

**THE
INSTITUTES
OF
GAIUS**

2024/25

based on the translation by

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Editor's Notes

This edition contains excerpts, with some adaptations, from T Lambert Mears (tr), *The Institutes of Gaius and Justinian, the Twelve Tables, and the CXVIIIth and CXXVIIth Novels, with Introduction and Translation* (London, Stevens and Sons, 1882).

Some translations by Mears of Latin words or expressions are, the first time they occur, accompanied by their Latin original in square brackets. They are listed at the back of the book. A bracketed ellipsis [...] indicates text omitted in this edition.

This edition of Gaius's *Institutes* comprises the set text for the Law Moderations paper in A Roman Introduction to Private Law.

While the words of the text are those that the Moderators will use, the Latin terms included in the text and the notes accompanying the text may be omitted, and the formatting may differ.

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GAIUS, COMMENTARY I.

§1. All communities of men governed by statutes [*leges*] and customs, partly use their own particular law [*ius*] and partly that common to all men, for that law which each particular community establishes for itself, is peculiar to that community and is called the civil law [*ius civile*], as being the peculiar law of that community; but that which natural reason [*ratio*] establishes between all men is equally maintained by all communities, and is called the law of nations [*ius gentium*], as being that law which is used by all nations. In this way the Romans use partly their own peculiar law, partly that common to all men. How these distinctions affect our subject we will discuss as occasion arises.

§2. Now the laws [*iura*] of the Romans consist of statutes [*leges*], ordinances of the plebeians [*plebiscites*], decrees of the senate [*senatus consultum*], the constitutions of the emperors, the edicts of those who have the right of declaring the law [*ius*], and of the answers of the learned.

§3. A statute [*lex*] is that which the people order and establish. An ordinance of the plebeians is that which the plebeians order and establish. Now the plebeians differ from the people in that by the term people the whole of the citizens are comprehended, including the patricians; but under the term plebeians the remainder of the citizens, without the patricians, are referred to; hence formerly the patricians contended that they were not bound by ordinances of the plebeians, for that they were made without their concurrence; but afterwards the Hortensian statute was passed, enacting that ordinances of the plebeians should bind the whole people, and in this way they became equal to statutes [*leges*].

§4. A decree of the senate is that which the senate orders and establishes, and it has the force of a statute [*lex*], although this has been doubted.

§5. A constitution of the emperor is that which the emperor established by decree, edict or rescript, and it has never been doubted that this has the force of a statute [*lex*], since the emperor himself receives his authority by a statute.

§6. The right of declaring the law [*ius*] is vested in the magistrates of the Roman people, and this right is exercised to its greatest extent in the edicts of the two praetors, viz., the urban praetor and the praetor for non-Romans, whose equivalent jurisdiction in the provinces is exercised by the respective governors. A similar right is exercised in the edicts of the curule aediles, whose jurisdiction is possessed by the quaestors in the provinces assigned to the Roman people; for quaestors are never sent into the provinces assigned to the emperor, and on that account no publication of this last-mentioned edict takes place in such provinces.

§7. The answers of the learned in the law [*responsa prudentium*] are the decisions and opinions of those who are authorised to settle points of law [*ius*], and their unanimous decision has the force of a statute [*lex*], though, if they disagree, it is permitted for the judge to follow that decision which he thinks best, as is laid down in a rescript of the late Emperor Hadrian.

§8. Now all our law [*ius*] relates either to persons, things, or actions, and first let us treat of persons.

[...]

GAIUS, COMMENTARY II.

§1. In the preceding commentary we have dealt with the law of persons; now let us treat of things. These are either held in our patrimony, or are considered to be outside our patrimony.

§2. And so a principal division of things is into two classes, viz., those subject to divine law, those subject to human law.

§3. Subject to divine law are, for example, sacred and religious things. §4. Sacred things are those consecrated to the gods. Religious things, those abandoned to departed spirits. §5. But a thing is only accounted sacred when it is made so by the authority of the Roman people, as by virtue of a statute, or a decree of the senate.

§6. But a religious thing may be so made of our own free will, as, by interring a dead body in our ground, provided only the burial of the corpse is a matter incumbent upon us. §7. But on provincial soil, according to the general opinion, the ground cannot be made religious, because the ownership of that land is in the Roman people or in the emperor, and we would seem to have but the mere possession and enjoyment [*ususfructus*] of it. Still, although it be not strictly religious, it is treated as such, just as that which in the provinces is not consecrated by the authority of the Roman people is not properly sacred, still it is so accounted.

§8. Sacrosanct things also, such as walls and gates, are, in a certain way, subject to divine law.

§9. And that which is subject to divine law cannot form part of the property of any one; but that which is subject to human law is generally the property of someone, though this need not be the case; for things belonging to an inheritance are not

included in the property of anyone until an heir exists [... five lines illegible ...]

§10. Things which are subject to human law are either public or private. **§11.** Those which are public are held not to be the property of any one, for they are looked upon as belonging to the whole community. Private things are those which are the property of individuals.

§12. Again, some things are corporeal, others incorporeal.

§13. Corporeal things are those which are tangible, as land, a slave, a garment, gold, silver, and, indeed, other things innumerable. **§14.**¹ Incorporeal things are those which are not tangible, such are those consisting in law, as an inheritance, a usufruct, or obligations in any way contracted. Nor does it affect the matter, that corporeal things are comprised in an inheritance, for produce gathered from the soil is corporeal; and that which is due to us by virtue of an obligation is usually corporeal, as land, a slave, or money; for it is the right itself of succession, or the right itself to the use and enjoyment, or the right itself arising out of the obligation, which is incorporeal. Amongst things incorporeal are to be included the rights over urban and rural estates, which are also called servitudes. The rights appertaining to urban estates are, the right of raising buildings so as to obstruct the lights of the neighbouring building, or of preventing the raising of buildings that would obstruct the access of light; likewise the rights of receiving rain water in drops, or flowing in the gutter [... three lines illegible...].

§14a. Things are either things requiring for transfer the formal conveyance by copper and scale [*res Mancipi*], or are things not requiring that form of transfer [*res nec Mancipi*]. Things requiring transfer by a formal conveyance are [... ¾

¹ Mears used an older edition of Gaius and relied here on emendations suggested by Huschke. We have followed up to G. 1.15 the modern division into sections and emendations of the text. Consequently, Mears's translation has been adjusted in G. 1.14-15.

line illegible ...] likewise estates on Italian soil [... 2 ½ lines illegible ...] the rights over urban estates are not; likewise, stipendiary and tributary lands do not require that form of transfer. §15. But regarding those quadrupeds which have been habituated to the saddle and the collar, as oxen, mules, horses and asses (the leaders of our school consider that these animals) are things requiring transfer by formal conveyance immediately they are born, whilst Nerva, Proculus, and other leaders of the opposite school, do not hold them to be so until they are broken in: and if, on account of their great ferocity, they cannot be broken in, then they are held to begin to be things requiring transfer by a formal conveyance when they have reached that age at which such animals are usually broken in. §16. But wild beasts, such as bears and lions, are things not requiring transfer by a formal conveyance; as also those animals which are commonly reckoned amongst wild beasts, such as elephants and camels; and the point is not material that these animals are accustomed to the collar and the saddle, because, at the time the division into things requiring transfer by a formal conveyance, and things not so requiring, was made, there was no mention of these animals. §17. Nearly all incorporeal things are things not requiring transfer by a formal conveyance, with the exception of servitudes of rural estates, for it is held that these are things requiring transfer by a formal conveyance, although they are amongst the number of incorporeal things. §18. A great difference exists between things requiring transfer by a formal conveyance and things not so requiring. §19. For things not requiring transfer by a formal conveyance may lawfully become the property of another by mere delivery, if only they are corporeal, and on that account susceptible of delivery. §20. Therefore, if I have delivered to you a garment, or gold or silver, whether as the result of a sale, or as a gift, or on any other ground, that thing immediately becomes yours if I was the civil law owner of it. §21. It is the same with provincial estates, of which we call some stipendiary, others tributary; stipendiary are those situated in those provinces which are regarded as the

peculiar property of the Roman people; tributary are those situated in those provinces which are considered as peculiar to the emperor. §22. “Res mancipi” are those things which are transferred to another by “mancipatio”, whence also they are so called. But what stands good when done privately by this method of formal conveyance, also stands good when done by way of surrender in court. §23. In what manner the formal conveyance by copper and scale is effected we have already explained in the previous commentary.² §24. The

- ² Book 1: §119. Now, the process of formal conveyance is, as we have already stated, a kind of imaginary sale, and is a right peculiar to Roman citizens. The ceremony is conducted thus: —In the presence of not less than five witnesses, Roman citizens above the age of puberty, with another person possessing similar qualifications, holding a copper scale, and therefore called the scale bearer; he who is receiving the thing into bondage, holding it says: “I assert that this (e.g.) slave is mine, by the law of the Quirites [Romans], and he has been bought by me by means of this piece of copper and copper scale”. He then strikes the scale with the piece of copper and gives the piece of copper by way of price to him from whom he receives the thing into bondage. §120. In this way both slaves and free persons are sold, as also those animals which fall within the class of things requiring a formal transfer, in which number are included oxen, horses, mules, asses. In the same way it is customary to sell such urban and rural estates as are comprised amongst the class of things requiring a formal transfer, as in the case of Italian estates. §121. The sale of estates differs from the sale of other things in this only, that slaves and free persons, as well as animals that are included under the class of things requiring a formal transfer, cannot be sold unless they are present; and, therefore, it is necessary that he who receives by way of formal transfer should take hold of the thing itself which is given him in this solemn mode, and hence, also, it is called “mancipatio”, because the thing is taken (*capitur*) by the hand (*manu*). But estates, though at a distance, may be conveyed in this way. §122. The piece of copper and the scale form part of the ceremonial used, because formerly only copper money was used, and there were pound, two-pound, half-pound, and quarter-pound pieces, but no gold or silver money, as may be seen by reference to the Twelve Tables; and the value of this money did not consist in its number, but in its weight, as, for example, the pound pieces were one pound in weight, and the two-pound pieces then weighed two pounds, whence comes the term “dupondius” ... which stands for two pounds, and this name is still retained in use. The half-pound and the quarter-pound pieces had also a fixed weight; that is, they were of their proportional weight of a

process of surrender in court is done in the following way: Being in the presence of a magistrate of the Roman people, as, for example, a praetor or a governor of a province, he to whom the thing is surrendered in court, and whilst holding it, speaks thus: — “I assert that this slave is mine by the law of the Quirites [Romans].” After he has thus claimed the thing, the praetor asks him who is surrendering it, whether he counterclaims it, and, upon his denial or silence, the praetor declares the thing to be his who has claimed it. This is called a statutory action [*legis actio*], and can be carried out, even in the provinces, in the presence of the governors. §25. Commonly, however, indeed almost always, we proceed to effect the transfer by formal conveyance, because we can do this ourselves in the presence of friends, as it is not proper or necessary to make any application (involving considerable difficulty) to perform it in the presence of a praetor or a governor of a province. §26. But if a thing requiring transfer by a formal conveyance has been neither so conveyed nor surrendered in court [... thirty-one lines illegible³ ...] §27. Finally, it is necessary to observe that the conveyance by means of the copper and the scale is a process peculiar to Italian soil, and there can be no such process employed in respect of provincial soil, for this process refers only to a thing which requires transfer by a formal conveyance, but provincial soil is a thing not requiring such a mode of transfer [... one line illegible ...].

§28. It is clear that incorporeal things are not subject matter for delivery. §29. But rights appertaining to urban estates can be surrendered in court, whilst those appertaining to

pound. Hence money was not counted but weighed, and hence those slaves to whom money matters were entrusted were called weighers-out, and are still so called.

³ Gaius presumably stated here that in that case no ownership was transferred, the recipient had to acquire ownership by use through the required period of possession (see G. 2.41). After that he presumably listed the groups of non-Romans who could use the transfer by formal conveyance.

rural estates can also be transferred by means of a formal conveyance.

§30. Usufruct is only susceptible of transfer by surrender in court; for the owner of the property can surrender in court the usufruct to another, so that the latter has the usufruct, and he himself retains the mere naked ownership. When the usufructuary himself surrenders in court the usufruct to the owner of the property, the effect is that the usufruct departs from him and merges in the ownership; but if he surrenders it in court [*in iure cessio*] to another person than the owner, he retains his rights, for it is held that such a surrender in court effects nothing. **§31.** But these remarks of course apply only to estates in Italy, because these are capable of being the subject of transfer by formal conveyance and of surrender in court, whereas in the provinces, whether a person wishes to establish a usufruct, or a right of passing, or of driving cattle, or of leading water, or of raising or not raising buildings higher so as to block out his neighbour's lights, and other similar rights, he must do it by agreements [*pactiones*] or stipulations, because the estates themselves are incapable of transfer, either by the formal conveyance or by surrender in court. **§32.** But since usufruct can be established in respect of slaves and animals generally, we must understand that the usufruct of these can be established, even in the provinces, by a surrender in court. **§33.** Now what we have said as to the usufruct being established only by a surrender in court, has not been rashly asserted, as though it may be established by a formal conveyance, in that it can be detached from the ownership in the process of formal conveyance, yet here it is not the usufruct that is formally conveyed; but by being withdrawn from the property to be formally conveyed, the result is that the usufruct will be in one person, and the ownership in another.

[...]

§40. The next point to mention is that among foreigners there is only one kind of ownership; for a person is either held to be, or not to be, owner, and this rule was formerly in use amongst the Roman people, for a person was either owner, by the law of the Quirites, or was not looked upon as owner at all. But afterwards ownership became susceptible of division, in such a way that one person could be the owner by the law of the Quirites, while another could hold it as part of his goods. **§41.** For, if I have neither conveyed to you by the process of the copper and the scale a thing requiring to be so conveyed, nor surrendered it in court, but have only delivered it, the thing has thereby, indeed, become part of your goods, but it will remain mine, by the law of the Quirites, until you have acquired it by use through the required period of possession; for when the period of acquisition by use [*usucapio*] is once completed, the thing will become completely yours in law, that is, it will be yours both as part of your goods, and by the law of the Quirites, just as if it had been formally conveyed or surrendered in court.⁴

§42. The acquisition by use of movables is completed in one year, that of lands and of buildings in two years, and this is so provided by the statute of the Twelve Tables.

§43. But even the acquisition by use of those things which have been delivered to us by another person than the owner, whether they are things requiring transfer by a formal conveyance or not, is available in our favour, if only we have received them *bona fide*, believing that he who delivered

⁴ Book 4: **§36:** To the same class belongs the action called Publician. This action lies in favour of him who claims a thing which he had not yet acquired by use, and of which he has lost the possession, after it had been delivered to him by some title recognised in law. For, as he cannot allege that the thing is his by the law of the Quirites, he asserts his claim, for example, thus: “— be judge. If Aulus Agerius has bought that slave, and if he has been delivered to him, and assuming the slave to have been possessed by him for a year, then, if that slave, about whom the suit is brought, ought to be his by the law of the Quirites”, and so on.

them was owner. §44. This rule appears to have been adopted to prevent the ownership of things remaining for a longer time in uncertainty than the period of one or two years, which is required to entitle a possessor to acquire by use, this period affording a sufficient interval within which an owner can make inquiries after his property.

§45. But sometimes, although a person possesses the property of another in perfect good faith, yet no acquisition by use flows from that possession: as, for example [*velut*], if a person possesses a thing stolen, or taken by force; for the Twelve Tables forbids the acquisition by use of a thing stolen, and the Julian and Plautian statute, that of a thing taken by force. §46. So provincial land is not susceptible of acquisition by use. §47. So, also, such things belonging to a woman under agnate guardianship, as required transfer by the formal conveyance of copper and scale, could not be acquired by use, except when they had been delivered by herself with the authority of her tutor, and this was so provided by the Twelve Tables. §48. So it is clear that free men, as well as sacred and religious things, cannot be acquired by use.

§49. When it is commonly said that the acquisition by use of things stolen or taken by force, is forbidden by the Twelve Tables, this does not mean that the thief himself, or he who possesses of the thing by force, is unable to acquire by use (for another reason prevents the acquisition by use, viz., that, of course, his possession is *mala fide*), but that no one else, even though he may have purchased from him in good faith, has the right of acquiring by use. §50. Whence, in respect of movables, it does not easily happen that a *bona fide* possessor can avail himself of acquisition by use. Because he who has sold and delivered another's thing commits theft, and the same holds good if he have delivered the thing on any other ground. But yet this may sometimes be otherwise; for, if an heir, supposing a thing lent or hired out to the deceased, or deposited with him, to be part of the inheritance, sells or

gives it as a gift or dowry to a person who receives it bona fide, he does not commit theft; so, if he who has the usufruct of a female slave sells or gives away her offspring, believing it to belong to him, he does not commit theft; for theft is not committed without the intention of stealing. It may also happen in other ways, that a person may transfer to another property not his own, without its being infected with the vice of theft, so that the possessor may acquire it by use. §51. For a person may become possessed, without violence, of land belonging to another; when, for example, it is vacant through the negligence of the owner, or because the owner has died without a successor, or has been absent from it for a long time; in which cases, if it has been conveyed to another person who receives it bona fide, the possessor will be able to acquire by use; and, although he who had taken the vacant possession, knew that the land belonged to another, this does not interfere to prevent the bona fide possessor acquiring by use, for the opinion is disapproved of those who have thought that land can be the subject of theft.

[...]

§65. Therefore, from what we have said, it appears that certain things can be alienated by natural law [*ius naturale*], such are those which are alienated by delivery [*traditio*]; other things are alienated through the civil law, for the law relating to formal sales, to surrenders in Court and to acquisition by use, is peculiar to Roman citizens.

§66. But not only are those things which become ours by delivery, acquired by natural reason [*ratio*], but also those which we have acquired by occupation, because previously they were the property of no one. Such are all things that are captured on land, in the sea, and in the air. §67. Hence, if we have caught a wild beast, or bird, or fish, it, so soon as caught, immediately becomes ours by the law of nations, and is deemed to be ours so long as it is retained in our control. But when it has escaped our control, and has recovered its

natural freedom, it again becomes the property of the first occupant, because it has ceased to be with us. It is held to regain its natural freedom, either when it has escaped out of our sight, or, although still in sight, the pursuit of it would be difficult.

§68. In respect of those animals in the habit of going and returning, such as pigeons, and bees, and deer, which are in the habit of going into and returning out of the woods, we have the rule handed down that, when they have lost the intention, they cease to be ours, and become the property of the first occupant; and they are deemed to have lost the intention when they have ceased to have a habit of returning.

§69. Those things which are captured from the enemy become ours by natural reason.

§70. Moreover, the alluvial deposit which is added to our land becomes ours by the same right. Now that is considered as added by alluvial deposit which the river adds, little by little, to our land, so that we cannot estimate the quantity added at any moment of time. This is what is commonly meant by saying that that is to be held to be added by alluvial deposit which is added so gradually that its addition is not perceptible to our senses. **§71.** Hence, if a river has swept off some portion of your land, and carried it to my land, the portion so carried off still remains yours.

§72. But if an island is formed in the middle of a river, it is common to all who possess the land on either bank of the river. But if it be not in the middle of the river it belongs to those who own the land on that bank which is nearest to it.

§73. Moreover, that which a person has built on our land, although he may have built it for himself, becomes ours by natural law, because the superstructure goes as an accessory to the land.

§74. And this rule of accession applies more forcibly still in the case of a plant which a person has placed in our ground, provided it has become bound up with the land by its roots.

§75. The same rule applies in the case of corn sown in our ground by another person. §76. But if we, as owner of the ground, claim the produce, or the building, and are not willing to repay the expenses incurred in the building, planting, or sowing, he will be able to defeat our claim by the plea of fraud [*exceptio doli*], assuming that he was a bona fide possessor.

§77. By this rule it is held that that which a person has written on my paper or parchment, even with letters of gold, is mine, because the letters are an accessory to the paper or parchment. Hence also, if I claim these books or parchments, and will not pay the cost of the writing, I may be defeated by the plea of fraud.

§78. But if a person has painted on my tablet, for example, a portrait, the opposite rule holds, for it is rather to be laid down that the tablet is an accessory to the picture. For this difference scarcely a satisfactory reason can be given. Still, it will be in accordance with this rule, that, if you claim the portrait as yours whilst I possess it, and do not pay the price of the tablet, you can be met by the plea of fraud. But if you are the possessor, the consequence is that an equitable action [*actio utilis*] must be granted to me against you; and in this case, unless I pay the cost of the picture, you can resist my claim by the plea of fraud, assuming that you are a bona fide possessor. It is clear that, whether you or another have stolen the tablet, an action for theft [*actio furti*] can be brought by me.

§79. In other classes of cases, also, the rule of nature is sought; thus, if you have made wine, oil, or corn, out of my grapes, olives, or ears of corn, the question arises whether that wine, oil, or corn, is mine or yours; again, if you have made some vessel out of my gold or silver, or have

constructed a ship or a chest, or a bench with my planks, or if you have made a garment out of my wool, or a sweet drink out of my wine and honey, or a plaster or balsam out of my drugs, the question arises whether that, so made out of my material, is yours or mine. Some think that the material and substance must be looked to, that is, that the thing should be held to belong to him out of whose materials it was made, and this was the better opinion according to Sabinus and Cassius. Others think that the thing should be his who made it, and this is the opinion generally approved by the leaders of the opposite school. But he who owned the material and substance has an action for theft against him who took them, and a personal action for its value [*condictio (furtiva)*] is also available, in spite of the fact that, owing to the thing being destroyed, an action for its recovery [*vindicatio*] will not lie, for a personal action may be brought against thieves and certain other possessors.

[...]

GAIUS, COMMENTARY III.

[...]

§88. Let us now pass to obligations, of which the principal division is into two species; for every obligation arises either from contract/contracting or from wrong (delict)/wrongdoing.

§89. And, first, let us look into those which arise from contract/contracting. Of these, there are four kinds; for an obligation is contracted either by the thing [*re*], or by words [*verbis*], or by writing [*litteris*], or by consent [*consensu*].

§90. An obligation is contracted by means of the thing itself, thus, for example [*veluti*], by a loan in kind [*mutuum*]. [A loan in kind/*mutuum*] properly applies to those things which are estimated by weight, number, or measure, such as coined money, wine, oil, corn, copper, silver, gold, which things we give either by counting, or measuring, or weighing them, in order that they may become the property of those receiving them, and the same things are not returned to us but others of the same nature; and, hence, this is called a “*mutuum*”, because that which been so given by me to you from being mine becomes yours [*ex meo tuum*]. **§91.** He, also, who receives a thing which is not owed to him from a person who pays it by mistake, is bound by the thing, for he can be sued by the personal action “if it appear that he ought to give”, just as if he had received a loan in kind [*mutuum*]. Hence, some think that a pupil, or a woman to whom, without the authorisation of the tutor, something has been paid by mistake which was not due, is not liable to a personal action [*condictio*], any more than by the giving of a loan in kind [*mutuum*]. But this kind of obligation does not seem to arise out of contract/contracting, since he who gives with the intention of paying, is rather desirous of dissolving than of forming an obligation.

§92. A verbal obligation results from a question and answer, thus, for example [*veluti*], Do you bind yourself to give? [*dari spondes?*] I do bind myself. [*spondeo*] Will you give? I will give. Do you promise? I promise. Do you become an additional debtor? I do so become. Do you become a surety? I do so become. Will you do? I will do. **§93.** But that form of verbal obligation: — Do you bind yourself to give? I do bind myself—is peculiar to Roman citizens, the other forms belong to the law of all nations, and, therefore, are valid amongst all men, whether Roman citizens or aliens. And, although they may be expressed in the Greek language, as, for example thus: — Will you give? I will give. Do you agree? I do agree. Do you pledge your good faith? I do pledge my good faith. Will you do? I will do; still these forms are binding amongst Roman citizens, provided they understand the Greek language. And, on the other hand, although they are expressed in Latin, they are binding amongst aliens, provided they understand the Latin language. But that form of verbal obligation, Do you bind yourself to give? I do bind myself to give, is so peculiar to Roman citizens that it cannot be translated into the Greek tongue, although the word “spondeo” is said to come from a Greek word.

[...]

§97. If that which we stipulate to be given us is of such a nature that it cannot be given, the stipulation is ineffective, as, for example, if a person should stipulate for a free man, whom he thought to be a slave; or for a dead slave, whom he thought to be alive; or for a plot of sacred or religious ground, which he thought to be the subject of commerce.

§97A. Again, if a person stipulate for a thing which does not, or cannot, exist, as, for example a hippocentaur, the stipulation is equally ineffective.

§98. Again, if a person stipulate subject to a condition which cannot be fulfilled, as, for example, if he shall touch the sky with his finger, the stipulation is ineffective. But the leaders

of our school are of opinion that a legacy left subject to an impossible condition is just as good as if no condition had been inserted. The leaders of the opposite school, however, think that the legacy is no less ineffective than the stipulation, and it certainly seems difficult to give a satisfactory reason for the difference.

§99. Moreover, a stipulation is ineffective if a person stipulate for a thing to be given to him, not knowing that it is his, for that which is already a person's property cannot be given to him.

[...]

§102. So, a stipulation is ineffective if a person's answer is not in accord with the question; as, for example, if I stipulate for ten thousand sesterces to be given by you, and you promise five thousand sesterces; or if I stipulate absolutely, and you promise subject to a condition. **§103.** Moreover, a stipulation is ineffective if we stipulate on behalf of one, to whose power we are not subjected; hence, the question has arisen, to what extent is the stipulation valid, if a person stipulate for a sum to be given to himself, and to someone to whose power he is not subjected. The leaders of our school think that it is valid for the whole amount; and, further, that the whole is due to the stipulator alone, just as if he had not added the name of a third person. But the leaders of the opposite school are of opinion that half is due to him, for that the stipulation, so far as the other half is concerned, is ineffective.

[...]

§105. It is evident that the dumb can neither stipulate nor promise, and the same restriction applies to the deaf; because he who stipulates ought to be able to hear the words of the promisor, and he who promises, the words of the stipulator.

§106. A person of unsound mind cannot transact any business, because he does not understand what he is doing.

[...]

§128. An obligation arises by writing, as, for example, in the case of accounts transferred to the ledger. This transfer of the entries of accounts may occur in two ways, either from thing to person, or from one person to another. **§129.** A transfer of the entry of an account from thing to person occurs in the case of, for example, the entry of a sum by me as due from you, which you owe me as the result of a sale, a letting, or a partnership. **§130.** A transfer of the entry from person to person occurs, for example, if I enter to your debit a sum which Titius owes me, that is, if Titius substitute you for himself. **§131.** The entries which are called “*arcaria*”⁵ stand on quite a different footing, for in these the obligation arises out of the thing itself, and not by the writing, because they are not binding unless the money has been paid; for the paying over the money makes an obligation arising out of the delivery of the thing, and hence we shall be correct in saying that entries, in respect of such payments, give rise to no obligation, but afford evidence of one having been made. **§132.** Hence, also, it is incorrect⁶ to say that aliens may bind themselves by means of such entries of payment, because they are not bound by the entry itself, but by the paying over of the money, which kind of obligation falls under the law of nations. **§133.** But, whether aliens can be bound by transferred entries is, very properly, open to question, for such an obligation belongs in a way [*quodammodo*] to the civil law; and this is the opinion of Nerva; but, according to Sabinus and Cassius, if the transferred entry were from thing to person, then even aliens were bound, but not if it were from person to person. **§134.** Further, it is held that an obligation by writing may be formed by means of a document given by the debtor only [*chirograph*], or one exchanged by

⁵ From *arca*, chest.

⁶ Following Huschke's insertion of *non*.

debtor and creditor [syngraph], that is (where no stipulation on the subject has been entered into), a writing stating that a person owes something, or that he will give something, and this kind of obligation is peculiar to aliens.

§135. Obligations are created by consent in buying and selling [*emptio venditio*], letting and hiring [*locatio conductio*], partnerships [*societas*] and gratuitous agencies [*mandatum*]. **§136.** We, therefore, say that obligations are contracted in these ways by consent, because there is no form of words or of writing required, but it is sufficient that those who are transacting the business have come to an agreement. Hence, also, such obligations may be contracted between absent parties, as, for example, by letter or by messenger, though a verbal obligation cannot be formed between absent parties. **§137.** Again, in contracts of this nature, both parties are under a mutual obligation to do all that is fair and equitable in respect of the other, whereas, in verbal obligations, one party stipulates and the other promises, and, in book entries, one binds the other by making an entry to his debit, whereby the other is bound. **§138.** But a book entry debiting an absent person binds, although a verbal obligation cannot be contracted with an absent person.

§139. Purchase and sale is contracted when the price is agreed upon, although the money may not yet have been paid, nor even any earnest [*arrha*] given, for what is given by way of earnest, is evidence that purchase and sale has been contracted.

§140. A price should have been agreed upon, for, otherwise, if the parties have agreed that the price shall be what Titius shall value the thing at, Labeo denied that such a transaction can have any effect, and this opinion is approved by Cassius, though Ofilius thought it was purchase and sale, and this view is followed by Proculus.

§141. Again, the price should consist of a sum of money, for it is a point rightly open to question, whether the price can

consist of anything else, as, for example, whether a slave, a garment, or a piece of land can be the price of another thing. The leaders of our school think that the price may consist of some other thing; whence arises the common opinion, that purchase and sale is contracted by the exchange of things, and that this is the oldest form of purchase and sale, and they support this view by quoting the Greek poet Homer, who somewhere says as follows:

“Then straightway the long-haired Greeks bought wine,
Some with copper, others with flashing steel,
Others with ox-skins, and others with the oxen themselves,
Others with prisoners of war.” — *Iliad*, viii, 472-5

and so on. The leaders of the opposite school take a different view, and think that an exchange of things is one thing and purchase and sale quite another, otherwise there would be no means of ascertaining, on an exchange of things, which was to be taken to be the thing sold and which given by way of price; and, again, it would seem absurd that both things should be regarded as sold and both given by way of price. But Caelius Sabinus lays down that if I should propose to buy a thing which you have for sale, as, for example, an estate, and I should give, say, a slave for it, the estate will then be held to have been sold, and the slave to have been given by way of price.

§142. Letting and hiring is subject to similar rules; for, unless a fixed sum for the hire has been agreed upon, it is held that no letting and hiring is contracted. **§143.** Hence the question arises whether letting and hiring is contracted if the amount to be paid for the hire is left to the decision of a third party, as, for example, at the sum which Titius shall fix. For this reason, also, the question arises whether letting and hiring has been contracted when I have given clothes to a fuller for the purpose of cleaning and pressing, or to a tailor to mend, without, at the same time, having agreed upon the sum to be paid, but only that so much shall be given as we subsequently agree upon. **§144.** Or if I have given you a thing

for use, and in return have received another thing for my use, the question arises whether letting and hiring is contracted.

§145. Hence, also, purchase and sale, and letting and hiring, seem to have some resemblance to each other, as, in certain cases, it is commonly a matter of doubt whether purchase and sale, or letting and hiring, have been contracted. As, for example, if something has been let out in perpetuity, as is the case with the estates of municipalities, which are let out under the condition that, so long as the rent is paid, the land shall not be taken away from the hirer himself, nor from his heir. But the better opinion is that this is letting and hiring.

§146. Again, it becomes a question whether purchase and sale, or letting and hiring, is contracted, when I have delivered gladiators to you on condition that I am to receive, by way of hire for their labour, twenty silver pieces in respect of each one who comes out unhurt, but one thousand silver pieces for each one killed or maimed; and the better opinion is, that, as to those who come out unhurt, letting and hiring has been contracted, but that, as to those who are killed or maimed, there is purchase and sale, and this results from the event, just as if there had been a condition attached to the sale or hire of each one, for it is now no longer doubted but that a thing may be sold or hired under a condition.

§147. Again, the question arises whether purchase and sale, or letting and hiring, is contracted if I come to an agreement with a goldsmith that he is to make some rings for me of a certain weight and of a certain form out of his gold, and that he is to receive, say, two hundred silver pieces. Cassius lays down that there is a sale of the material and a hiring of the work. But the majority are of opinion that purchase and sale has been contracted, though, if I had given him my gold, and agreed with him as to the price for his workmanship, then letting and hiring has been contracted.

§148. We are in the habit of entering into partnership, either in respect of our whole property, or in respect of some one

particular business, as, for example, the purchase or sale of slaves.

[...]

§155. Mandate arises whether we commission a person to do something for us or for another. Hence, whether I commission you to carry on my affairs, or those of another person, the obligation of mandate is contracted, and we are reciprocally bound to each other to do all that which I ought equitably to do for you in the matter, or you for me.

§156. Though, if I commission you to do anything for your own sake, the commission is useless; for what you may do for your own sake, you will be deemed to do in accordance with your own judgment, and not because of my commission: therefore, if I advised you to put out at interest the money you have lying idle at home, then, although you may have entered into a loan of it in kind with someone from whom you cannot recover it, still you will have no action, grounded on the commission [*actio mandati*], against me. Again, if I advised you to buy something, then, although it may not have been advantageous to you to have bought it, still I shall not be liable to you on the mandate, and this rule is carried to such an extent that it may be doubted whether he is liable on the mandate who has commissioned you to lend money at interest to Titius. Servius lays down that he is not liable, but we incline to the opinion of Sabinus, who says he is liable, because you would not have lent the money if you had not been commissioned to do so.

§157. It is clear that, if a person give a mandate in respect of a matter which is contrary to good morals, no obligation is contracted; as, for example, if I commission you to steal from Titius, or to do him an injury.

[...]

§162. Finally, it must be noted that an action on the mandate will lie whenever I give something to be done gratuitously,

as, for example, if I have given clothes to a fuller to be cleaned and pressed, or to a tailor to be mended, in which case, if I had at the time settled a fee, letting and hiring would have been contracted.

[...]

§182. Let us now pass to obligations arising from wrongs/wrongdoings [*ex delicto, ex facto*], thus, for example [*veluti*], if a person has committed theft [*furtum*], or taken property by violence [*rapina*], or inflicted damage [*damnum iniuria datum*], or committed an outrage [*iniuria*]; all which misdeeds give rise to one kind of obligation only, whilst obligations arising from contract/contracting (as we have above explained), are reducible to four kinds.

§183. According to Servius Sulpicius and Masurius Sabinus, there are four kinds of thefts, viz., that which is manifest [*furtum manifestum*], and that which is not manifest [*furtum non manifestum*], that which arises from the discovery of the thing after a search [*furtum conceptum*], and that which arises from the stolen thing being brought elsewhere [*furtum oblatum*]. According to Labeo, two kinds, viz., manifest and non-manifest; the two other kinds being rather forms of actions relating to theft than kinds of thefts, and this seems the better opinion, as will appear below.⁷

§184. Some lay down that it is a manifest theft when the thief is taken in the act, but others extend it to cover the case of the thief being taken in the place where the act was committed, as, for example, if olives have been stolen in an olive-grove, or grapes in a vineyard, as long as the thief is in the olive-grove, or in the vineyard; or if the theft has been committed in a house, so long as the thief is in that house it is manifest theft. Others go further, and say that it is manifest theft until the thief has carried the stolen property to the place to which he intended carrying it. Others, again, go

⁷ G. 3.186, 187.

further, and say that it is manifest theft whenever the thief has been seen holding the thing in his hand, but this opinion has not gained ground; and the opinion of those who have thought that the theft is manifest if the thief is caught before he has carried the stolen property to the place he intended seems also unsatisfactory, because it raises grave doubts whether it would extend over the space of one or even of several days, which is material in this way, that a thief often intends to convey property stolen in one city to another city, or another province. Of the two first-mentioned opinions, both have met with approval, but the majority incline to the second.

§185. As to what is non-manifest theft may be gathered from what we have said, for that which is not manifest is non-manifest.

§186. Theft is said to be “conceptum” when the stolen thing has been searched for, and found in the presence of witnesses in a person’s possession; for a special action [*actio furti concepti*]⁸ lies against him, even though he may not be the thief. **§187.** Theft is said to be “oblatum” when the stolen thing has been brought to you by someone, and has been found in your possession, that is, if it has been given you with the view of its being found in your possession rather than in his who gave it. For you, in whose possession the thing has been found, are entitled to a special action [*actio furti oblati*]⁹ against him who placed the thing in your possession, although he may not be the thief. **§188.** There is also an action for opposing a search against him who has prevented a person from searching for stolen goods [*actio furti prohibiti*].

§189. The punishment for manifest theft [*furtum manifestum*], by the statute of the Twelve Tables, was of a

⁸ The action based on the discovery of the stolen thing after formal search.

⁹ The action based on the deposit of the stolen thing elsewhere.

nature to cause the loss of the legal position of a citizen. For a free man, after being scourged, was adjudged to him whose property he had stolen; but whether, in consequence of this adjudication, he became a slave, or was only in the position of an adjudged debtor, was a disputed point. A slave after being equally scourged, was killed. But, subsequently, the severity of the punishment met with disapproval, and, under the edict of the praetor, an action for the quadruple value was established as well for slaves as for free persons. **§190.** The penalty inflicted for non-manifest theft [*furtum non manifestum*], by the statute of the Twelve Tables, was double the value, and this the praetor has retained. **§191.** The penalty for *furtum conceptum* and *furtum oblatum* was, by the statute of the Twelve Tables, threefold, and this the praetor has also retained. **§192.** The action for preventing a search for stolen property was for the quadruple value, and was introduced by the edict of the praetor. The statute of the Twelve Tables had established no penalty under this head; it only enjoined that he who wishes to search shall do so naked, girt with a “*linteum*”, and holding a plate; and if he found anything, the statute directs the theft to be deemed manifest. **§193.** As to what the “*linteum*” was is open to question, but it is highly probable that it was a sort of girdle to cover the private parts.¹⁰ Hence, the whole thing is absurd. For he who hinders the search of a man clothed, will also hinder the search being made by a naked one, especially as he would be liable to a heavier penalty if the thing sought for in this way were found. Then, as to the plate, was he directed to carry

¹⁰ The original is here difficult to read and a variant reading is *licio* instead of *linteo*, meaning ‘with a thread’. A recent interpretation is that the person who wished to search would be threatening the sanctity of another’s house. Thus he had to commit himself to non-violence by a sacral act, concretised by wrapping a sacral-ritual ribbon around his head and by carrying an offerand plate. He would have been dressed in an undergarment and thus have been ‘naked’. The meaning of this ritual would have been no longer known to Gaius. More recently L. Pepe points to Plato’s *Laws* 954a and Aristophanes’ *Clouds* 497 ff., where such a search is done naked or in a chiton without a belt. If this is a valid parallel, the *linteum* might indeed have been a loincloth or tunic.

this in order that, as his hands were occupied, nothing could be brought with him, or that he might put in it whatever might be found? but neither of these explanations would avail, if what is sought were of such a size or nature, that it could not be so brought in, nor placed thereon. There is no doubt, however, on one point, that of whatever material the dish may be made the statute will be satisfied. **§194.** Since, however, the statute directs that, on this ground, the theft shall be deemed manifest, there are some writers who lay down that theft is manifest, either by statute or by nature; by statute, in the case of which we are speaking; by nature, in the case we have detailed above. But the better opinion is that theft is only to be deemed to be manifest by nature; for the statute can no more make a non-manifest thief a manifest thief, than it can make him a thief, who is not a thief at all; or a man an adulterer or murderer, who is not an adulterer or a murderer; but the statute can, of course, cause a man to be liable to a penalty as if he had committed theft, or adultery, or murder, although he has not done any of these things.

§195. Theft is committed, not only when a person takes away the property of another in order to appropriate it, but generally when a person deals [*contrectat*] with the property of another against that other's will. **§196.** Hence, if a person uses a thing which has been deposited with him, he commits theft, and, if he who has the use of a thing uses it for another purpose than that intended, he is liable to an action of theft; as, for example, if a person has borrowed silver plate, as if about to invite friends to supper, and carries it abroad with him; or, if anyone, having borrowed a horse for a ride, takes it away with him a longer distance than agreed upon, as in the case of him whom the ancient authors quote as having taken the horse into battle. **§197.** It is, however, settled that those who use things, otherwise than was agreed upon when they were lent, only commit theft if they know that they are doing so against the will of the owner, and that he, if he knew of it, would not allow it; but, if they believe that they would be allowed, they are clear of the crime of stealing; and this is

a most salutary distinction, for theft cannot be committed without wrongful intent [*dolus malus*]. **§198.** But, although a person thinks that he is dealing [*contrectare, contrectatio*] with the borrowed thing in a way contrary to the will of the owner, yet, if the owner is a consenting party, it is laid down that no theft has been committed. Whence arises this question: If Titius has persuaded my slave to steal some things from me, and to bring them to him, and the slave has disclosed the proposal to me, and I, in order to detect Titius in the wrongful act, have allowed my slave to take those things to him, is Titius liable to me, either in an action for theft, or in an action for the corruption of my slave [*actio servi corrupti*], or in neither? It has been held that neither action lies, for there can be no action for theft against him, since he has not dealt with the thing against my will, nor is he liable in an action for the corruption of my slave, because my slave has not been depreciated in value by corruption.

§199. Sometimes theft may be committed of free persons, as, for example, if a person has carried off one of our children in our power, or our wife under marital power, or my adjudicated debtor,¹¹ or my hired gladiator. **§200.** A person may even steal his own property, as, for example, if a debtor deprives his creditor of a thing pledged to him,¹² or if I have secretly withdrawn property belonging to me from a bona fide possessor. Hence it has been held that he who concealed his slave, who had returned to him whilst bona fide possessed by another, commits theft. **§201.** Again, on the other hand, sometimes, the property of another may be occupied and acquired by use, without it being deemed a theft, as, for example, in the case of property belonging to an inheritance, of which the heir has not yet acquired possession, provided he is not a necessary heir; for, if the

¹¹ i.e., the debtor who defaulted in paying the sum he had been condemned to and now, after having been taken by his creditor, had been adjudicated into the power of the latter and presumably remained here until he had paid off his debt.

¹² G. 3.204.

necessary heir is in existence, it is held that nothing can be acquired by way of use which is grounded on being in the place of the heir. Again, a debtor may sometimes (as we have pointed out in the previous commentary)¹³ possess and acquire by use, without committing a theft, the property which he had sold by the process of the copper and the scale, or surrendered in court to a creditor, subject to a redemption clause.

§202. Sometimes a person is liable to an action for theft, though he himself has not committed the theft, as in the case of him by whose help and advice [*ope consilio*] theft has been committed. In this class may be included him who has knocked money out of your hand to enable another to run off with it, or got in your way to enable another to steal, or has scattered your sheep or oxen to enable another to catch them; and the ancient writers include, in the same class him who, with a piece of red cloth, has frightened a herd of cattle. But, although this was done from wantonness, and not with that intention necessary to constitute theft, still we shall have to consider whether, even then, an equitable action [*actio utilis*] will not lie in respect of such an act, as, by the Aquilian statute, if damage has been sustained, even fault [*culpa*]¹⁴ may be punished.

§203. An action for theft is available to him whose interest it is that the property should be safe, although he may not be the owner; and, therefore, it is only available to the owner when it is to his interest that the property should not perish.

§204. Hence it is clear that a creditor may bring an action for theft in respect of a stolen pledge [*pignus*]; and this is carried so far that, although it is the owner himself, that is, the debtor, who has stolen the thing, nevertheless an action for theft lies in favour of the creditor. **§205.** Again, if a fuller has received clothes to be cleaned and pressed, or a tailor has received them to mend for a fixed remuneration, and the

¹³ G. 2.59, 60.

¹⁴ See G. 3.211.

clothes are stolen, it is he, and not the owner, who has the action for theft, because the owner is not interested in their preservation, since he can, in an action based on the letting [*actio locati*], sue the fuller or the tailor for his property, provided the fuller or the tailor is good for the amount; but, if he is insolvent, then, as the owner cannot get redress from him, he is entitled to the action for theft, because, in such a case, it is to his interest that the thing should be safe.

§206. What we have said in respect of the fuller or the tailor may be repeated as to him to whom a thing has been lent [*commodatum*]; for, as he who receives remuneration is answerable for the safe custody of the thing, so also in this case, in consequence of the benefit received by the use of the thing, a liability for its safe custody is entailed.

§207. But he with whom a thing is deposited is not answerable for its safe custody, and the only liability he incurs, in respect of it, is that arising out of any intentional [*dolo malo*] act of his own; for which reason, if the thing is stolen from him, as he is not liable to restore it by an action based on the deposit [*actio depositi*], and, for the same reason, has no interest in the preservation of the thing, therefore, he cannot sue by an action for theft, but that action is available to the owner.

§208. Finally, it must be noted that the question has been raised whether a person under the age of puberty, by carrying off another person's property, commits theft. In the opinion of the majority, since theft turns on the intention, a person under the age of puberty can only be liable if he is approaching the age of puberty, and, consequently, understands that he is doing wrong.

§209. He who takes, by violence, another's thing, is, indeed, also liable to an action for theft; for who handles [*contrectatio*] another's thing more against the owner's will than he who takes it with violence? And, therefore, he is rightly said to be a wicked thief; but the praetor has

introduced a special action for this kind of wrong, which is called the action for robbery with violence [*actio vi bonorum raptorum*], and, if brought within the year, it is for the fourfold, but, after the year, for the simple value. The action is available though only one single thing has been taken by force, and that of the least possible value.

§210. The action for wrongful damage [*actio damni iniuriae*] is established by the Aquilian statute [*lex Aquilia*]; the first head of which provides that, if a person has wrongfully [*iniuria*] killed a slave, or a quadruped (of the class denominated cattle), the property of another person, he is to be condemned to pay to the owner the highest market value of the slave or animal during the previous year.

§211. He is deemed to kill wrongfully [*iniuria*], by whose wrongful intent [*dolus*], or fault [*culpa*], death has ensued, for damage not caused unlawfully is neither censured by this nor any other statute, so that he goes unpunished, who, by accident [*casus*], without wrongful intent [*dolus*] or fault [*culpa*], inflicts damage. **§212.** Nor is it the mere value of the deceased slave that is estimated in this action, for if the owner of the deceased slave sustains greater damage than the value of the slave, this also is estimated; as, for example, if my slave has been killed before he has declared his acceptance, by my order, of an inheritance, of which he had been appointed heir, then not only the value of the slave is estimated, but also that of the lost inheritance. Again, if one out of a pair, whether of actors, or of musicians, has been killed, not only is the value of the one killed estimated, but the estimated depreciation in the value of the remainder is also calculated. The same rule holds if one of a pair of mules, or even one out of a set of four chariot horses has been killed. **§213.** He whose slave is killed is free to choose whether he will prosecute the slayer for the capital offence, or sue him under this statute for damages.

§214. The effect of the words which are added to this statute, viz., “the highest market value of the thing during the previous year”, is, that if the slave, when killed, was, say, lame, or had lost an eye, but had been sound at some time during the year, the value would be so estimated; and thus a person may sometimes obtain compensation beyond the damage he has sustained.

§215. By the second head an action is established to recover the amount against the adstipulator, who, in fraud of the stipulator, has formally released a debt. **§216.** It is clear that this action has been introduced in this part of the statute as falling under the head of damage. But it would not have been necessary to have provided for it here, since an action on the mandate would have sufficed for the purpose;¹⁵ had it not been that, by suing under this statute, the action will be for double the amount, if the liability for the extinction of the debt is denied.

§217. By the third head provision is made for every other kind of damage. Therefore, if a person has wounded a slave or a quadruped, included under the class of cattle, or has wounded or killed a quadruped, not included under that class, as a dog, or a wild beast, as a bear, or a lion, an action lies under this head. In respect of all other animals, also, as well as in respect of those things which are devoid of life, any loss wrongfully inflicted [*damnum iniuria datum*] may be claimed under this part of the statute. For, if anything has been burnt, broken, or fractured, an action lies under this head; although the single expression “broken” would suffice to cover all these grounds; as the term “broken” means that which has been in any way damaged. Hence, this word comprises, not only that which is burned or fractured, but also that which is torn and crushed, and spilt, and in any way spoiled, destroyed, and deteriorated.

¹⁵ G. 3.111.

§218. Under this head, however, he who has caused the damage is not liable for the value during the previous year, but for the value during the nearest thirty days; and the word “highest” is not even added, and, hence, some have thought that the judge was at liberty to fix the value, either at a time, within the thirty days, when it was highest, or when it was lower. But Sabinus held that the case was to be dealt with as if the word “highest” had been inserted in this part also of the statute, on the ground that the proposer of the statute was satisfied with the use of the word in the first part. **§219.** But it was held that the action resulting from the statute only lay if a person caused the damage by his own bodily act; and if the damage was caused in any other way, equitable actions [*actiones utiles*] are given; as, for example, if a person has shut up another’s slave or cattle, so that they perished by starvation, or has driven a beast of burden so violently as to have caused its death; so, if a person has persuaded another’s slave to climb a tree, or descend into a well, and in ascending or descending the slave has fallen, and been either killed, or injured in some part of his body. If a person has hurled another’s slave from a bridge or bank into a river, and the slave has been drowned, it is not difficult to understand that, in this case, the damage has resulted from the bodily act, in that he threw him over.

§220. Now, an outrage [*iniuria*] is not only committed when a person is struck with the fist, or a stick, or even scourged; but, also, if a crowd has been caused to assemble round him, or if a person has advertised for sale, by auction, the property of another, as if he were his debtor, when he knows that the latter does not owe him anything; or if a person has written a libel or verses in defamation of another’s character; or if a person has persistently followed a respectable woman or a boy, and, in short, in many other ways. **§221.** But we are held to suffer outrage, not only in our own person, but also in the persons of our children whom we have in our power, and in the persons of our wives, when they are in our marital power. Therefore, if, for example, you have committed an outrage on

my daughter, who is married, to Titius, not only can an action be brought against you in the name of my daughter, but I, also, and Titius can sue.

§222. No outrage can be deemed to be committed on a slave himself, as it is held to be done to the master through him; but we are not held to suffer an outrage through them, by the same means as would amount to such in the persons of our children or our wives, but only when such a gross outrage has been committed as makes it a manifest insult to the master, and in which case the formula would run, as, for example, “if a person has scourged another’s slave”. But, if a person has caused a crowd to assemble round a slave, or struck him with the fist, no formula is provided, and one would not easily be obtained by a claimant.

§223. The penalty for outrages, according to the law of the Twelve Tables, was retaliation for a bodily member destroyed; but, for a bone broken or crushed, the penalty was three hundred copper coins [*asses*], that is, if a free man’s bone was broken, but one hundred and fifty such pieces if it were that of a slave, and for other outrages the penalty was fixed at twenty-five such pieces, and, considering the great poverty of all classes in those times, these sums seem to have been sufficient by way of penalty. **§224.** But we now follow a different rule, for we are now allowed, by the praetor, to estimate the outrage for ourselves, and the judge, in his discretion, and by his sentence, either awards the sum we have estimated or a smaller amount; but, when the praetor deems an outrage of a grave character [*atrox*], if he has at the same time settled the amount of the security for reappearance, we insert this sum in the formula as the measure of our damages, and the judge, although he may, in his sentence, award a smaller sum, yet, generally, on account of the authority of the praetor, he does not venture to diminish the amount of the condemnation.

§225. An outrage is deemed grave, either from the nature of the act; as, for example, if a person has been wounded, or scourged, or beaten with rods by another; or from the place, as, for example, if the outrage has been committed in the theatre or in the forum; or from the rank of the person, as, if it is a magistrate who has suffered the outrage, or an outrage has been done to a senator by a person of low repute.

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[...]

ENGLISH—LATIN TRANSLATIONS

accident	<i>casus</i>
acquisition by use	<i>usucapio</i>
action for recovery	<i>rei vindicatio</i>
action for robbery with violence	<i>actio vi bonorum raptorum</i>
action for the value	<i>condictio</i>
action for theft	<i>actio furti</i>
action for wrongful damage	<i>actio damni iniuriae</i>
action of deposit	<i>actio depositi</i>
action on the case	<i>actio in factum</i>
action on the letting	<i>actio locati</i>
action on the mandate	<i>actio mandati</i>
agreements	<i>pactiones</i>
answers of the learned	<i>responsa prudentium</i>
Aquilian statute	<i>lex Aquilia</i>
civil law	<i>ius civile</i>
to deal/ handle, deals/ handles	<i>contrectare, contrectat</i>
dealing/ handling	<i>contrectatio</i>
decree of the senate	<i>senatus consultum</i>
delict	<i>delictum</i>
delivery	<i>traditio</i>
earnest	<i>arra</i>
enjoyment	<i>usufruct</i>
equitable action	<i>actio utilis</i>
fault	<i>culpa</i>
(of a) grave (character)	<i>atrox</i>

(with) help and advice	<i>ope consilio</i>
intent, wrongful	<i>dolus (malus)</i>
(fraudulent, malicious)	
law of nations	<i>ius gentium</i>
letting and hiring	<i>locatio conductio</i>
loan for use	<i>commodatum</i>
loan in kind	<i>mutuum</i>
loss wrongfully inflicted	<i>damnum iniuria [datum]</i>
mandate	<i>mandatum</i>
natural law	<i>ius naturale</i>
negligence	<i>culpa</i>
obligation(s) contracted by consent	<i>obligatio(nes) consensu</i>
obligation(s) contracted by the thing	<i>obligatio(nes) re</i>
obligation(s) contracted by words	<i>obligatio(nes) verbis</i>
obligation(s) contracted by writing	<i>obligatio(nes) litteris</i>
obligations arising from wrongs	<i>obligationes ex delicto / ex facto / ex maleficio</i>
ordinance of the plebeians	<i>plebiscitum</i>
outrage	<i>iniuria</i>
partnership	<i>societas</i>
plea of fraud	<i>exceptio doli</i>
pledge	<i>pignus</i>
principal division	<i>summa divisio</i>
purchase and sale	<i>emptio venditio</i>
robbery	<i>rapina</i>
Romans	<i>Quirites</i>
security for reappearance	<i>vadimonium</i>
statutory action	<i>legis actio</i>

surrender in court	<i>in iure cessio</i>
theft	<i>furtum</i>
theft which arises from the discovery of the thing after solemn search	<i>furtum conceptum</i>
theft which arises from the stolen thing being brought elsewhere	<i>furtum oblatum</i>
theft, manifest	<i>furtum manifestum</i>
theft, non manifest	<i>furtum non manifestum</i>
things not requiring for transfer the formal conveyance by copper and scale	<i>res nec Mancipi</i>
things requiring for transfer the formal conveyance by copper and scale	<i>res Mancipi</i>
(use and) enjoyment	<i>ususfructus</i>
verbal obligations	<i>obligationes verbis</i>
wrong, delict	<i>delictum</i>
wrongfully, wrong	<i>iniuria</i>

LATIN—ENGLISH TRANSLATIONS

<i>actio damni iniuriae</i>	action for wrongful damage
<i>actio depositi</i>	action of deposit
<i>actio furti</i>	action for theft
<i>actio in factum</i>	action on the case
<i>actio locati</i>	action on the letting
<i>actio mandati</i>	action on the mandate
<i>actio utilis</i>	equitable action
<i>actio vi bonorum raptorum</i>	action for robbery with violence
<i>adstipulator</i>	co-promisee
<i>arrha</i>	earnest
<i>atrox</i>	(of a) grave (character)
<i>casus</i>	accident
<i>commodatum</i>	loan for use
<i>condictio</i>	action for the value
<i>condictio furtiva</i>	action for recovery of the stolen thing or for its value
<i>contrectare, contrectat</i>	to deal / handle, deals / handles
<i>contrectatio</i>	dealing / handling
<i>culpa</i>	fault
<i>damnum iniuria [datum]</i>	loss wrongfully inflicted
<i>delictum</i>	wrong
<i>dolus (malus)</i>	wrongful (fraudulent, malicious) intent
<i>emptio venditio</i>	purchase and sale
<i>exceptio doli</i>	plea of fraud
<i>furtum</i>	theft

<i>furtum conceptum</i>	theft which arises from the discovery of the thing after solemn search
<i>furtum manifestum</i>	manifest theft
<i>furtum non manifestum</i>	non manifest theft
<i>furtum oblatum</i>	theft which arises from the stolen thing being brought elsewhere
<i>in iure cessio</i>	to surrender in court
<i>iniuria</i>	wrongfully, wrong
<i>iniuria(e)</i>	outrage(s)
<i>ius civile</i>	civil law
<i>ius gentium</i>	law of nations
<i>ius naturale</i>	natural law
<i>legis actio</i>	statutory action
<i>lex Aquilia</i>	Aquilian statute
<i>locatio conductio</i>	letting and hiring
<i>mandatum</i>	mandate
<i>mutuum</i>	loan in kind
<i>obligatio(nes) consensu</i>	obligation(s) contracted by consent
<i>obligatio(nes) litteris</i>	obligation(s) contracted by writing
<i>obligatio(nes) re</i>	obligation(s) contracted by the thing
<i>obligatio(nes) verbis</i>	obligation(s) contracted by words
<i>obligationes ex delicto / ex facto / ex maleficio</i>	obligations arising from wrongs
<i>obligationes verbis</i>	verbal obligations
<i>ope consilio</i>	with help and advice
<i>pactiones</i>	agreements
<i>pignus</i>	pledge

<i>plebiscitum</i>	ordinance of the plebeians
<i>Quirites</i>	Romans
<i>rapina</i>	robbery
<i>rei vindicatio</i>	action for recovery
<i>res Mancipi</i>	things requiring for transfer the formal conveyance by copper and scale
<i>res nec Mancipi</i>	things not requiring for transfer the formal conveyance by copper and scale
<i>responsa prudentium</i>	answers of the learned
<i>senatus consultum</i>	decree of the senate
<i>societas</i>	partnership
<i>summa divisio</i>	principal division
<i>traditio</i>	delivery
<i>usucapio</i>	acquisition by use
<i>ususfructus</i>	(use and) enjoyment
<i>vadimonium</i>	security for reappearance
<i>veluti</i>	for example; the only one
<i>vindicatio</i>	see: <i>rei vindicatio</i>