecaria
*Likewise the-Servian and quasi Servian which also hypothecary*
vocatur, ex ipsius praetoris iurisdictione substantiam capit.
*is-called from of-the-very praetor the-jurisdiction substance takes*
Serviana autem experitur quis de rebus coloni, quae
*the-Servian however sues anyone about the-things of-a-tenant which*
pignoris iure pro mercedibus fundi ei tenentur:
*of-pledge by-right for the-rents of-the-estate to-him are-held*
quasi Serviana autem qua creditores pignora hypothecasve
*the-quasi Servian however by-which creditors pledges or-mortgages*
persequuntur. inter pignus autem et hypothecam quantum ad
*pursue between a-pledge however and a-mortgage as-far-as to*
actionem hypothecariam nihil interest: nam de qua re inter
*the-action hypothecary nothing differs for about which thing between*
creditorem et debitorem convenerit, ut sit pro debito obligata,
*the-creditor and the-debtor it-has-been-agreed that it-be for the-debt bound*
utraque hac appellatione continetur. sed in aliis differentia
*by-each this name it-is-contained but in other-things difference*
est: nam pignoris appellatione eam proprie contineri
*there-is for of-pledge by-the-name that properly to-be-contained*
dicimus, quae simul etiam traditur creditori, maxime si
*we-say which at-the-same-time also is-delivered to-the-creditor especially if*

mobilis sit: at eam, quae sine traditione nuda conventione
*movable it-be but that which without delivery by-bare agreement*
tenetur, proprie hypothecae appellatione contineri dicimus.
*is-held properly of-mortgage by-the-name to-be-contained we-say*
In personam quoque actiones ex sua iurisdictione 8
*In personam also actions from his-own jurisdiction*
propositas habet praetor. veluti de pecunia constituta, cui
*set-out has the-praetor as about money promised to-which*
similis videbatur recepticia: sed ex nostra constitutione, cum
*similar seemed the-receptitious but by our constitution since*
et, si quid plenius habebat, hoc in pecuniam constitutam
*also if anything fuller it-had this into money promised*
transfusum est, ea quasi supervacua iussa est cum sua
*poured is it as-if superfluous ordered was with its*
auctoritate a nostris legibus recedere. item praetor
*authority from our laws to-withdraw likewise the-praetor*
proposuit de peculio servorum filiorumque familias et ex
*set-out about the-peculium of-slaves and-sons of-the-family and from*
qua quaeritur, an actor iuraverit, et alias complures.
*which it-is-asked whether the-plaintiff has-sworn and other very-many*
De pecunia autem constituta cum omnibus agitur, quicumque 9
*About money however promised with all it-is-sued whoever*
vel pro se vel pro alio soluturos se constituerint,
*either for themselves or for another about-to-pay themselves have-promised*
nulla scilicet stipulatione interposita. nam alioquin si
*no namely stipulation interposed for otherwise if*
stipulanti promiserint, iure civili tenentur.
*to-one-stipulating they-have-promised by-law civil they-are-bound*
Actiones autem de peculio ideo adversus patrem 10
*The-actions however about peculium therefore against the-father*
dominumve comparavit praetor, quia licet ex contractu
*or-master devised the-praetor because although from the-contract*

filiorum servorumve ipso iure non teneantur, aequum
*of-sons or-slaves by-the-very law not they-are-bound fair*
tamen esset peculio tenus, quod veluti patrimonium
*however it-would-be to-the-peculium up-to which as-it-were the-patrimony*
est filiorum filiarumque, item servorum, condemnari eos.
*is of-sons and-daughters likewise of-slaves to-be-condemned them*

11 Item si quis postulante adversario iuraverit deberi sibi
*Likewise if anyone demanding the-adversary has-sworn to-be-owed to-himself*
pecuniam quam peteret, neque ei solvatur, iustissime
*the-money which he-claimed and-not to-him it-be-paid most-justly*
accommodat ei talem actionem, per quam non illud
*he-accommodates to-him such an-action through which not that*
quaeritur, an ei pecunia debeatur, sed an iuraverit.
*is-asked whether to-him the-money be-owed but whether he-has-sworn*

12 Poenales quoque actiones bene multas ex sua iurisdictione
*Penal also actions quite many from his-own jurisdiction*
introduxit: veluti adversus eum qui quid ex albo eius
*he-introduced as against him who anything from the-album his*
corrupisset: et in eum qui patronum vel parentem in
*had-damaged and against him who a-patron or a-parent into*
ius vocasset, cum id non impetrasset: item adversus eum,
*court had-called when that not he-had-obtained likewise against him*
qui vi exemerit eum qui in ius vocaretur, cuiusve
*who by-force has-rescued him who into court was-being-called or-whose*
dolo alius exemerit: et alias innumerabiles.
*by-fraud another has-rescued-him and others innumerable*

13 Praeiudiciales actiones in rem esse videntur, quales sunt, per
*Prejudicial actions in rem to-be seem such-as are through*
quas quaeritur, an aliquis liber vel an libertus sit, vel
*which it-is-asked whether someone free or whether a-freedman be or*
de partu agnoscendo. ex quibus fere una illa legitimam
*about offspring to-be-acknowledged of which almost one that a-statutory*

causam habet, per quam quaeritur, an aliquis liber sit:
*cause has through which it-is-asked whether someone free be*
ceterae ex ipsius praetoris iurisdictione substantiam capiunt.
*the-others from of-the-very praetor the-jurisdiction substance take*
Sic itaque discretis actionibus certum est non posse actorem 14
*Thus therefore distinguished the-actions certain it-is not to-be-able the-plaintiff*
rem suam ita ab aliquo petere 'si paret eum dare oportere':
*thing his-own so from someone to-claim if it-appears him to-give to-be-bound*
nec enim quod actoris est id ei dari oportet, quia
*nor for what the-plaintiff's is that to-him be-given ought because*
scilicet dari cuiquam id intellegitur, quod ita datur, ut eius
*namely to-be-given to-anyone that is-understood which so is-given that his*
fiat, nec res quae iam actoris est magis eius fieri potest.
*it-become nor a-thing which already the-plaintiff's is more his become can*
plane odio furum, quo magis pluribus actionibus teneantur,
*clearly from-hatred of-thieves that the-more by-several actions they-be-bound*
effectum est, ut extra poenam dupli aut quadrupli
*effected it-has-been that besides the-penalty of-double or fourfold*
rei recipiendae nomine fures etiam hac actione teneantur
*of-the-thing to-be-recovered by-way thieves also by-this action be-bound*
'si paret eos dare oportere', quamvis sit adversus eos etiam
*if it-appears them to-give to-be-bound although there-be against them also*
haec in rem actio, per quam rem suam quis esse petit.
*this in rem action through which thing his-own anyone to-be claims*
Appellamus autem in rem quidem actiones vindicationes: 15
*We-call however in rem indeed actions vindications*
in personam vero actiones, quibus dare facere oportere
*in personam however actions by-which to-give to-do to-be-bound*
intenditur, condictiones. condicere enim est denuntiare prisca
*is-claimed condictions to-condict for is to-give-notice in-the-old*
lingua: nunc vero abusive dicimus condictionem actionem in
*language now however improperly we-say condiction an-action in*

personam esse, qua actor intendit dari sibi oportere:
*personam to-be by-which the-plaintiff claims to-be-given to-himself to-be-due*
nulla enim hoc tempore eo nomine denuntiatio fit.
*no for at-this time by-that title notice is-given*

16 Sequens illa divisio est, quod quaedam actiones rei
*The-following that division is that some actions of-the-thing*
persequendae gratia comparatae sunt, quaedam poenae
*to-be-pursued for-the-sake devised are some of-the-penalty*
persequendae, quaedam mixtae sunt.
*to-be-pursued some mixed are*

17 Rei persequendae causa comparatae sunt omnes in rem
*Of-the-thing to-be-pursued for-the-sake devised are all in rem*
actiones. earum vero actionum, quae in personam sunt, hae
*actions of-those however actions which in personam are these*
quidem quae ex contractu nascuntur fere omnes rei
*indeed which from contract arise almost all of-the-thing*
persequendae causa comparatae videntur: veluti quibus
*to-be-pursued for-the-sake devised seem as those-by-which*
mutuam pecuniam vel in stipulatum deductam petit actor,
*lent money or into stipulation brought claims the-plaintiff*
item commodati, depositi, mandati, pro socio, ex empto
*likewise of-loan-for-use of-deposit of-mandate for partner on purchase*
vendito, locato conducto. plane si depositi agetur eo
*on-sale on-letting on-hiring clearly if on-deposit it-shall-be-sued on-that*
nomine, quod tumultus incendii ruinae naufragii causa
*ground that of-a-riot of-a-fire of-a-collapse of-a-shipwreck by-reason*
depositum sit, in duplum actionem praetor reddit, si modo
*deposited it-was for double the-action the-praetor gives if only*
cum ipso apud quem depositum sit aut cum herede
*with him-himself with whom deposited it-was or with the-heir*
eius ex dolo ipsius agitur: quo casu mixta est actio.
*his for fraud his-own it-is-sued in-which case mixed is the-action*

Ex maleficiis vero proditae actiones aliae tantum poenae 18
*From delicts however published actions some only of-the-penalty*
persequendae causa comparatae sunt, aliae tam poenae quam
*to-be-pursued for-the-sake devised are others both of-the-penalty and*
rei persequendae et ob id mixtae sunt. poenam tantum
*of-the-thing to-be-pursued and for that mixed are a-penalty only*
persequitur quis actione furti: sive enim manifesti agatur
*pursues anyone by-the-action of-theft whether for manifest it-be-sued*
quadrupli sive nec manifesti dupli, de sola poena agitur: nam
*fourfold or non manifest double about the-sole penalty it-is-sued for*
ipsam rem propria actione persequitur quis, id est suam esse
*itself the-thing by-its-own action pursues anyone that is his-own it-to-be*
petens, sive fur ipse eam rem possideat, sive alius quilibet:
*claiming whether the-thief himself that thing possess or another anyone*
eo amplius adversus furem etiam condictio est rei.
*by-this further against the-thief also the-condiction is of-the-thing*
Vi autem bonorum raptorum actio mixta est, quia in 19
*By-force however of-goods seized the-action mixed is because in*
quadruplo rei persecutio continetur, poena autem tripli
*the-fourfold the-thing's pursuit is-contained the-penalty however threefold*
est. sed et legis Aquiliae actio de damno mixta
*is but also of-the-statute Aquilian the-action about damage mixed*
est, non solum si adversus infitiantem in duplum agatur,
*is not only if against one-denying for double it-be-sued*
sed interdum et si in simplum quisque agit. veluti si quis
*but sometimes also if for single anyone sues as if anyone*
hominem claudum aut luscum occiderit, qui in eo anno integer
*a-man lame or one-eyed has-killed who in that year whole*
et magni pretii fuerit: tanti enim damnatur, quanti is
*and of-great value was for-so-much for he-is-condemned as-much-as that*
homo in eo anno plurimi fuerit, secundum iam traditam
*man in that year the-most was-worth according-to the-already taught*

divisionem. item mixta est actio contra eos, qui relicta
*division likewise mixed is the-action against those who what-was-left*
sacrosanctis ecclesiis vel aliis venerabilibus locis legati vel
*to-most-holy churches or other venerable places of-legacy or*
fideicommissi nomine dare distulerint usque adeo, ut etiam
*of-trust by-way to-give have-delayed so far that even*
in iudicium vocarentur: tunc etenim et ipsam rem vel
*into court they-were-summoned then for both the-very thing or*
pecuniam quae relicta est dare compelluntur et aliud tantum
*money which left is to-give they-are-compelled and another as-much*
pro poena, et ideo in duplum eius fit condemnatio.
*as a-penalty and therefore for double his is-made the-condemnation*
20 Quaedam actiones mixtam causam optinere videntur tam in
*Certain actions a-mixed character to-hold seem both in*
rem quam in personam. qualis est familiae erciscundae actio,
*rem and in personam such-as is of-the-family for-dividing the-action*
quae competit coheredibus de dividenda hereditate: item
*which belongs to-co-heirs about dividing the-inheritance likewise*
communi dividundo, quae inter eos redditur, inter quos aliquid
*of-common for-dividing which between those is-given between whom something*
commune est, ut id dividatur: item finium regundorum,
*common is that it be-divided likewise of-boundaries for-regulating*
quae inter eos agitur qui confines agros habent. in quibus
*which between those is-brought who adjoining fields have in which*
tribus iudiciis permittitur iudici rem alicui ex litigatoribus
*three trials it-is-permitted to-the-judge a-thing to-someone of the-litigants*
ex bono et aequo adiudicare et, si unius pars praegravari
*from the-good and fair to-adjudge and if of-one the-share be-overweighted*
videbitur, eum invicem certa pecunia alteri condemnare.
*shall-seem him in-turn in-a-certain sum to-the-other to-condemn*

Omnes autem actiones vel in simplum conceptae sunt vel 21
*All however actions either for single framed are or*
in duplum vel in triplum vel in quadruplum: ulterius autem
*for double or for triple or for fourfold further however*
nulla actio extenditur.
*no action extends*

In simplum agitur veluti ex stipulatione, ex mutui datione, 22
*For single it-is-sued as from stipulation from of-a-loan the-giving*
ex empto vendito, locato conducto, mandato et denique
*on purchase on-sale on-letting on-hiring on-mandate and finally*
ex aliis compluribus causis.
*from other very-many causes*

In duplum agimus veluti furti nec manifesti, damni iniuriae 23
*For double we-sue as of-theft non manifest of-damage wrongful*
ex lege Aquilia, depositi ex quibusdam casibus: item servi
*by the-statute Aquilian of-deposit in certain cases likewise of-slave*
corrupti, quae competit in eum, cuius hortatu consiliove
*corrupted which lies against him whose by-urging or-counsel*
servus alienus fugerit aut contumax adversus dominum factus
*a-slave another's has-fled or insubordinate against the-master made*
est aut luxuriose vivere coeperit aut denique quolibet modo
*is or luxuriously to-live has-begun or finally in-any way*
deterior factus sit (in qua actione etiam earum rerum,
*worse made is in which action also of-those things*
quas fugiendo servus abstulit, aestimatio deducitur): item
*which in-fleeing the-slave carried-off the-value is-included likewise*
ex legato, quod venerabilibus locis relictum est, secundum
*from a-legacy which to-venerable places left is according-to*
ea quae supra diximus.
*those-things which above we-have-said*

24 Tripli vero, cum quidam maiorem verae aestimationis
*For-triple however when someone a-greater than-the-true valuation*
quantitatem in libello conventionis inseruit, ut ex hac
*amount in the-libel of-summons has-inserted so-that from this*
causa viatores, id est exsecutores litium, ampliorem
*cause the-messengers that is the-executors of-suits a-larger*
summam sportularum nomine exegerint: tunc enim quod
*sum of-fees by-way have-exacted then for what*
propter eorum causam damnum passus fuerit reus, id
*on-account-of their cause loss suffered has the-defendant that*
triplum ab actore consequetur, ut in hoc triplo et
*threefold from the-plaintiff he-will-obtain so-that in this threefold also*
simplum, in quo damnum passus est, connumeretur. quod
*the-single in which loss suffered he-has is-reckoned which*
nostra constitutio induxit, quae in nostro codice fulget, ex
*our constitution introduced which in our code shines from*
qua dubio procul est ex lege condicticiam emanare.
*which doubt beyond it-is from the-statute the-condictitious-action to-flow*

25 Quadrupli veluti furti manifesti, item de eo, quod metus
*For-fourfold as of-theft manifest likewise about that which of-fear*
causa factum sit, deque ea pecunia, quae in hoc data
*for-the-sake done be and-about that money which for this-purpose given*
sit, ut is cui datur calumniae causa negotium alicui
*be that he to-whom it-is-given of-chicanery for-the-sake trouble for-someone*
faceret vel non faceret: item ex lege condicticia a
*should-make or not should-make likewise from the-statute a-condictitious-action from*
nostra constitutione oritur, in quadruplum condemnationem
*our constitution arises for fourfold condemnation*
imponens his exsecutoribus litium, qui contra nostrae
*imposing on-those executors of-suits who against of-our*
constitutionis normam a reis quicquam exegerint.
*constitution the-rule from defendants anything have-exacted*

Sed furti quidem nec manifesti actio et servi corrupti a 26
*But of-theft indeed non manifest the-action and of-slave corrupted from*
ceteris, de quibus simul locuti sumus, eo differt, quod
*the-others about which together spoken we-have in-this differs that*
hae actiones omnimodo dupli sunt: at illae, id est damni
*these actions in-every-way double are but those that is of-damage*
iniuriae ex lege Aquilia et interdum depositi, infitiatione
*wrongful by the-statute Aquilian and sometimes of-deposit by-denial*
duplicantur, in confitentem autem in simplum dantur: sed
*are-doubled against one-admitting however for single are-given but*
illa, quae de his competit, quae relicta venerabilibus locis
*that which about those lies which left to-venerable places*
sunt, non solum infitiatione duplicatur, sed et si distulerit
*are not only by-denial is-doubled but also if he-has-delayed*
relicti solutionem, usque quo iussu magistratuum
*of-the-legacy the-payment up-to the-point by-order of-magistrates*
nostrorum conveniatur, in confitentem vero et antequam
*our he-be-sued against one-admitting however and before*
iussu magistratuum conveniatur solventem simpli redditur.
*by-order of-magistrates he-be-sued paying for-single it-is-given*
Item actio de eo, quod metus causa factum sit, 27
*Likewise the-action about that which of-fear for-the-sake done be*
a ceteris, de quibus simul locuti sumus, eo differt,
*from the-others about which together spoken we-have in-this differs*
quod eius natura tacite continetur, ut, qui iudicis iussu
*that its in-nature tacitly it-is-contained that he-who the-judge's by-order*
ipsam rem actori restituat, absolvatur. quod in ceteris
*itself the-thing to-the-plaintiff restores be-acquitted which in other*
casibus non ita est, sed omnimodo quisque in quadruplum
*cases not so is but in-every-way each for fourfold*
condemnatur, quod est et in furti manifesti actione.
*is-condemned which is also in of-theft manifest the-action*

28 Actionum autem quaedam bonae fidei sunt, quaedam stricti
*Of-actions however some of-good faith are some of-strict*
iuris. bonae fidei sunt hae: ex empto vendito, locato
*law of-good faith are these on purchase on-sale on-letting*
conducto, negotiorum gestorum, mandati, depositi, pro
*on-hiring of-affairs managed of-mandate of-deposit for*
socio, tutelae, commodati, pigneraticia, familiae erciscundae,
*partner of-tutelage of-loan-for-use on-pledge of-the-family for-dividing*
communi dividundo, praescriptis verbis, quae de aestimato
*of-common for-dividing with-prescribed words which about a-valued-thing*
proponitur, et ea, quae ex permutatione competit, et
*is-set-out and that which from exchange lies and*
hereditatis petitio. quamvis enim usque adhuc incertum erat,
*of-inheritance the-claim although for up to-now uncertain it-was*
sive inter bonae fidei iudicia connumeranda sit sive non,
*whether among of-good faith actions to-be-counted it-is or not*
nostra tamen constitutio aperte eam esse bonae fidei disposuit.
*our however constitution openly it to-be of-good faith has-arranged*

29 Fuerat antea et rei uxoriae actio ex bonae fidei
*Had-been formerly also of-the-property wifely the-action among of-good faith*
iudiciis: sed cum pleniorem esse ex stipulatu actionem
*actions but since fuller to-be the-from stipulation action*
invenientes omne ius, quod res uxoria ante habebat,
*finding all the-right which the-property wifely before had*
cum multis divisionibus in ex stipulatu actionem, quae
*with many distinctions into the-from stipulation action which*
de dotibus exigendis proponitur, transtulimus, merito
*about dowries to-be-recovered is-set-out we-transferred deservedly*
rei uxoriae actione sublata ex stipulatu, quae pro
*of-the-property wifely the-action removed the-from stipulation which for*
ea introducta est, naturam bonae fidei iudicii tantum in
*it introduced was the-nature of-a-good faith action only in*

exactione dotis meruit, ut bonae fidei sit. sed et tacitam
*the-recovery of-the-dowry has-earned so-that of-good faith it-be but also a-tacit*
ei dedimus hypothecam: praeferri autem aliis creditoribus
*to-it we-have-given mortgage to-be-preferred however to-other creditors*
in hypothecis tunc censuimus, cum ipsa mulier de dote
*in mortgages then we-have-decreed when herself the-woman about dowry*
sua experiatur, cuius solius providentia hoc induximus.
*her-own sues for-whose alone protection this we-have-introduced*
In bonae fidei autem iudiciis libera potestas permitti 30
*In of-good faith however actions free power to-be-permitted*
videtur iudici ex bono et aequo aestimandi, quantum
*seems to-the-judge from the-good and fair of-assessing how-much*
actori restitui debeat. in quo et illud continetur, ut, si
*to-the-plaintiff be-restored ought in which also that is-contained that if*
quid invicem actorem praestare oporteat, eo compensato in
*anything in-turn the-plaintiff to-furnish ought that set-off for*
reliquum is cum quo actum est condemnari debeat. sed
*the-remainder he with whom sued it-has-been be-condemned ought but*
et in strictis iudiciis ex rescripto divi Marci opposita
*also in strict actions by the-rescript of-the-deified Marcus opposed*
doli mali exceptione compensatio inducebatur. sed nostra
*of-fraud bad the-defense set-off was-introduced but our*
constitutio eas compensationes, quae iure aperto nituntur,
*constitution those set-offs which on-law open rest*
latius introduxit, ut actiones ipso iure minuant
*more-widely has-introduced so-that the-actions by-the-very law they-diminish*
sive in rem sive personales sive alias quascumque, excepta
*whether in rem or personal or other whatever excepted*
sola depositi actione, cui aliquid compensationis nomine
*only of-deposit the-action against-which anything of-set-off by-way*

opponi satis impium esse credidimus, ne sub praetextu
*to-be-opposed quite impious to-be we-have-believed lest under pretext*
compensationis depositarum rerum quis exactione defraudetur.
*of-set-off of-deposited things anyone in-the-recovery be-defrauded*
31 Praeterea quasdam actiones arbitrarias id est ex arbitrio
*Moreover certain actions arbitrary that is on the-discretion*
iudicis pendentes appellamus, in quibus nisi arbitrio
*of-the-judge depending we-call in which unless by-the-discretion*
iudicis is cum quo agitur actori satisfaciat, veluti rem
*of-the-judge he with whom it-is-sued the-plaintiff satisfy as the-thing*
restituat vel exhibeat vel solvat vel ex noxali causa servum
*restore or produce or pay or from noxal cause the-slave*
dedat, condemnari debeat. sed istae actiones tam in rem quam
*surrender he-be-condemned ought but these actions both in rem and*
in personam inveniuntur. in rem veluti Publiciana, Serviana
*in personam are-found in rem as the-Publician the-Servian*
de rebus coloni, quasi Serviana, quae etiam hypothecaria
*about the-things of-a-tenant the-quasi Servian which also hypothecary*
vocatur: in personam veluti quibus de eo agitur, quod aut
*is-called in personam as those-by-which about that it-is-sued which either*
metus causa aut dolo malo factum est, item qua id, quod
*of-fear for-the-sake or by-fraud bad done is likewise by-which that which*
certo loco promissum est, petitur. ad exhibendum quoque
*at-a-certain place promised is is-claimed for production also*
actio ex arbitrio iudicis pendet. in his enim actionibus
*the-action on the-discretion of-the-judge depends in these for actions*
et ceteris similibus permittitur iudici ex bono et aequo
*and other similar it-is-permitted to-the-judge from the-good and fair*
secundum cuiusque rei de qua actum est naturam
*according-to of-each thing about which sued it-has-been the-nature*
aestimare, quemadmodum actori satisfieri oporteat.
*to-assess how to-the-plaintiff satisfaction-be-made ought*

Curare autem debet iudex, ut omnimodo, quantum possibile 32
*Take-care however ought the-judge that in-every-way as-much-as possible*
ei sit, certae pecuniae vel rei sententiam ferat, etiam
*to-him it-be of-certain money or thing a-sentence he-bring even*
si de incerta quantitate apud eum actum est.
*if about an-uncertain amount before him sued it-has-been*
Si quis agens in intentione sua plus complexus fuerit, quam 33
*If anyone suing in claim his more included has than*
ad eum pertinet, causa cadebat, id est rem amittebat,
*to him belongs from-the-case he-fell that is the-thing he-lost*
nec facile in integrum a praetore restituebatur, nisi minor
*nor easily in full by the-praetor he-was-restored unless younger*
erat viginti quinque annis. huic enim sicut in aliis causis
*he-was than-twenty five years to-this-one for as in other cases*
causa cognita succurrebatur, si lapsus iuventute fuerat, ita et
*the-cause examined help-was-given if slipped through-youth he-had so also*
in hac causa succurri solitum erat. sane si tam magna causa
*in this case to-be-helped wont it-was indeed if so great a-cause*
iusti erroris interveniebat, ut etiam constantissimus quisque
*of-just error intervened that even the-most-steadfast each*
labi posset, etiam maiori viginti quinque annis succurrebatur:
*slip could even one-older than-twenty five years was-helped*
veluti si quis totum legatum petierit, post deinde prolati
*as if anyone the-whole legacy has-claimed after then produced*
fuerint codicilli, quibus aut pars legati adempta sit aut
*have-been codicils by-which either part of-the-legacy taken-away be or*
quibusdam aliis legata data sint, quae efficiebant, ut plus
*to-certain others legacies given be which brought-about that more*
petisse videretur petitor quam dodrantem, atque ideo
*to-have-claimed seemed the-claimant than three-quarters and therefore*
lege Falcidia legata minuebantur.
*by-the-statute Falcidian the-legacies were-diminished*

33a Plus autem quattuor modis petitur: re, tempore, loco,
*More however in-four ways is-claimed by-thing by-time by-place*
causa. re: veluti si quis pro decem aureis qui ei
*by-cause by-thing as if anyone for ten gold-pieces which to-him*
debebantur viginti petierit, aut si is, cuius ex parte res
*were-owed twenty has-claimed or if he whose in part the-thing*
est, totam eam vel maiore ex parte suam esse intenderit.
*is the-whole it or the-greater in part his-own to-be has-claimed*

33b Tempore: veluti si quis ante diem vel ante condicionem
*By-time as if anyone before the-day or before the-condition*
petierit. qua ratione enim qui tardius solvit, quam
*has-claimed by-which reason for he-who later pays than*
solvere deberet, minus solvere intellegitur, eadem ratione
*pay he-ought less to-pay is-understood by-the-same reason*
qui praemature petit plus petere videtur.
*he-who prematurely claims more to-claim seems*

33c Loco plus petitur, veluti cum quis id, quod certo loco
*By-place more is-claimed as when anyone that which at-a-certain place*
sibi stipulatus est, alio loco petit sine commemoratione
*to-himself stipulated has at-another place claims without mention*
illius loci, in quo sibi dari stipulatus fuerit: verbi
*of-that place in which to-himself to-be-given stipulated he-had of-example*
gratia si is, qui ita stipulatus fuerit ‘Ephesi dare spondes?’,
*for-the-sake if he who so stipulated has at-Ephesus to-give do-you-pledge*
Romae pure intendat dari sibi oportere. ideo
*at-Rome unconditionally claims to-be-given to-himself to-be-due therefore*
autem plus petere intellegitur, quia utilitatem, quam habuit
*however more to-claim he-is-understood because the-advantage which had*
promissor, si Ephesi solveret, adimit ei pura
*the-promisor if at-Ephesus he-paid he-takes-away from-him by-the-unconditional*
intentione: propter quam causam alio loco petenti
*claim on-account-of which cause at-another place to-one-claiming*

arbitraria actio proponitur, in qua scilicet ratio habetur
*an-arbitrary action is-set-out in which namely account is-had*
utilitatis, quae promissori competitura fuisset, si illo loco
*of-the-advantage which to-the-promisor about-to-belong would-have-been if in-that place*
solveret. quae utilitas plerumque in mercibus maxima invenitur,
*he-paid which advantage mostly in goods greatest is-found*
veluti vino oleo frumento, quae per singulas regiones diversa
*as wine oil grain which through single regions different*
habent pretia: sed et pecuniae numeratae non in omnibus
*have prices but also monies counted not in all*
regionibus sub isdem usuris fenerantur. si quis tamen Ephesi
*regions at the-same interest are-lent if anyone however at-Ephesus*
petat, id est eo loco petat, quo ut sibi detur stipulatus
*claim that is in-that place claim where that to-himself it-be-given stipulated*
est, pura actione recte agit: idque etiam praetor
*he-has by-the-unconditional action rightly he-sues and-this also the-praetor*
monstrat, scilicet quia utilitas solvendi salva est promissori.
*shows namely because the-advantage of-paying safe is to-the-promisor*
Huic autem, qui loco plus petere intellegitur, proximus 33d
*To-this however who by-place more to-claim is-understood nearest*
est is qui causa plus petit: ut ecce si quis ita a
*is he who by-cause more claims as for-instance if anyone so from*
te stipulatus sit 'hominem Stichum aut decem aureos dare
*you stipulated has the-man Stichus or ten gold-pieces to-give*
spondes?', deinde alterutrum petat, veluti hominem tantum
*do-you-pledge then one-or-other claims as the-man only*
aut decem tantum. ideo autem plus petere intellegitur, quia
*or ten only therefore however more to-claim he-is-understood because*
in eo genere stipulationis promissoris est electio, utrum
*in that kind of-stipulation of-the-promisor is the-choice whether*
pecuniam an hominem solvere malit: qui igitur pecuniam
*money or the-man to-pay he-prefers he-who therefore money*

tantum vel hominem tantum sibi dari oportere intendit,
*only or the-man only to-himself to-be-given to-be-due claims*
eripit electionem adversario et eo modo suam quidem
*snatches the-choice from-the-adversary and in-that way his-own indeed*
meliorem condicionem facit, adversarii vero sui deteriorem.
*better condition makes of-the-adversary however his worse*
qua de causa talis in ea re prodita est actio, ut
*which for reason such in that matter published is an-action that*
quis intendat hominem Stichum aut aureos decem sibi
*anyone claim the-man Stichus or gold-pieces ten to-himself*
dari oportere, id est ut eodem modo peteret,
*to-be-given to-be-due that is that in-the-same way he-should-claim*
quo stipulatus est. praeterea si quis generaliter hominem
*as stipulated he-has moreover if anyone generally a-man*
stipulatus sit et specialiter Stichum petat, aut generaliter
*stipulated has and specially Stichus claims or generally*
vinum stipulatus specialiter Campanum petat, aut generaliter
*wine stipulated specially Campanian claims or generally*
purpuram stipulatus sit, deinde specialiter Tyriam petat: plus
*purple stipulated has then specially Tyrian claims more*
petere intellegitur, quia electionem adversario tollit, cui
*to-claim he-is-understood because the-choice from-the-adversary he-removes to-whom*
stipulationis iure liberum fuit aliud solvere, quam quod
*of-the-stipulation by-right free it-was another-thing to-pay than what*
peteretur. quin etiam licet vilissimum sit quod quis petat,
*was-claimed nay even although most-worthless be what anyone claims*
nihilo minus plus petere intellegitur, quia saepe accidit, ut
*by-nothing less more to-claim he-is-understood because often it-happens that*
promissori facilius sit illud solvere, quod maioris pretii est.
*for-the-promisor easier it-be that to-pay which of-greater value is*

Sed haec quidem antea in usu fuerant: postea autem lex 33e
*But these-things indeed formerly in use had-been afterward however the-statute*
Zenoniana et nostra rem coartavit. et si quidem tempore
*Zenonian and ours the-matter restricted and if indeed by-time*
plus fuerit petitum, quid statui oportet, Zenonis divae
*more has-been claimed what be-established ought of-Zeno of-deified*
memoriae loquitur constitutio: sin autem quantitate vel alio
*memory speaks the-constitution but-if however by-amount or in-another*
modo plus fuerit petitum, omne, si quid forte damnum ex hac
*way more has-been claimed every if any perhaps loss from this*
causa acciderit ei, contra quem plus petitum fuerit, commissa
*cause has-befallen to-him against whom more claimed has-been incurred*
tripli condemnatione, sicut supra diximus, puniatur.
*of-threefold condemnation as above we-have-said let-him-be-punished*
Si minus in intentione complexus fuerit actor, quam ad 34
*If less in claim included has the-plaintiff than to*
eum pertineret, veluti si, cum ei decem deberentur, quinque
*him belonged as if when to-him ten were-owed five*
sibi dari oportere intenderit, aut cum totus fundus eius
*to-himself to-be-given to-be-due he-has-claimed or when the-whole estate his*
esset, partem dimidiam suam esse petierit, sine periculo agit:
*was the-part half his-own to-be has-claimed without risk he-sues*
in reliquum enim nihilo minus iudex adversarium in eodem
*for the-remainder for by-nothing less the-judge the-adversary in the-same*
iudicio condemnat ex constitutione divae memoriae Zenonis.
*action condemns by the-constitution of-deified memory of-Zeno*
Si quis aliud pro alio intenderit, nihil eum periclitari 35
*If anyone one-thing for another has-claimed nothing him to-risk*
placet, sed in eodem iudicio cognita veritate errorem suum
*it-is-held but in the-same action learned the-truth error his*
corrigere ei permittimus, veluti si is, qui hominem Stichum
*to-correct to-him we-permit as if he who the-man Stichus*

petere deberet, Erotem petierit, aut si quis ex testamento
*to-claim ought Eros has-claimed or if anyone from a-testament*
sibi dari oportere intenderit, quod ex stipulatu debetur.
*to-himself to-be-given to-be-due has-claimed what from stipulation is-owed*

36 Sunt praeterea quaedam actiones, quibus non solidum
*There-are moreover certain actions by-which not the-whole*
quod debetur nobis persequimur, sed modo solidum
*which is-owed to-us we-pursue but sometimes the-whole*
consequimur, modo minus. ut ecce si in peculium filii
*we-obtain sometimes less as for-instance if into the-peculium of-a-son*
servive agamus: nam si non minus in peculio sit, quam
*or-slave we-sue for if not less in the-peculium be than*
persequimur, in solidum pater dominusve condemnatur: si
*we-pursue for the-whole the-father or-master is-condemned if*
vero minus inveniatur, eatenus condemnat iudex, quatenus
*however less be-found so-far condemns the-judge as-far-as*
in peculio sit. quemadmodum autem peculium intellegi
*in the-peculium it-is how however the-peculium be-understood*
debeat, suo ordine proponemus.
*ought in-its-own order we-shall-set-out*

37 Item si de dote iudicio mulier agat, placet eatenus
*Likewise if about the-dowry in-an-action the-woman sues it-is-held so-far*
maritum condemnari debere, quatenus facere possit, id est
*the-husband to-be-condemned to-be-obliged as-far-as do he-can that is*
quatenus facultates eius patiuntur. itaque si dotis quantitati
*as-far-as means his allow therefore if of-the-dowry to-the-amount*
concurrant facultates eius, in solidum damnatur: si minus,
*equal the-means his for the-whole he-is-condemned if less*
in tantum quantum facere potest. propter retentionem
*for so-much as-much-as do he-can on-account-of retention*
quoque dotis repetitio minuitur: nam ob impensas
*also of-the-dowry the-recovery is-diminished for on-account-of expenses*

in res dotales factas marito retentio concessa est, quia
*on things dotal made to-the-husband retention granted is because*
ipso iure necessariis sumptibus dos minuitur, sicut
*by-the-very law by-necessary expenses the-dowry is-diminished as*
ex latioribus digestorum libris cognoscere liceat.
*from the-broader of-the-digest books to-learn it-is-allowed*
Sed et si quis cum parente suo patronove agat, item 38
*But also if anyone with parent his-own or-patron sues likewise*
si socius cum socio iudicio societatis agat, non plus
*if a-partner with a-partner by-the-action of-partnership sues not more*
actor consequitur, quam adversarius eius facere potest.
*the-plaintiff obtains than adversary his do can*
idem est, si quis ex donatione sua conveniatur.
*the-same it-is if anyone on gift his-own be-sued*
Compensationes quoque oppositae plerumque efficiunt, ut 39
*Set-offs also opposed mostly bring-about that*
minus quisque consequatur, quam ei debeatur: namque ex
*less each obtain than to-him be-owed for from*
bono et aequo, habita ratione eius, quod invicem actorem
*the-good and fair having-been-had account of-that which in-turn the-plaintiff*
ex eadem causa praestare oporteret, in reliquum eum cum
*from the-same cause to-furnish ought for the-remainder him with*
quo actum est condemnaret, sicut iam dictum est.
*whom sued it-has-been he-condemned as already said it-has-been*
Eum quoque, qui creditoribus suis bonis cessit, si postea 40
*Him also who to-creditors his from-goods has-ceded if afterward*
aliquid adquisierit, quod idoneum emolumentum habeat,
*anything he-has-acquired which suitable profit has*
ex integro in id quod facere potest creditores cum eo
*from the-start for that which do he-can the-creditors with him*

experiuntur: inhumanum enim erat spoliatum fortunis suis
*sue inhuman for it-was one-stripped of-fortunes his-own*
in solidum damnari.
*for the-whole to-be-condemned*

## VII · DEALINGS WITH ONE IN ANOTHER'S POWER

*A father or master is liable in full for what a son or slave contracts by his order, as shipmaster, or as manager, and for what went to his benefit; otherwise to the extent of the peculium, after his own claims; and by the tributory action for stock traded with his knowledge. The Macedonian decree denies recovery of money lent to a son in power.*

Quia tamen superius mentionem habuimus de actione, quae
*Because however above mention we-had about the-action which*
in peculium filiorum familias servorumque agitur: opus
*against the-peculium of-sons of-the-family and-of-slaves is-brought need*
est, ut de hac actione et de ceteris, quae eorundem
*there-is that about this action and about the-others which in-their*
nomine in parentes dominosve dari solent, diligentius
*name against parents or-masters to-be-given are-wont more-carefully*
admoneamus. et quia, sive cum servis negotium gestum sit
*we-remind and because whether with slaves business done be*
sive cum his, qui in potestate parentis sunt, fere eadem iura
*or with those who in the-power of-a-parent are almost the-same rights*
servantur, ne verbosa fiat disputatio, dirigamus sermonem
*are-observed lest wordy become the-discussion let-us-direct the-speech*
in personam servi dominique, idem intellecturi de
*to the-person of-the-slave and-of-the-master the-same about-to-understand about*

liberis quoque et parentibus, quorum in potestate sunt. nam
*children also and parents of-whom in power they-are for*
si quid in his proprie observetur, separatim ostendimus.
*if anything in these peculiarly be-observed separately we-show*
Si igitur iussu domini cum servo negotium gestum erit, 1
*If therefore by-order of-the-master with a-slave business done shall-have-been*
in solidum praetor adversus dominum actionem pollicetur,
*for the-whole the-praetor against the-master an-action promises*
scilicet quia qui ita contrahit fidem domini sequi videtur.
*namely because he-who so contracts the-credit of-the-master to-follow seems*
Eadem ratione praetor duas alias in solidum actiones 2
*By-the-same reasoning the-praetor two other for the-whole actions*
pollicetur, quarum altera exercitoria, altera institoria appellatur.
*promises of-which one exercitorian the-other institorian is-called*
exercitoria tunc locum habet, cum quis servum suum
*the-exercitorian then place has when anyone slave his-own*
magistrum navis praeposuerit et quid cum eo eius rei
*as-master of-a-ship has-appointed and anything with him of-that business*
gratia cui praepositus erit contractum fuerit.
*for-the-sake to-which appointed he-shall-have-been contracted has-been*
ideo autem exercitoria vocatur, quia exercitor appellatur
*therefore however exercitorian it-is-called because exercitor is-called*
is, ad quem cottidianus navis quaestus pertinet. institoria
*he to whom the-daily of-the-ship profit belongs the-institorian*
tunc locum habet, cum quis tabernae forte aut cuilibet
*then place has when anyone to-a-shop perhaps or to-any*
negotiationi servum praeposuerit et quid cum eo eius rei
*business a-slave has-appointed and anything with him of-that business*
causa, cui praepositus erit, contractum fuerit.
*for-the-sake to-which appointed he-shall-have-been contracted has-been*

ideo autem institoria appellatur, quia qui negotiationibus
*therefore however institorian it-is-called because those-who over-businesses*
praeponuntur institores vocantur.
*are-appointed institores are-called*

2a Istas tamen duas actiones praetor reddit et si liberum
*These however two actions the-praetor gives even if a-free*
quis hominem aut alienum servum navi aut tabernae
*anyone man or another's slave over-a-ship or a-shop*
aut cuilibet negotiationi praeposuerit, scilicet quia eadem
*or any business has-appointed namely because the-same*
aequitatis ratio etiam eo casu interveniebat.
*of-equity reason also in-that case intervened*

3 Introduxit et aliam actionem praetor, quae tributoria
*Introduced also another action the-praetor which tributory*
vocatur. namque si servus in peculiari merce sciente domino
*is-called for if a-slave in peculium goods knowing the-master*
negotietur et quid cum eo eius rei causa contractum
*trades and anything with him of-that business for-the-sake contracted*
erit, ita praetor ius dicit, ut, quidquid in his mercibus
*shall-have-been so the-praetor law declares that whatever in those goods*
erit quodque inde receptum erit, id inter dominum,
*shall-be and-whatever thence received shall-have-been that between the-master*
si quid ei debebitur, et ceteros creditores pro rata
*if anything to-him shall-be-owed and the-other creditors in proportionate*
portione distribuatur. et quia ipsi domino distributionem
*share be-distributed and because himself to-the-master the-distribution*
permittit, si quis ex creditoribus queratur, quasi minus
*he-permits if any of the-creditors complain as-if less*
ei tributum sit, quam oportuerit, hanc ei actionem
*to-him allotted be than it-ought this to-him action*
accommodat, quae tributoria appellatur.
*he-accommodates which tributory is-called*

Praeterea introducta est actio de peculio deque eo, 4
*Moreover introduced was the-action about the-peculium and-about that*
quod in rem domini versum erit, ut, quamvis
*which to the-benefit of-the-master turned shall-have-been so-that although*
sine voluntate domini negotium gestum erit, tamen
*without the-will of-the-master business done shall-have-been yet*
sive quid in rem eius versum fuerit, id totum praestare
*whether anything to benefit his turned has-been that wholly furnish*
debeat, sive quid non sit in rem eius versum, id eatenus
*he-ought or anything not be to benefit his turned that so-far*
praestare debeat, quatenus peculium patitur.
*furnish he-ought as-far-as the-peculium allows*
In rem autem domini versum intellegitur, quidquid 4a
*To the-benefit however of-the-master turned is-understood whatever*
necessario in rem eius impenderit servus, veluti si mutuatus
*necessarily on affairs his has-spent the-slave as if having-borrowed*
pecuniam creditoribus eius solverit aut aedificia ruentia
*money to-creditors his he-has-paid or buildings collapsing*
fulserit aut familiae frumentum emerit vel etiam fundum
*has-propped or for-the-household grain has-bought or even an-estate*
aut quamlibet aliam rem necessariam mercatus erit.
*or any other thing necessary purchased shall-have*
Itaque si ex decem ut puta aureis, quos servus tuus a 4b
*Therefore if out-of ten for example gold-pieces which slave your from*
Titio mutuos accepit, creditori tuo quinque aureos solverit,
*Titius as-loan received to-creditor your five gold-pieces he-has-paid*
reliquos vero quinque quolibet modo consumpserit, pro
*the-rest however five in-any way has-consumed for*
quinque quidem in solidum damnari debes, pro ceteris vero
*five indeed for the-whole to-be-condemned you-ought for the-other however*
quinque eatenus, quatenus in peculio sit: ex quo scilicet
*five so-far as-far-as in the-peculium there-is from which namely*

apparet, si toti decem aurei in rem tuam versi fuerint,
*it-appears if the-whole ten gold-pieces to benefit your turned have-been*
totos decem aureos Titium consequi posse. licet enim una
*the-whole ten gold-pieces Titius to-obtain to-be-able although for one*
est actio, qua de peculio deque eo quod in rem
*is the-action by-which about the-peculium and-about that which to the-benefit*
domini versum sit agitur, tamen duas habet condemnationes.
*of-the-master turned be it-is-sued yet two it-has condemnations*
itaque iudex, apud quem de ea actione agitur, ante
*therefore the-judge before whom about that action it-is-sued first*
dispicere solet, an in rem domini versum sit, nec
*to-consider is-wont whether to the-benefit of-the-master turned it-be nor*
aliter ad peculii aestimationem transit, quam si aut
*otherwise to of-the-peculium the-assessment does-he-pass than if either*
nihil in rem domini versum intellegatur aut non totum.
*nothing to the-benefit of-the-master turned be-understood or not the-whole*
4c Cum autem quaeritur, quantum in peculio sit, ante
*When however it-is-asked how-much in the-peculium there-is first*
deducitur, quidquid servus domino quive in potestate eius
*is-deducted whatever the-slave to-the-master or-to-one-who in power his*
sit debet, et quod superest, id solum peculium intellegitur.
*is owes and what remains that alone the-peculium is-understood*
aliquando tamen id, quod ei debet servus, qui in potestate
*sometimes however that which to-him owes a-slave who in the-power*
domini sit, non deducitur ex peculio, veluti si is in huius
*of-the-master is not is-deducted from the-peculium as if he in of-this*
ipsius peculio sit. quod eo pertinet, ut, si quid vicario
*very-one the-peculium be which to-this pertains that if anything to-under-slave*
suo servus debeat, id ex peculio eius non deducatur.
*his the-slave owes that from the-peculium his not be-deducted*

Ceterum dubium non est, quin is quoque, qui iussu 5
*Moreover doubtful not it-is that he also who by-order*
domini contraxerit cuique institoria vel exercitoria actio
*of-the-master has-contracted and-to-whom the-institorian or exercitorian action*
competit, de peculio deque eo, quod in rem domini
*belongs about the-peculium and-about that which to the-benefit of-the-master*
versum est, agere possit: sed erit stultissimus, si omissa
*turned is sue can but he-will-be most-foolish if omitted*
actione, qua facillime solidum ex contractu consequi
*the-action by-which most-easily the-whole from the-contract obtain*
possit, se ad difficultatem perducat probandi in rem
*he-can himself to the-difficulty he-bring of-proving to the-benefit*
domini versum esse, vel habere servum peculium et
*of-the-master turned to-be or to-have the-slave a-peculium and*
tantum habere, ut solidum sibi solvi possit.
*so-much to-have that the-whole to-himself be-paid can*
Is quoque, cui tributoria actio competit, aeque de peculio 5a
*He also to-whom the-tributory action belongs equally about the-peculium*
et in rem verso agere potest: sed sane huic modo tributoria
*and on benefit turned sue can but indeed for-him sometimes on-the-tributory*
expedit agere, modo de peculio et in rem verso. tributoria
*it-benefits to-sue sometimes about the-peculium and on benefit turned on-the-tributory*
ideo expedit agere, quia in ea domini condicio praecipua
*therefore it-benefits to-sue because in it the-master's condition privileged*
non est, id est quod domino debetur non deducitur, sed
*not is that is what to-the-master is-owed not is-deducted but*
eiusdem iuris est dominus, cuius et ceteri creditores: at in
*of-the-same right is the-master as also the-other creditors but in*
actione de peculio ante deducitur quod domino debetur
*the-action about the-peculium first is-deducted what to-the-master is-owed*
et in id quod reliquum est creditori dominus condemnatur.
*and for that which remaining is to-the-creditor the-master is-condemned*

rursus de peculio ideo expedit agere, quod in hac
*again about the-peculium therefore it-benefits to-sue because in this*
actione totius peculii ratio habetur, at in tributoria eius
*action of-the-whole peculium account is-had but in the-tributory of-that*
tantum, quod negotiatur, et potest quisque tertia forte parte
*only which he-trades and can each a-third perhaps part*
peculii aut quarta vel etiam minima negotiari, maiorem
*of-the-peculium or a-fourth or even the-least trade-with the-greater*
autem partem in praediis et mancipiis aut fenebri pecunia
*however part in estates and slaves or in-lent money*
habere. prout ergo expedit, ita quisque vel hanc actionem
*have as therefore it-benefits so each either this action*
vel illam eligere debet: certe qui potest probare in rem
*or that choose ought certainly he-who can prove to the-benefit*
domini versum esse, de in rem verso agere debet.
*of-the-master turned to-be on to the-benefit what-was-turned sue ought*

6 Quae diximus de servo et domino, eadem intellegimus
*What we-have-said about the-slave and the-master the-same we-understand*
et de filio et filia aut nepote et nepte,
*also about the-son and the-daughter or the-grandson and the-granddaughter*
patre avove cuius in potestate sunt.
*the-father or-grandfather of-whom in power they-are*

7 Illud proprie servatur in eorum persona, quod senatus
*That peculiarly is-observed in their person that the-senate's*
consultum Macedonianum prohibuit mutuas pecunias dari
*decree Macedonian has-forbidden loaned monies to-be-given*
eis, qui in parentis erunt potestate: et ei qui crediderit
*to-those who in a-parent's shall-be power and to-him who has-lent*
denegatur actio tam adversus ipsum filium filiamve nepotem
*is-denied the-action both against himself the-son or-daughter the-grandson*
neptemve, sive adhuc in potestate sunt, sive morte
*or-granddaughter whether still in power they-are or by-the-death*

parentis vel emancipatione suae potestatis esse coeperint,
*of-the-parent or by-emancipation of-their-own power to-be they-have-begun*
quam adversus patrem avumve, sive habeat eos adhuc in
*and against the-father or-grandfather whether he-have them still in*
potestate sive emancipaverit. quae ideo senatus prospexit,
*power or he-has-emancipated-them which therefore the-senate provided*
quia saepe onerati aere alieno creditarum pecuniarum, quas
*because often burdened with-money another's of-lent monies which*
in luxuriam consumebant, vitae parentium insidiabantur.
*on luxury they-consumed on-the-lives of-their-parents they-plotted*
Illud in summa admonendi sumus id, quod iussu patris 8
*That in sum to-be-reminded we-are that which by-order of-the-father*
dominive contractum fuerit quodque in rem eius
*or-master contracted has-been and-what to the-benefit his*
versum fuerit, directo quoque posse a patre dominove
*turned has-been directly also to-be-able from the-father or-master*
condici, tamquam si principaliter cum ipso negotium
*to-be-claimed-by-condiction as if principally with himself business*
gestum esset. ei quoque, qui vel exercitoria vel
*done had-been against-him also who either by-the-exercitorian or*
institoria actione tenetur, directo posse condici
*institorian action is-bound directly to-be-able to-be-claimed-by-condiction*
placet, quia huius quoque iussu contractum intellegitur.
*it-is-held because his also by-order contracted it-is-understood*

*For a slave's delict, under statute or the praetor's edict, the master may pay the damages or surrender the slave, who passes to the plaintiff for good but is freed through the praetor once he makes the damage good. The action follows the slave's person, and a slave cannot be liable to his own master. The noxal surrender of sons and daughters in power, which the ancients allowed, is now rejected.*

Ex maleficiis servorum, veluti si furtum fecerint
*From the-delicts of-slaves as if theft they-have-committed*
aut bona rapuerint aut damnum dederint aut iniuriam
*or goods have-robbed or damage have-caused or outrage*
commiserint, noxales actiones proditae sunt, quibus domino
*have-committed noxal actions published are by-which to-the-master*
damnato permittitur aut litis aestimationem sufferre aut
*condemned it-is-permitted either the-suit's assessment to-bear or*
hominem noxae dedere.
*the-man in-noxal-surrender to-hand-over*

1 Noxa autem est corpus quod nocuit, id est servus: noxia
*Noxa however is the-body which did-harm that is the-slave noxia*
ipsum maleficium, veluti furtum damnum rapina iniuria.
*itself the-delict as theft damage robbery outrage*

2 Summa autem ratione permissum est noxae deditione
*By-the-highest however reason permitted it-is by-noxal surrender*
defungi: namque erat iniquum nequitiam eorum ultra
*to-be-discharged for it-was unfair the-wickedness of-them beyond*
ipsorum corpora dominis damnosam esse.
*their-own bodies to-the-masters ruinous to-be*

3 Dominus noxali iudicio servi sui nomine conventus servum
*The-master in-noxal action of-slave his on-account sued the-slave*
actori noxae dedendo liberatur. nec minus
*to-the-plaintiff in-noxal-surrender by-handing-over is-freed nor less*

perpetuum eius dominium a domino transfertur: si autem
*perpetual his ownership from the-master is-transferred if however*
damnum ei cui deditus est resarcierit quaesita pecunia,
*the-damage to-him to-whom surrendered he-is he-has-repaired obtained money*
auxilio praetoris invito domino manumittetur.
*by-the-aid of-the-praetor unwilling the-master he-will-be-manumitted*
Sunt autem constitutae noxales actiones aut legibus aut 4
*Are however established noxal actions either by-statutes or*
edicto praetoris: legibus veluti furti lege duodecim
*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 veluti iniuriarum et vi bonorum raptorum.
*of-the-praetor as of-outrages and by-force of-goods seized*
Omnis autem noxalis actio caput sequitur. nam si servus 5
*Every however noxal action the-head follows for if slave*
tuus noxiam commiserit, quamdiu in tua potestate sit,
*your a-delict has-committed as-long-as in your power he-is*
tecum est actio: si in alterius potestatem pervenerit, cum
*with-you is the-action if into another's power he-has-come with*
illo incipit actio esse, aut si manumissus fuerit, directo
*him begins the-action to-be or if manumitted he-has-been directly*
ipse tenetur et extinguitur noxae deditio. ex diverso
*he-himself is-liable and is-extinguished the-noxal surrender on the-contrary*
quoque directa actio noxalis esse incipit: nam si liber homo
*also a-direct action noxal to-be begins for if a-free man*
noxiam commiserit et is servus tuus esse coeperit (quod
*a-delict has-committed and he slave your to-be has-begun which*
casibus quibusdam effici primo libro tradidimus),
*in-cases certain to-be-brought-about in-the-first book we-have-taught*
incipit tecum esse noxalis actio, quae ante directa fuisset.
*begins with-you to-be noxal the-action which before direct had-been*

6 Si servus domino noxiam commiserit, actio nulla nascitur:
*If a-slave against-the-master a-delict has-committed action none arises*
namque inter dominum et eum qui in eius potestate est
*for between the-master and him who in his power is*
nulla obligatio nasci potest. ideoque et si in alienam
*no obligation arise can and-therefore also if into another's*
potestatem servus pervenerit aut manumissus fuerit, neque
*power the-slave has-come or manumitted has-been neither*
cum ipso neque cum eo, cuius nunc in potestate sit, agi
*with himself nor with him of-whom now in power he-is be-sued*
potest. unde si alienus servus noxiam tibi commiserit
*can whence if another's slave a-delict against-you has-committed*
et is postea in potestate tua esse coeperit, intercidit actio,
*and he afterward in power your to-be has-begun lapses the-action*
quia in eum casum deducta sit, in quo consistere non
*because into that situation brought it-has-been in which to-stand not*
potuit: ideoque licet exierit de tua potestate, agere
*it-could and-therefore although he-has-gone-out from your power sue*
non potes, quemadmodum si dominus in servum suum
*not you-can as if a-master against slave his-own*
aliquid commiserit, nec si manumissus vel alienatus fuerit
*anything has-committed nor if manumitted or alienated has-been*
servus, ullam actionem contra dominum habere potest.
*the-slave any action against the-master have can-he*

7 Sed veteres quidem haec et in filiis familias masculis
*But the-ancients indeed these-things also in sons of-the-family males*
et feminis admiserunt. nova autem hominum conversatio
*and females admitted the-new however of-men manner-of-life*
huiusmodi asperitatem recte respuendam esse existimavit
*such harshness rightly to-be-rejected to-be has-thought*
et ab usu communi haec penitus recessit: quis enim
*and from use common this wholly has-withdrawn who for*

patitur filium suum et maxime filiam in noxam
*would-endure son his-own and especially daughter into noxal-surrender*
alii dare, ut paene per corpus pater magis quam
*to-another to-give so-that almost through the-body the-father more than*
filius periclitetur, cum in filiabus etiam pudicitiae favor hoc
*the-son be-endangered since in daughters even of-chastity the-regard this*
bene excludit? et ideo placuit in servos tantummodo
*well excludes and therefore it-was-held against slaves only*
noxales actiones esse proponendas, cum apud veteres legum
*noxal actions to-be to-be-set-out since among the-ancient of-the-laws*
commentatores invenimus saepius dictum ipsos filios
*commentators we-find quite-often said that-the-very sons*
familias pro suis delictis posse conveniri.
*of-the-family for their-own delicts to-be-able to-be-sued*

## IX · DAMAGE BY A FOUR-FOOTED ANIMAL

*For damage a four-footed beast does against its nature the Twelve Tables give a noxal action, and the owner may pay or surrender it; natural wildness falls outside it, and an escaped bear's former owner cannot be sued. The aediles' edict forbids keeping a dog, boar, bear, or lion where people pass, at what the judge thinks fair for harm to a free man and double for other loss, and the action for animal damage lies beside it.*

Animalium nomine, quae ratione carent, si quidem lascivia
*Of-animals on-account which of-reason are-without if indeed by-wantonness*
aut fervore aut feritate pauperiem fecerint, noxalis actio
*or by-heat or by-wildness damage they-have-done the-noxal action*
lege duodecim tabularum prodita est (quae animalia si
*by-the-statute of-the-twelve tables published is which animals if*
noxae dedantur, proficiunt reo ad liberationem,
*in-noxal-surrender they-are-given avail the-defendant for release*

quia ita lex duodecim tabularum scripta est): puta si
*because so the-statute of-the-twelve tables written is as-for-instance if*
equus calcitrosus calce percusserit aut bos cornu petere
*a-horse given-to-kicking with-a-kick has-struck or an-ox with-the-horn to-butt*
solitus petierit. haec autem actio in his, quae contra naturam
*accustomed has-butted this however action in those which against nature*
moventur, locum habet: ceterum si genitalis sit feritas, cessat.
*are-moved place has but if natural be the-wildness it-ceases*
Denique si ursus fugit a domino et sic nocuit, non potest
*Finally if a-bear has-fled from its-master and so has-done-harm not can*
quondam dominus conveniri, quia desinit dominus esse, ubi
*the-former master be-sued because he-ceases owner to-be when*
fera evasit. pauperies autem est damnum sine iniuria
*the-wild-beast has-escaped damage however is loss without wrong*
facientis datum: nec enim potest animal iniuriam fecisse dici,
*of-the-doer caused nor for can an-animal wrong to-have-done be-said*
quod sensu caret. haec quod ad noxalem actionem pertinet.
*which sense lacks this as-far-as to the-noxal action pertains*
1 Ceterum sciendum est aedilicio edicto prohiberi nos canem
*Moreover to-be-known it-is by-the-aedilician edict to-be-forbidden us a-dog*
verrem aprum ursum leonem ibi habere, qua vulgo iter fit:
*a-boar a-wild-boar a-bear a-lion there to-keep where commonly a-way is-made*
et si adversus ea factum erit et nocitum homini libero
*and if against those-things done it-shall-be and harm-done to-a-man free*
esse dicetur, quod bonum et aequum iudici videtur, tanti
*to-be shall-be-said what good and fair to-the-judge seems for-so-much*
dominus condemnetur, ceterarum rerum, quanti damnum
*the-master be-condemned of-other things as-much-as the-damage*
datum sit, dupli. praeter has autem aedilicias actiones et de
*caused be double besides these however aedilician actions also about*

pauperie locum habebit: numquam enim actiones praesertim
*damage-by-animals place will-have never for actions especially*
poenales de eadem re concurrentes alia aliam consumit.
*penal about the-same thing concurring one the-other consumes*

## X · THOSE THROUGH WHOM WE CAN SUE

*Once no one could sue in another's name save for the people, for freedom, and for a ward, and the Hostilian statute added theft for captives and those absent on public business. Because illness, age, and travel hinder many, men began to sue through procurators, appointed with no set words and often without the adversary's knowledge; tutors and curators also sue for those in their charge.*

Nunc admonendi sumus agere posse quemlibet aut suo
*Now to-be-reminded we-are to-sue to-be-able anyone either in-his-own*
nomine aut alieno. alieno veluti procuratorio tutorio
*name or in-another's in-another's as as-agent as-tutor*
curatorio, cum olim in usu fuisset alterius nomine agere
*as-curator while formerly in use it-had-been another's in-name to-sue*
non posse nisi pro populo, pro libertate, pro tutela. praeterea
*not to-be-able except for the-people for freedom for tutelage moreover*
lege Hostilia permissum est furti agere eorum nomine,
*by-the-statute Hostilian permitted it-was of-theft to-sue in-their name*
qui apud hostes essent aut rei publicae causa abessent
*who among the-enemy were or of-the-thing public for-the-sake were-absent*
quive in eorum cuius tutela essent. et quia hoc non minimam
*or-who in their whose tutelage they-were and because this not the-least*
incommoditatem habebat, quod alieno nomine neque agere
*inconvenience had that in-another's name neither to-sue*
neque excipere actionem licebat, coeperunt homines per
*nor to-defend an-action it-was-allowed began men through*

procuratores litigare: nam et morbus et aetas et necessaria
*agents to-litigate for both illness and age and necessary*
peregrinatio itemque aliae multae causae saepe impedimento
*travel and-likewise other many causes often a-hindrance*
sunt, quo minus rem suam ipsi exsequi possint.
*are whereby less affair their-own themselves pursue they-can*

1 Procurator neque certis verbis neque praesente adversario,
*An-agent neither by-certain words nor present the-adversary*
immo plerumque ignorante eo constituitur: cuicumque enim
*nay mostly unaware him is-appointed to-whomever for*
permiseris rem tuam agere aut defendere, is procurator
*you-have-permitted affair your to-sue or to-defend he agent*
intellegitur.
*is-understood*

2 Tutores et curatores quemadmodum constituuntur, primo
*Tutors and curators how are-appointed in-the-first*
libro expositum est.
*book set-out it-has-been*

## XI · SECURITIES

*Of old a defendant in a real action, a plaintiff's procurator, and anyone defending another gave security. Now one sued in his own name secures only that he will stay to the end; agents and those defending the absent give more.*

Satisdationum modus alius antiquitati placuit, alium novitas
*Of-securities the-manner one to-antiquity was-pleasing another novelty*
per usum amplexa est. Olim enim si in rem agebatur,
*through use embraced has Formerly for if in rem it-was-sued*
satisdare possessor compellebatur, ut, si victus nec rem
*to-give-security the-possessor was-compelled so-that if defeated neither the-thing*

ipsam restitueret nec litis aestimationem, potestas esset
*itself he-should-restore nor of-the-suit the-assessment power there-should-be*
petitori aut cum eo agendi aut cum fideiussoribus eius.
*for-the-claimant either with him of-suing or with the-sureties his*
quae satisdatio appellatur iudicatum solvi: unde autem sic
*which security is-called adjudged to-be-paid whence however so*
appellatur, facile est intellegere: namque stipulatur quis, ut
*it-is-called easy it-is to-understand for stipulates anyone that*
solveretur sibi quod fuerit iudicatum. multo magis is, qui
*be-paid to-himself what has-been adjudged much more he who*
in rem actione conveniebatur, satisdare cogebatur, si alieno
*in rem by-an-action was-sued to-give-security was-compelled if in-another's*
nomine iudicium accipiebat. ipse autem qui in rem agebat,
*name the-action he-accepted he-himself however who in rem sued*
si suo nomine petebat, satisdare non cogebatur. procurator
*if in-his-own name he-claimed to-give-security not was-compelled the-agent*
vero si in rem agebat, satisdare iubebatur ratam rem
*however if in rem he-sued to-give-security was-ordered ratified the-matter*
dominum habiturum: periculum enim erat, ne iterum dominus
*the-principal about-to-hold the-danger for was lest again the-principal*
de eadem re experiatur. tutores et curatores eodem
*about the-same matter sue tutors and curators in-the-same*
modo quo et procuratores satisdare debere verba edicti
*way as also agents to-give-security to-be-obliged the-words of-the-edict*
faciebant. sed aliquando his agentibus satisdatio remittebatur.
*made but sometimes for-them suing the-security was-remitted*
Haec ita erant, si in rem agebatur. sin vero in 1
*These-things so were if in rem it-was-sued but-if however in*
personam, ab actoris quidem parte eadem optinebant,
*personam on of-the-plaintiff indeed the-side the-same held*
quae diximus in actione qua in rem agitur. ab eius vero
*which we-have-said in the-action by-which in rem it-is-sued on his however*

parte cum quo agitur si quidem alieno nomine aliquis
*side with whom it-is-sued if indeed in-another's name someone*
intervenerit, omnimodo satisdaret, quia nemo defensor
*has-intervened in-every-way he-was-to-give-security because no defender*
in aliena re sine satisdatione idoneus esse creditur. quod
*in another's matter without security suitable to-be is-believed but*
si proprio nomine aliquis iudicium accipiebat in personam,
*if in-his-own name someone the-action accepted in personam*
iudicatum solvi satisdare non cogebatur.
*adjudged to-be-paid to-give-security not he-was-compelled*

2 Sed haec hodie aliter observantur. sive enim quis in
*But these-things today otherwise are-observed whether for anyone in*
rem actione convenitur sive personali suo nomine,
*rem by-an-action is-sued or by-a-personal-one in-his-own name*
nullam satisdationem propter litis aestimationem dare
*no security on-account-of the-suit's assessment to-give*
compellitur, sed pro sua tantum persona, quod iudicio
*is-he-compelled but for his-own only person that in-the-action*
permaneat usque ad terminum litis, vel committitur
*he-remain up to the-end of-the-suit either he-is-committed*
suae promissioni cum iureiurando, quam iuratoriam
*to-his-own promise with an-oath which sworn*
cautionem vocant, vel nudam promissionem vel satisdationem
*security they-call or bare promise or security*
pro qualitate personae suae dare compellitur.
*according-to the-quality of-person his-own to-give he-is-compelled*

3 Sin autem per procuratorem lis vel infertur vel
*But-if however through an-agent a-suit either is-brought or*
suscipitur, in actoris quidem persona, si non mandatum
*is-undertaken in of-the-plaintiff indeed the-person if not the-mandate*
actis insinuatum est vel praesens dominus litis
*in-the-records registered is or present the-principal of-the-suit*

in iudicio procuratoris sui personam confirmaverit, ratam
*in court of-agent his the-person has-confirmed ratified*
rem dominum habiturum satisdationem procurator dare
*the-matter the-principal about-to-hold security the-agent to-give*
compellitur: eodem observando et si tutor vel curator vel
*is-compelled the-same being-observed also if a-tutor or curator or*
aliae tales personae, quae alienarum rerum gubernationem
*other such persons who of-another's affairs the-management*
receperunt, litem quibusdam per alium inferunt.
*have-undertaken a-suit for-certain-persons through another bring*
Sin vero aliquis convenitur, si quidem praesens procuratorem 4
*But-if however someone is-sued if indeed present an-agent*
dare paratus est, potest vel ipse in iudicium venire
*to-give ready he-is he-can either himself into court come*
et sui procuratoris personam per iudicatum solvi
*and of-his agent the-person through adjudged to-be-paid*
satisdationis sollemnes stipulationes firmare vel extra iudicium
*security's formal stipulations to-confirm or outside court*
satisdationem exponere, per quam ipse sui procuratoris
*security to-set-out through which he-himself of-his agent*
fideiussor existit pro omnibus iudicatum solvi satisdationis
*surety stands for all adjudged to-be-paid security's*
clausulis. ubi et de hypotheca suarum rerum convenire
*clauses where also about the-mortgage of-his things to-agree*
compellitur, sive in iudicio promiserit sive extra iudicium
*he-is-compelled whether in court he-has-promised or outside court*
caverit, ut tam ipse quam heredes eius obligentur:
*has-given-security so-that both himself and heirs his be-bound*
alia insuper cautela vel satisdatione propter personam ipsius
*other besides guarantee or security on-account-of the-person of-himself*
exponenda, quod tempore sententiae recitandae in iudicio
*to-be-set-out that at-the-time of-the-sentence to-be-read in court*

invenietur, vel si non venerit, omnia dabit fideiussor, quae
*he-will-be-found or if not he-has-come all-things will-give the-surety which*
condemnationi continentur, nisi fuerit provocatum.
*in-the-condemnation are-contained unless it-has-been appealed*

5 Si vero reus praesto ex quacumque causa non fuerit
*If however the-defendant present for whatever cause not has-been*
et alius velit defensionem subire, nulla differentia inter
*and another wishes the-defense to-undertake no difference between*
actiones in rem vel personales introducenda potest hoc facere,
*actions in rem or personal to-be-introduced he-can this do*
ita tamen ut satisdationem iudicatum solvi pro litis
*so however that security adjudged to-be-paid for the-suit's*
praestet aestimatione. nemo enim secundum veterem regulam,
*he-furnish assessment no-one for according-to the-old rule*
ut iam dictum est, alienae rei sine satisdatione
*as already said it-has-been of-another's affair without security*
defensor idoneus intellegitur.
*defender suitable is-understood*

6 Quae omnia apertius et perfectissime a cottidiano
*Which all-things more-openly and most-perfectly from the-daily*
iudiciorum usu in ipsis rerum documentis apparent.
*of-the-courts use in the-very of-affairs documents appear*

7 Quam formam non solum in hac regia urbe, sed et in
*Which form not only in this royal city but also in*
omnibus nostris provinciis, etsi propter imperitiam aliter
*all our provinces even-if on-account-of inexperience otherwise*
forte celebrabantur, optinere censemus, cum necesse est
*perhaps they-were-observed to-hold we-decree since necessary it-is*
omnes provincias caput omnium nostrarum civitatum, id
*all provinces the-head of-all our cities that*
est hanc regiam urbem, eiusque observantiam sequi.
*is this royal city and-its observance to-follow*

*Actions from statute, decree, or constitution lasted forever until the constitutions limited them; the praetor's mostly lasted a year, though some, as manifest theft, he made perpetual. Penal actions do not lie against heirs, though heirs bring them, save outrage; joined issue passes them both ways, and a defendant who satisfies the plaintiff before judgment is absolved.*

Hoc loco admonendi sumus eas quidem actiones, quae ex
*In-this place to-be-reminded we-are those indeed actions which from*
lege senatusve consulto sive ex sacris constitutionibus
*statute or-of-the-senate decree or from sacred constitutions*
proficiscuntur, perpetuo solere antiquitus competere, donec
*proceed in-perpetuity to-be-wont anciently to-lie until*
sacrae constitutiones tam in rem quam personalibus actionibus
*sacred constitutions both in rem and personal to-actions*
certos fines dederunt: eas vero, quae ex propria praetoris
*fixed limits gave those however which from own the-praetor's*
iurisdictione pendent, plerumque intra annum vivere (nam
*jurisdiction depend mostly within a-year to-live for*
et ipsius praetoris intra annum erat imperium). aliquando
*also of-the-very praetor within a-year was the-command sometimes*
tamen et in perpetuum extenduntur, id est usque ad
*however also into perpetuity they-are-extended that is up to*
finem constitutionibus introductum: quales sunt hae, quas
*the-limit by-the-constitutions introduced such-as are these which*
bonorum possessori ceterisque qui heredis loco sunt
*of-the-goods to-the-possessor and-the-others who of-the-heir in-the-place are*
accommodat. furti quoque manifesti actio, quamvis ex
*he-accommodates of-theft also manifest the-action although from*

ipsius praetoris iurisdictione proficiscatur, tamen perpetuo
*of-the-very praetor the-jurisdiction it-proceed yet in-perpetuity*
datur: absurdum enim esse existimavit anno eam terminari.
*is-given absurd for to-be he-thought by-a-year it to-be-ended*
1 Non omnes autem actiones, quae in aliquem aut ipso
*Not all however actions which against someone either by-the-very*
iure competunt aut a praetore dantur, et in heredem
*law lie or by the-praetor are-given also against the-heir*
aeque competunt aut dari solent. est enim certissima
*equally lie or to-be-given are-wont it-is for a-most-certain*
iuris regula ex maleficiis poenales actiones in heredem
*of-law rule from delicts penal actions against the-heir*
non competere, veluti furti, vi bonorum raptorum,
*not to-lie as of-theft by-force of-goods seized*
iniuriarum, damni iniuriae. sed heredibus huiusmodi actiones
*of-outrages of-damage wrongful but to-heirs such actions*
competunt nec denegantur, excepta iniuriarum actione et
*belong nor are-they-denied except of-outrages the-action and*
si qua alia similis inveniatur. aliquando tamen etiam ex
*if any other similar be-found sometimes however even from*
contractu actio contra heredem non competit, cum testator
*contract an-action against the-heir not lies when the-testator*
dolose versatus sit et ad heredem eius nihil ex eo dolo
*fraudulently dealt has and to heir his nothing from that fraud*
pervenerit. poenales autem actiones, quas supra diximus, si
*has-come penal however actions which above we-have-said if*
ab ipsis principalibus personis fuerint contestatae, et
*by the-very principal persons they-have-been joined both*
heredibus dantur et contra heredes transeunt.
*to-heirs are-given and against heirs pass*

Superest ut admoneamus, quod si ante rem iudicatam is 2
*It-remains that we-remind that if before the-matter adjudged he*
cum quo actum est satisfaciat actori, officio iudicis
*with whom sued it-has-been satisfies the-plaintiff by-the-office of-the-judge*
convenit eum absolvere, licet iudicii accipiendi tempore
*it-is-fitting him to-acquit although of-the-action accepted at-the-time*
in ea causa fuisset, ut damnari debeat: et hoc est,
*in that position he-had-been that he-be-condemned ought and this is*
quod ante vulgo dicebatur omnia iudicia absolutoria esse.
*what formerly commonly was-said all actions absolutory to-be*

## XIII · DEFENSES

*Defenses, drawn from statute or from the praetor's jurisdiction, protect a defendant against a claim valid at law but unfair, as for fear, fraud, money never paid over, an agreement not to sue, an oath, or a matter already judged. Some are perpetual and destroy the claim, others dilatory and delay it, and one who sues too early now falls under Zeno's constitution; defenses against agents such as soldiers delay a suit, but those for infamy are abolished.*

Sequitur, ut de exceptionibus dispiciamus. comparatae sunt
*It-follows that about defenses we-consider devised are*
autem exceptiones defendendorum eorum gratia, cum quibus
*however defenses of-defending them for-the-sake with whom*
agitur: saepe enim accidit, ut, licet ipsa persecutio qua
*it-is-sued often for it-happens that although the-very claim by-which*
actor experitur iusta sit, tamen iniqua sit adversus eum
*the-plaintiff sues just be yet unfair it-be against him*
cum quo agitur.
*with whom it-is-sued*

1 Verbi gratia si metu coactus aut dolo inductus aut
*Of-example for-the-sake if by-fear compelled or by-fraud led or*
errore lapsus stipulanti Titio promisisti, quod non debueras
*by-error slipped to-stipulating Titius you-have-promised what not you-ought*
promittere, palam est iure civili te obligatum esse et actio,
*to-promise plain it-is by-law civil you bound to-be and the-action*
qua intenditur dare te oportere, efficax est: sed iniquum est
*by-which it-is-claimed to-give you to-be-bound effective is but unfair it-is*
te condemnari ideoque datur tibi exceptio metus causa aut
*you to-be-condemned and-therefore is-given to-you the-defense of-fear for-the-sake or*
doli mali aut in factum composita ad impugnandam actionem.
*of-fraud bad or on the-facts framed for attacking the-action*

2 Idem iuris est, si quis quasi credendi causa pecuniam
*The-same of-law it-is if anyone as-if of-lending for-the-sake money*
stipulatus fuerit neque numeravit. nam eam pecuniam a te
*stipulated has and-not counted-it for that money from you*
petere posse eum certum est: dare enim te oportet, cum
*to-claim to-be-able him certain it-is to-give for you are-bound since*
ex stipulatu tenearis: sed quia iniquum est eo nomine
*from the-stipulation you-are-held but because unfair it-is on-that account*
te condemnari, placet exceptione pecuniae non numeratae te
*you to-be-condemned it-is-held by-the-defense of-money not counted you*
defendi debere, cuius tempora nos, secundum quod iam
*to-be-defended to-be-obliged whose times we according-to what already*
superioribus libris scriptum est, constitutione nostra coartavimus.
*in-former books written is by-constitution our have-restricted*

3 Praeterea debitor si pactus fuerit cum creditore, ne a se
*Moreover a-debtor if agreed has with the-creditor that-not from himself*
peteretur, nihilo minus obligatus manet, quia pacto convento
*it-be-claimed by-nothing less bound remains because by-pact agreed*
obligationes non omnimodo dissolvuntur: qua de causa efficax
*obligations not in-every-way are-dissolved which for reason effective*

est adversus eum actio, qua actor intendit ‘si paret
*is against him the-action by-which the-plaintiff claims if it-appears*
eum dare oportere’. sed quia iniquum est contra pactionem
*him to-give to-be-bound but because unfair it-is against the-pact*
eum damnari, defenditur per exceptionem pacti conventi.
*him to-be-condemned he-is-defended by the-defense of-the-pact agreed*
Aeque si debitor deferente creditore iuraverit nihil se dare 4
*Equally if the-debtor tendering the-creditor has-sworn nothing himself to-give*
oportere, adhuc obligatus permanet, sed quia iniquum est de
*to-be-bound still bound he-remains but because unfair it-is about*
periurio quaeri, defenditur per exceptionem iurisiurandi. in
*perjury to-be-inquired he-is-defended by the-defense of-the-oath in*
his quoque actionibus, quibus in rem agitur, aeque necessariae
*those also actions by-which in rem it-is-sued equally necessary*
sunt exceptiones: veluti si petitore deferente possessor
*are defenses as if the-claimant tendering the-possessor*
iuraverit eam rem suam esse et nihilo minus eandem rem
*has-sworn that thing his to-be and by-nothing less the-same thing*
petitor vindicet: licet enim verum sit quod intendit, id est
*the-claimant vindicate although for true be what he-claims that is*
rem eius esse, iniquum est tamen possessorem condemnari.
*the-thing his to-be unfair it-is however the-possessor to-be-condemned*
Item si iudicio tecum actum fuerit sive in rem sive in 5
*Likewise if by-action with-you sued it-has-been whether in rem or in*
personam, nihilo minus obligatio durat et ideo ipso
*personam by-nothing less the-obligation lasts and therefore by-the-very*
iure postea de eadem re adversus te agi potest: sed
*law afterward about the-same matter against you be-sued it-can but*
debes per exceptionem rei iudicatae adiuvari.
*you-ought by the-defense of-the-matter adjudged to-be-helped*

6 Haec exempli causa rettulisse sufficiet. alioquin quam
*These-things of-example for-the-sake to-have-reported will-suffice otherwise how*
ex multis variisque causis exceptiones necessariae sint, ex
*from many and-various causes defenses necessary be from*
latioribus digestorum seu pandectarum libris intellegi potest.
*the-broader of-the-digest or of-the-pandects books be-understood it-can*

7 Quarum quaedam ex legibus vel ex his, quae legis vicem
*Of-which some from statutes or from those which of-a-statute the-place*
optinent, vel ex ipsius praetoris iurisdictione substantiam
*hold or from of-the-very praetor the-jurisdiction substance*
capiunt.
*take*

8 Appellantur autem exceptiones aliae perpetuae et peremptoriae,
*Are-called however defenses some perpetual and peremptory*
aliae temporales et dilatoriae.
*others temporary and dilatory*

9 Perpetuae et peremptoriae sunt, quae semper agentibus
*Perpetual and peremptory are those-which always the-suing-parties*
obstant et semper rem de qua agitur peremunt: qualis
*obstruct and always the-matter about which it-is-sued destroy such-as*
est exceptio doli mali et quod metus causa factum
*is the-defense of-fraud bad and that-of-what of-fear for-the-sake done*
est et pacti conventi, cum ita convenerit, ne omnino
*is and of-the-pact agreed when so it-has-been-agreed that-not at-all*
pecunia peteretur.
*the-money be-claimed*

10 Temporales atque dilatoriae sunt, quae ad tempus nocent
*Temporary and dilatory are those-which for a-time harm*
et temporis dilationem tribuunt: qualis est pacti conventi,
*and of-time a-delay grant such-as is of-the-pact agreed*
cum convenerit, ne intra certum tempus ageretur, veluti
*when it-has-been-agreed that-not within a-certain time it-be-sued as*

intra quinquennium. nam finito eo tempore non impeditur
*within five-years for ended that time not is-prevented*
actor rem exsequi. ergo hi, quibus intra tempus agere
*the-plaintiff the-matter to-pursue therefore those to-whom within the-time to-sue*
volentibus obicitur exceptio aut pacti conventi aut alia
*wishing is-opposed the-defense either of-the-pact agreed or another*
similis, differre debent actionem et post tempus agere: ideo
*similar postpone ought the-action and after the-time sue therefore*
enim et dilatoriae istae exceptiones appellantur. alioquin,
*for also dilatory these defenses are-called otherwise*
si intra tempus egerint obiectaque sit exceptio, neque
*if within the-time they-have-sued and-opposed has-been the-defense neither*
eo iudicio quidquam consequerentur propter exceptionem
*in-that action anything would-they-obtain on-account-of the-defense*
nec post tempus olim agere poterant, cum temere rem
*nor after the-time formerly sue could-they since rashly the-matter*
in iudicium deducebant et consumebant, qua ratione
*into court they-brought and consumed-it by-which reason*
rem amittebant. hodie autem non ita stricte haec
*the-matter they-lost today however not so strictly these-things*
procedere volumus, sed eum, qui ante tempus pactionis vel
*to-proceed we-wish but him who before the-time of-the-pact or*
obligationis litem inferre ausus est, Zenonianae constitutioni
*of-the-obligation a-suit to-bring dared has to-the-Zenonian constitution*
subiacere censemus, quam sacratissimus legislator de his qui
*to-be-subject we-decree which the-most-sacred legislator about those who*
tempore plus petierunt protulit, ut et indutias, quas, si
*by-time more have-claimed issued so-that both the-respite which if*
ipse actor sponte indulserit vel natura actionis continet,
*himself the-plaintiff voluntarily has-granted or the-nature of-the-action contains*
contempserat, in duplum habeant hi, qui talem iniuriam
*he-had-despised in double have those who such wrong*

passi sunt, et post eas finitas non aliter litem suscipiant,
*suffered have and after them ended not otherwise the-suit undertake*
nisi omnes expensas litis antea acceperint, ut actores
*unless all the-costs of-the-suit before they-have-received so-that plaintiffs*
tali poena perterriti tempora litium doceantur observare.
*by-such a-penalty frightened the-times of-suits be-taught to-observe*

11 Praeterea etiam ex persona dilatoriae sunt exceptiones:
*Moreover also from the-person dilatory are defenses*
quales sunt procuratoriae, veluti si per militem aut
*such-as are the-procuratorial as if through a-soldier or*
mulierem agere quis velit: nam militibus nec pro patre vel
*a-woman to-sue anyone wishes for for-soldiers neither for a-father or*
matre vel uxore nec ex sacro rescripto procuratorio nomine
*mother or wife nor by sacred rescript in-a-procuratorial name*
experiri conceditur: suis vero negotiis superesse sine
*to-sue is-it-granted to-their-own however affairs to-attend without*
offensa disciplinae possunt. eas vero exceptiones, quae olim
*offense of-discipline they-can those however defenses which formerly*
procuratoribus propter infamiam vel dantis vel ipsius
*to-agents on-account-of infamy either of-the-giver or of-the-very*
procuratoris opponebantur, cum in iudiciis frequentari nullo
*agent were-opposed since in courts to-be-frequented in-no*
perspeximus modo, conquiescere sancimus, ne, dum de his
*we-have-seen way to-rest we-enact lest while about these*
altercatur, ipsius negotii disceptatio proteletur.
*it-is-disputed of-the-very business the-discussion be-prolonged*

*A defense that is itself unfair is met by a replication, which may in turn be met by a duplication and that by a triplication. A debtor's defenses usually avail his sureties, as an agreement not to sue does, but not the defense of a debtor who has ceded his goods, since sureties are taken for exactly that failure.*

Interdum evenit, ut exceptio, quae prima facie iusta videatur,
*Sometimes it-happens that a-defense which at-first sight just seems*
inique noceat. quod cum accidit, alia allegatione opus est
*unfairly harms which when happens another allegation need there-is*
adiuvandi actoris gratia, quae replicatio vocatur, quia per
*of-helping the-plaintiff for-the-sake which replication is-called because through*
eam replicatur atque resolvitur vis exceptionis. veluti cum
*it is-replied and is-dissolved the-force of-the-defense as when*
pactus est aliquis cum debitore suo, ne ab eo pecuniam
*agreed has someone with debtor his that-not from him money*
petat, deinde postea in contrarium pacti sunt, id est ut
*he-claim then afterward to the-contrary agreed they-have that is that*
petere creditori liceat: si agat creditor et excipiat debitor,
*to-claim for-the-creditor be-allowed if sues the-creditor and pleads the-debtor*
ut ita demum condemnetur, si non convenerit, ne eam
*that so only-then he-be-condemned if not it-has-been-agreed that-not that*
pecuniam creditor petat, nocet ei exceptio, convenit enim
*money the-creditor claim harms him the-defense it-was-agreed for*
ita: namque nihilo minus hoc verum manet, licet postea
*so for by-nothing less this true remains although afterward*
in contrarium pacti sunt. sed quia iniquum est creditorem
*to the-contrary agreed they-have but because unfair it-is the-creditor*
excludi, replicatio ei dabitur ex posteriore pacto convento.
*to-be-excluded a-replication to-him will-be-given from the-later pact agreed*

1 Rursus interdum evenit, ut replicatio, quae prima facie iusta
*Again sometimes it-happens that a-replication which at-first sight just*
sit, inique noceat. quod cum accidit, alia allegatione opus
*be unfairly harms which when happens another allegation need*
est adiuvandi rei gratia, quae duplicatio vocatur.
*there-is of-helping the-defendant for-the-sake which duplication is-called*

2 Et si rursus ea prima facie iusta videatur, sed propter
*And if again it at-first sight just seem but on-account-of*
aliquam causam inique actori noceat, rursus allegatione alia
*some cause unfairly the-plaintiff harm again allegation another*
opus est, qua actor adiuvetur, quae dicitur triplicatio.
*need there-is by-which the-plaintiff be-helped which is-called triplication*

3 Quarum omnium exceptionum usum interdum ulterius quam
*Of-which all defenses the-use sometimes further than*
diximus varietas negotiorum introducit: quas omnes apertius
*we-have-said the-variety of-businesses introduces which all more-openly*
ex latiore digestorum volumine facile est cognoscere.
*from the-broader of-the-digest volume easy it-is to-learn*

4 Exceptiones autem, quibus debitor defenditur, plerumque
*Defenses however by-which the-debtor is-defended mostly*
accommodari solent etiam fideiussoribus eius: et recte, quia,
*to-be-accommodated are-wont also to-sureties his and rightly because*
quod ab his petitur, id ab ipso debitore peti videtur,
*what from them is-claimed that from himself the-debtor to-be-claimed seems*
quia mandati iudicio redditurus est eis, quod hi pro
*because of-mandate by-the-action about-to-render he-is to-them what they for*
eo solverint. qua ratione et si de non petenda pecunia
*him have-paid by-which reason also if about not to-be-claimed money*
pactus quis cum reo fuerit, placuit proinde succurrendum
*agreed anyone with the-debtor has it-was-held equally to-be-helped*
esse per exceptionem pacti conventi illis quoque qui pro
*to-be through the-defense of-the-pact agreed to-those also who for*

eo obligati essent, ac si et cum ipsis pactus esset, ne ab
*him bound were as if also with themselves agreed he-had that-not from*
eis ea pecunia peteretur. sane quaedam exceptiones non solent
*them that money be-claimed indeed certain defenses not are-wont*
his accommodari. ecce enim debitor si bonis suis cesserit
*to-these to-be-accommodated behold for the-debtor if from-goods his he-has-ceded*
et cum eo creditor experiatur, defenditur per exceptionem
*and with him the-creditor sues he-is-defended by the-defense*
'nisi bonis cesserit': sed haec exceptio fideiussoribus non
*unless from-goods he-has-ceded but this defense to-sureties not*
datur, scilicet ideo quia, qui alios pro debitore obligat,
*is-given namely therefore because he-who others for the-debtor binds*
hoc maxime prospicit, ut, cum facultatibus lapsus fuerit
*this most provides that when in-means fallen has*
debitor, possit ab his quos pro eo obligavit suum consequi.
*the-debtor he-can from those whom for him he-has-bound his-own obtain*

## XV · INTERDICTS

*Interdicts were the praetor's orders forbidding, restoring, or producing, to gain, keep, or recover possession.* Uti possidetis *and* utrubi *protect the possessor of land and of movables;* unde vi *restores one ejected by force, and the Julian statute punishes the force. Judges now proceed as though an action from the interdict had been given.*

Sequitur, ut dispiciamus de interdictis seu actionibus, quae pro
*It-follows that we-consider about interdicts or actions which for*
his exercentur. erant autem interdicta formae atque conceptiones
*them are-brought were however interdicts forms and framings*
verborum, quibus praetor aut iubebat aliquid fieri aut
*of-words by-which the-praetor either ordered something to-be-done or*

fieri prohibebat. quod tum maxime faciebat, cum de
*to-be-done forbade which then most he-did when about*
possessione aut quasi possessione inter aliquos contendebatur.
*possession or quasi possession between some-persons it-was-disputed*
1 Summa autem divisio interdictorum haec est, quod aut
*The-chief however division of-interdicts this is that either*
prohibitoria sunt aut restitutoria aut exhibitoria. prohibitoria
*prohibitory they-are or restitutory or exhibitory prohibitory*
sunt, quibus vetat aliquid fieri, veluti vim sine
*are those-by-which he-forbids something to-be-done as force without*
vitio possidenti, vel mortuum inferenti, quo ei ius
*fault on-one-possessing or a-dead-man on-one-burying where to-him right*
erit inferendi, vel in loco sacro aedificari, vel in flumine
*shall-be of-burying or on a-place sacred to-be-built or in a-river*
publico ripave eius aliquid fieri, quo peius navigetur.
*public or-bank its anything to-be-done whereby worse it-be-navigated*
restitutoria sunt, quibus restitui aliquid iubet, veluti
*restitutory are those-by-which to-be-restored something he-orders as*
cum bonorum possessori possessionem eorum, quae quis pro
*when of-goods to-the-possessor the-possession of-those which anyone as*
herede aut pro possessore possidet ex ea hereditate, aut
*heir or as possessor possesses from that inheritance or*
cum iubet ei, qui vi possessione fundi deiectus
*when he-orders to-him who by-force from-the-possession of-an-estate ejected*
sit, restitui possessionem. exhibitoria sunt, per quae
*has-been to-be-restored the-possession exhibitory are through which*
iubet exhiberi, veluti eum, cuius de libertate agitur, aut
*he-orders to-be-produced as him whose about freedom it-is-sued or*
libertum, cui patronus operas indicere velit, aut parenti
*a-freedman on-whom his-patron services to-impose wishes or to-a-parent*
liberos, qui in potestate eius sunt. sunt tamen qui putant
*the-children who in power his are there-are however who think*

proprie interdicta ea vocari, quae prohibitoria sunt, quia
*properly interdicts those to-be-called which prohibitory are because*
interdicere est denuntiare et prohibere: restitutoria autem
*to-interdict is to-give-notice and to-forbid the-restitutory however*
et exhibitoria proprie decreta vocari: sed tamen optinuit
*and exhibitory properly decrees to-be-called but yet it-has-prevailed*
omnia interdicta appellari, quia inter duos dicuntur.
*all interdicts to-be-called-so because between two they-are-pronounced*

Sequens divisio interdictorum haec est, quod quaedam 2
*The-following division of-interdicts this is that some*
adipiscendae possessionis causa comparata sunt, quaedam
*of-obtaining possession for-the-sake devised are some*
retinendae, quaedam reciperandae.
*of-retaining some of-recovering*

Adipiscendae possessionis causa interdictum accommodatur 3
*Of-obtaining possession for-the-sake an-interdict is-accommodated*
bonorum possessori, quod appellatur quorum bonorum, eiusque
*of-goods to-the-possessor which is-called of-which goods and-its*
vis et potestas haec est, ut, quod ex his bonis quisque, quorum
*force and power this is that what of those goods each-man of-which*
possessio alicui data est, pro herede aut pro possessore
*the-possession to-someone given is as heir or as possessor*
possideat, id ei, cui bonorum possessio data est, restituere
*possesses that to-him to-whom of-goods the-possession given is restore*
debeat. pro herede autem possidere videtur, qui putat se
*he-ought as heir however to-possess seems he-who thinks himself*
heredem esse: pro possessore is possidet, qui nullo iure rem
*heir to-be as possessor he possesses who by-no right a-thing*
hereditariam vel etiam totam hereditatem sciens ad se
*hereditary or even the-whole inheritance knowing to himself*
non pertinere possidet. ideo autem adipiscendae possessionis
*not to-belong possesses therefore however of-obtaining possession*

vocatur interdictum, quia ei tantum utile est, qui nunc
*is-called the-interdict because to-him only useful it-is who now*
primum conatur adipisci rei possessionem: itaque si quis
*first tries to-obtain of-the-thing possession therefore if anyone*
adeptus possessionem amiserit eam, hoc interdictum ei
*having-obtained the-possession has-lost it this interdict to-him*
inutile est. interdictum quoque, quod appellatur Salvianum,
*useless is the-interdict also which is-called Salvian*
adipiscendae possessionis causa comparatum est eoque
*of-obtaining possession for-the-sake devised is and-it*
utitur dominus fundi de rebus coloni, quas is pro
*uses the-owner of-the-estate about the-things of-the-tenant which he for*
mercedibus fundi pignori futuras pepigisset.
*the-rents of-the-estate in-pledge to-be he-had-stipulated*

4 Retinendae possessionis causa comparata sunt interdicta
*Of-retaining possession for-the-sake devised are the-interdicts*
uti possidetis et utrubi, cum ab utraque parte de
*as you-possess and in-which-of-the-two when on each side about*
proprietate alicuius rei controversia sit et ante quaeritur,
*the-ownership of-some thing a-dispute there-is and first it-is-asked*
uter ex litigatoribus possidere et uter petere debeat. namque
*which of the-litigants to-possess and which to-claim ought for*
nisi ante exploratum fuerit, utrius eorum possessio sit, non
*unless first explored it-has-been of-which of-them the-possession is not*
potest petitoria actio institui, quia et civilis et naturalis
*can the-petitory action be-brought because both civil and natural*
ratio facit, ut alius possideat, alius a possidente
*reason brings-about that one possess the-other from the-possessor*
petat. et quia longe commodius est possidere potius
*claim and because far more-advantageous it-is to-possess rather*
quam petere, ideo plerumque et fere semper ingens existit
*than to-claim therefore mostly and almost always a-great arises*

contentio de ipsa possessione. commodum autem possidendi
*contention about itself possession the-advantage however of-possessing*
in eo est, quod, etiamsi eius res non sit qui possidet,
*in this is that even-if his the-thing not be who possesses*
si modo actor non potuerit suam esse probare, remanet
*if only the-plaintiff not has-been-able his-own to-be to-prove remains*
suo loco possessio: propter quam causam, cum obscura
*in-its-own place the-possession on-account-of which cause when obscure*
sint utriusque iura, contra petitorem iudicari solet.
*are of-each the-rights against the-claimant to-be-judged it-is-wont*
Sed interdicto quidem uti possidetis de fundi vel aedium 4a
*But by-the-interdict indeed as you-possess about of-an-estate or of-a-house*
possessione contenditur, utrubi vero interdicto de
*the-possession it-is-disputed in-which-of-the-two however by-the-interdict about*
rerum mobilium possessione. quorum vis et potestas
*of-things movable the-possession of-which the-force and power*
plurimam inter se differentiam apud veteres habebat:
*very-great among themselves difference among the-ancients had*
nam uti possidetis interdicto is vincebat, qui interdicti
*for as you-possess by-the-interdict he won who of-the-interdict*
tempore possidebat, si modo nec vi nec clam nec precario
*at-the-time possessed if only neither by-force nor secretly nor by-sufferance*
nanctus fuerat ab adversario possessionem, etiamsi alium
*obtained he-had from the-adversary the-possession even-if another*
vi expulerit aut clam abripuerit alienam possessionem
*by-force he-had-expelled or secretly had-snatched another's possession*
aut precario rogaverat aliquem, ut sibi possidere liceret:
*or by-sufferance had-asked someone that for-himself to-possess it-be-allowed*
utrubi vero interdicto is vincebat, qui maiore
*in-which-of-the-two however by-the-interdict he won who for-the-greater*
parte eius anni nec vi nec clam nec precario ab
*part of-that year neither by-force nor secretly nor by-sufferance from*

adversario possidebat. hodie tamen aliter observatur: nam
*the-adversary possessed today however otherwise it-is-observed for*
utriusque interdicti potestas quantum ad possessionem pertinet
*of-each interdict the-power as-far-as to possession pertains*
exaequata est, ut ille vincat et in re soli et
*made-equal has-been so-that he win both in a-thing of-the-soil and*
in re mobili, qui possessionem nec vi nec clam nec
*in a-thing movable who the-possession neither by-force nor secretly nor*
precario ab adversario litis contestationis tempore detinet.
*by-sufferance from the-adversary of-issue of-the-joinder at-the-time holds*
5 Possidere autem videtur quisque non solum, si ipse possideat,
*To-possess however seems each not only if himself he-possess*
sed et si eius nomine aliquis in possessione sit, licet is eius
*but also if in-his name someone in possession be although he to-his*
iuri subiectus non sit, qualis est colonus et inquilinus: per eos
*right subject not be such-as is a-tenant and a-lodger through those*
quoque, apud quos deposuerit quis aut quibus commodaverit,
*also with whom has-deposited anyone or to-whom he-has-lent*
ipse possidere videtur: et hoc est, quod dicitur retinere
*himself to-possess he-seems and this is what is-said to-retain*
possessionem posse aliquem per quemlibet, qui eius nomine
*possession to-be-able someone through anyone who in-his name*
sit in possessione. quin etiam animo quoque retineri
*is in possession nay even by-intention also to-be-retained*
possessionem placet, id est ut, quamvis neque ipse sit in
*possession it-is-held that is that although neither himself he-be in*
possessione neque eius nomine alius, tamen si non relinquendae
*possession nor in-his name another yet if not of-abandoning*
possessionis animo, sed postea reversurus inde discesserit,
*possession with-intention but afterward about-to-return thence he-has-departed*
retinere possessionem videtur. adipisci vero possessionem per
*to-retain possession he-seems to-obtain however possession through*

quos aliquis potest, secundo libro exposuimus. nec ulla dubitatio
*whom someone can in-the-second book we-have-set-out nor any doubt*
est, quin animo solo possessionem adipisci nemo potest.
*is-there that by-intention alone possession obtain no-one can*
Reciperandae possessionis causa solet interdici, si quis 6
*Of-recovering possession for-the-sake it-is-wont to-be-interdicted if anyone*
ex possessione fundi vel aedium vi deiectus fuerit: nam
*from the-possession of-an-estate or of-a-house by-force ejected has-been for*
ei proponitur interdictum unde vi, per quod is qui
*to-him is-set-out the-interdict whence by-force through which he who*
deiecit cogitur ei restituere possessionem, licet is ab eo
*ejected is-compelled to-him to-restore the-possession although he from him*
qui vi deiecit vi vel clam vel precario possidebat. sed
*who by-force ejected by-force or secretly or by-sufferance possessed but*
ex sacris constitutionibus, ut supra diximus, si quis rem
*by the-sacred constitutions as above we-have-said if anyone a-thing*
per vim occupaverit, si quidem in bonis eius est, dominio
*by force has-seized if indeed in the-goods his it-is of-the-ownership*
eius privatur, si aliena, post eius restitutionem etiam
*his he-is-deprived if another's after its restoration also*
aestimationem rei dare vim passo compellitur.
*the-value of-the-thing to-give force to-the-one-suffering he-is-compelled*
qui autem aliquem de possessione per vim deiecerit,
*he-who however someone from possession by force has-ejected*
tenetur lege Iulia de vi privata aut de vi publica:
*is-liable by-the-statute Julian about force private or about force public*
sed de vi privata, si sine armis vim fecerit, sin autem
*but about force private if without arms force he-has-done but-if however*
cum armis eum de possessione expulerit, de vi publica.
*with arms him from possession he-has-expelled about force public*

armorum autem appellatione non solum scuta et gladios
*of-arms however by-the-name not only shields and swords*
et galeas significari intellegimus, sed et fustes et lapides.
*and helmets to-be-signified we-understand but also clubs and stones*

7 Tertia divisio interdictorum haec est, quod aut simplicia sunt
*The-third division of-interdicts this is that either single they-are*
aut duplicia. simplicia sunt, veluti in quibus alter actor, alter
*or double single are as in which one plaintiff the-other*
reus est: qualia sunt omnia restitutoria aut exhibitoria:
*defendant is such-as are all restitutory or exhibitory*
namque actor est, qui desiderat aut exhiberi aut
*for the-plaintiff is he-who desires either to-be-produced or*
restitui, reus is, a quo desideratur, ut restituat aut
*to-be-restored the-defendant he from whom it-is-desired that he-restore or*
exhibeat. prohibitoriorum autem interdictorum alia simplicia
*produce of-prohibitory however interdicts some single*
sunt, alia duplicia. simplicia sunt, veluti cum prohibet praetor
*are others double single are as when forbids the-praetor*
in loco sacro vel in flumine publico ripave eius aliquid
*in a-place sacred or in a-river public or-bank its anything*
fieri (nam actor est, qui desiderat, ne quid fiat,
*to-be-done for the-plaintiff is he-who desires that-not anything be-done*
reus, qui aliquid facere conatur): duplicia sunt veluti uti
*the-defendant he-who something to-do tries double are as as*
possidetis interdictum et utrubi. ideo autem duplicia
*you-possess the-interdict and in-which-of-the-two therefore however double*
vocantur, quia par utriusque litigatoris in his condicio est
*they-are-called because equal of-each litigant in these the-position is*
nec quisquam praecipue reus vel actor intellegitur, sed
*nor anyone especially defendant or plaintiff is-understood but*
unusquisque tam rei quam actoris partem sustinet.
*each both of-defendant and of-plaintiff the-part sustains*

De ordine et veteri exitu interdictorum supervacuum 8
*About the-order and old outcome of-interdicts superfluous*
est hodie dicere: nam quotiens extra ordinem ius dicitur,
*it-is today to-speak for whenever outside the-order law is-declared*
qualia sunt hodie omnia iudicia, non est necesse reddi
*such-as are today all trials not it-is necessary to-be-given*
interdictum, sed perinde iudicatur sine interdictis, atque
*the-interdict but just it-is-judged without interdicts as*
si utilis actio ex causa interdicti reddita fuisset.
*if an-analogous action from the-cause of-the-interdict given had-been*

## XVI · THE PENALTY FOR RECKLESS LITIGANTS

*Rash suits are checked by penalties, oaths, and infamy: by Justinian's constitutions defendant, plaintiff, and advocates swear to good faith, denial makes some actions double or triple, and a dishonest litigant pays his opponent's loss and costs. Condemnation for theft, robbery, outrage, fraud, and certain breaches of trust brings infamy, as does compounding for the first four. One may not summon a parent or a patron without the praetor's leave, on pain of fifty solidi.*

Nunc admonendi sumus magnam curam egisse eos,
*Now to-be-reminded we-are great care to-have-taken those*
qui iura sustinebant, ne facile homines ad litigandum
*who the-laws upheld that-not easily men to litigating*
procederent: quod et nobis studio est. idque eo maxime
*should-proceed which also to-us of-concern is and-this by-this most*
fieri potest, quod temeritas tam agentium quam eorum cum
*be-done can that the-rashness both of-those-suing and of-those with*
quibus ageretur modo pecuniaria poena, modo iurisiurandi
*whom it-was-sued sometimes by-a-pecuniary penalty sometimes of-an-oath*
religione, modo metu infamiae coercetur.
*by-the-religion sometimes by-fear of-infamy is-restrained*

1 Ecce enim iusiurandum omnibus qui conveniuntur ex
*Behold for an-oath to-all who are-sued by*
nostra constitutione defertur: nam reus non aliter suis
*our constitution is-tendered for the-defendant not otherwise his*
allegationibus utitur, nisi prius iuraverit, quod putans se
*allegations uses unless first he-has-sworn that thinking himself*
bona instantia uti ad contradicendum pervenit. at
*on-a-good footing to-be-using to contradiction he-has-come but*
adversus infitiantes ex quibusdam causis dupli vel tripli
*against those-denying for certain causes of-double or triple*
actio constituitur, veluti si damni iniuriae aut legatorum
*an-action is-established as if of-damage wrongful or of-legacies*
locis venerabilibus relictorum nomine agitur. statim autem
*to-places venerable left on-account it-is-sued at-once however*
ab initio pluris quam simpli est actio veluti furti
*from the-beginning of-more than single is the-action as of-theft*
manifesti quadrupli, nec manifesti dupli: nam ex his causis
*manifest fourfold non manifest double for from these causes*
et aliis quibusdam, sive quis neget sive fateatur, pluris
*and other certain whether anyone deny or admit of-more*
quam simpli est actio. item actoris quoque calumnia
*than single is the-action likewise of-the-plaintiff also the-chicanery*
coercetur: nam etiam actor pro calumnia iurare cogitur
*is-restrained for also the-plaintiff about chicanery to-swear is-compelled*
ex nostra constitutione. utriusque etiam partis advocati
*by our constitution of-each also party the-advocates*
iusiurandum subeunt, quod alia nostra constitutione
*an-oath undergo which in-another our constitution*
comprehensum est. haec autem omnia pro veteris calumniae
*comprised is these-things however all for the-old of-chicanery*
actione introducta sunt, quae in desuetudinem abiit, quia
*action introduced are which into disuse has-gone because*

in partem decimam litis actorem multabat, quod nusquam
*by the-part tenth of-the-suit the-plaintiff it-fined which nowhere*
factum esse invenimus: sed pro his introductum est
*done to-have-been we-find but for these introduced has-been*
et praefatum iusiurandum et ut improbus litigator etiam
*both the-aforesaid oath and that the-dishonest litigant also*
damnum et impensas litis inferre adversario suo cogatur.
*the-loss and costs of-the-suit to-pay to-adversary his be-compelled*
Ex quibusdam iudiciis damnati ignominiosi fiunt, veluti 2
*From certain actions those-condemned infamous become as*
furti, vi bonorum raptorum, iniuriarum, de dolo, item
*of-theft by-force of-goods seized of-outrages about fraud likewise*
tutelae, mandati, depositi, directis non contrariis actionibus,
*of-tutelage of-mandate of-deposit by-direct not contrary actions*
item pro socio, quae ab utraque parte directa est et ob id
*likewise for partner which from each side direct is and for that*
quilibet ex sociis eo iudicio damnatus ignominia notatur.
*any of partners in-that action condemned with-infamy is-marked*
sed furti quidem aut vi bonorum raptorum aut iniuriarum
*but of-theft indeed or by-force of-goods seized or of-outrages*
aut de dolo non solum damnati notantur ignominia,
*or about fraud not only those-condemned are-marked with-infamy*
sed etiam pacti, et recte: plurimum enim interest,
*but also those-who-compounded and rightly very-much for it-matters*
utrum ex delicto aliquis an ex contractu debitor sit.
*whether from delict someone or from contract debtor be*
Omnium autem actionum instituendarum principium ab 3
*Of-all however actions to-be-brought the-beginning from*
ea parte edicti proficiscitur, qua praetor edicit de
*that part of-the-edict proceeds in-which the-praetor publishes about*
in ius vocando: utique enim in primis adversarius in
*into court calling certainly for in the-first-place the-adversary into*

ius vocandus est, id est ad eum vocandus est, qui ius
*court to-be-called is that is to him to-be-called is who law*
dicturus sit. qua parte praetor parentibus et patronis,
*about-to-declare is in-which part the-praetor to-parents and patrons*
item liberis parentibusque patronorum et patronarum
*likewise to-children and-parents of-patrons and of-patronesses*
hunc praestat honorem, ut non aliter liceat liberis
*this furnishes honor that not otherwise it-be-allowed for-children*
libertisque eos in ius vocare, quam si id ab ipso praetore
*and-freedmen them into court to-call than if this from himself the-praetor*
postulaverint et impetraverint: et si quis aliter vocaverit,
*they-have-requested and obtained and if anyone otherwise has-called*
in eum poenam solidorum quinquaginta constituit.
*against him a-penalty of-solidi fifty he-has-established*

## XVII · THE OFFICE OF THE JUDGE

*The judge must judge by statute, constitution, and custom: in a noxal case he condemns to pay or surrender, in a real action he orders the thing returned with its fruits, and in production he requires the thing as it would have stood when first claimed. In actions for dividing an inheritance, common property, or boundaries he adjudicates shares and sets payments between the parties, and what he adjudicates belongs to its recipient at once.*

Superest, ut de officio iudicis dispiciamus. et quidem in
*It-remains that about the-office of-the-judge we-consider and indeed in*
primis illud observare debet iudex, ne aliter iudicet,
*the-first-place that observe ought the-judge that-not otherwise he-judge*
quam legibus aut constitutionibus aut moribus proditum est.
*than by-statutes or constitutions or customs prescribed is*

Et ideo si noxali iudicio addictus est, observare 1
*And therefore if to-a-noxal action assigned he-has-been observe*
debet, ut, si condemnandus videbitur dominus, ita debeat
*he-ought that if to-be-condemned shall-seem the-master so he-ought*
condemnare: 'Publium Maevium Lucio Titio decem aureis
*to-condemn Publius Maevius to-Lucius Titius in-ten gold-pieces*
condemno aut noxam dedere.'
*I-condemn or in-noxal-surrender to-hand-over*
Et si in rem actum sit, sive contra petitorem iudicavit, 2
*And if in rem sued it-be whether against the-claimant he-has-judged*
absolvere debet possessorem, sive contra possessorem, iubere
*to-acquit he-ought the-possessor or against the-possessor order*
eum debet, ut rem ipsam restituat cum fructibus. sed
*him he-ought that the-thing itself he-restore with the-fruits but*
si in praesenti neget se possessor restituere posse et
*if at present deny himself the-possessor to-restore to-be-able and*
sine frustratione videbitur tempus restituendi causa petere,
*without evasion shall-seem time of-restoring for-the-sake to-seek*
indulgendum est ei, ut tamen de litis aestimatione
*to-be-granted it-is to-him so-that however about of-the-suit the-assessment*
caveat cum fideiussore, si intra tempus quod ei datum
*he-give-security with a-surety if within the-time which to-him given*
est non restituisset. et si hereditas petita sit, eadem
*is not he-should-restore and if an-inheritance claimed be the-same-things*
circa fructus interveniunt, quae diximus intervenire in
*about fruits apply which we-have-said to-apply in*
singularum rerum petitione. illorum autem fructuum, quos
*of-single things the-claim of-those however fruits which*
culpa sua possessor non perceperit, in utraque actione
*by-fault his-own the-possessor not has-gathered in each action*
eadem ratio paene fit, si praedo fuerit. si vero bona
*the-same account almost is-made if a-robber he-has-been if however in-good*

fide possessor fuerit, non habetur ratio consumptorum
*faith possessor he-has-been not is-had account of-those-consumed*
neque non perceptorum: post inchoatam autem petitionem
*nor not of-those-gathered after begun however the-claim*
etiam illorum ratio habetur, qui culpa possessoris percepti
*also of-those account is-had which by-the-fault of-the-possessor gathered*
non sunt vel percepti consumpti sunt.
*not have-been or gathered consumed have-been*

3 Si ad exhibendum actum fuerit, non sufficit, si exhibeat
*If for production sued it-has-been not it-suffices if produces*
rem is cum quo actum est, sed opus est, ut etiam
*the-thing he with whom sued it-has-been but need there-is that also*
causam rei debeat exhibere, id est ut eam causam
*the-condition of-the-thing he-ought produce that is that that condition*
habeat actor, quam habiturus esset, si, cum primum
*have the-plaintiff which about-to-have he-would-be if when first*
ad exhibendum egisset, exhibita res fuisset: ideoque si
*for production he-had-sued produced the-thing had-been and-therefore if*
inter moras usucapta sit res a possessore, nihilo minus
*during the-delays usucapted be the-thing by the-possessor by-nothing less*
condemnatur. praeterea fructuum medii temporis, id est
*he-is-condemned moreover of-the-fruits of-the-middle time that is*
eius, quod post acceptum ad exhibendum iudicium ante
*of-that which after the-accepted for production action before*
rem iudicatam intercessit, rationem habere debet iudex.
*the-matter adjudged intervened account have ought the-judge*
quod si neget is, cum quo ad exhibendum actum est, in
*but if deny he with whom for production sued it-has-been at*
praesenti exhibere se posse et tempus exhibendi causa
*present to-produce himself to-be-able and time of-producing for-the-sake*
petat idque sine frustratione postulare videatur, dari ei
*he-seek and-this without evasion to-request he-seem be-given to-him*

debet, ut tamen caveat se restituturum: quod si
*it-ought so-that however he-give-security himself about-to-restore but if*
neque statim iussu iudicis rem exhibeat neque postea
*neither at-once by-order of-the-judge the-thing he-produce nor afterward*
exhibiturum se caveat, condemnandus sit in id, quod
*about-to-produce himself he-give-security to-be-condemned he-is for that which*
actoris intererat ab initio rem exhibitam esse.
*to-the-plaintiff it-mattered from the-beginning the-thing produced to-have-been*
Si familiae erciscundae iudicio actum sit, singulas res 4
*If of-the-family for-dividing in-an-action sued it-be single things*
singulis heredibus adiudicare debet et, si in alterius persona
*to-single heirs to-adjudge he-ought and if in of-one the-person*
praegravare videatur adiudicatio, debet hunc invicem coheredi
*to-weigh-heavier seem the-adjudication he-ought him in-turn to-the-co-heir*
certa pecunia, sicut iam dictum est, condemnare. eo
*in-a-certain sum as already said it-has-been to-condemn on-that*
quoque nomine coheredi quisque suo condemnandus est, quod
*also account to-co-heir each his to-be-condemned is because*
solus fructus hereditarii fundi percepit aut rem hereditariam
*alone the-fruits of-the-hereditary estate he-gathered or a-thing hereditary*
corrupit aut consumpsit. quae quidem similiter inter
*spoiled or consumed which-things indeed likewise among*
plures quoque quam duos coheredes subsequuntur.
*more also than two co-heirs follow*
Eadem interveniunt et si communi dividundo de pluribus 5
*The-same-things apply also if of-common for-dividing about several*
rebus actum fuerit. quod si de una re, veluti de fundo,
*things sued it-has-been but if about one thing as about an-estate*
si quidem iste fundus commode regionibus divisionem recipiat,
*if indeed that estate conveniently by-regions division admit*
partes eius singulis adiudicare debet et, si unius pars
*the-parts of-it to-individuals to-adjudge he-ought and if of-one the-part*

praegravare videbitur, is invicem certa pecunia alteri
*to-weigh-heavier shall-seem be in-turn in-a-certain sum to-the-other*
condemnandus est: quod si commode dividi non possit, vel
*to-be-condemned is but if conveniently be-divided not it-can or*
homo forte aut mulus erit de quo actum sit, uni totus
*a-man perhaps or a-mule it-shall-be about which sued it-has-been to-one wholly*
adiudicandus est et is alteri certa pecunia condemnandus.
*to-be-adjudged it-is and he to-the-other in-a-certain sum to-be-condemned*
6 Si finium regundorum actum fuerit, dispicere debet iudex,
*If of-boundaries for-regulating sued it-has-been consider ought the-judge*
an necessaria sit adiudicatio. quae sane uno casu necessaria
*whether necessary be an-adjudication which indeed in-one case necessary*
est, si evidentioribus finibus distingui agros commodius
*is if by-more-evident boundaries to-be-distinguished the-fields more-convenient*
sit, quam olim fuissent distincti: nam tunc necesse est
*be than formerly they-had-been distinguished for then necessary it-is*
ex alterius agro partem aliquam alterius agri domino
*from of-one the-field part some of-the-other field to-the-owner*
adiudicari. quo casu conveniens est, ut is alteri certa
*to-be-adjudged in-which case fitting it-is that he to-the-other in-a-certain*
pecunia debeat condemnari. eo quoque nomine damnandus
*sum ought be-condemned on-that also account to-be-condemned*
est quisque hoc iudicio, quod forte circa fines malitiose
*is each in-this action that perhaps about the-boundaries maliciously*
aliquid commisit, verbi gratia quia lapides finales
*something he-has-committed of-example for-the-sake because stones boundary*
furatus est aut arbores finales cecidit. contumaciae quoque
*stolen he-has or trees boundary has-cut of-contumacy also*
nomine quisque eo iudicio condemnatur, veluti si quis
*on-account each in-that action is-condemned as if anyone*
iubente iudice metiri agros passus non fuerit.
*ordering the-judge to-measure the-fields allowed not has*

Quod autem istis iudiciis alicui adiudicatum sit, id 7
*What however in-those actions to-someone adjudged be that*
statim eius fit cui adiudicatum est.
*at-once his becomes to-whom adjudged it-is*

## XVIII · PUBLIC PROSECUTIONS

*Public prosecutions are not brought by actions, may mostly be prosecuted by anyone, and are capital or not. The Julian statutes on treason and adultery, the Cornelian on murderers and poisoners and on forgery, the Pompeian on parricide with its sack, and the statutes on violence, embezzlement, kidnapping, electoral bribery, extortion, the corn supply, and arrears are outlined, leaving fuller knowledge to the Digest.*

Publica iudicia neque per actiones ordinantur nec omnino
*Public prosecutions neither through actions are-ordered nor at-all*
quidquam simile habent ceteris iudiciis, de quibus locuti
*anything similar have to-the-other actions about which spoken*
sumus, magnaque diversitas est eorum et in instituendis
*we-have and-great the-difference is of-them both in being-brought*
et in exercendis.
*and in being-conducted*
Publica autem dicta sunt, quod cuivis ex populo exsecutio 1
*Public however called they-are because to-anyone of the-people the-prosecution*
eorum plerumque datur.
*of-them mostly is-given*
Publicorum iudiciorum quaedam capitalia sunt, quaedam non 2
*Of-public prosecutions some capital are some not*
capitalia. capitalia dicimus, quae ultimo supplicio
*capital capital we-call those-which with-the-ultimate punishment*
adficiunt vel aquae et ignis interdictione vel deportatione
*afflict or of-water and fire by-interdiction or by-deportation*

vel metallo: cetera si qua infamiam irrogant cum damno
*or by-the-mine the-others if any infamy impose with loss*
pecuniario, haec publica quidem sunt, non tamen capitalia.
*pecuniary these public indeed are not however capital*
3 Publica autem iudicia sunt haec. lex Iulia maiestatis,
*Public however prosecutions are these the-statute Julian of-treason*
quae in eos, qui contra imperatorem vel rem publicam
*which against those who against the-emperor or the-thing public*
aliquid moliti sunt, suum vigorem extendit. cuius poena
*anything plotted have its force extends whose penalty*
animae amissionem sustinet et memoria rei et post
*of-life the-loss bears and the-memory of-the-defendant also after*
mortem damnatur.
*death is-condemned*
4 Item lex Iulia de adulteriis coercendis, quae non solum
*Likewise the-statute Julian about adulteries to-be-restrained which not only*
temeratores alienarum nuptiarum gladio punit, sed etiam
*violators of-another's marriages with-the-sword punishes but also*
eos, qui cum masculis infandam libidinem exercere audent.
*those who with males unspeakable lust to-practice dare*
sed eadem lege Iulia etiam stupri flagitium punitur,
*but by-the-same statute Julian also of-fornication the-crime is-punished*
cum quis sine vi vel virginem vel viduam honeste
*when anyone without force either a-virgin or a-widow honorably*
viventem stupraverit. poenam autem eadem lex irrogat
*living has-debauched a-penalty however the-same statute imposes*
peccatoribus, si honesti sunt, publicationem partis dimidiae
*on-offenders if respectable they-are confiscation of-the-part half*
bonorum, si humiles, corporis coercitionem cum relegatione.
*of-the-goods if humble corporal punishment with relegation*

Item lex Cornelia de sicariis, quae homicidas ultore 5
*Likewise the-statute Cornelian about assassins which murderers with-avenging*
ferro persequitur vel eos, qui hominis occidendi causa
*sword pursues or those who of-a-man to-be-killed for-the-sake*
cum telo ambulant. telum autem, ut Gaius noster in
*with a-weapon walk a-weapon however as Gaius our in*
interpretatione legis duodecim tabularum scriptum reliquit,
*the-interpretation of-the-statute of-the-twelve tables written left*
vulgo quidem id appellatur, quod ab arcu mittitur: sed
*commonly indeed that is-called which from a-bow is-shot but*
et omne significatur, quod manu cuiusdam mittitur:
*also everything is-signified which by-the-hand of-anyone is-thrown*
sequitur ergo, ut et lapis et lignum et ferrum hoc
*it-follows therefore that both a-stone and wood and iron by-this*
nomine contineatur. dictumque ab eo, quod in longinquum
*name be-contained and-named from this that into the-distance*
mittitur, a Graeca voce figuratum, ἀπὸ τοῦ τηλοῦ: et hanc
*it-is-thrown from a-Greek word formed from the far and this*
significationem invenire possumus et in Graeco nomine: nam
*meaning to-find we-can also in the-Greek name for*
quod nos telum appellamus, illi βέλος appellant ἀπὸ τοῦ
*what we telum call they belos call from the*
βάλλεσθαι. admonet nos Xenophon. nam ita scripsit: καὶ τὰ
*being-thrown reminds us Xenophon for thus he-wrote and the*
βέλη ὁμοῦ ἐφέρετο, λόγχαι, τοξεύματα, σφενδόναι, πλεῖστοι δὲ
*missiles together were-borne spears arrows slings very-many and*
καὶ λίθοι. sicarii autem appellantur a sica, quod significat
*also stones assassins however are-called from sica which signifies*
ferreum cultrum. eadem lege et venefici capite damnantur,
*an-iron knife by-the-same statute also poisoners capitally are-condemned*

qui artibus odiosis, tam venenis vel susurris magicis homines
*who by-arts hateful either by-poisons or by-whispers magic men*
occiderunt vel mala medicamenta publice vendiderunt.
*have-killed or bad drugs publicly have-sold*
6 Alia deinde lex asperrimum crimen nova poena
*Another then statute the-harshest crime with-a-new penalty*
persequitur, quae Pompeia de parricidiis vocatur. qua
*pursues which Pompeian about parricides is-called by-which*
cavetur, ut, si quis parentis aut filii aut omnino
*it-is-provided that if anyone of-a-parent or of-a-son or at-all*
adfectionis eius, quae nuncupatione parricidii continetur, fata
*of-a-relation of-that which in-the-name of-parricide is-contained the-fate*
properaverit, sive clam sive palam id ausus fuerit, nec non
*has-hastened whether secretly or openly that dared he-has and also*
is, cuius dolo malo id factum est, vel conscius criminis
*he whose by-fraud bad this done is or an-accomplice of-the-crime*
existit, licet extraneus sit, poena parricidii punietur
*appears although an-outsider he-be with-the-penalty of-parricide shall-be-punished*
et neque gladio neque ignibus neque ulla alia sollemni
*and neither by-the-sword nor by-fires nor by-any other customary*
poena subicietur, sed insutus culleo cum cane et gallo
*penalty shall-be-be-subjected but sewn-in a-sack with a-dog and a-cock*
gallinaceo et vipera et simia et inter eius ferales angustias
*farmyard and a-viper and an-ape and among its deathly narrows*
comprehensus, secundum quod regionis qualitas tulerit,
*enclosed according-to what of-the-region the-nature shall-have-allowed*
vel in vicinum mare vel in amnem proiciatur, ut
*either into the-neighboring sea or into a-river he-be-thrown so-that*
omni elementorum usu vivus carere incipiat et ei
*every of-the-elements use living to-be-deprived he-begin and from-him*
caelum superstiti, terra mortuo auferatur. si quis autem
*the-sky surviving the-earth dead be-taken-away if anyone however*

alias cognatione vel adfinitate coniunctas personas necaverit,
*other by-kinship or affinity joined persons has-killed*
poenam legis Corneliae de sicariis sustinebit.
*the-penalty of-the-statute Cornelian about assassins he-shall-bear*
Item lex Cornelia de falsis, quae etiam testamentaria 7
*Likewise the-statute Cornelian about forgeries which also testamentary*
vocatur, poenam irrogat ei, qui testamentum vel aliud
*is-called a-penalty imposes on-him who a-testament or another*
instrumentum falsum scripserit signaverit recitaverit subiecerit
*instrument false has-written sealed read-out substituted*
quive signum adulterinum fecerit sculpserit expresserit sciens
*or-who a-seal counterfeit has-made engraved impressed knowingly*
dolo malo. eiusque legis poena in servos ultimum
*by-fraud bad and-of-that statute the-penalty against slaves the-ultimate*
supplicium est, quod et in lege de sicariis et veneficis
*punishment is which also in the-statute about assassins and poisoners*
servatur, in liberos vero deportatio.
*is-observed against the-free however deportation*
Item lex Iulia de vi publica seu privata adversus eos 8
*Likewise the-statute Julian about force public or private against those*
exoritur, qui vim vel armatam vel sine armis commiserint.
*arises who force either armed or without arms have-committed*
sed si quidem armata vis arguatur, deportatio ei ex
*but if indeed armed force be-charged deportation on-him by*
lege Iulia de vi publica irrogatur: si vero sine armis,
*the-statute Julian about force public is-imposed if however without arms*
in tertiam partem bonorum publicatio imponitur. sin autem
*on a-third part of-the-goods confiscation is-imposed but-if however*
per vim raptus virginis vel viduae vel sanctimonialis
*through force the-rape of-a-virgin or of-a-widow or of-a-nun*
vel aliae fuerit perpetratus, tunc et peccatores et ei,
*or of-another has-been perpetrated then both the-offenders and those*

qui opem flagitio dederunt, capite puniuntur secundum
*who help to-the-outrage gave capitally are-punished according-to*
nostrae constitutionis definitionem, ex qua haec apertius
*of-our constitution the-definition from which these-things more-openly*
possibile est scire.
*possible it-is to-know*

9 Lex Iulia peculatus eos punit, qui pecuniam vel rem
*The-statute Julian of-embezzlement those punishes who money or a-thing*
publicam vel sacram vel religiosam furati fuerint. sed si
*public or sacred or religious stolen have but if*
quidem ipsi iudices tempore administrationis publicas
*indeed themselves the-judges at-the-time of-administration public*
pecunias subtraxerunt, capitali animadversione puniuntur,
*monies have-withdrawn by-capital punishment they-are-punished*
et non solum hi, sed etiam qui ministerium eis ad
*and not only these but also those-who service to-them for*
hoc adhibuerunt vel qui subtracta ab his scientes
*this have-furnished or who the-things-withdrawn from them knowingly*
susceperunt: alii vero, qui in hanc legem inciderint,
*have-received others however who into this statute have-fallen*
poenae deportationis subiugentur.
*to-the-penalty of-deportation be-subjected*

10 Est inter publica iudicia lex Fabia de plagiariis,
*There-is among public prosecutions the-statute Fabian about kidnappers*
quae interdum capitis poenam ex sacris constitutionibus
*which sometimes of-the-head the-penalty by sacred constitutions*
irrogat, interdum leviorem.
*imposes sometimes a-lighter*

11 Sunt praeterea publica iudicia lex Iulia ambitus et
*There-are moreover public prosecutions the-statute Julian of-canvassing and*
lex Iulia repetundarum et lex Iulia de annona
*the-statute Julian of-extortion and the-statute Julian about the-corn-supply*

et lex Iulia de residuis, quae de certis capitulis
*and the-statute Julian about arrears which about certain heads*
loquuntur et animae quidem amissionem non irrogant, aliis
*speak and of-life indeed the-loss not impose to-other*
autem poenis eos subiciunt, qui praecepta earum neglexerint.
*however penalties those they-subject who the-precepts of-them have-neglected*
Sed de publicis iudiciis haec exposuimus, ut vobis 12
*But about public prosecutions these-things we-have-set-out so-that for-you*
possibile sit summo digito et quasi per indicem ea
*possible it-be with-the-tip of-the-finger and as-if through an-index them*
tetigisse. alioquin diligentior eorum scientia vobis ex
*to-have-touched otherwise more-careful their knowledge to-you from*
latioribus digestorum sive pandectarum libris deo propitio
*the-broader of-the-digest or of-the-pandects books god propitious*
adventura est.
*about-to-come is*