Encyclopedic Dictionary

of Roman Law

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PREFACE

The idea of preparing a Dictionary of Roman Law in encyclopedic form came to my mind soon after my arrival in the United States, as I became more familiar with the status of Roman Law in American schools and legal writing. The idea grew further while I was working with my friend, Professor A. Arthur Schneller of Columbia University School of Law, on a complete bibliography of the Romanistic literature published in English since 1939. It became increasingly clear to me that many a reader must encounter great difficulties in understanding the technical language of papers concerned with Roman Law. The severely restricted place occupied by Roman Law in college and university curricula has produced a situation in which it is entirely true that Romanistica non leguntur.

That I finally undertook the work, despite a variety of difficulties, may be attributed in large measure to the warm encouragement I received from scholars in various fields of Roman antiquities. They approved my plan enthusiastically and stressed the usefulness of a dictionary as I conceived it, designed for teachers and students of Roman Law in the classroom, for students of legal history who have no or only little Latin, and for readers of juristic or literary Latin works in translations which not always are reliable when legal terms or problems are involved. In particular, the idea of an encyclopedic dictionary with extensive bibliographies met with the approbation of everyone consulted.

Now, after several years of intensive work, after several decades of study and research in my chosen field, I may be permitted to offer this Dictionary to all who are interested in ancient Rome's legal institutions, sources, history, and language, to scholars and students, both beginners and those more advanced, with the wish and hope that the cupidia legum inventus may include in its desire for knowledge of the law that legal system which, even in our own day, is the foundation and the intellectual background of the law of a large part of the world.

No one is more aware of the deficiencies of a work of this kind than the author himself. The selection of the entries from all the domains of Roman Law, the maintenance of a proper proportion in presenting the various topics without concessions to those more familiar or more interesting to the author personally, and the necessity of remaining within the limits of a single volume, all created embarrassing difficulties. For the principles of selection and organization finally adopted, the reader is referred to the Introduction.

Preparation of the Dictionary would not have been possible if the American Philosophical Society had not been generous with renewed grants-in-aid from the very beginning of the project. I wish to express my deepest gratitude to the Society for this assistance and encouragement and for accepting the Dictionary for publication in its Transactions.

I am further grateful indebted to the Mid-European Studies Center of the National Committee for a Free Europe for the helpful interest it took in my work in its later stages. Thankful mention must also be made of the Social Science Research Council for grants in the years 1946 and 1949.

Invaluable assistance was rendered by several colleagues who assumed the tedious task of polishing the manuscript linguistically and stylistically. My most sincere thanks are due Professors M. I. Finley of the New-ark College of Rutgers University, Jacob Hammer of Hunter College, Lionel Casson of New York University, and Naphtali Lewis of Brooklyn College for the service they have rendered to me in true friendship.

A. B.

New York, June 15, 1952
MAlVAE

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S.
ENCYCLOPEDIC DICTIONARY OF ROMAN LAW

ADOLF BERGER

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INTRODUCTION

This Dictionary has several purposes: to explain technical Roman legal terms, to translate and elucidate those Latin words which have a specific connotation when used in a juristic context or in connection with a legal institution or question, and to provide a brief picture of Roman legal institutions and sources as a sort of a first introduction to them.

The objectives of the work, not the juristic character of available Latin writings, therefore, determined the inclusion or exclusion of any single word or phrase. Since the Dictionary is not intended to be a complete Latin-English dictionary for all words which occur in the writings of the Roman jurists or in the various codifications of Roman law, the reader must consult a general Latin-English lexicon for ordinary words that have no specific meaning in law or juristic language. In this respect, as in others, the present work differs fundamentally from Heumann's Handlexikon zu den Quellen des römischen Rechts (in the excellent edition by Emil Seckel, 1907). On the other hand, numerous entries concern words and phrases which occur only in non-juristic sources, literary writings or inscriptions, but which must, nevertheless, receive attention if the Dictionary is truly to survey all fields of the vast province of Roman law: private, criminal, public, administrative, sacral, and military law, taxation, etc. Many entries, furthermore, deal with Latin terms of medieval or modern coinage, unknown to the ancient Romans, but now widely accepted in the Romanistic literature.

All the more important entries are encyclopedic as well as lexicographical. That is to say, an attempt has been made in each case to depict as succinctly as possible, the historical development of the legal institution or term it defines, the use of certain words in the language of the jurists or the imperial chancery, and particular attention has been given to important substantial changes from early law to classical law and again in the reforms of Justinian. Additional matter is indicated by cross-references, printed in small capitals. Analogous terms and institutions are also noted by small capitals, sometimes in the body of the text, sometimes at the end of an entry. (As a matter of course, with a few exceptions, every Latin word used to explain or illustrate a term has its own entry even when that fact is not specifically indicated by the use of small capitals.) Synonyms and antonyms are indicated in many entries.

Considerable attention has been given to the sources themselves. A large number of entries are devoted to them, ranging in time from the archaic regal ordinances (the leges regiae) to Justinian's codification, and, in more limited measure, to post-Justinian Byzantine and medieval writings and collections of laws. Basic definitions, legal rules of fundamental importance, and characteristic utterances of the jurists are given in literal translations within quotation marks, followed by a citation of the pertinent source. Titles of the Institutes, Digest and Justinian's Code or Novels that deal ex professo with a specific topic are noted at the end of the
entry. Substantial interpolations by which classical institutions and terms were eliminated as well as the more reliable linguistic criteria have been taken into consideration.

BIBLIOGRAPHY

The extensive bibliographical apparatus is intended for a wide circle of readers. For that reason, space has been given to publications in English, many of which may be unknown to the international guild of Romanists, at the same time that works in other languages are fully represented in the interest of readers in other countries and of students and research workers who have a mastery of other languages. Stress has been primarily placed on the international Romanistic literature of the twentieth century. Earlier works are cited only when they have remained standard treatments or did not lose their importance despite later publications. All recent publications have been taken into account in so far as they were available. A few books that were not accessible to the author have been included after their usefulness was ascertained by correspondence with scholars abroad.

To insure completeness and at the same time to avoid wasteful duplication, the bibliography was divided into two distinct parts. A General Bibliography in twenty chapters appears as a block at the end of the Dictionary. It comprises textbooks and comprehensive general presentations, which as a matter of rule are not repeated in the bibliographies appended to the single entries, and literature concerning general problems of the development of Roman law, the sources and their editions, and the influence of Roman law on modern legal systems. The Anglo-American reader will find Chapter X, "Roman Law and the Anglo-American World" of special interest. It is a first attempt to provide an extensive bibliography of works and articles on the part played by Roman law in the development of the common law and on the value of the study of Roman law in countries in the sphere of Anglo-American law. Chapter XIV on Roman law in non-juristic sources, Chapter VI on the legal policies of the emperors, and Chapter XI concerned with the literature on the place of Roman law in legal education, are also first attempts at systematic bibliographic treatment.

The second part of the bibliographical apparatus is the specialized section, scattered throughout the Dictionary among the individual entries. Here, too, the aim was to satisfy both the beginner and the expert. First place has been assigned to the renowned encyclopedias: the Realencyklopadie der klassischen Altertumswissenschaft (RE) of Pauly, Wissowa, Kroll, et al., the Dictionnaire des antiquités grecques et romaines of Darenberg and Saglio (DS), the Nuovo Dizionario Italiano (NDI), De Ruggiero's Dizionario epigrafico (DE) and the very recent Oxford Classical Dictionary (OCD). Then come the special monographs, periodical articles, essays in volumes published in honor of, or in memory of distinguished scholars, congress publications, anniversary papers, and the like. Frequent reference has been made to doctoral dissertations in various languages, since at the very least they provide good bibliographies. On rare occasions special attention is drawn to reliable bibliographical references collected in other papers. In general, an effort has been made in the individual bibliographies to indicate appropriate sections within a larger work or publications whose titles do not suggest a discussion of the entry concerned. When the index word is mentioned in the bibliography it is frequently abbreviated to the initial letter.

Bibliographical omissions are unavoidable even when remarkable papers are involved. I am confident, however, that the selections scrupulously compiled will enable the reader to find without any difficulty the literature left out in this book.

GLOSSARY

A selected English-Latin Glossary is appended for the benefit of readers who have little or no familiarity with Latin legal terminology. It includes the more important terms in English whose Latin counterparts are not virtually the same. Thus, "sale" or "lease" are included, but not "senate" or "consul," "formula" or "exceptio." Terms connected with administration are generally omitted. The Latin words of the Glossary are covered by pertinent entries in the Dictionary proper together with the cross-references. Thus the reader will have the opportunity to become acquainted not only with the term itself but also its legal significance and applications.

LIST OF ABBREVIATIONS

AbA. Abhandlungen der Bayerischen Akademie der Wissenschaften (Munich).
ACDR. Atti del Congresso Internazionale di diritto romano, 1933; Bologna 1-2; Roma 1-2 (1934, 1935).
ACSR. Atti dei Congressi Nazionali di Studi Romani.
ADO-RDA; see RDA.
AG. Archivio giuridico.
AHE. Anuario de Historia de Derecho Español (Madrid).
AHP. American Journal of Philology.
AIA. Atti dell'Accademia delle Scienze morali e politiche della Società Reale di Napoli.

AnBar. Annali della Facoltà di giurisprudenza dell' Università di Bari.
AnCam. Annali dell' Università di Camerino, Sezione giuridica.
AnCat. Annali del Seminario giuridico dell' Università di Catania.
AnGren. Annales de l' Université de Grenoble. Section Lettres, Droit.
AnMec. Annali dell' Università di Macerata.
AnMe. Annali dell' Istituto delle Scienze giuridiche dell' Università di Messina.
AnPer. Annali dell' Istituto giuridico dell' Università di Perugia.
Ant. Ammali Triestini di diritto, economia e politica (a cura dell'Università di Trieste).

Ant. Antonynm.

Atti. Atti dell'Accademia scientifica di Padova.

AtW. Abhandlungen der Preussischen Akademie der Wissenschaften in Berlin, philosophisch-historische Klasse.

ArCP. Archiv für civilistische Praxis.

ArPop. Archiv für Papyrusforschung.


Ath. Athenaeum. Studi periodici di lettere, e storia dell'antichità (Paria).

ASt. Atti dell'Accademia delle Scienze di Torino.


BerSüchGW. Berichte der Sächsischen Gesellschaft der Wissenschaften, Leipzig, philosophisch-historische Klasse.

Bibl. Bibliography.

BIDR. Bulletino dell'Istituto del diritto romano.

Cl. Codex Iustinianus.


CentCodPav. Per il XIV Centenario della codificazione giuridica. Studi pubblicati dalla Facoltà di giurisprudenza di Pavia, 1934.

CJ. Classical Journal.

CIM. Classical et Mediaevalia (Kopenhagen).

GiPhilol. Giornale di Filosofia.

ConfConf. Conferenze romanistiche tenute nell'Univ. di Pavia nell'anno 1930 a ricordo di G. Castelli, Milano 1940.


ConfParl. Conferenze nel XIV Centenario della Pandetta, Milano, 1933.

CRAI. Compte Rendus de l'Academie des Inscriptions et des Belles Lettres.


D. Diposta Iustinianum.

DE. Dizionario epigrafico di antichità romane, ed. E. De Ruggiero.

DS. Dictionnaire des antiquités grecques et romaines, ed. Ch. Darenberg and E. Saglio.

Et. Etudes.

Fg. Festgabe.

Fil. Il Filantropo.


Fr. Vat. Fragmenta Vaticana.

Fehr. Festschrift.

GGA. Göttingische Gelehrte Anzeigen.


Herm. Hermes.

Hist. Historia. Studi storici per l'antichità classica (Milan).

I. J. J. Ihering's Jahrbiicher für die Dogmatik des heutigen römischen und deutschen Privatrechts.

Inst. Institutiones Iustinianum.

JRS. Journal of Roman Studies.

J. J. J. Jeremiad Review.

Klio. Beiträge zur alter Geschichte.

KvJ. Kritische Vierteljahreschrift für Gesetzgebung und Rechtswissenschaft.

LQR. Law Quarterly Review.

Mél. Mélanges.


MemLum. Memorie dell'Accademia dei Lincei.

MemLomb. Memorie dell' Istituto Lombardo di Scienze e Lettere.

MemVen. Memorie dell'Istituto giuridico dell'Università di Torino.


ND. Nuovo Digesto Italiano.


NRH. Revue historique de droit français et étranger. (since 1922 Revue historique etc. = RHD).

OCD. The Oxford Classical Dictionary.

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CentCodPav. Per il XIV Centenario della codificazione giustiziana. Studi pubblicati dalla Facoltà di giurisprudenza di Pavia, 1934.

CJ. Classical Journal.
A
A. Abbreviation for absolvus written by judges of criminal courts (see quaestiones) on wooden tablets (see tabellae) to indicate a vote for acquittal. See absolutio. A condemnatory vote was expressed by the letter C = condemno (= I condemna). In criminal matters submitted to the popular assemblies (see comitia) the abbreviations used were: L = libero for acquittal, and D = damno for condemnation. The abbreviation NL (= non liquet) meant that the case was not clear to the voter.—See liqere.
A. Abbreviation for antiquo, written by the participants in a popular assembly (see comitia) on wooden tablets, indicated a vote against the proposed bill. Antiquo = I leave it in the ancient state, I reject. On the contrary, the abbreviation UR = uti rogas (as you propose) was used for an affirmative vote.—See lex, rogatio.
A. ab. These prepositions appear in the official titles of the heads of certain divisions in the imperial chancery; see the following items. Some of these officials were later called magistri.
A. censusibis. An official of the imperial chancery charged with the examination of the financial situation of persons who aspired to admission to the senatorial or equestrian rank. Such admission depended upon the possession of a considerable property.—See census,ordo senatorius,equites.
Kalogothazes, DE 2, 114.
A. cognitionibus. The chief of the division of the imperial chancery concerned with judicial matters.—See cognitio.
De Ruggiero, DE 2, 320; v. Frenzstein, RE 4, 220.
A. commentariis. See commentarii,commentariensis.
A. consilia. See A stuibus.
A. diplomatibus. See diploma.
A. libellis. The head of the division of the imperial chancery which dealt with all kinds of petitions addressed to the emperor. His later title was magister libellorum.—See libellus.
Thédat, DS 3, 1174; v. Frenzstein, RE 13, 15.
A. memoria. A high official of the imperial chancery who prepared the drafts for the emperor's public allocations.
Blich, DS 2, 723; Fluss, RE 15, 655.
A. rationibus. The head of the division of the imperial chancery which was concerned with the emperor's financial matters and the control of the fiscal administration throughout the whole empire. From the time of Claudius he was an official of the state and not an imperial functionary.—See procurator a rationibus, rationes.
Rostowzew, DE 3, 133.
A. studii. An imperial official (from the middle of the first century) somewhat connected with the emperor's judicial activity, probably his special counsel in more complicated legal and governmental matters. Later his title was magister a studii. A similar office may have been that of the a consiliis.
Kühler, RE 4 A, 397; Chapot, DS 4, 1546; O. Hirschfeld, Kaiserl. Verwaltungsbeamte (1905) 332; Bernardini, Epigraphica 9 (1947) 56.

Ab actis. See acta.
Ab epistulæ. The director of the imperial secretariat which was subdivided into two departments, one for Latin (ab epistulis Latinis) and one for Greek letters (ab epistulis Graecis). The office was concerned with the private and official correspondence of the emperor, in both civil and military matters, and also with the appointment of military officers.—See epistula, scribium epistularum.
Rostowzew, RE 6, 210; Blich, DS 2, 712; De Ruggiero, DE 2, 2133.

Ab intestato. See intestatus.
Abactor. See abigeus.
Abactus. A magistrate forced to resign his office by the decision of a popular assembly.—See lex sem- pronia de abactis.
Abactus partus. See partus abactus.
Abaliensae. See alienatio. The term is used primarily of alienations through mancipatio.
Abdicatio. Renunciation, abdication, abandonment. In private law, the term is used of the renunciation of an inheritance or a guardianship (abdicatio tutelae). The abandonment of a child (abdicatio liberorum) by the head of a family (pater familias) was forbidden by the law, as expressly stated by Diocletian (C. 8.46.6), but was nevertheless practiced. In public law abdicatio indicates the resignation of a magistrate or an imperial official from his post.—See exponere liberum.
Leonard, RE 1; Neumann, RE 1; Humbert, DS 1; for abdicatio tutelae: Peruzzi, Rend.Bel 1918/9 = Scripta 3, 215; Solazzi, Rend.Lomb 51 (1918) 873; idem, St. Pace 6 (1921) 116; Sachsen, RE 7 A, 1532; for abdicatio liberorum: Düll, ZSS 63 (1943) 71.

Abigatua. Cattle stealing (rustling) from a stable or pasture. Unlike an ordinary theft (see furto) it was prosecuted as a public crime (see crima publica) and punished more severely.—D. 47.14; C. 9.37.
Hartmann, RE 1; Humbert, DS 1; Berger, Sem 2 (1944) 23.


Abiurare. To deny a debt on oath; to hold back fraudulently.—See iusurbandum.
Wissak, RE 1; D. Daube, Studies in biblical law, 1947, 229.

Aboliri. See abolitio.
Abolitio. (From abolere.) In penal law, the annulment of an accusation and consequently of the whole trial through deletion of the name of the individual
charged with a crime from the list of accused persons. See accusatio. Abolitio publica (= general abolition) was ordered by the emperor on the occasion of some happy event or of thanksgiving festivities (gratulatio). Withdrawal of the accusation by the accuser (desistere) or his death produced abolitio. Abolitio = extinction of the right of suing or prosecuting a person in civil or criminal matters.—D. 48.16; C. 9.42; 43.45.

Saglio. DS 1; A. Leschch. A. paschalix. Diss. Freiburg, 1904; P. Duparc, Origines de la grace dans le droit pénal rom., 1942. 24.

Abortio (abortus). Abortion. For abortio caused by a poisonous drink (poculum abortionis), see venenum.

Wassink. RAC 1 (1950).

Abrogare legem. To annul a statute in its entirety by an abrogating legislative act. A law may also lose its binding force by disuse (desuetudo) which is the expression of a "tacit consent of the whole people" (D. 1.3.32.1).—See derogare.

Absens, absentia. (In judicial trials.) The Twelve Tables already provided that the absent party automatically lost the case to the party present. Under the formulary procedure a plaintiff who did not appear in court was deemed to have renounced his claim. The absence of the defendant in the first stage of the trial before the magistrate (in iure) might under certain circumstances lead to the seizure of his property; see missio in bona; his non-appearance before the judge (apud indicem) might lead to his condemnation; see condemnatio, contumacia, eremodium. The normal consequences of the absence could be annulled by an extraordinary praetorian measure (restitutio in integrum) if it was justified by important reasons such as sickness, acting in the interest of the state, and the like.

Wlassak. RE 1; Kipp. RE 6. 417; Flimiaux. Et Girard 1, 1912; Solazzi. St. Simoncelli, 1917; idem, Concorso dei creditori 1 (1917) 66. 70 (Bibl.).

Absentes, absentia. Persons absent enjoy a particular protection in cases in which the defense of their rights required their presence. The remedies were various. In the case of justified absence the praetor could annul by means of restitutio in integrum any rights acquired to the prejudice of the absent person; see the foregoing item. Property of persons absent in service of the state (such as governors of provinces, officials, soldiers) could not be acquired by usuacipio. Such persons were also excused from civil charges, as tutela, cura. A particular defense was granted to Roman citizens who became prisoners of war. See capitolium, postliminium. In contractual relations the absence of the creditor does not interrupt the prescription of his actions. The distinction absentes—praesentes is of importance in the conclusion of verbal and consensual contracts: whereas the former require the presence of the contracting parties, the latter can be concluded inter absentes by means of a letter (epistula) or a messenger (nuntius).—In Justinian's rules on longi temporis praescriptio, inter praesentes means that the owner of the immovable and the factual possessor live in the same province. Ant. inter absentes.—See commensat. stipulatio inter absentes.

Wlassak. RE 1; Guarneri-Citani NDI 1 (s.t. assumpsit).

Absolutio. (From absolvere.) Refers to a judgment by which the defendant in a civil trial or the accused in a criminal one was absolved. In the formulary procedure the term was expressly used in the formula to authorize the judge to render an absoluto judgment (absolvitio).—See sententia.

Wlassak. RE 1; Leonard, ibid.

Absolutorius. There was a maxim in classical Roman law (Gai Ins 4, 114): omnia judicia absolutoria sunt = all civil trials may lead to an absolution (of the defendant). If the defendant satisfied the plaintiff after litis contestatio but before the judgment (sententia), the judge had to render an absoluatory judgment. The rule was accepted by some jurists only with regard to judicia bonae fidei, but by the second century it was generally recognized.

Abstinerne (se)heredita. The praetorian law granted the so-called sui et necessaria heredes the right to refuse the paternal inheritance (ius abstinendi) in order to avoid the acceptance of an insolvent inheritance which otherwise would fall to them automatically. —C. 2.38. —See pro herede gerere.

Absumpto. See res quae usu consumuntur.

Aburnius Valensa. A Roman jurist under Hadrian and Antoninus Pius, author of an extensive treatise on fideicommissa.

Jörs, RE 1 (no. 2); Orestano NDI 1.

Abusus. See res quae usu consumuntur.

Abuti. To abuse, to make bad use of a thing or a right, particularly with the intention to harm another.—See aemulatio.

Riccobono, BIDR 46 (1939) 1; Appleton. Rev. générale du droit 55 (1931) 115.

Accensi. Non-armed soldiers without any property qualification. They were mustered into a special centuria and formed a reserve troop which in battle took the place of fallen legionaries. Syn. velati (= clothed with a military cloak).—Accensi were also the orderlies of higher magistrates (with imperium).

Cichorius-Kubitschek. RE 1; Humbert—De la Bergé—Saglio. DS 1; De Ruggiero, DE 1; Vogel, ZSS 67 (1950) 86.

Acceptatio. An oral form of dissolving oral obligations, according to the rule that obligations contracted verbis had to be dissolved in the same way (orally). The stipulatory debtor asked his creditor: "What I promised to you, have you received it (habere acceptum)?" The latter answered "I have (habeo)." Later, Greek words were admitted. In order to dissolve an obligation other than an oral one by accepti-
latio, which was the safest form of receipt, the parties transferred the obligation into a stipulatio to which an acceptatio was afterwards applied. This extension of acceptatio was introduced by the jurist AQUILLIUS GALLUS who composed the formula of the novating stipulatio, called stipulatio Aquiliana.—D. 46.4; C. 8.43.

Leonhard, RE 1; Natalucci, NDI 1; De Ruggiero, Scritti A. Murgiari (1921) 415; Wlassak, ZSS 42 (1921) 394; Bohacek, AmPal 11 (1923) 379; Cugia, A. solutionis comparatar, 1924; idem, St. Masceleumi, 1938, 111; idem, St. Bonolis I (1942) 247; Michon, Rec. Gén. I (1934) 42; Solazzi, Estinzione dell’obbligazione, P 1935 246; P. Meylan, A. et paiament, 1934; G. Lombardi, Ricerche in tema di ins gentium 1946, 185; Deube, ZSS 66 (1948) 119.

Acceptum habere. See acceptatio; syn. acceptum facere, accepto ferre.

Acceptum rogare. The debtor’s question in acceptatio.

Accessio. (From accedere.) The union of one thing (land or movable) with another either by natural forces or artificially (mechanically, imgere) so that they form an organic unity (a whole, accessio materiae). The cases of accessio were very manifold. If the things mixed, melted, woven, etc., belonged to different owners, the question of ownership over the new whole might involve difficulties. A general rule was that when one of the things was only an accessory of the other, the ownership of the latter was decisive. Outward appearance, usage or custom determine which was principal and which accessory.—D. 22.1.—See fercuminatio, intexere, litterae, pictura, plantare, superficies, exhibere.

Leonhard, RE 1; Baudry, DS 1; Sanfilippo, NDI 1; Riccobono, AmPal 5 (1917); Guerini-Cintai, AMac 1926, 1929; idem, AnAc 1927; AmPal 14 (1930).

Accessio possessionis. Addition of possession. In some particular cases (longi temporis praescriptio, usuacapio, interdictum utrubi), the periods of possession of two or more successive holders were added together to the benefit of the last one. Syn. accessio temporis.

Zanussi, AG 72 (1904) 177, 353; 76 (1906) 3; P. Krüger, ZSS 26 (1905) 144; Summ, RISG 59 (1917) 225; Ratti, St. Bonumte 1 (1930) 263.

Accessio temporis. See accessio possessionis.

Accipere indicium. See iudicium accipere.

Acclamation. A demonstration of esteem and friendly feeling in the form of fixed cheers, tendered to high magistrates and later to the emperors when they appeared in public on certain occasions. A victorious general was acclaimed by a loud salutation when he entered the city of Rome in triumph. In the senate, acclamation was a sign of approval of the emperor’s oratio (see oratio principis). It was considered a vote and noted in records of the senate (acta senatus).

—See triumphus.

De Ruggiero, DE 1, 72; Saglio, DS 1; Klauer, Rac 1 (1950) 221; Desau, Ephemeris epigraphica 7 (1892) 429; Seeck, Rheinisches Museum 48 (1893) 199; O. Hirscheid, Kleine Schriften, 1913, 691; Charlesworth, JRS 33 (1943).

Accursius. A famous glossator (1182–1250), professor at the law school in Bologna. He compiled the glosses of other glossators (see Glossatores) in a general collection called glossa ordinaria.

Monti, NDI 1; E. Landsberg, Die Glosse des A., 1883; Geusner, Fischer-Wenger 2 (1945) 223; Torrelli, RISD 17 (1934) 429.

Accusatio. (From accusare.) Except for a few instances of a civil nature this means accusation in criminal affairs in the Roman criminal procedure of the last century of the Republic. Prosecution began at the initiative of a citizen (not a magistrate) who assumed the role of the accuser by denouncing the wrongdoer and filing a charge against him with the chairman of the competent criminal court (quastio). This first step of the accuser was called nominem deferre (nominis delatio), he being the delator (denouncer). If the magistrate accepted the accusation (nomine recipere), normally presented by writing (libellus accusatorius), he ordered its registration (scriptio) in the official record of persons to face a criminal trial. The accusatio could be supported by the signatures (scriptio) of additional accusers. In order to prevent malicious accusations, an oath (turamentum calumniarum) was imposed on the accuser.—In civil matters, accusatio is used in connection with a guardian alleged to be dishonest or negligent (see tector suspicetus), with a freedman, ungrateful to his patron (see ingratus), and with an undutiful testament (see Querela inofficiosi testamenti).—D. 48.2; C. 9.1.2.—See calumnia, capitis accusatio, edictum constantinii, praevencatio, tergiversatio, repete accusationem.

Leonhard, RE 1; Vinet, DS 1; Lauria, NDI 1; idem, A-inquisitisio, ANap 56 (1934); Wlassak, SchPbI 184, 1 (1917), 194 (1920); Hitzig, RE 4 (s.v. delatio nominis).

Accusator. An accuser in a criminal trial.

Accusatori libellus. See accusatio.

Acclius (Atullus ?), Lucius. A jurist of the early second century B.C., author of a commentary on the Twelve Tables.

Kiebs, RE 1, 252 (no. 7).

Acut. See Acut-.

Acta. Records drawn up by officials, concerning their activity and proceedings developed before them as well as certain binding declarations of private individuals (donations, testimony, etc.) made before them (apud acta). Syn. gesta, sometimes commentarii. The term for the performance of binding deeds, entered into the acta, is in later times insinmari.—Ab actis a general designation for officials concerned with acta (secretaries = scribæ), the subordinate personnel in the pertinent offices.

Kubitschek, RE 1; Weiss, RE Suppl. 7 (s.v. gesta); Humbert, DS 1; De Ruggiero, DE 1.

Acta Caesaria. Acts performed or ordered by the emperor before his death. They had to be respected by his successor who was obliged to take an oath to that effect upon accepting the throne. A similar oath with
regard to acta Caesaris was also compulsory for senators. Syn. acta principis, which may also mean the records of imperial orations, decisions, etc.

Acta diurna. An official law bulletin, introduced by Caesar for the publication of statutes and decrees of the senate (senatusconsulta) as well as of important news concerning the state, and the imperial family.

Acta militaria. Records pertaining to the administration of larger military units, as, e.g., legions, in which there was a file for each soldier summarizing his service and his financial affairs (proceeds, savings, and the like).

Kubitschek, RE 1, 286; Humbert, DS 1; O. Hirschfeld, Kleine Schriften, 1913, 682.

Acta populi. Another designation for ACTA DIURNAs.

They were also called acta urbis, urbane, publica, since they contained news about important local events.

Acta senator. Records of the discussions in the senate, another of Caesar's innovations (see ACTA DIURNAs). Orations of the emperor delivered in the senate were also published there.

Humbert, DS 1; De Ruggiero, DE 1, 45; O'Brien Moore, RE Suppl. 6, 770; O. Hirschfeld, Kleine Schriften, 1913, 689.

Actio. In the definition of the jurist Celsus, "nothing else than the right of an individual to sue in a trial for what is due to him" (D. 45.1.51; Inst. 4.6 pr.).

In the formal sense actio is referred to the action of a plaintiff by which he initiates a suit (actiones expestrii, actionem exercere) as well to the whole proceedings, or to the formula granted for a specific claim. In this last meaning actio is synonymous with iudicium, both being applied to particular formulae.

—See IUDICIUM, PETITIO, DARE ACTIONEM, DENEGARE, REPETERE ACTIONEM, PERIRE.—Inst. 4.6; D. 44.7; C. 4.10.—In the following presentation the different types of actions appear under actiones; the specific actions are dealt with either under the name of the legal institution with which they are connected or under their own denomination.

Wissee, RE 1; Anon., DS 1; Landucci, NDI 1; Brugi, NDI 1 (s.e. amicis); Albertario, In tema di classificazione delle amoli, 1928 (= Studi 4 [1946] 219); Arangio-Russo, Cours de droit romain. Les actions, Naples, 1935; G. Fogliese, Actio e diritto subbotivio, 1939; Biondi, ACDR, Roma II (1935) 185.

Actio ad exhibendum. See EXHEREBEE.

Actio ad supplendum legitimam. See FARS LEGITIMA; QUERELA INOFFICIOSI TESTAMENTI.


Actio aemmatioria. See ACIO QUANTI MINORIS, AEMMATUM, EMPTIO.—D. 19.3.

Actio aquae pluviae arcandae. Action against the owner of a neighboring plot of land for having constructed a work which might change the natural flow of rain-water to the detriment of the plaintiff's property. The actio had to be brought before damage was done; the defendant when defeated had to remove the construction. Originating in the Twelve Tables, the actio acquired a different aspect in Justinian's law since its availability was considerably reformed.—D. 39.3.

G. Baviera, Serviti 1 (1909); Berger, ZSS 31 (1910) 405; Schönhauer, ZSS 54 (1934); M. Sargenti, L'actio, 1940.

Actio arbitrarium. See ACIO DE EO QUOD CERTO LOCO, ACTIONES ARBITRARIAE.

Actio arborum furtum caesarii. The Twelve Tables introduced this actio against anyone who secretly cut down trees belonging to another's property. The fixed penalty of 25 asses for each tree was later changed to double value by the praetorian action de arborebus suffectis, modeled after the decemviral action. Moreover, the wrongdoer could be sued for the damage done through the actio LEGISAquilae.

—D. 47.7.

P. Huvelin, Le furtum, 1915, 67; Flinius, St. Boniface 1 (1929) 523; Berger, St. Ricobono 1 (1936) 614; E. Carrelli, SDHI 5 (1939) 327; idem, AnbBari 2 (1939); Kiesling, Jour. of jur. papyrology 4 (1950) 317.

Actio auctoritatis (de auctoritate). The transferor of quinary ownership over a RES MANCIPI through MANCIPIATIO was obliged to defend the transferee against a claim of ownership (REI VINDICATIO) by a third person (see EVICTIO). In this context auctoritas means a kind of guaranty in case of eviction. If the transferor failed to do so or the transferee lost the case, the latter had actio auctoritas for double the price paid. This liability on the part of the mancipio donum (the transferor) lasted according to the Twelve Tables two years for immovables, one year for all other things, because after these periods the transferee acquired full ownership through USUCAPIO. Where usucapio by the transferee was excluded, as, for instance, in the case of stolen things, or of a transferee who was a foreigner (hostis) the liability for auctoritas of the transferor was unlimited in time, "eternal" (aeterna auctoritas).

Leis, RE 2, 226; Ferrari, NDI 1 (s.e. auctioritas e.); E. Levy, Die Konkurenz der Aktionen, 2, 1 (1922) 238; P. F. Girard, Mélanges 2 (1922) 5, 153, 290; Leifer, ZSS 56 (1936) 136; v. Lütow, Festschr. Fhr. Kaschak (1939) 117; De Vischer, RHD 16 (1937) 574; (= Nouvelles Études, 1949, 179); Giscard, RHD 17 (1938) 339; P. Noailles, Fas et 1s, 1948, 339; M. Kaser, Eigentum und Besitz, 1943, passim; idem, ZSS 68 (1951) 168, 174; Magdelain, RIDA 5 (= Mé De Vischer 4, 1950) 145.

Actio calumniae. See IUDICIUM CALUMNIAE.

Actio calumniosa. An action brought by a plaintiff only with the purpose of chicanery. —See CALUMNIA.

Actio Calvisiana. The patron's right to inherit from his freedman was protected by this action against fraudulent alienation by the latter in the case of intestacy. If the freedman's testament contained dispositions to defraud the patron the analogous action for annulment of such dispositions was the actio Fabiana. —See FRAGMENTUM DE FORMULA FABIANA.

E. Levy, Privatsache und Schadenersatz (1915) 69.

Actio certae creditae pecuniae. See MUTUM.
Actio civilis in factum. See Actio Praescriptis Verbis.

Actio civilis incerti. See Actio Praescriptis Verbis.

Actio commodati. See Commodatum.

Actio communis dividendo. Action among co-owners for division of common property. Along with this primary function, the actio served for the settlement of all other controversial questions that might arise from common ownership, e.g., from unequal distribution of profits from, or expenses on, the common thing. The actio belongs to the category of Iudicia Bonae Fidei; thus the judge had the possibility of taking into account and adjusting the various reciprocal liabilities among the co-owners (praestationes personales).—D. 10.3; C. 3.37; 38.—See Communio, Communis, Societas, Diversio, Actiones Duplices, Aequidativus.

A. Berger, Zur Entwicklungsgeschichte der Teilungsaklagen im klassischen röm. Recht, 1912; Alberti, Studi 4 (1946, ex 1913) 167; Arangio-Rusia, RISG 52 (1912) 223; Bioni, AnPer. 1913; Elin, BIDR 39 (1931) 73; Frezza, RISG 7 (1932) 3.

Actio conducti. See Locatio Conducti.

Actio confessoria. See Vindicatio Servitutis, Confessio in Iure.

Actio constitutoria. See Constitutionum.

Actio curationis causa utilius (Iudicium curationis utile). The name given by Justinian to the action granted the curator of a minor for recovery of expenses or losses he had incurred in connection with the management of the ward’s affairs.—See Minores, Curator Minoris.

Actio damni infecti. See Damnum Infectum.

Actio de aestimato. See Aestimatum.

Actio de albo corrupto. Action for spoiling, damaging or falsifying the praetorian edict promulgated on the album. The actio is penal, in factum, and popular. See Actiones in factum, Actiones Populares, Album, Edictum.

Actio de arboribus succession. See Actio Arborum Furtim Carasum.

Actio de delectis vel effusis. A praetorian action against a householder for throwing things or pouring liquids from his dwelling, so as to harm people on the street. The householder is responsible also if his slave, guest, or child did so. Justinian listed such cases among obligations which arise “as if from a delicat” (obligationes quee quasi ex delicato nascentur). Similar responsibility arose when things were located or suspended on the outside of a house or in a window in such a way as to endanger passers-by. The pertinent action was actio de positis ac suspensis.—See Hospes.

Fioreti, NDI 5 (s.v. effusis); G. A. Palazzo, Obligazioni quasi ex delicato, 1919.

Actio de dolo. See Actio Doli.

Actio de dote (dotis). In some interpolated passages the name for the action for recovery of a dowry (actio rei uxoriarum), thoroughly reformed by Justinian.—See Doss.

Actio de eo quod certo loco. If someone promised by stipulatio a performance at a certain place, the creditor could sue him only there since the fulfillment of the obligation at another place might be more expensive to the debtor. By this praetorian action the judge was given the possibility of taking into account the difference. The action is also termed arbitrarium for a reason which is not quite clear; its classical formula had not the arbitrium-clause which was the characteristic feature of the so-called Actiones Arbitrariae.—D. 13.4; C. 3.18.—See Fluris Pettitio Loco.

G. v. Bessler, Editorum de eo quod certo loco, 1907; Dumas, NRHD 34 (1910) 610; Arangio-Rusia, BIDR 25 (1912) 130, 26 (1913) 147; Bioni, AnPal 1 (1916) 19; idem, BIDR 26 (1913) 5 153; Lenel, ZSS 37 (1916) 121; Bessler, TR 8 (1928) 326; S. G. Huvardas, Beiträge zur Lehre von den actiones arbitrariae, 1932; Asteti, AnComm 11, 2 (1937) 157; L. Wenger, Institutes of the Roman Law of civil procedure, 1940, 151; Biscardi, StSen 60 (1948) 656 (Bibl.); D’Oria, RIDA 4 (1950) 455.

Actio de in rem verso. See Peculum.

Actio de modo agri. If land is transferred by mancipatio the transferee has this actio against the transferee if the area of the transferred land proves to be less than asserted by the former owner. The latter must pay double the proportionate part of the price. Coa, DS 3, 1958.

Actio (judicium) de moribus. The action of a husband against his wife in case of divorce for misconduct. The actio, which in ancient times may have been merely a criminal accusation, is penal in character and, under certain circumstances, may cause the divorced wife to lose her whole dowry. The action was abolished by Justinian.—C. 5.17.

Klingmüller, RE 9 (s.v. iudicium, de m.); Coa, DS 3, 2001; Wolff, ZSS 54 (1934) 315 (Bibl.); Volterra, RISG 85 (1948) 115.

Actio de pastu pecoraria. Action for damage caused by another man’s cattle grazing on the plaintiff’s property. Belongs to the category of Actiones Noxales.—See Nox.

Fiinaux, MH Cornul 1 (1926) 245; Carrelli, AnBari 2 (1939) 3.

Actio de pauperia. Action for damage done by a domestic four-footed animal (quadrupes). Its owner had either to compensate for the damage (pauperias) or surrender the animal (noxas dedere). See Noxa. Justinian extended the actio to another case of liability of animal owners. Keeping a dog or a savage animal near the road was prohibited by the edict of the aediles and the injured victim was entitled to redress. Justinian granted an actio de pauperia in such a case in addition to the aedilician action.

Robbe, NDI 9 (s.v. pauperias); Haymann, ZSS 42 (1921); E. Levy, Konkurrenz der Aktionen, 2, 1 (1922) 225; Bioni, AnPal 10 (1923) 3; Kerr Wylie, St. Riccobono 4 (1936) 459; Robbe, RISG N.S. 7 (1932) 327; Lenel, ZSS 47 (1937) 2; Viacovi, St. Solmi 1 (1941) 157; Dühl, ZSS 61 (1941) 1; Coodnari-Michler, Febru Wenger 1 (1944) 235.
Actio de peculio. See PECULIUM.
Actio de pecunia constituta. See CONSTITUTUM.
Actio de positis ac suspensis. See ACTIO DE DEECTIS VEL EFFUSIS.
Actio de rationibus distrahenndis. Action for double damages against a guardian guilty of embezzlement; it was available only after the termination of the guardianship.—D. 27.3.
Sachers, RE 7 A, 1563; Solazzi, Rep Lomb 50 (1917) 178; 53 (1920) 121; Levy, Konkurrenz der Aktionen 2, 1 (1922) 247.

Actio de servio corrupto. See ACTIO SERVI CORRUPTI.
Actio de termino termino. Action against the person who intentionally removed and set at another place a boundary stone in order to change the boundary of a landed property to the prejudice of the owner. Such an action could be brought by any citizen.—See TERMINUM MOVERE, ACTIONES POPULARES.

Actio de tigno iuncto. See TIGNUM IUNCTUM.
Actio de universitate. A postclassical name for HERE-DITATIS PETITIO.
E. Albertario, Studi 4 (1946) 65.

Actio doli (de dolo). Action for fraud (dolus, dolus malus), introduced by the praetor Aquilius Gallus in 66 B.C. In the praetorian edict, it was generally promised for restitution of damages by the following announcement: "When acts are alleged to have been done dolo malo (by fraud), if there is no other action available in such a case and there appears to be just cause, I shall grant an action" (D. 4.3.1.1). Its applicability was gradually extended, even in Justinian's law. Actio doli belongs to the category of ACTIONES IN FACTUM; it is of penal character, inflaming, limited to one year (after Constantine to three years) from the time the fraud was committed, and available only when no other remedy, particularly a contractual one, could be applied. Because of its general applicability the actio is called by Cicero "a drag-net of all ill-will" (De nat. deorum 3.30.74).

Actio dotis. See ACTIO DE DOTE.

Actio empti (ex empto). See EMPTIO.

Actio ex stipulatu. See STIPULATIO.

Actio ex testamento. Action of a legatee against the heir to enforce a legacy bequeathed per damnationem or sinendi modo. See LEGATUM.

Actio exercitoria. See EXERCITOR.

Actio Fabiana. See ACTIO CALVISIANA.

Actio familiae (h)erciascundae. Action among co-heirs (COHEREDES) in order to bring about division of the common property inherited.—D. 10.2; C. 3.36; 38.—See DIVISIO, FAMILIA.
Frezza, NDI 1; Sciascia, AG 132 (1945) 75; see ACTIO COMMUNI DIVIDENDO.

Actio fiduciae. See FIDUCIA.

Actio finium regundorum. Action between neighbors to settle a dispute over the boundaries (fines) of their lands. The judge (an arbitrator, often an expert land-surveyor = agrimensor) could transfer a piece of land from one party to another into full ownership (ADUIDICATIO). D. 10.1; C. 3.39.
Humbert, DS 2 (xv. finium reg. a.) Arangio-Ruiz, BIDR 32 (1922) 5; Buckland, RHD 15 (1936) 741.

Actio funeraria. The praetor granted an action to a person who arranged a funeral at his own expenses without being obliged to do so. The heir who did not fulfill his duty of piety towards the deceased because of negligence or absence, was liable.—D. 11.7; C. 3.44.—See FUNDUS, SUMPTUS FUNERUM.
Coq, DS 2, 1405; De Francisci, FIl 40 (1915); idevm, AnPer 32 (1920); E. Levy, Privatstreue und Schadenersatz, 1915, 33; Donatui, SDHI 8 (1942) 18.

Actio furti. See FURTUM.

Actio furti concepsi. See FURTUM CONCEPTUM.

Actio furti non exhibiti. See FURTUM NON EXHIBITUM.

Actio furti oblati. See FURTUM CONCEPTUM.

Actio furti prohibiti. See FURTUM PROHIBITUM.

Actio hypothecaria. See HYPOTHeca.

Actio incerti. ACTIO EX STIPULATU and ACTIO EX TESTAMENTO have sometimes the addition incerti. ACTIO CIVILIS INCERTI is a Justinian creation.—See ACTIO PRESCRIPTIS VERBIS, LEGATUM, STIPULATIO.
De Villa, A. I. 1932; Giffard, SDHI 3 (1938) 152; idevm, RHD 16 (1937) 670.

Actio in iudicem qui item suam facit. See TUIDEX QUI, etc.

Actio iniuriarum. See INJURIA.

Actio institoria. See INSTITOR.

Actio institutoria. See ACTIO QUAE INSTITUT OBLIGATIONEM.

Actio interrogatoria. See INTERROGATIO.

Actio iudicati. See IUDICATUM.

Actio iurisdendentis. See IURAMENTUM VOLUNTARIUM.

Actio legis Aquilae. See LEX AQUILA.

Actio legis Plaetorae. See LEX PLAETORI.

Actio locati. See LOCATIO CONDUCTIO.

Actio mandati. See MANDATUM.

Actio negatoria (negativa). Action brought by the owner of a landed property against anyone who, without denying the plaintiff's ownership, claimed a servitude or usufruct over his property. The aim of the actio was judicial recognition that the plaintiff has full ownership not encumbered by any right of the
Actio oneris aversi. Action against the master of a ship for fraud committed in the delivery of cargo.

Actio operarum. See OPERAE LIBERTI.

Actio pauliana. See FRAUS, INTERDICTUM FRAUDATORIUM.

Actio pinchergatica. See PIGNUS, HYPOTHECA.

Actio praescriptis verbis. Not a classical term; the classical jurists speak of *agere praescriptis verbis* when "common and usual names of actions are lacking," that is to say, when the foundation of an action is a bilateral transaction for reciprocal performances which do not conform to the typical and recognized species of contracts. The name *praescriptis verbis* originates from the fact that in the respective formula the factual background of the action had to be described, *praescriptis verbis rem gestam demonstrare*. Justinian’s collaborators created the term *actio praescriptis verbis* and extended the applicability of the action although the formulary procedure had been out of use for centuries. It was qualified by Justinian as an *actio bonae fidei* and had a general function, being adaptable to very different legal situations in which the plaintiff after performing his duty claimed the performance of the reciprocal duty by the defendant. The terminology is not stable, the *actio* is also called *actio civilis incerti, civilis in factum*, and by other names.—D. 19.5; C. 4.64.


Actio principalis. See ACTIONES DIRECTAE.

Actio pro socio. See SOCIETAS.—SYN. JUDICIUM SOCIETATIS.

Actio prohibitoria. An action similar to *ACTIO NEGA-
TORIA*. Its existence in classical law is controversial. It is assumed that its *INTENTIO* aims at recognition of the plaintiff’s right to forbid the defendant to exercise a certain right (servitude, usufruct) over the plaintiff’s property. See VINDICATIO SERVITUTIS.


Actio protutelae. Action against a person who acts as a guardian (*protutore*) without having been legally appointed.

Peters, *ZSS* 32 (1911) 243; Solazzi, *AS* 91 (1924) 150.

Actio publiciana in rem. An honorary action (*actio honoraria*) created by a praeator named Publicius and granted to the bonitary (in bonis) owner of a thing for reclaiming property of which he has lost possession. The plaintiff has to prove only that he acquired the thing under conditions which put him in the position to usucapit it. It is an *actio ficticia*, the fiction being that the plaintiff had already acquired full property by a completed usuaspio. The function of the *actio Publiciana* was the same as that of *REI VINDICATIO*, which, however, the plaintiff could not use because he had no quiritary ownership.—D. 6.2.—See ACTIONES FICTICIAE, EXCEPTIO IUSTI DOMINI.


Actio quae instituit obligationem. Improperly called *institutoria*, a term unknown to the sources. If a woman intervened for another person by assuming a contractual obligation for him, her intercession being void, the praeator granted the creditor an action directly against the real debtor who personally was not obliged.—See INTERESSIO, SENATUSCONSULTUM VELLAEANUM.


Actio quae restituit obligationem (restitutoria). When a creditor lost his *actio* against his debtor because of a novatory intercession by a woman, the praeator granted him the primary action since the woman's intercession was void. See INTERESSIO, SENATUSCONSULTUM VELLAEANUM.


Pringsheim, *ZSS* 69 (1952) 234.

Actio quasi institoria. See INSTITOR.

Actio quasi Serviana. See PIGNUS, HYPOTHECA.

Actio quod iussu. See IUSSUM.

Actio quod mutua causa. See METUS.

Actio rationibus distrahendis. See ACTIO DE RATIO-
NIBUS DISTRAHENDI.

Actio recepticia. See RECEPTUM ARGENTARIO.

Actio redhibitoria. See EMMPTIO.

Actio rei uzoriae. See DOS.

Actio rerum amotorum. Action for recovery of things stolen by the wife from her husband in view of an imminent divorce. The milder qualification "for having taken things away" instead of "having stolen" (*furtum*) was chosen to avoid the infaming *actio furti* between husband and wife.—D. 25.2; C. 5.21.—See RETENTIONES DOTALES.

Zambrucchi, *RISG* 42 (1906); 47 (1910); Kretschmar, *ZSS* 59 (1939) 199.

Actio rescissoria. In a few cases an action is granted for the annulment of a legal situation created by special circumstances, as in the case of the return of a soldier from captivity or of a person who had been absent in public service. By bringing this *actio* within a year after their return, they could rescind the usucapio (*rescindere usucapionem*) achieved during their absence. See ABSENTES.

Actio restitutoria. See actio quae restituit obligationem.

Actio Rutiliana. An action devised by the praetor Rutilius to the benefit of the purchaser of the property of a bankrupt debtor (bonorum emporior). For debts due to the latter, whose universal successor the bonorum emporior was, he sued in the name of the other (see intentio), but asks for condemnation in his own name. Another actio granted to the bonorum emporior was the so-called actio Serviana by which he sued under the fiction “as if he were the heir” (facto se herede) if the bankrupt died. See actiones ficticiae, conversate, bonorum venditio.

Actio sequestrali. A praetorian, penal action in case of violation of a grave.—D. 47.12; C. 9.19.—See sequestrum, violatio sequestrali.

Actio sequestraria. See sequester.

Actio servi corrupti (de servio corrupto). Action by a slave’s master in case of his slave’s corruption. Those liable were persons who persuaded the slave to commit robbery or some other crime, moral misconduct or luxury, to flee from his master, and the like, so that the slave became worse (deterior factus). The corruptor (insitigator, sollicitator) is responsible only when he did it purposely (dolo malo). He had to pay not only the lesseuing in value of the slave but also double damages done by the slave.—D. 11.3; C. 6.2.

Kleinfeller, RE 4; Schiller, Columbia Law Rev. 30 (1930) 839; idem, St. Riccobono 4 (1936) 79.

Actio Serviana. See pignus, hypothec.

Actio Serviana. Of the bonorum emporior, see actio Rutiliana, venditio bonorum.

Actio subsidia. An action granted to a ward against a municipal magistrate for having appointed an incapable guardian or having failed to demand adequate guarantee from the appointed guardian (see cautio rem pupilli salvum fore). Roman and provincial magistrates were not answerable under this action.—D. 27.8; C. 5.75.

Sachser, RE 7 A, 1581; E. Levy, Privilegien und Schadensersatz, 1915, 41; Brugi, Mol Girard 1 (1912) 143; Berger, Krjv j 16 (1914) 84.

Actio tributaria. A praetorian action lying against a father or master whose son (or slave) doing commercial business with his peculium, contracted debts with the knowledge of the father (master), and the peculium subsequently became insolvent. The remainder of the peculium was to be shared proportionally among the creditors and the father (master) if anything was due to him. Claims on the part of the creditors that an unfair distribution has been made by the father (master) could be sued by actio tributaria.—D. 14.4.

—See peculium.


Actio tutelae. See tutela.—D. 27.3.

Actio vectigalis (actio quae de fundo vectigali proposita est). See ager vectigalis.

Actio venditii. See emptio.

Actio vi bonornem raptorum. See vis, rapina.

Actiones adiectiliae qualitatis. See exercitor navis.

Actiones aediliciae. Actions introduced by the aedilician edict. They were concerned with the sale of slaves and animals (see emptio) and damages caused by animals, see actio de pauperie.—C. 4.59.—See dictum aedilium curium.

Actiones annales. See actio temporales.

Beretta, RISG 2 (1948) 353.

Actiones arbitrariae. Actions the formula of which contained the so-called arbitrary clause authorizing the judge to bid the defendant by an arbitrium (arbitratus), an interlocutory order, to satisfy the defendant’s claim by restoring or producing (exhibere) the object claimed (“nisi arbitrio tuo [of the judge] res restitutur, exhibetur”). If the defendant did so, he was absolved; if not, the final judgment condemned him to pay a sum of money, which was more disadvantageous to him than the immediate fulfillment of the judge’s order (he might be condemned to a higher amount, he had to pay a fourfold amount in the actio quad metus causa [see metus], he incurred infamy in actio doli, etc.). It is controversial whether the words “arbitrio tuo” were in the formula and whether the term arbitrariae actiones was used by the classical jurists.

Biondi, BIDR 26 (1913) 153; idem, St. sulle actiones arbitraria e arbitrarium iudicis, 1913; May, Mié Girard 2 (1912) 151; Lenel, Fisch Sohn, 1914, 201; Berger, Krjv j 16 (1914) 122; Levy, ZSS 36 (1915) 1; R. D’Urb, Der Genezedenk, 1931; M. Kaiser, Restituentia als Prozesselement, 1932; G. Wournard, Beitriige zur Lehre von der a. a., 1932; Herditterz, Zur Lehre vom Zwischenwritel bei den a. a., 1930; idem, Sskam zum röm. Zivilprozess, 1934; Schönbauer, St. Riccobono 2 (1936) 371; F. Schulz, Class. R. Law, 1951, 37.

Actiones bonae fidei. See iudicia bonae fidei.

Actiones (formulatione) certae. Actions with a precisely specified object, sum of money or a thing, claimed by the plaintiff. Ant. actiones incertae. In the formulation procedure the object in dispute was defined in the intentio of the formula. Hence the distinction: intentio certa and incerta. In the latter the plaintiff’s claim is directed to “quidquid” (= whatever it will appear that the defendant has to pay or do).

Actiones civiles. Actions which protected rights recognized by the ius civilis. Their origin lay in the Twelve Tables, in certain statutes or in the creative activity of the jurists. Ant. actiones honorariae, see actiones praetoriae, actiones aediliciae.

Actiones contrariae. See actiones directae.

Actiones directae. (1) Actions the formula of which could be extended through an appropriate modification to analogous factual circumstances, not covered by the original formula. The modified formula was an actio situlis, as opposed to the original actio directa. (2) Actions arising from certain contracts which normally created liability in one party, as, e.g.,
in the case of a deposit or mandate the action of the depositor or mandator, were *actiones directae*. Under exceptional circumstances, however, the party primarily bound, the depositee or the mandatory, had a claim against the other party. Such actions are called by Justinian *contrariae* as opposed to the *actiones directae* of the parties who as a matter of rule are creditors in such contracts. The same holds true for non-contractual situations, such as guardianship, since the guardian had an *actio contraria* (*judicium contrarium*) against the ward. Other terms for *actio directa* are *actio principalis*, and rarely, *judicium rectum*. The concept of *actio contraria* is controversial.—D. 27.4; C. 5.58.


**Actiones duplices.** See *judicia duplica*.

**Actiones famosae.** Actions in which the condemnation of the defendant involved *infamia*: he became infames (ignominiosus). Such actions were: *actiones funeri, vi bonorum raptorum, insiuriarum, de dolo, mandati, depositi, and others*. Syn. *actiones turpes*.


**Actiones ficticiae.** Praetorian actions adapted by the use of a fiction in the formula to legal situations not protected by the original formula. For instance, some actions became available to foreigners under the fiction "as if they were Roman citizens." In the *actio publiciana* the claim for recovery of a thing was based on the fiction that *usucapio* has been completed. Actions granted to, or against, a successor by praetorian law (*bonorum possessor*) contained the fiction "as if he were heres."


**Actiones hereditariae.** Actions in favor of, or against, the heir, connected with an inheritance.—Inst. 4.12; C. 4.16.

**Actiones honorariae.** Actions originating in praetorian or aedilician law.—See *actiones aediliciae*, *actiones praetoriae*. Ant. *actiones civiles*.

M. Kaiser, *Das aedil. Recht*, 1949, 94.

**Actiones in bonum et aequum conceptae.** This term, mentioned only once (D. 4.5.8), refers to certain *actiones in factum*, primarily in cases of torts in which the *condemnatio* contained the clause *quantum bonum et aequum* (or simply *aequum*) video. It authorized the judge to fix the sum of condemnation at his discretion "as it would seem to him just and fair." The foundation of the *actiones* was not a contractual relation between the parties but a behavior of the defendant which caused some harm to the plaintiff. Such actions were, e.g., *actiones rei uxoriae, funeraria, insiuriarum, sepulcri violati*, and the action against the judge *qui iure sanam facit*. In origin, there certainly were formal and substantial differences between these *actiones* and *IUDICIA BONAe FIDEI*. The disappearance of the formulary procedure furthered their equalization fully completed in Justinian law.


**Actiones in duplum.** See **actiones in simplicium**.

**Actiones in factum.** See *formulæ in usus conceptæ*.

**Actiones in id quod pervenit.** Actions by which the plaintiff claimed only what the defendant obtained to his detriment.—See *actiones foenales*, *pervertere ad aliquem*.


**Actiones in usus conceptæ.** See *formulæ in usus conceptæ*.

**Actiones in personam.** Actions in which the plaintiff based his claim on a contractual or delictual obligation of the defendant. Ant. *actiones in rem* = actions in which the plaintiff asserts a right to a certain thing (ownership, servitude) possessed by the defendant. This basic distinction is expressed by a different wording of the *intentio* in the formula: in the *actiones in personam* the defendant is sued for *dare, facere, praestare opertum* (= to give, to do or to perform something), in the *actiones in rem* the plaintiff affirms that the corporeal object he claims is his or that he has a certain right over the adversary’s property. The former actions lie against the person obligated by a contract or a wrongdoing, the latter may be brought against any person who withholds the thing involved from the plaintiff. *Actiones in rem* are also called *vindicaciones* (*rei vindicatio*, *vindicatio servitutis*); to *actiones in personam* the term *conditiones* is applied, in post-classical and Justinian law the term *actiones personales*.


**Actiones in rem.** See **actiones in personam**.


**Actiones in simplicium.** It is a general rule that the aim of each action is the simple value of what the plaintiff claims (*simplicium*). There are, however, *actiones* in which the defendant is condemned to pay twofold (*duplum*), threefold (*triplum*), even fourfold (*quadruplum*) the value. The liability of the defendant is doubled, for instance, in certain actions when he deliberately denies. See *INFITIATIO*. Higher rates of condemnation occur in cases of theft.—See *FURTUM, DUPLUM*.

**Actiones incertae.** See **actiones certae**.

**Actiones interrogatoriae.** See *interrogatio in iure*.

**Actiones mixtæ.** The term, doubtless of non-classical
origin, is used in various meanings. JUDICIA DUPLICIA are so called likewise actions which simultaneously serve different purposes (recovery of a thing and penalty), finally actions which are both in rem and in personam (actiones quod mutus causa, see ACTIONS IN PERSONAM).

Berger, St Simoncelli, 1915, 184 (Bibl.); idem, ZSS 36 (1915) 218; U. v. Lübben, Editio nova quod mutus causa, 1932, 292; P. Voci, Risorsimento e pena privata, 1939, 91.

**Actiones mutuae.** See MUTUA PETITIONES.

**Actiones noxales.** See NOX.

**Actiones perpetuæ.** Generally actions could be brought without limit of time. Such were all actions civiles. A constitution of Theodosius II (A.D. 424) introduced a thirty-year period of prescription for all actions with a few exceptions. Since then all actions which extinguished after thirty years, we called perpetuæ.—Inst. 4.12; C. 7.39.—See PRAESCRITTO TRIGINTA ANNUMMOR.

**Actiones personales.** Postclassical and Justinianian term for ACTIONS IN PERSONAM.

**Actiones poenales.** Also called actiones quibus poenam persequimur. Actions by which the plaintiff sued for payment of a penalty because of a private offence committed by the defendant. Penal actions are transmissible only to the heir of the plaintiff, but not to the heir of the defendant, except in certain cases for his enrichment (in id quod ad eum pervenit, or quantum locupletior factus est).—See DELICTA.

P. De Francisci, SÌ sopra le actioni penali, 1912; E. Levy, Privatstrate und Schadensersatz, 1915; Rieckhoff, ZSS 47 (1927); G. Maier, Praetorische Bereicherungsclagen, 1932; P. Voci, Risorsimento e pena privata (1939) 6, 150; E. Albertario, SÌ 4 (1946) 303, 371; Beretta, RISG 2 (1948) 333.

**Actiones populares.** Actions which can be brought by "any one among the people" (quvis [quilibet] ex populo). They are of praetorian origin and serve to protect public interest (ius populi). They are penal, and in case of condemnation of the offender the plaintiff receives the penalty paid. Such actions are: actiones de albo corrupto, sepulchri violati, de termino moto, de posita ac suspensa, etc. There are instances, however, established in statutes or local ordinances, in which the penalty was paid to the state or municipal treasury, or divided between the aetrium and the accuser, as, e.g., provided in a decree of the Senate in the case of damage to aqueducts.—D. 4.23.

Con. DS 4 (as. popularis actio); Köbler, RE 4A, 157; C. Fadda, Actio popolare, 1894; T. Mommsen, Gesammelte Schriften 3 (1905) 375.

**Actiones praesidiales.** Actions in which decision in a preliminary question is passed (praesidium) being decisive on a second suit. E.g., when a patron wants to sue his freedman for failure in accomplishing his duties, the preliminary question is an libertas sit, i.e., whether the defendant is really his freedman. In such actions absolution or condemnation is not implied, the judge's statement (pronsuntiatio) being only an answer to the question involved.—See FORMULARAE, PRAEFIDICIALES, PRAEJUDICIA, INTENTIO.

Siber, Fache Wenger 1 (1944) 69.

**Actiones praetoriae.** Actions originating in pretorian law. They either contained an extension of civil actions (actiones civiles) to analogous new cases or granted protection to legal transactions or situations not recognized by IUS CIVILE. The most creative innovations among the actiones praetoriae were the actiones (formulae) in factum, actiones ficticias, and actiones utiles. See ACTIONES TEMPORALE.

Beretta, RISG 2 (1948) 333.

**Actiones praescriptvis verbis.** See ACTIO PRAESCRIPITIS VERBIS.

**Actiones privatae.** Actions protecting the private interests of an individual. Ant. ACTIONES POPULARES. Similar in meaning is the term iudicia privata covering civil trials in private affairs subject in classical law to the judgment of a private judge, but in later times, after the nationalization of the civil proceedings, without this feature.

**Actiones quibus poenam persequimur.** See ACTIONES POENALAE.

**Actiones quibus rem persequimur (actiones rei persequendae gratia comparatae).** Also called in the literature rei persecutoriae = actions in which the object of the trial is a thing, a sum of money, restitution or indemnity. Such are all actiones in rem and actiones in personam of contractual origin. Ant. ACTIONES POENALAE. There are actions arising from offences of a delictual character in which the plaintiff's claims embrace both objectives, redress and penalty, as for instance in case of theft, or of actions in dupium. The distinction is important as far as the liability of the heirs is concerned.—See ACTIONES MIXTAE, IN SIMPLUM, POENALE.

A. Giffard, Etudes sur les obligations et les actions, II Les actions personnelles repressorices, 1941.

**Actiones speciales.** See JUDICIA GENERALIA.

**Actiones temporales (temporariae).** Actions which could be brought only within a limited period of time. Such were ACTIONES PRAETORIAE, mostly limited to one year (actiones annales). ACTIONES AEDI- LICIAE were limited to six months only.—Inst. 4.12.

—See ACTIONES PERPETUA.

**Actiones stricti iuris.** See JUDICIA BONAE FIDEI.

**Actiones turpes.** See ACTIONES FAMOSAE.

**Actiones utiles.** Actions introduced through the activity of praetors and jurists by a modification of an already existing formula to cover legal situations and transactions for which the original formula did not suffice. The mechanism of the actiones utiles contributed considerably to the development of the law. The original action is called directa.—See ACTIONES DIRECTAE.

I. Alibrandi, Opera 1 (1896) 149; Seeck, in Hemmann's Handlexikon' (1907) 608; G. Bortolucci, A. stili, 1909;
Actiones vulgares. Common, usual actions, opposed to actiones utiles, or actions in factum.

Actor. The plaintiff in a civil trial, particularly after the litis contestatio. Syn. is qui agit, agens, petitour. Before the litis contestatio he is designated as is qui agere vult. Actrix = a female plaintiff. Act. reus, is cum quo agitur.—See REUS, AGERE.

Wissak, RE 1.

Actor. In private law, a manager of another's business or affairs, an agent. Frequently a slave is appointed for this purpose.—C. 5.61.


Actor domus augustae. See Actor REI PRIVATAE.

Actor praediorum fiscalium. The administrator of landed property belonging to the fisc.—C. 11.72.

Actor publicus. See ACTOR UNIVERSITATIS.

Actor rei privatae (actor domus augustae). The administrator of the Emperor's private property. See REI PRIVATAE, DOMUS AUGUSTA.

De Ruggiero, DE 1.

Actor rei publicae. See ACTOR UNIVERSITATIS.

Actor universitatis (collegii, municipii). The agent, representative of a corporate body by whom "is being acted and done (agatur et fiat) all that has to be acted and done on the common behalf" (D. 3.4.1.1). Corporate bodies of public law had also their actores (actor municipum, actor civilis), who in case of litigation represent them in court both as plaintiffs and as defendants. In this character they are also called defensores. Sporadically the term actor rei publicae or actor publicus also appears.—D. 3.4.

Habel, RE 1, 330; Humbert, DS 1 (a. publ.); De Ruggiero, DE 1, 66; Ramadier, Et. Girard 1 (1913) 259.

Actrix. See actor in a civil trial.

Actum. Added at the end of a written document and followed by the name of the locality to refer to the place where the deed was performed ("done at . . .").

Actus. The right to drive a draft animal or vehicles over another's property. It is a rustic servitude and also implies the right of passage (in usu sundi). See servitutes praediorum rusticorum, interdictum de itinere actuque privato.—D. 43.19.

Leonard, RE 1, 331; De Ruggiero, DE 1, 76; Scalaies, St gouv. 1 (1932) 389; Arangio-Ruiz, St Bruyé, 1910; Landucci, AVen 65 (1906) 1307; Meylan, St Albertiani, 1 (1935) 134.

Actus legitimi. Certain formal legal transactions governed by the strict formalism of the ancient law, which could not be subject to a suspensive condition or a term (dies), such as formal conveyance of property (through mancipatio or in iure cessionis), acceptatio, and a few others. In these transactions no interval was admitted between their conclusion and their effectiveness.—See DEES.

E. F. Bruck, Bedeutungsfreundliche Rechtsgeschäfte, 1904.

Actus rerum. Court days on which the judicial activity of the private judges (jurors = iudices) was exercised (cum res aguntur).—See IUDEX.

Wissak, RE 1.

Ad exemplum. See EXEMPLUM.

Adseratio. Calculation in money for payment in cash instead of supplies in kind to the state (ANNONA) or in matter of wages.

Sceck, RE 1; Heichelheim, OCD; Persson, Staat und Manufaktur (Lund, 1923) 104.

Adrescendi ius. See IUS ADRESCENDI.

Addicere (addictio). To assign, adjudge, adjudicate a thing being the object of a controversy. When property is conveyed by in iure cessionis the praetor addict rem. Addicere iudicem (or arbitrum) = to appoint a judge (or an arbitrator). Addicere is also referred to persons: a free man caught in the commission of a theft was assigned to the person from whom he has stolen. For addicere in auctions, see AUCTIO.

—See also ADDICITUS.

Wissak RE 1; Cogliolo, VDI 1; Carrelli, AttiR 1939, 122; Lévy-Brühl, Nouvelles études sur le très ancien dr. rom., 1947, 141; Kaiser, Fischer Wagner 1 (1944) 117.

Addictio bonorum libertatum servandarum causa. In order to prevent testamentary manumissions from becoming void when the appointed heir refused to accept an insolvent inheritance, an enactment of Marc Aurel made it possible to assign the inheritance to another person, primarily to the slaves freed in the last will, who had to carry out all the dispositions concerned with manumissions.—Inst. 3.11.

Humbert, DS 1.

Addictio in diem. An agreement between buyer and seller giving the latter the right to declare the sale annulled if, within a certain time, he received an offer of a higher price (addictio) for the object sold. In such a case the first buyer had the possibility to increase his bid and to keep the thing.—D. 18.2.

Cogliolo, VDI 1; Sem, NRHD 37 (1913); Loengo, BIDR 31 (1921); H. Sieg, Quellenkritische Studien zur Besessensklausal im röm. Kaufrrecht, 1933; Archi, St Rati, 1934, 325; Lévy, Zu den Rücktrittserklärungen des röm. Kaufls, Symbolae Fris. Lovel, 1932; Romanzo, StPav 22 (1937); Henle, Fischer Kochhauer 2 (1939) 169; Alvaro D'Oros, In diem addictio, Madrid, 1945.

Addictus. A debtor who had failed to pay his debt and against whom a personal execution (MANUS INJECTIO) was initiated could be adjudged to the creditor in the earliest times and held prisoner by the latter (under the Twelve Tables). He remained free, but after sixty days he could be sold beyond the boundaries of Rome (beyond the Tiber river = trans Tiberinums) which effected loss of citizenship and of freedom.—See DEES IUSTI. TIBERIUS.

Leist, RE 1; Humbert, DS 1.

Ademptio. From admere. Cancellation, revocation of a prior disposition, as, for instance, withdrawal of a peculium which had been granted to a son or slave (ademptio peculii).—See ADEMPTRIO LEGATTI, ADEMPTRIO LIBERTATIS.
**Ademptio bonorum.** Confiscation of property by a public authority as an act of punishment.—See **confiscatio, publicatio bonorum.**


**Ademptio legati.** A legacy could be annullled by the testator either expressly by a statement in a later will or codicil, or through a subsequent, intentional (*animus ademindii legatum*) alienation of the thing bequeathed or through its transfer to another legatee (*translatio legati*). In a similar manner a testamentary manumission could be revoked either expressly or tacitly when the testator alienated the slave or bequeathed him to another person (*ademptio libertatis*).—Inst. 2.21; D. 34.4; 40.6.


**Ademptio libertatis.** See **ademptio legati.**—D. 40.6.

Adesse. In a judicial trial, to be present in court as a party to the proceedings; to assist a party as his advocate.—See **advocatus.**

**Adivatus.** An imperial enactment (in the language of the imperial chancery).

Adfinitas. See **adfinitas.**

**Adfinitas.** Relationship between one consort and near relatives (parents, brothers and sisters, children) of the other consort. Marriage between persons so related was forbidden; it was void and punished as incestuous.—See **incestus.**

Leonhard, RE 1; Baudry, DS 2; A. Guarino, *Adfinitas*, 1939; Castello, *Osservazioni sui diritti di matrimonio fra parenti ed affini*, RendLomb 72 (1939); idem, *Diritto familiare*, 1942, 142.

Adfinites. A person who affirms the trustworthiness or solvency of another before an official. He was answerable for fraudulent false information.

Leonhard, RE 1.

**Adgnatio, adgnatus.** See **agnatio, agnatus.**

**Adiectio.** See **addictio in diem.** *Adiectio* = a higher bid at an auction.—C. 10.3.—See **auction, subhasta.**

**Adiectus solutionis causa.** A person to whom a debt due to another, the primary creditor, was to be paid.


**Adire hereditatem.** See **aditio hereditatis.**

**Adito hereditatis.** The acceptance of an inheritance by an heir (*heres*) appointed in a last will or inheriting under the law. Only a certain category of heirs (see *heres voluntarius*) was obliged to declare expressly their willingness to accept the estate, whereas the nearest relatives belonging to the family of the testator (*heres necessarius, heres suus et necessarius*) acquired the inheritance automatically under the law (*ipsa iure*) without any particular formality. The ancient form of *aditio hereditatis* wascretio, later forms were: acting as an heir (*pro herede gereere*) and an informal declaration of intent (*aditio nuda voluntate*). An acceptance once made was irrevocable.—D. 29.2; C. 6.30.


**Aditus.** Syn. *ius ademundi*. With some rustic servitudes there is connected the right of walking to the place burdened with the servitude if the exercise of the servitude by the person so entitled would otherwise be impossible.—See **servitutes praediorum rusticorum.**

**Adjudicatio.** The part of the procedural formula by which the judge was permitted to adjudge (*adjudicatio*) the object to the parties to the trial in so-called divisory actions (*actio communi dividendo, actio familiae ecciscundae*). Beyond the controversies, concerned with the division of common property, *adjudicatio* by the judge also occurs when he adjudicates someone's property to another or to the fisc.

Wlassak, RE 1; Baudry, DS 1; Arangio-Ruiz, BIDR 32 (1922) 5.

**Adiutore.** Assistant officers in the various branches of administration of the Empire, as well as in the imperial chancery and household.

De Ruggiero, DE 1; Habel, RE 2; Saglio, DS 1; Berger, CIPhilol 43 (1948) 233; Jones, JRS 39 (1949) 54.

**Adi.** See **ali.**

**Adfecti.** Subordinate officers in the emperor's secrétariat and in other imperial offices.—See the following item.

**Adlectio.** The emperors used to confer the title and rank of ex-magistrates (*adlectio inter consulares, praetorios, quaestorios, tribunicios*) on persons who never before had been in service or had held an office of a rank lower than that which was conferred on them. The person thus distinguished (*adlectus*) became qualified for the next higher magistracy. An *adfectio inter praetorios*, for instance, could be elected to the consulsip. Moreover, the *adlecti* became members of the senate in the group of retired magistrates of the rank given them. An *adlectio in senatum* was frequently practiced with regard to imperial procurators of equestrian rank. See **lectio senatus.**—Another kind of *adlectio* was the admission of persons of plebeian origin to the patriciate.

—*Adlectio* is also the admission of a new member into a corporation, as well as that of a new citizen into the municipales (*adlectio inter civites, see **lex cassia***) or of a new councillor into the **ordo decurionum.**—See **decretum decurionum.**

Schmidt, RE 1; Humbert, DS 1; De Ruggiero, DE 1; O'Brien-Moore, RE Suppl. 6, 760 (a. in **senatum**); Borzsak, RE 18, 1110 (a. **ornamenta**).

**Adminiculum.** A legal support or remedy which strengthens a person in his legal situation or gives
him the possibility to improve it (e.g., an appeal, see *APPPELLATIO*).

**Administrare (administratio).** Refers both to the management of private affairs (property, *peculium*, tutorship) and to the exercise of a public office (magistracy, governorship, *administratio rerum publicarum*). Hence *administror* is used of the highest officials of the state.—D. 26.7; 50.8; C. 5.37; 11.31; 38; 1.49. See *EXCUTERE RATIONES*.

Orestano, *S. Bonito* 1 (1942) 11.

**Admissionalia.** See the following item.

Seeck, *RE* 1.

**Admissiones.** Admission to an audience with the emperor was granted by a special office, *officium admissionum*, under the supervision of a *magister admissionum*. The intervening officer was the *admissionalis*, Schmidt, *RE* 1; De Ruggiero, *DE* 1, 92.

**Admissum.** A general and not sharply defined term for criminal offenses. It is used particularly in later sources. *In admisso deprehendere* = to catch in the very act.

Berger, *KrP* 16 (1912) 414; De Dominici, *AVem* 92 (1932/3) 1215.

**Admittere.** To commit an illicit act (a wrongdoing).

**Adnotatio.** A decision of the emperor written in the margin of a petition addressed to him. In some texts it is distinguished from an imperial rescript (re*scriptum*) from which it differed in form, not in content. The differences between *adnotation* and *rescriptum* which might have arisen from the fact that the *adnotation* was originally a written instruction for drafting a rescript by the imperial chancery, gradually vanished. In criminal proceeding *adnotation* (from *adnotare*) means noting a person on the list of those who are to be summoned or deported.

Seeck, *RE* 1.

**Adoptio.** Through *adoptio* a person who is under the paternal power of the head of his family comes under the *patria potestas* of another (*adoptator, pater adoptitus*). The change of family (*mutatio familias*) is the characteristic feature of the *adoptio*, while in an *adrogatio*, i.e., the adoption of a person *sui iuris* who is himself the head of a family, there is a fusion of two families since the *adrogatus* enters into another family together with all persons subject to his paternal power. The legal effects are equal in both cases; the adopted persons have the same rights (succession) and duties (*sacri*) as natural sons.—D. 1.7; Inst. 1.11; 3–10; C. 8.47. See the following items, *DATIO IN ADOPTIONEM, ADROGATIO* (Bibl.).


**Adoptio in fratrem.** See *FRATER*.

**Adoptio minus plena.** A weaker form of *adoptio* in Justinian law by which the ties with the former family of the adopted person were not completely destroyed, particularly in the field of the rights of succession. Ant. *adoptio plena* which produced the effects of the ancient *adoptio*.


**Adoptio per populum.** Refers to *adrogatio* since in earlier times the approval by the people (*auctoritas populi*) was required for the validity of a change of family (*mutatio familias*).

Castelli, *Scritti giuridici*, 1923, 189.

**Adoptio plena.** See *ADOPTIO MINUS PLENA*.

**Adoptimus.** Connected with adoption. *Filius adoptivus*, or simply *adoptivus* = the adopted person. *Pater adoptivus* = the adopting father.

**Adoratio purpuræ.** Worshipping the emperor by kneeling before him and kissing his purple garment.


**Adp.** See *APP*.

**Adplumbatio.** See *FERRUMINATIO, PLUMBATURA*.

Leoohard, *RE* 1; Pampaloni, *Scritti* 1 (1941) 7.

**Adprehendere rem.** To take hold of a thing. It is a symbolic gesture to affirm the right of ownership in a trial (*rei vindicatio*) or in the act of transfer of ownership through *MANCIPATIO*. In a larger sense, to take physical possession of a thing.

**Adprobare.** To approve, as another jurist’s opinion. According to a statute, *LEX AELIA SENTIA*, exceptional manumissions of slaves contrary to the rules therein set forth had to be approved by a special court.—*Adprobare opus* = to approve of a work (*opus*) done by a hired craftsman. *Adprobare* was an important act in the hire contract (*locatio conductio operis faciendi*) since after approval the risk of destruction or deterioration of the work passed upon the person who ordered it.—*Syn. probare*.

Samter, *ZSS* 26 (1905) 125.

**Adpromissio (adpromissor).** The obligation of a surety who guaranteed for the debt of the principal debtor through *stipulatio*. The different forms of suretyship were *sponsio, fideiuscio, fidepromissio*, according to the expression used by the surety (*sponsor, fideiuscor, fidepromissor*) when he assumed liability in a stipulation additional to that of the principal (*spondeo, fide mea esse indeo = I bid you trust my faith, fide promitto = I pledge my faith*). The obligation of the surety was for the same thing and could not be assumed for a larger sum or under heavier conditions than that of the principal. As a matter of rule, the accessory character of the suretyship depended upon the validity and the existence of the principal obligation, but in the case of *sponsio* and *fidepromissio* this rule was weakened. Besides, the liability arising from these two forms lasted only two years and did not bind the heirs. In Justinian’s law all three forms were
fused into one, the fideiusmio, whereas in earlier times sponsio was accessible only to Roman citizens, and sponsio and fidepromissio could be applied to guarantee only obligations from verbal contracts. In Justinian's law all these and other minor differences vanished.—Inst. 3.20; D.46.1; C. 2.23; 8.40.—See LEX APULEIAE DE SPONSU, LEX CI CERELIA, LEX CORNELIA DE AD PROMISSORIBUS.

Leonard, RE 1; 6 (c.w. fideiusmio, fidepromissio); Coq, DS 3, 557; Anon. NDI 5 (c.w. fideiusmio); E. Levy, Sponsio, fidepromissio, fideiusmio, 1907; Donatini, AnP 38 (1927) 1; Sossi, BIDR 38 (1930) 19; Buckland, RHD 7 (1928), 460; 12 (1933) 116; W. Flume, Studien zur Akssoriatität der röm. Bürgschaftstitulatior, 1932; G. Bo, Contributi alla dottrina dell'obbligazione fideiusmio, 1934; Archi, ConfCatt, 1940, 259; F. De Martino, Gennesi personali dell'obbligazione, 1 (1940); G. Negri, Inassium e responsabilità matildaria, 1942, 59; Levy, Sen 2 (1944) 6 (= BIDR 55-56, Post-Bellum [1951] 207); Beretta, Serv Fervini 1 (Univ. Sacro Cuore, Milan, 1947) 80.

Adpusus pecoris ad aquam. The right to drive one's cattle through another's (the neighbor's) property to water. The right is connected with certain rustic servitudes to secure the access of the cattle to the watering-place.

Adquirere (adquisitio). To acquire (ownership, possession, an inheritance, an obligation). The ability to acquire for other persons is dealt with by Inst. 2.9; 3.28; C. 4.27; the acquisition of an inheritance D. 29.2; C. 6.30; of ownership D. 41.1; of possession D. 29.2; C. 7.32; through adrogatio Inst. 3.10.

Leonard, RE 1, 284.

Adquirere per universitasem. See UNIVERSITAS.

Adrogatio. See ADOPTIO, ADOPTIO PER POPULUM.—Inst. 3.10.

Leonard, RE 1; Humbert, DS 1; Bellelli, NDI 1; G. Bescer, Suidicitia, 1929, 1; Bellelli, AG 116 (1936) 65; idem, SDHI 3 (1937) 140; Laveesi, SDHI 12 (1946) 115; Coconati, AnP 2 (1948) 247.

Adrogatior per rescriptum principis. Adoption of a person as inheritor granted by a rescript of the emperor. No further formalities were necessary.

Adscribere. When referring to last wills, to make a legacy or to add a specific clause (e.g., a condition, a term) to a testamentary disposition.

Adscriptici. A class of COLONI in the later Empire who were bound to their landlord's soil which they cultivated. Although their legal status was that of free men and citizens, they were subject to certain personal restrictions and burdens which made their position similar to serfdom.—See COLONATUS.

Saumange, Byzamion 12 (1937).

Adsertio. (From adserere.) Any assertion made before court. An adsertio acquired particular importance when the personal status of a person was contested. Hence, adsertor libertatis was he who, in a trial about the status of an alleged slave, asserted and defended his liberty. In the form of enfranchisement called MANUIMISSIO VINDICTA (= manumission in the form of a fictitious trial) the intervention of an adsertor libertatis was necessary. He claimed the liberty of the slave involved, and the manumittor then failed to deny this assertion.—C. 7.17.—See INGENUITAS, VINDICATIO IN LIBERTATEM.

Leonard, RE 1; DS 1 (c.w. adsertio); M. Nicolaci, Carum liberalis, 1932, 12; Noailles, Rev. des Etudes Latines 20 (1942) 121; Van Oven, TR 18 (1950) 159, 177; P. Noailles, Du droit sacré au droit civil, 1950, 177.

Adsertor libertatis. See the foregoing item.

Adsessores. Legal advisers who assisted magistrates and judges in judicial activity. They belonged to the consilium (council), hence their name consiliiarii. In the later classical period their activity was very extensive. The jurist Paul who wrote a monograph on the duties of adsessores enumerates as lying in the sphere of their activity: cognitiones, postulationes, libelli, edicta, decreta, epistulae. The terms cover the whole magisterial and judicial activity in court and beyond procedural questions. Under the later Empire each official had at least one adssessor. The adsessores were appointed by the government with a salary. An adssessor who helped a magistrate or judge in drafting a decision was responsible for advice given in ignorance or inconsiderateness (imprudencia). The opinion of adssessors was not binding on the magistrate or judge.—D. 1.22; C. 151, 52.

Seck, RE 1 (adssessores); Humbert, DS 1; De Ruggiero, DE 1; Kübler, RAC 1 (1943) 803; Hitzig, Die Aessores der röm. Magistratur, 1893.

Adssessorium. Appears in the title of works by the jurists, Sabinus and Puteloanus, each work cited only once in the Digest. Thus the character of those writings cannot be specified. They probably dealt with cases which the authors drew from their assessorial practice.—See ADSSESORES.

Adasidui. The term appears in the Twelve Tables in connection with processual guarantees (see VINDEX).

"For an adidasius only an adidasius may be a guarantee, while for a proletarius any one may guarantee" (Gell. n. Att. 16.10.5). Adasidui are those who belong to the five classes of the so-called Servian constitution (centuriae) with a patrimony from 100,000 down to 12,500 asses. Syn. locoplates, classici. Ant. proletarii.

Kubitscheck, RE 1; Pascal, Rvista di filol. e istrusione classica 30 (1902); M. F. Peterlongo-Lepri, Saggi sul patrimonio 1 (1942) 25.

Adsignatio. The assignment of public land (AGER PUBLICUS) to private individuals, municipalities or colonies in ownership or usufruct. The distribution was regulated by statutes (agrarian legislation = LEGES AGRARIAE) which fixed the size and conditions of the grant.

Kubitscheck, RE 1; Vancura, RE 12, 1155; De Ruggiero, DE 1; Fracarò, Serv Fervini 1 (Univ. Sacro Cuore, Milan, 1947) 262.

Adsignatio liberti. According to a decree of the senate of the early Empire, the patron of a freedman
was permitted to assign (assignare) his right of patronage, those of inheritance included, to one of his children or grandchildren under his paternal power. The patron who thus disposed, either in a last will or orally, is called adsignator.—Inst. 3.8; D. 38.4.

Leonard, RE 1; De Ruggiero, DE 1; G. La Pira, La successione intestata, 1936, 203; Harada, ZSS 59 (1939) 408; E. Coeminti, St iure liberti 2 (1950).

Adstipulatio (adstipulator). A promise by an additional stipulator, in which the debtor of the original stipulation promised the same thing (idem) to another person (adstipulator). The latter is entitled to sue the debtor in the case of non-payment. The internal relation between the first and the subsidiary creditor is normally a mandate (agency), therefore the first creditor or his heirs might recover the sum paid to his agent (procurator) through actio mandati.

Adstipulatio was primarily applied when a person wanted to make sure that the payment would be made after his death, since a direct stipulation post mortem was invalid.—See mandatum, lex aquilia, stipulatio post mortem.

Pernice, ZSS 19 (1898) 178; Pringsheim, ZSS 42 (1921) 305; Desserteaux, Capituli deminutio 2 (1919) 229; R. Orestano, ius singulare, AmJAc 11 (1937), 79; F. de Martino, La garanzie personali dell’obbligazione, 1940.

Adtributio. The assignment of debts owed to, by, or an inheritance, by a judge or an arbitrator on the occasion of its division. With reference to aker fulicu adtributio is syn. with adsignatio.—See actio familiae herciscundae.

De Ruggiero, DE 1, 111.

Adulescens. A person under twenty-five years of age, but over fourteen.—Syn. minor, adulter. See juvenis, minores.

Berger, RE 15, 1861 (Bibl.); Axelson, Milanges Maroukien, 1948, 7.

Adulter, adulteria. See adulterium.

Adulator. A counterfeiter of coins.—See falsum.

Adulentinus. Counterfeit, e.g., a coin, a last will.—Syn. falsus, reprobus.

Adulterium. A statutory punishment of adultery, which was considered a criminal offence only when committed by a married woman (adultera) was introduced by the Augustean law, Lex Julia de adulteriis coercedis (before 18 B.C.). Earlier customary law admitted only immediate revenge of the husband on the adulteress or punishment by him after consultation with the family council (consilium propriunum) in a procedure similar to a judicial trial (see judiciuam domasticum). Under the Julian statute, the father of the adulterous woman was permitted to kill her and her partner (adulator) if he surprised them in his or her husband’s house. The husband’s rights were rather limited; he was forced to divorce her, for otherwise he made himself guilty of match-making (lemenium). Besides, he or his father had to accuse the adulteress of adulterium which now became a public crime prosecuted before a criminal court. Any Roman citizen could bring in the accusation if the husband or his father did not do so within two months after the divorce. The statutory term for other accusers was four additional months. The penalty was banishment of the adulterers and confiscation of one-third of her property, together with the loss of a part of her dowry. The legislation of Constantine, later confirmed by Justinian, introduced the death penalty for adulterium.—D. 48.5; C. 9.9.—See lex julia de adulteriis, lena, actio de moribus, sima nuptiae.

Hartmann, RE 1; Humbert, DS 1; Chiaresso, NDI 1; C. W. Westrup, Observations sur la notion de la fidelite, 1927; Volterra, SicCapi 1928; idem, RendLomb 63 (1930) 182; St Bonfante 2 (1930) 109; Bandini, St Rati, 1934; C. Corante, La repressione romana dell’adulterio, 1936; Biondi, SItAe 16 (1938); De Dominici, SDH 16 (1950) 1.

Adulterus. See adulescens.

Adventicium (adventicius). Acquisitions made by a slave or filius familiae with means not taken from the master’s or father’s property.—See dos, feculium adventicium.

Leonard, RE 1; Albertario, SItAe 1 (1933) 283.

Adversarius. The adversary in a lawsuit.

Advocatio. Both the profession of an advocate and his assistance to a party in a legal controversy.—See advocatus.

Advocatus. The term is applied to persons who exercise the profession of an advocate (advocatio), i.e., a legal adviser, while iuriprudentius is a legal scholar, expert in law, a man learned in law. The advocatus assisted his clients (cliens) with juristic advice before and during the trial, in both civil and criminal matters, and pleaded for them in court. The latter activity was originally reserved to persons specially trained in rhetoric (oratores). Under the Republic the advocatus was not paid for his services; under the Principate compensation was gradually permitted. See honorarium, palmarium, lex cinclia. Syn. patronus, cansidius.—C. 2.7; 9; 12.10; 61.—See senatusconsultum de advocacyone, senatusconsultum Claudianum, error advocatorum.

Kubitschek, RE 1; Humbert, DS 1; De Ruggiero, DE 1; Seidl, RE 44 (s.v. symmengetos); M. Travers, Les corporations d’avocat sous l’Empire rom., Thése, Paris, 1894; Pierantonio, Gli avvocati di Roma antiche, 1900; Weiss, ZSS 32 (1911) 365; Tamassia, APad 33 (1917) 51; White, Amer. Law Rev. 53 (1919) 481; Wenger, Die Anwaltschaft im röm. Recht, in J. Magnus, Die Rechtswissenschaft, 1929, 452; E. P. Parks, The R. rhetorical schools as a preparation for the courts, Baltimore, 1943; F. M. De Robertis, I rapporti di lavoro, 1946, 189; U. E. Paoli, La vita romana, 5th ed. 1948, 252.

Advocatus fisci. First appointed by Hadrian for the defense of the interests of the fisc both extrajudicially and in courts. He is not directly concerned with the fiscal administration.—Syn. patronus fisci.—C. 2.B.

Kubitschek, RE 1; Humbert, DS 1; De Ruggiero, DE 1, 125.
Aedes. (In sing.) A building of sacred character (often *aedes sacra*) of a lower degree sacrally than a temple (*templum*). See *depositio in aede.* (Pl.) In juristic texts, syn. for *aedificium* and is applied primarily to urban buildings while the rustic ones are called *villas.* Jurisprudently the terms *aedes* and *aedificium* include the soil (*solum*) and what is built upon it (*superficies*). Moreover, everything that is within the building and serves for perpetual use (e.g., tubes for water supply) is a part of the building as its accessory and shares the legal situation of the whole.—*See vitium aedium.*

De Ruggiero, *DE* 1; Weinstock, *RE* 5A (*templum*).

Aedificatio. Building a house. The construction of houses is governed by building regulations (*statutes, senatus consultum,* imperial enactments) and is subject to the supervision of magistrates (*aediles, censors* for public buildings, under the Empire the *praefectus urbani* and his staff). Among the imperial enactments the building regulation by the Emperor Zeno (C. 8.10, 474–491) is the most important. The interests of the neighbors are protected by *opus novi nuntiatium,* a kind of protestation against a new construction which may be detrimental to the owners of adjacent buildings or lands. On the other hand, the house builder who gives sufficient guaranty is protected by a special interdict *ne vis fiat aedificant* (= that force should not be used against the builder of a house) against any disturbance. Unless special permission is granted, building on public places is prohibited. Demolition of constructions already erected may be enforced by an interdict *interdictum de locis publicis.*—*See lex iulia de modo aedificiorum, zonianum constitutiones, operis novi nuntiatium.*—C. 8.10.


Aedificia. There is a distinction between private buildings (*aedificia privata*) which are in private ownership and public buildings (*aedificia publica*) which are *res publicae* and under the management and supervision of public officials.—*See aedes, aedificatio, opera publica.*—C. 8.10.

De Ruggiero, *DE* 1.

Aediles cereales. These officials were created by Caesar in 44 B.C. and given specific functions in the administration of grain for the city of Rome.

De Ruggiero, *DE* 1, 222.

Aediles curules. Created in 367 B.C. as a patrician magistracy ranking in the hierarchy between the praetors and the quaestors. Their charges in which in certain measure coincided with those of the *aediles plebes,* were rather extensive: public order and security in Rome, the traffic in the city, management of public buildings, *cura annonae* (food supply) as well as water supply, the supervision over markets, market transactions (such as the sale of slaves and animals), and weights and measures used in the market, and the like. A particularly heavy burden of theirs was the *cura ludorum,* arrangement of the public games, on which they often spent considerable sums of their own in order to obtain the support of the people in the furtherance of their careers. The creation of this magistracy is linked with the organization of the games inasmuch as the *aediles curules* were not rich enough to afford such expenses. The *aediles curules* had criminal jurisdiction in minor offenses. They were magistrates without *imperium.*

—*See actiones aediliciae, edictum aedilium curulium, cura annonae, dies fasti.*


Aediles plebis. Plebeian officers elected by the plebeians, to serve as assistants of the plebeian tribunes whose orders they had to carry out (*collegae miniore*) *until the creation of the aediles curules* (patrician magistrates), their responsibility was rather large and embraced the same fields which were later assigned to the new magistracy, the *aediles curules.* They enjoyed inviolability like the tribunes of the *plebs.* After the creation of the patrician *aediles,* they were somewhat in the shadow in spite of a certain similarity in function. The plebeian *aediles* had no outward sign of their official rank. For their activity in the archives see *lex valeria horatia on senatus consultum.*


Aedilicius. Connected with the activity of the *aediles.*

—*See actiones aediliciae, edictum aedilium curulium.*

Aelius Gallus (Caius). A little known jurist of the end of the Republic, author of a juristic glossary: "On the meaning of juristic terms."

Klebs, *RE* 1, 492, no. 58.

Aelius Paetus Catus (Sextus). Consul in 198 B.C.; he published a manual under the title *Triperita,* divided into three parts: the Twelve Tables, a commentary on them, and the forms of *legis actiones* (procedure). The work was later called *ius aestianum.*


Aelius Tubero. See *tubero.*

Aemulatio. Making use of a right not for one’s own profit, but only with the intention of doing damage to another. The term is not of Roman juristic coinage, it was created in the Middle Ages and means abuse or misuse of a right. The classical rule, stressed several times in the sources, that "there is
no fraud, no wrong, no violence when one does
something he has the right to do,” or “when one
avails himself of his own right” (D. 50.17; 55;
155.1) was somehow modified in Justinian’s law
under the influence of Christian ethics.—See NEMO
(NULLUS) VIDETUR, etc., NEMO DAMNUM, etc., UTI
SUO TURE.

Riccobono, NDI 1; De Villiers, Nuitances in Roman Law,
LQR 17 (1901) 387; M. Rotondi, CenlaCod.Peu, 1934;
Riccobono, La teoria dell’abuso di diritto nella dottrina
romana, BIDR 46 (1939) 1; Stella-Maranes, St Albertini
2 (1933) 449; Kraler, Missbrauch der Rechte, Zschr für
ausländisches und internationales Privatrecht 2 (1937) 1;
Bartošek, Arch 3 (1952) 191 (Bibl. 235).

Aequitas (aequum). Related to justice (ius, iustum) but distinguished from the positive law, ius.
One of the fundamental principles which direct or
should direct the development of law; it is the cor-
rective and creative element in such development.
A law which is guided by aequitas is ius aequum, its
antonym is ius iniquum. In the legal sphere aequitas
may be realized either by interpreting the existing
law or by supplementing it where an exact legal
provision is missing. Aequitas, as the word itself
indicates, implies the element of equality. Trans-
ferred into the province of law it postulates equal
treatment of all according to the conceptions nurtured
in the social (common) conscience of the people
which change, of course, when social and economic
conditions undergo a change. The Roman aequitas
fulfilled its functions in the development of the Roman
law. When the legal norms established in earlier
law, written or not written, became inadequate to the
social and economic necessities of the later age, the
aequitas went into operation both in private law and
in civil procedure as well as in judicial practice. The
ius honorarium was a large field in which the postu-
lates of equity were realized. On the other hand,
the jurists also contributed a great deal in the same
direction. Since the end of the Republic many
juristic decisions were inspired by the principle of
aequitas; among the classical jurists the most prolific
contributor was Papinian. This is the meaning of
the famous definition of the jurist Celsus—put at the
very beginning of the Digest (D.1.1.1 pr.)—“ius est
arx boni et aequi” (=law is the art of finding the
good and the just) which has recently been depre-
ciated—unjustly—as an empty rhetorical phrase.
The Roman jurists as well as the officials who ad-
ministered the law were perfectly aware of the
nature of aequitas although they have not left an
exact definition of the word. It was precisely through
their exercise of that “art” and by their perfect
understanding what was bonum et aequum that the
Roman jurists brought ius to the peak it reached in
the classical period. Aequitas sometimes appears to
be opposed to the ius then in force, particularly when
it enters into its corrective function (when, for in-
stance, the aequitas of the praetor is placed ahead of

the rigidity of the ancient law, ius civile), and, at
times, it is strongly connected with ius, even being
presented as its substance, as in the Ciceronian say-
ing, “the law is the established aequitas” (aequitas
constituta, Top. 9) where ius and aequitas appear
inseparable. Aequitas has its natural foundation in
any human society, in its customs, and in its ethical
and social conceptions as well, and becomes law either
through customary practice or by legislative enact-
ments (this is the Ciceronian aequitas constituta); the
connection between aequitas and ius naturale is
evident. Hence the frequent references to aequitas
naturalis, reminiscent of the references to naturalis
ratio. It is often added by the jurists as the reason
for criticism of, or doubts about, the fairness of an
existing legal rule. The classical aequitas was a fer-
tile soil for the influence of Christian ethical doc-
trines. The evolution found its expression in Ju-
tinian’s codification in which not only the conception
of aequitas acquired a broader aspect but the terminol-
yogy was also enriched by the addition of references
to terms like pietas, caritas, humanitas, benignitas,
clementia. Many interpolations referring to these
ideas testify to that tendency of the emperor, but
not all of them added new doctrines and rules to the
classical Roman law, since the aequum was too
deply rooted in the conscience of the jurists.
The place the classical aequitas acquired in Justinian’s
legal system is neatly characterized by the following
detail. A principle of fundamental importance for-
mulated in a rescript of the emperor Antoninus Pius
(doubtless at the suggestion of a jurist of his council)
to the effect that “though changes in solemn forms
are not easily to be admitted, yet where aequitas
demands it help should be granted” (D. 4.1.7 pr.)
is repeated, as a general rule, in the final title of
Justinian’s Digest On Rules of Ancient Law, under
the name of the jurist Marcellus (D. 50.17.183) from
whose Digesta the quotation of the rescript was
excerpted in one of the initial books of the Digest.
Attempts to eliminate all references to aequitas,
aequum, aequitissimum est, aequitas naturalis, etc.,
wherever they appear in excerpts of classical juristic
works, must be rejected as one of those uncritical
exaggerations which have been so frequent in the
modern search for interpolations, although nobody
will deny that some of those references belong to the
compilers.—See IUS, IUS EST ARX BONI ET AEQUIT.

BENIGNUS.

Kipp, RE 11; Humbert, DS 1; Riccobono, NDI 1; Jonkers.
RAC 1 (1941); Fadda, L’equità ed il metodo dei giur-
consulti rom., 1880; W. W. Buckland, Equity in Rom.
ian, 1911; Brice, Rom. aequitas and English equity, George-
town Law Journal 2 (1913); Beseler, ZSS 45 (1925)
453; Guarnere-Ciasti, Indice 2 (1927) 7; idem, St Rieco-
bono, 1 (1936) 704; idem, Fischer Rezensioner 1939
129; Sokolowski, St Bonifante 1 (1929) 190; Ragona,
Diritto e aequitas da Cicerone a Codice, AC 1930
87, 224; Giannini, AG 105 (1931) 194; Prangsheim, ZSS
52 (1932) 86; C. A. Maschi, La concezione naturalistica,
Aequum et bonum. See BONUM ET AEOUM, AQUI
TAS, IUS EST BONI ET AEQUI.
Aër. The air. Belongs to the category of res com-
unes omnium.—See CAELUM.
Lardone, Air Law Rer. 2 (1931); Riccobono, Riv di
diritto aeronautico 1 (1938).
Aerarii. Citizens excluded from the centuriate and
tribal organization (tribus) by the censors and sub-
ject to the payment of a special poll-tax. They were
not permitted to vote in comitia centuriae and comitia
tributa. Assignment to the aerarii was a form of
administrative punishment.—See NOTA CENSORIA.
Kubitschek, RE 1; Humbert, DS 1; De Ruggiero, DE
1, 311.
Aerarium militare. A special military treasury insti-
tuted by Augustus. It provided pensions for veterans
and was supported by donations of the emperor and
by the income from sales—and inheritance taxes.
The funds of the aerarium militare were administered
by praefecti aerarii militaris.—See CENTESIMA REUM
VENALIUM, VICISIMA HEREDITATUM.
Aerarium populi Romani. State treasury, also called
aerarium Saturni because it was located in the temple
of Saturn. It was also a central archive for docu-
ments connected with the financial and general ad-
ministration, for statutes passed by the popular as-
semblies (LEX LICINIA IUNIA), senatusconsultula, and
generally for all documents in which the state was
interested, such as contracts with private individuals
(see TABULAE PUBLICAE, TABULAE CENSORIAE).
Originally under the directorship of the quaestors, then of
the praetors, it was submitted by Augustus to the control of the
senate. In the Principate the chiefs of the aerarium were the
praefecti aerarii Saturni. The aerarium populi Romani is to be distinguished
from the treasury of the emperor (see FISCUS). The distinction gradually lost importance since the
imperial treasury absorbed the revenues of the aerarium
more and more.—See TABULARI.
Kubitschek, RE 1; Sachers, RE 4 A, 1964; Humbert and
Guillaume, DS 1; De Ruggiero, DE 1, 309; Stella-
Maranza, NDI 1; Foligno, NDI 5 (s.m. erario); Frank,
JRS 23 (1933) 143; S. v. Bolla, Die Entwicklumg des
Fiscus, 1938; Sutherland, Amer. Jour. of Philology 67
(1945) 151; Mattingly, OCD; O'Brien-Moore, RE Suppl.
6, 790; Jones, JRS 40 (1950) 23.
Aerarium Saturni. See AERARIUM POPULI ROMANI.
Aes. A copper coin, often syn. with AS. In a broader
sense = money.—See the following items.
Kubitschek, RE 1; Mattingly, OCD; idem, Numismatic
Chronicle, 1943, 21.
Aes alienum. "What we owe to another," a debt.
Ant. aes sum = "what another owes to us" (D.
50.16.213.1).
Humbert, DS 1; De Ruggiero, DE 1, 312.
Aes confessum. See CONFESSIO IN TURBE.
Aes equestre. The sum of money allotted to a caval-
ryman for the purchase of a horse.—See EQUITUS, LEGIS
ACTIO PER PIGNORIS CAPIONEM.
Kubitschek, RE 1; Humbert, DS 1.
Aes et libera. See PER AES ET LIBRAM.
Lévy-Brulé, LQR 60 (1944) 51.
Aes bordearium (bordearium). The allowance for
the purchase of fodder for a cavalryman's horse.—
See EQUITUS, LEGIS ACTIO PER PIGNORIS CAPIONEM.
Schwahn, RE 7A, 57; Humbert, DS 1.
Aes militare. The soldier's pay.—See TRIBUS, LEGIS
ACTIO PER PIGNORIS CAPIONEM.
Aes publicum. See COLLATIO.
Aes ruda. Uncoined bronze which served to estimate
the value of things before coinage was introduced.
Aestimatio. The valuation in money of things, or of
damages and all kinds of losses one suffered through
another's wrongful doing or by his non-fulfillment of
a contractual obligation. Particularly important in
the recovery of damages was the estimation of the interest
(INTERESSE) of the person who endured them.—See VERITAS.
Aestimatio dotis. The valuation in money of the
things which are constituted as a dowry. When the
restitution of the latter (dos aestimata) became an
issue, only its fixed value entered into consideration,
if a choice between restoration in kind and the return
of a sum of money has not been agreed upon.
Volterra, RendLomb 66 (1933), 1014; Wolff, ZSS 53
(1933) 331.
Aestimatio litis. See LITIS AESTIMATIO.
Aestimatiorius. See AESTIMATUM, ACTIO QUANTI
MINORIS, INTRIA.
Aestimatum. A transaction by which one receives
goods, estimated at a fixed amount, from another on
the condition that within a certain time the recipient
will either return the goods or pay the sum agreed
upon. Such agreements were generally made with
second-hand dealers who kept the profit when they
sold the goods at a higher price. In the meantime
the ownership normally remained with the real
owner, who did not care whether the recipient finally
decided to buy the things for himself or sold them
to another. In the case of non-fulfillment of the
transaction the owner had an action called de aesti-
matio or aestimatorio.—D. 19.3.
De Medici, Il contractus aestimatorio, 1900; De Francisci,
Sorallagination 1 (1913) 85; Buckland, Mil. Cornl 1 (1926)
139; idem, RHD 12 (1933) 217; P. Voci, Contratto (1946)
256; Pezzana, AG 140 (1951) 53.
Aetas. When used without any specific attribute (as,
for instance, aetas minor, maior, perfecta, adulta),
1937, 311; M. P. Guibat, De l'influence de la philosophie
sur le droit romain, 1937, 162; Alberti, Studi 5 (1937) 107;
Devillit, AE. naturalis, StAs 16 (1938) 125; Barmagel,
BIDR 45 (1948) 356; Condorari-Michler, St Besta 3
(1939) 505; Biondi, See Ferrini (Pavia, 1947, reprint,
1948) 210; Riccobono, BIDR 53/4 (1948) 32 ( = AsPol 20
(1949) 39); idem, Lineamenti della storia delle fonti,
1949, 108; Ridder, Acquisita non equum, Archiv für Rechts-
und Socialphilosophie 39 (1951) 181.
Aequum et bonum. See BONUM ET AEOUM, AEQUI-
TAS, IUS EST BONI ET AEQUI.
the word may indicate any human age. In particular, in locutions connected with the protection of minors (such as remedium or beneficium aetatis, VENIA AETATIS), aetias refers to minors, whereas when it is applied to the age of persons liberated from public charges (munera) or tutorship (tutela), elderly people are meant. For the influence of the various stages of human life on legal capacity, see INFANS PUBERES, IMPUBERES, MAIORES, IMPUDENTIA, SVAE AETATIS FIERI, MINORES.—See also the following entries.

Leonard, RE 1; Berger, RE 15, 1862.

Aetas legitima. Not a technically exact term. Usually refers to persons who have attained their majority, as in phrases like post legitimam aetatem, legitimam aetatem compleure. A favorite word in the language of Justinian's compilers and appears frequently in interpolated texts. Sometimes there is doubt about its actual significance because of the lack of precision in the term legitimus in Justinian's language.—See LEGITIMUS.

Berger, RE 15, 1863.

Aetas perfecna. Not a technical term. Generally refers to the age of majority.

Berger, RE 15, 1862.

Aetas pupillaris. See PUPILLUS.

Aetatis suae fieri. See SUAE AETATIS FIERI.

Aeterna auctoritas. See ACTIO AUCTORITATIS.

Aeterna urbs. Rome (in later imperial constitutions).

—See URBES, ROMA.

Aeternitas. Eternity, immortality. The term was one of the titles of the emperor in the later Empire (aeternitas imperialis, aeternitas nostra).


Elsäss, Gott-Kaiser, SbMünchen 1943, & Hef!, 77.

Adf. See AFF.

Affectio (affectus). A favorable disposition of one's mind towards a person or a thing. See AFFECTIO MARITALIS. With reference to juristic transactions the term is used in the same sense as animus (= will, intention) and is charged with the same suspicion of Byzantine origin (see ANIMUS). The value which a person attaches to an object (the so-called pretium affectionis) is generally irrelevant when restitution of damages done to it is demanded.

Guarnieri-Giast, Indice (1927) 8.

Affectio maritalis. Conjugal affection conceived as a continuous (not momentary) state of mind is a basic element of intent in the Roman marriage. It presumes the intention of living as husband and wife for life and of procreating legitimate children. The attempt to eliminate the affectio maritalis from the conception of marriage by the assumption that the pertinent texts are interpolated must be considered a failure.—See CONCURBINATION.

Ehrhardt, RE 17, 1479; E. Albertario, Studi 1 (1933) 197; G. Longo, BIDR 46 (1939) 119; E. Voltterra, La concezione del matrimonio (Padova, 1940) 37; Wolff, ZSS 19 (1920) 326 (Bibl.); P. Rasi, Consensus facit nuptias, 1946.

Affectio societatis. Used with reference to the intention of the parties to a contract of partnership.—See SOCIETAS.

Salvadoro, Rivista di dir. civile 3 (1911) 68; Arangio-Ruiz, La società, 1950, 63; van Oven, TR 19 (1951) 452.

Africanus, Sextus Caecilius. A Roman jurist of the middle of the second century after Christ, a younger contemporary of Julian and probably his pupil. He is the author of a collection of responsum, published under the title of Quaestiones (in nine books); many of them represent the opinion of Julian. From his twenty-book-collection of Epistulae one text only is preserved.

Jörs, RE 3 (a. a. Caecilius, no. 29); Orestano, NDI 1;

Buhl, ZSS 2 (1881) 180; Lenel, ZSS 51 (1931) 1;

Degrassi, Epigraphica 3 (1941) 23.

Agens vice (vicem, vices). See VICE.

Agentes in rebus. Since the fourth century after Christ, a body of more than a thousand persons whose official duties varied widely in character. They acted chiefly as police officers. Their competence also embraced the provinces where during their frequent travels, they had to inspect the state post and to report about misdemeanors and corruption of officials in other fields of administration. They developed a system of spying and denunciation and they exercised a great influence at the imperial court as informers and secret police, not seldom misusing their position. A group of them charged with the control of the cursus publicus (= state post) were called curator in allusion to their inquisitive activity.—C. 12.20; 21.

—See SCOLARE.

Seck, RE 1; Humbert, DS 1; De Ruggiero, DE 1, 355;


Ager. Any kind of rural land, both arable and pasture, not including buildings and villae (country-houses, farm-houses). The principal division is: ager privar, in private ownership, and ager publicus, state land considered to belong to the Roman people. The various types of public land assigned to private individuals are explained in the following items. The nature of some of them varied in the course of time owing to the manifold agrarian legislation (see LEGES AGRARIAE). In the last analysis, through the gradual assignment of the ager publicus to private individuals by various forms, all the land which in the earliest times was ager publicus became ager privar,.


Ager adsignatus. See ADSIGNATIO.

Ager colonicus. Land destined as the territory of a
new colony. It was assigned to the colonists in ownership.

Ager compascuus. Pasture land assigned to the inhabitants of the adjacent plots, for their collective use at a small fee (scriptura).

Ager desertus. Land abandoned by its owner and not cultivated. Imperial legislation took care of bringing such land into agricultural economy.—C. 11.59.

Leonhard, RE 5, 249; Humbert, DS 2 (s.v. deserti agrī); Kaser, RE Suppl. 7, 690; Charvin, Les constitutions du Code Théod. sur les a., La Belgique judiciaire 58 (1900); Meyer-Collins, Der Stichts (Das. Erlangen, 1930) 89; E. Levy, West Roman Vulgar Law, 1951, 194.

Ager emphyteuticus (emphyteuticus). Land which is the object of a contract of emphyteusis. Syn. ager vectigalis.—See EMPHYTEUSIS. D. 6.3.

Ager limitaneus. See LIMEN.

Ager limitatus. Land, the boundaries of which were settled by a land-surveyor.

Ager occupatorius. (1) Enemy land occupied by the Romans and annexed to the territory of the state; (2) part of the AGER PUBLICUS which was open to free occupation and use by anybody, the ownership, however, being reserved to the state which had the right to claim it back at any time. Holders of such land (possessoris) could dispose of it by various transactions and by testament. The agrarian legislation (see LEGES AGRARIÆ) imposed some limits on the extension of an ager occupatorius.

Kaser, RE Suppl. 7, 689; idem, ZSS 62 (1942) 27; F. Bozza, Possesso dell'ager publicus, 1939.

Ager privatius. See AGER.

Ager privatius vectigalissis. Land which originally was AGER PUBLICUS became quitatory property of the buyer when sold by public sale. The acquirer had to pay an annual rent to the state. The ager privatius vectigalissis passed to the heirs of the owner as part of his succession, but it could not be sold by him. Later agrarian legislation introduced some modifications.

Kaser, ZSS 62 (1942) 6.

Ager provincialis. See FUNDUS PROVINCIALIS.

Ager publicus. The land which belongs to the state (the Roman people). The principal source of its increase was military conquest. Portions of the AGER PUBLICUS could become private property by assignment (adsignatio, ager adsignatus) or by sale (AGER QUASESTORIUS, since such sales of state property are made by the quaestors). Lease of the AGER PUBLICUS to individuals was also practiced, either in perpetuity, for long terms or for short periods. The lessee paid a rent (vectigal).—See AGER, LEGES AGRARIÆ, AGER QUASESTORIUS.

Kubitschek, RE 7A 10; Schwahn, RE 7A 10; Humbert, DS 1: Albertario, NDI 1; Jones, OCD; De Ruggiero DE 1; Guiraud, Rev. des questions historiques 44 (1909) 397; T. Frank, JRSI 17 (1917) 141; Zancan, ATor 67 (1932); idem, A., Pubbl. Facoltà Lettere Univ. Padova, 8 (1935); F. Bozza, Possesso dell'ager publicus, 1939; Carcaterra, AnBari 4 (1941) 101; Kaser, Eigentum und Besitz, 1943, 239 and passim; Tibielli, Ativ 26 (1948) 173, 27 (1949) 3.

Ager quaestorius. See AGER PUBLICUS.

Kaser, ZSS 62 (1942) 43.

Ager Romanus. The Roman soil comprising the territory of the city of Rome, later, the territory divided into thirty-five tribes (tribus), and, finally, the whole of Italy.

Ager scripturarius. A plot of public land granted to private individuals for pasture on payment of a special tax (scriptura).

C. Trapani, L'as., 1908.

Ager stipendiarius, tributarius. See FRAEDIA STIPENDIARIA, FRAEDIA TRIBUTARIA.

Ager vectigalis. Land belonging to the state or municipality and leased in perpetuity. Originally the lease of state land was performed by the censors and the term was limited to five years (leges censoriae, leges locationis). In postclassical law, the ager vectigalis is identified with ager emphyteuticus. It was hereditary and the lease could not be annulled if the lessee or his heir paid the rent regularly. The pretorian action for the recovery of such land from a third person holding it unlawfully was modeled after the rei vindicatio although the lessee was not a full owner (actio vectigalis or quae de fundo vectigalis proposita est). In the largest sense, any public land given in lease to an individual for a rent (vectigal) is called ager vectigalis.—See AGER PRIVATUS VECTIGALISIQUIS.

Humbert, DS 1; Holla, NDI 1; Bassanelli, La colonia perpetua, 1933; Beseler, SDHI 3 (1937) 360; Lanfranchi, Studi sull'ager vectigalissis 1 (1938) 2 (AnCam 13, 1939, 163) 3 (AnTor 11, 1940); Kaser, ZSS 62 (1942) 34.

Ager viritus. Public land assigned individually (viritum) to a private person, mostly under the form of AGER PRIVATUS VECTIGALISIQUIS. This assignment is not connected with the foundation of a colony.

Kubler, Geschichte des rom. Rechts, 1925, 120.

Agere. In a civil trial, the procedural activity of the plaintiff (is qui agit). Ant. is cum quo agitur = the defendant.—See ACTOR, IS QUI AGIT.

Wlassak, RE 1 (s.v. actor); Fadda, NDI 1.

Agere. When referring to the activity of the jurists, indicates their activity as legal advisers in a specific controversy. In particular, they assisted the party to a trial in drafting the formula to be used by him, in advising him about the use of prescribed oral forms, in acting personally in the first stage of the trial before the magistrate, or in instructing the party's advocate. This activity gave the jurists the opportunity to develop new, unprecedented formulas.

Berger, RE 10, 1162.

Agere causas. See CAUSAS DICERE.

Agere cum plebe, populo, senatu. See IUS AGENDI CUM PLEBE, POPULU, SENATU.

Agere iumentum. See IUS AGENDI IUMENTUM.

Agere per sponsionem. (1) In interdictal proceedings, a special form of trial when the defendant did
not immediately obey the praetor's order. At the plaintiff's demand a normal trial was initiated in order to establish whether or not the defendant had fulfilled the interdictial order. The sponsio trial involved a penal element since the defendant bound himself by a stipulation (sponsio) to pay the plaintiff a penalty (poena) if his failure to obey the interdict was proved. In the case of an interdictum duplex each party had to promise to pay a penalty if defeated, the defendant by sponsio, his adversary by restitutio. Thus a counterpart to agere per sponsionem is agere ex restitutione. The sponsio was only a measure to compel the party involved to fulfill the command of the magistrate. If, however, the restitution or exhibition ordered by the magistrate was still not accomplished, or if the defendant continued to interfere with the plaintiff, contrary to a prohibitory interdict issued, a specific action followed, called iudicium securorum, the aim of which was to procure for the plaintiff full satisfaction for all damages and losses he had suffered from the obstinate behavior of the defendant. (2) Another form of agere per sponsionem is applied when the question of ownership of a thing is involved. The party in possession of the thing promised the adversary a certain sum by sponsio (stipulatio) in the event that the latter proved his ownership over the controversial thing. The action which followed was based on the sponsio and the decision therein was actually a decision on the ownership. Here the sponsio had no penal character and therefore the defeated possessor did not pay the sum stipulated in the sponsio, the function of which is described as follows: "through it, it is judged over the thing itself" (per eam de re ipsa indicatur, Gaius, Inst. 4.94). Hence it is called sponsio praesidialis because the legal situation established in the decision in the sponsio suit was prejudicial for all claims connected with the ownership (the delivery of the thing, or of its fruits, and the like).—See SPONSO, PROVOCARE SPONSOE.

Berger, RE 9, 1693; Jobbe-Duval, Ét sur la procédure civile 1. Agere p.a., 1896; Börsz. St Bonfante 2 (1930) 589; Carcattera, AnBari 2 (1940) 52; Kaser, Eigentum u. Besitz, 1943, 282; Sibiv, Fische Wenger 1 (1944) 69; Arango-Ruiz, La parole del passato 8 (1948) 142; v. Lüthow, ZSS 68 (1951) 337.

Agere praescriptis verba. See ACTIO FRAMESCRIPTIS VERBIS.

Agerius. See AULUS.

Agnasci. To enter by birth (or by adoption) into the agnatic group. The term is primarily used with reference to a person (son or grandson) born after the death of a testator. He becomes the testator's heir (heres suus) by reason of the fact that he would have fallen in directly under the testator's paternal power if the latter were still alive. See POSTUMI. The term is also applied to children born during the testator's lifetime after a will has been made.—See the following items.

Agnatio. The relationship among persons (agnati) who are under the paternal power (patria potestas) of the same head of a family (pater familias) or who would have been if he were still alive. The agnatic tie is created by descendancy in the male line from a common ancestor. From earliest times agnatio was the basis for rights of succession by intestacy according to the ius civile. Guardianship also falls on the nearest agnatus.—Ant. cogntio.—Inst. 1.15; 1.2.—See HERES SUIUS.

Leonard, RE 1; Baudry, DS 1; Paoli, NDI 1; Lenel, ZSS 57 (1914); Ferrozzi, BIDR 31 (1921) 88; Michon, MéI Cemel 2 (1926) 113; G. Goutelle, La lutte entre l'agnation et cogntion à propos du Senanc. Tertullilumnum, 1934; Carcattera, AnBari 2 (1940); C. Castello, Diritto familiare, 1942, 123; Guarino, SDHI 10 (1944) 290; idem, AnCesi 1 (1947) 330, 3 (1949) 204; Lepri, St SolaGez, 1948, 299; SolaGez, ANap 63 (1950).

Agnati (agnatus). See AGNATIO, AGNACI.—Ant. Cognatio.

Agnatio postumti. See AGNACI, POSTUMI.

Agnatus proximus. The nearest relative among the agnati. In matters of intestate succession and guardianship an agnatus proximus excludes the agnatus of a remoter degree.—Ant. agnatus inferioris gradus.

Lenel, ZSS 37 (1917) 129.

Agnitio honorum possessionis. The request of a person addressed to the praetor that he be granted the possession of an inheritance (bonorum possessionis) as successor according to the praetorian law (bonorum possessor).—See BONORUM POSSESSIO.

Leonard, RE 1; Arangio-Ruiz, FJR 3 (1943) no. 61; H. Krüger, ZSS 64 (1944) 397, 405.

Agnoscere. A general term for the assumption of legal duties or the acknowledgment of a specific legal situation or transaction.—D. 25.3.

Agnoscere bonorum possessionem. See AGNITIO BONORUM POSSESSIONIS. Syn. petere bonorum possessionem.

Agnoscere liberum (partum). To acknowledge the paternity of a child. A senatusconsultum de agnoscendi liberiis established certain rules in the case of pregnancy of a divorced wife, designed to protect her rights against the former husband as well as the latter's if the child was not his. The wife had to declare formally to the husband se ex eo praesumatur esse.—D. 25.3.—See SENATUS CONSULTUM PLANCIANUM.

Agnoscere signum. See SIGNUM.

Agrimensorum. Land(field) surveyors. Syn. mensores agrorum, agrarii, or simply mensores. The earliest were priests (augures) since the Romans attached a religious significance to the boundaries of a city or of a settlement and the act of tracing the boundaries was celebrated with sacred rites. Later, they were private individuals, experts in surveying. An agrimensor engaged for the delimitation of a plot of land was not considered to be hired by locatio conductio; his services were treated as liberal, not sal-
ried, services. See HONORARIUM. He was responsible, however, for fraud committed in the fulfillment of his professional duties. A special action was granted against an agrimensor who made a false report on boundaries (qui falsum modum disserit). Under the Principate the agrimensores were trained in special schools. Some were appointed as state officials, chiefly for military purposes (division and assignment of conquered land, limitation of military camps). In their private activity they functioned as arbitrators in controversies about boundaries of private property or as experts in judicial trials on such matters.—See CONTROVERSIA DE FINE, DE LOCO.

—D. 11.6; C. 12.27.

Fordyce and Balsdon, OCD (v. grutum); Kubitschek, RE 1; Schulten, RE 7 (grutum); Fabricius, RE 15 (memor): Humbert, DS 1; Bulla, NDI 1; De Ruggiero, DE 1; E. Levy, Privatstrafe und Schadensersatz, 1915, 52; idem, Konkurrenz der Klagen 2, 1 (1922) 241; Beeson, CI Philol 23 (1928) 1; Albertario, SDHI 9 (1943) 27.

Aio. "I affirm." The word is used by a party to a trial to stress his rights to the object in dispute, or to assert the status of liberty of a man (hunc hominem liberum esse aio).

Ait (aiunt). In juristic writings, opinions of other jurists are thus introduced in this way, e.g., Labeo ait. In the commentaries on the praetorian edict, the words praetor ait (inquit) precede a literal quotation. Excerpts from statutes, senatusconsults and imperial enactments are also often attached to ait.

Ala. A cavalry unit of about five hundred men within the auxiliary armies (auxilia) under the command of a praefectus alae (since Augustus). The auxiliary cavalry has to be distinguished from the cavalry units within the legions (equites legionis).

Cichorius, RE 1; Köbler, RE 6, 279; De Ruggiero, DE 1.

Album. A board painted white, exposed in public and accessible to the people, on which announcements (edicta) of the magistrates were written. Forgery of the text or damage intentionally done to the album (corrumpere, corruptio) can be prosecuted by any citizen through the actio de albo corrupto.—See ALBUM PRAETORIS, ACTIO DE ALBO CORRUPTO.

Schmidt, RE 1; Guillaume-Saglio-Humbert, DS 1; Anon. NDI 1; Schulz, JRS 32 (1942) 88.

Album collegii. A list of the members of a collegium as well as the bulletin board for internal announcements in an association.

De Ruggiero, DE 1, 393.

Album curiae (decurreionum, ordinis decurreionum). The list of the members of municipal councils. It was published on a white board.—See CURIA, DECURREIONES, PROSCRIPTIO ALBE.—D. 50.3.

De Ruggiero, DE 1, 392; Kornemann, RE 4, 587; V. Hoesen and Johnson, Jour. Egyptian Arch., 12 (1926) 116.

Album iudicum. The list of citizens qualified to assume the function of juror in judicial trials, both civil and criminal. Under the Republic the album iudicum was prepared every year by the praetorian office. Political points of view often influenced the composition of the list. The jurors for a specific trial were selected by agreement of the parties or by lot (sortitio). The parties had the right to reject persons unacceptable to them (reicere, reiectio).—See FERE JUDICEM.

Steinwenter, RE 9, 2466; Guilemin-Saglio-Humbert, DS 1; Fraccaro, Rev. Lomb 52 (1919) 335; Kreller, ZSS 45 (1925).

Album praetorius. A white board on which the praetorian edict was publicly announced together with its legal rules, procedural formulae (actions, exceptions, interdicts) and praetorian measures. A plaintiff who wanted to sue his adversary might lead him before the album and indicate there the formula of action he wished to apply against the defendant.

Album senatorium. The list of the members of the senate.

De Ruggiero, DE 1, 390.

Aea. In juristic language the term indicates any game of chance (not only dice). Claims arising from such games, which were generally forbidden, were not actionable. The Justinian law admitted certain exceptions.—See LEX AEAARIA, LEX CORNELIA DE AEAATORIBUS, LEX TITIA DE AEAATORIBUS.—C. 3.43.

Leonhard-Hartmann, RE 1; Humbert, DS 1.

Aleator. A gambler.—D. 11.5; C. 3.43.—See AEA.

Alfenus Varus. A Roman jurist of the end of the Republic, pupil of Servius Sulpicius Rufus, author of an extensive work, Digesta, in forty books.

Klebs-Jors, RE 1; Orestano, NDI 1; H. Krüger, St Bonfante 2 (1930) 326; L. de Sario, Alfenus Varr e i suoi Digesta, 1940.

Alienatio. Alienation, the transfer of property through a transaction (sale, donation). Certain things are not alienable (RES LITIGIOSAE, land constituted as a dower, fundus doitius) and, on the other hand, certain persons are not permitted to alienate their property because of the lack of legal ability to act by themselves (persons under guardianship or curatorship). Insolvent debtors were prohibited from alienating their property fraudulently to the detriment of the creditors (in fraudem creditorum). See INTERDICTUM FRAUDATORIUM. For fraudulent alienation by a freedman to the detriment of his patron, see ACTIO CALVISIANA. For the alienation of a thing bequeathed in a last will to a legatee, see ADEMP'TIO LEGATI.—Inst. 2.8; C. 4.51; 52.

De Ruggiero, DE 1; Del Prette, NDI 1; De Robertis, AnBair 2 (1939) 71; Brasilio, SDHI 15 (1949) 114; A. Burde, Autorizzazione ad alienare, 1950.

Alienatio hereditatis. The transfer of an inheritance before or after its acceptance by the heir is achieved by IN FURE CESSIO HEREDITATIS. The alienation of an anticipated inheritance of a person still alive by a presumptive successor was not only void, but the seller also became unworthy (indignus) losing thereby his right to receive anything from that particular inheritance.
Alienatio in fraudem creditorum. See alienatio, interdictum fraudatorium.

Alienatio iudicis mutandi causa facta. The transfer of a thing which is expected to be the object of litigation in the near future, in order to change the conditions of the trial to the disadvantage of the adversary. The transaction could be rescinded by the praeator through in integrum restitutio. In particular an alienation to a person of greater power (potestates) was forbidden.—D. 47; C. 2.54.

Parsch, De seditur auliam, 1900; Mitteis, ZSS 30 (1909) 451; Lenel, ZSS 37 (1916) 104; Kretschmar, ZSS 40 (1919) 130, 48 (1928) 566; L. Charvet, La restitution in integrum des majors, 1920, 93.

Alieni iuris esse. To be legally dependent upon the power of another. Syn. alieno iuri subjicius, in potestate alcuicis esse. The power (ius, potestas) of another fell into different types and consequently there was a distinction among persons alieni iuris. The most important group was that of persons subject to the paternal power (patricia potestas) of the head of the family (pater familias). Other persons alieno iuri subjicius were wives under the power of the husbands (manus), persons in mancipio (see mancipium), and slaves (servi) under the dominica potestas of their masters. Ant. suj iuris esse. Persons alieni iuris might become suij iuris either through legal acts, which differed according to the form of potestas, or in consequence of certain events. Persons subject to paternal power become sui iuris through the death of the pater familias, unless they then come under the power of another person, as, e.g., a grandson became subject to the patria potestas of his father if they both had been under the potestas of the grandfather. The release of a person alieni iuris from paternal power in the lifetime of the father was achieved by emanicipatio, that of a slave by manumissio.—See pater familias, patria potestas, sui iuris esse.—Inst. 1.8; 4.7; D. 1.6; 14.5; C. 4.26.

Alienigenus. A foreigner (born in a foreign country).

Alieno iuri subjicius. See alieni iuris esse.

Alieno nomine. In the name (in behalf of) another (e.g., agere, possidere, etc.). See nemo alieno nomine.—Ant. suo (proprio) nomine. Acting alieno nomine was subject to various restrictions which in the course of time were gradually repealed.

G. Beeler, Juristische Miniaturen, 1929, 92.

Alienum. (Noun.) All that belongs to another.

Alienum ase. See aet alieum.

Alienum negotium. Another man’s affair. See negotiorum gestio. The law intervened in cases in which a person managed another’s affair without being authorized by him.

Alienus. See alienum. Ant. proprius.

Alimenta. Nourishment, the necessities of life, means of support. Under the Principate a reciprocal right to, and duty of, sustenance between parents and chil-

dren was established. Imperial constitutions and the jurisdiction of the cognitio extra ordinem enlarged the circle of persons obliged to reciprocal support (grandparents and grandchildren, wards, even illegitimate children), which reached its apogee in Justinian’s law. This introduced a general obligation to provide alimenta for impoverished relatives as a duty of piety (officium piastatis). For alimenta as a public institution, see alimentarius, facultates, oratio marci.—D. 25.3; C. 5.26; 50.

De Ruggiero, DE I, 408: Roberti, Il diritto agli alimenti, Miscellanea Verona 2 (1935); B. Albertario, Studi 1 (1933) 249; Lanfranchi, SDHI 6 (1940) 5; G. Longo, AnMac 17 (1948) 215; Sacher, Feste Schulz 1 (1951) 310.

Alimenta legata. Legacy of sustenance. It comprised food (cibaria), clothing (vestiaria) and lodging (habitation). The extent of such a legacy is broadly discussed by the jurists in D. 34.1. It was normally combined with landed property as security.

—See legatum fenoris.

B. Biondi, Successiones testamentaria, 1943, 463.

Alimentarius. Connected with the distribution of alimenta (provisions) among the poor. Pueri alimentarii (puellas alimentarias) are indigent children who received alimenta from either imperial or private foundations (arca alimentaria, pecuniae alimentariae). The supervision of all such organizations in Italy and in the provinces was assigned to special procuratores (quaestores, profecti) alimentarium.

Kubitschek, RE I; Orestano, NDI I; De Ruggiero, DE I, 402, 408.

Alluvio. What a river has gradually added to the land along its bank. The landowner acquires ownership of the added soil (accessio). If, however, a river swept away a piece of land and attached it to another’s property, the former owner did not lose his rights to the land carried away unless the accession became inseparable from the neighbor’s land, as when, for instance, the trees stroke roots into the latter.—C. 7.41.

Lehnard, RE I (edwinus); Baudry, DE I; Pampoloni, SJem 43 (1929) 214; Naber, Atth 10 (1932) 37; Gammarini-Giusti, BIDR 43 (1935) 25; Branca, AnTr 12 (1941) 50.

Alma urbs. In later imperial constitutions refers to Constantinople.

Alter alteri obligatur (tenetur). Each party is obligated to the other contractual partner. The phrase applies to reciprocal obligations in consensual contracts in which each party is bound to "what each has to perform for another ex aequo et bono (according to what is just and fair)," Gai Inst. 3.137, Inst. Inst. 3.22.3.

Altercatio. A legal controversy. Altercationes = alternating speeches of the advocates in a trial. Also a cross-examination of a witness.

Steinwenter, ZSS 65 (1947) 92.

Alterum tantum. As much again. Syn. duplum. The expression is applied to actions in which the plaintiff
is condemned to pay twofold the value of the object in dispute. See *actiones in simulum, duplum.*

Atiliores. Persons of the highest social rank.—See *honestiores.*

Alumnus. A child nourished and brought up by a person not related to him by blood.—See *expositio.*

De Ruggiero, *DE* 1; Votteria, *St Tenta* 1 (1939) 455.

Alveus derelictus. A river bed abandoned by the flowing water. It belonged to the landowners on the banks in proportion to the extent of their holdings, while the new river bed was in the same legal situation in which the former was: it became a *flumen publicum* (a public river) if it had been such before.—See *Flumina.*


Amatorius. See *venenum.*

Ambigere. To doubt, dispute, call into question. Legal decisions or rules are often introduced apodictically by *non est ambigendum, non ambiguutur* (= there is no doubt).


Ambigua vox. An obscure, ambiguous term. When it is used in a statute, "that meaning of it ought rather to be accepted which is blameless (*stito caret = free from fault), particularly when the intention of the law cannot be thereby concluded" (D. 1.3.19).—See *interpretatio.*

Ambiguitas (ambiguus). Ambiguity, vagueness. The terms are used with predilection by Justinian and his compilers. But the phrase *non est ambiguis juris (= it is a certain law) is frequent in Diocletian’s constitutions. The monograph "De ambiguitatis" ascribed to the jurist Julian may be a collection of doubtful questions collected in a later period from the jurist’s works.—See *ambigere, ambiguas vox.*


Ambire. To canvass in elections for magisterial posts.

Ambitio. Bias, partiality (e.g., of a judge).

Ambitus. Unlawful maneuvers in elections. A series of statutes (see *lex Aurelia, Calpurnia, Cornelia, Cornelia Baeria, Cornelia Fulvia, Iulia, Postella, Pompeia*) dealt with dishonest and corrupt electoral practices by the candidates for magistracies ( bribery, banquets, circus plays, canvassing by unworthy means). The legislation against ambitus may not have been very effective since the various prohibitions had to be repeated under the Republic time and again and the penalties became more and more severe (pecuniary fines, loss of its honorum, exclusion from the senate [lex Calpurnia of 67 b.c.], infamy, exile) until the *lex Iulia* of Augustus of 18 B.C. introduced some moderations.


Ambitus. An open space two and a half Roman feet in width (*duo pedes et semis = sestertius pes*) between neighboring houses. Originally required by the Twelve Tables, it fell later into disuse. See *pobies communis, servitus oneris ferendi.* New building regulations were introduced by the Emperor Zeno (474-491). See *aedificatio, zenitnianae constitutiones.*

Bruci, *RISG* 4 (1887); Berger, *ACDR* Roma, 1 (1934) 57.

Ambulare. The passing of a thing, a right or possession, from one person to another or successively to several persons by a change in the legal situation.

Amica. See *paelex.*

Castello, *Matrimonio e concubinato* (1940), 31, 41.

Amici Augusti. Outstanding persons, senators or knights (*equites*), admitted to solemn receptions by the emperor. They have no official position. From Diocletian’s time the title *amici Augusti* was automatically granted to higher court officials.

Oehler, *RE* 1, 1831; Cicotti, *DE* 1.

Amicitia (foedus amicitiae). A treaty of friendship between Rome and another state establishing peaceful and friendly relations.—See *amicus populi Romani.*


Amici populi Romani. A title granted by the senate to individuals who rendered special services to the Republic. A state with which Rome has a friendship treaty. See *amicitia.* A stronger degree of international relations with Rome was that of societas, by which a foreign state became an ally (*socius*) of the Roman state (*populi Romani*) and was bound to give military aid in the event of war.


Amovere. To purloin, put aside. The term has a milder color than *furari (furarium committere = to steal) and is applied when there is no real theft, as, for instance, when important documents or things belonging to an inheritance are hidden by the heir. For *amovere between spouses, see actio rerum amatorum.*

Ampliatio. In Roman criminal procedure the reiteration of all the evidence when the jury declared that the case has not been sufficiently elucidated and required further (*amplius*) investigation.


Amplissimus ordo. The senate.—See *senatus.*

Amplitudo. A distinctive title of the highest functionalities in the later Empire ("your Excellency").

Anastasianae leges. See *leges Anastasianae.*

Anatocismus. The transformation of interest due and not paid into a new interest bearing principal. The term is unknown in juristic sources. Syn. *wurrae wurwarum.* Although forbidden, it was practiced in
Cicero’s time as *anatocismus anniversarius* (= annually compounded interest). Justinian forbade it definitely.

Leonard, RE 1; Callmer, DS 1.

Anatolius. A law professor in Beirut, one of the compilers of the Digest. Anatolius (the same?) is known as a commentator on Justinian’s Code.

Hartmann, RE 1, 2273; Berger, *Byz. 17* (1945) 1 (Bibl.).

Ancilla. A female slave.—See *PARTUS ANCILLARUM, PROSTITUTES*.

De Ruggiero, DE 1; F. M. De Robertis, *La organizzazione e la tecnica produttiva*, 1946, 156.

Aneglogistus. Exempt from the duty of giving account. The term is used on a guardian appointed in a testament and relieved by the testator from giving account of his administration of the ward’s property. The guardian was, however, liable for fraud in spite of the testator’s order.


Angaria (angariae). Compulsory service in the imperial post or in the transportation of persons or things in official business (*cursus publicus*). The same term indicates the animals (oxen, horses = *veredi*) as well as the carriages to be provided for that purpose. Later imperial legislation dealt with the organization of official transportation and postal service, which had become a great burden to landowners.—C. 12.50.

Seeck, RE 1; Humbert, DS 1, 1659; Rostowzew, *Klio 6* (1906) 249.

Augustus clavus. A narrow purple stripe on the tunic, a distinctive mark of the equestrian rank.—*Anatus clavus* (for senators).—See *CLAVUS LATUS*.

Hula, RE 4, 6; De Ruggiero, DE 2, 306.

Animadversio. *Animadvertere*. Any kind of punishment, but most often capital punishment. *Animadversio gladio* (*animadversio capitio*) = decapitation. *Animadversus* = a man who was executed in conformity to a death sentence.

Animalia. A distinction was made between wild animals living in a natural state of liberty (*ferae bestiae*) and those who go away and come back to their former place (pigeons, bees, stags). The latter belonged to the occupant and as long as they retain the habit of returning to his property (*consuetudo, animus revertendi*).—See *FERAE, ANIMUS REVERTENDI, ACTIO DE PAUPERIBUS*.

Animalia quae collo dorseo domantur. Domestic animals of draft and burden (horses, oxen, asses, mules, but not elephants and camels). They are res *MANCHIP.*—See *PECUS*.

Animus. The intention (will) of a person concluding a transaction with another or acting unilaterally in order to accomplish an act with legal effects. *Animus* is also connected with certain wrongdoing in order to stress that the person acted intentionally (*animus furandi, iniurias faciendae, occidenti*). With reference to last wills and testaments, the syn. term *voluntas (testantis, testatoria*) prevails. Intention is distinguished from what a person declared orally whether by solemn, prescribed words or informally or in writing. A contradiction between intention (*animus, voluntas*) and the words expressed (*verba*) might influence the validity of the act accomplished. After the archaic and preclassical periods of rigid formalism in legal transactions, the importance of the *animus (voluntas)* with regard to the validity of the act was gradually recognized already in classical time, although there is in the modern Romanistic literature a tendency to ascribe all occurrences of *animus* in Justinian’s codification, chiefly in the contractual domain, to the emperor’s innovation or at least to post-classical origin. The tendency mentioned is doubtless an exaggeration though the interpolation of many texts in which the *animus* is emphatically stressed is beyond the question. The connection between *animus* and various legal institutions differs in intensity; its significance in the Roman doctrine of possession (*animus possessio*) is particularly well elaborated. Syn. with *animus* is sometimes *affectio* (*affectus*), sometimes *mentis*, as in the phrase *eo animo ut (eo mente ut)* = with the intention that.—See *VOLUNTAS* and the following items.


Animus adimendae legatione. See *ADEMPITO LEGATI*.

Animus contrahendi. (Or *animus contrahendae obligationis*) Occurs in a few texts. Sometimes the type of the contract is specified: *animus emendi, vendendi, transigendi, promittentis, stipulantis, compensandi, etc.*

Animus damnii danni. The intention to damage a thing. It is used in connection with damages done to testaments.

Animus decipiendi. The intention to deceive (de- fraud) another.

Animus derelinquendi (derelinquentis). See *DERELICIO*.

Animus donandi. The intention to make a gift.—See *DONATUM*.


Animus furandi (furiae, furti faciendi). See *FURTUM*.


Animus iniuriae (faciendae). See *INIURIA*.

Animus intercedendi. See *INTERCESSIO*.

Animus legandi. See *LEGATUM*.

Animus liberorum procursandorum. Procreation of children is considered to be an element of intent in concluding a marriage.

Animus lucrandi (luci faciendi). See *FURTUM*. 
Animus negotia aliena gerendi. See negotiorum gestio.


Animus novandi. See novatio.

Guarnieri-Ciasti, Indice 2 (1927) 11; Scialaja, St Perea ti, 1925; Corull, MÜ Fournier, 1907, 87; Hägerström, Der röm. Obligationsbegriff 2 (1941) Bell. p. 199.

Animus occidenti. The intention to kill a man.

Animus possidenti. The term, common in literature, is rare in juristic sources, which also speak of animus possess idinis, but mostly of animo adquirere possessi onem or retinere possessionem.—See posses sio.

Rotondi, BIDR 30 (1920) 1 (= Ser giur. 3, 1922, 94).

Animus recipiendi. Refers to the intention of a person acting on behalf of another without authorization (negotior um gestor) to be reimbursed subsequently for his services.

Animus revertendi. Used of animals which have the habit of returning to their quarters. Thus, their owner does not lose ownership. See anima lia. Similarly the master of a slave retained his power as long as the slave had the intention to return to the master.

Animus societatis. See societas.

Annalis actio (or exception). An action (or exception) available for only one year to anyone who wished to make use of it. See actiones temporales.

Both these remedies are of praetorian origin.

Annulus. A one-year-old child.—See caussa pro ratio.

Anniversarius. See anatocismus, canon.

Annona. Has different meanings which all, however, are somehow connected with the supply of provisions: the general supply of grain for the city of Rome, the free distribution of grain and bread to needy people, food for the army, food sold by the government to the people for cash, taxes in natural products, and, finally, the central administration of the food supply. Originally the responsibility for the provisioning of Rome was vested with the aediles, under the later Republic and in the Empire the cura annonas was enlarged under the supervision of the praefectus annonas assisted by a staff of auxiliary officials.—D. 48.12; C. 40.16.—See ANNONA CIVICA, ANNONA MILITaris, CURA ANNONAE, PRAEFECTUS ANNONAE, PROSECUTOR, LEX IULIA DE ANNONA.

Schwahn, RE 7 A, 76; Stevenson, OCD.; Kalsbach, RAC 1 (1950) Oehler, RE 1; Humbert, DS 1; Rostowzew, RE 7 (frumentum); De Ruggiero, DE 1; A. Segré, Byz. 16 (1943) 392.

Annona civica (civilis). The supply of food from Egypt and Africa for the provisioning of Rome, and later of Constantinople. The term is also used to indicate the gratuitous distribution of food to the poor, also known as annona publica.—C. 11.25.—See FRUMENTATIONES, LEGES FRUMENTARiae.

Van Berchem, Les distributions de blé etc. sous l’Empire, 1939.

Annona militaris. Provisions supplied by the population in the provinces for the maintenance of troops and government officials. In the later Empire this, originally an emergency measure, became a permanent institution as a form of taxation in kind.—C. 12.38.

De Ruggiero, DE 1; A. Segré, loc. cit.; Van Berchem, Mém. de la Société des Antiquaires en France 80 (1937) 117.

Annona publica. See ANNONA CIVICA.

Annonarius. (Adj.) Connected with food administration.—See ANNONA.

Annua bima trima die. A frequent clause in legacies of annual payments (pensions): the bequeathed sum was to be paid over a period of three years in equal installments. The phrase also appears in sales when the price was to be paid in the same way.

Annus continuus. A full calendar year of 365 consecutive days. Ant. annus utilis.

Annus utilis. A one-year period (365 days) not counting the days during which the party involved was unable to act in court for personal reasons (disease, captivity, absence in official business) or because of the absence of his adversary or the inactivity of the judicial authorities.—See dies utiles, tempus utile.

Kübler, RE 5 A, 485.

Annuum. A payment or an allowance which recurs every year. Annum legata = legacies consisting of annual payments.—See legatum annuum.

Anonymus. An anonymous juristic writer of the late sixth century after Christ, author of a concise summary (index) of the Digest which served as a basis for the compilation of the Digest portion of the BASILICA. He can be identified as the author of a collection of ecclesiastical and lay legal sources, the so-called Nomocanon 14 titulorum, and of a compilation of allegedly controversial rules in Justinian’s Digest. From the title of the latter work (Peri enantiotheneion), later Byzantine authors invented the name Enantiophanes of a jurist. The identity of the author of the Digest index and the compilations mentioned is controversial but without good reasons.


Anquisitio. The earliest form of judicial trial in criminal matters conducted by a magistrate in the presence of an informal assembly of citizens (contio) who attended the whole proceedings, the examination of the accused and the hearing of witnesses, in order to be able to pass final judgment in case the accused appealed from the condemnation by the magistrate. An acquittal by the latter is final, however.

Hartmann, RE 1; Brecht, ZSS 59 (1939) 271.

Antecessores. Prominent teachers in the law schools of the late Empire.

Humbert, DS 1.
Antestatus. One of the solemn witnesses at a municipatio in the earliest law. His role in the act is not quite clear and he disappeared soon (there is no mention of him in Gaius).

Leitl, RE 1; Kaser, RE 5A, 1025; Kreekel, RE 14, 999; De Ruggiero, DE 1, 491; Schwyzer, RISG 47 (1910) 333; Bonfante, Corso di dir. rom. 2, 2 (1928) 138.

Anthianus. See FURIIUS ANTHIANUS.

Antichresia. An agreement between creditor and debtor by which the former was granted the right to use the thing pledged (land or house) and to obtain income therefrom in lieu of interest. The creditor might lease the property, live on it, or use it otherwise. He kept possession until the debt was paid.

Leonhard, RE 1; Manigk, Gütwillverbriefung durch Nutzum, 1910; idem, RE 20, 1276.

Antinomia. Justinian uses this Greek term, for which he did not find a Latin synonym, to indicate a contradiction between legal norms. He proudly, though mistakenly, stresses that his codification is free from contradictory statements (Deo auctore B = C. 1.17.1.8).

Antiphema. Gifts given by the husband to the wife as a counterpart to the dowry (in Greek ἀφέσις).—See DONATIO ANTE NUPTIAS.

Antiquus. As a noun, or as an adjective in connection with legum auctores, conditores, prudentes, etc., refers to former jurists, particularly those of more remote times. In Justinian's language by antiquus the classical jurists are meant.—See VETERES, IUS ANTIGUUM.

Antiquus. See a (abbreviation for antiquus).

Antiquum ius. See IUS ANTIGUUM, VETUS IUS.

Anulus. A ring. It was an old Roman custom that freeborn men wore rings signdam causa, i.e., for sealing written instruments they made or witnessed (e.g., last wills). Syn. anulus signatorius.—See IUS ANULI AUREI, EQUITES.

Apertissimae. Most evident, conclusive. It is one of Justinian's favorite superlatives, often applied to means of evidence (apertissimae probationes).—See PROBATIONES.

Guerini-Ciati, Indice (1927) 11.

Apertura testamenti (tabularum, codicillorum). In connection with the introduction of an inheritance tax (vicisima hereditatium), certain formalities were fixed for the opening of a last will in the presence of a special official. From Hadrian's time the competent office was the static vicisimae. After the acknowledgment of the signatures and seals by the witnesses, the testament was opened (aperture) and read aloud in public (recitation testamenti). Later it was deposited in the archives together with a record of the whole act of apertura. Persons interested in the document were permitted to see it (inspicere) and to make a copy (describere).—D. 29.3; 6.32; 52.

Wenger, RE 2A, 2407; B. Biondi, Successiones testamentaria, 1943, 601; Arangio-Ruiz, FIR 1943, nos. 37, 58.

Apices. When used with a pertinent adjective, such as divini, sacri, augusti, indicates an imperial letter.

Apices iuris. Juristic subtlety, sophistry.

Apostol. A written receipt in which the creditor declares that he has received ("scripsi accepti") the sum due him. In Justinian's law an apothea was fully valid only if it was not gain said within thirty days. Apothea publica = an official receipt issued for the payment of taxes. Syn. securitatis.—C. 10.22.

Leonhard, RE 1; Paoli, NDF 1; Frese, ZSS 18 (1897); Appleton, St Scleioja 2 (1905) 503.

Apothesis. At least in the 1785 in the house of a banker in Pompei.

Arangio-Ruiz, FIR (1943) 400.

Apostolus. A person who abandoned the Christian faith. Penalties imposed on apostates by the Christian emperors included infamy, loss of the right to make a last will or to take under one, and loss of the right to receive a donation. Constantine added confiscation of property for those who turned to Judaism.—C. 1.7.

Humbert, DS 1 (apostasie).

Apparitor. See APPELLO. Syn. libelli diminuitor.—D. 49.6.—See LETTERAE DIMISSORIAE.

Apparitor. Subordinate officials performing auxiliary services in the offices of magistrates and imperial officials, such as secretaries (scribae), messengers (viantores), heralds (praecones). The apparitors normally served for longer periods of time and thus became valuable aides to their superiors who were appointed for one year only. Their influence increased considerably during the Empire. They were organized in associations (collegia, decuriae apparitorum). In the absolute monarchy they constituted an important element in the bureaucratic organization of the government. A series of imperial constitutions of the fourth and fifth centuries dealt with the privileges and duties of the apparitors of the higher officials, as we learn from Justinian's Code 12.52 (53)–59 (60); 61 (62).—See IMMUNES, DECURIAE APPARITORUM.

Habel, RE 2; Humbert, DS 1; de Ruggiero, DE 1; Waltinga, DE 2, 351, 369; Ellachévitch, La personnalité juridique, 1924, 241; Dull, ZSS 53 (1943) 393.

Appellatio (appello). An appeal by a litigant to a higher judicial court when the judgment of the lower one was not in his favor. Introduced in the extraordinary proceedings (cognito extra ordinem) as a new procedural remedy, then gradually reformed, finally by Justinian, the appellatio developed into a general institution applicable to all judgments, in both civil and criminal matters, except those of the praetorian prefect and decisions of a merely administrative character. Frivolous appeals were punished by pecuniary fines. Later, appellatio became syn. with provocatio, which in earlier times applied only to criminal cases.—D. 49.1–13; C. 7.62–70.—See
CONSULTATIO, EDICTUM DE APPELLATIONIBUS, INTUS-
TUS, ORATIO MARCI, and the following items.
Kipp, RE 2; Hartmann, ibid.; Humbert, DS 1; Orestano,
NDI 1; E. Patot, L'appel dans la procedure de l'ordo
judicium, 1907; Lauria, AG 97 (1927); Sanfilippo,
Anteo 8 (1934); Dull, ZSS 56 (1936); Wenger, RAC
1 (1942).
Appellator. The party to a trial who appeals from an
unfavorable judgment.—See APPELLATIO, APPELO.
Appellatorii libelli. See APPELLO.
Appello. "I appeal." This word was pronounced by
a litigant in order to announce that he was appealing
from the judgment or decree of a magistrate to a
higher court. When made in writing in so-called
libelli appellatorii the appeal had to be filed with
the judge of the lower court whose decision was being
opposed. The latter then wrote a report (litterae
dimissoriae, libelli dimissorii, apostoli) by which he
"dismissed" the case and transmitted the appeal to
the higher court through the intermediary of the
appellant himself. Until the decision of the higher
tribunal was rendered, the first judgment remained
without effect.
Appius Claudius Caecus. A renowned jurist of about
300 B.C.
Munzer, RE 3, 2681; Schulz, History of Roman legal
science (1946) 9.
Applicatio. See CLIENTES, TUS APPLICATIONS.
Apud. Connected with the name of a jurist (e.g.,
apud Iulianum), used to introduce a specific opinion
of the jurist, or of a critical or explanatory remark
(nota) made by a later jurist to the opinion of an
earlier one (e.g., apud Iabeanum Proculus notat).—
See NOTA.
Sciascia, BIDR 49-50 (1947) 430.
Apud acta. See ACTA.
Apud iudicem. See IN IURE, IN IUDICIO.
Aqua. Often employed for the servitudine of using
water from or through another's property. In this
meaning it is syn. with iss (servitio) aquae. Dis-
tinctions are made as to the time during which the
right may be exercised. Thus aqua aestiva can be
used only in the summer time, aqua cottidiana every
day, aqua diurna only in the daytime, and aqua noc-
turna at night.—D. 43.20; C. 3.34.—See SERVITUS
AQUAEDUCTUS, SERVITUS AQUAE HAUSTUS.
Aqua et igni interdictio. See INTERDIRE AQUA ET
IGNI.
Aqua pluvia. Rain water. See ACTIO AQUAE PLUVIAE
ARCIDAE, SERVITUS STILLICIDII.
Aqua profuens. Flowing water. It ranks among the
RES COMMUNES OMNITUM.—See FLUMINA.
Aqua publica. (Syn. aqua in usu publico.) Flowing
or stagnant water destined for the common use of
the population of a community. The category em-
braces waters in FLUMINA PUBLICA, LACUS, STAGNUM,
FOSSA.
De Ruggiero, DE 1; E. Costa, Le acque nel diritto rom.,
1919; Bonfante, Scripti giur. 4 (1926) 242; M. Lauria,
Aquauctus. Aqueducts for public use were under
particular protection of the law. A decree of the
Senate of 11 B.C., statutes (such as the lex quincla)
and frequent imperial enactments, especially in the
later Empire, contained detailed provisions, backed
by penal sanctions, designed to prevent damage to
aqueducts.—Water conduits for private purposes
were protected by interdicts.—C. 11.43.—See SERVI-
TUS AQUAEDUCTUS, INTERDICTUM DE AQUA, ACTIONES
POPULARES.
Leonhard, RE 2; Labast, DS 1; De Ruggiero, DE 1,
537; Gianzana, NDI 1 (s.v. aquae privae); Herschel,
The two books on the water supply of Frontinus, New
York, 1913; Kornemann, RE 4, 1784; Weiss, ZSS 45
(1925) 87; De Robertis, La espropriazione per pubblica
utilita, 1936, 95; Riccobono, FIR 1° (1941) 276.
Aquaeductus Venafransus. See EDICTUM DE AQUAE-
DUCTU VENAFRANUS.
Aqua haustus. See SERVITUS AQUAE HAUSTUS.
Aquarius. A subordinate officer in the water admin-
istration. In a private household, aquarius is usually
a slave who takes care of the water supply.
De Ruggiero, DE 1, 587.
Aquila, Iulius. A little known Roman jurist, con-
temporary with Ulpian, author of a collection of
RESPONSA.
Berger, RE 10, 167.
Aquilia (Aquilia lex). See LEX AQUILIA.
Aquiliana stipulatio. See ACCEPTILATIO, AQUILII
GALLUS.
Aquilius Gallus, Galus. One of the most creative
jurists under the Republic, praetor in 66 B.C. His
name is linked with the introduction of the stipu-
latio aquiliana and the actio doll.—See also
POSTUMI AQUILIANI.
Klebs-Jörs, RE 2, 327; Orestano, NDI 1; Beseler, BIDR
50 (1931) 314.
Ara. An altar for sacrifices located either in a temple,
in any locus sacer, as a sanctuary, or in any other
place. Along with the consecration of an ara, rules
(les ares) were issued concerning its use.
De Ruggiero, DE 1, 578.
Ara legis Hadrianae. The stone on which the inscrip-
tion concerning the so-called Lex Hadriana was
found (in Tunisia).—See LEX MANCIANA.
Ricobono, FIR 1° (1941) 493.
Arbitrator. In a judicial trial, in controversies which
required specific professional or technical knowledge
the magistrate could appoint an expert (arbitrator)
in- stead of a judge (iudex) so that the judgment should
be rendered by someone better qualified than the
average Roman citizen listed in the panel of judges
(album iudicum). The discretionary powers of an
arbitrator in making his decision were not so severely
restricted by the praetor's instructions as in ordinary
trials. 'The division of common property (communio)
or a common inheritance was assigned to an arbiter as was the establishment of boundaries between adjoining lands.—See ADICICERE, ADICICATIO, LEGIS ACTIO PER IUDICIS ARBITRIVM POSTULATIONEM, IUDEX.

Wlsak, RE 2; De Ruggiero, DE 1; R. Dall, Der Güte-
gedanke im röm. Civilprozessrecht, 1931; Kaser, Fisch 
Wenger 1 (1944) 115.

Arbiter datus (deleagatus, pedaneus). A person ap-
pointed by a judicial magistrate to examine a partic-
ular point in dispute in a civil trial, e.g., to check 
accounts, to establish the solvency of a guarantor, or 
to calculate the quarta Fuidicia (see LEX FALCICIA). 

Wlsak, RE 2, 410.

Arbiter ex compromiso. An arbitrator chosen by 
voluntary agreement of the parties (COMPROMISSUM) 
to decide their dispute. His decision (sententia, pro-
nunntiatio arbitri) could be enforced only when the 
parties had, through reciprocal stipulations strength-
ened by penalties, assumed the obligation of fulfilling 
the arbitrator’s judgment. Generally the duties of 
the arbiter were fixed in the parties’ agreement, the 
arbiter had more liberty, however, than a index 
bound by the formula in the formulary proceedings. 
The appointment of an arbiter is an extrajudicial 
arrangement; later it received protection of the praet-
or, who, by coercive measures, might compel the 
arbiter to carry out the duties conferred on him by 
the parties involved and assumed by him without the 
intervention of a magistrate.—See RECEPTEM ARBITRI, 
COMPROMISSUM (Bibl.).

Arbitrarii. The activity of an arbiter.

Arbitrarius. Depending upon the decision of the judge 
(index).—See ACTIONES ARBITRARIAE.

Arbitratus. SEE ARBITRIUM.

Arbitratus (arbitrium) iudicis. See ACTIONES ARBI-
TRARIAE.

Arbitrium. A judgment, decision of an arbitrator.
Syn. arbitrus. See ARBITRIUM. The entire pro-
ceedings ending with a decision by an arbiter is also 
called arbitrium, as is the interlocutory decision which 
could be handed down by the judge (index) in a 
civil trial (in literature arbitrium de resiutendo) 
under authority of the clause in the formula (clausula 
arbitrii): neque et res arbitrio tuo (sc. iudicis) 
resiutendr, see ACTIONES ARBITRARIAE.—See the fore-
going entries. IURGIUM, RECEPERK ARBITRI.

Wlsak, RE 2.

Arbitrium (arbitrator) boni viri. The judgment, 
option of an honest, upright man to whom a contro-
versial point has been submitted.

Seduto, AmPai 11 (1923) 24; Riccobono, Mil Cornill 2 
(1926) 310; Albertario, Studi 3 (1936) 283, 329; Grosso, 
SDHI 1 (1935) 83; idem, Riv. di dir. commerciale 402 
(1942) 227; Frezza, Nuova Riv. di dir. com. 2 (1949) 41.

Arbitrium iudicis (iudicantis). See ACTIONES ARBI-
TRARIAE, ARBITRIUM.

Arbitrium liti(a) aestimandae. Proceedings for the 
estimation of the value of an object in dispute in 
benefit.—See LITIS AESTIMATIUI.

Kip, RE 1, 687; Huelin, Mil Gérardin, 1907, 319.

Arbitrium tutelae. ACTIO (IUDICII) TUTELAE. See 
TUTOR.—C. 5.57.

Arbores caedere. For conflicts arising in connection 
with the cutting of trees by a neighbor or by an 
unauthorized person, see INTERDICTUM DE ARBORIBUS 
CAEDENDIS, ACTIO ARBORUM FURTUM CAESARIUM.—D. 
43.27; 47.7.

Arca. A cash-box, in a larger sense the treasury of 
a community (arca municipalis) or of a public or 
private corporation (arca collegii). Arca publica is 
the treasury of Rome; its divisions connected with 
specific purpose are arca frumentaria, arca olearia, 
etc., for revenues and expenses resulting from the 
sale and purchase of grain, oil, and the like. Arca 
foisci (fiscalis, Caesaris) is the state treasury under 
the Empire. Arca praefecturae is a particular treas-
ury under the administration of the praefectus prae-
torio.

Hael, RE 2; Humbert, DS 1; Fuchs, DE 1, 627; Beseler, 
ZSS 46 (1926) 8.

Arca alimentaria. See ALIMENTARIUS.

Arca collegii. The treasury of an association.—See 
COLLEGIUM.

De Ruggiero, DE 1, 629.

Arca fisici, praefecturae, publica. See ARCA.

Arca provincialis. The treasury of a province, sup-
ported by contributions of the provincial municipali-
ties primarily for religious expenditures and for the 
public games.

Arcadius Charisius. See CHARISIUS.

Arcarius. The treasurer (cashier) in an arca. In 
public arcæ, he is the chief officer in charge of the 
treasury.—C. 10.72.—See ARCA.

Habel, RE 2; Humbert, DS 1; Fuchs, DE 1, 633.

Arcarius. (Adj.) See NOMINA ARCARI.

Archiatrer sacri palatii. A physician-in-ordinary to 
the emperor and the imperial family.—C. 12.13.

Archiepiscopus. An archbishop.

Architectus. The profession of an architectus was 
considered one of the noblest liberal professions. An 
architectus who deceived his client in the accomplish-
ment of the work ordered was prosecuted by an 
action similar to that against a dishonest land-
surveyor.—See ACRIMENSORES.

Arex. See LOCUS.

Arenarii. Men who hired themselves out for fights 
with wild beasts in the circus (arena). They were 
free men but were treated as slaves by their em-
ployers, and belonged to the most despised social class. 
Pollack, RE 2.

Argentaria. A banker’s business. Syn. mensa argen-
taria.

Argentarii. Bankers, owners of a banking firm. They 
performed various financial operations such as money 
changing, purchase and sale of coins, loans on in-
terest, and on mortgage, and the like. Exact and 
honest bookkeeping was obligatory of them since 
their books (rationes) enjoyed public confidence (fides publica), and had to be produced (edere ra-
tiones, editio rationum) in trials in which their clients were involved, as evidence even when the banker himself was not a party. The duty to produce their books in court was precisely formulated in the praetor-arian edict, and a special action was granted against an argentarius who refused to do so. When suing his customer for a money debt (actio qua argentarius expiravit) the argentarius had to deduct from his claim whatever he owed to the customer (agere cum compensatione) since, when he demanded "one penny more" (plus minus uno), he lost the case because of pluspettito.—Women were excluded from the banking business.—D. 2.13.—See MENS, RELEGARE PECUNIAM.

Ohler, RE 2; Saglio-Humbert, DS 1; De Ruggiero, DE 1; La Fortuna, NDI 1; Voigt, AStAGW 10 (1898) 316; A. Rosello, Argentari 1, 1891; Mittels, ZSS 19 (1898) 203; R. Beigel, Rechenweise und Buchführung der Römer, 1904, 206; E. L PRIVATASCH, Leiden 1899; Platow, NHRD 33 (1909) 10; L. De Sarlo, Il documento come otto del rapporti, 1935, 257; Solazzi, Compensazione 2 (1950) 31.

Argentum. (1) Silver money; (2) the silver objects in a household. They might be altogether the object of one legacy (argentum legatum).—D. 34.2; C. 10.78.

De Ruggiero, DE 1.

Arguere. To accuse (and generally, to convict) a person of a crime.

Argumentum. A general term for all means of evidence.—See Probatio, ARRA.

Aristo, Titius. A Roman jurist, member of the council of the emperor Trajan, author of annotations (notae) to the works of some jurists of the Augustan period.—See DECRETA FRONTIANA.

Orestano, NDI 1, 206; Mommsen, Jurist. Schriften 2 (1905) 22; Sciascia, BIDR 49-50 (1948) 215.

Arma. See VIS ARMATA, TELUM.

Arre (arrha). A sum of money or a thing (a ring, for instance) given as an earnest at the conclusion of a sale. In the classical law it was considered a means of evidence only (argumentum emptionis contractae). The origin of the institution lies in Greek sale practices. In Justinian's law the buyer might withdraw from the purchase by forfeiting the arra, whereas the seller had to double the amount he received from the buyer if he wanted to cancel the sale. This function of the arra—the parties' right to cancel the sale (hence the name arra poenitentia in literature)—evidently was excluded when the formalities set by Justinian (written deed, intervention of a notary) had been completed.

Foligno, NDI 1; C. Calogirou, Die o. im Verwaltungsrecht, 1911; Seew, NRHD 37 (1913) 571; F. Bergold, Gesch. und Wesen der arrhaha und der a., Diss. Erlangen, 1923; Cornil, ZSS 48 (1928) 55; E. Popesco, La fonction péneti- tementielle des arrhas dans le vente, 1929; Carus, Si Bonfante 4 (1930) 503; J. Pardis, Aus nachgeholasen Schriften, 1931, 262; Levy, Synb Frib Lenc, 1931, 133; Simonetto, Faschr Kochaker 3 (1939); Massel, BIDR 48 (1941) 213; Steinwenter, RAC 1 (1943); F. De Zulueta, The Rom. Law of sale, 1945, 22; F. Fringsheim, The Greek law of sale (Weimar, 1950) 333.

Anra sponsalicia. See Sponsalia.—C. 5.1.

Kochaker, ZSS 39 (1912); Carni, ZSS 48 (1928); Voldrea, RISC 2, 4, 5 (1927-1930); Granier, Dictionnaire de droit can. 1 (1935) 1050.

Arrianus. A Roman jurist of the classical period, known only as the author of a monograph on interdicts.

Jörs, RE 2, 1229.

Arrius Menander. A Roman jurist who lived under Septimius Severus and Caracalla (early third century) and was a member of their councils (consilia). He is the author of a treatise on military law (De re militari).

Jörs, RE 2, 1257.

Ars magicæ. See MAGIA.

Artes liberales. See OPERAE LIBERALES, STUDIA LIBER- ALIA.

Articulus. A legal rule or a special provision in a written legal enactment.

Artifices. Artists versed in fine arts or skilled in the practice of a manual art. They were exempt from compulsory public services (munera) in order to be given the opportunity of developing their knowledge and skillfulness and of instructing others. A constitution of the Emperor Constantine of A.D. 337 (C. 10.66.1) contains a list of some forty professions entitled to such exemptions. Along with physicians and veterinarians there are mentioned painters, sculptors, architects, goldsmiths, silversmiths, potters, armorers, glaziers, fullers, carpenters, etc.

Arvales fratres. Arval brethren, a group of twelve priests of senatorial origin whose duty it was to observe certain rituals and to perform sacrifices in honor of the goddess Dea Dia and the deities worshipped as protectors of agriculture. Protocols of their priestly functions are preserved epigraphically. After the reorganization of the college of Arvales by Augustus their activity was more and more devoted to the glorification of the Emperor (who was automatically a member of the group) and his family.

As. A Roman coin, originally of one pound of bronze (as librarius). As a monetary unit the as was divided into twelve unciae. In juristic language, the term served as a conception of a whole; hence an heir who inherited the entire estate was named heres ex asse. Similarly, parts of an inheritance were indicated by the corresponding terms used for an uncia and its multiples. Heres ex semis was an heir whose share was a half of the estate. In general, the term involves the whole of an object referred to, as, for instance, a legacy ex asse or ex asse possidere. In later times the as was reduced to four, and then to two ounces (unciae).—See ASSIS DISTRIBUTIO, Uncia.

Kubitschek, RE 2; Hultsch, RE Suppl. 1; Lenormant, RS 1; Pampaloni, RISC 52 (1912) 131.

Ascendentes (ascendentes). Relatives in the ascending line (parents, grandparents, great-grand-
parents) on both the father's (per virilem sexum) and mother's side (per matrem). Ant. descendentes. Syn. superiores.

Ass. See ADS.

Assis distributio. A pamphlet of the jurist Maecianus on the division of the as.—See AS.

Pampaloni, RISP 52 (1912) 131.

Astrologi. Although frequently prosecuted together with others who illictam divisionem pollicentur (illegally predict the future) as exercising a prohibited profession, they did not disappear from Rome, especially since several emperors believed in astrology (as Vespasian, Hadrian, Septimius Severus, Cara-
calla) and the high society was not adverse to them. A course of strong action against the astrologers (often identified with Chaldaei and mathematici) began with Diocletian who condemned the ari mathema-
tica. Generally only the practice of astrology as a profession (exercitio, professio) for the prediction of future events was punished. The knowledge (notitia) as such was not interdicted. Diocletian's successors followed his severe regime against the astrologers, especially with regard to foreigners.

Ries, RE 2; Bouché-Leclercq, DS 2, 316; Rogers, Classi-
cal Philology 26 (1921) 203; Cramer, SchMI 9 (1931) 1.

Ateius Capito. See CAPITO.

Athanausius. A Byzantine jurist of the second half of the sixth century, author of an epitome of Justinian's Novels (about A.D. 572) systematically ar-
anged in 22 titles.


Athleta. Athletes who exercised their profession for the sake of glory and bravery (gloriae et virtutis causa) were granted certain privileges, such as ex-
emption from public charges (munera) and taxes. The Lex Aquilia does not apply when an athleta killed his adversary in the fight by accident because the element of iniuria was lacking. See LEX AQUILIA.

Unlike actors and gladiators, athletes enjoyed high esteem.—C. 10.54.

Atilianus tutor. See LEX ATRIA.

Attilinus. A jurist of about the middle of the first century after Christ.

Joers, RE 2; Ferrisi, Opere 2 (1929) 87.

Atilius. An unknown jurist of the second century B.C. —See SEMPRIONUS.

Atrox. Atrocious, dreadful. The attribute is applied to certain crimes accomplished with particular vio-

lence and cruelty, hence involving greater culpability and more severe punishment.

Atrox iniuria. See INTURIA ATROX.

Atrox vis. See VIS.

Attestatio. Unknown in the classical juristic language, the term is used in later imperial constitutions in the sense of testimony. Syn. testatio, testimonia.

Auctio. A public sale by auction. It was applied in certain cases. See SECTIO BONORUM, BONORUM VEN-

DTIO. When the auction was in the interest of the state, the auctio was performed by a quaestor, whereas when the sale of the property of an insolvent debtor was ordered at the request of his private creditors, a representative of the latter managed the sale. The owner himself might initiate a public sale of his prop-

erty on his own behalf. The conditions of the auctio were publicly announced (praedicere); the assign-

ment to the highest bidder addicere.—See HASTA, SUBHASTATUM, LICITARI.

Leist, RE 2, 2270; Humbert, DS 1; Platon, NHDR 33 (1909) 137.

Auctor. A person who by giving his approval, i.e., exercising his auctoritas, made valid the transaction of another person who was not able to conclude a transaction by himself. Such a person acting as an auctor was primarily the guardian (tutor) who aucto-

ritatem suas interponit to the transaction concluded by his ward by declaring: auctor fio ("I approve"). Of the legally incapable ward it is said that he acts tutore auctore.

Auctor is also used for the prede-
cessor in title who transfers his right on another (a seller, for instance) and through the transaction as-

sumes the guaranty that the acquirer will not be evicted from the thing transferred.—See LAUDARE

AUCTOREM.

Auctor. In penal law, the person by whose influence, instigation or order, a crime was committed.

Humbert, DS 1.

Auctor legis. The proposer of a statute. Syn. rogator. Similarly, an emperor is named as auctor semina-

consulti, i.e., of the senatusconsulti decreed on his proposal. Of the senators who by their auct
oritas (approval) promote the passage of a law in the popular assemblies, it is said patres auctores fiunt.—See AUCTORITAS SENATUS.

Auctorati. Persons who hired themselves out for fighting as gladiators. Their condition was not far from that of slaves.—See ARENARI, GLADIATOES.

Kühler, DE 1, 769.

Auctores. With or without the qualifiers iuris, or iuris scientiae, or scholae = jurisprudents.

Humbert, DS 1.

Auctoritas. Authority, prestige; it is rather a moral power than a legal one. The term is used with re-
gard to groups or persons who command obedience and respect. In this sense, legal and literary texts speak of auctoritas of the people (populi), of the emperor (principis), of the magistrates, judges, and jurisconsults, of a father or parents, as well as of that of a statute, of the law in general or of judicial judgments. A legally technical meaning auctoritas acquired in some fields of the private and public law. The significance of auctoritas varies according to the context in which it is used. Thus, in private law auctoritas occurs when a tutor acts as an auctor giving his assent (auctoritatem interponere) to a trans-

action concluded by his ward (pupillus) or by a
woman under his guardianship. By his auctoritas he gives legal weight to the transaction. Auctoritas is also the guaranty assumed by the vendor when transferring his property.—See auctor, actio auctoritatis, denuntiatio ex auctoritate, and the following items.

Leist, RE 2; Bozzi, NDI 1; Heine, Hermes 60 (1925) 348; De Viescher, RHD 1933, 603 (= Nouvelles Études, 1949, 141); idem, La jurisprudence romaine et la notion de auctorialitas, Recueil Gény 1 (1934) 32; idem, RHD 1937, 573; F. Füreet, A. im Privat- und öffentlichen Leben der röm. Republik, Diss. Marburg, 1934; F. Schulz, Principes 1936, 164; Kahrstedt, Das Problem der a., Göttin- gische Gelehrte Anzeigen 200 (1938) 17; R. Heine, Vom Geist des Römerrums (1938) 1; Wagenvoort-Tellenbach, RAC 1 (1943); Staelder, ZSS 61 (1941) 77, 100; 63 (1943) 384; H. Lévy-Bruhl, Ann. Un. Lyon 1942 (= Nouvelles Études, 1947, 14); De Francisci, Arcana imperii, 3, 1 (1948) 245 (Bibl.); Amirante, St Solazzi (1948) 375; Brasiello, ibid. 689; Schönauer, St Wein, 224, 2 (1946) 68; P. Noailles, Fra et ius (1948) 223; idem, De droit sacré au droit civil, 1950, 236; Magdelain, RIDA 5 (1950) 127; Roussy, RHD 29 (1951) 231.

Auctoritas patris. The approval by the authority of the head of a family (pater familias).

Solazzi, Jura 2 (1951) 131.

Auctoritas patrum. The ratification of statutes (and elections) voted in the popular assemblies by the senate (patres auctores iuri). The word "patrum" is reminiscent of the original senate composed of patricians. Originally given subsequent to the vote of the comitia, the auctoritas patrum became later rather a mere formality when the procedure was changed and the senate gave its authorization before the matter passed to the comitia or consilia plebis.—See auctoritas senatus, senatus, lex maenia, lex valeria horatia.

Lengle, RE 6A, 2467; O'Brien-Moore, RE Suppl. 6, 668, 677; Humbert, DS 1; Biscardi, BIDR 48 (1941) 403; Guarino, Studi Solazzi (1948); Biscardi, RHD 29 (1951) 151.

Auctoritas populi. Mentioned in connection with adrogatio for the validity of which the approval by the people assembled was necessary.

Auctoritas praefecti (praesidis). The personal authority and influence of the prelates (particularly of the praefectus praetorio) or of the provincial govern- nors.

Auctoritas principis (principalis). The use of aucto- ritas with reference to the emperor first appears in the autobiography of Augustus (see res gestae) in which he affirms, after having transferred the res publica to the senate and the people and after having received the title Augustus (January, 27 B.C.): "I was superior to all others in authority (auctoritate praestiti), but I had no more power (potestas) than my colleagues in the magistracy." Auctoritas means here personal authority, moral and social influence, while potestas embraces legal power. Auctoritas has no specific legal content, although after Augustus it entered the official terminology. Generally speaking, it is the personal prestige, the authority, the high esteem which the emperor enjoyed as the first citizen in the state (princeps). It gave all his acts and orders a particular importance and significance in legislative, judicial, and administrative fields. Senatusconsults were issued ex auctoritate principis and the authorization of the jurists to give answers to legal questions addressed to them (ius respondendi) was referred to the auctoritas principis. In a few texts the auctoritas of certain emperors is stressed (Hadrian, Septimius Severus). Some emperors define their auctoritas as the source of their commands and decisions (ex auctoritate nostra) or underline the auctoritas of their rescripts and enactments. Thus their auctoritas is transferred to their ordinances themselves. Through the increasingly binding force of the imperial constitutions, the frequency of administrative orders of the emperors, and the privileges and distinctions granted to individuals by them, the content of auctoritas principis went beyond the mere personal authority and assumed sometimes the aspect of sovereignty. The term was never legally defined, not even under the absolute monarchy, although it is very frequent in imperial constitutions of the fourth and fifth centuries.—See constitutiones princeps, princeps.


Auctoritas prudentiae. See auctoritas.

Auctoritas rei iudicatae, auctoritas rerum similiter iudicaturam. See res iudicata.

Auctoritas senatus. The previous or subsequent approval by the senate of statutes or elections voted in the popular assemblies. It is syn. with auctoritas patrum in the earlier centuries of the Roman history. In the later Republic the term is applied to those decrees of the senate which did not become senatusconsults because of a formal defect or the intercession of a magistrate. In phrases like auctoritas senatusconsulti, auctoritas means the same thing as in references to statutes or other enactments.—See senatusconsultum, auctoritas, lex publica peti- lonis, auctoritas patrum, intercessio.

Leist, RE 2, 2275; O'Brien-Moore, RE Suppl. 6, 718; Humbert, DS 1, 545; Volterra, NDI 12, 44; Kunkel, ZSS 66 (1948) 437.

Auctoritas tutela. The cooperation (consent) of the guardian in transactions concluded by the ward (an impubes, a woman).—Inst. 1.21; D. 26.8; C. 5.59.—See auctoritas, tutela.

Sachsen, RE 7A, 1554; Solazzi, ANop 57 (1935) 212; idem, SDH 12 (1946) 7; De Viescher, Ibid. 9 (1943) 116; Solazzi, Jura 2 (1951) 133.
Audientia. Unknown in the language of the classical jurists the term is used in later imperial constitutions for legal proceedings, the judgment included.

Albertho, AD 2 (1936) 161.

Audientia episcopalis. See EPISCOPALIS AUDIENTIA.

Auditores. Law students attending the lectures of jurists. A group of pupils of the jurist Servius Sulpicius Rufus appears in the Digest as auditores Servii.

Auditorium. The audience hall in the imperial palace, used also as a court room. Later auditorium often means the court itself, sometimes even an imperial one.

Kubitschek, RE 2; Humbert, DS 1.

Autfidius Chius. An unknown Roman jurist, of the first post-Christian century, mentioned only once in the Digest.

Jörn, RE 2, 2291 (no. 17).

Autfidius Namusa. One of the last Roman jurists under the Republic, a pupil of Servius Sulpicius Rufus and the editor of an extensive work composed of excerpts from the writings of Servius' disciples (auditores Servii).—See AUDITORES.

Jörn, RE 2, 2294 (no. 31); Kübler, RE 4A, 858.

Autfidius Tucca. Another of the pupils of Servius Sulpicius Rufus, like Autfidius Namusa.—See AUDITORES.

Jörn, RE 2, 2296 (no. 39).

Augures. A college of high priests among the sacerdotes populi Romani. Originally they were only three, but later their number gradually increased until 15 (16?). Certain priestly rituals were in their exclusive competence, in particular the interpretation of all kinds of auspices (auspicia, auguria) on any occasion when consultation of the will of the gods was obligatory (the appointment of high priests, of the flamen Dia lucis or of high magistrates [= inauguratio], the opening of comitia meetings, the performance of an important public action). Besides these official augures (augures publici), there were numerous augures privati, both in Rome and in Italy, who assisted citizens in their private auspicia.

—See AGRI MENSORES, LEX DOMITIA, AUSPICIA, LEX OGULNIA, TEM PLUM, IUS AUGUR IUM, COMMENTARII SACERDOTUM, DIVINATIO.

Wasowa, RE 2; idem, Religion und Kultur der Römer, 1902, 450, 523; Muller and Waszink, RAC 1, 973; Spinazzola, DE 1; P. David, Le droit augural et la divination officielle chez les Rom., 1905; H. Baranger, La théorie des auspices, Thése, Paris, 1941, 102; Coli, SDHI 17 (1951) 73.

Augusta. An honorary title of the emperor's wife conferred by the senate. The first Augusta was Livia, Augustus' wife; the title was conferred on her after her death. Exceptionally, the title was given also to a daughter of the emperor.

Neumann, RE 2, 2371; De Ruggiero, DE 1, 925.

Augustales. Persons associated in colleges devoted to the cult of Augustus. They were either priests (sodales Augustales, in Italian municipalities servii [serviti] Augustales) or private individuals conferred in a collegium (corpus) Augustalium.


Augustalicia. See PRAEFECTUS AUGUSTALIS.—D. 1.17; C. 1.37.

Augusti. Two emperors, each being simultaneously head of the state.—See CONSORS IMPERII.

Augustus. An honorary title conferred on the first Roman emperor, the founder of the Roman Principate, C. Iulius Caesar Octavianus (27 B.C.—A.D. 14), and then given by the Senate to his successors. It became later the usual title of the emperors. Justinian called himself Semper Augustus.—See CONSORTES IMPERII.

Neumann, RE 2; Schönbauer, SBWien, 224, 2 (1946) 67; M. Grant, From imperium to auctoritas, 1946, 444 (Bibl.).

Augustus. (Adj.) Connected with, or originating from, the emperor. The word occurs frequently in imperial constitutions.—See DOMUS AUGUSTA.

A•ularis) Agerius. In Gaius' Institutes this fictitious name is used in the formulae of several actions for the plaintiff (is qui agit, hence Agerius). The defendant appears there as N. (umerius) Negidius, an imaginary name originating in the words numerare and negare, since the defendant is the man who has to pay and normally denies the plaintiff's claim.

Wissack, RE 1, 794.

Aurea. Golden words (sentences). It is the second title of Gaius' Res Cottidianae, probably added to the work in a later time.—See GAIUS, RES COTTIDIANAE.

Aureus. A Roman gold coin of high value. As a monetary unit it was introduced by Caesar, equal to one hundred sesterces. Its gold content gradually diminished with the various monetary reforms. In Justinian's legislation it was substituted for one thousand sesterces (sestertium) in classical texts.

Syn. SOLIDUS.

Lenormant, DS 1; Cesano, Bull. della Commissione archeol. comunale di Roma, 5, 6 (1929, 1930); Mattingly, OCC 210 (s.x. coinage); M. Bahrleitl, Die röm. Goldmünzprüfung, 1923.

Aurum argentumque. A special tax imposed on merchants once in five years. Syn. collatio lustralis.


Aurum coronarium. A conquered country had to provide the victorious Roman general an amount in gold as a contribution to be used for the manufacturing of a crown for the triumphant commander when he returned to Rome.—See TRIUMPHUS.—C. 10.76.

Kubitschek, RE 2; Humbert, DS 1; Moschella, ND 1 (s.x. coronarium aurum); Schubart, Arch. für Papyroforshung 14 (1941) 44; T. Klausen, Mitt. Deutsch. Archäol. Inst. Rom, Rom, Abt. 59 (1944, published 1948) 129; idem, RAC 1, 1014; Lacombrade, Rev. études anciennes 51 (1949) 54.
Aurum tironicum. See TEMO.
Kubitschek, RE 1; Humbert, DS 1.

Aurum vesciariarum. See VICESIMA MANUMISSIONUM.

Auspicato. After having obtained approval of the gods through favorable auspicia.

Auspicia. The observation of certain natural phenomena by competent priests (AUGURES) in order to explore whether or not the gods approve an important public action about to be launched. When the signs observed (ex coelo = from the sky, such as thunder, ex avisus = from the flight of birds, ex tripludio = feeding chickens from a tripod vessel, etc.) were interpreted by the priests in an unfavorable sense, the action was dropped. The right to order auspicia (ius auspiciorum) was a prerogative of the higher magistrates and was sometimes misused in order to thwart an action proposed by another magistrate. The non-observance of auspicia or action in defiance of an unfavorable prediction (contra auspicio facta) might lead to the annulment of the whole action by the competent magistrate.—See OBNUINTIATIO.

Cassola, RE 2; idem, Religion u. Kultur der Römer, 1902, 45; Domin-Leclerc, DS 1; Stella-Manca, NDJ 1; Ericsson, Arch. für Religionwissenschaft. 33 (1936) 294; H. Baranger, La théorie des auspices, Thése, Paris, 1941; Coi, SDHI 17 (1951) 96.

Authenticum. The original of a written document. Authenticae tabulae testamenti = the original written will of a testator.—Ant. tabulae descriptae (= a copy).—See EXEMPLUM.

Authenticum (or Authenticae sc. Novellae). A collection of 134 Novels promulgated by Justinian between A.D. 535 and 556, after the publication of the second edition of his Code. The Greek Novels are translated into Latin therein, not always quite correctly. The date (eleventh century?) and place of the origin of the Authenticum are unknown. It was first considered a forgery, but the Law School in Bologna established its authenticity (hence the name Authenticum).—See NOVELLAE JUSTINIANI.

Tammessa, Aven 1908; Scherillo, ASCR 1935; Index titulorum Authentici in novem collectiones digesti, Sem 2 (1944) 82.

Auxilia. Military units recruited in the provinces from men lacking Roman citizenship (peregrini) and therefore excluded from service in the legions. The auxiliarii (= the soldiers of the auxilia) were discharged after twenty-five years of service (missio honesta). On that occasion they were granted Roman citizenship in a document called a diploma.

De Ruggiero, DE 1, 932; Corpus Inscrip. Latinarum 16; Riccobono, FRR 1 (1941) 225; Forte, OCD; G. L. Cressman, The a. of the imperial army, 1914; R. Marichal, L'occupation rom. de la Basse Egypte. Le statut des auxilia, 1945.

Auxiliarii. See AUXILIA.

Auxillium. The assistance, protection given by the plebeian tribunes, first to plebeians only and later to all citizens, against wrongful acts of the magistrates. —See TRIBUNI PLEBIS, INTERCESSIO.

Aversio. Emerere per aversionem (in aversione or aversione) to buy with a lump sum.

Avulsio. The term does not appear in Roman juristic language, but is familiar in literature. It indicates a piece of land carried away from its owner’s property by flowing water and attached to another’s land.—See ALLUVIO.

Leonard, RE 2; Pampaloni, Scritti 1 (1941) 431 (ex 1884), 507 (ex 1885); idem, StSen 43 (1929) 214.

AZO (AZZO). A famous glossator (see GLOSSATORES), professor in the Law School in Bologna (1190–1229), renowned for his commentary to Justinian’s Code (Summa Codicis).

Orestano, NDJ 2, 172 (s. c. Azzoni). Maitland, Select passages from the works of Bacton and Azzo, 1895.

B

Bacchanalia. Orgiastic rites in the worship of Bacchus, forbidden by the SENATUSCONSULTUM DE BACCHANALIBUS.

De Ruggiero, DE 1, 957.

Baldus (de Ubaldis). A famous post-glossator, pupil of Bartolus, professor of law in various Italian universities. He died about 1400.—See GLOSSATORES.

L’opera di Baldo (per cura dell’Univ. di Perugia) 1901; Moni, NDJ 2 (Bibl.).

Balineum (balnearia, balneum). A bath-house. Theft committed here, furtum balnearium, is considered as a theft to be punished more severely.—D. 47.17.—See BALNEATOR.

De Ruggiero, DE 1, 964.

Balneator. The owner of a bath-house or the lessee of a public bathing establishment. The supervision of baths and of their management was in the competence of the aediles. A balneator who exploited his enterprise for immoral purposes (“as happens in certain provinces.” D. 3.2.4.2) was published as a procurer (see LENO).—C. 4.59.—See BALINEUM.

Barbari. Originally the Romans used this name for any foreign people with a strange language and savage customs. Later the term was extended to enemies of the Roman state and to countries not bound to Rome by a treaty.

Ruge, RE 2; Humbert, DS 1; Vismara, Scr Ferrinii 1 (Univ. Sacro Cuore, Milan, 1947) 445.

Bartolus De Saxoferrato (1313–1357). Professor of law in Perugia. He was one of the so-called post-
glossators, commentators on Justinian’s codification in the fourteenth century, and exercised great influence on the development of late medieval law.—See GLOSSATORES.

Monti, NDJ 2; Buonamici, B. de S. in Pisa, 1914; J. L. van de Kamp, B. de S. Leven, weken, etc. Amsterdam, 1936; A. T. Schecky, B. on social conditions in the fourteenth century, 1942 (New York).

Basilica. A Byzantine codification (term by Byzantine writers Basilikos [sc. nomos], i.e., imperial
[law]) in sixty books. It was initiated by the Emperor of Byzance, Basil the Macedonian, and completed in the reign of his son, Leo the Wise, early in the tenth century. Starting from a sharp criticism of Justinian’s codification for having dealt with the same topics in its various parts, Leo ordered the collection into single titles of provisions, taken from Justinian’s Institutes, Digest, and Code, and also from the Novels, which dealt with each particular topic. He followed, however, Justinian’s example by further ordering that superfluous, controversial, and obsolete matters be omitted. Apart from some legal provisions of the legislation of post-Justinian emperors the Basilica are thus an abridged Greek summary of Justinian’s codification, at times even a more or less literal translation of single texts thereof. Works of writers of Justinian’s time were exploited in a large measure for the codification, in particular, for the Digest texts a summary (index) by an unknown author (see ANONYMUS), for excerpts from Justinian’s Code a commentary thereon by THEALE-LAEUS. Only about two-thirds of the Basilica are preserved in the known manuscripts. The contents of the missing portions are revealed by a repertory (“table of contents”), called TIPOUFEKTEIT (= “where is what”). Some of the Basilica manuscripts are also provided with scholia, i.e., excerpts from juristic literature written on Justinian’s legislation during his lifetime and afterwards (the so-called “older” scholia); a considerable number of scholia belong to juristic works of post-Basilicain times. The scholia preserved are even more incomplete than the Basilica themselves, some manuscripts of the Basilica being preserved without scholia at all. The Basilica constitute a legal monument of the highest importance for our knowledge of Justinian and post-Justinian law in the Byzantine Empire, and for the criticism of some texts of Justinian’s Digest and Code in instances in which the Greek text of the Basilica and their scholia is better preserved than in the Latin manuscripts of Justinian’s legislation.

Edition (with Latin translation): G. E. Heimbach, Basilicorum libri 60, 1–6 (1833–1870), Suppl. 1, ed. Zacharias v. Lingenthal (1846), Suppl. 2, ed. Mercati and Ferrini (1897); ed. without translation by J. Zepa, Basilica (2nd ed., Athens, 1910–1912).—Lawson, LQR 46, 47 (1930, 1931); idem, ZSS 49 (1929); Arangio-Ruiz, St Albertiuni 1 (1925); Scheltema, Problema der Basiliken, TR 16 (1939) 320; Guriro, Scr Ferrini (Univ. Pavia), 1946, 307; Berger, Scrifit Ferrini 3 (Univ. Sacro Cuore, Milan, 1948) 194; idem, To kata podos, BIDR 55–56 (1952) 65.

Beattisimus. An attribute of the emperors in the fourth century.

De Ruggiero, DE 1, 984.

Beatitudo. A title of the highest church dignitaries.

Bellum. According to a tradition, it was the legendary founder of Rome, Romulus, who granted the Roman people the right to decide about war, and—according to Cicero (De rep. 2.17.31)—it was the third king of Rome, Tullus Hostilius who introduced the formal declaration of war (bellum indicere) by the fetiales since a war waged without prior declaration to the enemy was considered unjust (impiusum) and impious (impium). Later it was in the competence of the comitia centuriata to decide about the declaration of war (lex de bello indicendo).—See SENATUS, DE- NUNIARE, FETIALES, INDICERE BELLUM, LEGES DE BELL0 INDICENDO, IUS FETIALE, OCCUPATIO, DEDITIO, INDUTIAE, REPETITIO BEUM.

Liesenam, RE 4, 696; Berger, RE Suppl. 7, 383; Larssen, OCD 958; C. Phillipson, Intern. law of Greece and Rome 2 (1911) 166; E. Seckel, Krieg und Recht in Rom., 1915; Hens, Klio, Beihlf 31 (1933) 18.

Beneficiarii. Soldiers of a lower rank to whom their superiors granted the liberation from certain duties (munera). In the Empire the term indicates not only persons who had obtained a benefit (beneficium) from the emperor or from a military commander but also the assistants (staff) of high military and civil officials.

Domaszewski, RE 3; Masquesa, DS 1; De Ruggiero, DE 1, 994; O. Hirschfeld, Kleine Schriften, 1913, 581; Lomanskelig, AntiC 20 (1951) 7.

Beneficium. A legal benefit or remedy of an exceptional character, granted in certain legal situations or to a specific category of persons by a statute, the praetorian edict, a senatusconsult or by the emperor (imperial constitutions). With regard to this last source the term is applied to privileges granted by the emperor to individuals, groups of persons, municipalities or whole provinces. See COMMENTARIUM BENEFICI- ORUM.

Leonard, RE 3; Baudry, DS 1; De Ruggiero, DE 1; Orestano, SI Riccobono 3 (1936) 473.

Beneficium abstinendi. Syn. ius abstinendi.—See ABSTINERE (SE) HEREDITATE.

Beneficium abeatiae. See VENIA AETATIS, RESTITUTO IN INTEGRUM.

Beneficium cedendarum actionum. Before paying the principal’s debt the surety could demand cession of the actions the creditor had against the principal and other sureties. See CESSIO.

G. Nocera, Insolvenza e responsabilita sub subsidiaria, 1942, 89.

Beneficium competentiae. The term coined in literature and generally accepted although unknown in Roman juristic language indicates the right of a debtor in certain cases to be condemned only “to what he can do (pay)” (in id quod [quantum] facere potest was the pertinent clause, inserted into the condemnatio part of the formula). Facere means here “as far as his means permit” (quatenus facultates eius permitteunt). The exceptional measure is granted in actions in which there was a specific relationship between plaintiff and defendant (for instance, when the debtor was an ascendant, a patron or a former partner of the creditor, actions between husband and wife) or in which the claim had a spe-
cific character (claim by the donee for fulfillment of a donation promised, payment of a dowry promised but not given, restitution of a dowry). Soldiers may oppose the beneficium competentiae in any claim directed against them. The financial capacity of the defendant was differently estimated (taxatio) in the various cases. The beneficium competentiae was strictly personal and not available to sureties. Its purpose was to protect the debtor from being deprived of the necessary means of subsistence.—See FACULTATES, FACERE POSSE, CONDEMNATIO.

Weiss, RE 17 (s.v. Notothermal); Pampaloni, RISG 52 (1912) 198; Zancruphi, BIDR 29 (1916) 61; A. Levett, Le bénéfice de compétence, 1927; Guarino, RendLomb 72, 2 (1938/9) 355, 401; idem, Fcher Koschaker 2 (1939) 49; idem, SDHL 7 (1941) 5; idem, RISG 14 (1939) 153; idem, Ser Ferrivi 1 (Univ. Sacro Cuore, Milan, 1947) 299.

Beneficium divisionis. Hadrian limited the liability of fidiusores (sureties by FIDEIUSSSIO) to the share resulting from the division of the principal debt by the number of solvent sureties.


Beneficium excussionis (or ordinis). Both terms coined in literature. Justinian gave a surety the right to compel the creditor who had sued him before the principal, to sue the principal first.

Beneficium inventarii. According to an enactment of Justinian, an heir had the right to call for an inventory of the inheritance. This gave him the benefit that he was liable for the debts of the testator and the legacies only to the amount of three quarters of the estate, the remaining fourth being reserved to him as the so-called quarta Falcidia (see LEX FALCIDIA). The inventory was made in the presence of a notary and representatives of the creditors of the estate. Failure to request the beneficium inventarii within the prescribed term (thirty days after notice of his institution as an heir) made the heres fully liable and deprived him of the Faldician quarter.—See INVENTARIUM, SEPARATIO BONUSUM.

Beneficium ordinis. See BENEFICUM EXCUSIONIS.

Beneficium separations. See SEPARATIO BONUSUM.

Benigna interpretatio. A liberal, beneficial interpretation of a legal provision or of an individual expression of will in legal transactions or testaments. "Laws are to be interpreted in a more liberal manner provided that their intention be respected" (D. 1.3.18). "In criminal matters a more benign interpretation (sc. in favor of the accused) should be applied" (D. 50.17.153.2).—See INTERPRETATIO, RES DUBIAE, HUMANITAS, and the following item.

Benigne (benignius), benignitas. All these expressions are used in legal texts to introduce decisions which, dictated by considerations of a moral rather than a legal nature, are contrary to the strict rules of law. Good will, charity, benevolence, and humanity are frequently invoked in order to save a transaction or legal situation in favor of a person, without any further argumentation. Sometimes the decision is given abruptly (sed benignius est), just contrary to the one which may be expected. The classicality of such texts has long been suspected and the terms mentioned above have been considered criteria of interpolations. There is no doubt that many of the decisions based exclusively on benignitas and similar conceptions, such as pias, caritas, benevolentia, humanitas, are not of classical origin. The influence of Christian doctrines and philosophical ideas is undeniable. But a general stigmatization of all the pertinent texts invoking benignitas may be one of the usual exaggerations in the interpolationistic research. Benignitas and analogous terms are familiar in Cicero and other literary sources. There is no reason to exclude a saying like this one: "In doubtful matters preference should always be given to the more benign (benevolent, liberal) solution" (sempar in dubio benigniora praeserenda sunt), inserted in the Digest title "On various rules of the ancient law" (50.17.56), from the classical law. The rule appears in other texts in similar words. The road from benignitas to aequitas is not a long one and one text (D. 1.3.25, by Modestinus) speaks directly of aequitatis benignitas.—See BENIGNA INTERPRETATIO, AEOQUIAS.

Guarnieri-Citati, Indice delle porole, etc. 2 (1927) 14 and Fcher Koschaker 1 (1939) 123; Albertorio, BIDR 33 (1923) 65, 73; Laborde-Boleau, RHD 26 (1948) 157; Berger, in dubia benigniora, ACIVer 1 (1951) 187 (= Sem 9 [1931] 36).

Berytus. Beirut. There was a famous law school here which flourished particularly in the fifth and sixth centuries after Christ. It had a fixed curriculum and its professors (antecessores) were appointed by the state. Two of them (Dorotheus and Anatolius) were selected by Justinian, who speaks of the Phoenician city with high praise ("the city of the laws," legum nutriri = the nurse of the laws), for collaboration in his codification. Fifth-century teachers at Berytus: Patricius, Cyrillus, Domininus, Demosthenes, and Eudoxius, were held in great esteem.—C. 11.22.

Kübler, RE 1A, 398; P. De Francisci, Vite e studi a Beryt, 1912; Peters, Die oströmischen Digestenkommentare, 1913, 60; Pringsheim, Beryt und Bologna, Fcher Lennel 1921, 204; P. Collinet, Histoire de l'école de droit à Beryrouth, 1925.

Bes. Two-thirds of an as (= eight unciae). Bes indicates two-thirds of any whole (an estate, for instance).—See as.

Bestiae fora. See FERAE BESTIAE, ANIMUS REVERTENDI, OBICERE BESTIES.

Bimius. See ANNUA, BIMA DIE.

Bina sponsalia. See BINAE NUPTRIAE.

Binae nuptiae. The Latin language has no word for bigamy. Speaking of bigamy, later juridic language used the locution binas usores habere. According to the Roman conception of marriage the existence of two simultaneous marriages was legally impossible.
since the first marriage was considered automatically
dissolved through the absence of the essential
elements (affectio maritalis, uninterrupted living in
common). The praetorian edict punished, however,
with infamy a person who attempted to constitute
two marital unions at the same time. Two betrothals
(bona sponsalia) were punished as well. Under cer-
tain conditions, a bigamist might be accused of stu-
frum, a bigamous woman of adultery. In post-
classical law bigamy was punished as a specific crime.
—See INFAMIA.
Volterra, St Rasti (1933) 299; P. Rasi, Consensus facii
nuptiae (1946) 194.
Binas uxoribus habere. See BINAE NUPTIAE.
Bis idem exigere. To claim (to sue for) the same
thing twice from the same debtor. “Good faith does
not allow (bona fides non patitur) the same thing to
be twice exacted” (D. 50.17.57). The same is ex-
pressed in the rule: bis de eadem re ne sit actio.—
See Eadem res, res Iudicata, Litis contestatio,
Repetere actionem.
Biondi, AnPal 7 (1920) 38.
Bona. The whole of a person’s property. The term
has a specific application in the praetorian law (in
bonis esse, missio in bona), and in the law of suc-
cession, both civil and praetorian. See BONORUM
possessio. Bona as a whole embraces not only cor-
poreal things but also rights and debts. In certain
locutions, however, it is employed in the sense of
corporeal things only. Syn. (often) patrimonium.
—See the following items, in BONIS ESSE, MISSIO IN
BONA, CONSECRIATIO, UNIVERSITAS BONORUM.
Leonhard, RE 3; Humbert, DS 1; Donatini, NDI 2;
Pfaff, Fasch Haenisch, 1925; P. Collinet, B. et patri-
monium, Études Andriades (Athens, 1940) 377; Lema-
rigier, L’apparition du mot bona, RHD 21 (1942) 224.
Bona adventicia. See PECULIUM ADVENTICIUM.
Bona caduca. See CADUCA.
Bona damnumatorum. Property confiscated from per-
ssons condemned to capital punishment (loss of life,
liberty or citizenship) in a criminal trial.—D. 48.20;
C. 9.49.—See PUBUCATIO.
Humbert, DS 1; De Ruggiero, DE 1; L. Clerici, Eco-
nomia et finance dei Romani, 1943, 497.
Bona fides. Honesty, uprightness, good faith. The
term has various applications. Generally it is op-
posed to mala fides, fraud, doilus, doilus malus. Cer-
tain common rules are derived from bona fides, such
as: “bona fides requires that what has been agreed
upon be done” (D. 19.2.21) which is expressed in
other words by the saying: “bona fides demands
highest equity (honesty, aequitas) in contract” (D.
16.3.31 pr.). What is dishonest, immoral is consid-
ered contra bonam fidei. In contractual law, the
bona fides is particularly important not only because
of the rules mentioned above, but also because certain
types of contract are based on bona fides, as the re-
ciprocal confidence, honesty, good faith of the parties,
at both the conclusion and the execution of the as-
sumed duties. Trials arising from such contracts are
judged from the point of view of honesty and fairness
(indicia bona fidei). Acting bona fide (e.g., emovere,
vendere, solvere, facere) or exercising certain rights
connected with a factual situation (bona fide possi-
dere) presumes the belief of a person that what he is
doing is lawful and does not violate another’s right.
Such an erroneous belief may even be to the detri-
ment of the person involved, as when a free man
bona fide considers himself a slave and acts as such
(liber homo bona fide serviens).—See FIDES (Bibl.),
INDICIA BONAE FIDEI, CONTRACTUS BONAE FIDEI, LIBER
HOMO, etc., USUCAPIO, BIS IDEM EXIGERE, POSSESSOR
BONAE FIDEI.
Leonhard, RE 3; Humbert, DS 1; Montel, NDI 2; Bon-
fante, Scritti giur., 2 (1925) 708; Fringsheim, Const.
1931, 201; Collinet, MéFournier, 1929, 71; J. Faure,
Lebon cause et bonae foi, Lausanne, 1936.
Bona liberta. A freedman’s property.—See DESIGNA-
TIO LIBERTI.
Bona materna. Everything that a filius familias
acquires from his mother through a testament or by
intestacy. Bona materni generis are his acquisitions
from maternal descendants. Though the ownership
of these bona goes to his father (pater familias),
the latter according to a law of Constantine, has not the
right to alienate them, but he has the usufruct during
his lifetime.—C. 6.60.
Bona materni generis. See BONa MATERNA.
Bona proscriptorum. See PROSCRIPTO.—C. 9.49.
Bona vacantia. An estate without any heir under a
will or by intestacy. In earlier law, it could be ac-
quired by USUCAPIO PRO HERED. Under the Empire
it was taken by the fisc, which also assumed the debts
of the deceased. Syn. bona vacua.—C. 10.10.—See
PROCURATOR HEREDITATUM.
Leonhard, RE 5, Humbert, DS 1; Erdmann, RE 7A, 2026.
Bona vi rapti. See RAPINA.
Bonae fidei possessor. See POSSESSOR BONAE FIDEI.
Bonam copiam iuventa. See IUVENTE BONAM COPIAM.
Boni mores. (Ant. mali mores.) Customary prin-
ciples of good, honest and moral behavior, recognized
and traditionally observed by the people (mores
populi, mores antiqui). The location acquires legal
importance when something is done in violation of
what, according to common feelings, is required by
the boni mores (adversus contra bonas mores).—
See MORES, CONTRA BONAS MORES, ILLICITUS.
Senn, Recueil d’études en hommage de F. Gény 1 (1933)
53; Kaser, ZSS 60 (1940) 100.
Bonis interdictis. See INTERDICTIO BONORUM.
Bonomor addictio. See ADDICTIO BONORUM.
Bonorum cessio. See CESSIO BONORUM.
Bonorum collateral. See COLLATIO BONORUM.
Bonorum curator. See CURATOR BONORUM.
Bonorum distractio. See DISTRACTIO BONORUM.
Bonorum emptio. The counterpart to bonorum ven-
ditio.—See BONORUM VENDITIO.
**Bonorum emptor.** The buyer of the property of a bankrupt.—See bonorum venditio, actio rusticana, deductio.

**Bonorum interdictio.** See interdicere bonis.

**Bonorum possessio.** The law of succession introduced by the praetors as a system of inheritance parallel to that of the ius civile, in order to correct certain inequities (iniquitates) in the latter. Literally *bonorum possessio* means the possession of an estate given by the praetor to a person (*bonorum possessor*) without regard to whether or not he had the right of succession in the specific case under the civil law (*ius civile*). Practically the *bonorum possessor* had a legal position similar to that of a universal successor without being called *heres*, since that term is reserved to those who succeeded into the entire property of the deceased under the *ius civile*. An old rule says: *praetor heredes facere non potest* (= the praetor cannot make *heredes*, Gai Inst. 3.32; Iust. Inst. 3.9.2), but he might give a person factual possession of the inheritance and thus create a legal situation similar to that of the civil *heres*. In granting *bonorum possessio*, the praetor originally followed the rules of succession of the *ius civile*, but in the later development, new rules of succession were introduced by him which differed essentially from the civil law. Thus conflicts might arise between persons claiming their rights to an inheritance on the ground of the civil law and those who obtained possession of the estate from the praetor. The praetor's law was ultimately triumphant. The most important advantage of the praetorian *bonorum possessor* was the *interdictum quorum bonorum*, available to him against anyone who held things belonging to the estate. In comparison with the *hereditatis petio* the procedural benefits of this remedy were so important (especially in the matter of evidence) that even civil law successors (*heredes*) asked for *bonorum possessio* in order to profit by the praetor's protection. The *bonorum possessor* has the actions of the civil *heres*, but he might use them only as *actiones utiles* with the fiction "as if he were *heres"." For the recovery of single objects he had the *actio Publiciana* instead of the *rei vindicatio*, which makes his situation as a plaintiff much easier. With the disappearance of the formulary procedure, the differences between the two systems gradually lost their significance. The imperial legislation promoted the fusion of the two systems which in the past had created a dualism, with its unavoidable conflicting situations in specific cases. Under Justinian, the fusion is completed. Terms used before for the civil law of succession were now used with reference to the *bonorum possessio*; the *bonorum possessores* are mentioned alongside the *heredes* in interpolated texts either expressly or by the general expression "*ceteri successores*." A *bonorum possessio* was given by the praetor (dare *bonorum possessorum*) only on request. There was no *bonorum possessio ipso iure*. No one acquired the *bonorum possessio* against his will. For the different kinds of *bonorum possessio*, see the following items.—Inst. 3.9.; D. 37.1; 38.13; C. 6.9.—See *agnitio bonorum possessionis*, interdictum *quorum bonorum*, usucapio *pro herede*, hereditatis *petitio* possessoria.

Leonhard, RE 3: Humbert, DS 1: Donatisti, NDI 2; Crescenzio, NDI 12, 940; Biondi, Concetti fondamentali del dir. ereditario 1 (1946) 83; Timbal, RHD 19-20, (1940-41) 368.

**Bonorum possessio ab intestato.** See *bonorum possessio intestatil.*

**Bonorum possessio contra tabulas.** In certain cases, the praetor granted the possession of the estate contrary to the will of the testator, in particular when an emancipated son was passed over in silence in the will, without being either instituted as heir or expressly disinherited. Other dispositions of the will, such as manumissions, legacies, appointments of guardians, disinherited remains valid. Special rules on behalf of a patron and his children provided for a *bonorum possessio* contrary to the will of his freedman; see *bonorum possessio dimidiae partis*.—D. 37.4; 5; C. 6.12; 13.

Düll, RE 17 (s.v. Notorbrecht); L. Maisonnier, B.ptl., Thèse Bordeaux, 1905; G. La Pira, La successione ereditaria intestata e contro il testamento, 1930.

**Bonorum possessio cum re.** Cases of *bonorum possessio* in which the *bonorum possessor* retained the inheritance against the claim of the *heres* under *ius civile*. *Cum re* (= *cum effectu*) = effectively. Ant. *bonorum possessio sine re* (= without effect), when in a conflict between the *heres* and the *bonorum possessor*, the latter was defeated. When the praetors began to grant *bonorum possessio* against the rules of the *ius civile*, the *bonorum possessio* was mostly *sine re*; in the later development the *bonorum possessio* *cum re* prevailed.

**Bonorum possessio decretalii.** Ant. *bonorum possessio edictalis*. The latter occurred when the *bonorum possessio* was given by the praetor in cases fixed in the praetorian edict. *Bonorum possessio decretalii* instead was when the praetor after investigation of the specific circumstances granted the *bonorum possessio* in a case not foreseen in the edict. The praetor's decree was issued in such cases in court (*pro tribunali*) whereas the *bonorum possessio edictalis* was given more informally (de plano). Examples of *bonorum possessio decretalii* are the *bonorum possessio* granted to the mother of an unborn child (*bonorum possessio ventris nomine*) and the *bonorum possessio ex carbonianino edicto*.

Solazzi, AG 100 (1928) 17.

**Bonorum possessio dimidiae partis.** This took place when a freedman died without leaving a testament and his heirs in intestacy were only adopted children.
or a wife in aen. In this case the praetor granted
the patron a bonorum possessio of half the freedman's property. The same happened when a freedman
who had no children or disinherited them, did not leave his patron (or the latter's children) a half
of his estate. In the latter case the bonorum possessio was contra tabulas.

G. La Pira, Successione hereditaria intestata, 1930, 395; C. Josanini, St sui liberti 1 (1948) 189, 2 (1950) 24, 1:5.

Bonorum possessio edictalis. See bonorum possessio decretalis.

Bonorum possessio ex Carboniano edicto (Carboniana). The praetorian edict provided that an impubes
whose legitimacy was contested might be granted a temporary bonorum possessio intestatit until he
reached puberty and his status of a legitimate child was decided in his favor.—D. 37.10; C. 6.17.

Niedermeier, ZSS 50 (1930) 78.

Bonorum possessio ex testamento militis. See testamentum militis.—D. 37.13.

Bonorum possessio furiosi nomine. A bonorum possessio decreatalis granted to the curator of an
insane. It was provisory and became definite when the insane regained capacity.—D. 37.3.

H. Krüger, ZSS 64 (1944) 408.

Bonorum possessio intestati (ab intestato). Succession according to praetorian law in case of in
testacy. Taking into consideration the cognicia tie
alongside the agnatic one (an emancipated son, for instance) and favoring in a larger measure the re
tatives and the surviving spouse of the deceased the praetor admitted to an intestate succession a number of persons excluded by the ius civile. The praetorian
successors on intestacy were classified in four groups (classes), which the jurists identified by adding the
word "unde" (ex ea parte edicti unde . . . vocantur
= from that part of the edict under which the pertinent
point was entitled to the bonorum possessio). Persons of a lower-ranking group were eligible only when there were no successors in the foregoing class or if the existing successors repudiated the inheritance (successio ordinum). The first group, unde liberi, embraced all children of the deceased, including those emancipated, but excluding children adopted into another family. An emancipated son did not exclude his children who had remained in the family of his father (i.e., their grandfather). Later, accord
ning to an innovation ascribed to the jurist Julian (nova clausula Iuliani), the emancipated son
received half of the appropriate portion of the estate, the other half being reserved for his children. The second group, unde legitisim, embraced the agnates
who were heredes under the civil law (heredes legiti
imi). The third group, unde cognati, comprised cognates until the sixth and (partly) seventh degrees, primarily persons excluded from inheritance under the ius civile. An innovation here was also the
successio graduum; if the nearest cognate failed to

claim the bonorum possessio or refused the success-
sion, the right to claim passed to the cognates of the
next degree. In the fourth class, reciprocal rights
to succession were given to husband and wife in the
absence of persons entitled in the foregoing classes,
regardless of whether or not the wife was in aen of her husband. In an analogous manner, the praetor-
ian law reformed the intestaté succession of a freedman's estate establishing in a somewhat com-
licated manner seven classes of eligible persons,
from the children of the freedman to the cognates
of his patron.—D. 38.6-8; 11; C. 6.14; 15; 18.

G. La Pira, La successione ereditaria intestata e contro il testamento, 1930.

Bonorum possessio iuris civilis adiuvandi (confirm-
mandi) gratia. A bonorum possessio given to a
person who is entitled to the inheritance under the
civil law (ius civile).

Bonorum possessio iuris civilis corrigendi (emend-
andi) gratia. A bonorum possessio given to per-
sons not entitled under the ius civile to the exclusion
of those so entitled.

Bonorum possessio iuris civilis supplendi gratia.
A bonorum possessio given to a person who is not
entitled to inherit under the ius civile, but without
the exclusion of persons so entitled; when, for in-
stance, an emancipated son inherits under praetorian law together with those not emancipated.

Bonorum possessio liberti intestati. See bonorum
possessio intestati.

Lavaggi, StCgl 30 (1946).

Bonorum possessio litis ordinandae gratia. A bon-
or possessio granted exceptionally to persons who
would be entitled to a bonorum possessio intestat-
ti, in order to enable them to impugn the will of the
deceased as testamentum inofficiatum.—See quere
la inofficiosi testamenti

Bonorum possessio secundum tabulas. A bonorum
possessio given to the heirs instituted in a will, which
although void under the ius civile was, however, valid
according to the praetorian law, the requirements
of which were less formal than those of the ius civile.

—D. 37.11; C. 6.11.—See testamentum, testa-
mentum praetorium.

Bonorum possessio sine re. See bonorum possessio
cum re.

Arab, Mem. Accad. di Modena 12 (1914).

Bonorum possessio unde cognati. See bonorum
possessio intestati.

Bonorum possessio unde legitiimi. See bonorum
possessio intestati.

Bonorum possessio unde liberi. See bonorum pos-
sessio intestati.

Bonorum possessio unde vir et uxor. See bonorum
possessio intestati.

Bonorum possessio ventris nomine. A bonorum
possessio granted to a pregnant woman whose child
is presumed to be the successor of the deceased father.
This is provisory until the legitimacy of the child born and his rights of succession are established.—D. 37.9.

Bonorum possessionem petere. See AGNITIO BONO
RUM POSSESSIONIS.

Bonorum possessor. A person to whom the praetor granted a bonorum possesicio. "He succeeds in the place of the deceased under praetorian law" (Gai Inst. 4.34).—See BONORUM POSSESSIONIS and the following items, AGNITIO BONORUM POSSESSIONIS, AC
TIONES FICTICIAE.

Bonorum proscriptio. See PROSCRIERE BONA.

Bonorum sectio. See SECTIO BONORUM.

Bonorum separatio. See SEPARATIO BONORUM.

Bonorum venditio. The sale of the whole property (bona) of an insolvent debtor who even after it had been given into possession (missio in possessionem) of a creditor or creditors, failed to come to terms with them. The sale, an auction, was managed by a magister under the supervision of the praetor. The property is assigned to the highest bidder (bonorum emptor, bonorum emptio). The buyer had an interdict (interdictum possessorum) to obtain the possession of things belonging to the debtor's bona that were held by another.—Inst. 3.12; C. 7.72.—See LEX VENDITIONIS, DEDUCTIO.

Leonhard, RE 3 (z.v. b. emptio); Beaupré-Branchet-Colinet, DS 5 (z.v. venditio h.); Armuzi, AG 72 (1904) 496; Tribandif, Du rôle du curator et magister dans la b. v., Rev. de droit et sociologie 1 (1916); Rotondi, Cent CodPen, 1933; Carrelli, SDHI 4 (1937) 429, 10 (1944) 302; Solazzi, Il concorso dei creditori 2 (1938) 61, 130; idem, La compensazione 2 (1950) 65.

Bonum et aequum (aequum et bonum). (Also without "et.") Right and equitable, fair (ness) and just (ice). The words appear in the definition of ras by the jurist Celsus (Ras est ars boni et aequi), in the formula of actiones in aequum et bonum conceptae, and in the phrase ex bona et aequo. The location bonum aequum appears also in the comparative degree melius aequius.—See AEGUITAS.

Pringsheim, ZSS 52 (1932) 78: A. Levaly, Notion d'inter
richissement injuste. Une application de b. et ae., These, Alger, 1935, 68; Masch. La coénession naturalistica, 1937, 182; Riccobono, BIDR 53-54 (1948) 31 (= AmPal 20 [1949] 39); v. Lütkow, ZSS 66 (1948) 533; Beretta, St Solazzi, 1948, 264.

Bonus pater familias. The average type of an honest, prudent (prudens) and industrious (diligens, studio
sus) man (father of a family), whose behavior in relations with other citizens is given as a pattern of an upright man and may be required from any one. Acting contrary to what a bonus pater familias would do in a given situation may serve as a basis for measuring his culpability and liability in a specific case.—See DILIGENS PATER FAMILIAS.

Sachers, RE 18, p. 4, 2154; Predella, ND1 2; Fadda, Atti Accad. Napoli 32 (1901); D'Ameglio, Monitor dei Tribunali, 1930, 441.

BONUS VIR. See ARBITIUM BONI VIRI, VIR BONUS, BONUS PATER FAMILIAS.

Breviario Alamarianum (Alarici). See LEX ROMANA VIGISOTIORMUM.

Brevis (brevia). Any kind of lists and registers used in fiscal administration of the later Empire; in particular financial reports of public officials about payments (taxes) received and administrative expenditures. Such reports had to be made in four-month-periods (breves quadrimentum). Brevis was also used for lists of tax-debtors. In military administration, brevis = a list concerning the supply of provisions for the army (see ANNONA MILITARIS).—C. 1.42.

Seeck, RE 3; Karlowa, Röm. Rechtsgeschichte 1 (1885) 907.

Brutus, M. Iunius. A Republican jurist of the second century b.c., author of a work on the ius civile (pariety responsa).

Bulgarius. A glossator of the twelfth century.—See IERNEUS, GLOSSATOES.


Bustus. The place where the body of a dead person was burned or buried. The Twelve Tables excluded the usucapio of such places.—See ROGUS, USTRINA.

Mau, RE 3; Coq, DS 2, 1394.

C

C. Abbreviation for CONDEMNO.—See A.

Cadaver. A dead body. Burning or burying a corpse within the boundaries of the city of Rome was prohibi
shed by the Twelve Tables. An insult to the body, before or during the funeral, was considered an insult to the heir, who had the actio inaniarum directly against the offender since "a contumely done to the deceased concerns the heirs' reputation" (D. 47.10.14). Theft committed on a dead body was punished by compulsory labor in mines (metalla), in certain circumstances (use of arms) by death. Justinian prohibited the seizure of the body of a dead debtor, a custom which seems to have been practiced to compel the heirs to pay his debts.

Cadaverum punitorum. The bodies of persons con
demned to death and executed; these must be deliv
ered to their relatives for burial.—D. 48.24.

Cadere causa. To lose a case in court, primarily for an excessive claim (plus petere).—See PLUSPETITIO.

Caducia. Testamentary dispositions made in favor of persons who, according to certain statutes (leges caducarie), were incapable of acquiring under a will. The term indicates also the inheritance itself or the legacy which became vacant because of the incapacity of the heir or legatee or because of other reasons (death of the beneficiary before the opening of the testament or his refusal to accept the gift). Dispositions which became void during the testator's life
are styled in causa caduci. The treatment of caduca and the things in causa caduci was identical: they were assigned to persons who benefited by the testament if they had children. If such heirs or legatees were lacking the caduca went to the "treasury of the Roman people" (aerarium, later fiscus). Already in the later Empire some cases of caduca were abolished. In an extensive constitution Justinian abrogated the whole institution of caduca ("De caduis tollendis," C. 6.51.1) and fixed new general rules concerning testamentary dispositions which became vacant for any reason. A fundamental rule in the law of caduca was that the person who benefited by them received them with all charges (cum onere) imposed by the testator, such as legacies, or manumissions.

—See caducorum vindicatio.
Leonard, RE 3 (s.v. bona c.); Humbert, DS 2 (s.v. bona c.); Barbi, St Bonifate 1 (1929) 563; Levet, RHD 14 (1935); v. Bolla, ZSS 59 (1939) 546; Vacciari Delogu, L'accrescimento nel dir. ereditario, 1941, 145; Solazzi, SDH 6 (1940) 255; idem, ANap 61 (1942) 71; B. Biondi, Successioni testamentarie, 1943, 143; Bessier, RIDA 2 (1949) 93.

Caducorum vindicatio. The claim of a beneficiary to whom vacant parts of an inheritance or vacant legacies were awarded.—See caduca, coeliba, orbi.
Caezilius Africanus. See africanus.
Caecus. Blind (caecitas = blindness). A blind man could not witness a written testament. He was also unable to assume a guardianship.—See testamentum caecl.
Caelebs, caelilatus. See coelibs, coelilatus.
Caelestis. Celestial, divine. Referred in the later Empire to the emperor's encomiations or letters.
Caeilus Sabinius. A Roman jurist (consul in A.D. 69), who was the head of the Sabinian group. He wrote a commentary on the aedilician edict.—See sabini-
ap, editium aedilium curium.
Jörs, RE 3, 1272 (no. 32).
Caelum (coelum). The aerial space over a private or public property (supra locum, caelum agri). Although air is not in private ownership, the immediate space over any property must remain free (liberum) from another’s interference in so far as its use, necessary to the owner, is impaired by a neighbor or anybody else.—See fumus, projectio, servitutes luminiut, aëris.
Pampaloni. Sulae conditio dello spazio aere, AG 48 (1892) 32; Bonfante, Corso di dir. rom. 2, 1 (1926) 219.
Caesar. The name was originally a cognomen (= surname) of the emperor Augustus as adoptive son of C. Iulius Caesar and was used as such by the members of his adoptive family. Later it was assumed by the emperors as a part of their imperial title ("Imperator Caesar . . ."). Until Hadrian's time the descendants of an emperor also bore this title but thereafter only the destined successor and co-regents used it. Under Diocletian's reform of the government (tetrarchy) two emperors were Augusti and the other two Caesars (lower in rank and designate successors to the Augusti).—See princeps.
Neumann, RE 3, 1287.
Caesariani. Originally all servants in the imperial household were so termed. Later the term was applied to subordinate fiscal officials, concerned primarily with the seizure (confiscation) of property.
Calzun comitia. See comitia calata.
Calator. A slave assigned to the personal service of his master and at his disposal on call. Calatores (kalatores) were also servants of the members of pontifical guilds.
Samter, RE 3; De Ruggiero, DE 2.
Calculus. In Justinian constitutions, the judgment of a judge or an arbitrator. In the meaning of calculation (reckoning) calculus is syn. with computatio.—C. 2.5.—See fero calculus.
Solazzi, RendLomb 38 (1925) 307.
Calendarium. See kalendae.
Callistita. Shrewedness.—See stellionatus.
Callistratus. A Roman jurist, presumably of Greek origin. He lived under Septimius Severus and Caracalla, and wrote Institutiones, quaestiones, and works on criminal and fiscal law. The term editum memoriatorium which appears in the title of one of his writings, is not clear.
Kots-Dobra, RE Suppl. 3; Orestano, NDI 2; H. Krüger, St Bonifate 2 (1930) 327; J. B. Nordeblad, Index verborum quae Callistri libris continuat 1 (A-I), Lund, 1934; Schultz, History of Rom. legal science, 1946, 193.
Calumnia. Trickery, deception in legal transactions or in the interpretation of legal norms or of manifestations of will. In a technical sense calumnia refers to both civil and criminal matters. In the first case it is a malicious vexation (vexare) of a person with suits (litius) "brought merely in order to trouble the adversary and with the hope for success through a mistake or injustice of the judge" (Gai Inst. 4.178). In civil proceedings the defendant too may commit calumnia if he denies the plaintiff’s claim merely for chicanery. The principal remedies to prevent calumnia in civil trials is iusturandum (iuramentum) CALUMNIAE applicable to either party, and (in classical law) TUDICUM CALUMNIAE only in favor of a defendant maliciously sued. In the field of the private law there is still another form of calum-
ia if a person receives money in order to annoy another with vexatious trials (civil, criminal or fiscal). The person to whose detriment such an illicit arrangement was made, was granted against the man who received the money a praetorian action, proposed in the Edict, for four times the sum which had been given him as the price of his complicity.—In criminal law calumnia (crimen calumniius) was committed when a person accused another in full knowledge that the latter is innocent. Such a falsa accusa-

atio made in bad faith was punished by brandishing the calumniator with the letter K (abbreviation for
\textit{kalumniator} on the forehead, and by the imposition of various disabilities: infamy, inability to be in the future a prosecutor in a criminal trial, other procedural disadvantages, and exclusion from competition for a public office. The \textit{crimen calumniæae} of the \textit{falsus accusator} had to be proved in a special proceeding; the mere acquittal of the person he had accused was not sufficient to stigmatize him as a \textit{calumniator}. A \textit{lex Remmia} (about 80 B.C.) set the rule that a \textit{calumniator} was to be tried before the same tribunal (\textit{quaestio}) before which he had prosecuted the innocent accused.—D. 3.6; C. 9.46.


**Calumnia notatus.** A person convicted of \textit{crimen calumniæae} (malicious accusation).—See \textit{CALUMNIA, CALUMNIATOR}.

**Calumniari.** To commit \textit{calumnia}.—See \textit{CALUMNIA, CALUMNIATOR}.

**Calumniator.** A person "who harasses others with suits brought through fraud and deception." D. 50.16.233 pr. (\textit{calumniari}). A \textit{calumniator} proved and pronounced guilty of \textit{crimen calumniæae} was exposed to various penalties.—D. 3.6; C. 9.46.—See \textit{CALUMNIA}.

**Calumniosius.** Involving \textit{calumnia}.—See \textit{CALUMNIA, ACTIO CALUMNIOSA}.

**Cancellaria.** To mark crosses over a written document (a testament, a promissory note) in order to annul it. Sandilippo, \textit{AnFl} 17 (1937) 133.

**Cancellarii.** Auxiliary officials in the chancery of a high functionary, charged with secretarial services. They seem to have been of importance in the offices of the provincial governors.—C. 1.51.

**Candidati.** Members of the body-guard of the emperor (in the later Empire). They are first mentioned in A.D. 350.

Seec, \textit{RE} 3, 1468.

**Candidatus.** An aspirant to a magistracy. The competitors for a magisterial post appeared in public during the electoral period in glittering white togas (\textit{toga candida}, hence the name \textit{candidatus}), surrounded by friends and slaves, to appeal for the support of the voters. Unfair practices were forbidden and punished if they constituted the crime of \textit{ambitus}.—See moreover \textit{lex Pompeia, nomencla tor, professio} (in elections).

Kübler, \textit{DE} 2.

**Candidatus Caesaris** (or \textit{principis}). A candidate recommended by the emperor to the senate for an official post. The following appointment by the senate was a mere formality. The emperor’s recommendation was considered a distinction; it is found as such in numerous inscriptions.—See \textit{quaestores candidati principis}.


**Canon.** The term (of Greek origin and unknown in Justinian’s \textit{Institutes} and \textit{Digest}) appears in two different meanings in later imperial constitutions and Justinian’s \textit{Novels}: (1) a regular annual payment of a fixed (\textit{fixus}) amount as a rent in a lease for a long term or in perpetuity (\textit{emphyteusis}) or as a land-tax paid to the state. As a tax it was only exceptionally increased or lessened (see \textit{PERAEQUATIO}) by the tax assessors. It is distinguished from extraordinary payments of duties which were neither regular nor fixed; (2) syn. with \textit{regula} (\textit{iuris}) or \textit{norma} (legal rule). In the language of the \textit{Novels} \textit{canon} occurs mostly in the sense of Church legal rules in contradiction to legal rules of secular origin.—See the following items.

Humbert, \textit{DS} 1; L. Wenger, \textit{Zwischen} 220, 2 (1942); Berger, \textit{Fischer Schulz} 2 (1951) 9.

**Canon anniversarius.** A tax or duty paid \textit{per annum}. The term appears with reference to an impost paid by Jewish synagogues.

**Canon aurarius.** A tax or duty paid in gold. Ant. \textit{canon frumentarius} = a tax or duty paid in kind.—C. 11.23.

**Canon emphyteuticus** (\textit{emphyteuticus}). The annual rent paid by an \textit{emphyteutus} to the landlord (the emperor or a private individual) in a lease in perpetuity or for a long term.—See \textit{EMPHYTEUSIS}.

**Canon frumentarius.** See \textit{canon aurarius}.

**Canones ecclesiastici.** The rules of the Church (ecclesiastical laws).

B. Biondi, \textit{Giustiniano Primo, principe e legislatore cattolic}, 1936, 92.

**Canones largitionarium titulorum.** See \textit{LARGITIONALIA}.—C. 10.23.

**Canonica.** Regular taxes (duties) paid by the possessors of fundi \textit{emphyteutici} or of land belonging to the private patrimony of the emperor.

**Canonicarius.** A collector of taxes (\textit{canones}).

Seeck, \textit{RE} 3; Wenger, \textit{Canon} (see above), 46.

**Canticum.** A defamatory poem. \textit{Syl. Carmen Famosum}.

**Capacitas.** (Adj. \textit{capax}.) A general conception of legal capacity is unknown to the Romans. The term is used only with reference to certain acts or legal transactions. Elsewhere \textit{capacitas} is expressed by \textit{ius} (= the right to do something) or by a specific term, as, for instance, the capacity to make a will = \textit{testamentio factio}. More frequent is the use of the adjective \textit{capax} (= capable, able) to denote physical or mental capacity and legal capacity as well (e.g., to contract an obligation or to accept the payment of a debt). Restrictions of legal capacity are manifold and they vary pursuant to certain personal qualities of the individual involved (age, sex, citizenship, dependency upon paternal power, etc.) or to the legal domain to which they apply (obligations, acquisition of property, procedure, etc.). Persons capable (\textit{capaces}) in one regard may be incapable in another.
For \textit{capacitas} in the law of successions, see the following item, \textit{Corribes, orbis, lex furia, lex vocomia, lex iulia et papia, caduca, testamenti facto.}


\textbf{Capax.} In the law of succession, a person able to take under a will (= \textit{qui capere potest}). See \textit{capacitas}. A person might be fully \textit{capax (capax solid)} when he could take the whole gift (inheritance or legacy) left to him in a last will and testament, or partially \textit{capax (capax portionis)} when only a portion thereof was accessible to him.

\textbf{Capax doli.} A person capable of perceiving the fraudulent character of his action. Those who are below the age of puberty generally are not considered \textit{capaces doli}, nor are persons with mental defects, who are not responsible for their actions.—\textit{See impuress.}

\textbf{Capere.} To acquire either by \textit{usucapio} or (more frequently) on the occasion of a person's death (\textit{mortis causa}).—D. 39.6.

\textbf{Capio.} Sometimes syn. with \textit{usucapio}. \textit{Mortis causa capiones} = all kinds of benefits a person receives through, or on the occasion of, another's death (conditional gifts) "except those forms of acquisition which have specific names" (D. 39.6.31 pr.), such as here-ditas, legatum, fideicommissum.—D. 39.6; C. 8.56.—See PIGNORIS CAPIO.

Ferrini, \textit{NDI} 2 (s. \textit{capiones}).

\textbf{Capitallia.} A criminal matter in which the penalty may be death, loss of liberty or loss of Roman citizenship.—\textit{See caput, causa capitalis, crimen, quaestio, poena capitalis, sententia, tresviri capitales.}

\textbf{Livy, \textit{Die rom. Capitallia, StHeid} 1931; Brasilei, \textit{RBSG} 9 (1934) 220.}

\textbf{Capitatio.} A general expression for taxes paid per head (\textit{caput}), either as a poll-tax (\textit{capitatio humana}) or an animal tax (\textit{capitatio animalium}). The \textit{capitatio humana}—to be distinguished from land tax, \textit{iuagatio terrarum}—was paid only by persons of lower classes (hence it was called also \textit{capitatio plebeia}), not wealthy enough to pay taxes \textit{ex censu} i.e., on their whole property as evaluated on the occasion of a \textit{census}. The \textit{capitatio humana} became a general institution under Diocletian. In earlier times the poll-tax (\textit{tributum capitio}) was paid only in certain provinces. Exemptions were admissible; they were granted to minors, widows, etc. Only healthy persons able to work (men from 14 to 65) were assessed, but not in equal measure.—C. 11.49.


\textbf{Capitatio animalium.} A tax levied per head of cattle (from the times of Diocletian.)—See \textit{capitatio}.
prisoners in a war. After his return the Roman war prisoner (capitivus) regained his legal status by virtue of a specific Roman legal institution (see postliminium). A Roman captured (kidnapped) by a bandit (lato) did not become his slave; his legal status remained unchanged.—D. 49.16; C. 1.3.—See postliminium, redeemptus ab hostibus, lex cornelia.

Leonhard, RE 3; L. Sertorio, La prigionia di guerra, 1915; Ratti, RISG N.S. 1, 2 (1926-27); idem, BIDR 33 (1927) 105; idem, AnMac 1 (1927); H. Krüger, JSS 31 (1931) 203; Levy, CIPhilol 38 (1943) 159; Di Marzo, St Solazzi, 1948, 1; Leicht, RSDeH 22 (1949) 181; L. Ambrante, Captivitas e postliminium, 1950.

Captivus. A prisoner of war.—D. 49.15; C. 1.3.—See the foregoing item.

Caput. In Roman sources the term has different meanings. Generally it signifies an individual, hence the distinction between caput liberum (= a free person) and caput servile (= a slave). In connection with deminutio (deminutio capitii = the loss of caput) caput = the civil status of a Roman citizen, for which three elements were necessary: to be a free man (status libertatis), to have Roman citizenship (status cittatis) and to belong to a Roman family (status familiae) either as its head (pater familias) or as a member. The loss of one of these elements involved the capitii deminutio, with all its legal consequences. The gravest effects were connected with the loss of freedom (capitii deminutio maxima) in the case of enslavement of a citizen or reducing a freeman to slavery, because the loss of liberty entailed the loss of citizenship and family ties. A lesser degree (capitii deminutio media) in which a person lost citizenship without losing liberty also resulted in loss of membership in family. See interdicere aqua et igni.

Loss of family (capitii deminutio minima) occurred when a person's agnatic family ties were dissolved either by his entry into another family (adoption, adrogatio, marriage of a person with in manum conventio) or by his becoming the head of a new family (emancipatio). The consequences of this lowest degree of capitii deminutio were originally perceptible only in economic and social fields (loss of the rights of inheritance in the former family, dissolution of partnership, extinction of personal servitudes, and the like). Some of these consequences were later mitigated by the praetorian law which recognized cognatic family ties. Thus the capitii deminutio minima gradually lost its original significance; under Justinian it is almost without any importance at all. See capitii deminutio.—Other meanings of caput are: a section of a statute, edict or imperial constitution (syn. capitulum); the principal of a debt as distinguished from the interest; in tax administration, caput denotes a tax unit or an individual person as a tax-payer. For caput in connection with the death penalty, see animadversio, capitium puniendum, capitum accusatio, capitalis, poena capitatis, consecratio.—Inst. 1.16; D. 4.5.

Radin, Mil Fournier, 1929; Gottfredi, SDHI 11 (1945) 301; Lot, L'étendue du caput fiscal, RHD 4 (1923) 5, 177; A. Dejean, La capitum du Bas-Empire, 1945.

Caput aquae. The place where the water originates (aqua nascitur). It is either the source or the river or lake from which the water is initially drawn. The servitude of aquaeductus could be constituted on any caput aquae.—See fons.

Carbonianum edictum. See bonorum possession ex carbonianio edicto.

Carcer. A jail. Imprisonment was not a repressive measure, it served only for the detention of persons during investigation or trial, or after sentence pending execution.

Berger, OCD (civ. prison); Grand, La prison et la notion d'empoisonnement, RHD 19 (1940) 58.

Carcer privatus. A private prison. It was used for the incarceration of recalcitrant slaves, and—in earlier times—of debtors who failed to pay their debt. Private prisons were prohibited by the emperors Zeno and Justinian.—C. 9.5.—See nexum.

Humbert, DS 1; Hitzig, RE 3.

Caritas. Love, affection. Appears in a few juristic texts as a psychological and humane element which had to be taken into consideration in certain legal situations which required mild and benevolent treatment. Caritas belongs to the group of terms, such as benignitas, elementia, humanitas, which are put forward to recommend an exceptionally benignant dealing with a specific case. Reminiscences of Christian caritas may occur in some interpolated texts, but the term cannot be excluded from the language of the classical jurists since it is used in contemporary literary texts.—See beneigne.

Alberto, Studi 5 (1937) 21; Maschi, AnTr 18 (1948) 51; idem, lws 1 (1950) 266.

Carmen famosum. A defamatory poem (libel), lampoon, pasquinade. Syn. canticum, libellus famosus. It is one of the graver cases of personal offense (inuria) and is punished by deportation.—See the following item.—See libellus famosus, intestabilis.

Leonhard, RE 3; Brasiello, NDI 2.

Carmen malum. Sometimes identified with carmen famosum. Originally it was a specific wrongdoing, a kind of sorcery (mentioned already in the Twelve Tables) committed by pronouncing magic formulae to bring harm to a person or his property.—See occentare, incantare.

Carnifex. An executioner. He was not permitted to live in Rome.

Cartellus. An unknown jurist of the late Republic.

H. Krüger, St Bonfante 2 (1930) 328.

Cascellus. A jurist of the late Republic, author of the formula called iudicium cascellanum.

Jörs, RE 3, 1634; Ferrini, Opere 2 (1929) 53.
Cassare. To annul (a law, an agreement).

Cassiani. See CASSIUS, SABINIANI.

Cassius, Gaius Cassius Longinus. A prominent jurist of the first century after Christ. He followed Sabinus in the leadership of the so-called Sabinian school (SABINIANI), hence also called CASSIANS. His principal work was an extensive treatise on ius civilis.—See GAIUS.

Jôra, RE 3 (no. 63); C. Arnb, Pubbl. Fac. Giuridica Moderna 4 (1925); idem, Méi Cornil 1 (1926) 97.

Castellum. A small fortified place (diminutive of castrum). People living in a castellum sometimes had an organization similar to that of small communities (vicini, pagi)—C. 11.60.

Kubitschek, RE 3; De Ruggiero, DE 2.

Castellum (aqua). A water reservoir, public or private (syn. receptaculum). A servitude of drawing water from another’s castellum (i.e. aquae ductus ex castello) was protected by a special interdict de aqua ex castello ductum.—D. 43.20.

Berger, RE 9, 1631; De Ruggiero, DE 2, 132; Thierry, DS 1, 937; Crestano, BILD 43 (1935) 297.

Castigare (castigatio). To chastise, castigate. Corporal punishment was applied to both slaves (with a whip, flagellum) and free persons (with a club, justis) either as an additional punishment, or in lieu of a pecuniary fine when the culprit could not pay, or as a coercive measure for minor offenses. Soldiers were punished by castigatio for disobedience or violation of military discipline. Outside the penal law fathers, masters, and instructors were permitted to castigate their sons, slaves and apprentices, respectively. Syn. verbare (verbatio).

Hitzig, RE 3; Humbert, DS 1; Fourges, DS 2 (a. s. flagellum); Lecrivain, DS 3 (verbare); U. Brasili, Repressione female, 1937, 386.

Castra. A military camp serving either as a permanent quarter for troops or a temporary center of attack or defense, or for a short night stay of a military unit in march. In castris = during the military service, in war time.

Domażelski, RE 3; De Ruggiero, DE 2; Saglio, DS 1, 941.

Castratio. Emasculation, castration. Castratus = eunuch. The imperial legislation of the early Empire (Dominian, Hadrian) tried to suppress this custom practiced primarily on slaves, but without success, since the prohibition of castratio was repeated several times and the penalties were constantly aggravated, until Constantine and later Justinian, imposed the death penalty.—C. 4.42.—See EUNUCHUS.

Hitzig, RE 3; Humbert, DS 1.

Castrensis (procurator castrensis). The superintendent of the imperial household. His title was also castrensis sacri palatii.

Seeck, RE 3; Heron de Villefosse, DS 1; Dunlap, loc. cit. 207.

Casus. An accident, an event which happened without any human intervention or fault. Terminology is varied: casus, casus fortuitus, casus major, vis maior. According to a general principle "no one is responsible for a casus" (casus a nullo praeestatur, D. 50.17.23), the owner of a thing suffered the damage caused by a casus unless another has assumed responsibility for such losses. In the contractual field casus might make it impossible for the debtor to fulfill his obligation (e.g., destruction of the thing to be delivered to the creditor). Normally, the debtor was not liable for such accidents unless there was a special agreement extending his risk to such cases.—See CUSTODIA, DILIGENTIA, FORTUITUS.

De Medio, BILD 20 (1908) 157; F. Schulz, Rechtvergleichende Forschungen über die Zufallskraft, ZfR 25, 27 (1910, 1912) Buckland, Harvard LR 46 (1933); G. L Lucarato, Caso fortuito e forza maggiore 1 (1938); Condurao-Michler, St Ferriani 3 (Univ. Sacro Cuore, Milan, 1948) 102.

Catholicus. (Adj.) Connected with the Christian faith (fides, religio) or Church (ecclesia).

For bibl. see B. Biodi, Guide bibliografiche, Dir. rom. (1944) 1. Chiesa, Catholica, p. 139.

Cato, M. Porcius Cato. Surnamed also Censorinus (or Maior), consul 195 B.C., censor 184 B.C. He is named by Cicero "an expert in ius civilis, the best of all" (De orat. 1.171). His work "On agriculture" (De agricultura, written about 160 B.C.) contains forms of agrarian contracts. He was the initiator of the Senatusconsultum de Bacchanalibus. His son, M. Porcius Cato Licianus, is known as the author of an extensive work De iuris disciplina, probably a treatise on the ius civilis. One of the two (more likely the son) was the author of the so-called REGULA CATONIANA.

Jôra, Röm. Rechtswissenschaf (1888) 267, 283; McDonald, OCD 173 (no. 1).

Catonianna regula. See REGULA CATONIANA, CATO.

Caupo. An inn-keeper. He assumed liability for things left in his custody by an agreement, receptum cauponum. The praetorian Edict fixed the pertinent rules equally to the responsibility of ship-owners and keepers of public stables.—D. 4.9; 47.5.—See RECEPTUM NAUTARVM.

Causa. One of the vaguest terms of the Roman juridical language. Starting from the basic meaning of cause, reason, inducement, the jurists use it in very different senses. Thus, causa indicates a legal situation in such phrases as in eadem causa est, or aliqua causa est. Causa is the reason for which some judicial measures (actions, exceptions, interdicts) were introduced by the praetor. Causa is also the purpose for which an action is brought in a specific

Castrænsian. See PECULIUM CASTRENSE.


Enslin, RE Suppl. 6, 493; Dunlap, Univ. of Michigan Studies, Humaric Ser. 14 (1924) 215; Giffard, RHD 14 (1935) 239.
controversy, or a legal disposition is made (causa
dotis, causa legati). Not infrequently causa refers to
the trial itself or the matter from which it originated;
see causae cognitio. Sometimes causa is roughly
identical with animus when it alludes to the
subjective motive, intention, or purpose of a person.
In this sense its use is simply unlimited because it may
be applied to elements recognized by the law as well as
to inducements which are immoral and condemned
by law (causa turpis, insusta, illicita, and similar).
Causa receives a specific juridical content when it
implies the legal title or foundation on which a per-
son bases its claim against another or a legal situation
is created, as, e.g., in phrases like causa menditionis,
donationis, hereditaria, legati, fideicommissi, indicati,
etc. In certain legal institutions causa, particularly
when qualified as insta causa, acquires a specific col-
oration, as in traditio, usucapio, manumissio, etc.
In the domain of the law of contracts, i.e., in bilateral
transactions, the Romans did not elaborate a special
document of causa. There are mentions of causa with
regard to some specific contracts, but a general theory
can hardly be drawn out. Finally, with reference to
certain things (land, slaves) when their restitution
cum sua causa is involved, causa means the acces-
sories, proceeds, fruits, or the child born of a slave.
See the following items.—See cadere causa, falsa
causa, iusta causa, and the following items.

Leonhard, RE 3; Brunelle, NDI 3; Bomsame, Scr. gior.
3: 125; V. A. Georgescu, Le mot causa dans le latin juri-
dique, Jasi, 1936 (reprinted in Et. de phllosophie juridi-
cque, Bucharest, 1939); De Bois-Juran, De la c. en fr. 
1939, 155; Bibl. in Betti. Istituzioni 1 (1942) 122; Min-
iconi, Rev. Et. Latines 21 (1943-4) 82; De Sarlo, BIDR 
51/2 (1948) 99; P. J. Miniconi, Causa et de descendit. 
These, Paris, 1951; F. Schwarz, Die Grundlage der Con-
dictio (1925) 129.

Causa cadere. See cadere causa.

Causa capitalis. A criminal or trial in which
the loss of the defendant's caput (life, freedom or
Roman citizenship) was at stake. Syn. res capitalis,
crimen capitale; ant. causa pecuniaria.

E. Levy, Die röm. Kapitalstrafe, StHeid, 1931.

Causa cognitio. See causae cognitio, passim.

Causa criminalis. A judicial matter connected with
a crime.

Causa Curiana. See curiana causa.

Causa judiciati. See iudicatum.

Pfeffer, ZSS 45 (1923) 153.

Causa liberalis. A trial in which the question whether
an individual was a slave or a free man, was involved.
Syn. iudicium liberale.—D. 40.12; C. 7.16.—See
praetor de liberalibus causis, ordinare item,

verginiens.

Nicolaus, C. L. Paris, 1933; H. Krüger, St Riccobono 2
(1936) 227; P. Naulilles, Le procès de Virginie, Rev. Et.
Latines, 20 (1942) 166 (= Fas et ini, 1948, 187); Di Paola,
AcCiv 2 (1948) 266; Van Oyen, TR 18 (1950) 159.

Causa lucrativa. A matter in which one acquires a
thing without any reciprocal, equivalent expenditure.

DONATIO, LEGATUM, USUCAPIO PRO HEREDIBUS are so
named.—See res lucrattivae.

Di Marco, BIDR 15, 17 (1903, 1905).

Causa manumissionis. See causae probatio, man-
missio.

Causa pecuniaria. A judicial matter in which the issue
is the payment of a sum of money (debts, damages,
fines). Ant. causa capitalis, criminalis.

Causa poenalis. See iudicia poenalia, poenalis.

Causa possessionis, traditionis, usucapionis. See
possessio, traditio, usucapio.

Causa turpis. See condictio or turpe causam.

Causae coniectio. See causae coniectio.

Causae cognitio (causam cognoscere). The judicial
examination of the case, particularly of its factual
background in the course of the proceedings, both in
the first stage of the trial before the magistrate (in
sive) and in the second (affud indicem) before the
private judge. Several ordinary and extraordinary
measures to be ordered by the judicial magistrate.
As, e.g., in integrum restitutio, missiones in
possessionem, cautions, could be applied only
causa cognitio, i.e., after a thorough causa cognitio.
Ant. citra causae cognitionem.

Wissak, RE 4, 206; Lévy-Bruhl, TR 5 (1924) 383;
M. Lemosse, Cognitio, 1944, 185.

Causae collectio. See the following item.

Causae coniectio. A summary presentation of the
case before the juror (iudex) by the parties or their
advocates. Syn. causae collectio.

Wissak, RE 4 (i.e., coniectio).

Causae probatio. A special procedure designed to
examine certain factual elements in matters involving
Roman citizenship or personal status. Errors causae
probatio: when a marriage was concluded in error
by persons of differing legal status. Annulni causae
probatio: a Latinus uniunus, who had been freed
before the age of thirty and had married a Roman
woman, acquired Roman citizenship if there was
a one-year-old child born in this marriage. The wife
and child became Roman citizens too. Also in some
exceptional cases of manumission (of a slave under
thirty years or as a token of particular gratitude)
the fairness of the motives was examined by the com-
petent official through a causa probatio.—See senatus-
consultum pegasianum.


Causam perorare (orare). To argue the case before
the judge (see iudex).

Causa perpetua. See perpetua causa.

Causaria. See missio.

Causas agere. See the following item.

Causas dicere. To plead the causes of others before
the courts as an advocate. Hence causidicus = the
advocate. Syn. causa agere, orare.

Causidicus. See causas dicere, advocatus.

Kubitschek, RE 3; Conrat, Mel. Fitting I (1907) 303.
Cautio. Used by Justinian's compilers in lieu of cautio.—See CAUTIO.

Guarneri-Ciati, Indice* (1927) 16.

Cautio. Denotes the obligation assumed as a guaranty for the execution of an already existing obligation or of a duty which is not protected by the law. The simplest form (nuda cautio) is a promise by a mere stipulatio (nuda stipulatio, repromissio) which gives the creditor the advantages of a stipulatary obligation. Other forms were a pledge (pignus or hypotheca) or guaranty assumed by a person other than the principal debtor (a surety). "A thing gives more security than a person" (D. 50, 17, 25). Also an oath (cautio iuratoria) was used to strengthen an obligation. For the different application of cautiones, which frequently are called simply stipulationes, see the following items. Cautio is also used to indicate a written declaration of the debtor confirming his obligation and issued for the purpose of evidence. For the application of cautio with reference to a preceding stipulatio, see CAUTIO STIPULATORIA.—See STIPULATIO, SATISDATIO, IDONEUS, REPROMISSIO.


Cautio amplius non agi (peti). A cautio given by the plaintiff who acts on behalf of another person as his procurator (procuratorio nomine) to guarantee the defendant that he would not be sued for the same claim again by the principal.—See PROCURATOR.

Debray, NHRD 36 (1912) 3; A. Palermo, Procedimento censinale cit., 23.

Cautio damni infecti. A security given against apprehended damage. The pertinent stipulatio created a legal tie between the owner of the immovable threatened and the owner of the adjacent building the rundown conditions of which endangered the former's property. If the cautio damni infecti was refused and later damage was really done, the praeator granted the owner of the damaged property an action with a fictitious formula based on the fiction that cautio damni infecti had been given.—D. 39.2.—See DAMNUM INFECTUM, MISSIO IN POSSESSIONEM DAMNI INFECTI CAUSA.

G. Branca, Damno temuto, 1937; Palermo, op. cit. 35.

Cautio de bonis (dotibus) conferenda. A cautio by which an emancipated son or draught promised to accomplish their duties of collatio.—See COLLATIO BONORUM, COLLATIO DOTIS.

A. Guarino, Collatio bonorum, 1937.

Cautio de dolo. See DOLUS, STIPULATIO DE DOLO.

Cautio de evictione. See EVICTIO.

Cautio de non amplius turbando. A cautio given by the defendant in an actio negatoria to the effect that he will not disturb the owner of a plot of land by claiming a servitude thereon. A similar cautio is given in an actio confessoria to the beneficiary of a servitude by the defendant binding himself not to put any obstacle in the exercise of the servitude.—See VINCICATIO SERVITUTIS.

Cautio de rato (cautio ratam rem dominum habiturum). A cautio given in a trial by a representative (procurator) of the creditor to the effect that the latter (the principal, dominus negotio) will approve of what his procurator had done and will not sue the debtor a second time in the same matter. Tutors and curators as well had to give such a security in the name of their wards. In later law the cautio de rato was required only when there were reasonable doubts about the powers of the representative (for instance, in the case of absence of the principal.)—See PROCURATOR, TUTOR, CAUTIO AMPLIUS NON AGI.

Palermo, op. cit. 23.

Cautio de servio persequendo. A security given by a person holding another's slave for the pursuit of the latter in case he would run away.—See SERVUS FUGITIVUS.

Cautio ex leges Falcedia. A security given the heir by the legatee to return what he might receive beyond the limits established by the lex Falcedia.—See LEX FALCEDIA.

Cautio ex operis novi nuntiatione. See OPERIS NOVI NUNTIAIIO.

Cautio fructuaria. See CAUTIO USUFRUCTUARIA (symp.).

Cautio indemnitatis. A security given a person that he would not suffer any loss or damage from a transaction or an event which may happen.

Cautio iudicatum solvi. See IUDICATUM.

Brunelli, NDt 3; Duquesne, Mil Germin, 1907; idem, Mil Patroyc 1 (1907); Palermo, op. cit. 22; P. Gay-Lugny, C.L., These, Paris, 1906.

Cautio iudicio siisti. A security given by the defendant to appear in court.—See VADIMONIUM, EXECUTOR.

Cautio iuratoria. The strengthening of an obligation by oath.—See IURISURANDUM, CAUTIO.

Cautio legatorum nomine. A security given by the heir that all that the testator ordered in connection with a legacy would be fulfilled. In the case of refusal by the heir to assume this obligation by stipulatio the legatee might ask the praeator to be put in possession of the heir's property (missio in possessio- num legatorum servandorum causa).—See LEGATUM, MISSIO IN POSSESSIO- NUM.

Palermo, op. cit. 41, 93; Solazzi, RISG 86 (1949) 38.

Cautio Muciana. A security given by a legatee (extended later to heirs) to whom a legacy was bequeathed under a negative condition that he would not do a certain thing. The fulfillment of such a condition could be established only at the death of the legatee. In order to give the legatee the opportunity of receiving the legacy during his lifetime this cautio was introduced (by the Republican jurist Q. Mucius Scævola) by which he obligated himself not to act against the condition imposed. If, despite
this promise he did the act forbidden, he was com-
pelled to return all that he benefited by the legacy
including the profits (fructus).
Kübler, RE 16, 445; Boxzi, NDI 3; Levy, ZSS 24 (1904)
122; H. Krüger, Mit Girard 2 (1912); Beseler, ZSS 47
(1927) 60; Solazzi, SDHI 10 (1944); B. Bianoni, Successio-
siones testamentaria, 1943, 545; idem, BIDR 49-50 (1947)
241.
Cautio pro praede litis et vindiciarum. A security
connected with the proceedings with sponsio (agere
per sponsionem) and given by the party who re-
ceived the temporary possession of the object in dis-
pute, in order to guarantee its restitution together with
the fruits in the case he lost the suit.—See PRAEDES
LITIS ET VINDICIARUM.
Palermo, op. cit. 21.
Cautio ratam rem dominum habiturum. See CAUTIO
DE BATO.
Cautio rei uxoriae. A stipulation concerning the re-
stitution of the dowry in case of divorce.—See DOS.
Cautio rem adolescentis salvam fore. See the follow-
ing item.
Berger, RE 15, 1878.
Cautio rem pupilli salvam fore. A guaranty given
by the guardian to the effect that his administration
of the ward’s patrimony will not prove detrimental
to it. Testamentary guardians were free from giving
such a security. A similar cautio (rem adolescentis
salvam fore) was imposed on the curator of a minor.
—Inst. 1.24; D. 46.6; C. 5.42.—See TUTELA, CURATOR
MINORIS.
Sachers, RE 7A, 1569; H. Weymuller, Contribution à
l’histoire de l’actio tutelae, 1901; Rotondi, Scritti 2 (1922,
ex 1912) 268; Palermo, op. cit., passim.
Cautio stipulatoria. (A non-Roman term.) A written
declaration by a debtor confirming that he as-
sumed an obligation through stipulatio. The frequent
usage of such documents in postclassical development
influenced the transformation of the stipulatio into a
written form of promise since the legislation of the
later emperors considered a written declaration of
promise a sufficient proof that an oral stipulatio had
taken place regardless of whether this has happened
or not.—See STIPULATIO.
Plato, ApRBD 33 (1909) 438; Riccobono, ZSS 35 (1914)
217; 43 (1922) 262; H. Steinacker, Die antiken Grund-
lagen der frühmittelalterlichen, Urkunde, 1927, 83; P.
Collinet, Études historiques sur le droit de Jurcinum 1
(1912) 39; V. De Gaurard, Les rapports entre la stipu-
lation et l’actio stipulatoria, Thèse, Lassance, 1931; A.
Segre, Act 25 (1945) 63.
Cautio susplicti hereditis. See SATISDATIO SUSPECTI
HEREDITIS.
Cautio usufructuaria. A security given by the usu-
fructuary to the owner of the res in usufructum to
1guarantee that he would fulfill his duties and would
not abuse his rights as an usufructuary.—D. 7.9.
R. de Ruggiero, St Scholast 1 (1905) 4; Grosso, ATor 72
(1936); Palermo, op. cit. 39, 102.
Cautio vadimonium sisti. See VADIMONIUM.

Cautum (caveri) iubere. The order of the praetor to
give security (CAUTIO). Ant. cautum denegare.
Woess, ZSS 53 (1933) 378; Palermo, Procedimento
causionale, 1942, 62.
Cavere. To give security through a cautio (stipu-
latio, pignus, surety).—See IDONUS.
Cavere. (When referring to the jurists’ activity.)
Drafting agreements (sponsiones, mancipationes) and
last wills which the jurists composed upon request of
private individuals.
Leonard, RE 3, 1085; Berger, RE 10, 1162.
Caveri. (When referring to provisions of statutes
(["lege cavetur"], senatusconsults, etc.) The statute
(senatusconsult) provides that... With reference to
last wills and testaments cavere denotes the dis-
positions of the testator.
Cedere. (Transitive.) To cede, transfer to another a
right or an action or to constitute a servitude (cedere
usumfructum, aquaeductum, etc.) in favor of an-
other.—See cessio.
Cedere. (Intransitive.) With regard to terms fixed
for the fulfillment of an obligation: dies cedit means
the day “on which the sum is beginning to be owed”;

dies venit = the day “on which the sum due can be
demanded (sued for)” (D. 50.16.213 pr.). For
legacies, see DIES CEDENS.
Cedere actione (lite). To recede from, to withdraw,
an action. Syn. desistere.
Leonard, RE 3.
Cedere actionem. See CESSIO.
Cedere bonis. See CESSIO BONORUM.
Cedere foro. To leave the forum, i.e., when a money-
banker (nummularius) gave up his place of business
on the forum because of bankruptcy.
Cedere in ture. See IN TURE CESSIO.
Celerus. Cavalrymen in the earlier times. They were
organized in three centuries, each recruited from one
of the original three Roman tribus, and were com-
doned by tribuni celerum.—See TRIBUS, RAMES.
Kübler, RE 6, 272; Saglio, DS 1; Berger, RE Suppl. 7,
397 (i.e. Lex Iunia).
Celsitudo. An honorific title of the emperor (celsitudo
imperatoria). The emperors addressed the praefectu
praetorio in rescripts with celsitudo ("your high-
ness")—Syn. AMPULITUD.
P. Koch, Byzantinishe Beamtenstitel, 1905, 108.
Celsus, P. Iuventius. A prominent Roman jurist of the
first decades of the second century after Christ.
He succeeded his father, P. Iuventius Celsus the
Older, a less known jurist, in the leadership of the
Proculian School. Celsus was praetor, consul and
member of the Emperor Hadrian’s council. Among
his works Digesta, Epitulæ and Quaestiones are of
a high value.
Diehl, RE 10, 1363; Orestano, NDI 3; Giancarlo, St Fadda
5 (1906); F. Stella-Marana, Intorno ai frammenti di
Celsa, 1913.
Censura. Used for the resolutions of the senate (senatus censuri or censuernai [sc. senatores]). Censura, with reference to censors and their subordinates, indicates the activity connected with the evaluation of the citizens’ property for tax purposes.

Censores. (Syn. censores.) Appraisers, special officials in the later Empire sent to provinces for the purpose of estimation of landed property in connection with the assessment of taxes.—C. 11.58.

Censitius. (From censeri.) A taxpayer whose property has been estimated and charged with a land-tax. Later, the payer of a poll-tax was also called censitis. Ant. incensarius.—C. 11.48; 50.

Censoria. Censorship was created in 443 B.C. as a non-permanent magistracy. Censores were elected once in five years (lustrum) and were in office for eighteen months. Thus through three years and a half there were no censors at all, and during that time their functions passed to other magistrates, chiefly the consuls. The censores had no imperium, and yet their authority was exceptionally great so that even ex-consuls competed for censorship. Their ordinances were valid for the whole quinquennial period until the appointment of new censors. Their most important tasks were the preparation of the census and making the list of the senators (lectio senatus). For further functions of the censores and various problems connected with censorship see CUBA MORUM, NOTA, LEGES CENSORIAE, TABULAE CENSORIAE, LEGE DE CENSORIA POTESTATE, LEX AEMILLIA, LEX OVINIA, LEX PUBLICA PHILONIS, TRIBUS, CENSUS EQUITUM. The censorship lost its importance in the late first century after Christ.

Kubitschek, RE 3; Humbert, DS 1; Manca, NDI 3; De Ruggiero, DE 2; Treves, OCD; M. Nowak, Die Strafverhängnisse der c., Diss. Breslau, 1905; O. Lenz, Zur Gesch. der röm. Zensus 1 (1909); E. Schmihling, Die Sittenaufsicht der Zensoren, 1938; Kloez, Rheinisches Museum für Philologie, 1939; Plachy, BIDR 47 (1940) 104; R. V. Cram, Harvard St. of Class. Philology 51 (1940) 71; A. Calderini, La censura in Roma antica, 1944; Siber, Fehr Schulz 1 (1931) 466.

Censorius. (Adj.) Connected with the office and functions of the censors.—See nota, leges censoriae, lex de censoria potestate.

Censorius. (Noun.) An ex-censor.

Censum manumissió. See manumissio censu.

Censuales. Officials of the later Empire, in Rome and Constantinople, subordinate to the profectus urbi and concerned with the taxation of senators and various other matters, similar to those which in the Republic belonged to the tasks of aediles (games, administration of public buildings, survey of students studying in the capital, police functions, and the like). In other cities censuales were primarily active in making taxation lists.—See magister census.—C. 10.71.

Seek, RE 3.

Censualis. (Adj.) See census, forma censualis. Census. The registration of citizens combined with the estimation of their property and their assignment to centuriae. Upon summons by the censors the head of a family had to appear before them and make a declaration under oath (profession censualis) concerning his family and property. Taxation (as long as direct taxation in Italy existed, i.e., until 167 B.C.) followed the evaluation of the property. By an edict preceding the census (lex censui censendo), the censors announced publicly the principles to be observed in making the returns required, and the rules they would follow in the evaluation of the moral conduct of the citizens.—See nota censoria, forma censualis, a censibus. Census is also the term for the list of the taxpayers.—D. 50.15; C. 11.58; 49.

Kubitschek, RE 3; Seeck, RE 5, 1184; Schwahn, RE 7A, 63; Kalopothakes, DE 2; Stevenson, OCD; Garfalo, BIDR 13 (1900) 273; Cavagna, Revue de philologie 1934, 72; Bourne, Classical Weekly 45 (1951/2) 132.

Census equitium. The inspection of cavalrymen and their horses by the censors.

Centenarius. An official with a salary of 100,000 sesterces (since the time of Hadrian). Also a private individual with a property valued at the sum mentioned above.

Centesima. (Sc. centum.) One per cent interest per month, i.e., 12 per cent per annum.—See usuras centesimae.

Kubitschek, RE 3; Humbert, DS 1.

Centesima reorum venalium. A tax on sales at auction (one per cent) introduced by Augustus, reduced by Tiberius to ducentesima (one-half per cent), then again restored as centesima.

Kubitschek, RE 3; Moschella, NDI; Rostowzew, DE 2, 582; R. Cagnat, Ét. historiques sur les impôts indirects à Rome, 1882, 227.

Centonarii. Voluntary firemen.—See Fabri.

H. J. Lonne, Industry and commerce in R., 1938, 73.

Centumviri. A special court for trials concerning inheritances and property affairs (vindicaciones) of a higher value. The centumviral panel was composed originally of 105 jurors (3 from each of the 35 tribus) divided into groups (tribunalia). Later their number increased to 180. After the normal procedure in iusre (before the magistrate) the matter went to a court selected from the centumviral list. The form of proceeding before the centumviri was always the legis actio, even when this form was generally substituted by the formulary procedure. The centumviri disappeared in the third century after Christ.—See lexis censura, hasta, provocation.

Wissak, RE 3; Gayet, DS 1; Moschella, NDI 3; De Ruggiero, DE 2; Berger, OCD; Olivier-Martin, La tribunale des c., 1904; Jobbé-Duval, NHRD 28-29 (1904-1905) 5; F. Bozzi, Sulla competenza dei c., 1928; Kochkelzer, ZSS 50 (1930) 679; M. Nicolai, Censio liberalis, 1933, 35.

Centuria. Tradition ascribes to the king Servius Tullius the organization of the Roman people (well-to-do
men, capable to military service) in centuriae (units of about a hundred persons) which assembled in so-called comitia centuriata. The connection of this political reformation with the military formations is obvious. This tradition is rejected by many scholars as unreliable. As a military unit the centuria is a group of one hundred (later less) soldiers, under the command of a centurio. In later development sixty centuriae formed a legion.—See comitia centuriata (Bibl.), PROLETARII.

Kubitschek, RE 3; Humbert, DS 1; Moschella, NDI 3; De Ruggiero, DE 2; Martingly, OCD; A. Rosenberg, Zenturienverfassung, 1911; Giorgi, Le origini dell’ordinamento centuriale, 5 storici per l’antichità classica 5 (1912); Arangio-Ruiz, La riforma dell’ordinamento centuriale, S. Ambrò 1928; H. M. D. Parker, The Rom. legions, 1928; Fraccaro, St Boniface 1 (1929) 103; idem, Ath 12 (1934); De Sanctis, Riv. di Stor. e d’istruz. class. 1933; Zancan, AV 1933-34, 869; G. Giannelli, Atene e Roma 37 (1935); Cavaignac, RIDA 2 (= Mêli De Visscher 1 (1949) 173.

Centuria praerogativa. The centuria which, selected by lot, voted first in the comitia centuriata.

Centuria vigilum. See vigiles.

Centurio. The military commander of a centuria. The centuriones of the first line (hastati) were of a lower rank than those of the second line (principes); the latter were of a lower rank than those of the third line (trierii). The first centurio in the legion was the centurio primi pilii or primipilus.—See centurio (Bibl.).

Domaszewski, RE 3; Parker, OCD; Th. Wiegelen, Die Reorganisation der röm. Centurionen, Diss. Berlin, 1913; Parker, JRS 26 (1936) 45; De Laet, AntCl 9 (1940) 13.

Cerae. Wax-tablets. They were used for short letters, receipts, brief written agreements, testaments and codicils (codicilll cerati). Syn. tabellae ceratae.—See APOCHEI POMPEIANAE.

Lafaye, DS 5, p. 3 (s.v. tabellae).

Cernere hereditatem. See cretio.

Certa et sollemnia vera. See verba certa et sollemnia, sollemnia verba.

Certamen. (From certare = to fight.) Applied to lawsuits.

Certum. (Noun.) A fixed sum or quantity of things being the object of an obligation or of a claim in a trial (obligatio certi, condicio certi, certum pater). Certum is "where the object (quid), the quality (qua), and the quantity (quantum) is expressly evident" (D. 45.1.74). Ant. incertum. The distinction certum—incertum is important in the law of obligations and in the civil procedure.—C. 4.2.—See CERTUS, CONDICTIO CERTI, CONDICTIO INCERTI, LEGIS ACTIO PER CONDITIONEM, LEGIS ACTIO PER FUDICIS POSTULATIONEM.

Certus. Exactly determined, such as a sum of money, a specific object, the price in a sale (pretium), a slave indicated by name, a limited plot of land (fundus Corneliani), a date fixed by calendar, a determined place (see actio de eo quod certo loco), etc.—See condicio certae pecuniae, condicio certae reli.

Cessare (cessatio). When referring to actions, procedural measures, or statutory provisions, to become inapplicable, unsuitable, to lose validity. When used of a person bound to do something (a guardian, procurator, debitor) = to neglect, to fail to fulfil his duties.

Cessicus tutor. See tutor cessicus, in iure cessio tuteiae.

Cessio. The transfer of a creditor’s rights to another person. It was not directly feasible in Roman classical law. The obligatory relationship (obligatio) was strictly personal. The transfer could, however, be managed in another way, either by a novatory promise of the debtor to pay to a new creditor (the transferee) the thing he owed the former creditor, or by the transfer of the action against the debtor by appointment of the transferee as the creditor’s representative through a mandate (cedere, mandare, transfere actionem) to sue the debtor. The cessionary was procurator in rem suam (a representative on behalf of his own) inasmuch as the condemnation of the debtor was in his favor. This form of cessio was more popular because the first way (novatio) was impossible if the debtor refused to cooperate. But certain inconveniences were involved in a cessio actionis, too, because the debtor might pay the former creditor until the action of the cessionary was brought against him, and, besides, the appointment of the transferee by mandatum became invalid through the death of the primary creditor (the mandator). In the later law a notification of the cession performed, made to the debtor by the creditor, improved the situation of the cessionary. In further development the cessionary was granted, in certain specific cases, an actio utiis against the debtor. This became a general rule in Justinian’s law.—See beneficium cedendum, actionem, lex Anastasiana.

Biondi, NDI 3; Schultz, ZSS 27 (1906) 82; Eisele, ibid. 46; Beseler, Besirige 3 (1913) 172; Drechsler, Actio utiis des Cessionares, Diss. Freiburg, 1914.

Cessio honorum. A debtor who became insolvent without his fault might voluntarily surrender his property to the creditors in order to avoid an execution by a compulsory sale thereof which involved infamy. The measure was introduced in favor of the debtors by the Lex Julia de cessione honorum.—D. 42.3; C. 7.71.

Wlasak, RE 3; Weiss, RE Suppl. 6, 61; Humbert, DS 1 (s.v. honorum c.); Donizetti, NDI 3; Zanuichi, BIDR 29 (1918) 71; Godinou, La c. b., Paris, 1920; Woess, ZSS 43 (1923) 485; S. Solazzi, Censore dei creditori 4 (1943) 130; Acta Divi Augusti 1 (1945) 152 (Bibl.).

Cessio in iure. See in iure cessio.

Ceteri (ceterae). Used by the compilers in order to introduce a generalization of what originally referred only to a certain category of persons or things (as, for instance, heredes et ceteri successores, ceteri con-
tractus).—See bonorum possessio, successores ceteri.

Guerini-Citari, Indice delle parole, etc.² (1927) 17.

Charisius, Aurelius Arcadius. A little known jurist of the late third or the first half of the fourth century after Christ. He wrote monographs on the office of the praefectus praetorio, on witnesses and on public charges (munera).

Jörn, RE 3, 2146.

Charta. The material on which a document is written. In the later Empire the term (or chartula) indicates the document itself.

L. De Sarlo, Il documento oggetto di rapporti, 1935, 33.

Chartularius. An official in the late Empire dealing primarily with the registers of taxpayers.—C. 12.49.

Chirographum. A promissory note written by the debtor and delivered to the creditor. Gaius mentions it as a litterarum obligatio used by peregrines (the name [= handwriting] reveals the Greek origin of the institution). Used by Romans the chirographum had the value of any written document, and was considered only an evidence of a previous stipulatio. It was later applied even without a preceding stipulatio promise. An exceptio non numeratae pecuniae (i.e., an objection to the effect that the creditor did not give any money to the debtor) could be opposed to a claim from a chirographum, but only within five years after the issuance of the chirographum (two years in Justinian’s law). Later it could not be oppugned at all.—C. 8.26.

Levrin, DS 5, 156; M. Kroell, La rôde de l'écrit dans la preuve de convoir, 1906, 137; Messina-Vitrano, AG 80 (1908) 94; Riccobono, ZSS 43 (1922) 320; Arrango-Ruis, FJR 3 (1943) no. 130; L. De Sarlo, Il documento come oggetto dei rapporti (1933) 7, 35.

Christianus. In pagan Rome Christians were considered enemies of the state (hostes publici) and as such they were exposed to persecution and punishment for crimen maiestatis. Besides, the secret meetings of the Christians were punishable under the lex Iulia de collegis as illicit associations (collegia illícita). Still in the early third century mentions of illicit Christianorum coitio (gathering) appear; it is likely that a special enactment was later issued against Christian associations. A milder practice was exercised with regard to the so-called collegia funerales (tenuiorum), but administrative coercive measures ordered in police proceedings (coercitio) by the discretionary power of the magistrates were always applicable. Refusal to take part in religious ceremonies dedicated to the celebration of gods or the emperor as a god was considered as a confession to profess Christianity in the same measure as an open declaration, “I am a Christian,” sufficed for an accusation of crimen maiestatis. A particular practice was introduced in connection with the persecution by the emperor Decius; the production of a certificate that an individual participated in pagan sacrifices issued by a competent commission was an evidence that he was not a Christian; see libellus libellatici.—C. 1.10.—See crimen maiestatis, ecclesia.

M. Conrat (Cohn), Die Christenverfolgungen, 1897; Mattiingly, OCD (s.v. persecutio); Mommsen, Juristische Schriften 3 (1907, ex 1890) 389; R. Roux, Il delitto politico nell'età ellenistica, 1907, 135; Conza, Criminali e penne, 1927, 105 (Bibli); Saleilles, Mél Gérard 2 (1912); Vitale, Rev. de philologie 49 (1925); Schnorr v. Carolsfeld, Gesch. der juristischen Personen 1 (1933) 243; P. W. Duff, Personality in Rom. private law, 1938, 169; Levy, BIDR 45 (1938) 122; G. Borini, La proprietà ecclesiastica e le condizioni giuridiche della Chiesa, 1949, 145.

Cibaria. Food, provisions. Interpretative rules for cibaria in leges are abundant in juristic writings. Cibaria is also the daily remuneration granted to imperial officials during their service travels through the empire.—D. 34.1.—See salarium.

Fiebig, RE 3; Fournier, DS 2.

Cingulum. A girdle. In later imperial constitutions it denotes symbolically the rank of a high civil or military state official.

Kübler, RE 7A, 2024.

Cinna. An unknown jurist of the first half of the first century after Christ.

Berger, RE Suppl. 3, 250.

Cino da Pistoia. A renowned postglossator (died 1314).—See glossatores.

Monti, NDI 3 (Bibli).


Circumcision. Circumcision was first generally prohibited by Hadrian. Later Antoninus Pius permitted it as a special concession to Jews. The interdiction of circumcision of slaves was always in force, but evidently it was practiced since several imperial constitutions repeated the prohibition. A circumcised slave became free.—C. 1.10.


Circumscribere (circumscriptio). To defraud the partner in a transaction. It is a statutory term in the lex plauentia which forbade the circumscriptio adulcentium (defrauding young men).

Humbert, DS 1.

Circumvenire legem. To evade a law by trickery.

Citra causae cognitionem. Without investigation of the truth. Certain declarations of individuals made before an official (professiones) were accepted for registration only on the ground of the person’s allegations. Similarly some orders of the praetor were issued on the assumption that what has been proffered by the party was true, without any further examination of the factual or legal situation. A typical case of such procedure is the issuance of an interdict.—See causae cognition, interdictum.

Monrevecchi, Aug 28 (1948) 145.
Citare. To call a person to court as a witness. The term is not syn. with in ius vocare (see in ius vocatio).

Civitis. Connected with the civis (citizens) or a civitas (state, city, community). When opposed to criminalis, civis means a private matter as contrasted with a criminal one. Another juxtaposition is civis—naturalis (possessio, obligatio) in which civis alludes to a connection with the ius civile, whereas naturalis lacks such a connection and means only a natural, real state of things.—See ius civile, naturalis.

Civilliter. Opposed to criminaliter = through a civil trial; opposed to naturaliter = according to ius civile.

Civis. A Roman citizen (also civis Romanus), unless a citizen of another city or state is meant.—See civitas romana, civitates sine suffragio.

Civis Romanus. A Roman citizen, i.e., any person who either by birth or otherwise became an integral part of the Roman people (populus Romanus) and as such enjoyed public and private rights connected with Roman citizenship. Only a small group of citizens (not born as Roman citizens) was deprived of public rights, e.g., civis sine suffragio, former slaves (freemen) and in certain cases former perigrines.—See civitas, romana, civitates sine suffragio.

De Ruggiero, DE 2; Lévy-Bruhl, ACDR Roma 2, 471.

Civitas Romana. Roman citizenship. Beside freedom (status libertatis) Roman citizenship was an essential condition for being subject of rights, both private and public. Citizenship was acquired principally by birth of parents. Roman citizens. A child born in a legitimate marriage, was Roman citizen, even if the father alone was citizen, for children took status of their fathers. Therefore, a child born ex iustis nuptiis of a peregrine father and a Roman mother, was a peregrine. Decisive was the status at the time of conception. See lex minicia. Through manumission a slave became not only free but also a Roman citizen. Admission of peregrines to Roman citizenship was effected by a special concession either in favor of individuals or larger groups, inhabitants of a city or country. Under the Republic, Roman citizenship was granted by the Roman people and later by the emperor. Particular services rendered to the state (military service or special merits, see also lex viseilla) were the occasion for granting citizenship to individuals (vir tum, singulatum). Political tendencies dictated the acceptance of foreign elements in larger groups into the orbit of Roman citizenship. Between 90 and 87 B.C. the whole of Italy obtained Roman citizenship; later it was extended gradually to cities and provinces abroad until the Emperor Caracalla (A.D. 212, Dig. 1.5.17) granted Roman citizenship to all inhabitants "of the Roman world" (in orbe Romano), with the exception of deditici. See constitutio Antoniniana. The rights of the Roman citizens comprised the right to compete for a magistracy (ius honorum), to vote in public assemblies (ius suffragii), to appeal to the people in the case of condemnation in a criminal trial, to conclude a Roman marriage, full legal capacity and admission to solemn legal Roman forms. Among the duties of a Roman citizen the principal was military service in a legion and payment of taxes which in the course of times were subject to various reforms. The loss of liberty (capitis deminutio maxima) involved the loss of citizenship, but there was also a loss of citizenship without loss of liberty (capitis deminutio media), as in the case of interdictio aqua et igni or deportatio.

—See caput, reiectio civitatis.

Kornemann, RE Suppl. 1, 304; Humbert, DS 1; De Ruggiero, DE 2; Colagrosso, NDI 3, 201; Sherwin-White, OCD (z.v. citizenship); C. E. Goodfellow, Roman citizenship, 1935; Zancan, APem 95 (1935/6); Bernardi, Ath 16 (1939/40) 239; A. N. Momigliano, The Roman Republic, 1939; Lombardi, AG 126 (1941) 192; De Visscher, La dualité de droits de cité dans le monde romain, Bull. Cl. de Lettres Acad. Royale de Belgique 33 (1947) 50; idem, Amicitia 3 (1949) 1; Aragon-Rius, Ser Cornellui 4 (1950) 53; Schönauer, Amer. phil. Klasse, 1949, 343; idem, Jura. Jus. Jure Pollic. 6 (1952) 17; Niccolini, Atti Accad. Lincei, 1946; C. Castello, L'acquis dell' cittadinanza e i suoi rifiuti nel dir. rom., 1951; De Visscher, ADO-RIDA 1 (1952) 401.

Civitas optimo iure. Roman citizenship granted to foreigners (or municipalities) with all the rights enjoyed by a native Roman citizen.

Civitates (civitas). All civis (citizens) of a larger or smaller territorial, political unit (state, city, colony, municipality) form a civitas. Hence the term is also applied to an autonomous unit itself and the Romans speak of their own state as a civitas ("nostra") as well as of other states (civitas Atheniensium) or a group of states (civitates Graecorum). The term is, however, especially used with regard to foreign civitates (civitates peregrinae) in the sense of a large group of free individuals living together and organized as a legal social unit (societas; Cicero: coetus hominum iure sociati, De republ. 6.13.13).—See the following items.

Kornemann, RE Suppl. 1, 300; Sherwin-White, OCD 195; De Ruggiero, DE 2; Lombardi, AG 126 (1941) 193.

Civitates foederatae. Allied cities and communities in Italy and the provinces with which Rome concluded a treaty (foedus). They enjoyed certain privileges and exemption from taxation and lived according to their own laws (suoi legibus sui), but they were seldom granted exemption from military service.—See foedus.

Kornemann, RE Suppl. 1, 302; De Ruggiero, DE 2, 255; Sherwin-White, The Roman citizenship, 1939, 157.

Civitates liberae et immunes. Free cities enjoying a high degree of self-government and exemption from taxes. The status of a civitas libera was granted
either by a lex data (a charter decreed by the Roman people, the senate, or later, by the emperor) or by a treaty of alliance (foedus) with Rome (civitates liberae et foederatae), by which the autonomous position of the civitates liberae was guaranteed in a stronger way since the treaty could not be unilaterally revoked, except in the case of war. According to a Roman conception "a people is free when it is not subject to the power of another people" (D. 49.15. 7.1).

De Ruggiero, DE 2, 258; Sherwin-White, op. cit. 150; Heus, Die volkrechtlichen Grundlagen, Klio, Beiheft 31 (1933) 99; Vieth, ZSS 68 (1931) 472.

Civitates sine suffragio. Cities with limited Roman citizenship, being deprived of the right to vote in the popular assemblies. They were not enrolled into a Roman tribus, and thus their accession to comitia tributa was excluded.

Kübler, RE 4A, 1897; Kornemann, RE Suppl. 1, 309; Ziegler-Konopka, Eos 32 (1929) 587; Bernardi, Aith 1938, 239; Sherwin-White, op. cit. 38; E. Manzi, Per la storia dei municipii, 1947, 56.

Civitates stipendiariae. Civitates subject to the payment of tributes and imposts to Rome. Ant. civitates immunes.—See STIPENDIUM.

Clam. Secretly. An act is committed clam when it is done with the intention to conceal it (animo celando) before another person since otherwise a controversy with the latter would be unavoidable. The term is of particular importance in the doctrine of possessio (see CLAUSTRAM POSSIBILIS) and in the interdictum quod vi aut clam.

M. David, Lnterdiis quod vi aut clam, 1947, 18.

Clamor. A friendly call, applause. It is the usual element of ACCLAMATIO. As a cry in danger it had a certain importance in connection with the theft (furitium) when a person surprised and attacked by a burglar called for help. Already the Twelve Tables mention the clamor applied in a similar situation (endolorato).

Berger, St Albertoni 1 (1933) 381; Wiesacker, Fachwer 1 (1944) 129.

Clandestina possessio. Possession acquired secretly (see CLAM) against or without the will of the owner or the actual possessor. Such possession was stigmatized as possessio vitiosa (= defective) and was exposed to an exceptio vitiosae possessionis by the person from whom the thing had been taken away.

—See POSSESSIO, INTUSTA.

Clara persona. A senator or his wife. Execution on their property in the case of insolvency was made in a milder form (honestus); there was no missio in possessionem and the sale of the property was performed according to a senatorconsult (of an unknown date) by a special curator ( curator distraherendum bonorum gratia).

Clarigatio. A solemn oral declaration addressed by the PETITAE in the name of the Roman people to a foreign state. It concerned territories or things claimed by the Romans. If the claims were not satisfied by the foreign state, a formal declaration of war followed.—See INDICTUM BELL.

Volterra, See CARMELO 4 (1950) 245.

Clarissimus. The dignity of a person who belongs to the class of clarissimi. Syn. dignitas clarissima.—See CLARISSIMUS.

Clarissima. (Clarissimus vir, clarissima persona.) An honorary title of senators and high officials of senatorial rank. A senator's wife had the right to the title clarissima.—C. 3.24; 5.33.—See CLARA PERSONA, SPECTABILIS.

Seeck, RE 3, 2628; P. Koch, Byzantinische Beamtenstitel, 1903; De Ruggiero, 2, 267; O. Hirschfeld, Kleine Schriften, 1913, 647.


Classici. See CLASSTII.

Classicus. A person enlisted in the first class of wealthy persons on occasion of the census. The property required was 100,000 asses. Persons listed in the lower classes were infra classem.—See LEX VCOONT.

Kübler, RE 3, 2628; Gabba, Ath 27 (1949) 173.

Clavis. The Roman navy. Also the name of the five groups of citizens distinguished according to their wealth in the politico-military reform ascribed to Servius Tullius (see CENTURIA). The classes comprised only the foot-soldiers of the army.—See NAUKHEUS.


Claudius. This name, particularly in notes to the Digesta of the jurist, Q. Cervidius Scævola, refers to the jurist, Claudius TRYPHONINUS.

Claustra. A specific legal provision of a statute, a senatusconsult or of the praetorian edict. Also a particular clause of an agreement between private individuals (e.g., of a stipulatio).—See DOLUS MALUS, NOVA CLAUSULA.

Leonhardt, RE 4.

Claustra doli. (De dolu malo.) See DOLUS MALUS.

Claustrus (clausus). A slave put into jail by his master.

—See CARER PRIVATUM.

Wenger, ZSS 61 (1941) 357.

Clavus. Keys. The delivery of clavus (traditio clavis) of a storage-room (a granary or a wine-cellar) was considered in later law the delivery of the merchandise itself by the seller to the buyer. Such kind of delivery is called in literature a "symbolic tradition."

Riccobono, ZSS 34 (1913) 197; F. Schulz, Einführung in das Studium der Digesten, 1916, 68.

Clavus latas. A broad purple stripe on the toga or tunic. The clavus latus (laticlavus) on the tunic was
a mark of distinction of senators and their sons, hence
the senatorial rank itself is indicated as latus clavus
(the bestowal by the emperor = conferre latum clau-
sum; to obtain the senatorial rank upon request =
impetrare latum clavum). The privilege of a latus
clavus was later extended to higher dignitaries of
the empire (laticlavius). Ant. clavus angustus = a narrow
stripe on the border of the toga, a distinction mark
for persons of equestrian rank.—See toga prae-
texta, adlectio.
Hula. RE 4, 6; De Ruggiero, DE 2, 306; Baldson, OCD.
Clementia. Referred to gracious acts of the emperor.
Later emperors, Justinian included, like to speak of
their clemency (placet nostrae clementiae).
Dahlmann, C. Caesaris, Neue Jahrb. für Wissenschaft. und
Jugendbildung 70 (1934) 17.
Clementissimus. A title of the emperors since the
third century.
De Ruggiero, DE 2.
Clerici. The title of the Code of Justinian, 1.3 (De
episcopis et clericis) contains a series of imperial
constitutions of the Christian emperors (A.D. 313-
334) concerning the particular legal situation of
ecclesiastical persons and various privileges granted to
clergymen (in judicial matters, with regard to testa-
mentary dispositions, exemption from guardianship
and public charges, etc.).
Geneval, NRHD 32 (1908) 161; F. Ferrari dalle Spade,
Immunität ecclesiastische, AVem 99 (1939-1940) 115, 162,
171, 194.
Clientela. See clients.
Clients. In the earliest period clients were strangers
who had migrated to Rome where they submitted
themselves to patrician families (gentes) in order to
obtain their protection. Men from vanquished coun-
tries also looked for a similar relation. (See de-
dition.) Clientship created reciprocal duties. The
clients worked for their patrons, who in turn gave
them protection in case of need, especially in judicial
matters. The clients were free men, but in fact
their situation was half serf. Later their situation
improved considerably although their social authority
and dignity remained always low. They were
permitted to acquire property and many of them became
gradually well-to-do people. The clients had to
assist the patron and his family in the case of need,
and to ransom him when he had fallen into captivity.
They appeared in public as his retainers and were
subject to his jurisdiction. The whole relationship
being based on reciprocal confidence (fides) the pa-
tron could not sue his client before court nor testify
against him. A reciprocal duty bound the client.
Fraud committed by the patron on his client stood
under religious sanctions; the pertinent provision
derives from the Twelve Tables (sacer esto). Client-
ship (clientela) was hereditary but lost its original
force and meaning in the course of time. The
clients were gradually absorbed by other strata of
the population, primarily by the plebeians. In quite
a different sense clients is used with reference to the
clients of an advocate.—See Ius applicationis, do-
tare, gens.
Prermerstein, RE 4; Humbert, DS 2; Anon., NDI 3;
Momigliano, OCD; G. Curia, Clientela e schiavitù, 1902;
S. L. Mohler, Class. Studies in honor of J. C. Rolfe, Phila-
delphia, 1931, 239; Leomose, RIPA 3 (= Mdl De Visscher
2, 1940) 46.
Cloaca. A sewer. Protection of public health (sa-
bruibus civitatum) and of private interests required at
times the intervention of judicial or administrative
authorities in the case of defective sewers.—See in-
terdicta de cloacis, interdicta de reticiendo,
servitus cloacae immittendae.—D. 43.23.
Coactio causae (in breve). See causae conjunctio.
Coactor. A collector of taxes or of money paid by
sellers at a public auction.
Leist, RE 2, 227; v. Prermerstein, RE 4; De Ruggiero,
DE 2, 314; Platon, NRHD 33 (1909) 149.
Coactus volui. An expression used in the doctrine of
metus (duress), indicating that an individual al-
though acting under duress is nevertheless acting
willingly, something he would not have done if he
were free (e.g., accepting an inheritance under duress).
This opinion was shared only by a few jurists.—See metus.
U. v. Lübbe, Quod metus causa gestum erit, 1932, 61.
Codex. Wooden tablets covered with wax or sheets
of papyrus or parchment, bound together in book
form. A booklet of few pages = codicill. In the late
Empire, collections of imperial constitutions were
designated as codices (see below).
Wünsch, RE 4.
Codex accepti et expansi (depressi). A cash-book
into which a Roman used to note the sums received
(acceptum) and paid out (expensum). A codex (liber)
rationum domesticarum was used for similar
purposes. The entries might be used as evidence in
a trial, but they did not have the force of full proof.
Only bookkeeping of bankers enjoyed particular con-
fidence.—See argentarii, nomina arcaria, nomina
transscripticia.
Humbert, DS 1; Leonhard, RE 4; Aru, NDI 3; R.
Belgel, Rechnungen und Buchführung der Römer
(Karlsruhe, 1904) 181; Voigt, ASächSW 10 (1868) 544,
552.
Codex Gregorius. The earliest private, systematic
collection of imperial constitutions, published not be-
fore A.D. 291 by an unknown author (Gregorius?).
The oldest constitution is by Hadrian. The Codex
Gregorius is not preserved and is known in ex-
cerpts only from the Fragmenta Vaticana, Collatio,
Consultatio, Lex Romana Burgundionum, Lex
Romana Visigothorum, and an appendix thereto.
A continuation of this collection is the Codex Herno-
genianus. Both compilations acquired seemingly a
considerable authority although composed as private
enterprises, since Justinian refers to them as the sources for his Code.


Codex Hermogenianus. A collection supplementary to the *Codex Gregorianus* containing constitutions of Diocletian from 291 until 294. The composer of the compilation was one Hermogenianus (not identical with the jurist Hermogenianus?). Excerpts of the *Codex Hermogenianus* are preserved in the same sources as those of the *Codex Gregorianus*. Several constitutions of the years 295–305, 314, and 364–365 were added later to the original Code.


Codex Iustinianus. In 528 Justinian charged a commission composed of high officials and lawyers with the task of compiling a collection of imperial constitutions. For earlier imperial enactments the three *Codices, Gregorianus, Hermogenianus, and Theodosianus*, had to be used. The Code published April 7, 529, soon proved obsolete because of the copious later legislative activity of the emperor. Therefore a new edition (*Codex repetitae praecationis*) was ordered in 533, and published in the middle of December, 534. The latest constitution therein is of November 4, 534, the earliest by Hadrian who is represented in the Code by one enactment only (6.23.1). The Code is divided into twelve books, the books into titles. Within each title the constitutions are chronologically arranged and provided with information concerning the emperor, the destination to whom they were issued and the date of issue. As in the Digest, the compilers were authorized to make appropriate changes in the texts of the constitutions of former emperors for which a comparison with the pertinent texts in the *Codex Theodosianus* is very instructive, showing both the technique and the extent of the interpolations accomplished.—See QUINQUAGINTA DECISIONES.


Codex (liber) rationum domesticarum. A housebook in which proceeds and expenses were entered.—See CODEX ACCEPTI ET EXPENS.

Codex repetitae praecationis. See CODEX IUSTINIANUS.

Codex Theodosianus. An official collection of imperial constitutions from A.D. 312 (Constantine) until 438 when the Code was published by Theodosius II. The Code is divided into sixteen books, the books into titles. The compiling commission was authorized by the emperor to omit obsolete provisions and superfluous phrases, to make additions, emendations and alterations. A large portion of the Theodosian Code found acceptance in the *Lex Romana Visigothorum*, and later in Justinian’s Code, not without abridgements and alterations. The Theodosian Code was in force in the East until its abrogation by the Code of Justinian (first edition 529) and in Italy until the conquest by Justinian in 554. The *Codex Theodosianus* is not preserved as a whole; a great portion thereof is known through the *Lex Romana Visigothorum*, the existing manuscripts contain only parts of the codification.—See CODEX IUSTINIANUS, INTERPRETATIONES.


Codicilli. A written document containing dispositions of a testator to be valid after his death (mortis causa), but not in the institution of an heir which was permissible only in a testament. The recognition of codicilli is somehow connected with the institution of *fideicommissa* (under Augustus). Distinction is made between *codicilli testamenti confirmati* (a codicil confirmed in a later or earlier testament) and *non confirmati* (not mentioned in a testament). While the former codicil might contain various dispositions (legacies, manumissions, appointment of a guardian) and was considered as a part of a testament (pars testamenti), the latter was reserved for *fideicommissa* only. There were also *codicilli ab intestato*, i.e., *codicilli* in which the testator charged his heirs on intestacy with *fideicommissa*. In classical law no specific form was required for codicilli. Later
imperial legislation required the presence of witnesses. Justinian introduced even oral codicilli. A testator might dispose in his testament that in case of its invalidation because of formal deficiencies, it should be treated as a codicil.—Inst. 2:25; D. 29.7; C. 6.36.

Seeck, RE 4; Sagio, DS 1; Accardi-Pasqualino, NDI 3; De Ruggiero, DE 2; B. Biondi, La consolidazione del codicillo, 1911; Konsenbeutel, Ein Kodikil eines röm. Kaiser, APR 1939, no. 13; Scarlata-Faxio, La successione codicillare, 1939; Guarino, ZSS 62 (1942) 209; idem, SDHI 10 (1944) 317; Biondi, Successione testamentaria, 1946, 612.

Codicillus. A diploma of appointment of an official by the emperor or granting a special privilege.—See ILLUSTRIS, EPISTLA.

Pignolio, CRAI 1947, 376.

Coelibis (caelibis). Unmarried persons. The Augustan legislation excluded coelibis of a certain age wholly or partially from inheritance.—See LEX IULIA DE MARITANDIS ORDINIBUS.—C. 8.57.

Leonhard, RE (ex. caelibus); Manca, NDI 3 (ex. caelibis).

Coēmpio. A contractual form of acquisition of manus over the wife by the husband (convertio in manum) through a fictitious sale (mancipatio) by which the woman, and consequently the power over her, were transferred to him by his father. When the woman was not under paternal power (swi iniri), she herself accomplished a self-mancipation. Coēmpio is closely connected with the conclusion of a marriage (coēmpio matrimonii causa facta) except in the case of coēmpio fiduciae causa.—See MANUS, and the following item.

Leonhard, RE 4; Kunkel, RE 14, 2269; Anon., NDI 4; Peroszi, Scriv 1 (1948, ex 1904) 328; Carrelli, AnMac 9 (1933) 189; E. Volterra, La concezione del matrimonio (Padova, 1940) 23; Dull, Fischl Wagner 1 (1944) 211; H. Lévy-Bruhl, Nouvelles Études 1947, 74; Köstler, ZSS 65 (1947) 47; Kaser, Das altröm. ius, 1949, 315.

Coēmpio fiduciae causa (fiduciaria). A coēmpio concluded not for the purpose of marriage but in order to get rid of a disagreeable guardian. After the coēmpio has been made the woman “is emancipated by her partner (coēmpionator) to another man of her choice and having been manumitted by him, she has him as a guardian (tutor fiduciaris).” This form of coēmpio was applied also (until Hadrian) to give the woman the possibility to make a testament (Gaius, Inst. 1.114–115a).

W. Erbe, Fiducia, 1940, 165.

Coēmpionator. See COĒMPIO FIDUCIAE CAUSA.

Coērcito. (From coērcere.) The magistrates had the power of enforcing obedience to their commands and of punishing minor disorderly offenses by certain coercive or repressive measures (prison, fines, pledge). Generally there was no appeal against acts of magisterial coercion which were made without any ordinary proceeding at the discretion of the individual magistrate.—See MULTA.

Neumann, RE 4; Kübler, RE 14, 421; Lécrivain, DE 3, 1528; De Dominiciis, NDI 3; Brasili, Repressione penale, 1937, 32; Lenige, RE 6A, 2475.

Coetus amplissimus. In later imperial constitutions, the senate.

Cogere. See COACTUS VOLUI, NECESSITAS.

Cogere senatum. See SENATUM COGERE.

Cognition. A thought, an intention, a design. “Nobody is punished for his thoughts (intentions)” (cognitionis pœnæ nemo patitur, D. 48.19.18). “The intention to commit a theft does not make a person a thief” (D. 47.2.1.1).

Cognati. Relatives united by the cognatic tie.—See COGNATIO, AGRATI.

Solazzi, La successione dei cognati, ANAP 58 (1937) 63.

Cognatio. Blood relationship. Normally the AGRATI are also cognati even when the natural tie does not occur. Thus, adopted family members are not only agrati (under the same paternal power) but also cognati. Cognatio includes persons related through females, as well as former agrati who given in adoption, emancipated or otherwise, lost the agratic kinship. The praetorian law protected the rights of succession of cognati which finally superseded those of agrati. The distinction agratio—cognatio gradually lost its practical significance.—Inst. 3.5.—See AGRATI (Bibl.), UNDE COGNATI.

Baudry, DS 1; Leonhard, RE 4; Anon., NDI 3; Peroszi, St Brugi, 1910 (= Scriv 1, 61); Maschi, La concezione naturalistica, 1937, 143; C. Castello, Diritto familiare, 1942, 121; Guarino, SDHI 10 (1944) 290.

Cognatio civilis (legitima). See AGNATIO.

Cognatio ex transverso gradu. Collateral relationship (in the side line).

Cognatio legitima. COGNATIO CIVILIS; see AGNATIO.

Cognatio naturalis. Cognatio. Ant. cognatio civilis. Also applied to the relationship between a mother and her illegitimate child, and to the relationship between slaves (syn. cognatio servilis).

Cognatio servilis. See COGNATIO NATURALIS, SERVUS.

Cognitio. (From cognoscere.) The examination of a judicial case (and eventually a decision) by a magistrate or a juror (index). The cognitio comprehends all that is done by the judicial authority during the proceedings, civil or criminal, in order to establish the facts which led to the controversy (hearing of the parties and their counselors, of witnesses and experts, examination of documents and other means of evidence). The extension of the activity, termed as causae cognitio, depended upon the competence of the inquiring person (qui cognoscebat) as well upon the matter involved in the causae cognitio. Thus, for instance, the causae cognitio by the praetor took one form when he was requested to grant an in integrum restitutio and another when he ordered a missio in possessionem or a cautio, or appointed a guardian. The cognitio also differed in the various strata of the Roman civil procedure. In criminal matters
cognitio covers the whole proceeding, judgment included.—See CAUSAE COGNITIO.

Wassak, RE 4; Kleinfelter, RE 4, 218; Théodrat, DS 1; De Ruggiero, DE 2; Laubi. Annales 36 (1934) 305; M. Lemosse, Cognitio, Étude sur le rôle du juge, 1944.

Cognitio caesariana. See Cognitio sacra.

Cognitio extra ordinem (extraordinaria). The latest form of civil proceedings which, originally concurrent with the formulary procedure as "extraordinary" (extra ordinem, sc. iudiciorum privatorum), later became exclusive. The cognition extra ordinem was based on the idea that the administration of justice is a function of the state, while in the previous forms of proceedings the trial was dominated by the parties under the moderation and supervision of the magistrate. The characteristic feature of the cognition extra ordinem which appeared at the beginning of the Empire, is that the private juror disappears and his place is taken by a public official acting as a delegate of the emperor or of a high functionary. When the new procedure became general, there was no more bipartition of the trial nor a formula, the whole proceeding being under control of the same functionary or his delegate. In criminal matters the new procedure under the Principate, cognition extra ordinem, was opposite to the procedure before perpetual courts (see quaestiones). Here, too, the imperial jurisdictional official held the trial in his hands from beginning to end and rendered the final sentence. The jurisdiction of the cognition extra ordinem in which the jurists efficiently collaborated assisting the jurisdictional officers with their advice, contributed considerably to the development of the law.—D. 50.13.

—See APPPELLATIO.

Wassak, RE 4; Sachs, RE Suppl. 7, 793; R. Samster, Nichtürförmliches Gerichtsverfahren, 1911; Riccobono, La c.e.o. e il suo infuso sui ius civile, Mil. Civ. 2 (1926); Balogh, ACDR Roma 2 (1935) 269; Dreist, Stcapl 26 (1938) 153; De Robertis, AnBari, N.S. 4 (1941) 3; Santini Di Paula, AnCat 2 (1948) 272; Riccobono, RITA 3 (= Mil De Visscher 2 (1949) 277.

Cognitio sacra (or caesariana). The examination and decision of a judicial matter by the emperor or his delegate.—See A COGNITIONIBUS.

De Laet, ANCI 1945, 145.

Cognitionalis. Connected with judicial cognitio. The term is widely used in later imperial constitutions.

Cognitor. A representative of a party in a civil trial. He was appointed in a prescribed, solemn form in the presence of the adversary, contrary to another type of a representative in litigation, the procurator, who was informally appointed. The intervention of a representative found its expression in the procedural formula since the principal was mentioned in the intentio, while the condemnatio was formulated in favor of the representative. In practice the cognitor had the actio iudicata for the execution of the judgment (see cessio), but a praetorian remedy (translatio iudicis) was foreseen to make the formula work for the real creditor. In Justinian's law the only representative in litigation is the procurator.—See EXCEPTIO Cognitoria, Iudicatum, and the following item. Cognitor in later imperial constitutions = a judge (qui iudem cognoscit).—See the following entry.

Leist, RE 4; C. Wirbel, Le c. 1911; Debray, NRHD 36 (1912); Berger, GrZ 40 (1913) 663.

Cognitor in rem suam. A plaintiff in a trial, formally appointed as a cognitor and being in fact the real creditor as the cessionary of the original creditor who transferred his right against the debtor to him. See cessio. Similar is the situation of a procurator in rem suam.

Cognitorum praediorum. Vouchers (examiners) who on their responsibility certified the correctness of the data concerning landed property, given as a pledge (subsignatio) by persons who assumed certain obligations towards a municipality.

E. G. Hardy, Three Spanish Charters (1912) 80, 110.

Cognomen. A surname following the first name (praenomen) and the name of the gens of a person (nomen gentilicium).—See NOMEN.

Cognoscere. See cognitio.

Cohaeerens. See corpus ex cohaerentibus.

Coheredes. Co-heirs. When an estate was left to more than one person, instituted as heredes, or when several persons inherited it in intestacy, in equal or unequal shares, they were coheredes and had the same legal position as co-owners. Division could be obtained either by arrangement or through judicial proceeding by an actio familiae eriscundae.—See familia, divisio, actio familias eriscundae.

Cohors. A contingent of five hundred (in the legions) or thousand soldiers (in certain auxiliary troops).

De Ruggiero, DE 2.

Cohors. In administration, the subordinate personnel in the office of a high magistrate, an imperial official or a provincial governor. Of particular importance were the cohorites attached to the office of the praefeci praetorio (cohorites praetorii), organized as military units under their command. They became in the course of time a highly influential military and political factor in the empire until their abolition by Constantine.—See praetorianus, praetorium.

Cognat, DS 5, 603; M. Durry, Les cohors veteriores, 1938; A. Passerini, Le cohorti pretoria, 1939.

Cohortes vigilum. See vigiles.

Cohortales (cohortalini). Subordinate officials in the office of the praefeci praetorio and provincial governors in the later Empire.—C. 3.25; 12.57.—See Cohors.

Coiro. See ius cojundi.

Collatio (conlatio). The contribution of money (pecunia, aedem) for the erection of a monument, a gravestone or a public building. When the contributor was a municipality or another public body, the construction was designated as aedem publico.

De Ruggiero, DE 2, 602.
Collatio bonorum. A contribution to the estate to be made by emancipated children (collatio emancipati) and including all their gains made after the emancipation, if they wanted to participate together with the non-emancipated children in the intestate inheritance of their father according to praetorian law (bonorum possessio unde cognati). The reason was that if the emancipated children had remained under the paternal power of the deceased, all their acquisitions would have increased his property. On similar principles was based the collatio dotis with regard to the dowry which a daughter had received from her father. This collatio applied also to testamentary successions. The rules concerning the collatio dotis which were somewhat different from those of the collatio emancipati, influenced the development of the latter towards an extension to cases which were not foreseen at its origin. Collationes were made originally through an effective import of the goods acquired, later an appropriate cautio sufficed; see CAUTIO DE BONIS CONFERENCE.—D. 37.6; C. 6.20.

Leonhard, RE 3, 704 (i.e. bonorum c.); Baudry, DS 1 (i.e. bonorum c.); A. Guarino, Collatio bonorum, 1937; idem, RendLomb 73 (1939), ZSS 59 (1939) 509, and Le collazioni ereditarie (Corso, Napoli, 1944), BIDR 49-50 (1947) 259.

Collatio donationis. Based on the same principles as collatio bonorum. It was introduced by Justinian for all kinds of donations made by ascendants to their descendants and for all kinds of succession.

Collatio donationis ante nuptias. A collatio introduced in the late fifth century after Christ and applied to gifts made by a man to his betrothed. See DONATIO ANTE NUPTIAS. The rules were similar to those of the collatio dotis.—See COLLATIO BONORUM.

Collatio dotis. See COLLATIO BONORUM.—D. 37.7; C. 6.20.

Pringsheim, SDHI 4 (1938); Leonhard, RE 3, 705 (i.e. bonorum c.).

Collatio emancipati. See COLLATIO BONORUM.

Collatio lustralis. See AURUM ARGENTUMQUE.

Collationes. In the later Empire, the term covers various contributions, ordinary and extraordinary, in kind, money or labor, imposed on possessors (lessees) of empyrtean land belonging to the emperor (fundis patrimoniales), to the fisc or to public corporate bodies (civitates). The term occurs in the rubrics of several titles in Justinian’s Code (10.28; 11.65; 74; 75) although it does not appear in the single imperial constitutions therein. Possessions of the DOMUS AUGUSTA and the RES PRIVATA of the emperor were exempt from such collationes.—C. 11.75.

Collator. A tax payer (in later imperial constitutions). Collectarii. Money-changers. They were united in associations.—See ARGENTARI.

Platon, NRHD 33 (1909) 23.

Collectio causae. See CAUSA CONCRETIO.

Collegae. Members of the same association (collegium). Also co-guardians and co-heirs are collegae. In public law collegae are officials who simultaneously hold the same office and “have the same power” (D. 50.16.173 pr.), as e.g., consuls, praetors in the same year of service).—See COMPARATIO.

Neumann, RE 4; Kübler, RE 14, 407; Frezza, St Solacii, 1948, 508.

Collegatarii. Legatees to whom the testator bequeathed the same object. The ius adscriptendi applies to a common legacy.—See CONCORSU PARTES FITTNT.

Collegia. Associations of both private and public character, unions of different kinds and for different purposes (professional, cultural, charitable, religious). There were collegia of priests (collegia sacerdotum, pontificum) of tradesmen, craftsmen and workmen, of public officials, clubs for social gatherings, etc. Originally they had (probably since the Twelve Tables) the right to assembly (coire, ius coëundi), they were permitted to issue statutes concerning their organization, activity, and the rights and duties of their members (LEGES COLLEGIORUM). Gradually, particularly under the imperial legislation, they have been granted certain rights as associations, both to have and to free slaves and to acquire legacies under a testament. The rule “if anything is owed to a universitas, is not due to its members,” and vice versa “what the universitas owes, the members do not owe” (D. 3.4.7.1) shows that the conception of a universitas (collegium) as a corporate body (corporation), separated from the individual members, came through. Generally they had a common fund (arca) and a representative (actor universitatis) who acted on their behalf. From the beginning, restrictions were imposed on collegia to prevent them from acting against the laws and engaging in subversive activities. When doing so, they were considered illegal (illicita), were dissolved and a criminal prosecution of the members followed. Analogous terms are: corpus, universitas, societas, sodalicium.—D. 47.22.—See the following items, LEX CLODIA,
LEX IULIA DE COLLEGIIS, LEGES COLLEGIORUM, CONVENIUM COLLEGIUM, PACTIO COLLEGII,
Kornemann, RE 4; Baudry-Gayet-Humbert, DS 1; Berta, NDI 3; De Martino, NDI 9, 931; Waltzing, DE 2; idem, "Etudes historiques sur les corporations professionnelles, 1-3 (1895–1899); Grogg, Vierteljahrschr. für Sozial- und Wirtschaftsgesch. 2 (1904) 481; U. Colli, Collagia et societates, 1913; La Piana, L'immigrazione a Roma, Ricerche religiose, 2 (1926) 508; De Robertis, Anbari 1933 II, 3; idem, "Il diritto associativo romano, 1938; Lo Bianco, Storia dei colleghi artigiani dell'impero, 1934; Schnorr v. Carolus, Zur Geschicthe der juridischen Person 1 (1933); A. Calderini, Le associazioni professionali in R. antica, 1953; P. W. Duff, Personality in Rom. private law, 1938; A. P. Torri, "Le corporazioni romane, 1940; B. Eliacheritch, La personnolité juridique en dr. priv. rom., 1942; Accame, Bull. Comm. Archeol. del Governmento di Roma, 10 (1942) App. 12; Arangio-Ruiz, FJR 3 (1943), nos. 32 ff; Berger, Epigraphica 9 (1947) 44; F. Schulz, Rom. classical law, 1951, 95.

Collegia apparitorum. Associations of APPARITORES.
Waltzing, DE 2, 351; 369.

Collegia familiarum. Associations of the members of a family for the construction and maintenance of a common grave.
De Ruggiero, DE 3, 30.

Collegia funeraria. Associations of poor men for the purpose of assuring each member of a decent funeral. The expenses were from a common fund collected through monthly fees (stips menstrua) paid by the members. Named also collegia tenuorum. Early Christian communities were organized as collegia tenuorum.
Cos, DS 2, 1402; De Vincenti, DE 3; Saleilles, Mii Girard 2 (1912) 470; M. Roberti, St Zanucchi (Pubbli. Univ. Sacro Cuore, vol. 16, Milan, 1927); Besnier, Mii Albert Dufource, 1932; De Roberti, Anbari 1933, I, 101; Massi, St Riccobono 3 (1936); G. Bovini, La proprietà ecclesiastica, 96 (1947) 114.

Collegia illicita. Associations that were considered illegal, not because they lacked formal requirements (authorization), but because their aims and purposes were ostensibly directed against the state or the public order. They are frequently mentioned in the last period of the Republic. See collegia, LEX IULIA DE COLLEGIS.
F. De Roberti, Anbari 1933, I, 134; idem, St di dir. penale rom., 1943, 94.

Collegia magistratum. Not collegia in the strict sense of the word; they are groups of magistrates who were COLLAEGE in office.
Fadda, St Brugi, 1910, 139.

Collegia sacerdotum. Colleges of priests performing the same priestly duties (collegia pontificum, augurum, flaminum, ferialium, etc.). See NOMINATIO.

Collegia tenuorum. See COLLEGI OlleB aRb a.

Collegia veteranorum. Associations of veterans.
Waltzing, DE 2, 350; 368.

Collegiati. Members of corporate bodies, particularly in the provinces. In Rome and Constantinople the term corporati prevailed. The membership in associa-

ciations of artisans and workmen was compulsory.
—C. 11.18.

Kornemann, RE 4, 460; G. Kuhn, De officium Romanorum condicione, Diss. Halle 1910, 27.

Colliberti. Slaves simultaneously manumitted by their master. Usually manumissions of a larger number of slaves were ordered in testaments. See LEX FUILLA CANINIA.

Thibault, Mii Fournier, 1929, 725.

Collocare domicilium. See DOMICILUM.

Collocare filiam in matrimoniun. To give away a daughter in marriage.

Collocare pecuniam. To invest money (in nomina = in loans).

Kühler, Mii Girard 2 (1912) 49.

Collusio. (From colluder.) A secret understanding between two or more persons for the purpose of obtaining fraudulently an illegal profit or injure a third person, primarily through a fictitious (percussum judicium) trial. Collusion frequently occurred between a patron and his freedman in order to make the latter be declared free-born. —D. 40.16; C. 7.20.

—See senatusconsultum NINNANUM.

Leist, RE 4; H. Krüger, St Riccobono 2 (1936) 247.

Colonatus. In the late Empire from the fourth century on, the legal, economic, and social situation of coloni, i.e., rural laborers bound to the soil which they cultivated for the landowner. Their connection with the soil was so close that its alienation involved their transfer to the acquirer. The original condition of coloni was that of perpetual tenants. It became hereditary in the course of time and assumed the aspect of servitude from which they could be freed under certain circumstances. Legally they were free and Roman citizens. Desertion from the land did not change their status since they could be reclaimed by the landowner. People in distress voluntarily accepted the condition of coloni. —C. 11.48; 51–53; 64; 69. —See descriptici.

Seecck, RE 4; Humbert, DS 1; Schulten, DE 2; Bolлеstein, De coloniam romanom, Amsterdam, 1909; H. F. Pelham, The imperial domains and the colonate, Oxford, 1911; Rostowzew, Studien zur Geschichte des Kolonats, 1910; idem, "The problem of the origin of servitude, Jour. of land and public utility economics, 1926, 148; R. Clausing, The Roman colonate, New York, 1925; Sammarg, Byzantion 12 (1937) 487; Collinet, Recueil de la Société J. Bodin, 2 (Brussels, 1937) 85 and Studi Bizantini e Neolitici 5 (1938) 600; Ganz, AntCl 14 (1945) 262.

Coloni. Citizens of a colony (colonia); farmers on land taken on lease. For coloni in the later Empire, see COLONATUM.

Coloni descriptici. See descriptici.

Coloni dominici. Coloni on land belonging to the private property of the Emperor. —C. 11.69.

Coloni partiarii. Tenant-farmers who gave the landowners a portion of the products as a rent (instead of a rent in money). They shared profits and losses with the owner as if there existed partnership (socie-
tas) between them and the owners.
Coloni patrimoniales. Coloni on land belonging to the patrimonium principis.

Coloniae. The first Roman colonies composed of Roman citizens were founded on the Roman coast line. Later colonization expanded through Italy for military, naval, political, and commercial purposes. Some colonies were founded on the basis of rus lati granted to their citizens (colonia Latina, Latini coloniarii). Under Augustus colonization comprised the provinces on the Mediterranean. Colonies were named after their founders. Their organization, settled in a charter (lex coloniae, leges colonicae), varied with the times. They were administered by duoviri iuri dicundo whose competence was similar to that of consuls and praetors in Rome.

Kornemann, RE 4, 567; Lenormant, DS 1; Scherillo, NDI 3; Schulten, DE 2, 415; Sherwin-White, OCD (s.v. colonization); J. S. Reid, Municipalities of the R. empire, 1913, 60; Abbott, CPhiat 10 (1915) 123; E. Pais, Storio della colonizzazione della Roma antica, 1 (1923); Salmon, JRS 26 (1936) 47; A. N. Sherwin-White, The Roman citizenship, 1939; Degrassi, Atti Accad. Lincet, Ser. 8, vol. 2 (1959) 281; Vittinghoff, ZSS 68 (1951) 440.

Colonia Latina. A colony the citizens of which were granted only the ius Latii, and not Roman citizenship. They were Latini coloniarii. A Roman citizen who took domicile in a colony Latina at its foundation, lost Roman citizenship and became a Latin.

Vittinghoff, ZSS 68 (1951) 475.

Colonia partaria. See coloni partarii.

Comes domesticorum. The commander of the court garrison.

Seeck, RE 4, 648.

Comes domorum. The superintendent of imperial buildings.

Seeck, RE 4, 651.

Comes formarum. See comites.

Comes Orientis. The ruler of the Dioecesis Orientis (Syria, Palestine, etc.).—C. 1.36; 12.56.


Comes portus. See comites.

Comes rei militaris. Military commanders who received this distinctive title after important achievements in the provinces.—C. 12.12.; 1.47.

Seeck, RE 4, 662; Grossi-Gondi, DE 2, 516.

Comes rei privatae (rerum privatarum). These directed the administration of the imperial domains. Property confiscations of persons condemned in criminal trials, vacant inheritances and seizures of all kind belonged to his competence.—C. 1.33; 12.6. —See procurator rei privatae, comes sacri patrimonii.

Seeck, RE 4, 664; Grossi-Gondi, DE 2, 497.

Comes sacrae vestae. The supervisor of the imperial wardrobe.

Seeck, RE 4, 671.

Comes sacrarum lagmentionum. The highest officer in the financial administration of the state and head of the state treasury. He is also the highest judicial authority in tax matters. There was no appeal to the emperor against his decisions.—C. 12.6; 1.32.—See lagmentiones.

Samosati, DE 4, 409; Grossi-Gondi, DE 2, 495; Seeck, RE 4, 671.

Comes sacri cubiculii. The chamberlain of the imperial palace.

Comes sacri palatii. The marshal of the imperial residence. His fuller title was comes et castrensis sacri palatii.—C. 12.13.

Comes sacri patrimonii. The chief of the administration of the emperor's patrimony. The office, created at the end of the fifth century, assumed a part of the duties of the comes rerum privatarum.—C. 1.34.

Seeck, RE 2, 675.

Comes sacris stabuli. The imperial equerry.

Seeck, RE 4, 677.

Comitatenses lagmentionum. The staff of the office of the comes sacrarum lagmentionum.—See lagmentiones.

Comitatus. All the comites forming the retinue of the emperor.

Comites. In the Republic and the early Empire, subordinate officials in the office of a magistrate (see cohors) or provincial governor.

Comites. In the later Empire, comes was the title of high military and civil officials. In almost each branch of the administration it was conferred on more important functionaries who under the Principate were simply curatores. Thus a comes formarum headed the administration of water supply, a comes portus had the supervision of the ports, a comes riparum et alaei Tiberis et cloacarum supervised the rivers, the Tiber and the sewers. Some of those officials of particular significance in the government of the later Empire are mentioned in the following items. The dignity of a comes = comitata. There were three degrees of comitatae: primi, secundi, tertii ordinis. Besides, the title of a comes was granted to meritorious persons, even such who never had served in official capacity. The comites in general, but particularly those of the highest class residing in the imperial palace and in daily contact with the emperor, became the most influential persons in the later Empire.—C. 12.6; 10-14.—See the foregoing and the following items.

Seeck, RE 4; Humbert, DS 1; Grossi-Gondi, DE 2.

Comites Augusti. These appear about the middle of the second century as advisers of the emperor during his travels.

Seeck, RE 4, 626.

Comites commerciorum. Supervisors of the trade with the adjacent states and custom officers.

Comites consistoriani. Members of the imperial council (consistorium).—C. 12.10.
Seeck, RE 4, 644; Grossi-Goodi, DE 2, 482.

Comites dispositionum. Directors of the department of the imperial chancery for private (not governmental) matters of the emperor (scrinium dispositionum).
Seeck, RE 4, 647.

Comitia. Assemblies of the Roman people (populus Romanus) for legislative and judicial purposes as well as for elections. They are to be distinguished from the assemblies of the plebs alone, concilia plebis. For the various comitia, see the following entries. The comitia were convoked by a high magistrate who had the ius agendi cum populo. Only matters presented by the convoking magistrate could be submitted to vote and amendments to the proposals were not admitted. An informal gathering of the people, contio, might take place before the comitia assembled in order to discuss the subjects on which the citizens had to vote in the comitia.

Liebenam, RE 4; Humbert, DS 1; Ferrini, NDI 3; De Ruggiero, DE 2, 804; Mattingly, OCD; G. W. Botsford, The Rom. assemblies, 1939; Marchi, L’ininfrequenza nei c., Rend.Lomb 45 (1912) 72; E. Pais, Ricerche sulla storia 4 (1921) 49; Siber, ZSS 57 (1937) 233; Brecht, ZSS 59 (1939) ; G. Nocera, Il potere dei comitii, 1940; Cosenzi, AG 131 (1944) 130.

Comitia calata. One of the ancient forms of comitia convoked (calata) by the pontifex maximus for special religious purposes. There the opportunity to make a will was given the citizens (testamentum calatis comitii).
Kübler, RE 4; B. Biondi, Successione testamentaria, 1943, 47.

Comitia centuriata. A popular assembly based upon the division of the people into centuriæ, classified according to the value of the property of the individual citizens. Primarily a military unit, the centurias was also a voting unit with one vote only, determined by the majority of its members. Originally the comitia centuriata had large legislative functions, but they lost them gradually to the benefit of comitia tributa. They retained, however, other prerogatives, such as the election of magistrates, the decision about war and peace, and jurisdiction as a court of appeal in capital matters.—See lex de bello indicendo, pomerium, provacatio.
G. Rotondi, Leges publicae populi Romani, 1912, 31 (Bibl.); Thiberti, Ath 27 (1929) 172, 210; Siber, ZSS 57 (1937) 263; Monnigiano, SDHI 4 (1938) 509; Guarino, St So- lazi, 1948, 27; Dell'Oro, La parola del passato 14 (1950) 132; De Viascher, RHD 29 (1951) 34; Gallo, SDHI 18 (1952) 128.

Comitia curiata. The earliest legislative assembly based upon the division of the people into curiae. At the beginning of the Republic they were deprived of their legislative functions and their competence was limited to voting the lex curiata de imperio by which the magistrates were vested with imperium, and to approving certain legal acts connected with the family system, as adrogatio and testaments.—See pomerium.
Siber, RE 21, 128.

Comitia tributa. The basis of this popular assembly of patricians and plebeians was the division of the Roman territory into local, district organizations, tribus. Originally limited to less important matters (the election of minor magistrates, restricted jurisdiction as a court of appeal) their competence increased in the second half of the fourth century B.C. when they superseded the comitia centuriata in legislative matters.—See lex cornelia pompeia, tribuni plebis, provacatio.
G. Rotondi, Leges publicae populi Rom., 1912, 36 (Bibl.).

Comitialis morbus. See morbus comitialis.

Comitiiatus maximus. See comitia centuriata.
E. Pais, Ricerche sulla storia 1 (1915) 408.

Comitium. The place at the forum of Rome where the curial assemblies (comitia curiata) took place.
De Ruggiero, DE 2.

Comitiva. See comites.

Commensatus. In military service, a furlough. A soldier on leave of absence is not considered absent in the interest of the state. He becomes an emanusor when he does not return in time, or a desertor, when his absence lasts a longer time.—C. 12.42.

Commendare (commendatio). Recommendation of a candidate for an office in Roman or provincial administration by the emperor when the appointment depended upon a popular assembly or the senate (from the time of Tiberius).—See candidatus principis.
Braunf., RE 4; De Ruggiero, DE 2; Baldo, OCD; O'Brien-Moore, RE Suppl. 6, 780.

Commendare. See deponere.

Commentariensis. An officer in a record-office. In the military administration he had similar functions as the a commentarii.—Commentarienses were also officials in public prisons. One of their tasks was to superintend the execution of corporal punishments.—See commentarii.
V. Fremerstein, RE 4, 759; De Ruggiero, DE 2, 540.

Commentarii. Records (a journal) kept in the offices of higher magistrates about their official activities (commentarii consulaire, censorii, commentarii of provincial governors). The recording officers = a commentarii (as, e.g., a commentarii praefecti praetorio, praefecti vigilum). This also was the title of the director of the pertinent division of the imperial chancery.—As a type of juristic writings commentarii has no technical meaning. Apparently they were notes for lecturing purposes. The Institutes of Gaius are divided into four commentarii; he denoted his other works also as commentarii.
V. Fremerstein, RE 4, 726, 759; Thédenat, DS 1 (s. v. commentariium); De Ruggiero, DE 2; Kübler, RE 6, 499; F. Schuma, History of Roman legal science (1946) 340.
Commentarius beneficiorum. A special register in the imperial chancery for enactments granting personal privileges.—See BENEFICIUM.

V. Fremerstein, RE 4, 741; De Robertis, An Bau 1941, 185.

Commentarii principum. Records kept in the imperial chancery for imperial enactments. There were apparently separate divisions in the imperial record office in which various types of imperial constitutions (commentarii epistularum, editorum, etc.) were kept under the supervision of one or more a commentarii. The Semestria (Semestria) of the emperor Marcus Aurelius had perhaps some connection with his legislative activity as excerpts from the commentarii made public every six months. Of particular importance were the commentarii of civil and criminal trials which had taken place before the emperor.

V. Fremerstein, RE 4, 739; Breslau, ZSS 6 (1886).

Commentarii sacerdotum (pontificum, aegurum). Records (diaries) kept in the archives of the various colleges of priests. The commentarii pontificum contained reports on their activities, statutes of their temples, rules of sacral law, and the like.


Commencement. The right to buy and to sell reciprocally (Epit. Ulp. 19.5). In other words the legal ability to conclude valid transactions in order to acquire or to sell goods. Commercium interdiciere = to deprive a person (for instance, a spendthrift) of this right. Similarly certain things are exempt from being the object of commercium; see RES CUTIS COMMERCIUM NON EST. For commercium in international trade relations, see IUS COMMERCII.—C. 4.63.


Communatio. A threat applied by a magistrate to a party in a trial to the effect that certain consequences will result if his order is not followed, as e.g., payment of interest if the debt is not paid at the date fixed.—C. 7.57.

Commiscere (commixtio). To mingle things together. The product resulting from the mixing together of materials belonging to different owners was owned by them in common, when the materials were of the same kind, or when they were of different but inseparable sorts.

Pampoloni, BIDR 37 (1929) 38.

Commissoeria lex. (In sales.) An additional clause in a sale (emptio venditio) under which the seller had the right to rescind the contract if the buyer failed to pay the price or its remainder within a certain time.—D. 18.3.

Leonard, RE 4; Humbert, DS 1; F. Vieck, Er-

füllungszwang und Widerruf im röm. Kaufrecht, 1932; Levy, Symb Früb Lenel 1932; Archi, S t Ratti, 1934, 325; Biscardi, StSen 60 (1948) 611.

Commissoria lex. (In a pledge.) An agreement between creditor and debtor by which the former becomes owner of the pledge if the debtor fails to pay the debt at the date fixed. Constantine forbade such agreement.—C. 8.34.—See IUS DISTRAHENDI, PIGNUS. Naber, Mn 32 (1904); Raape, Verfallsklausel beim Pfand, 1 (1913); A. Burdese, L. e ius vendendi (Mem. Ist. Giur. Torino, 63) 1949; Kaser, ZSS 67 (1950) 557.

Commissum. In fiscal law, a confiscation of goods, primarily for the violation of custom provisions.—D. 39.4; C. 4.61.


Humbert, DS 1; De Dominics, AVen 92 (1932-33) 1215.

Committere. To commit an unlawful act (committere crimem, delictum, scius, furtum, adulterium). In contractual law: to forfeit a right or an advantage or to incur a penalty by committing an act to which according to the agreement of the parties involved such consequences were attached (committere stipulationem). In passive form (commiti), as in phrases like stipulatio (cautio) commititur, the term indicates that a certain obligation becomes binding because the suspensive condition under which the promise was given was realized.

Committi facio (or similar). To incur a confiscation.

—See COMMISUM (in fiscal law).

Commixtio. See COMMISCERE.

Commodator. See COMMODATUM.

Commodatum. A gratuitous loan of a thing (originally movables, later also immovables) to be returned by the borrower to the lender (commodator) on the terms fixed in the agreement or reasonably corresponding to the purpose of the loan. Commodatum belongs to the so-called real contracts concluded by the delivery (re) of the thing and is governed by bona fides. Normally commodatum was to the exclusive benefit of the borrower; therefore his liability for the use of the thing is extensive (diligentia, custodia). He is not responsible for damages caused to the thing by accidents beyond his control (carus). The lender had an action (actio commodati) against the borrower for the misuse or the return of the thing, whereas the borrower might sue with actio commodati contraria for the recovery of extraordinary expenses and for damages caused by the fault of the lender.—D. 13.6; C. 4.23.—See FIDUCIA CUM AMICO.

Leonard, RE 4; Humbert, DS 1; C. Ferrini, Opera 3, 81; G. Segre, St. Fadda 6 (1906) 313; R. De Ruggiero, BIDR 19 (1907) 5; Ciesagni, ibid. 215; Schulz, GRZ 38 (1911) 12; J. Stock, Zixw Beleg von den notarii, 1932; Pflüger, ZSS 65 (1947) 121.

Commodum. Advantage, profit. Legal benefits, resulting from statutes or senatusconsulta are designated as commoda, similarly the rights connected with a certain legal situation (possession, ownership)
as well as proceeds, such as interest, wages, and the like. Ant. incommodus, onus. "It is natural that he who suffers the disadvantage of a thing should have also the profits thereof" (Inst. 3.23.3; D. 50.17.10). A similar saying is: "he who bears the risk should have also the profit." The rule applies to the contract of sale (emptio venditio) to the effect that the buyer who bears the risk (periculum) of deterioration, destruction or disappearance of the thing purchased but not yet delivered has the right to its products and increase after the conclusion of the sale.—See EMPTIO VENDITIO.

Communiorum. See REPRESENTARE.


Commorientes. Persons who died in the same accident (e.g., a shipwreck). There were certain rules concerning the simultaneous death of parents who died together with their children: children below the age of puberty (impuberes) were presumed to have died before their parents, whereas children over that age (puberes) had to be considered dead after their parents. The rules, which probably originate in Justinian's law, had to be observed in the case of succession. Syn. simul (pariter) perire (decedere). Ant. supervivere (= to survive).

Bessel, ZSS 44 (1924) 373; G. Donatini, Le precauzioni nel diritto rom., 1930, 22; idem, Rivista di dir. privato 3 (1933) 198.

Communicare. To share a thing with another by making him co-owner thereof or by dividing it or its proceeds with him.

Communicare lucrum cum damno. To share profits and losses with another. This is a fundamental principle of the contract of partnership (societas) except for losses caused by fraud or negligence of one of the partners. In relations among successors, especially when an heir was obliged to deliver the inheritance wholly or partially to a fideicommissarius, reciprocal stipulations were made in order to guarantee the common participation in profits and losses (de lucro et damno communicando).

Communio. Common ownership. It arises when two or more persons buy or acquire through inheritance or legacy the same thing in common. They have either equal or unequal shares thereof, the thing remaining physically undivided (pro indiviso). The co-owners have the same legal situation with reference to the whole and participate according to their shares in the produces (fructus) and expenses. Each of them may freely dispose of his share but not beyond it. Division of the common property becomes necessary when the co-owners disagree (communio est mater rixorum = common ownership is the mother of disputes). It is achieved by the actio communi dividendo, or in the case of common inheritance by the actio familiae (h)erculisndae. These disunity actions offer an opportunity for settling other controversies among co-owners, such as restitution of expenses made on the common thing by one co-owner, equalization of profits and damages and the like (so-called praestationes personales).—D. 10.2; 3; C. 3.36; 37; 38; 4.52.—See ADJUDICATIO; IUS PROHIBENDI; ACTIO COMMUNI DIVIDUNDO; IUS AD- CRESCENDI; NEMO INVITTS.

Leonhardt, RE 4; Biondi, NDI 4; A. Berger, Zur Entwicklungs geschichte der Teilungslagen, 1912; Boniface, BIDR 25 (1912); Riccobono, Della comunio del diritto quiritario, Oxford Essays in legal history, 1913; idem, Del diritto rom. classico al dir. moderno, AnPal 3-4 (1917) 165; Ein, BIDR 39 (1931); Branca, RISG 6 (1931) 215, 7 (1932) 247; Borettini, RISG 7 (1932) 459; J. Gaudenz, Le régime juridique de l'indivision en dr. rom., 1934; Solazzi, AnSpr 57 (1935) 127; Arangio-Ruiz, La società (Corso), 1950, 32; Ambrosino, SDRH 16 (1950) 188.

Communio incidenae. The term is used in literature to indicate common ownership which arose without interference of the co-owners, as in the case of an inheritance or legacy awarded to two or several persons who thus "fell in together into common property" ("incidimus in communione").

Arangio-Ruiz, St Riccobono 4 (1936) 355; Donatini, St Albertino 1 (1952).

Communio sacrorum. See SACRA.

Communia. (Adj.) A thing may be communis (common property) to all (see RES COMMUNES OMNITUM), or belong to a corporate body (corpus, collegium) or to two or more persons, res communis (see COMMUNIO). Communis (a noun) embraces all that several persons have in common. It may be ownership, or another right, as superficies, ius in agro usque ad ius in agro usque. In the denomination of the actio communi dividendo, communis is used in this large sense. Communis is also what is in the interest of more persons or the whole society (communis utilitas) or concerns more persons (communis culpa, periculum). Communis (pl. noun) = rules which equally apply to similar legal institutions; several titles in the Code contain such common rules, e.g., communia de legatis et fideicommissis (C. 6.43).—See IUS COMMUNE, UTILITAS.

Communiter agere. To act on behalf of more persons or a corporation.—See STIPULATIO COMMUNIS.

Comparare. See PARARE, COMPARATIO LITTERARUM.

Comparatio. An agreement between colleagues in office concerning the division of competence or the assignment of the performance of a specific official act to one of them.—See COLLEGAE.

Comparatio litterarum. The comparison of handwriting. Experts on handwriting (comparatores) were heard in a trial when doubts about the authenticity of a written document arose.

Compascere. To exercise the right of common pasturage (ius compascendi, ius compascui).

Compatrioni. Co-patrons who manumitted a common slave.
Compassatio. Occurred in classical law when the judge on grounds of good faith (only in a bonae fidei judicium) took into consideration what the plaintiff owed to the defendant from another transaction and condemned the defendant to pay the balance only if his debt was larger. Later a set-off of reciprocal debts was available under certain circumstances through exceptio doli. The practice of the cognitio extra ordinem favored the development of the institution and thus it became a general form of extinction of obligations which operated even beyond the judicial courts. In this final stage compassionatio worked ipso iure (= by the force of law) and not opes exceptionis (through an exception) when reciprocal debts between two persons met together.—D. 16.2; C. 4.31.
—See ARGENTARI, DEDUCTIO.
Leohnard, RE 4; Humber, DS 1; Biondi, NDI 3; Brassinoff, ZSS 22 (1901); P. Kretschmar, Entwickelung der Compensation, 1907; Leonhard, Mil Girard 2 (1912); B. Biondi, La compensazione, Auskat 12 (1929); Solazzi, La compensazione (1950); Kreller, Lasa 2 (1951) 82.
Compendinatio. (In a criminal trial, particularly on extortion, repetundae.) Compulsory division of the case into two proceedings (actio, prima, actio secunda). Voting took place at the end of the second hearing.—See lex servilia de repetundis and the following item.
Kipp, RE 4, 790; Balldan, Papers of the British School of Rome, 1928, 98.
Compendinarius dies. The third following day. On that day after the appointment of the index the parties had to appear before him (in the legis actio proceedings).—Syn. perendinarius dies.
Kipp, RE 4 (i.e. compendinatio); Humber, DS 2, 177 (i.e. dies); Ferrini, NDI 3.
Competens. When applied to procedural elements as actio, index, poena, tribunal, etc., indicates the action, the judge, etc., pertinent (competent) to the specific case. Justinian's compilers often substituted the term competens in place of the classical expression which in Justinian's time was obsolete because of the reformed organization of the procedure and administration of justice.
Guarnieri-Citati, Indice (1927) 19; Berger, KrVj 1914, 142.
Competere. Actio competit is used of actions which were granted by the ius civile, while praetorian actions are “given” (a praetore datur). When used with reference to other actions than those of ius civile the term may be frequently of compulsory origin.
P. Krüger, ZSS 16 (1895) 1; Guarnieri-Citati, Indice (1927) 19; Vincz, Auskat 2 (1948) 365.
Competitor. (In later imperial constitutions.) An imperial official of the treasury charged with the seizure of goods submitted to confiscation. Syn. (sometimes) petitor.
Componere (compositio). To draft the text of a legal instrument (a testament, a codicil, a stipulatio, a compromise, or a procedural formula).
Componere controversiam. To settle a dispute by a compromise.
Compos mentis. Fresh of mind, mentally healthy. Ant. demens.
Comprobare. See ADPROBARE. Syn. probare.
Compromissum (compromittere). An agreement of the parties to submit their controversy to an arbitrator (compromittere in aliqua de aliqua re). It normally provided for the payment of a penalty by the defeated party defaulted in the fulfilment of the arbitrator's decision (pecunia compromissa).—See ARBITER EX COMPROMISSO.
Leist, RE 4; De Ruggiero, DE 1, 615; La Ferica, St Rico-bono 2 (1936) 187; Roussier, RHD 18 (1939) 167.
Computare. To reckon, to include in an account (e.g., in quartum Falcidianum). Syn. calculus. Error computationis = error calculi.
Conatus. (In penal law.) An attempt to commit a crime. The Roman jurists did not elaborate a general theory of the criminal attempt, nor did they establish any rule as to when an attempt should be punished. With regard to some crimes preparations made with criminal intent were declared to be liable to punishment (as, for instance, some cases under the Lex Cornelia de sicariis), with regard to others they were not. Nor is a clear distinction made between intent to commit a crime (consilium, voluntas sceleris) and an actual but unsuccessful attempt. However, juristic and literary texts distinguish between intended and not committed crimes (cognitum, non perfecta sceleri) and those actually carried out (exitus, factum, eventim). In a rescript of Hadrian we read: “With regard to crimes intention is taken into consideration, and not the result (exitus)” (D. 48.8.14). Similarly a late imperial constitution of A.D. 397 (preserved in the Theodosian Code 9.26.1, but not accepted into Justinian's Code) contains, in connection with the Lex Iulii de ambitu, the rule: “Statutes (the laws) punish equally a crime and the intention to commit it (scleris voluntas).” These dicta not only did not become a general rule but are even contradicted by other texts in legal sources.—See cogitationi.
Costa, II conato criminoso, BIDR 31 (1921) 20.
Concedere. To concede, to grant another a right (e.g., a servitude). Sometimes syn. with cedere. When referring to a debt = to remit, to release from an obligation.
Concepta verba. Appears in a text by Gaius (4.30) as synonymous with the formula in the formulary procedure.—See CONCEPTIO VERBOUM.
Solazzi, Fische Wenger 2 (1945) 54.
Conceptio. A conception. The time of conception is decisive for the personal status of the child. In classical law the child was free if at any time between the conception and the birth the mother was...
a free person. Similarly the time of conception is of importance in the doctrine of posthumous children (postumi), inasmuch as there was a difference according as the conception took place before or after the testament was made.

Concettio verborum. The drafting of a legally important oral declaration (an oath, a stipulation) or a written procedural instrument (formula, interdictum, libellus).

Conceptus. Conceived and not yet born. See conceptio. Syn. in utero esse. The law protects the interests of a child not yet born, in particular his rights of succession and for this purpose the child whose birth is expected (nasciturus) is treated as if it were already born (pro nato habetur).—See postumi, nasciturus.

Albertario, St 1 (1933) 3; Castello, St Solanzii, 1948, 222; idem, RIDA 4 (1950) 267; Bastoek, RIDA 2 (1949) 28.

Concilia plebis. Assemblies of the plebs alone. They met originally by curiae and later by the lex Publilia Voleronis by tribus (concilia plebis tributa). Resolutions passed by the concilia plebis = plebiscita. Three statutes are cited in connection with the legislative power of the plebeian assemblies (lex Publilia Philonis, Valeria Horatia, Hortensia) but the extant evidence is not precise enough to admit of an exact understanding of their significance. The last statute (297 b.c.) is the most concrete in this obscure history. The plebiscites were passed upon the motion of the plebeian tribunes.—See plebiscita, tribuni plebis.

Kornemann, RE 4; Humbert, DS 1; Vaglieri, DE 2; G. W. Botsford, The Roman assemblies, 1909, 119.

Concilia provinciarum. Provincial assemblies composed of leading personages as representatives (legati) of the various political entities in the province. The original purpose of these gatherings was of a religious character: to celebrate the cult of the divinity of the emperor (Augustus) in the capital of the province. Their activity developed considerably. They maintained a direct contact with the governor of the province through envoys and exercised a kind of control over his activity which might result in a criminal prosecution of the governor at Rome. In the second half of the third century they began to disappear.

Kornemann, RE Suppl. 4 (e. v. koission = the Greek term for c.) E. G. Hardy, St in R. history, 2nd ed., 1910, 235.

Conciliiabulum. A settlement, a community of lesser extent than a municipality (municipium). The organs of local administration were similar to those of a municipality, including an administrative council (ordo decurionum). Some conciliaulum may have been important market places since conciliaulum often appears in connection with a forum.—See municipium.

Schuiten, RE 4; Grenier, DS 5, 856.

Concilium manumissionum. An advisory board of five senators and five equites constituted to examine the reasonableness of exceptional manumissions (of slaves under thirty or when the master was under twenty). Such councils existed also in the provinces under the chairmanship of the governor.

Conciliopropinquorum. See consilium propinquorum.

Concipere. See concepta vera, conceptio verbo, conceptio, conceptus.

Concordans matrimonium. (Syn. concordantes vir et uxor.) A marriage in which husband and wife live in perfect accord. The terms occur in connection with the problem of whether the father of the wife may exercise his patria potestas in order to dissolve such a marriage.

Volterra, RIDA 1 (1948) 232.

Concubinum. See concubinatus.

Concubinatus. A concubinage. The sources do not contain any definition of concubinatus. It is a permanent, monogamous union of men and women not legally married. It differs from marriage through the lack of affectio maritalis and of the honor matrimonii (the social dignity of a woman living with a man in a legitimate marriage). Concubinatus was not prohibited by law and the lex Tullia de adulteris did not apply to persons living in concubinatus. Restrictions which barred the conclusion of a valid marriage were also binding with regard to concubinatus. The relation did not produce any legal consequences. Justinian favored the transformation of the concubinatus into marriage by establishing the presumption that a union with a free woman of honest life honestae vitae is considered a valid marriage unless the parties declared in a written document before witnesses that they were living in concubinatus.

—D. 25.7; C. 5.26.—See paelix.

Leonhard, RE 4; Baudry, DS 1; De Ruggiero, DE 2; P. M. Meyer, Der röm. Konkubinat, 1895; Costa, BIDR 11 (1900) 233; J. Plassart, La concubinité rom. sous le Haut-Empire, 1921; G. Castelli, Il concubinato e la legislazione Augustea, Scritti 1 (1923) 143; Bonfante, St Pereazzi, 1925, 283 (=Studi 4, 563); E. J. Jonkers, Invloed van het Christendom op de romijnse wetgeving betreffende het concubinat, 1938; C. Castello, In tema di matrimonio e concubinato nel mondo rom., 1940; Janeau, De l'adrogation des liberi naturales, 1947, 29.

Concubitus. Coition. The term occurs in the classical rule concerning the conclusion of a marriage. Nuptias non concubitus, sed consensu facti (= consent, not intercourse, constitutes marriage, D. 35.1.15; 50.17.30).—See matrimonium, nuptiae.

Concurrentia delicta. See dicta concurrentia.

Concurrar. Said of actions which lie in favor of one person for the same thing (de eadem re). Actiones concurrentes are to be distinguished from actions which arise from the same fact but have different aims, as for instance in the case of a theft, see fur-tum. The claimant could sue only with one of the
Concursus partes iunt. When the same thing (inheritance, legacy) or the same right is assigned to several persons all share equally therein, unless the testator disposed otherwise.

Concursus causarum. Occurs when a person to whom a determined thing is due becomes owner thereof under a different title. The obligation to deliver the thing automatically becomes void, "because what is ours cannot be given to us" (Gaius Inst. 4.4). Thus the performance of the duty becomes impossible. In later development another more equitable solution was found. The obligation of the debtor was extinguished only when the creditor got the thing gratuitously (ex causa incentiva), for instance, by legacy or donation. C. Ferrini, Opere 3 (1929, ex 1891) 385; Schulte, ZSS 38 (1917) 114.

Concussion. (From concutere.) Extortion of money or gifts through intimidation, misuse of authority by an official or by a person who falsely assumes an official character.—D. 47.13; C. 12.61.

Hitzig, RE 4.

Condemnare. To condemn the defendant in a civil trial to the payment of a sum of money (see CONDEMNATIO) or the accused in a criminal trial. Ant. absolvire.

Hitzig, RE 4 (for criminal procedure).

Condemnatio. (In formulary proceedings.) "That part of the formula by which the judge (iudex) is empowered to condemn or to absolve the defendant" (G. 4.43). In the condemnatio either a fixed amount was indicated (condemnatio certa) or a maximum sum was fixed which the judge could not exceed (dumtaxat = not exceeding). In certain formulas no sum at all was indicated, the judge being authorized to fix the sum of the condemnation at his discretion by expressions such as the following: quanti ea res est (or erit = what the value of the matter in dispute is, sc. at the time when the formula was set or when judgment will be pronounced respectively), or simply by quidquid ("whatever" may appear appropriate to the judge, as in cases when the obligation concerned an incertum), or, in exceptional cases, by the phrase quantum aequum videbitur (= as much as will appear equitable to the judge). In the so-called IUDICIA BONAE FIDEI the condemnatio contained the clause ex fide bona (according to [in] good faith).—See SENTENTIA, TAXATIO, EGREDI, and the following items.

Leist, RE 4; Beretta, St Solas 1948, 254.

Condemnatio certa (certae pecuniae). A condemnatio in which the judge is instructed to condemn the defendant to pay a fixed sum. Ant. condemnatio incerta.—See CONDEMNATIO.

Condemnatio cum deductione. See DEDUCTIO.

Condemnatio incerta (incertae pecuniae). A condemnatio in which the sum is indefinite. Ant. condemnatio certa. The condemnatio incerta is either unlimited or limited by a maximum (cum taxatione).

—See CONDEMNATIO.

Condemnatio in quantum facere potest. (Sc. the defendant.) A condemnation to what the defendant is able to pay.—See BENEFICIAE COMPETENTIAE.

Condemnatio pecuniaria. A condemnatio to pay a sum of money. The classical law did not admit of any other condemnation in a civil trial than a pecuniary one. In suits in which the plaintiff claimed the delivery of a specific thing an evaluation in money (see LITIS AESTIMATIO) was necessary to make the conversion into a specific thing in the condemnatio possible, unless the defendant preferred to satisfy the plaintiff by the delivery of the thing in dispute before the judgment was passed.—See ABSOLUTORIUS.

Platt, Juristische Vierteljahreshefte, 18 (1902) 49; Schlossmann, IHh 46 (1904); Levy, ZSS 42 (1921) 476; M. Nicolai und P. Callinet, RHD 13 (1936) 751; S. Riccobono, Jr., AnPal 17 (1937) 43; Wenger, ZSS 59 (1939) 316; Giovialfe, SDH 12 (1946) 136; \textit{idem}, Contributi allo studio del processo civ. rom., 1947, 46; v. Lübott, ZSS 68 (1951) 321.

Condere iura. To establish, to create law. In referring to jurists, the term conditores iuris is used to mean those of them who, through their responsa given on the ground of their ius respondendi, contributed to the development of the law.—See IUS RESPONDENDI, RESPONSA, INTERPRETATIO.

Magdelain, RHD 28 (1950) 6.

Condicere. In the earliest civil procedure syn. with demunire (= to announce, to give notice, to declare). It applies to the act of the claimant in the LEGIS ACTIO PER CONDICTIONEM, by which he summoned the defendant in iure to appear before the magistrate again after thirty days to continue the proceedings with the appointment of the iudex. Since this legisl actio served only for claims in personam and for a specific object, the terms condicere and condiciio were used for actiones in personam by which a dare facere oportere (obligations to give or to do) was claimed. For further development, see CONDICTIONES and the entries referring to the various condiciiones.

—See ACTIONES IN PERSONAM.

Condicio. The legal or social status of a person. In the imperial criminal law the social condition of a person was of importance for the kind of penalty to be applied to him.—See HONESTORES, HUMILIORES, POTENTIORES.

Condicio. A condition, i.e., a clause added to a transaction or a testamentary disposition which makes the validity thereof dependent upon the occurrence or non-occurrence of a future event; the clause is introduced by si or nisi (si non). The event may be
either a natural one when it is independent of human activity, or it is a fact to be done or not done by the party involved or by a third person (condicio potestativa). Until the fulfillment of the condition (pendente condicio) there is a state of uncertainty about the effects attached to its realization, to wit, as to whether the transaction will enter into force (suspended condition) or be dissolved (resolutive condition). The technical terms for the period between the conclusion of the transaction and the fulfillment of the condition are in suspenso esse, suspensus sub condicio, and the like. Conditions may be added to almost all legal transactions and acts (stipulations, sales, leases, institutions of heirs, legacies, manumissions, etc.) except the so-called ACTUS LEGITIMI.—D. 28.7; 35.1; C. 6.25; 6.46.—For the various kinds of condicio see the following items; see DISJUNCTIVO MODO, DIIES CENSUS, DIIES CERTUS, NUBERE.

Leonardi, RE 4; Crestano, NDI 3; De Ruggerio, DE 2; E. F. Bruck, Bedingungsmässige Rechtsgeschichte, 1904; Vassalli, BIDR 1915 (= Scritti I, 1939, 245); R. Popovic, Condicionia implícita causa datum, Züricher Beiträge zur Rechtswissenschaft 73, 1919; Bohaczev, AnP 11 (1924) 329; Riccobono, St. Perusini, 1925; G. Grosso, Contributo allo studio dell’adempimento della condizione, Mem Tor 1930; idem, ATor 65 (1929) 455; V. Scialoja, Negozio giuridico, 1933, 96; D. Ochsbein, Transmissibilità hereditaria de l’obblig. condizionale, Genève, 1933; Fumero, TR 14 (1936) 19; Donauti, SDHI 3 (1937); idem, La statuizione, 1940, 16; Betti, Retroattività della condizione, Ssr Ferrara (Univ. Pavia, 1946); Grosso, SDHI 8 (1942) 290.

Condicio defect. The condicio is not fulfilled.

Condicio facit. See CONDICO IURIS.

Condicio illicita. See CONDICO TURPIS.

Condicio impliatur (implesa est). The condicio is fulfilled. Syn. condicio existit (existit). Sometimes a condition which has not been fulfilled is considered as if it were fulfilled. This is the case primarily, “when the person who is interested in the non-fulfillment of the condition acts so as to prevent its fulfilment” (D. 50.17.161 = 35.1.24). Such a fiction is applied to manumissions imposed upon an heir under a condition the realization of which depends upon himself. The rule was later extended to stipulations.

G. Grosso, La fissione dell’adempimento della condizione, 1930; Donauti, SDHI 3 (1937) 63; B. Bondi, Successione testamentaria, 1946, 317.

Condicio impossibilis. A condition which in the nature of things cannot be fulfilled. A typical example is “if you will touch the sky with your finger.” For testamentary dispositions the doctrine of the Sabini, who considered such a condition non-existent (pro non scripta) was accepted by later jurists and Justinian.

I. Alibrandi, Opere 1 (1896) 192; R. De Ruggerio, BIDR 16 (1904); Manenti, St. Scialoja 1 (1908); Cargani, St. Fadda 5 (1906); Beseler, SDHI 7 (1941) 168; Cooper, Tulane LR 18 (1942) 453.

Condicio Institutions. A condition attached to the institution of an heir by the testator.—D. 28.7.—See CONDICO TESTAMENTI.

Condicio iuris. A requirement imposed by law for the validity of a legal transaction. Condicionis iuris are not real conditions, since they are neither uncertain nor do they make the validity of the transaction depend upon a future event. They are indispensable requisites fixed by the law. Where they are not observed, the transaction is void. Ant. condicio facti = real conditions imposed by the will of the party (testator, donator) or parties involved.

Condicio iurisurandi. A testamentary condition imposed on an heir or legatee to take an oath that he would fulfill the testator’s wish. Such conditions were usual in testamentary manumissions. When added to other dispositions such a condition might be dispensed with by the praetor or replaced by a cautio.

Cuiq. DS 3, 772; Messina-Vitrano, Ann 33 (1921) 600.

Condicio mixt. A condition which partly depends upon, and partly is independent of, the will of the party involved, as, for instance, when its fulfillment depends partly upon a natural event or the will of a third party.—Syn. condicio promiscua.

Condicio pendet. See CONDICO.

Condicio potestativa. A condition the realization of which depends upon the will of a specific person. It may consist in doing (condicio faciendi) or not doing (condicio non faciendi) something. In the latter case only after the death of the person upon whom the condicio was imposed could it be established that he had not acted against the condition. See CAUTIO MUCIANA. The term condicio potestativa is not of classical origin; the classical jurists speak of condicio in potestate (arbitrio) alius (a condition depending upon one’s capacity or will).

Condicio tacita. A condition which is understood in a transaction, as, for instance, the conclusion of a marriage with regard to a dowry constituted in advance.

Condicio testamentarii. A testamentary condition connected with the institution of heirs, legacies, facultative, manumissions. Specific rules apply to such conditions. The underlying one is that in the first place the testator’s intention is decisive.—See CONDICO IMPOSSIBILIS, TURPIS.—D. 28.7; 35.1; C. 6.46.

I. Alibrandi, Opere, 1895.

Condicio turpis (illicita). A condition the fulfillment of which involves the perpetuation of an act violating a legal or moral norm (contra bonos mores). Such conditions made the contract void; when added to a testamentary disposition, originally they had to be vacated by the praetor, later they were considered as condiciones impossibiles and were treated as if they were not written (pro non scripta).—See CONDICO IMPOSSIBILIS, ILICTITUS.

R. De Ruggerio, BIDR 16 (1904) 167; Sumati, Fil 1917; Messina-Vitrano, I negozio iuris civili sotto condizione illicita, AnPer 33 (1921) 583; Ciogna, StSen 54 (1940) 48.
Condicionalis. A legal transaction (obligatio, stipulatio, emptio, etc.) or testamentary disposition (institution of an heir, legacy, manumission) attended with a condition. Ant. purus = unconditional.

Condicionaliter. See SUB CONDITIONE. Ant. pure.—See PURUS.

Condiciones disiunctiva. See DISJUNCTIVO MODO.

Condictio (condiciones). As actio in personam it arose from the ancient LEGIS ACTIO PER CONDITIONEM (see CONDICERE). The condictiones acquired increasing application. Gaius (Inst. 4:5; 17) defines dictio as "any actio in personam by which we claim (intendimus) an obligation to give or to do (dare facere oportere)," without giving any specific cause of action. Originally limited to a fixed sum (certa pecunia) and a specific thing (certa res), the condicio was extended to uncertain claims (incertum) and Justinian admitted them for all kinds of things, movable and immovable, fungibles and not fungibles. A particular domain of the application of condicio is an unjust enrichment when a person acquires something from another's property at the latter's expenses, without any legal ground (sine causa) or dishonestly (ex iniusta causa). "It is a matter of natural equity that no one should be enriched to the detriment of another." (D. 12.6.14; see LOCUPLETIOR FIERI.) This doctrine of Justinian infiltrated the classical texts through numerous interpolations and made the condicio a general action for the most varied claims when a specifically termed action was not available.—See ACTIONS IN PERSONAM, CONDICERE, and the following items.

Kipp, RE 4; Humbert and Lecrivain, DS 4 (z.v. per condictionem actio); Landucci, NDI 3; L. Koschembauer-Lyskowski, C. als Bereicherungsklage, 1–2 (1903, 1907); R. v. Mayr, Die c. des röm. Privatrechts, 1905; M. Frondenthal, Zur Entwicklungs gesch. der c., 1910; F. de Vries, Les c. et le systeme de la procedure formelle, 1923; E. Benvenuto, L'esecuzione generale dei condizioni, Paris, 1926; Haymann, Lkb 77 (1927) 188; G. H. Maier, Die praealter Bereicherungsklagen, 1932; A. P. Levy, De la notion d'enrichissement en dr. rom., Thèse, Alger, 1935; Oliver, Dr. 12.1, etc. De condictionibus, Cambridge, 1937; Robbe, SDHI 7 (1941); Frezza, Nuova RDCom 2 (1949) 42; Solazzi, ANap 62 (1941); Donatini, Studi Pontifici 1 (1951) 35; U. von Lähn, Beiträge zur Lehre von der condicio, 1952; F. Schwarz, Die Grundlage der c. im klassischen röm. Recht, 1952.

Condictio causa data causa non secuta (ob causam dati or datorum). An action granted a person who has given something to another in anticipation of a specific event (e.g., a dowry given for a future marriage) or the performance of a specific act by the receiver, upon the failure of the expected event or act to materialize. Through this condicio the giver recovered the thing given.—D. 12.4; C. 4.6.

Kretschmar, ZSS 61 (1941).

Condictio cautelna. An action of the debtor for the return of a written acknowledgment of his debt which he had repaid.

Condictio certae pecuniae. An action for the payment of a fixed sum promised by a stipulatio.

Condictio certae rei. An action based on a stipulatio for the delivery of a specific thing (certa res). This condicio is also called condicio triticaria, a term which was originally applied when a fixed amount of wheat (triticum) was due, and was generalized by Justinian to apply to all kinds of fungible goods.—D. 13.3.

Beretta, SDHI 9 (1943) 223.

Condictio certi. An action for a certum. A Justinian creation, "it lies when a certum is claimed from any cause, from any obligation" (D. 12.1.9 pr.).—See CERTUM.

Giffard, Conlinsf 1947 (1950) 55.

Condictio ex causa futriva. See FUTRUM.

Condictio ex iniusta causa. See CONDICIO OB INIUSTAM CAUSAM.

Condictio ex lege. This name was given by Justinian to the post-classical condicio, which became a general action employed for the prosecution of any claim which an imperial enactment acknowledged as actionable without giving the action a specific name.—D. 13.2; C. 4.9.—See CONDICIO.

Condictio ex paenitentia. See PAENITENTIA.

Condictio futriva. (Syn. condicio ex causa futriva.) —See FUTRUM.

Condictio incerti. A condicio by which an incertum is claimed. The term appears mostly in interpolated texts.—See CERTUM.

Trampedach, ZSS 17 (1896) 97, 365; Pflegér, ZSS 18 (1897) 75; idem, Condictio und sein Ende, Fg P. Krüger, 1911; v. Mayr, ZSS 24–25 (1903–1904); Benigni, Fz 31 (1906); Naber, RSDtb 8 (1935) 284; Kretschmar, ZSS 59 (1939) 128; Giffard, RIDA 4 (1950) 499.

Condictio indebiti. An action for the recovery of a payment made in error for a non existing debt (indebitum). Both the parties, the giver and the receiver, must have acted in error. If the latter took the payment in bad faith, he was treated as a thief. Indebitum was also a debt which existed at its civile, but could be annulled by a peremptory exception.—D. 12.6; C. 4.5.

Solazzi, ANap 59 (1939); idem, SDHI 9 (1943) 55; C. Sanfilippo, C.l., 1943; F. Schwarz, ZSS 68 (1951) 266.

Condictio liberationis. A post-classical form of a condicio incerti, granted to a debtor against his creditor in order to obtain from him a formal release from a debt which became invalid.

Archl, St Solazzi, 1948, 740.

Condictio ob causam datorum. See CONDICIO CAUSA DATA CAUSA NON SECUTA.

Condictio ob iniustam causam. An action for the recovery of money paid for an illegal cause, as, e.g., for a debt contracted under duress.—D. 12.5; C. 4.9.—See USUARE.

Pflegér, ZSS 32 (1911) 168.

Condictio ob turpem causam. An action for the recovery of money the acceptance of which by the re-
ceiver was immoral, as, e.g., for not committing a crime.—D. 12.5; C. 4.7.

Condictio possessionis. An action for the recovery of possession of a thing which the adversary had obtained from the plaintiff without legal cause. In comparison with the interdictal protection (see interdicta), the condictio had the advantage of being an actio perpetua.

De Villa, SiSta 10 (1932).

Condictio sine causa. An action for the recovery of a thing given for a specific purpose (causa) which failed afterwards, as, e.g., a dowry given in view of a future marriage which, however, was not concluded, or a gift made by a donor in contemplation of his imminent death (mortis causa), which then did not occur.—D. 12.7; C. 4.9.

Condictio triticaria. An action for the return of a quantity of grain (triticum) or other fungibles which had been given as a loan.—See CONDICTIO CERTAE REL. MUTUM.—D. 13.3.

Collinet, St. Ferecci, 1925; Kretschmar, ZSS 59 (1939) 128.

Conditoriœ iuris. See IURISCONSULTUS, CONDERE IURA.

Conduco. See LOCATIO.

Conductor agri vectigalii. See AGER VECTIGALIS.

Conductor operarii. See LOCATIO CONDICTIO OPE- RARIUM.

Conductor operœ. See LOCATIO CONDICTIO OPERIS FACIENDI.

Conductores rei. See LOCATIO CONDICTIO REL.

Conductores. Lessees. Holders of large private and public estates used to sublease small portions thereof to minor lessees (coloni) for a rent (a third or higher part of the produce) and personal services.—C. 11.72.

Rostowzew, DE 2, 356; Lécrivain, DS 3, 967.

Conductores vectigalium. Persons who leased from the state the right to collect vectigalia (revenues from state property, such as land, mines, salt-works).—C. 10.57.—See VECTIGAL, PUBLICANI.

Rostowzew, DE 2.

Confarrearœ. The earliest form of conventio in manum in order to conclude a marriage between patricians. It was a solemn ceremony in the presence of ten witnesses and a high priest. The term comes from the use of a cake of spelt (far, panis farreus) in the ceremony. When the confarrearœ fell into disuse, it remained obligatory only for the marriage of flamines.

Leonard, RE 4; Kamien, RE 14, 2270; De Ruggiero, DE 2; S. Peronzi, Scriti 3 (1948, ex 1904) 528; Fowler, IRS 6 (1916) 183; Brusiloff, St. Bowmonte 2 (1929) 363; Carrelli, Ambaco 9 (1933) 207; Nosilles, RHdD 15 (1936); E. Volterra, La conception du mariage (Padova, 1940), 14; Köster, ZSS 65 (1947) 44; M. Kaiser, Das alttröm. Ius, 1948, 342.

Confere. To contribute money or goods; see CONFERE IN SOCIETATEM, COLLATIO, COLLATIO BONORUM, COLLATIO DOTIS, COLLATIO DONATIONIS.

Confere imperium (magistratum, potestatem). To confer power upon a high magistrate or the emperor.—See IMPERIUM, LEX CURIATA DE IMPERIO, LEX DE IMPERIO.

Confere in societatem. To contribute a share as a partner of a company (societas).—See SOCIETAS.

Guarneri-Ciani, Bidr 42 (1934) 183.

Confesso. (From confiteri.) Admission of liability by the defendant in full or partial conformity with the plaintiff's claim. Confesso may occur in either stage of the civil trial, in ursu or apud indicem.—D. 42.2; C. 7.59.—See the following items.

Kipp, RE 4; Curr. DS 3, 744.

Confessio apud indicem. An acknowledgment of the plaintiff's claim by the defendant before the judge. It was treated only as a means of evidence. The judge could evaluate it at his discretion.

Confessio in ursu. An acknowledgment of the plaintiff's claim made by the defendant (confessus) before the magistrate in the stage of the proceedings in ursu. A confessus "is like a iudicatus (condemned by the judge's judgment) since he is condemned to a certain degree by his own judgment" (D. 42.2.1). The rule goes back to the Twelve Tables with regard to claims of a fixed sum. They ordered that an amount of money admitted by the defendant (aese confessum) was subject to execution in the same way as a thing adjudged by a judgment. When the defendant admitted his liability but did not express it in a fixed sum, immediate execution was impossible and the whole matter went as a suit based on confession (actio confessoria) to the judge whose task was to assess the liability of the defendant. By his confessio the latter avoided condemnation to a double amount (duplum) in those actions in which his denial (see infitiatio) would have produced such effect.

Kipp, RE 4; Curr. DS 3; A. Giffard, La c., 1900; Betti, Avv en 74 (1913) 1453; idem, ATor 50 (1914-15) 700; Collinet, NRHD 29 (1925); W. Fuchs, Confessus pro iudicato err., 1924; Wlassak, Confessio in ursu, 38 München 1934; W. S. ZSS 59 (1939); Päßiger, ZSS 64 (1944) 360; S. di Paolo, Confessio in ursu 1 (Milan, 1952).

Consideiussores. Two or more sureties, fideiussores, for the same debt.—See BENEFICUIUM DIVISIONES.

Confinium. A strip of land constituting a border between two adjoining plots. It was to be left unploughed and was excluded from usucapio. Syn. fines.—See ACTIO FINIUM REGUNDORUM, CONTROVERSIA DE FINIS.

Confirmare tutorem. To confirm a guardian. In certain cases, when the testamentary appointment of a guardian was not quite certain, when the testament was defective, or when the appointment was made by a person who had no patria potestas over the ward (the mother, or the father of an emancipated son) the praetor could take the will of the testator into consideration and confirm the guardian appointed.—D. 26.3; C. 5.29.

Sachs, RE 7A, 1511; Solazzi, Rend. Lomb 53 (1920) 359.
Confirmatio codicillorum. See Codicilli.

Confirmatio donationis. A donation which might be invalidated by an exception opposed by the donor (exceptio legis Cinciae) became valid if the donor died without having revoked the donation. According to an oratio of the emperors Severus and Caracalla a donation between husband and wife (donatio inter virum et uxorern) became valid, if the donor confirmed the donation in his testament.

Siber, 2 S 43 (1933); De Robertis, AnBari 1935; Biondi, Successione testamentaria (1943) 666, 714.

Confiscari (confiscatio). Seizure by, and for, the fisc. —See Publicatio.—C. 9.48.

Humbert, DS 1.


Confuga. (From confuger.) A person persecuted by an enemy, by creditors or for a crime, who takes refuge in a place which is inviolable, e.g., in a temple (in aedse sacra) or under a statue of a reigning or dead emperor (ad statusm Caesaris).—C. 1.25.

P. Timbal Ducaux de Martin, Droit d'asile, 1939, 27; Goffred, SDHI 12 (1946) 187.

Confugerit ad ecclesiam. To take refuge in a church. —C. 1.12.

Confusio. (From confundere.) Mingle of liquids. When they belong to different owners, the mixture is owned by them in common as in the case of commiscere.

Pampaoni, BIDR 37 (1929) 38; Baudry, DS 1; Leonard, RE 4.

Confusio. In the law of obligations this occurs when the right of the creditor and the obligation of the debtor meet in the same person, as when the debtor becomes heir of the creditor or vice versa. Confusio effects the extinction of the obligation.

Baudry, DS 1; Leonard, RE 4; S. Cugia, Confusione extinguitur obligatio, 1927; i.e., La confusione dell'obbliga

Confusio. (In the law of servitudes.) If ownership of an immovable, encumbered by a servitude, and the right of servitude meet in the same person, the servitude, praelial or personal, is extinguished through confusio, which in such cases is also termed con

Solidatio.

Congiarium. Money or valuable commodities distributed among the people on special occasions. This custom, introduced by Caesar, was followed by the emperors as a gesture of liberality (liberalitas) on such occasions as accession to a throne, a victory in war, or another solemn event. The example of the emperors was imitated by triumphant generals and wealthy individuals. Tokens (tessarum num

mariarum) redeemable in money, were also thrown to the people on such occasions.—See Missilia.

Rostowzew, RE 4; Bervé, RE 13 (s.v. liberalitas); Espé

randieu, DE 2; Thédenat, DS; D. Van Berchem, Distribu

tion de bié et d'argent, Gentre, 1939.

Coniectanea. A collection of miscellanea. The word appears as the title of juristic works of Capito and Alienus Varus.

Coniectio. See CAUSAJ CONJECTIO.

Coniunctum. Jointly. Heirs instituted coniunctum became co-heirs with equal shares. A condition im

posed coniunctum upon several persons is binding on all. Ant. disjunctum, separate.

Coniunctio. An institution of several heirs for the same estate or of several legatees for the same thing in common. The estate (or legacy) became common property of the cohredes (or collegatarii). The heirs or legatees thus awarded are termed coniuncti.

—See Conjunctum.

Coniunctio maris et feminae. A basic element of the Roman marriage when connected with affectio ma
talis and intended as a community for ever (consortium omnis vitae). —See Nuptiae.

Conl.. —See ColL.

Connubium. See Connubium.

Corre. —See Corre.

Consanguniae. See Consangunitas. Ant. uterin.

The distinction has significance in the law of suc

cession.

Leonhard, RE 4.

Consangunitas. The relationship between brothers and sisters begotten by the same father. In a larger sense, blood relationship.—See ius consangunita
tis, necessity.

Conscentia (consuvus). Knowledge of a crime com

mitted by another. Such knowledge did not entail punishment except in cases in which denunciation to the authorities was obligatory, as, e.g., in case of high treason (see maestas, perduellio).

Consccisere sibi mortem. To commit suicide. Su
cide committed by a person accused of a crime in order to avoid condemnation was considered a con

fession of guilt and his property was confiscated. Trials for high treason were continued in spite of the suicide of the accused.—Syn. manus sibi infrer.-

D. 48.21; C. 9.50. —See Sucidium, libera facultas mortis.

Rogers, TAmPhilolAts 61 (1933) 18; Volterra, RSI 6 (1933) 393; F. Vittinghoff, Der Staatsfeind in der röm. Kaiserzeit, 1936, 52.

Conscius. See Scncientia.

Consciue fraudul. One who participates in a debtor's fraudulent activities in order to deceive the latter's creditors. Syn. partes fraudis. A praetorian ac

tion for damages lies against him.—See Fraus.

Humbert, DS 1.

Conscriptae. To write down a legal document, in par

ticular a testament or codicil.

Conscripta. See Patres Conscrip.

Consecratia (consecratio). See Res Sacrae.

Consecratio. As a sanction for a crime committed against the state or community this was the assign

ment of the offender and his property to the gods; this made him an outlaw (sacer), deprived him of
protection by men and excluded him from human society. The consecratio, both capitis and bonorum, is the lot of a person whom the laws declared Sacer.

—See LEGES SACRATAE.

Wiszowa, RE 4; De Ruggiero, DE 1, 144.

Consecratio. (With regard to deceased emperors.) The enrollment of the dead emperor among gods, deification.—See DIVUS.

G. Hertling, Konsekratio im röm. Sakralrecht, 1911; S. Braslowski, Studien zur röm. Rechtsgeschichte, 1925; Bickerman, Arch. für Religionswissenschaft 27 (1929);F. Vittinghoff, Der Staatsfeind in der röm. Kaiserzeit, 1936, 77; Bruck, Sem 7 (1949) 12 (Bibl.).

Consensus. (From consentire.) In private law = consent. It is either unilateral when a person gives his assent (approval) to an act performed by another (consensus curatoris, of a father or parents, of a magistrate); or bilateral when two persons agree upon a transaction. The consensus must be complete (in unum = on the same matter) and free from any external influence (duress = vis, metus, error). Although consensus is the basic element of all agreements between two or more persons, there are some contracts (emptio venditio, locatio conductio, mandatum, societas) which are concluded (obligatio consensus contracta) when merely a consensus of the parties exists and is expressed (nudus consensus), as opposed to other contracts for the conclusion of which further elements are required, such as the delivery of a thing (res), the use of words (verba) or a written form ( litterae). Consensus may be given expressly in spoken or written words, or tacitly, simply by gesture or other behavior leaving no doubt as to the consent of the party (tacite, tacitus consensus).

—Inst. 3.22.—See CONTRACTUS, NUTUS.

Leonhard, RE 4; Perozzi, St Schufter, 1 (Turin, 1898); Hagerstrom, ZSS 63 (1943) 268.

Consensus. In public law this refers to the manifestation of the collective approval of the people (consensus populi), the senate (consensus senatus), a municipal council, and the like.

De Ruggiero, DE 2.

Consensus contrarius. A consensual contract (see consensus) could be rescinded by a contrary agreement of the parties if neither of them had yet fulfilled his obligation (re integra, re nondum soluta). Syn. dissensus.

Siber, ZSS 42 (1922); Stoll, ZSS 44 (1924).

Consentire. See CONSENSUS.

Conservi. Fellow slaves belonging to the same master.

Consignare (consignatio). To seal a written document (e.g., a testament). Syn. signare.

Consiliarii (consiliarii Augusti). Members of the emperor’s consilium; generally members of any council.

De Ruggiero, DE 2, 616; Checchini, AVen 58 (1909).

Consilium. Advice. It is to be distinguished from a mandate (mandatum) and does not create any responsibility for the person who gave it if it produced bad results. “Everybody may decide for himself whether the advice is to his advantage” (17.1.2.6).

—Consilium of the person who performs a deed means his decision, intention, particularly when referring to prohibited acts.—See OPE CONSELIO.


Consilium decurionum. A municipal senatus.—See DECURIONES.

De Ruggiero, RE 2, 611.

Consilium magistratuum. Higher magistrates (consuls, praetors, censors, aediles, governors of the provinces, prefects, etc.) used to have advisory boards composed of jurists and experts in various fields. They asked the consilium for advice in important matters, but were not obliged to follow it.—See ADSENSORES.

Liebenam, RE 4; De Ruggiero, DE 2, 610; G. Cicogna, I consigli dei magistrati romani e il c. principis, 1910.

Consilium principis. The imperial council. Following a Republican institution, the council of the magistrates (consilium magistratuum), the emperors beginning with Augustus used to consult a body of advisors convoked in cases of particular importance. Hadrian organized it as a permanent council composed of members (jurists, high imperial functionaries of equestrian rank, and senators) appointed for life (consiliarii, from the time of Diocletian a consilii sacri). In the later Empire the council, called consistorium (sacrum), functioned rather as a privy council of the emperor in legislative, judicial and administrative matters. Many famous jurists of the classical period were members of the consilium. They exercised a great influence on the development of the law as crystallized in imperial enactments. The participation of the praetorian prefects gave the consilium principis also a political character.

Orestano, NDI 3; Balsdon, OCD; Seeck, RE 4, 926; De Ruggiero, DE 2, 614; Coq, Mémoires de l’Académie des Inscriptions et Belles-Lettres, 1 S. 9 (1884); Cicogna, Il consilium principis, consistorium, 1902; idem, I consigli dei magistrati romani e il cons. princ., 1910; Orestano, Il potere normativo degli imperatori, 1937, 51.

Consilium propinquirorunm (necessarium). A family council composed of older members. Sometimes friends participated therein (consilium propinquorum et amicorum). According to an ancient custom the head of a family used to consult this council before punishing a member of the family for criminal offenses, for instance his wife or daughter for adultery (see ADULTERUM). But he was not bound by the opinion of the consilium, which was only an advisory board to assist the head of the family in internal family matters, and had no judicial competence.

De Ruggiero, DE 2, 609; Volterra, RISG 85 (1948) 112.

Consilium publicum. The senate.

De Ruggiero, DE 2, 610.

Consilium quaestionis. The jury in a criminal trial.

—See QAESTIONES.
Consistentes. Persons who sojourn temporarily at a place which is neither their birth-place nor their domicile. The term is applied primarily to merchants (negotiatores).

Kornemann, RE 4, 922; De Ruggiero, DE 2.

Consistere (cun aliquo, adversus aliquum). To sue a person for a civil claim or to denounce another for an unfair action (e.g., a slave denounces his master for concealing a testament).

Consistorium. See COMITES CONSISTORIANI, CONSISTIUM PRINCIPI.

Seeck, RE 4, 930; Humbert, DS 1; De Ruggiero, DE 2, 618; Mattingly, OCD; Cicogna, Il consitium principis, consistorium, 1902.

Consobrini. Children of brothers or sisters, cousins.

Children of two brothers = patres (fratres or sorores).

Consolidatio. The extinction of a personal servitude by merger when the ownership of an immovable, burdened with a servitude and the right thereto meet in the same person. It happens, for instance, when the owner becomes heir of the usufructuary (fructuarius) or vice versa.—See CONFUSIO.

 Consortes imperii. Colleagues in power. Colleagues in the tribunate = consortes tribuniciæ potestatis. Syn. participes. With reference to emperors, the consortes of the reigning emperor was his colleague only formally being appointed solely to secure the succession after the death of the emperor, who alone had the title Augustus. Normally he was the emperor's son appointed in the same manner as the emperor. In this way the imperial power was perpetuated in the family.—See COLLEGAE.

De Ruggiero, DE 2; Lécrivain, DS 4, 651.

 Consortes litis. Two or more plaintiffs or defendants in the same trial.—C. 3.40.

Redenti, AG 59 (1907).

Consortium. (In ancient law.) The community of goods among co-heirs after the death of their pater familias when the property remained undivided. This common enjoyment of family property served as a model for a contractual consortium among individuals, members of different families, not connected by a tie of common succession. The consortes had broader powers to act for the whole group, with regard both to acquisitions and alienations (manusmission of slaves) since each was considered the owner of the whole. According to Gaius (3.154a), this ancient consortium was "a legal and simultaneously a natural societas, called ercto non cito" (with ownership not divided).

Sachers, RE 18, 4, 2149; Frezza, NDt 3; idem, Rito di flaut e str. class. 1934, 31; Cicogna, St in mem. P. Reus, SIt 1932; Rabel, Mmnozgna Pappoula, 1934; Arangio-Ruiz, BIDR 42 (1934) 601; P. Noailles, Etudes de droit rom. 51; Lévy-Bruhl, Atti IV Congr. Intern. Papir. giur. (Firenze, 1935) 293 (= Nouvelles Ét. 1947, 51); C. A. Maschi, Diatrrhemes, Ricerche intorno alla divisibilità del c. nel diritto rom. clas. 1935; idem, Concorrenza naturalistica, 1937, 306; Albertario, Studi 5 (1937) 467; Wiel-
Kübler, RE 19, 641: Anon., NDI 5 (Editio di Caracalla); Bry, Et. Gered (1912); G. Segré, BIDR 32 (1922); idem, St. Perossi, 1925, 137; E. Bickerman, Das Edikt des Kaisers Caracalla, 1925; Capocci, Mem. Soc. 6, 1. 1925; P. M. Meyer, ZSS 46, 1926; Schönbauer, ZSS 51 (1931) 303; Stroux, Philologia 88 (1933) 272; Wilhelm, Amer. Journ. of Archaeology 32 (1934); Jones, JRS 36 (1936) 223; Sherwin-White, The R. citizenship (1939) 218; Schubart, Aeg 20 (1940) 31; Heichelheim, Journ. of Ep. Arch. 26 (1940); A. Segré, Rend. Pontif. Accad. di Arch., 16 (1940) 181; Riccobono, FJR 213 (1941) 188; Wengen, Arch. 1941 (1941) 195; D'Ors, Emittia 11 (1943) 297; idem, AHDE 15 (1946) 162, 17 (1947) 586; Arrangio-Rusia, L'application du droit rom. en Egypte après la c. A. Bull. de l'Institut d'Egypte 29 (1947) 89; Bell, JRS 37 (1947) 17; Wengen, RIDA 3 (1949) 527; Keil, Anziger Akad. Wiss. Wern, 1948, 143; D. Magic, Rom. rule in Asia Minor 2 (1950) 1555; Henne, Constat 1947 (1950) 92; De Viescher, AmC 3 (1949) 15; Schönbauer, Journ. juristic papyrology 6 (1952) 36; Taubenschlag, ibid. 130 (Bibl.). — For imperial constitutions preserved in papyri, Taubenschlag, ibid. 121.

Constitutio Rutiliana. See CONSTITUTIO.

Constitutionarius. An official entrusted with copying the imperial constitutions and keeping them under control.

Constitutiones generales. See CONSTITUTIONES PRINCIPUM, CONSTITUTIONES SPECIALES.

Constitutiones imperiales. See CONSTITUTIONES PRINCIPUM.

Constitutiones personales. Imperial enactments by which private individuals were granted personal privileges as a reward for meritorious service rendered to the emperor or the state.

De Robertis, AnBari 4 (1941) 360.

Constitutiones principum (principales, imperiales, sacrae). Constitutiones is a general term which embraces all types of imperial enactment; see EDICTA, DECRETA, MANDATA, REScripta. "What the emperor ordained (principi placuit) has the force (vigor) of a statute (lex)" or "... is applied as if it were a statute (legis vicem obiment)" (D. 1.4.1 pr.; Gaius 1.5). Such principles were established in the early second century after Christ. We are told by Gaius (loc. cit.) that there never had been any doubt about it, and yet in the early Principate the emperor used to present his legislative proposals personally in an oratio before the senate for its approval by which they acquired full legal force. This approval afterwards became a simple formality, so that the oratio itself was considered a law. A legislative character was attributed in the first place to the edicta and to those enactments indicated as constitutiones generales (decreta, rescripta) in which the emperor expressly declared that his decision issued in a specific case should henceforth be applied in analogous cases. Rescripts and decrees issued without such a clause also acquired the force of legal norms in the last analysis, since on the one hand the judges normally followed the principles settled therein (although legally they were not bound to do so) and on the other hand by appeal to the imperial court a contrary decision of a lower court might be changed in accordance with the rules issued by the emperor in previous cases.—D. 1.14; C. 1.14.

Jörs, RE 4; Costa, NDI 3; Berger, OCB: Riccobono, FJR 216 (1941) 295; Fass, Arch. für Urkundenforschung 1 (1908) 221; E. Vernet, Et. Gered 2 (1913); Kreuder, ZSS 41 (1920) 262; Lardone, St. Riccobono 1 (1956). Orestano, Il potere normativo degli imperatori e le costituzioni imperiali, 1937; Volterra, St. Besta 1 (1939) 449; F. v. Schwab, Schriften der Gesetze, 1940, 129; De Robertis, Sull'efficacia normativa delle cost. imperiali, AnBari 4 (1941, 1. 281); idem, ZSS 62 (1942) 255; Lazzazz, Sc. Ferrata (Univ. Pavia, 1946) 263.

Constitutiones Sirmondianae. A private collection of sixteen imperial constitutions issued between 333 and 425 concerning ecclesiastical matters (first edited by J. Sirmondi, 1631). The collection was compiled by an unknown author in the Western Empire. Ten of the constitutions are preserved in the Codex Theodosianus, but their text in the Constitutiones Sirmondianae is more complete.


Constitutiones speciales. Imperial constitutions general in character but limited to particular categories of persons or legal relations. Ant. constitutiones generales binding on the whole people, and CONSTITUTIONES PERSONALES.


Constitutum. A formless promise to pay an already existing debt, either of one's own (constitutum debiti proprii) or of another (constitutum debiti alieni) on a fixed date and at a fixed place. The sum so promised is called pecunia constituta. This is not a novation, the creditor being able to sue the debtor according to the previous terms. The fulfillment of a constitutum may be claimed by a special action, actio de pecunia constituta (constitutoria). It is an actio in factum, strengthened by the promise of a penalty of one half of the original debt (spensio dimidia partis). A constitutum could also cover debts originating from wrongdoings. The institution was reformed by Justinian in many respects.—D. 13.5; C. 4.18.—See the following items.


Constitutum debiti alieni. A promise to pay (constitutum) another's debt. This is a formless kind of surety. Its validity depends upon that of the principal debt.—See RECEPTUM ARGENTARI.

Constitutum debiti proprii. A constitutum between parties already involved in an obligatory relationship. See CONSTITUTUM. The purpose of this constitutum, also called pactum de constituito, is to modify some
elements of the previous obligation, such as the date or the place of the payment.

Koschaker, ZSS 65 (1943) 470.

Constitutum est. When referring to a legal norm, this indicates that it originates from an imperial constitution.—See constitutiones principum.

Constitutum possessorium. Not a classical term. In literature it denotes the legal situation of a person who transferred possession (possessio) of a thing to another but continued to hold it (detinere) under another title. Possessory protection is consequently given to the new possessor. A constitutum possessorium took place when the seller of an immovable remained therein as a tenant. A contrary change of a possessory situation, when the actual holder of a thing (detentor) acquired possession thereof was traditio brevi manu, since the thing was not delivered over by traditio but remained in the detention of the same person.—See detentio.


Constitutus. Said of a person or a thing that is in a certain legal situation; it also means settled by law (imperial constitutions), legally established. The term appears frequently in interpolated texts, particularly when constitutus is substituted for a specific period of time (tempus constitutum) which had been fixed in the ancient law and was then changed in post-classical or Justinian's law.

Guarnieri-Ciati, Indice, 2nd ed. (1927) s.c. constitutum.

Consuetudo. (Also consuetudo longa, inveterata, vetus.) A custom, usage. Syn. mores, mores diuturni, mores (or mo) maiorum (= custom observed by the ancestors). Consuetudo constantly observed through a long period is the source of the so-called customary law, generally observed by the people. Cicero (De invent. 2.22.67) defines it as the law which has been approved by the will of all being observed for a long time, and classical jurists speak of a silent consent of the people (tacitus consensus populi, tacita civium consentio, D. 1.3.32.1; 35).

Yet it is not an autonomous source of law. Without legislative action by a law-making organ, through a statute, the praetor's edict, a senatusconsultum, or imperial enactment, it was not binding upon the judge, though its influence on jurisdiction or on the interpretation of the will of the parties to a transaction may have been considerable. "Custom is the best interpreter of statutes" (D. 1.3.37). In ancient times, before the first Roman codification in the Twelve Tables, the whole law was customary. Legal customs observed constantly and generally in relations with foreigners, could easily acquire statutory force when confirmed by the praetor. To change legal customs regularly and immutably observed was not easy and the emperors had frequently opposed customs, particularly those from the provinces in their enactments. A custom could not abrogate an existing law (desuetudo).—D. 1.3; C. 8.52.—See usus scriptum, longaeus usus, usus, interpres.

S. Brice, Zur Lehre vom Gewohnheitsrecht, 1899; E. Lamberti, Études de droit commun 1 (1902) 111, 389; O. Klein, Zur Lehre vom Gewohnheitsrecht im sorurji, Recht, Heidelberg, 1908; Solazzi, AG 102 (1929) 3; idem, St Albertoni 1 (1935) 35; Steinwenter, St Bonifatius 2 (1930) 419; A. Lebrun, La coutume, Thése, Caen, 1932, 198; Schiller, Virginia Law Rev. 24 (1938) 268; Gaudemet, RHD 17 (1938) 141; Riccobono, BIDR 46 (1939) 333; Kaser, ZSS 59 (1939) 59; Rech, Max maiorum, Dts. Marburg, 1936; Sem, Introduction à l'étude du droit comparé, 1 (1938) 218; B. Paradisi, Storia del diritto italiano (Lezioni) 1951, 228; Lombardi, SDHI 17 (1951) 281.

Consuetudo civitatis (provinciae, regionis). Legal customs of a local character observed in autonomous cities, provinces or particular regions.

Niedermyer, Byzaat-Nyugat. Jahrb. 2 (1921) 87.

Consuetudo fori. A constant court practice. The term is mentioned only once in juristic sources (D. 50.13.1.10) with reference to the honorarium of an advocate; a judge, when settling a lawyer's fee, should have taken into consideration the practice of the court among other circumstances. In Justinian's language analogous expressions are usus judiciorum and observatio iudiciarum. In all instances the court practice refers to procedural matters and not to substantive law. The term usus fori which occurs in the literature is not Roman.

Consuetudo revertendi. See animalia, animus revertendi.

Consulares. Ex-consuls. They became members of the senate after their year of service. Governors of provinces, dictators, and censors were often chosen from among the consulares. See adlectio. Hadrian created the institution of four circuit-judges to administer law in Italy and they, too, were called consulares. In the later Empire some governors of provinces had the title consulares.

Kühler, RE 4; Humbert, DS 1; Paribeni, DE 2.

Consulare (jurisprudentia). To ask a jurisconsult for an opinion in a legal matter.—See jurisconsulti.

Consules. The supreme Roman magistrates in the Republic, as successors to the royal power (potestas regia). Two consules elected by the people in centuriate assemblies governed the state for one year. Originally both consules were patricians, since 367 B.C. one had to be a plebeian (see lex Liciae sextia). The creation of other magistracies and the activity of the senate and the popular assemblies produced a gradual weakening of their originally unlimited power, which further was hampered by the plebeian tribunes (intercessio). Their functions as military commanders remained undiminished, however. Their jurisdictional attributions were checked by the right of appeal to the comitia in criminal matters; in civil affairs they lost them to the praetors. Under the Principate the consulship remained in
existence but gradually became a merely honorary function. The *consules* were appointed for short periods (four, or even two months) but they kept some political rights (convocation of, and presidency in, the senate) and exercised some minor administrative functions. Their social position remained high, however, since they were granted all honors and insignia of the highest magistrates, as in the earliest Principate. They continued to give their name to the year until this system of dating was abolished by Justinian in 537. They retained some competence in manumissions when they were in active service, but as a whole their official functions were insignificant.—D. 1.10; C. 12.3.—See DICTIONARY, CONSULS, MAGISTRATUS, PROCONSUL, IMPERIUM, SE

NATUSCONSULTUM ULTIMUM, DIES ET CONSUL, AND THE FOLLOWING ITEMS.

Kübler, RE 4; Humbert, DS 1; Anon., NDI 3; De Ruggiero, RE 2, 679 (a list of consuls by Vaglieri, ibid.); Treves, OCD; De Sanctis, *Rivista di filologia*, 1929, 1; Groag, *Wiener Studien*, 1929, 143.

Consules honorarii. Persons to whom the emperor granted the title of consul as an honorary distinction in the late Empire. They had no effective functions.

Consules ordinarii. Consuls who entered office on January 1 and whose names were given to the whole year in the official dating system.

Consules suffecti. Consuls elected by extraordinary vote when the post of a consul became vacant during the year of service because of death or some other reason.

Consulario. (From consulario.) A request addressed by a lower judge in a proceeding of *cognitio extra ordinem* to his superior, the future appellate judge in the case, for an opinion in a legal matter to be decided upon. This practice led to the development of a specific procedure whereby a consulatio was addressed to the emperor by a judge whose decision was subject to an appeal to the imperial court. The consulatio was made in a detailed report (relatio) containing a statement of the subject of the controversy and the written objections (preces refutatoriae, libelli refutatorii) of the parties, who had been informed in advance of the contents of the judge’s report. The emperor decided on the basis of the written materials submitted to him. In particular, judicial matters of the provinces were transmitted in this way to the emperor who expressed his point of view in a rescript sent to the first judge. The latter in turn notified the parties of the imperial decision. The parties themselves were forbidden to address the imperial chancery directly unless a year elapsed without an answer. This was the procedure of a consulatio before judgment (ante sententiam). The same procedure was used in the case of an appeal to the imperial court (appellatio more consultationis) from the time of Constantine. Justinian’s predecessor, Justin, admitted a hearing of the parties before the imperial court in the course of this proceeding.—D. 49.1; C. 7.61; 62.—See RESCRIPTEM.


Consultatio vetersi eiusisdam iurisconsulti. An anonymous booklet written in the Western Empire in the late fifth or early sixth century containing a collection of juristic opinions on real and imaginary cases. The author used the Sentences of Paul and a number of constitutions from the three Codices, Gregorianus, Hermogenianus and Theodosianus.

Editions: P. Kruger, Collectio 3 (1890) 201; Kübler in Huchke’s *Jurisprudenciae Antoniniani*, 2. 2 (1927) 490; Baviere, FIr 1 (1940) 593.—Jörß, RE 4; Moschella, NDI 3; Courat and Kantorowicz, ZSS 34 (1913) 46; Volterra, *ACII 2* (1935) 399; *idem*, RStDIt 8 (1935) 144 (for glosses and interpolations).

Consultator (consul, consulens). One who asks a jurist for his opinion in a legal matter.—See consulere, iurisconsulti.

Berger, RE 10, 1165.

Consultissima lex. A well-considered law.

Consultissimus vir. A man learned in the law.

Consulto. See DOLUS.

Consumere. See ABUSUS, RES QUAE USU CONSUMENTUR.

Leonhard, RE 4.

Consumere, consumi. (With regard to actions.) When a plaintiff has two different actions against the same adversary for the same claim, “through the use of one action the other is extinguished” (“consumed,” *per alteram actionem altera consumitur*). This principle does not apply to *aetiones poenales*. A “consumptive” effect is also connected with the *litis contestatio*, to wit, that the plaintiff loses the right to repeat an action once *litis contestatio* has been achieved.—See CONCURRERE, BES DE EADEM RE.


Consomere fructus. See FRUCTUS CONSUMPTI.

Contendere. To litigate, hence *contentio* = a dispute brought to trial.

Contentio. See the foregoing item.

Contentiosus. See iurisdictio contentiosa.

Contestatio. (From contestari.) A declaration made before witnesses. The term is connected with the invitation extended to persons to be witnesses to a fact or an oral statement, by the words “testes estote” (= be witnesses). Later *contestatio* is also used with regard to declarations made before a public official.—See TESTATIO, TESTIS, TRANSFERRE DOMICILIUM.

Contestatio litis. See LITIS CONTESTATIO.

Contextus. The content of a written document, e.g., of a testament. With regard to testaments, it is required that they be made uno contextu, i.e., in one act, without interruption.

Continens. In (ex) continenti = immediately, without delay. Ant. ex intervallo. The location in continenti is used in connection with the right of a father to kill an adulterous daughter caught in flagranti; see ADULTERIUM, LEX ICLIA DE ADULTERIS.

Continentia (se dio oria). Buildings outside of Rome, but adjacent to the walls of the city. They were considered part of Rome and consequently a child born therein was held to have been born in Rome.—See URBS.

Continus. See ANNUS, TEMPUS CONTINUM.

Contio. A popular informal meeting convened by a magistrate in order to communicate to the people (verba facere ad populum) news of an important military event or an edict issued by him, or to inform them about subject matters to be dealt with in the next formal consilia, which might even be held on the same day. Thus, laws, elections and judicial matters were discussed in a contio before they were subject to vote or decision in the assembly proper where discussion was not permitted. A contio was less solemn and was not preceded by auspicio. No voting took place. Piebian tribunes were wont to use contiones for political purposes.

Liebenau, RE 4; Humbert, DS 1; De Ruggiero, DE 2; Treves, OCD.

Contra. Against (e.g., to decide, to render judgment). Ant. secundum.

Contra bonos mores. See BONI MORES. "It is to be held that we may not do things (facta) which violate good customs" (D. 28.7.15). A condition imposed on a person not to marry or not to procreate children in a legal marriage, suing parents or patrons in court, a mandate to commit a theft or to hurt another, and the like, were considered to be contra bonos mores.—See CONDICIO TURFIS, CONDICIO OB TURFEM CAUSAM, ILLICITUS.

Koschmieder-Lyskowski, Mél Cornu 2 (1926); J. Macqueron, L'histoire de la cause immorale dans les obligations, 1924; H. R. Meager, Sipulatienen und letzwillige Verfügungen c. b. m. 1929 (Diss. Göttingen); Sieber, St Bonifatius 4 (1930) 103; Kaser, ZSS 60 (1940) 100; Riccobono, Ser. Ferraria (Univ. Pavia) 1947, 75.

Contra legem facera. See FRAUS LEGI FACTA.

Contra tubulas. Contrary to the testamentary dispositions of the testator.—See BONORUM POSSESSIO CONTRA TABULAS.

Contra vindicarea. See IN TURE CESSIO.

Contractus. (From contrahere.) A contract. There is no exact definition of contractus in the sources, nor did the Roman jurists develop a general theory of contracts. The characteristic element of a contractus is the agreement, the concurrence of the wills of the parties, to create an actionable, obligatory bond between them. (Much larger is the use of the verb contrahere which at times appears in a sense other than the creation of a contract; locations such as contrahere delictum or contrahere crimen have nothing to do with a contractual obligation.) Originally limited to obligations recognized by the ius civile, the term contractus even in the classical period acquired a wider sense, embracing obligatory relations recognized by the praetorian law and covering the whole domain of contractual obligations, so that the jurist Paul could say: "Every obligation should be considered a contract, so that wherever a person assumes an obligation he is considered to have concluded a contract" (D. 5.1.20). The term contractus, although not rare in classical sources, is therefore far less frequent than obligatio. The real picture of the Roman concept of contractus was overshadowed by the fact that for some typical contracts specific names were created, such as emptio venditio, locatio conductio, depositum, commodatum, etc. (see below); on the other hand, for the fundamental element of a contract, the consent of the contracting parties (see CONSENSUS), other expressions were available which covered both the consent itself and the whole transaction (consuetio, pactio, pactum conventum, also negotium). In the Roman system of obligations, the contractus appears as the source of four principal classes of obligations according to the fundamental division established in Gaius' Institutes (4.88): "every obligation arises either from a contractus (ex contractu) or from a wrongdoing (ex delicto)."

The subdivision of the contracts into four groups, formulated also by Gaius (4.89 ff.) and accepted by Justinian (Inst. 3.13 ff.), is based on specific elements which create unilateral or bilateral obligations. The four groups are: (1) Contracts which are validly concluded by the mere consent (nudo consenso) of the parties. As a matter of fact, all contracts require consent of the contracting parties, but this particular category requires nothing more than the consent. It includes sale (emptio venditio), lease and hire (locatio conductio), mandate (mandatum), and partnership (societas). (2) Contracts concluded by res (obligations re contracta), i.e., the handing over of a thing by one party (the future creditor) to the other (the future debtor). Such contracts are loan (mutuum), deposit (depositum), a gratuitous loan of a thing (commodatum) and pledge (pignus). (3) Contracts concluded by the pronunciation of solemn, prescribed words (extra verba, obligatio verbis contracta); such are stipulatio, dotis dicio and isura promissio liberti. (4) Contracts concluded through the instrument of litterae (obligatio litteris contracta), i.e., of written entries in the account books of a professional banker or any private individual; see NOMINA TRANSCRIPITICA, EXPENSILATIO. For the specific contracts, see the pertinent entries; for the subjective elements of importance in the conclusion of a contract see CONSENSUS, VOLUNTAS, ERROR, METUS, DOLUS; see also CONVENTIO, NEGOTIUM, PACTIO, PACTUM, TRANSACTIO and the following items.

Leonard, RE 4; Riccobono, NDI 4, 50; Brasielli, NDI 8, 1203; Berger, OCD; De Francisci, Synallagma, 1-2
Contraetu, volved which tore toBi, ward.

another wpieMhiU has formction* mame C0lipct. anicle*; St CmtCtiPm (1946; W (L sach consensual tfat ccbc (1930) Di USITIAE to actioo the Inm himself (14); USITIAE controtti, (formula*, 123; the Inm in 1916) himsLf, the (formula*, 121; to the Inm (1936) imperially, by the (1939) law official, was (1947) 32. Contractus judicium. In Justinian’s language, contracts concluded by high administrative officials in Constantinople and the provinces as private individuals. The emperor greatly limited their liberty to conclude certain transactions. Forbidden were purchases of immovables and movables (except for personal use), contracts for the construction of a building for their private use, and the acceptance of gifts, unless with a special permission of the emperor. Such transactions made by indices (a general Justinian term for high governmental officials) were void.—C. 1.53.

Contractus sufragii. See SUFFRAGIUM.

Contradicere (contradictio). To oppose, object, make a contrary statement, deny, particularly with regard to a claim in a judicial proceeding.—See NARRATIO.

P. Collinet, La procedure par libelle (1932) 209, 295; Lemosse, St Solazzi, 1948, 470.

Contradictor. The opponent in a trial who contests the plaintiff’s claim, particularly in trials concerning paternity or the personal status of a person (as a free man or a free-born).

Contradictory libelli. See LIBELLI CONTRADICTORII.

Contrahere. Used in different applications: concluding a marriage or betrothal, committing a crime, assuming an obligation through a bilateral agreement (see CONTRACTUS), accepting an inheritance, performing procedural activities, and in a general sense, performing any act of legal significance.

Betti, BIDR 25 (1912) 65 and 28 (1915) 3, 329; P. Voci, Dottrina del contratto (1946) 12; Grosso, Il sistema romano dei contratti, 2nd ed. 1950, 32.

Contractus innominati. Unnamed contracts. The term, unknown in the sources, is used for transactions which, although of a certain typical structure, were not termed by a specific name. Once only the expression “anonymous symallagma” appears in a Byzantine text. From contractus innominati arise bilateral duties: each party assumes the obligation to give (dare) or to do (facere) something. Four types of such contracts are distinguished: (1) do ut des (one party transfers the ownership of a thing to another who has to do the same in return); (2) do ut facias (one party gives the other a thing whereas the other has to perform a service); (3) facio ut des (an inverse transaction to that under 2); and (4) facio ut facias (a reciprocal exchange of performances of the most different kinds). If one of the parties fulfilled his duty and the other did not, the former has an action for the recovery of the thing given or for indemnification for the service performed (condictio causa data causa non secuta, action doli). Some of the contractus innominati became so typical that already in classical times they received a specific denomination (permutatio, aestimatum); others were discussed by the jurists and solved in various manners, particularly with regard to the question whether the party who first performed his obligation had an action to compel the other to perform his. Some jurists were not disinclined to such an action (in factum, with a description of the agreement in the formula, praescriptis verbis agere). The history and theory of such contracts appear in the sources in a somewhat confused picture because the pertinent texts are thoroughly interpolated, leaving the classical ideas hardly recognizable, and because of the multiform terminology concerning the remedies granted to the one party who had performed his duty to enforce the reciprocal performance on the part of the other.—See ACTIO PRAESRIPTIS VERBIS.

P. De Francisci, Synallagma, Storia e dottrina dei casi detti contratti innominati, i–2 (1913, 1916); P. Schuck, Am nachgelassenen Schriften, 1933, 3; Collinet, Mnae Pop-poula, 1934, 93; Kretschmar, ZRS 61 (1941); Grosso, Il sistema romano dei contratti, 2nd ed. 1950, 176; Giffard, Constata (1947) 68.

Contractus in favorem tertii. The term is unknown in the sources. The Romanistic literature considers as such a contract a transaction in which a person who is not a representative of a third person, accepts a promise in favor of the latter, who does not himself participate in the transaction. As a matter of principle, such a transaction was void and the third person did not acquire any action therefrom. See NEMO ALTERI STIPULARI POTEST. Only a son could conclude such a transaction in favor of his father, a slave for his master, a guardian for his ward. In Justinian’s law some exceptions were admitted.

Riccobono, AmPaz 14 (1930) 299; G. Pacchioni, Contratti in favorem tertii, 3rd ed. 1933; Bonfante, Studi 3 (1926) 243; idem, Contratti in favorem tertii, 3rd ed. 1933; idem, BIDR 40 (1932) 321; idem, St Riccobono 4 (1936) 261; Cornili, St Riccobono 4 (1936) 241; Albertario, Fischb Kochscher 2 (1939) 16 (BBL); G. Wesenberg, Vertragne zugunsten Dritter, 1949; Frezza, NuovaRCd 3 (1950) 12.

Contractus bonae fidei. A term created by Justinian for contracts which in the classical period gave rise to actiones (formulae, iudicia) bonae fidei. They involved the good faith of the parties and required fairness in the performance of the duties assumed. All consensual contracts as well as the real contracts (re, the latter with the exception of the loan, mutuum) belong to this category of contracts.—See CONTRATID, USURARUM EX FACTIO, IUDICIA BONAE FIDEI.

S. Di Marzo, B. f. c., 1904; Bibl. in Guarnieri-Citati, Indice, St Riccobono 1 (1936) 713.

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Contrectatio (contractare). Laying hands on another's thing with a view to taking, misappropriating, meddling with, misusing another's thing. The term appears in the Roman definition of theft (furto) and its application goes far beyond the simple taking away of another's property without his consent.

Buckland, LQR 57 (1941) 467; Cohen, RIDA 2 (1949) 134; Niederlander, ZSS 67 (1950) 240.

Contrectator. A thief.—See CONTRECTATIO.

Controversia. A general term for a legal controversy between private individuals, a dispute before a court. With regard to jurists and their works, controversia means a difference of opinion among persons learned in the law, particularly between representatives of the two juristic schools, the Sabiniains and Proculians.—See PROCULIANI, SABINIANS.

Albertario, Studi 4 (1940) 263.

Controversia de fine (finibus). A dispute between neighbors about the boundaries of rural property when only the five-foot-boundary strip was involved. The controversy was called surgium (not lus) and was settled in a friendly manner by arbitrators, usually with the assistance of experts (agrimensores). See LEX MAMILLIA ROSCIA. When the controversial strip of land was wider than five feet, the quarrel became a CONTROVERSIA DE LOCO.

Kübler, RE 9, 959; Brugi, NDI 4 (controversiae agerum); Schulten, DE 3, 93.

Controversia de loco. See the foregoing item.

Contubernales. A man and woman living together but not united in a legal marriage (iusce nuptiae). See CONTUBERNUM. Inscriptions show that not only slaves but also free persons and freedmen were thus designated.—See CONTUBERNUM.

De Ruggiero, DE 2, 1188; Castello, Matrimonio (1940) 32.

Contubernales (militae). See CONTUBERNUM (military).

Contubernium. A permanent, marriage-like union between slaves. Masters favored the maintenance of slave families. Children of such unions were liberi naturales. Contubernium is also a lasting union of a master and his female slave.—See CONTUBERNALLES, SENATUSCONSULTUM CLAUDIANUM.

Fiebig, RE 4; Masqueliez, DS 1; Brugi, NDI 4; A. de Manaricin, El matrimonio de los esclavos, Analctia Gregoriana, 23 (1940); C. Castello, Matrominio (1940) 32.

Contubernium. (Military.) A group of ten soldiers living under the same tent. Hence contubernales = tent-companions.

De Ruggiero, DE 2.

Contumacia. (Adj. contumax.) Non-obedience to an order of a magistrate in general, to a judicial magistrate or a judge in particular, the refusal to answer or another form of contempt of court. A specific form of contumacia is non-appearance in court in spite of a summons or hiding to avoid a summons. —See ABSENS, EREMODICUM, EDITA PEREMPTORIA.

Kipp, RE 4; Humbert, DS 1; P. Petos, Le défaut in injurias, 1912; A. Steinwenter, Versammlungsverfahren, 1914; Solazzi, St Simoncelli, 1917; Volterra, BIDR 38 (1930); Brasileilo, StUrb 7 (1933); L. Ara, Il processo civile contumaceo, 1934.

Contumacia. (In military service.) Insubordination, disobedience to a superior's order. Contumacia towards a high commander or the governor of a province in his military capacity was punished by death. Persulanitia is more serious insubordination (impudence, audacity), as when a soldier raised hand against his superior. It was punished by death when the superior was of a higher military rank.—See DELICTA MILITUM.

Contumaciter. (In imperial constitutions.) To behave as a contumax, to be guilty of contumacia in a civil trial. Syn. per contumaciam.—See CONTUMACIA.

Contumax. See CONTUMACIA.

Contumelia. An insult. It is considered a kind of injury, but it is not precisely defined. It is characterized as synonymous with the Greek hybris.—See CONVICTION.

Contutores. Two or more guardians of the same ward (plures tutores). Such plurality could be established by testament, by appointment of the magistrate, or by law, when two tutores legitimi were entitled to the same guardianship being relatives of the ward in equal degree. Co-owners manumitting a common slave might become co-tutors, too.—D. 25.7; C. 5.40; 42.2.—See TUTOR GERRIS, TUTOR CESSANS.

Sachera, RE 7A, 1526, 1551, 1757; Petrarca, ZSS 32 (1911) 226; Lery, ZSS 37 (1916) 14; A. Lacompt, La pluralité des tutores, 1927; Solazzi, ANAP 57 (1935) 212; Arangio-Rius, ibid. 61 (1942) 271; G. Nocera, Insezione, 1942, 227; Solazzi, SDHI 12 (1946) 7; Fresa, St Solazzi, 1948, 514.

Comnubium. The legal capacity of a man to conclude a valid marriage. Comnubium is “the faculty to marry (uxorem ducere) legally.” (Epit. Ulp. 5.3).—See IUS CONVIUM, MATTROMINIO, MATRIMONIO IUSTUM.

Leonhard, RE 4; Kukiel, RE 14, 2262; Humbert, DS 1; De Ruggiero, DE 2, 265; C. Coeminti, St su i liberti 1 (1948) 50; E. Nardi, La reciprocita posizione successoria dei coniugi privi di c. in 1938; Costanzo, Sull divieto di c. tra liberti e plebei, ACGR 2 (1927) 50; Volterra, St Adoratior, 2 (1950) 347; Di Vasteh, ADO-RIDA 1 (1952) 401.

Convalescere. To become legally valid after an original invalidity or uncertainty about the validity. As a matter of rule, “what is defective (vitiosum) in the beginning cannot become valid by lapse of time” (D. 50.17.29).

Conveniens est (convenit). It is proper, suitable (e.g., to equity, to good faith, or to what has been said before). The phrase conveniens est dicere (= it is proper to say) frequently precedes juristic decisions.

Convenienter. Used similarly to CONVENIENS EST.

Convenera. (1) To come together, “to assemble from different places in one place” (D. 2.14.1.3). It refers to gatherings of members of an association (collegium) and the like. (2) When said of two persons = “to agree upon a thing from different impulses of
the mind" (D. ibid.). Hence "convexitio is a general term and applies to all matters upon which persons dealing one with another agree in order to conclude a contract or to settle a dispute." The term is so comprehensive that "there is no contract, no obligation, which does not involve an agreement" (D. ibid.). Convenire may denote the agreement as a whole or single clauses thereof (nominatio convenire).—Syn. consentire.

Convenire aliquem. To sue a person in court.

Convenit. (Generally said.) It is held, assumed, generally accepted.—See CONVENTIENS EST.

Conventio. See CONVENTIRE under (2). Later classical jurists distinguished three kinds (species) of conventiones: publicae (ex publica causa), such as peace treaties concluded by the commanding generals; privatae (ex privata causa), agreements in private matters such as contracts at civil law (conventiones legitimae) and at ius gentium (conventiones iuris gentium).

Costa-Michler, RE 18, 2135; Riccobono, St Bonifante 1 (1930) 146; G. Lombardi, Ricerche in tema di ius gentium (1946) 193, 215.

Conventio. In later procedural terminology, see LIBELLUS CONVENTIONIS.—See CONVENTIRE (ALIQUEM).

Conventio in manum. An agreement accompanying the conclusion of a marriage, by which the wife entered into the family of her husband and acquired the legal position of a daughter (filias familiæ loco) dependent upon his power (manus).—See MANUS (Bibl.), COÆMPTIO, CONTARREATIO, USUS.

Conventionalis. Based on a conventio, i.e., an agreement between the parties. The term is applied to stipulations (stipulationes) to be distinguished from stipulationes prætoriæ, imposed by the praetor in certain proceedings, and stipulationes iudiciales, imposed by the judge.—See STIPULATIONS PRÆTORIÆ.

Conventiones legitimae, publicae, privatae. See CONVENTIO.

Conventum. Occurs only in combination with pactum.—See PACTUM CONVENTUM.

Conventus. A gathering of the people in the provinces for judicial purposes (hence the name conventus juridicus) on days fixed by the governor, who, during his travels through the province, made a halt in larger cities in order to administer justice. The institution was created at the beginning of the Principate.

Kornemann, RE 4, 1173; Schulten, DE 2, 1189; Humbert, DS 1; Accardi-Pasqualino, NDL 4.

Conventus civium Romanorum. A permanent organization of Roman citizens in the provinces, under the chairmanship of a curator (civium Romanorum).

Kornemann, RE 4, 1179; Schulten, DE 2, 1196.

Conventus collegii. A meeting of the members of an association.

Conventus iuridicus. See CONVENTUS.

J. Coroi, Le c. i. en Egypte aux trois premier siècle de l’Empire rom., 1935.

Converteere. (With regard to the formula in the formal proceedings.) To transfer the condemnatio clause of the formula to a person other than the one mentioned in the intentio, for instance, when the plaintiff’s representative in the trial is the cessionary (procurator in rem suam) of the primary creditor, or when the bonorum empir acquires the creditor’s property.—See CONDEMNATIO, INTENTIO, TRANSLATIO IUDICII, ACTIO RUTILIANA, BONORUM EMP'TIO.

Conviccere. To convict a person of a crime as his accuser (see ACCUSATIO) or to prove one’s rights in a civil trial against the assertions of the adversary.

Convocare. (In public law.) To convok the senate, a popular assembly, a CONTIO. In criminal law: to assemble a number of accomplices (TURBA) to commit a criminal assault together.

Coaptatio. The election of new members of a college by its existing members. It was also practiced in priestly colleges (COLLEGEN SACERDOTUM). Coaptatio took place in the college of the tribunes if the full number of tribunes was not elected by the plebeian assembly or if the post of a tribune became vacant. The LEX TIREONIA abolished the tribune's coaptatio.

Wisowa, RE 4; Paribeni, DE 2.

Copulare matrimonium (nuptias). To conclude a marriage.

Cordi. An enactment by Justinian, beginning with the word "Cordi" by which the second edition of his Code was promulgated (November 16, 534).—See CODEX IUSTINIANUS.

Cordiculare. Soldiers who received the distinctive military sign, cordicum. They were used as auxiliaries of their military commanders and for secretarial work. Under the Empire higher civil officials also had their cordiculares.—C. 12. 57.

Fiebig, RE 4; Pottier, DS 1; Breccia, DE 2.

Corona. See VENDITIO SUB CORONA.

Corporalia. Corporate, connected with a corpus.—See RES CORPORALIS.

Corporale. (Adv., syn. corpore). See POSSESSIO.

Corporati. Members of a compulsory association (guild) of professional artisans. —See COLLEGIATI.

Leonardi, RE 4, 1645.

Corporis possidere. See POSSESSIO, POSSESSIO NATURALIS.

Corpus. A human body (alive or dead). Corpus liberum = a free person.—See VITIUM CORPORIS.

Corpus. A corporeal thing; it is syn. with res corporalis and opposed to non-corporeal things, to rights (ius, iura). Corpus nummorum = pieces of money, coins, distinguished from a sum of money (summa). Corpus is also used to denote a whole, embracing a number of things, as, for instance, corpus patrimonii = the whole estate, corpus gregis = the whole herd,
corpus servorum = all the slaves belonging to one master. With regard to a union of persons, a corporate body, corpus is syn. with collegium.—D. 47.22.


Corpus. (With reference to the literary activity of a jurist.) Refers to the whole of his writings (e.g., corpus Ulpiani). Syn. universalia scripta.

F. Schulte, Epitome Ulpiani, 1926, 20; idem, History of R. legal science, 1946, 181; Albertino, Studi 5 (1937) 497.

Corpus ex cohaerentibus. (Corpus quod ex pluribus inter se cohaerentibus constat.) A thing composed of several, physically united things of the same or different material, which serves a given economic or social use (e.g., a building, a ship). Through the junction the component parts lose their legal individuality and share the legal situation of the whole. They become property of the owner of the whole. The term universitas rerum, when used for such kind of things, is probably of postclassical origin. Ant. res singularis on the one hand, corpus ex distantibus on the other.—See accessio, ferruminatio, and the following item.

Corpus ex distantibus. An agglomeration of things, physically not united but considered one thing, a unit from the economic and social point of view. The typical example is a herd (grec). Legally such a corpus is treated as a whole and may be, as such, the object of legal transactions (sale, lease) or claims (vindicatio gregis). But the individual things belonging to such a corpus may also be made the object of transactions and claims, without, however, changing the collective character of the whole. Ant. corpus ex cohaerentibus.

Bianco, NDI 4, 371 (s. u. case simplici).

Corpus Hermogenianum. See codex hermogenianus.

Corpus iuris civilis. A collective designation of the Emperor Justinian’s codification, used first in the edition by Dionysius Gothofredus (Godefroy) in 1583. The denomination embraces the institutions, the digesta (or panthea), the codex (codex justinianus) and the novellae. No collective title was given to this codification by Justinian himself. He mentions only once (C. 5.13.1 pr.) omne corpus iuris (the entire domain of law).


Correctores civitatum. Imperial officials supervising the financial administration of certain municipia. In the later Empire, corrector appears as the title of high governmental dignitaries, in particular of provincial governors.

V. Premerstein, RE 4; Cagnat, DS 1; Orustano, NDI 4; Mancini, DE 2.

Correi (conrei). Two or more debtors owing the same debt.—See duo rei.

Leonhard, RE 4 (conreus); Willems, Mdl Cornill 2 (1926).

Corrumpere. To bribe (a judge, an arbitrator, a magistrate); to forge a document (a testament = corrumpere tabulas testamenti, accounts = rationes, a promissory bill = corrumpere chirographum).

Corrumpere album. See album, actio de albo corrupto.

Corrumpere servum. See actio servorum corrupti.

Corruptio (corruptor) servi. See actio servorum corrupti.

Kleinneller, RE 4.

Coruncanius, Tiberius. Consul in 280 B.C. and the first plebeian to be chief pontiff. He is also mentioned as the first jurist who explained the law in public by discussing private cases and giving opinions in legal questions (responsa).

Jörn, RE 4 (no. 3).

Cratinus. A law professor in Constantinople and member of the commission which compiled the Digest.

Cretatio. The election of a magistrate in a popular assembly or the appointment of a magistrate or a pontiff. See magistratus. In the later Empire, creatio is appointment to any public service.—C. 10.68; 70.

Basslof, RE 4.

Credere. To trust, to have confidence in a person as an honest debtor (fides sequi). Hence pecuniam (rem) credere = to lend money (a thing). Pecunia (res) credita is the sum of money (the thing) given in loan. In a larger sense, credere is syn. with mutum dare (i.e., to lend money) and creditus with mutuum. In a narrower sense, credimus is a loan when the same object is to be returned to the loan-giver, creditor. “A creditor is not only he who lent money but anyone to whom anything is due for any reason whatsoever” (D. 50.16.11), in other words “anybody who has any action, a civil one, an honorary one or an actio in factum” (D. 44.7.42.1).—D. 12.1; C.4.1.—See fraudare.

Leonhard, RE 4.

Creditor. See credere.

Creditor pignerationis. A creditor who received security from the debtor in the form of a pledge (pignus).—See pignus, fructus rei pigneratorae, furbum possessionis.

Rudi, Stu 10 1 (1927) 3.

Creditorum. See credere, ius crediti.

Creditur. It is presumed.—See praesumptio.

Crematio (vivi). Death by being burned. It was already known in the Twelve Tables as a penalty for arson. Syn. esurire, esurendum damnari, igni necari.—See incendiarius.
Cretio. (From cornere.) The earliest form of acceptance of an inheritance (see ADITIO HEREDITATIS) by the heir appointed in a testament. The prescribed formula of the oral declaration of acceptance was “Whereas A appointed me his heres in his testament, I deliberately accept (adeo corneno) (Gaius 2.166). The testator might impose this solemn form as obligatory and disinherit the heir in the case of omission. Normally cretio had to be declared within one hundred days from the time when the heir had notice of his appointment (cretio vulgaris) if the testator did not dispose otherwise. Cretio was formally abolished in a.D. 407.

Leonhard, RE 4; Baudry, DS 2 (s.v. espliation); Solazzi, RendLomb 69 (1936) 978.

Crimen fraudati vectigali. The crime of tax evasion.—See FRAUDARE VECTIGAL, VECTIGAL.

Crimen legis Fabiae. See LEG FABIA, PLAGIUM.

Crimen maiestatis. (Sc. imminutae, laesae, violatae.) A crime “committed against the Roman people and its security” according to the LEX JULIA MAIESTAS (D. 48.4.1.1.). A crimen maiestatis could be committed not only by Roman citizens and not only on Roman territory. Several kinds of wrongs were termed crimen maiestatis: high treason, sedition, criminal attack against a magistrate, desertion, and the like. Under the Principate the term was extended to any offense where the safety of the emperor or his family is involved. In the later period, the term maiestas covered the sphere of PERDUELLIO, hence a distinction between these two crimes can hardly be made. The profession of Christianity was treated as crimen maiestatis.—D. 48.4; C. 9.8.—See LEX CORNELIA DE MAIESTATE, LEX VARIA, LEX APULEIA, OBSES.

Kühler, RE 14; Humbert and Lécrivain, DS 3; Charlesworth, OCD (all s.v. maiestas); Berger, Orb. 663; Anon., NDI 7; E. Pollack, Der Majestätsverdacht im röm. Recht, 1908; Gicert, St storici per l'antichità classica 2-3; Robinson, Georgetown LJ 8 (1919) 14; F. Vittinghoff, Der Staatsfeind in der röm. Kaiserzeit, 1926; P. M. Schias, Offenheit as the state, London, 1928; A. Mellor, Lex conceptiones de crimen politique aux la Rep. rom., 1934; C. A. Brecht, Perduelle, 1938; idem, ZSS 64 (1944) 354; Cranmer, Sem 9 (1951) 9.

Crimen repetundarum. See REPETUNDAE.

Crimen suspecti tutoris. See TUTOR SUSPECTUS.

Crimina extraordinaria. See CRIMINA PUBLICA.

Crimina levia (leviora). Minor wrongdoings which are tried and punished by a magistrate in a simplified procedure (de plano).—See COERITIO, DE PLANO.

Crimina publica. Crimes against the public and social order which were defined by special statutes (leges indicitorum publicorum) and tried in iudicia publica. The pertinent statutes (listed under LEX) settled also the penalties. The prosecution of crima publica started with ACCUSATIO. The procedure was regulated either by the specific statute or by a general one, as the LEX JULIA IUDICIORUM PUBLICORUM. Ant. crima extraordinaria (quae extra ordinem coerentur) are opposed to the crima publica which legibus coerentur. Their repression was introduced by imperial legislation, in a large measure in instructions given to the provincial governors. New kinds of crimes, unknown in the past, were thus submitted to criminal prosecution, and some wrongs previously defined as private offenses (as some kinds of theft, ABIEATUS, STELLIONATUS) were treated as public crimes and prosecuted through public accusation.—D. 47.11.—See IUDICIA PUBLICA, QUAESTIO.
Criminalis. Connected with a criminal matter (crimi-
nalis accusatio, causa). Ant. civilis.

Criminaliter. See CIVILITER.

Crux. A cross. It was used as an instrument for the
eexecution of persons condemned to death (in [ad] crucem damna-
re). Crucifixion was considered the most cruel form of the death penalty. Therefore it was
applied to slaves; hence the term servile supplicium.
Under the Empire crucifixion was also used for Ro-
man citizens, but only in the case of individuals of the
lower class (humiliores) convicted of particularly heavy crimes. It was abolished by Constantine.
A wooden pillar to which slaves were bound to be
flogged was also called crux.

Cubicularius. A groom in the imperial chamber
(cubiculum).—C. 12.5.
Ronowzew, RE 4; Saglio, DS 1; Besta, NDi 4; J. E.
Dunlap, Univ. Michigan Studies, Human. Ser. 14 (1924)
182.

Cubiculum. The bed-chamber of the emperor and the
empress.—See CUBICULARIUS, PRAEPOSITUS SACRi
CUBICULI.

Cesario, DE 2, 1280.

Culleus. A leather sack used for the execution of the
death penalty by drowning the culprit (poema cullei).
The penalty was applied in the case of murder of a
near relative (parricidium).—See LEX POMPELA.

Hitzig, RE 4; Humbert, DS 1; Radin, JRS 10 (1920)
119; Düll, ACDR Roma 2 (1935).

Culpa. (In contractual relations.) A negligence on the
part of a debtor who failed to foresee the conse-
quences of his behavior with regard to the perfor-
manee of the duties assumed in a contract. “There is
no culpa if everything was done that a very careful
man should have done” (D. 19.2.25.7). The responsi-
bility of the debtor for his culpa is not settled in a
uniform way for all kinds of contracts. There is
no general rule in this respect, although some under-
lying ideas are not lacking, such as the liability for
culpa of a contracting party who has received profit
from a transaction (utilitas contrahentis) or in con-
tractual relations governed by good faith (bona fides).
Among those responsible for culpa were artisans and
experts who took on a piece of work and afterwards
proved lacking in the necessary professional knowl-
dge (imperitia). On the other hand, in actions in
which condemnation would have rendered the de-
fendant infamous, his culpa is not taken into con-
sideration. “In contracts we are liable sometimes
only for dolus (fraud), sometimes also for culpa”
(D. 13.6.5.2). The whole question of liability for
culpa in the Roman contractual law is among the
most crucial points in the literature, primarily because
of the manifold changes introduced into classical texts
by Justinian’s compilers, guided by the tendency to
increase the debtor’s responsibility, and because of
the absence of precise classical definition of various
more or less technical terms in this domain, such as
custodia, diligentia, neglegentia. In spite of a copious
literature on the problem, the opinions of scholars are
still divergent in fundamental points.—Culpa in crimi-
nal offenses or wrongdoings harmful to others is not so
problematical. In some instances it means simply a
fault of the guilty wrongdoer for which he is held
responsible. As to private wrongs (crimina privata,
delicta), culpa as negligence (“when a man failed to
foresee what a careful [diligens] man would have
foreseen,” D. 9.2.31) it is scarcely conceivable in
many cases (theft, robbery). In damage to property
damnum) a negligent behavior (carelessness) was
taken into consideration and the jurists frequently
dealt with cases of this kind. With regard to damage
to property (see LEX AQUILLA) Justinian extended
the liability of the wrongdoer to the “slightest negli-
gence” (culpa levissima, D. 9.2.44 pr.). Crimina pub-
lica were punished only when the offender acted in-
tentionally (sciens dolo malo); negligence remained
without penalty. Where, in a later development, culpa
was held to deserve a penalty, the latter was a
minor one. Among such instances of punishable
negligence were acts committed under a sudden im-
pulse (impetus) or in a state of intoxication (ebrietas,
per vimnum).—Although in delictual matters culpa
appears in a somewhat different light from that in
the contractual sphere, the conception that culpa is
something intermediate between dolus (dolus malus =
evil intention, fraud) and casus (accident) is com-
mon to both domains.—See DOLUS, CASUS, IMPERITIA,
NEGLEGENTIA, CUSTODIA, DELICITIA, and the
following items.

Leonard, RE 4; Baudry, DS 1; De Medici, St Fadda 2
(1906); idem, BIDR 17, 18 (1905-1906); Kübler, Das
Utilitatsprinzip. Fg Gierke, 2 (1911) 256; Gradenzwitz,
ZSS 34 (1914); Binding, ZSS 39 (1919); K. Heldrich,
Verbrechen beim Vermoehnungsverfahren 1924; Kübler, Rechts-
ideen und Staatsgedanken (Pachr Binder, 1930), 63; Arango-
Ruiz, Responsabilidad contractual, 2nd ed. 1933:
Vazny, ACII 1 (1935) 345; Kübler, Les degrés de faute, Etudes
Lambert 1 (1938); Pflüger, ZSS 65 (1947) 120; Braziello,
SDHI 12 (1946) 148; Condonnier-Michler, Ser Ferroni 3
(Univ. Sagro Cuore, Milan, 1948) 28; Marton, RIDA 3
(= Ml De Vezcher 2, 1949) 182; Visly, ibid. 437; F. H.
Lawson, Negligence in the civil law, 1950, 36.

Culpa in concreto. (A term unknown in Roman juris-
tic language.) Occurs when a person does not apply
the same care (diligentia) in the interest of his
creditor which he observes in his own matters (dili-
genla quae sui). Such degree of attention is re-
quired of a partner in a societas, of a guardian in the
administration of the ward’s affairs, and of a
husband in the administration of the dowry.

L. Sertorio, La c. t. c., 1914.

Culpa in eligendo. Negligence involved in choosing
an inappropriate person for a work which someone
assumed to do. Under certain circumstances the
person who made the negligent choice was responsi-
ble for the damages caused by the unskilled workman
(particularly in locatio conductio operis faciendi).
Culpa in faciendo. A negligent doing which caused damage to another’s property or body. Ant. *culpa in non faciendo = negligent omission.*

Culpa lata and culpa levis. These constitute a distinction according to the gravity of the negligence. There are no specific criteria, the estimation of the degree is left to the judge. “*Culpa lata is an immoderate negligence, i.e., not understanding what all understand*” (50.16.213.2). *Culpa lata* (also called *culpa latior or culpa magna*) is considered equal to dolus (D. 50.16.226). Ant. *culpa levis,* a lower degree of *culpa,* is called once, in connection with the *les Aquilia,* *culpa levissima* (D. 9.2.44 pr.).

De Medio, Binding, *il cc. under culpa*; Lenel, *ZSS* 38 (1918) 263.

**Cum re. See bonorum possessio cum re.**

Cunabula (*juris, legum*). Basic principles, elements of the law.

Cura (*curatio*). Appears as a technical term both in public (administrative) and private law. In the first domain *cura* embraces the duties of public officials connected with various branches of administration, in the second field it comprises duties of private individuals to protect the interests of private individuals who because of physical or mental defects, youth or absence, cannot take care personally of their affairs. The *cura* in private law, known already in the Twelve Tables, is similar to guardianship (*tutela*). The differences which had existed originally between the two institutions as far as the rights and duties of the tutors and curators were concerned, were gradually abolished; in postclassical and Justinian law the equalization is completed, in a large measure through the insertion of *cura* into texts which originally dealt with *tutela.* Persons entrusted with *cura* are called *curatores,* both in public and private law. In the following entries the *curae* of the private law are listed under *curator,* those (more important) of the public law under *curatores.*—Inst. 123; D. 26.7; 27.5; 7; 9; 10; C. 5.31–34; 36–49; 57; 60–69. See EXCEPTIO CURATORIA.

Kornemann, RE 4; Leonhard, *ibid.* 4; Théodori, *DS* 1; Anon., *NDI* 4; Solazzi, *NDI* (s.v. *tutela*) 12; De Ruggiero, *DE* 2.

**Cura annonae. The care for corn supply.** Under the Republic the aediles were responsible for the *cura annonae* and all matters pertaining to it (regulation of prices, prevention of monopolies, supply of corn to the troops in Italy, and the like). Their administration was often a failure and created catastrophic situations. Augustus reorganized the whole matter of provisioning of Rome by the creation of a new office under the direction of the *praefectus annonae.*—See ANNONA.

Humbert, *DS* 1.

**Cura minorum. See curator minoris, minores.**

Cura morum. The supervision of public morals. The term corresponds to the *regimen morum* of the censors under the Republic. It is particularly connected with Augustus and his “care for law and morals” (*cura legum et morum*).


Cura prodigi. See CURATOR PRODIGI, PRODIGUS.

Curatio. Syn. with CURA, in both private and public law.

Curator adiunctus tutori. See CURATOR IMPUGERIS.

Curator bonorum. The administrator of the estate of an insolvent debtor. He was appointed in certain cases only when the creditors, who were granted possession thereof (*missio in possessionem*), had no right to sell it (e.g., the heir being a *pupillus*), absent in the interest of the state, or a prisoner of war). A *curator bonorum* was also appointed when it was uncertain whether there would be an heir or not. His duty was to protect the estate from losses.—D. 42.7.

G. Solazzi, *Concursus dei creditors* 2 (1938).

Curator collegii. A leading functionary in professional, religious and other kinds of associations. If there was a *magister collegii* (a chairman), the *curator* was his deputy. His functions depended upon the character and aims of the association.

Kornemann, RE 4, 122.

Curator distrathendorum bonorum gratia. See dissociatio bonorum.—See CLARA PERSONA.

Curator furiosis. A *curator* of an insane person of whom it is said: “he cannot make any transaction because he does not understand what he is doing” (D. 50.17.5). The *curator* took care of the person and administered the property of his ward. He could be appointed by the father of the lunatic in a testament; if there was no testamentary disposition, the nearest agnate was, according to the Twelve Tables, entitled to assume the *cura furiosa.* When the curatorship was ended the *curator* could be sued in an *actio negotiorum gestorum* for bad management of the ward’s patrimonial affairs.—D. 27.10; C. 5.70.—See FURIOSUS, IUDICUM CURATIONIS.

De Francisci, *BIDR* 30 (1921) 154; Guarino, *SDHI* 10 (1944) 374.

Curator impugeris (pupilli). Wards who had a guardian (*pupillis*), in exceptional cases could have (besides the tutor) a *curator,* appointed by a magistrate at the request of the guardian and at the latter’s responsibility (*curator adiunctus, actor, adiutor*). This occurred when the tutor was old or permanently ill—which was not a ground for his removal—or when the property of the *pupillus* was large and located at distant places. In Justinian’s law the *curator adiunctus* became an autonomous institution; he was appointed by an official and the tutor was not responsible for his assistant’s activity.—D. 27.10.—See IMPURES, PUPILLUS.

Sachers, RE 7A, 1526; R. Taubenschlag, *Vormundswirtschaftsrechtliche Studien,* 1913, 47; Solazzi, C. i., 1917.
Curator minoris. A *curator* of a minor (a person under twenty-five) *su iuris*. Originally appointed for specific matters in order to protect the interests of a child not yet born.—See *Venter, nasciturus, conceptus.—D. 37.9.*

**Anon.** NDI 4; Solazzi, RISG 54 (1914) 277.

**Curatores.** (In public law.) Commissioners entrusted with certain branches of the administration. Augustus appointed several *curatores* and charged them with the administration or supervision (*cura, curatio*) of public institutions and works which under the Republic were assigned to *quaeestors* and *aediles*, such as public roads (*curatores viarum*), aqueducts (*curatores aquarum*), public buildings (*curatores operum publicorum*) and property of the Tiber (*curatores alii et riparum Tiberis*). Curatores were active also in municipalities.—See *Magistri*, *Procuratores* and the following items.

Kornemann, RE 4; Sacchi, NDI 4; De Ruggiero, DE 2; Thédenat, DS 1, 1621.

**Curatores aedium sacrarum.** *Curatores* of imperial buildings.—See *Subcurator.*

Kornemann, RE 4, 1787.

**Curatores alvei Tiberi.** See *Curatores.*

Thédenat, DS 1, 1623.

**Curatores annonae.** See *Curia annonae.*

**Curatores aquarum.** *Curatores* of aqueducts and administrators of the water supply.—See *Subcurator.*


**Curatores civitatis.** See *Curatores rei publicae.*

**Curatores civium Romanorum.** See *Conventus civium Romanorum.*

**Curatores frumenti.** See *Praefecti frumenti Dandi.*

**Curatores kalendarii.** See *Kalendarium.*

Kornemann, RE 4, 1805.

**Curatores ludorum.** *Curatores* for extraordinary games (*ludi*) given by the emperor to the people.

Kornemann, RE 4, 1796.

**Curatores operum publicorum.** Officials for the management of public buildings (administration, lease, construction, contracts with contractors, etc.). Their competence was sometimes extended to other public institutions which found expression in their official title, appropriately enlarged.—See *Subcurator*, *Opera publica*.

Kornemann, RE 4, 1787, 1802; Thédenat, DS 1, 1622.

**Curatores praesidi.** Administrative officers in military garrisons.


**Curatores regionum.** See *Curatores urbis Romae.*

**Curatores rei publicae (civitatis).** Officials in Italian cities appointed by the emperor for the supervision and administration of municipal finances. They had jurisdiction in matters connected with the financial administration and intervened in transactions concerning municipal property. In the later Empire their competence appears somewhat diminished as a result of a general centralizing tendency in the administration of the state.

Kornemann, RE 4, 1806; Lacour-Gayet, DS 1, 1619; Mancini, DE 2; Liebenam, *Philologus* 56 (1897) 290; Lucas, JRS 1940, 56; Cassarino, ACat 2 (1948); A. Lécrivain, *Le c. r. p*, 1920; D. Magie, *Rom. rule in Asia Minor* 2 (1950) 1454.

**Curatores urbis Romae.** Officials who took care of the districts (*regiones*) of the city of Rome.—See *Regiones urbis Romae.*

**Curatores viarum.** Officials charged with the maintenance and supervision of public roads (*cura viarum*). Primarily the adjacent communities had to
contribute funds and labor for constructing and repairing the roads. But the state treasury and the imperial fisc made also considerable contributions. There were also special curatores for larger roads, as curatores viae Apia, Flaminia, etc.

Kornemann, RE 4, 1781; Chapot, DS 5, 788.

Curiae. The earliest units, probably based on a territorial principle, into which the Roman people was divided. There were originally thirty curiae, ten in each tribus. It seems that in the original stage only patricians belonged to the curial organization; later the plebeians were admitted. The political character of the curiae manifested itself in the COMITIA CURIATA in which each curia had one vote. Their purpose was also military, since each of them had to contribute one hundred men for the infantry and ten for the cavalry. A land plot was assigned to the curia for common use. The leader of a curia was the curio, the head of all curiae was the curio maximus, originally perhaps identical with the king. A flamem curialis took care of the common worship and religious matters of the members of the curiae. For curiae in the later Empire, see ORDO DECURIONUM.

Kähler, RE 4; Momigliano, OCD; Lacour-Gayet, DS 1; Gervasio, DE 2; Besta, NDI 4.

Curiae municipiorum. The citizens of the municipalities (municipes) were organized in groups called curiae or tribus. Curia is also the council of administration, the senate, of a municipium (syn. ordo decurionum), and the building in which the council held its sessions.—See ORDO DECURIONUM.

Gademet,juris 2 (1951) 44.

Curiales. Members of a municipal council (curia, ordo decurionum) in the later Empire. Syn. decuriones.

—C. 3.25; 10.22.

Gademet, Jurs 2 (1951) 44.

Curiana causa. A famous trial (clarissima causa) before the centumviral court dealing with a case of a substitutio ppullaris for a son whose birth was expected but did not materialize. The case in which the jurist Q. Mucius Scaevola appeared for the heirs on intestacy, is mentioned in several writings of Cicero.—See CENTUMVIRI.


Curio. See CURIA.

De Ruggiero, DE 2.

Curiosi. See agentes in rebus.—C. 12.22.

Humbert, DS 1, 1667; Hirschfeld, StBer 39, 1 (1891).


Curus honorum. The order in which the Republican magistracies had to be held by a Roman citizen to make him a capable candidate for a higher magistracy. The lowest degree in the magisterial career was the questorship which was followed by the aedilship and praetorship. The consulship was the top magistracy. Censorship did not belong to the cursus honorum. Syn. ordo magistratum. In the Empire there was not a fixed cursus honorum, either in the senatorial or equestrian career, since the emperor had full liberty to confer official titles on persons who never before had been in service (see ADLECTIO).—See LEX CORNELIA DE MAGISTRATIBUS, LEX VILLIA.

Kähler, RE 14, 405.

Cursus publicus. The official postal service organized in the early Principate for the transportation of official personages or of things in the interest of, or belonging to, the State or the emperor, or connected somehow with the administration. It served also for the official correspondence with the rest of Italy and the provinces. Reorganized by Hadrian, who charged the fisc with its supervision, the postal service was again reformed by Diocletian and his successors and became a compulsory service (missus) shouldered by landowners and wealthy people who had to contribute in various ways to a proper functioning of the institution.—C. 12.50.—See CURSUS VELOX, AGENTES IN REBUS, ANGARIA, DIPLOMA, EVECTIO. MANIO. PARAN- GARIA, VEREDI, PRAEFFECTUS VECULORUM.


Cursus velox. Fast post-service (see CURSUS PUBLICUS) to be distinguished from cursus clabularis (from clacula = a heavy carriage) for the transportation of food and luggage for soldiers.

Curulia. Refers to magistrates who had the right to seat on a SELLA CURULIS during their official activity. See MAGISTRATUS, AEDILES CURULES.

Custodes. An ancient Latin term, syn. with custodia. It appears in the form prescribed for the testamentum per aequo et liberum. The FAMILIAR EMPER assumed the custody of the hereditary things. The custodes is a counterpart to a likewise ancient term mandatae, used in the same formula and indicating the wish (order) of the testator concerning the distribution of the inheritance.

Weiss, ZSS 42 (1921) 104.

Custodes corpora. Bodyguards of the emperor and of high military commanders in peace as well as in war.—See EQUITES SINGULARES.


Custodia. Custody, safe keeping, watching. The term appears in connection with the responsibility of the debtor in some specific contracts. It belongs to those not precisely defined and oscillating expressions concerning contractual responsibility (see CULPA), which through manipulations of the compilers of the Digest became nebulous. Moreover, the custodia itself is sometimes accompanied by adjectives, such as dili-
the culprits were held in prison for the execution of the sentence.—D. 48.3; C. 9.4.—See CARcer.
Berger, OCD (s.c. prison).

Custodire partum. See INsPiceRcE vEntREM.

Custos. A jailer. See custodiA ReguM. Prisoners who escaped from jail profiting by the negligence of the custodes received a milder punishment than those who broke out by their own efforts (effractores) or in conspiracy with other prisoners.

Custos. (In a traditio.) The buyer of a larger amount of merchandise could appoint a custos (= a guard, an attendant) before taking it away. The delivery of the things (traditio) was considered fulfilled by such appointment, and the seller was free from any risk.

Ricobono, ZSS 34 (1913) 200.

Custos iuris civilis. Title given the praetor by Cicero.

Custos urbis. Refers to the praefectus urbi.
KeMe, RE 4, 1903; Humbert, DS 1.

Custos ventris. See sEnatuscoNsultum pLaNCiANUM.

Cyrillos. See Kyrillos.

D

D. Abbreviation for damno (= I condemn), see A.

Damnare. To condemn a defendant in a civil trial (see conDEMNatio) or an accused in a criminal proceeding. In the latter meaning the term is mostly used of a condemnation judgment for crimes punished by death (in crimine capitali). With reference to testamentary dispositions damnare = to impose upon an heir or legatee the duty to perform a service or a payment to the benefit of a third person.

Damnare ad bestias. See bestiS GRicicE.

Damnare in metallum (metalla). See MEtalLUM.

Damas. Occurred in the form of a legacy called legatum per damnationem: h compr tuogra damnas esto dare (= my heir shall be obliged to give).—See legatum per damNationem.
Thomas, RHD 10 (1931) 211.

Dammatio. See DamnARE, CONDEMNatio.

Dammatio in ludum. See luDi GLADiatori, GLADiatOErs.

Dammatio memoriae. A disgrace inflicted on the memory of a person (memoria damnata) condemned to death and executed, or dead before the criminal prosecution was finished. Only crimes against the state, such as treason (maieitis, perdueUio) brought about this ignominia post mortem, the extinction of the memory of the individual thus stigmatized. His name was canceled on documents and destroyed on monuments; his last will and donations mortis causa lost validity. The damnatio memoriae was also applied to emperors, whose conduct was unworthy,
during their lifetime or posthumously. The pertinent decree was issued by the senate.
Braszoff, RE 4; Baldus, OCD; Orestano, BIDR 44 (1937) 327; Vittinghoff, Der Staatsfried in der röm. Kaiserzeit. Untersuchungen zur damnum memoriae, 1936.

Dammatus. Condemned in a criminal trial for a crime calling for capital punishment.—D. 48.20; C. 4.49.—See bona damnatorum.

Damosus. Threatening (involving) loss. In relations between neighbors the term indicates a defective building which may damage the neighboring property.—See damnum infectum.

Dannum. A loss, expenditure, suffered by the victim of an offense, particularly a loss ensuing for the owner of a thing from a damage done thereto. “He who suffered damage through his own fault is not considered to have sustained damage” (D. 50.17.203). Responsibility for damages inflicted on another’s property is either contractual (resulting from duties assumed in a contract) or delictual resulting from a tort, a wrongful act (delictum) committed by an offender.—See communicare, nemo damnum facit, sarcire.

Leonhard, RE 4; Baudry, DS 1; E. Levy, Privatstreit und Schadensersatz, 1915; Thomas, RHD 10 (1931) 211; Ratti, BIDR 40 (1932) 109; P. Voci, Rischieramento del danno e processo formale, 1938, 19: idem, St Ferrini 2 (Univ. Sacro Cuore, Milan, 1947) 361; Deube, On the use of the term d., St Solazzi, 1948, 93.

Dannum decidere. To come to terms concerning the damages to be paid by the offender to the person who sustained a loss.

Deube, St Solazzi, 1948, 99.

Dannus emergens. A real factual loss which one suffers in his property, a loss which can be evaluated in money (pecuniary loss). Ant. lucrum cessans = a loss of a reasonable profit. Both terms do not belong to the Roman juristic language, but the distinction between two kinds of losses is classical.

P. Voci, Rischieramento del danno, 1938, 63.

Dannum fatalis. A damage done by an unavoidable accident (vis maior).

Dannum infectum (or nondum factum). A damage not yet done but threatening one’s property by the defective state of a neighbor’s property. Originally the owner of the threatened property had against his neighbor an actio damni infecti (which even after the introduction of the formulary procedure was conducted in the form of legis actio). Later praetorian law introduced specific remedies, see cautio danni infecti, missio in possessionem danni infecti nomine.—See vittum aedium, denuntiatio damnorum.

Baudry, DS 1; Coo, DS 5, 933; Branca, St Ratti, 1934, 161; idem, Damno temuto, 1937; M. F. Lepri, Missione in possessionem, 1939, 90.

Dannum inulia datum. See lex aquilia.

Dannum praestare. To make good the loss incurred by a person whose property was damaged.—See sarcire, resarcire.

Dardanarius. A merchant in corn and other kind of food who through illicit machinations raised the prices or used forged weights.

Rostowzew, RE 7, 142.

Dare. To give, hand over a thing for the purpose of making the receiver the owner thereof. This is the general meaning when a contractual obligation concerned a dare. The contents of the term might be limited by the indication of a minor purpose, as, e.g., pignor are dare (= to give as a pledge), utendum dare (= to give for use), precario dare (= to give as a precarium).—See contractus in nominati.—Dare, in criminal trials, connected with a sentence, in phrases as dare in metalla, ad bestias, in extirsum, etc. = to condemn.—Dare in the meaning of “to appoint” refers to the appointment of a tutor or curator by a magistrate or a private person or of a representative or agent for one’s private affairs. Dare bonus rem possessionem refers to the praetorian act of granting a bonorum possessionem.—See the following items.

Grosso, In materia di obbligazioni di dare, SDHI 6 (1940); F. Pastori, Profilo dogmatico dell’obbligazione rom., 1951, 118.

Dare actionem. To grant an action. The praetor ”gives an action” in cases where the ius civile refused it. In a larger sense dare actionem (or iudicium) is the praetor’s approval of the formula agreed upon by the parties. Ant. denegare actionem (= non dare actionem). Syn. reddere actionem.—D. 44.5.

P. Kröger, ZSS 16 (1895) 1.

Dare iudicem. To appoint a judge in a civil trial.—See iudex.

Datio. An act of giving (dare). It applies to all meanings of dare (datio tutoris, bonorum possessionis, iudicis, pignoris, etc.).

Datio dotis. Constitution of a dowry by immediately handing it over. Datio dotis is also the term employed for the delivery of things promised as a dowry by dictio, promissio or peciusiicii dotis.

Datio in solutum. The payment of a thing other than that which originally was due to the creditor who accepts it as a discharge of the former obligation. The creditor was not obliged to do so. Only in Justinian’s law a debtor who had no cash at his disposal could offer payment in immovables at a fair price.

H. Steiner, D. i. s., 1914; De Francisci, L’imposizione della res data i. s., 1915; Solazzi, RendLomb 61 (1928) 341; M. Ricca-Barberis, L’imposizione della i. s., RIG 6 (1931) 3; S. Solazzi, L’estinzione dell’obbligazione, 2nd ed. 1935, 161.

Datio tutoris. See tutor dative.

De actionibus. A dissertation written in Greek (peri agogon), of pre-Justinian origin and dealing gen-
eraly with various more important actions. It is rather the work of a practitioner than of a scholar.

Editions: G. E. Heimbach (Jr.), Observationes urbis Graeco-Romanun 1 (1830); Zachariae, ZS5 14 (1893) 88; J. and P. Zepos, Jus Graeco-Romanum 3 (Athens, 1931) 301.—Ferrini, Opere 1 (1929) 365; G. Segré, Mé1 Girard 2 (1913) 543; Brugi, Annuario dell'Istituto di storia del dir. rom. Catania 13-14 (1914-15); P. Collinet, La procedure per libelle, 1932, 501; Scheltema, TR 17 (1940) 420.

De gradibus (cognationum). A dissertation on the degrees of cognatic relationship, written by an unknown jurist, probably of the classical period.

Editions: in all collections of Fontes, see General Bibliography, Ch. XII.—Berger, RE 10, 1192; Scherillo, StCagl 18 (1931) 65.

De peculiis. A Byzantine dissertation, called not quite appropriately Tractatus de peculiis in the literature. Written about the middle of the eleventh century it deals with various topics connected with the reciprocal acquisitions and rights of succession of father and son, of some kinds of peculium and the like. The unknown author who is quite familiar with Justinian’s legislation, the post-Justinian legal literature as well as with the basilica, is particularly interested in the son’s acquisitions on which the father has only a usufruct.


De plano. In matters of minor import the magistrate acted more informally, “from the level” “out of court,” without any preceding causae cognitio, either personally or through officials of his bureau acting under his supervision. The proceedings were public and there was no platform (tribunum) for the acting officers. Ant. pro tribunatu.—See crimina levia.

Dull, ZS 52 (1932) 170; Wengler, loc. cit. 59 (1932) 62; 62 (1942) 366.

Debere. To owe, to be under an obligation to pay a sum or to perform something, an obligation of a contractual or delictual origin which was suable at its civile or its praetorium.—See debetur, debitor.

G. Segré, St Bonifate 3 (1930) 524.

Debtor. A debtor, “he from whom money may be exacted against his will” (D. 50.16.108). Therefore a debtor is not he who “has a just exception against the creditor’s claim” (D. 50.17.66). Syn. reus debendi. Ant. creditor.—See debere.

Debtor civitatis (reipublicae). A debtor of a civitas or municipality. He could not obtain any honorary position (honour) until he paid his debt. Such debtors were subject to special executory measures.—C. 11.33; 40.

Debtor debitoris. A debtor’s debtor.—C. 4.15.

Debtor fisci. A debtor of the fisc. Imperial legislation established special rules for the execution of fiscal claims.—C. 10.2.

Debtor reipublicae. See DEBITOR CIVITATIS.

Debitum. Both the object of the obligation (id quod debetur = what is due) and the obligatory tie between debtor and creditor. Ant. indebitum.

Humbert, DS 2.

Decanus. A low ranking officer in a legion, commander of a unit of ten soldiers (contubernium). A decanus at the imperial court was an official of a lower rank in the service of the empress.—C. 12.26.

Fiebiger, RE 4; Seek, ibid. 2246 (no. 2).

Decedere de possessione. To give up, to abandon possession.—See missiones in possessionem.

Decemprima. (Also decemprimi curiae.) A group of ten persons selected from the members of a larger body (the senate under the Republic where the decemprimi were the heads of the senatoral decuriae, municipal senates, sacerdotal colleges). They enjoyed special privileges. In the military hierarchy of the later Empire decemprimi occupied a privileged position in the military unit attached to the imperial palace (domestici).

Brandis, RE 4; Humbert, DS 2.

Decemvirales leges. See lex duodecim tabularum, decemviri legibus scribundis.

Decemviri agris dandis assignandis. See triumviri coloniae deducentae.

De Ruggiero, DE 2, 430.

Decemvir legibus scribundis. A commission composed of ten persons appointed in 451 B.C. for the codification of laws. They continued their work in the following year. During the two years of their work, the activity of all magistracies was suspended and the decemviri assumed the governmental functions vested in the consular imperium.—See lex duodecim tabularum, virginia.

Kübler, RE 4, 2257; Berger, RE 44, 1905; Momigliano, OCD; Humbert, DS 2; Moschella, NDI 4.

Decemviri sacris faciundis. See duoviri sacris faciundis.

Decemviri stilitibus iudicandis. Originally minor judicial magistrates (see vigintiseptviri), they became later chairmen of the judicial courts formed within the tribunal of the centumviri.

Humbert, DS 2; Kübler, RE 4, 2260; Vaglieri, DE 2; M. Nicolau, Causa liberalis, 1933, 16.

Decernere. To issue a decree (decretum) when applied to the senate; to decide a judicial matter when applied to a decision of a magistrate or the emperor. —See decreta.

Decensor. A predecessor in office. A provincial official whose successor in office had already been appointed, was required to remain in service until the new incumbent arrived in the province. Ant. successor.—C. 1.49.

Decidere. To decide about a judicial matter by judgment (see decisiio); to settle a controversy by a transaction between the adversaries or by an oath.—See transactio, iusutandum voluntarium.

Decidere damnun. See damnum decidere.
Decima. One-tenth. One-tenth of the estate was the part which according to the Augustan lex Julia et Papia Poppaea one spouse could take when the other died intestate. An increase of this tenth part by further tenths was permitted in proportion to the number of children. The pertinent provisions (decemvariae sc. leges) were abolished in A.D. 410.—C. 8.57.
Decius. See DECIUS, QUINOGAGIITA DECISIONES.
Declamare. To declare (e.g., voluntatem = one's will). With reference to judicial judgments = to establish a specific legal situation (ownership, a servitude).
Decoctor. (From decoquere.) An embezzler or a bankrupt, whose property was sold through honores venditio. In a later trial he was obliged to give a caustus indicatum solvi (a security for the payment of the judgment debt).
Decretae. See DECERNERE, BONORUM POSSESSIONI DECERTALIS, and the following items.
Decretae decurionum. Decrees issued by the municipal senate (ordo decurionum) on various matters. They could not be rescinded unless public utility required such a measure.—D. 50.9; C. 10.47.—See DECRETA MAGISTRATUM.
Decreta Frontiana (Frontiniana). A juristic work (collection of decisions of the imperial court?), attributed to the jurist Titius Aristo.—See ARISTO.
T. Mommsen, Jw. Schriften 2 (1905) 22.
Decreta magistratuum. Orders of the magistrates of a judicial (interdicta, missiones in possessioem, or concerning bonorum possessionem) or administrative character (imposition of fines, multiae, or ordaining a pignoris capio) to enforce compliance with their ordinances. In matters concerning guardianship or curatorship decreti are very frequent. Decreta are issued after causae cognito and pro tribunali. The decretae of provincial governors had a similar character.—C. 5.72.—See IN INTEGRUM RESTITUTIO.
Hesky, RE 4; De Ruggiero, DE 2; Jobbé-Duvial, St Bonifaci 3 (1930) 165.
Decretae principium. Imperial enactments (decrees) issued by the emperor in the exercise of jurisdiction in civil and criminal matters, both as final judgments and as interlocutory decisions during the proceedings. They rank among the imperial constitutions and had some importance, although no binding force, in similar future cases inasmuch as they could be considered and applied as precedents. When published by order of the emperor they acquired general validity as the edicts of the emperor.—See CONSTITUTIONES PRINCIPIUM (Bibl.).
Decretum divi Marci. A decree of the emperor Marcus Aurelius forbidding creditors to take arbitrarily away things or money due from their debtors, without resorting for help to the competent authorities. "Creditors should claim what they believe to be due to them through the intermediary of a judge" (D. 4.2.13). A creditor who contrary to that decree proceeded on his own with force against the debtor lost his claim.
Decumana. The tenth part (pars decumana) of natural produce paid in kind (corn, wine, oil) as a rent or property-tax in Italy and provinces.
Liebmann, RE 4; Humbert, DS 2; Kaiser, ZSS 62 (1942) 61; De Ruggiero, DE 2; L. Clerici, Economia e finanze dei Romani, 1 (1943) 477.
Decuria. A group (unit) of ten men. In ancient times, the decuria had a military and political character, since the curia, into which the oldest tribus were divided (altogether 30 curiae), were composed of ten decuriae, each of them with ten men. Decuriae were also the smallest units in the cavalry. The Roman senate had also its decuriae (oi ten men) and preserved this name afterwards when its decuriae were groups of one tenth of the whole number of the senators. Finally, professional corporations and those of subaltern officials as well, were divided in decuriae, often with more than ten members. Imperial constitutions of the fourth century deal with various decuriae of officials in the city of Rome (decuria urbis Romae), such as fiscal clerks (fiscales), scribae (librarii = copyists), cenacales (= tax assessment clerks).—C. 11.14.—See the following items.
Kühler, RE 4; Humbert, DS 2; Bellino, DE 2; Moschella, NDI 4.
Decuria lictoria. See LICTORES.
Decuriae apparitorum. Associations of apparitors, organized in decuriae. They were granted some rights as corporate bodies (inheriting, holding and manumitting slaves).—See DECURIALES.
Decuriae indicum. Groups of jurors (of 300 each?) in the list of persons qualified for this service. Originally there were three decuriae, of senators, equestres and tribuni aerarii, respectively. The first to be eliminated were the tribuni aerari; then Augustus removed the senators after which the equestrian class alone functioned as judges. The number of decuriae indicum increased to five.
Kühler, RE 8, 299.
Decuriae senatus. See DECURIA.
Decuriales. Members of decuriae in private corporations or of associations of subaltern officers (decuriae apparitorum).
De Ruggiero, DE 2.
Decurio. The commander of a small cavalry unit, decurio.—See TURMA.
Mancini, DE 2.
Decurionatus. The office of a decurio.—See DECURIONES, ORDO DECURIONUM.
Decuriones. Members of a municipal senate (ordo decurionum) elected for life. Vacant posts were filled at five-year intervals. Eligible were former municipal magistrates with a census of at least one hundred thousand sesterces. Persons of particular
worth to the municipium and its protectors (patroni municipii) residing in Rome were honored by membership in the municipal senate. The decuriones decided about all matters involving the interests of the community, appointed local magistrates, and functioned as a court of appeal on fines imposed by municipal officers.—D. 50.2; C. 10.32; 33; 35; 12.16.

—See ORDO DECURIONUM, DECRETA DECURIONUM, ALBUM CURLAE, DUAE PARTES.

Kübler, RE 4; Kornemann, RE 16, 621; Humbert, DS 2; Mancini, DE 2, 1515; Gaudemet, Juris 2 (1951) 44.

Decuriones pedanei. Members of the municipal senate who had not been municipal magistrates before. They were appointed by duoviri (or quattuorviri) iuris dicundo to seats which became vacant because of the death of a decurio or his removal, as the result of a condemnation in a criminal trial.

Mommsen, Jw. Schriften, 3 (1907) 38.

Dedere noxae. See NOX.

De Visscher, Naturalis, 1947, 400 and passim.

Dedere se hostis. To surrender to the enemy in the course of a war.—See DEDITIO, DEDITICII.

Dedicatio. A religious ceremony by which an object (a temple or an altar) was consecrated to gods. Solemn words were pronounced on such an occasion by a pontiff and sometimes by a magistrate, in conformity with the statute or decree of the senate by which the consecratio was ordained (LEX DEDICATIONIS).—See RES SACRÆ, LOCUS SACER, DUOVIRI AEDIC DEDICANDÆ.

Wissowa, RE 4; Pottier, DS 2; De Ruggiero, DE 1, 144; 2, 1553; S. Brassloff, Studien zur röm. Rechtsgeschichte, 1925; Paoli, RHD 24-25 (1947) 183.

Dediticii. The citizens of a foreign state or community who, vanquished in a war with Rome, surrendered to the power and protection of Rome (deditio). They constituted a specific group of the Roman population; they were free but lacked all public rights and citizenship (nullius civitatis). Their legal status as peregrini dediticii could be improved by unilateral concessions granted by Rome to individuals or groups. But even the general grant of Roman citizenship to peregrines by the constitution of the emperor Caracalla excluded the dediticii. The status of dediticii, termed by Justinian Dediticia libertas, was abolished by him (C. 7.5.1).—See CONSTITUTIO ANTONINIANA (Bibl.), DEDITIO, DEDITICII EX LEGE AELIA SENTIA.

Sherwin-White, OCD; Schulten, RE 4; Gayet and Humbert, DS 2; Moore, Arch. f. lat. Lexikographie, 11 (1900) 81; G. Moinier, Les peregrines dediticii, 1930; G. Bozoni, La const. Antoniniana e i d., 1933; Stroux, Philologus 88 (1933) 287; Monigllo, Ann. Scuola Norm. Superiore di Pisa Ser. 2, v. 3 (1934) 361; Luzzatto, SDHI 2 (1936) 211; A. d'Ors, AHDE 15 (1944) 162; Bell, JRS 37 (1947) 17; Tsherikover, Jw. juristic Papyrology 4 (1950) 203; Schönbauer, ibid. 6 (1952) 17.

Dediticii ex lege Aelia Sentia. Slaves who had been found guilty of a crime, had been put in bonds by their masters by way of punishment, or had been handed over to fight with men or beasts, could become free through manumission, but they obtained free-
Deductio ususfructus. A mode of constituting a usufruct on behalf of the owner who transfers his property to another (deuctio usufructus) or of a legatee in a testament. Syn. with deducere are detractare, excipere.

Humbert, DS 2; U. v. Libson, Schenkungen der Eltern, 1949, 34; D’Orsi, Fischers Recht 1 (1951) 270; Samphilipp, Ann. 4 (1950) 152.

Defectus conditionis. See CONDICTION DEFICIT.

Defendere. To defend one’s own (defendere proprium causa) or another’s matter (defendere aliam causam, for instance of an absent person) in court. Defendere another means “to do what the principal would do in the trial and to give appropriate security (causa)” (D. 3.3.35.3). A party to a trial who does not fulfill his procedural duties or is not duly represented, is considered indefensus (not defended) and must submit to disagreeable executory measures. Defendere may also refer to the defended object or right (defendere jandum, servitutum, hereditas, possessiones, etc.).—See INDEFENSUM.

Defendente potest. Introduces a legal opinion (= “it may be affirmed”).

Defensio. The activity of defendere oneself or another in a civil or a criminal trial. Defensio is also the procedural means by which one combats his adversary’s claim, an excipere, for instance. “No one of those whose debt is disputed from using another kind of defense” (D. 50.17.43).—Defensio is also the payment of another’s debt.

Watts, I.S.B. 19 (1914) 24; Fremin, St. Romances 4 (1930) 431.

Defensor. A person who defends another’s interests in a trial with or without authorization (defensor alienus) or on account of his legal relation to the plaintiff or defendant as his tutor or curator. Public corporate bodies may have a defensor too, such as an academical council, chancellors, defensor cununiatus, defensor rei publicae.—C. 5.5.5. See DEFENSOR, DEFENSE.

Defensor civitas. An official appointed by the emperor for the first time in A.D. 44 to defend the poor classes of the population (hence he is also called defensor populi) against encroachments by the great landowners and powerful classes (patronati). The imperial officials, even senators, were appointed to this office in later times by the praetorius magistratus, or elected by a group of distinguished citizens of the community. The defensores civitatis gradually became supervisors of all officials in the provinces and they transmitted to the governor complaints received concerning his subordinates. They also assumed jurisdiction in smaller civil affairs and even overruled judicial sentences in certain cases, not to speak of their extensive interference in administrative matters.—C. 1.3.5. See ADJUVANTI, DEFENSOR.

Defensor plebis. See DEFENSOR CIVITATIS.

Hoepfner, RHD 17 (1938) 225.

Defensores senatus. These were introduced about the middle of the fourth century for the defense of the members of the senate in Constantinople against vexations by provincial governors and tax-collectors to which senatorial landowners were exposed in the provinces. The defensores senatus (who were elected by the senate) disappeared in the fifth century.

Seeck, RE 4.

Deferrre. To denounce a crime committed by another person to the authorities. In the later Empire, slaves who denounced certain crimes (such as counterfeiting of money, desertion, abduction of women) received liberty (libertate donata) as a reward (præmia). See DEFENSURAE. Deferrre se = to denounce oneself in a fiscal matter (e.g., to be unable to take under a will; see CAPAX) which might result in a seizure of property by the fisc.—C. 7.1.3. See DELIATIO, DELATORIs, DEFERRRE FISCO.

Deferrre fisca. To denounce to the fisc a case in which it would be eminently to seize private property. The imperial legislation sought repeatedly to curb the abuse of denunciations and inflicted severe penalties not only on false informers. Apparently, denunciations concerning unpaid custom duties were frequent. The jurist Marcellus wrote a monograph De delatoribus ("On denouncers") in which numerous imperial constitutions dealing with denunciations are listed along with a schedule of articles durable on import (D. 39.4.16.7; see PARTUS). Smuggling of those goods was severely punished.

Berger, RE 7 (1494); Seimann, H.E.R. 49-50 (1947) 405.

Deferrre hereditatis. An inheritance, both testamentary and intestate was considered delato (connived). “When somebody may obtain it by acquiescence” (D. 50.16.51). See DEEX HEREDITATUM. The heir had only to declare that he accepts it. The term deferrre is also applied to personal possessions, legacies and testamentary subscriptions. Deferrre occurs normally at the time of the death of the person whose succession is inherited. It might occur later, when the heir was insufficiency under condition, or when the heir considered refused to accept the inheritance. Deferrre on intestacy took place when there was no valid testament because according to an ancient rule, "no one can destroy personal assets, party reservations", see V E N P R E PARTUS TESTAMENTI. See TRANSMISSA, TRANS- MITION.

Deferrre insufficiens. See INTRUMENTUM NECESSARIUM.

Deferrre insufficiens. To designate a person by testament or intestate or to confer possession according to the law. See intesta. The term is also applied to succession, see infra.

Deferrre. With regard to public measures e.g.,

action (exception, interdict) had to be denied. In the passive voice, defici (e.g., iure, actione) refers to a person deficient in a right or action.

Deferre. (Intrans.) See condicio defecti.

Definitio. Appears both in the sense of an explanation of a term and in that of a legal rule. The Roman jurists do not give definitions very often, and those given by them are not always exact or exhaustive. They rather avoided definitions which might have become a hindrance to later adaptations required by the necessities of life. "Every definition in civil law is perilous since there is little that could not be subverted (overthrown)," the jurist Javolenus said (D. 50.17.202). Justinian’s compilers did not share this prejudice. In later imperial constitutions definitio = a judgment in a trial.

Pringsheim, E., Lenel, 1921, 231; Himmelschein, Symbolae Friburgenses Lenel, 1931, 420; Mass, AG 121 (1939) 138; M. Villen, Recherches sur la litterature didactique du dr. rom., 1945, 44; Biondi, Ser Ferruni (Univ. Pavia, 1946) 240; Schulz, History of R. legal science, 1946, 60; 336.

Definitiones. The title of a work of the jurist Papinian. The excerpts from the work preserved in the Digest show that definitiones cannot be unrestrictedly identified with regulae. A work of the jurist Q. Mucius Scaevola, with the Greek title Horoi (= definitiones) may have had a similar character.

Definitiva sententia. A postclassical term for the final judgment in a civil trial, to be distinguished from interlocutory, preliminary decisions (interlocutiones).—Syn. DEFINITIO.

Biondi, St Bonfante 4 (1930) 50.

Defixiones. See EXECUTIONES.

Kuhmert, RE 4; Laiére, DS 5, 4; Cesano, DE 2.

Defraudator. See FRAUDATOR.

Defunctus. A deceased person. The term is primarily used when questions connected with his inheritance or specific hereditary objects are involved.

—See MORS, MORTALITAS, STATUS DEFUNCTI.

S. Solazzi, Contro la rappresentanza del defunto, 1916; Jobbé-Duval, Les morts malfaisants, 1924; Volterra, Processi penalii contro i defunti, RIDA 3 (1949) 485.

Deiicere. To throw down; see ACTIO DEIECTIS ET EFFUSIS.—D. 9.3.

Deiicere de possessione. To dispossess a person from an immovable, chiefly when the action is connected with the use of physical force. —See INTERDICTUM DE VI.

Leonard, RE 4; Humbert, DS 2; Leve, Ser Ferruni 3 (Univ. Sacro Cuore, Milan, 1948) 136.

Deiicere e saxo Tarpeio. To throw down from the Tarpeian rock. It was a way of executing the death penalty on slaves who committed a theft and were caught in the very act (furtum manifestum), as well as in cases of high treason and false testimony. Introduced by the Twelve Tables, it was abolished in the third century after Christ. —See TESTIMONIUM FALSUM.

Taubenschlag, RE 4A, 2330; E. Paix, Ricerche sulla storia e sul dir. pubbl. di Roma, 4 (1921) 17.

Deiictio gradus. Degradation from rank as a military punishment.

Deiurare (deiurare). Syn. iurare. The term belongs to ancient Latin and is used once in the praetorian Edict with reference to an oath imposed on the defendant by the praetor.

Delatio. See DELATORUM.

Delatio fisco. See DEFFERRE FISCO.

Delatio hereditatis. See DEFFERRE HEREDITATEM.

Delatio iurisiriandii. See TUSURANDUM NECESSARIUM.

Delatio nominia. See ACCUSATIO.

Delatores. Accusers in a criminal trial; see ACCUSATIO. Some individuals professionally assumed the role of accusers for political reasons. Malicious prosecution was punished.—C. 10.11.—See QUADRUPLATORES, NUNTIAE FISCO, DEFFERRE FISCO.

Kleinfeller, RE 4; Humbert, DS 2; De Ruggiero, DE 2; Flum, CUI 8 (1912); G. Bossièr, L’accusation publique et les délateurs, 1911.

Delegare ab argentario. See RELEGARE PECUNIAM.

Delegare iurisdictionem. See IURIDICTIO DELEGATA.

Delegatio. An order given by one person (is qui delegat) to another (is qui delegatur) to pay a debt to, or to assume an obligation towards, a third person (is cui delegatur). The term covers various transactions serving different purposes. The most practical form occurs when a creditor orders his debtor to pay the debt to a third party of whom he himself is a debtor. "He who orders a payment is considered as if he paid himself" (D. 46.3.56). A delegatio may serve also novatory purposes (novatio) when the creditor orders his debtor to promise (not to pay) a third person something. In this case a new obligation arises towards the third person in the place of that of the delegans. Such changes in the person of the debtor or creditor may occur only with the consent of the persons involved. A delegatio may also serve for the performance of a donation (when the donor orders his debtor to pay his debt to another) or for the constitution of a dowry (when the father of the bride orders his debtor to pay the debt to his son-in-law).—D. 46.2; C. 8.41.—See EXPROMPTURE.


Delegatio. (In taxation matters.) An imperial order by which the annual amount to be levied in taxes, both in money and in kind, was established. The praefectus praetorio assessed the amount for the provinces and notified the governors who were responsible for the collection in their provinces.

Seek, RE 4, 2431.

Delere. To cancel a written document (a testament, for instance) totally or partially. The pertinent dispositions became void. —D. 28.4.
Deliberare (deliberatio) de aedunda hereditate. An heir who was not obliged to accept an inheritance (heres voluntarius) was granted a certain time in which to decide whether to accept it or not.—See **TEMPUS AD DELIBERANDUM, ADITIO HEREDITATIS.**—D. 28.8; C. 6.30.

S. Solazzi, *Spation deliberandi*, 1912; *idem*, SDHI 3 (1937) 450, 6 (1940) 337.

Delicta concurrentia. Several crimes committed by the same person either in different acts or in one. "Never do several concurrent crimes cause impunity to be granted for any of them" (D. 47.1.2 pr.). This rule concerns private crimes, as when, for instance, one kidnapped another's slave and killed him. The culprit could be sued for private penalty by actio furti and by actio legis Aquiliae for damages. As to crimes prosecuted by the state (crimina publica) imperial legislation provided that they be tried before the same court.

Humbert, *DS* 1 (concursus delictorum).

Delicta militaria. Military crimes or offences are either purely military or common to civilians as well. A special military crime (delictum militare) is one "which somebody commits as a soldier" (D. 49.16.2 pr.). Minor military penalties included: pecuniary fines, castigation, additional service, transfer to another branch of service; more severe penalties were degradation and dishonorable discharge. Several military crimes were punished by death, particularly in wartime. A soldier could neither be compelled to compulsory labor in the mines nor tortured. Specific offences against military discipline included insubordination, disobedience (contumacia), idleness (segregatio), negligence (desidia). Milder treatment, and sometimes full forgiveness, were granted to recruits (tirones) unfamiliar with military discipline. A rule which defined generally the behavior of a soldier was: "A soldier who is a disturber of the peace (turbator pacis) shall be punished by death" (D. 49.16.16.1).

—D. 49.16.—See **DISCIPLINA**.


**Delicta privata—publica.** See **DELICTUM**.

**Delictum.** A wrongdoing prosecuted through a private action of the injured individual and punished by a pecuniary penalty paid to the plaintiff. For the distinction, *crimen—delictum*, see **CRIMEN**. The actions by which the injured person sued for a penalty were *actiones poenales*, and the procedure was that of a civil action. The typical private offences are *furtum* (theft), *rapina* (robbery), *iniuria* (personal offence), and *damnum inuria datum* (damage done to property). **Delictum** is the source of one group of obligations (*obligationes ex delicto*) which in the fundamental division of obligations is opposed to the contractual ones (*obligationes ex contractu*). The group of private wrongdoings was enlarged by the praetorian law through the creation of obligations, called *quasi ex delicto*, arising from some minor offences. "No one should improve his condition by a *delictum*" (D. 50.17.134.1). The distinction *delicta privata—publica* which corresponds to the classical distinction of *delicta* and *crimina*, is of postclassical origin.—D. 47.1.—See **CRIMEN, CRIMINA PUBLICA**.


**Delictum militare.** See **DELICTA MILITUM**.

Delinquere. To commit a wrongdoing, an unlawful act, a crime (*crimen*), or a private offence (*delictum*).

**Demenis** (noun dementia). Insane, lunatic. Legally he is treated as a *furiusus* and subject to a curatorship.—See **CURATOR FURIOSI** (called also curator *dementia*), *FURIOSIUS*.

Andibert, *Etudes I. La folie et la prodigalité*, 1882, 11; Solazzi, *Demenia*, *Monatsh.* 2 (1924); *idem*, *AG* 143 (1922), 16; Lensel, *ZSS* 45 (1925) 514.

**Deminuio (deminuere).** Refers to all acts of transferring or alienating property. Some persons, such as those who are under curatorship, are forbidden to make transactions by which their property is lessened.

**Deminuio capitis.** See **CAPITIS DEMINUITIO**.

**Demolire (deltollie).** To destroy. The owner of a building could destroy it when he pleased provided that such action did not violate the rights of, or cause damages to, his neighbor. Where it might, the demolition was regarded as a new structure (*opus novum*) and was liable to an objection by the neighbor, see *OPERIS NOVI NUNTIAE*. Also in the case of a party wall (see *PARES COMMUNIS*) the demolition by one of the owners could give rise to a controversy. Syn. *destruere*.

Berger, *RE* 18, 561; Daube, *Class. Quarterly* 44 (1950) 119.

**Demonstrare (demonstratio).** To denote, explain, describe, define (a thing, a term, a plot of land, etc.). It refers primarily to testamentary clauses by which the testator defined the persons or things mentioned in his testament.—See **DEMONSTRATIO FALSA**.

**Demonstratio.** As a part of the written formula in the formulary procedure this defined the subject matter of the claim with a phrase initiated with *quod* (= whereas, inasmuch as, e.g., the plaintiff sold a slave to the defendant). A *demonstratio* was required where the claim (*intentio*) was uncertain (*incerta*), since it defined more precisely the object of the controversy (*res de qua agitur*), which was of importance for a future trial on the same subject and for an eventual objection that the matter had already been dealt with in court (*exceptio rei iudicatae*).


**Demonstratio falsa.** The use of inappropriate words in the description of a person or a thing in a last will,
or of words which in common speech mean something other than what the testator intended to express. "Falsa demonstratio non nocet" (= "the erroneous denotation is not prejudicial," D. 35.1.33 pr.). In numerous cases the jurists interpret a falsa demonstratio in favor of the validity of the testamentary disposition.—With regard to the demonstratio in the formula (see the foregoing item) the plaintiff's claim is not impaired if the object of the trial is not correctly described in the formula; an overstatement or an understatement (plus aut minus postium) is without any effect on the plaintiff's claim.—D. 35.1.

Eisele, Jb 65 (1915) 18; Bang, Jb 66 (1916) 336; Domatius, St Perozzi, 1923, 311; Grosso, St Bonifatius 2 (1930) 187; B. Biandis, Sucessione testamentaria, 1943, 221; Fiume, Fischer Schutz 1 (1931) 224.


Denarius. A Roman silver coin (after 269 B.C.), originally equal to ten copper asses and four sestertii nummi. —See EDITIO DIOCLETIANI DE PRETIIS.

Lenormant, DS 2; Cesano, DE 2; De Ruggiero, RendLince 17 (1908) 250; Mattingly and Robinson, Numismatic Chronicle 1938, 1; Mattingly, OCD 210 (s.v. coinage).

Denegare actionem (denegatio actionis). The refusal by the praetor to grant the plaintiff the action (legis actio, formula) he requested. "He who has the power to give an action may refuse it" (D. 50.17.102.1). The competent magistrates (the praetor primarily) did so at his own discretion, but the plaintiff could repeatedly sue the defendant before another praetor. Denegare actionem was decreed by the magistrates in various instances when already in iure it appeared beyond a doubt that the plaintiff had no cause of action, that he had no capacity to act personally in court, or when his claim was immoral or not liable under either ius civilis or praetorian law and the praetor was not willing to grant a new action. Syn. non dare actionem. —D. 44.5. —See DARE ACTI-

NONEM.

Leist, RE 5; Lenel, ZSS 30 (1909) 333; R. Düll, Denegationsechter und praetorian Jurisdiction, 1915; R. Me-

waldt, Denegare actionem, 1912; H. Lévy-Brühl, La d. e. dans la procedure formulaire, 1924; Wenger, Praetor und Formel, SterMünch 1926, 33; De Martino, Giurisdizione, 1937, 70; Polack, ZSS 63 (1943) 406; Lauria, Scr Ferrini (Univ. Pavia, 1946) 644.

Denegare bonusorum possessionem. To reject a re-

quest for BONORUM POSSESSIONIS. —See AGNITIO BON-

ORUM POSSESSIONIS.

Denegare cautionem. See CAUTUM TABERE.

Denegare exceptionem. A counterpart to denegare actionem: when the praetor rejected the demand of the defendant for the insertion of an exceptio into the formula.

Denegare interdictum. The refusal of an interdict by the praetor. —See INTERDIC'TUM.

Denegare jurisdictionem. To exclude a person from judicial protection in court (before the magistrate) and from assuming the role of a petitioner. It differs from denegare actionem where the magistrate in his capacity as a jurisdictional organ issued a decree of denegatio after the party had appeared before him and presented his case.

R. Düll, Denegationsrecht, 1915, 59; idem, ZSS 57 (1937) 77.

Denuntiare. (Syn. muntiare.) To give notice, to inti-
mate, to announce. The term applies both to official declarations addressed to private individuals and to announcements made by the latter to the competent authorities. Similarly, there was a denuntiare when a private person gave notice to another of a legally important fact or of his intention where such an act was necessary for proceeding with a legal remedy. Denuntiare was prescribed, for instance, in the case of evictio: when sued by a third person for recovery of the thing bought the buyer had to notify the seller thereof. A creditor who was going to sell the pledge had to give the debtor notice. Similarly a creditor who ceded his rights against the debtor to another (see cessio) had to act in order to compel the debtor to pay the new creditor. An heir who had a right on intestacy, when disinherited by the testator, had to denuntiare his intention to sue for the nullification of the testament. —See CONDICERE, SENATUSCONSUL-

TUM PLANCIANUM, COMMISSORIA LEX.

Kipp, RE 5; Humbert, DS 2; A. Burdese, Lex commis-

soria, 1949, 15.

Denuntiare bellum (denuntiatio bellii). A declara-
tion of war by which a state of war between two coun-
tries was initiated. Indicerc bellum has similar sig-
ificance. The two verbs sometimes appear side by side. —See BELLUM.

Walbank, CIPhil 1949, 15.

Denuntiare testibus testimonium. To summon a witness in a criminal trial. It could be done either by a magistrate or by the accuser.

Raser, RE 5A, 1049.

Denuntiatio domum. A specific form of denuntiatio in the case of DAMNUM INFECTUM, which must pre-
cede the proceedings connected with cautio damni infecti or missio in possessionem. By this private act, the plaintiff informs the adversary of his intention to proceed against him for damnum infectum. If the adversary is absent, the denuntiatio is made to his representative or to a tenant in the house.

Denuntiatio ex auctoritate. Summons of the adver-
sary (in the late Empire) authorized by a public official. —See DENUNTIA LITIT.

A. J. Boyé, La denuntiatio, 1922, 206.

Denuntiatio litis. A summons of the defendant by the magistrate in the procedure cognitio extra ordi-

num of the classical period. In the later Empire the summons was a private act with the assistance of an official person and under official authorization (de-

nuntiatio ex auctoritate). —See SEPARATIO TEMPO-

RUM.
Demonstrators. The prosecutor in a criminal trial; police officers in the late Empire who had to denounce criminal offenses to be prosecuted by the State. Synonym.

Klitzke, RE 5; Humbert, DS 2; De Ruggiero, DE 2.

Demonstratores (lictores demonstratores). Assistants of the curators aequitatis. Demonstrators were also subordinate officials who announced the public games (īdi).

Klitzke, RE 5; idem, RE 13, 515.

Deo Antoni. The initial words of Justinian’s constitution of December 15, 536, addressed to Tribonianus, his principal collaborator in the composition of the Digest (Ziegler), by which the emperor’s plan concerning this part of his codification was announced. The enactment reveals the emperor’s ideas about the whole work and contains instructions to be followed in its compilation.

Depellere maxwum. To remove, throw off the claimant’s hand who had touched the shoulder of the defendant in exercising the so-called manus injunctio.

—See VINDEX.

M. Kaer, Das abidum, Im, 1949, 195.

Depensum. (From dependere.) What the surety paid to the creditor on behalf of the principal debtor. — See ANTIO DEPERIL.

Deponere (depositio). To resign one’s office (officium) or guardianship (tutelam). — For depositum = to deposit, see DEPOSITO, DEPOSITUM.

Deporatio. Perpetual banishment of a person condemned for a crime. It was the severest form of banishment since it included additional penalties, such as seizure of the whole property, loss of Roman citizenship, confinement to a definite place. Under the Principate it replaced the former interdictio aequa et igiwi. The emperor could grant the deportee full amnesty, which restored him to his former rights (postliminium). Places of deportatio were islands (in marium) near the Italian shore or an oasis in the Libyan desert. — D. 48.22. — See RELEGATIO, EXILITUM.

Kleifelther, RE 4; Berger, OCD (s. replegio); J. Strachan-Davidson, Problems of Roman criminal law, 2 (1912) 57; Brasili, La repressione penale, 1937, 294 and pasius; Devilla, SItas 23 (1950) 1.

Depositio in aede. A debtor who wants to pay his debt and was unable to do so because the creditor refused to accept the payment, was absent or unable to accept it, or was uncertain (as, for instance, when the heirs of the original creditor were yet unknown), might deposit the sum due in a temple (in aede sacra) or in a public office (in loco publico) designated by an official. In a similar situation was a slave, manumitted in a testament under the condition that he render accounts and pay the balance, when the heir was absent or unknown. It is controversial whether such a deposito effectuated an immediate liberation of the debtor. It seems that the various cases were treated differently in this regard.

R. De Ruggiero, SIta 51 (1969) 121; G. Solzani, Estinti
di e sequestrati 1st ed. (1955) 146, 160; Caniato, ANCNA 3 (1949) 5.

Depositum. A deposit. Depositum is both the object given a person for custody, and the contract itself by which somebody assumed the duty to watch over the depositor’s thing without any remuneration. The contract, which was exclusive in the interest of the depositor, was concluded by handing over the deposit to the depositary (obligato re conservato). The latter was not allowed to use the thing and had to return it to the owner at his demand, with all proceeds and accessories. He was liable for dolo, but not for negli- gence (culpa). An actio depositi lay against him when he refused to return the deposit or otherwise violated his duties. The condemnation in actio depositi rendered the depositary infamous (see INFAMIA). On the other hand, he had an actio depositi controversiae against the depositary for the recovery of expenses and losses incurred in connection with the deposit. — D. 16.3; C. 4.34. — See FIDUCIA CUM AMICO, FACTUM NE DOLUS PRAESTET, and the following items.

Leonhard, RE 5; Humbert, DS 2; Anon. NDI 4; Tambenschlag, Grz 34 (1907) 8; Schulz, Zicher für ergli. Rechtsmu. 25 (1911) 461; Id (1912) 144; R. De Ruggiero, BIDR 19 (1907) 3; G. Solzani, Sevita 2 (1922) 1; J. Paoli, Liu mittimanda creatas in depositum, 1933, 170; G. Longo, Cursus dir. rom. II, depositum, 1933; Albertario, Studi 4 (1936) 264; Sachers, Fescher Kastaveller 2 (1939) 80.

Depositum irregulare. A deposit of money or other fungibles wherein the depositary had to return not the same things, but the same quantity (instamnativa) of money or things. The transaction, called in litera
ture depositum irregulare, became a loan (sustitutum) when the depositary had the right to use the things. A deposit of an amount of money (coins) in a sealed bag was a normal depositum. Such deposits were made with bankers who assumed the custody of the money.

G. Seagr, BIDR 13 (1906) 122; C. Longo, BIDR 19 (1907) 187; Bonitaclo, BIDR 49-50 (1948) 80; Schulz, Ferrini 4 (Univ. Sacro Cuore, Milan, 1949) 254; Seidi, Fescher Schola 1 (1951) 373.

Depositum miserabile. A deposit made in a time of emergency (a shipwreck, fire; riot; see TUMULUS). The depositary’s liability was greater than in an ordinary deposit. He had to pay double damages in the case of fraud or denial. The term is not of Roman juridical language.

Deprehendere (deprehensio). To catch a criminal in the very act. A thief surprised when committing the theft (= facit manifestum). — See ADMISSUM, FURTUM MANIFESTUM.
Derectarius (directarius). A burglar who sneaks into a dwelling furtively. He was punished more severely than an ordinary thief.

Hitzig, RE 5, 1166.

Derelictio. (From derelinquere.) The abandonment of a thing by its owner with the intention of getting rid thereof. A res derelicta is subject to occupatio, by which the occupant immediately acquires property. Derelinquere is also coupled with certain procedural terms (accusationem, iitem) when a person withdraws an accusation or an action.

Berger, BIDR 32 (1922, reprint published 1915); J. J. Meyer-Collins, D. (Diss. Erlangen, 1932); H. Krüger, Minerva 1934; Arnö, ATor 76/II (1941) 261; A. Cuenod, Usucapio pro derelicto, 1943 (Thése, Lausanne).

Dereicitus. See ALVEUS DEREICITUS, PRO DEREICITO HABERE.

Derelinquere. See DEREICITIO. Syn. pro derelicio habere; see USUCAPIO. Derivatio. See FLUMINA PUBLICA.

Derogare legi. Refers primarily to a partial annulment of a statute; see ABROGARE. Derogatorius = a derogating enactment.

Descendentes. Relatives in a descending line (children, grandchildren, great-grandchildren) through males (ex viridi sexu, per mares, ex masculis, etc.) or females (ex femino sexu).—See VENIRE EX ALIQUO.

Descendere ex. (E.g., lege duodecim tabularum.) Indicates the origin of a legal norm or institution.

Describere. To make a copy of a document, a private one (a testament) or one which was deposited in a public archive.—See LIBER LIBELLUM.

Descriptrio (describere). (In the tax administration of the later Empire.) The assessment of taxes.—C. 10.22; 36.—See RES LUCRATIVAE.

Deserere. To renounce a right (a servitude, an usufruct); to withdraw an accusation (accusationem) or to discontinue a suit after the litis contestatio (iitem). Syn. desisterre actione, destituere.—See EREMODICUM, TESTAMENTUM DESERTUM, VADIMONIUM DESERTUM, TERGIVERSATIO.

Deserere (desertio, desertor). To abandon the military service without leave. More severe cases of desertion were punished with death, as, for instance, leaving the field of combat before the enemy.—C. 12.45.—See EMANSON, TRANSFUGA, PERFUGA, FOSTERIUM SUPPLICUM.

Fiebig, RE 5; Julian, DS 2; R. Latrille, La repression de la desertion, Toulouse, 1919; V. Aubry-Ruiz, Sul resto di diserzione, in Rariare, 1946, 271.

Desiderare. To apply to a judicial magistrate for granting an action, an interdictum, or a restitution in integrum.

Desiderium. A written or oral request addressed to a judicial magistrate.—See PRECES.

Designatio. The emperor's proposal concerning candidates for a magistracy to be elected by the senate.—See COMMENDATIO, CANDIDATUS PRINCIPIS, DESTINATIO.

Designatus. A magistrate (consul, praetor, etc.) elected for the following year.—See RENUNCIATIO.

De Ruggiero, DE 2.

Desinere possidere. See DOLO DESINERE POSSIDERE.

Desistere. To withdraw an accusation in a criminal trial; to drop a civil suit. Syn. cedere actione, desere, destituere.—See TERGIVERSATIO.

Despondere. To betroth.—See SPONSALIA.

Destinare. To assign, appoint a person for certain functions or tasks; to designate a thing for a specific use.

Destinatio (of magistrates). The official nomination of candidates for consulship and praetorship to be elected by the popular assemblies (designatio) in the early Principate. The assemblies had to confirm the candidates proposed by a gathering composed of senators and equites (not by senators alone, as has been assumed hitherto). The procedure in voting and selecting the candidates is now known from a statute preserved on a bronze tablet (tabula Hebana) and recently discovered in the R. colony of Heba (Etruria).

Coli, BIDR 53–54 (1948) 369; De Visscher, Bull. Acad. de Belgique, Cl. Lettres, sér. 3, 35 (1949) 191; idem, RHD 29 (1951) 1; Nesselhauf, Historia 1 (1950) 110; Schönauer, RIDA 6 (1951) 201; Levi, Porola del passato 14 (1950) 158; De Visscher, ibid. 118.

Destituere. See DESERERE.

Destruere. See DEMOLIRE.

Desuetudo. A long continued non-application of a legal norm. Although desuetudo does not formally abrogate a law, the latter easily falls into oblivion and loses its force in practice. "Laws are repealed not only by the will of the legislator but also by disuse through the tacit consent of all men" (D. 1.3.32.1). In connection with the compilation of the Digest Justinian ordered that laws which had vanished by desuetudo should not be taken into consideration.—In desuetudinem abire = to pass out of use.—See ABROGARE LEGEM.

Steinwenter, RE 16, 295; Solazzi, AG 102 (1929) 3.

Detentio. (From detiner.) A simple holding of a thing without having possession (in legal sense) or ownership thereof. Detentio is not a technical term and is used in a rather looser sense. He who has detentio (detentor) cannot use possessory remedies. He holds another's thing on the ground of an agreement with him (lease, deposit, commodatum), who remains legal possessor; the detentor "renders service to another's possession." The Roman term for detentio is possessio naturalis. Syn. tenere, detentare. In Justinian's language the use of the respective words is confusing.—See CONSTITUTUM POSSESSORIUM, POSSESSIO.

J. Duquesne, Distinction de la possession et de la detention, 1898; S. Brassloff, Possessio, 1928; Radin, St Bonfante 3 (1930) 151; Albertario, Studi 2 (1941) 161; Kasner, Deutsche Landesreferate zum III Intern. Kongress für Rechtsvergleichung in London, 1950.
Detentor (detentator). See DETENTIO. The term occurs only in later imperial constitutions.

Determinare. To set limits, to settle (terms for a judicial action), to define the extent of a servitude.

Detestari (detestatio). To give notice to another (denuntiatio) in the presence of witnesses (testes).

Detestatio sacrorum. A solemn declaration made by a person in consimia to the effect that he is leaving his gens or family in order to pass into another. He renounced the participation in the sacred rites of his former social group. The interpretation of the term is controversial.

Kähler, RE 3, 1331; 1A, 1682; Anon., NDI 11, 964.

Detestatus. A culprit convicted of a crime through the testimony of witnesses.

Detinere. See DETENTIO, CONSTITUTUM POSSessorIUM.

Detrahere ususfructus. See DEDUCTIO USUSFRUCTUS.


Devocare. (In imperial constitutions.) To summon a person to render public services or assume a public charge.

Deus. Frequently interpolated in classical texts for the plural déi (= gods).—See DEI.

R. De Ruggiero, StCäpì (1909) 140.

Devolutus. (From devolueræ.) Used with regard to a succession, guardianship or ownership conferred on a person.

Devotio. An honorific title used in the later Empire in writings addressed to high officials ("devotio tua"). In another sense, the term is connected with the tax administration in the later Empire.

Devotio. A maladministration addressed through a magic formula to the infernal gods requesting them to destroy a certain person.—See EXSECRATIO.

Wissowa, RE 5; Bouché-Leclercq, DS 2; Cesano, DE 2.

Devotissimus vir. The title of a subaltern official. It appears first in the second half of the fourth century after Christ. It alludes to the loyalty towards the emperor.

O. Hirschfeld, Kleine Schriften, 1913, 678.

Diarium. Daily records, an official diary, in particular in a fiscal office (statia).

Dicere. Appears frequently in such interpolated phrases as dicere ut, dicipotest (= it may be said), dicit aliquid, dicendum est (= it is to say), and the like. Such phrases do not, however, indicate that what follows is not of classical origin.

Guarnieri-Cinti, Indice (1927) 29; idem, Fasch-Roscher, 1 (1939) 131.

Dicere. Denotes the assertions of the parties and their advocates in a trial.—See IUS DICERE, DICERE SENTENTIAM, CAUSA DICERE.

Dicere causae. See CAUSA DICERE.

Dicere diem. (In a criminal trial.) To summon the accused to appear before the magistrate on a fixed day.

Dicere dotem. See DICTIO DOTIS.

Dicere ius. See IUS DICERE, IURISDICTIO.

Dicere legem. To insert a specific clause in a testament or contract.—See DICTUM, LEGES CONTRACTUS.

Dicere multam. See MULTA.

Dicere sententiam. (When referring to a judge.) To pronounce a judgment.

Dicere sententiam in senatu. To give a vote in the senate.

Dicio Romana (or Romani nominis). The supreme political power, sovereignty of the Roman state.

Dicis causa (gratia). For the sake of form, pro forma. The phrase refers to transactions made in a certain form in order to conceal the true purposes of the parties and to obtain legal results other than those which normally are connected with that form of transaction.—See IMAGINARIUS, SIMULATIO, NUMMUS UNUS.

Rabel, ZSS 27 (1906) 307; Betti, BIDR 42 (1934) 306.

Dicta. An informal statement made by the seller concerning the existence of specific distinctive traits or the absence of certain defects in the object sold (particularly in a slave). The seller is liable if his assertion proves to be untrue. Similar significance is attached to promissa, when the assertion is more formal and made as an explicit promise of the qualities specified. The two terms appear together as dicta et promissa.—See EXPETO.

R. Monier, La garantie contre les vices cachés, 1930, 50; Haymann, ZSS 51 (1931) 476; Krückmann, ZSS 59 (1939) 1.

Dictare (dictatio). To dictate the contents of a written document; it primarily refers to testaments. For dictare with reference to the formula in the formal procedure, see EDITIO ACTIONIS.

Dictator. An extraordinary magistrate under the Republic, appointed in times of internal troubles (sedition) or external difficulties of particular gravity. The appointment was made by one of the consuls for a maximal period of six months. If the danger passed earlier, the dictator was obliged to resign. A dictator had unlimited legislative, administrative, and judicial power, and was not hampered by the intercession of the tribunes. The dictatorship of Sulla (82 B.C.) and Caesar (49 B.C.), established by special statutes, were of a different character. The last constitutional dictatorship was at the end of the third century B.C.—See MAGISTER EQUITUM, MAGISTER POPULI, PROVOCATI.

Liebenam, RE 5; Humbert, DS 2; De Robertis, NDI 4; Bruno, DE 2; Sherwin-White, OCD; F. Bandel, Die röm. Dictatoren, 1910; Soltau, Hermes 49 (1914) 332; Krommann, Kl 14 (1914) 190; Birt, Rheinisches Museum 76 (1927) 196; Moniglione, Bull. Comp. Arch. Commerciale di Roma, 58 (1930); Wicken, APRAW 1940, no. 1; Gromow, Ml De Vescher 1 (RIDA 2, 1949) 23; A. Dell'Oro, La formazione dello stato parallà-piebro 1950, 49.

Dictator comitiorum habendorum causa. An extraordinary magistrate appointed for the special purpose of convoking a popular assembly for elections when
the higher magistrates were absent from Rome (e.g.,
commanding the army).
Liebenam, RE 5, 383.

 Dictator municipii. The head of the administration in
the earliest municipia, assisted by one or two
aediles, and later also by two quaeestors.—See MUNI-
CIPIVM, MAGISTRATUS MUNICIPIV.
Kornemann, RE 14, 615; Liebenam, RE 5, 389; H.
Rudolph, Stadt und Staat im röm. Italien, 1935, 14; E.
Manni, Per la storia dei municipii, 1947, 93.

Dictio dotis. A form of constituting a dowry through
a unilateral promise expressed in prescribed words
(certa et sollemnia verba) "... duti tibi erit" by
the woman, her paternal ancestor or her debtor.
The dictio dotis was abolished by an imperial con-
stitution of Theodosius II (428 A.D., C. 5.11.6) which
introduced formless promises of a dowry.—See POL-
LICTATIOTI DOTIS.
Leonhard, RE 5; Lauria, AnAn 38 (1937) 221; Daube,
JwrR 51 (1939) 11; Solazi, SDHI (1940); Hägerström.
Der. röm. Obligationenbegriff (2) 1912; Berger, Bull.
Acad. Sciences Cracovici, 1909, 75; idem, Jour. of Juristic
Psychology 1 (1945) 13 (= BIDR 32-35, Suppl. Pont-
Béllum 1931, 99); Riccobono, BIDR 36-59 (1948) 39;
F. Bonicafio, Notizie, 1950, 58; Kaser, SDHI 17
(1951) 169.

Diciat. See DICTA.

Diae dictio, diem dicere. See DICE DIEM.

Dies. A day, a date specified in a clause of a trans-
action or testamentary disposition and connecting the
beginning (ex die) or the end (in diem, ad diem) of
the validity thereof with a fixed date. The so-called
ACTUS LEGITMI could not be limited by dies.—See
CEDERE, SINE DIE, and the following items.
Humbert, DS 2; De Ruggiero, DE 2; Pagge, NDI 12
(s.v. termes); R. De Ruggiero, BIDR 15 (1903) 5;
Vassalli, BIDR 27 (1913); idem, St. juridici 1 (1939)
245; Solazi, Jura 1 (1950) 34.

Dies cedens (legati). The day on which the legatee
becomes entitled to the legacy. If he dies after that
day, his heir acquires his right. The dies cedens gen-
erally is the day of the testator's death; if the legacy
depends upon a condition, dies cedens is the day on
which the condition is fulfilled. A counterpart to the
dies cedens is the dies vienisi (legati) = the day on
which the legatee or his heir may claim payment of
the legacy. It is normally the day on which the heir
accepts the inheritance. Under certain circumstances
both days fall together as, for instance, when the con-
dition attached to the legacy is fulfilled after the accep-
tance of the inheritance by the heir.—D. 36.2;
C. 6.53.—See CEDERE.
Sommer, ZSS 34 (1913) 394.

Dies certus. A day of which one is certain that it will
come (certus on) and when it will come (certus quando).
Such days are calendar-days. Ant. dies
incertus, an uncertain day, either uncertain as to when
it will come (incertus quando, as, e.g., the day of a
person's death) or whether it will come at all (in-
certus on, as, e.g., the day of a person's marriage).
A dies incertus on and incertus quando is equal to a
condition (condicio).
C. Appleton, Revue générale de droit 50 (1926) 154.

Dies coeptus pro impleto habetur. A day begun is
held to be completed. The rule is applied to USUCAPIO
(D. 44.3.15 pr.).

Dies comitiales. Days on which the popular assem-
blies (comitia) could be convoked.—See LEX PFLA.
Boucic-Leclercq, DS 2. 992.

Dies comprehendinlus. See COMPRENDINUS DIES.

Dies diffusus. See DIFFERENDERE.

Dies et consul. Official dating by indication of the
calendar-day and the consuls of the year (cwm
die et consule, die et consule actio). It was used
for statutes, senatusconsults, imperial enactments, and
private documents. Ant. sine die et consule.—See
CONSUL.

Dies fasti. Days on which court sessions could be held
and magistrates and jurors could exercise their judi-
cial activity. Ant. dies nefasti. See DI DICO ADDICO.
The origin of this distinction goes back to the earliest
times of Roman history. First the pontiffs established
the official calendar in which the single days were
indicated as fasti or nefasti by the abbreviations F
and N. Afterwards the aediles took care of the
calendar. The annual schedule of dies fasti and
nefasti was termed fasti.—See DIES NEFASTI.
Schön, RE 6 (s.v. fasti); Boucic-Leclercq, DS 2 (s.v.
fasti); De Ruggiero, DE 2, 1780; Stella-Marana, NDI 5
(s.v. fasti dies); Paoli, RH 30 (1932) 293.

Dies fatalia. The last day of a term within which a
certain performance had to be done in order to pre-
vent the loss of a right or some other detrimental
consequence.

Dies festi. See FERIAE.

Dies incertus. See DIES CERTUS.
Bremetti, D. i., 1893; Segre, RISG 18 (1893).

Dies iuridici. A later term for court-days.

Dies iusti. A thirty-day period granted by the Twelve
Tables to debtors who had acknowledged their debt
in court (aex confissum) or were condemned by
judgment, to gather the sum to be paid. If the thirty
days elapsed and the debt was not paid, the debtor
was brought to the praetor who adjudged him to the
creditor. The latter was allowed to fetter the debtor
and keep him in prison for 60 days.—See ADDICTUS,
TEMPSUS IUDICATI.

Dies mortis. The day of death. In classical law,
stipulations to pay a sum after the debtor's or credi-
tor's death (post mortem) were void because an
obligation could not arise for the heir, neither as
creditor nor as debtor. Similar treatment was ex-
tended to promises connected with the day preceding
the death of the creditor or debtor (pridie quam mo-
rir, or pridie quam moriis in the stipulatory
question). Justinian declared such stipulations valid.
Dies nefasti. Days on which the praetor was not allowed to pronounce one of the three solemn words do, dico, addico. Ant. dies fasti. Therefore, legit actiones and jurisdiction were forbidden on those days. Likewise, popular assemblies did not meet on those holidays which were devoted to religious ceremonies and public festivals.—See dies fasti (Bibl.), do dico addico.

Dios legitimus. See legitimus.

Dies praesens. See praesenti die.

Dies utiles. Days on which certain acts could be performed in court (before the magistrates). When a certain number of days was fixed for declarations or requests to be made before a magistrate, as, for instance, one hundred days for the demand of honorum possessio, only dies utiles were reckoned.—See annus utilis.

Dies veniens (legati). See dies cedens.

Dissolventio. The formal dissolution of a marriage concluded by conferarreatio to free the woman from the mansus tie.—See divortium.

De Ruggiero, DE 2, 397; Leopold, RE 5.

Distinctiae. Distinctions. The title of a work by the jurist Modestinus. Some of the texts preserved reveal a tendency to stress the differences existing among similar legal institutions or terms.

Diffinendae. To defer a trial to another day because of the sickness of the judge or of one of the parties (dies diffius). The measure was already known in the Twelve Tables.

Digerere. See digesta.

Digesta. (From digerere.) In juristic literature. Some jurists (Alfinus Varus, Celsus, Julian, Scaevola, Marcellus) wrote comprehensive works under this title. Neither the system nor the kind of presentation is uniform, but the general feature is that both ius civilis and praetorian law are taken into consideration. Often excerpts from earlier works of the same author (Responda, quaestiones) are collected and put into a somewhat systematic order (digerere).

Mommsen, Jurist. Schriften 2, 90; Jörs, RE 5, 485.

Digesta Justiniani. The main part of Justinian's legislative work. Announced on December 15, 530 by the constitution "Deo Au tor e," it was published on December 16, 533 by the constitutions "Tanta" (in Latin) and "Dedoken" (in Greek) and it entered into force two weeks later. The grandiose work is a compilation of excerpts from the juristic literature of the classical epoch. More than 9,000 texts are distributed into fifty books, each of which—except for books 30-32 on legacies and fidicommisso—are divided into titles of various extent containing the texts pertinent to the topic indicated in the super-
Diligentia. Cautious conduct, carefulness. Lack of diligence might cause liability of the person who was contractually obligated to a careful, cautious conduct, where another's interests were involved. The term is linked with others concerning contractual liability, and appears at times in texts which are not free of suspicion as to their classical origin. Complete elimination of the term from the classical juristic thinking is out of the question. Ant. neglegentia.—See CULPA, CUSTODIA.

Diligentia quam sui. Carefulness (diligence) which a man applies in his own affairs. It is referred to when the duties of a guardian in the management of the ward's property or those of a partner in a societas are defined.—See CULPA IN CONCRETO.

Einhardt, Marm Popullia, 1934, 101.

Dilucida intervalla. See INTERVALLA.

Dimissorius. See LITTERAE DIMISSORIAE.

Dimittere. In obligatory relations dimittere creditorem = to satisfy the creditor; dimittere debitorem = to release the debtor.

Dimittere uxorem. To dismiss, to send away one's wife (e.g., in the case of adultery). Such an act is sufficient for a divorce if the husband gives up his affectio maritalis and repudiates the wife with the intention of dissolving the marriage.

Dioecesis. (As an administrative unit.) The union of several provinces. Through Diocletian's reform the whole Roman Empire was divided into twelve dioeceses. Later the number was increased to fifteen. The governor of a dioecesis, to whom the governors of the pertinent provinces were subordinated, was the vicarius. Three or four dioeceses were united into a praefectura under a praefectus praetorio. There were two praefecturae in the Western Empire (Italia, Gallia) and two in the Eastern Empire (Oriens, Illyricum). This administrative division of the Empire was reflected in the appeal proceedings in judicial matters. The provincial governors were judges in the first instance (indices ordinarii, in Justinian's language called simply indices). The second instance was the vicarius, from whose decisions an appeal to the emperor was admissible. The judgments of the praefectus praetorio as the head of a praefectura, rarely were submitted to the emperor since his judicial functions were held to be exercised in the place of the emperor (vice sacra).—See VICARIUS, VICARIUS IN URBE, VICARIUS PRAECEPTI PRAETORIO.

Kornemann, RE 5, 727; Julian, DS 2.

Dioecesis urbica. The territory of Rome as a judicial district in which justice was administered by officials residing in Rome. Italy was divided into districts...
(regiones) submitted to the judicial competence of iuridici.—See REGIONES ITALIAE.

Diploma. Written permission to use the imperial post, delivered by a special official of the imperial chancery (a diplomatus).—Humert, DS 1, 1648.

Diploma honestae missionis. See AUXILIA, MISSIO, and the following item.

Diploma militare. A certificate in the form of a dip- tych issued to veteran soldiers after the completion of their military service (normally twenty, in the AUXILIA twenty-five years). The diploma conferred Roman citizenship on a peregrine soldier, his wife and children or granted him the ius conubii (= the right to conclude a legal Roman marriage). If the veteran had lived in a marital union with a woman, the diploma convalidated it into a legal marriage. Some tax immunities might also be included in a diploma.—See DIPTYCHUM.

Wünsch, RE 5; Lammert, RE 15, 1666; Wenger, RE 2A, 2416; Théodenat, DS 2; Vaglieri, DE 2, 196; H. M. D. Parker, The R. legiones, 1928, 102, 239; Nesselhauf, Corpus Inscrip. Latinarum 16 (1936); Riccobono, PIR 1° (1941) 233 (Bibk).

Diptychum. A written document composed of two rectangular tablets of bronze or wood, joined together by a string passed through holes in the edges. Often three tablets were used bound in the same way together like a booklet (tripythum). The text of the document was written twice, once on the inner pages (scriptura interior), tied around with the string and sealed by the witnesses, and a second time on the outside pages (scriptura exterior) which could be read without opening the inner part.—See TABULA, TABULAE CERATAE.

Wenger, RE 2A, 2417; Wünsch, RE 5, 1163.

Directarius. See DERECTARIUS.

Directus. Straight, immediate. Used in various connections to denote that an act produces directly the results normally attached thereto, contrary to analogous legal institutions which are only indirectly effective. Thus, for instance, libertas directa is liberty given in a testament through a direct manumissory disposition of the testator and is opposed to libertas fideicommissaria where the slave becomes free through a manumission by the heir; the direct institution of an heir (institutio directa) is opposed to a substitutio. For the meaning of directus in connection with certain types of actions, see ACTIONES DIRECTAE.

Diribito. The scrutiny of votes in popular assemblies by special scrutinizers (diribitores) appointed for each centuria or tribus.

G. Rotondi, Leges publicae populi Romani, 1912, 142.

Diribitores. See DIRIBITO.

Liebenam, RE 5; Humert, DS 1, 1386.

Dirimere. To settle a controversy (dirimere controversiam) by the decision of a judge or an arbitrator; to dissolve (a marriage, a partnership).

Discedere. To recede, to withdraw as a party from an agreement, or from a trial; to give up possession (a possesione); to dissolve a marriage by divorce.

Disceptatio. (From disceptare.) A legal dispute, a trial. It may denote both the debate on the controversial matter before court and the decision itself. Disceptatio domestica = a friendly dispute within the domestic community.

Dull, ZSR 63 (1943) 67.

Disceptator. He who examines and settles a controversy, an arbitrator or judge.

Discessio. (From discedere.) Voting (in the senate) by division. The senator who voted for the motion took one place, those who opposed it, another (sententiam pedibus ferre, Gellius, Noc. Att. 3.18.2).—See SENATORES PEDARI, SENATUSCONSULTA.

O'Brien-Moore, RE Suppl. 6, 711; 716.

Discidium. A divorce.

Discindere. (In later imperial constitutions.) To dismiss from public service.

Disciplina. Rules affecting orderly conduct, primarily in military service (disciplina militaris). Disorderly conduct of soldiers, disobedience, insubordination, and the like, were treated as lesser military delicts. See DELICTA MILITUM, CASTIGATIO, REGES EXERCITUM.—Disciplina publica = public order. See SEDITION.


Discussor. An official in the later Empire who verified the accounts of expenditures for public buildings and the records connected with tax administration.—C. 10.30.—Discussor censur, see INSPECTOR.

Seek, RE 5.

Discutere matrimoniun. To dissolve a marriage (or a betrothal = discutere sponsalia).

Disiunctium. See CONUNCTUM. Different interpretative rules were applied to legacies left joint disiunctum. See the following item.

Disiunctivo modo. Alternatively (ant. . . ant. sive . . sive = either . . or). Conditions imposed disiunctivo modo = conditiones disiunctivae. Generally the person on whom they were imposed had the choice between them.


Dispensatio aeiarii. Supervision over the administration of the treasury (AERARIUM POPULI ROMANI). It belonged to the competence of the senate.

Dispensat or. A financial manager of a wealthy landlord. The emperor also had dispensatores = paymasters, cashiers of the imperial purse.

Dispensator pauperum. See OECONOMUS ECCLESIAE.

Displerere. See FACTUM DISPlicitAE.

Dispositio. (In later imperial constitutions.) An arrangement made by a testator in his last will or the testament as a whole (ultima dispositio).
Dispositions. Private (not governmental) affairs and correspondence of the emperor (in the late Empire).

—See Comes dispositionum.

Disputatio fori. Mentioned only once by Pomponius with reference to the times following the promulgation of the Twelve Tables (D. 1.2.2.5). The term seems to indicate discussions of legal problems by the jurists in a public place (in court?).

V. Lübnow, ZSS 56 (1948) 467.

Disputationes. Juristic writings containing cases discussed by the jurists in their activity as teachers. The discussions might have started from real cases in which the jurists were asked for opinion (responsum).—See Tryphonius.

Disseminus. (From dissentire.) See consensus contradicti.

Hupka, ZSS 53 (1912) 1.

Dissimulatio. In the case of injuria (insult), disregarding (neglecting) an offense by the person insulted who leaves the matter without giving any sign of outraged feeling. “The insult is abolished by dissimulatio” (dissimulatio abolutur, D. 47.10.17.1).

—See injuria.

Dissolvere (dissoluto). To dissolve (a marriage by divorce, a partnership), to cancel (a contract, an obligatory tie).

Distactio bonorum. An institution similar to bonorum venditio (sale of the property of an insolvent debtor). The sale was by individual items (not in a lump), probably without any foregoing missio in bona. Distactio bonorum did not involve infamy. Originally applied as an exception in the case of the insolventy of a senator (see Clara persona), a ward or a lunatic, the distactio bonorum became a general institution under Justinian.

Solazzi, Concursus dei creditori 2 (1938) 199; 3 (1940) 1; Cosentini, SDHI 11 (1945) 1; Lepri, Scritti Romani, Saggio 1 (Reggio Emilia, 1949) 79.

Distactio pignoris. See Ius distrahendi.—D. 20.5; C. 8.27; 28.

Distrare. To sell (a pledge, see Ius distrahendi, distactio bonorum), to dissolve (a contract, a marriage). Syn. dissolvere, ant. contrahere.

Divitius. See AQUA DIURNA, FOR DIURNAS, OPERAE DIURNAE.

Divalis. Refers to enactsments and utterances made by the emperor.

Emslin, StMünchen 1943, 6, 72.

Divertere. To divorce (“to go in different ways”).—See Divortium.

Dividere. See Divisio.

Divina domus. See Domus Augusta.

Divinatio. As the art of predicting and interpreting certain natural phenomena (auspicia, auguria) this is a part of the activity of augures and their occult science.—Augures, haruspices.

Hopfen. RE 14, 1258 (s.v. manite); Bouché-Leclercq, DS 2; Pease, OCD; Cramer, Sem 10 (1952) 44.

Divinatio. (In a criminal trial.) A preliminary stage in which an accuser is chosen among several persons who brought the same accusation against a person. Plurality of accusers in the same trial was not admissible.

Hitzig, RE 5; Humbert, DS 2; Berger, OCD.

Divinitas. Divinity; a title applied to the emperor.—See divalis, divus, divinus.

Hersog-Hauer, RE Suppl. 4, 806 (zv. Kaiserkult); L. R. Taylor, The divinity of the R. emperor, Middletown, 1931; Emslin, Gottkaiser, StMünchen 1943, Heft 6, passerim.

Divinus. Pertaining to gods; in the later Empire, connected with the person of the emperor or issued by him (enactments, privileges, gracious acts). Syn. divinis.—See Ius divinum, res divini iuris, domus divina.

Divisio. Division of common property. It can be achieved either by mutual agreement or by an action: among co-heirs by the Actio familiaris heresicundae, among co-owners by the Actio communis divinundus. An analogous action, although not for dividing common property, but for the regulation of controversial land boundaries, was the Actio finium reconditum. All these actions have some procedural peculiarities, among them a special clause in the formula, adjudicatio.—See communi.

Divisio inter liberos. (Made by the father.) See Testamentum parentis inter liberos.

Divortium. A divorce. It was achieved without formalities, simply by a definitive cessation of the common life of the consorts, initiated by common agreement or by one of them, thereby proving that there was no longer any affectio matrimonii between the spouses. Therefore, a temporary abandonment of the common dwelling by the wife in a state of excitement (per calorem) was not considered a divortium. If the conclusion of a marriage was accompanied by a conventio in manum, the dissolution of such agreement had to be accomplished by a contrary act (diffarreatio in the case of conjorreactio, remancipatio or emancipatio in the case of coempiotio). Usually, however, a unilateral declaration by the divorcing spouse (repudium) followed the separation, either by writing, per epistulam—the letter had to be signed by seven witnesses—or orally, directly or indirectly by a messenger (per munium). Legislation of the Christian emperors often dealt with divortium; they introduced some restrictions and imposed pecuniary sanctions on the party who repudiated his consort without any just ground. The principle of the dissolubility of marriages, however, always remained in force. In Justinian’s law written notification of a divorce (libellus divortii, repudii) became obligatory.—D. 24.2; C. 5.24.—See Filiae FAMILIARUM.

Leonard, RE 5; Kunkel, RE 14, 2275; Baudry, DS 2; Anon., ND I 5; E. Levy, Hergang der röm. Ehescheidung, 1925; Solazzi, BIDR 34 (1925) 3; 293; Corbett, LQR 45 (1929); Volterra, St Riti, 1934, 394; idem, St Riccobono 3 (1936) 201; Basanelli, ibid. 177; L. Cases, La dissolution
Divortium bona gratia. (In Justinian law.) A divorce caused by reasons which cannot be charged to either of the consorts, as when the marriage remained childless for three years because of a physical deficiency of one of the consorts, or the absence of the husband as a prisoner of war for five years, mental disease, etc.

Tabara, ACII 1 (1935) 195; Solazi, RendLomb 71 (1938) 511; Wolf, ZSS 67 (1950) 270.

Divortium ex iusta causa. A divorce caused by the bad behavior of one of the consorts (adultery or immoral conduct of the wife, the husband’s living with a concubine or his false accusation of the wife for adultery) in Justinian’s law. The culpable consort was subject to pecuniary sanctions (loss of the dowry or nuptial donations, and, under certain circumstances, even loss of a quarter of property). Ant. divortium sine causa, when there was no reasonable ground for the divorce. It was valid, but the party who divorced was liable to money penalties.

Divus (diva). A title granted an emperor or empress after the death if a consecratio had taken place by which the deceased entered among the deities of the state.—See DIVINITAS, HOSTIE.


Do, dico, addico. The three solemn words (tria sollemnia verba) pronounced by the praetor in the exercise of his jurisdictional activity in the in-iure-stage of the process. Dare referred to his granting an action (formula, iudicium), an exception, an interdict, possession, or to his appointment of a guardian, a judge, and the like. Dicere was applied to some of his commands, such as dicere diem, dicere multum; addicere is linked with the approval of what happened in iure (e.g., in iure cessio), see also ADDICERE.—See DIES FASTI.

Wlasak, ZSS 25 (1903) 85; Doll, ZSS 57 (1937) 76; F. De Martino, Giuridicaione, 1937, 59; Pugliese, Lexicon sui processo civile r., 1947, 45; P. Noailles, Du droit sacré au dr. civil, 1950, 284.

Documentum. A document. The term is unknown in classical juristic language, but is used in post-classical imperial constitutions.—See INSTRUMENTUM.

Dodrans. Three quarters of an a (nine unciae), hence three quarters of an inheritance.—See A3.

Dolo desinere possidere. To give up fraudulently possession of a thing with the purpose to be unable to restore it to the true owner or legal possessor. He who does so “is treated as if he still possessed the thing” (D. 50.17.137; 157.1).—See REI VINDICA- CATIO, EXHIBERE, POSSESSOR PICTUS.

Lemel, GrZ 37 (1910) 534; Pasard, NRH 35 (1910); Levy, ZSS 42 (1921) 505; Kaser, ZSS 51 (1931) 109.

Dolo malo. (Syn. dolose.) Intentionally, with evil intention (malice). The term receives often greater emphasis by the addition of sciens (knowingly) to indicate that the wrongdoer committed the offence with full knowledge of the unlawfulness of his act. “No one is considered to act fraudulently (dolo) who avails himself of his right” (D. 50.17.55), or “who fulfills the order of a judge” (iusstum iudicis, D. 167.1).—See DOLUS.

Dolose. See DOLO MALO, DOLUS.

Dolus. Defined by Labeo (D. 4.3.1.2) as follows: “any cunning, deceit, or contrivance used to defraud, deceive or cheat another.” Syn. dolus malus. Ant. on the one hand dolus bonus (simple shrewdness), on the other hand BONA FIDES. In transactions governed by bona fides (negotia bona fide) and protected by actions (iudicium) bona fide the judge’s duty was to take into consideration fraudulent conduct of the parties and to reject claims or defenses based on dolus. In actions governed by ius strictum (such as arising from stipulatio) the defendant must oppose exceptio doli if he wanted to object that the plaintiff’s claim was founded on dolus. A person deceived dolo (malo) by another, had the actio Doli against him, introduced by praetorian law, when another special action was not available. In transactions under strict law liability for dolus could be assumed by a special clausula dolii, included in, or attached to the principal stipulatio. Through this clause the promisor guaranteed that there was not nor will be any fraud (dolium malium absesse auctorunquique esse). An agreement excluding liability for dolus (pactum ne dolus praestetur) was void.—In criminal offenses dolus means the intention of the wrongdoer to commit the crime, which presupposes his knowledge of the unlawfulness of the act. Republican statutes dealing with criminal offenses generally express stress the scientia of the culprit (sciens dolo malo). Similar expressions are: consulto, consilio, voluntate, sciens prudensque.—D. 4.3; C. 2.20.—See ACTIO DOLI, CULPA, CAPAX DOLI, EXCEPTIO DOLI, CONSILIUM, DOLO MALO, IN INTEGRUM RESTITUTIO, STIPULATIO DE DOLO.

Humbert, DS 2; Litten, Fg Güsterbock, 1910; Schulz, ZSS 33 (1912); Charvet, La restitution in integrum des majors, 1920, 41; G. Rotondi, Sei pri. 2 (1922) 371; H. Heldrich, Das Verschulden beim Vertragsabschluss, 1924; J. Duquesne, In integrum restitution ob doinem, 1929; G. Maier, Praetorische Bereicherungsklagen, 1932. 17; 35; G. Longo, Contributa alla dottrina del dolo, 1937; F. Palmbo, L’azione di dolo, 1935; F. Palmbo, L’azione di dolo, 1935; Coing, Som 8 (1950) 12; idem, Fiscr Schuls 1 (1951) 97.

Dolus bonus. Earlier jurists called shrewdness dolus bonus, “especially when anything was skillfully contrived against an enemy or a robber” (D. 4.3.1.3). Dolus bonus does not produce any legal consequences. Ant. dolus malus.—See DOLUS.
Dolus malus. Jurisprudently syn. with dolus. Malus is in this connection a strengthening attribute but does not denote a higher degree of dolus to be treated otherwise than dolus.—See DOLO MALO, DOLUS, MA-

CHINATUM.

Domestici. The court garrison in the Imperial palace.—C. 12.17. —See DECIMPRIMI, COMITES DOMESTICUM, PROTECTORES.

Seeck, RE 5; Brachi, DE 2; Babut, Rev. Historique 114 (1913) 226.

Domestici iudices. The staff in the office of provincial governors.—C. 1.51.

Domesticum furturn. See FURTUM DOMESTICUM.

Domesticum imperium. See IMPERIUM DOMESTICUM.

Domesticum iudicium. See IUDICIUM DOMESTICUM.

Domesticum testimonium. See TESTIMONIUM DOMESTICUM.

Domi. The area within the city of Rome and a radius of a mile from its walls. Ant. militiae = the territory beyond that area. The terms refer to the imperium of the magistrates and to their territorial criminal jurisdiction.—See LEX CORNELIA DE IMPERIO.

Domicilium. The domicile of a person, the place where he permanently (not temporarily) lives. Domicilium is sometimes identified with domus "where a man has his abode, his documents (tabulæ) and the establishment of his affairs (business)" (D. 50.16.203). Other criteria of domicilium are: where one "is always acting in the municipality, when he buys, sells and concludes contracts there, when he makes use of its forum, baths, theaters and its other institutions, when he celebrates there the holidays" (D. 50.1.27.1). It was controversial whether a man might have two domiciles. Some jurists hold that he had no domicile at all; a contrary opinion prevailed in Justinian's law. Senators had their domicilium both in Rome and in their community of origin. Several rules concerning domicilium are referred to Hadrian. Even a longer sojourn in a city, for the purpose of studies is not considered a domicilium unless it lasted more than five years. Domicilium collocare = to establish one's domicile; syn. larem collocare, constituere (literally = to set a shrine for the tutelary deity of the household). A person who had a domicilium in a community was an incola thereof. Domicilium was important in civil procedure since, as a matter of rule, a debtor might be sued only where he had his domicilium (forum domiciliis). The domicile also was decisive for the municipal charges (munera) since a person was obliged to perform them only where he was resident. On the other hand, only an incola could obtain an honorary post in his community.—D. 50.1; C. 10.40. —See INCOLA, ORIGO, TRANSFERRE DOMICILUM.

Leonhard, RE 5; Berger, RE 9 (s. v. incola); Baudry, DS 2; Lechat, DS 3 (s. v. incola); V. Tedeschi, RISG 7 (1932) 213; idem, Del domicilio, 1936; Visconti, Scr Ferrina 1 (Univ. Catt., Milan, 1947) 429.

Dominicus. Refers to the master's (dominus) power over his slave (dominica potestas). Dominicus = connected with the private property of the emperor; See RES DOMINICA, DOMUS DIVINA.

Dominium. Ownership. Unknown in Cicero (although dominus is not rare in his works) the term appears for the first time at the end of the Republic. It denotes full legal power over a corporeal thing, the right of the owner to use it, to take proceeds therefrom, and to dispose of it freely. The owner's plena potestas in re (= full power over a thing) is manifested by his faculty to do with it what he pleases and to exclude any one from the use thereof unless the latter has acquired a specific right on it (a servitude, an usufruct) which he might obtain only with the owner's consent. Limits to private ownership may be imposed on account of public order or in the interest of the community (utilitas publica) which under certain circumstances may lead to an expropriation (taking away one's property through a compulsory purchase, emplio ab invito, the owner being compensated for the loss of his property). Under the later Empire expropriation was practiced in various instances. Restrictions of the unlimited utilization of immovable property were admitted when a neighbor was hindered in the free use of his property. Special restrictions concerning the owner's right to transfer his property by sale or in another way (alienatio) might be imposed on him by contract or by a testamentary disposition: in exceptional situations they were ordered by law, as for instance, by the LEX IULIA DE FUNDO DOTALIS, which forbade the husband to sell the land pertaining to his wife's dowry, or the prohibition to alienate a thing which is the object of a pending suit (see RES LITIGIOSA). Finally, the owner's rights are limited when he has a thing in common ownership with another (see COMMUNIO). —Syn. proprietats, apparently a later creation. A fundamental feature of the Roman doctrine of ownership is the distinction between the legal power over a thing and the factual holding of a thing (possessio) which do not always meet together in the same person. Hence, conflicting situations might arise between the owner (dominus, proprietarius) and the possessor.—D. 41.1. —See DOMINUM DUPLEX, MANcipium, IN BONIS HABERE, POSSESSIO. For the acquisition of ownership see MANDICATIO, IN TURE CESSIO, TRADITIO, USUCAPIO, LONGI TEMPORES PRAESCRIPTIO, SPECIFICATIO, COM-

MIXTIO, CONFUSIO, OCCUPATIO, TRESAURUS. For the protection of dominium, see REI VINDICATIO, ACTIO PUBLICIANA, OPERIS NOVI NUNTIALE, CAUTIO DAMNI INFECTI, IMPETRATIO DOMINI, HASTA. —See also the following items:

Leonhard, RE 5; Baudry, DS 2; Anon., NDI 5; Berger, OCD; Di Marzo, NDI 10 (s. v. proprietats); C. H. Monto, De adquirendo forum dominio, D. 41.1, Cambridge, 1900; Bonfante, Scritti 2 (1918); V. Scialoja, Teoria della proprietas, 1–2 (Lecioni, 1928, 1931); De Francisci, Translatio.
Dominium duplex. Occurs when one person had dominium ex iure Quiritium over a thing, and another had ownership, recognized by praetorian law (in bonis), of the same thing, an ownership which was often in a basic contrast with the rules of the quiritary law (in ius civile). See the following item.

Di Marco, BIDR 43 (1936); Riccobono, Ser Ferrini (Univ. Pavia, 1946) 34; Cipressoni, St zu Galia, 1943, 93; La Rosa, AmCat 3 (1949); Solazzi, SDHI 16 (1950) 286.

Dominium ex iure Quiritium. Ownership which a Roman citizen has acquired according to the principles of ius civile (ius Quiritium) of things which under that law could be in private ownership. The pertinent action for the recovery of such things was the rei vindicatio. Ant. in bonis habere = ownership which was recognized by, and under the protection of, the ius honorarium.—C. 7.25.—See in bonis esse, dominium duplex, nundum ius Quiritium.

Sinaiski, St Riccobono 4 (1936) 39.

Dominium iustum. Ownership legally acquired.—See HASTA.

Dominus. The owner of a thing. He is opposed to the possessor and usufructuary thereof, who have no ownership but hold a thing. In a broader sense "the term dominus comprises also the usufructuary" (D. 42.5.8 pr.). Dominus = the master of a slave. In contractual and particularly in commercial relations, dominus is the principal (dominus negotii) for whom another is acting on mandate or without authorization (negotiorum gestor).

Lugli, DE 2.

Dominus. A title of the emperor in the later Empire. Hence the period of Roman history from the fourth century is called Dominate.

Neumann, RE 5; Lugli, DE 2, 1952; Dumas, RHD 10 (1931) 35.

Dominus litia. The person in whose name a trial is conducted by a representative (procurator) appointed by him.

Dominus navis (navigii). The owner of a transport ship (or fleet). Syn. nauticarius. The latter term is usually applied to owners of smaller vessels.

Dominus negotii. See negotiorum gestio, ratibabitio, dominus.

Dominus proprietatis. An owner. The term is less used in a general sense; it serves to stress the contrast to another person who has an usufruct or another right (ius in re aliena) on the same property.

—Syn. proprietarius, dominus.

Kaser, Fach Koschaker 1 (1939) 465.


Domus. A house. The house where one is living is considered "his most secure shelter and retreat" (D. 2.4.18). Therefore summons to a trial (in ius vocatio) could not take place in the residence of the defendant. As a matter of rule, "no one should be taken (by force) from his home" (D. 50.17.103). Domus has sometimes the significance of familia, gens, or of a temple.—See domicilium, ius revocandi domum, instrumentum, instrumentum fundi, introire domum.

Calsa, DE 2, 2060; Polak, The inviolability of the house, Symbolae van Oyen (1946) 251.

Domus Augustana (divina, dominica, regia). The imperial household or the private property of the emperor or the empress.—C. 11.72; 77; 3.26.

Seek, RE 4, 651; Neumann, RE 5; Calsa, DE 2, 2061.

Domus divina. See Domus Augustana.—C. 3.26; 7.56.

Lécrivain, DS 3, 961; Calsa, DE 2, 2062; Easslin, Sbstützach 1943, Heft 6, pp. 37, 71.

Donare. To make a gift. "It is held to be donated what is given without any legal obligation" (D. 39.5.29 pr.). See donatio. The gift = dominum, movum. The first term is broader, the latter refers rather to customary gifts, given on certain occasions or as a voluntary compensation for services rendered.

Donarium. A votive offering.

Donatio. An act of liberality by which the donor (donator) hands over or promises a gift to the donee with the intention to make a gift (animas donandi) and without expecting any reciprocal performance. The donor, however, may express the wish that the recipient fulfill a certain act or render a service; see donatio sub modo. A donation may be made also in the form of a release of a debtor from his debt by the creditor (acceptatio). The promise of a gift to be given in the future required the form of a stipulatio in classical law; it was formless in Justinian's law. A donatio must bring about an enrichment of the donee in any form, not only in money, for instance, when the right to dwell in the donor's house is gratuitously granted. Hence the payment of a debt which is not actionable (obligatio naturalis) is not a donatio. For restrictions concerning both the amount of gifts and the group of persons to whom unlimited gifts could be given, see lex clucia. A distinction is made between donations inter vivos (becoming effective during the lifetime of donor and donee) and donations mortis causa, made conditionally and effective when the donee survived the donor.
In the later Empire certain donations had to be made before public officials and registered in public archives (insumatio acta). Justinian made the insumatio obligatory for donations over 500 solidi, but various types of donations were exempt from that formality. Donations of a smaller amount were valid when made in a formal agreement, pactum donationis.—Inst. 2.7; D. 39.5; C. 8.53; 54.—See ANIMUS DONANDI, LEX CINCA, COLLATIO DONATIONIS, CONTRACTUS JUDICUM, EXCEPTA PERSONAE, MODUS DONATIONIS, REVOCARE DONATIONEM, CONFIRMARE DONATIONEM, NEGOTIUM MIXTUM, USUCAPIO PRO DONATO, STIPULATIO DONATIONIS, and the following items.

Leonard, RE 5; Baudry, DS 2; Ascoli, NDI 5; Riccobono, M. Girard 2 (1912) 415; idem, ZSS 34 (1913) 159; Peruzzi, Ser. prin. 2 (1948, ex 1897) 635; J. Stock, Zum Begriff der donatio, 1932; A. Ascoli, Trattato delle donazioni, 2nd ed. 1935; Bussi, La donazione, in CrisDiPri, 1935; H. Krüger, ZSS 60 (1940) 80; Arraúgo-Ruiz, FIR 3 (1943) nos. 93 ff.; B. Biondi, Successione testamentaria, 1943, 651; idem, Ser. Ferrini 1 (Univ. Sacro Cuore, 1947) 102 (Bibl.: J. R. Lévy, RITA 3 (= M. De Vischer 2, 1949) 91; Archi, St. Solazii, 1948, 740; idem, La donazione, 1950; E. Lévy, Wies Roman Vulgar Law, 1951, 157.

Donatio ante nuptias. A gift given to the fiancée by the fiancé. If marriage did not follow, the gift could not be claimed back unless it was made under such condition. In Justinian’s law such condition is self-understood. Justinian’s predecessor, Justinus, permitted donations between spouses which under classical law were forbidden (see DONATIO INTER VIRUM ET UXOREM). Such donations (donatio propter nuptias) were considered a counterpart to the dowry and subject to analogous rules. Hence the name antiphera (= counterdowry). The provisions concerning the restitution of a donatio propter nuptias in the case of divorce or of the husband’s death were equally applied as in the case of a dowry.—C. 5.3; 14.

—See DOS, COLLATIO DONATIONIS ANTE NUPTIAS.

Hollack, F. Niederbaech, 1910, 505; Scherillo, RS/2, 3 (1959, 1930); F. Brandelione, Ser. civ. 1 (1931) 117; Vienara, CrisDiPri, 1935; Vescari, CentCodPriv, 1933, 251; L. F. Re, De donationibus ante nuptias, Rome, 1935; L. Azzone, Le vie de fiancaille et la donatio pour cause de mariage sous le Bas-Empire, Louvain, 1941; L. Caes. Le statut juridique de la sponsalia largitas, Courial, 1949.

Donatio inter virum et uxorem. A gift made by the husband to his wife or vice versa. They were originally valid and not subject to the requirements of the lex cinsca since the spouses belonged to the category of persons exempt from the restrictions of the statute (personas exceptas). Such donations were later prohibited. The prohibition was sanctioned by the legislation of Augustus who seemingly confirmed what customary law had introduced before (moribus receptum est). An oration of the emperors Severus and Caracalla restored the validity of such donations in A.D. 206 in case of the donor’s death before that of the other spouse if the marriage was still existing at the time of his death.—D. 24.1; C. 5.16.—See RETENTIONES DOTAES.

Baudry, DS 2; De Medio, Distio di donare tra i coniugi, 1902; F. Dumont, Les donations entre époque, 1928; J. B. Thayer, On gifts between husband and wife, Cambridge, Mass., 1929; Silver, ZSS 53 (1933) 99; J. G. A. Wilms, Schenkungen zwischen Echtgenoten, Gent, 1934; De Roberts, AnBar 1936, 37; Laura, St Albertoni 2 (1937) 513; L. Aru, La donazione fra coniugi, 1938; C. Stocesco, La date de la prohibition de donations i. v. e, Revista Clásica (Paris-Bucharest) 1939–1940; Scherillo, St Solmi 1 (1941) 169; B. Biondi, Successione testamentaria, 1943, 649.

Donatio inter vivos. See DONATIO MORTIS CAUSA.

Donatio mortis causa. A gift made by a donor in the assumption that he would die before the donee. It was effective after the donor’s death. The donation was invalidated if the donee died when the donor was still living. Donations made by a man seriously ill or in a time of particular danger, might expressly be connected with the condition that they become void if the donor recovered or remained safe. A donatio mortis causa has a similar function as a legacy. It differs from the latter that it is not made in a testament. In the later development it was assimilated to the legacy in many respects and some rules governing the law of legacies were extended to donatio mortis causa. Am. donatio inter vivos, which is effective when the donor and the donee are alive.—D. 39.6; C. 8.56.—See DONATIO, REVOCARE DONATIEM.

E. F. Bruck, Schenkung für den Todestag, 1909; F. Sem, Études sur le droit des obligations, 1. La donatio à cause de mort, 1914; Haymann, ZSS 38 (1918) 209; B. Biondi, AnPer 1914, 188; idem, Successione testamentaria, 1943, 703.

Donatio perfecta. A gift is accomplished (and consequently cannot be invalidated) when the thing presented entered irrevocably into the patrimony of the donee, as, for instance, when a res mancipii was transferred by mancipatio or in iure cessio, or a res nec mancipii was delivered over to the donee. Generally a donatio is considered perfect when the donor had no action for demanding back the gift of the donee who had acquired full ownership. R. Biondi, Successione testamentaria, 1943, 641; S. di Paolo, D. m. c., (Cattanea, 1950).

Donatio propter nuptias. See DONATIO ANTE NUPTIAS, ANTIPHERA.—C. 5.3.

Donatio sub modo. A donation in which the donor imposed on the donee a certain performance (for instance, the erection of a monument in his honor). The term modus was unknown to the classical language in such connection. The beneficiary was only morally obliged to fulfill the donor’s wish, unless it was expressed in the form of a condition ("si . . .") of the validity of the donatio or the donee assumed the pertinent duty by a stipulatio. Imperial and Justinian’s legislation gave the donor and his heirs means to ensure the fulfillment of the modus or to annul the donation.—C. 8.54.—See NEGOTIUM MIXTUM, MODUS.
Donatium. A donation in money given to soldiers by the emperor on special occasions (a triumph, accession to the throne, birthday).

Fiebig, RE 5.

Donatio. See Donatio.

Donum. See Donare, Donatio.

Dorotheus. A law professor in Beirut in Justinian’s time. He was a member of the commission which compiled the Digest and the second edition of Justinian’s Code. Together with Theophilus he edited the Institutes (see Institutiones Iustiniani) as a part of the emperor’s legislative work. He wrote a summary (index) of the Digest.

Jors, RE 5, 1572, no. 22.

Dos. A dowry, i.e., goods given to the bridegroom by the bride or somebody else, primarily her father, for her, in view of the marriage to be concluded. Syn. res uxoria. Normally the dowry was bestowed before the conclusion of the marriage, but it could also be given afterwards. According to the classical law the husband was the legal owner of the dowry; he was, however, limited in the disposal since it was meant as a contribution to the maintenance of the common household and had to be returned at the end of the marriage to the wife, her heir, or another person. The husband’s ownership was therefore rather formal which found its expression in the opinion that the dos is only in bonis maritii. He had, however, full administration of the dowry which he had to manage as a bonus pater familias and he could use the proceeds thereof. He could not alienate landed property belonging to the dowry as a matter of principle (see lex tullia de fundo dotale), except with the wife’s consent. The same principle applied to the manumission of slaves that formed part of the dowry. The husband was liable for the value of slaves manumitted without the wife’s approval. “There is no dowry where there is no marriage” (D. 23.3.3).

Hence a dowry constituted before the conclusion of a marriage was held to have been made under the tacit condition that the marriage would follow (si nuptias fuerint secutae). The restitution of the dowry could be claimed by actio ex stipulatu if the provisions concerning the restitution were set in the husband’s stipulatio (causio rei usoriae). Formless agreements regulating the problems connected with the restitution of the dowry, in particular in the case of a divorce, were later admitted (pactum nuptiale, pactum dotale, instrumentum dotale). Generally a specific action for the recovery of the dowry lay against the husband (actio, iudicium rei usoriae) independently of a particular agreement on the matter. It is not certain whether the action was bona fide, but the judge, no doubt, had to consider ex aequo et bono the questions connected with the restitution. The rules concerning the restitution made a distinction as to whether the marriage came to an end by the death of one of the consorts or by divorce, and, in case of divorce whether the husband or the wife was at fault. The husband was granted the beneficium competentiae and had the right to keep some parts of the dowry for various reasons (see retentiones, inspensae dotales). Justinian’s law introduced important reforms. The problem of the husband’s rights over the res dotales was solved simply by granting him only an usufruct; the actio rei usoriae was declared an actio bonae fidei.—D. 23.3; 4; 5; 24.3; 25.1; C. 5.12; 13; 14; 15; 18; 19; 20; 22; 23; 7.74.—See collatio dotis, datio dotis, dictio dotis, promissio dotis, favor dotis, beneficium competentiae, condictio causa data, condictio sine causa, instrumentum dotale, inspensae dotales, edictum de alterutro, retentiones dotales, usucapio pro dote, and the following items.

Leonhard, RE 5; Baudry, DS 2; Sacchi, NDI 5; Berger, OCD 540; S. Solazzi, Restituzione della doti, 1899; Gradenwitz, MTh Gérardin, 1907, 283; P. Noailles, L’insellaneous dotale (Ann. Univ. Grenoble) 1919; Biondi, AnPel 7 (1920) 179; L. Trippicci, L’actio rei usoriae e l’actio ex stipulatu nella restituzione della doti, 1920; Capocci, BIDR 37 (1928) 139; Grosso, RISG 3 (1928) 39; Lémaire, MTh Fournier, 1929; Stella-Maronca, AnBeri, 1928/L, 1929/1; Riccobono. TR 9 (1929) 23; Arnó, St Bonfaire 1 (1930) 81; Albertario, Studi 1 (1932) 281 (several articles); Naber, St Riccobono, 3 (1936) 231; J. Sonis, Digestinumnumus des Anonymus, I. Dotschrift, 1937; Laura, AN 58 (1937) 219; G. A. Maschi, Con- cezione naturalistico, 1937, 313; Castello, SDHI 4 (1938); Orestano. St Bonolus 1 (1942) 9; Dumont. RHD 22 (1943) 1; Kagan, TWL 20 (1946) 597; Lavaggi, AG 134 (1947) 24; Pföuger, ZSS 65 (1947); Wolff, ZSS 66 (1948) 31; Kaser, RDA 2 (= MTh De Visscher 1, 1949) 511; Maschi, AnTr 18 (1948) 78; M. Ricca-Barbera, La parentesa per esclusione della doti, 1950.

Dos adventicia. A dowry given for the woman, not by her father (see dos profecticia) but by another person, or constituted by herself when she was sui iuris.

Albertario, Studi 1 (1933) 283.

Dos aestimata. See AEStimatio dotis.

Dos fundi. See iusinstrumentum fundi.

Dos profecticia. A dowry given by the father of the bride or wife (a patre profecta). When the wife died before the husband, the father might claim the dowry back, but the husband was entitled to keep one fifth thereof for each child. Ant. dos adventicia.

Dos recepticia. A dowry which after the death of the wife was to be returned to the person who had given it, according to a stipululatory promise of the receiver.

Solazzi, SDHI 5 (1939) 223.

Dositexanum fragmentum. See fragmentum dosi- tereanum.

Dotale. See fundus dotalis, instrumentum do- tale, pacta dotalia, inspensae dotales, retentiones dotales.
Dotare. To give a dowry. It was a moral duty of the head of a family to bestow a dowry upon his daughter (or granddaughter). To enter a marriage without a dowry (indotata) was considered humiliating to the woman. Clients (clientes) used to endow the daughter of their patron with a dowry. Justinian speaks explicitly of ancient laws which held the assignment of a dowry a paternum officium. Under his legislation it became a legal duty of the father and under certain circumstances also of the mother.—See favor dotis.

G. Castelli, Intorno all’origine dell’obbligo di d., BIDR 26 (1913, 164 = Scritti, 1923).

Dotis causa. As a dowry, in order to assign a dowry.

Dotis dictio. See dictio dotis.

Duae partes. Two-thirds. The presence of this majority of members of the municipal council (ordo decurionum) was required for the validity of its decisions.

Dubitare (dubitatio). To doubt. Various locutions with dubitare refer to controversial legal problems (dubitatis est, dubitationem recipit). Justinian calls attention to some controversial discussions of the classical jurists by using the phrase apud veteres dubium est.—See IUS CONTROVERSUR.

A. B. Schwartz, ZSS 69 (1932) 349.

Dubius. See res dubiae, procul dubio.—D. 34.5.

Ducator navis. See gubernator navis, magister navis.

Ducatus. The rank of a dux.

Ducenarius. An imperial official with a salary of 200,000 sesterces. See centenarius.

Vulic, DE 2.

Ducentesima. (Sc. muta.) See centesima.

Ducere aquam. See aquae ductus, servitus aquae-ductus.

Ducere liberos. See interdictum de liberis exhibendis.

Ducere uxorem. To marry a woman. Ducere in domum suam, see deductio in domum. For the interdictum de uxore ducenda, see interdictum de liberis exhibendis.

Duci (ferri) iubere. If the defendant in an actio in rem (a rei vindicatio, for instance) for a movable refused to “enter” the trial (to cooperate in the litis contestatio), the praetor might order that the thing in dispute be taken (ferri) by the plaintiff, or when the object of the controversy was a slave, that he be led off (ducti). This was also the case when, sued for his slave’s wrongdoing by an actio nosalis, the master refused to defend the slave. Duci or ferri iubere might be pronounced by the praetor when the thing or the slave was present before court. If the defendant denied having the thing (or the slave) in his possession, an actio ad exhibendum lay against him which he could not evade, this action being an actio in personam. Duci iubere also occurred when the defendant in a civil trial had been condemned (condemnatus), and refused to defend himself in a trial for the execution of the judgment (actio indicati) and to pay the judgment-debt; the creditor was authorized by the praetor to “lead away” (ducere) the debtor.

Leonhard, RE 4 (s.v. duo revi); J. Kerr Wylie, St in R Law, 1. Solidarity and correactility, Edinburgh, 1923; Bonfante, Scritti 3 (1926) 209, 368, 4 (1925) 368; Cau, Mei Corni 1 (1926); Collinet, St Albertoni 1 (1935); Grosso, St Sas 16 (1938) 3; idem, RDCam 38 (1940) 224; Albertari, St Besta 1 (1939) 3; idem, St Calisse, 1939; idem, Obbligazioni solidali (Corso), 1944; idem, Fischr Wenger 1 (1944) 83; M. Lucifredi Peterlongo, Intorno all’unite
Duodecim tabulae. See Lex duodecim tabularum.

Duovirales (duoviricij. Persons who in a colony or municipium occupied the post of a duovir.

Duoviratus (duumviratus). The office of a duovir.

Duoviri (duumviri). Local magistrates in Rome, Italy and the provinces with varied functions. The principle of collegiality was observed in this magistracy too, since there were always two duoviri at least.

—See Decuriones, and the following items.

Lienbam, RE 5; Humblet, DS 2; Anon., NDI 5; Amo-
iellis, DE 2.

Duoviri aedii dedicandae. Extraordinary magistrates who according to a decree of the senate, had to perform the dedication of a public area to a deity for the construction of a temple, or the dedication of a temple already constructed. A person who as a magistrate erected a temple at his own expenses might be later appointed a duovir aedii dedicandae in order to dedicate it when he was no longer in office.

Lienbam, RE 5, 1801; De Ruggiero, DE 1, 163.

Duoviri aedii locandae. Two magistrates appointed for the construction of a temple, if the matter was not managed by a higher magistrate (a consul, praetor, or censor). Sometimes they were identical with the duoviri aedii dedicandae.

Lienbam, RE 5, 1802.

Duoviri aediles. Two municipal officials with functions similar to those of the aediles in Rome. They had the right to impose fines.—See Multa.

Kubitschek, RE 1, 460; De Ruggiero, DE 1, 244.

Duoviri iuris dicundo. Heads of the municipal administration and the highest judicial magistrates in Italian and provincial cities. Together with the DUOVIRI AEDILES they formed a board of four officials (qua-

tuoviri). Several local statutes (Lex Malacitana, Lex Rubria, Lex Iulia Municipalis, Lex Coloniae Genetivae Iuliae) deal with the official activities of the duoviri iuris dicundo. They were elected by the local assemblies for one year. Each of them could exercise the right of intercessio against the other's acts. It often happened that the emperor was elected as a duovir; in that case another duovir was not elected and the emperor appointed in his place a praefectus.

The functions of a duovir were similar to those of the consuls and praetors in Rome, with certain restrictions in the jurisdictional field, both civil and criminal.

Lienbam, RE 5, 1804; Köhler, RE 4, 2339.

Duoviri navales. Instituted in 311 B.C., they took care of the needs of the fleet and commanded a patrol for the defense of the coast.

Fießbér, RE 5, 1800.

Duoviri perduellionis. In the time of the kingship they were appointed by the king to try cases of per-

duellio (high treason) when such crimes occurred. Under the Republic the consuls continued to appoint them (they are mentioned last in 63 B.C.) although since the middle of the third century B.C. the plebeian tribunes took cases of perduellio under their jurisdiction.

Lienbam, RE 5, 1799.

Duoviri quinquennales. Duoviri in municipalities and colonies, elected once in five years and charged with the census of the population.

Duoviri sacris faciundis. Priests, originally two (under the kings, later ten, decemviri sacris faciundis, and fifteen, quindecimviri sacris faciundis) whose particular function was to take care of, and interpret the Sibylline books of oracles (libri Sibyllini).—See Ludi saeculares.

Bloch, DS 2, 426; Boyce, TAM Philol 69 (1938) 161.

Duoviri viis extra urbem purgandis. Lower magistrates charged with the maintenance of the roads outside of Rome. They belonged to the group of VIGINTISEXVIRI and were subordinate to the aediles.

Duple (sc. pecuniis) stipulatio. See stipulatio duplae.

Duplicia dominium. See dominium duplex.

Duplicia judicium. See judicium duplicia.

Duplicatio. See replicatio. There is a confusion of terminology in the sources. What Gaius calls dupli-
catio (an objection made by the defendant to the plaintiff's replicatio) is called by Ulpian triplicatio which, however, to Gaius is the plaintiff's objection to the duplicatio of the defendant.

Duploma. See diploma.

Duplum. Double. Actiones in duplum = actions in which the defendant is condemned to pay double damages or price paid by the plaintiff when he purchased the object in dispute.—See Actiones in sim-

plum, infitiatio, revocatio in duplum, stipulatio duplum, usuriae ultra duplum.

Dupondii. Students "of two asses"; a frivolous nick-

name given by advanced students to those of the first year (freshmen) of legal studies, because of their poor preparation in law.—See iustinianni novi.

Cantarelli, Rend Linc, ser. 6, vol. 2 (1926) 20; Kreitschmar, ZStS 48 (1928) 559.

Dupondius (dupundius). Two asses. With regard to heirs instituted in a testament the term refers to the following case: if the testator exhausted the whole estate by distributing it among certain heirs and instituted besides them other heirs to some portions of the estate, the estate is reckoned not as one as (see as) but as two asses, the former group receiving one-

half of the inheritance, the latter group the second half.

Duoviri. See Duoviri.

Dux (duces). The head of a military district in the later Empire when the military power was taken from the provincial governors and transferred to the duces. They were commanders of a larger military unit on the frontiers of the Empire (duces limitum).—See dician, ducatus.

Seeck, RE 5; Vulic, DE 2; R. Grosse, Röm. Militärge-

setze, 1920, 152.
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E

Es res agatur. "This shall be the object of the trial." an introductory clause in the part of the procedural formula called praescriptio.—See PRAESRIPTIO.

Wissak, Ml. Girard 2 (1912) 615.

Eadem res. The same thing. The term is discussed by the jurists with regard to the rule: *bis de eadem re ne sit actio*, which excludes a second trial for the same claim. See BIS IDEM EXIGERE. Syn. idem.; ant. alia res.—See CONCURRENCE.

E. Levy, Konkurrenz der Aktionen 1 (1918) 78; Cornil, St. Boniface 3 (1930) 45.

Eebrias. Drunkenness. For crimes committed by drunken persons, see IMPETUS.

Ecclesia. The church both as a building and as the religious Christian community. The recognition of the Christian Church by Constantine was followed by a gradual recognition of Church property. Churches could be instituted as heirs and receive gifts under a will. Justinian admitted also monasteries and foundations for charitable purposes (*piae causae*) to property. He extended the time for *usuacpio* to the detriment of ecclesiastic property to forty years. Testamentary gifts made to Christ, to an archangel or a martyr were considered to be in favor of the local church, or that dedicated to that archangel or martyr respectively.—C. 1. 12; 12.—See CHRISTIANI, EPISCOPI, OECONOMUS ECCLESIAE, PIAE CAUSAES, MINISTER, CONFUGERE AD ECCLESIAM.


Ecclesiasticus. (Adj.) Connected with the Church (res, praedia, ius, dominium, negotia, canones).

Ecclesiasticus. (Noun.) A person employed in the administration of Church property, a Church employee.—See PRIVILEGIO FERI.

Ecloge. (The full Greek title is Ecloge ton nomon.) A selection of laws. It is a Byzantine compilation of excerpts from Justinian's legislative work and constitutions of later Byzantine emperors, written in Greek, and divided into eighteen titles. The work was prepared on the initiative of the emperor Leo the Isaurian and his son, Constantine Copronymos, about the middle of the eighth century. Several private compilations followed in later centuries, composed in a similar manner, for the use of practitioners, such as Ecloge privata, Ecloge privata aucta, Ecloge ad Prochiron mutata (early twelfth century) in which the later legislation is taken into consideration more or less.—See PROCEIROS NOMOS.


Edere actionem, formulam, judicium. See EDITIO ACTIONIS.

Edere librum (libellum). To publish a booklet. See EDITIO SECUNDA, LIBELLUS FAMOSUS.

Edicera. To make known by public announcement (publice, publice). For the praetor's announcements the phrase *praetor edicit* is used. With regard to private persons *edicere* = to make a promise publicly, see INDICUM.

Edicta Augusti ad Cyrenenses. Five edicts issued by Augustus and published in Cyrene between 7 and 4 B.C. They are preserved in an inscription discovered there in 1926. The edicts, written in Greek, deal with various matters of criminal and civil procedure (actions between Greeks should be brought before Greek judges unless the defendant preferred judges of Roman origin), with public charges (numera) of Roman citizens, and other matters. The fifth edict known as a senatusconsult concerning extortion (receptundae, of 4 B.C.), see SENATUSCONSULTUM CALVISIANUM. The Augustan edicts are of great importance because they reveal the features of the earliest imperial edicts (see EDITA IMPERATORUM) issued for the provinces.

Steinwenter, R. E., Suppl. 5, 152; Rademacher, Anzeiger Akad. Wur., 1928, 69; Stroux and Wenger, A.Bay.AW 34 (1928) 2. Abhandlung; v. Premerstein, ZSS 51 (1931, Bibli.) Riccobono, F1R 1 (1914) no. 68 (Bibl.) Moniglioni, O.C.D 250; Last, J.R.S 1945, 93; F. De Visser, Les édits d'Auguste, Louvain, 1940; idem, Nouvelles études, 1949, 111; Oliver, Memoirs Amer. Acad. Rome 19 (1949) 103.

Edita Imperatorum (principum). Edicts issued by the emperors, containing general legal norms laid down both for officials and for private citizens. The edicta are based on the ius *edicendi* of the emperor which resulted from his imperium proconsulare. Unlike the edicts of the magistrates (see EDITA MAGIS-
TRATUUM), which had only temporary validity the edicta imperatorum seem to have had unlimited validity. They were issued for one or more provinces or cities and were introduced with the formula: imperator dicit ("the Emperor says").—See constitutiones principum.—C. 1.14.

Kipp, RE 5; 1947; Haberlandt, Philologia 98 (1909) 68; E. Weiss, St. zu röm. Rechtsquellen, 1914, 84, 119; Wilcken, ZSS 42 (1922) 132; Riccobono, FIR 1° (1941) no. 67 ff.; Orestano, BIDR 44 (1937) 219.

Edicta Iustiniiani. Thirteen Justinian's constitutions preserved as an appendix in one of the two manuscripts of the collection of 168 Novels of the emperor, see novellae justiniiani. Only ten of them were unknown, since three (1.5.6) were preserved in the other manuscript of the same collection (as nos. 8.111.122). Externally the edicta do not differ from the Novels; they have been called "edicta" to differentiate them from the Novels proper.


Edicta magistratum. Edicts issued by magistrates on the basis of their ius ediciendi, at the beginning of their term of office, and containing rules by which they would conduct their judicial activity "in order to make the citizens know what law they would apply in the jurisdiction" (D. 1.2.2.10). See ius ediciendi. The right to issue edicts was held by consuls, praetors, dictators, aediles, quaestors, censors, plebeian tribunes; in municipalities by duoviri and quaestorviri, in the provinces by governors. The custom of issuing edicts was also followed by the prefects in imperial times. Of greatest importance in the development of Roman law were the edicts of the praetors and aediles. The creation of the ius honorarium was their work. There is no doubt, however, that the real authors of most praetorian edicts were the jurists, acting in their capacity as legal advisers of the magistrates and as initiators of new forms of action and creative ideas in daily legal life.—See ius honorarium, ius praetorium, ius ediciendi, edictum aedilicum, edictum praetorium.

Kipp, RE 5; Louis-Lucas and A. Weiss, DS 2, 456.

Edicta praefectorum praetorio. Edicts issued in the later Empire by the praefecti praetorio under various names (edicta, programmata, formae, praecpta, praescitiones, 'commoinitoria'). They were concerned mostly with administrative matters.

Moemmen, Hist. Schriften, 3 (1906) 284; Zacharias (v. Lingenthal), Anedota 1 (1843) 227.

Edicta praesidium. Edicts of the provincial governors.—See edictum provinciale.

E. Weiss, Studien zu den röm. Rechtsquellen, 1914, 71; Wilcken, ZSS 43 (1921) 137.

Edicta principum. See edicta imperatorum.

Edictales. Students in the second year of law studies, called so in pre-Justinian law schools because they studied the juristic commentaries to the pretorian edict.

Kübler, RE 5; Humbert, DS 2.

Edictalis bonorum possessio. See bonorum possessio decretaalis.

Edictalis lex. A term which some late emperors (from the fifth century on) and Justinian applied to their enactments when promulgating them ("haec edictalis lex").

Edictum. Either the whole edict published by the magistrate on the album when he assumed his office or a single clause thereof. A magisterial edict was one year's law (lex annua) since the magistrate was only one year in office. — See magistratus, edicta magistratum, edictum tralaticum, ius ediciendi, clausula, nova clausula.

Kipp, RE 5; De Ruggiero, DE 2; v. Schwind, Zur Frage der Publikation (1940) 49.

Edictum aedilium curulium (aedilicium). The edict of the aediles who as supervisors of the market promulgated certain rules concerning the sale of slaves and domestic animals, and the liability of the seller for defects of the object sold. The aedilian norms were later extended to sales of other things.—D. 21.1.—See emptio venditio, edictum de feris.

H. Vincenc, Le droit des édiles, 1922; Serarendens, TR 4 (1923) 384; idem, RHD 6 (1927) 385.

Edictum Augusti de aquaeductu Venafrano. (Between 18 and 11 B.C.) An edict by Augustus concerning the aqueduct in Venafrum.

Edition: Riccobono, FIR 1° (1941) no. 67 (Bibl.).

Edictum breve. Not a technical term; a brief edict issued with regard to another legal provision (a statute).


Edictum Carbonianum. See bonorum possessio et carboniano edicto.

Edictum censorum. Against Latin rhetoricians (92 B.C.) It is known from literary sources.

Riccobono, FIR 1° (1941) no. 52.

Edictum Constantini de accusationibus. (Between A.D. 313 and 317.) Concerned the accusation in criminal matters. It is epigraphically preserved.

Riccobono, FIR 1° (1941) no. 94 (Bibl.).

Edictum de alterutro. A section in the praetorian edict granting a widow the right to claim restitution of her dowry after the husband's death, based either on her legal right to the dowry or on the husband's testament in which such restitution was ordered.

Lenel, Edictum (1927) 308.

Edictum de appelationibus. (Preserved on a papyrus.) Deals with appeals to the emperor and settles some pertinent procedural rules. The author of the edict is unknown (Nero?).

Riccobono, FIR 1° (1941) no. 91.

Edictum de feria. A part of the aedilean edict concerning the liability for damages done by non-domestic animals (a dog, wolf, bear, panther, lion, etc.) held by a private individual.—See feriae.

Lenel, Edictum (1927) 566; Scialoja, Studi 2 (1934) 142.
Edictum de violatione sepulcrorum (of Augustus?).

See VIOLATIO SEPULCRI.

Riccobono, FIR 1° (1941) no. 69 (Bibl.).

Edictum Diocletiani de pretiis. An edict of Diocletian (A.D. 301) which established ceiling prices for a long list of goods, both necessary and luxurious, as well as for services rendered by professionals, such as advocates, physicians, shippers. Penalties were imposed on the violators who sold at higher prices or who hoarded merchandise. The prices were fixed in DE NARI² reduced to one twenty-fourth of their original value. The Edict had little success. It was published throughout the empire and is preserved epigraphically in considerable part.

Blümner, RE 5; Enslein, RE 7 A (1949) 2469; Mommsen, Juv. Schriften 2 (1903) 323; Kühler, Gesch. des röm. R., 1925. 361; Mickwitz. Geld und Wirtschaft (Helsingfors, 1932) 70; Balogh, ACIV 2 (estr. 1951) 332 (Bibl.).

Edictum Domitiani de privilegiis veteranorum.

(A.D. 88/89.) Granted certain privileges to veterans.—See VETERANI.

Riccobono, FIR 1° (1941) no. 76 (Bibl.).

Edictum Hadriani de vicesima hereditatim. Concerned with the tax on estates. It was abolished by Justinian.—C. 6.33.—See VICESIMA HEREDITATUM, MISSIO IN POSSESSIONEM EX EDICTO HADRIANI.

Edictum monitorium. The jurist Callistratus wrote a treatise on "edictum monitorium," but the meaning of the term is not clear in spite of the score of texts preserved in the Digest.

Kots-Dobrz, RE Suppl. 3, 227; F. Schulte, History of R. legal science, 1946, 195 (Bibl.).

Edictum novum. See NOVA CLAUSULA.

Edictum peremptorium. An official summons addressed to a defendant who refused to appear in court warning him that the trial would be conducted even in his absence.—See EVOCATIO.

Edictum perpetuum. An edict issued by the praetor or another magistrate at the beginning of his year of service and valid for the entire year of his being in office. Ant. edictum repentinum = an edict issued during the year of service. For another significance of edictum perpetuum see the following item.

Guarnieri-Citati, NDI 5, 296; Fringsheim, Symbolae Frigburgenses Lenzel, 1931, 1.

Edictum perpetuum Hadriani. A revision and codification of the praetorian and aedicular edicts, made by the jurist Salvius Uilianus at the initiative of the emperor Hadrian toward the end of his reign (after A.D. 132). The final codification of the edicts provoked an abundant commentary activity of the jurists (Pomponius, Pedius, Furius Anthianus, Callistratus, and Gaius, the latter with regard to the provincial edict). The earlier commentaries were superseded by the extensive commentaries to the Edict by Ulpian and Paul (in 81 and 80 books, respectively) which were richly exploited by Justinian's compilers of the Digest. The edictal system was followed in Justinian's Digest and Code according to an express instruction of the emperor to keep in the compilations the order of presentation as systemized in the Edict.

Thanks to this arrangement a reconstruction of Hadrian's Edict in its essential outlines was possible. In this final edition the Edict gives an extensive picture of the praetorian law, primarily of procedural legal institutions, such as editio actionis, in ius vocatio, representatives and securities in court, in integrum restitutio, execution of judgments, interdicts, exceptions, the formulae of actions (partly scattered through the whole work, partly reserved for the end). With the codification of the edict the edictal activity of the praetors was practically stopped.—See EDICTUM PRAETORIS.

The standard work: Lenel, Edictum perpetuum, 3rd ed. 1927, was followed by the editors of Fontes iuris romani, recently by Riccobono 1° (1941) 65, p. 335 (Bibl.); Kipp, RE 5, 1945; Louis-Lucas and A. Weiss, DS 2; De Ruggiero, DE 2; Guarnieri-Citati, NDI 5, 296; Girard, Mélanges 1 (1912); Fringsheim, Symbolae Frigburgenses Lenzel, 1932; Riccobono, BIDR 44 (1937) 1; A. Guarino, Salvius Julianus, 1946, 26: Berger, St Albertario 1 (1950) 605; De Francisci, RIDA 4 (= Mèl de Visscher 3, 1950) 319; D’Orgeval, RHD 27 (1948) 301; Kaiser, Fach der Schule 2 (1951) 21; Guarino, St Albertario, 625; idem, ACIV 2 (estr. 1951) 169.

Edictum praetoris. Both the praetor urbans and the praetor peregrinus issued edicts at the beginning of their term. See IUS EDICENDI, EDICTA MAGISTRATUM. The praetorian edicts were a decisive factor of the development of the law (see IUS PRAETORIUM). They introduced new actions (actiones praetoriae) in order to protect legal situations and transactions which were deprived of judicial protection under the ius civile. They reformed the law of succession, both testamentary and intestate. Even before the final codification of the praetorian law (see EDICTUM PERPETUUM HADRIANI) many commentators to the praetorian edict were written (by the famous Republican jurist Servius Sulpicius Rufus, then by Ofilius, Laobeo, Sabinus, Vivianus). The announcements of the praetor in the edict are formulated in the first person through such phrases as idictum dabó, cagam, perimitum, restitutum, iubebo, servabo ("I shall grant an action, enjoin, allow, restitute, order, protect") and similar. In this way he promised in his own name to apply certain rules or measures in his jurisdictional functions without directly ordering or prohibiting a certain behavior.—See CALENDAE, LEX CORNELIA DE EDICTIS.

Kipp, RE 5; Braziello, NDI 5; Wlassak, Edikt und Klageform, 1882; F. v. Velsen, Beiträge zur Geschichte des e. praetoris urbani, 1909; Weiss, Uber vorjuridische Edikta-redaktionen, ZSS 50 (1930) 249.

Edictum provinciale. An edict issued by the governor of a province, chiefly on entering office. The governor had ius edicendi as the magistrates in Rome. The differences between the edicts in the various provinces and the edict of the Roman praetor seem not to have been very important. Only Gaius wrote a
commentary on "the provincial edict" by which we must understand a typical provincial edict and not that of a specific province. To judge from the excerpts of that commentary as preserved in the Digest, we may assume that the provisions of the provincial edicts were modeled on the edict in Rome.

F. v. Velzen, ZSS 21 (1900); E. Weiss, Studien zu den röm. Rechtssäulen, 1914, 66; 109; L. Falloni, Evolution de la juridiction du magistrat provincial, 1926, 73; Reinhuth, The prefectural edict, Aegyptus 18 (1938) 3; Backland, RHD 13 (1934) 82; F. v. Schwind, Zur Frage der Publikation, 1940, 70.

Edictum repentinum. An edict issued by a magistrate exceptionally during his term on a specific occasion, whereas the normal edict was promulgated at the time he took up his duties.—See Edictum perpetuum.

Edictum successorium. The section of the praetorian edict concerning Bonorum possessio. It contained the rules about persons entitled to claim the bonorum possessio if the person first entitled failed to do so within the prescribed period or refused to accept the estate. Syn. caput successorium.—D. 38.9; C. 6.16.

—See Bonorum possessio intestati.

Edictum Theodorici. A collection of 154 Roman legal provisions, compiled about a.d. 500 by order of Theodoric, king of the Ostrogoths, which had to be observed by both Roman citizens and Ostrogoths. The excerpts were taken from the three Codes, Codex Gregorianus, Hermogenianus and Theodosianus, from some post-Theodosian Novels, and from Paul’s Sententiae.

Brasloff, RE 5; Brasilello, NDI 5, 595; Editions: Buchme, Monumenta Germaniae Historica 5 (1875) 149; Baviera, FIR 2° (1940) 683 (Bibli.)—Schupfer, Atti Assisi. Lincei, Ser. 4, T. 2 (1867-1868) 233; Paterza, ATor 28 (1893) 553; B. Paradisi, Storia del dir. inst. 1951, 103.

Edictum tralaticium. The part of a praetor’s edict which he adopted from his predecessor’s edict.

Weiss, ZSS 50 (1930) 233.

Edictum Vespasiani de privilegiis medicorum. (a.d. 74.) Epigraphically preserved; it granted physicians certain personal privileges and exemption from taxes (immunitas) and set penalties for violation of the enactment. Among the beneficiaries of the edict were also the teachers (paeunia = magistri, praecptores). Similarly, a rescript by the emperor Domitian (a.d. 93-94) against certain abuses (avaritia = greediness) of physicians included praecptores as well.—See medici.

Edition: Riccobono, FIR 1° (1941), no. 73, 77 (Bibli.)—S. Riccobono, Jr. AmPh 17 (1937) 50.

Edictio actionis. The notification by the plaintiff of the defendant of the action he wanted to bring against the latter. First it had to be done extrajudicially. This edictio had a preparatory character to let the defendant know the matter for which, and the type of action with which, he will be sued. This offered him the opportunity of settling the controversy before it came to trial. A second edictio followed when both the parties appeared before the praetor, the plaintiff indicating exactly the action (formula) by which he was suing his adversary. There remained a possibility of changing or amending the proposed formula.—D. 2.13; C. 2.1.—See litis contestatio.

Wenger, RE 5; Humbert, DS 2.

Edictio instrumentorum. The introduction of written documents by the parties to a trial as evidence either of the plaintiff’s claim or of the defendant’s denial.—See exhibere, instrumentum.


Edictio interdicti. A preliminary act in interdictal proceedings, analogous to the edictio actionis, when an ordinary process was initiated. Edere interdictum also refers to the issuance of an interdict by the praetor.—See interdictum.


Edictio iudicem. (In criminal trials, quaestiones.) The selection of one hundred jurors from the panel for quaestiones, proposed by the accuser for the appointment of a juror in a specific trial and communicated by him to the accused. From that number the latter might select (electio) fifty who then made up the jury. Later, this procedure was repeatedly modified.—See quaestiones.

Edictio rationum. (By a banker, argentarius.) A banker was obliged to produce his books in a trial in which not only his own interests were involved but also when those of his clients were at stake and the entries in the banker’s book might serve to clarify the legal situation.—See argentari.

Edictio rescripti. Mentioned only in the Theodosian Code in connection with the summons (denuntiatio) in the rescript procedure. It seems to be the modification of an imperial rescript to the adversary.

Andt, La procedure par rescr., 1920, 13, 57; Filisiaux, RHD 9 (1930) 201.

Edictio secunda. The second edition of a book. Second editions of juristic writings are mentioned by Justinian (Cori 3) with the remark that in earlier times they were called repetita praeciptio. A second edition of a monograph by Paul is noted in a later source (Frag. Val. 247). There is no doubt that some jurists have themselves prepared second editions. On the other hand we know that a few first editions (edicto prima) of juristic works were reedited by other classical jurists, usually with a commentary or loose remarks (notae). There is, however, a tendency in the recent Romanistic literature to ascribe to early postclassical times (end of the third and the first decades of the fourth century) a very vivid activity in anonymous reediting of classical juristic works which even if perhaps accepted in very few instances, hardly can be proved and seems very unlikely when assumed to such extent as has been by some writers.

F. Schulz, History of R. legal science, 1946, 141, and passim; G. Riccobono, Lineamenti della storia delle fonti,
Educare (educatio). To educate, to rear, to bring up. The sources deal with educa re with reference to wards (pupillii) being under the tutelage of guardians. The term is understood in a broader sense comprising not only the care for mental development but also nourishment and the necessities of physical development. Supervision of the pertinent duties of the guardians was exercised by the tutelary authorities.—D. 27.2; C. 5.49.—See tutela.

Effectus. The result, consequence of a legal transaction or of a trial. The term often appears in interpolated texts.

Volterra. St. Ratti, 1933, 440; Guarneri-Citati, Indices (1927) 32; idem, Fachr Kasperker 1 (1939) 133.

Efficax. Legally valid, efficient.

Effractor. (From effringere.) A burglar.—D. 47.18.

—See custos.

Effusa. What has been poured out from a dwelling.—D. 9.3.—See actio de deiectis et effusis.

Egestas. Poverty, indigence. It served as a basis for exemption from certain duties (guardianship, public charges, and the like). It could also be the cause of the dissolution of a partnership.

Albertario, Studi 5 (1937) 435.

Egredi. To surpass, exceed, for instance, the terms fixed in an agreement (e.g., a mandate); with reference to the condemnatio in the procedural formula = to go beyond the limits fixed therein.

Egregiatus. The dignity of a vir egregius.—See the following item.

Egregius vir. The honorary title of an imperial procurator of equestrian rank.

Seck, RE 5; O. Hirschfeld, Kleine Schriften, 1913, 652.

Eiusare iudicem. See ferre iudicem.

Eiuratio. A declaration made by a magistrate under oath at the end of his term to the effect that during his service he had observed the laws. Eiuratio magistratus = the remuneration of a magistracy.

Neumann, RE 1, 23; Kübler, Re 14, 416; Staudeler, ZSS 61 (1941) 81.

Elusmodi. Of such a kind. Syn. huiusmodi. The latter word is preferred by Justinian in his constitutions, where it appears several hundred times while eiusmodi is used by him only once. Huiusmodi is, therefore, considered as a criterion of interpolation.

Guarneri-Citati, Indices (1927) 44.

Electio. The right of the debtor to choose among the alternative things he owes if such a right was reserved to him in the pertinent agreement. Similarly, the creditor (or a legatee) might have been entitled to make the choice among alternative things owed (or bequeathed) to him.—D. 33.5.—See optio, legatum optionis.

Grosso, RDCom 38 (1940) 225.

Electio iudicium. See editio iudicium.

Electio legata. See legatum optionis.

Elegantia. In a correct, fine manner. The term is applied to express approval of another jurist's opinion with emphasis on the legal idea or doctrine rather than the style. It is a favorite expression of Ulpian's. Ant. inelagantia.

Radin, LQR 46 (1930) 311; Schulz, History of R. legal science, 1946, 335; Sciaccia, BIDR 51-52 (1948) 372.

Elementa. Justinian called his Institutes "Institutiones sive elementa" and in the introductory constitution by which the work was promulgated (Imperatoriam, c. 4) he denotes the work as "the first elements of the whole of legal science (totius legalis scientiae prima elementa)."

Elidera. In a civil trial, to repel the plaintiff's claim by an exception (exceptione) or the defendant's exception by a replicatio.

Elocutio. To let out, to lease.—See locatio conductio.

Elogium. An additional clause. Elogium is a testamentary clause, particularly when someone is disinherited. For elogium in theaedilian edict, see rumentum. In criminal affairs elogium is the report transmitted to the competent military or civil authority about a criminal who has been arrested and questioned by the official who seized him.

Laiaye, DS 2; Brachi, DE 2.

Elogium ultimum. A testament.

Elugere virum. To mourn the husband.—See lucutus.

Emancipatio. The voluntary release of a son or daughter from paternal power by the father. Following a rule established by the Twelve Tables, "if a father sold his son three times, the son shall be free from his father" (Gaius, Inst. 1.132; Epit. Ulp. 10.1.), a man would sell his son through mancipatio to a reliable person under fiduciary agreement that the latter would manumit him three times. Only after the third manumission did the son become free from paternal power because after each of the first two he returned to the patria potestas. Alternatively, the trustee could remanipate the son directly to the father; after the third remancipatio, the son did not come under patria potestas but became the father's persona in mancipio (see mancipium) to be freed by him through a simple manumissio. A third remanipatio by the trustee was necessary, because otherwise the trustee would have acquired certain rights of succession and of guardianship over the son which were generally not intended by the parties involved. With regard to daughters and grandchildren, one mancipatio by the head of the family sufficed. The emancipated member leaves the family and becomes a head of a family himself. In Justinian's law, emancipatio is performed by a simple declaration before a competent official.—D. 1.7; C. 4.13; 8.48.—See divortium, lex Anastasiana, fiducia reman- cipationis causa, ingratus, pares, manumissior.

Leonhard, RE 5; Kreller, RE 184, 1456; Baudry, DS 2;
Emansio. See EMANSON.

Emansor. A soldier who is absent without leave or who exceeds his furlough, but who intends to return to his unit unlike a deserter who quits for good or is absent for a longer time. Punishment for emansio depended upon the reason for the absence. In certain cases (illness, affection for parents and relatives, pursuit of a fugitive slave) the culprit was pardoned.

Syn. remansor.

Emblemata Tribonianii. A term used in Romanistic literature for interpolations by Justinian's compilers in texts taken from juristic writings of the classical period or in imperial constitutions.—See DIGESTA, TRIBIONIANUS, GLOSSAE.

For bibl. see General Bibliography, ch. XIII.

Emendare. To correct, amend. It refers to legal reforms by which earlier law was improved, in particular to the activity of the praetors in this regard.

—Syn. corrigere.

Emendare moram. See MORA.

Emendatio. A punishment, chastisement, especially correction administered by a father on the strength of his paternal power (emendatio domestica) or by a master to his slaves. See CORRECTIO. Imperial legislation of the fourth century restricted the formerly unlimited power of the father and master.—C. 9.14; 15.—See IUS VITAE NECISQUE.

Emere. See EMMPTO.

Emeritum. The pension of a soldier who had served out his time (emeritus, veteranus).

Emeritus. See the foregoing item. Syn. VETERANUS.

Lacour-Gayet, DS 2.

Eminencia. See EMINENTISSIMUS VEN.

Eminentissimus vir. An honorary title of the praefectus praetorio, and in third century after Christ also of the praefectus vigilium. The office of the praefectus praetorio is addressed by the emperor with the attribute Eminencia.

Emittere. (With regard to written documents.) To write down and sign a document (instrumentum, caustionem) or a letter (epistolam, litteras) in which the writer makes a legally important statement.

Emittere rescriptum. To issue a rescript.

Emolumentum. An advantage, profit, primarily with regard to successional benefits (inheritance, legacies, collatio, Falcidian quarter). The term is common in the language of the imperial chancery and in Justinian's constitutions.

Emphyteusis. Long-term lease of an imperial domain or of private land for a rental in kind. The fore-runner of this institution was the is in agro vectigali. The emphyteusis gave the lease-holder (= emphyteus) rights similar to those of a proprietor, although the real owner remained the person to whom the rent (canon, pensio) was paid. Under certain circumstances, the land returned to the owner (as in the case of the death of the emphyteus without an heir, non-payment of the rent or taxes for three years, lapse of time if a term was fixed in the original agreement, contractus emphyteusos, which was a specific contract and neither an ordinary lease nor a sale. The rights of the emphyteus (ius emphyteuticum) embraced the full use of the land and its products; they were alienable and transferable by testament or ab intestato.—C. 4.66; 11.63.—See AGER VECTIGALIS, IUS IN AGRO VECTIGALI, CANON. Berger, OCD 314; Mitteis, ASächsGW 22 (1901); Macchioro, AG 75 (1905) 148; G. Baviere, Scr giuridici 1 (1909) 189; P. Bondante, Scr giur. 3 (1924) 141; W. Kamps, Recueil de la Société J. Bodin, 3 (1938) 57; Johnston, Univ. Toronto Li 3 (1940) 323; A. Hajo, Etudes sur la location à long terme, 1926: E. Levy, West Roman Vulgar Law, 1951, 43, 90; S. O. Casio, AnPal 22 (1951) 1.

Emphyteuta. See the foregoing item.

Emphyteuticus (emphyteuticus). Encumbered (ager fundus, praedium) or connected with emphyteus (contractus, ius, canon).

Empetio venditio. A purchase and sale, i.e., a contract by which a thing is exchanged for money. The terminology empetio venditio indicates the two elements of the contract: an emerere by the buyer (emptor) and a vendere by the seller (venditor). The Roman sale was a consensual contract concluded when the parties by simple consent (nudo consensu) agreed upon the thing to be sold and the price (pretium) to be paid therefor, without further formality. The sale contract itself did not transfer ownership of the thing sold to the buyer. To accomplish that another legal act was necessary (mancipatio, in iure cessio, traditio). The vendor had only to hand over the thing to the buyer to make the latter possess and enjoy it peacefully (ut rem emptori habere licet). The buyer had to pay the price in money, either immediately or later, according to the agreement. The exchange of one thing for another is not a sale, but a PERMUTATIO. Any thing may be the object of a sale (merx) except things excluded from private transactions (res cuius commercium non est). Non-corporal things (a servitute, an usufruct) may be sold, as well as future things (see EMPTIO SPEL. EMPTIO REI SPERATAE).

The price must be fixed in an unequivocal way (pretium certum) and be real, i.e., corresponding to the true value of the thing (verum), not fictitious (e.g., as a device to cover a prohibited donation). Sale was a contract bonas fidei; the pertinent actions were actio venditi (ex vendito) against the buyer for payment of the price and actio empti (ex empto) against the seller if he did not fulfill his obligations, failed to deliver the thing sold, for example, or to take care of it (custodia) in the period between the conclusion of the sale and delivery so that the thing perished or deteriorated. The seller was not liable for accident
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(cause). See PERICULUM REI VENDITAE. Special rules settled the liability of the vendor when the buyer was later evicted from the thing by a third person. See EVICTIO, STIPULATIO DUPLAE. Warranty against hidden defects in the thing sold was originally stipulated expressly by the seller; besides, the actio emptii, as a bonae fidei actio, gave the opportunity to take into consideration defects fraudulently concealed by the seller. The edict of the aediles curules, as the supervisors of the markets established particular provisions for the sale of slaves and domestic animals. Above all, the seller had to inform the buyer of any defect or disease that was not apparent to the buyer. He was liable for all allegations (DICTA ET PROMISSA) he may have made about special qualities of the slave or animal or the lack of secret defects (even those unknown to himself). Two actions lay against him, either the actio redhibitoria for the rescission of the sale (the seller being obliged to return the price and the buyer to restore the thing with accessories) or the actio quanti minoris (named also aestimatoria) by which the buyer claimed restitution of a portion of the price paid, corresponding to the lesser value. The principles of the aedilian edict were later extended to all kinds of sale. Throughout the classical period no written document was required for the validity of a sale contract. When made, it served only for purposes of evidence. Justinian ordered some formalities for written sales, when according to the will of the parties, the written form was a requirement for the validity of the sale (instrumentum emptionis, instrumentum emotionale). Until the formalities were accomplished, with the assistance of a notary (tabellio), the parties could rescind the sale. Many reforms in the law of sale were introduced by Justinian.—Inst. 3.23; D. 18.1; 18.5; 19.1; C. 4.38; 40; 44; 45; 49; 54; 58.—See actio de modo agris, ADICTIO IN DEMENT, ARBA, COMMISORIA LEX, COMMODUM, EDITION AEDILII, EXCEPTIO REI VENDITAE, PACTUM DE RETROVENDENDO, PACTUM DISPLICENTIAE, PERFECTUS, PRETII, PERICULUM REI VENDITAE, VENDITIO, LAESIO ENSORMIS, USUCAPIO PRO EMPTOR, REDHIBITORIO, SIMPLARIAM VENDITIO, VACUA POSSESSIO.

Leonard, RE 5; Humbert, DS 2; Lécrivain, DS 4, 517 (s.v. redhibitoria); Puginie, NDI 5 (s.v. emptio); Biondi, NDI 12, 880 (s.v. vendita); De Medici, BIDR 16 (1904) 5; Lusignani, La responsabilità per custodia 2 (1905) 3; M. Mackintosh, The Law of Sale, 2nd ed. 1907; E. Rabel, Haftung des Verkäufers wegen Mangels im Recht, 1912; F. Fringsheim, Kauf mit fremdem Geld, 1916; H. Vincent, Le droit des édiles, 1922; Ferrini, Opere 3 (1929) 49; R. Monier, M.E. Cornu 2 (1926) 137; idem, La garantie contre les vices cachés, 1930; Fringsheim, ZSS 50 (1930) 1; Meylan, St Boniface 1 (1930) 3; C. Longo, Ebd. 3 (1930) 363; Senacchia, Ebd. 91; Becklund, LQR 48 (1928) 217; Albertano, Studi 3 (1934) 401; Marianne Bussmann, L'obligation de délivrance du vendeur, 1933; Fringsheim, ZSS 53 (1934) 491; Flume, ZSS 54 (1934) 328; Besserer, ACII 1 (1935) 335; G. G. Archi, Il trasferimento della proprietà nella compravendita romana, 1934; Meylan, St Riccobono 4 (1936) 279; Biondi, Ebd. 90; Fringsheim, ibid. 313; Maymann, ibid. 341; S. Romano, AnFer 10 (1934); idem, Nuovi studi sul trasferimento della proprietà nella compravendita, 1937; Meylan, La vente, Années de droit et de sciences polit. de Louvain, 1938, 447; C. Longo, BIDR 45 (1938) 198; Amo, ATor 74 (1939) 570; Scarlata, Fazio, RISC 1939, 216; v. Lübben, Fachr Kschacher 2 (1939) 113; Arangio-Ruiz, ibid. 141; F. De Zulueta, The Roman Law of Sale, 1943; Pfugner, ZSS 65 (1947) 205; Romarz, Novation de l'obligation du vendeur, RHD 1948, 189; W. Flume, Eigenschaftsverw. und Kauf, 1948; Meylan, Scr Ferrini 4 (Univ. Sacro Cuore, Milan, 1949) 176; Goei, Sem 8 (1950) 6; Perazzoa, AG 140 (1951) 31; E. Levy, West Roman Vulgar Law, 1951, 117; Fringsheim, Actio quanti minoris, ZSS 69 (1952) 234; V. Arangio-Ruiz, La compravendita in dir. rom. 1 (Lessons) 1952.

Emptio ab invito. Used of an act of a magistrate by which an individual is compelled to sell his land to the state for the sake of public utility (construction of an aqueduct or a road) in return for a reasonable compensation. The term "expropriation" is unknown in juristic Latin.—See PROBACTIO.

Jones, Expropriation in R. law, LGR 45 (1929); F. M. De Robertis, La expropriación por publicidad utilidad, 1936; U. Nicollini, La propiedad, il principio e l'asprapropriazione, 1941; Brasili, BIDR 44 (1927) 475; idem, Estensione e limiti della proprietà (Corso, 1941) 58; De Robertis, AnBari 7 (1947) 153.

Emptio bonorum. See BONORUM EMPTIO.

Emptio familiae. See FAMILIAE EMPTOR.

Emptio hereditatis. The inheritance of a living person or a non-existent person could not be the object of a sale unlike the inheritance of a deceased person. Antoninus Pius granted the buyer of an inheritance an actio utilis against the debtors of the inheritance. —D. 18.4; C. 4.39.

Vassalli, Miscellanea critica 1 (1913); Capua, St Basta 1 (1939) 514.

Emptio rei speratae. The sale of a thing which is expected to come into existence in the future (the sale of a crop, an unborn child of a slave = partus ancillae). The sale becomes void if the expected thing does not materialize.

F. De Visscher, Vente des choses futures, 1914.

Emptio spei. A sale of a future thing while it is quite uncertain whether it will come into existence at all (ipsum incertum rei is the object of the transaction), e.g., fish to be caught by a fisherman in his next catch. In such a sale, the buyer takes the full risk and the price has to be paid even if no fish are caught. —See LACTUS REI.

Brasilia, NDI 5; Vassalli, AnPer 1913 (Miscellanea 1); F. De Visscher, Vente des choses futures, 1914; Bartocci, RIDA 2 (= M. De Visscher 1, 1949) 50.

Emptio sub haste. See SUBHASTATIO, VENDITIO SUB HASTE.

Emptionale instrumentum. A written deed of sale. —See EMPTIO.

Emptor bonae fidei. A buyer of a thing who did not know that "the thing belonged to another (than the seller) or believed that the seller was entitled to sell it" (D. 50.16.109), for instance, as a guardian or curator or representative of the real owner.
Emptor bonorum. See bonorum emptio.
Emptor familias. See familiae emptor.

Enantiophanes. See ANONYMUS.

Enchiridium (enchiridion). An elementary handbook.
A juristic writing so entitled appears in the Digest under the name of Pomponius. A long excerpt thereof containing a concise outline of legal history and a survey of jurisprudence until Julian is preserved (not free from later alterations) as frag. 2 in the title of the Digest 1.2 "on the origin of the law, all magistrates and the sequence (successio) of the jurists."
Berger, RE 4A, 1907; Ebrard, ZZS 46 (1925) 117; Felgenträger, Symb. Friburgensis Lenel (1932) 369; Kretschmar, ZZS 59 (1939) 166; Schulz, History of R. Legal Science, 1946, 168; Guarino, RIDA 2 (= Mil De Vißcher 1, 1949) 402; Weisz, ZZS 67 (1950) 503.

Enucleatum ius (antiquum). Law taken from older writings. Justinian calls the law collected in the Digest and in his Institutes by this term.
Ebrard, RIDA 3 (= Mil De Vißcher 2, 1949) 253.

Epanagoge (tou nomou). A collection of legal norms written between a.d. 879 and 886 at the initiative of the Byzantine emperor Basil the Macedonian but not officially published. The compilation, built up primarily on Justinian's codification, was to lead to an achievement similar to that of the Basilica a few decades later. A similar compilation called Epanagoge acuta belongs to the tenth century.

Epistemica. See METATUM.—C. 12.40.

Episcopalis auditia. The jurisdiction of bishops insofar as it was recognized by the State. Originally limited to spiritual matters and disputes among ecclesiastics, though also practiced by the bishops with regard to laymen in the capacity of arbitrators, it was later extended to controversies among laymen in various instances, operating concurrently with state courts. Fluctuating imperial legislation limited or increased the jurisdictional competence of the bishops until the whole matter was settled by Justinian.—C. 1.4; Nov. 123.

Piacentini, NDI 1, 1154; Humbert, DS 2; Steinwenter, RAC 1; Siciliano-Villanueva, Byzantion 1 (1924) 139; Lammeyer, Aeg 13 (1933) 193; Volterra, BIDR 42 (1934) 433; G. Vismona, E. a. 1937 (Milan); Steinwenter, Byzantinische Zeitschrift 30 (1930) 660; Masl., AG 122 (1939) 86; Bussek, ACTTI 1 (1934) 431; idem, ZZS Kas. abst. 28 (1939) 453; Aranguio-Ruiz, FJR 3 (1943) no. 183; Volterra, SDHI 13-14 (1948) 353.

Episcopus. A bishop. He had full control and administration of Church property, including the right to conclude contracts, such as leases, loans, pledges, and mortgages. Property of his own acquired after consecration—except that from the next relatives—belonged to the Church.—C. 1.3; 4.—See the foregoing item.

Genestel, NRHD 33 (1908) 163; L. Gaeta, Du rôle des épiscopales dans le droit public et privé du Bas-Empire, 1913; Leitner, Die Stellung des Bischofs, Feste Heringt, 1913; Volterra, BIDR 42 (1934) 433; Declareuil, RH 14 (1935) 33; Masl., AG 122 (1939) 86; Moche Onooy, RS/Dict 46-6 (1931-1933); Ferrari, AVem 99, 2 (1939/40) 233.

Epistula. A private letter. "If I send you a letter, it will not be yours until delivered to you" (D. 41.1.65 pr.). Delivery of the letter to a secretary or messenger of the addresser makes the letter the owner thereof immediately. Certain agreements, primarily consensual contracts (a sale, for instance), might be concluded by letter (per epistulam). A letter might also be used by a testator in order to express some desires to his heir. It then had the legal value of a codicil (see CODICILLI). See EPISTULA FIDEICOMMISSARIA. An epistula might also serve for the acknowledgment of a debt; see CHIROGRAPHUM.—See DIVORTIUM, MANUMISSIO PER EPISTULAM, NUNTIVUS.
—For official letters, see EPISTULAE.

Dziatko, RE 3, 836 (s.v. Brief); L. De Sarlo, Il documento oggetto di rapporti privati, 1935, 37, 128.

Epistulae fideicommissaria. A letter by which a person imposed on his heir, testamentary or intestate, a fideicommissum in favor of a third person.—See FIDEICOMMISSUM.

Epistula traditionis. See TRADITIO CHAERTAE.

Epistulae. (In official matters.) Official letters written by magistrates and provincial governors to private individuals.—C. 7.57.

De Ruggiero, DE 2.

Epistulae. (Of jurists.) Written legal opinions given by prominent jurists to magistrates, other jurists, or private persons at their request. Some jurists edited their epistulae in collections entitled "Epistulae." (Labeo, Proculus, Iulianus, Neratius, Celsus, Africanus, Pomponius), works similar to Quaestiones or Responsa. Excerpts from epistulae often appear in the Digest in their epistolary form.
Berger, RE 10, 1174.

Epistulae principium. Answers of the emperor given in a separate letter to enquirers or petitioners who addressed themselves directly to the emperor with a question or petition. The epistulae were issued by the imperial bureau AB EPISTULIS and primarily addressed to officials.—See RECEPTA.

Brassolff, RE 6; De Ruggiero, DE 2, 2131; Riccobono, FIR 1° (1941) nos. 72, 74, 75, 78, 80, etc.; Lafrancesco, De epistulae imperatorum, Paris, 1902; Haberleimer, Philologia 90 (1909).

Epitome Gaï. An abstract of Gaius' Institutes, written in the Western Empire probably in the fifth century. It is a part of the Lex Romana Visigothorum under the title "Liber Gaï." Originally it may have served as a book for students.
Editions: Seckel-Kübler in Huschke's Jurisprudencia anteriorminima, 2, 2 (sixth ed. 1927) 395; Baviera, FIR 2°
Erecto non citato. An ancient term for joint, not divided, ownership (familial community).—See CONSORTIUM.

Ergastulum. A workhouse or workhouse for untrustworthy slaves. One who contracts to construct a building or to perform a work (opus) with his own materials and workers. The contract is a locatio conductio operis faciendi. Syn. (in classical language) redemptor operis.—C. 4.59.

Eriperm. To take away something from another either by force (vi) or legally as when a person is deprived of illegal profits (eripere hereditatem).—See EREPTORIUM.

Erogare (erogatio). To expend, to lay out. In certain legal situations involving two or more persons, as, e.g., in a partnership, common ownership, or common inheritance, whatever one has expended in favor of all was computed with the gains which he made for himself without sharing with the others.

Erogatio. (In military administration.) Distribution of military supplies (of food = erogatio annuum militi.
Errare. To be mistaken, to ignore, not to know certain legally important facts, to believe in what is untrue and to act accordingly. A person acting in error = errans. Errans nulli voluntas = "the (expressed) will of a person who is in error, has no (legal) force" (D. 3.20). —See ERROR.

Erhardt, ZSS 56 (1938) 167.

Error. A vagrant slave who leaves his master's house in order to roam about, and who, after spending his money, returns to the master.

Error. A false knowledge or want of knowledge of legally important circumstances, factual or jurisdictional (error facti, error iuris). Syn. ignorantia. An error may occur in unilateral (testaments) and bilateral acts (contracts). It creates a divergence between the will of a person and the manifestation of his will in spoken or written words. One thing is declared as wanted whereas another is really wanted. In a testament an error concerning the beneficiary (e.g., another name is written than that of the person to whom the testator wants to make a gift) or the bequest (another thing is mentioned as bequeathed than the one intended) renders the whole disposition void. In contractual relations error may invalidate the transaction under certain circumstances. Only an excusable error is taken into consideration in favor of the person acting in error, however, and then solely an error which concerns such an essential element of the transaction that it must be assumed that he would not conclude it at all had the error not occurred. These are problems which cannot be resolved in general terms, but must be judged individually in each concrete instance. The error of a person may serve in certain situations as an evidence of his acting in good faith (bona fide) and furnish the basis for a restitutio in integrum, or, when a payment was made in the erroneous assumption of a debt, for a condicio indebiti.—D. 22.6; C. 1.18. —See CAUSA PROBATIO, CONDICIO INDEBITI, DEMONSTRATIO FALSA.

R. Allain, L'erreur, Thèse, Paris, 1907; R. Leonhard, Irruum, 1907; Schulz, ZSS 33 (1913): idem, Gedächtnisschrift für Seckel, 1927; Donatini, AG 86 (1921) 223; Laura, RDCiv 19 (1927) 313; Riccobono, BIDR 43 (1925) 1; P. Vocì, L'errore nel dir. rom., 1937; idem, SDHI 8 (1942) 82; Kaden, Fisch-Raschke 1 (1939) 334; Simonius, ibid. 339; P. F. Wülches, De errore commun. in iure rom. et canonico, Rome, 1940; Riccobono, Scr Ferroni (Univ. Pavia, 1946) 35; Solazzi, Condictiones e errore, Anap 62 (1947/8); Flume, Festschr. Schulz 1 (1951) 209; Dulcete, ibid. 175; F. Schwarz, ZSS 68 (1951) 266; idem, Die Grundlagen der condicio, 1952, 65.

Error advocatorum. Mistakes or false allegations made by advocates in their written statements. "They do not prejudice the truth" (C. 29.3).—C. 29.

Error calculi (computations). An error in calculation. If it occurs in a judgment and is fully evident, no appeal is necessary. The judge himself may correct it. In public administration, error calculi is without any legal effect. A reexamination and correction (retractatio) is admissible even after ten or twenty years.—C. 2.5.

Error facti. Ignorance or false knowledge of a fact. Syn. ignorantia facti. Ant. error (ignorantia) iuris. It is said that unlike ignorantia iuris an error facti non nocet (C. 1.18.7), to wit, it may be alleged as an excuse and in certain instances produce the nullity of the act. The rule was not generally applied.—See ERROR.

Error in corpore. An error concerning the thing to which a legal transaction refers (e.g., the buyer believes he is buying the slave Stichus while the seller means another).

Flume, Fisch-Schulz 1 (1951) 244.

Error in corpore hominis. See ERROR IN PERSON.

Error in iure. (Error iuris.) See IGNORANTIA IURIS.

Error in materia. See ERROR IN SUBSTANTIA.

Error in negocio. An error which concerns the transaction itself (e.g., one party believes he is buying an immovable while the other wants to lease it). Such an error makes the transaction void.

Error in nomine (nominis). A mistake made in the mention of a name (of an heir, a legatee, a slave bequeathed or a slave to be manumitted by the legatee). —See DEMONSTRATIO FALSA, NOMEN.

Flume, Fisch-Schulz 1 (1951) 244.

Error in persona. An error concerning the person to whom a testator wants to make a gift or with whom one wants to conclude a transaction. The testamentary disposition or the transaction is void if in the concrete instance the identity of the person is of particular importance. Syn. error in corpore hominis.

Error in substantia. Occurs when the mistake concerns the substance, nature or economic function of the thing involved (e.g., buying vinegar instead of wine). Syn. error in materia.

Thayer, ACDR, Rome, 2 (1935) 409; Flume, Fisch-Schulz 1 (1951) 248.

Error iuris. See IGNORANTIA IURIS.

Erroris causa probatio. If a Roman woman who married a peregrine under the erroneous assumption that he was a Roman citizen, proved her error, the marriage remained valid, and the husband and children became Roman citizens. —See CAUSA PROBATIO.

Erus. The owner, master of a household.

Eudoxius. A law professor in Beirut, about the beginning of the sixth century after Christ. He was the founder of a family of famous Byzantine jurists, among them his son, Leontius, and a grandson, Anatolius.

Kühler, RE 6, 927.

Eumachia. Emasculated. See Castratio. In Justinian law eumachia were not allowed to marry or make an adoption. These restrictions did not exist in the classical law. Eumachs were able to make a testament, however.—C. 4.42.

Hug, RE Suppl. 3, 449; Bonfante, AG 101 (1929) 3.
Eustathius. See Peira.

Evanescere. To vanish, to lose validity, to become void. The term is applied to testamentary dispositions and to contractual bindings. Actio evanesceit an action which though originally available lost its applicability in a concrete case. The term is considered suspect as to its classicality.

Guarneri-Citati, St (1936) 719.


Seeck, RE 4, 1859; Humbert, DS 1, 1662.

Eventus. The legal effect of a transaction or a trial. With regard to wrongdoings, eventus (= the issue) is opposed to the intention (design) of the wrongdoer.—See exitus, animus.

Evictio. (From evincere.) Occurred when a seller sold a thing which did not belong to him and the buyer was later evicted by the real owner. When ownership over the thing sold was transferred by mancipatio the buyer had the actio auctoritatis against the seller in case of eviction. If there had been no mancipatio (the thing being a res nec mancipi, for instance), the seller used to promise by stipulatio to pay the buyer double the price (stipulatio duplæ) or make a simple stipulatio (stipulatio evictio or de evictione) by which he guaranteed the buyer peaceful use of thing sold (habere licere) and promised to pay the buyer any damages he incurred by eviction. In a later development the buyer could avail himself of the actio empti for damages independently of a preceding stipulatio. Liability for eviction, which became a legal element of the sale, could be excluded by a special agreement, pactum de non praestanda evictione.—Evictio might also occur when a thing belonging to another was given as a dowry or as a pledge (fudicia, pignus) by the debtor.—D. 21.2; C. 8.44; 45; 10.5.—See emptio venditio, evincere, actio auctoritatis, laudare autorem, datio in solutum.

Humbert, DS 2; Pirano, De evictione in iure rom., 1901; De Medio, BDIR 16 (1904) 5; De Francisci, L'eviction dello res data in solutum, 1915; Guarnieri-Citati, AnPAl 8 (1921) 383; Girard, Mélanges 2 (1923) 1; Kamphuisen, RHD 16 (1927) 607; Ricca-Barberis, St Riccobono 2 (1930) 127; idem, L'eviction nella dato in solutum, 1931; Kaser, ZSs 54 (1934) 162; E. Albertario, Studi 3 (1936) 481; Erbe, Pfandrecht und Eviction, Fasch Koschaker 1 (1939) 479; Meylan, RIDA 3 (= Mél De Vischer 2, 1949) 193.

Evictionem praestare. To indemnify a buyer who was evicted by a third person from the thing sold. —See evictio.

Evidens. Manifest, obvious, evident. The term is used with preference by Justinian and his compilers.

Guarneri-Citati, Indices (1927) 36; E. Albertario, Studi 1 (1933) 322.

Evidentissimae probationes. Evidence which fully proves the truth of an alleged fact or right. It is a typical Justinian expression, frequently interpolated in classical texts.—See APERTISSIMUS, PROBATIONES.

Guarneri-Citati, Indices (1927) 36 (Bibl).

Evincere. See evictio. Evincere occurs not only when a third person claims ownership of a thing from the buyer, but also when he claims an usufruct or a servitude. With regard to slaves evincere is used not only when the third person asserts that the slave is his, but also when he claims that the slave is a free person (evincere in libertatem).

Evocati. Persons who in case of emergency assumed military service for as long a time as the state remained in danger. Under Augustus they became a separate unit (evocati Augusti, Caesaris) of soldiers who had already served their time, under the command of the praefectus praetorio. Some of the evocati were appointed for special services in the imperial palace or in the office of the praefectus praetorio, others were distributed among the legions for special functions of a non-military character or were sent to the provinces on special missions. The purpose of the institution was to use able persons with military experience for further official service.

Fiebiger, RE 6, 1145; Cagnat, DS 2; De Ruggiero, DE 2.

Evocatio. The summons of a party or a witness to a trial by a magistrate in the proceedings cognitio extra ordinem. It could be made orally by denuntiatio when the person involved lived in the same city, otherwise by a letter (litteris) or by a public announcement (edicto) if his domicile was unknown. Syn. (in a few instances) vocatio.—See editum permotorium.

A. Steinwenter, Versammlungsfichren, 1914, 8; L. Aru, Procedura contumaciae, 1934, 98.

Ex. Added as a prefix to the title of an imperial official who was no longer in service (e.g., ex praefecto praetorio, ex comite, ex proconsule).

Ex aequo et bono. See bonus et aequum.

Ex asse heres. An heir to the whole estate. Ant. ex parte. Ex semisne heres = an heir to a half of the estate.—See dators, semuncia.

Ex die. See dies, manumissio sub condizione.

Ex fide bona. In conformity with good faith, honesty. Ant. ex iure Quiritium = according to the strict law.

—For ex fide bona in the procedural formula, see judicia bonae fidei.—See bona fides.

Siasiaki, St Riccobono 4 (1936) 57 (for ex i. Q.).

Ex lege. According to a statute (law). It is to be understood "both according to the intention (sententia) and to the words of the law" (D. 50.16.6.1).

Ex post facto. From a later event. It refers to a fact or event subsequent to a legal situation, resulting from an agreement or a unilateral act (a legacy or donation). From (ex) that fact or event (for instance, the fulfillment of a condition), conclusions are drawn as to the validity of, or a change in, the former legal situation.—See praetexta, initium.

Berger, Seminar 7 (1949) 49.
Ex re alicuius. (Acquisitions made) from another’s means. In particular ex re patris is applied to what a son acquired at the father’s expense, apart from what the son acquired from other sources. A similar distinction separates what a slave acquired ex re domini (= from his master’s means) from what he gained ex opera sua (= by his work).—Ex re suæ (= acquisitions made) from one’s own property. 

Ex re usufructuaril See SERVUS USUFRUCTUARIUS.

Berger, Philologus 73 (1914) 69.

Exactio. (From exigere) Taking legal measures against a debtor for the recovery of a debt, enforcing payment legally. With regard to payments owed to the state (taxes), exactio tributorum = the levy, collection by the competent officials or authorized persons. Enforcing payment of public debts in a higher measure than was legal = superexactio.—C. 10.19; 20.—See PRIVILEGII EXIGENDI.

Exactor. A collector of taxes and other payments due to the state.—In public administration exactor indicates an inspector, a superintendent of public buildings and works (opera publica).—C. 12.60.

Louis-Lucas, DS 2; De Ruggiero, DE 2, Seek, RE 6, 1542; Lammers, RE 4A, 973.

Exaequare (exaequatio). To make different legal institutions or enactments equal in their legal force. According to Justinian’s statement, for instance, fideicommissa exaequata sunt to legacies (legatis) in all respects. By the lex hortensia de fideiscitis the fideiscites were declared equal to statutes passed by the assemblies of the whole people.

Exauctorare. To discharge a soldier from the service. The term is used of both honorable and dishonorable discharges.—See missio.

Excantare fruges. To enchant the produce of another’s field by magical formulae in order to deprive the land of its fertility and to transfer the fruits to the enchanter’s plot. Such sorcery was punished as a crime according to the Twelve Tables.

F. Beckmann, Zamberti und Recht in Roms Frühzeit, 1928, 3.


Excellentissimus (vir). A general title appearing in imperial constitutions of the late Empire in connection with high dignitaries.

Excelsa sedes. The office (court) of the praefectus pratorio.—C. 12.49.

Exceptae personae. Certain persons or groups to whom some legal prohibitions were not applied. There was no general rule establishing the persons thus privileged, the pertinent statutes designated the exceptae personae only within their own domain. Of particular importance were the rules concerning exceptae personae of the lex cincia on donations. It admitted gifts—beyond the limitations established in the statute—in favor of the donor’s fiancée, the wife, relatives until the fifth degree and some of the sixth degree, the patron, the ward, and some other persons.

—See LEX CINCA.

Riccobono, MIH Girard 2 (1912) 415.

Exceptio. A defense opposed by the defendant to the plaintiff’s claim to render it ineffective and exclude the defendant’s condemnation as demanded by the plaintiff in the intentio of the procedural formula. Formally the exceptio was a clause in the formula containing an assertion of the defendant who, without denying the plaintiff’s claim in principle, opposed to it a legal provision (e.g., exceptio legis Cinciae, or legis Praetoriae) or a fact not alleged by the plaintiff. Thus, for instance, the defendant asserts that he owes the sum claimed by the plaintiff, but according to a special agreement (pactum de non petendo) the plaintiff assumed the obligation not to sue for the money. The defendant’s objection made during the proceedings in iure, is inserted into the formula as a negative condition, to wit, the judge may condemn the defendant “if there has not been an agreement that the plaintiff will not bring an action.” In the interdictal proceedings the exceptio is included in the interdict itself in the form of a negative conditional clause giving the defendant the right to disregard the praetor’s order if the fact mentioned in the clause occurred. Some exceptions are an integral part of the interdict (e.g., exceptio virtuosis possessionis, exceptio annalae), others were inserted in a specific case by the praetor upon the request of the defendant. With the disappearance of the formalulary procedure and the interdicts in their classical form, exceptio became any kind of defense applied by the defendant in order to paralyze, peremptorily or temporarily, the plaintiff’s claim.—Inst. 4.13; D. 44.1; C. 7.40; 8.35.—Texts in which literal quotations of exceptions occur in the Digest are listed in Vocabularium Jurisprudentiae Romanae 2, 662 and 5, 450.—See OPE EXCEPTIONIS, DENEGARE EXCEPTIONEM, NOCERE. In the following presentation the different kinds of exceptions are treated under EXCEPTIONES, the specific exceptions under EXCEPTIO.

Seckel, in Heinmann’s Handlexikon zu den Guellen (1907) 180; Wenger, RE 6; Ferrini, NDL 5; Wisenk, Urgesung der röm. Einrede, Fg L. Pfeiff, 1910; E. Weiss, Fischer Wach 2 (1913); J. Petrus-Gay, Exceptiones et praescriptiones, Paris, 1916; Blondi, Atti del 7 (1920) 3; Guerrieri-Ciastl, St Ponsan, 1925, 245; Kopp, ZSS 42 (1922); R. Dill, Der Gütererben, 1913, 193; F. De Martino, Giuridizione, 1937, 83; Ramos, AHDE 16 (1945) 720; Solazzi, AG 137 (1949) 3; Levy, Imrue 3 (1952) 157.

Exceptio cognitoria. An exceptio by which the defendant denied the plaintiff’s right to be a cognitor in the trial, either because the principal creditor was not able to appoint a representative, or because the cognitor had not the qualifications to represent another.—See COGNITOR, EXCEPTIO PROCURATORIA.

Lancel, Edictum perpetuum (1927) 502.

Exceptio conventionis. Functions the same way as EXCEPTIO FACTI and is based on a special agreement.
which excludes the plaintiff’s claim. Analogous is exceptio transactionis.

Exceptio curatoria. An exceptio by which the defendant denies the plaintiff’s right to act as a curator of the real creditor.

Exceptio dolii. This was opposed by the defendant sued for the fulfillment of an agreement and based on the allegation that the plaintiff had acted fraudulently (dolo). The formulary wording of this exceptio was: si in ea re nihil dolo malo Auli Agerii (of the plaintiff) factum sit (= “if in this matter no fraud has been committed by the plaintiff”). The exceptio dolii was strengthened by an additional clause, attached to the foregoing words, “neque fiat” which refers to the actual action of the plaintiff in the sense “nor is being committed by him,” i.e., that his suit itself is not a fraud (inequitable). About this general applicability of the exceptio dolii it is said: “he who makes a demand which may be broken down by an exception whatsoever, commits a fraud” (D. 44.4. 2.5). Therefore an exceptio dolii can be opposed. Thus by the initiative of the praetor and the jurists the exceptio dolii, originally a merely procedural measure, acquired a positive function, promoting the development of the substantive law through the protection of formless agreements not recognized by the ius civile (additional agreements connected with the transfer of property through mancipatio, constitution of servitudes, agreements attached to a stipulatio, and so on). A maxim gained currency that the exceptio dolii is implied in the bona fide iudicia (D. 24.3.21), inasmuch as the judge has to decide on grounds of good faith, which gave him the opportunity to take into consideration all elements which might let the plaintiff’s claim appear inequitable. To those elements belonged not only fraud committed at the conclusion of the transaction but also all circumstances which qualified the suit itself as being against good faith. Therefore, the insertion of an exceptio dolii into the formula which contained already the clause “ex fide bona” was superfluous. The mechanism of the exceptio dolii allowed the judge to consider counterclaimes of the defendant (such as expenses he made on the thing claimed by the plaintiff) and condemn the defendant only for the balance (see compen- satio).—D. 44.4.—See dolsus, iudicia bona fide, retentio.

Kleinmüller, RE 5 (s.v. dolis); Vite, NDI 5, 144; E. Costa, La r.d. 1897; Biindi, AnPal 7 (1920) 5; Beeseler, ZSS 45 (1925) 245; Riccobono, AnPal 14 (1930) 405, 437; E. Proietti, Contributi allo studio dell’efficacia dell’r.d., 1948.

Exceptio intercessionis. See senatusconsultum vel liberam.

Exceptio iurius in iuris. See ius iurandum voluntarium.

Exceptio justi dominii. An exception of which the owner of a thing at ius civile could avail himself against a plaintiff who based his claim for recovery of the thing on possession only (actio Publiciana in rem).

Exceptio legis Cinciae. See lex cinca.

Exceptio legis Falcidiae. See lex falcidia.

Exceptio legis Plaetoriae. See lex plaetoria.

Exceptio litis dividuae. This may be opposed when the plaintiff after having sued for a part of the debt, claims the remainder thereof in a second trial during the same praetorship. The exception is dilatory, the plaintiff having to expect the next praetor’s term of office. A similar exceptio is the exceptio litis residuae, applicable when a plaintiff who has several claims against the same defendant sues only for one of them in order to vex the latter with another trial under the same praetorship.

Buckland, RHD 11 (1932) 311.

Exceptio litis residuae. See the foregoing item.

Exceptio metus (de metu, quod metus causa). An objection by the defendant that he assumed the obligation for which he is sued, under duress (metus).

—D. 44.4.—See metus.

Exceptio ne praetidicium hereditati fiat. See hered- ditatis petitio.

Exceptio non adimpleti contractus. The defendant’s objection that the plaintiff did not fulfill his duties reciprocally assumed in the contract on which he based his claim.

R. Cassin, De l’exception tirée de l’exécution, 1914.

Exceptio non numeratae pecuniae. This exceptio, analogous to the foregoing, is of later origin. The defendant objects that he did not receive the money from the plaintiff for the restitution of which he is being sued. Such things happened when the debtor issued a written document for a debt before receiving the money.—C. 4.30.—See querella non numeratae pecuniae.

Platon. NRHD 33 (1909) 452; Suman, AVen in 78, 2 (1919) 225; Kreller, St Riccobono 2 (1936) 285.

Exceptio pacti (conventi). An exceptio based on an additional agreement between creditor and debtor which modified the original obligation, as, for instance, not to claim the debt in a judicial trial at all, or within a certain time. In the latter case the exception was dilatory.


Exceptio pigneratoria. Mentioned in a specific case of an action brought for division of common property (actio communi dividundo) by a co-owner against his partner to whom the claimant had pledged his portion. The exceptio is opposed by the pledgee co-owner in order to be taken into consideration by the judge at the division.—See exceptio rei ante pigneratorae.

Last, GrZ 36 (1909) 457.

Exceptio procuratoria. The counterpart to the exceptio cognitoria in the case that the creditor is repre-
sented in a trial by a procurator. Through this exceptio the defendant objects that the plaintiff's representative has no right to act as a representative (procuratorio nomine). The exceptio is dilatory, the creditor having the opportunity to sue again either personally or through another representative.—See EXCEPTIO COGNITIOAE, PROCURATOR (in a civil trial).

Solari, RISG 83 (1949) 60.

Exceptio quod metus causa. See EXCEPTIO METUS.

Exceptio rei ante pigeraterae. This served the protection of the rights of a creditor to whom the debtor had pledged a thing, against another creditor to whom the same thing was hypothecated later.—See FIGNUS, HYPOTHECA.

Exceptio rei in judicium deductae. See EXCEPTIO REI JUDICATAE.

Exceptio rei iudicatae. An exception opposed by the defendant and based on the fact that he had been sued for the same thing (eadem res) in a previous trial and a judgment had been passed in the matter. Identity of the plaintiffs was not necessary since the exceptio might be used against the successor of the claimant in the trial. There was a maxim: "Good faith does not permit that the same thing be claimed twice" (D. 50.17.57). The most important point in the application of this exceptio was the identity of the claims (eadem res). A similar exceptio was the exceptio rei in judicium deductae which was available when an earlier trial had not been rendered but the joinder of issue (litis contestatio) had been reached.—D. 44.2.—See BIS IDEM EXIGERE, RES IUDICATA, LITIS CONTESTATIO.

Eisels, ZSS 21 (1900); Leonhard, Fg Dohn 2 (1905) 65; Manenti, BIDR 21 (1909) 139; Weiss, Faschi Wach 2 (1913); Pfeifer, ZSS 43 (1933); Gommer-Ciabat, BIDR 33 (1923) 204; Sibler, ZSS 65 (1947) 1.

Exceptio rei litigiosae. See RES LITIGIOSA.

Exceptio rei venditae et traditae. An exceptio opposed by the defendant for the delivery of a thing of which the plaintiff asserts to be the owner. The defendant, on his part, objects that he bought the thing and that it was delivered (tradita) to him by the seller.—D. 21.3.

Ferrini, Ope 3 (1891) 275; Last, GrZ 36 (1909) 490; J. Gouver, E. r. v., These, Lausanne, 1939.

Exceptio restitutae hereditatis. Connected with fideicommissurium hereditatis. The heir who according to the testator's disposition handed over the whole estate to a fideicommissarius when sued for the testator's debts might oppose the exceptio restitutae hereditatis, and similarly he was exposed to this exceptio if he sued a debtor of the testator. In earlier law, when the rule semel heres semper heres was strictly observed, the heir could avoid any risk by demanding a causio for indemnity from the real successor. The senatusconsultum trebe lianum established the liability of the fideicommissarius which made superfluous special agreements between the instituted heir and the real beneficiary to whom he delivered over the inheritance.

Exceptio senatusconsulti Macedoniani. See SENATUSCONSULTUM MACEDONIANUM.

Exceptio senatusconsulti Trebelliani. See SENATUSCONSULTUM TREBELLIANUM, EXCEPTIO RESTITUTAE HEREDITATIS.

Exceptio senatusconsulti Velleiani. See SENATUSCONSULTUM VELLELIANUM.

Exceptio transactio (transacti negotii). Has a similar function as the exceptio pacti or exceptio conventionis. It may be opposed by the defendant if the plaintiff sues for a debt on which he concluded a modifying transaction with the former.

Exceptio tutoriae. An exceptio opposed to the plaintiff on the allegation that he is not the guardian of the person in whose name he is suing.—See EXCEPTIO CURATORIAE.

Exceptio vitiorsae possessionis. Applicable in possessory interdicts. The actual possessor of a thing is protected in his possession against anybody except the case that he himself acquired possession from his adversary (i.e., the claimant in the interdictal proceeding) in a defective way (vitiosa).—See INTERDICTUM UTI POSSIDENTIS, CLANDESTINA POSSESSIO, POSSESSION INTUSTA.

Exceptiones annaeles. In actions which lie only for one year in favor of the claimant, the defendant may ask for an exception that the one-year period elapsed when the suit was brought after this period. In the domain of interdicts some of them contained a clause that the praetor’s order is valid only if issued within a year after the fact against which the plaintiff remonstrates (exceptio annalis).—C. 7.40.—See ACTIONS TEMPORALES.

Exceptiones civiles—honoriariae. Exceptions which are based on the ius civile (statutes, as, e.g., exceptions legis Cinciae, Plaetoriae, or senatusconsulti, as, e.g., exceptiones senatusconsulti Macedoniani, Velleiani) are distinguished from exceptions of praetorian origin, introduced either in the praetorian edict or granted in a specific case, exceptiones in factum.

Exceptiones dilatoriae. Exceptions valid only for a certain space of time, for instance, the exceptiones pacti based on an agreement by which the plaintiff bound himself not to sue the debtor within a certain time. When the time fixed elapsed, the exceptio was without effect. Syn. exceptiones temporales.

Ait. EXCEPTIONES PEREMPTORIAE (perpetuae).

Kapp, ZSS 42 (1921) 328; Solari, AG 137 (1941) 3.

Exceptiones in factum. Exceptions granted by the praeator in specific cases, although not established either by law (in statutes or senatusconsulti) or in the praetorian edict. The insertion into the formula was decided by the praeator after a thorough examination of the case (rason cognito).

Blondi, AnPol 7 (1918) 50.
Exceptiones in personam. A term not evidenced in the sources, but applied in literature as opposite to exceptiones in rem.

Exceptiones in rem (scriptae). Exceptions which may be opposed to any claimant if the transaction on which the suit is founded was essentially defective, as, e.g., in the case of duress under which the defendant assumed an obligation. Therefore such exceptio was effective also against a plaintiff who did not take part in the act of force exercised on the debtor. Ant. exceptiones in personam (a term coined in literature) when the exceptio could be set forth against one plaintiff only for an action in which he participated, as the exceptiones for fraud (exceptiones doli). A counterpart to this distinction are the exceptiones personae cohaerentis et rei cohaerentis.

Exceptiones peremptoriae. Exceptions which “are valid at any time and cannot be evaded” (Gaius, Inst. 4.120) when opposed by the defendant. Such exceptions, if sufficiently proved, make the plaintiff’s claim void. Most exceptiones are peremptory; thus, e.g., exceptio metus, exceptio rei iudicatae, exceptions based on statutes or sententia consulta. Syn. exceptiones peremptae; ant. exceptiones dilatoriae (temporales).

Kipp, ZSS 42 (1921) 328; Devilla, ZSS 19 (1942) 92; Solazzi, AG 137 (1949) 3.

Exceptiones perpetuae. See exceptiones peremptoriae.

Exceptiones personae cohaerentis. Exceptio which only the defendant himself (not his sureties) may oppose, as, for instance, the exceptio “quod facere possit” available to a parent, patron or partner to the effect that he be condemned to an amount within his means (see beneficium competentiae), the exceptio being strictly personal. Ant. exceptiones rei cohaerentis, which are available also to sureties for they impugn the matter of the controversy itself, such as, for instance, exceptio doli, iuris iurisendi, rei iudicatae, metus, etc.

Exceptiones quae minuunt condemnationem (damnationem). Exceptio which do not wholly paralyse the plaintiff’s claim but produce only the effect that the defendant is condemned to a sum smaller than originally claimed by the plaintiff. The existence of this type of exceptions in classical law is controversial. Those exceptions cover all cases where the defendant was permitted to invoke the so-called beneficium competentiae.—See compensatio.

Weniger, RE 6, 1557; Ferrini, ND 15, 736; Arango-Ruiz, Exc. in diminuzione della condanna, 1930; Solazzi, BIDR 42 (1934) 268.

Exceptiones rei cohaerentis. See exceptiones personae cohaerentis.

Exceptiones temporales. See exceptiones dilatoriae.

Exceptor. A scribe, short-hand writer, in court, in the senate, or the offices of higher officials. Their primary task was to keep the minutes of meetings or events which took place in the offices mentioned. In the imperial bureaucracy the number of exceptores increased considerably. They were employed also in the headquarters of military commanders.—C. 12.49.

Fiebiger, RE 5, 1565; Cagnat, DS 2; Jones, JRS 39 (1949) 53.

Excipere. To oppose an exception against the claim of the plaintiff. In setting forth an exception (excipiendi) the defendant assumes the role of a plaintiff (reus actio est, D. 44.1.1) since he has to prove the facts alleged in his assertion (D. 22.3.9).


Excipere. (In transactions.) To insert a clause in favor of a party primarily of one who alienates something (e.g., excluding the liability of the seller of a slave for certain defects) or of the slave being sold (e.g., binding the acquirer to a certain behavior towards him).

Excipere mortem. To be condemned to death.

Excipere poenam (sententiam). To be sentenced in a criminal trial.

Excipere servitum. To reserve a servitude or another right (iter, usus, habitationem, etc.) on behalf of the alienator when the ownership of an immovable is being conveyed.

Excipere usumfructum. See deductio ususfructus.

Excludere. To exclude a person from certain legal benefits or from the use of a procedural remedy.

Exclusiones a muneribus. Exemption from public compulsory services (munera) were granted to women, men under twenty-five or over seventy, fathers of three children (four in Italy, five in provinces); it was limited, however, in these cases to exemption from personal services (munera personalia). Exemptions were also extended to certain professions (physicians, teachers), shippers, veterans, and members of municipal councils (decurationes). In granting exemption, poverty could be taken into consideration. After the time of Constantine, appeal (querela, querimonia) to the governor of the province was permitted.—D. 50.5; C. 10.48–59; 66.—See munera, magister, philosophi, poetae.

Kübler, RE 16, 648.

Excusationes a tutela. Persons called to guardianship by law or by testament were entitled to claim exemption (excusatio) because of certain circumstances, permanent or temporary, which made the fulfillment of their duties as guardians (fuores or curatores) impossible or very onerous to them. Among such grounds for exemption were age of seventy, high office, poverty, a certain number of children (three in Rome, four in Italy, five in the provinces) three tutorships already sustained, chronic illness, incapacity to manage another’s property, and the like. Some grounds of exemption were available only with regard to specific guardianships, as, for instance, emity
Exercere actionem. (Iudicium, item, exceptionem, appellationem.) To use a judicial measure either in order to claim a right against another person or in defense against another’s claim. See actio. In criminal affairs exercere accusationem, crimen = to accuse. Civile exercere = to sue in a civil trial.

Exercere navem. See exercitor navis.

Exercere pecuniam (fenus). To lend money on interest. Exercere pecuniam apud nummarios = to invest money with a banker with profit.

Exercere vectigal. To levy, collect taxes.

Exercitator. A military instructor.

Baroccini, DE 2.

Exercitor navis. A shipper, either the owner or lessee of a commercial ship used for the transportation of men and goods. “He is the man to whom the daily profit gained by shipping belongs” (Inst. 4.7.2). When he employs another as captain (magister navis), he is liable on the contracts concluded by the latter. The action lying against him was introduced by praetorian law, actio exercitaria. It belongs to the category of so-called aetiones adiectivae qualitatis (non-Roman term). These were “additional” actions (actio adictoria: D. 14.1.5.1) under which a person (a father, a slave’s master, a principal, a shipper) under certain circumstances could be sued for acts done by his subordinate (a son, slave, employee) in the management of a peculium or a commercial business as his agent or on his order. The responsibility of the father and the other persons was additional to that of the subordinate although they did not participate in the latter’s agreements or transactions.—D. 14.1; C. 4.25.

—See actio tributoria, peculium, iussum, institutum.

Humbert, DS 2 (s.v. exercitaria a.); Del Prete, NDI 5 (s. ed. v.); Valeri, RDCom 21 (1913) 14; Chialvo, St. F. Berrignieri, 1933, 171; Ghionda, RDNave 1 (1933) 327; De Martino, ibid. 7 (1941) 5; Solazzi, ibid. 7 (1941) 185 and 9-14 (1943-1948).

Exercitus. The army. It is composed of pedites (= infantry) and equites (= cavalry). Classis = the navy. For the legal status of the soldiers, see milites.

—See legio, auxilia, cohors, equites, hastati, velati, militia, maniples, dieciles, numeri, diploma, missio, ala, turma.

Liebenam, RE 6; Cagnat, DS 2, 912.

Exhauriri. To be expended wholly. It is used of inheritances which are exhausted by legacies to be paid by the heir.—See lex falcidia.

Exheredare. To disinherit. A son under paternal power (filius familiae) must be disinherited by his father (pater familiae) in the latter’s testament by name (nominatio) or in any other way which admits of no doubt about the person meant. Syn. exheredem facere. Under ius civile a testament was void if the testator failed to institute his son (heres suus) as an heir or to disinherit him. Disinheritance of other persons, however, could be accomplished by a general
clause ("all others shall be disinherited"). The jurists did not favor disinheriting in their opinions. Their principle was: "disinheriting must not be supported" (D. 28.2.19). The testator was not obliged to indicate the reason of the disinheriting.

—Inst. 2.13; D. 28.2; C. 6.28.—See lex iunia vel-laeae, praetereire, exhibere.

Klingmüller, RE 6; Humbert, DS 2; Azzariti, NDI 1 (s.a. discedence); J. Merkel, Justiniánische Entwieklungs-gründe, 1908.

Exhibere. See exhiberedare. The term was used in the disinheriting clause ("Titus exhibere esto" = Titus shall be disinherited).

Exhibere. To display, "to produce (a thing, a slave) in public (i.e., during a trial) in order to give the plaintiff the chance to proceed with his suit" (D. 10.4.2). The pertinent action to enforce the defendant to produce in court the movable thing in dispute when sued for its delivery (by rei vindicatio) he fraudulently denied having, was the actio ad exhibendum. In many cases the action served to prepare a future rei vindicatio which followed if the exhibited thing was in fact that very one which the plaintiff wanted to claim. This occurred, for instance, when a legatee was given by a testator the right to choose among the slaves of the inheritance, see OPTIO SERV. The actio ad exhibendum was available when a plaintiff before suing the master of a slave for damages with an actio noxalis had to identify first which of the defendant's slaves was the wrongdoer. A specific application of the action was in a case of accessio when a person joined the plaintiff's thing to one of his own (e.g., set a gem belonging to the latter in his ring of his own). Through the actio ad exhibendum the plaintiff obtained the separation of his thing and its production in court, and might sue afterwards for recovery by a rei vindicatio. Even in cases when the thing to be claimed no longer existed (if, e.g., it was consumed by the defendant or destroyed or if the defendant intentionally gave up possession. dole desinerre possidere), the actio ad exhibendum was available for damages. The action was an actio in personam and had the advantage for the plaintiff, that the defendant could not refuse cooperation in the trial since he was condemned to full indemnification.—D. 10.4; C. 3.42. —See actiones arbitrariea, actiones in personam, futum non exhibitum, and the following items. Several interdicts are concerned with exhibere, see interdictum de homine libero exhibendo, interdictum de liberis exhibendis, interdictum de liberto exhibendo, interdictum de uxore exhibenda, interdictum de tabulis exhibendis.

Ferrini, NDI 1 (s.a. actio ad e.); Aru, NDI 5; Humbert, DS 2; Last, GZ 36 (1909) 433; Lenel, GZ 37 (1910) 546; idem, ZSS 37 (1916) 116; idem, Edictum perpetuum (1923) 220; Beseler, Beiträge 1 (1910) 1; Last, JKB 62 (1921) 120; Levy, ZSS 36 (1917) 1; Wlassak, ZSS 42 (1921) 433; G. Levi, Studi M. 2 (1933) 311.

Exhibere debitorem (reum). Refers to a guarantor who undertook to answer that a defendant in a civil trial would appear in court at a fixed date. His duty was to "produce" the defendant. See VINDEX. In a criminal trial exhibere reum = to submit to court a culprit of whom one had assumed the custody.—D. 48.3; C. 9.3.

Exhibere hominem liberum. In connection with the interdictum de homine libero exhibendo exhibere is defined "to produce in public (i.e., in court) and to make it possible to see and touch the man" (D. 43.29.3.8).—D. 43.29; C. 8.8.

Exhibere instrumenta. To produce documents for the purpose of evidence. It could be judicially enforced if it was in the interest of the adversary in the trial.—See exhibere tabulas.

Exhibere rationes. To produce accounts concerning the management of another's affairs (for instance, on the part of a guardian with regard to the ward's property).

Exhibere reum. See exhibere debitorem.

Exhibere tabulas (testamenti). To produce a testament. It could be enforced by a person interested in the knowledge of the contents as a presumptive beneficiary.—D. 43.5; C. 8.7.—See interdictum de tabulis exhibendis.

Exhibere uxorem (familiam, patronum). To sustain, support one's wife (family, or patron). In another meaning exhibere uxorem is used in connection with the interdictum de uxore ducenda.—See interdictum de liberis exhibendis.

Exhibito. See exhibere.

Exigere. See exactio.

Exilium (exsilium). A person involved in a criminal matter might voluntarily go into exile in order to escape a trial or a condemnation when the trial was already in course. Exilium also was a compulsory departure from the country if given as a punishment. Voluntary exile was tolerated in the case of a person sentenced to death in a criminal trial, but in such cases there followed an administrative decree which outlawed the fugitive (interdictum aqua et igni). It deprived him of Roman citizenship (capitis deminutio media) and his property. Illicit return was punished by the death penalty. The consequences of a compulsory banishment varied according to the crime; they were fixed in the judgment. A milder form of banishment was relegatio, while the severest one was deportatio. The terminology later became rather uncertain.—C. 10.61.—See IUS EXILLI, VIALI-CUM.

Kleinfeller, RE 6; Humbert, DS 2; Berger, OCD; Braginton, CIJ 39 (1943-44) 391; U. Brasilei, Repressione pe nale, 1937, 272.

Eximere. To exempt, to free, to release a person from liability (obligatione), from special personal charges, such as guardianship (a tutela), or from penalty (poena, damnatione).—See exemptio.
Exire. When used of persons, to leave the family (de familia) by entering into another one or becoming sui iuris. Such steps were connected with exire de (ex) potestate (= to be released from the actual power of the head of the family). When referring to things (exire de familia, de nomine) exire = to depart from one property and enter another.

Existimatio. To assume, to consider (for instance, a thing belonging to another as one's own). An erroneous belief (thinking) is irrelevant from the juristic point of view. "More important is the truth (res) than the belief (existimatio)" (D. 22.6.9.4). Exceptionally, however, as in the case of usucapio a wrong opinion of the possessor of a thing may lead to his acquisition of ownership.—See ERROR.

Existimatio. The respect or esteem a person enjoys in society. "It is the state of undiminished dignity approved by law and custom" (D. 50.13.5.1). The existimatio of a person remains unharmed (integra, intassa) as long as he does not commit a wrongdoing or a crime by which it "is diminished or extinguished under the authority of the laws" (D. ibid.).—See INFAMIA, TURPIS PERSONA, TURPITUDO.

U. Brasiello, La repressione penale, 1936, 546; Cieogna, Stum 54 (1940) 51.

Exitus. See EVENTUS.

Exonere. To relieve, release (from a debt, or a public charge). Syn. eximere.

Expedire. To settle a controversy through a trial or extra-judicially; to accomplish a legal act (e.g., a manumission); to bear the expenses of a thing; to carry through as official matter.

Expellere. To dispossess a person by force from the use of his property. Syn. desicere de possessione.

Expellere uxorem (virum). To expel a wife (husband) from the common dwelling (domo) for the purpose of divorce.

Expendere. To pay out, to spend. Rationes accepte et expensi = a housebook for entries of income and disbursements.—See CODEX ACCEPTI ET EXPENSI, EXPENSILATIO.

Expensae. Expenses. Syn. IMPENSAE, SUMPTUS.

Expensae litis. Syn. sumptus litis, impensa litis.—C. 7.51.—See SUMPTUS LITIS.

Expensilatio. (From expensum ferre.) The making of an entry in a ledger, by which a person was charged with a debt in such fashion as if it were given to him as a loan. If made in the books of a banker, it created an obligation, obligation litteris contracta.—See CONTRACTUS, NOMINA TRANSCRIPTICIA. Anon., NDI 5; Appert, RHD 11 (1932) 625.

Expensum ferre. See EXPENSILATIO.

Experiri actions (interdicto). To claim a right by a suit (or interdict). Experiri ius = to pursue a right. Potestas expirandi = the right to sue.

Beretta, RISG 85 (1948) 387.

Expilare hereditatem (expilatio). To purloin a thing belonging to an inheritance before the heir enters upon it. See CRIMEN EXVLITATIA HEREDITATIS.—See USUCAPIO PRO HERED.

Expilator. A plunderer, a "more atrocious thief" (D. 47.18.1.1).

Explore. To fulfill (a mandate, a condition imposed by a testator, and the like). Explore tempus usucapium = to possess a thing for the full time necessary for an usucapio.—See USUCAPIO.

Explorare (exploratio). In military service, to reconnoiter, to try to get information about enemy troops. In exploratione esse = to be put at a place to observe the enemy's movement. A soldier who leaves such a post, even though forced to do so under the pressure of the enemy, was punished by death.

Explorator. A scout, a spy.—See EXPLORARE, PROATOR.

Bartocci, DE 2.

Exploratus. In phrases like explorai iuris est, exploration est, it is established, ascertained (law).

Exponere. With reference to written deeds, to write down (a donation, a security, cautio). The term belongs to the language of the later imperial constitutions.

Exponere filium (liberum). To expose. abandon a child in order to get rid of it. By doing so the father lost the patria potestas over the infant. The person who took him home and brought him up (nutritor) as of his own (alimus) or as a slave, acquired power over him and might sell him as a slave. Later imperial legislation forbade the custom, but in vain. Parents were given the right to redeem a child that had been exposed, but were obliged to compensate the person who had raised him. The latter had to declare whether he would foster the child as free or slave, until Justinian ordained that any exposed child was to be considered free.—C. 8.51.

Mau, RE 2 (s. Aussetzung); Weiss, RE 11 (s. Kinder- aussetzung); Albertoni, Apokryfis, 1923; Carcopino, Le droit rom. d'exposition, Mémoires de la Société des Antiquaires en France, Sér. 8, vol. 7 (1924-27) 59; Fournier, RHD 5 (1926) 302; Radin, CU 20 (1925) 337; Volterra, Si Besta 1 (1939) 453; Lanfranchi, SDHI 6 (1940); P. Delafon, Droit d'exposition d'enfants à Rome, Thése, Montpellier, 1942; C. W. Westrup, Introduction to Early R. Law, I, I sect. 1 (1944) 248; Solazoi, RISG 86 (1949) 14.

Exponere servum (in insulam Aesculapii). Sick slaves abandoned by their masters (on the island of Aesculapius in the Tiber) to avoid expenses for medical care became free under an edict of the emperor Claudius (A.D. 46-47).

Fasciato, RHD 27 (1949) 452.

Exportare. To send abroad (merchandise, slaves, etc.). Later imperial legislation forbade the export of certain commodities (such as wine or oil) to enemy countries. Export of weapons of any kind to an
enemy state was punished by death and seizure of property.—C. 4.41.
Expositio illii. See EXONERE FILIUM.
Expostulare. To address a complaint to a magistrate.
Expressa. “What was expressly stated is prejudicial, what was not expressed, is not prejudicial”. (D. 50.17.195). The rule applies to statements concerning the object of a sale.—See DICTA.
Expresser. To express. The term is frequently applied to testametary dispositions or legal norms introduced by statutes, senatusconsultula and imperial constitutions.—See EXPRESSA.
Expropria (expromissor). See the following item.
Expromittere (expromissor). To transfer an existing obligation into a stipulatio by which a stipulatory obligation replaced the original debt. On this occasion a change in the person of either the debtor or the creditor might occur when the debtor stipulated his debt to a new creditor (with the consent of the former creditor) or when a new debtor (expromissor) assumed another’s debt towards the same creditor. Through such a transaction the former debtor was released if the creditor agreed to it. Sometimes expropmittere has the same meaning as promittere.—See DELEGATIO.
De Villa, NDI 5.
Expugnare (navem, ratem). To subdue by force (a boat, vessel, rates = a bark, a raft).—D. 47.9.
Exrogogio legis. A partial repeal of a statute through the passage of a new one.—DEROGARE.
Exsacratio. A self-malediction. An oath was often combined with the imprecation of an evil or a curse upon oneself if one failed to carry out the terms of the oath. This made non-fulfilment a crime against the gods which resulted in exclusion from sacred rites.
Pfaff, RE Suppl. 4; De Ruggiero, DE 2, 2182.
Exsacrationes (deification). Maledictions written on metal tablets and directed against a personal enemy of the writer.
De Ruggiero, DE 2.
Exsecutio. (From exsequi.) With regard to criminal matters, prosecution of a criminal through accusation and trial; in civil matters = the claim on the part of a creditor of his right against a debtor, in particular against one who had been condemned in a civil trial and did not fulfill the judgment debt. The execution of a judgment in a civil trial was either personal (on the person of the judgment debtor) or real (on his property).—C. 7.53.—See IUDICATUM, LEGIS ACTIO PER MANUS INJECTIONEM, PIGNORIS CAPIO, ADDICTIO, DUCI IUBERE, MISSIONES IN POSSESSIONEM, BONGRUM VENDITIO.
L. Wenger, Actio indicati, 1902, 7; A. d’Ors, AHDE 16 (1945) 747.
Exsecutor (negotii, litis, litium). A court clerk serving as an official organ of summons in the proceedings of the later Empire. The defendant pays fees to the executor and must give security (cautio judicio siste) that he will appear in court until the end of the trial. In the case of his refusal, the executor may take him into custody. The executor was also in charge of the execution of judgments. In Justinian’s procedure the institution of executori negocii underwent a radical change. They were private, influential individuals of high rank and their functions were enlarged as well as their financial profits.—C. 12.60; Nov. 96.—See SPORTULAE.
Exsecutor testamenti. The term and the institution are unknown to Roman classical law. According to the modern conception the executor testamente is a person holding an estate in trust, and administering and distributing it according to the testator’s wishes. The familiae emptor in the early Roman law fulfilled a similar task but the juristic structure of the two institutions is different. Later imperial legislation recognized the designation of a person in a testament for the fulfillment of specific dispositions of the testator connected with charitable purposes, such as ransom of prisoners of war, foundations (piae causae), and the like.
Kübler, RE 5A, 1013 (s.v. Testamentzvollstrecker); E. Callenmer, Origine de l’exécution testamentaire, 1901; Bruck, Gr. 40 (1914) 533; B. Biomi, Successiones testamentaria, 1943, 607; Macquerey, RHD 24 (1945) 150.
Exsecutores. Officials in the late Empire authorized to enforce the payment of taxes and fiscal debts. Syn. intercessores.
Exsecutores rei indicatae (sententiae). Officials charged with the execution of judgments.—See EXECUTOR (NEGOTTI).
Exsequi. To perform a legal act, to pursue a matter in court to its end (actionem, litum), to prosecute a crime in a penal trial until sentence, to execute a judgment debt (sententiam, rem indicatam). Generally exsequi is applied to the activity of the various types of EXECUTORES.
Exsilia. See EXILIVM.
Exsistere. Condicio extitit, see CONDICTO.
Ex solvere (exsolution). See SOLVERE, SOLUTIO.
Exstare. To exist. Exstat = there is. The term is frequently used with reference to existing legal rules (exstat edictum, senatusconsultum, rescriptum) to point out “there is” a legal norm for the case under discussion.
Exstinguere. To annul, cancel (an agreement, a contractual clause, a condition, a legacy). Extungui (syn. evonescente, extirpare) is applied to the extinction of rights and the obligations connected therewith (an action, a servitude, a usufruct, a stipulation, a legacy).
Exsul (exul). A man living in voluntary or compulsory exile.—See Exilium.

Exter, exterus. See Extraneus.

Extorquere. To extort, to force a person to give or to do something, or to perform a legal act (to promise by stipulatio, to give security).—See Metus, vis.

Extra iudicium. Outside the court, extrajudicially.

Extra ordinem. Beyond the normal order of things.

—See cognitio extra ordinem, extraordinarius.

Wissak, Kritische Studien zur Theorie der Rechtsquellen, 1884, 85; Lauria, Anop 56 (1934) 308; Orestano, StCagi 26 (1938) 170.

Extraneus (exter, exterus, extrarius). One who is outside; not belonging to a certain family or being no relative of a certain person (for instance, of the woman for whom one constitutes a dowry). Extraneus is also any third person not involved in a given transaction or situation, as, for instance, in possession controversies between two persons, any one who never had possession of the thing under dispute. Syn. persona extranea.

Garzino, ZSS 61 (1941) 378.

Extraneus heres. An outside heir who is not subject to the testator's power at his death, and therefore is neither his heres suus et necessarius nor his heres necessarius. Such an extraneus heres is an emancipated son, or a slave appointed as an heir and freed in the testament who, however, had been manumitted by his master (the testator) when he was still alive, but after the testament was made. See Necessarius heres. An extraneus heres was given an opportunity to deliberate (deliberare, ius deliberandi) whether to accept the inheritance or not. Therefore an explicit declaration of acceptance was required from him. See voluntarius heres, pro herede gerere, tempus ad deliberandum.

Solazzi, St Stories, 1940.

Extraordinarii. Selected army troops destined for particularly difficult tasks.

Liebenam, RE 6: Cagnat, DS 2.

Extraordinarius. What is extra ordinem, beyond the normal order of things. See Extra ordinem. The term is mostly applied to procedural institutions, both civil and criminal (actio, iudicium, poena, cognitio, persecutio, crimen, remedium).—D. 50.13; C. 47.11.

—See cognitio extra ordinem, crinitia publica, ius extraordinarium.

Extrarius. See Extraneus.

Exul. See Exsul.

Exurere, exuendum damare. See crematio.

Fabri. Workers, craftsmen, artisans, e.g., fabri tignarii (carpenters), ferrarii (forgers), argentarii (silversmiths), etc. Fabri navales = shipbuilders. Rich material on the various organizations (collegia) of craftsmen is found in inscriptions. So-called cento-narii (voluntary firemen) appear united with the fabri in one association (collegium fabrorum et centonarii). In the earliest organization of the Roman army, attributed to the king Servius Tullius, there were two centuriae of fabri for all kinds of craftsman's work. See praefectus fabrum.

Kornemann, RE 6: Julian, DS 2; Liebenam, DE 3; H. C. Maud, Praefectus fabrum, 1887, 50; idem, Die Vereine der fabri cessionarii, Frankfurt, 1886; G. Kühn, Die offizcunen R. condiciones, Diss. Halle, 1910, 21; O. Hirschfeld, Kleine Schriften, 1913, 101; Schnorr v. Carolsfeld, Gesch. der juristischen Person 1 (1933) 281; Riccobono, FIR 2 (1941) no. 87.

Fabricenses. Workers in state factories (fabricae) for arms and military equipment. They had a privileged position in the later Empire, but were subject to very rigid discipline. Desertion from their posts was severely punished.—C. II.10.

Seeck, RE 6.

Fabricles operas. See operae.

Facere. “The term includes all kinds of doing, as to give, to fulfill an obligation, to pay money, to judge” (D. 50.16.218). With reference to contractual obligations facere = to do (or not to do) something.—OBLIGATIO, CONTRACTUS INNOMINAT.

Scherillo, BIDR 36 (1928) 29.

Facere aliquid alicius. To make a thing enter into the ownership or possession of another.

Facere possae. To be able to pay one's debts, to be solvent. In certain civil actions the limit to which a defendant can be adjudicated is set by in id quod facere potest (= to as much as he can pay); see beneficium competentiae.

Garzino, SDHI 7 (1941) 5; G. Nocera, Jassolovana, 1942, 40; F. Pastori, Profilo dogmatico dell'obbligazione rom., 1951, 131.

Facinus. A general term for a criminal offense.


Facti est. See res facti.

Factio. A combination of persons, a plot for criminal purposes, in particular for organizing a sedition.

Factio testamenti. See testamenti factio.

Factiones. Political unions for the purpose of the realization of the political ambitions of their members with the help of friends, clients and sympathizers.

Strasburger, RE 18, 788; Mariec, Bull. Cl. Lettres, Acad. Royale de Belgique, 36 (1950) 396.

Factum. A thing done by a human being, also an event, a happening independent of human influence. Factum is often opposed to ius, Res facti—res iriis = a matter of fact— a matter of law; facti esse—irius esse, questio facti— quasiost inius. Condicio facti— condicio irius = a condition depending upon a fact—a condition imposed by the law. For the distinction actiones in factum—actiones in ius conceptae, see Formulæ in ius conceptæ; for the distinction error facti—error irius (in iure), see Error facti, ignorantia irius.

Vassalli, AnPer 28 (1914); Georgescu, Scr Ferrini 3 (Univ. Sacro Cuore, Milan, 1948) 144.
Factum alienum. Something done by another person. See NEMO FACTUM ALIENUM, etc. Ant. factum sum = something done by a person for which that same person is responsible. “Everybody bears the consequences of his doings, not his adversary” (D. 50.17.155 pr.).

Facultas. The legal ability to conclude an agreement or to accomplish a valid act (a testament).—See LIBERA MORTIS FACULTAS.

Facultates (facultates patrimonii). Property, wealth. The possession of a fixed fortune was a requirement for certain official positions. Thus, for instance, a decurio (= councilor) of a municipal council had to have one hundred thousand sesterces. The patrimonial census of a knight (see EQUITATES) was 400,000 sesterces. Obligations of maintaining other persons (see ALIMENTA) are estimated according to the means (pro modo facultatum) of the person obligated.—See BENEFICIA COMPETENTIAE.

Fænus. See FENUS.

Falcidia. Refers either to the statute lex Faldicia or to the so-called quarta Falditia. See LEX FALCIDIA. Vassalli, BIDR 26 (1913).

Falsa causa. An untrue, erroneous ground assigned by a testator or donor as the motive for a legacy or gift. Generally, it had no influence on the validity of the disposition.—C. 6.44.

Falsa demonstratio. See DEMONSTRATIO FALSA.

Falsa moneta. Counterfeited money, coins (nummi) made of tin or lead. Counterfeiters were punished under the Lex Cornelia de falsis.—C. 9.24.—See FALSUM.

Taubenschlag, RE 16, 1455 (s.v. Münzverbrechen).

Falsarius. One who commits a crimem falsi, such as a forger of documents, a counterfeiter of coins, measures, weights, and the like.—See FALSUM.

Falsum. A general definition says: “falsum is that which in reality does not exist, but is asserted as true” (Paul, Coll. 8, 6, 1). In the field of penal law falsum covers any kind of forgery, falsification or counterfeiting. The fundamental statute on falsum was the Lex Cornelia de falsis by Sulla (81 b.C.), also called the Lex Cornelia testamentaria or nummaria since it dealt with the forging of testaments and counterfeiting of coins as well. The statute was still in force in Justinian’s Digest and was applied to crimes which originally were not mentioned in it and only through senatusconsulta, the interpretation by the jurists and the practice of the criminal courts became punishable under the statute. With regard to last wills the destruction or concealing thereof was a crimem falsi as well as the substitution of a forged testament or a fraudulent manipulation of the seals. See SENATUSCONSULTUM GEMINIANUM, LIBONIANUM, LICINIANUM. These decrees of the senate extended the penalties of the Lex Cornelia to forgery of documents other than wills, false testimony, producing forged imperial enforcements (epistulae, rescripta).

With regard to coins the Lex Cornelia set penalties for various kinds of forgery and for knowingly bringing false money (see ADULTERINUS, FALSA MONETA) into circulation. Manifold crimes connected with jurisdicational activity were later subject to the penalties of the Lex Cornelia, as, for instance, the passing of an unjust judgment with the intention of violating existing laws, the giving of a bribe to a judge or the accepting of one by a judge, any kind of bribery in criminal matters to cause the dropping of an accusation or of the condemnation of a culprit, false testimony or subordination of witnesses; furthermore the refusal to accept state money, assuming false impersonation of an official, the counterfeiting of measures and weights, etc. Penalties of the Lex Cornelia were various, primarily aquae et ignis interdictio (see INTERDICERE AQUA ET IGNIS), for graver crimes deportation and death.—D. 48.10; C. 9.22; 23; 24.—See QUAESTIONES PERPETUE, PRODIRE INSTRUMENTA, RESIGNARE.

Hinzig, RE 6; Humbert, DS 2, 967; H. Erman, La falsification des acts dans l’antiquité, Mél Nicole, 1905, 111; L. De Sarlo, Repressione penale del falso documentale, Riv. di dir. e proc. penale 14 (1937) 317; Levy, BIDR 43 (1938) 60; Archi. Studi nelle scienze giur. e sociali 26 (1941) 35; idem, St Pavia 26 (1941) 9.—On Lex Cornelia: Rotondi, Leges publicae populi Romani, 1912, 356; Cud, DS 3, 1138.

Falsum testamentum. A forged testament. “It is no testament” (D. 50.16.223).

Falsum testimoniun. See TESTIMONIUM FALSUM.

Falsus accusatior. See CALUMNIA.

Falsus procurator. One who falsely assumes the role of another’s representative (mandatory). He is considered a thief when he accepts money on behalf of his non-existing principal.

H. Fitting, Scienza deibitum accipere (Lausanne, 1926) 19.

Falsus tutor. “A guardian who is not a guardian” (D. 50.16.221), a person who acts as a guardian (tutor or curator) without having been appointed as such.—See ACTIO PROTUTELAE, PRO TUTORE GERERE.—D. 27.6.

E. Levy, Privatstrafe und Schadensersatz, 1915, 84; idem, Konkurrenz der Actionen 2, 1 (1922) 243; Solazzi, AG 91 (1924) 133.

Familia. The term “has received different meanings, it is referred both to things and persons” (D. 50.16.195.1). Already in the Twelve Tables it appears in both senses: on the one hand embracing all persons who are under the same paternal power (the wife in manu included) and in a broader sense, all persons connected by blood through descent from the same ancestor, on the other hand referring to the whole property of a person, including all corporeal things and slaves. In a narrower meaning familia denotes all the servants (in servitio) in a household, in particular slaves and free men serving in good faith as slaves.—See ACTIO FAMILIARUM ERCISCUNDAE, CAPITIS DEMINUTIO, EXIRE, FILIUS FAMILIAS, FILIA FAMI-
Familia castrensis. See CASTRÆLIAN.

Familia pecuniaria. The whole property of a person.

Fascia. A bundle of rods with an axe in the middle, carried by lictors before consuls and higher magistrates when they appeared in public or on other specific occasion. The axe symbolized the power to impose the death penalty (ius gladii) and was put into the fæces only when the magistrate exercised his military power (imperium militeum, see DOMITI).

Fæces. A list of tax-payers, in the later Empire.

Fasti. See DIES FASTI.

Fasti consulares (consulium). Lists of consuls in chronological order according to the years in which they were in office. There were also fæst of other higher magistrates, as dictators, censors (fasti magistratus) and of high priests (fasti sacerdotales). Fasti is also used as the name of the official calendar of dies fasti and nefasti.


Fatalis. See DIES FATALIS, DAMNUM FATALE.

Fateri. Syn. confrateri. See CONFESSIO.

Favor. (From favere.) A tendency in legislation, jurisprudence or jurisdiction in favor of certain legal institutions (testament, dowry, liberty). The intensity of such tendencies varied through the centuries and assumed particular strength in Justinian’s law, but their origin goes back to classical ideas. The modern Romanistic literature inclines to ascribe these tendencies to Justinian’s reforms, a doctrine which hardly can be true since in various instances the jurists reveal in their writings a favorable attitude in specific decisions even though they do not use the word favor. See the following items.

Faenenti-Ciati, Indice (1927) 39 (Bibl.).

Favor debitoris. The tendency to interpret contractual clauses in cases involving debt in favor of the debtor. With regard to stipulatio there was the following rule: “if it is doubtful what was agreed upon, the words are to be interpreted against the creditor” (D. 35.4.26). A larger application of the rule in civil trials is expressed in the saying: “defendants should be treated more favorably than plaintiffs” (D. 50.17.125). The legislation of the Christian emperors openly acted in favor of the debtors.

Favor dotis. The law of the dowry is governed by the tendency to favor the constitution of a dowry and its preservation during marriage so that, in the event of the restitution the dowry would remain undiminished, as far as possible. “It is in the public interest that dowries be preserved for the women” (D. 23.3.2).

—See dos.

Favor libertatis. “Whenever an interpretation regarding liberty is doubtful, the answer should be in favor of liberty” (D. 50.17.20). The simplification of the forms of manumission is an expression of this favor libertatis as well as the admission of cases in
which a slave becomes free without manumission. Particularly obvious is the "favors libertatis" in decisions concerning testamentary manumissions which are declared valid where according to a strict interpretation of the law they would be void. Justinian called himself "a favorer of liberty" (favors libertatis, C. 7.7.2.2).—D. 40.8.—See LIBERTAS, MANUMISSIO.

I. PFaff, Zür Lehre vom f. l., 1894; Schulz, ZSS 48 (1928) 197; Rotondi, Sop giuridici 3 (1930) 476; Albertario, Studi 1 (1933) 65; M. Nicolau, Canon legalis, 1923, 174; 219; Oria, ACII 1 (1932) 153; Imber, RHD 27 (1940) 274.

Favor testamenti. A tendency to declare a testament valid despite some doubts in this respect, in order to realize the will of the testator. Interpretation of ambiguous testamentary dispositions was governed by the desire to fulfill the wishes of the testator; hence, the frequent statements in juristic writings urging that his will (votum) be interpreted favorably (benefice, plenius).—See BENIGNA INTERPRETATIO, BENIGNIS.

E. Costa, Papiniano 3 (1893); A. Suman, Favor l., 1916; B. Biondi, Successione testamentaria, 1943, 7.

Feliciissimus. An honorific title given to emperors in inscriptions.

De Ruggiero, DE 3.

Femina. A woman. "Women are barred from all civil and public office and therefore they cannot be judges, hold a magistracy, bring a suit, intervene for another, or be a representative in a trial" (D. 50.17.2 pr.). In many legal matters the position of women was inferior to that of men. Several restrictions on their capacity were imposed in the law of succeessions and obligations. As long as the guardianship over women was in force, they were not able to conclude legal transactions or manage their affairs without the consent of the guardian. A woman could not be a guardian; an exception was later introduced in behalf of a mother if there was no tutor appointed in a testament or by law. She had, however, to assume the obligation not to marry again. Postclassical development and Justinian law brought some reforms towards the equalization of the sexes under the law but some substantial differences remained even in Justinian's codification.—See TUTELA MULIERUM, LEX VEOCONIA, SENATUSCONSULTUM VELLEIACUM, MULI-

ERES.

Conch, Woman in Early R. Law, Harvard LR 8 (1894/5) 39; Wehner, ZSS 26 (1905) 449; Frezza, Aeg 11 (1931) 363; idem, Stiapagl 22 (1933) 126; Brassloff, ZSS 41 (1921); idem, Stzur röm. Rechtsgez. I. Intestatotcherbrech der Frauen, 1925; Volterra, BIDR 48 (1941) 74.

Femina famosa (probrosa). See MEREITRIX.

Nardi, SIAS 16 (1938).

Femina stolata. See MATRONA.

Fenerator. Money-lender, usurer.—See FENUS, LEX MARCIA.

Fenus (faenus). Interest paid by the debtor to the lender. Syn. usurae. From the time of the Twelve Tables the legislation often intervened with the limitation of the rate of interest. See FENUS UNCIARIUM, FENUS SEMIUNCIARIUM, LEX GENULCA, LEX MARCA, LEX CORNELIA POMPELIA. Under the Empire the rate of twelve per cent was termed fenus licitum, usurae legitimae. A creditor who took higher interest could be sued for four times the amount exceeding the legal rate. Justinian considerably reduced the highest admissible rate, set different rates according to the nature of the loan and abolished the fourfold penalty.

—See USURAE, PECUNIA FENEBRIS, EXERCERE PECU-
NIAE, and the following items.

Klingmüller, RE 6; Baudry, DS 2; G. Rotondi, Leges pub-
lice populi rom., 1912 (Encic. giuridica ital.); Kling-
müller, ZSS 23 (1902) 23.

Fenus licitum. See the foregoing item.

Fenus naucitum. A loan given in connection with the transportation of merchandise by vessel. The loan had to be repaid only when the ship arrived safely in port with the cargo. Because of the risk which the loan-giver assumed (shipwreck, piracy), the rate of interest was unlimited until Justinian fixed it at 12 per cent. Syn. usurae mariticae. The money loaned was called pecunia traleticia as "money conveyed overseas," since either the money itself or the cargo bought by it was to be transported by boat.—D. 22.2; C. 4.33.

Klingmüller, RE 6, 2200; Cuq, DS 2, Heichelheim, OCD (A. bottomry loan); F. Fringsheim, Kauf mit fremdem Geld, 1916, 143; Nicolau, M31 lorga, 1933, 925; De Martino, RDNave 1 (1935) 217; Biscardi, St Alberto 2 (1937) 345; idem, SISem 60 (1948) 567; De Martino, RDNave 15 (1949) 19.

Fenus semiunciarium. A rate of interest amounting to one-half of the FENUS UNCIARIUM. It was introduced by a plebiscite of 347 B.C.—See the following item.

Fenus uncarium. The rate of interest established by the Twelve Tables. It was one unusia (one-twelfth of the sum loaned) per annum (8½ per cent), or when the year was reckoned as ten months, 10 per cent. Some scholars assume that such interest was paid monthly making 100 per cent per annum, which does not seem likely, although the other calculation appears too low for the primitive economy of the fifth century B.C.

G. Billeter, Geschichte der Zinsfrüesse, 1898, 157; Appleton, RHD 43 (1919) 467; Saloja, BIDR 33 (1924) 240 (= St piper. 2, 287); Köhler, Geschichte, 1923, 47; Nicolau, M31 lorga, 1933, 925; L. Clerici, Economia e finanze dei Romani, 1 (1943) 322; Arangio-Russo, Istituzioni, (1947) 304; E. Weiss, Institutionen (1949) 304; Kunckel, Röm. Recht, (1949) 182.

Fera (bestia). A wild animal. It was considered a res nullius. When caught (not merely wounded) it became the property of the captor and remained such as long as it was in his custody. After regaining its natural liberty it could be the object of another occupatio. A wild animal belongs to res nec
mancipi.—See ANIMALLA, ANIMUS REVERENDI, EDIC-
TUM DE FERIS, OCCUPATIO, VENATIO.

Kaeser, RE 7A, 684; Landucci, NDI 2, 588; idem, AG 29
(1882).

Ferendus non est. Said when the reasons (excuses)
alloed in court by a person to justify his acting, are
not to be taken into consideration.

Feriae (dies festi). Days on which agricultural, in-
dustrial and other kinds of labor, even that of slaves
to a certain extent, were suspended, as well as all
judicial activity (vacatio a formasibus negotios). Such
days were dedicated primarily to religious ceremonies
and popular festivals. Any offence against such holi-
days was punished. There were also extraordinary
feriae publicae, as on the occasion of a victory or an
accession to the throne. Feriae privatae (annivers-
aries, commemorative days in associations, see col-
legia) considerably increased the number of holidays
on which any labor ceased. At the beginning of the
Principate the number of public holidays amounted to
forty-eight. The whole matter was later regulated
by a law of A.D. 389, which also took into considera-
tion Christian holidays.—D. 2.12; C. 3.12.

Wissowa, RE 6; Jullian, DS 2; De Ruggiero, DE 2;
1782; Weinberger, DE 3; De Robertis, Rapporti di lavoro,
1946, 278; J. Faoli, RHD 30 (1952) 304.

Feriae Latinae. See praefectus urbani.

Samter, RE 6; Jullian, DS 2.

Feriatricus (feriatus) dies. Holidays on which agri-
cultural and industrial labor ceased. Work connected
with the military service had to be done. Some acts
of voluntary jurisdiction as, e.g., the appointment of
a tutor or curator, were permitted.—See FERIAE.

Ferrariae. Iron mines.—See procurator ferrari-
orum.

De Ruggiero, DE 3.

Ferre. See FERENDUS NON EST.

Ferre expensum. See expensilatio.

Ferre iudicem. To propose to one's adversary in a
trial a certain person from the panel of jurors (album
iudicum) to be judge in the controversy. Sumere
iudicem = to accept the proposal; eierar = to reject,
to refuse (under oath).

Ferre legem. To propose (bring in) a law, to enact,
to make a law.

Ferre opem. See opes consilio.

Ferre sententiam. To pass a judgment.

Ferre suffragium. To vote.

Ferre testimonium. To bear testimony.

Ferri iubere. See duci iubere.

Ferruminatio. The junction of two objects of the
same metal, for instance, a bronze arm with a bronze
statue. When the parts belonged to different own-
ers, the owner of the principal part became owner of
the whole. This was not the case when the soldering
metal was different, as, for instance, when in the
example above plumb was used (adplumbatio). If
separation is possible without destruction of the
whole, the owner of the part which was illegally
joined could claim its restitution after having en-
forced its separation through actio ad exhibendum.

—See CORPUS EX COHAERENTIBUS, PLUMBATURA,
ACTIO AD EXHIBENDUM.

Leonhard, RE 1 (s.v. adplumbatio) ; Pampaloni, Serviti 1
(1941, written 1879) 9; Bozzi, NDI 5.

Festivi dies. See FERIAE.

Festus. A stalk of grass, later a rod, used in earlier
law when a thing was claimed by rei vindicatio or
in specific form of manumission (manumissio vin-
dicia).

Nisbet, IRS t 8 (1918); Meylan, La baguette, Mél F.
Gutium (Lauzanne, 1950).

Feticies. A group of twenty priests who from the
earliest times were charged not only with religious
functions, but also with public service, in particular
in international relations with other states. Their
duty was to observe whether or not the terms of
international treaties were being fulfilled. They were
involved in the concluding of treaties, in affairs of
extradition, and were representatives of Rome in
serving official declaration of war. In their mis-
sions abroad they were headed by one of them whose
official title as the speaker of the delegation was
pater patratus.

Samter, RE 6; A. Weiss, DS 2; De Ruggiero, DE 3;
Ferrini, NDI 5, 928; Rose, OCD; Frank, CIP Hick 7
(1912); Volterra, Serviti Corneliuss 4 (1930) 248.

Ficta possessio (fictus possessor). See possessio
fictus.

Fictio. (From fingere.) The assumption of the ex-
istence of a legal or factual element, although such
an element does not exist. The purpose of a fiction
is to cause certain legal consequences which other-
wise would not occur. For fictio in the procedural
formula, see inciones ficticiae.

R. Decker, La fiction juridique, 1935.

Fictio legis Corneliae. See lex cornelia de captivis.

Fideicommissaria hereditas. See fideicommissum
hereditatis.—Inst. 2.23.

Fideicommissaria hereditatis petition. See heredi-
tatis petitionem fideicommissaria.

Fideicommissaria libertas. Liberty granted through
a fideicommissum.—D. 40.5; C. 7.4.—See manumis-
sio fiduciaria, senatusconsultum dasumanum, rubri-
anna, vitrinum.

Montel, St Boniface 3 (1930) 633.

Fideicommissarius. (Noun.) Indicates sometimes
a person awarded with a fideicommissum, sometimes
an heir charged with one.

Fideicommissum. (From fidei alicuius committere.)
Originally a request addressed by the testator to his
heir ("te rogo," "peto a te") to carry out a certain
performance (payment of a sum of money, transfer
of property) to the benefit of a third person. It
created only a moral (not legal) duty. Augustus
rendered the fideicommissum obligatory to the heir.
and made it enforceable by a new procedure (cognitio extra ordinem) before a special magistrate created for the purpose, the praetor fideicommissarius. Fideicommissum was formless and this advantage over legacies in the form of legata furthered its development. Anybody who received a gift mortis causa (not only an heir) might be charged with a fideicommissum. Not even a testament, without which a legacy could not be bequeathed, was necessary since a fideicommissum could be imposed on an heir at intestacy. The differences between fideicommissa and legata gradually disappeared and under Justinian both institutions were considered equal (per omnia exaequata sunt, D. 30.1).—D. 30; 31; 32; C. 3.17; 6.42-46.—See FIDEICOMITITRE, SENATUSCONSULTUM PEGASIANUM, CODICILLI, ORATIO HADRIANI, ORATIO MARCI.

Leonhard, RE 6; Humbert, DS 2; Trifone, NDI 6 (1002); Kübler, DE 3; Milone, Il fideicommesso romano, 1896; Declarenil, Mél Gérardin (1907) 135; Riccobono, Mél Cornil 2 (1926) 310; R. Trifone, Il fideicommesso 1914; Lemercier, RHD 14 (1935) 443, 623; B. Biondi, Successione testamentaria, 1943, 289; F. Schwarz, ZSS 68 (1951) 266.

Fideicommissum a debito relictum. A fideicommissum by which the testator ordered his debtor to pay the debt not to the heir but to a third person.

G. Wesenberg, Verrührte zu Guatsten Dritter, 1949, 56.

Fideicommissum hereditatis. A fideicommissum concerning the whole estate or a part of it. A fideicommissary honored by such a fideicommissum became either successor to the entire inheritance or co-successor with the heir who had been charged with the fideicommissum (the fiduciary heir). The latter remained the heir (heres) but he had to transfer the pertinent portion to the fideicommissary; for the transfer of the testator’s claims and debts reciprocal stipulations were made (stipulaciones emptae vendi
tae hereditatis) by which the fiduciary heir obligated himself to restitute the fideicommissary the payments received from the debtors of the deceased, whereas the fideicommissary assumed the liability to indemnify proportionally the heir for payments made to the creditors of the estate. For later reforms which directly gave the fideicommissary the legal situation of an heir and made the stipulations superfluous, see SENATUSCONSULTUM TREBILLIANUM AND PEGASIANUM. Justinian simplified the whole matter and gave the fideicommissary the position of a universal successor (heredis loco).—Inst. 2.23.—See HEREDITATIS PETITIO FIDEICOMMISSARIA, COMMUNICARE LU
crum, exceptio restitutae hereditatis.

Lemercier, RHD 14 (1935) 462, 623; La Pira, StSen 47 (1933) 243.

Fideicommissum liberatatis. See MANUMISSIO FIDEI-
COMMISSARIA.

Fideicomittere. See FIDEICOMMISSUM. Fideicomittere was the term used by the testator when he addressed his request to his heir: “fidei tuae com-
mitto” (= I leave it to your faith, honesty). Other words could, however, be used as well (poto, rogo, volo, etc.).

Fideissuario, fideiuscissor. See ADPROMISSIO.

Fideiuscissor fideiuscissoria. A surety who assumes guar-
anty for another surety.

Fideiuscissor judicio sistendi causa. See VINDEX, VAD-
MONIUM, SISTERE ALIQUEM.

Fideiuscissor tutorius (curatoris). A surety for a guardi-
ian (tutor or curator).—D. 27.7; C. 5.57.

Fideipromissio, fideipromissor. See ADPROMISSIO.

Fidem aliius sequi. (Syn. fidem habere aliciu.) To put faith in one’s honesty, to trust.

Fidem praestare (conventioni, pacto). To perform the obligations assumed in an agreement. Syn. fidem servare; ant. fidem fallere, fidei rumptere.

Fides. Honesty, uprightness, trustworthiness. In legal relations fides denotes honest keeping of one’s promises and performing the duties assumed by agreement. On the other side fides means the confidence, trust, faith one has in another’s behavior, particularly with regard to the fulfillment of his liabilities. See FIDEM ALICUTUS SEQUI. For fides as the element of reciprocal confidence in contractual relations, see IUS GENTIUM; for fides in the promissory formulae by which one assumes guaranty for another, see ADPROMISSIO.—See BONA FIDES, CON-
TRACTUS BONAE FIDEI, IUDICIA BONAE FIDEI, EMPTOR BONAE FIDEI, LIBER HOMO, etc., USUCAPIO, POSSESSOR BONAE FIDEI, MALA FIDES.

De Ruggiero, DE 3, 77; Heine, Hermes 64 (1929) 140; Fränkel, Rheinisches Museum für Philol. 71 (1916) 187; W. Flume, Studien zur Akzessoriatät, 1932, 64; Beseler, Fides, ACID Roma 1 (1934) 135; Hermendort, ACII 1 (1935) 161; F. Schulz, Principles of R. Law (1936) 223; Kunkel, Fehr Kaschaker (1939) 1; Dulekait, ibid. 316; Condarnari-Michier, Ser Ferrini 3 (Univ. Sacro Cuore, Milan, 1948) 90; Kaser, Das altrömische Ins, 1949 (passim); Freezza, Nuova Riv. dir. comm. 2 (1949) 31.

Fides bona. See BONA FIDES.

Fides instrumentorum. The credibility, the conclusive force of documents as means of evidence. Similar applications of the term: fides scripturarum, fides tabularum; with regard to witnesses and their testi-
mony: fides testimoni, testum.—D. 22.4; C. 4.21.

Arch., Ser Ferrini 1 (Univ. Sacro Cuore, Milan, 1947) 15.

Fiducia. An agreement (pactum fiduciae) in addition to a transfer of property through mancipatio (or in iure cessio) by which the transferee assumes certain duties as to the property transferred or the later retransfer thereof to the transferor. The agreement is based on the transferor’s trust (fides, fiducia) to the honesty of his partner. The transferor had an action (actio fiduciae) against the trustee if, contrary to the fiduciary agreement, the latter refused to retransfer the property. On the other hand, the trustee had an actio fiduciae contraria for the recovery of expenses and damages caused by the thing mancipated. Fiducia means sometimes the thing
Fiducia cum amico. A fiduciary agreement concluded with a friend on the occasion of a transfer of ownership under specific circumstances for the purpose "that the thing be safer with him" (Cauius, Inst. 2.60). Such a transaction could serve for a deposit or a gratuitous loan of a thing (commodatum), the fiduciary assuming the duty to retransfer it to the depositor or commodator.

Fiducia cum creditore. A kind of pledge. The debtor transferred the ownership of a thing given as a real security to the creditor through mancipatio or in ire cessio. The latter assumed the obligation to retransfer the thing to the debtor after the debt was paid. For the pertinent actions, see FIDUCIA. An example of a fiducia cum creditore is epigraphically preserved in the so-called Formula Eactica. This kind of pledge did no longer exist in Justinian's law. The term was canceled by the compilers of the Digest everywhere in classical texts and substituted by another term, primarily by pignus.—See FIDUCIA (Bibl.).

Hazelton, in R. W. Turner. The Equity of Redemption, Cambridge, 1931, p. xiii; C. Longo, CemCodPav 1934, 795; Rabel, Syn 1 (1943) 39; A. Burdese, St Solazzi, 1948, 324; idem, Lex commissoria e ius vendendi nella fiducia, 1949.

Fiducia manumissionis causa. The conveyance of the ownership over a slave to a fiduciary under the agreement that the slave be manumitted. The purpose of such a transaction was to make the fiduciary the patron of the slave manumitted or to elude the legislation which restricted manumissions, see LEX FUTIA CANTITIA, LEX AELIA SENTIA, LEX IUNIA NORMANA. Such transactions in fraudem legis (= to defraud the law) were void.

Grosso, RISG 4 (1929) 251.

Fiducia remanicipationis causa. An agreement made with a third person by a father who wished to emancipate his son from paternal power, by which agreement the fiduciary assumed the duty to emancipate the son to the father until, after the third remanicipation, the son was free from the paternal power.—See EMANCIATION.

Fiduciae causa. Refers to transactions (mancipatio or in ire cessio) creating a fiduciary relation between the contracting parties and imposing on the trustee the duty of performing under certain conditions a legal act entrusted to him.

Benti, BIDR 42 (1934) 299; Brasiello, RIDA 4 (1950) 201.
Filius iustus. A son born in a legally valid marriage (iustae nuptiae). In Justinian's language the term filius legitimus prevails.

Filius legitimus. See the foregoing item.

Filius naturalis. As an ant. to filius adoptivus, filius naturalis indicates a child born in a marriage. On the other hand, filius naturatis is a child born in a marriage-like union, contubernalium, and from the time of Constantine a child issued in a concubinage. This latter significance predominates in Justinian's language where it comprises any illegitimate child. Children born in a concubinage may become legitimi in later law by a subsequent marriage of the parents (legitimatio per subsequens matrimonium, a term coined in literature). The emperor could grant an illegitimate child the position of a filius legitimus by a special privilege (per rescriptum principis).—C. 5.27.—See CONTUBERNIUM CONCUBINATUS, LEGITIMATIO.


Fines (finis). Boundaries of a landed (rural) property. Syn. confinimum.—D. 10.1; C. 3.39.—See ACTIO FINITUM REGUNDORUM, AGRIMENSORES, CONTROVERSA DE FINE.

Leonhard, RE 6; Anon., NDI 6; Schulten, DE 3.

Finge (fingamus). Suppose (let us suppose) that. The words are frequently suspected to be a compulsory addition introducing a hypothetical case which was not discussed by the classical jurist in his original work. Glosses or interpolations thus introduced do not prejudice, however, the classicity of the decision itself.

Guarneri-Ciati, Index (1927) 40.

Finiri. To come to an end. A controversy is "considered finished when it was brought to an end by a judgment in court, settled by an agreement of the parties, or extinguished by silence (non-activity sc. of the claimant) through a longer time" (D. 38.17.1.12).

Fiscalis. (Noun.) An officer concerned with fiscal administration.—See FISCUS.

Fiscalis. (Adj.) See RUS FISCI.

Fiscus (fiscus Caesaris). The treasury of the emperor. It was not property of the emperor; it was only entrusted to, and controlled by, him as a fund destined for public purposes. The emperor had the right, and the moral duty as well, to dispose of the fiscal revenues only for public welfare. The main revenues of the fiscus were derived from the imperial provinces; some income came from senatorial provin-}

inces. The creation of the fiscus under the Principate did not abolish the AERARIUM POPULI ROMANI which remained under the control of the senate. The fiscus was administered by imperial officials (a rationibus). Procuratores fisci appointed by the emperor decided controversies between the fisc and private individuals. The fisc gradually assumed a more privileged position towards private individuals who were its debtors (debitor fisci). In the course of time (first half of the third century) the fiscus absorbed other public funds, the aeraurium Saturni (populi Romani) and the aeraurium militare.—D. 49.14; C. 10.1; 8; 9; 2.17; 2.36; 3.26; 2.8; 7.73; 10.1—9.—See ADVOCATUS FISCI, ARCA, AERARIUM, IUS FISCI, LANGITIONES, FRAGMENTUM DE IURE FISCI, RES PRIVATA, MUTA FISCO DEBITA, A RATIONIBUS, HYPOTHECA OMNIIUM BONORUM, DEFERRE FISCO, NUNTIARE FISCO, SENTENTIAL ADVERSUS FISCUm, RETRACTARE CAUSAUS, USURAE FISCALES, RES FISCI, PRAEDIA FISCALIA.

Rostowzew, RE 6; idem, DE 3; Humbert, DS 2; Stella-Maranca, NDI 6; Vassalli, StSt 25 (1908); L. Mittels, Rom. Privatrecht, 1908, 349; Weiss, ZSS 53 (1933) 255; S. v. Bolla, Das Entsteckung der F., 1938; P. W. Duff, Personality in Law, 1938, 51; B. Elishevitch, La personnalité juridique, 1942, 33; Last, JRS 34 (1944) 51; Sutherland, Amer. Jour. of Philology 66 (1945) 151; Jones, IRS 40 (1950) 23.

Fiscus Iudicus. A central fund in Rome for revenues from the poll-tax paid by the Jews in the whole empire.


Flagellum. See CASTIGARE.

Fougeres, DE 2.

Flagitium. A crime against good customs, chiefly a military infraction. The term acquired later a more general meaning.

Reichenbecher, De vocum sancti, flagitiis, etc. apud frumenta scriptores usu, Diss. Jena, 1913; Volterra, AG 111 (1934).

Flamines. Priests in early Rome. A flamen was assigned to the service of a specific deity, primarily for performing sacrifices. There were altogether fifteen flamines of whom three were maiores (patricians), all others (minores). The highest in rank was the flamen Dialis (of Jupiter) who during the period of kingship was appointed by the king. He had to be born in a marriage concluded in the form of confarreatio and could take a wife (flaminica Dialis) only by confarreatio. He was entitled to certain privileges (sella curulis, seat in the senate). Under the Empire special flamines were assigned to deified emperors.

Samter, RE 6; Julian, DS 2; Anon., NDI 6; Espérance, DE 3; Rose, OCD.

Flamen curialis. See CURIA.

Flamen Dialis. See FLAMINES, LEX VOCONIA, FLAMINICA DIALIS.

Aron, NRHD 28 (1904) 5; Brassloff, St Bonfante 2 (1930) 365.
Flaminina Dialis. The wife of the flamen Dialis. She assisted her husband in his priestly functions.

Samter, RE 6, 2490; Esperandieu, DE 3.

Flavius, Gnaeus. See ius Flavianum.

Florentina. (Sc. littera.) The oldest and most authoritative manuscript of the Digest, written in the late sixth or early seventh century. The manuscript was preserved in Pisa during the twelfth and thirteenth centuries (hence it is named Littera Pisana). From the beginning of the fifteenth century it has been in Florence.

Kamienowicz, ZSS 30 (1909) 186.

Florentinus. A jurist of the second century after Christ, known only as the author of an extensive manual of Institutiones (in twelve books).

Brassoff, RE 6, 2755.

Flumen. See Alveus, insula.

Flumina privata. See Flumina publica.

Flumina publica. Rivers flowing the year through, perpetually (flumen quod semper fluit, perenne). Navigability is not decisive. See res publicae. The public use of flumina publica is protected by special interdicts which serve to assure navigation, unloading boats, maintenance of navigable rivers, and the like. See interdicta de fluminius publicis. The question whether water from public rivers could be diverted for private use is controversial.—D. 43.12–15.—See ripa, aqua publica, and the following item.

Berger, RE 9, 1634; Lauria, AnSt 8 (1937); G. Longo, RISG 3 (1928) 243; idem, Si Ratti, 1934; Grosso, ATar 66 (1931) 369; idem, Ser. S. Romano 4 (1940) 175; B. Blondi, Categoria romana delle servitute, 1938, 591; Albetto, St 2 (1941) 71; G. Segrè, BIDR 48 (1941) 17; Branca, AnTrieste 12 (1941) 29, 71, 141; Scherillo, Le cas, 1945, 131.

Flumina torrentia. Rivers flowing during the winter only and regularly drying up during the summer. Later law treated them as flumina publica.

Costa, BIDR 27 (1914) 72.

Foederati. Citizens of a state which was tied to Rome by a treaty of alliance (foedus). "They enjoy their liberty in our country and retain their property in the same way as in their own land; we enjoy the same rights in their country" (D. 49.15.7 pr.).—See civitates Foederatae.

H. Horn, Foederati, 1930.

Foedus. A treaty of friendship, peace and alliance with another state. It bound the parties to reciprocal military aid in the case of a war (foedus aequum). If the treaty was not based upon equality and Rome only was granted military assistance from the partner, the treaty was a foedus imiguum.—See soci, amici Populi Romani, civitates Foederatae, fæx.

Neumann, RE 6; Hambert, DS 2; Paribeni, DE 3; Frezza, La forma fedesoriale, SDH 4 (1938) 363, 5 (1939) 161; B. Paradisi, Storia del dir. internazionale nel Medio Ero, 1 (1940) 52; De Visscher, Noxalit, 1947, 97; A. Magdelain, Origines de la sposa, 1943, 6.—For treaties concluded by Rome see L. Larivière, Des traités conclus par Rome avec les Rois étrangers, 1892; R. v. Scala, Staatsverträge 1 (1898).

Fons. A source of water. Syn. caput aquae. It becomes juristically relevant when another has a right (servitude) to take water (see servitus aquae- haustus) from the source on neighbor’s property or the right to drive his cattle thereto; see Aduclus pecoris. Persons entitled to make use of another’s fons are protected by an interdict de fonte. On the other hand, the owner has an interdict against any one who prevents him from repairing or cleaning the spring.—D. 43.22.—See interdicta de fonte, interdicta de repiciendo.

Berger, RE 9, 1637; G. Longo, RISG 3 (1928) 288.

Forensia negotia. See FERIAE.

Forensia. Connected with a judicial court, forum (e.g., causa, res, negotium).

Forma. A legal norm, established in a statute, an edict of a magistrate, a decree of the senate, or an imperial enactment. With regard to certain contracts (a mandate, a lease) forma indicates the contents of the agreement. Sometimes forma = formula.

Falletti, Mé Fournier, 1929, 219; De Fracisci, RISG 10 (1932) 102.

Forma censusalis. Regulations issued for the performance of a census.

Schwahn, RE 7A, 63.

Forma idiologi. See Gnomon diologi.

Forma iuris fiscalis. A rule of fiscal law.

Formae. Metallic tablets on which the boundaries of a plot of land are documentarily set.

Formare. (With regard to a written document.) To draw up.

Formula. (In the formulary procedure.) A written document by which in a civil trial authorization was given to a judge (index) to condemn the defendant if certain factual or legal circumstances appeared proved, or to absolve him if this was not the case (si paret . . . condemnato, si non paret, absolveto). Introduced by the lex Aetitia, and later extended by the Augustan lex Iulia judicorum privatorum, the formulary procedure replaced almost completely the former procedure of leges actiones. See centum- veri. The formula consisted of several clauses. Some of them, the mention of the judge appointed to decide the case (. . . index esto) and two essential parts, intentio and condemnatio, were included in each formula. (For prejudicial actions, see FORMULA FRAEJUDICIALIS.) Other clauses, such as demon- stratio and adjudicatio, were inserted in order to specify more precisely the case at issue. Some circumstances alleged by the defendant, which, when verified, excluded his condemnation (see exceptio), might be inserted. The elasticity of the formula which made it adaptable to any case was its great advantage which explains its existence through centuries until it was gradually superseded by a new form of procedure,
the cognitio extra ordinem. In a concrete trial the formula was first proposed by the plaintiff (see editio actionis) and became decisive for the continuation of the process through co-operation and consent of the defendant who, for his part, was entitled to ask for the insertion of exceptions and for other modifications of the formula. All this took place in iure, i.e., before, and under the supervision of the praetor who had the right to grant new formulae hitherto not promulgated in his edict, if such an innovatory and unprecedented formula was proposed by the plaintiff or his legal advisers. Such new formulae in the development of which the jurists had an important role, either as consultants of the parties or counselors to the magistrates, played an important part in the development of the Roman private law (see ius honorarium). The term formula is used promiscuously with actio and was substituted in Justinian's codification by the latter since in his time the formula was only a historical reminiscence. Officially the formulae were abolished by an imperial constitution of a.D. 342 with the critical censure: "dangerous hair-splitting" (C. 2.57).—See besides the items mentioned above, praescriptiones, ea res agatur, quanti ea res est, some entries under actio, actiones and the following items.


Formula arbitaria. See actiones arbitariae.

Formula Baetica. An epigraphically preserved example of a fiducia as a pledge (mancipatio fiduciae causa) given to a creditor.


Formula census. See lex censui censendo.

Formula certa—incerta. See actiones certae.

Formula Fabiana. See actio calvisiana, fragmentum de formula fabiana.

Formula ficticia. See actiones ficticiae.

Formula in factum concepta. See formula in ius concepta. —D. 19.5. De Francisci, StSen 24 (1907); De Vischer, RHD 4 (1925) 193 (= Études de dr. rom. 1931, 359); Lévy-Brühl, Prudent et princeur, RHD 5 (1916) 5; Lenel, ZSS 48 (1928) 1; Fabia, Mël Huelvin, 1938; Collinet, La nature des actions, 1947, 337; Philonenko, RDA 3 (= Mël De Vischer 2, 1949) 237.

Formula in ius concepta. Acta. formula in factum concepta. The distinction is based on the contents of the intentio in the procedural formula. When a question of law is raised, as, for instance, when the plaintiff claims the ownership over a thing or another right, under Quiritary law, or when he sues for the performance of an obligation by the defendant under civil law (dare operture), there is in the intentio a direct or indirect reference to a legal transaction or relation protected under ius civile. In a formula in factum, however, the intentio mentions the fact from which the plaintiff draws his claim and the judge is authorized to condemn the defendant if the fact in question is proved. The formula in factum is adapted to the particular circumstances of the case, for instance, when a freedman summons his patron to court, or when a person summoned to court does not appear or give a guaranty. The substantial difference between the two kinds of formulae is that in the formula in factum the condemnation of the defendant is connected with a fact from which his liability is derived, whereas in the formula in ius the establishment of a specific right of the claimant either over a thing or to a performance by the defendant effects the condemnation of the latter. In the creation of formula in factum the jurists and the judicial magistrates (the praetors) equally co-operated. Granted first in specific cases the formula in factum gradually entered into the praetorian edict in the form of an announcement of the praetor that he was willing to grant an action in certain situations, not protected hitherto by the law. The formulae in factum were an important factor in the development of the ius honorarium.—See FORMULA IN FACTUM CONCEPTA (Bibl.), INTENTIO.

Formula Octaviana. (Actio quod metus causa.) See METUS.

O. Carrilli, La geneesi della procedura formulare, 1946, 200.

Formula petitoria (judicium petitorium). The formula used in so-called actiones in rem by which the plaintiff claims a right over the thing at issue. The formula petitoria is applied in a rei vindicatio. It is opposed to another form of process when ownership of a thing is involved; see AGERE PER SPONSIONEM.

Formula praesidialis. The formula of the so-called prejudicial actions; see actiones praesidiales. The formula has only an intentio and no condemnation, since the final statement by the judge establishes the existence of a legally important fact only.

Formulae. Formularies for last wills, contracts, actions, and the like. Collections of such forms were a favorite type of juristic writings in the early Republic. Such collections are known as ius aelianum (see aelius paetus catus). Ius flavianum, Monumenta Maniliana (see MANILIUS). The last collection written by Manlius Manilius (consul 149 b.c.) was in use at the end of the Republic.
Fortasse, fortassae, forte. Perhaps, perchance, by accident. The words are used frequently by the compilers to introduce fictitious examples or, particularly by nisi forte, to add some restrictions to a legal norm expressed before.

Guarnieri-Ciatti, Indice (1927) 40 (Bibl.); idem, St Riccobona 1 (1936) 721.

Fortuitus casus. An accident “which cannot be foreseen by human mind” (D. 50.8.2.7).—See CASUS (Bibl.); TERRAE MOTUS.

Kübler, Fg Gierke (1911) 26.

Forum. (In procedural law.) The competent court (forum competens) before which one can be sued. Special courts had jurisdiction in specific cases; see DECEMVIRI S LITITIBUS IUDICANDIS, CENTUMVIRI, RECUPERATORES. There were praetors with a special jurisdiction, as, e.g., the praetor fideicommissarius, tutelaris, and likewise the prefects in Rome were competent in particular controversies connected somewhat with their specific domain of administration. A general rule, actio sequitur forum rei (C. 3.1.3.2; 3.19.3; Fragm. Vat. 326) established that the plaintiff could sue the defendant only where the latter had had his judicial status either through origin (origo) or domicile (see DOMICILIO, INCOLA). If the defendant is summoned (in ius vocatio) before a magistrate not competent to try the case, he must answer the summons, but the magistrate will refuse the action to the plaintiff (denegare actionem). The place where the defendant had to pay the debt, determined in certain cases the competent court. In Justinian’s law trials concerning an immovable belonged to the court of the place where the immovable was situated. For delictual obligations the place where the offence was committed was decisive in the later law. For all these kinds of fora non-Roman terms were coined in literature (forum domicili, contractus, rei sitae, diclii). Non-Roman is also the term forum prorogatum (prorogatio fori), when, by an agreement of the parties, a special court was selected. A change of the court after the joinder of issue (litis contestatio) was impossible. It was the duty of the judicial magistrate approached by the parties “to examine whether he was competent in the specific case” (an sua est jurisdicctio, D. 5.1.5).—D. 5.1: C. 3.13.

Kipp, RE 7.

Forum. A market place, a small community (like VICUS).

Schulze, RE 7, 62 (no. 3); Théodat, DS 2, 1278.

Fossa. A channel, a water way.—See LACUS, FLUMINA PUBLICA.

Fragmenta de iudiciis. Three brief excerpts from an unknown work, perhaps a commentary on the section de iudiciis of the praetorian edict. The manuscript is of the fifth or sixth century.

Editions in all Collections of Fontes (see General Bibliography, Ch. XII); the most recent one in Baviera FIR 2 (1940) 623.—Berger, RE 10, 1192.

Fragmenta de iure fisci. A few excerpts from a treatise on the rights of the fisc. Author and date are unknown. The manuscript is preserved on parchment; it was written in the fifth or sixth century.

Editions in all Collections of Fontes; the most recent one in Baviera, FIR 2 (1940) 627.—Brassloff, RE 7.

Fragmenta Vaticana. A collection of legal texts preserved in a Vatican manuscript. It contains excerpts from the works of Papinian, Ulpian, and Paul (isra) and imperial constitutions, primarily by Diocletian (leges). For the selection of the constitutions the Codices Gregorianus and Hermentogenianus were probably used but not the Codex Theodosianus. The collection was compiled presumably in the second half of the fourth century.

Editions in all Collections of Fontes (see General Bibliography, Ch. XII); recently Baviera, FIR 2 (1940) 463; Brassloff, RE 7; Volterra, VI 12 (Nom. Vat. Fr.); Felgenträger, in Romanistische Studien (Freiburger rechtsgeschichtliche Abhandlungen 5, 1935) 27; Albertario, Studi 5 (1937) 551; F. Schulz, Hist. of R. legal science, 1946, 310; v. Bolla, Ser Ferroni 4 (Univ. Sacro Cuore, Milan, 1949) 91.

Fragmentum de bonorum possessione. A brief text on bonorum possesso ascribed to Paul; it is preserved on a parchment sheet.

First edition: P. M. Meyer, ZSS 42 (1921) 42; Baviera, FIR 2 (1940) 427.

Fragmentum de formula Fabiana. A brief excerpt from a juristic writing (by Paul?), named in literature “de formula Fabiana” rather inappropriately in spite of three mentions of that formula. It is preserved in a parchment manuscript.—See ACTIO CALVIANA.

Edition: Baviera, FIR 2 (1940) 429 (Bibl.).—Albertario, Studi 5 (1937) 571.

Fragmentum Dositheanum. This name is applied to a longer excerpt from a collection of passages used for translations from Latin into Greek and vice versa. It is commonly ascribed to the grammarian of the late fourth century after Chrest, Dositheus, the author of Ars grammatica. The text preserved in both languages, is inaccurate and full of errors and contains some general conceptions and an extensive section on manumission which goes back probably to a classical elementary treatise.

Editions in all Collections of Fontes (see General Bibliography, Ch. XII); lastly by Baviera, FIR 2 (1940) 617.—Jörs, RE 5, 1603; Berger, RE 10, 1192; G. Lombardi, Il concetto di ius gentium, 1947, 246 (Bibl.).

Frangere. To break. The verb occurs in connection with the harmful wrongdoings in the LEX AQUILIA which may provide cause for an action for damages (actio legis Aquiliae) against the wrongdoer.—See OS FRACTUM.

Frater. A brother. Brothers (fratres) are the sons of the same parents (= germari) but also the sons of the same father only (per patrem, fratres consanguinei) or of the same mother (per matrem, uterini).
Under the ius civile brothers had a right to intestate succession in the group of the next agnates (prosimini agnati), under the praetorian law (see BONORUM POSSESSIO INTESTATI) in the groups unde legitiimi and unde cognati. The term frater covers both brothers and sisters, unless a narrower sense is evident from the context. An adopted son is considered to be a brother of the other sons of the adoptive father (per adoptionem gaesita frater nitat). Prohibited, however, was adoptio in fratrem = adoption of a person as a brother of the adopting person (fratrem sibi per adoptionem facere) in order to institute him as an heir.

Volterra, BIDR 41 (1933) 289; Koschaker, St Riccobono 3 (1936) 311. Nallino, ibid. 321 (= Raccolta di scritti, 1942, 385).

Fratres Arvales. See ARVALES.

Fratres germani (uterini). See FRATER, GERMANI.

Fratres patruetes. See CONSOBERNI.

Fraudare. To defraud. "No one is held to defraud persons who know the matter and agree" (D. 42.8.6.9 = 50.17.145). Fraudare credores (syn. in fraudem creditoris agere) = to act in order to defraud the creditors by diminishing one's property, e.g., through forbidden donations, manumissions of slaves, or alienations. Such fraudulent acts could be made by a freedman in order to deprive his patron of successional benefits (fraudare patrum).—See FRAU.—C. 6.5.

Fraudare censum. See FRAUDARE VECTIGAL.

Fraudare credores. See FRAUDARE.

Fraudare patronum. See FRAUDARE.—C. 6.5.

Fraudare legem. To evade a law by a fraudulent transaction, e.g., to sell a thing at a small fictitious price in order to cover up a forbidden donation. Syn. in fraudem legis agere.—See FRAUS LEGI FACTA.

Fraudare vectigal (censum and the like). To evade taxation or other payments due to the state.

Fraudatio. See FRAUDARE, FRAUS. Fraudationis causa = (an act accomplished) for the purpose of defrauding another.

Fraudator. A deceiver, in particular a debtor who is acting in order to defraud his creditors (in fraudem creditorum).—See FRAUERE, FRIAUS, INTERDICTUM FRAUDATORIUM.

Solazzi, Revoca degli atti fraudolenti 1° (1945).

Fraudatorium interdictum. See INTERDICTUM FRAUDATORIUM.

Fraudulosus. Using fraud, deceitful fraudulent. For fraudulosis in the definition of theft, see FURTUM.

Fraus. A detriment, disadvantage. The term means also evil intention, fraud (syn. DOLUS) and, consequently, any act or transaction accomplished with the intention to defraud another or to deprive him of a legitimate advantage. In contractual relations the term had a particular importance with reference to acts committed for the specific purpose to deceive the reditors through alienations (diminution of property) performed in order to become insolvent and unable to pay one's debts to the creditors (fraudare credores, in fraudem creditorum agere). Creditors thus deceived could obtain the rescission of such fraudulent alienations (donations, manumissions of slaves). Various remedies were introduced in the course of time. One of them was the INTERDICTUM FRAUDATORIUM. Under specific circumstances the praetor granted RESTITUTIO IN INTEGRUM by which the debtor's deceitful deeds (fraudationis causa gesta) were annulled. A specific action for the rescission of such alienations was an actio in factum, named actio Pauliana (the origin of the name is not clear).

The action substituted in Justinian law the other remedies; the pertinent interpolations produced a certain obscurity in details as far as the classical law is concerned. The action was applicable against any third person who profited from the transaction with the insolvent debtor and knew of his fraud.—D. 42.8; C. 7.75.—See the foregoing items, CONSCIUS FRAUDIS, ALIENATIO, INTERDICTUM FRAUDATORIUM, REVOCARE ALIENATIONEM.

Conforti, NDI 2 (av. azione recoversia) G. Rotundi.

Fraus legi facta. The Romans did not elaborate a real doctrine of fraus legi facta. There was a distinction between contra legem facere (= to do what the law forbids) and in fraudem legis facere ("who evades the intention of a statute but respects his wording," D. 1.3.29). In other words, a fraus legi occurs "when something is done what the law expressly did not forbid, but what it did not want to be done" (D. 1.3.30). Acting in fraudem legi was considered simply a violation of the law and it produced those consequences which were provided by the law.

Rotundi. Gli atti in frode alla legge, 1911; idem. BIDR 25 (1912) 221 (= Scritti 3 [1922] 9); Lewald, ZSS 33 (1912) 586; Scheltema. Rechtsgeleerd Magazine 53 (1936) 34 (Bibl.) 96; J. Bréjon. Fraus legis, Rennes, 1941; idem, RHDT 22 (1949) 301.

Fraus patroni. Defrauding his patron by a freedman through the performance of alienations by which his rights of succession are impaired. See ACTIO CALVISIANA. As early as A.D. 4 the lex AELIA SENTIA declared manumissions of slaves in fraudem creditorum void.—C. 7.75.

Fructuarios. Used of a person entitled to the usufruct of a thing (syn. usufructarius) and of the thing itself being in usufruct (e.g., servus fructarius).—See USUFRUCTUS.

Fructus. Fruits, products, proceeds. The term comprises primarily the natural produce of fields and
gardens, offsprings of animals, and proceeds obtained from mines (fructus naturales). Profits obtained through legal transactions (the rent from a lease) are also conceived as fructus (fructus civiles, non-Roman term). Children of a female slave (partus ancillae) are not considered fructus. As a matter of rule, the owner of a thing which produces fruits has the right of ownership over them. In certain specific legal situations, however, a person is given the right to the fruits from another's property (ususfructus, bonae fidei possession, emphyteusis). The extension of such rights as to both the kind of fruits and the moment when they are acquired by the third person, is ruled by special provisions. Natural fruits become legally fructus after separation from the thing (land, tree, etc.) which produced them (separatio fructuum, fructus separati). Before separation (fructus pendentes) they are part of the principal thing and belong to the owner.—Fructus is sometimes identified with ususfructus.—D. 22.1; C. 7.51.—See the following items, IMPENSES, USUSFRUCTUS, POSSESSOR BONAE FIDEI, VENATIO.

De Martino, St Scaros, 1940; Fabi, AnCom 16 (1942–44) 51; P. Ramelet, L'acquisition des fruits par l'usufruitier, These, Lausanne, 1945; Kaser, ZSS 65 (1947) 248.

Fructus civiles (naturales). These are modern expressions. See FRUCTUS. For fructus civiles the Roman juristic language used the expressions loco fructuo, pro fructibus.

Fructus consumpti. Fruits already consumed; see PERCEPTIO FRUCTUM. They are distinguished from fructus extantes (fructus non consumpti) = fruits separated and gathered but not yet consumed.

Fructus dotis. The proceeds of a dowry. They belong to the husband.—See dot.

Fructus dupliio. See VINDICIAE FALSAE.

Fructus extantes (stantes). Fruits still existing and not consumed; see FRUCTUS CONSUMPTI.

Fructus licitatio. A specific act in the procedure of possessory interdicts (interdictum uti possidentis, utraui). The temporary possession of the controversial property is assigned to the party who assumes the duty to pay a higher sum to the adversary in the case he would lose the claim for ownership in the trial to follow.

Berger, RE 9, 1697; Arangio-Ruiz, DE 4, 70; Siber, Set Ferrini 4 (Univ. Sacro Cuore, Milan, 1949) 101.

Fructus naturales. See FRUCTUS, FRUCTUS CIVILIS.

Fructus pendentes. Fruits not separated from the thing (land, tree, etc.) which produced them. They are considered a part of the land (pars fundi) until they are separated. Ant. fructus separati.—See USUSFRUCTUS.

Fructus percepti. Fruits of which one took possession by separating and gathering them.—See PERCEPTIO FRUCTUM.

Fructus percipiendi. Products which the fruit-bearing thing would have produced if the holder of it had taken the necessary care. In exceptional cases they were taken into consideration when the restitution of a thing with all its proceeds was involved.—See POSSESSOR BONAE FIDEI.


Fructus rei pignerae. The proceeds of a thing given as a pledge to the creditor. The question as to whether they are pledged too by virtue of a tacit agreement of the parties (so in Justinian law) or only when there was an explicit agreement to this effect, is controversial as far as the classical law is concerned. The sources deal primarily with the problem with reference to the offsprings of a female slave (partus ancillae).

Romano, AnCom 5 (1931); Carcaterra, ibid. 12 (1938); ibid, AnBari 3 (1940) 123; Arnò, ATor 75 (1939–40); De Robertis, AnBari 9 (1946) 31.

Fructus separati. Fruits separated from the fruit-bearing thing. Only through separation the fruit becomes juristically fructus. Ant. fructus pendentes.—See FRUCTUS.

Fruges excantare. See EXCANTARE FRUGES.

Fruit. Refers to the person who has the right to the proceeds (see FRUCTUS) of a thing.—See USUSFRUCTUS.

Frumentarii. Military officials charged with the care for provisions for the army.


Frumentationes. Doles of free corn distributed to the needy or sold them at a low price.—See LEX SEMPRONIA FRUMENTARIA, FRUMENTUM, TESSERAE FRUMENTARIAE.

Humbert, DS 2; Cardinai, DE 3; Rostowzew, RE 7, 172; D. Van Berchem, Distribution de blé sous l'Empire, Genève, 1939; Moniglione, SDH 2 (1938) 374.

Frumentum. The administration of corn supply for Rome and the needs of the state (military provisions, frumentationes). Frumentum is used in the sense of free distribution of corn (e.g., cura frumenti, see FRUMENTATIONES).—C. 11.24; 28.—See ANNONA.

Rostowzew, RE 7.

Frumentum emptum. The corn which Rome bought from provinces with a rich agricultural production (e.g., Sicily) at a price fixed by herself. Sometimes the quantity of corn to be furnished and paid for was dictated by Rome (frumentum imperatum).

Humbert, DS 2; Schwahn, RE 7 A. 30.

Frumentum imperatum. Compulsory supply of corn from a province against compensation when the FRUMENTUM EMTUM did not suffice.

Rostowzew, RE 7 165.

Frumentum in cellam. The provision of corn for the governor of a province and his staff to be furnished by the provincials at a price fixed by the senate.

Frumentum publicum. Corn distributed among the needy people by the state (frumentationes). See LEX SEMPRONIA FRUMENTARIA, LEX CLODIA FRUMEN-
TARIA. Initiated under the Republic, the distribution was reformed by Augustus and continued by his successors. Nature and purposes of the action were not always the same.

Frustra. (With reference to a legal transaction, a donation, a sale or a judicial action.) Indicates the legal non-validity or deficiency of the act accomplished.

Hellmann, ZSS 23 (1902) 428.

Frustrari (frustratio, frustrator). To obstruct the continuation and conclusion of a trial by resorting to tricks, such as evading summons to appear in court, hiding, or appealing without any chance of success. With regard to the payment of a debt frustrari = to fail to fulfill an obligation at the fixed date.—See MORA.

Fudidius. A little known jurist in the early Principate, author of a collection of Quaestiones.

Brassloff, RE 7, 201.


Fuga latia. See interdictio locorum, exilium.

Fugitius. In Justinian's constitutions refers to the defendant in a trial.

Fugitivarius. A man whose occupation was to catch fugitive slaves for a reward.—See servus fugitivus. Daube, JwrR 64 (1952) 12.

Fugitivus. A fugitive. See servus fugitivus. The term is also applied to fugitive coloni and lessees of imperial estates.—C. 11.64.

Fulciniius Priscus. A little known jurist of the early Principate.

Brassloff, RE 7, 212 (no. 6).

Fullo. A fuller. He is responsible for taking care (custodia) of the customers' clothes accepted for fulling.—See lis fullonum.

M. Maxey, Occupation of the lower classes etc., Chicago, 1938, 34; Rosenthal, ZSS 68 (1951) 260.

Fundus. A vaporous or odorous smoke. A disturbing smoke from the neighbor's house or factory (the sources mention the case of a cheese factory, D. 8.5.8.5) might be contested in court by the owners of the plots in the neighborhood, unless the adversary had a servitude which entitled him fundum immittere (= to let go the smoke to the neighbor's property, servitus fumi immittendi). Similar disturbances at a public place could be combated by an interdict.

Bonfante, Corpus 2, 1 (1926) 309.

Funcio. (From fungii.) The performance of official or other duties. Funcio refers at times to public charges and payments. The term is frequently used by the imperial chancery.—See genus, fungii.

Savagnone, BIDR 55-56 (1952) 37.

Fundus. A plot of land. "By the term fundus any building and any plot of land, as well as land with buildings thereon are indicated" (D. 50.16.211).—See dos fundi, instrumentum fundi, interdictum quem fundum, locus, praedium, instructum, fructus pendentum.

Schulten, RE 7; idem, DE 3; Humbert, DS 2; E. Kaila, L'unité foncière en dr. rom., 1927; Steusweiter, Fundus cum instrumentio, SJAV 19, 361 (1942) 10; M. Kaser, Eigentum und Besitz, 1943, 259.

Fundus dotalis. Land constituted as a dowry.—See lex iulia de fundo dotali.—D. 23.5; C. 5.23.

Fundus in solo Italico. A plot of land in Italy.—See praedia italica, res mancipi.

Fundus limitaneus (limitotrophus). A borderland of the Empire.

Fundus patrimonialis. Land belonging to the patrimonium principis in the later Empire. It was mostly exploited through emphyteutical leases.—C. 11.62-65.—See emphyteusis.

Fundus provincialis (predium, solum provinciale). Provincial land. Quiritary ownership could not be acquired thereon because according to a Roman conception provincial soil was considered as belonging to the Roman people or to the emperor. Consequently, usucapio of such land was excluded. See longi temporis praescriptio. In later times provincial land was granted in exceptional cases to individuals.

Klingmüller, Die idee des Staats Eigentums am Provinzialboden, Philologus 69 (1910) 71; T. Frank, JRS 17 (1927) 141; Levi, Ath 7 (1929); Segré, ATor 1936; Kaser, ZSS 62 (1942) 74; Bozza, AnnLac 15 (1941) 83; studem, Ath 20 (1942) 66, 21 (1943) 21; Cappelletti, Studi zu Gozi, 1943, 47 (Bibl.).

Fundus stipendiarius. See praedia stipendiaria, tributaria.

Fundus uti optimus maximus. A clause in a sale of a land to the effect that it is in the best and perfect condition, i.e., free from servitudes. A similar clause was used in sales and legacies of buildings and land. In the case of a legacy also the necessary appurtenance (instrumentum fundi) was understood as bequeathed.

Fundus vectigalis. See ager vectigalis.

Fungi. To perform official functions (e.g., as a magistrate or judge). With regard to a trial fungii = to be a party to it (e.g., fungi partibus actoris). Fungi vice (partibus) aliuscius = to act, operate in the place of another; see vice.

Funerarius. See actio funeraria, privilegium funerarium.

Funus. A funeral. The disturbance of a funeral was punished under the lex iulia de vi privata.—See actio funeraria, sumptus funerum.

Fur. A thief.—See the following items, furtum, mora. Fur balnearius. A thief who steals clothes and other things in a bathing establishment.—D. 47.17.—See balineum.

Humbert, DS 2, 1409.

Fur diurnus. A thief who steals during the day. Ant. fur nocturnus = who steals during the night.
Fur manifestus (nec manifestus). See Furtum MANIFESTUM.

Fur nocturnus. See FUR DIURNUS.

Furari. To commit a theft.—See ANIMUS FURANDI, FURTUM.

Furca. An instrument with two prongs used for the execution of the death penalty by hanging the criminal.

Furere. To be (or become) insane.—See FURIOSUS, FUROR.

Furiosus. An insane person, a lunatic. “A furiosus is considered to be absent” (D. 50.17.124.1). “He has no will” (D. 50.17.40) and therefore manifestations of his will are deprived of validity. He is not able to conclude a legal transaction except during a lucid interval (see INTERVALLA) when he regains a normal state of his mental faculties. During his insanity a furiosus is under control of a curator who manages his affairs. See CURATOR FURIOSI, BONORUM POS-SESSIO FURIOSI NOMINE. The juristic sources apply several terms for insane persons, such as demens, mente captus, insanus, non suae (sane) mentis, non composita mentis. No legal distinction was applied to the various kinds of lunatics.—See SUBSTITUTIO PUPILLARIS.

A. Audibert, Études d’hist. du droit. 1. La folie et la pro- digalité, 1892; De Francisci, BIDR 30 (1921) 154; Solazzi, Morsion, 2 (1924): Lenel, ZSS 45 (1925) 314; Guarino, AnCai 3 (1949) 194; Renier, RIDA 5 (1950) 429.

Furius Anthianus. A jurist of the first half of the third century after Christ, seemingly the author of a commentary on the praetorian edict.

Brassloff, RE 7, 319 (no. 22); F. Schulz, History of the R. legal science (1946) 201.

Furor. See FURIOSUS.

Furor intermissus. See INTERVALLA DILUCIDA.

Furtum. A theft. The classical conception of furtum included not only an actual removal of another’s thing, but any intentional handling (see CONTRACTATIO) of another’s thing with the view to derive a profit therefrom ( lucr i faciendi, lucrandi causa). This broad definition embraced not only simple stealing but also the most different acts of making use of another’s thing without the knowledge of, or contrary to an agreement with, the owner, such as, for instance, selling another’s thing, collecting money from another’s debtor as a payment, without authorization of the creditor, and the like. The object of furtum could be only a movable though opinions to the contrary were not absent. Even a free person (a son or wife) could be “stolen.” There was no furtum if there was not an owner of the stolen thing, as, e.g., if the thing was a res nullius or belonged to an inheritance not yet entered upon by the heir, since such a thing was considered (in earlier law) to be a res nullius. Only a fraudulent contractatio could be qualified as furtum since “no one commits a theft without evil intention” (Inst. 4.1.7), which in the sources is termed as animus (affectus) furandi, juris, furti faciendi. The terms may be of later coinage. There was no theft when one took another’s thing in the erroneous belief that it was his or that he was making use of it with the owner’s consent. Furtum was a private crime (delictum) prosecuted only by the person who suffered the loss. Two actions lay against the thief, first the condicio furtiva (available also against the heir of the thief) for the recovery of the stolen property (together with the proceeds) and second, the actio furti for a private penalty (actio poenalis) the amount of which depended upon the kind of the theft, see FURTUM MANIFESTUM, FURTUM NON MANIFESTUM. This action could not be brought against the heir of the thief. In certain legal situations it was not the owner but another person who was entitled to sue the thief (a possessor bonae fidei, a usufructuary, a creditor from whom the debtor’s pledge was stolen). Furtum indicates sometimes the stolen thing itself.—D. 47.2; 5; 131.1; C. 4.8; 6.2.—See ANIMUS FURANDI, CONTRACTATIO, NATURALLIS LEX, RES FURTIVA, OPE CONSILIO, MONETA, PECULATUS.

Hitizig, RE 7; Humbert, DS 2; Brasili, NDI 6; Berger, OCD; M. Pampalon, Scritti (1947, written 1894) 559, 653; Schulz, ZSS 33 (1911); L. Hurel, Le furtum, 1915; Buckland, NRHD 41 (1917) 9; E. Levy, Konkurrenz der Aktionen, 2, 1 (1922) 90; Bossowski, AnPal 13 (1929) 343; Daube, CambL 1937, 217; Schepes, SDHI 4 (1938) 99, 5 (1939) 140; H. F. Jolowicz, Digest 47.2, Dr furtis, 1940; Tabera, SDHI 8 (1942); U. Baglio, Sul reato permanente nel dir. penale rom., 1943, 14; M. Kaiser, Das aulron. lns, 1949, 213; Niederländer, ZSS 67 (1950) 185; K. Ollevcrona, Three essays in R. law, 1949, 43; De Robertis, AnBeri 10 (1950) 55; Rosenthal, ZSS 68 (1951) 244.

Furtum balnearium. See BALINEUM, FUR BALNEARIUS.

Furtum conceptum. Occurs “when a stolen thing has been sought and found with somebody in the presence of witnesses” (Gainus, Inst. 3.180). The man could be sued by actio furti concepti for a threefold value of the thing stolen as a penalty, even if he was not the actual thief. In the latter case he himself had an actio furti oblati against the person who passed on to him the thing stolen even if the latter did not commit the theft. These actions disappeared in the law of the later Empire. The receivers of stolen things were liable for furtum nec manifestum.

Daube, TR 15 (1937) 48; idem, Sti in biblical law, 1947, 260.

Furtum domesticum. A theft committed by a person pertaining to the household.

M. Piquet, Vol à l’imitation de la domus, Dijon, 1938.

Furtum manifestum. A theft detected when being committed. Some jurists extended the qualification “manifest theft” to cases lying beyond the catching the thief in the very act. The opinions of the jurists varied as to the essential elements of furtum manifestum (capture of the thief on the spot, capture on the day of the theft with the thing stolen being still in his possession, seizure of the thing thrown away
Furtum. A theft which cannot be qualified as an open theft; see FURTUM MANIFESTUM. The private penalty was double the value of the thing stolen.

Furtum non exhibitum. Occurs when the stolen goods are not produced (see EXHIBERE). The thief who failed to produce them was liable in a praetorian action (actio furti non exhibiti) if they were found later on his premises.

Furtum obligatum. See FURTUM CONCEPTUM.

Furtum possessionis. The theft of a thing by its owner from the person who has the right to hold it (a usufructuary, a creditor holding the debtor's pledge).—See FURTUM REI SUAE.

C. Ferrini, Opera 5 (1930, written 1886) 107; M. Pampaloni, Scritti giuridici 1 (1947) 673 (written 1894); Sciascia, Archivio penale, 1947, 319.

Furtum prohibitan. An actio furti prohibiti, of praetorian origin, was granted against one who prevented another from searching a thing which had been stolen from him. The penalty was fourfold damages.—See LANCE ET LICIO.


Furtum publicum. See PECULIUM.

Furtum rei suae. A theft committed by the owner of a thing who took it away from the person who had the right to keep it.—See FURTUM POSSESSIONIS.

Sciascia, Archivio penale, 1947, 319.

Furtum usus. A theft committed by an illicit use of a thing, which one obtained from the owner for a specific purpose, against the owner's will and beyond the limits imposed by the latter. Such a theft occurred, for example, when a depository, a receiver of a commodatum, a creditor holding a pledge used the thing for other purposes than agreed upon. The classical origin of the term is rather doubtful.

C. Ferrini, Opera 5 (1930, written 1886) 107; M. Pampaloni, Scritti giuridici 1 (1947) 717 (written 1894).

Fustigatio, fustis. See CASTIGATIO, CRUX.

Fustuarium supplicium. The execution of a slave or a deserter condemned to death by beating him with clubs.—See CASTIGATIO, DESERERE.

Futura. See PRAETERITA.

G

Gaius. One of the most renowned Roman jurists of the middle of the second century after Christ (born under Hadrian). His origin, full name and personal whereabouts are unknown. For his standard work, the Institutes, see INSTITUTIONES GAI. Moreover, he wrote a series of works, among them a commentary on the Twelve Tables and commentaries on the Edict of the praetor urbanus and the provincial edict. No other jurist commented on the provincial edict, see EDITUM PROVINCIALE. An elementary work, RE COPTIDIANAE (called also Aurea) is ascribed to him, but several scholars believe it to be a postclassical compilation of excerpts from Gaius' works. Monographs on legal institutions (on fideicommissa, on manumissions) appear under his name. In spite of this rich literary activity he is never cited by the classical jurists. Some sporadic mentions of a Gaius refer to the jurist Gaius Cassius Longinus (see CASSIUS). Later (A.D. 426) Gaius appears among the jurists whose opinions acquired official authority in the so-called Law of Citations (see IURISPRUDENTIA). Justinian considerably contributed to his fame by utilizing his Institutes as a basic source for the imperial Institutiones and speaking of him with great esteem ("Gaius moster").—See INSTITUTIONES GAI, INSTITUTIONES JUSTINI.

Kübler, RE 7; Greer, NDI 6; Berger, OCD; F. Kien, Der Rechtsgelehrte Gaius und die Editionen, 1910; H. Kroll, Zur Gaiuseragung, 1917; J. B. Nordeblad, Gaiusstudien. Lund, 1932; P. Meylan, Le jurisconsulte Gaius, 1923; Buckland, Gaius and the liber singularis regularum, LQR 40 (1924); C. Appleton, RHD 8 (1929) 157; Kocourek, ACGR Rome 2 (1935) 495 (Bibl.); Sibele, ibid. 1 (1934) 424; Kreller, ZSS 55 (1935); Bizouides, Gaius, App. to vol. 2 (1938), Bibl.; E. Weiss, Fscr Schulz 2 (1951) 79.

Gaius Cassius Longinus. See CASSIUS.

Gallus. See AEOLIUS GALLUS, AQUILIUS GALLUS.

Gemmae. Precious stones, gems. When mounted in gold or silver, included in a ring, or used as an ornament of vases they became part of the principal thing (cedere) and consequently the ownership of its owner, notwithstanding its great value. The same principle applies to pearls (margaritae).

Generalis (generaliter). General (generally). These terms frequently used by Justinian and his compilers served to formulate general rules, definitions, and to generalize ("generaliter sancius") earlier legal rules which had been applicable only to specific legal situations. The terms are therefore often suspect, but cannot be excluded from the classical juristic language.—See IUDICIA GENERALIA, HYPOTHECA GENERALIS.

Guarnieri-Citati, Indice (1923) 41; idem, Fscru Kossakr 1 (1939) 136.

Genius. The tutelary deity of a person. The genius of a pater familias was the deity of, and worshipped by, the whole family. Oaths were taken by invoking a genius, primarily that of the emperor (per genus principis). Slaves took an oath per genus domini.

—See IUSIURANDUM.

Otto, RE 7, 1161; Steinwenter, RE 10, 1255; Wenger, ZSS 23 (1902) 251; L. Berliner, Beiträge zur insuffizienten Titulatur der röm. Kaiser, 1935, 10.
Gens. A major group (clan) of several families really or supposedly descending from a common ancestor. Originally a large plot of land was possibly assigned to the gens as a whole where its members lived together and formed a kind of a community. A surviving feature of this ancient organization is the right of succession on intestacy of the members of a gens (gentiles) in default of agnatic relatives. This principle, mentioned in the Twelve Tables, remained in force through the Republic and perhaps in the early Principate. The members of the gens, gentiles, were also entitled to guardianship if a member had neither a testamentary nor an agnatic tutor. An external sign pointing to the fact that the gentiles belonged to the same social unit was the common name (nomen gentilicium); to this must be added their common worship of a divinity as a special protector of the gens and common cult ceremonies (sacra gentilica). They had also a common burial place. The gens had originally a political character and comprised patri- cians only; later plebeians had also their gentiles. It is not quite certain whether the stirpes were smaller groups within the gens; many other elements in the organization of the gentes are likewise obscure. The smallest social unit within the gens was the family, familia. The clients (clientes) had no membership in the gens but participated in its religious ceremonies.—See GENTILES, FAMILIA.

Kübler, RE 7; Siber, RE 21, 118; Humbert, DS 2; Ores- nano, NDI 6; De Ruggiero, DE 3; Treves, OCD; G. W. Bosford, Political Science Quarterly 22 (1907) 665; M. Radin, ClasPhil 1914, 233; V. Arangio-Ruiz, Le genti e la città, 1914; G. I. Luzzatto, Per una ipotesi sulle origini dell’obbligazione rom., 1934, 27; L. Zancan, La teoria gentilizia, AVem 95 (1935/6); C. Cantello, St sul diritto familiare e gentilizio rom., 1942; Coli, SDHI 17 (1951) 73.

Gentiles. Persons belonging to the same gens and using the same name, nomen gentiliciurn.—See GENs (Bibl.).

De Ruggiero, DE 3; Lenel, ZSS 37 (1917) 128.

Gentilicium nomen. See NOMEN GENTILICUM.

Genus. A kind, sort, type. The term has manifold applications. It refers to actions (genus actionis, judicij), to legal institutions (contracts, possessions = genera possessionum); the most important use is in the field of things: genus as opposed to species. Whereas the latter word refers to a specific, individual object, the other indicates fungibles, in which one thing can be replaced by another of the same quality since economically they exercise the same function (quaes in genere functionem recipiunt), such as corn, oil, wine, money. See RES QUAE PONDERE NUMERO MENSURABE CONSTANT. In obligatory relations the distinction genus-species becomes important when the thing due perished. In the case of a species the fulfillment of the obligation is impossible and the problem as to who is responsible becomes actual; in the case of genus the extinction of the obligation does not enter into consideration since things in genere can be replaced by others of the same quality and quantity unless they were specified by exact indications, e.g.: wine which the debtor has in his cave.—Genus is sometimes synonymous to gens.—See LEGATUM GENERIS.

Scarpello, NDI 12, 2 (s.v. species); E. Albertario, St 3 (1936) 375; Beretta, Qualia e bonum nelle obbligazioni di genere, SDHI 9 (1943); Savagione, La categoria delle res fungibiles, BIDR 55-56 (1952) 18.

Geometra. Syn. agrimenso.—See STUDIA LIBERALIA.

Gerae. To administer (a patrimony), to manage his own or another's affairs (a business, curam, tutelam, negotia aliena), to exercise (a profession, a magis- tracy), to conclude a legal transaction (negotium).—See NEGOTIUM GESTIO.

Gerae (gestio) pro herede. See PRO HEREDE GESTIO.

Gerae se. To conduct oneself; gerere se pro . . . = to impersonate, to assume falsely the character of another person, in particular of an official, or of a free person when one is a slave, or of a soldier without being one, etc., in order to obtain certain privileges illicitly.—See FALSUM.

Germani (fratres). Brothers born of the same parents. Similarly sorores germanae = sisters born of the same parents.—See CONSANGUINEI, FRATER, UTERIN.

Gesta. See ACTA, IUC GESTORUM.

Gestio. See GERERE, NEGOTIUM GESTIO.

Gestio pro herede. See PRO HEREDE GESTIO.

Gestor. See NEGOTIUM GESTIO.

Gestus. See GERERE. The term is primarily applied to the management of the ward's affairs by a tutor or curator. Syn. gestio.

Gladiatores. Gladiators. Condemnation to gladiato- rial fights (ludi gladiatorii) was tantamount to the death penalty since the gladiatorii generally lost their life in the fights. It happened, however, sometimes that the emperor abolished the death sentence by an act of mercy, particularly when a gladiator was success- ful in a fight.—C. 11.49.—See LUDI GLADIATORII.

Schneider, RE Suppl. 3; Lafaye, DS 2; Wright, OCD; L. Robert, Les gladiateurs dans le monde grec, 1940.

Gladius. A sword. It is the most characteristic symbol of the emperor's highest military command.—Dama- mare ad gladium = to condemn a culprit to the death penalty by decapitation with a sword.—See IUC GLADII, ANIMADVERSIO.

Glans. An acorn. See INTERDIC'TUM DE GLANDE LE- GENDA. For the application of this interdict the term was extended to all kinds of tree-fruits.

Gleba. Earth, soil. For glebae adscripti, see ADSCRIP- TICUS.—Gleba was a land tax in gold imposed in the later Empire on senators (gleba senatoria, gleba- tio). Later it was levied even upon senators who were not landowners.—C. 12, 2.

Seeck, RE 4 (s.v. collatio glebalis); Thibault, Rev. générale du droit 24 (1900) 36.

Glebatio. See GLEBA.
Gloriosissimus. Under Justinian a title of the highest officers of the empire.
Koch, Byzantinische Beamenstitel, 1903, 58.

Glossa ordinaria. See ACCURSIUS.

Glossae. For glosses in juristic writings, called also (not quite properly) pre-Justinian interpolations, see DIGESTA.

Glossatores. Interpreters of Justinian's codification from the eleventh century until the middle of the thirteenth century. They were scholars and teachers in the school of Bologna under INNERNUS (+1125) and his pupils. The name glossatos derives from the form of their exegetical remarks to texts, phrases or single words of Justinian's Corpus, written as marginal or interlinear glosses, in the order of Justinian's compilation. See ACCURSIUS. Systematic presentations in the form of summaries (summae) were rare. See A20. Later commentators, from the middle of the fourteenth century, who worked in a somewhat different way, are termed by the collective denomination "postglossators." These post-Accursian commentators started from the glossa ordinaria of Accursius. They wrote commentaries and more extensive discourses on legal doctrines.—See BALDUS; BARTOLUS.


Gnaeus Flavius. See IUS FLAVIANUM.

Gnomon iudiciorum. A collection of imperial mandates (liber mandatum) of Augustus and some of his successors. The text, written about the middle of the second century (probably under Antoninus Pius), is preserved in a papyrus. It contains instructions concerned with the administration of the private property of the emperor (res privata Caesaris = idios logos). The provisions are primarily of fiscal character and deal with various matters, such as inheritances that fail to the fisc, taxes, fines, the capacity to make a testament, marriage between persons of different nationality. A few decisions of the praefects of Egypt are also added.

Editions: Berliner Griechische Urkunden 5, 1, 2 (no. 1210) by Schubart (1919) and commented on by Wasnur.

Gyllenband (1934); F. M. Meyer, Juristische Papyri no. 93 (1920); Riccobono, FJR 5 (1934) 59 (Bibl.).—Lenel-Partisch, SbHeid 1920, 1; Seckel-P. M. Meyer, SbBer 1928, 424; T. Reinhart, NRHD 1919, 583; 1920, 1; Beinner, RIDA 2 (=Mil De Visscher 1, 1949) 93; S. Riccobono, Jr., Il g. dell'idios logos, 1950 (Bibl.).

Gradatim. Gradually. In the law of successions the term refers to the admission of successors by degrees (see GRADUS) proceeding from a nearer degree, if there are not heirs (heredes or bonorum possessores), to the next degree, and so on.

Gradus (cognitionis). Degrees of relationship. Their calculation is based upon the principle that "each procreation adds one degree" (Inst. 3.6.7, hence the formula: tot gradus quot generationes). Inferior gradus is applied to relatives in descendant line. Ant. superior gradus. See DE GRADIBUS COGNATIONUM, SUCCESSIO GRADUM. In the official hierarchy gradus indicates the rank of a public (civil or military) officer.—Inst. 3.5; D. 38.10.


Granius Flaccus. See PAPIRIUS.

Fumaioli, RE 7, 1820.

Grassator. See LATRO.

Kleinfeller, RE 7, 1829; Dull, RE Suppl. 7, 1239.

Gratia. An act of grace by the emperor.—See INDULGENTIA, DIVORTIUM BONA GRATIA.

Gratis. Gratuitously, given without any recompense.
—See GRATUITUS.

Gratuitus. Benefits conceded without any compensation are considered to be a donation and are subject to the same limitations as gifts. See DONATIO. Some contracts contain the element of gratuity (COMMODO-DATUM, DEPOSITUM, PRECARIUM). A loan (mutuum) is gratuitous if interest is not paid (gratuis pecunia).

Gratulatio. See ABSOLITO.

Gravare. (In criminal matters) to incriminate, to charge with a crime as an accuser or witness, to cast suspicion upon another.

Gravis. Severe. The term is used of penalties inflicted on condemned criminals. When under specific circumstances a crime deserves a more severe punishment the sources speak of gravior poena (or sententia) without indicating precisely how the punishment is to be more severe. The choice is left to the judge. Ant. levior poena.

Gravis. With regard to contractual obligations, e.g., aequum et gravissium grave a burdensome, heavy debt. Such a debt occurs when the debtor has to pay a penalty if he failed to fulfill his obligation at the fixed date. Usuaria gravis = high interest.

Gravitias. The dignity of a high office. The imperial chancery used this title in rescripts (letters) addressed by the emperor to official of a high rank.

Graviter loqui. To stutter. Stuttering was not considered a disease. Consequently the sale of a slave who stuttered could not be annulled for this reason.
Gregarii milites. Soldiers of the lowest rank, privates.
Gregatim. In herds, in flocks. Animals living gregatim = greges (see GREGX), such as equus (a stud of horses), armentum (plough-oxen). Such flocks are treated legally as units (corpus ex distantibus).—See CORPUS EX COHAERENTIBUS.
Gregorianus. See CODEX GREGORIANUS.
Gregx. A herd. It is a collective thing (CORPUS EX DISTANTIBUS) which maintains its identity in spite of changes in the individual animals of which it is composed. A herd as a whole may be the object of a claim (vindicatio gregis) embracing all animals without regard to changes which therein or to single animals which do not happen to belong to the defendant. There is, however, no usucapio of a whole gregx but only of single animals. It was held that at least ten sheep made a herd.—See GREGATIM.
Pampaloni, A. SIS 10 (1890) 268; Bosowski, St Riccobono 3 (1936) 357; O. Pallucchini, L'usurpato del gregge, 1940.
Gromatici. Land-surveyors, writers on land-surveying.—See AGRIMENSORES.
Fordyce and Brink, OCD.
Gubernare (gubernatio). To govern, to administer. The term belongs to the language of imperial constitutions.
Gubernator navis. A steersman of a ship. He is liable for sinking another’s ship through his fault and can be sued for damages under the actio legis Aquilias.

H
Habere (rem). “Used in a double sense, since we say habere of a person who is the owner (dominus) of a thing and of one who without being its owner holds it. Finally we use to say habere of a thing which is deposited with us” (D. 45.1.38.9). In a still larger meaning habere is used of a person who has an action for the recovery of a thing held by another.
Habere licere. To enjoy full possession of a thing without being disturbed by another person.—See EMPTIO, VACCA POSSESSIO, STIPULATIO HABERE LICERE.
M. Kaser, Eigentum und Bestät, 1943, 14; Coing, Sem 8 (1950) 9.
Habitatio. As a personal servitude (servitus personae), this is in fact a type of the servitude usus: the right to use another’s house for dwelling. It used to be granted primarily by legacy. It was strictly personal in classical law and could not be transferred to another person. Transfer was admitted, however, in Justinian’s law. Quite different is the legal structure of the right of habitation obtained through a contract of lease, of a house (locatio conductio rei). The reciprocal rights and duties of the lessor and the tenant (habitation, inquisition) are governed by the rules of locatio conductio rei.—Inst. 2.5; D. 7.8; 33.2; C. 3.33.—See HOSPES, USUS.

Leonhard, RE 7; De Villa, NDI 6; Ricci, ibid. 1 (abitazione); De Ruggiero, DE 3; Cigna, Fil 1906; Berger, Wohnungsmiete in den Papyri, ZVR 29 (1913) 321; G. Groso, Uso, abitazione, 1939.
Habitator. See HABITATIO.
Habitus. (Perfect passive participle of habere.) With reference to things done = concluded (e.g., contractus, emptio); pronounced, passed (sententia = a judgment); contained (in a document, in testimony).
Habitus corporis. The bodily appearance, constitution. In earlier times it was the basic element of puberty (see IMPUBES).
A. B. Schwarz, ZSS 69 (1952) 371.
Habitus matronalis. See MATRONA.
Haec quae necessario. These are the initial words of Justinian’s constitution (of February 13, 528) in which he announced his plan of a code of imperial constitutions (the first edition of his Code).—See CODEX JUSTINIANUS.
Haeretici (haeresis). Heretics (heresy). The legislation of Christian emperors frequently dealt with heretics. The Codex title 1.5, which contains the pertinent enactments (from 326 until 521) starts with Constantine’s statement that “Privileges which have been granted with regard to religion, are only in favor of those who observe the Catholic law (Catholica lex). We wish that heretics not only be excluded from those privileges but also be subject to various public charges” (C. 1.5.1). Heretics were excluded from public offices and had no political rights. Restrictions in the field of private law were manifold: inability to acquire landed property, to make a testament or to inherit under one. Certain types of heresy were prosecuted as a crime. The most severe penalties were inflicted upon Manichaeans.—See 1.15; 1.10; Nov. 45.109.132.—See APOSTATA, IUDAEI.
Th. Mommsen, Rom. Strafrecht (1899) 595; Volterra, BDIR 42 (1934) 453; Balan, ACII 1 (1935) 483; C. Pizzetti, Codex Theodosianus, 1951, 382.
Harena. Sand.—See IUS ARENAE FODIENDAE.
Harenarius. See ARENARIUS.
Harmenopoulos, Constantine. The author of a compilation of Roman law as it was about the middle of the fourteenth century (A.D. 1345) still in force in the Byzantine Empire. The collection contains excerpts from earlier Byzantine compilations (Eitoe, Peira, the two Synopseis, Novels of the emperor Leo, Procheiros Nomos). The title of the work is Hexabiblos (= in six books). It is also called Prochiron ton nomon (= Manuale legum).
Haruspices. Diviners who interpreted abnormal phenomena in the inner organs of sacrificial animals, also celestial phenomena (lightning).

Thuila, RE 7; idem, DE 3; Pease, OCD; Bouché-Leclercq, DS 3; G. Wissowa, Religion und Kultur der Römer, 1902, 469.

Hasta. A spear, lance. It was considered a visible sign of ownership lawfully acquired (signum iusti domini) since "the Romans primarily considered their things what they had taken from an enemy (Gaius, Inst. 4.16). Public auctions were performed sub hasta (see Subhastatio). When the centumviral court held its sessions, a spear was set before it.—C.10.3.—See locatio sub hasta, Praetor hasta.

Hastati. See Centurio.

Haustus. Syn. aquae haustus.—See servitus aquae haustus.

Hercisci (ercisci). See actio familiaris erciscundae.

Hereditas institutio. The designation of a person in a testament who as the testator's heir (heres), shall succeed as the owner of the whole estate (both corporeal things and rights). An heir may be instituted to a fraction of the inheritance and several heirs instituted in common without indication of their individual portions succeed in equal parts. The institution of an heir must be expressed in a prescribed form (solummni mora): "X shall be (my) heir" ("X heres esto"). The hereditis institutio was the most important element of a testament. It had to be expressed at the beginning of the testament (caput et fundamentum testamenti). No testamentary disposition was valid if there was not a valid institution of an heir or if the heir did not accept the inheritance. In the later law the earlier rigid rules lost their strength. The requirement of solemn words was dropped. A testament with a not valid hereditis institutio was efficient as a codicil and all dispositions of the testator were thus saved.—Inst. 2.14; D. 28.5.7; C. 6.24; 25.—See Codicilli.

Lenel, Zur Gesch. der h. i., Essays in legal history, Oxford, 1913; S. Cugia, L'invalidità totale dell'istituzione d'eredi, 1913; Tumedei, RISG 63-65 (1919-21); Vismara, St. Besta 3 (1939) 303; Sanfilippo, AnPal 17 (1937) 142; L. Cohen, T. AmPhilolA 68 (1937) 342; B. Biandri, Successione testamentaria, 1943, 188.

Hereditas institutio captatoria. See Captatorius.

Hereditas institutio ex re certa. The institution of an heir to a specific thing (not to a fraction of the estate). Originally it was not valid and made the whole testament void. But already in the time of Augustus the jurist Sabinus expressed the opinion that an heir thus instituted should be considered an heir to the whole estate as if the specific thing were not mentioned. This doctrine, dictated by the tendency to save other testamentary dispositions (legacies, manumissions), prevailed in later law (favor testamenti).—See Heres.

Manualeoni, StStas 2 (1902); Beseler, St Riccobomo 1 (1936) 294; M. David, Studien zur h. i. ex re e., 1930; Sanfilippo, AnPal 17 (1937) 227; L. Cohen, T. AmPhilolA 68 (1937) 343.

Hereditas institutio excepta re. The institution of an heir to the whole estate or a fraction thereof, with the exception of one specific thing.

Scascia, Anais 1947-1948 Pontif. Univ. Cat. de São Paulo (Brazil) 223.

Hereditarius. Pertinent to, connected with, an inheritance.—See actiones hereditariae, ius hereditarium, res hereditariae, sepulcura hereditaria, pars hereditaria.

Hereditas. Used on the one hand in the sense of the complex of goods, rights, and duties of the deceased (the estate as a whole), and on the other hand of the legal position of the heir (heres) who after the death of another enters (succeedere) into his legal situation and legal relations (in universum ius, in locum defuncti). "Hereditas is nothing else than the succession to the whole right (universum ius) which the deceased had" (D. 50.16.24). The fundamental distinction is between hereditas testamentaria = an inheritance of which the testator disposed by designating (instituere) the person or persons (heres, heredes), who should inherit his property, in a valid testament, and hereditas legitima = an inheritance which is given to heirs indicated by the law because the deceased did not leave a testament or his testament became later ineffective for specific reasons. The testamentary succession prevails over the intestate one. According to a legal rule both kinds of succession cannot apply simultaneously to the same estate; see nemo pro parte testatus. Hereditas refers to successions under the ius civilis; it is opposed to bonorum possessio which is governed by norms of the praetorian law.—See Aditio hereditatis, delatio hereditatis, emptio hereditatis, inure cession hereditatis, heres, hereditatis petitione, successio, and the following items.

Bandry, DS 3; De Ruggiero, DE 3; Berger, OCD (z.v. inheritance); Rabl, ZSB 50 (1930) 295; Bonfante, Scritti 1 (1926), several articles; Bortolucci, BIDR 42 (1934) 150; 43 (1935) 128; Robbe, StCagl 25 (1937); La Pira, StSen 47 (1933) 243; Ambrosino, SDHI 10 (1944) 10; C. Sanfilippo, St. sulla hereditas 1 (1936); idem, Evoluzione storica dell'In., 1946; Biandri, Istituti fondamentali 1 (1946) 24; B. Albanese, La successione hereditaria, AnPal 20 (1949) 228; Ambrosino, SDHI 17 (1951) 195; Solazzi, Iura 3 (1952) 21.

Hereditas damnosa. An estate in which the debts of the deceased exceeded the value of the property he left. Hereditas fideicommissa (fideicommissaria). An inheritance which in whole or in part was left to a person through a fideicommissum to be handed over by the heir instituted in a testament to the beneficiary (fideicommissarius), see fideicommissum hereditatis. Syn. hereditas fiduciaria.

Hereditas fiduciaria. See the foregoing item.
Hereditas iacens. Corporeal things belonging to an estate (res hereditariae) during the time before the heir entered upon the inheritance (aditio hereditatis). From the time of the death of the person whose inheritance is involved until its acquisition by the heir the hereditas "iacet" (= lies). During this period the things to be inherited are considered to be res nullius (belonging to nobody). Taking away such things is not a theft (furtrim) but a milder wrongdoing crimen ex�itatas hereditatis.—See usu-
capio pro herede.

Manigk, RE 8, 644; Di Marco, StScalolja 2 (1905) 51; Scaduto, ApPal 8 (1921); A. d'Amia, L'eredità piaceve, 1937; B. Biondi, Istituti fondamentali di dir. ereditario, 2 (1948) 102; idem, furo 1 (1950) 150.

Hereditas legitima. (Or quae ture legitimo obvenerit.) An inheritance which is conferred to an heir by the civil law (ius civile) in the case of intestacy.—Inst. 3.1; D. 38.6; 7; C. 6.58.—See HEREDITAS, INTESTATUS.

La Fira, La successione hereditaria intestata, 1930.

Hereditas suspecta. See HERES SUSPECTUS.

Hereditas testamentaria. An inheritance which an heir obtains according to the testament of the deceased.—D. 37.2.—See TESTAMENTUM.

B. Biondi, La successione testamentaria, 1943.

Hereditatis aditio. See ADITIO HEREDITATIS.

Hereditatis petito. An action by which an heir (heres), either the testamentary one (heres testamentarius) or one succeeding at intestacy (heres legitimus, ab intestato), claims the delivery of the whole estate, a portion of it or a single thing on the grounds of his right of succession. The action lies against any one who, holding things belonging to an estate claims either that he himself is an heir (pro herede), or simply denies the plaintiff's right of succession without giving any justification of his own possession (pro possessore). The hereditatis petito is a kind of rei vindicatio based on a specific title of the plaintiff, i.e., the right of an heir. Therefore it is also termed vindicatio hereditatis. The rules concerning the restitution of res hereditariae are analogous to those of the rei vindicatio. See INTER-
dicium quem fundum. Special provisions were introduced by the Senatusconsultum Iuentianum which made an essential distinction between one who held the inheritance in good faith (bona fide) in the belief that he was the real heir, and one who knew that he had no rights of succession. A defendant sued under a rei vindicatio for the restitution of a single thing belonging to the estate might oppose an exception that the question of the plaintiff's rights of succession be not prejudged in that trial (ne praemedito hereditatis faci). The exception compelled the plaintiff to sue with hereditatis petito if he wanted to base his claim on his quality as an heir.—D. 5.3; 4; C. 3.20; 31.—See SENATUSCONSULTUM

IVVENTUANUM, VINCICATIO FAMILIAE, POSSessor

BONAE FIDEL.

Degni, NDI 9, 1114; Di Marco, StScal 23 (1906) 25; Massina-Vianio, BIDR 20 (1908) 220; A. Marcel, L'action en petiton d'eredité, Lausanne, 1915; Bexeler, Buirage 4 (1920) 5; Biondi, ApPal 7 (1920) 242; Lenel, ZSS 46 (1920) 1; Denoyes, Fother Koschaker 2 (1939) 304; G. Longo, La h. p., 1933; A. Carcatari, AnBari 3 (1940) 35; Kaden, ZSS 62 (1942) 441.

Hereditatis petito fideicommissaria. A hereditatis petito granted to one who through a fideicommissum hereditatis obtained an estate or a fraction thereof. This hereditatis petito was conceived of as an exten-
tion (hereditatis petito utilis) of the normal HEREDITATIS PETITIO which originally was available only to an heir inheriting under ius civil.—D. 5.6.

—See FIDEICOMISSUM HEREDITATIS.

Hereditatis petito possessoria. A hereditatis petito granted the bonorum possessor (an heir inheriting according to the praetorian law). It was a later creation (by Justinian?) when the two systems of universal succession were unified. In the classical law the praetorian heir had the INTERDICITUM QUORUM BONORUM.—D. 5.5.

Hereditatis petito utilis. See HEREDITATIS PETITIO FIDEICOMMISSARIA.

Heredium. A plot of land, including a garden, of the size of two Roman acres (ingera), allotted, according to a legendary tradition by the founder of Rome, Romulus, to the citizens. It was inalienable and indivisible. Being reserved for the heir (heredem sequei).

Humbert, DS 3; Sacchi, NDI 6; Nap. TR 1 (1919) 390; Lenel, Edictum perpetuum (1927) 180; Pöhlmann, Gesch. der sozialen Frage 1928, 334; H. Lévy-Bruhl, Nouvelles études sur les ancien droit roman, 1947, 37; Kampa, Archives d'histoire du droit oriental 3 (1948) 262.

Heres. An heir, he "who enters in the rights and the place of the deceased" (D. 29.2.37). "No one leaves to his heirs more rights than he had himself" (D. 50.17.120). All advantages and disadvantages (charges, commoda et incommoda) resulting from the legal relations of the deceased are transferred to the heir. Hence he is liable for debts and duties of the defunct except those which are strictly personal and not transmissible to another person. Among the rights excluded from succession are, e.g., personal servitudes (ius, usufructus). Possession (possessor) as a mere factual situation does not pass to the heir until he obtains physical holding of the things involved. Obligations originating from wrongdoings (obligationes ex delicto) are not bind-
ing on the heir, but he must return what he gained from such acts (the enrichment). Some contractual relations (partnership, mandate) are extinguished by the death of one party.—Inst. 2.14; 19; D. 28.5; C. 4.17; 6.24.—See the following items, and HEREDIS INSTITUTIO, SUUS HERES, SUUS ET NECESSARIUS HERES, PRO HERDE GESTIO, EX HEREDARE, NEMO PLUS
COMMOTS, EXTRANEUS HERES. USCAPIO PRO HERED, LNCIA.

Manig., RE 9 (s.v. hereditarium ius): De Ruggiero, DE 3, 736; V. Korosec, Erbenhaftung, 1927; Wolff, St. Ricobono, Beseler, 1928; 460; Kanm, Archives d'histoire du droit oriental 3 (1948) 237; H. Lery-Brulé, Nouvelles études, 1947, 33; idem, RIDA 3 (= Mil de Vischer 2, 1949) 137; Kaiser, ADOL-RIDA 1 (1952) 507.

Heres extraneus. See EXTRANEUS HERES.

Heres fiduciarius. An heir, instituted in a testament, on whom the testator has imposed the duty to deliver the estate wholly or in part to a third person (FIDEICOMMISSUM HEREDITATIS, HEREDITAS FIDEICOMISSA).

Heres legítimus. An heir who succeeds according to the order of succession established by the civil law, ius civile (the Twelve Tables, a statute), in the case of intestacy. Ant. heres scriptus, testamentarius.—See HEREDITAS LEGITIMA.

Heres necessarius. A slave manumitted and instituted as an heir in his master's testament. He acquires the estate immediately together with liberty without any formal acceptance of the inheritance, and he is unable to reject it.—Inst. 2.19; C. 6.27.—See HERES SUUS ET NECESSARIUS.

Manig., RE 4A, 672; Guarino, SDHI 10 (1944) 240.

Heres nuncupatus. See TESTAMENTUM PER NUNCUPATIONEM.

Heres scriptus. An heir appointed in a written testament. Ant. heres legítimus.

Heres secundus. See SUBSTITUTIO.

Heres suspéctus. An heir who appears not to be able to pay the debts of the deceased. Hereditas successæ is an inheritance overcharged with debts.—See SATISDATIO SUSPECTI HEREDIS.

Heres suus. An heir who at the death of a person was under his paternal power (patricia potestas). This is a technical term to be distinguished from suus heres (his heir) which refers to the heir of a specific person.—See Inst. 2.19; D. 38.16; C. 6.55.—See ADITIO HEREDITATIS, EXHEREDARE.

Manig., RE 4A, 664; 8, 639; Coqq, DS 4 (s.v. suus); Solazzi, BIDR 39 (1931) 5; Kirk, ZSS 58 (1938) 161; Lepri, St. Solazzi, 1948, 299; Vogel, ZSS 68 (1951) 490.

Heres suus et necessarius. A person under the paternal power (or manus) of the deceased who after his death becomes suus heres (head of a family). If appointed as an heir in a testament or succeeding at intestacy he has no power to refuse the inheritance and becomes heir at once after the testator's death whether he wishes or not. Such heirs are sons, daughters, and the widow of the deceased; grandsons and granddaughters are heredes sui only in the event that their father is dead or no longer under the paternal power of the deceased. The praetorian law granted the heredes sui et necessarii the right to refuse the acceptance of an insolvent inheritance (ius abstinendi).—See HERES SUUS.—Inst. 2.19.

Manig., RE 4A, 672.

Heres voluntarius. An heir who is neither heres suus nor heres suus et necessarius. He acquires the inheritance only through voluntary acceptance (see ADITIO HEREDITATIS).—See the foregoing items.

Hermaphroditus. Considered under the law to be of the sex which prevailed.

Hermogenianus. A Roman jurist of the late third century or the early fourth century after Christ. He is the author of a collection of excerpts (Iuris epistomae) in six books. His identity with the author of the Codex Hermogenianus cannot be established.

Braasch, RE 8; Ricobono, ZSS 43 (1922) 327; Pringsheim, Symbole Frierurgenses Lenel, 1931, 31; Felgenhauer, ibid. 365 (Bibl.).

Hermogenianus Codex. See CODEX HERMOGENIANUS.

Hippocentaurus. A fabulous creature, half man half horse. Hippocentaurus dare is given as an example of an obligation which cannot be fulfilled because of the involvement of a thing which does not exist.—See IMPOSSIBILITAT NULLA OBLIGATIO.

Histrio. See SCAENICUS.

Hoc est. See ID EST.

Hodie. Today, nowadays. Some Justinian's innovations are referred to in his Institutes by hocie as well as in the Digest certain new legal rules are opposed to earlier ones through this word. Although the word appears in interpolated texts, it is not a reliable criterion of an interpolation.

E. Albertario, Hodie, 1911; Beseler, Beitriige 2 (1917) 97; Berger, Kröfj 16 (1914) 427; Guarneri-Cistiti, Ius (1922) 43 (Bibl.).

Holographus. Written in full in one's own hand (e.g., a testament).

Homicida. A killer, manslaughter.—See HOMICIDUM.

Homicidium. An assassination, manslaughter. The term is of later origin; it appears twice in Cicero, but is rare in the writings of the classical jurists, although frequent in imperial constitutions. For earlier terminology, see PARRICIDII. The pertinent verbs are necare, interficere, occidere. After a period of self-vengeance, homicide in historical times became a crimen publicum (QUAESTORES PARRICIDI). Under specific circumstances killing a person is justified, as, e.g., in the case of self-defense against a thief during the night (fur nocturnus) or when a daughter and her accomplice have been caught in the very act of adultery. A person killed in such circumstances is considered sure causus (justly killed). The Twelve Tables inflicted the death penalty on a murderer of a free person. The Lex Cornelia de sicarii (by Sulla)—still in force under Justinian with various changes introduced by the imperial legislation—established the rules applicable to different kinds of murder, either fully executed or only attempted. There existed a principle of dolus pro facto accipitur (= malice, evil intention is considered as if the fact had been done, D. 48.8.7 pr.); see CONATUS. Participation in armed bands of murderers was punished as
as instigation of, or assistance in, the commission of the crime. Penalties for murder were differentiated according to the gravity of the crime under the Republic; under the Empire the social status of the culprit influenced the severity of the penalty, even in the death penalty distinctions being made (crucifixion, condemnation ad bestias, decapitation, burning = crematio). Not punished was the killing of a person exempt from the law (see Interdictum aqua et igni sacer). A master who killed his slave remained unpunished until Hadrian ordered that such a crime had to be treated as homicidium. Killing another's slave created civil responsibility only for damages done to his master; similarly a murder committed by a slave involved responsibility of his master for damages from which he was released by delivering the culprit to the family of the killed person (in nosam edere, see Noxa). Accidental killing of a person was sued for by a private action for damages, an actio utilis, modeled on the actio legis Aquilae.—D. 48.3; C. 9.16.—See Parricidium, sacer, adulterium, ius vitae necisque, lex Pompeia de Parricidio, sacer, transfgusa.

Pfaff, RE 8; Brunnenmeister, Das Tötungsvorbrechen im röm. Recht, 1887.

Homo. A human being. "All human beings are either free or slaves" (D. 1.5.3). The word "homo (= man) includes both males and females" (D. 50.16.152). Very often homo is syn. with servus (a male slave).—Hominl collectively denotes the subordinates of a high dignitary or the officials in the imperial household.

Angels, DE 3.

Homo alieni iuris (sui iuris). See Alieni iuris esse.

Homo integrae frontia. A blameless, honest person. The origin of the expression goes back to the custom of branding the forehead of a convicted calumniator (= slanderer) with the letter K.—See Caluntia.

Homo liber. A free man.—See Interdictum de homine libero exhibendo, liber homo bona fide serviens, flagium.

Homo novus. A newcomer, who did not belong to the older aristocracy of birth and office (nobiles) but, despite the lack of a noble origin entered into the highest social class by obtaining a curule magistracy. The homines novi owed their official career to acknowledgment of their personal ability and proficiency (per se cognitum).

Strasburger, RE 17, 1223; MacDonald, OCD (s.v. novus h.); J. Vogt, H. n., ein Typus der röm. Republik, 1926; Schur, Bonner Jahrbücher 134 (1929) 54.

Honesta missio. See Missio honesta.

Honestas. Respectability, an honorable reputation, an honest moral conduct.—See Eximiatio.

Honestiores. See Humiliores.

Honestus. Honest, respectable, decent. "Not all that is permitted is honest" (D. 50.17.144 pr.).


Honor (honoris). The dignity and privileges attached to the power of a magistrate, both in Rome and municipalities; hence also the reverence, consideration due to him (honorem debere, tribuere). Honor is frequently syn. with magistratus. When both terms occur together, magistratus refers to the power and its exercise, whereas honor covers the dignity, rank and privileges connected with a magistracy. Honor was extended later to any honorific position occupied by a person in a municipality. Honor denotes also a gift left in a testament to a person as a sign of respect and reverence. Finally honor is used in the meaning of an honorarium paid for services rendered (remunerandi gratia).—D. 30.4.; C. 10.41.—See cur- sus honorum, debitor civitatis.

Campanile, DE 3.

Honor matrimonii (maritalis). See ConcubinatuS.

R. Orestano, Struttura giuridica del matrimonio rom .., 1952, 314.

Honorarius. Persons who (in the later Empire) were given the title of a high official but who actually did not perform any official duties. They did not receive the distinction accorded to active officials (see Cingulum).—See Vacantes, Illustres.

Kübler, RE 7A (s.v. vacantes).

Honorarium. A gift, an honorarium paid (under the Principate) to persons exercising liberal professions (lawyers, teachers, physicians, architects, etc.). For physical labor a merces was paid, honorarium indicated the compensation for higher, intellectual services. See Advocati. The payment of an honorarium could be enforced through extraordinary proceedings (cognitio extra ordinem) in which gradually the principle was recognized that such kind of professional services should be recompensed. Honorarium (= summa honoraria) was also called the sum which municipal officials and senators in the Empire had to pay as a contribution to help defray the expenses of mounting public games.—See Honoraria summa, sportulae, consuetudo fori, senatusconsultum claudianum.

Kübler, RE 4A, 896; Klingmüller, RE 8; Cagnat, DS 3, 236.239; De Villa, NDI 5.

Honorarius. (Adj.) Based on, or originating from, the ius honorarium (praestorium), e.g., actio, obligatio, successor. Ant. civile (based on the ius civile) or legitimus (based on a statute).

Honorati. In the later Empire, persons who occupy an honorific position, civil or military, in Rome or a municipality. They remain honorati even after leaving office and as such enjoy certain personal privileges.—C. 11.20.

Honoratus. In the law of succession, a person "honor- ored" by a legacy in a testament. See Honor. Syn. legatorius. Ant. oneratus = an heir appointed in a testament and charged with the payment of a legatum or fideicommissum to the beneficiary.
Honos. See honor.
Hordearium (hordarium) aes. See aes Hordearium.
Horrea. Storehouses, silos. Horrea privata = storehouses owned by private individuals and leased to private persons through locatio conductio rei. Leges horreae = rules concerning the deposit of merchandise in storehouses. Horrea publica = large silos maintained by the government for the preservation of food (corn, oil, wine) for public use and distribution. They served also for the storage of food against emergency. The horrea publica were under the supervision of the praefectus annonae. Special horrea were provided for the needs of the army.—C. 10.26.—See Horrearius.
Fiechter, RE 8; Roetzwitz, DE 3, 594; Romanelli, DE 3, 961; Theidenat, DS 3, 268; V. Scialoja, St iur. 1 (1933) 289.
Horrearius. The lessee of a storehouse leased from the owner (dominus horrei) for warehousing, i.e., the renting out of storage space to customers. Normally the horrearius assumed responsibility for the custody (custodia) of the things deposited, but he might publicly announce through a poster (propositum) the limits of the risk he assumed. The contractual relation between the horrearius and his customers is a lease of services (locatio conductio operariu), that between the horrearius and the owner a lease of a store (locatio conductio rei).—See Horrea.
Carrelli, RSBG 6 (1931) 608; Vazny, AnPal 12 (1929) 131.
Hospes. A guest in another’s house. Ant. habitator = the tenant of a dwelling. See Habitation. Only the latter is responsible for damages done to third persons through things thrown or poured out from the abode by anybody.—See Actio Delectis.
Cagnat, DS 3 (i.e. hospitium militare).
Hospitium. Hospitality granted by Rome to another nation in an international treaty. It comprised the right to sojourn in Rome, to conclude legal transactions with Roman citizens (ius commercii) and protection before Roman courts.—See Tesseru Hospitalis.
Leonhard, RE 8; Anon., NDI 6; Marchetti, DE 3; Léridavan, DS 3; C. Phillipson, International Law and Customs 1 (1911) 217; Gallet, RHD 16 (1957) 265; Frezza, SDHI 4 (1938) 398.
Hospitium militare. See Hospites.
Hostia. A sacrificial animal. The seller of a hostia had a privileged right of execution (legis actio per pignoris capionem) against a buyer who failed to pay the price.
H. Meyer, RE 8; Krause, RE Suppl. 5.
Hostis. In ancient language (Twelve Tables) this was syn. with peregrinus = a stranger. Later hostis = the enemy with whom Rome was at war. “Hostes are those against whom we (the Roman people) have publicly declared war or those who have done so against us” (D. 50.16.118). The earlier term for an enemy was perdulius. Hostis also was used of an individual, citizen or stranger, who was declared to be an enemy of the state by a statute or by the senate. He might be killed on Roman territory by any citizen with full impunity.—See Occupatio Reorum Hostilium.
Cuj. DS 3; Vaglieri, DE 3; F. Wittighoff, Der Staatsfeind in der rom. Kaiserzeit, 1936; O’Brien-Moore, RE Suppl. 6, 759.
Huiusmodi. See Eiusmodi.
Humanitas. The humane tendency as an ethical commandment, benevolent consideration for others. The term as well as the adjective humanus (humanior) appears both in juristic texts and imperial constitutions. The idea of humanity undoubtedly exercised a considerable influence on the development of the Roman law through interpretation and decisions of the jurists. In the Christian Empire its influence infiltrated various provinces of the laws (family, marriage, succession, slavery, penal legislation). It is undeniable that many a decision introduced by phrases like sed humanus est or similar, is not of classical origin; on the other hand, however, it is not correct to ascribe every passage where the expression humanitas occurs and every decision based on humanitarian principles to postclassical (Christian) times or to Justinian. Humanitas and humanus cannot be completely eliminated from the juristic language and thinking. What appeared good (humane) to Cicero, could not appear contemptible to the jurists. The tendency to stigmatize the terms as scrupulously avoided by the jurists is an exaggeration similar to that which condemns the expressions benignitas, benignus, and the like.—See Intuttu.
Heinemann, RE Suppl. 5; H. Krüger, ZSS 19 (1898) 6; Wolff, ZSS 53 (1953) 323; Harder, Hermes, 69 (1934) 64; Schilhau, Priniciples of R. Law, 1936, 189; idem, History of R. Legal Science, 1946, 297; S. Riccobono, Lineamenti della storia delle fonti, 1949, 297; Maschi, H. come motivo giuridico, AnTr 18 (1949); idem, Ius, n. ser. 1 (1950) 266; S. Riccobono, Jr., Il Circolo giuridico (Palermo, 1950 (Bibl.)); Berger, AGIV 2 (1951) 194 (= Sem 9, 1951, 41).
Humanitas imperatoria (imperatoris). The later emperors liked to speak of themselves as “humanitas nostra.” On the other hand, merciful acts of the emperors, particularly in criminal matters, are denoted as humanitas.
Humanus. See humanitas. For decisions based on humanitas different phrases are used, e.g., humanum, humanius, humanissimum est, humanius interpretari, humana (humanior) sententia.
Humiliores. Lower classes of the Roman society. Syn. tenuiores, humiliores loco nati, piebii. Ant. honestiores = citizens of the higher social classes distinguished by their official position, wealth or origin (in aliqua dignitate positi, honestiores loco
positi, nati). The distinction between humiliiores and homestiores had particular importance in the field of criminal law and procedure. Some kinds of punishment (capital punishment by crucifixion, by being thrown to wild beasts, torture, bodily punishment) were applicable only to humiliiores. In certain cases where the humiliiores were punished by death, the homestiores were merely sent into exile. In cases in which relegatio was applied to homestiores, humiliiores were subject to deportatio.—See POTENTIORES, ALTIORES.

Julian. DS 3; Brasiello, NDI 6; Berger, OCD (s.v. homestiores); Mitteis, Mél Girard 2 (1912); De Robertis, RIGC 14 (1939) 65; E. Stein, Gesch. des spät-rom. Reiches 1 (1928) 44; Cardascha, RHD 23 (1950) 305, 461.

Hyperocha. The surplus over the amount of a debt which a creditor obtained from the sale of the debtor's pledge (superfium pretii, superfium pignorum). The creditor is obliged to restore such surplus to the debtor. The term hyperocha (of Greek origin) appears only once in the Digest. Ant. residuum.

Manigk, SDHI 5 (1939) 228.

Hypotheca. A form of real security. The thing pledged as a hypotheca was not handed over to the creditor, but remained with the debtor who might use it but could not alienate it. The Greek-termed institution originated in agreements under which tenants of dwellings or lessees of land hypothecated all the things they brought in (inverta, illata, importata, introducta) as security for the rent to be paid under the terms of the lease. The lessor could obtain possession of the things hypothecated through an interdict in the case of non-payment of the rent due (see INTERDICTUM SALVIANUM); later the praetor granted a special action, actio Serviana, for the same purpose; under this action the lessor could claim possession of the things hypothecated, even when they were held by a third person and not by the lessee himself. In a further development the actio Serviana was extended to other cases of hypothecation (actio quasi Serviana, called also actio hypothecaria and pignaratica in rem) when the thing pledged had remained in the possession of the debtor. In Justinian's law manifold changes were introduced in order to unify the different forms of pledge and the terms pignus and hypotheca became synonymous.—D. 20.1; 3; 6; C. 8.13–35.—See PIGNUS.

Manigk, RE 9; 20, 1243; Cuiq, DS 3; De Sarlo, NDI 6 (s.v. ipotesco); Herzen, NRH 22, 23 (1898, 1899); A. F. Sorrentino, L'ipotesco delle servitù, 1904; T. C. Jackson, Justinian Digest, Book 20, 1908; Erman, Mél Girard 1 (1912); F. Ehrard, Digestenfragmente ad formulam hypothecarium, 1917; D. F. Vasilescu, Succesio hypothecaria, Paris, 1931; Solazzi, SDHI 5 (1939) 228; Rabel, Serv 1 (1943) 44; Kreteler, ZSS 64 (1944) 306.

Hypotheca generalis. An expression used by Justinian for the hypothecation of the whole property of the debtor.—See the following item.

Hypotheca omnium bonorum. An hypothecation embracing the whole property of a debtor at the time of the agreement (res prae sentes); it could even cover things later acquired by the debtor (res futurae) if they were included in the hypothecary agreement. Justinian ordered that such things were automatically included in the hypothecation unless they were expressly excluded. Such general hypotheces were first introduced as a security for the fisc for its contractual claims and taxes. Later law granted a ward a general hypothec over the property of his guardian or curator for claims resulting from the administration of the ward's property. Claims connected with the restitution of a dowry also enjoyed this privilege under the law. No agreement of the parties was necessary (hypotheca tacita).

Hypotheca tacita. A general hypothec over the debtor's property in postclassical and Justinian's law. It is called tacita because an hypothecary agreement of the parties was not necessary since the hypotheca was established by the law.—D. 20.2; C. 8.14.—See the foregoing item, PIGNUS TACITUM.

Hypothecaria actio. See HYPOTHECA, PIGNUS.

I

Iacens hereditas. See HEREDITAS IACENS.

Iacobus. A glossator of the twelfth century, disciple of Imerius.—See GLOSSATORES.

Berra, NDI 6, 515 (s.v. Iacopo Bolognese).


Iactus lapilli. The throwing of a small stone on another's landed property as a symbolic act of protest against a new construction intended by the neighbor.—See OPERIS NOVI NUNTIATIO.

Berger, RE 9, 531; Latte, Ren Lomb 47 (1914).

Iactus mercium. Jettison; the throwing of goods overboard from a ship in distress in order to lighten it (nauts levandae causa).—See LEX RHODIA DE IACTU.

—D. 14.2.

Berger, RE 9, 546; Arnò, ATor 76/11 (1941) 290.

Iactus missilium. See MISCELLIA.

Iactus retis. As the object of a sale, the catch made by a fisherman (s. captura piscium). The sale is made before the fisherman leaves and the risk is assumed by the buyer who has to pay the agreed price even in the event that no fish was caught.—See EMPTIO SPEL.

Berger, RE 9, 555; F. Vassalli, Miscellanea critica 1 (AnPier 1912) 49.

Iavolenus (Octavius I. Priscus). A Roman jurist. Born about A.D. 60, he was still alive under Hadrian. He was the head of the Sabiniun school and the teacher of the famous jurist Julian. His most important and original work, Epistulae (in fourteen books), fully reveals his juristic individuality. Other writings of Iavolenus are collections of excerpts from earlier jurists (libri ex Cassio, ex Plauto), frequently
provided with his own comments. He edited also a collection of texts from Labeo's posthumous work Posteriorum.

Berger, RE 17, 1830, no. 59; idem, BIDR 44 (1936/7) 91; Oresano, NDI 6 (s.v. Giunoleno); Di Paolo, BIDR 49-50 (1948) 277.

Id est. To wit, namely, sometimes = for instance. Many explanatory remarks, introduced by id est, are postclassical glosses or interpolations by Justinian's compilers, mostly of a harmless nature. The location cannot, however, be excluded, as a matter of rule, from classical texts. The same refers to expressions as hoc est, sicilicet, and the like.

Guarnieri-Citati, Indices (1927) 49 (Bibl.); Chiazzone, Contributi testuali, AnPal 16 (1931) 149.

Id quod interest. "That which I have lost and what I would have gained" (D. 46.8.13 pr.). If a defendant was to be condemned in id quod (or quanti) actoris interest, the judge had to estimate the claimant's losses and his material situation which would have resulted if the fact for which the defendant was liable would not have occurred. — See DAMNUM EMERGENS, LUCRUM CESSANS, QUANTI EA RES EST.

Beretta, SDHI 3 (1937) 419; Giffard, Commidia 1950, 61.

Idem est (erit). This and similar locutions, such as idem dicendum est, observandum est, placet (placuit), introduce a new legal situation but similar to the preceding one in order to state that the foregoing norm or opinion has to be applied to the new instance.

Ideo. In phrases et idque, ideaque (= and therefore), this serves often—but not always—for the insertion of glosses or interpolations. In any case the conclusions introduced in this way have to be examined as to their genuineness since through such locutions a classical decision is sometimes introduced although in consequence of the omission of the preceding deliberations by the compilers the connection with the foregoing text is interrupted.

Guarnieri-Citati, Indices (1927) 45 (Bibl.); idem, St Riccobono 1 (1936) 723.

Idiologus. (From the Greek idios logos.) A fiscal administrator of the emperor's res privata in Egypt.

— See GNOMON.

Plaumann, RE 9, 882; S. Riccobono, Jr., Il gnomon dell'ì., 1950, 11.

Idoneus. Used not only of the financial solidity and solvency of a person (a debtor, a surety, a guardian) but also of his honesty, trustworthiness, and moral reliability. In connection with security given by a debtor, idoneus caverre = to give security either through suretyship or a pledge. "But if faith is given to the debtor's promise without any surety, it appears idoneus cautum" (= the security is considered proper, sufficient), D. 40.5.4.8.

Kühler, St Albertoni 1 (1935) 506; G. Nocera, Insolvenza, 1942, 36.

Ignis. See INTERDICERE AQUA ET INGI, CREMATIO.

Ignobiles. See NOBILES.

Ignominia. A deprivation of one's good name as result of a blame expressed by the censorS (nota censoria) or of a dishonorable discharge from the army.

Piaff, RE 9, 1537.

Ignominiosus. One whose conduct is dishonorable; marked with IGNOMINIA.

Ignominiosa missio. See MISSIO IGNOMINIOSA.

Ignorantia facti. See ERROR FACTI.

Ignorantia iuris. Ignorance or an error concerning the existence or meaning of a legal norm. It is prejudicial (nocet), i.e., it does not afford an excuse and the person who acts from lack of knowledge of the law has to bear the consequences of his ignorance. Some persons, however, such as women, minors, soldiers, inexperienced rustic persons (rustici) may be excused.—D. 22.6; C. 1.18.

Vassalli, StSen 30 (1914); Volterra, BIDR 38 (1929) 75; De Martino, SDHI 3 (1937); Scheltema, Rechtsgeleerd Mannen 56 (1937) 253; Guarniero, AnS 15 (1941/2) 166; idem, ZSS 63 (1943) 243; F. Schwarz, Die Grundlage der Condiditie, 1952, 65.

Ignorare litteras (ignorantia litterarum). To be illiterate (syn. nescire litteras). An illiterate person may be excused from guardianship. In written declarations to be made for the authorities his signature could be written by another person.

Illata. (From inferre.) See INTRODUCTA.

Illatio. An installment, especially in the payment of taxes.

Illatio mortui. Burying a dead person either in a family grave or in one which belongs to another family on the ground of a ius mortuom inferendi. The illatio mortui makes the place a locus religiosus even when the dead was a slave.—D. 11.8.—See INTERDICITUM DE MORTUO INFERENDO, SEPULCRUM.

Taubenschlag, ZSS 38 (1917) 251.

Illegitimus. Illegal, unlawful, illegitimate. Ant. LEGITIMUS.

Illicitus. What is not permitted by law or custom, improper. Generally illicit acts are not valid. An illicit condition or testamentary disposition is considered pro non scripta (= as if it would not have been added, written).—Ant. LICITUS.—See COLLEGIUM ILICITUM, CONDICIO TURPI.

Ferrini, NDI 6, 637; J. Maqueron, L'histoire de la cause immorale ou illicite, 1924.

Illustratus. The dignity of a vir illustris. Syn. illustris dignitas.

Berger, RE 9, 1071.

Illustris. (St. vir.) An honorific title of the highest officials of the later Empire. Frequent in imperial constitutions from the second half of the fourth century on, and in inscriptions, the title is connected with the prefects of the city of Rome and of the praetorium, with the magister militum, comes sacrarum largitionum, quaestor sacri palatii, etc. Although the title was normally attached to the office there
were *illustres honorarii* upon whom it was bestowed by the emperor as a special privilege (through *codicilli honorariae dignitatis*). The wives of the *illustres* were *illustræ*, too; similarly the office itself was called *illustris* (*illustris praefectura, administratio, sedes*, etc.). The *illustræ* enjoyed special personal privileges, such as exemption from public charges (*munera*), a privileged position in civil and criminal trials and as witnesses, and the like.—C. 5.33.—See SPECTABILIS.

Berger, RE 9; Jullian, DS 3; Brasiello, NDI 6; De Ruggiero, DE 4, 55; A. Stein, Bull. Acad. Beligique, Cl. Lettres, 1937, 365.

*Imaginarius*. Used of a transaction (*contractus imaginarius, solutio imaginaria*) concluded by common consent of the parties *pro forma* in order to cover up another one intended by the parties but somewhat contrary to the law. Such a transaction was, e.g., one that looked on the surface like a sale but was in fact a donation prohibited by the law (between husband and wife). *Imaginarius* is called also a party to such a transaction, e.g., *imaginarius emportr. In another sense *imaginarius* denotes the external resemblance of a transaction permissible under the law, to another legal transaction although substantially they are not identical. Thus *mancipatio* is called *imaginaria venditio, an acceptilatio—imaginaria solutio, a testamentum per aed et libram—imaginaria mancipatio.*—See the pertinent items, DICIUS CAUSA, SIMULATIO.

Berger, RE 9; Rabel. ZS 27 (1906) 300; G. Pugièse, *La simulazione nei negozi giuridici*, 1937, 147.


*Imagines*. In the army, medallions with the portrait of the reigning emperor, used as insignia of military units (legions, urban cohorts).

*Imbecillitatis*. Mental or physical weakness which may deprive a person of the ability to conclude a legal transaction. *Imbecillitas* is brought in connection with the age (*imbecillitas aetatis*) or sex (*imbecillitas sexus*), i.e., as *imbecillitas of women.*

*Imitatio veteris iuris*. See VETUS IUS.

*Immiscere* s. *Immiscere* or *miscere* (negotis alienis). The term was primarily used when such an interference was done against the will or without authorization of the person involved. *Immiscere* creates the liability of the person so acting since “it is culpable to interfere in a matter which is not ours” (D. 50.17.36).

Berger, RE 9.

*Immiscere* or *miscere* se hereditati (or bonis). See PRO HERIDE GERERE.

Berger, RE 9, 1108.

*Immittere*. To let into a place. It occurs when the owner of an immovable commits certain acts which do harm to the adjacent property (be it in private ownership or a public place or building), e.g., to let water or a sewer run into it, to disturb the neighbor by steam or smoke, to bring a beam (*tignum*) into the wall of the neighbor’s house. Such acts normally can be inhibited by prohibitory or restitutory interdicts (*interdicta*).—See INTERDICTA DE VIS PUBLICIS, FUMUS, STILLICIDUM.

Pasqua, NDI 6, 723.

*Immobilitas*. See RES IMMOBILES.

*Immoderatus*, *Immodicus*. Excessive, immoderate, unreasonable. The terms are applied to acts or doings which exceed the normal or licit limits, e.g., to a donation, an obligation, the price of an object sold.

*Immmunes*. Persons permanently exempt from military service (e.g., priests, persons over forty-six years of age, those who served ten years in cavalry or sixteen—later twenty-five—years in infantry). Temporarily relieved from service were the furnishers of the army, persons employed in lower official service (*apparitores*). Syn. noun *vacatio militiae.*—*Immmunes* were also those who for any reason were exempt from public charges, taxes, and the like.—See IMMUNITAS, MUNERÀ.

De Ruggiero, DE 4; Fiebiger, RE 9; Jullian, DS 3; De Visscher. *Les édits d’Auguste*, 1940, 103; Welles, JRS 25 (1938) 41.

*Immmunitas*. Exemption from taxes or public charges (MUNERÀ). It was granted as a personal privilege to individuals, as a privilege of a social group (public officials, soldiers) or of a community in Italy or in a province. The extension of *immunitas* was different; it varied according to the kind of the charges or the profession of the persons exempted (physicians, teachers, clergymen, etc.). *Immmunitas* was granted by the senate through a decree (*senatus-consultum*) and under the Empire by the emperor through a general enactment (*edictum*) or a special personal privilege. Of particular importance were the exemptions in the domain of municipal administration.—D. 50.6; C. 10.25.

Ziegler, RE 9; Köbler, RE 16, 650; Messini, NDI 6, 727; Stevenson, OCD; Ferrari Dalle Spada, *Immunità ecclesiastiche nel dir. rom.*, AV en 99 (1939/40).

*Impedire* (impedimentum). To hinder (a hindrance, impediment). The terms are used of legal norms which impede the conclusion of certain legal acts, or to legal requirements which, when not complied with will produce the non-validity of the act done.

*Impendere*. To spend.—See IMPENSAE.

*Impendium*. See SYN. IMPENSÆ, DISPENDIUM.

*Impensae*. Expenditures made on a thing. They become juristically important when made in behalf of another’s property (*in alienum*) or by one co-owner in behalf of a thing he owns together with others. Legal situations whereby one comes into the position to make expenditures for another are manifold. They may originate from a contract (*impensae*
made by a depositee, or by one who received a thing as a gratuitous loan, commodatum, or as a pledge, by a husband with regard to the dowry) or from the possession of another's thing in good faith as one's own. For the various kinds of impensa, see the following items. The liability of the owner for the restitution of expenses could be established in a special agreement or by his consent to a specific expenditure. In the absence of a mutual understanding the legal rules were applied which settled the problem in various ways for specific legal situations. The proceeds derived from the thing held, are deducted from the impensa to be restituted.—D. 25.1.—See POSSESSIO BONAE FIDEI.

Guarneri, Citati, NDI 12 (s.v. spes); Riccobono, AnPal 3-4 (1917) 319; idem, BIDR 47 (1940); S. Riccobono. Jr., AnPal 17 (1937) 53; Daube, CombrLR 1945, 31.

Impensa dotales. Expenses made by the husband on the property he received as a dowry (in dotem [res dotales] factae). Specific rules determined the husband's right to recover his expenditures at the restitution of the dowry. They underwent various changes in the course of time. “Necessary expenses diminish the dowry by the force of law (ipso iure)” (D. 25.1.5 pr.)—D. 25.1.—See RETENTIONS DOTALES.


Impensa funeraria. Expenses made for the funeral of a person. If made by a person not obliged to do it under the law, they can be recovered from the pertinent relatives.—See ACTIO FUNERARIA, SUMPTUS FUNERIS.

Impensa in fructus. (Or fructum precipiendorum causa). Expenses made to increase the produce of a land. They are taken into account when the person who laid out the money is sued for the restitution of the produce. “What remains after the deduction of expenses is considered a produce” (D. 5.3.36.5).—See FRUCTUS.

Riccobono, AG 58 (1897) 61; Riccobono, Jr., AnPal 17 (1937) 53.

Impensa litis. See SUMPTUS LITIS.

Impensa necessariae. Necessary expenditures made to prevent deterioration, destruction, or loss of a thing, e.g., repairing a building, medical attendance on a slave. They must always be made good except to the holder of a stolen thing. Ant. impensa utiles, voluptariae.

Impensa utiles. Useful, beneficial, expenditures made to promote the improvement of a thing, to increase its produce or selling value. Generally the improvements may be taken away by the person who made them to the profit of the owner if it is feasible without damage to the thing. Impensa utiles must be restored by the owner if they were made with his consent. Ant. impensa necessariae, voluptariae.—See IUS TOLLENDI.

Impensa voluptariae (voluptuosae). Expenditures made on a thing which serve only to increase its beauty or for ornaments. Impensa voluptariae are neither necessary (necessariae) nor beneficial (utiles). As a matter of rule, there is no liability on the part of the owner to refund them, but the person who made the ornament at his expenses has the right to take it away (ius tollendi).

Imperator. The commander (one who imperat) of the army. Under the Republic a high magistrate (consul, praetor, proconsul) who, by virtue of his imperium, commanded the troops, was hailed (salutatio, acclamatio) by them after the victory over an enemy as imperator, at the end of the battle or during his triumphant entrance in Rome. He used to be so addressed afterwards in public and private life. Augustus assumed the term imperator as a praenomen (Imperator Caesar) and so did his successors. Thus gradually the former honorific title became an appellative title of the princeps, the head of state (“the emperor”).—See PRINCES.

Roseberg, RE 9; Cagnat, DS 3; Orestano, NDI 6; De Ruggiero, DE 4, 41, 43; MacFayden. History of the History of the title Imperator under the R. Empire, Chicago, 1920; Stroux. Die Antike 13 (1937); Monigliano, Bull. Comm. Archeol. Comunale di Roma 55 (1930) 42; idem, OCD; De Sanctis, St Riccoboni 2 (1936) 57.

Imperatoriam. The initial word of Justinian's enactment by which his Institutes were promulgated (November 21, 533).—See INSTITUTIONES IUSTINIANI.

Imperfectus. Not complete. A transaction is incomplete when one of its essential elements is not fulfilled or missing, e.g., if in a stipulatio the object of the promise or another essential element is not indicated. See TESTAMENTUM IMPERFECTUM. Imperfect acts or transactions lack legal validity.—See LEGES PERFECTAE, MINORES.

Aru, AG 124 (1940) 3.

Imperialis. Connected with, or originating from the emperor (e.g., constitutio, statuta, praepositiones, liberalitas, auctoritas, maestas, etc.). Imperialis occurs as frequently as its syn. principalis.

Imperita. The lack of professional skill, capacity (knowledge). It created liability of the person who through a contract (locatio conductio operis, or locatio conductio operarum) assumed the duty to render certain professional services, without having the necessary knowledge. It is considered as a form of culpa (culpa adnumeratur). Imperitia is used of artisans and craftsmen as well as of persons exercising liberal professions (physicians, land-surveyors, etc.). Also the lack of knowledge of the law (inability) in a judge is qualified as imperitia.

Aranjio-Ruiz, Responsabilitat contratual, 2nd ed. 1933, 188.

Imperium. An order, command. A legal norm is called imperium legis when referring to a statute. Imperium means also the right to give orders (ius imperandi), the power over a smaller group such as
a family (hence imperium domesticum is the imperium of the head of the family, pater familias). The supreme power of the Roman people, its sovereignty = imperium populi Romani. In a technical sense imperium = the official power of the higher magistrates (magistratus maiores) under the Republic, and of the emperor under the Empire. The magisterial imperium embraced various domains of administration, legislative initiative through proposals made before the popular assemblies (ius agendi cum populo), and military command. With regard to the administration of justice, imperium is sometimes opposed to, and distinguished from, iurisdiction, sometimes coherently connected with it. See imperium merum. The juristic sources do not agree as to the attribution of certain magisterial acts of jurisdictional character (restitutio in integrum, missiones, appointment of guardians) to imperium or iurisdiction. The confusion is doubtless the result of alterations of the texts or misunderstanding on the part of Justinian compilers for whom other distinctions lost their practical significance.—Finally imperium means the territory of the state.—See lex imperio, potestas.

Rosenberg, RE 9; Toutain, DS 3; Lauria, NDI 6; De Ruggiero, DE 4; Balsdon, OCD; Nocera, AnPer 57 (1946) 145; F. Leifer, Die Einheit des Gewaltdrangens im rom. Staatsrecht, 1914, 68; Radin, St Riccobona 2 (1936) 21; Caspary, St Albertini 2 (1937) 394; G. Pugliese, Appunti sui limiti dell'imperium nella repressione penale, 1939; Balsdon, JRS 29 (1939) 57; Rudolph, Neue Jahrbücher für das klass. Altertum, 1939, 145; H. Wagenwoort, Roman dynamism, 1947, 70; C. Gioffredi, Contributi alla storia della procedura civ., 1947, 16; Vogel, ZSS 67 (1950) 62.

Imperium domesticum. The power of the pater familias.—See imperium.

Imperium domi. See domi.

Imperium maius. The imperium of a higher magistrate when compared with that of a magistrate lower in the hierarchy, e.g., the imperium of a consul was imperium maius when confronted with the praetor's imperium. Ant. imperium minus. Par imperium = the imperium of magistrates equal in rank (see collegae).—See intercessio.

Rosenberg, RE 9, 1209; Hugh Last, JRS 37 (1947) 157; M. Grant, From imperium to auctores, 1946, 411.

Imperium merum. The full magisterial power. As far as jurisdiction is concerned, it is limited only to criminal matters (ius gladii, potestas gladii) and does not include jurisdiction in civil matters. If, however, the latter was granted too, the imperium was termed imperium mixtum. The origin of this distinction is somewhat obscure.

Plaß, RE 9; Rosenberg, ibid. 1210.

Imperium militiae. See domi.

Imperium mixtum. See imperium merum.

Imperium par. See imperium maius.

Imperium proconsulare. See proconsul.
Improbare. To disapprove, to reject. The term is applied to agreements or contractual clauses (conditions) condemned (improbari) by law or custom. Improbare is also used of a disapprobation of a person who is considered to be disqualified for certain duties (e.g., a guardian) or works.—Ant. adprobare, probare.

Improbus. Dishonest, lacking in moral integrity. Improbus is a person who, for instance, knowingly sues for a debt which has been paid or who conducts a trial knowing that he is wrong (improbus litigat). "He who does not know how much he owes cannot be considered dishonest" (D. 50.17.99).—See NEMO DE IMPROBITAT.

Kleinfeller. RE 9.

Improbus et intestabilis. See TESTIS.

Improbus litigatior. See PROBOS. Syn. calumniator (see CALUMNIA), temere litigans. According to Justinian's constitution he must pay his adversary all damages and expenditures caused by the trial (C. 3.1.14.1).

Imprudentia. Want of knowledge of law or facts, ignorance, inadvertence, imprudence. In legal matters it is treated like ignorantia. On the other hand, however, "almost in all criminal trials assistance is given to youth and lack of prudence" (D. 50.17.108).—See INDEX QUI LITEM SUAM FACIT, IMPERITIA.

Impubes. A person below the age of puberty, one who has not attained manhood. In earlier times no certain age was fixed for puberty (pubertas). Physical condition (habitus corporis) was decisive, both in men (qui generare possunt = who are capable to procreate) and women (nubilis, viri potent = fit for marriage). The beginning of puberty had its external distinction in the man's garment, toga virilis, hence the youth was called praetextatus. Later the age of fourteen years for boys, and twelve for girls, was established as the end of impuberty. An impubes, who is not under the paternal power (patria potestas) and is therefore sui iuris, must have a guardian (tutore), see TUTELA. An impubes under guardianship may conclude legal transactions only with the consent of his guardian, profitable transactions even without such consent. After completion of the age of fourteen, an impubes becomes pubes and enters the age of a minor which lasts until the completion of twenty-five years. Within the age of impuberty some distinctions are made (they are perhaps of later origin): impubes infantiae proximus = one who has somewhat exceeded the age of infancy (infantia, see INFANS) and impubes pubertatis proximus = one who is near the age of puberty. The latter may be responsible for criminal wrongdoings if he is capable to understand the importance of his acts. A general classical rule was, however, that an impubes was not capax doli, i.e., he had no capacity of understanding the fraudulent (criminal) character of his actions.—See CAPAX DOLI, CURATOR IMPUNERIS, TOGA FRAETEXTA.

Baudry, DS 2; S. Perozzi, Tutor impubes, Scritti 3 (1948, ex 1918) 127; Tummedei, AG 89 (1923); Albertario, Studi 1 (1933) 81; Di Marzo, St Besta 1 (1939) 111.

Impune. Without punishment, with safety. Impune is frequently used with a negative (non impune, nemo impune, and the like) and indicates that a person acting in a certain way may expect punishment. Non impune is sometimes syn. with illicita.

Impunitas. Freedom from punishment.—See ABDILITIO.

Impunitus. Unpunished, one who escaped punishment. The emperor Trajan made in a rescript the following statement: "It is better to leave a criminal unpunished than to condemn an innocent person" (D. 48.19.5 pr.)—See SUSPICIO.

Imputare. To reckon into (for instance, into expenses, a legacy, the quarta Falcidia, a debt), to make a deduction. Imputare is used also to mean charging one with fault or negligence (culpa, neglegentia).

In bonis esse (or rem habere). When a res mancipi was conveyed by a mere delivery (handing over, traditio), and not by one of the solemn acts required for the transfer of property of such things (mancipatio, in iure cessio), the transferee did not acquire ownership under Quiritarian law but he had the thing only in bonis (= among his goods, so-called bonitary ownership) which was protected by praeatorian law. He might acquire Quiritarian ownership through USUCAPIO.—See ACTIO PUBLICIANA, DOMINUM EX IURE QUIRITIUM, DOMINUM DUPLEX.


In continenti. See CONTINENS.

In diem. Until, on, a fixed day.—See DIES.

In diem addictio. See ADDICTIO IN DIEM.

In dominum deductio. See DEDUCTIO IN DOMUM.

In factum actiones (formulae). See FORMULAE IN IUS CONCEPTAE.

In integrum restitutio. See RESTITUTIO IN IURE.

In iudicio. Used (not correctly) in literature to denote the stage of a civil trial before the private judge. The correct expression is apud iudicem. Ant. IN TURE.—See INDEX.

In iure. Before the judicial magistrate. The first stage of a civil trial in the proceedings of legis actiones and per formulas took place before the magistrate (the praetor), while the second, final stage, normally ended with a judgment, took place before the private judge (iudex), apud iudicem.—See FORMULA, IUS, INDEX, CONFESSION IN IURE, IN- TERRAGOATIO IN IURE, TUTUSURANDUM NECASSARUM.

R. Dull, Der Gutgedanke, 1931; F. De Martino, Giurisdizione, 1937, 41; Jolowicz, ACDR Bologna 2 (1935) 59; idem, RIDA 2 (= Mel De Vischer 1, 1949) 477; Kaser, Fasth Wenger 1 (1946) 106; Wenger, St Solazzi (1948) 47 (Bibl. 48).
In iure cesso. A fictitious trial in the form of a rei vindicatio before the magistrate (in iure) the purpose of which was the transfer of Quiritarian ownership. The plaintiff (the transferee) asserted that the thing was his (vindicare), the defendant (the transferor), interrogated by the praetor whether he wanted to make a countervindication (contra vindicature), remained silent or replied in the negative, whereupon the praetor assigned (adjectio) the thing to the plaintiff. Thus the transfer was completed, without litis contestatio, or a procedure apud iudicem. The in iure cesso does no longer exist under Justinian.—See rei vindicatio.

Kipp, RE 3 (s.v. cessio); Baudry, DS 1 (s.v. cessio); De Villa, NDI 6 (s.v. in iure c.); S. Schlossmann, In iure c. und mancipatio, 1904; Rabel, ZSS 27 (1906) 309; H. Lévy-Bruhl, Quelques problèmes du très ancien droit rom., 1934, 114; Ibid, Nouvelles études, 1947, 144; Pflüger, ZSS 63 (1943) 301; M. Kaiser, Das altrom. iur., 1949, 104; Meylan, RDA 6 (1951) 103.

In iure cesso hereditatis. A cession of an inheritance in the form of in iure cesso to a third person by an heir on intestacy of the agnatic group. The heredes sui were not permitted to transfer the inheritance through in iure cesso. If the heir did it before taking over the estate, the cessionary became heir as if he were heir appointed by the law. If he did it after the acceptance of the inheritance (aditio hereditatis) he remained obligated to the creditors of the estate whereas the debts owed to the estate were extinguished since through in iure cesso only corporeal things were conveyed. The in iure cesso hereditatis disappeared together with the in iure cesso. It was absorbed by the sale of an estate; see emptio hereditatis.—See the foregoing item.

Garou, RHE 1 (1922) 141; Cugia, Attiennazioni dell'eredità, St Basta 1 (1939); Ambrosino, SDI 10 (1944) 3; Guarino, St Solazzi, 1948, 38; De Martino, ibid, 558; Berti, ibid, 594; S. Albanese, Successione ereditaria, AnnPol 20 (1949) 283; Scherillo, St. Corneluti 4 (1950) 257; Ambrosino, SDI 17 (1951) 203; Solazzi, iura 3 (1952) 21.

In iure cesso servitutis. The constitution of a servitude through an in iure cesso in court, modeled on a trial for a servitude (vindicatio servitutis). It could be applied for predial servitudes and usufruct.
—See in iure cesso.

In iure cesso tutelae. A guardian of a woman who under the law was entitled to assume the guardianship (tutus legitimus), could surrender the tutorship to another through an act before the magistrate, in iure cesso. The tutor thus appointed = tutor cesticus. At the latter's death the guardianship returned to the tutor legitimus. The tutor cesticus ceased to be tutor when the guardian under law died.
Sachers, RE 7A, 1594.

In iure cessio usufructus. See in iure cesso servitutis.

In ius conceptae actiones (formulae). See formulae in ius conceptae.

In ius vocatio. The summons of a debtor by the plaintiff to appear in iure (before the magistrate) where the plaintiff will claim his right. The defendant was bound to follow the summons according to a provision of the Twelve Tables: "si in ius vocatus, ino (= if, sc. the plaintiff, summons to court the defendant shall go). The summoned defendant must not answer the plaintiff's summons immediately if he gives a surety (vindex) warranting that he (the summoned) would appear in court on a fixed day. Certain persons could not be summoned at all, such as consuls, praetors, and high provincial officials; others were exempt from in ius vocatio only when exercising a specific activity (a pontiff during a sacrifice, a judge or an advocate during a trial) or on specific occasions (wedding, funeral). Certain persons were prohibited from summoning other persons related to them by specific ties. Thus parents, patrons and their children and parents could not be summoned by children or freedmen, respectively, unless the latter obtained a special permission from the praetor. In later law a summons was performed by the plaintiff in writing in the presence of a clerk of the court; see denunziatio litis. In the later Empire the summons became an official act in which the plaintiff did not participate.—D. 2.4–7; C. 2.2.—See domus, evocatio, vindex, vadmonium, manus iniectio, oratio marci, theatrum.

Cug, DS 3, 743; Sacchi, NDI 6; Fugliese, RIDA 3 (= Mil De Visecher 2, 1949) 249.

In locum alius succedere. See succedere in locum.

In manum conventio. See conventio in manum, manus.

In mora esse. See mora.

In personam actiones. See actiones in personam.

In pendenti esse. To be in suspense.—See condicio, pendere.

In possessione esse. Syn. detinere. The term possessio is not used here with its technical meaning.
—See possessio.

In proiectu. Before the troops gathered in face of the enemy. A testament made by a soldier in proiectu before a combat is one of the earliest forms of testament. Details are unknown.

In re sua. See res sua.

In rem actiones. See actiones in rem.

In rem agere per sponsionem. See agere per sponsionem.

In rem versuum. See versum in rem, peculium.

In summa. In conclusion, finally, generally. It was a favorite location of some classical jurists (especially Gaius) to introduce a conclusive rule (in summa scendit est, dicendum est = it must be said, understood).

Guarneri-Ciati, Indice* (1927) 46; Sargenti, AG 122 (1939) 33; Solazzi, La tutela delle servitù prediali, 1949, 148.
In transitu. Used of official acts accomplished by a magistrate when passing by (e.g., when a praetor or a high provincial officer went to the theatre or into a bathing establishment). Only acts of voluntary jurisdiction (e.g., munificences) could be performed on such occasion.

Inaequalia. What was built on a land belongs to its owner, no matter who was the builder or to whom belonged the materials used. The maxim, "all that is built on soil goes with the soil" (D. 43.17.37; Gaius 2.73; Inst. 2.1.33), is an application of the rule superficies cedit solo. The owner of the materials remains their owner and may recover them by vindicatio only when the building for any reason comes down. However, one who knowingly built a house on another's land with his own materials, lost the ownership of them.—See TIGNUM, SUPERFICIES.


Inanimis. (When used of a legal transaction, obligation, action) void, of no legal effect.

Inauguratio. A religious ceremony celebrated by the augurs in republican Rome after the election of a high magistrate or the appointment of a high priest (flamin). A favorable result of the sacrifice was considered an approval by the gods.—See AUGURES.

Wissowa, RE 2, 2125; Richter, RE 9; Bouché-Leclercq, DS 3.

Incantare (incantatio). To enchant by a magic formula. According to the Twelve Tables incantatio was punished as a crime. Syn. escantare.—See EXCANTARE FRUGES, MALUM CARMEN, OCCENTARE, MAGIA.

Pfaff, RE 9: F. Beckmann, Zauberei und Recht in Roms Frühzeit, 1928, 26, 45.

Incendere (incendium). To set fire, to burn (another’s property). Incendium = arson.—See INCENDIARIUS.

Incendiarius. An incendiary, one guilty of arson (incendium). An incendiarius was punished with the death penalty (by burning) when he willfully had set fire to another's property within the city, either for reasons of enmity or for the purpose of committing a robbery. See CREMATIO. The burning of a country-house, outside the city, was punished less severely. Damage done to property by fire could be claimed by an actio legis Aquilaeae. According to Lex Cornelia de siciarum an incendiarius was treated as a murderer when human life was destroyed by the fire. In minor cases arson was considered a crimem vis (violence). Syn. incensor.

Kleinfeller, RE 9; Humbert, DS 3; Condamari-Michler, Ser Ferrini 3 (Univ. Sacro Cuore, Milan, 1948) 74.

Incendium. A fire. The praetorian Edict granted a penal action for fourfold damages against a person who at a fire took things by violence or fraud or received goods stolen during a fire. After a year the action could be brought only for double the damages. Analogous actions were set in the Edict for robbery committed in a shipwreck (naupragium), when a house collapsed (ruina) or during an attack against a boat (expugnare navem).—D. 47.9.

Lenel, Edictum perpetuum (1927) 396.

Incensitius. Not registered in the tax payers' list. Ant. censitius.

Incensor. See INCEDNIARIUS.

Incensus. One who abstained from registering in the census in order to avoid military service. According to ancient law he could be sold abroad losing liberty and citizenship (capitis deminutio maxima).

Pfaff, RE 9.

Incertae personae. See personae incertae.

Incertum (incerti). See CERTUM, ACTIONS (FORMULAE) CERTAE, CONDEMNATIO INCERTA, DIES CERTUS.

Incestus (incestum). Incest, sexual union between persons tied by blood relationship. It was prohibited since the earliest times for physiological, ethical, and social reasons by veteres mores (old customs), undoubtedly under religious sanctions (fas). Later legislation was concerned only with the prohibition of marriages between persons closely related by blood (nuptiae incestae), without taking into account as a specific crime sexual intercourse outside a marital union, since such coition was punished under the law concerning related crimes (stuprum, adulterium). Incestus was always forbidden between descendants and ascendants (termed incestus iuris gentium as being prohibited with all nations). As to cognatic relationship the extension of the concept incestus (and the interdiction of marriage) varied in the course of time. As a matter of principle, "man commits incestus if he marries a woman among those whom by custom we are forbidden to marry" (D. 23.2.39.1). A marriage between brother and sister, uncle (or aunt) and niece (or nephew) always remained under ban. Legislation of Christian emperors dealt frequently with the matter. Punishment was originally the death penalty by throwing down the culprit from the Tarpeian rock; later deportatio, relegatio, and seizure of property were inflicted. At times penalties for the woman were severer than those for the man. Ignorance of the law or of the existing relationship was taken into consideration in setting the penalty. The marriage itself (incestae nuptiae) was null and the children were illegitimate.

—C. 5.5.

Klingmüller, RE 9; Humbert, DS 3; Brasiliello, NDI 6: Lotmar, MéI Girard 2 (1912); De Martino, SDHI 3 (1937) 405; Guarino, St sull', 1942; idem, ZSS 63 (1943) 175 (Bibl. 177); G. Lombardi, Ricerche in tema di ins gentium (1946) 3.

Incestus superveniens. Adoption of his son's wife or his daughter's husband by a father dissolves the existing marriage as incestuous, the spouses being now in a relationship (although created artificially), which would exclude the conclusion of a valid marriage between them.
Inchoare actionem (iudicium, litem). When referring to the procedure extraordinem, to initiate a lawsuit; when referred to the formulary procedure the term indicates the litis contestatio.

Solerzi, Annap. 63 (1951).

Incidere. To become involved in a situation which makes a law (a statute) or a criminal or private action applicable against the person entangled, e.g., incidere in legem Aquiliae, in edictum, in senatusconsultum. — See communio incidens.

Incidere testamentum. To cut through a written testament (tabulas testamenti) in order to destroy the last will. If a testator in a state of insanity did so with the testament he had made when he had been mentally sane, the testament remained valid.

Incitus. (Sc. aere). One whose name was engraved on a bronze tablet containing a list of persons for a specific purpose, e.g., for participation in the gratuitous distribution of grain in Rome.

De Ruggiero, DE 4.

Incola. An inhabitant of a city or municipality, one "who conferred his domicile at a certain place" (D. 50.16.239.2). Hence syn. qui domiciliun habet. See domiciliarium. An incola is distinguished from an originarium, i.e., a citizen of the community where he was born; see origo. — "An incola has to obey the magistrates of the place where he is an inhabitant as well as those where he is citizen" (D. 50.1.29).— D. 50.1; C.10.40. — See consistentes.

Berger, RE 9; Lechat, DS 3.

Incolatus (ius). Rights and duties connected with the domicile, the quality of being an incola in a community. — See domiciliarium, incola.

Incommodum. See commodium.

Inconcussa possessio. Undisturbed possession of an immovable (inconcusse possidere). Unknown in the classical language, the term appears in later imperial constitutions.

Inconsiderate, inconsulte (inconsulto). Inconsiderately, thoughtlessly, without deliberation. One who is so acting must bear the consequences of his transactions or declarations made without deliberation.

Inconsultus. (Adj.) Not consulted. Inconsulto praetore (principe) = without asking the praetor (the emperor) for permission or advice.

Incorporalis. See res incorporales.

Incorporatio. The incorporation of confiscated property into the private property (res privata) of the emperor. — C. 10.10.

Incrementum. An increase, augmentation, produce. The term is applied to increases of a dowry, of an inheritance or legacy, of a peculium, and becomes juridically important when the restitution of such patrimonial units is involved.

Incubare (incubatio). To take and retain another's thing in unlawful possession. Incubator = an unlawful holder of a thing.

Daube, CommlJ 9 (1945) 37.


Incursio, incursus (latronum, praedonum). An assault of bandits. An attack made by a group of robbers was considered a vis maior. It released the holder of another's things from responsibility.

Incursare. To accuse, to blame, to complain. The term appears only in the language of the imperial chancery.

Indebite. See indebitum.

Indebitum (indebita pecunia). A debt which in fact does not exist. In a broader sense the term is used of an existing debt which may be repealed by a peremptory exception. What has been paid in discharge of a not existing debt may be recovered by a special action, condicio indebiti.— D. 12.6; C. 4.5. — See condicio indebiti.


Indefensus. A defendant who by his negative attitude refused the cooperation necessary for the continuation of a trial. Indefensus is one who does not accept the formula (accipere iudicium) proposed by the plaintiff and approved by the magistrate, one who does not offer security ordered by the praetor, who does not answer when questioned by the praetor in court (interrogatio in iure), or who is hiding himself (latitare) so that he cannot be summoned by the plaintiff; see in jus vocatio. The sanction for the frustration of the process by the defendant was that the plaintiff was authorized by the praetor to enter into possession of the defendant's property, missio in possessionem.

In trials in which a right over a thing is involved, the thing itself is called res indefensa when the defendant assumed a passive attitude. In such a case the plaintiff was given possession of the thing. Indefensus is also one who being personally incapable to defend himself in court, is not properly represented by his tutor or curator. — See latitare, missio in possessionem rei servandae causa, duci ubere, defensio, defendere.


Indemniss. Secure from loss, incurring no loss. Indemnem praestare aliquem = to indemnify either by reimbursement of the damages already done or by giving security against future losses.

Indemnitas. Security against loss, indemnification. See indemnis, cautio indemnitatis. — C. 5.46.

Index. One who denounces a crime without being a formal accuser in a criminal trial; an informer. An index who had been an accomplice of a criminal frequently went unpunished if his information led to the discovery of the culprit. Both the denunciation and the award given to the index were termed indicium.

Kleinfelder, RE 9; Kaser, RE 5 A. 1047.

Index. A summary of a juristic text or of a written document (index scripturae). In the Byzantine legal
literature indices were résumés of older collections of legal texts in the form of concise formulations of legal norms with the omission of discussions, polemics, historical reminiscences, and the like. The most renowned Byzantine jurists (Theophilius, Dorotheus, Stephanus, Kyrrillos) wrote indices of the Digest or of parts thereof. Authors of indices were designated as *indiketwai*.

Berger, Justinian's *Ban*, *Bull. Polish Inst. of Arts and Sciences in America* 3 (1945) 676 (= *BIDR* 55-56, Post-Bellum, 1951, 148, Bibl.).

**Index Florentinus.** A list of juristic works which had been excerpted for Justinian's Digest. Justinian ordered that such a list be composed, but only the manuscript of the Digest of Florence (see *Florentina*) contains such a list. However, some works of classical jurists are listed therein of which no excerpt is preserved in the Digest but on the other hand some works are excerpted in the Digest which are not mentioned in the *Index Florentinus*.


**Index rerum gestarum.** (Of Augustus.) See Res Gestae.

**Indicere.** To impose a duty. The term applies to both official orders (imposing public services, munera or other charges) and to testamentary dispositions by which an heir or a legatee was charged with the performance of services or with a moral duty (indicere operas, indicere viduatum).—C. 6.40.

**Indicere bellum.** To declare war. Under the Republic the decision about a declaration of war depended upon the *comitia centuriata*.—See Indictio Belli, Lex de bello indicendo, Fetiales, Clarigatio.

**Indiccia.** Circumstantial evidence. "Indicia have no less force of evidence than documents" (C. 3.32.19), provided they are not prohibited by law. The term appears in imperial constitutions (from the time of Diocletian) in connection with both criminal and civil matters.

**Indicium.** In criminal matters, the denunciation of a crime and its perpetrator.—See Index, Nuntiator.

**Indicium.** The promise of a recompense for a certain service. It used to be announced publicly (edicere), as, for instance, the announcement of a reward for the return of a runaway slave. The award was promised to anybody who succeeded in fulfilling the action to be compensated.


**Indictio.** An imperial enactment ordaining an extraordinary requisition of corn from the owners of provincial land. From the beginning of the fourth century on, the *indictio* became a regular annual impost. The revision of the land taxes was carried out every fifteen years (= three censuses). These fifteen-year cycles came to serve afterwards as a new system of dating, the years being indicated by the number of the indictment and by one to fifteen according to their sequence in the given indictment. The first *indictio* cycle started in a.d. 297 and the beginning of an *indictio* was on September 1st.—*Indictio* (indicere) was the term for the imposition of public charges (munera).—C. 10.17; 43.—See Superindictio.


**Indictio bellii.** A ceremonial act (throwing a blood-stained spear into the enemy's territory), performed by the fetiales; it completed the declaration of war.

—See Indicere Bellum, Lex de bello indicendo, Clarigatio, Fetiales.

*Walbank, ClPhilol* 1949, 15.

**Indigena.** A person living at his birth place. The term is used in imperial constitutions.—See Orig., Domicum.

**Indignus.** In the law of sucessions, a person who because of his (ungrateful) attitude towards the testator became unworthy to benefit by the latter's last will. He was deprived of the advantages granted therein. Generally it was the fisc which might claim the return (eripere, afferre, see Exemptorium) of the things already taken by the *indignus* under the testament.

*Indignitas* (= the quality of being *indignus*) was primarily introduced by the imperial legislation. An *indignus* was one who killed the testator or did not take the necessary measures to revenge his assassination; one who impugned the last will as officious (see Querela Inofficiosi Testamenti) or as forged and lost the trial; one who concealed the last will in order to avoid the payment of legacies, or who, appointed as a guardian, refused to accept the guardianship without any just reason, or the like.—D. 34.9; C. 6.35.—See Inulta Mors, Nubere.


**Indiscrete, indistincte.** Without any distinction, without a specific indication which person or thing is meant, e.g., when a payment is made by a debtor liable for several debts without stating to which debt the payment refers.

**Individuum.** Indivisible. Things or rights which cannot be divided and things which cannot be separated into parts become the common property of the persons to whom they happen to be assigned. *Individuum* is sometimes syn. with *indivisum* (undivided). See the following item.

**Indivisum.** Undivided, not separated into parts. *Pro indiviso possidere* (habere) is used of owners who have a thing in common ownership (*communio pro indiviso*). In such instances the right of any one of them is expressed by a fraction and the thing itself remains undivided.—See *Communio* (Bibl.), *Piegni*.

**Indotata mulier.** A woman who entered a marriage without a dowry.—See Dotare.
Inducere (inductio). To cross out, e.g., the institution of an heir or a legacy in a testament. See INTERLINEARE, PERDUCERE.—Inducere with reference to a statute (e.g., induce legem Falcidiam), a senatus-consult, or a legal remedy (an action, an exception) = to apply.—D. 28.4.

Inducta. See INTRODUCTA.

Indulgentia (indulgere). An act of grace (by the emperor = indulgentia principis), a benefit granted as a favor (ex indulgentia). The term occurs primarily in imperial constitutions concerned with acts of amnesty in criminal matters.

Kleinfelder, RE 9; Cuq, DS 3; De Ruggiero, DE 4; P. Duparc, Origine de la grâce dans le droit pénal rom., 1942, 25; Carrelli, Restitutio i. principii, Ambari 53, 2 (1934).

Indulgentissimus. A title given to emperors (after Hadrian).

De Ruggiero, DE 4.

Indutiae. A truce, armistice.


Inefficax. Deprived of legal effectiveness, ineffective.

Ant. EFFICAX.

Inemptus. Not bought. Certain sales contained a clause to the effect that under specific circumstances the sale should be considered not valid and the object of the sale not bought (res inempta).—See LEX COMMISIONIA, PACTUM DISPLICENTIAE.

Inesse. To be contained in. It is used of clauses (conditions) inserted in an agreement by the will of the parties, or of essential elements of legal institutions or transactions, which are either fixed by law or self-evident. Inesse officio indicis = to be part of the office of a judge.

Infamare. To defame, injure the good reputation of a person. The praetorian edict forbade the doing or saying anything (orally or by writing, see LIBELLI FAMOSI) infamandi causa (= for the purpose of defamation). The person injured could sue the offender by actio inimiarium.—See INTURIA.

Daube, ACIVer 3 (1952) 413.

Infamia. Evil reputation, the quality of being infamous (infamia). Infamia was not only connected with a diminution of the estimation of a person among his fellow citizens but produced also certain legal disabilities which differed according to the grounds for the infamy. In Justinian’s law various groups of persons were added to those whose legal ability had been restricted already in earlier (primarily praetorian) law. The oldest measure to brand a person as dishonest was the nota censoria which was a moral punishment by the censors for misconduct in political or private life. See IGNOMINIA. The praetorian edict deprived certain persons for moral reasons of the right of appearance in court as advocates or representatives of a party to the trial, or of being reprented by another. In particular, persons condemned for crimes or private wrongdoings (delicta) were struck by this measure. Infamia as it appears as a developed institution in Justinian’s law originated either in the exercise of a dishonest profession (persona turpae) or in a condemnatory judgment in trials resulting from contractual relations which required a particularly honest behavior and in which the violation thereof appeared as a flagrant break of confidence (as, e.g., partnership, deposit, mandatum, fiducia). See ACTIONES FAMOSAE. Bankruptcy, a dishonest discharge from military service, misbehavior in family life, simultaneous betrothal with two persons, and many other wrongdoings made a person infamia (= qui notatur infamia, as Justinian says). Besides procedural disabilities infamia caused other disadvantages such as exclusion from tutorship and denial of the right to obtain a public office or to be an accuser in a criminal trial. Under specific circumstances, infamia was not without repercussion in the rights of succession.—D. 3.2; C. 2.11; 10.59.—See NOTA CENSORIA, IGNOMINIOUS, INTESTABILIS, INUSTUS, TURPI PERSONA, TURPITUDO.

Pfaff, RE 9; Humbert and Labrivaix, DS 3; Sacchi, NDI 6; De Ruggiero, DE 4; Berger, OCD; A. H. J. Greenidge, I. in R. law, 1894; Schultz, Fischer Zeliemann, 1913, 11; E. Lévy, St Ricobono 2 (1936) 77; L. Pommeray, Études sur l’infamie, 1937; U. Bresciani, Repressione penale, 1937, 152.


Infans. Qui fari non potest (= one who cannot speak), a child who cannot express his ideas reasonably. “Children have no intellect” (Gaius 3.109). From the time of Justinian, or perhaps a little earlier, infanitia (= childhood) comprehends children under seven completed years. An infans is completely incapable under the law. After the completion of seven years an infans becomes IMPUDES.—D. 37.3.

Cuq, DS 3; Sciasca, NDI 6; Tumedei, AG 89 (1923); Solazzi, BIDR 49-50 (1947) 354.

Infantia. The age of an INFANS.—See IMPUDES.

Infantiae (infanti) proximius. See IMPUES.

Infanticidium. The term does not occur in juristic texts. A legal prohibition of infanticide is ascribed to the legendary founder of Rome, Romulus. The Twelve Tables permitted the killing of a new-born child that turned out a monster. Generally infanticide was punished as murder, both under the Republic (Lex Cornelia de sicariis, Lex Pompeia de particidio) and under imperial legislation, particularly that of Christian emperors. Syn. necare infansem, partum.—See EXPONERE FILIUM.

Cuq, DS 3.

Infestum damnum. See DAMNUM INFECTUM.

Inferea. See ILLATA, INTRODUCTA, ILLATUM MORTUUM.

Inferea. (With reference to account books.) To make an entry.—See RATIONES, CODEX ACCEPTI.
Inferre. (In procedural language.) To proceed with an action (actio nem, item) in a civil matter; to bring in an accusation (accusationem, crimen) against a person in a criminal matter.

Infirmare. To annul, to rescind, to revoke a unilateral act (a testament, legacy, donation). Infirmare actionem = to oppose an exceptio to the plaintiff's claim.

De Sarlo, AG 136 (1949) 102.

Infirmitas aetatis (or sexus). The weakness of an individual because of his age (or sex). It is given as a reason for guardianship or curatorship over a person under a certain age or over women.—See CURA IMPIMERIS, TUTELA MULIERUM.

Solazzi, AG 104 (1930).

Infiata. Ad infinitus ire = to deny the plaintiff's claim.

Syn. infiata.

Infiati (infiniti). To deny the plaintiff's claim. In certain actions (actio legis Aquilai, actio indicati, claim for a legacy left in the form of a LEGATUM PER DAMNATIONEM), a defendant who deliberately denied the claim although he knew that the claimant was right was judged liable to double the amount involved; see ACTIONES IN DUPLUM. Such an action is characterized as an actio quae infiriendo crescit in duplex (duplatur).

Thomas, NRHD 27 (1903) 579; Betti, ATor 50 (1915); J. Paoli, Li infiriendo crescit in duplum, 1933; Kaser, Das altger. Ztschr., 1st, 1949, 121.

Insigere. To impose (a penalty), to cause damage (damnatum). Similar expressions are imponeere, iniquere.

Ingenius. The status of a free-born person. See INGENIUS. In a trial as to whether a person was free-born, there had to participate an adserior ingeniiatis whose role was analogous to that of the adserior librenia in a trial in which it was examined whether or not a person was free.—See ADERTIO, VINDICATIO IN LIBERTATEM.

H. Kruger, St Riccobono 2 (1936) 227.

Ingenius. Free-born. Ant. servus (= a slave) and liberinus (= a freedman, i.e., born as a slave and freed afterwards.)—See INGENIUS, NATALITIUM RESTITUTIO.—Inst. 1.4; D. 40.14; C. 7.14.

Kühler, RE 9; Ceqn, DS 3; Seicamia. ND1 6.

Ingenius manumissus. A free-born person who erroneously served as a slave (liber homo bona fide serviens) and was manumitted by his "master" could initiate a trial for the recognition that he was born a free man. The restriction that he might do it only within five years after the manumission, was abolished by Justinian.—C. 7.14.—See INGENIUS.

H. Kruger, St Riccobono 2 (1936) 234.

Ingratus. Ungrateful, ingratitude. An emancipated son or daughter could in the later Empire be brought back under paternal power in case of ingratitude towards his father (e.g., a verbal offense, contrivium). A freedman, ungrateful towards his former master (libertus ingratus), could be assigned to the latter as a slave. Non-fulfiliment of his duties towards the patron, refusal of maintenance in the case of poverty, participation in a plot against the manusmissor, treating him with contempt (contumelia, convicium, castigatio justitia) and the like, were considered ingratitude of a freedman. Accusatio liberti ingrati = the complaint of a former master about an ungrateful freedman.—C. 8.49.—See OBSERVIA.

De Francisci, Mel Cornul 1 (1926) 304; C. Cosentini, St sui liberti 1 (1948) 96, 206; 2 (1950) 31.

Ingridi (ingressus). (With reference to an office.) To enter on official duties (a magistracy).

Ingridi in alienum fundum. To trespass upon another's land. The owner or possessor could oppose himself against such violation particularly when the trespassor committed it for hunting or catching birds. Possessor interdicts were available against the invader if he attempted to remain on the spot and keep it for good.—See INGRIDI POSSESSIONEM.

Ingridi possessionem. To enter into another's immovable in order to take lawful possession thereof, e.g., after buying it or with the authorization by a magistrate (missio in possessionem). Ingridi possessionem may take place also unlawfully when the invader uses force (vi) or enters stealthily (furtive). The pertinent possessor interdicts (see INTERDICTUM QUOD VI ACT CLAM) serve for protection against such incursion.

Inhabilis militiae. Unfit for military service. A father who mutilated his son to make him inhabilis when a levy for war was ordered, was punished with deportation.

Inhabitate. See syn. HABITARE.

Inhibere. To check, to stop, e.g., another's act, a suit or transaction by a lawful countermove or with the help of a judicial authority. When used of a legal enactment inhibere = to forbid.

Inhibitor. e INHIBERE.

Inhones. Dishonest. Ant. honestus. The term is used of illicit or dishonest professions (prostitution, lemanichium) or of things forbidden by law or good customs.

Inhumanus, inhumanitas. See ant. HUMANUS, HUMANITAS.

Incerci condicionem. To add a condition to a transaction or to a testamentary disposition.

Incerci manum (injectione manus). See MANUS INJECTIONEM.

Iniquitas. See INJURIA INJICIC.

Iniquus. Ant. of AQUEUS. Iniques is frequently used of unjust judgment or arbitration.

Inire. (With regard to an office.) To enter on one's official duties. Syn. ingredi.

Inire consilium. (With reference to wrongdoings.) To take a decision, to form a design.—See CONDIVIA.
Initium. A beginning. *Initium* is used of the starting sentence of a written document (e.g., a testament, a contract, a letter) or of a statute. It refers also to the beginning of certain legal relations (partnership) or situations (*usu cuius*) normally lasting for some time. *Ab initio* is from (at) the very beginning. A legal rule stated: "A legacy (an appointment of an heir) which is invalid (*null*) at the beginning cannot become valid by a later event (ex post facto)," D. 30.41.2; 50.17.210.—See EX POST FACTO, TRACTUS TEMPORIS.

Iniungere. To impose upon a person a burden (guardianship) or a public charge (*munus*); to inflict a damage or a penalty.

Injuria. A wrongful act, unlawfulness. Generally speaking, *injuria* is "all that has been done non iure, i.e., against the law (contra ius)," Inst. 4.4 pr. On damages done *injuria* (unlawfully) to another's property, *damnum injuria datum*, see DAMNUM, LEX AQUILIA. Specifically *injuria* embraces particular crimes, both bodily injuries (*injuria re facta*) as well as offenses against the good reputation of a person, as defined in the Twelve Tables, in the praetorian edict, in the *Lex Cornelia de injuriis*, and later in imperial constitutions. It was in particular the praetorian law which efficiently defended the honor of a Roman citizen against defamation by according a special action, *actio injuriarum*. *Injuria* was a private crime (*delictum*), prosecuted only at the request of the offended person. "There is no *injuria* done to those who wished it (to be done)." D. 39.3.9.1. Penalties varied in the course of time from pecuniary reparation (fixed fines in the Twelve Tables)—the amount of which was set by the judge, who had great discretion in estimating the damage done to the reputation and the social rank and respectability of the individual injured—to more severe penalties, such as flogging, scourging, exile, according to the gravity of the injury and the social status of the prit. In the *actio injuriarum* the plaintiff ma. *own assessment* of the extent of the damages in a sum of money and the judge sentenced the defendant to what seemed to him *bonum et aequum*, but not a larger sum than demanded by the plaintiff. *The actio injuriarum* was granted a father for *injuria* done to a son under his paternal power, and the master of a slave for an injury done to the slave.—Inst. 4.4; D. 47.10; C. 9.35.—See CARMEN MALUM, LIBELLUS FAMOSUS, INFAMARE, OS FRACTUM, MEMBRUM KUPTUM, CONVICIUM, CONTUMELIA, OCCIDENTARE, FUDICIA ADTEMPTATA, LEX CORNELIA DE INJURIIS, MANUS INFERRE, PERCUTERE, PUGNUS, THEATRUM.


Injuria atrox. An atrocious, aggravated outrage. It occurred, e.g., when the victim was flogged or wounded, when the wrong was done in a public place (theatre, *forum*), when the offended person was a magistrate, or when a senator was insulted by a person of a lower social class. The atrocity (*atrociats*) of the *injuria* was thus distinguished according to the fact itself (ex facto), the place (ex loco), and the person (ex persona).—See PERCUTERE.

Injuria cadaveri facta. See CADAVER.

Injuria iudicis. An unjust judgment, condemnation or absoluto, handed down by a judge or a magistrate in the exercise of his judicial functions, "when the praetor or a judge non iure (unlawfully) decides against a person" (Inst. 4.4 pr.). Other expressions used in such cases are *injustitia*, *iniquitas* ("when one pronounced an unacceptable or unjust judgment") *iniuria iniquitas sententiae* can be corrected (abolitio) on appeal.


Inissus. Without the order (*tussum*) of the person whose order is required or presumed. *Inissus populi* = without the order of the people. The term appears in connection with the prohibition against carrying out a death sentence without the approving order of the people.

Inustitia. See *INJURIA IUDICIS*.

Iniustum—iustum sacramentum. It is generally assumed that the judgment in the *legis actio sacramentate* stated whose (of the parties to the trial) *sacramentum* was just and whose unjust by which the decision on the claim itself was expressed implicitly. The distinction is based on Ciceronian texts (pro Caes. 33.97; de domo 23.78).

v. Mayr, Miel Girard 2 (1912) 177; Wenger, ZSS 59 (1939) 342 (Bibl.) v. Lubkow, ZSS 68 (1951) 322.

Iniuatus. Unjust, unlawful.—See CONDICTIO EX INUSTA CAUSA. For *injusta sententia*, see INJURIA IUDICIS. *Iniustia appellatio* (*iniustae appellare*) = an appeal not founded on legal grounds and rejected (*pronuntiata*) as unjust.—See TESTAMENTUM INIUSTUM.

In-—See *ILL-*.

Innocens. Innocent. A remarkable saying of the emperor Trajan in one of his rescripts states: "It is better to leave unpunished a crime of a guilty person than to condemn an innocent man" (D. 48.19.5 pr.).
The innocence of an accused person established after his condemnation could be ground for an appeal to the emperor and lead to the annulment of the condemnation judgment. When the innocence of the accused has been established during the trial, he must be discharged even though he had admitted responsibility.—See IMPUNITUS, SUSPICIO.

Innocentius. A jurist of the time of Diocletian who allegedly had the ius respondendi "granted by the emperors." The notice goes back to a source of the late fourth century and is not fully reliable.

Seek and Steinwenter, RE 9; Massei, Sev Ferrini (Univ. Pavia, 1946) 440.

Inofficiosus. One who disregards his natural duties to his next relatives or, in the case of a freedman, to his patron. A testament, a donation, or a dowry by which the rights of succession of the nearest relatives are violated is inofficiosus.—See QUÆRELA INOFFICIOSI TESTAMENTI, QVÆRELA INOFFICIOSÆ DONATIONIS. DOTIS.—Inst. 2.18; D. 5.2; C. 3.26-30.

Inopia. Indigence, poverty, lack of necessary resources for living. It is ground for exemption from public charges and guardianship. A fine imposed on a person who is unable to pay it may be suspended or commuted into corporal punishment.

Inops (inopes). See LOCUPLETES.

Ins. See IMP.

Inquietare. To trouble, to vex a private individual or a magistrate with suits.

Inquilinus. A tenant living in a rented dwelling.

Syn. habitation. In the later Empire inquilinus = colonus. There are two possibilities of living in another's house: either on a lease (locatio conductio rei) or on a personal servitude to use another's house, see HABITATIO.—See INTERDICTUM DE MIGRANDO.

Humbert. DS 3; Saumagne, Byzantien, 17 (1937).

Inquisitio. (From inquirere.) Investigation, inquiry in criminal trials, conducted in the form of cognitio proceedings. The inquisitio is made by subordinate official organs under the direction of a jurisdictional officer who is the prosecutor of the matter from the beginning to the end. Inquisitio is opposed to the ACCUSATIO in the earlier criminal procedure (see QUAESTIONES). In the inquisitio procedure an accuser was admissible, but his rights were rather limited in comparison with his position in the earlier procedure. Inquisitio in civil matters occurs primarily in the procedure concerning the appointment of tutors and curators. It was the inquiry by the magistrate to establish whether or not the individual to be appointed had the necessary personal and financial abilities (idosus). In certain instances such inquisitio was obligatory, for instance, when the guardian was designated by a woman.

M. Laura. Accusatio—inquisitio, AN 56 (1934) 304.

Inquisitio localis. A local inspection in the case of a controversy between neighbors.

Insania (insanus). A general term for mental disease.—See FURIOSUS, DEMENS, MENTE CAPTUS.

Insani, inscientia. Ant. of SCIENSI, SCIENETIA.

Inscribere. To give a title (inscription) to a book; to write down (into a written document); to register in a list of persons or things (e.g., an inventory).

Inscribere operi publico. To engrave on a public building (or construction) the name of the emperor or the person at whose expense the building was erected.

Inscriptio (inscribere). In criminal trials, to enter in official records the accusation made against a person; see ACCUSATIO.—D. 48.2; C. 9.2.—See SUBSCRIPTION. LIBELLUS INSCRIPTIONIS.

Piaf, RE 9, 1561.

Inserere. To insert (a clause, a condition, a provision). The term is used with reference to statutes, last wills, agreements, etc.

Insidiare. An ambush, cheating, fraud.

Insidiari. To lie in wait to attack another by surprise; to bring into danger.

Guarno, SDHI 5 (1939) 437.

Insignia. Distinctive outward signs of high officials when they appeared in public. It was an old Roman custom to grant high officials the right to use certain insignia which varied according to the rank of the office. The Republic preserved most of the regal insignia for its high magistrates. The insignia were also differentiated according to the occasion; the most spectacular were on the occasion of a triumph (see TR homophobicus) when a victorious commander of the army entered the city of Rome after the end of a war. The use of improper insignia for the purpose of assuming the character of a higher official was severely punished as crimen falsi (see FALSUM).—See LICORES, SELLA CURULIS, FASCES, GLADIUS, TOGA.

PRAETEXTA.


Insimulare (insimulatio). To accuse (in imperial constitutions of the third and later centuries).

Insinuare. To inform, to give notice.

Insinuare (insinuatio) actus. See ACTA.

M. Kroell, Le rôle de l'écrit dans la prave de contres, 1906, 129.

Insinuatio testamenti. (In Justinian's constitutions.)

Syn. with APERTURA TESTAMENTI.

Inspector. An inspector, examiner (in private enterprises).

Schulz, Haltung für das Verschulden der Angestellten, GRZ 38 (1911) 10.

Inspector. In administrative law, an official in the later Empire charged with investigations in census matters.—C. 11.58.

Seeck, RE 5, 1184: 9, 1562.

Inspectio tabularum (insicere tabulas, sc. testamenti). To inspect a testament. Any person who has an interest in knowing the content of a testament
could obtain permission from the praetor to look into it and to examine the seals.—D. 29.3.—See INTERDICTUM DE TABULIS EXHIBENDIS, APERTURA TESTAMENTI.

Inspicere ventrem. To examine a woman as to whether she is pregnant or not. The measure was applied when there was a controversy between a man and his divorced wife about her pregnancy, in particular when the woman claimed to be pregnant, or denied it, contrary to the assertions of the husband. A similar situation occurred, when after the death of her husband, a widow declared that she was pregnant and there was a reasonable suspicion that the pregnancy was simulated. A similar institution is custodire partum = to watch the confinement in order to prevent the substitution of another child. The procedures, which were performed with the assistance of midwives, were precisely defined in the praetorian Edict.—D. 25.4.

Instantia. Perseverance, in particular of a claimant or defendant acting in court in claiming or defending his rights.

Instar. A resemblance, likeness. The term indicates that a legal act is to be dealt with like a certain definite legal institution (e.g., a donation, a sale, a legacy) with which it has some common features (instar esse, instar habere).—Ad instar is used by classical jurists to extend existing legal rules to new factual situations.—Syn. ad exemplum.

Instaurare. (With reference to trials.) To resume a civil or criminal prosecution, to re-open a controversy. The term appears frequently in imperial constitutions. As a matter of principle, controversies settled by a judgment cannot be resumed.—See bis de EADEM RE, RES IUDICATA.

Institor. The manager of a commercial or industrial business, appointed by its owner. For obligations contracted by an institor and connected with the business, the principal could be sued directly by an action called actio instititoria. Later, but still in classical times the requirement that the business have a commercial character was dropped so that any one could be sued for obligations contracted by the manager of his affairs (procurator) under an action named actio quasi instititoria (term not classical), modeled on actio instititoria. These actions belong to the category of actions adiecticiae qualitatis (see EXERCITUM NAVIS) because the manager was also liable. Institor could be a slave of the principal or of another person.—D. 14.3; C. 4.25.—See PROSCRIBERE.

Klingmüller, RE 9; Steinweber, RE 9 (s. institutio a.); Humbert-Lécirvain, DS 3; E. Costa, Actio exercititia e instititoria, 1891; L. F. Dentraysgues, Et. hist. sur l'actio instititoria, 1910; Rabel, Ein Ruhmesblatt Papiers, die q. quasi instititoria, Fischer Zittelmann, 1913; P. Fabricius, Der gemischt-rechtliche institor im klass. rém. R., 1926; P. Huyelin, Études d'hist. du droit commercial, 1925, 160; Albertario, Storia 4 (1940), ex 1912) 189; E. Carrelli, St. Scorrva, 1940; Solazzi, RDN 7 (1941) 185; Kreller, Fischer Wener, 2 (1945) 73.

Instituire actionem (litem, querelam, accusationem). To prosecute in court in a civil or criminal matter.

Instituire heredem (institutio heredia). See HEREDIS INSTITUTIO.

Institutiones. Elementary law textbooks written primarily for students. Institutiones were written by Gaius (see INSTITUTIONES GALI), Florentius, Callistratus, Paul, Ulpian and Marcian. Some of these works may have originated in the lectures of their authors. One part of Justinian's codification is also entitled Institutiones; see INSTITUTIONES JUSTINIANI.

Kozx-Dobrzy, RE 9; Kübler, RE 1A, 396; De Villa, NDI 6; Kreller, ZSS 66 (1948) 572.

Institutiones Gali. An introductory textbook of legal institutions in four books (called "commentarii" by the author) written by Gaius about a.d. 161. The system adopted by Gaius is tripartite: law of persons, law of things (including succession), and law of actions (civil procedure). The work, discovered in 1816 in Verona (hence called Gaius Veronensis) in a manuscript of the (late) fifth century, is preserved nearly in full. Some of the lacunae have been filled by a few parchment sheets, found in 1933, seemingly of the late fourth century (now in Florence, hence named Gaius Florentinus). The new texts confirmed the reliability of the Veronensis to a large extent. Modern Romanistic literature has applied to the Institutes of Gaius the same critical (and hypercritical) method they used with regard to Justinian's Digest, a method which is often far from convincing, although it cannot be denied that the text preserved evokes sometimes serious doubts, hardly amazing in a manuscript written about three centuries later than the original. For many problems of the classical law, and primarily for the classical civil procedure, Gaius' Institutes remain the foremost authority the importance of which has not been lessened by the recent "purification" of the text.—See GAIUS.

Editions: in all collections of anto-Justinian sources (see General Bibli. Ch. XII), the best is by Seckel-Kübler in Huschke's Iurisprudentia antiquioriorum, 7th ed. 1935; Bissoitides, Gaius, 3 vol., Salonicana, 1937-1939; Arangio-Ruiz and Guarino, Breviarium iuris romani, 1943; Alvaro d'Ora Perez-Perel, Gaius Institutiones, Testo latino con una traducción, Madrid, 1943; E. de Zuluba, The Institutes of Gaius, 1 (transl.) 1946; 2, 1953; M. David, Gai I., Leiden, 1948; J. Reinach, Gaius Institute (with French translation, Collection Budé, 1950). Italian translation: P. Novelli, Gaius, Elementi di dir. rom., 1914-1944, RE 6, 494; Berger, OCD 376; Klépp, Gai Institutium commentarii, 4 vol. incomplete (1911-1914); Beseler, TR 10 (1930) 161; Solazzi, Glossa a Gaius, 1 (St Riccione, 1936); 2 (Centodetennio, 1936) 3 (SDHI 1, 1940); 4 (Società Centro-Padana, Pavia, 1947, 141); Albertario, St 5 (1937) 441; Schulz, History of R. Legal Science, 1946, 159; Bellinger, AmPhil 70 (1949) 394; Wiesacker, RIIA 3 (1949) 577; idem, Fischer Schulz 2 (1951) 101; Maschi, AmTr 17 (1947) 77; idem, ACIVer 1 (1951) 9; H. J. Wolff, St Arangio-Ruiz 4 (1932) 171.—For Bibl. on the Gaius Florentinus (= Papiri Societatis Italicanae 11, no. 1182, 1933) see Baviera, FIR 1* (1940) 195; Van Oven, TR 13 (1934) 248.—For the few fragments
of the fourth book, preserved on a papyrus from Oxyrhynchos (P. Oxy. xvi. no. 2103), see Baviera, ibid. p. 201; Wenger, Scr Ferroni 4 (Univ. Sacro Cuore, Milan, 1949) 268.

Institutiones Iustiniani. A part of Justinian's codification, compiled in 533 after the final draft of the Digest had been finished, and published on November 21, 533. It entered into force simultaneously with the Digest, published a few weeks later. The sources exploited for the composition of the Institutes are Gaius' Institutiones and his Res coddianae, the Institutes of Florentinus, Marcianus, Ulpian, and Paul, and several imperial constitutions in some of which the reforms introduced by Justinian are emphatically stressed. The work was intended as an elementary manual—hence its title Institutiones sive Elementa—for law students in their first year. It was edited by the law professors, Theoephilus and Dorotheus, under the supervision of Tribonian.


Instructum dominus (fundus). The necessary furnishings, equipment of a house (or a landed property); almost syn. with instrumentum domus (fundus), although some jurists assumed that instructum is the broader term. Both instructum and instrumentum are discussed casuistically by the jurists in connection with legacies of a land or house cum instrumento or a fundus instructus (domus instructa).—See le- catum instrumentum.—D. 33.7.

Instruere. To instruct, to teach; to impart knowledge (information) of a legal norm or legally important facts.

Instruere causam (litum). To support a judicial—civil or criminal—case with legal arguments and factual evidence.

Instruere domum (fundum). To provide a house (a land) with the necessary equipment (furnishings, utensils, implements).—See instructum, instrumentum fundi.

Instrumentum. In a broader sense, this embraces all means of evidence (including the oral testimony of witnesses), but the regular meaning is that of a document; another word is often added to indicate the subject matter of the document, as instrumentum donationis (of a donation), emptionis (sale), divisionis (division of property), instrumentum nuptiale (concerning a marriage) or dotale (dowry). In later law documents acquired constantly increasing value as evidence, particularly when written with the assistance of a public or private notary (instrumentum publici conjunctum) or when signed by three trustworthy witnesses (instrumentum quasi publici conjunctum).—See editio instrumentorum, fides instrumentorum.—D. 22.4; C. 4.21; Nov. 73.—Prodere instrumenta, traditio chartarum, retractare causam, subscriptio, stipulatio.


Instrumentum causae (litus). A document connected with a judicial controversy. —See instruere causam.

Instrumentum domus. See instrumentum fundi.

Instrumentum donationis. See instrumentum.

Ricobono, ZSS 34 (1913) 159.

Instrumentum dotale. A written instrument concerning a dowry. It contained details of the dowal agreement (pactum dotale) concerning the objects constituting the dowry and its restitution at the end of the marriage by death or divorce. The instrumentum dotale came into use in the postclassical period. —See dos, tabulae nuptiales.

Kübler, RE 4 A, 1931; Riccobono, ZSS 34 (1913) 175; Castello, SDHI 4 (1938) 208.

Instrumentum fundi (domus). The equipment necessary for a reasonable management of rural (instrumentum fundi) or industrial property, or for the use of a house (instrumentum domus): furniture, tools, utensils, and all kinds of appurtenances needed for some specific use of the immovable. The interpretation of the term and its extension in the case of a lease or a legacy of a house or rural property cum instrumento is widely discussed in juristic works. It is pointed out that instrumentum fundi is not a part of the land; it may be therefore the object of special agreements.—D. 33.7.—See instructum, instruere domum, fundus, fundus uti optimus maximus, legatum instrumenti venatio.

Arango-Ruiz, DE 4, 59; Riccobono, St Brugi, 1910, 173; Steinwenter, Fundus cum instrumento, SDWien, 221, 1 (1943) 24. 71.

Instrumentum nuptiale. See tabulae nuptiales. Instrumentum publice conjunctum. See instrumentum.


Insula in flumine nata. An island which came into being in a river. If located in the middle of the river, it belonged as a common property to the land-owners on both banks; if it arose nearer one bank it became property of the land-owners along that bank. Such
an island in a public stream (flu men publicum) became public property.

Cogliolo, St per l'ottavo centenario dell'Univ. di Bologna, 1888; Pampaloni. \textit{Scrii giudici 1} (1941, ex 1885) 505; Herzen. \textit{VRHD} 29 (1905) 561.

\textbf{Insula in mari nata.} An island which arose in the sea was \textit{res nullius} (it belonged to nobody) and as such it became the property of the first occupant.

\textbf{Insularius.} A tenant in a rented dwelling in an \textit{insula}. \textit{Insularius} is also the guard or administrator of a tenement house.

\textbf{Integer.} Unchanged, untouched, whole. \textit{Res integra} = an unchanged legal or factual situation. \textit{Integer}, when used of the reputation of a person = blameless, impeccably, upright. —See \textit{Homo integrae frontis, mors, locare ex integro, retractatio causae}.

\textbf{Integritas.} Uprightness, integrity.—See \textit{Integer}.

\textbf{Intellectus.} The power of understanding, of judging (\textit{intellegere}). Insane persons have no \textit{intellectus} (\textit{intellectus carens}) and are therefore not able to conclude a legal transaction. With regard to dumb or deaf persons, the decisive element is whether they have \textit{intellectus} or not. —See \textit{Furius's, mutus, surdus}.

\textbf{Intellegere.} To understand. With regard to persons having only physical (not mental) defects (deafness, blindness, muteness) and those acting with the assistance of their guardians, the requirement that they understand what is being done is imperative. —See \textit{Intellectus}.

\textbf{Intelligi.} Used primarily in impersonal form (\textit{intelligiitur} = it is considered) or in locations such as \textit{intellegendum est} (= it is to be considered), refers to instances in which a legal or customary rule prescribed a definite estimation of certain doings or in which a jurist recommends a certain interpretation of specific words or facts.

\textbf{Intendere.} Used of the plaintiff's claim in trial. \textit{Intendere} is also a general term to indicate the activity of a person seeking justice in court, either in a civil (\textit{intendere actionem, litem, syn. agere}) or in a criminal matter (\textit{intendere accusationem, syn. accusare}). —See \textit{Intentio}.

\textbf{Intentare.} Appears frequently in imperial constitutions with reference to criminal matters as syn. with \textit{intendere} (= to accuse).

\textbf{Intentio.} An intention, design. In criminal trials \textit{intentio} = the accusation by an accuser (\textit{accusator}) or an incrimination by an informer.

\textbf{Intentio.} In formulary procedure, "that part of the formula in which the plaintiff comprehends his claim" (Gaius 4.41). "If it appears that \textit{X} (name of the defendant) ought to pay to \textit{Y} (name of the plaintiff) the sum of . . . " is the wording of an \textit{intentio certa} since the amount of the payment due is indicated precisely therein. An \textit{intentio incerta} says instead: "Whatever (\textit{quidquid}) it appears that the defendant ought to pay to the plaintiff." In an \textit{actio in rem} (for the recovery of a thing) the \textit{intentio} says: "If it appears that . . . (designation of the thing, e.g., the slave \textit{X}) belongs to . . . (the plaintiff) under Quiritary law." The \textit{intentio} is expressed in the form of a condition "if it appears (\textit{si parest})," upon which the condemnatory judgment depends, because, if the condition does not materialize (\textit{si non parest} = if it does not appear), the judge must absolve the defendant. In certain exceptional cases, the whole formula consists only of an \textit{intentio}, as in \textit{formulae praetudiciales} in which no specific claim is expressed but only a question is posed (for instance, whether one is a freedman or what was the amount of the dowry), which is preliminary to a subsequent legal measure. —In postclassical procedure, \textit{intentio} is any assertion of the plaintiff which must be proved by him. —See \textit{Praeudicia, si parest}.

Aubert, \textit{Formules sans i. Méli Girard 1} (1912) 35; Berger, \textit{KrV} 16 (1914) 77; Juncker, \textit{Sic Ruccobono} 2 (1936) 325; Philonenko, \textit{RIDA} 3 (1949) 231.

\textbf{Inter absentes} (praesentes). See \textit{Absentes}.

\textbf{Inter vivos.} Refers to legal acts which have to produce legal effects while the interested parties are still alive. \textit{Ant. mortis causa.} —See \textit{Donatio mortis causa}.

\textbf{Intercalar.} See \textit{Lex acilia de intercalando, mens intercalaris}.

\textbf{Intercedere.} See \textit{Intercessio}.

\textbf{Intercessio.} (From \textit{intercedere}.) To assume on oneself another's debt or a liability for another. For the interdiction of intercession of women, see \textit{Senatus-consultum velleianum}. According to its terms, an \textit{intercessio} embraced all kinds of assumption of an obligation for another, either primary or accessory one (suretyship, pledge, novation), in other words any obligation assumed by an agreement with another's creditor and concerning a third person's liability. —See \textit{Senatusconsultum velleianum} (Bibl.).

\textbf{Intercessio.} In public law, a veto by a higher magistrate against an official act (decision) of his colleague (e.g., by one consul against an act of the other) or of a magistrate of a lower rank (e.g., by a consul against the act of a praetor). The performance of the act (the execution of the decision) was thus inhibited. Of greatest importance was the veto power of the plebeian tribunes over the official acts not only of other tribunes but of any magistrate. By vetoing the proposal of a bill made by any magistrate before a popular assembly or in the senate they could paralyze legislative activity, as well as any motion presented before the assemblies. The introduction of the tribunician \textit{intercessio} was aimed at the protection of the interests of the \textit{plebs} against abuses by magistrates, but in practice the institution turned out to be an important political weapon used by the tribunes for personal purposes. No \textit{intercessio} was permitted against an act of a dictator. —See \textit{Tribuni plebis, auctoritas senatus}.
Interdictio. An order issued by the competent authority, originally a popular assembly, excluding a person from a certain territory (Italy or a province) or from the whole state with the exception of a certain place (*lata fuga*).—See EXILIUM.

Interdictum. An order issued by a praetor or other authorized official (proconsul in the provinces) at the request of a claimant and addressed to another person upon whom a certain attitude is imposed: either to do something or to abstain from doing something. The interdictal procedure is more administrative than judicial in nature and differs from a normal trial in that there is no division of the proceedings into two stages inasmuch as the issuance of an *interdictum* depends upon the magistrate as an act of his *imperium*, not of jurisdiction. The *interdictum* is a peremptory remedy with the purpose of protecting existing situations by a quick decision of the official. It fulfills its task—a speedy ending of a controversy—only when the adversary complies with the order. If he does not, the subsequent procedure which assumes the form of a normal trial, though not without certain particularities resulting from the fact that an interdict had been issued, is rather complicated and perhaps even slower than an ordinary process. The interdictal procedure is very summary; no long hearings of witnesses, no examination of evidence. What the plaintiff, i.e., the person who asks for the *interdictum* (*postulare interdictum*) affirms is taken for granted, if the authority considers that his claim deserves protection either in his interest or in public interest. If the assertions of the claimant are not true, the defendant will disregard the order and defend his right in the subsequent ordinary trial. Various interests are defended by interdictal protection. They are of both private and public character. In Justinian's law the differences between actions and interdicts are effaced. What was formerly proposed in the praetorian Edict as a form of interdict—an order or a prohibition—is in Justinian's law a legal rule. Acting against that rule may give rise to a judicial trial, just as in classical times a trial followed the transgression of an *interdictum* in a specific case, although the later procedure is quite different. Many interdicts lost their applicability entirely, however, and references to them were deleted or made unrecognizable by Justinian's compilers. The reconstruction of the formula of interdicts is therefore sometimes problematic. The law of interdicts is presented in the following items. The various types or groups of interdicts are specified below under *interdicta*, particular interdicts under *interdictum*. Some interdicts took their name from the initial words of the pertinent form.—

Interdictio aquae et ignis. See *interdictum aquae et ignis*.

Interdictio bonorum. See *interdictum bonorum*.

Interdictio locorum. An order issued by the competent authority, originally a popular assembly, excluding a person from a certain territory (Italy or a province) or from the whole state with the exception of a certain place (*lata fuga*).—See EXILIUM.

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Interdicta adipiscendas possessionis. These belong to the group of possessory interdicts serving for the protection of possession (possessor). The purpose of the possessory interdicta is either the acquisition of possession by a person who had not had it at all before, interdicta adipiscendas possessionis (such as, for instance, interdictum quorum bonorum, interdictum quod legatorum, interdictum salviainum), retention of possession by the actual possessor, interdicta reihendae possessionis (interdictum uti possessor, interdictum utrum) or resumption of possession (interdicta recuperanda possessionis) by the claimant who had been violently ejected from his land or house (interdictum unde vi).—See EXCEPTIO ANNALIS.

Berger, RE 9, 1615; Siber, Scr Ferrini 4 (Univ. Sacro Cuore, Milan, 1949) 96; Levy, ibid. 3 (1948) 109; idem, West Roman vulgar law, 1951, 243.

Interdicta annalia (annua, temporaria). Those interdicta which can be requested only within one year after the allegedly wrongful act was done against which the plaintiff demonstrates. Ant. interdictum perpetuum which are not limited as to time.—See EXCEPTIO ANNALIS.

Berger, RE 9, 1620; 1689; 1690.

Interdicta de cloacis. Several interdicts are granted for the maintenance of public and private sewers in good condition in the interest of public health. Any attempt to damage them or to prevent their repair could be frustrated by an appropriate interdictum.

Berger, RE 9, 1633; Solazzi, Tutela delle servitù prediali, 1949, 79.

Interdicta de divinis rebus. Ant. interdicta de humanis rebus. This distinction of interdicta is based on that of res divini iuris and res humani iuris. Among the interdicta de humanis rebus there are some which serve for the protection of things which belong to nobody (res nullius) as the interdictum de Romine libero exhibendo, of things which are in the private ownership of individuals (res singulorum) or of things used by the people (interdictum de fluminibus publicis, de vils, de locis publicis). Some of them refer to single things, others to a universitas rerum (interdicta de universitate).

Berger, RE 9, 1627.

Interdicta de fluminibus publicis. They are accorded for the protection of navigation on public rivers (fluminia publica). Any construction on the bank (see ripa) or in the river proper which impedes the traffic of boats, the use of the harbors, the access to the river, etc., can be prevented by one of these interdicts which on the other hand were extended as interdicta utilia on similar wrongdoings on the seashore or harbor. When the construction has already been executed, the interdict orders its destruction and restoration of the former state.—D. 43.12; 13; 14; 15.

Berger, RE 9, 1634; Branca, AnTr 12 (1941) 40, 177.

Interdicta de fonte. These serve for the protection of the servitus aquae haustus.—D. 43.22.

Berger, RE 9, 1637; Lenel, Edictum perpetuum (1927) 480; Solazzi, Tutela delle servitù prediali, 1949, 77.

Interdicta de humanis rebus. See INTERDICTA DE DIVINIS REBUS.

Interdicta de itinerebus publicia. These protect the use of public roads against any act which may hinder traffic. A specific interdictum is granted to anybody who is impeded in repairing a damaged public road.—D. 43.7; 11.

Berger, RE 9, 1641; Lenel, Edictum perpetuum (1927) 458.

Interdicta de locis publicis. These serve for the protection of public places against damage or harmful constructions which may impede their public use. Obstacles already constructed are interdictally ordered to be removed.—D. 43.8; 9.

Berger, RE 9, 1643; 1654; Lenel, Edictum perpetuum (1927) 459; Branca, AnTr 12 (1941) 169.

Interdicta de reficiendo. There are several interdicts which refer to particular situations when neighbors in connection with predial servitudes (servitutes praediorum). Using the neighbor's land for the exercise of a servitude (itter, actus, via) sometimes requires the possibility of entering it in order to repair the way if the owner is not bound to do so. To secure this right to a person entitled thereto an interdictum is proposed “for repairing” (de reficiendo), such as interdictum de fonte reficiendo, de itinere actuque privato reficiendo, de sepulcro reficiendo, de cloaca privata reficiendo, de rivio, de ripa munienda. For similar interdicta with regard to public roads, see INTERDICTA DE ITINERIBUS PUBLICIS.

All these interdicta are prohibitory since the order of the praetor, vim fieri veto, is addressed to anyone who prevents the claimant from doing the necessary work.—See RIPA, INTERDICTA PROHIBITORIA.

Berger, RE 9, 1653 no. 4a; 1657 no. 6b; 1640; 1647 no. 24.

Interdicta de universitate. Interdicta the object of which is a complex of things, as, for instance, an inheritance (interdictum quum hereditatem, interdictum quorum bonorum). Berger, RE 9, 1627.

Interdicta duplicia. See INTERDICTA SIMPLICIA.

Interdicta exhibitoria. See INTERDICTA RESTITUTORIA.

Interdicta in praesens vel praeteritum relata. The distinction is based on the circumstance whether the actual situation at the moment when the interdictum is demanded or the situation which existed during a
certain period before the postulatio of the interdictum, is decisive for the issuance of the interdict. The latter is the case in the interdictum utrubi.

Berger, RE 9, 1617.

Interdicta mixta. Interdicta of a mixed character being both prohibitoria and exhibitoria.


Interdicta ne vis fiat ei qui in possessionem missus est. Three interdicts are proposed to protect a person who by a praetorian missio in possessionem is granted the right to take possession of another’s property. They are prohibitory since the order forbids the use of force to prevent the claimant’s entry.

—D. 43.4.

Berger, RE 9, 1656.

Interdicta noxalia. See NOX.

Interdicta perpetua. See INTERDICTA ANNALIA.

Interdicta popolare. See INTERDICTA PRIVATA.

Interdicta privata. Ant. interdicta popolare. The distinction is based on the same principle as that of actions in actiones privatae and actiones publicae. Interdicta popolare are those interdicta which may be requested by “anyone from the people.” Although most of the popular interdicta are introduced in the interest of public utility (utilitas publica), this element is not decisive for the distinction in question. In the interdictal form, the private character of the interdicta is recognizable by the reference to the claimant through the pronoun illis or us, lacking in the interdicta popolare.—See ACTIONES POPULARES.

Berger, RE 9, 1621.

Interdicta prohibitoria. Those interdicta in which the magistrate’s order contains a prohibition (aliquid fieri prohibet). They impose upon the defendant the duty not to do the thing exactly indicated in the interdictal formula through “ne... facias,” “ne... immittas,” or not to hinder the plaintiff in the exercise of his right. The prohibition is expressed by the words veniam fieri veto (= I forbid the use of force), where veniam is used in a broader sense and not precisely as force or violence. The interdicta prohibitoria constitute together with the interdicta restritutoria and exhibitoria the principal division of the interdicta.

Berger, RE 9, 1611.

Interdicta quae causam proprietatis habent. Ant. interdicta quae possessionis causam habit. The distinction appears only in one confused text and has given occasion to controversial interpretation. It may be of postclassical or Justinian origin and is based on the distinction whether the interdict takes into consideration the ownership of a thing or only possession.

Berger, RE 9, 1618; idem, ZSS 36 (1915) 183.

Interdicta reciprandae (recuperandae) possessionis.

See INTERDICTA ADIPISCENDAE POSSESSIONIS.

Interdicta restitutoria. Order the restoration (restitutus) of things to their former condition or of possession to the plaintiff who has been deprived of it. They are distinguished from interdicta exhibitoria, which order the defendant to produce (“exhibeas”) a person (a free man, a slave, a child; see interdictum de homine libero exhibendo, interdictum de libris exhibendis) or a thing (a testament, see interdictum de tabulis exhibendis) held by him, but do not impose the duty to deliver the person or the thing to the claimant. Both types of interdicta are also called decretum.—See INTERDICTA PROHIBITORIA.

Berger, RE 9, 1613.

Interdicta retinenda possessionis. See INTERDICTA ADIPISCENDAE POSSESSIONIS.

Interdicta simplicia. Ant. interdicta duplicia. The distinction is based upon the role of the parties in the interdictal proceedings. Simplicia are those in which one party is the plaintiff and the other the defendant to whom the prohibitory order is addressed or by whom things have to be restored or produced. In the interdicta duplicia both parties are at once defendant and plaintiff, as in the possessorial interdicta uti possidentes, utrubi. Here the praetor speaks “in an equal language” (pari sermoni, Gaius 4.160) to both parties. In the terminolgy of Justinian’s compilers, interdicta duplicia are those interdicta which exceptionally aim at acquiring and regaining possession; see interdictum quam hereditatem, interdictum quem fundum.

Berger, RE 9, 1616; idem, Vol. 1, onorante Simoncelli, 1915, 186; idem, ZSS 36 (1916) 222; Arangio-Ruiz, DE 4 (1926) 69.

Interdicta temporaria. See INTERDICTA ANNALIA.

Interdicta unde vi. See INTERDICTUM DE VI.

Interdicta utilia. These are created by the extension of a normal interdictal formula beyond its limits. Thus a normal interdict becomes available to a larger group of persons and applicable to situations different from those protected by the original interdictum. The interdicta utilia are a creation analogous to actiones utiles, but the term interdictum directum is not to be found in the sources.

Berger, RE 9, 1623.

Interdictum de aqua. Issued for the protection of servitudes consisting in the use of water from another’s property.—See SERVITUS AQUAE DUCTUS, CASTELLUM.—D. 43.20.

Berger, RE 9, 1630; Lenel, Editum perpetuum1 (1927) 479; Solazzi, Tutela delle servitut prediali, 1949, 66.

Interdictum de arboribus caedendis. Accor ded to the owner of an immovable against a neighbor who, does not remove tree branches hanging over the plaintiff’s property. The latter may cut them and keep the wood if the tree owner does not obey the interdictal order.—D. 43.27.

Berger, RE 9, 1632.
Interdictum de glande legenda. Granted to protect the right of the owner of a tree to collect the fruits that fall on the neighbor’s property.—D. 43.28.
Berger, RE 9, 1638; Lenel, Edictum perpetuum¹ (1927) 487.

Interdictum de homine libero exhibendo. A man who unlawfully holds (relinse) a free man as a slave is ordered by this popular interdictum to produce the man in court.—See lex fabia.—D. 43.29; C. 8.8.
Berger, RE 9, 1638; Lenel, Edictum perpetuum¹ (1927) 487.

Interdictum de itinere actuque privato. Serves for the protection of the servitutes iter and actus. The order is directed to the owner of the land on which the servitude is imposed, to the effect not to hinder the plaintiff in the exercise of his right.—D. 43.19.
Berger, RE 9, 1639; Lenel, Edictum perpetuum¹ (1927) 478; Biondi, Actio negativa, AnMax 3 (1929) 55; Solazzi, Tuitia delle servitù prediali (1949) 57; Dauba, RIDA 6 (1951) 40.

Interdictum de liberis ducendis. See the following item.

Interdictum de liberis exhibendis. When a person alieni iuris (filius or filia familias) is held by another, even by a member of the same family, against the will of his pater familias, the latter may request this interdictum which orders that the person withheld be produced (exhiberi). If through the exhibition the identity of the person involved was established, the magistrate issued a second interdict, de liberis ducendis, ordering his delivery to the pater familias, who then takes him home (ducere). Therefore the first interdictum is called preparatorium with reference to the second. In later development analogous interdicts were introduced: de usore exhibenda and de usore ducenda in favor of a man whose wife was withheld by another, even her father.—D. 43.30; C. 8.8.
Berger, RE 9, 1641.

Interdictum de liberto exhibendo. This was issued in favor of a patron whose freedman, being held by another person, was not able to render the services due to the patron.
Berger, RE 9, 1643.

Interdictum de loco publico fruendo. A lessee of public land may request the issuance of this interdictum to secure his unimpeded use according to the lease agreement.—D. 43.9.
Berger, RE 9, 1643.

Interdictum de migrando. Granted to the tenant of a rented apartment against the landlord who retained his things under the pretext that the rent has not been paid. A distinction is made, on the one hand, between things which the tenant hypothecated to the landlord and those not hypothecated, on the other hand between things which were brought in by the tenant (introducta, importata, such as furniture, slaves) and those which were afterwards made by him or became his (slaves born in his house). The tenant who wants to move (migrare) to another place applies for this interdictum in order to release his property.
Berger, RE 9, 1646; Lenel, Edictum perpetuum¹ (1927) 490; Kreller, ZSS 64 (1944) 313.

Interdictum de mortuo inferendo. When somebody has the right to bury a deceased person in a certain place that belongs either to him or to someone else (ius mortuum inferendi), he is protected by this prohibitory interdict against any disturbance in so doing.—D. 11.8.
Berger, RE 9, 1646.

Interdictum de precario. See precarium.

Interdictum de ripa munienda. See ripa.

Interdictum de rivis. The free access of the user of water-works, aqueducts, sluices, channels, cisterns, etc., for purposes of repair or cleaning is protected by this interdictum against anyone who attempts to prevent him from so doing. The interdictum is complementary to the interdictum de aqua.—D. 43.21.
Berger, RE 9, 1647; Lenel, Edictum perpetuum¹ (1927) 480; Solazzi, Tuitia delle servitù prediali, 1939, 73.

Interdictum de sepulcro aedificando. This is connected with the interdictum de mortuo inferendo inasmuch as he who has the right to bury a corpse in another’s property must be permitted to erect a tombstone on the grave.—D. 11.8.
Berger, RE 9, 1648.

Interdictum de superficiebus. See superficies.—D. 43.18.
Berger, RE 9, 1647; Lenel, Edictum perpetuum¹ (1927) 476; H. Vogt, Das Erbbaurecht, 1950, 86.

Interdictum de tabulis exhibendis. Issued in the interest of a person to whom it is important to know the contents of a last will after the testator’s death. The interdictal order compels the holder of the testament to produce it.—D. 43.5.
Berger, RE 9, 1648.

Interdictum de uxore ducenda (exhibenda). See interdictum DE LIBERIS EXHIBENDIS.
Berger, RE 9, 1642 (no. 12 c).

Interdictum de vi. This belongs to the group of interdicta unde vi which serve for regaining possession (interdictum recuperandae possessionis) on behalf of persons who have been deprived of possession by physical force (vi desecti). He who gave order to others (family members, slaves) to dispossess, was also responsible. When the aggressor acted with the assistance of armed persons engaged for this purpose (vis armata), a special interdictum de vi armata was issued. Another interdictum was proposed for the case of rejection of a person by force from an immovable on which he had only an usufruct.—D. 43.16; C. 8.4.
Interdictum de viis publicis. There are several interdicts protecting the use of public roads and ways by private individuals. Analogous prohibitory interdicts are granted with regard to public areas (loca publica) such as squares, streets, islands, market places, etc., which "are intended for public use" (D. 43.8, 2.5.). These interdicta forbid any construction at a public place which might damage it or render it less available for use. Not only are constructions built on the road or place itself, e.g., a monument, hit by the prohibition but also works done on adjacent lands which directly or indirectly damage the place in question. Constructions permitted by law or by the local authorities are exempt from the prohibition. The demolition of a harmful work already done may be obtained by similar interdicts of restitutory character, by which restoration of the place to its original state, the removal of the obstacles, or reconstruction of what was damaged is ordered.—D. 43.8; 9.
Berger, RE 9, 1649; 1653 (no. 35); Lenel, Edictum perpetuum 1 (1927) 489.

Interdictum demolitorum. See operis novi nuntiatio.

Interdictum ex operis novi nuntiatione. See operis novi nuntiatio.

Interdictum fraudatorium. In classical law one of the measures to rescind any transaction (alienation) by which a debtor intentionally deprived himself of his rights or of his property to the detriment of his creditors (fraudanai causa). The purpose of the interdictum was the restoration of the legal situation which existed before the fraudulent act. Other means leading to the same effect were actio Pauliana and in integrum restitution. The relationship between these different expedients is rather obscure since the interdictum fraudatorium is effaced in Justinian sources.—D. 42.8; C. 7.75.—See fraus.
Berger, RE 9, 1650; Lenel, Edictum perpetuum 2 (1927) 493; G. Maiser, Praetorische Berichtigungsblagen, 1932, 73; G. Segrè, BIDR 48 (1941) 38; Solazzi, Revoca degli atti fraudolenti 1 (1943).

Interdictum momentariae possessionis. See possessio momentaria.

Interdictum ne quid in loco sacro religioso fiat. A prohibitory interdictum serving for the protection of sacred and religious places (see res religiosae, res sacræ), similar to those which are granted for use of public roads and places (interdictum de viis publicis). It is directed against all kind of wrongful doing (facere, such as constructions, and immittere, e.g., to let water run).—D. 43.6.
Berger, RE 9, 1655.

Interdictum ne vis fiat aedificanti. See aedificatio.

Interdictum possessorium. See bonorum venditio.
Berger, RE 9, 1657.

Interdictum quam hereditatem. An interdictum issued when in a trial for recovery of an inheritance (hereditatis petitio) the defendant, i.e., the actual possessor of the estate, refused to cooperate in the manner prescribed for actiones in rem, e.g., to give security. In such a case he is considered indeffensus, not defended as prescribed by the law, and his adversary could request the issuance of the interdictum quam hereditatem which was an interdictum adscriptae possessionis since the claimant obtained possession of the estate. The new situation, although provisional, was of great advantage to him inasmuch as in any future process that might be brought against him by the former defendant in the interdictual controversy he had the favorable position of defendant. Some other interdicts are constructed on similar premises, such as interdictum quem fundum when the object of the claim is land, interdictum quam servitutem, when a praelial servitute is claimed, or interdictum quem usufructum when the claimant demands the delivery of an immovable on which he pretends to have the right of usufruct. In all these cases the victorious claimant obtains provisional possession of the controversial object.
Berger, RE 9, 1650; idem, Vol. di omorurze Simoncelli, 1913, 186; Lenel, Edictum perpetuum 1 (1927) 474.

Interdictum quam servitutem. See interdictum quam hereditatem.

Interdictum quem fundum. See interdictum quam hereditatem.

Interdictum quem usufructum. See interdictum quam hereditatem.

Interdictum quod legatorum. When somebody holds a thing under the pretext that it was bequeathed to him, he may be sued in interdictual proceedings by the heir under praetorian law (bonorum possessor), who denies the legacy, for recovery. The claimant must give security for the return of the thing if there is a valid legacy.—D. 43.3; C. 8.3.

Berger, RE 9, 1661; Lotmar, ZS 31 (1911); Perrot, Et. Girard 1 (1913); Lenel, ZS 52 (1932) 282.

Interdictum quod vi aut clam. A restitutory interdict issued against a person who forcibly (vi) or secretly (clam) did a "work" on the claimant's property. The work (opus) is here conceived in the broadest sense of any act done which changes the state of the land or its surface, such as cutting trees, ploughing, digging, demolition of existing constructions, etc. Vis (=force, violence) is also interpreted very broadly since any action taken against the prohibition by the owner is considered to be vis. The defendant is also liable for his slave's wrongdoings. The aim of the interdictum is restoration to the former state by the defendant himself or at his expense.—D. 43.2; C. 8.2.

Berger, RE 9, 1662; Cigogn. I. quod vi aut clam; 1910; E. Levy, Konkurrenz der Aktionen 1 (1918) 293; Lenel, Edictum perpetuum 1 (1927) 482; Marcel David, Études sur l'é. q.v. a. c., Annales Univ. Lyon, 3rd sér., 10 (1947).
Interdictum quorum bonorum. An interdictum available to a successor under praetorian law (bonorum possessor) against anyone who holds things belonging to the estate and asserts to hold them as an heir or simply as a possessor without any title (sine causa). If he pretends to hold them as a legatee he is exposed to the interdictum quod legatorum. The interdictum belongs to the category of interdictum adisipendae possessionis.—D. 43.2; C. 8.2.—See bonorum possessor.

Berger, RE 9, 1666; Humbert and Lécrivain. DS 4 (s.c. quorum b.); De Mariano, ANAP 58 (1937) 348.

Interdictum Salvianum. An interdictum available to a landlord against his lessee for the latter's failure to pay the rent due. The interdictum is adisipendae possessionis, since the claimant obtains possession of the tenant's things which were brought in (imvcta, illata) and pledged for rent. It is prohibitory because the tenant is forbidden to impede the landlord in taking away the things.—D. 43.3; C. 8.9.

Berger, RE 9, 1667; Sacchi, NDI 7; Lenel, Edictum perpetuum1 (1927) 490; Kreller, ZSS 64 (1944) 320; v. Bolla, RE 18, 2479; Daube, RIDA 6 (1951) 46.

Interdictum sectorium. See sectio bonorum.

Interdictum secundarium. A second interdictum issued in a possessory controversy when one of the parties involved did not completely fulfill the order or refused to cooperate in the proceedings subsequent to the interdictum first issued in the matter. The details of this complicated procedure are not known since the sole pertinent text in Gaius' Institutes is not fully preserved.

Berger, RE 9, 1670; 1697; Gintzow, AnPal 15 (1934) 228.

Interdictum uti possidetis. Accorded in order to maintain an existing possessory situation at the request of the actual possessor who has been disturbed in the possession of an immovable by the adversary and is threatened with a suit over ownership. The order of the magistrate forbids any change in the actual situation. The interdictum is directed to both the parties; it is an interdictum duplex (see interdicta simplicia) and inhibits the use of force (viri fieri veto) to dispose of the actual possessor. The plaintiff is protected only when his holding of the controversial immovable is not a defective possession (possessio vitiosa), to wit, acquired and kept by force (ut), secretly (clam) or through a gratuitous revocable loan (precario). In such cases the defendant avails himself of the so-called exceptio vitiosae possessionis.—D. 43.17; C. 8.6.

Berger, RE 9, 1682; Anon., NDI 12 (s.c. uti p.); Lenel, Edictum perpetuum1 (1927) 469; Passerini, Atis 1937, 25; Ciapessoni, St Albertini 2 1937 15; Kaser, Eigenium und Besitz, 1943, passim.

Interdictum utrubi. An interdictum based on the same principles as the foregoing, but limited to moveables. It is an interdictum duplex and takes into account the exceptio vitiosae possessionis. Victorious in retaining or regaining possession is the party who, during the year preceding the issuance of the interdictum, possessed the object for a longer period. Justinian extended the interdictum uti possidetis to moveables; thus the interdictum utrubi lost its actuality in Justinian's law.—D. 43.31.

Berger, RE 9, 1684; Lenel, Edictum perpetuum1 (1927) 488; Fraenkel, ZSS 54 (1934) 312; M. Kaser, Eigenium und Besitz, 1943, passim; Daube, RIDA 6 (1951) 32.

Interdictus. An individual punished by banishment, confinement, or any kind of interdictio locorum.—See deportatio, relegatio.—D. 48.22.

Interdum. Sometimes. The word is often inserted by Justinian's compilers to limit a general classical rule and to leave a way open for exceptions. Interpolation of the adverbs plerumque (= very often) and nonnumquam (= sometimes) has a similar function. Guarnieri-Crati, indice (1927) 48, 67.

Interesse. See the following items.

Interest. There is a difference; multum interest = there is a great difference; nihil interest = it makes (there is) no difference.

Interest aliquius. It is of interest (importance) to a person. If the phrase is cius interest refers to a public authority, a magistrate, judge, or imperial functionary is meant. Rei publicae (or publice) interest = it concerns the welfare, the interests of the state (or the Roman people). The term interest is of particular importance in the cases involving payment of damages. There were no general rules for the evaluation of a person's interest when compensation was taken into consideration. It was the judge's task to estimate it in each instance according to the rules governing the extension of the liability of the defendant, in particular as to whether real damages only or also lost profit should be identified.—See id quod interest; quanti ea res est, veritas.

Steinwenter, RE 9; Finiaux, RH 7 (1928) 326; Beretta, SDHI 3 (1937) 419; Guarino, Giurisprudenza comparata di dir. civile, 6 (1941) 197.

Interim. Meantime. The adverb is used with reference to the time intervening between two legally important events, for instance, between the conclusion of a transaction or the bequeathing of a legacy and the fulfillment of a condition upon which the effectiveness of the agreement or legacy depends; or the time between a judgment and the appeal brought against it.

Interitus. (From interiure.) Destruction, extinction. The term is used of the extinction of certain rights (a servitude, a usufruct) or of actions.

Interlinere. To efface, to obliterate a written document (a testament, an account book) wholly or in part. If a person did so illegally, he could be sued by any one who had an interest in the existence of the document, primarily through the actio legis Aquilae.

Interlocutio. An order, a statement or preliminary decision issued by a magistrate, judge or chairman of a tribunal during a trial. Interlocutio is also an
interlocutory statement or decision by the emperor in the course of a trial before the imperial court.—D. 42.1; C. 7.45.—See definitiva sententia, multa praetudicialis.

Aragio-Ruiz, RE 4, 72.

Interminatio. In later imperial constitutions, threatening with punishment for a specific infraction. Intermina causae. In later imperial constitutions, the essential elements of a judicial affair.

Interminius. (Syn. nunius.) A messenger used for the oral transmission of a legally important decision (a declaration, a consent). Ant. of per interminium is per epistolam (= by letter).

Interpellare (interpellatio). To press a debtor who had failed to pay on time, for payment. See MORA.—Interpellare is also used when one sues his adversary in court (hence interpellatio = an action, a suit) or when one forbids another to accomplish a certain act. With regard to usucapio (usucapiio interpellatur), interpellare indicates that the usucapiio is interrupted either through the loss of possession by the holder of the thing or through a successful action of the person who claims the recovery of the thing.

Kaser, RE 16, 255; Biscardi, StsEn 60 (1948) 607 (Bibl. on interpellatio in the case of default); Siber, ZSS 29 (1959) 47.

Interpone. Used of the conclusion of an obligatory transaction (stipulacionem, contractum, donationem, giving security), of taking an oath (interponere nusivandum), of writing down a document (interponere instrumentum), even of committing fraud (interponere fraudem).

Interponere aliquem. To appoint a person as a representative or mediator; see INTERPOSITA PERSONA.

Interponere auctoritatem. See AUCTOR, AUCTORITAS.

Interponere se. When said of a private individual, to interfere, meddle in a legal controversy between other persons; when said of a magistrate = to intervene officially, to take official measures.

Interposita persona. An intermediary, sometimes a straw man interposed in order to disguise an unlawful transaction (syn. supposta persona).

Interpositio decreti. In Diocletian’s and later constitutions, the issuance of a decretum by the emperor or a high imperial official.

Interpres. An interpreter. References to the use of interpreters in judicial proceedings, in hearings before a magistrate or public corporate bodies (the senate, on the occasion of a reception of foreign envoys) are very scarce. In provincial administration the service of interpreters is better evidenced. Their use in imperial courts, in particular in the later Empire, is beyond any doubt (interpretes diversarum gentium). The jurist Paul defined the custom (consuetudo) as “the best interpreter of laws” (D. 1.3.37).

De Ruggiero, DE 4, 72; Taubenschlag, The interpreters in the papyri, Charisteria Sinko, Warsaw, 1951, 361.

Interpretatio. The explanation of the significance of a legal norm or term. Originally the pontiffs who alone mastered the knowledge of the law and legal customs, accomplished the task on interpretation, later it was assumed by the jurists as the men “learned in the law.” The interpretation of the law exercised a great influence on the development of the law from whatever source it originated. This refers not only to the interpretatio of the law of the Twelve Tables, which, being only a limited codification, was unable to satisfy the growing legal needs, but also to the interpretatio of legal customs. The interpretatio prudenum thus became a primary source of law, since it extended the norms of the decemviral legislation to new legal situations and problems and took into consideration customary practices which through the comprehensive activity of the jurists acquired a more perceptible expression. Hence the jurists were later designated as those who iura considerant (= established the law, see iurisprudentia) and their law as a law which “without writing was composed by the jurists and so became a ius civilis proper consisting exclusively in the interpretatio of men learned in the law” (D. 1.2.2.12). The interpretative activity continued when legislative enactments were passed by the people (statutes = leges) and when the praetors began to create new legal rules in their edictal pronouncements. In the later Empire, the interpretation of law became a special province of the emperor and ultimately Justinian made the emphatic statement (Tanta, 21 in fine) that the emperor as the exclusive legislator had the exclusive right to interpret the law (cui soli concussum est leges interpretari; so-called authentic interpretation). The Roman jurists did not elaborate a specific theory of the interpretation of law, some rules of interpretatio are to be found, however, scattered through the Digest, such as: “Whenever a statute provides something there is a good opportunity to add further rules which aim at the same benefit (utilitas = utility) through interpretation or jurisdiction” (D. 1.3.13). “To know the laws (scire leges) means to adhere not to their words but to their force and sense” (D. 1.3.17).

“The term ex legibus (= according to the laws) is to be understood according to both the sense and to the words” (D. 50.16.6.1). Several texts stress the importance of the intention and spirit of a statute. See benigna interpretatio, humanitas.—The interpretatio of the laws is to be distinguished from the interpretation of manifestations of will by private individuals in their legal acts, both unilateral (testimonial dispositions) and bilateral (agreements). Under the regime of strict formalism the ancient law gave no opportunity to differentiate between verba (what has been expressed) and voluntas (the intention) of the party or parties. In the later development, owing to the activity of the jurists, the evaluation of voluntas as against verba gradually in-
creased, starting in the field of testaments and legacies and passing from there into other domains of the private law. Some interpretative directives given by the classical jurists appear in Justinian's legislative work, such as: "If ambiguous utterances occur, the intention of the person who used them should be taken into consideration" (D. 50.17.96). "Where there is ambiguity of words, what (in fact) was acted, is valid" (D. 34.5.21). "Where there is no ambiguity of words, the question of intention should not be admitted" (D. 32.25.1). The final two titles of the Digest contain a large number of interpretative suggestions concerning single words or locutions which are of importance for the understanding of juristic texts (D. 50.16) and a long series of general legal rules (regulae iuris, D. 50.17) of an interpretative nature.—See IUS RESPONDENDI, RESPONSA, VERBA, VOLUNTAS.


Interpretatio duplex. The interpretation of a text in Justinian's codification (primarily in the Digest) from two points of view: on the one hand, what the text meant in the time and the language of the jurist who wrote it; on the other hand, the significance it acquired in Justinian's legislation. Many texts in the final title of the Digest (50.17: On various rules of the ancient law) offer instances for such an interpretation, since certain rules formulated by the classical jurisprudence on a specific occasion and for a specific legal situation were drawn out of their original context and settled as a general rule applicable at all times (sempor or at least "very often" (plerunque). The expression interpretatio duplex is of modern coinage.

Riccobono, BIDR 49-50 (1948) 6.

Interpretationes ad Codicem Theodosianum. Summaries or paraphrases of the constitutions collected in the Codex Theodosianus. They are preserved in the Lex Romana Visigothorum and frequently contain additional remarks and references to other sources. The Lex Romana Visigothorum contains also interpretations of some texts of Paulus' Sententiae. The interpretationes may originate from various private commentaries written to the sources mentioned.—See CODEX THEOSDIANUS.

Kleinfeller, RE 9, 1712; Berger, RE 12, 2400; Scouff, Médi: Fitting 2 (1908) 165; M. Conrat. Der westgotische Paulus, Amsterdam, 1907; Cechini, St sull'interpretatio al Cod. Teodosiano, Scritti in memoria di Monticola, 1913; G. Ferrrari, Osservzioni sulla tramissione diplomatica del Codice Teodosiano e sulla interpretatio Visigothica, 1915; Wiesacker, Symb Frb. Lenel, 1931, 259; Chiara, ANP 16 (1931) 301; Niccolai. RendLomb 75 (1942) 42; Buckland, LQR 60 (1944) 361.

Interpretatores (interpretes) legum, iuris. Justinian refers to the classical jurists by such terms as "the ancient interpreters of the law" or "the interpreters of the ancient law."

Interregnum. The interval between the death of a king and the election of his successor. At the beginning of the vacancy a senator elected by the senate was appointed interrex only for a period of five days. If this period expired without the election of a new king, the interrex designated his successor for the consecutive five days.—See interrex, PRODIRE INTERREGEM.

Liebenam, RE 9; Ehrenberg, RE 13, 1498; Foligno, NDI 7; Giannelli, DE 4 (s.v. interrex); De Ruggiero, DE 2, 823; Heuss, ZSS 64 (1944) 79.

Interrex. See INTERREGNUM. Under the Republic an interrex selected from among the patrician senators was appointed by the senate when both consuls died or abdicated, for five days only. His principal function was to order the election of new consuls. The following interreges were consecutively designated by their predecessors for a five-day term as long as the election was not accomplished.

Giannelli. DE 4, 73.

Interrogatio. In a stipulatio, the question addressed by the future creditor to the debtor.—See STIPULATIO.

Interrogatio. In criminal trials, the question addressed by the court to the accused as to whether he pleads guilty or not. If he admits having committed the crime or if he is silent, which is considered an admission, the proceedings are quickly brought to an end. Interrogatio also means the questioning of a witness.

Berger, RE 9, 1729.

Interrogatio. In the senate, a request for opinion addressed to the senators by the presiding magistrate. The opinion given by a senator = sententia. Syn. sentenias rogare.

Interrogatio in iure. Questioning the defendant in a civil trial. This was a specific institution for the purpose of establishing certain important points regarding the defendant's liability. In some actions in personam the plaintiff was permitted to question the defendant during the first stage of the trial before the magistrate (see in iure) about certain circumstances that were decisive for the further progress of the trial. Thus, in a suit against the heir of his debtor, a creditor could ask the defendant whether he was in fact the heir (in heres sit) and of what share. In noxal actions (see NOXA) the plaintiff asked the defendant whether the son or slave for whose wrongdoings he was being sued was in his power legally and factually (in potestate). These were the two
most practical uses of *interrogatio*. An affirmative answer by the defendant was binding even if it did not correspond to the truth. The fact of the affirmative answer was then inserted into the pertinent procedural formula; actions with formulae so modified were termed *actiones interrogatoriae*. The defendant’s negative answer put an end to the trial. If the plaintiff was able to prove its untruth, the trial was continued and entailed considerable disadvantages for the defendant in case of condemnation. The *interrogatio* was not a general institution relieving the plaintiff of the burden of proof in any trial. There were also instances in which the magistrate might question the defendant in iure about some details which were prejudicial to further proceedings. The *actiones interrogatoriae* disappeared when the civil process ceased to be bipartite.—D. 11.1.


**Interrumpere** (interruptio). To interrupt. With reference to possession, *interrumpere* is mentioned as a negative requisite of usucaption since the interruption makes impossible the usucaption.—C. 7.40.

—See *iusuratio*, *usuvario*, *interpellare*.

**Interusurium.** If the debtor pays the money due on a fixed day before that date, the creditor has the profit (*commodum*) of having the money at his disposal and of being able to lend it at interest for the remainder of the term (*interusurium mediī temporis*). The debtor may deduct the *interusurium* from his payment only if the creditor consents, because the latter is not bound to accept a payment with a deduction before it is due.

De Dominia, ND 7, 87.

**Intervalladilucida** (lucida). Periods during which an insane person regained full mental capacity and, consequently, legal capacity. Syn. *furor interruptus*.—See *furores*, *demens*.

De Francisci, *BIDR* 20 (1921) 154; Solazzi, *AG* 89 (1923) 80; Lenzl, *BIDR* 33 (1923) 227, 45 (1925) 517.

**Interveniens**. A general term to indicate that a legally important event occurred, e.g., an agreement (*stipulatio, pactum*), a wrongdoing creating legal liability (*dolus, fraudus, culpa*), a procedural measure (*cautio, accusatio*), and the like.

**Interveniens** (*interventor, interventio, interventus*). In obligatory relations syn. with *intercedere*. It is frequently used of sureties.

**Interveniens**. In judicial proceedings to intervene in a trial as a representative of a party, either as a general representative (*tutor, curator*) or as one appointed for a specific trial (*procurator*).

**Intercessio.** An embezzlement.

**Intestabilis.** A person who is unable to be a witness at a solemn act requiring the presence of witnesses (e.g., *mancipatio, testamentum per aes et libram*) or to invite another to witness such an act to be made by himself. *Intestabilis* was one who had been convicted of libel (*carmen famosum*) or who had refused to give testimony about an act in which he participated as a witness.—See *improbus testis*.

Manigk, RE 9.

**Intestate.** (Adv.) Refers to a succession in which there is no valid testament. Syn. *ab intestato*.

**Intestatius.** A person who died without leaving a valid testament or whose testament, originally valid, became ineffective because the appointed heirs refused to accept the inheritance or by other reasons. *Ant. testatus*.—See *testamentum ruptum, testamentum irritum, nemo pro parte testatus*, etc.


**Intexter.** To interweave. The owner of a piece of cloth acquires ownership of whatever has been woven into it.


**Intimare.** In the language of the imperial chancery, to perform a legal act before an official or to register it in the official records; to announce official ordinances publicly; to send official instructions to the appropriate offices.

**Intra.** Within. With regard to a period of time, the word includes the last day, e.g., *intra centum dies* takes in the hundredth day. *Intra* with regard to years includes the last year in full. This kind of reckoning is applied to acts to be accomplished *intra* a certain lapse of time. In later imperial constitutions, *intra* connected with a number of days or months means exactly the last day of the term. For *intra milliariuin*, see *millarium*.

**Introducta.** (Syn. *importata*.) Things brought into a rented apartment by the tenant (furniture, slaves, etc.). The analogous expressions in the lease of land are *inventa*, *illaia* (furnishing, tools, instruments of husbandry, cattle, slaves, etc.).—See *indeficiunt de migrando*.

**Introductio actionis* litis (introducere actionem, *litum*). Starting a civil trial. In Justinian’s language *introductio litis* is syn. with *litis contestatio* as conceived in the procedure of his time.—See *litis contestatio*.

**Introire domum alicuius vi.** To invade another’s house by violence. It was punished under the *lex cornelia de iniuriis*.—See *domus*, *ingredi*.

**Introire fundum.** To enter a landed property in order to take physical possession thereof. It sufficed to set foot on any part of it.—See *possessor*.

**Introitus.** The sum paid for obtaining a subaltern post in the civil service.—See *militia*.

Marchi, *AG* 76 (1906) 319.

**Intuitus.** With regard to, in consideration of. The term is frequent in later imperial constitutions and those of Justinian in connection with *humantia* or
pietas (intuitu humanitatis, pietatis). In the Digest the word is rather suspect as to its classical origin.

Guarneri-Citati, Indice (1927) 49.

Inulta mors. A murder which has remained unavenged (without prosecution) by the dead man's son. The latter was held unworthy (indignus) to benefit from the will of the father.

Inustus. (From in uerre.) Stigmatized, branded by iniary (in the language of imperial constitutions).

—See infamia.

Inutilis. Legally ineffective. The term is used of acts (testaments, transactions, actions) which are void because of the non-fulfilment of a legal requirement.

Inutiliter = without legal effect.—Inst. 3.19; C. 8.38.

Hellmann, ZSS 23 (1902) 422.

Invadere. To enter with violence another's immovable in order to take possession of it (invadere bona, possessionem).—See ingredi, introire.

Invalidus. See validus.

Invasio (invasor). The act of committing an invadere (the person who does it).—See invadere.

Invecta (illata). See introducta, interdictum de migrando.

De Villa, NDI 7.

Inventarium. An inventory of property (e.g., belonging to a ward). An inventarium should be made by a guardian, when he assumed the tutorship, in his own interest since his liability for the administration is limited to the amount of the ward's property. Such an inventory became later obligatory. Syn. repertorium. An inventarium was also made by creditors who obtained missio in possessionem into the property of a bankrupt debtor. The inventarium had a particular importance in the law of succession; see beneficium inventari.

Kaser, RE 7A, 1571.

Inventor, thesauri. A person who finds a treasure-trove.—See thesaurus.

Investigare (investigator). To search for a criminal or a fugitive slave; to investigate a crime. Syn. inquirere (see inquisitio), quaerere.

Invicem. Mutually, reciprocally. With regard to agreements, in vicem denotes that both parties assume reciprocal obligations (obligari, debere) and each party thus is both creditor and debtor.

Invitator. An imperial functionary charged with sending out invitations to appear before the emperor. He also assisted at the audiences in the imperial palace.

Invitus. One against whose will or without whose consent something is done. "An invitus is not only he who contradicts, but also someone of whom it is not proved that he has agreed" (D. 3.3.8.1). Generally, no legal effect is produced for or against a person by an act for the validity of which his consent was required but not given. Acquisitions, however, made by a slave for his master even without his will are valid. The payment of another's debt releases him from it even against or without his will. Remarkable rules are the following: "No one can be forced to bring a suit or to accuse against his will" (C. 3.7.1). "No one is given a benefit, a favor, against his will" (D. 50.17.69).—See emptio ab invito, noleens, nemo invitus.

Fadda, St Brugi, 1910, 145.

Iocus. A joke. A stipulation made for the sake of a joke (per iocum) does not create an obligation.

Ipse. Used in Justinian's language in lieu of is (= he). It is an evident Grecism, and therefore considered a criterion of interpolation when it appears in classical texts in the Digest.

Guarneri-Citati, Indice (1927) 49.

Ipso iure. By virtue of the law itself. The location is opposed to ope exceptionis (= by virtue of an exception) or to tuitione praetoris (by the aid of a praetorian remedy).—See aditio hereditatis.

Iracundia. Anger, irritation, indignation. "Whatever is done or said in the heat of anger is not considered binding, unless it appears through perseverance to have been an act (judgment) of the mind" (D. 50.17.48 = D. 24.2.3). A wife who had left her husband in a state of irritation and returns to him after a short time is not held to have been divorced (D. ibid.).

Ire. As a servitude, ins evundi.—See iter, actus. Via ire ad iudicem (judicium). To proceed judicially; to go to court after having been summoned. Ire ad arbitrum = to appear before an arbitrator to settle a controversy.

Irenarcha. A provincial officer charged with the functions of a justice of the peace and with the maintenance of public order. He conducted criminal investigations.—C. 10.77.

Iri in bona (possessionem). To be granted possession of another's property through a decree of the praetor. Syn. miti in bona, miti in possessionem.—See missio in possessionem, vaca possessio.

Irnerius. (Also Guarnierius.) A famous jurist of the late eleventh and the first decades of the twelfth century. He was the founder of the law school in Bologna which became the center of legal studies in medieval Italy. He is often referred to as lucerna iuris (= the lantern of law) and is considered the initiator of the revival of the study of Roman law in Italy. As teacher of law he enjoyed great esteem and he was one of the most prominent, if not the first, of the so-called Glossators.—See glossatores.

Schupfer, RISS 1894, 346; H. Fitting, Die Summa Codicis des I., 1894; idem, Questiones de iuris substantibus des I., 1894; E. Besta, L'opera di Imerio, 1-2, 1896; Patetta, SiSen 14 (1897); Chiappelli, AG 58 (1897) 354; H. Kantorowicz, Studies in the Glossators of the R. Law, 1938, 33; Zanetti, AG 140 (1951) 72.

Irreverens miles. A soldier who violated military discipline or offended his superior by lack of respect.

—See delicta militum.
Irritus. Invalid (a legal act or transaction), either from the beginning or by a later event. Ant. ratus.

—See Testamentum Iritum.

Irograre. To inflict a penalty (poenam, nullam) either in a normal criminal proceeding or as an act of magisterial coercitio.—See Multi.

Is qui agit. Syn. Actt. is qui agere vult (acturus) = the plaintiff before the litis contestatio; is cum quo agitur = the defendant.—See Reus, Agere, PETITUR.

Italicus. Italian. situated in Italy. Land in Italy (prædia Italic, solum Italicum, terra Italice) is distinguished from provincial land. Only a plot of land situated in Italy (not a provincial one) is a res mancipi and transferrable by mancipatio.—See Ius ITALICUM.

Iter. A rustic servitude (servitus praediorum rusticiorum) which entitles the beneficiary “to pass (ius ambulendi), to walk (ius ambulandi), and to ride on horse-back through another’s land” (D. 8.3.1 pr.). He has not the right to drive a draught animal.—See SERVISSERTES PRAEDIORUM RUSTICORUM, ACTUS, VITAE.

De Ruggiero, DE 4, 120; Arangio-Ruiz, St Brugi, 1910; Saumagne, Revue de philosophie 53 (1928) 320; Grosso, St Albertiano (Estr. 1950) 596.

Iter ad seculurum. Access to a grave through another’s property. Free access (aditus) to a family tomb is granted to persons interested therein either as a servitude or as a revocable concession given through a mediation of the competent official (extra ordinem). The right is not extinguished through non-use.

Iter aquae. See ServiTTes AquaE DUCENAE.

Iter privatum. Indicates both a private road and a servitus itineris (see Iter) through another’s land.

—D. 43.19.—See INTERDICTUM DE ITINERE PRIVATO.

Berger, RE 9, 1639; Marzi, St Bonfante 3 (1930), 619.

Iter publicum. A public road the use of which is permitted to all. For the protection of the public use of such roads, see INTERDICTA DE ITINERIBUS PUBLICIS.

—D. 43.7; C. 12.44.

Berger, RE 9, 1641, 1654.

Iteratio. Holding the same magistracy a second time. Iteratio was permitted only after an interval of ten years. The pertinent rules were often violated for political reasons. Syn. iterum fieri (e.g., consul).

Mommers, Staatsrecht I, 519; Kübler, RE 14, 404.

Iteratio. (In manumissions.) A second manumission was necessary when the first one was performed in a form not recognized by ius civile, or by a master who had only bonitary (in bonis) ownership over the slave. Since such defective manumissions gave the ex-slave restricted citizenship (see LATINI ITUNIANI) a second manumission (Iteratio) in a form prescribed by ius civile or a manumission by the quiritary owner gave the freedman full Roman citizenship.

Steinwender, RE 12, 921.

Iubere. To order, to command. By use of the word iubere a testator instituted an heir (heredem esse iubete) and formulated other dispositions, such as legacies, or manumissions (“Servum meum Stichum liberum esse iubete”). Iubere is also applied to the right of magistrates to issue orders (ius, potestas iubendi), particularly in their jurisdictional activity. All commands issued by the praetor in the first stage of a civil trial, in iure, originate in a iussum (praetor iubet), e.g., stipulaciones priuorias, cautions, missions. Injunctions ordered by the judge (iudex) in the second stage of the bipartite trial are also covered by the term iubere. Precepts in written enactments are referred to by iubere, e.g., lex (senatusconsultum, edictum) iubet. Iubere is also the technical term for the vote of the Roman people when a statute is passed.

—In domestic relations, iubere is applied to the orders given by a father to a son under his paternal power or by a master to his slave, as well to the authorisation given by them to a son or slave to conclude a transaction with a third person which involved the responsibility of the father or master, respectively.—D. 15.4.—See IUSSUM (Bibl.), IUDICARE IUBERE, DICI IUBERE.

Iudaei. Under the Principate, the Jewish religion was recognized by the state as a religio licita which gave its followers the right to build synagogues for religious gatherings, to perform those ceremonies in conformity with their religion, and to have cemeteries. These religious privileges were, however, not respected by all emperors (e.g., Tiberius, Caligula, Vespasian, Hadrian). Legally the Jews were aliens (see PERGERINI), subject to taxation, except for groups and individuals who for one or another reason were granted Roman citizenship. As peregrines they were exempt from military service. After A.D. 49 they had the right of association. Jewish communities had their own courts for litigation between Jews. A Jew was admitted to tutorship over a non-Jew. Of Alexander Severus it is said: “He confirmed the privileges of the Jews (Iudeas privilegia reservavit).” The policy of the Christian emperors varied from toleration and religious neutrality to the most severe restrictions. As a matter of principle, the Jewish religion remained a religio licita, and the synagogues were treated as loca religiosa and were exempt from billeting soldiers. From the beginning of the fifth century the Jews were excluded from public office, but they were subject to public charges (munere). Among the measures taken against the expansion of the Jewish religion were such as the interdiction of the construction of new synagogues (A.D. 415) and of the conversion of persons of other religions under threat of severe penalties. Manifold restrictions in private law were imposed in the later Empire on the Jews with regard to the acquisition of land, ownership of Christian slaves, last wills, marriage with Christians (forbidden and prosecuted as adultery), exclusion from public office and military service. After A.D. 415 Jews were excluded from arbitration in con-
troversies in which one party was a Christian.—C. 19; 1.10.—See senatusconsultae de iudaeis, cir-
cumcision, pirus iudaeorum, universitas iudaeorum.
T. Reimach, DS 3; Jones, OCD (s.v. Jews); Heinemann, 
RE Suppl. 3 (s.v. Antisemitismus); Corradi, DE 4 (s.v. 
Judaism); Mommsen, J. Schriften 3 (1907) 416; W. D. 
Morrison, Gli Ebrei sotto la dominazione romana, 1911; 
J. Juster, Les Juifs dans l'Empire rom., 1-2 (1914); G. 
Costa, Religione e politica nell'impero rom., 1923, 151; La 
Piana, L'immigrazione a Roma, Ricerche religiose 4 (1928) 
193; A. Momigliano, Ricerche sull'organizzazione della 
vol. 3 (1934) 346; Browe, Die Judengesetzgebung Justin-
iani, Analecta Gregoriana 8 (1935) 109; Solazzi, BIDR 
44 (1935/6) 396; idem, ANE 59 (1938) 164; M. Brücke-
meier, Beiträge zur Stellung der Juden im röm. Reich, 1939; 
A. Segré, Note sullo status civitatis degli Ebrei nell'Egitto, 
Bull. Soc. Royale Archéol. d'Alexandrie 28 (1933) 143; 
idem, Jewish Social Studies 6 (1944) 373; V. Colomari, 
Legge ebraica e leggi locali, 1945; Ferrari Dalle Spade, 
FiscH. Wenger 2 (1943) 102; idem, Giurisdizione speciale 
ebraica nell'impero r. cristiano, Scr Ferrini 1 (Univ. 
Cat., Milan, 1947) 239. For further bibl. see R. Marcus, 
A Selected Bibliography of the Jews in the Hellen.-Rom. 
Period (1920-1945), Proceedings of the Amer. Acad. for 
Jewish Research, 16 (1947) pp. 97-141, passim; S. W. 
Baron, A Social and Religious History of the Jews, An-

Iudex. Originally a iudex was any magistrate who de-
cided about a controversy by a judgment (qui ius 
dicit). In the bipartite civil procedure the rendering of a 
judgment (judicium) was separated from ius 
dicere, and the iudex was the private judge. In the 
classical juridistic language iudex was a private in-
dividual (judge) appointed as a judge in a specific 
trial. He was neither a magistrate nor a magistrate's sub-
ordinate, and he was bound solely by the instructions 
given in the formula. The right to serve as a judge was 
denied deaf (sordi), dumb (muti), and insane 
(furiosi) persons, to impuberes, and women. Sena-
tors removed from the senate were excluded from 
judgeship. The circumstance that one was under 
paternal power was no bar. A judge sitting in court 
(cum de re cognoscet) could not be summoned before 
the magistrate (in ius vocatus) by a creditor. Syn. 
judicaris (a term frequently interpolated in lieu of 
any jurisdictional official who did no longer exist in 
Justinian's times). In the later Empire and in Justi-
rian's language iudex is any imperial official who has 
any jurisdiction at all, and iudicis is a collective 
term for all administrative functionaries of the Em-
pire.—See C. 1.45; 1.48; 7.49; Inst. 4.17; D. 11.2.— 
See the following items and album iudicum, de-
cursiae iudicium, lex pinaria, lex sempronia iudi-
ciaria, lex aurelia, contractu iudicium, postcu-
lato iudicis, iurae sibi non liquere, inuiaria 
judicis, suus iudex, iudicem.

Kübler, RE 6, 259; Steinwender, RE 4 and Suppl. 5, 350; 
Kerfer, DS; Boeza, DE 4; Boeza, OCD; Seeckel, Handlexikon 
(1914) 291; Wildemann, Richterwahl im röm. Privatprozessrecht, 1919; J. Ma-
seau, La nomination du iudex unus dans la procédure 
formulaire, 1933; Collinet, Le rôle des juges, Recueil F. 

Geny, 1 (1934) 21; J. Davunilier, La théorie de l'inaria 
judiciaire, Rec. Acad. de législat. Toulouse 13 (1937); Weiss, 
BIDR 49-50 (1948) 194; Jolowicz, RIDA 2 (= Méi De 
Fischer, 1, 1949) 477; Keller, FiscH. Wenger 1 (1945) 
122.

Iudex appellationis. A judge (jurisdictional official) 
vested with the power to decide on appeals from 
decisions of an inferior court.

Iudex competens. A judge competent in a specific 
matter, i.e., legally authorized to examine a judicial 
controversy and to pass judgment. The term com-
petens is frequent in postclassical and Justinian's 
constitutions; the compilers substituted it frequently 
where a judicial magistrate was mentioned in the 
classical work.—C. 7.48.

Iudex compromissarius. An arbitrator selected by 
the parties to a controversy by virtue of a compro-
mise; see compromissum.

Iudex datus. In classical law, a private person ap-
pointed with the cooperation of the magistrate to be 
the judge in a specific trial. In postclassical law = a 
judge appointed by a higher official, primarily the 
provincial governor, to examine a controversy and 
to pass judgment. Syn. iudex pedaneus.

Iudex delegatus. A lower (auxiliary) judge whom a 
higher jurisdictional official appointed for a specific 
case to be examined and decided upon by him.

Iudex esto. The introductory part of the written pro-
cedural formula in which an individual person is 
authorized to be the judge in a specific litigation 
("Titius iudex esto").

Steinwender, RE 9, 2468.

Iudex extra ordinem datus. A judge appointed in a 
cognitio extra ordinem by a jurisdictional official to 
examine a case and deliver a judgment.

Iudex in re propria (sua). A judge in his own affair. 
No one may be judge in his own controversy with 
another (sibi esse iudicum, sibi ius dicere). "It is 
highly improper to give one the liberty to pass a 
judgment in a matter of his own" (C. 3.5.1).—See 
jurisdiction.

Iudex ordinarius. Refers to the governor of a prov-
ince in his capacity as a judge.

Iudex pedaneus. A judge to whom as a iudex dele-
gatus a judicial official assigned a case in the cognitio 
procedure. Provincial governors used to delegate 
minor cases (negotia humiliora) to a iudex pedaneus 
if governmental affairs made it impossible for them 
to act personally.—C. 3.3.

Wissak, RE 3, 3102 (s.v. chamadihaftes).

Iudex privatus. A private individual selected by the 
parties with the cooperation of the judicial magis-
trate to serve as a judge under the regime of the legis 
actiones and the formulary procedure. He examined 
the evidence and rendered the judgment. Hence the 
second stage of a civil trial is termed apud iudicum 
(before the judge). In later imperial constitutions 
iudex privatus is syn. with iudex compromissarius.
Iudex quaestionis. The chairman of the jury in criminal trials in the quaestiones-procedure (also called index quaestionis rerum capitalium), primarily in capital matters. Normally a magistrate of a rank lower than the praetor or an ex-magistrate was charged with such function.

Iudex qui litem suam facit. A iudex who intentionally (dolo malo) gave a false judgment made himself liable (“he makes the trial his”). An action for damages lay against him. This was the case when the judgment exceeded the limits fixed in the written formula. The extension of the judge’s responsibility to judgments delivered per imprudentiam (= by negligence, lack of knowledge) may have been a later innovation.—D. 50.13.


Iudex sacratum cognitionum. See Iudicans.

Iudex specialis. A judge assigned to a particular case by his superior. The term seems to be a postclassical (Justinian’s?) creation.

Iudex suspexsus. A judge whose impartiality is doubted. He may be rejected by the parties involved in a litigation. The term appears only in later imperial constitutions.

Iudex tutelaris (tutelae). A term interpolated for praetor tutelaris.

Iudex unus. One judge conducting the part of the trial called apud iudicem. See in iure. Iudex. Ant. decemviri, centumviri: as collegiate courts, and recu- peratores, a tribunal of three judges.—See IUDICUM LEGITIMUM.

J. Mazerud, La nomination du iudex u. dans la procédure formuleia, 1933; Wenger, ZSS 55 (1935) 424.

Iudicans. See IUDEX.

Iudicans vice sacra. A judge appointed by the emperor to decide in his name as an appellate judge.

Syn. index sacratum cognitionum.

De Ruggiero, DE 2, 323.

Iudicare. The judicial activity, the rendering of a judgment, or decision by a person who is acting as a judge in civil or penal proceedings. In criminal matters, iudicare is opposed to coëcreare (coëcretio) which is not preceded by an ordinary trial. In ancient law, iudicare is syn. with adiudicare = to adjudge a person to his creditor on account of an unpaid debt.

—See RES IUDICATA, EXCEPTIO REI IUDICATAE, IUDICA-
CAMUM.

Betti, RISG 56 (1915) 31; M. Kaser, Das altrom. Ius, 1949, 126.

Iudicare iubere (iussum iudicandi). The order given by the praetor to the private judge to pass judgment according to the terms of the written formula.

Steinwenter, RE 9, 2468; Wlassak, SJW 197, 4 (1921); Lauria, St. Bonifatius 2 (1930) 506; E. Carrelli, La gense del procedimento formuleia, 1946, 121.

Iudicare vetare. To remove a iudex who is or has become unable to exercise his duties.

Iudicatio. See IUDICARE. In the language of later constitutions iudicatio = a judgment (syn. with sententia).

Iudicatum. The condemnatory judgment (sententia) as well as its contents, i.e., the sum of money which the defendant was condemned to pay to the victorious plaintiff, iudicatum = the judgment-debt. Under the classical law the defendant had to pay the judgment-debt within thirty days; otherwise he was sued by the plaintiff in a special action for the execution of the iudicatum, actio iudicati. The action was initiated in the same way as any other action; it was terminated in the in-iure stage through a decree of the praetor ordering fulfillment of the judgment-debt. See ADDICTUS. Only when the defendant contested the validity of the judgment or asserted that he had paid his debt, did the actio iudicati come before a private judge (apud iudicem), and if the allegations of the defendant proved untrue, he was condemned to pay double. In certain cases the defendant was bound to give security that the judgment-debt will be paid (cautio, satisfatio iudicatum solvi), e.g., when a representative appeared at the trial on his behalf. If the defendant appointed a cognitor, he had to provide the guaranty himself; if a procurator acted for him, however, the procurator gave the security iudicatum solvi. Other instances in which such a security was obligatory were when the defendant was a bankrupt (see DECOCTOR), when his property was seized by his creditors by virtue of a missio in possessionem, when an heir suspected of insolvency (see HERES SUSPECTUS) was sued, or when a debtor who had been condemned in a previous trial and did not pay the judgment-debt was sued by actio iudicati.—D. 467.—See CAUTIO IUDICATUM SOLVI, TEMPUS IUDICATUM, DUCI IUBERE, MANUS IN-
ACTIO, RES IUDICATA, EXCEPTIO REI IUDICATAE.

Steinwenter, RE 9; Coq, DS 3; L. Wenger, Die Lehre von der actio i., 1901; P. Gay-Lupny, Le cautio i. solvi, 1906; Duquesne. Mél Gerardin, 1907, 197; idem. Mél Fitting 1 (1907) 321; Pflüger, ZSS 43 (1923) 153; Liebman, St. Bonifatius 3 (1930) 397; Biandi, ibid. 4 (1931) 35.

Iudicatus. A defendant in a civil trial against whom a judgment has been rendered.—See IUDICATUM.—

Syn. condemnatus.

Iudices civilles—militares. In imperial constitutions, civil and military officials exercising special jurisdiction in fiscal and military matters.—C. 1.45; 46; 48.

Iudices decemviri. See DECEMVIRI SITITIBUS IUDI-
CANDIS.

Iudices delicti. Jurors selected from the panel (see ALBUM) for a specific trial.

Iudices maiores—minores. A distinction made in the later Empire and by Justinian between superior and inferior courts.

Iudices sacri. Judges appointed by the emperor primarily for appellate matters.
Iudices selecti. Persons entered in the official panel of jurors (see ALBUM).

Iudicia. See IUDICIA and the subsequent items.

Iudicialis. Connected with the functions of a iudex or the administration of justice.—See STIPULACIONES IUDICIALES.

Iudicarius. Referring to judicial proceedings; see LEGES IUDICIAE.

Iudicio sistere (se sisti). See SISTERE ALIQUEM.

Iudicio (iudicia). Used in various technical senses. It is frequently syn. with ACTIO and comprises the whole process without regard to bipartition; at other times it indicates only the second stage, apud iudicem, i.e., the proceedings before the private judge. Not seldom iudicium refers to the written formula (iudicium in rem, in factum) and at times to the act which separates the two stages of the classical process, the LITIS Contestatio (e.g., ante iudicium, iudicium contestari). The elasticity of the term dimen. its use in the cognito proceedings in which the distinction in ure—apud iudicem no longer exists. There it denotes the whole trial and refers generally to any proceedings before an official acting in a jurisdictional capacity. Finally iudicium is used of the judgment itself (syn. sententia) by which the trial is brought to an end. This last use is hardly classical. Justinian's compilers frequently inserted the term iudicium to replace references to the bipartition of the classical process, in particular when the classical text alluded to the stage in ure or when men. of a classical institution obsolete in Justinian's time had to be deleted (see VADIMONIUM). In criminal matters iudicium refers to the trial as a whole as well as to its initial act (acceusatio) and the process pending (see IUDICIA PUBLICA). The various meanings of iudicium are clarified by the context in which the word appears.—D. 5.1; C. 3.1.—See EXCEPTIO REI IN IUDICUM DEDUCTA and the following items (IUDICIA for various types of actions, IUDICUM for specific actions, both civil and penal).

Leonhard, RE 9; Humbert and Lécivain, DS 3; Flore, DE 4; Kübler, ZSS 16 (1895) 137; Jobbé-Duval, MéI. CornuI 1 (1926) 532; Beseler, ZSS 46 (1925) 131, 52 (1932) 292; Lenzl, ZSS 47 (1927) 29.

Iudicia absolutoria. See ABSOLUTORIUS.

Iudicia arbitrariora. See ACTIONS ARBITRARIAE.

Iudicia bona fidei. Contractual actions in which through the clause ex fide bona in the INTENTIO of the written formula the judge (iudex) was given full power to decide the controversial matter according to the principles of good faith, i.e., to estimate what should be paid by the defendant to the plaintiff. The pertinent clause does not refer to the actionability of the case but to the extension of the performance required of the defendant. All actions arising from consensual or real contracts (except mutuum), the actio tutela\oe, rei axoria\oe, negotiorum gestorum, and some others were bona fidei. The authority given to the iudex was broad and it increased gradually; he might take into account former acts added to actionable contracts immediately after their conclusion and modifying their effects (pacta conventa). Ant. iudicia stricta (actiones stricto iuris), the formulae of which had no clause ex fide bona. There the judge could take into consideration only what was expressed in the formula.—See ACTIONS IN BONUM ET AEQUUM CONCEPTAE, CONDENNATIO.

Longo, StS 22 (1903); C. de Francisci, ibid. 24 (1907) 346; BindoI, An.Pal 7 (1920) 3; ech, BIDR 32 (1922) 61; C. Zevenbergen, Karakter en geschiedenis der i.b.f., Amsterdam, 1920; Grosso, StUrb 1927, 1928; idem, RISG 5 (1928); Koschmehr-Lyskowsk, St Riccobono 2 (1935) 159; F. de Martino, La giurisdizione, 1937, 95; Danbe, ZSS 68 (1948) 92.

Iudicia contraria. Syn. actions contrariae; see ACTIONS DIRECTAE, IUDICUM CONTRARIUM.

Iudicia directa. See ACTIONS DIRECTAE.

Iudicia duplicia. Actions in which each party is both plaintiff and defendant. This is the case in divisory actions for the partition of common property (actio communis diviundum, actio familiae euritcundae). The term interdicta duplicia is to be understood in the same sense.—See INTERDICTA SIMPLICIA.

Berger, St Simoncelli (1915) 185; Leone, An.Bari 6 (1943) 187.

Iudicia extraordinaria. Trials conducted in the form of proceedings extra ordinem. See CONGNITO EXTRA ORDINEM. An interpolated text (D. 3.5-46.1) says: "In iudicia extraordinaria the use of written formulae (conceptio formularum) is not observed." Ant. iudicia ordinaria.

Iudicia generalia. Trials in which a complex of disputed matters is examined and decided upon. This occurs when a person (a guardian, a partner, or a negotiorum gestor) administers all or much of another's affairs. Ant. iudicia specialia in which litigation concerns one specific matter, as in the case of actio mandati, depositi, commodati, etc. All actions in rem in which a specific thing (not a complex of things, universitas) is claimed are actions specialiae. The distinction is important in cases in which a special action concurs with a general one or when the settlement of a special controversy appears necessary before a general action can be brought against the adversary.

Peters, ZSS 32 (1911) 179.

Iudicia legitima. Trials between Roman citizens which took place in Rome or within the first milestone of the city, before one judge (iudex unus) only. Ant. iudicia quae imperio continentur (iudicia imperio continentia), in which any one of these requisites is missing. The former are governed by statutory law (see LEGITIMUS), the latter depend upon the imperium of the jurisdictional magistrate. A iudicum legitimum expires (moriit = "dies," see LIS MORITVA) if the trial has not been brought to an end within eighteen months from its beginning (LEX...
Iulia Iudiciaria), whereas a iudicium quod imperio continetur expires with the termination of the imperium of the magistrate before whom the trial began.

Bonifacio. St Araglio-Ruiz 2 (1952) 207.

Iudicia ordinaria. Ant. of IUDICIA EXTRAORDINARIA.

Iudicia poenalia. In a broader sense, merely criminal trials. Syn. poenales causae. In a narrower sense (syn. with actiones poenales) = civil trials involving a penalty to be paid to the plaintiff.

Iudicia populi. Trials in criminal matters before the popular assembly (comitia) when a Roman citizen had been condemned by a magistrate to capital punishment or to a fine (see multa) exceeding the legal maximum (thirty oxen and two sheep or 3,000 asses). In the first case the comitia centuriata were competent, in the second the comitia tributa. The introduction of the quaestiones procedure diminished the role of the iudicia populi.

Bergen. OCD: E. E. Hardy, JRS 3 (1913) 25; Brecht, ZSS 59 (1939) 261.

Iudicia privata. See actiones privatae. Ant. IUDICIA PUBLICA.

Leonhard. RE 9.

Iudicia publica. Proceedings in criminal matters. Ant. iudicium privata. The distinction is clearly manifested in the Augustan legislation (lex Iulia iudiciaria) which deals separately with iudicium publica and iudicium privata.—Inst. 4.18; D. 48.1.


Iudicia quae imperio continetur. See IUDICIA LEGITIMA.


Iudicia specialia. See IUDICIA GENERALIA.

Iudicia stricta. See IUDICIA BONAE FIDEI.

Iudicis postulatio. See POSTULATIO IUDICIS.

Iudicium accipere. Refers to the acceptance by the defendant of the procedural formula proposed by the plaintiff. Through such an agreement made under the supervision of the praetor, the object of the controversy is fixed (lis contestata) and the stage in iure of a civil trial comes to an end. Post iudicium acceptum = apud litis contestatio.—See litis contestatio.

Wlassak. RE 1 (s.a. accipere i.).

Iudicium calumniæ (actio calumniæ). An action for calumnia (see CALUMNIA). If a defendant was sued maliciously, the plaintiff having full knowledge that his claim was unjust, and was absolved, he could bring an action against his adversary for a tenth of the amount claimed in the former trial, but he had to prove that the latter acted calumniæ causa (= with chicanery).—See IUDICIA CONTRARIA.

Hitzig. RE 3. 1430.

Iudicium Cescallianum. A special trial (iudicium secutorium), when the defendant against whom the praetor issued a possessory interdict, did not obey the order.—See INTERDICTUM, AGERE PER SPONSIONEM.

Berger, RE 9. 1693; 1697.

Iudicium centumvirale. Refers to the second stage in a trial before the centumviral court. The first stage took place before the jurisdictional magistrate (the praetor).—See CENTUMVIRI.

Iudicium contrarium. A counter-action brought by a defendant against a plaintiff who had sued him incon siderately and had lost the claim. Such a counter-suit was admissible only in a few specific cases, e.g., with regard to an actio iniuriarum. In an iudicium contrarium the former plaintiff was condemned for one tenth of his unsuccessful claim, even if he had acted without malicious intention. The iudicium contrarium concurs with iudicium calumniæ. —See IUDICIA CALUMNIAE.

G. Provera, Contributi alla teoria dei iudicia contraria, MemTor 75 (1951).

Iudicium curationis. A term used by Justinian for the action which a ward under curatorship (see cura) could bring against his curator for damages resulting from bad management of the ward's affairs. In classical law the pertinent action was the actio negotiorum gestorum.—D. 27.3.—See actio curationis causa utilis.

Iudicium de moribus. See ACTIO DE MORIBUS.

Iudicium de operis libertorum. See OPERAE LIBERTI.

Iudicium domesticum. A domestic court in which the head of the family (pater familias) exercised his jurisdiction over family members under his power. It was an ancient, customary institution in which his unlimited power (see IVIS VITAE NECISQUE) found its most evident expression. In the case of major crimes he was assisted by the family council (concilium pro pinquorum) but the judgment lay with him. For women sui iuris and those under tutorship, the iudicium domesticum was composed of their nearest relatives.

Humbert and Lecrivain. DS 3; Düll, ZSS 54 (1943); Volterra, RJSG 85 (1948) 103.

Iudicium imperio continens. See IUDICIA LEGITIMA.


Iudicium liberale. See CAUSA LIBERALIS.

Iudicium noxale. See NOXA.

Iudicium operarum. See OPERAE LIBERTI, IURATA PROMISSIO LIBERTI.

Iudicium petitorium. See FORMULA PETTORIA.

Iudicium quinquevirale. A tribunal in the later Empire, composed of five senators under the chairmanship of the praefectus urbi, for criminal offenses committed by senators.


Iudicium rectum. See ACTIONES DIRECTAE.

Iudicium restituturum. See ACTIO RESTITUTORIA.

Iudicium secutorium. See AGERE PER SPONSIONEM.

Iudicium societatis. Syn. actio pro socio; see societas.
Judicium supremum (ultimum, testatoris). A last will (testament).

Iudicium triumvirale. See TRIMVIRALE IUDICUM.

Iugatio terrena. A tax paid on landed property. It is distinguished from the poll-tax, capitatio humana. The term *iugatio* comes from the land unit, *iugum*, which served as the basis for the assessment of the tax to be paid in natural products of the soil (annona).—See *iugum*.

Thibault, *Revue générale du droit, de la législation* 23 (1899) 481.

Iugum (*iugerum*). A plot of land (three-fifths of an acre) "which two oxen can plow in one day."—See *iugatio terrena*.

A. Délage, *La capitation du Bas-Empire*, 1945, passim.

Iulianus, Salvius. A jurist of the second century, member of the imperial council under Hadrian, pupil of Iavolenus and teacher of Africanus, the last known head of the Sabinian school. In his official career he held many important posts from the tribunate to the governorship of several provinces as is testified by a well-preserved inscription (CIL 8, 24094) found in North Africa, near Hadrumetum, where he may have been born. Iulianus was one of the outstanding Roman jurists, an original and independent thinker, whose works, in particular his *Digesta*, are among the most highly appreciated products of the Roman juristic literature. At Hadrian's initiative, he revised the praetorian edict; see *editum perpetuum*. His Digesta (in 90 books) were richly excerpted by the compilers of Justinian's Digest and frequently quoted by later classical jurists. It is a comprehensive collection of *responsa* on real and hypothetical cases; in general, it followed the edictal system. Julian also wrote commentaries on works of two earlier, little known jurists, Urseius Felix and Minicius, and a booklet *De ambiguittatis* (= on doubtful questions). With Iulianus, the Roman jurisprudence reached its apogee.


Iumentum. A beast of burden (horse, mule, ass). The edict of the seidiles laid down certain rules concerning the sale of *iumenta*, and the liability of the seller for physical defects and diseases of the animal, similar to the provisions referring to the sale of slaves. Through an additional clause (*eligionum*) the rules were expanded to other kinds of cattle (*pecus*) and domestic animals.—See *editum aedilixm*, *actio redhibitoria, pecus*.


Iunianii. See Latini IUNIANII.

Iuniores—seniores. Each *centuria* in the early military organization consisted of two groups, *seniores* (men from forty-six to sixty) and *iuniores* (men under forty-six). The *seniores* formed the reserve troops.—See *tabulare iuniorum*.

Iungere. See *acessio, signum junctum*.—*Iungere* (= *se iungere*) = to be tied to another person by marriage or kinship.

Iura—leges. See *lex*.

Iura praediorum. Rights attached to an immovable property, servitudes. For the various *iura praediorum*, see *servitutem praediorum rusticorum, servitutes praediorum urbanorum*, and the pertinent items.

Iuramentum. An oath. See *ius iurandum*.

Iuramentum calumniiæ. See *ius iurandum calumniiæ, accusatio*.

Iurare (*iurari*). To take an oath.—See *ius iurandum*.

Iurare bonam copiam. A rather obscure expression which appears in connection with the *Lex Poetelia Papiria* on *nexi* and is linked with an oath of the debtor, apparently concerning his pecuniary ability to pay his debts.


Iurare in leges. Taking an oath by a magistrate when entering office to the effect that he would observe the laws. The oath was administered by a *quaestor*.—See *iuratio*.

Kübler, *RE* 14, 416; Steinwenter, *RE* 10, 1257; R. Maschke, *De magistratu Romanorum iure iurando*, 1884.

Iurare sibi non liquere. A private judge (*index*) in a civil proceeding to whom the controversy did not appear sufficiently clarified, so that he felt unable to render a judgment, might take an oath that the matter "was not clear to him." He was released from the trial which was then submitted to another judge (*translatio iudicii*). For criminal cases, see *ampliatio*.


Iurata promissio liberti. A promise under oath by which a manumitted slave assumed the duty of rendering certain services to his patron. In order to ascertain whether the slave would make such a promise after his manumission, it was usual to allow him to take the oath before he was freed, which created only a religious duty for him. After his manumission the *iurata promissio liberti* produced a civil, contractual obligation under oath. The pertinent action was *judicium operarum*.


Iuratores. Reliable persons who assisted the censors in their work of registering the citizens (see *census*) and who administered an oath to them on the truth of their declarations.


Iuratorius. See *cautio iuratoria*. 

ADOLF BERGER [TRANS. AMER. PHIL. SOC.]
Iuratus. A person who upon assuming a public office, even a temporary one, took an oath before entering service.

Passerini, DE 4.

Iure. (Abl.) According to the law, legally, lawfully, in particular with reference to the solemn formalities prescribed by the law. *Iure valere* = to be legally valid. *Non iure* = in iuridid (abl.).—See *IPSU IURE, MERITO.*

Riccobono, ZSS 34 (1913) 224.

Iure suo uti. See *UTI SUO IURE.*

Iure uti. (In phrases like hoc [eo, quo] iure utimur.) In this way the jurists used to refer to a legal norm still valid, particularly to one established in an imperial rescript, in order to stress the fact that it was still applicable. The phrases are not linked with *responsa.* Occasionally they were interpolated by Justinian's compilers when they wished to point out that the classical rule has remained unchanged. There is, however, no reason to exclude all such phrases from the classical juristic language.


Iurisgrium. Used of those kinds of legal controversies which are brought before an arbitrator, such as disputes on division of property or on boundaries between neighboring properties, or quarrels between family members. It is opposed in a certain measure to *LIS.* Later both terms were used rather indiscriminately.


Iuri alieno subjectus. See *ALIENI IURIS.*

Iuridicatus. The office of a *iuridicus.* See *IURIDICI* in provinces.

Iuridici. In Italy, jurisdictional magistrates of senatorial rank, introduced by Marcus Aurelius with competence in civil and criminal matters. Territorially their competence was limited to one or more districts (*REGIONES*) into which Italy was divided. There were four *iuridici* altogether. In their jurisdiction in civil matters, fideicommissary and tutelary controversies were of particular importance. They also had jurisdiction in administrative disputes (e.g., *munera,* corn supply).—D. 1.20.—See *DIOCEESIS JURIDICA, REGIONES ITALIAE.*

Rosenberg, RE 10: Julian, *DS* 3: Samonati, DE 4; Berger, *OCD.*

Iuridici. In provinces, high officials of provincial administration with broad activity in judicial matters (*legati iuridici*) concurrent with that of the governor. The official title of the *iuridicus* in Egypt was *iuridicus Aegypti* with the frequent addition, *et Alexandræ.*

—C. 1.57.


Iuridici dies. See *DIES IURIDICII.*

Iuris auctor. See *IURISPERITUS.*

Iuris conditor. See *CONDERE IURA.*

Iuris est. (In such locutions as id *iuris est,* certi, *manifesti iuris est.*) "This is the law" in a specific question submitted to a jurist for opinion. Quid *iuris est* (= what is the law?) is the corresponding interrogatory phrase.—See *IURE UTI, IUS CERTUM.*

Iuris scientia. The knowledge of the law, jurisprudence.—See *SYL. IURISPRUDENTIA.*

Iuris suii (or alieni) esse. See *ALIENI IURIS.*

Iurisconsultus. A jurist. The word alludes to the activity of the jurists as *qui consulantur,* i.e., who are consulted for an opinion in a legal matter and who give *responsa* to the consultants (*consultator*). Other terms are *iurisperitus* (*iuris peritus*), *iuris prudentus,* or simply *prudent.* The jurists "enjoyed the highest esteem among the Roman people" (*Cic.* de orat. 1.43.198). Their profession was considered one which "cannot be evaluated or dishonored by a price in money" (D. 50.13.1.5).—See *IURISPERITUS, IURISPRUDENTIA, IUS RESPONDENDI, RESPONSA.*


Iurisdicctio. (From *ius dicere.*) The power and activity of *ius dicere,* i.e., of settling legal principles which serve to adjust controversies. The term covers any judicial activity in civil matters, and in a broader sense, all activity connected with the administration of justice. With reference to the praetor, the jurisdictional magistrate *par excellence* of the classical times, it embraces all his acts and orders issued during the stage in *iure* of a civil trial, such as the appointment of a *iudex* (private juror), the grant of an action to the plaintiff as well as its denial (*denegatio*), the order to the judge to decide the case in dispute, and so on. The power of *iurisdicctio* is given to all magistrates with *imperium*; magistrates of lower rank (*magistratus minores*) had only a limited *iurisdicctio* (see *AEDILES*). In a territorial sense, *iurisdicctio* refers to the judicial district in which a magistrate may exercise his jurisdictional rights. The judicial activity of municipal magistrates is also covered by the term. Under the Empire, all higher officials are vested with *iurisdicctio.* With reference to provincial governors the term comprehends the whole administration of the province, which is a sign of the extension in the significance of *iurisdicctio* in later times. The classical *iurisdicctio* refers only to the activity of judicial magistrates and imperial officials, and not to the activity of the private judge developed in the stage *opus iudicis* in a civil trial.

The transition from the bipartite process to the *cognitio* procedure could not remain without influence on the content of *iurisdicctio,* which was applied thereafter to any official acting as a *iudex* (*iudicis*) in the broad sense which this term acquired in the later
Empire; see Iudex. "A person provided with iurisdictio shall not ius dicere in matters in which he himself, his wife or children, his freedmen or other persons of his household are involved" (D. 2.1.10).—D. 2.1; Cod. 3.13.—See the following items, Forum, Iudex in re propria.

Steinwenter, RE 10; Coq, DS 3; Luria, NDI 5; Bosza, DE 4; F. Leiter, Die Einheit des Gewaltgesetzbuchens (1914) 68, 86; L. Falleti, Evolution de la juridiction civile, These Paris, 1926; Luria, St Bonavent 2 (1930) 479; F. de Martino, La giurisdizione nel dir. rom., 1937; C. Giosfredi, Contributi allo studio del proc. civ. rom. 1947, 9.

Iurisdicton contentiosa. Jurisdiction in cases involving a legal controversy between the parties to the trial. Ant. iurisdicton voluntaria = the intervention of a magistrate in matters in which there is no quarrel between the parties and the fictitious trial serves only as a way of performing certain legal acts or transactions (in iure cesso, emancipatio, adoptio, manusvicin). Iurisdicton voluntaria also comprises cooperation of officials in guardianship matters and legal acts for the validity of which a permission of the competent authority is required. The distinction is important inasmuch as some magistrates who have no full iurisdicton may intervene in acts of iurisdicton voluntaria and as the personal interest of the magistrate is not a hindrance to the performance before him of such acts as adoptions, manumissions, emancipations in which he himself or his next relatives are involved.

Solazzi, AG 98 (1927) 3; Gomnet, RHD 16 (1937) 193.

Iurisdicton delegata. The delegation of jurisdicton by the emperor to an official or a private person to examine a case (delegatio causae) and render judgment, either in the first instance or in appellate procedure. Such a jurisdictional delegate (ex divina delegatione) may subdelegate the matter to another judge. On the other hand, iurisdicton delegata occurs when a higher official (one of the pre£ets in Rome, a proconsul in the province) delegates another to act in a certain kind of judicial affair, or for a limited period or in a single case. The right of the provincial governors to delegate their jurisdicton was reduced to minor matters by imperial legislation of the fourth century or to exceptional situations when the governor was overburdened with jurisdictional duties, in order to relieve him to a certain extent. Through the delegation of jurisdicton a new instance arose because an appeal from the decision of the index delegatus to the delegans was admissible. In this important point the iurisdicton delegata differs from iurisdicton mandata. Ant. iurisdicton propria.—See IURISDICTON, IURISDICTON MANDATA.


Iurisdicton extraordinaria. (In the language of the imperial chancery.) Jurisdiction in the cognitio procedure.

Iurisdicton iudicia. (Of postclassical origin.) After the disappearance of the bipartite civil procedure there was no further reason to distinguish between the functions of a magistrate and those of the private judge. Hence iurisdicton iudiciis refers to the judicial activity of any public official.—C. 3.13.

F. De Martino, La giurisdizione nel dir. rom., 1937, 177.

Iurisdicton mandata. Jurisdiction transferred through mandate by a magistrate vested with iurisdicton to another person (magistrate or not). "He who assumes iurisdicton mandata has no right of his own but exercises the jurisdicton of his mandator" (D. 1.21.1.1). Therefore, he is not authorized to appoint another as a mandatory and his jurisdictional rights are extinguished when the mandator revokes his mandate or dies. An appeal from the decision of the mandatory goes not to the mandator but to his superior. The transfer of jurisdicton through mandate was widely practiced in the Republic. One of its most developed applications was the iurisdicton mandata of the legatus proconsulis in the provinces, who received his jurisdictional powers from the proconsul. There was a rule that "what is assigned to a magistrate by a statute, a senatusconsult or an imperial constitution as a special assignment, cannot be transferred to another as a iurisdicton mandata" (D. 1.21.1 pr.); only what belonged to the province of his magistracy (ius magnissatus) might be entrusted to another through mandate. Ant. iurisdicton propria.—See IURISDICTON DELEGATA.—D. 1.21.

Steinwenter, RE 10, 1157.

Iurisdicton praetoria. The jurisdicton of the praetor. It embraces not only his activity in civil trials (in the stage in iure) but also his edictal creations (the issuance of new legal rules, formulae, interdicts, etc.).

Betti, St Civendono, 1927.

Iurisdicton voluntaria. See IURISDICTON CONTENTIOSA. Iurispruentia. A man learned in the law, a professional jurist. The term alludes to his knowledge of the law, while iurisconsultus refers rather to a jurist consulted in legal matters. See IURISCONSULTUS. Syn. iuris auctor, iuris prudens (or simply prudens), iuris conditor.

Massei, AG 133 (1946) 48; idem, Scr Ferrini (Univ. Pavia, 1946) 428.

Iurisprudentia. See the foregoing item.

Iurisprudentia. Defined as "the knowledge of divine and human matters, the knowledge of what is just and what unjust" (D. 1.1.10.2). Iurisprudentia is syn. with iuris scientia: it is knowledge of the law in the broadest sense of the word, the science of the law. The Roman jurists were the most important element in the development of the Roman law, and with good reasons they are named iuris auctores, iuris conditores; see CONDIRE IUR. This refers in particular to the classical period of Roman jurisprudence, i.e., in the last century of the Republic and the two centuries and a half of the Principate. The creative
influence of their *responsa*, their literary and teaching activity, their participation in the councils of judicial magistrates and private judges as *assessores*, and later in the imperial *consilium* as legal advisers of the emperors furthered the development of the law through creative and progressive ideas based on the understanding of the necessities of the life, to which they adapted their opinions and doctrines taking into consideration the changes in the economic, political, and social development of the empire. They did not care for philosophical doctrines and conceptions, for precise definitions or etymologies, but they had a keen eye for the exigencies of everyday legal life with which they were constantly in touch in their various capacities. The high value of their works does not lie in theoretical deliberations and doctrinal speculations, but in the elaboration of a systematic structure of the law as a whole, in the gradual building up of a legal system composed of legal institutes with an admirable logical strength and guided by ideas which justify the conception of the law as *ars boni et aequi*. The juristic literature of the classical period acquired particular significance in the later Empire in spite of its completely different political, economic, and social structure, through the so-called Law of Citations, issued in 426 by Theodosius II. It laid down rules for the use of classical juristic writings as authorities in legal matters. The works of Papinian, Paul, Ulpian, Modestinus, and Gaius were established as the principal authorities. Their views had to be considered authoritative in legal disputes. Works of jurists other than the five mentioned might be taken into consideration only if they were quoted by the primary authorities and if those quotations could be strengthened by a comparison with the original works. In the case of divergent opinions of the jurists, the majority was decisive; if there was no majority, the opinion of Papinian prevailed. If none of these criteria was applicable the judge had free choice in rendering judgment. The greatest homage paid to the works of the classical jurists was Justinian’s Digest, based as it was exclusively on excerpts from them.—D. 1.2; C. 1.17. For particular jurists, see the pertinent items; for their literary products, see Digesta. Institutiones, responsa. quaestiones. regulae, notae, editio secunda.—See Ius est ars boni et aequi.

**Ius (iusra).** In the Roman juristic language, *ius* has different meanings. In the broadest sense the term embraces the whole of the law, the laws (*ius populi romani*), without regard to the source from which they emanate. When used with a special attribute it applies to a bigger field of the law (*ius publicum, privatum, honorarium, etc.*) or to exceptional provisions (*ius singulare*). Even references to a single legal provision are not missing. The meaning of *ius* as the law in general is reflected in expressions like *iure* (abl.) = legally, in conformity with the law, or *ipsa iure* = by virtue of the law itself. Allusions to specific legal provisions are in locutions such as "*idem iurest*" or "*quid iurest?*" when a question is put concerning the specific norm to be applied in a particular case. Conceived as the whole of the law originating from various sources—hence the distinction between *ius* and *lex* (a statute which is a source of *ius*)—the *ius* is defined by the jurist Celsus "*Ius est ars boni et aequi*" (see *aequitas*) which is not far from another formula expressed by the jurist Paul, "what always is just and fair (*aequum et bonum*) is called *ius*" (D. 1.1.11 pr.). The fundamental principles (*praecipita*) of the *ius* are "to live honestly, not to do harm to anybody, to give any one what is his (*sum quiaque tribuere*)" (D. 1.1.10.1). Along with the juxtaposition *ius*—*lex*, not always exactly distinguished by the jurists, there is another one, *ius*—*fas*, see *fas*. Beside the use of the term in the objective sense as "the law," *ius* is applied to indicate the subjective right or rights (*iura*) of an individual, as the right to do something in a certain legal situation, to acquire a thing or to dispose of it, to claim something from another. In this sense the praelidial servitudes are called *iura praediorum*, and the general term, *ius in re aliena*, is coined. Almost synonymous with *ius* in this meaning are the expressions *facultas* and *potestas* although the legal element is not explicit in them. The patrimonial rights of an individual as a whole are termed *iura* or simply *ius* (*universum*), as in the locution *successio in ius*. *Ius* also indicates the personal status of a person, as in the technical phrases, *sui* (or *alieni*) *iuris esse*, a distinction made according to whether a person is under the power of another or legally independent. With regard to landed property, *ius* may indicate the legal situation thereof including servitudes and liens (*ius fundi*). A specific meaning is attached to *ius* in procedural language. *Ius* is the place where the magistrate (*praetor*) administers the law. Hence the stage of a civil trial which takes place before him is named in *iure*. Here "the term is transferred from what is being done (*ius dicitur*) to
the place where it is done" (D. 1.1.11). Hence some procedural institutions have their denomination, as in ius vocatio, interrogatio in iure, confessio in iure. Slight shades of difference in the meaning of ius will be found in the following entries, which deal with some more important expressions in which ius (or iura) is connected with either a noun or an adjective. In the language of the later imperial constitutions and of Justinian, ius appears in associations unknown in the classical juristic language.—Inst. 1.1; D. 1.1.—See Iure, Ipsi iure, Iurisdiction, Iuris esse, Auctores, Autoritas, Ignorantia, Sollemnia, in Iure, in Iure Cessio, Interrogatio, confessio, Rigor Iuris, Regula Iuris, and the following items.

Leonhard, RE 10; Cui, DS 3; Biondi, NDI 7; May, Mel Gerardin, 1907, 402; Clark, Mel Fitting 1 (1907) 241; Kamphuisen, RHD 11 (1932) 389; Willey, Le droit subjectif et les systemes juridiques rom., RHD 24-25 (1946/7) 201; Godinac, Atti Accad. d’Italia, See VII, vol. 3 (1943) 489; M. Kasser, Das ulrmische ius 1949, 29; D’Oria, Si Alberbar 2 (1952) 279.

Ius abstinendi. See ABSTINERE SE HEREDITATE.

Ius acta conficiendae. The right of magistrates and imperial officials to keep public records.—See ACTA.

Ius adcringendi. The law of accrual under which the portion of a co-owner increases, as, for instance, if a co-owner manumits a common slave, the manumission being void, the other co-owner acquires full ownership over the slave (Justinian ordered the slave freed). In the law of succession, the share of a co-heir increases when the other co-heir fails to take his share under the will or on intestacy.

Leonhard, RE 10; Humbert, DS 3; P. Boniface, Scritti giuridici 3 (1926) 434; Macquorron, RHD 8 (1929) 580; Vasscaro-Delogo, L’accrescimento nel dir. ereditario, 1941; U. Robbe, Ius a e la costituzione volgare, 1947.

Ius adeundii. See ADITUS.

Ius adfinitis. A relationship based on adfinitis.—See ADFINITAS.

Ius aedicandae. The owner of a plot of land has the right to construct a building on it, provided that his neighbor has no title under which to protest. In the case of a neighbor’s unjustified protestation, the builder has an action against the neighbor in which he claims his right (ius) sibi esse iia aedicatum habere, i.e., to build the house in the way he wants to do it. On this occasion he also has the possibility of claiming some specific servitudes (e.g., servitus altius tollendi, immittendi) to which he is entitled. In the case of common property the ius aedicandae depends upon the consent of all the co-owners any one of whom may exercise the ius prohibendi (right of prohibition) against the partner who intends to build.—See AEDIFICATIO, OPERIS NOVII NUNTIATIO.

Ius Aelianum. See AElius PAETUS CATUS.

Ius aequum. See AEGUITAS.

Pringsheim, ZSS 42, 643.

Ius agendi (iumentum). The right to drive draft animals through another’s property.—See ACTUS, VIA.

Ius agendi cum populo (cum patribus, cum plebe). The right to convocate a popular assembly (comitia), primarily for legislative purposes. It was granted to the highest magistrates (consuls, praetors, dictators). A similar right of the plebeian tribunes to convocate the plebeian assemblies (concilia plebis) was the ius agendi cum plebe. The ius agendi cum patribus refers to the convocation of the senate which under the Principate was a prerogative of the emperor.

Fadda, NDI 1, 238.

Ius agnationis. Rights deriving from the agnatic relationship. See AGNATIO.

Ius altius tollendi. See servitus ALTUS TOLLENDI.

Ius ambulandi. See ITER, VIA.

Ius anuli aurei. The right to wear a golden ring. It was a privilege of persons of equestrian rank.—D. 40.10; C. 6.8.—See EQUITES, RESTITUTIO KATALIUM.

Ius antiquum. The earlier law referred to for comparison with new legal provisions. In imperial constitutions of the later Empire and with Justinian, ius antiquum denotes the classical law, sometimes going as far back as the Twelve Tables. Syn. ius vetus, ant. ius novum.

Ius appellandi (appellatios). The right to appeal to a higher court. Syn. auxilium appellatios.—See APPELLATIO.

Ius applicationis. The relationship created through a voluntary placing of oneself under the protection of a powerful person (patronus) by a solemn act, applicatio ad patronum. The individual, a plebeian or a stranger (peregrinus), thus became a client (see CLIENTES) of the patron.

Premerstein, RE 4, 32; Manigk. RE 10.

Ius aquae ductus (aquae duendae). See servitus ADQUAE DUCTUS.

Ius augurium. The sacral rules concerned with the activity of the augurs. They were collected in Books of the augures (libri augurum or augurales).—See AUGURES.

Ius auspiciatorium. See AUSPICIA.

Ius auxillii. The right of the plebeian tribunes to assist a plebeian wronged by an official act of a patrician magistrate.—See TRIBUNI PLEBIS.

Ius (iura) bellii. The rules which governed the conduct of war. They were observed by the Romans from the moment of the formal declaration of war.—See BELLUM INDICE.

Ius caduca vindicandi. See CADUCA, CADUCORUM VINDICATIO.

Ius calcia coquendae. A praedial servitude of lime-burning on another’s land.

Ius capienda. The right to take under a will.—See CAPAX, CADUCA, LEGES CADUCARIAE.

Ius certum. Phrases like certi iuris est or certo iure utiurum are used in juristic writings and imperial constitutions to indicate that the opinion of the jurist or the imperial decision is beyond question because it is based on a certain, doubtless legal rule. In the
language of the imperial chancery, particularly in Justinian’s time several analogous expressions occur as certissimis, explorati, evidentiissimi, indubitabatur, manifestati, manifestissimi iuris est (or in the nominative ius est).

Ius civile. With regard to the sources from which the ius civile derives, a definition given by Papinian says “ius civile is the law which emanates from statutes (leges), plebiscites, decrees of the senate (senatus-consulta), enactments of the emperor and from the authority of the jurists” (D. 1.1.7). Ant. ius prae
torium (honorarium). Etymologically ius civile deno
tes the law of a given civitas or of the citizens; with reference to Rome it is the ius civile proprium Romanorum. Syn. in earlier times IUS QUÆRITUM. To the republican jurists, ius civile was the law among the civis, applied in their mutual relations, therefore the private law. The earliest treatises on ius civile, entitled Libri iuris civilis or Commentarii iuris civilis (or de iure civili), therefore dealt almost exclusively with the private law. In a narrower sense, the interpretation of the law by the men learned in law is called proprium ius civile (= ius
civile proper). One of the most renowned treatises on the ius civile was the LIBRI IURIS CIVILIS by the jurist Sabinus. His system was followed by later writers on the ius civile, who called their works “ad Sabinium.”—A counterpart of ius civile is ius hon-
rorarium (praetorium) on the one hand, the IUS GENTIUM on the other.—Inst. 1.2.—See the following item.

Weiss, RE 10: Pacchioni, NDI 2 (diritto civile); Berger, OCD; E. Ehrlin, Beiträge zur Theorie der Rechtsquellen, 1902; B. Biondi, Prospettive romanistiche, 1933; 40; Laura, Scritti Ferrari (Pavia, 1946) 593; C. Segre, Inter-
terrane, raccolteamente e nessi fra diritto civile e pretorio, ibid. 729; De Francisci, Scritti Ferrari 1 (Univ. Sacro Cuore, Milan, 1947) 192; Goffredi, SDHI 13-14 (1948) 12; M. Kaser, Das aultrömische Ius, 1949.

Ius (iura) consanguinitatis. The reciprocal rights of persons who have the same father (brothers and sisters).—See CONSANGUINITAS.

Ius constitutum. A norm of the existing law without regard to the source from which it originates. Hence, customary law is ius moribus constitutum. Some legal decisions in the sources are proffered iure consitutum.

Ius controversium. A concept familiar to rhetoricians and not to Roman jurists. It refers to legal norms which were controversial among jurists (ambiguitur inter peritissimos, Cic. de orat. 1.57.242). Syn. ius
dubium, ambiguum (in later imperial constitutions). Ant. individuatim ius.

Ius crediti. The creditor’s right against the debtor.

Ius debiti. A debt. Syn. DEBITUM.

Ius deliberandi. See DELIBERARE.

Ius dicere (reddere, statuere). Refers to the jurisdic-
tional activity of the magistrates, primarily of the praetor.—See IURISDICTIO.

F. De Martino, Giurisdizione 1937, 56.

Ius distrabendi. The creditor’s right to sell the pledge (fiducia, pignus) if the debtor did not pay the debt due. Originally admitted only when it was agreed upon between debtor and creditor (pactum de distra-
hendo pignore), it was later considered to be self-
derstood unless expressly excluded by agreement (pactum de non distrabendo pignore).—Syn. ius vend
dendi.—D. 20.5; C. 8.27.28.

Messina-Vitrano, Per la storia del id., 1910; Ratti, StUrb 1 (1927); De Villa, StSat 10 (1938); Bartošek, BIDR 51-52 (1948) 238; A. Burden, Les commissiares e ius vendendi, 1949, 131.

Ius divinum (iura divina). Laws created by the gods and governing the relations of men to the gods. Ant. ius
humanum (iura humana). A similar, but not identical distinction, is fas—iuris.—See FAS, RES DI-
VINI IURIS.

Berger, RE 10, 1212; Orestano, BIDR 46 (1939) 195.
Ius dominii. The right of ownership. The term is rare in the Digest, more frequent in Justinian’s Code.
—See DOMINUM.

Ius domum revocandi. See IUS REVOCANDI DOMUM.

Ius dotium. Legal provisions concerning the dowry.—D. 23.3; C. 5.12.—See DOS.

Ius ecclesiasticum. (With Justinian.) Church laws. Ad ius ecclesiasticum pertinentis = governed by church laws. See ECCLESIA.

Ius edicendi. The right of the higher magistrates to proclaim edicts (edicta) to the people. The contents of the edicts were manifold, according to the sphere of functions of the magistrate. The ius edicendi was an important element in the development of the law since the edicts dealt primarily with legal and procedural problems and introduced innovations into the existing law. See EDICTA, EDICTUM, IUS HONORARIUM.

Kipp, RE 5, 1940; Louis-Lucas and A. Weiss, DS 2, 457.


Ius est ars boni et aequi. “Law is the art of finding the good and the equitable.” This unique definition of ius in the legal sources is expressed in the initial text of the Digest (D. 1.1.1 pr.).—See AEQUITAS, BONUM ET AEQUUM, IUS (Bibl.).

Arnò, Attor 75 (1939/40); Riccobono, Quaderni di Roma 1 (1947) 32; idem, BDIR 53-54 (1948) 5 and AnPal 20 (1949); Biondi. Scr Ferrini (Pavia, 1946) 209; v. Lüb-{


Ius eundi. See ITER, ACTUS, VIA.

Ius ex scripto (ex non scripto). See IUS SCRIPTUM.

Ius exilii (exulandii). The term in literature for the possibility a person threatened by the death penalty in a criminal trial to avoid the capital sentence by voluntarily leaving Roman territory. See EX\;

ILIUM.

Berger, OCD 353; Arango-Ruiz, Storia (1947) 81; Gio-

fredi, SDFI 12 (1946) 191; idem, Archivio penale 3 (1947) 428.

Ius experiri. See EXPERIUM.

Ius extraordinarium. A rare term in the juristic sources (once in the Digest in a suspect text, D. 50.16.10, and once in the Code, 7.73.5). It is linked with the cognito EXTRA ORDINEM. See IUS NOVUM. The expression ius extra ordinem used sometimes in literature does not occur in juristic sources.

Ius fetale. The norms concerning primarily the solemn forms to be observed by the priests called fetiales in relations between Rome and other states. —See FETIALES.


Ius (iura) fisici. The state treasury (fiscus) occupied a privileged situation as creditor, with various advan-
tages when acting as claimant in a trial or against an insolvent debtor, when taking a vacant inheritance or seizing private property for one reason or another. The complex of rules which determine the rights of the fisc is the ius fisici (ius fiscale).— “The norms of fiscal law cannot be overthrown by private agreements” (D. 2.14.42). Syn. priviligia fisici.—D. 49.14; C. 7.73; 101; 5; 9.—See FISCUS, BONA VACANTIA, CADUCA.

Wieacker, Fschr Koschaker 1 (1937).

Ius fruendi. See USUSFRUCTUS, FRUCTUS.

Ius Flavianum. A collection of forms of civil actions. compiled about 300 B.C. by Gnaeus Flavius, a freed-

man, secretary of the jurist Appius Claudius. De ne-

nameberg, RE 10; Cuq, DS 3, 745; Gabrieli, NDI 6 (d.c. Flavio Gneo); Zocco-Rosa. NDI 7; E. Pais. Ricerche sulla storia e sul dir. rom. 1 (1915) 215.

Ius gentilicum. The law concerning the gentiles (members of a gens).—See GENS, GENTILES.

Berňhöft, ZVR 36 (1918), 99.

Ius gentium. Apart from the meaning, rather rare in the sources, that the ius gentium is the law governing the relations of Rome with other states (see iura BELLI, LEGATI, FOEDUS, RECUPERATORES, etc.), the term appears frequently in juristic sources in a somewhat confused picture. On the one hand, it is linked with ius naturale, or at least with the naturalis ratio which dictates the same law to all peoples. This results from the definition given by Gaius, D. 1.1.9, “what naturalis ratio introduced among all men is observed by all peoples and called ius gentium, as the law applied by all peoples.” Gaius thus gives the term the sense of ius omnium gentium which therefore is not opposed to the Roman law proper since the Romans are included among all peoples. Gaius’ definition was fully adopted by Justinian in his Institutes (1.2.1) with a confusing introduction which treats ius civile and ius gentium as synonyms. The ius gentium is also linked with ius naturale in other texts, the genuineness of which is rather suspect, however. On the other hand, ius gentium appears in quite another shape as the product of the political and economic growth of the Roman state. Contact with foreign territories in the Mediterranean basin that were gradually conquered, commercial relations with those nations and the necessity of considering their legal customs in Roman courts when transactions were concluded in Rome, the jurisdictional activity of the praetor peregrinus, created expressly for the latter purpose and given the power to recognize transactions which the Roman ius civile did not recognize—all this prompted the development of a new legal system beside the formalistic ius civile, which was not accessible to peregrines. The formalism of the ancient law had to be sacrificed in favor of the development of international trade and the peregrines had to be admitted to Roman institutions. The admission of the Greek language in the
thoroughly Roman Stipulatio is one of the most characteristic examples of this development. That the new legal rules and institutions should be extended to transactions concluded between Roman citizens was a natural further step in the development, leading finally to a fusion of the two systems. It was particularly in the contractual field that the ius gentium exercised its influence, primarily by strengthening the element of reciprocal confidence (fides) without which relations with foreigners were hardly possible. The law of family and succession remained completely untouched. One common basis for all applications of ius gentium in the juristic sources could not be established. The intrusion of Greek philosophical ideas, ius naturale and naturalis ratio, brought in a certain confusion which makes it very difficult to separate what is classical from what is of later origin.—Inst. I.2.—See its NATURALE, NATURALIS RATIO, PEREGRINI.


Ius gestorum. The right of certain higher officials in the Empire (the time of Constantine) to make an official record of declarations of private individuals or of documents presented to them. This procedure the validity of the acts was officially strengthened. Cf. ius ACTA CONFICIENDI.

H. Steinacker. Die antiken Grundlagen der frühmittelalterlichen Privatrufhende, 1927, 76.

Ius gladii. “The power to punish criminal individuals” (D. 2.1.3) with all kinds of punishment, the death penalty included. In Rome it was the emperor himself who exercises the right in capital trials. He could delegate it to the supreme officials in the provinces (governors, legati) and to the prefects in Rome, at first only in a specific case, later generally.—Syn. potestas gladii.

De Ruggiero. DE 3, 512; H. Pfamm, Essai sur les procedements ecquesares, 1950, 117.

Ius habitandi. The right to dwell in another’s house. It may be based on personal servitude (habitatio) or on a lease contract (locatio conductio rei).

Ius barenae fodiendi. The right (servitude) to dig sand from another’s sand-pit.

Ius hereditarium. The rights of an heir (HERES) as opposed to the rights of a legatee. Iure hereditario = by virtue of universal succession as heir.

Ius honorarium. The law introduced by the magistrates who had the right to promulgate edicts (ius ediscendi) in order to support (adistare), supple-
Ius in agro vectigalii. The right of a lessee of an ager vectigalii. The lease of such a plot of land belonging to a public corporate body (municipium, colonia) is the classical precedent of emphyteusis.

—See AGRE VECTIGALIS.

Cassio, Annal. 22 (1951) 27.

Ius in re (aliena). A right in the property owned by someone else, such as servitude, pledge, emphyteusis, superficies. Such rights impose restrictions on the exercise of the rights of ownership by the owner. The classical jurists do not use as technical either the term ius in re in the meaning of ownership (dominium) or the term ius in re aliena (familiar in the literature) mentioned above.

Arango-Ruiz, AC 81 (1908) 361, 82 (1909) 417; Viley, RIDA 2 (1949) 417.

Ius (iura) ingenuitatis (ingenui). The political rights of a freeborn, such as ius suffragii, ius homo-

rum.

Ius iniquum. See AEGUtas.

Ius intercedendi. See INTERCESSIO, TRIBUNI PLEBIS.

Ius Italicum. The privileges granted non-Italian provincial cities and communities by the emperor (from the time of Augustus) through a special law (lex data) by which they acquired the legal status of Italian cities as developed in the last century of the Republic. The ius Italicum comprised various rights both of public and private character, such as self-government, exemption from the supervision by the governor of the province, land ownership ex iure Quiritium, to which mere Roman institutions (mancipatio, usufructio) were applicable.

V. Premeister, RE 10: Julian, DS 3: Luzzatto, RIDA 5 (= Mei De Visscher 4, 1930) 79; Vittinghoff, ZSS 68 (1951) 465.

Ius (poestas) iubendi. See IUBERE.

Ius lapidis examindi. See LAPIS.

Ius Latii. Rights connected with the legal position of colonies founded by the Romans as Latin colonies, and with the legal status of the citizens of such colonies. The ius Latii could be granted individually to foreigners (peregrini) the legal situation of a Latin having been more advantageous than that of other peregrines; it was, of course, less favorable than that of a Roman citizen.—See LATINI.


Ius legationis (legatorum). The rules governing the position of, and the relations with, the ambassadors of foreign countries. The ius legationis is "sacred (sacrum, sanctum) with all nations" (Cornelius Nepos. Pelop. 5.1; cf. D. 50.7.18).—See LEGATI—Ius legationis is also the privilege granted to subjugated cities to send embassies to Rome.


Ius liberorum. Parents of several children enjoyed certain privileges, first introduced by the Augustan legislation (lex Iulia et Papia Poppaea). Fathers might claim exemption (excusatio) from public charges and from guardianship to which they were called by law (tutela legitima). The most important application of ius liberorum concerned women. A freeborn woman with three children and a freedwoman with four children (ius trium vel quattuor liberorum) were freed from guardianship to which women were subject (tutela mulierum) and had a right of succession to the inheritance of their children. The women's ius liberorum was applied even when the children were no longer alive.—C. 5.66; 8.58.—See SENATUSCONSULTUM TERTULLIANUM.

Steinwenter, RE 10: Cuq, DS 3 (s.v. liberorum ius) Tuchli, Atene e Roma 17 (1941) 333; Arango-Ruiz, FJR 3 (1943) 71.

Ius mariti. Mentioned specifically in connection with adultery when the accusation of the wife is made by the husband iure maritium.—See ADULTERUM.

De Dominicia, SDHI 16 (1950) 1.

Ius militare. Military law, applied to soldiers both in the field of criminal offences and military discipline, as well as with regard to some institutions of the private law (testament).—See MILITIA, MILITES, TESTAMENTUM MILITIS.

Ius militiae. See MILITIA.

Ius mixtum. A law originating from both a statute and a custom.

Ius mortuorum inferendi. See IUS SEPULCRI, INTER-

DICTUM DE MORTUO INFERENDO, RES RELIGIOSAE.

Ius multae dicendae. See MULTA.

Ius naturale (ius naturae, iura naturalia). Natural law (laws). Unknown to Republican jurists, the ius naturale is not considered by those of the Principalists a juristic conception denoting a special sphere of law, a particular category of law, or a system of legal norms. Nor do the occasional "definitions" of the ius naturale, found in the sources, give the picture of a certain uniformity of the conception, although the influence of Greek philosophy is evident. Striking by its peculiarity is the explanation of the term given by Ulpius: "that which nature taught all animals" (D. 1.1.1.4), followed by examples such as union of male and female, procreation and rearing of the young. The saying has no juristic content at all, and did not get any by the repetition in Justinian's Institutes (1.2 pr.). Quite different is the definition by Paul: "what always (at all circumstances) is just and right (quod semper est bonum et aequum)" (D. 1.1.11 pr.), but here the notion of an ideal law is expressed rather than what is the ius naturale within a legal system. The connection with aequitas is apparent also in several texts which speak of naturalis aequitas. Elsewhere, the ius naturale is identified with ius gentium as the law which all nations observe. Both ius gentium and ius naturale are linked with naturalis ratio (natural reason); nevertheless on another occasion, with reference to slavery, ius naturale is opposed to ius gentium inasmuch as naturalis iure all men are born free, and it
was the ius gentium which introduced slavery (*iure gentium servitus invasit*, D. 1.1.4 = Inst. 1.5. pr.). Although those definitions may be considered of classical and not of Byzantine origin (as has often been assumed in recent literature), no one of them was elaborated as a doctrine by the Roman jurists, whose practical sense was centered more on the positive law, its interpretation, and applicability or extension to the actual necessities of life. The mark “*iure naturalis*” attached to a legal institution or a decision by a jurist means “by the natural order of things, by the reality of life,” without any legal background. Combining an earlier idea with Christian doctrines, Justinian found a new formulation of *naturalia iura*: “they are those which are equally owned by all nations, and are somehow established by divine providence; they remain firm and unchanged for ever” (Inst. 1.2.11).

This Justinian doctrine produced in literature the tendency to ascribe many, if not all, sayings involving *ius naturale* or the related locations, as *naturalis aequitas, naturalis ratio*, etc., to Justinian’s compilers. As a matter of fact, in a few passages retouched by the compilers *naturalis ratio* was substituted by *ius naturale*. A great majority of the pertinent texts may be considered to be of classical origin, as recent, comprehensive studies on all the expressions mentioned have shown.—Inst. 1.2.—See *AEQUITAS NATURALIS, IUS RATIO, IUS GENTIUM, NATURALIS LEX*.

The Coq, DS 3, 736; Longo, RendLomb 40 (1907); Goudy, Trichotomy in Roman Law; 1910; F. Semn, De la justice et du droit, 1927, 76; Arnò, Atti Moderna 10 (1926) 127; E. E. Hoescher, Vom römischen zum christlichen Naturrecht, 1931; Kampbuizen, RHD 11 (1932) 389; Albertario, Studi 5 (1937) 277; C. A. Maschi, La concezione naturalistica del diritto e degli istituti giuridici romani (Milan, Pubb. Univ. Sacco Cuore, 1937); Orastano, Riv. intern. di filosofia di diritto 21 (1941) 21; G. Grosso, Problemi generali del diritto, 1948, 98; De Martino, AnBari 7–8 (1947) 107; L. Wenger, Naturrecht und das röm. R., Wissenschaft und Weltbild 1 (1948); E. Levy, Natural law in the Roman period (Univ. Notre Dame Natural Law Institute Proceedings 2, 1949) 43 (reprinted in SDHI 15, 1949); H. Mitteis, Über das Naturrecht, 1948; Wenger, Ius 2 (1931) 1; Bartosch, St Albertino 2 (ext. 1930) 492; R. Voggenreger, Der Begriff des ius in röm. R. (Basil, 1952); Gaudemet, ADO-RID 1 (1952) 445.

Ius non scriptum (sine scripto). See *IUS SCRIPTUM, CONSULTUM*.

Ius novum. A term which is more frequently used in the recent Romanistic literature than in the sources. Gaius uses it once in the meaning of the law which originates in *senatusconsulta* and imperial constitutions as opposite to the law of the Twelve Tables. In the literature *ius novum* is referred to the imperial law arising from imperial legislation and jurisdiction and the practice of the *cognitio extra ordinem*. The latter meaning is that of the term *ius extraordinarium* which occurs only once in a text not free from suspicion (D. 50.16.10). In Justinian’s language *ius novum* is applied with regard to the emperor’s own innovations.—See *IUS EXTRAORDINARIUM*.

Ius offerendae pecuniae. The right of a hypothecary creditor to offer the prior pledge the sum due to him by the common debtor. Thus the later creditor gained the priority in the hypothecary degree which belonged to the pledgee whom he paid out.

Ius ordinarium. The normal law applied in regular proceedings. *Ius ordinario* = in the way of normal proceedings (*ordo indicitorum*) as opposed to the *cognitio extra ordinem.*—See *IUS EXTRAORDINARIUM*.

Ius originis. See *ORIGO*.

Ius paenitetendi (poenitetendi). A term used in literature, but unknown in legal sources.—See *PENITENTIA*.

Ius Papirianum. See *PAPIRIUS*.

Ius passendi. The right (*servitudo*) to pasture cattle on another’s property.

Ius patris. The right of the father of the family. It is mentioned when the paternal power of the father over his children enters into account. A specific use of the term appears in connection with the father’s right to accuse his daughter of adultery *iure patris*.

—See *IUS VITAE NECISQUE, ADULTERIUM, IUS MARTI*.

Ius (iura) patronatus (patroni). The rights of a patron over the person and the inheritance of his freedman.—D. 37.14; C. 6.4.—See *LIBERTUS, PATRONATUS, OPERAEE LIBERTI, OBSEQUIUM*.

Ius perpetuum. A right analogous to *ius emphyteuticum*, based on an irrevocable grant of agricultural land (belonging to imperial domains) to individuals for a rent (*canon*). It is alienable.—Cf. *EMPHYTEUSIS, IUS IN ACRO VECTIGALI*.

E. Bassanelli, La colonia perpetua, 1933; Levy, West Roman vulgar law, 1951, 43.

Ius pigionaria. See *PIGNUS*.

Ius piscandi. The right to fish in the sea, harbors and public rivers. It is free to all.

Ius pontificium. The laws governing the life and activity of the pontiffs of which they are both creators and guardians. Monographs were written on *ius pontificium* by Fabius Pictor and Fabius Maximus Servilianus. In their activity the pontiffs dealt often with questions of the *ius civile*. Therefore it was said: “No one can be a good pontiff without knowledge of the *ius civile*” (Cic. de leg. 2.19.47).—See *PONTIFICES*.

Berger, RE 10; Stella-Maranca, AnBari 1927.

Ius populi. The interest of the people.—See *ACTIONES POPULARES*.

Ius possessionis. Occurs in a few texts in which it denotes either the right to take possession of another’s thing or the rights connected with the exercise of possession.

Vassalli, AnPer 28 (1914) 40; Solazzi, BIDR 49–50 (1947) 367.

Ius postliminii. See *POSTLIMINIUM*.
Ius praetorium. “The law which the praetors introduced in order to support, to supplement or to amend the ius civilis” (D. 1.1.7.1). Its development intensified after the reform of the civil procedure initiated by the Lex Aebutia.—See ius honorarium.

Riccobono, Fuzione del ius civile et praetorium, Archiv für Rechts- und Wirtschaftspithos. 16 (1922/3) 503; Frese, ZSS 43 (1923).

Ius privatum. The law which governs the relations among individuals and primarily concerns the benefit of private persons. Ant. ius publicum.—See utilitas privata.

Leonhardt, RE 3; Cuq, DS 3, 732; E. Ehrlich, Beiträge zur Thcore der Rechtsquellen, 1902. For recent bibl. see ius publicum.

Ius prohibendi. The right to prevent another from doing something. Its particular significance appears among co-owners or between neighbors when a prae- dial servitude entitles a person to prohibit a certain action on the neighbor’s land.—See actio prohibitoria, communio, ius aedificandi. A group of interdicts serve for the protection of ius prohibendi in various situations; see interdicta prohibitoria, operis novi nuntiatio.

Pacchioni, Riv. dir. commerciale 10 (1912); P. Boniante, Scritti giudicizi 3 (1926) 362.

Ius publice respondendi. See ius respondendi.

Ius publicum. The law which is concerned with the existence, organization (status) and functioning of the state. Ant. ius privatum which was concerned with the interest of private individuals. What is in the interest of the state or the people (publice utilia) belongs to field of ius publicum. The law dealing with sacred things (sacra), priests, and magistrates (government, administration) is ius publicum. The distinction between ius publicum and ius privatum, originating under the influence of Greek philosophy, is based on the juxtaposition of the state and the individual. Sometimes the law dealing with relations between private persons are attributed to ius publicum, when a general or social interest concurs with a private one (marriage, guardianship). The public law thus conceived in a larger sense "cannot be changed by agreements concluded between private individuals" (D. 2.14.38; 50.17.45.1). The law which emanates from legislative organs of the state, mainly from statutes passed by the people (populus) is also named ius publicum from which senatus consultum and imperial constitutions are not excluded.—See ius privatum.


Ius Quiritium. The ancient national law of the Romans, a rigorous formalistic law of a primitive rural community. The term is used in the classical period as a contrast to the modernized law originating from other sources (ius praetorium, ius gentium).—For ex iure Quiritium, see ex fide bona, dominium ex iure quiritium.

Weiss, RE 10; Moschella, NDI 7; C. L. Kooiman, Fragmenta iuris Quiritium, 1914 (Amsterdam); De Visscher, Proc. Schulp 2 (1951) 71; A. Guarino, L’ordinamento giur. rom., 1 (1949) 82; idem, Iura 1 (1950) 265.

Ius reddere. See ius dicere.

Ius respondendi (ius publice respondendi). The right granted by the emperor (from the time of Augustus) to prominent jurists to give answers (responsa) in juristic questions "on the personal authority of the emperor" (ex auctoritate principis). The Augustan reform produced the distinction between licensed (authorized) and not licensed jurists since many jurists continued the republican usage to give responsa without being authorized by the emperor. The imperial permission was a personal distinction; the jurists, thus authorized did not acquire any official character nor were their responsa legally binding on the magistrates or judges who had asked for them.—See responsa prudentium, auctoritates principis.


Ius retentionis. See retentio.

Ius revocandi domum. A defendant who is not domiciled in Rome, when sued in Rome during his temporary sojourn, has the right to ask the praetor that his case may be sent to the court of his domicile (revocare domum).

Kipp, RE 7, 58.

Ius sacrum. Strictly connected with ius divinum and ius pontificium. It embraces the legal principles and institutions which are connected with the relations of men to gods, with questions of cult, sacrifices, temples, consecration, graves, and sacerdotal functions, whenever they may occur. The jurists Servius Sulpicius and Trebatius wrote on the subject of the ius sacrum. In oldest times the ius sacrum exercised a considerable influence on private law, the knowledge of legal rules and their interpretation and applicability having been a monopoly of the priests.—See pontifices, votum, commentarii sacerdotum.

Berger, RE 10; Maroi, Elementi religiosi nel dir. rom. AG 109 (1933) 89; P. Noailles. Du droit sacré au droit civil (Course) 1949; M. Kaser, Das allröm. ius, 1949, 75.305.
Ius (iura) sanguinis. The rights of blood (blood ties = cognatio). They "cannot be destroyed by any civil law (nulla iure civili, D. 50.17.8)."

Ius scriptum. The written law, i.e., the law embodied in written form at its origin. It consists of statutes (leges), plebiscita, senatus consulta, enactments of the emperors, edicts of the magistrates (edicta). Ant. ius non scriptum (sine scripto), "the law which usage (usus) has approved" (Inst. 1.2.9). The distinction which follows Greek concepts is based on the external form through which the legal rules are manifested. The interpretatio prudentium was considered ius non scriptum, but in Justinian's Institutes (1.2.3) the response of the jurists are listed among other forms of ius scriptum.

Leonhard. RE 10; Maenti. StFen 23 (1906) 209; Steinweiser. St. Beowulf 2 (1926) 421; Scheller. Rend.Lomb 64 (1931) 1271; Schiller, Virginia Law Rec. 24 (1938) 270; Blant, Cited 5 (1942) 137.

Ius sententiae dicendarum in senatu. See SENATUS.

Ius sepulcri. The right to bury a dead person in a grave (sepulcrum). The owner of a land may be buried therein unless he ordered otherwise in his last will. A sepulcrum was familiare, when it was designated by its owner in his testament as a grave for himself and the members of his family (household); it was hereditarium when it was destined only for the testator and his heirs (heredes).—See SEPULCRUM, RES RELIGIOSAE.

E. Albertario. Studi 2 (1941) 81; Biondi. Iura 1 (1950) 160; Dull. Fischl Schule 1 (1951) 203.

Ius sine scripto. See IUS NON SCRIPTUM, IUS SCRIPTUM.

Ius singulare. A special law issued to the advantage of a certain class of persons (e.g., soldiers, minors) or of an individual. Ant. ius commune (ius commune civium Romanorum) which indistinctly concerns all Roman citizens.—See PRIVILEGIUM.


Ius soli. The legal situation of a piece of land. What is built on the soil (superficies, aerdisium) sequitur ius soli, i.e., is in the same legal situation, as the land itself with all its charges (liens, servitudes).

Ius sollemne. Syn. ius civile. It is opposed to ius praetorium.

Ius statuere. See IUS DICERE.

Ius stiplicidi (stiplicidium avertendi, or non avertendi). Praedial servitudes connected with the water dripping from the roof.—See STIPLICIDIUM.

Ius strictum. The rigid, stiff law. The term is not a technical creation of the classical jurisprudence. By a characteristic example Gaius (4.11) tries to explain how rigid was the law of the Twelve Tables. Nor is technical the meaning of the location "stricto iure" (= strictly according to the law) which is used to stress the contrast with exceptional legal remedies, not deriving from the positive law but granted in specific cases by the praetor (exceptio) or the emperor. Seemingly a technical significance is attached to the term in the juxtaposition actiones bonae fidei and actiones stricti iuris, which occurs only once in Justinian's Institutes (4.6.28) and soon afterwards is substituted by judicia stricta. The denomination actiones stricti iuris is apparently of Byzantine coinage since it is not to be found in juristic writings (in the Digest occurs another term: actio stricti iudicii, D. 12.3.5.4). Possibly it goes back to an earlier conception which started from the distinction that some actions were bonae fidei and others were not; therefore the judge had to pass his judgment strictly according to the law without making use of the liberties he had ex fide bona or ex aequo et bene. Thus the ius strictum is conceived as a counterpart of ius aequum.—See AEQUITAS.

Manigk. RE 10; Pringsheim. ZSS 42 (1921) 653.

Ius suffragii. The right to vote in the assemblies of the people. It was one of the most important political rights of the Roman citizens and of those to whom it was exceptionally granted.—See MUNICIPIUM, CIVITATES SINE SUFFRAGIO.

Rosenberg, RE 10.

Ius testandi. (Syn. ius testamenti faciendi.) See TESTAMENTI FACTIO.

Ius testamenti faciendi. See TESTAMENTI FACTIO.

Ius tigni immittendi. See servitus tigni immittendi.

Ius tollendi. A person who possesses or holds a thing belonging to another, particularly an immovable, and makes some improvements thereon has, under certain conditions, the right to take them away (tollere) provided that the object suffers no damage by such an operation. Thus a husband has the ius tollendi with regard to his expenses made on objects constituted as a dowry, a tenant in a rented house with regard to the expenses spent on improvements. According to the classical law a possessor in bad faith (possessor malae fidei) had no right to avail himself of the ius tollendi. Justinian extended the applicability of the ius tollendi.—See IMPENSAE, IMPENSAE UTILES, IMPENSAE VOLUPTARIAE, TIGNUM IUNCTUM.

Pampaloni. RISG 49 (1911) 239; Riccobono. AnPol 3-4 (1917) 445; ibid. 20 (1949) 71.

Ius utendi. See usus, ususfructus.

Ius variandi. If parties had agreed in a contract that either the debtor (which was more frequent) or the creditor has the right to choose (ejectio) between two or more things which the debtor had to pay, the choice once made could be changed by the creditor as long as he did not claim judicially one of the things due, and by the debtor as long as he did not fulfill one of the alternative obligations. The ius variandi was also applicable in legacies and other testamentary
dispositions when a right of selection was left to the beneficiary.—See legatum optionis.

Grosso, StSas 17 (1938) 161; idem, RDCom 38, 1 (1940) 224; Biondi, Successione testamentaria, 1943, 440; Sciascia, Scr Ferrini 2 (Univ. Sacro Cuore, Milan, 1947) 255.

Ius vectigalis. The right to collect the rents due from the lessees of public land.—See vectigal.

Ius vendendi. For the right to sell a pledge, see IUS DISTRAMENDI; for the right of the pater familias to sell his son, see PATRIA POTESTAS.

Ius vetus. See IUS ANTICUM, VETUS IUS.

Ius vitae necisque. The power of life and death. Since the earliest times the head of a family had this right over persons under his paternal power (children and wife) and over his slaves. His right to punish them comprised also the death penalty. Before imposing a severe penalty the pater familias had to consult the council of relatives (consilium præjudicium) but its advice was not obligatory. An abuse of his rights was punished by infamy through a decision of the censors (nota censoria). Imperial legislation restricted considerably the ius vitae necisque until its complete abolishment by Valentinian I.

Albanese, Scr Ferrini 3 (Milan, 1948) 343; Volterra, RISG 85 (1948) 139.

Iusiurandum. An oath. There were two kinds of oaths, one during a judicial trial (iusiurandum in iure, iusiurandum necessarium, iusiurandum in litum), the other sworn extrajudicially upon agreement of the parties engaged in a dispute (iusiurandum voluntarium). The promissory oath of a freeman was of a specific character. Syn. iuramentum.—See iurata promissio liberti, genius, perium, vadimoniunium iure iurando, sacramentum, condicio ius iurandandi, sematus consultum de advocazione, abjuratio, and the following items.

Steinwender, RE 10; Cro, DS 3; Sacchi, NDI 7; M. Cherrier, De sermenti promissione en dr. rom., These Dijon, 1921; E. Seidl, Der Eid im Röm. Provinzialrecht, 1933.

Iusiurandum caluniae. An oath demanded by the defendant from the plaintiff to the effect that he does not sue for mere chicanery (non caluniae causa agere) or by the plaintiff from the defendant that he does not deny the plaintiff’s claim for a similar purpose. In Justinian’s law both parties and their advocates had to take the iusiurandum caluniae.—C. 2.38.—See CALUMNIA.

Hinig, RE 3, 1420.

Iusiurandum in iure. See iusiurandum necessarium.

Iusiurandum in litum. An oath taken by the plaintiff upon order of the judge (apud iudicem) and concerning the value of the object claimed. The judge may, however, condemn the defendant to an amount minor than assessed by the plaintiff’s oath.—D. 12.3; C. 5.53.—See taxratio.

Solazzi, AG 65 (1900); Marchi, Il giuramento in litum, St Siciloja 1 (1905); L. Chiazzese, Iusiurandum in litum, 1937.

Iusiurandum iudiciale. An oath taken by one of the parties to a trial in the proceedings before the judge. It was only a means of evidence the value of which depended upon the estimation of the judge.—D. 12.2.

B. Biondi. Il giuramento decisorio nel processo civile rom., 1913, 76.

Iusiurandum liberti. See iurata promissio liberti.

Iusiurandum magistratuum. See iure in leges.

Iusiurandum minoris. An oath taken by a minor in order to confirm an obligation he assumed without the assistance of his curator. It produced the loss of the right to request a restitution in integrum for the minor.—See minores.

Iusiurandum necessarium. (Syn. iusiurandum in iure.) Only in a few specific instances, when the debt was a fixed sum (certa pecunia) could the plaintiff tender the defendant an oath (deferre) to the effect that he denies the debt. The debtor was obliged to swear, because in the case of refusal he was exposed to an immediate execution on his property. He had, however, the right to retender (referre) the oath to the plaintiff which, too, was compulsory, since the plaintiff lost his claim if he refused. This oath procedure took place in iure before the magistrate and led to a quick end of the trial either in favor of the party who swore or against the party who declined to take the oath.—D. 12.2; C. 4.1.

B. Biondi. Il giuramento decisorio nel processo civile romano, 1913; Debray, NRHD 32 (1908); see iusiurandum (Bibl.): V. Joachimovici, Le ius à l’époque classique, These Paris, 1912.

Iusiurandum voluntarium. An extrajudicial oath. It is opposed to the iuramentum necessarium since it is voluntary and is based on an agreement of the parties engaged in a controversy. “An oath contains a kind of a transaction and has a greater authority than a judgment” (D. 12.2.2). When the claimant swore to uphold his claim, he had a praetorian action (actio ex iusiurando or iure iurandandi) against the debtor. When the debtor denied his debt under oath, he might oppose an exceptio iusiurandandi when sued by the creditor. The attribute “voluntarium” is a creation of Justinian.—D. 12.2.

Iussio. A postclassical term, syn. with iussum.

Iussio sacra. An order of the emperor.

Iussu. By order or authorization. Ant. inimissu.—See iussum, iubere.

Iussum. (In public law.) An order given by a magistrate within the limits of his power to issue an order (itus iubendi). In private law = generally any act covered by the expression iubere, such as an order or authorization given by a father (or master) to a son under his power (or his slave) to conclude a transaction, to commit a licit or illicit act. All that has been accomplished iussu patris or domini is considered accomplished by themselves and on their own liability. Persons entering a contractual relation with a son or slave who negotiates with the authorization
(iusuti) of his father or master, have a praetorian action, called actio quod iussu ("whatever by order"), which lies directly against the father or master, "because the contract is concluded in a certain measure with the person who gives the authorization" (qui iubet, D. 15.4.1 pr.). A similar effect is connected with the subsequent ratification (ratum habere, rati-habitio) by a father or master.—D. 15.4; C. 4.26.—See IUBERE.

Steinwenter, RE 10; Humbert and Lecrivain, DS 10 (s.v. quod iussu); Accame, DE 4; Del Prete, ND 7; G. Ci- cogna. Iusuti, 1906; Lemose, RHD 27 (1949) 171.

Iussum careri. The order of the praetor in the iu-ure stage of civil proceedings addressed to a party to give a caution.—See CAUTUM IUBERE.

Iussum iudicandi. See IUDICARE IUBERE.

Iusta causa. A just ground (cause). It is stressed as a requirement for some legal acts (adoption, manu-mission) or for the exemption from guardianship and public charges (munere). Iusta causa is particularly important in connection with possession, traditio and usucapio.—See POSSESSIO, TRADITIO, USUCAPIO, RE-PUDICUM.

Collinet, Mél Fournier, 1929; J. Faure, Justa causa et bonae fwi, Thèse Lausanne, 1936; J. G. Fuchs, Iusta causa traditio, Basel, 1952.

Iustae nuptiae. See NUPTIAE.

Iusti dies. See DIES IUSTI.

Iusti liberii. Legitimate children born in a valid marriage (iustae nuptiae).

Iustinianii Institutiones. See INSTITUTIONES IUSTI-NIANI.

Iustinianii novi. A name introduced by Justinian for students in the first year of law schools. Simultaneously the nick-name DUPONDI U was prohibited.

Kühler, RE 1A, 404; Steinwenter, RE 10, 1309.

Iustinia. Justice. A Roman definition of justitia (D. 10.1.1) says: "it is a constant and perpetual desire to render every one his due." The sentence appears on the very beginning of Justinian's Institutes.—See Inst. 1.1; D. 1.1. —See IUS, IUS NATURALE, AEGQTAS.

F. Sen, De la justice et du droit, 1927; Donatui, AnPer 33 (1921); Sokolowski, Der Gerechtigkeitsbegriff, St Boniante 1 (1930); v. Lubow, ZSS 66 (1948) 460; A. Carcavera, I. nelle fonti e nella storia del dir. rom., Bari, 1949.

Iustium matrimonium. Syn. iustae nuptiae; see NUP-

TIAE.

Iustum sacramentum. See INTUSTUM SACRAMENTUM.

Iustus. (Adv. iustae.) Conformable to the law (for instance, a judgment), justified, excusable (iustus metus, error, iustus excusatio).—See IUSTA CAUSA, NUP-TIAE, IUSTI LIBERII, DOMINUM IUSTUM, IUSTUM PRETUM.

Donatui, AnPer 33 (1921) 377; Albertario, Stad 3 (1936) 404.

Iustus titulus. See USUCAPIO.

Iuvenes. Organizations of youths (over fourteen) of senatorial and equestrian families for educational purposes and training in sports. Widespread in the Empire they were later recognized as collegia.


Iuvenis. A young man. The term has no technical meaning; it refers to both impuberes (under fourteen) and minors (under twenty-five), more frequently to minors in an advanced age. Syn. adu-

leccens.

Berger, RE 15, 1862; Albertario, RendLomb 54 (1921) 303 (= Studi 1, 1933, 513); Axelson, Mél Maneusau, 1948, 7.

K

K. Abbreviation for Kalumniator. See CALUMNIA.

Kalator. See CALATOR.

Kalendae. The first day of a month. Kalendae usually were fixed as the date for the payment of debts and interest. In the case of omission of the month whose Kalendae was set for payment (e.g., in a testa-
ment or stipulatio) the first day of the next month was understood. Omission of the year in a simple indication, such as "Kalendis Januariis," the next January first was assumed unless the intention of the parties was apparent from other indications. January first was from 153 b.c., the day on which the magis-trates elected several months before entered. On the same day the annual edicts of the magistrates whose terms expired lost their validity and those of their successors entered in force.

Kalendarium. A register of births in the form of a codex or a papyrus-roll where the declarations of birth were entered daily alongside the recording on the white board (album); see PROFESSIONES LIBER-

RUM.

Schulz, JRS 32 (1942) 88 and 33 (1943) 57; Montvecchier, Aeg 28 (1948) 151.

Kalendarium (calendarium). A debt-book of bankers and professional money-lenders in which they wrote the names of debtors and the sums and interest due. Municipalities had also their kalendarium, and a special official, curator kalendarii, was entrusted with the bookkeeping. There are some instances of the use of a kalendarium by private individuals.
L

L. Abbreviation for "libera" (= I acquire). See A. 

Labeo, Marcus Antistius. One of the most famous 

Roman jurists, contemporary with Augustus, pupil of 

prominent republican jurists, among them Trebatius. 

He was both teacher and writer. Among his works, 

which altogether amounted to 400 books, were 

collections of cases (Pithana, Respansa, Epistulae), a 

commentary on the praetorian edict, a treatise on 

pontifical law. A progressive mind, original and 

courageous in his interpretations, he appears fre- 

quently as a keen innovator, although in his political 

ideas he was rather conservative. According to 

the tradition he was the founder of the "school" called 

later by the name of his follower, Proculus, Procu- 

liani. Labeo is the only jurist whose works which 

remained unpublished during his lifetime were edited 

after his death (Posteriorres, sc. libri) by an unknown 

writer and then in a shorter epitome by Javolenus. 

His father, Pacuvius Labeo, was also a jurist. 

Jör. RE 1, 2548, no. 34; Oestrano, 'NDI 7; A. Pernice. 

Labeo. Röm. Privatrecht im ersten Jahrh. der Kaiserzeit, 

1 (1873); Grosso, Quadrini di Roma 1 (1947) 335: 

Berger, BIDR 44 (1937) 96; Santi di Paola, BIDR 8-9 

(1948) 277; Schulz, History of Roman legal science 

(1946) 207.

Lacus. A lake. "It has water permanently" (D. 

43.14.1.3). Navigation on public stagnant waters, 

such as lakes, ponds (stagna), channels (fossae), is 

protected by the same interdicts as that on public 

rivers. — See flumina publica, interdicta de 

fluminibus publicis.

Berger, RE 9, 1636: De Ruggiero and Mazzarino, DE 4.

Laedere. To injure, to hurt, to damage. "He who 

exercises his right injures no one (neminem laedit)." 

"Through agreements between private individuals 

rights of other persons cannot be impaired" (D. 

2.153.3 pr.). — See aemulatio, uti iure suo.

Laelius Felix. A jurist of the first half of the second 

post-Christian century, author of a little known 

commentary on the work of Q. Mucius Scaevola.

Berger, RE 12, 416.

Laesio enormis. A non-Roman term which refers to 

the sale of a thing for which the buyer paid less than 

half of its real value (nee dimidia pars veri pretii). 

In Justinian's (postclassical?) law such a sale could 

be rescinded at the request of the seller, but the 

buyer might keep the thing by supplementing the 

price paid to the full value. — See pretium iustum.

Basshoff, ZVR 27 (1912) 261: Meynial, Mih Gurd 2 

(1912) 201: Andrich, RSG 63 (1919); Solazzi, BIDP 

31 (1921) 57: Levy, ZSS 43 (1922) 334; De Senarcens. 

Mih Fournier (1929) 696: Scheuer, ZVR 47 (1932): 

Nicolaou, RHD 15 (1936) 207; Albertario, St 3 (1936) 

401; Carrelli, SDH 3 (1937) 445; R. Dekkers. La L., 

Paris, 1937; Gemmer, Die anikten Grundlagen der i.e., 

Zischke. für ausländisches und intern. Privatrecht 11 

(1937): Jolowicz, Recueil en l'honneur de E. Lamberti, 

1 (1938): Leicht, St Calixtus 1 (1940) 37.

Lance et licio. The search (perquisitio) for stolen 

things in the house of the accused person had to be 

made according to the Twelve Tables under certain 

formalities: the plaintiff was clothed only with a 

girdle (apron = licium) and he held a dish (laxis) 

with both hands. This measure excluded the possibil- 

ity that the pursuer might bring in the stolen goods. 

The procedure took place in the presence of witnesses. 

It fell into disuse early. — See furtum, furtum con- 

ceptum, furtum oblatum.

F. De Visscher, Etudes de droit rom. 1931, 217: Rabel. 

ZSS 52 (1932) 477; Polak, Symbolae von Oen. 1946, 

253.

Lanciarii. A military unit within the praetorian co- 
horts (see cohors) instituted by Diocletian.

Mazzarino, DE 4.

Lapidicina. A stone quarry. Jurisprudentially relevant is 

the question of who owns a quarry discovered in a 

land after it had been sold without the seller's knowing 

of the quarry's existence. Generally stones are con- 

sidered as proceeds (fructus) of the land.

Lapillus. See iactus lapilli.

Lapis. A stone of any kind (a building stone, a mile- 

stone, a boundary stone, see terminus, even a gem, 

see gemma). Iius lapidis extemendi = the right 

(servitude) to take stones from another's land (stone- 

pit). — See lapidicina.

Laqueus. A rope. — See strangulatio, suspendere.

Pfla, RE 4.

Lares. Tutelary deities of a household; in a broader 

sense, the household itself. — Lares collocare see do- 

micilium.

Vitucci, DE 4.

Large. To bestow, to donate, to give a liberal gift.

The term is also applied to judicial remedies granted 

by the praetor, e.g., a restitutio in integrum.

Largeitas. (Frequent in imperial constitutions.) Larg- 

gess, giving a gift, granting a benefit. Syn. largitio.

Essai, RE 12.

Largitio imperialis. A benefit, privilege, grace be- 

stowed by the emperor. — See comes sacrarium lar- 

gitionum, largitiones.

Largitionalis. Connected with the state treasury, fascus 

(in the later empire). The term refers to all kinds of 

taxes and imposts paid to the treasury.

Largitiones. The state treasury (= fascus) in the later 

Empire; it is also called sacrae largitiones as depend- 

ning upon the control and disposal of the emperor,
exercised by a staff of imperial officers (palatini, comitatusenses) under the direction of the comes sacrarum lartaitionum.—C. 12.23.

Samonati, DE 4, 408.

Lascivia. Wantonness, lasciviousness, negligence. In certain situations it is considered as culpa and involves the responsibility of the person who neglected his duties per lasciviam.

Lata fuga. See interdictio locorum, exilium.

Laterculum. An official register of all public offices and officers in the later Empire. It was kept and supervised by special officials, laterculenses.

Laticlavius, laticlaves, latus clavus. See clavus, tribunus laticlavius.

Latefundia (lati fundi). Large estates owned by the state (populus Romanus), the emperor (patrimonium principis), members of the imperial family, or private individuals. Large private estates were the characteristic feature of the agricultural economy in the last two centuries of the Republic. They were cultivated by gangs of slaves who under the Empire were gradually replaced by free labor and later by tenants who practically became serfs.—See coloni, patrocinium vicorum.

Lécrivain, DS 3; Heichelheim, OCD; N. Minutillo. Latifondi nella legislazione dell’impero rom., 1906; P. Roux. La question agraire en Italie. Le latifondium r., 1910.

Latina liberta. The legal status of Latini iuniani.—C. 76.—See also latinitas.

Latini. The descendants of the population of ancient Latium (Latini prisci), which was organized as a federation of various smaller civitates. After its dissolution (in 338 B.C.), Rome entered into relations with the civitates Latinae on the basis of agreements by which they were given a rather privileged status, designated as ius Latii. Later, colonies were founded in Italy on the basis of ius Latii as civitates Latinae. The citizens of these colonies were Latini coloniarii (colonial Latins). The Latin colonies were granted internal autonomy, with their own legislative and jurisdictional organs, but they were subject to the Roman foreign policy, to financial obligations to Rome, and to military service in wartime. Although legally strangers (peregrini), they enjoyed some political rights in Rome, the right to vote in comitia tributa, acquisition of Roman citizenship through domicile in Rome, ius commercii with Rome, and the right to conclude marriages with Romans, when specifically granted. The charter issued on the occasion of the foundation of a Latin colony determined the rights of its citizens in each case. An important advantage of the Latini coloniarii was the opportunity to obtain Roman citizenship (either generally or individually) for services rendered to the Roman state. Latins who held offices in their own community easily became Roman citizens. The ius Latii was a particularly favorable legal status, in a sense, an intermediate status between Roman citizen-ship and the status of peregrini.—See Latini iuniani, lex licinia mucia.

Steinwenter, RE 10 (s.v. ius Latii): Lécrivain. DS 3; Vitucci, DE 4 (Latinum); A. N. Sherwin-White, OCD; idem, The R. citizenship, 1939; Wissak, ZSS 28 (1907) 114.

Latini coloniarii. Citizens of Latin colonies founded by the Romans with the privileges of ius Latii. See Latini. After the constitution of Caracalla on Roman citizenship, the status of Latini coloniarii ceased to exist.—See Latini.

Kornemann, RE 4, 514; Steinwenter, RE 10, 1257; Lécrivain, DS 3, 978; Bernardi, Studia Ghisleriana 1 (1948) 237.

Latini iuniani. Slaves manumitted in violation of the provisions of the lex aelitia sentia and the lex iunia norisana concerning manumissions or in a form which was not recognized by the ius cistic (see manumissiones praetoriae) became free but did not acquire Roman citizenship, only Latin status without political rights (Latini iuniani). They had ius commercii and could acquire property by transactions or take it under a last will as heirs or legatees, but they had no right to make a testament, their property going to the patron after their death. Therefore their situation was characterized by the saying: “they live as free men, but they die as slaves.” They had no ius conubii with Romans. The status of Latini iuniani was abolished by Justinian.—See Latiniitas. Iteratio in manumissions, secatusconsulium largianum, caeae probatio, senatusconsultum pecasianum.

Steinwenter, RE 12; Kübler, RE 18. 799; Vitucci, DE 4, 446.

Latini prisci (veteres). See Latini.

Latinitas. A term used by Justinian with regard to the status of Latini iuniani which was abolished by him. Therefore he speaks of it as antiqua Latinitas. Syn. Latina liberta.—See ius Latii, Latini iuniani.

Latinum nomen. All peoples (populi) of Latin origin (from ancient Latium). Socii nominis Latini = Latin nations joined in alliance with Rome.

Latio legis. Making, enacting a law.

Latitare. To hide in order to escape a trial. Latitans is one who cannot be found and summoned to court. The praetorian edict dealt with persons who fraudulently withdrew from sight (fraudationem causa latitare) thus making impossible judicial proceedings against them. A remedy to enforce their appearance was the seizure of their property by the plaintiff, authorized by the praetor (missio in possessionem rei servandae causa).

G. Solazzi, Concorso dei creditori 1 (1937) 58.

Latium. Often syn. with ius Latii. Under the Principate there is a distinction between Latium maior and Latium minus. The former referred to the rights granted to colonies founded as coloniae Latinae outside Italy, combined with the concession of Roman citizenship to a larger group of individuals than
Latium minus, in which only the municipal magistrates and members of the municipal council (decuriones) were rewarded with Roman citizenship.

Lecrivain, DS 3, 979; Vinucii, DE 4, 442; Mommsen, Juristische Schriften 3 (1907) 32.

Latro (latrunculus). A robber, bandit, highwayman. A person kidnapped by a latro remains free and does not become his slave. His legal situation remains unchanged, and the so-called ius postiliniun to which applies to Roman citizens who became prisoners of war, does not apply to him. In the earlier law a latro was treated like a thief unless his crime was combined with a graver one (murder or use of violence, vix). Later, robbery (latrocinium) committed by a group of armed bandits became a special crime involving the death penalty by hanging (see FURCA).

—See GRASSATOR.
De Ruggiero and Barbieri, DE 4; Düll and Mickwitz, RE Suppl. 7 (zv. Strassernurb).

Latrocinari. To commit a latrocinium.

Latrocinium. Highway robbery.
Pfaff, RE 12; Düll, RE Suppl. 7, 1239; Humbert and Lecrivain, DS 3.

Latrunculatur. A military (police?) official charged with the running down of highwaymen (latrones, grassatores). The latrunculatores were stationed at posts (stationes) throughout the country.—See STATIONARI.

Latrunculus. See LATRO.


Latus. (With reference to contracts and trials.) The party to a contract or to a trial.

Latus. (Adj.) Broad, wide. Adv. late, latus, latisme. The terms refer frequently to the meaning of words and their interpretation (“in a broader sense”).

—See CULPA LATA, LATA FUGA.

Laudabilitas. An honorific title of a high official in the later Empire (“excellency”).
De Ruggiero and Barbieri, DE 4 (zv. laudabilis); P. Koch, Byzantinische Beamtenizit, 1903, 117.

Laudare auctorem (laudatio auctoris). The buyer of a thing who was sued by a third person claiming the right of ownership in it, had to name the seller (laudare auctorem, syn. later nominare auctorem) as his predecessor in ownership. The latter was obliged to assist the buyer (liti subsistere) in the defense of his right against the claimant. A similar laudare took place when a non-owner of a thing (a depositee, a usufructuary) was sued by a third person for recovery of the thing. Here the defendant named the person in whose name he held the thing. It was the latter’s task to defend his property.


Laudatio funebris. A funeral oration. Such orations, when delivered on behalf of a deceased official, were pronounced publicly (pro comitio) by a magistrate authorized for the purpose (laudatio publica), whereas on behalf of a private person a laudatio was delivered by a family member.

Vollmer, RE 12, 992; Cug, DS 2, 1399; De Ruggiero and Barbieri, DE 4; E. Galletier, Poétique funéraire romaine, 1922; Crawierd, CI 37 (1941) 17; Durry, Revue de philologie 16 (1942) 105.

Laudatio. (In a criminal trial.) See LAUDATORES.

Laudatio Murdiae. A funeral oration (or perhaps only a dedicatory inscription on a tomb?) of the first post-Christian century, preserved on a tombstone. It contains an important section concerned with the testament of the deceased woman, Murdia.

Recent edition: Arango-Ruiz, FIR 3 (1943) 218 (Bibl.); Weiss, RE 12; Fluss, RE 16, 659; De Ruggiero and Barbieri, DE 4, 474.

Laudatio Turiae. An extensive inscription half preserved with a laudatio funebris dedicated by a husband to his wife. The inscription contains precious details about marriage, divorce, and the administration of the spouses’ property. The inscription was written between 8 and 2 B.C.

Recent edition: Arango-Ruiz, FIR 3 (1943) 209 (Bibl.); Weiss, RE 12; Arango-Ruiz, ANop 60 (1941) 17; De Ruggiero and Barbieri, DE 4, 474; Van Oven, RIDA 3 (1949) 373; Lemose, RHD 28 (1950) 251; Gordon, Amer. J. of Archaeology 54 (1950) 223; M. Durry, Eloge funèbre d’une matrone rom., 1950; Van Oven, TR 18 (1950) 80.

Laudatores. Witnesses in a criminal trial who testified about the blameless life (laudatio) of the accused.
Weiss, RE 12; Kaser, RE 5A. 1047; Messina, Rivista penale 73 (1911) 292.

Lectio. (E.g., constitutionis.) The text (of an imperial constitution). Lectiones iuris = legal texts. Lectio Papiniani (in Justinian) = a text taken from Papinian’s writings.

Lectio senatus. Selection of the members of the senate. A Lex Ovinia (318–312 B.C.) vested the censors (see CENSORES) with the discretionary power of the selection of new members. Their first duty when they assumed the office was to establish a list of the senators. They started with the scrutiny of the list of the actual members (high magistrates and ex-magistrates) and excluded senators (senatu mortuorum) who judged guilty of bad conduct. Then they filled any vacancies by appointing new senators chosen from among the prominent citizens (optimi) of the people.

—See SENATUS.

O’Brien-Moore, RE Suppl. 6, 686.

Legare. (In classical law.) To bequeath a legacy in the form of legatum. In the language of the Twelve Tables the term embraced all kinds of testamentary dispositions, the institution of an heir (see HEREDIS INSTITUTO) included.—See LEGATUM.

Legatarius. A legatee, one to whom a legacy in the form of legatum is left.
Legati. Ambassadors, both Roman legati sent abroad and those of foreign states in Rome. Foreign ambassadors in Rome were inviolable (zusti, D. 507.18); they remained so even after declaration of war against the country they represented. The Romans granted this privilege to other countries and claimed it also for their ambassadors. The maintenance of international relations lay with the senate; it received foreign ambassadors and sent official missions abroad. Under the Empire, however, the emperor assumed these tasks. Roman ambassadors were sent to perform special missions such as the declaration of war (see fetiales), the conclusion of peace or of particular treaties. The settlement of a controversy between Rome and another state.—D. 507; C. 10.65.


Legati. Members of provincial councils; see concilia provinicialum.

Cagnat. DS 3, 1035.

Legati ad census accipiendos. Special delegates (of senatorial rank) sent by the emperor or the senate to senatorial provinces to conduct a census of the population.


Legati Augusti (Caesarii). Imperial ambassadors sent on a special mission. For Legati Augusti pro praetore, see legati pro praetore.

V. Premerstein. RE 12, 1144; Solazzi. AG 100 (1928) 3.

Legati coloniarii. See legati municipiorum.

Legati decemviri. Ten delegates of the senate acting as a council for a commanding general in the concluding of a peace treaty or in the organizing of a conquered territory.

V. Premerstein. RE 12, 1141.

Legati iuridici. (In provinces.) Officials sent by the emperor to provinces to assist the governors in their judicial activity. Their competence was primarily in the field of iuridictio voluntaria (as the appointment of guardians), but they might be delegated by the governor to examine and judge specific cases as his delegates.—See iuridici.

V. Premerstein. RE 12, 1149; Jullian. DS 3, 715.

Legati legionum. Legates of senatorial rank assigned regularly or only in war time to the legati Augusti pro praetore who were commanders of legions in the provinces, in order to assist them in military, administrative and judicial activity.

Liebenau. RE 6, 1641; v. Premerstein. RE 12, 1142, 1147. Legati municipiarii (coloniarum). Delegations sent to Rome by provincial municipalities or colonies in order to present complaints against (or praise for) the provincial governor or against a magistrate of the colony. Such missions came to Rome also to express some particular wishes or to declare their loyalty to Rome or the emperor, on the occasion of a happy event. Generally they were composed of three persons.

Cagnat. DS 3, 1036.

Legati proconsulares. The provincial governor of a senatorial province, who had the rank of a proconsul, had a deputy, legatus pro consul. The latter had jurisdiction only as far as it was delegated to him by the governor (iurisdiction montanda). His official title was legatus pro praetore and his imperium was of a degree lower (pro praetore) than that of the governor (pro consule). He replaced the governor in the case of absence or death. These legates are to be distinguished from the legati Augusti pro praetore in imperial provinces. All legati pro praetore had the right to be preceded by five lictors with fasces, hence they were named quinquefascales.—D. 1.16; C. 1.35.—See provincia, iurisdiction montanda and the following item.


Legati pro praetore. See the foregoing item. Legati Augusti (Caesarii) pro praetore = governors of imperial provinces appointed by the emperor for an indefinite period. They were representatives of the emperor who himself had the proconsular imperium and therefore their imperium was only pro praetore.

—Legati Augusti pro praetore could be sent by the emperor to senatorial provinces but only for a special task.

V. Premerstein. RE 12, 1144; Bersanetti. DE 4, 527; Solazzi. AG 100 (1928) 3.

Legatio. The office of an ambassador, a group of delegates entrusted with a mission. The head of the group = princeps legationis.—D. 507; C. 10.65.—See legati, ius legationis, concilia provinicialum.

Legatio gratuia. See legativum.

Legatio libera. An ambassadorship granted by the senate to a senator to facilitate his travel abroad in personal matters. He did not assume any official duties.


Legativum. The expenses of an ambassador, primarily for traveling (vaticum). They were reimbursed unless the ambassador assumed the mission at his own expenses (legatio gratwia).

Legatum. A legacy. It is "a deduction from the inheritance" (D. 30.116 pr.) which according to the testator's wish is given some person other than the heir. The legatee (legatarius) is legatarius partarius when a fraction of the inheritance is left to him (see partitio legata). Generally a legacy consisted of a sum of money or one or more objects individually
designated (res singulares). A legacy in the form of legatum could be bequeathed only in a testament, and after the institution of an heir (hereditis instituto) because it was the heir who was charged with the payment of the legacy, and all dispositions preceding the institution of an heir were void. A legacy termed "after the death of the heir" was null. For further details see the following items; for the form of a legacy called fideicommissum, see FIDEICOMMISSUM. D. 30. 31, 32; 37. 5; Inst. 2. 20; C. 6. 37; 6. 43.—See ACTIO EX TESTAMENTO, CAUTIO LEGATORUM NOMINE, ADEMPTEIO LEGATI, TRANSLATIO LEGATI, COLLEGATORIAI, CONCURSUS PARTES FIUNT, ANNUM, ANNUA BIMA DIE, DIES CEDENS.


Legatum alimentorum. See ALIMENTA LEGATA.

Legatum annuum. A legacy under which the legatee had to receive every year a certain sum or a quantity of things during a period of time or for life. The legatee must have the capacity of acquisition at each term when the payment is due.—D. 33.1.—See ANNUA BIMA DIE.

Legatum debiti. A legacy by which a testator bequeathed his debt to the creditor. Such a legacy was valid only if it contained an advantage for the creditor, by, for instance, rendering unconditional a debt that orginally was under a suspensive condition, or setting better terms of payment.

B. Biondi, Successione testamentaria, 1943, 450.

Legatum dotis. A legacy concerning the dowry. A husband might bequest the dowry to his wife; if so, after his death the dowry was restored immediately to the wife. A pater familias who held the dowry given to his married son might leave it to his son. —D. 33.4.

B. Biondi, Successione testamentaria, 1943, 453.

Legatum generis. A legacy of fungibles (see GENUS) and not of some individually designated thing (species). The legacy of a slave, without any further indication, was such a legacy. Normally the testator set in his testament who had to make the choice from among the things of the same kind (slaves, horses) belonging to the estate: the heir, the legatee or a third person. The jurists did not agree about the solution in the case the testator did not entitle any person to make the selection. Apparently the rules varied according to the form in which such a legacy (legatum) was left. The Justinian law favored the choice by the legatee.

B. Biondi, Successione testamentaria, 1943, 436.

Legatum instrumenti. A legacy of a house or land with all necessary appurtenances. See INSTRUMENTUM, INSCRIPTUM. It was held generally that there were two legacies, one of the house (land) and another of the appurtenances. Hence if the testator sold the house without the instrumentum, the legacy of the latter remained valid. There is in the Digest an abundant discussion about the extension of the term instrumentum in connection with legacies. The pertinent problems concern the interpretation of the term from the point of view of the social and economic connection of the accessories (even persons, slaves, professional craftsmen) with the principal thing. A legatum of a fundus instructus was the broadest type since it embraced all that served the owner's use (also food, provisions, furniture, and the like).—D. 33.7.

Legatum liberationis. A legacy by which a testator released a legatee who was his debtor, from the debt. —D. 34.3.

De Villa, La liberatio legata nel dir. classico e giustiniano, 1939; B. Biondi, Successione testamentaria, 1943, 457.

Legatum nominis. A legacy by which the testator bequeathed a debt due to him by a third person to the legatee.

B. Biondi, Successione testamentaria, 1943, 448; Aras Bonet, Rev. general legislacion y jurisprudencia 187 (1950) 60.

Legatum optionis. A legacy naming several things among which, however, the legatee may select only one (optare). The choice was (until Justinian) a strictly personal right; accordingly, if the legatee died before making his selection, the legacy became void. Various innovations were introduced by Justinian. Syn. optio (electio) legata.—D. 33.5.—See EXHIBERE, IUS VARIANDI, ELECTIO.

Ciapessoni, ACSR 1931, 3, 24; De Villa, StStas 11 (1934); Albertario, St 5 (1937) 345; B. Biondi, Successione testamentaria, 1943, 440; P. Bolomey, Le legs d'option. Lausanne, 1945.

Legatum partitionis. See PARTITIO LEGATA, LEGATARIUS PARTIARIUS.

Legatum pecullii. A legacy of a slave's peculium, together with the slave or without him. The legacy was void if the slave was manumitted or sold by the testator or if he died before the legacy was available to the legatee. When the peculium alone was bequeathed, it was understood deducto aere alieno, i.e., with the deduction of what the slave owed to his fellow slaves, to his master, or to the latter's children. —D. 33.8.—See PECULIUM.

B. Biondi, Successione testamentaria, 1943, 447.

Legatum penoris. A legacy of food provisions, of "what can be eaten or drunk" (D. 33.9.3 pr.). Such a legacy could involve the duty of furnishing the legatee a certain quantity of provisions continually through a longer period of time (every month or year). The interpretation of the term penus and related expres-
sions is extensively discussed by the jurists.—D. 33.9.
—See LEGATUM ANNUITUM, ALIMENTA LEGATA.
Clerici. AG 73 (1904) 128; Guarneri-Ciati. AnPal 11
(1923) 259; B. Biondi. Successione testamentaria, 1943,
463.

Legatum per damnationem. A legacy expressed by the
testator with the words: "my heir shall be obliged
to give (domnas esto dare) . . ." Later other
words were admitted (e.g., dare iubeo = I order my
heir to give). This form of a legatum obligated the
heir to fulfill the testator's wish. In the case of
denial, the heir was condemned to double damages.
—See SENATUS-CONSULTUM NERONIANUM, SOLUTIO
PER AES ET LIBRAS.
Kühler. RE 18. 801; Thomas. RHD 10 (1931) 211; J.
Paoli. Lii in futurbo crescit in duplum, 1933, 135; Voci,
SDHI 1 (1935) 48; Koschaker. Conf. Cist 1940, 97; M.
Kaser, Das altröm. lex, 1949, 123; 154.

Legatum per praecipitationem. A legacy expressed in
the following form: "X shall take a thing beforehand." The
nature of this kind of legatum was contro-
versial among the jurists. The problem was
whether it could be applied only in the case of an
heir to whom the testator wanted to leave a specific
thing over and above his share in the inheritance or
whether it could be left to anyone with the ex-
ception of a legatum per vindicationem. The second view
prevailed.

Legatum per vindicationem. A legacy left with the
words: "I leave, I bequeath (do lego) to X" or
(later) "let X take (sumite, capito)." A legatee thus
rewarded could claim the thing with rei vindicatio
as its owner. This type of a legatum also raised some
doubts among the jurists, in particular as to the
moment when the acquirer owned over and above
the thing bequeathed.—See USUCAPIO PRO LEGATO.
Wiassak. ZSS 31 (1941) 196; S. Romano. Sull'acquist
del. I.p.x., 1934; P. Voci, Tratt. dell'acquisto dei legati,
1936; Amiranu. Iura 3 (1952) 249.

Legatum poenae nomine relictum. A legacy left with
the purpose of compelling the heir to do or not to do
something by charging him with a legacy to be given
to a third person in the case of non-fulfillment. For-
medly it was a legacy under condition. In classical
law such a legacy was void; Justinian made it
admissible, but it was null if the thing to be done by
the legatee was immaterial, illicit or impossible.—
D. 34.6; C. 6.41.
Marchi. BIDR 21 (1909) 7.

Legatum rei alienae. A legacy of a thing different from
the testator. If the testator knowingly bequeathed
such a thing, the legacy was valid: the
heir was obliged to acquire the thing from the third
person and deliver it to the legatee. Decisions of
the jurists were divergent if the third person did not
want to sell the thing or demanded an exorbitant
price. The opinion prevailed that the heir had to
pay only the value of the thing to the legatee.
B. Biondi. Successione testamentaria, 1943, 421; Orestano.
AnCom 10 (1936).

Legatum rei obligatae. A legacy by which the testa-
tor bequeathed the legatee a thing belonging to the
latter which he (the testator) or the heir held under
a specific right (as a pledge, or in usufruct).

Legatum servitutis. See SERVITUTIS.—D. 33.3.

Legatum sinendi modo. A legacy left with the fol-
lowing formula: "my heir shall be obliged to
allow (sinere) that X take (e.g.) the slave Stichus
and have him for himself." Such a legacy could involve
even things which belonged to the heir at the time
of the testator's death. The heir was obliged to ful-
fill the testator's order; in the case of refusal an actio
incerti) ex testamento lay against him.
Ferrini. Operae 4, 217 (c. 1900); N. O. D. Bammatt.
Origine et nature du legs sinendi modo, Lausanne, 1947;
Cugia. Ser Ferrini 2 (Univ. Catt. Milano, 1947) 71; Kaser,
ZSS 77 (1950) 320.

Legatum sub modo. A legacy combined with a re-
quest that the legatee perform certain acts.—D.
33.1; C. 6.45.—See MODUS.

Legatum suppellectilis. A legacy of household goods
(furniture, utensils). Gold and silver goods are ex-
cluded, as are domestic animals. The limits of such
a legacy are widely discussed by the jurists.—D.
33.10.

Legatum ususfructus. A legacy of an usufruct.
F. Messina-Virzino. Legato d'usufrutto, 1913; B. Biondi.
Successione testamentaria, 1943, 346; Solazzi. BIDR 49-50
(1947) 393.

Lege agere. To conduct a suit under a procedure
established by a statute (læx).—See LEGIS ACTIO.

Legere. To read. A written testament must be legible
(= legibile). An illegible testament is void. A tes-
tator could annul his testament wholly or in part by
making it or a part of it illegible.

Leges. Entries with the heading LEGES dealing with
certain types or groups of statutes, concerned with
the same subject matter (such as leges caducariae,
leges agrariae, etc.), follow below, after the item
LEX (LEGES).

Legibus solvere. See SOLUTIO LEGIBUS.

Legio. A military unit originally composed of 4200
footsoldiers and 300 cavalrymen. The number of
soldiers increased in the last century of the Republic
to 6000; under the Principate it dropped to 5000.
In the third century there were 30 legions totalling
150,000 men. The service in a legion lasted twenty-
five years.—See VETERANI, COHORS. CENTURIA, MANI-
FULUS, LEGATI LEGIONUM, TRIBUNI MILITUM.
Passerini. DE 4; Ritterling-Kubischek. RE 12; H. M. D.
Parker. OCD; idem, The Roman legions, 1928.

Legis actio. The earliest form of Roman civil pro-
dure about which we are relatively well informed.
Its characteristic feature was the use of prescribed
oral formulae which were used in the stage of the
trial before the magistrate (see IN TURE). Changes
in the prescribed words by one of the parties might
result in their losing the case. There were five legis
actiones: sacramento, per iidicis arbitri postulatio-
Legis actio per manum inactionem. This *legis actio* was a form of a personal execution on the debtor for specific claims. Its name comes from a symbolical seizure of the debtor by the creditor by the laying of a hand (*manum inicere*) upon him. This form was applied against a debtor who within thirty days after a judgment passed in a proceedings by *legis actio sacramentum*, *per conditionem*, or *per judicis postulationem*, did not fulfill the judgment-debt. Summoned by the plaintiff, the debtor was compelled to go to court before the praetor where the plaintiff pronounced the solemn formula: "Inasmuch as you have been adjudicated to pay the sum of . . . and you did not pay, I lay my hand on you for that sum." If nobody intervened for the debtor as a guarantor (*vindex*), he was assigned to the creditor (see *addictus*). The *vindex* had to pay the debt or contest the judgment. The personal execution was thus invalidated which was expressed by the location *manum depellere* (= to push away the creditor's hand).—See *lex poetelia papria, lex marcia, manus injectio, vindex*.


Legis actio per pignoris capionem. An extrajudicial *legis actio* through which the creditor took a pledge from the debtor's property. This way of execution, reminiscent of an ancient form of self-help, could be applied even in the absence of the debtor and on days on which jurisdicational activity was in abeyance (see *dies nefasti*). In the presence of witnesses the creditor pronounced a prescribed formula (*certa verba*) and took the object to his house. Only certain privileged claims of a military (see *aes equestre, aes hordearium, aes militare*) or sacral (see *hostia*) nature were enforceable through this quick form of execution.—See *pignoris capio, pignus*.

Lécivain, *DS* 4 (1936) 1; Steinweuter, *RE* 20, 1235.

Legis actio sacramentum. Qualified as general (generalis), i.e., it was available in any case for which no other *legis actio* was provided by statute. The term *sacramentum* reveals the sacral origin of the institution (an oath which, in the case that the assertion of the party proved untrue, rendered the perjurer outlaw, *sacer*). In the developed stage the *sacramentum* was a sum of money. The respective amount, 500 or 50 asses according to whether the object under litigation was of the value of one thousand asses or less, was deposited in cash (originally the *sacramentum* was probably paid in cattle), but later sureties were admitted who guaranteed the payment of the sum in the case of defeat. When the controversy concerned the freedom of a man the lower *sacramentum* of fifty asses was applied. The defeated party forfeited the *sacramentum* as a penalty paid to the treasury (not to the adversary). The origin of the *sacramentum* remains obscure in the absence of any reliable source. Only in Gaius' Institutes is some information on the procedure under the *legis*.
Legitamatio. (Term unknown in Roman juristic language.) The changing of the status of an illegitimate child into that of a legitimate one.

Blume. Tulane L R 5 (1931); A. Wetmayer, Die L. des ausserhessischen Kindes, Basel, 1940.

Legitamatio per obligationem curiae. An illegitimate son was considered legitimate if his father gave him sufficient means to be a member of a municipal council (decursio). Likewise an illegitimate daughter was treated as legitimate if the father gave her a sufficient dowry to enable her to marry a decursio. The purpose of these provisions, introduced in the later Empire, was to find candidates for the decurionate with which considerable public charges were connected. The term obligation curiae is also not Roman.—See curiales,ordo decurionum.

Legitamatio per rescriptum principis. A privilege granted by the emperor in the form of a rescript to the effect that a child born in concubinage was to be considered legitimate as if it were born in a valid marriage (iustae nuptiae). The institution is a creation of Justinian. The privilege was granted at the request of the father if the mother was already dead or not worthy to be married.


Legitamatio per consequens matrimonium. According to an innovation introduced by Constantine, an illegitimate child born in concubinage became legitimate through a subsequent marriage of the parents. The pertinent requirements were: the status of the mother as free-born, the consent of the child and the absence of legitimate children. The last restriction was dropped by Justinian.

White. LQR 36 (1920).

Legitime, legitimo modo. In a way prescribed by the law, in the solemn form prescribed by the ius civilis.

Ricobono, ZSS 34 (1913) 224.

Legitimus. Lawful, legal, based on, or in accord with, the law, in particular with a statute (lex) or generally, with the ius civilis. In a few connections legitimus directly refers to the Twelve Tables, as hereditas legitima, tutela legitima. In Justinian's language legitimus appears frequently in interpolated texts where it replaced another classical term; thus, e.g., tempus legitimum is used by the compilers to replace the terms which were fixed in earlier law and were changed by later imperial legislation. For similar reasons in the expression usurae legitimae the adjective is interpolated for the fixed rate of interest as established in Republican and later legislation.—See aetas legitima, actus legitimi, idicitum legitimum, pars (portio) legitima, filius legitimus, hereditas legitima, tutela legitima. Usurae legitimae, successores legitimi, scientia legitima, persona legitima.

Heumann-Seeckel. Handelsikon, 9th ed. 1914, 309; for interpolations see Guarnieri-Ciati, Indice (1927) 52 (Bibl.).

Lena (lenu). A person who exercises the profession of a pander (lenocinum), an owner of an ill-famed house. Juridically a lena (= procuress) who takes profit from other women's prostitution is treated as a meretrix. Lena is also used of the husband of a lena who profits by her profession or of the husband who profits by his wife's adultery, without taking steps for divorce. A man who married a woman condemned for adultery is considered a leno. Persons guilty of lenocinum were branded with infamy and severely punished.—C. 11.41.—See adulterium, meretrix, balneator.

Kleinert. RE 12; Humbert and Lécrivain. DS 3; Acmame, DE 4, 636; C. Castello. In tema di matrimonio, 1940, 117; Solazzi. SDHI 9 (1941) 193.

Lenocinum. See LENA.

Leonini societas. See societas LEONINA.

Leontius. There were two Byzantine jurists by this name; one, a prominent law teacher in Beirut, son of Eudoxius and father of Anatolius, both renowned jurists; the other was the son of the famous Byzantine jurist, Patriacus. The second Leontius was a member of the commission which compiled the first edition of Justinian's Code (see CODEX JUSTINIANUS). The two Leontii were often confused.
Levare. To levy, to collect and exact taxes.

Levis. Light, mild. Frequently used in connection with crimes and punishments (crimen, delictum, poena, castigatio, coercitio) indicating the minor gravity. Analogous is the use of the adverbs levius, levis, in particular when a milder punishment is recommended.

Levis culpa. See culpa lata.

Lex (leges). The primary meaning of lex is that of a statute, law, passed by the competent legislative organs. According to an early definition lex is "a general order of the people (populus) or of the plebeians (plebs) passed upon the proposal of a magistrate" (Capito in Gel. Not. Att. 10.20.2; Gaius Inst. 1.3). The definition embraces legislative acts of the popular assemblies (comitia) as well as those of the plebeian gatherings (concilia plebis) for the enactments of which a special term is coined, plebiscitum. The distinction is still maintained by the jurist Gaius who (1.3) limits the term lex to "what the people order and decree," reserving plebiscitum to "what the plebs orders and decrees." These enactments by the whole people or by a part of it are covered by the term leges publicae.

According to the Roman conception "the strength of a statute is commanding, forbidding, permitting, punishing" (D. 1.3.7). Statutes are designated by the gentile name of the proposer (either of the consuls, a praetor, a tribune of the plebs) or proposers (both consuls), which sometimes gives rise to doubts as in the case of such common names of gentes as Cornelia, Julia, Sempronia. A characteristic feature of the leges publicae is that they never cover a broad legal field. Thus there never was a law concerning the Roman constitution as a whole, or the private law or any division thereof, such as obligations, succession, etc. The leges publicae dealt with one single topic within any area of legal life. As the items immediately following and the subsequent selection of more interesting laws show, the statutory enactments were concerned with popular assemblies and voting, magistrates in Rome and the provinces, the senate and senatorial privileges, the priests and their duties, international relations, Roman citizenship, the provinces, municipalities and colonies, agrarian problems, food supply, luxury, associations, and select questions of private law like guardianship, slaves, succession, interest, civil procedure, and penal law and procedure, etc. With the progress in the development of the law, lex is also referred to laws emanating from other sources that have binding force for all, such as the edicts of the praetors, and decrees of the senate, although in discussions on the sources of law the leges senso stricto, mentioned before, are distinguished from the others. With regard to imperial constitutions of which the jurist named above speaks of them as "standing in the place of a lex" (leges vicem optinem, Gaius 1.5), later classical jurists and imperial enactments call them leges directly. In the later Empire a new distinction arises. The imperial laws are opposed, as leges to iura (= the laws originating from other sources). But the term leges often refers to the law as a whole without respect to its sources. The study of law or the knowledge of law is expressed by legum scientia, legum erudito, and of the jurists of the classical period Justinian speaks as legum auctores, prudentes, and the like. Even religious norms appear as lex, as lex Judaica, lex Catholica. The intrinsic idea of a lex as a binding rule for the whole people or the people of a smaller territory (lex municipalis) appears in the implication of lex as a legal provision created within the sphere of private relations between individuals. Their will, expressed either in a unilateral act or in bilateral agreements (contracts), gives rise to legal ties between the parties involved. With reference to transactions, as, e.g., lex venditionis, locationis, donationis, etc., lex is a particular clause of the transaction in question, a condition imposed upon the party who is interested in, or receives profit from, the transaction. The meaning of a condition appears clearly in phrases with ea lege ut, as, for instance, when somebody donates a slave on the condition ea lege ut manumittatur, i.e., that the slave be manumitted. In the following presentation types of statutes or groups of laws referring to the same subject matter are noted under "leges," while specific statutes appear under "lex."—D. 1.3; C. 1.14.—See auctoritas senatus, rogatio, sanctio, derogatio, obrogatio, renuntiatio legis, rogatores, legitimus, fraud legi facta, mens legis, ratio legis, voluntas legis.

Weiss, RE 12; Cuq, DS 3; G. Longo, N.DI 7; Treves, OCD; Hesky, Wiener Studien 1902, 541; Rotondi, Leges publicae populi Romanorum (Lug. 1912); Peterlongo, Lex nel dir. rom. clasico e nella legislazione giustinianica, St in memoria di R. Michel, Padova, 1937; Arango-Ruiz, La règle de droit et la loi dans l'antiquité classique, L'Egypte contemporaine, 1938 (= Rariora, 1946, 231); F. v. Schwind, Zur Frage der Publikation (1940) 21, 145; Corenini, Carattere della legislazione comitale, AG 131 (1944) 130. For statutes of lesser importance omitted in the following list see Lex, RE 12 (Weiss, Berger) and Suppl. 7 (Berger); Cuq, DS 3; Rotondi, Leges publicae (see above) and additions in Scripta 1 (1922) 411.

Leges agrariae. Statutes concerned with the distribution of public land (ager publicus) which from the earliest times was considered state property. Through gratuitous assignment (adsignatio) plots of land were given to individuals or groups of citizens. The Roman agrarian legislation is as old as Roman history, since the earliest assignment of land to the people is referred to the founder of Rome, Romulus. More than forty agrarian laws of the time of the Republic are known, some of them with the name of
their proposers, some simply as *lex (agraria).* A group of *leges agrariae* is connected with the foundation of new settlements (coloniae). Political considerations exercised a great influence on the agrarian legislation, radical agrarian reforms were often introduced at the expenses of the actual possessors who were deprived of their land, held through generations by inheritance, on behalf of poor citizens to whom it was assigned. Important agrarian legislation falls in the period of the tribunes Tiberius Sempronius Gracchus (133 B.C.) and Gaius Sempronius Gracchus (123–122 B.C.). Until 44 B.C. some twenty agrarian laws were passed, whereas only two laws are known, set from the first century after Christ, the *Lex Coecilia* (under the emperor Nerva, 96–98) being the last. In Justiman's Digest two citations of a *lex agraria* appear, both in connection with the removal of boundary stones (termini motus). The notices on the earliest agrarian legislation are often not reliable. In an inscription a *lex agraria* of 111 B.C. is preserved.


**Leges caducaeiae.** Statutes which introduced incapacity of certain persons to take under a will and so-called caduca (inheritance becoming vacant because of the incapacity of the instituted heir). The most important *leges caducaeiae* are *lex Julia et Papia Poppea,* and *lex Iunia Norbana.*—See CADAICA (Bibl.).

Bemier, *RIDA* 2 (1949) 93.

**Leges censoriae.** Conditions imposed by the censors in contracts concluded with tax-farmers (*publicani*) or collectors of other public dues as well as in sales or leases by auction through which state property was alienated or leased.—See *leges contractus,* *lex venditionis.*

Coo, *DS* 3, 1117; Placy, *BIDR* 47 (1940) 91.

**Leges censui censando.** See CENSUS.

**Leges collegiorum.** Statutes of associations to which all members are subject. The Twelve Tables already granted the members of collegia (sodales) the right to set internal rules.


**Leges coloniarum, (de coloniiis deducendis), municipales (municipiorum).** Statutes concerning the constitutional organization of a colony (coloniae) or of a municipality in Italy or in a province.—See *LEX COLONIAE GENETIVAE IULIAE,* *LEX MUNICIPALIS TARENTINA,* MUNICIPIVM.

Kornemann, *RE* 4, 577.

**Leges comitiales.** See *LEX ROGATAE.*

**Leges consulares.** Statutes proposed by a consul.

**Leges (lex) contractus.** (In private law.) Applied to all transactions between private individuals with regard to particular provisions of a specific contract. According to a saying of the jurist Ulpian (D. 16.3.1.6) "contracts receive a law (legem) by agreement (ex conventione)," which means that what is agreed upon by the parties to the contract becomes law between them. In this meaning *lex* is applied to various types of transactions (municiptio, venditio, locatio, depositum, donatio). In public administration *leges contractus* is used of contractual provisions set by the magistrates in transactions concluded with private persons in the interest of the state, such as leases (leges locationis), sales (leges venditionis), and the like. Since such transactions were primarily in the competence of the censors, literary sources often speak of a *lex censoria* (see *LEGES CENSORIAE*) with regard to rules imposed by the censors in such agreements. The term *lex dicta* also occurs on such occasions.


**Leges datae.** Laws issued by higher magistrates under the Republic, later by the emperor, for communities on the occasion of their incorporation into the state. They are not voted in popular assemblies, unlike the *leges rogatae.*—See *LEX MUNICIPALIS TARENTINA.*


**Leges datae.** (In the provinces.) Charters given to provincial cities making them free (civitates liberae). They were revocable by the authority which granted them or by the legislative bodies in Rome.

**Leges de censoria potestate.** Laws passed by the *comitia centuriata* every five years investing the censors with their magisterial power.—See CENSORES.

**Leges de imperio.** Under the Republic the investment of higher magistrates with the magisterial *imperium* was achieved by a statute passed in the curial assembly (lex curiata). Under the Principate the sovereign power is transferred to the emperor (princeps) by a similar act, lex de imperio, with the appropriate constitutional modifications. This was practiced at least during the first century. The statute conferring the sovereignty on Vespasian is preserved in a large part; see *LEX DE IMPERIO.*—See also IMPERIUM.


**Leges decemvirales.** See *LEX DUODECIM TABULARIVM.*

**Leges dictae.** (From *legem dicere.*) A conception common to both private and public law. With reference to private persons they comprise dispositions settled in a last will or a contract by which a certain
legal situation or character is imposed on a thing by its owner. One also speaks in such cases of *lex suae rei dicta*. *Leges dictae* is used also with regard to clauses settled in a contract concluded by the censors on behalf of the state; see *Leges Censoriae*, *Leges Contractus*. Finally, *leges dictae* are the rules imposed by the emperor in the administration of his private property.

*Leges divinae* (humanae). See *Ius Divinum*—*Humanum*.

*Leges edictales*. Laws emanating from imperial edicts.

—See *Edicta Principium*.

*Leges frumentariae*. Laws concerned with the distribution of grain. —See *Frumentum*, *Frumentatio*, *L'l sempromnia frumentaria*, *Lex Cloedia frumentaria*.


*Leges geminae* (geminatae). In the literature the excerpts from juristic writings or imperial constitutions which are preserved twice in Justinian's codification are so called. Despite Justinian's order to avoid repetitions there is in the Digest a considerable amount of *leges geminae* derived from the works of the same author or different authors.


*Leges generales*. In the later Empire imperial enactments of a general character.

*Leges imperfectae*. See *Leges Perfectae*.

*Leges judiciales*. Statutes concerned with the organization of the courts and judicial procedure. —See *Lex Aurelia*.


*Leges latae*. See *Leges Rogatae*.

*Leges lucorum*. Sylvan statutes. Some of them are preserved in inscriptions.

Arango-Ruiz, *FIR* 3 (1943) 223.

*Leges minus quam perfectae*. See *Leges Perfectae*.

*Leges municipales* (municipiorum). See *Leges Coloniariae*.

*Leges perfectae*. Statutes which forbid certain transactions with the sanction that acts performed in violation are void. *Ant. leges imperfectae* = laws without any sanction at all. There is also a category of *leges minus quam perfectae* which threaten only the violator with a penalty, but do not invalidate the act itself. —See *Sanctio*.


*Leges regiae*. Laws attributed to the kings of Rome, Romulus, Numa Pompilius, and their successors. They are primarily concerned with sacral law. Their existence is highly questionable, although according to tradition the so-called *Ius Papirianum* is supposed to have been a collection of the *leges regiae*. —See *Papirius*.


*Leges rogatae*. Statutes which are passed by vote of one of the popular assemblies upon the proposal (*rogatio legis*) by a higher magistrate. Syn. *leges comitiales*. Ant. *leges datae*.

G. Rotondi, *Scritti* 1 (1922) 1; Cosentini, *AG* 131 (1944) 130.

*Leges Romanae barbarorum*. Called in the literature the codifications made for the use of the Roman population in the territory of the former Western Roman Empire after its decay.

Berger, *RE* 12, 1185.

*Leges sacratae*. Laws for the violation of which the offender is outlawed (*sacer*). The statutes on the inviolability of the plebeian tribunes fall in this category. —See *Lex Icilia*, *Lex Valeria Hortacia*, *Sacrosanctus*, *Sacer*.


*Leges saeculares*. The term occurs only in the title of the so-called *Libri Syro-Romanus*.

*Leges satuirae* (*per satarum*). Statutes dealing with heterogeneous subject matters. Such statutes were forbidden in the earlier law. The prohibition was renewed by the *Lex Caecilia Didia* of 88 B.C.

*Leges sumptuariae*. See *Sumptus*.


*Leges tabellariae*. Statutes referring to voting in popular assemblies through tablets (*tabellae*). —See *Lex Cassia*, *Gabinia*, *Maria*, *Papiria*.

Humbert and Lécrivain, *DS* 5, 5.

*Leges tribuniciae*. Statutes proposed by plebeian tribunes.

Weiss, *RE* 12, 2416; Cua, *DS* 3, 1174.

*Leges viariae*. —See *Viae*.

*Lex Accilia de intercalando*. (Of 191 B.C. on intercalary days.) See *Intercalare*.


*Lex Accilia repetundarum*. (123 B.C.) This is one of the best known statutes on *repetundae* because it is preserved in large part in an inscription which is generally considered to be the *Lex Accilia*.

Lex Aebutia. (Of uncertain date, between 199 and 126 b.c. or even later.) Connected with the reform of the civil procedure. It abolished the LEGIS ACTIONES—except for the centumviral court and in the case of DAMNUM INFECTUM—and introduced the formulary procedure. The reform was completed by two statutes of Augustus (leges Iuliae iudiciariae). The Aebutian reform served to generalize the formulary procedure which was doubtless known earlier and practiced in trials between foreigners.—See FORMULA, CENTUMVIRI.

Berger, RE Suppl. 7 (Bibl.); G. Longo, NDI 7, 829; Radin, TwiLR 22 (1947) 141; Kaser, St Alberthia (1952) 3.

Lex Aebutia. (On extraordinary magistrates, about 150 B.C.?) Anyone who proposed the institution of an extraordinary magistrate could not himself be elected to that office. A later lex Liciana of unknown date dealt with the same matter.


Lex Aelia Sentia. (A.D. 4.) Completed the restrictions on manumissions introduced by the lex Fufia Caninia. It prohibited any manumission to the detriment of the creditors of the slave's master and fixed minimum age limits both for the manumissor (twenty years) and the slave (thirty years). Exceptions were admitted when the reason for the manumission was particularly justified and was approved by a special commission (consilium) appointed for these matters. Slaves manumitted against the rules of the statute became LATINI IGNANI, and in certain cases (previous conviction of a crime) they received the lowest degree of freedom, that of dedition.—D. 40.9.—See MANUMISSIO, DEDITICII EX LEGE AELIA SENTIA.

Leonard, RE 12, 2323; Coq, DS 3, 1127; Longo, NDI 7, 830; Schultz, ZSS 48 (1928) 263; A. M. Duff, Freedmen in the early Roman Empire (1928); Acta Diöz. Augu. 1 (1945) 205 (Bibl.); Weiss, BIDR 51/2 (1948) 316.

Lex Aemilia. (On censorship, 367 B.C.) Limited the duration of the censor’s activity to 18 months.


Lex Aemilia sumptuaria. (Of 115 B.C.) One of the most drastic statutes against luxury. It did not deal with expenses for banquets, but fixed “the kind and limits of meals” (genus et modus ciborum).—See SUMPTUS.

Kübler, RE 4A, 905.

Lex agraria. (Of 111 B.C.) Perhaps identical with Lex Baebia agraria, was an agrarian law concerning the distribution of the ager publicus in Italy and Africa. It is especially important because, partly preserved in an inscription it contains valuable information about the nature and structure of agrarian laws.—See AGER PRIVATUS VECTICALISQUE.

Vaneura, RE 12, 1182; Riccobono, FIR 11 (1941) 102; L. Zancan, Ager publicus, 1935; Bosza, La possessio dell’ager publicus, 1939, 33; E. H. Warmington, Remains of ancient Latin 4 (1940) 370; Kaser, ZSS 62 (1942) 6.

Lex Alearia. (204 B.C.) Prohibited gambling with dice. The name of the proposer is unknown.—See ALEA.


Lex Anastasiana (leges Anastasianae). Justinian uses the name lex Anastasiana for certain important constitutions of the emperor Anastasius (491–518). According to one of them the cessionary of a creditor could not demand from the debtor more than he himself paid to the creditor. See CESIO. Another innovation of Anastasius was the emancipation of a person from paternal power by means of a rescript of the emperor and the admission of emancipated brothers and sisters to an intestate inheritance equally with those not emancipated.—See REDEMPTOR LITIUM.

Ferrini, NDI 7 (legge A.).

Lex Antia sumptuaria. (71 B.C.) Limited the sums that could be spent for banquets and prohibited (with some exceptions) magistrates and magisterial candidates from accepting invitations to banquets.—See SUMPTUS.


Lex Antonia de Termessibus. (71 B.C.) Granted the citizens of Termessus (Pisidia) the privilege of being “free, friends and allies of the Roman people” as a reward for help in time of war. The law is epitgraphically preserved.

Weiss, RE 12, 2325; Heberdey, RE 5A, 749; Riccobono, FIR 15 (1940) 135 (Bibl.); Kaser, ZSS 62 (1942) 63; D. Magie, Rom. rule in Asia Minor 2 (1930) 1176.

Lex Antonia. (On dictatorship, 44 B.C.) Issued on the proposal of the triumvir Antonius, abolished the institution of the dictatorship.—See LEX VIBIA.

Lex Apuleia de maiestate. (About 103 B.C.) The first statute on CRIMEN MAIESTATIS.

Berger, RE 12, 2325.

Lex Apuleia de sponsu. (Date not known exactly, after 241 B.C.) Introduced a kind of partnership among sureties (sponesores, fidepromissores). Any one of them had an action against the others for what he paid to the creditor more than his proper share. See ADPRMOISSOR. Later statutes, Lex Furia and Lex Cicernæ, made further provisions concerning these kinds of sureties.

Weiss, RE 12, 2283 and 3A, 1853; Coq, DS 3, 1129; G. Rotondi, Leges publ. pop. Rom. 1912, 246; C. Appleton, ZSS 26 (1905) 3; E. Schulz, Contrat de société, 1947, 290.

Lex Aquilia. (Of the second half of the third century B.C.) A statute concerned with the damage done to another’s property. It abrogated the earlier legislation on the matter, including some specific cases which were mentioned in Twelve Tables. It set general rules of liability for damage caused by killing
another's slave or domestic four-footed animal (quadrupes pecus) or by damaging his property by breaking, burning or spilling. The loss inflicted on the owner must be the result of a wrongful act (damnum iniuria datum; iniuria is here synonymous with non iure), i.e., there must be no lawful excuse for what was done, as there would be, for instance, in the case of justifiable self-defense or of an order of a magistrate. The damage must be physical and result directly from a corporeal act (corporis). Mere omission creates no liability under the statute. The original provisions of the lex Aquilia were extended by the activity of the jurists and of the praetors to cases not considered by the law. The actio legis Aquilae became available either as an actio utillis (quasi ex lege Aquilia) or as an actio in iure following the model of the actio legis Aquilae (ad exemplum legis Aquilae, D. 9.2.12) in cases lying far beyond the original statute. In Justinian's law it acquired a more general applicability, the strict rules of the lex Aquilia having been superseded by larger conceptions with regard to the persons to whom it became accessible (not only to the owner of the damaged property as in the original law), the kind of damage and the degree of negligence on the part of the wrongdoer. A characteristic feature of the actio legis Aquilae was that the defendant who denied his liability had to pay double damages if condemned; see LIS INFINITANS. The second chapter of the lex Aquilia had nothing to do with physical damage. It gave the primary creditor a remedy against a co-creditor (adstituitor) who fraudulently released the debtor from his debt.

—Inst. 4.3; D. 9.2; C. 3.35.

Taubenschlag, RE 12; Ferrini, NDI 6, 680; Longo, NDI 7, 831; C. H. M. A. Dip. 9.2, Ad legem Aquilam (1898); E. Levy, Konkurrenz der Aktionen 2.1 (1922) 178; Rotondi, Teorica postclassica null'actio i. A. (= Scritti 2, 411); Jolowicz, LQR 38 (1922) 220; Kunkel, ZSS 49 (1929) 161; J. B. Thayer, Les A., Cambridge, Mass., 1929; v. Belzer, ZSS 30 (1930) 25; J. Poit, Les Infiniatis decreti, 1937; Giffard, RHD 1933; Ardu, ComColPaw 1933; idem, BIDR 42 (1934) 195; Carrelli, RSH 13 (1934) 356; Daube, LQR 52 (1936) 253; Bernard, RHD 16 (1937) 450; De Visscher, Symbalae Van Oven 1946, 307; Cordani-Michier, St. Ferrimini 3 (Milan, Univ. Sacro Cuore, 1948) 95; Daube, St Solazzi, 1948, 93; Macquarre, Annals Fac. Droit d'Aix-en-Provence, 1950; F. H. Lawson, Negligence in the Civil Law, 1950; Albanese, AnPal 21 (1950); Sanfillipo, AnCat 5 (1951) 127.

Lex ara. See ARA.

Lex Aetriana Tarpeia. (454 B.C.) This and a later Lex Memoria Sextia (452 B.C.) established the highest limits for fines imposed by the magistrates; see MUTIA: two sheep and thirty oxen. Another statute dealing with the same subject matter was the lex Iulia Papiria.

Lengle, RE 6A, 2454; Hellebrand, RE Suppl. 6, 1544.

Lex Atia. (63 B.C.) See lex Domitia.

Lex Atilia. (Of the end of the third century B.C.) Dealt with the appointment of a guardian by the competent praetor if no guardian was nominated in a last will or designated by the law. The appointment by the magistrate = datio tutoris. A guardian appointed in accordance with the lex Atilia was called TUTOR ATILIUS.—Inst. 1.20.

Taubenschlag, RE 12, 2330; H. Krüger, ZSS 37 (1916) 290; Schulz, St Solazzi, 1948, 451.

Lex Atinia. On stolen things (second century B.C.), excluded res furtivae (= subreptae) from usucapio.

—See SUBRIPERE.

Berger, RE 12, 2331; P. Huelin, Le furtum, 1915, 255; Daube, CambLit 6 (1938) 217; M. Kaser, Eigentum und Besitz, 1943, 95; Marky, BIDR 53-54 (1948) 244; F. De Visscher, Nouvelles Etudes, 1949, 183; v. Lubbow, Fechr Schulz 1 (1951) 263.

Lex Atinia. On plebeian tribunes (102 B.C.), was concerned with the admission of the plebeian tribunes to the senate.


Lex Aurelia de ambitu. (70 B.C.) Introduced the penalty of ten-year ineligibility for a candidate guilty of AMBITUS.

Berger, RE 12, 2336.

Lex Aurelia iudiciaria. (70 B.C.) Broadened the hitherto exclusive privilege of the senators to be judges in judicial trials by admitting persons of equestrian rank (equites) and TRIBUNI AERARI.

Weiss, RE 12, 2336; Girard, ZSS 34 (1913) 303.

Lex Aurelia. (On tribunes, 75 B.C.) Admitted former tribunes of the plebs to magistracies from which the dictator Sulla had excluded them; see LEX CORNELIA on tribunes.


Lex Caecilia Didia. Renewed the prohibition of LEGES SATURAE and the provision of TRINUMIDUM between the publication of a project of a statute and the vote on it.—See PROMULGARE, NUMIDAE.

Liebenam, RE 4, 695; G. Rotondi, loc. cit. 335.

Lex Caelia. See LEX CASSIA.

Lex Calpurnia de ambitu. (67 B.C.) See AMBITUS.

Lex Calpurnia de legis actione per conditionem. An early statute (later than lex Silla, after 204 B.C.) which made the procedure of legis action per conditionem available for claims of a definite thing (certa res).—See LEX SILLA, LEGIS ACTIO PER CONDITIONEM.

Lex Calpurnia de repetundis. (149 B.C.) See REPE.

Tundae, Q&AESTIONES PERPETUE.

Berger, RE 12, 2338; Ferguson, JRS 11 (1921) 86.

Lex Canuleia. (445 B.C.) Permitted marriage (ius status matrimonium) between patricians and plebeians.

Berger, RE 12, 2339 (Bibl.); Longo, NDI 7, 832; H. Siber, Die plebeischen Magistraturen, 1936, 46.

Lex CASSIA. (On plebeians, 45 B.C.) Conceded their admission (adlocio) to the patriciate. A similar statute was the lex Scarnia of 30 B.C.

Schmidt, RE 1, 368; G. Rotondi, Leges publ. populi Rom. 1912, 426.

Lex CASSIA. (On senators, 104 B.C.) Excluded from the senate individuals condemned or deprived of imperium by popular vote.
Lex Cassia tabellaria. (137 B.C.) Introduced the secret ballot in jurisdictional matters dealt with by the popular assemblies except for cases of treason. This exception was repealed by the Lex Caetilia (107 B.C.).

Lex censui censendo. See CENSUS.

Lex Cicereia de sponsu. (Date unknown, second century B.C.) A creditor taking sponsores or fidem-promissores as sureties (see ADPRIMISSOR) had to proclaim publicly certain details of the debt and the sureties.—See Lex APULIA DE SPONSI. Weiss, RE 3A, 1855; G. Rotondi, Leges publicae populi Rom. 1912, 477; Appleton, ZSS 26 (1905) 34.

Lex Cincia. On donations. (A plebiscite of 204 B.C.) It limited gifts to a certain (unknown) amount. Larger donations were permitted only in favor of near relatives and certain privileged persons (personae exceptae). Gifts promised in violation of the statute were not void, but the donor could oppose the exceptio legis Cincia if he was sued for payment. A special provision prohibited advocates from accepting gifts from their clients in payment for their professional activity.—See DONATIO, ADVOCATUS, REPLICATIO LEGIS CINCIARUM, EXCEPTA PERSONAE. Leonard, RE 5, 1335; Ascoli, NDI 5, 188; Langlo, NDI 7, 834; Rotondi, loc. cit. 361; Radin, RHD 7 (1928) 249; Appleton, RHD 10 (1931) 423; H. Krüger, ZSS 60 (1940) 80; B. Biondi, Successione testamentaria, 1943, 635; idem, See Ferrini 1 (Univ. Sacro Cuore, Milan, 1947) 110; Denoyez, Iura 2 (1951) 146.

Lex Claudia de tutela mulierum. A law passed under the emperor Claudius abolished the guardianship of the next relatives (tutela legitima) over women.

Taubenschlag, RE 12, 2340; idem, Vormundschaftsrechtliche Studien (1913) 72.

Lex Claudia. (On senators, 218 B.C.?) Excluded them from maritime commerce by permitting them to possess vessels of a very small capacity only. The prohibition remained in force under the Principate.

G. Rotondi, Leges publ. populi Rom. 1912, 249.

Lex Claudia. (On loans, a.D. 47.) Passed on the proposal of the Emperor Claudius, prohibited loans to filii familiis on pain of a fine.

Groag, RE 3, 2028; Weiss, RE 12, 2340.

Lex Clodia de collegiiis. (38 B.C.) Permitted the foundation of associations prohibited a few years earlier by a decree of the Senate (64 B.C.).


Lex Clodia frumentaria. See Lex SEMPRONIA FRUMENTARIA.

Lex Cocceia agraria. See LEGES AGRARIAE.

Lex Cocceia. (On eunuchs, a.D. 96.) Under the emperor Nerva, prohibited castration.

Berger, RE 12, 2341.

Lex Coloniae Genetivae Iuliae. Also called Lex Ursoneis (44 B.C.) = charter of the Roman colony Ursone in Spain.

Kornemann, RE 16, 613; Riccobono, FJR 19 (1941) 177 (Bibl.); Gradenzwitz, Die Stadtrechte von Ursone, etc., Sbr Hefi 1920; idem, ZSS 42 (1921) 565, 43 (1922) 439; Alvaro d'Ortis, Emerita (Madrid) 9 (1941) 138; Mallon, Ibid. 12 (1944) 1; Le Gall, Revue de philologie, 20 (1946) 138; De Roberti, AnBori 7–8 (1947) 175; Schulz, St Solazzi (1948) 451; Wenger, Anzeiger Akad. Wiss. Wien 1949, 245.

Lex comissoria. See COMMISSORIA LEX.

Lex Cornelia (Leges Corneliae). The following entries, inasmuch as they refer to the legislation of the dictator Sulla (82–79 B.C.), deal only with some of his selected laws since several of the laws passed under his dictatorship were repealed by legislative enactments of the subsequent years. The attribution of some laws to the dictator Sulla is not always certain.

For Cornelian laws not mentioned below, see Cic. DS 3, 1137; Rotondi, Leges publ. populi Rom., 1912, 349.

Lex Cornelia de adprimissoribus. (81 B.C.) Limited the sum for which a person could assume guaranty for the same debtor to the same creditor in any one year, to twenty thousand sesterces.—See ADPRIMISSOR.

Cic. DS 3, 1138; Rotondi, loc. cit. 362.

Lex Cornelia de aleatoribus. (81 B.C.) Declared valid all bets made on athletic games in which competition was considered a bravery (viribus). Stipulations for gambling debts, however, were void.

Cic. DS 3, 1138; Rotondi, loc. cit. 353.

Lex Cornelia de ambitu. (81 B.C.) Sulla's law against bribery at elections.—See AMBITUS.

Berger, RE 12, 2344.

Lex Cornelia de captivis. (62–79 B.C.) On last wills made before the testator became prisoner of war. They were valid if the testator died in captivity, and were treated "as if he died a free Roman citizen" (Epit. Ulp. 3, 235). This is the so-called fiction of the Cornelian law (fictio legis Corneliae, also beneficium legis Corneliae).—See CAPTIVITAS, POSTLIMINUM.

V. Bebeler, ZSS 45 (1925) 192; Balogh, St Bonfante 4 (1930) 623; Wolff, TR 17 (1939) 136; J. Imbert, Postliminum, Thèse Paris (1944) 149; L. Amirante, Captivitas e postliminium, 1950, 32.

Lex Cornelia de edictis. (67 B.C.) Ordered that "the praetors administer the law according to their perpetual edicts."


Lex Cornelia de falsis. See FALSUM.

Lex Cornelia de imperio. (81 B.C.) Separated the imperium domi (in the city of Rome with its environs) from imperium militiae.—See IMPERIUM, DOMI.

Lex Cornelia de iniuriis. (81 B.C.) Punished three kinds of injury committed by violence: pulsare (beating), verberare (striking, causing pains) and domum introire (forcible invasion of another's domicile).—See INTOIRE DOMUM.

Polak, Symb. van Overm, 1946, 263.

Lex Cornelia de legibus solvento. (76 B.C.) This plebiscite limited the right of the senate to exempt
a person from the laws (legibus solvere). Such laws benefiting particular individuals had been passed in the past. The lex Cornelia set a quorum of two hundred senators and required subsequent approval by a popular assembly.—See SOLUTIO LEGIBUS.


Lex Cornelia de magistratibus. (81 b.c.) Fixed the sequence of magistracies (ordo magistratum), cf. lex VILLIA. Quaestorship had to be held before praetorship, the latter before consulship. Likewise time intervals between tenures of office were set.

Humbert. DS 1, 270.

Lex Cornelia de maiestate. (Of the dictator Sulla, 81 b.c.) This was concerned with CRIMEN MAIESTATIS (high treason). It punished by exile any person who called in military forces, or began hostilities against another country without approval of the senate and the people.—See QUAESTIO DE MAIESTATE.

Lex Cornelia de praetoribus. (81 b.c.) Under the dictatorship of Sulla, increased the number of praetors to eight.

Cuy, DS 3, 1139.

Lex Cornelia de proscriptione. (82 b.c.) See PROSCRIPTIO.


Lex Cornelia de provinciis. (81 b.c.) See PROVINCI.

Lex Cornelia de repetundis. (Of the dictator Sulla.) On extortion.—See REPETUNDAE.

Berger, RE 12, 2343.

Lex Cornelia de sacriis et veneficiis. A Sullan enactment (81 b.c.) on murderers and poisoners was still in force under Justinian.—D. 48.8; C. 9.16.—See SICARIIS, VENEFICI.

Cuy, DS 3, 1140; G. Rotondi, Leges publ. populi Rom., 1912, 357; Condurari-Michler, Speciti Ferrini 3 (Univ. Sacco Cuore, Milan, 1948) 70.

Lex Cornelia de tribunis plebis. (82 b.c.) This law of the dictator Sulla was inspired by the desire to deprive the plebeian tribunes of their power. Only senators could be elected to the tribuneate; ex-tribunes were excluded from higher magistracies. Legislative proposals of the tribunes had to be previously approved by the senate, and their right of intercession was considerably restricted. Pompeius abolished the law and reinstated the former prerogatives of the tribunes.—See LEX POMPEIA LICINIA on tribunes.


Lex Cornelia de viginti quaestoribus. (81 b.c.) Raised the number of quaestors to twenty. Part of the law is epigraphically preserved; it deals with the subordinate personnel of the quaestorian office.—See QUAESTORES.


Lex Cornelia nummaria. See FALSUM.

Lex Cornelia sumptuaria. (81 b.c.) The dictator Sulla used this law to combat excessive expenditures for banquets and pompous funerals.—See SUMPTUS.

Rotondi, loc. cit. 354; Kübler, RE 4A, 907.

Lex Cornelia testamentaria. See FALSUM.

Lex Cornelia Baebia de ambitu. (181 b.c.) One of the earliest statutes against bribery at elections.—See AMBITUS.

Berger, RE 12, 2344

Lex Cornelia Fulvia de ambitu. (159 b.c.) See AMBITUS.

Berger, RE 12, 2344.

Lex Cornelia Pompeia. (On comitia tributa, one or two laws passed under the consulship of Sulla in 88 b.c.) Imposed restrictions on the legislative and electoral activity of the comitia tributa.

G. Rotondi, Leges publ. populi Rom., 1912, 343.

Lex Cornelia Pompeia. (On interest, 88 b.c.) A statute proposed by Sulla of uncertain content. Presumably it permitted loans at an annual interest of ten per cent. Higher interest payments may have been deducted from the principal.

Berger, RE Suppl. 7, 384.

Lex Crepereia. An earlier republican statute of unknown date, dealt with the proceedings before the centumviral court. The sum of the sponsio was fixed at 125 sesterces.—See CENTUMVIRI, IUDICIAI CENTUMVIRALE, AGERE PER SPONSIONEM, SPONSIO PRAE-JUDICIALIS.

Berger, RE Suppl. 7, 384.

Lex Curtiata de imperio. See COMITIA CURIATA, LEX DE IMPERIO.

Liebenau, RE 4, 1826; G. W. Botsford, Pol. Sci, Quart. 23 (1908); Latte, Nachr. Göttingische Gesellschaft der Wissenschaften, Phil.-hist. KI. 1934; Heuss, ZSS 64 (1944) 70; Nocera, AnFer 51 (1946) 163.

Lex de bello indicendo. Decisions concerning the declaration of war were to be taken by the comitia centuriata.—See BELLUM, INDICERE BELLUM.

Liebenau, RE 696; Berger, RE Suppl. 7, 383 (with a list of the pertinent statutes); Siber, ZSS 57 (1937) 261.

Lex de flaminiac Dialis. (AD. 24?) Provided that in a marriage of the FLAMEN DIALIS, concluded in the solemn form of confarreatio, his wife (flamina) did not pass into his full power (manus). She was obliged to obey him only in sacram matters. The measure was designed to encourage marriages by confarreatio, which became very rare at the beginning of the Empire so that it was difficult to find candidates for the post of flamens Dialis who had to be born from such a marriage.

Berger, RE 12, 2353.

Lex de imperio. (Under the Empire.) A statute by which the emperor was vested with sovereign power by the people and the senate. Apparently this custom, practised in the first century of the Principate, was a continuation of the old republican tradition, of the LEX CURIATA DE IMPERIO which conferred
imperium on the higher magistrates. Several sections of a lex by which the emperor Vespasian received sovereignty, lex de imperio Vespasiani (A.D. 69-70) are epigraphically preserved. It is one of the most important epigraphical monuments. It enumerates various prerogatives of the emperor and describes their contents, primarily by reference to the same rights held by Vespasian's predecessors. The lex de imperio as a general institution is mentioned once in Gaius' Institutes and four times in Justinian's codification (once, C. 6.23.3, as lex imperii). The term applied to the lex by Justinian, lex regia, is doubtless not classical and corresponds to the Byzantine conception of the nature of kingship (basileia). In all these references there is certainly an element of truth and all efforts to eliminate them as spurious are futile. It remains questionable, however, how long this kind of investment of the emperor with "omnes sumum imperium et potestas" by the people continued in use.


Lex de imperio Vespasiani. See the foregoing item.
Lex de piratis. See LEX GABINIA.
Lex decemvirales (leges decemvirales). See Lex DUODECIM TABULARUM.
Lex dedicationis. See DEDICATIO.
Lex Dei. See COLLATIO LEGUM MOSAICARUM ET ROMANARUM.
Lex Didia sumptuaria. (143 B.C.) Extended the validity of the lex FANNIA to all Italy and settled penalties for the guests who participated in banquets condemned by the statute.—See SUMPTUS.
Lex Domitia. (103 B.C.) Reformed the system of election of pontiffs and augurs by introducing a combined method: election by a minor group of tribus from a list of candidates proposed by the collegium of priests in which the vacancy occurred. Abrogated by Sulla, the statute was later restored by the lex ATIA.
Wisowetz, RE 2, 2318; Münzer, RE 5, 1325; Weiss, RE 12, 2330; Rotondi, loc. cit. 329, 380.

Lex Duilia de provocatione. (449 B.C.) One of the earliest republican statutes. The plebeian tribune Duilius to protect the institution of appeal (provocatio), provided the death penalty for anyone seeking to create a magistracy the decisions of which could not be checked by an appeal, or to leave the plebeians without tribunes.—See PROVOCATIO.
Weiss, RE 12, 2345; Rotondi, loc. cit. 203. Lex Duilia Menenia (Maenia?). See FENUS UNCIARIUM.
Rotondi, loc. cit. 222; L. Clerici, Economia e finanza dei Romani, 1 (1943) 333.

Lex duodecim tabularum. (451-450 B.C.) The earliest Roman codification or rather collection of the fundamental rules of customary law was published on twelve tablets. The work was achieved by a commission of ten experts, decemviri legibus scribundis, hence the name leges decemvirales for the legislation. The decemviral laws were the outcome of a political struggle between the plebeians and the patricians. The principal grievances of the former were the fact that the law was administered exclusively by the patricians in their own interest, the uncertainty of the law, and the severity of the enforcement of debts (see NEXUM). Only a portion of the Twelve Tables is known partly from quotations (sometimes in their original archaic wording) preserved in juristic and literary sources, but chiefly, however, from scattered references to certain provisions appearing in a rather considerable number in Justinian's codification. The Twelve Tables contained a selection of rules from different provinces of the law. Starting with some procedural norms they comprised rules of private and penal law as well as of sacral law. (The more important statements of the law are noted in the present volume under the appropriate entries.) The decemviral legislation is the germ from which the ancient Roman us civile arose and evolved but from which the Roman jurisprudence also developed. The interpretation of the Twelve Tables by the pontiffs and the professional jurists promoted the development of law and jurisprudence. Still in Cicero's boyhood the Roman youth learned them by heart. Several commentaries were written on the Twelve Tables, the last by the jurist Gaius about the middle of the second century after Christ (in six books). The excerpts from his work "ad legem duodecim tabularum" preserved in Justinian's Digest have contributed largely to the knowledge of the structure and nature of the whole codification. The high esteem the Twelve Tables enjoyed in Roman tradition for centuries is testified by many sayings of Roman writers (primarily Cicero); Livy did not hesitate to call them, not without a certain exaggeration, "the source of all public and private law" and "the body (corpus) of the whole Roman law (omnis Romani iuris)." This evaluation cannot be shattered by the outburst of modern criticism which has not only attacked their authenticity but has also not hesitated to pass an unfavorable judgment over them as a whole. —See ABSENS, ADDICTUS, ADDIDUI, AMBITUS, COLLEGIA, CONFESSIO IN IURE, DECEMVIRI LEGIBUS SCRIBUNDIS, DIES IUSTI, DEICERE E SAXO TARPEIO, DIFFIN- DERE, EMANCIPATIO, INUTRIA, LEGARE, LEGITIMUS, LEGIS ACTIO PER IUDICIS ARBITRIVIS POSTULATIONEM,
LEX VALERIA DE PROVOCATIONE, NEXVUM, MANUS INJECTIO IUDICATI, OBVAGULATIO, SECARE PARTES, SUMPTUS, TALIO, TEMPSUS IUDICATI, TESTES, TUTOR SUSPECTUS, TUTELA LEGITIMA, USUS AUCTORITAS, VINDICIAE FALSAE, VITAE.

Berger, RE 4A (s.v. Tabnlae duodecim, Bibl.); idem, RE Suppl. 7, 1275; Riccobono, FR 1° (1941) 23; Girard, La loi de Deous Tables, London, 1914; E. Taubner, Untersuchungen zur Gesch. des Dezemvaris und der Zwölf- tafeln, 1921; Baviera, St Perosizi, 1924; Berger, St Riccobono 1 (1933) 587; idem, St Albertoni 1 (1933) 381; idem, BIDR 43 (1935) 195; idem, Le Dodici Tavole e la codificazione giustinianea, ACDRA Roma 1 (1934) 39; E. Volterra, Diritto rom. e diritti orientali, 1937, 146, 173, 687; E. H. Warmington, Remains of old Latin 3 (1938) 424; Baviera, St Riccobono 1 (1936) p. XXXII; R. Düll, Das Zwölfthelfgesetz, Übersetzung und Erläuterung, 1944; Balogh, Scr Fennini 3 (Univ. Sacro Cuore, Milan, 1948) 2; Goffredi, SDHI 13-14 (1944) 33; C. W. Westrup, Introduction to early J. r. law, 4, 1 (1950) 79; P. Ansilles, Du droit sacre au droit civil, 1950, 36; P. R. Coleman-Norton, The Twelve Tables, (Princeton, 1950); idem, Cicero’s contribution to the text of the Twelve Tables, CU 1950; Ferrua, RHD 29 (1951) 383.

Lex Fabia. A statute of unknown date (second or first century B.C.) against kidnapping, treating a free man as a slave, or persuading another’s slave to leave his master. The same crime (crimen legis Fabiae, plagium) is charged against anyone who helps the principal culprit in such undertakings (sociae). In later development, making a free man the object of a transaction (sale, giving in dowry) was also considered to be a plagium. Both the giver and the receiver were subject to punishment but only if they had knowledge of the free man’s status and acted fraudulently (scientes dolo malo). Severe penalties were provided for plagium in the lex Fabia; they were later aggravated by imperial enactments. Diodocian introduced the death penalty for plagium. — D. 48,15; C. 9,20.—See VINCULA.

Berger, RE Suppl. 7, 386; idem, BIDR 45 (1938) 257; Niedermeyer, St Boniface 2 (1936); Laura, AnnMar 8 (1932).

Lex Falcidia. (40 B.C.) Provided that legacies (legato) should not exceed three quarters of the testator’s estate. A minimum of a fourth part (quarta Falcidia, Falcidia) was reserved to the heir appointed in the testament. In the case of several heirs each of them had to receive at least one fourth of the share assigned to him. The part of the legacy exceeding three-quarters was void; an heir sued by the legatee for the surplus could oppose the exceptio legis Faldciadie. The value of the estate at the time of the testator’s death was decisive. Later changes did not count. The tendency of the law was to prevent the refusal of an inheritance, charged with exorbitant legacies, by the testamentary heir. Imperial legislation introduced substantial reforms. Antoninus Pius extended the quarta Falcidia to intestate inheritance if the owner disposed in a codicil over more than three-fourths of the estate by fideicomissio. The application of the law was in some exceptional cases excluded, as with regard to a soldier’s testament or to legacies in favor of piae causae (for charitable purposes). — Inst. 2,22; D. 35,2; 3; C. 6,50.

—See BENEFICUM COMPETENTIAE, CAUSTEO EX LEGE FALCIDIA, DII, SENATUSCONSULTUM PEGASIANUM.

Steinwenter, RE 12, 2346 (Bibl.); Longo, NDI 7; Pampani, BIDR 21 (1909); Socr. gnom. 1 (1941, 347); Vassalli, BIDR 26 (1913) 52; F. Schwartz, ZSS 63 (1943) 314; B. Biondo, Successione testamentaria, 1943, 381; F. Bonifacio, Ricerche sulla L.F., 1948; idem, Iura 3 (1952) 229; F. Schwartz, SDHI 17 (1951) 225.

Lex Fannia. (161 B.C.) One of the leges sumptuariae; it limited the expenditures for banquets and the number of persons who could be invited, particularly at the time of the great national games (ludi). — See SUMPTUS.

Weiss, RE 12, 2353; Kübler, RE 4A, 905.

Lex Fufia Caninia. (2 B.C.) Introduced restrictions on testamentary manumissions by fixing a ratio between the number of slaves belonging to the testator and the number of those he could enfranchise in his last will. The more he owned the smaller was the percentage of manumissions permitted. Manumissions ordered in violation of the exact provisions of the law (in fraudem legis) were void. The statute was abolished by Justinian whose legislation favored the liberation of slaves (favor libertatis). — Inst. 1,7; C. 7,3.—See SENATUSCONSULTUM ORPITITIUM.

Leonard, RE 12, 2355; Acta Diu Augusti 1 (1943) 202.

Lex Fufia de sponsu. (Of unknown date, probably later than the lex Apuleia de sponsu.) Dealt with suretyship contracted in Italy in the form of sponsio or fidipromissio. — See ADFIDROSSOR.

Rontodi, Leges publ. populi Rom., 1912, 475; Appleton, ZSS 26 (1905); idem, Mél Gerardin, 1907; Girard, St Fadda 2 (1905).

Lex Fufia testamentaria. (Between 204 and 169 B.C.) Fixed the maximum amount of a legacy at one thousand asses except for legacies bequeathed to one’s nearest relatives, spouse or bride. It is the earliest statute setting limits for legacies.

Steinwenter, RE 12, 2356 (Bibl.), 2421.

Lex Gabinia de piratis persequendia. (67 B.C.) Authorized Cn. Pompeius Magnus to combat piracy with an army of twenty legions and a navy of 500 ships. The identification of the statute with a Greek inscription found in Delos is not certain. Riccobono, FR 1° (1941) 121 (Bibl.).

Lex Gabinia. (139 B.C.) Forbade secret meetings (clandestinae coitiones) directed against the state.

Berger, RE Suppl. 7, 395.

Lex Gabinia tabellaria. (139 B.C.) Introduced the secret ballot in the election of magistrates in the popular assemblies. — See TABELLAE.

Lex Genucia. (342 B.C.) A plebiscite which prohibited loans at interest.

Klingmüller, RE 6, 2192; Stein, RE 7, 1207; Rotondi, Leges publ. populi Rom., 1912, 226; L. Clerici, Economia e finanza dei Romani, 1 (1943) 334.
Lex Glitia. Known only from a commentary by Gaius "ad legem Glitiaum." It dealt with the QUERELA INOFFICIOSI TESTAMENTI. Date is unknown.

Weiss, RE Suppl. 3, 577; Cq. DS 3, 1145; Rotondi, loc. cit. 482.

Lex Hadriana. See LEX MANGIANA.

Kornemann, RE Suppl. 4, 253; Ch. Saumagne, Tablettes Albertini, 1932, 99.

Lex Hieronica. (Third century B.C.) Mentioned by Cicero in his orations against Verres, not a Roman law. Its author was Hiero II, tyrant and (later) king of Syracuse. It was an agrarian law, dealing with the lease of public land and land taxes and remained in vigor after the Roman conquest of Sicily.

Lenschan, RE 8, 1508; Schwahn, RE 7A, 15; Weiss, RE 12, 2361; Carcopino, La loi de Hiérom, 1914; Plachy, BIDR 47 (1940) 67.

Lex horreorum. See HORREUM.

Lex Hortensia de plebisictis. (Ca. 286 B.C.) Provided that the decrees of the plebeian assemblies shall be binding on the whole people" (Gaius, Inst. 1.3).—See FLEBISICITUM.

Lengle, RE 6A, 2471; Berger, RE Suppl. 7, 396; Siber, RE 21, 68; Humbert, DS 1, 546; Baviere, St Brugi, 1910, 367; Costa, MemBol 6 (1911–1912) 77; G. Rotondi, Leges publ. pop. Rom., 1912, 238; H. Siber, Die plebsischen Magistraturen 1936, 43; Guerrino, Fesch Schults (1951) 458.

Lex Hostilia. An early statute of unknown date, enabled a person who was in captivity or absent on official mission, to be represented in the trial against a thief for the theft committed in the absent person's property.

Rotondi, loc. cit. 480; P. Huvelin, Furtum (1915) 117; Nap. TR 13 (1934) 181.

Lex Icilia. (492 B.C.) Probably the earliest law on the inviolability of the plebeian tribunes.—See TRIBUNI PLEBIS.

Rotondi, loc. cit. 193.

Lex imperii. See LEX DE IMPERIO.

Lex Iulia (leges Iuliacae). A statute passed on the legislative initiative of either Julius Caesar or the emperor Augustus. The proposer cannot always be established with certainty.

Lex Iulia agraria. (59 B.C.) An agrarian law proposed by Caesar during his consulship. It completed the transfer of public land in Italy into private ownership.

Vancura, RE 12, 1184; Rotondi, loc. cit. 387.


Berger. RE 12, 2365; Acta Divi Augusti 1 (1945) 140.

Lex Iulia caducaria. Probably not a special statute concerning CADUCA, but a chapter of the Augustan legislation on marriage and related problems (LEX IULIAE DE MARITANDIS ORDINIBUS).—See LEGES CADCARIAE, CADUCA (Bibl.).

V. Bolla. ZSS 59 (1939) 546.

Lex Iulia de adulteriis. (18 B.C.) This Augustan statute, which some scholars consider to be a part of the LEX JULIA DE MARITANDIS ORDINIBUS. fixed the cases of adultery punishable as a crime, the penalties, the forms and terms of accusation, etc. See ADULTERIUM. The law also dealt with other crimes against chastity (STUPRUM, INCESTUM).—D. 48.5; C. 9.9.

Fitzler-Seeck, RE 10, 354; Acta Divi Augusti 1 (1945) 112.

Lex Iulia de annona. (18 B.C.?) An Augustan law against merchants raising the market prices of foodstuffs or committing other unfair practices in the sale or transportation of food.—D. 48.12.

Rotondi, loc. cit. 448; Acta Divi Augusti 1 (1945) 200.

Lex Iulia de cessione bonorum. (By Augustus.) Perhaps a part of the LEX JULIAE IUDICIARUM PRIVATORUM.—See CESSIO BONORUM.

S. Solazzi, Il concorso dei creditori 4 (1943) 133; Acta Divi Augusti 1 (1945) 132.

Lex Iulia de civitate. (90 B.C.) Bestowed Roman citizenship on Latins (see LATINI) and a great number of the allies (socii) in Italy. All allies domiciled in Italy received citizenship in the following year by the Lex Plautia Papiria (89 B.C.), provided that they applied to the urban praetor in Rome within sixty days for enrollment on the list of citizens.


Lex Iulia de collegiis. An Augustan law; it is mentioned only once in an inscription (cit. 6, 4416 = 6, 2193).

Kornemann, RE 4, 408; 430; G. Rotondi, loc. cit. 442; Berger, Epigraphica 9 (1947) 44; G. Bovini. La proprietà ecclesiastica, 1949, 141.

Lex Iulia de fundo dotali. Not a specific Augustan law (although once mentioned as such) but a section of the emperor's legislation on adultery (LEX JULIAE DE ADULTERIIS). It prohibited the husband to alienate land in Italy constituted as a dowry unless the wife gave her consent.—D. 23.5; C. 5.23.


Lex Iulia de maritandis ordinibus. (18 B.C.) This law together with another one, also of Augustus, the Lex Papia Poppaea (A.D. 9) deals with several problems connected with marriage. In the writings of the Roman jurists the two laws appear both as two distinct legislative acts and as one unified piece of legislation, sometimes called simply "lex" or "leges." The earlier law contained several prohibitions of marriage, such as between senators or their sons and their freedwomen, between free-born men and women of bad behavior or women convicted of adultery. Consorts married in violation of these provisions have no reciprocal rights of succession. Another tendency of the Augustan legislation was to promote marriage and the procreation of children in order to prevent a further decline of morality and family life, widespread in the last decades of the Republic. Various privileges were granted to married people and parents of children whereas on the other hand severe economic and social disadvantages were imposed on
unmarried persons (coelibes) and childless married persons (orbi). A consul who had more children than his colleague had some preference over the latter. Fathers were excused from public charges (munera) and tutorship. Married women with three children (four, if they were freedwomen) were not excluded to guardianship (tutela mullerum). See *Tus Liberorum*. The second statute excluded unmarried men over twenty-five and under sixty and unmarried women over twenty and under fifty from succession under a will. For further provisions, see *Coelibes*, *Orbi, Capacitas*, *Pater Solitarius*, *Caduta, Dies Cendens Legati, Ereptorium*, *Lex Iuliana Miscella*, *Senatusconsultum Calvisianum*, *Senatusconsultum Memmiianum*, *Princeps Legibus Solutus*—C. 8.57.


**Lex Iuliana de modo aedificiorum.** A building regulation probably of Augustus (18 B.C.?) it set a maximum for the height of houses and the thickness of walls.


**Lex Iuliana de pecuniis mutuis.** (49 B.C.) A statute passed under the dictatorship of Caesar, introduced some alleviation for debtors who had contracted a loan of money: deduction of interest already paid from the principal, cancellation of interest in arrears for two years, admission of payment in land instead of in cash. Some modifications of the law were made in a later Caesarian law of 46 B.C.


**Lex Iuliana de residuis.** See *Pecqualtus, Residua*.

**Lex Iuliana de senatu habendo.** (Ca. 10 B.C.) Concerned with the procedure of voting in the senate.—See *Discessio*.


**Lex Iuliana de vi privata et Lex Iuliana de vi publica.** It is more likely that there were two statutes on the topics indicated, not one, and that their author was Augustus rather than Caesar. For their contents, see *Vis, Res vi possessae, Telum.—D. 48.6; 7; C. 9.12* (*De vi privata*); *D. 48.6; C. 9.12* (*De vi publica*).

Rotondi, *loc. cit.* 457; Berger, *RE* Suppl. 7, 405; Girard, *ZS* 34 (1913) 322; *Coroi*, *La violence en dr. rom.*, 1915; Berger, *Göttingische gel. Anzeigen* 1917, 336; *Costa*, *RendBol* 2 (1917) 21; *Niedermayer*, *St Bonifacii* 2 (1930) 400; *Flors* *ibid.* 4 (1930) 335; G. Pugliese, *Appunti sui limiti dell'impero nella repressione penale 1939*; *Acta Divi Augusti* 1 (1945) 129.

**Lex Iuliana de vicesima hereditatam.** (A.D. 5?) The name Iuliana is preserved, but Augustus’ authorship is doubtful. The law introduced a tax of 5 per cent on estates and legacies except those left to parents and children and those of small value. The heir could deduct a proportional part of the tax from the legacies. The law also contained provisions concerning the opening of last wills (*Apertura Testamenti*) in connection with the taxes to be paid.—See *Vicesima Hereditatum*.


**Lex Iuliana judiciorum privatorum.** See the following item.

**Lex Iuliana judiciorum publicorum.** (17 B.C.) This Augustan law and another procedural law concerning civil trials (*Lex Iuliana judiciorum privatorum*) together constitute the *leges Iuliae iudiciariae*. They are mentioned along with the *Lex Aebutia* as the statutes which completed the transition from the *Legis Actiones* to the formulary procedure. The norms set in the statutes are known in part from references in Justinian’s Digest, in part from juristic (Gaifs’ Institutes, Fragmenta Vaticana) and literary sources. They dealt with various questions about judicial magistrates and judges, the parties to a trial and their advocates, witnesses and the like. They were in a sense a procedural code.—See *Judicia Legitima*.

Girard, *ZS* 34 (1913) 295; *Acta Divi Augusti* 1 (1945) 142 (Bibl.).

**Lex Iuliana maestatis.** There were two Julian statutes on the crime of *maestias*; one by Caesar (46 B.C.), the other by Augustus (8 B.C.)—See *Crimen Maestatis*.—D. 48.4; C. 9.8.

*Acta Divi Augusti* 1 (1945) 156.

**Lex Iuliana miscella.** The name occurs twice in Justinian’s enactments. “Miscella” is not a proper name as sometimes assumed. It is an adjective, syn. with *saturnus* (see *Lexes Saturnae*). The specific provision referring to it (nullity of a legacy bequeathed by a husband to his wife on the condition that she remain unmarried after his death) is found in the *Lex Iuliana de Mariantandis ordinibus*, called “miscella” by Justinian because of its various intermingled provisions.—C. 6.40.

*Coq*, *DS* 3, 1157; *Acta Divi Augusti* 1 (1945) 173.

**Lex Iuliana municipalis.** Known in modern literature as *Tabula Heraclinea* because the bronze tablet on which a part of the law is preserved was found near the site of ancient Heraclia. The text deals with different subjects and it is striking that a part of it refers to Rome itself, while another and larger portion is a general ordinance for municipalities and colonies. The topics dealt with are distribution of grain, building and traffic regulations, election of municipal magistrates, and administrative problems in municipalities. Caesar’s authorship and the date of the law are debatable, as is its basic character (a *lex data* or *lex rogata*). The law is a good illustration of a *lex satura* (see *Leges Saturnae*), generally disliked in Roman legislation.
Lex Iulia Papiria. (30 B.C.) On pecuniary fines. It fixed the equivalents 10 asses = one sheep, 100 asses = one ox.

Hellebrand, RE Suppl. 6, 545; G. Rotondi, loc. cit. 211.

Lex Iulia peculium. A penal law of Augustus (or Caesar?), dealing with the crimes of peculium and sacrilegium. —D. 48.13; C. 9.28. —See Residua, Praedia.

Brecht, RE Suppl. 7, 828; Acta Divi Augusti 1 (1945) 161.

Lex Iulia repetundaria. (39 B.C.) The last and most severe (acerrima) republican statute on repetundae, proposed by Caesar as consul. It was still in vigor under Justinian (D. 48.11; C. 9.27) and covered any act of bribery in which a person exercising a public office was involved, judges and arbitrators included. The generalization was so broad that any misdemeanor or violation by a public functionary might fall under the law. —C. 9.27.

Berger, RE 12, 2389.

Lex Iulia sumptuaria. (Of the dictator Caesar, 46 B.C.) Against luxury, containing, besides general prohibitions, some special interdictions such as those dealing with the use of litters, purple, luxurious clothing and pearl jewelry. Exceptions were admitted for special occasions and certain persons. —See sumptus.

Kübler, RE 4A, 908.

Lex Iulia sumptuaria. (Of the emperor Augustus, 18 B.C.?) Reiterated various severe provisions against luxury in banquets. The law is to be distinguished from the law of the dictator Caesar (see the foregoing entry).


Lex Iulia theatralis. (After A.D. 5.) An Augustan law, admitted only free-born persons whose fathers or grandfathers had a patrimony of at least 400,000 sesterces (the equestrian census) to seats in the first fourteen rows in the theater. —See lexi Roscia theatralis, Equites.

G. Rotondi, loc. cit. 462; Acta Divi Augusti 1 (1945) 201.

Lex Iulia et Poppaea. See Lex Iulia de Mariandis ordinibus.

Lex Iulia et Plautia. Cited in connection with the exclusion of things taken by force (res vi possessae) from being acquired by usucapio. Once (D. 41.3.33.2) the name lex Plautia et Iulia occurs. It is more likely, however, that two statutes are meant, lex Plautia de vi and lex Iulia de vi.

Berger, RE Suppl. 7, 405.

Lex Iulia et Titia. (Sometimes called simply lex Titia.) A law passed under Augustus (exact date unknown), a counterpart for the provinces to the lex Atilla on the appointment of tutors. The competent authority was the governor of the province. The term tutor Titianus is known from an inscription referring to a guardian appointed according to the lex Titia. —Inst. 1.20. —See Tutor Datius.

Taubenschlag, RE 12; Acta Divi Augusti 1 (1945) 199; Solazzi, Studi su tutela 2 (1926) 17.

Lex Iunia. (126 B.C.) Ordered the expulsion from Rome of foreigners who pretended to be Roman citizens.

G. Rotondi, loc. cit. 304.

Lex Iunia Norbana. (A.D. 19.) Slaves manumitted informally or in violation of earlier laws which had set specific requirements or restrictions for manumissions, did not become full Roman citizens, but Latini iuniani. The paramount disadvantage in their legal situation is that they were not able to make a will or to take under a will. Hence the person who manumitted them retained control over their property.

Steinwenter, RE 12, 910; Weiss, RE Suppl. 3, 578; Rotondi, loc. cit. 463; Wassak, ZSS 26 (1905) 374; A. M. Duff, Freedmen, 1928, 75, 210; Biscardi, Manumissio per permeniam, SisEn 1939, 8.

Lex Iunia Petronia. (A.D. 19?) Introduced the rule that in the case of dissent among the jurors (cen-tumviri) in trials concerning the liberty of persons whose status libertatis is not clear because of lack of evidence, the decision should be in favor of liberty.

G. Rotondi, loc. cit. 464.

Lex Iunia Vellaea. (A.D. 26?) Introduced some rules on institutio and on exheredatio of posthumous children. —See postumi iuniani.

Weiss, RE 12, 2394; G. Rotondi, loc. cit. 465; Solazzi, Ath 18 (1930) 45.

Lex Laetoria. See Lex Plaetoria.

F. Schult, Roman classical law, 1931, 191.

Lex Latina tabulae Bantinae. (133–118 B.C.) A statute of unknown content; only the sanction is preserved containing penalties for non-observant magistrates. On the reverse side of the bronze tablet with the Lex Latini there is another inscription in the Oscan dialect (lex Osca tabulae Bantinae) with a partial text of the municipal charter of Bantia (South Italy).

E. H. Warmington, Remains of old Latin 4 (1940) 294; Riccobono, FIR 1 (1941) 82, 163; Zotta, RendLinc 98 (1939) 373 (on lex Osca).

Lex Licinia. On extraordinary magistracies, see Lex Aerutia on extraordinary magistracies.

Lex Licinia (Liciniana). (On the actio communi divi-dundo.) An early Republican statute introduced the proceedings by legis actio per iudicis postulationem for the division of common property.

Berger, RE Suppl. 7, 398.

Lex Licinia de sodalicia. (55 B.C.) Directed against a special type of associations organized during the
electoral period to support a candidate for a magistracy by unfair practices which were considered a special form of ambitus.

Weiss, RE 12, 2394; Berger, ibid. 2395; Pfaff, RE 3, 785; Rotondi, loc. cit. 407; Ascanza, Bull. Commissione archeologica del Governatorato di Roma 70 (1942) 32.

Lex Licinia Cassia. (172 b.c.) Gave consuls and praetors the right to appoint military tribunes; previously they were elected by the comitia tributa.

G. Rotondi, loc. cit. 282.

Lex Licinia Iunia. (62 b.c.) Ordered that the official text of statutes be deposited in the state archive in the aerarium.—See AERARIUM POPULI ROMANI.

Münzer, RE 10, 1090; Rotondi, loc. cit. 383; Landucci, APod 1896, 146; F. v. Schwind, Zur Frage der Publikation 1940, 27.

Lex Licinia Mucia. (95 b.c.) Established the conditions for the acquisition of Roman citizenship by Latins who had taken up residence in Rome, and fixed penalties for non-citizens in Rome who acted as if they were citizens.

Weiss, RE 12, 2398, no. 6.

Lex Licinia Sextia. On loans. (367 b.c.) Debtors received the right to pay in three annual installments and to deduct the interests paid from the sum due.

G. Rotondi, loc. cit. 217.

Lex Licinia Sextia. On the plebeian consulship and the creation of the praetorship. (367 b.c.) Granted the plebeians one of the two consulships and established the office of praetor accessible only to patricians.


Lex Licinia Sextia agraria. (367 b.c.) Limited the dimensions of a plot of the ager publicus that could be assigned to individuals to 500 Roman acres (sugera) and settled the number of head of cattle to be held by the possessors.

Vancura, RE 12, 1164; Coq, DS 3, 1153; Rotondi, loc. cit. 217; L. Clerici, Economia e finanza dei Romani, 1 (1943) 290; Tibiletti, Ath 26 (1948) 191.

Lex Licinia sumptuaria. (103 b.c.) A statute against luxury which repeated provisions of earlier laws.—See SUMPTUS.

Rotondi, loc. cit. 327; Kübler, RE 5A, 905.

Lex Livia iudicaria. (91 b.c.) Established a special court (quaestio) for trials of judges corrupted by bribery.

Rotondi, loc. cit. 337.

Lex Lutatia de vi. Probably identical with LEX PLACTIA DE VI.

Berger, RE Suppl. 7, 399; Cousin, RHD 22 (1943) 88.

Lex Maenia de patrum auctoritate. (Of unknown date, probably not before the beginning of the third century b.c.) Ordered that candidates for office had to be approved by the senate before the people voted in the comitia. This provision of the statute is analogous to that of LEX FUBLILIA PHILOLIS in legislative matters.

Weiss, RE 12, 2396; O’Brien-Moore, RE Suppl. 6, 677; Guarino, Studi Solazzi, 1948, 29.

Lex Malacitana. (A.D. 82-84.) See LEX SAPPENSANA.

Lex Mamilia Ruscia Peducaea Alliena Fabia. (Of uncertain date, after 111 b.c. and perhaps as late as 59 b.c.) Dealt with controversies over boundaries of landed property in colonies and municipia. Three chapters of the statute are preserved in the writings of land surveyors (promatici). It is uncertain whether the law was a section of the LEX Iulia agraria or a plebiscite proposed by a tribune Mamilius and his four colleagues. The appearance of five names in the denomination of the lex is unique.—See CONTROVERSA DE FINE.

Vancura, RE 12, 1185; Kroll, RE 12, 2397; Cary, Journ. Philol. 35 (1920) 184; Fabricius, Sibérid 1924; Pignarli, Comptes-Rendus Acad. des Inscriptions 1939, 193; Riccobono, FIR 1 (1941) 138; Le Gall, Revue de philologie 30 (1946) 138; Herrmann, RIDA 1 (1948) 113; L. R. Taylor, Studies in honor of A. C. Johnson, 1931, 68; Pignarli, CRAI 1949, 193.

Lex Manciana. (Under Vespasian?) Concerned with the administration of imperial domains in North Africa by imperial procuratores and the relations with the leaseholders (conductores). A similar law was the so-called lex Hadriana.


Lex Manilia. (67 b.c.) Gave freedmen the right to vote in the tribus of their patrons.

G. Rotondi, loc. cit. 375.

Lex Manilia. (On manumission taxes, 357 b.c.) See VICENSI MANUSSIONUM.

G. Rotondi, loc. cit. 375.

Lex Marcia. (On usury, 104 b.c.) Protected the debtors who had paid the moneylenders interest at a rate higher than was legally permitted by granting them the privilege of recovering the sum unduly paid through the procedure of MANUS INIERTIO.

G. Rotondi, loc. cit. 325.

Lex Maria. (119 b.c.) Set general rules for secret voting by tablets in the popular assemblies.—See TABELLAE.

G. Rotondi, loc. cit. 318.

Lex Maria (Marcia) Porcia. (62 b.c.) See TRIBUNUS.

Lex Menenia Sextia. (452 b.c.) See LEX ATERNIA TARPEIA.

Lex metalli Vipascensis. (Second century after Christ.) An ordinance for the administration of the mines in Vipasca (Spain) with instructions to the imperial procurator metallorum concerning the lease of the mines to private conductores.

Riccobono, FIR 1 (1941) 502; Schönauer, Beiträge zur Geschichte des Bergbaurechts, 1929; Kübler, ZSS 49 (1929) 569; Schönauer, ZSS 55 (1935) 212; U. Täckholm, Bergbau in der röm. Kaiserzeit (Uppsala, 1937) 101; D’Ors, Iura 2 (1931) 122.
Lex Minicia. (Date unknown, about 90 B.C.) Ordered that a child born of parents of a different status civitatis receives the lower status. Weiss, RE 12, 2399; Rotondi, loc. cit. 338.

Lex municipalis Tarentina. (First century B.C.) A municipal charter (lex data) of Tarentum, preserved in part. It contains provisions about the responsibility of municipal magistrates, building regulations, and the like.—See LEGES DATAE.


Lex naturalis. See NATURALIS LEX.

Lex Oculina. (300 B.C.) Augmented the number of pontifices and augures from four to eight and nine, respectively. And established the rule that four pontifices and five augures were to be plebeians.

Riewald, RE 1A, 1639; Münter, RE 17, 2065; Rotondi, loc. cit. 236.

Lex Oppia. (215 B.C.) Condemned luxury among women. It introduced restrictions on jewelry and prohibited many-colored dresses. The statute was abolished twenty years later by the Lex Valeria Fundania.—See SUMPTUS.

Kübler, RE 4A, 904.

Lex Orchia. (181 B.C.) Also a lex sumptuaria. See SUMPTUS. It limited the number of persons who could participate in a sumptuous dinner.

Rotondi, loc. cit. 276; Kübler, RE 4A, 905.

Lex Osca tabulae Bantinae. See LEX LATINA TABULAE BANTINAE.

Lex Oxinia. See LECTIO SENATUS.

Lex Papia. On foreigners. (63 B.C.) Introduced special proceedings against foreigners who unlawfully pretended to be Roman citizens. The penalty was expulsion from Rome.

Weiss, RE 12, 2399.

Lex Papia. On Vestal virgins. (65 B.C.) Established the procedure for the selection of Vestal virgins by the high pontiff (PONTIFEX MAXIMUS).—See VESTALES.

Berger, RE Suppl. 7, 402.

Lex Papia Poppaea. See LEX IULIA DE MARITANDIS ORDINIBUS.

Lex Papiria. On treviri capiteles, of unknown date, third or second century B.C.

G. Rotondi, loc. cit. 312.

Lex Papiria de consecratione. (Date unknown.) Required the approval of the plebs for the validity of consecratio (dedicatio). The statute seems to have been one of the earliest plebiscits.

Berger, RE Suppl. 7, 402; Paoli, RHD 25 (1946/7) 176; Sani Di Paola, St Soluzioni 1948, 631.

Lex Papiria tabellaria. (131 B.C.) Guaranteed secrecy in voting on legislative matters in the popular assemblies.—See TABELLAE.

Liebenam, RE 4, 692.

Lex Petronia de praefectis iure dicundo. (Before 32 B.C.) Regulated the election of praefecti iure dicundo in municipalities.

Cass. DS 3. 1158; Rotondi, loc. cit. 439.

Lex Petronia. On slaves. (A.D. 61?) Prohibited masters from exposing their slaves to fight with wild beasts without permission from the competent magistrate. Approval was given when a slave deserved punishment for bad conduct.

Leonhard and Weiss, RE 12, 2401; Rotondi, loc. cit. 468.

Lex Pinaria. An early statute which fixed the term of thirty days for the reappearance of the parties in a trial conducted in the form of legis actio sacramento.—See LEGIS ACTIO SACRAMENTO.

G. Rotondi, loc. cit. 472.

Lex Pinaria Furia. (472 B.C.) Reformed the calendar by the insertion of an intercalary month.

Berger, RE Suppl. 7, 403.

Lex Plaetoria (Lastoria?) de minoribus. (192/1 B.C.) Protected persons sui iuris under twenty-five years of age (minores) who had been defrauded in a transaction. The latter was valid in principle, but the minor, when sued for payment, had an exception, exceptio legis Plaetoriae, for his defense. Besides, an actio legis Plaetoriae was available to anyone (actio popularis) against the person who exploited the inexperience of a minor (circumscriptio adolescentium).—See MINORES.

Berger, RE 15, 1863, 1867; Weiss, RE Suppl. 5, 578; Rotondi, loc. cit. 271; Debay, Médi Girard 1 (1912) 265; Duplessie, Médi Corni 1 (1926) 156; Nap. TR 13 (1934) 194.

Lex Plautia de vi. (78–63 B.C.)? The earliest law against the crime vi (violence) committed either against the state or a private individual.—See VIS, RES VI POSSESSAE.

Berger, RE Suppl. 7, 403 (Bibl.): J. Corio, La violence en droit criminel rom., 1915, 31; Cousin, RHD 22 (1943) 88.

Lex Plautia iudiciaria. (89 B.C.) On the election of judges (fifteen for each tribus).

G. Rotondi, loc. cit. 342.

Lex Plautia Papiria de civitate. See LEX IULIA DE CIVITATE.

G. Rotondi, loc. cit. 340.

Lex Plotia de vi. See LEX PLAUTIA DE VI.

Lex Poetelia de ambitu. (358 B.C.) The earliest statute against unfair machinations for electoral purposes. In particular the statute forbade competition for votes in market places.

Berger, RE 12, 2407; Husband, CU 10 (1914/5) 376.

Lex Poetelia Papiria. (326 B.C.) The statute, called by Livy (VIII 28.1) “another beginning of the freedom of the Roman plebs,” forbade the private imprisonment of the debtor by the creditor, which was a kind of enslavement since the debtor (nexus) had to work for the creditor like a slave. Many details about nexit are doubtful as is the whole doctrine on nexus, owing to the discrepancies in the confusing reports in literary sources (Livy, Varro), especially about putting the debtor into fetters.—See NEXUM.

IURARE NONAM COPIAM.

Huvelin, DS 4, 83; Berger, RE Suppl. 7, 405; Kleinesdamm, Fgs Dmal 2 (1905) 1; Aussele, AmCem 2 (1939); De
Lex Pompeia. On candidates for a magisterial post. (52 B.C.) It obliged them to be present in Rome during the electoral period.

Lex Pompeia. On provincial administration. (52 B.C.) Established the interval of five years between the holding of a magistracy in Rome and a subsequent pro-magistracy in a province.

G. Rotondi, loc. cit. 411.

Lex Pompeia de ambitu. (62 B.C.) A very severe statute against bribery at elections. It has interest because of its procedural provisions.

Berger, RE 12, 2403.

Lex Pompeia de culleo. (55 B.C.? Abolished execution by drowning the condemned culprit in a leather sack (culleus). The statute was perhaps a section of the lex Pompeia de parricide.

Hitzig, RE 4 (a.v. culleus, no. 4).

Lex Pompeia de parricide. (55 or 52 B.C.) Extended the term parricidium to the assassination of parents, grandparents, children, grandchildren, brothers, uncles, a consort or fiancé, and some other relatives. The law apparently substituted the penalty of aquae et ignis interdictio for the ancient form of execution by culleus. It is still in vigor under Justinian, D. 48.9.

Hitzig, loc. supra cit.; G. Rotondi, Leges publ. populi Rom., 1912, 406; Radin, JRS 10 (1920).

Lex Pompeia de vi. (52 B.C.) A special statute on crimen vis (violence) the occasion of which was a great riot with fires and massacres at the via Appia. Severe penalties were set.—See vis.

Berger, RE Suppl. 7, 409; Rotondi, loc. cit. 410; J. Coroi, La violence en droit criminel rom., 1915, 93.

Lex Pompeia Licinia. On tribunes. (70 B.C.) Abolished the restrictions imposed on the plebeian tribunate by Sulla.—See lex cornelia and lex aurelia on tribunes.

Lex Porcia (Leges Porciae). Three Leges Porciae of the second century B.C. are mentioned in connection with the right of appeal (provocatio) of persons condemned in a criminal trial. One of them dealt with the provocatio of soldiers.—See lex valeria.

Cox, DS 3, 1160; Rotondi, loc. cit. 356.

Lex praediatoria. See prae diatoria.

Lex provinciae. A law concerning the organization of the administration of a conquered province. Originally it was issued by the commanding general with the assistance of a senatorial commission.—See lex data, provincia, legati decem.

Lex Publicia. (Earlier than lex Cincia of 204 B.C.) Limited the gifts of freedmen to their patrons who used to demand (exigere) excessive donations on the occasion of the feast of the Saturnalia.

Berger, RE Suppl. 7, 410.
Lex Romana Burgundionum.  (Ca. A.D. 500.) Belongs to the so-called leges romanæ barbarorum. It is a compilation of Roman legal rules for the use of the Roman citizens in Burgund. Its sources are the three Codices, Gregorianus, Hermogenianus and Theodosianus, some post-Theodosian Novels, and juristic writings of Gaius and Paul.


Lex Romana canonice compta. A collection of constitutions from Justinian's Code, primarily concerned with ecclesiastical matters. It was compiled in Italy in the ninth century.

C. G. Mor., L.R.B., Pubb. Univ. Pavia, 1927.

Lex Romana Raetica Curiensis. Also called Utinen-sis. (Of the late eighth or ninth century.) Built up on the pattern of the Lex Romana Visigothorum, for the use of Roman citizens in the Franconian state.

Berger, RE 12, 2406; Edition: Zsomm, Monumenta Germaniae Historica, Leges 5 (1890).

Lex Romana Visigothorum. By order of Alaric II, king of the Visigoths, a compilation of Roman Law was made for the use of Roman citizens in the Visigothic state. The sources excerpted in the collection are the three Codes, Gregorianus, Hermogenianus and Theodosianus, the post-Theodosian Novels, Gaius' Institutes and Paul's Sententiae. The excerpts from the Sententiae and the Theodosian Code are provided with paraphrastic and explanatory notes, interpretationes, of unknown origin, but not unimportant for they often contain additional details. The Lex Romana Visigothorum is called also Brevirariu Alaricianum (Alaric).—See Interpretationes ad codicem Theodosianum, Epistola Gai.


Lex Roscia. See EQUITES.

Lex Roscia theatralis. (67 b.c.) Contained some rules about the distribution of seats in the theaters. The equites were seated behind the senators.—See Lex Iulia Theatralis.

Von der Mühll, RE 1A, 1126 no. 22.

Lex Rubria de Gallia Cisalpina. A charter for Gallia Cisalpina, issued before 42 b.c. when the territory was still a Roman province. Only chapters 30–33 are epigraphically preserved. The inscription is of paramount importance for the knowledge of certain legal institutions, such as operis novi mutiatio and cautio domini infecti, as well as of the jurisdiction of municipal magistrates and some procedural questions (execution against confœs). Edition: Riccobono, F.I.R. 1° (1941) 169 (Bibl.); Gradenitz, Versuch einer Decomposition des Rubriachen Fragments, Sb Heid 1913; Berger, RE 12, 2412.

Lex Rutpilia. (131 b.c.) Organized Sicily as a province. It is frequently referred to in Cicero's orations against Verres.

Weiss, RE 12, 2413.


Lex Salpensana. (A.D. 82–84.) A municipal constitution of the Latin municipium Salpensa. A part of the text, together with the Lex Malacitana, was found on a bronze tablet near Malaga in Spain. The sections of the two charters preserved inform us about municipal magistrates, manumission of slaves and appointment of tutors (Lex Salpensana), municipal assemblies, candidates in elections and voting, the administration of municipal funds, tax-farming, fines, and the like (Lex Malacitana). Some provisions are preserved in both charters.

Kornmann, RE 16, 614; Riccobono, F.I.R. 1° (1941) 302, 280; Schulz, St. Salutii (1948) 431.

Lex Scatinia (Scantinia). Against stiprum cum mascu- loculo (= pederasty, 149 b.c.). The penalty was a fine of ten thousand sesterces.

Berger, RE Suppl. 7, 411; Weiss, RE 12, 2413.

Lex Scribonia. (About 50 b.c.) Excluded the acquisition of servitudes through usuacipo.


Lex semiuniaria. (De fenore semiuniario, 367 b.c.) Reduced the fenus uncianium to half the former rate.—See Fenus Uncianium.

Berger, RE Suppl. 7, 394.

Lex Semproniana agraria. There were two agrarian laws under the name Sempronia; one of the tribune Tiberius Sempronius Grachus of 133 b.c., the other of Gaius Sempronius Grachus of 123 b.c.—See LEGES AGRARIAE.

G. Rotondi, loc. cit., 298 (Bibl. on the Grachii, see also Rotondi, Scritti 1, 1922, 421), 307; Vancura, RE 12, 1169; Terruzzi, BfDR 36 (1928) and Ath 5 (1928) 85.

Lex Semproniana de abactis. (123 b.c.) A magistrate forced to resign his office by a decision of the people could not obtain another office.

Berger, RE Suppl. 7, 412.

Lex Sempronia de provocacione. (123 b.c.) Strengthened the rules regarding the appeal to the people (provocatio).

Coc, DS 3, 1164.

Lex Sempronia frumentaria. (123 b.c.) A plebis- cite proposed by G. Sempronius Grachus, introduced...
the distribution of grain (frumentatio) to all Roman citizens: five measures, modii, monthly at the fixed price of 6½ ases. A later statute, lex Clodia (58 B.C.), restricted the distribution to needy people.

Rostowzew, RE 7, 173; Cardinalli, DE 3, 239; Van Berchem, La distribution du blé à la plebe rom., Genève, 1939.

Lex Sempronia iudicia.ria. See eQUTES (123 B.C.).

Guizoum, Et Girard 1 (1912); Fraccaro, RendLomb 52 (1919) 355.

Lex Sempronia. On interest. (193 B.C.) Provided that Roman statutes on interest in loan contracts should be also applied to transactions fictitiously (via jraudis) concluded with citizens of allied states (socii) in order to avoid the restrictions imposed on loan transactions among Roman citizens.

Berger, RE Suppl. 7, 412 (no. 5); Rotondi, loc. cit. 271.

Lex servilia de repetundis. (111 B.C.) More severe than the previous laws on the crimen repetundarum. It was the first statute to introduce the loss of political rights as a penalty for repetundae.

Berger, RE 12, 2414.

Lex Silia de condictione. An early statute of an unknown date which established the legis actio per condictionem for claims of a fixed sum of money (certainum).—See Lex CALPURNIA, LEGIS ACTIO PER CONDICTIOEM.

Nap, TR 9 (1929) 62.

Lex Silia de ponderibus. (Date unknown, third century B.C.) Introduced penalties for magistrates who forged, or participated in a forgery of, weights or measures.

Riccobono, FIR 1° (1941) 79.

Lex Tarentina. See lex MUNICIPI TARENTINI.

Lex Terentia. (189 B.C.) Gave the sons of freedmen citizenship optimo iure (with full rights).

Münzer, RE 5A, 652; Kübler, RE 9, 1545; Steinwenter, RE 13, 106.

Lex Thoria. An agrarian law of 119–118 B.C., often identified with the Lex AGRARIA of 111 B.C.

Vancouver, RE 12, 1176; Rotondi, loc. cit. 318; Thompson, Classical Rev. 27 (1913) 23; Caspary, Kleo 13 (1913) 84; Hardy, Jour. of Philol. 50, 32 (1909, 1912); D'Arms, Amer. Jour. of Philol. 56 (1935) 232.

Lex Titia de aleatoribus. A republican statute which allowed betting on sports in which the bravery (virus) of the competitors was implied. The statute is mentioned (D. 11.5.3) together with a Lex Publicia and a Lex Cornelia the provisions of which are unknown.

Lex Titia. (43 B.C.) Introduced an extraordinary magistracy, a commission of three persons for the reorganization of the constitutional structure of the state, tresvirii reipublicae constituentiae causa (the first triumvirate was composed of Octavian, Antonius, and Lepidus). They were invested with full consular power for five years and with the right to appoint magistrates. The commission was apparently renewed by a statute of 37 B.C.

Lecravir, DS 5, 412; De Villa, NDI 12, 1, 532; Strasbourg, RE 7A, 519; Rotondi, loc. cit. 438.

Lex Titia. On tutelary (under Augustus, date unknown); see Lex IULIA ET TITIA.

Lex Trebonia. (448 B.C.) Introduced the election of ten plebeian tribunes in the concilia plebis.

Rotondi, loc. cit. 206.

Lex Tullia de ambitu. (63 B.C.) Proposed under the consulship of Cicero.—See AMBITUS.

Berger, RE 12, 2416.

Lex unciaria. See lex CORNELIA POMPEIA.

Lex Ursonensis. See lex COLONIAE IULIAE GENE-TIVAE.

Lex Valeria de provocacione. (509 B.C.) At the very beginning of the Republic, this established the rule that a Roman citizen sentenced to capital or corporal punishment by a consul had the right of appeal to the people. The rule was confirmed by the Twelve Tables, which provided that the appeal had to be submitted to the comitia centuriata. The rule, apparently violated in later times, was repeated with severe punishments by a Lex Valeria Horatia (449 B.C.), again by a Lex Valeria (300 B.C.) and a century later by the LEGES PORCIAE.—See PROVOCATIO.

G. Rotondi, loc. cit. 190; G. Pugliese, Appunti sui limiti dell'imperium nella repressione penale, 1939.

Lex Valeria. On the abolition of kingship. (509 B.C.) Threatened with the death penalty anyone who would endeavor to promote the restoration of kingship.

Berger, RE Suppl. 7, 414.

Lex Valeria. On debts, issued in a time of economic crisis. (86 B.C.) Permitted the debtors to pay only one-fourth of their debts and freed them from the remainder. The statute, criticized later as turpissima lex (= "a very bad law"), was in force only a few years.

Lex Valeria Cornelia. (A.D. 5.) See DESTINATIO.

Lex Valeria Fundania. See lex OPPIA.

Lex Valeria Horatia. See lex VALERIA DE PROVOCATIONE.

Lex Valeria Horatia. (449 B.C., on plebiscites.) Provided that "what the plebs assembled by tribes (tributum) ordered was binding on the whole people" (Livy 3.55).—See lex PUBLILLIA PHILONIS.

G. Rotondi, loc. cit. 203; Humbert, DS 1, 546; Guarino, Fesch Schulz 1 (1951) 461.

Lex Valeria Horatia. (449 B.C.) On the inviolability of the plebeian tribunes.—See SACROSANCTI.

Lex Valeria Horatia. (449 B.C.) On senatusconsulta. It ordered the deposition of senatusconsulta with the plebeian aediles in the temple of Ceres.

Lex Vallia. (Second century B.C.) Permitted the debtor in some cases of MANUS INJECTO to resist immediate arrest by the creditor who laid hands upon him by repelling this gesture (manum repellere), and to defend himself without the aid of a guaranty (vindex).

Taubenschlag, RE 14, 1401; Berger, RE Suppl. 7, 416; G. Rotondi, loc. cit. 478.
Lex Varia. (90 B.C.) Punished for treason those who “by help and advice” (ope et consilio) induced an allied country to take up arms against Rome.

G. Rotondi, loc. cit. 339.

Lex Vatini. See REICTIONI JUDICIS.

Lex venditionis. The conditions of sale in the case of BONORUM VENDITIO of an insolvent debtor. Generally lex venditionis indicates a specific clause in a sale which differs from the normal provisions of such a contract.—See LEX CONTRACTUS.

Vasni, BIDR 40 (1932) 72.

Lex Vetii Libici. A statute of unknown origin and content. The name is preserved in an imperial constitution (C. 7.9.3.1) which notes the extension of that law to the provinces. The name is certainly corrupt. The law apparently dealt with the citizenship of freedmen, who before the enfaimishment were servi publici.

Leonhard, RE 12, 2417; Coq, DS 3, 1167; G. Rotondi, loc. cit. 471.

Lex Vibia. (43 B.C.) Renewed the abolition of the dictatorship. See LEX ANTONIA.

Lex Villia. Called annalis (180 B.C.). Fixed the minimum age for Roman magistrates: for consuls forty-three years of age, for praetors forty, for aediles curules thirty-seven. The interval of time between the tenure of two offices was settled at two years.

Humbert, DS 1, 270; Rotondi, loc. cit. 278; Fracarzo, CemiCodPac (1934) 473; Axilsins, Cillum 8 (1947) 253.

Lex Visellia. On freedmen (A.D. 24). Freedmen of a lower degree of citizenship (LATINI IUNIANS) obtained full Roman citizenship as a reward for six years’ service in the fire brigades (vigiles) of Rome. Another provision of the law punished freedmen who falsely pretended to be free-born. Under the statute freedmen were excluded from municipal offices, especially from the decurionate.—C. 9.21.

Leonhard, RE 12, 2418; Rotondi, loc. cit. 465; Schneider, ZSS 5 (1884) 245.

Lex Voconia. (169 B.C.) Contained several provisions concerned with the law of succession: (1) No woman could be heir (heres) to an estate having a value greater than a fixed amount on which the available historical sources do not agree (it was at least 200,000 asses). The restriction did not apply to intestate inheritance and to legacies, nor to testaments of Vestal virgins and of the flamen Dialis. (2) Admitted among female agnates only the sisters of the deceased to intestate succession. (3) No one person—male or female—could receive by legacy more than the heir (or all heirs together) instituted in the last will. This prohibition was also limited to larger estates, as above. The possibility remained of leaving the heirs very small portions in order to make numerous small legacies. The lex Voconia belongs, together with the former LEX FURIA TESTAMENTARIA and the later LEX FALCIDIA, to the statutes which by imposing limits on the amount of legacies, aimed at making inheritances more attractive to the heirs instituted and thereby discouraging their refusal of the testamentary inheritance, by which action all dispositions of the testator would be frustrated (testamentum desertum, destitutum). On the other hand, the lex Voconia had a purpose of more social character, namely to restrain the luxury of women inheriting big patrimonies. The rule, mentioned above under 3, was superseded by the lex FALCIDIA. The incapacity of women to be instituted testamentary heirs was somehow alleviated by the Augustan legislation on marriage and lost its practical significance no later than the beginning of the second century. An allusion to the motivation of the lex Voconia, unfavorable to women’s rights of succession is reflected in the term Voconiana ratio.

Steinwente, RE 12, 2418 (Bibl.); Kübler, ZSS 41 (1920) 23; Brassloff, Studien zur röm. Rechtsgeschichte, 1925, 70; Cassisi, AnCatt 3 (1930).

Liballaticus. See LIBELLUS LIBELLATICI.

Libellensis. See SCRINITUM LIBELLORUM.

Libellus. A small booklet (liber), a pamphlet. The term is applied to all kinds of petitions or letters addressed to the emperor or a high official. Syn. PROCES, SUPPLICATIO. Written complaints in civil or criminal matters (accusations) as well as written declarations (attestations, issued by an official or a private person) are also termed libellus. In the Roman civil procedure of the later Empire a libellus (= petition, complaint) of the plaintiff was the start of proceedings called per libellum.—See A LIBELLUS, EPISTULA, and the following items.

V. Premerstein, RE 13; Thédenat, DS 4; L. De Sarlo, Il documento come oggetto di rapporti, 1935, 57.

Libellus accusatorius. A written accusation, addressed to the competent official with the purpose of initiating a criminal trial against a person.—See ACCUSATIO.

Libellus appellatorius. See APPELLO.

Libellius contestatorius. A petition by which a person appointed as a guardian requests to be released on the grounds of a legal excuse.—See EXCUSATIO.

Libellus contradictorius. A written reply by which one party to a trial contradicts the claims or facts presented by his adversary. In the libellary procedure (per libellum) libellus contradictorius is the defendant’s written reply to the libellus conventionis of the plaintiff.—See the next item.

Betti, ACDR Roma 2 (1935) 152.

Libellus conventionis. A complaint addressed to the judicial magistrate (in provinces, to the governor) in which the writer presents the facts on which he bases his claim against the defendant. Thereupon the official authorizes the plaintiff to summon (with the assistance of a subordinate clerk of the court, executor), the defendant communicating the libellus conventionis to him. The defendant either recognizes
the plaintiff’s claim or denies it in a written libellus contradictorius in which he assumes the obligation to appear before court.—See the foregoing item.

V. Premerstein, RE 13, 49; Mittei, St. Leipz. 1910, 61; Steinwenter, Fscbr Hanauzck (Abhandl. zur antiken Rechtsgesch. 1925) 36; idem, SSS 50 (1930) 373, 54 (1934) 373; idem, SDHI 1 (1935) 132; idem, Fscbr Wengel 1 (1944) 180; P. Collinet, La procedure par libelle (Ey historiques sur le droit de Justinien 4, 1932; Betti, ACER Roma 2 (1935) 145 (Bibl.); Balogh, St. Ricobono 2 (1936) 453.

Libellus dimissorius. (Appears only in the plural, libelli dimissorii.) See litterae dimissoriae, appell.—D. 49.6.

Libellus divertil. See divortium.

Libellus familiaris. (Liber patronimii.) A book in which the whole property of the family (estate, slaves, valuable furniture, etc.) was recorded.

Libellus famosus. A pasquils, a lampoon. Syn. libellus ad infamiam alicuius perimins (= defaming another person). According to the Lex Cornelia de iniuriis punishment was inflicted on the person who wrote (scripterit), composed (composuerit) or edited (editerit) such a lampoon, even if the publication was made under another name or anonymously (sine nomine). Libellus famosus was also a letter addressed to the emperor or an official containing malicious accusations against another person. If the letter was anonymous, it had to be burnt, without any investigation against the person defamed.—D. 47.10; C. 9.36.—See carmen famosum, lex cornelii de iniuriis.

Pfaff, RE 13; v. Premerstein, RE 13, 29; Théodenst, DS 3, 1176; Anon. NDI 7.

Libellus inscriptionis. A written accusation of a crime brought against a person by an accuser (acccusator). It contained a detailed description of the wrongdoing and was used by the competent office as the basis for the registering of the case in the official records (see inscriptio). This initiated the investigation and the criminal trial.—See LIBELLUS ACCUSATORIUS, INSCRIPTIO IN CRIMEM.

RE 13, 59.

Libellus libellatici. A petition addressed to the commission instituted during the persecution of Christians by the emperor Decius, in which the petitioner (a Christian who, in fact, did not perform the pagan sacrifices) requested the issue of a certificate that he had made the appropriate sacrifices to the Roman gods. The certificate saved him from persecution.

V. Premerstein, RE 13, 46; Wittig, RE 13, 1280; P. M. Meyer, Die libelli der Decamischen Christenverfolgung, APRAW 1910, Abb. 5; Faulhaber, Zeitschr. für kath. Theol. 43 (1919) 439, 617; Knaipig, Harvard Theol Rev 16 (1923) 345; Bludau, Röm. Queralt. Suppl. Heft 77 (Freiburg i. Br., 1931); H. Schoenach, Die I. und ihre Bedeutung für die Christenverfolgung, 1933.

Libellus refutatorius. See refutatio, consultatio.

V. Premerstein, RE 13, 59.

Libellus repudii. See divortium.

Libellus rescriptorum. See liber libellorum re- scriptorium.

Liber. A son. See liberi (children).

Liber. (In juristic writings.) A book as a division of a written work. The jurists used to divide their writings into books (libri). The average size of a liber was from 1500 to 2500 lines, each of approximately 35 letters. Gaius’ Institutes are divided into commentarii. A writing consisting of one book only is liber singularis.

P. Krüger, SSS 8 (1887) 76.

Liber. (Adj.) Free. For liber in the sense of a free man, see liber (homo), libertas, status libertatis. Generally, according to the connection in which it is used, liber means free from any legal or factual restrictions; with reference to immovables = free from charges (servitudes, hypothec). See civilitates.

Liber (homo). A free man, either a free-born (ingenius) or a freedman (libertinus, libertus). A person is free-born when born of free parents, legally married, even when they were not free-born themselves, but were free when the child was born. A child born of parents not married follows the condition of the mother. Ant. servus.

Liber Authenticorum. See novellae iustiniani.

Liber beneficiorum. See commentarii beneficiorum.

Baundry, DS 1, 688.

Liber Gaii. See epitome gaii.

Liber homo bona fide serviens. A free man who does not know his status as a free man and serves in good faith as another’s slave. This might happen when a free-born child was exposed by his parents (see exponere filium) and was treated by the person, who took him into his home, as a slave, or when a slave manumitted in a testament by his master, had no knowledge of his being freed. What such a person acquired at his “master’s” expense (ex re domini) or through his own labor belonged to the “master,” all other acquisitions, donations, and testamentary gifts were his. Good faith on the part of the master is also presumed. Different is the situation of a free man who fraudulently (dolosus) lets himself to be sold as a slave and shares the price with his accomplice who performed the sale. He loses freedom and becomes the slave of the buyer.—See incubus manumissus, ex re alicitus.

Berger, Philologus 73 (1914) 69; idem, SSS 43 (1922) 398; G. Dulceit, Erblasserwolle, 1934, 12, 79; G. Ciutei, Lk. b.f. a. Paris, 1941.

Liber libellorum rescriptorum. A collection of imperial rescripts issued in legal matters and publicly exhibited (see proponere). Copies of single rescripts could be made by private individuals. On request they were provided with an official clause
confirming their correctness (descriptum et recogni-
tum factum).
F. v. Schwind, Zur Frage der Publikation im röm. R., 1940, 
169.

Liber patrimonii. See LIBELLUS FAMILIAE.

Liber populus. See CIVITATES FOEDERATAE.

Liber Syro-Romanus. An anonymous legal compilation 
of an unknown date (fifth century?) preserved in 
oriental versions (Syriac, Arabic and Armenian), 
presumably derived from a Greek translation of a 
Latin original. It deals primarily with laws of 
family, slavery, and inheritance and takes imperial 
legislation into account. The purpose of the 
compilation which in the various manuscripts shows 
different additions, is not quite clear. It would seem 
that it has been prepared for teaching rather than 
for the use of practitioners.

Editions: Bruns and Sachau, Syrisch-röm. Rechtsbuch aus 
dem 5. Jahrhunderts, 1880; E. Sachau, Syrisch-römische 
Rechtsbücher 1 (1907). Latin translations: Ferrini, Opere 
1, 397; Furiani in FJR 1 (1940) 753.—Seidel, RE 4A, 1779; 
Mittet, APh 4W 1905; Ducati, BIDR 17 (1905); idem. 
Rev. di storia antica 10 (1906); Nallino, St Bonifate 1 
(1929) and in a series of articles, now republished in 
Raccolta di scritti, 5 (1942); Volterra, RISG 88 (1951) 
153 (Bibli.); Taubenschlag. J. Of juristic psychology 6 
(1952) 103.

Libera facultas mortis. Permission granted by the 
emperor to persons condemned to death to evade 
execution through suicide. Provincial governors did 
not have this right. Syn. liberum arbitrium mortis.
—See SUICIDIIUM, MORTEM SIBI CONCISCERERE.

F. M. De Robertis, St di dir. penale, 1943, 89.

Liberalis. Concerning liberty. For liberalis causa 
(liberale iudicium), see CAUSA LIBERALIS.—See 
OPERA LIBERALES, STUDIA LIBERALIA.

Liberalitas. Liberty, generosity. The term covers 
acts of liberty both by private individuals, magis-
trates, and by the emperor as well (donations, distribu-
tion of money among the people, miseria, con-
giarium; the coins or tesserae nummariae had the 
scription ex liberalitate Augusti = by liberty of the 
emperor). Liberalitas occurs only when there is 
no reciprocal performance and no compensation. If 
a person is sued for the fulfillment of an obligation 
assumed by liberty, he could be condemned only to 
idi quod facere potest, i.e., as far as his means allow, 
see BENEFICIO COMPETENTIAE. Syn. largito.—C.

Berve, RE 13; Fringsheim, St Albertario 1 (1952) 661.

Liberare (liberatio). Applied in the field of private 
law in different meanings. With regard to slaves it 
is syn. with manumittere (= to free); with regard 
contractual or other obligations = to release the 
debtor either after payment or through an act of 
liberality (see LEGATUM LIBERATIONIS); with regard 
to things = to release a thing from a legal tie, e.g., 
from a servitude or from being pledged. Liberare 
creditorum = to satisfy a creditor. Liberare also 
indicates the release of a guardian from tutorship, 
or a curator from curatorship. Liberare refers to 
the emancipation of a son from paternal power, too. 
In criminal matters liberare = to absolve, to acquit 
the accused.—D. 46.3; 34.3; C. 8.42; 11.40.—See 
ACCEPTILATIO, SOLUTO, MANUSMISSIO, EMANCIPIATIO, 
PER AES ET LIBERAM.

Cuz, DS 3; Meylan, St Riccobono 4 (1936) 287.

Liberi. Children, sons and daughters. In a broader 
sense the term embraces all descendants.—See IUS 
LIBERORUM, INTERDICTUM DE LIBERIS EXHIBENDIS, 
TESTAMENTUM PARENTIS INTER LIBEROS.

Lanfranchi, StCagl 30, 2 (1946) 15.

Liberi iusti. See FILIUS TUSTUS.

Libri naturales. See FILIUS NATURALIS.—C. 5.27.

Liberorum quaerendorum (procreandorum) causa.
Procreation of legitimate children was the aim of 
a Roman marriage. At the registration of citizens 
(see cENSUS) the head of a family was asked whether 
he was living with a wife liberorum quaerendorum 
causa. Hence a woman married in iustae nuptiae = 
uxor liberorum quaerendorum causa.

Libertas. Liberty, freedom, the status of a free (see 
LIBER) person as opposed to slavery (SERVITUS). 
In a broader sense libertas is "the power to live as 
you wish" (Cicero, Parod. 5.1-34). The following is 
the definition of the jurist Florentinus (D. 1.5.4 
pr.): "Libertas is the natural liberty of doing what-
ever one pleases unless something is prohibited by 
force or law." This definition was literally repeated 
by Justinian in his Institutes (1.3.1). "Freedom is 
inestimable" (D. 50.16.106), it cannot be evaluated 
in money. Trials in which the libertas of a person 
is involved = causa liberalis (iudicium liberale).— 
C. 7.22.—See STATUS LIBERTATIS, FAVOR LIBERTATIS, VINDICATIO IN LIBERTATEM. Libertas with regard to 
immovables denotes freedom from servitudes.—See 
USUCAPIO LIBERTATIS, ADEMPTIO LIBERTATIS, POSSES-
SIO LIBERTATIS.

H. Kloesel, Libertas, Diss., Breslau, 1933; G. Lombardi, 
Concetti fondam, del dir. pubblico, 1942, 32; Wirszubski, 
L as a political idea at Rome during the late Republic and 
early Principate, 1950; Wenger, SDHI 15 (1949) 60; 
Biondi, Il diritto romano propagatore della libertà, Jus, 
n. s. 3 (1952) 266.

Libertas directa. See the next item.

Libertas fideicommissaria. Freedom granted to a 
slave through a FIDEICOMMISSUM. The slave becomes 
free when the heir fulfilled a formal manumission. 
Ant. libertas directa, when a testator freed a slave 
directly ("liber esto" = he shall be free) in his 
testament; see MANUSMISSIO TESTAMENTO.

Libertas Latina. See LATINI IUNIANI, LATINITAS.

Libertinitas. The status of a freedman (libertinus).
A free-born considered erroneously a freedman might 
defend his ingenuitas (the status of a free-born) 
before court; see INGENUITAS.
Libertinus (libertina). A person born as a slave, but set free later by manumission (see manumissio), a freedman. Ant. ingenius (= free born) and servus (= a slave). Freedmen were citizens, though enjoying fewer political rights than the free-born. They were excluded from magistracies and sacerdotal offices, and could not become members of the senate. Their right of voting in the popular assemblies was regulated to their disadvantage (exclusion from participation in comitia centuriata as long as they were based upon the organization of the army, since freedmen were not admitted to the service in the legions). Their social position, however, was not unfavorable because they were entrusted with confidential work in the household of their patrons. Their social esteem increased even under the Principate since many posts in the imperial chancery, in the general administration and in that of the imperial patrimony were confined to them, in particular to the emperor’s freedmen (see liberti caesarii). Hadrian introduced restrictions in the use of freedmen in important administrative positions in favor of persons of equestrian rank.—Inst. 1.5; C. 10.58.—See lex visellia, restitutio natalium, libertus (Bibl.).

Steiner, RE 13; Lecrivain, DS 3; Sciascia, NDI 7; Barrow, OCD 371; A. M. Duff, Freedmen in the Roman Empire, 1928; Gordon, The freedman’s son, JRS 21 (1931) 65.

Libertas. A freedman. The term is used of a freedman in relation to the person who manumitted him (patronus, manumissor). A freedman is libertinus, but libertus of his ex-master. In a few texts libertus is used in sense of libertinus. Liberta = a freedwoman. For the relations between a freedman and his patron, see patronus, operae liberti, iudicium operarum, obsequium, ingratius libertus, beneficium competentiae, bonorum possessio intestati, in ius vocatio, adsignatio liberti.—Inst. 1.5; 3.7; D. 38.2; 3; C. 4.13; 6.4; 7; 10.58.

De Francisci, StSas 1 (1921) 39; Buckland, RHD 2 (1922) 273; H. Krüger, St Riccobono 2 (1926) 229; Bellili, AG 116 (1936) 65; Perger, Ricerche epigrafiche sui liberti, Epigraphica, 2–3 (1940–41); Lavaggi, SDHI 12 (1946) 115; idem, StCagi 30 (1946),_StSas 21 (1947); idem. La successione nei beni dei liberti nel dir. postclassico, 1947; C. Coeremini, Studi sui liberti 1 (1948), 2 (1950); _idem, Ancat 2 (1948) 235.

Libertus Caesaris (principia). A freedman of the emperor. The manumission of a personal slave by the emperor was a sign of particular confidence. Imperial freedmen obtained normally important positions in the imperial palace and chancery and acquired at times great influence on state affairs and the imperial policy.

Libertus ingratus. See ingratus.

Libertus orcinus. A freedman manumitted in the testament of his master (see manumissio testamento). In classical law he was free from patronage since his former master was dead. In Justinian’s law, however, the manumitter’s son became his patron with all the rights of patronage.

Loreti-Lorini, BIDR 34 (1925); Harada, ZSS 59 (1939) 498.

Libra. A balance. A libra was used in formal acts concluded per aes et libram.—See per aes et libram.

L. Michon, Recueil F. Gray, 1 (1934) 42.

Libriarius. A slave who, in the service of a wealthy master, was charged with writing letters, copying books, and sometimes with bookkeeping. Libriarius is also the technical term for a book-seller.—See scriba.

Blabiel, RE 13; Lafaye, DS 3.

Libri. For some kinds of libri in the sense of records, registers, lists, see under liber, and the following items.

Libri ad edictum. Commentaries on the praetorian edict written by jurists. There were commentaries on the pre-Hadrian edict and after Hadrian on the edictum perpetuum as compiled by the jurist Julian; see edictum praetoris, edictum perpetuum Hadriani.

Libri ad Sabinum. See Sabinus.

Libri censuales. A land-register for taxation purposes.

Libri magistriatum. Lists of the annual magistrates (consuls, plebeian tribunes) were in use, seemingly, from the fifth century B.C. on.

Niccolini, Atti della Società linguistica di scienze e lettere, 5 (1926) 103.

Libri pontificum. See commentarii pontificum.

Libripens. The man who held the balance when a legal act was performed in the solemn form per aes et libram.

Kübler, RE 13; Kaser, RE 5A, 1025; Foligno, NDI 7.

Licentia. Freedom; in a derogatory sense = boldness, licentiousness. With regard to magisterial power it is syn. with potestas, facultas.

Licere. To be permitted by law or custom. “Not all that is permitted (licet), is honest” (D. 50.17.144).

Licit. (Conj.) Although, even if. When used with a subsequent indicative, it is suspect as to its classicality, especially when followed by a concession. Introduced with attamen. The incorrect indicative may, however, originate from a copyist’s error or a wrong resolution of an abbreviation. Likewise, quamvis, followed by an indicative, is considered suspect.

Guarnieri-Citati, Indice 4 (1927) 53, 72.

Licinianus Rufinus. A jurist of the third century, a pupil of Paul, author of an extensive work entitled Regular.

Müller and Berger, RE 13, 457 no. 151; H. Krüger, St Boniface 2 (1930) 331; L. Robert, Hellenica 5 (1948) 28.

Licitari (licitatio). To bid at an auction.—See auction, substatatio.

Licitatio fructuum. See fructuum licitatio.

Licitius. What is permitted by law or custom. Hence licito iure = lawfully, legally (= liceite). Licitius is
used at times instead of *legitimus*, *iustus*. Ant. *illecitus*.

Lictor. See LANCE ET LICIO.

Lictores. According to an old Roman custom (of Etruscan origin), the king was preceded in his official appearance by twelve lictors carrying bundles of rods (see FASCES) with a protruding axe-head as a symbol of the king’s sovereignty and power over his subjects’ life and death. Under the Republic the use of lictors was preserved as a sign of magisterial power. A consul had twelve lictors, a dictator twenty-four, a praetor in Rome two, in the provinces six. The lictors were appointed by the higher magistrates and fulfilled lower official services, such as the conveyance of popular assemblies, the citation of individuals to appear before a magistrate and the arrest of criminals by order of the competent magistrate. They assisted also at capital executions. Their principal duty was to escort the magistrate in public (marching before him = anteire) and to keep order wherever he appeared. Under the Principate they were organized in professional associations (decuriae lictoriae) with the addition of the office to which they were attached (e.g., decuria lictoria consularis).—See QUINQUEFASCALES.

Kübler. RE 13; Lécrivain, DS 3; Treves, OCD; De Sanctis. *Rictere di filologia*, 1929.

Lictores curiati. Lictors, attendants of priests of higher rank.

Kübler. RE 13, 516.

Lictores denuntiatores. See DENUNCIATORES.

Kübler. RE 13, 515.

Lignum. A wooden tablet, a testament written on a wooden tablet (*tabulae testamenti*).

Limes. The frontier of the state (sometimes specified by the name of the region, e.g., *limes Aegeiacus*). *Limes* is also the free space between two neighboring landed properties, left for public use. In ancient times it had to be five feet wide (syn. *fines, terminus*).

Fabricius. RE 13.

Limitaneus. Connected with the state boundaries. *Milites limitanei* = troops stationed in a frontier garrison. *Agri limitanei* = land on the frontier of the state for the maintenance of *milites limitanei*.—C. 11.60.—See FUNDUS LIMITANEUS.

Linea. The line of descent from a common ancestor on the paternal or maternal side (*linea paterna, materna*). *Linea transversa* = the collateral line.—See LATUS.

Lintuum. See LANCE ET LICIO.

Linum. A thread with which the tablets of testament (*tabulae testamenti*) were bound and sealed. The testator’s tearing the *linum* was considered tantamount to his destruction of the will.

De Sarlo. AG 136 (1949) 102.

Liquer. To be clear, evident.—See IURARE SIBI NON LIQUERE.

Leonhard and Weiss. RE 13, 726.

Lis. "Indicates any suit (actio), either in rem or in personam" (D. 50.16.36). The term refers both to the trial and to its object. The parties to a *lis* (litigatores) are "enemies" (imicri). *LITIGIUM* is also a legal controversy but of a less inimical nature. Syn. *litigium*.—See the following items, *LITIGIUM IN LITEM, LITIS CONTESTATIO, DECERVIRI STITI BUS IUDICANDIS, PRAEDES LITIS ET VINDICARIUM, CONSORTES LITIS*.

Weiss, RE 13; Cuj., DS 3.

Lis deserta. See DESERERE, REMODICUM.

Lis dividua. See EXCEPTIO LITIS DIVIDUAE.

Lis fullonum. A trial before *praecepti vigilum* (a.d. 226-244) in which the guilds of fullers claimed the exemption from water rates on the ground of ancient privileges and some religious consideration. The record of the trial is preserved in an inscription. Recent edition: Arango-Ruiz, *FJR* 3 (1943) no. 165 (SBl); Walzling, *DE* 2, 405; W. Liebenam, *Geschichte und Organisation des röm. Vereinswerken*, 1910, 239.

Lis interfando crescit in duplum. See INFINTARI.

Lis moritur. See IUDICIA LEGITIMA. The term *mors litis* is a creation of Justinian’s.—See LIS PERIT.

Kaser. RE 16; P. Tsow, *Die mors litis im röm. Formulargrundlagen* (1920) 1; Boni- facio, AG 142 (1952) 34.

Lis pendens. See LITE PENDENTE.

Litis pendente. When a trial is still pending. During this time a supplication to the emperor concerning the object of the controversy was not admissible. The object of the trial = *res litigiosa*.—C. 1.21.

Lis residua. See EXCEPTIO LITIS DIVIDUAE.

Litem contestari. See LITIS CONTESTATIO.

Litem denuntiare. See LAUDARE AUTOREM.

Litem suam facere. See IUDEX QUI LITEM SUAM FACIT.

Liti se offerre. To accept the part of a defendant in a trial involving the recovery of a thing (*rei vindicatio, hereditatis petitio*) by a person who does not possess it. Usually behind this acceptance was deliberate deception in order to cover the real possessor of the thing and to give him the opportunity to usurp it in the meantime. The dishonest defendant was, of course, not able to restore the thing, but he was liable for damages on the ground of his *cauto iudicatum solvi* which made him responsible for fraud.—See POSSESSOR FICTUS.

Lenel, GrZ 37 (1910) 552; Maria, Et Girard 2 (1913) 237; Kaser, ZSS 51 (1931) 101.

Litigare. To be involved in a civil trial. The term refers particularly to the stage in *jure*. *Litigans* = the party to a trial. Syn. *litigato*.—D. 44.6; C. 8.36.

Litigato (litigans). See LITIGARE.

Litigiosus. See RES LITIGIOSA, LITE PENDENTE.—D. 44.6; C. 8.36.

Litis aestimatio. The evaluation in money of the thing claimed by the plaintiff to make possible a judgment in a sum of money (*CONDEMNIATIO FECU-
Litis contestatio. The final act in the proceedings in iure, by which, after the appointment of the judge (index), the controversial issues are established and submitted to the latter for the examination of the facts and for judgment. In the procedure of legum actiones the end of the first stage of the process took place before witnesses summoned by the phrase "testes estote" (= be witnesses); hence the term contesato. In the formulary procedure the litis contestatio was achieved by agreement of the parties about the formula. The concept that the litis contestatio was of a contractual nature has been common opinion in the literature, since the parties gave their consent to surrender their controversy to the private judge. Among the manifold effects of the litis contestatio the most important is that the plaintiff's right to sue the defendant is "consumed" (actio consumitura) which excluded a second trial for the same claim; see bis idem exigere, eadem res. The defendant is protected, under specific circumstances, against a second suit by the law itself (ipsa iure). In such cases the praetor could reject the second action (denegare actionem) immediately and, besides, the defendant might object to the identity of the second claim with that of the first trial. In other cases (judicia imperio continentia, actiones in rem, actiones in factum) the defendant had to oppose a formal exception (in the formulary procedure) that the dispute at issue had been already the object of a litis contestatio (exceptio rei in iudicium deduxæ) or had been decided by a final judgment in a previous trial (exceptio rei indicatae). After the litis contestatio, the plaintiff's claim became transmissible to his heir, even in those cases in which it was not hereditary before the litis contestatio being a strictly personal claim. Through litis contestatio the original obligation of the defendant was extinguished (tollitur obligatio) and transformed into an obligation, based on the litis contestatio itself, the substance of which was to fulfill the judgment debt (iudicatum facere) in case of condemnation. The legal situation at the time of the litis contestatio was decisive for the final judgment. With the disappearance of the bipartite procedure the litis contestatio lost not only its external aspect but also its material effects. The term, however, occurs frequently in Justinian's legislative work where it refers to the cognitio extra ordinem and the postclassical procedure. What was later called litis contestatio resembled somewhat the classical litis contestatio; it was the moment when the jurisdictional officer "started" (coeperit) to hear the exposition of the case by the parties or their representatives: the narratio by the plaintiff, and the contradictio by the defendant. Legal consequences attached to the former litis contestatio became now connected with the final judgment itself.—C. 3.9.—See iudicium accipere, absolutionis, exceptio, res litigiosa, exceptione rei indicatae, perire, suspensionem.

Weiss, RE 13; Humbert, DS 3; R. De Ruggiero, BIDR (1905) 149; Gradenzwitz, Fg. Bekker 1907; Wiassak, SbWien 184 (1917), 194 (1920); E. Betti, Costuzione giuridica della consunzione processuale, 1919; Guarnieri, BIDR 34 (1925) 163; Riccobono, ZSS 47 (1917) 65; Meylan, Del Gennari 2 (1928) 81; M. Kaser, Restitutio in praesentia, 1932; E. Carrelli, La genesi del procedimento formulare, 1946, 17; Lavaggi, AG 150 (1947) 24; C. Giofredi, Contributi allo studio del processo civ. rom., 1947, 65; Di Paolo, AN Cat 2 (1948) 253; Biscardi, RIDA 2 (1950) 199; Bonfatto, St Albertino 1 (1952); Pugiessi, R. di diritto processuale 6 (1951).

Litis denuntiatio. See DE iUNTAITO LITIS.

Littera Florentina. See FLORENTINA.

Littera Pisana. See FLORENTINA.

Naber, St Bonfante 2 (1930) 289.

Littera vulgaris. See VULGATA.

Litterae. A writing (opposed to spoken words, oratio), a letter (syn. epistula). A letter may be used for the conclusion of an agreement (contrahere) between persons not living at the same place. Illiterate persons (ignorantibus, ignorans or qui nescit litteras) are excluded from legal acts which require a written form. Justinian issued special rules for testaments of illiterate persons. "What has been written (litterae) on another's material (e.g., charta = paper, membranae = parchment), even if written with golden letters, becomes his property" (D. 41.1.9.1).—See comparatio litterarum, ignarum litterarum, epistula.

Litterae. (With reference to official correspondence.) A letter issued by a magistrate or an imperial official in an official matter. Litterae also indicates an imperial rescript; see RESSIPUTUM PRINCIPIS.

Litterae commendatidiae. A letter of recommendation.

Litterae dimissoriae. A written report of a judicial officer to a higher court in the case of an appeal (see APPELLATIO) concerning the controversy. It was to be presented to the appellate court by the appealing party. Syn. libelli dimissorii, apostilae.—D. 49.6.—See APPELLO.

Litterarum obligatio. (Obligatio litteris contracta.) An obligation which originates from a written document or from a written entry in an account-book.
The ancient forms of *litterarum obligatio* became obsolete already in classical times. In Justinian's law there is a new form of *obligatio litterarum*. A *scriptura* carried an obligation if the writer acknowledged by writing that he owed a sum of money to a certain person. He could, however, during two years, object that he actually had not received the money.—Inst. 3.21.—See *nomina transcripticia*, *codex acceptti*, *chirographeum*, *syngrapheum*, *expensilatio*.


Litus maris. The seashore. It is a *res communis omnium*; consequently everybody may approach it and set his foot thereon. Its extension goes to the limits reached by the highest winter waves. Pearls, gems, etc., found on the seashore were subject to *occupatio* and became the property of the individual who found them. In some texts *litus maris* is listed among *res publicae*. A building constructed on a seashore belongs to the builder.—C. 12.44.—See *mare, occupatio*.


Locare ex integro. (Syn. *renovare locationem*.) To renew a lease, to prolong an existing lease.—See *locatio conductio*.

Locatio conductio. A general term which covers various types of lease and hire. The contracting parties are: the *locator* (*si qui locat* = he who gives his thing, immovable or movable, in lease, who gives his material of, or on, which a work has to be done, or who lets out his services to another) and the *condutor* (*si qui condit rem, opus, operas* = the lessee of another's thing, the workman who engages himself to make a specific work, or he who hires another's services). The *locatio conductio* is a contract, concluded by mutual consent of the parties (see *consensus*) and governed by good faith, hence the actions resulting from a *locatio conductio*, *actio locati* (*ex locato*) for the locator, and *actio condutori* (*ex conducto*) for the conductor in the case of non-fulfillment of the reciprocal duties, are *actiones bonae fidei*. For the various types of the *locatio conductio* see the following items. The compensation for using another's thing or services (*merces*) was paid, as a matter of rule, in money, otherwise there was no *locatio conductio* but another kind of a contract (e.g., a sale or an innominata contract; see *contractus innominati*). There are specific rules concerning the rights and duties of the parties and their responsibility in the case of non-fulfillment. The normal rules could be changed by a special agreement between the parties. It was held of *locatio conductio* that it was a contract similar to the sale (*proxima emptionis*); as a result many rules governing the sale were applied to *locatio conductio*.—Inst. 3.24; D. 19.2; C. 4.65; 11.71.—See *locare ex integro, re-locatio, reconductio, merces*.


Locatio conductio operarii. Hiring another's labor, primarily manual work, since services rendered by intellectual professionals (physicians, lawyers, land-surveyors, teachers, architects, etc.), the so-called *operae liberales*, could not in classical law be the object of a *locatio conductio*, although under the Principate compensation for such professional services could be obtained in extraordinary proceedings (see *honorarium, advocati, mediici, agrimensores, operaee liberales*). Therefore, the expression *operae quae locari solent* (= which used to be hired) refers only to the labor of craftsmen, artisans and manual workers. The *locator* (the workman) has to perform the services as agreed upon by the parties and the wages must be paid to him if the performance of his services became impossible by a cause for which he was not liable (e.g., *vis maior*).—See *imperitia, merces*.


Locatio conductio operis (faciendi). A contract by which a person (*conductor, redemptor operis*) assumes the duty to perform a specific service or work on, or from, the material supplied by the employer. If the workman produces an *opus* out of his own material, it is a sale (*emprio*). Contracts of transportation of goods or persons is a *locatio conductio operis*; likewise building a house by a contractor on one's ground, no matter who furnishes the materials, the contractor or a third person; *locator* is the owner of the ground (*domum aedificandam locare*). Death of the *condutor* dissolves the contract when the services were strictly personal and had to be performed by the *condutor* himself. The employer has to pay the wages (*merces*) agreed upon when the work performed corresponds to the provisions of the agreement. Approval by the *locator* or by a third person (*adprobare*) is often settled as a condition of the employer's duty to pay the wages. The employer incurs the risk of the destruction of the work (even not yet approved) by an accident or when there was a delay in the approval by his fault.—See *adprobare, fullo, receptum nautilum*.

Schula, *GlZ* 38 (1911) 21; Huvelin, *RHD* 3 (1924) 322; M. Boizard, *Les contrats des services gratuits*, 1941; De
Locatio conductio rei. A lease of a thing, movable or immovable (a house, a plot of land), to be used by the *conductor* according to its economic and social utility. A lease is concluded for a fixed period of time (a rural property normally for five years) or in perpetuity (*in perpetuum*, see *EMPYTHEUSIS*). Full or partial sublease is generally admitted unless prohibited by the agreement. The lessee has no possession of the thing let; he, therefore, has no possessory protection through interdicts. The rent is paid in money (*merces*); only in a lease of land it may consist in a part of the proceeds (*colonia particaria*). The lessor is liable to the lessee (the tenant) if the latter is evicted by a third person. It was customary that the lessor, when selling the immovable, obliged the buyer to respect the lease and to leave the lessee on the spot until the lease expired. A renewal of the lease (*relocatio*) could be performed by an agreement of the parties to this effect or tacitly (*relocatio tacita*) when the lessee kept holding the immovable and the owner did not object.—See *INQUILINUM*, *INSULA*, *MERCES*, *COLONI PARTICARI*, *LOCATIO CONDUCTIO* (Bibl.), *HABITATIO*.


Locatio subasta. A lease performed through a public auction.—See *AUCTIO*, *HASTA*.

Voigt, *BerSächsGW* 1903, 19.

Loco. (Used adverbially.) In the place of, e.g., *heredes loco, dominus loco*, in the same legal situation as an heir (*heres*) or owner (*dominus*), to be treated legally as an heir or owner (not to be an heir or owner).

Loco plus petere. See *PLURIS PETITIO*.

Locuples. The rich, the wealthy, chiefly in landed property. Originally the term was applied only to land-owners, even of small parcels. Syn. in earlier times *ASSIDUI*, *ANT. PROLETARI*. Later it embraced all kinds of riches (slaves, cattle, movables, money). In procedural language, he who has sufficient means to satisfy the claims brought against him or to be an appropriate surety for the defendant is considered *locuples*.

Berve, RE 13.

Locupletarii (locupletior fieri). To enrich oneself to the detriment of another. “Natural equity requires that no one should enrich himself to the detriment of another” (D. 12.6.14). Such enrichment can be reclaimed under specific circumstances by certain actions (*CONDUCTIONES*) in which the defendant is condemned in *quantum (quaternus) locupletarii factus est* (= to the extent of his enrichment) or in *id quod ad eum pervenit* (= of what were his earnings).—See *PERVENIRE AD ALIQUEM*.


Locus. Distinguished from *FUNDUS* (= piece of land, estate) as a part of the whole. Both urban and rural lands are called *locus*. A plot of land in the city with no building on it = *arca*, in the country = *ager*. This terminology, however, is more strictly observed in juristic writings than in literary works and inscriptions.—See *CONTROVERSAE DE LOCO, SUCCEDERE IN LOCVM, USUS LOCI*.

Kübler, RE 13.

Locus profanus. See *PROFANUM*.

Locus publicus. (Pl. *loca publica*) A parcel of public land. It is property of the Roman people and is protected by various interdicts (*INTERDICTA*) against violation by private individuals who might endanger its public character or its use by the people.—D. 43.7; 8; 9.—See *INTERDICTA DE LOCIS PUBLICIS*, *INTERDICTVM DE LOCO PUBLICO FRUENDO*.


Locus purus. A place which is neither *locus sacer*, nor *sanctus*, nor *religiosus*, and is consequently negotiable through all kinds of transactions.—See the following items.

Locus sacer. A land or a building dedicated to the gods with the authorization of the senate or by a statute. Interdicts (*INTERDICTA*) served the protection of *loca sacra*.—D. 43.6.—See *RES SACRAE*, *INTERDICTVM NE QUID IN LOCVM SACRO*.

Locus sanctus. See *RES SANCTAE*.

Locus religiosus. A place where a dead person was buried by, or with the consent of, the owner. *Ant. locus profanus*.—D. 11.7; C. 3.44.—See *RES RELIGIOSAE*, *PROFANUM*, *INTERDICTVM NE QUID IN LOCVM SACRO*.

Taubenschlag, ZSS 38 (1917) 245; Kobbert, RE 1A (*s.p. religiosa loco*).


Longa consuetudo. See *CONSUETUDO*.—D. 1.3; C. 8.52.

Longa possessor. In the language of Justinian’s compilers = *USUCAPIO*.—See *PRAESCRIPTIO LONGI TEMPORE*.

Longa praescriptio. See *PRAESCRIPTIO LONGI TEMPORE*.

Longaeus usus. A usage, a custom, observed during a long period.—See *CONSUETUDO*.

Longi (longissimi) temporis praescriptio. See *PRAE­SCRIPTIO LONGI TEMPORE*.

Longum silentium. See *SILENTIUM*.

Loqui. To speak. See *GAVITER LOQUI*. With reference to statutes, *SENATUSCONSULTA*, and praetorian edicts ("praetor loquitur" = the praetor says) *loqui* is primarily used to introduce a literal quotation from the
enactment. Syn. (prætor, lex) dicit, ait. Quotations from a testament are preceded by the statement that the testator ita locutus est (= has so disposed). Syn. scribere.

Luceres. See RAMNES.

Berve, RE 13.

Lucra nuptialis. See NUPTIAE.

Lucrarii. To gain, to derive a profit. Syn. lucifacere.

—See FURTUM.

Lucrativus. See CAUSA LUCRATIVA, RES LUCRATIVAE, USUCAPIO PRO HERED.

Lucrifacere. See LUCRAR.


Lucrum. A gain, profit. Ant. DAMNUM. It is doubtful whether the wording of the saying "it does not conform to what is right and just (bonum et aequum) that one make a gain (lucrum) to another's detriment nor that one suffer a loss to the profit of another" (D. 23.6.2) is of classical origin.—C. 12.61.—See COMMUNICARE LUCRUM CUM DAMNO.

Grumwald, Ordnung der die Worte lucrum, lucifacere etc. enthaltenden Stellen der Digesten, Diss., Heidelberg, 1912.

Lucrum cessans. See DAMNUM EMERGENS.

Lucrum facere. (Syn. lucifacere.) See FURTUM.

Lucus. Mourning. During the time fixed for mourning (tempus lugendi) after the death of her husband (ten months, later one year) the widow had to abstain from another marriage. One of the reasons was to avoid confusion about the paternity of a child born after the husband's death (turbatio sanguinis = confusion of blood). She might, however, become engaged or marry with the emperor's permission. If she had given birth to a child after the husband's death, there was no restriction in time for a second marriage. No marriage prohibition existed for widowers. Persons who violated the mourning duties, which were obligatory after the death of a near relative, were branded by infamy with all its procedural disadvantages (see INFAMIA). Later imperial legislation brought even more severe sanctions for widows transgressing the pertinent rules by excluding them from inheritance, legacies, and other testamentary gains from the deceased husband's estate.—See INSPICERE VENTREM, SUBLUGERE.

Kühler, RE 13; Gaebner, DS 3; Cuq, DS 2, 1401; Volterra, RISG 8 (1933) 171; Rasi, Stv Ferrini 1 (Univ. Sacro Cuore, Milan, 1947) 197.

Ludi. Public games, arranged on various occasions, of a spectacular character and of different nature (sportive, gladiatorial, theatrical = ludi scaenici, circenses). Some were organized by the state, on particularly solemn occasions, and were arranged by magistrates (aediles curules, later, from the end of the Republic on, by praetors) who were charged with the cura ludorum (sollennium). The days on which public festivities (ludi publici) took place were considered as FERIAE (= dies festi) on which every kind of labor was suspended. There were also spectaculars of a more private character, arranged by high officials or candidates for magistracies in order to win the favor of the people.—C. 11.42.—See LEX FANNA, HONORARIUM, SENATUSCONSULTUM DE SUMPTIBUS LUDORUM.

Kubitschek, RE 1, 456, 462; Habel, RE Suppl. 5: v. Buren, OCD.

Ludi gladiatori. For the condemnation to fight with gladiators as a penalty in criminal trials, see GLADIATORES. This kind of penalty for minor criminal offenses (damnatio in ludum) does not appear in Justinian's codification since it was abolished in the fourth century. Another kind of condemnation was damnatio in ludum venatorium (a fight with wild animals) which existed still in Justinian's time. Ludus gladiatorius is used also of a school of gladiators.—See SENATUSCONSULTUM DE SUMPTIBUS.

Ludi saeculares. Extraordinary public festivals, combined with religious ceremonies, and arranged for the celebration of the end of a saeculum (century) and the beginning of a new one. They were organized by priests, duoviri sacris facundis.—See SENATUSCONSULTA DE LUDI SAECULARIBUS.

Nilsson, RE 1A, 1696; Taylor, OCD (s.v. secular games); Diehl, StBerl 1932, 762; J. B. Pighi, De ludis saecularibus poeuli Rom., Milan, 1941; Wagenvoort, Mede-

Ludi venatorii. See LUDI GLADIATORII.

Ludicra ars. Histrionic art. Actors and actresses (qui ludicram artem exercerent) were branded with infamy. Members of senatorial families were prohibited to marry actresses or actors, or persons whose parents acted on the stage. The ban goes back to the Augustan legislation on marriage (see IULIA DE MARITANDIS ORDINIBUS).

Luere pignus. (Or rem pignori datam.) To redeem a pledge by paying the debt.—C. 8.30.

Lugendi tempus. See LUCTUS.

Luitio pignorius. See LUERE PIGNUS.

Lumen. See SERVITUS LUMINUM, SERVITUS NE LUMINIBUS OFFICIAIUR.

Lustralis. Quinquennial, referring to a period of five years. Syn. quinquennalis (census, iuslrum). For collatio lustralis, see AURUM ARGENTUMQUE.

Lustratio. See LUSTRUM.

Böhm, RE 13; Bouche-Leclercq, DS 3.

Lustrum. The religious ceremony performed at the end of a census. It was called also lustratio, and was followed by a review of the army, assembled on the field of Mars. Later iuslrum denoted the quinquennial period between two subsequent registrations of the citizens; see CENSUS, CENSORES.


Lusus aleae. See AEA. —C. 3.43.

Luxuriosus. Luxurious. Living luxuriously might be a reason of declaring a person a spendthrift (prodigus) and of placing him under cura prodigi.
Lytae. Students in the fourth year of studies in the law schools. After Justinian's reform of the law curriculum, they studied ten books of the Digest concerned with family law, guardianship and law of inheritance.

Berger, RE 14; Cantarelli, RendLinc Ser. 6, vol. 2 (1926) 20.

M

Macer, Aemilius. A jurist of the first half of the third century, author of monographs on procedure, military law, and provincial governorship.

Jørs, RE 1 (s.v. Aemilius, no. 86).

Machinatio. (From machinari.) Appears in the definition of dolus malus as a "trick (ruise) used to deceive, to cheat, to defraud another" (D. 4.3.1.2).

Macula. A taint of infamy or of immoral behavior.

Maecianus, Volusius. A jurist of the middle of the second century, law teacher of Marcus Aurelius, and later, after a brilliant official career, member of the imperial council. His principal work was Questions de fideicommissis (concerning fideicommissi), in 16 books. He wrote also on penal procedure and a monograph on the Lex Rhodia.

H. Krüger, St Bonifante 2 (1930) 314; Lery, ZSS 52 (1932) 352.

Magia. Sorcery, the exercise of magical arts. Magia was a crime when it was performed with an evil intention to harm or defraud another. The term covered various kinds of sorcery, such as the use of magic formulae, nocturnal sacrifices made in order to produce supernatural results, the use of magic liquids, and the like. Penalty for sorcery was death, for both the sorcerer and his associates. Possession of magic books was forbidden and punished by death or relegation; the books were burnt in public. Syn. magica ars. — See Fruges Excantare, Occentare, Mathematici.

Kleinfeller, RE 14; Hopner, ibid. 301; Hubert, DS 3; P. Huelin, Magie et droit individuel. Année sociologique 1905-6; Stoicescu. Mel Cornii 2 (1926) 455; Martrone, RHD 9 (1930) 669; C. Pharr, TAmPhilolA 63 (1932) 269; E. Massonneau, La magie dans l'antiquité romaine, 1934; V. A. Georgescu, La magie et le dr. rom., Revista clasică 1-2 (Bucharest, 1939-40); Cramer, Sem 10 (1952).

Magica ars. See Magia.

Magis. More. The term is applied in various phrases, such as magis est, placet, videtur, dicendum est, etc., to give preference to one legal opinion over another (= it is preferable, more correct, more proper to say that . . . ). The compilers of the Digest often use such an expression to cut short a discussion on a controversial matter and to give a solution without any further reasoning.

Guarnieri-Ciuti, Indice (1925) 51 (BibL).

Magister. A general term (title) indicating a person who exercises high (or the highest) functions in an organization, association, or a public office. For the various magistri, whose particular function is normally indicated by the specification of the body in which they function as a magister, see the following items. Magister is also a teacher "in any field of learning (cuiuslibet disciplinarum praecipit)," D. 50.16, 57 pr. The services of teachers were reckoned among operae liberales and could not be the object of contract of hire (see locatio conduction operarum). Teachers enjoyed exemption (immunitas vacatio) from certain public charges (munera civilia). The emperor Constantine considerably enlarged the privileges of professores litterarium and protected them against " vexation." — C. 10.53. — See IMMUNITAS, OPERAE LIBERALES, EDITUM VESPASIANI.


Magister admissionum. The master of ceremonies in the imperial court. — See ADMISSIONES.

Magister auctionis. The manager of a public auction. — See AUCTIO, BONORUM VENDITIO, MAGISTER BONO-

RUM.

Magister bonorum. A man appointed by the creditors of an insolvent debtor to prepare and direct the sale of the debtor's property. — See BONORUM VENDITIO.

Solazzi, Concorso dei creditori 2 (1938) 70.

Magister census (censuum, a censibus). The highest officer among the censuales. He was concerned with matters of taxation of the senators. He also intervened in the opening of a testament. — See APERTURA TESTAMENTI.

Seeck, RE 3, 1191.

Magister census. A man who kept a register of students of liberal arts who came to Rome for studies. He supervised their conduct and took care for their moral discipline. For bad behavior students were publicly flogged, expelled from Rome and sent back to their place of origin.

Seeck, RE 3, 1192.

Magister collegii. See CURATOR COLLEGI. He was the leading functionary of a collegium both in private associations and in colleges of public officials and priests. Some collegia had several magistri whose attributions in the management were different. They were elected for five years, hence their appellation "quinquennales."

Magister creditorum. See MAGISTER BONORUM.

Magister epistularum. The chief of the division of the imperial chancery concerned with the correspondence of the emperor. — See AB EPISTULIS, EPISTULAE, SCRINION EPISTULARUM.

Magister equitum. The commander of the cavalry. He was the deputy of the dictator who appointed him. He was the first-in-command when the dictator was absent. For the magister equitum in the post-
Constantinian epoch. See Magister militum.—See magister populi.
Westmeyer, RE Suppl. 5, 631; Cagnat, DS 3; Momigliano, Bull. Commissione archeol. comunale di Roma 30 (1930) 35.

Magister iuvenum (juventutis). The head of the organization of young men of noble families (iuvenes) in Italian cities. In some places his title was praetor iuvenis.—See iuvenes.

Magister libellorum. The chief of the bureau of the imperial chancery concerned with libelli, scriinium libellorum.—See A LEBELLIS.

V. Premerstein, RE 13, 20.

Magister memoriae. The chief of the bureau a memoria of the imperial chancery. “He dictates all adnotationes and sends them out; he gives also answers to petitions (preces, Notitia Dign. Occid. XVII, 11).—See A MEMORIA, ADNOTATIO.

Seeck, RE 2A, 896; Fluss, RE 15, 656.

Magister militum. From the time of Constantine the emperor as the supreme commander of the army was assisted by one magister militum or two magistri (magister uriorque militiae), one for the infantry (magister peditum), the other for the cavalry (magister equitum). The number of the magistri increased with the reform of the administration of the empire and its division into praetecturae (magister militum per Orientem, per Illyricum, per Thraciaum, etc.).—C. 1,29; 12,4.


Magister navis. One “who is entrusted with the care of the entire ship” (D. 14.1.1.1). See exercitor navis. His agreement with the owner of the ship was either a contract of hire (locatio conductio operarum) or a mandatum when he assumed the duties gratuitously.


Magister officiorum. In the later Empire, the highest official among the court offices (officio palatina) with extensive and manifold functions. He was entrusted with the supervision of certain court bureaus and the secretariat.—C. 1,31; 12,6.—See officium, officiales, scriinia.

De Dominis, NDI 8, 2; Book. RE 17, 2048; idem. The Master of the Offices. Univ. of Michigan Studies, Human. Ser. 14 (1924).

Magister officiorum (operarum). In private service. Large private estates employing a great number of slaves were divided into units each with a separate management (officium) headed by a magister.—C. 1,31; 12,6.—See schola palatinae.

Magister pagi. See pagus.

Magister peditum. See magister militum.
Cagnat, DS 3.

Magister populi. In the Republic, the title of a dictator as the commander of the army, whereas the commander of the cavalry was the magister equitum.
Westmeyer, RE Suppl. 5, 633.

Magister rei privatae. See procurator rei privatae. From A.D. 340 his title is comes rerum privatarum.

Magister sacrarum cognitionum. The head of the imperial bureau concerned with judicial matters brought before the imperial court (from the end of the third century).—See A COGNITIONIUS.

Magister scrini. The head of any bureau in the imperial chancery in the later Empire. His deputy was proximus scriini.—See scriinium. C. 12,9.

Magister societatis publicanorum. A leading personality in the association of tax farmers.—See publicani.

Magister universitatis. A magister in a corporate body.—See magister collegii.

Magister uriorque militiae. See magister militum.

Magister vicarius. The chief of the local administration of a village, or of a vicus in Rome.—See vicus, regiones urbis Romae.


Magisterium (magistria potestas). The office of a magister whatever his special functions were. The term is frequent in imperial constitutions. Magisterium refers also to the employment of a magister navis as well as of a teacher.—See the foregoing items.

Magistratus. Denotes both the public office and the official himself. Magistracy was a Republican institution; under the Principate some magistratus continued to exist but with gradually diminishing importance; in the post-Diocletian Empire some former magistracies still exist but reduced nearly completely to an honorific title. The magisterial power is based on two fundamental conceptions, imperium and potestas, of which the first is the broader one. For the distinction between imperium domi and imperium militiae, see domi. The imperium domi was hampered by the right of intercessio of magistrates of higher or equal rank, and primarily of plebeian tribunes (see intercessio). The most characteristic features of the Republican magistracy were the limited duration (one year) and colleagueship since each magistracy was covered by at least two persons (see collegae) with equal power. Colleagueship meant complete equality of competence and functions; colleagues in office could act in common or divide their functions by agreement. Unilateral action by one magistrate could be stopped by the veto of his colleague. Simultaneous holding of two ordinary magistracies was prohibited; iteration was admitted only after ten years; see iteratio. For the tenure of a magistracy later a minimum age was prescribed; likewise the periods, after which the tenure of another higher office was permitted, were fixed by statute; see lex villa annalis. The magistrates were
elected by the people, namely, those with imperium and the censors in the comitia centuriata, others in comitia tributa. The election of plebeian magistrates was directed by the plebeian tribunes, that of other magistrates by one of the consuls, in exceptional situations by a dictator, an interrex, or a military tribune. The candidates had to present themselves personally to the competent magistrate (profieri) who was authorized to accept their candidacy or to reject it, see CANDIDATUS, AMBITUS. Non-citizens, freedmen, individuals branded with infamy, women, persons with certain physical (blindness, lameness) or mental defects were not eligible. During his year of service a magistratus could not be removed. Misdemeanor in office could be prosecuted only after the term, hence the tenure of an office for two consecutive years was prohibited. Specific crimes could be committed only by magistratus through violation of their official duties; see PECULATUS, REPETUNDAE. The tenure of a public office was considered an honor; for that reason the magistrates did not receive any compensation. Their political influence was, however, of great importance; membership in the senate and the possibility to continue the official career (for which a certain sequence was prescribed, see CURSUM HONORUM) and to obtain a high post in the administration of a province were attractive enough to assume the financial charges connected with a higher magistracy (as, e.g., the arrangement of public games, ludi).—D. L. 2; Z. 8; C. 575; 11.35. —For the particular magistrates (consuls, praetors, quaestors, etc.), see the pertinent items; for the auxiliary personnel, see APPARITORES, LICTORES, PRAEFO, SISCA, VIATORES. See also HONOR, ABACTUS, LEX CORNELIA DE MAGISTRATIBUS, KALENDS, IUS AGENDI CUM POPULO, JURISDICTIO, POMERIUM, DESTINATIO, ACTIO SUBSIDIORUM, SCAEFA VETERIS, INCAGIO, IURARE IN LEGES, IURARE, NOMINATIO, PROFESSIO, LEX POMPILIA (on candidates), MULTA, COMPARATIO and the following items.

Küber, RE 14; Braschfeld, RE 4, 1868 (s. v. creation); Lécrivain, DS 3; De Dominicus, NDI 8; Treves, OCD; F. Leifer, Die Einheit des Grundgesetzes im röm. Staatsrecht, 1914; Buckland, Civil proceedings against ex-magistrates in the Republic, JRS 37 (1937); H. Siber, Die plebeischen Magistraturen, 1938; Gonne, RHD 16 (1937) 193; Nocera, Il fondamento del potere dei magistrati, AmPer 57 (1946) 145; T. R. S. Broughton and M. Patterson, The magistrates of the R. Republic, New York, 1951.

Magistratus curules. Magistratus who had the right to be seated on a folding ivory chair, silla curulis, when acting officially (dictators, consuls, praetors, censors, aediles). The silla curulis belonged to their official insignia and was carried about everywhere they had to perform an official act. —See SUBSELITUM, SILLA CURULIS.

Küber, RE 2A (s. v. silla curulis); Chabot, DS 4 (s. v. silla c.).

Magistratus designati. Magistrates elected for the next term (normally in July) during the whole period which preceded their entering on the official duties (since 153 B.C., January first). —See KALENDS, RE-NUNIATIO.

Magistratus maiores—minores. The magistratus maiores were elected by the comitia centuriata, the magistratus minores by comitia tributa (see MAGISTRATUS). The magistratus minores were officials of minor importance, they had no imperium and were vested with a restricted jurisdiction and some functions in specific fields. The collective denomination for a group of magistratus of a lower degree was VIGINTISEXVIRI. The tenure of a minor magistracy opened the way for the quaestorship, the first step in the career of magistratus maiores. —See CURSUM HONORUM.

Lécrivain, DS 3; Küber, RE 14, 401.

Magistratus minores. See MAGISTRATUS MAIORES.

Magistratus municipales. Magistrates in municipalities (MUNICIPIA) who managed the local administration, finances, and jurisdiction. They were elected by the local assemblies, later by the decuriones and from among the members of the municipal council,ordo decurionum. The principles of collegueship were also applied to them as well as the institution of intercessio. They had no imperium. —C. 1.56.

—See DUOVIRI IURI DICUNDO, QUATTUORVIRI, QAUES- TORES MUNICIPIALES, DUOVIRI AEDILES, PRAEFFECTI IURI DICUNDO, HONORARIUM, NOMINATIO.

Lécrivain, DS 3; Küber, RE 14, 434; E. Manni, Per la storia dei municipi, 1947.

Magistratus patricii—plebeii. The distinction is based on the circumstance whether a magistracy was accessible only to patricians or to plebeians. In the course of time all magistracies which originally were reserved to patricians, could be obtained by plebeians. Specifically plebeian magistrates were the plebeian tribunes and the aediles plebis. —See TRANSITIO AD PLEBEM.

Magistratus populi Romani. Magistrates in Rome; ant. MAGISTRATUS MUNICIPIALES.

Magistratus suffecti. Magistrates (chiefly consuls) elected when a magistracy became vacant by death or resignation of the magistrates in office. —See CON-SULES ORDINARI.

Magna culpa. "Equal to dolus (dolus est)," D. 50.16.226. —See CULPA, CULPA LATA, DOLUS.

De Medio, St Faddo 2 (1906).

Magnificus (magnificentia). A title of high imperial functionaries in the later Empire.

P. Koch, Byzantinische Beamtenstitel, 1903, 45; O. Hirsch- feld, Kleine Schriften, 1913, 672.

Magnitudo. Occurs in the imperial correspondence as a term of address to the highest dignitaries of the Empire ("magnitudo tua").

Magus. See MAGIA.

Maiestas. Dignity, supremacy, the greatness of the state (maiestas populi Romani). Maiestas was also an honorific title of the emperor. —For maiestas in
penal law, see crimen maiestatis, quaestio de maiestate.

Maior. A person higher in official rank.—See magistratus maiores.

Maior (natu). Older, in particular one who is over twenty-five years of age. Ant. minor. Maior aetas = the age over twenty-five.—C. 2.53.

Maiores. Ascendants of a person, from the sixth degree. Generally maiores = ancestors, forefathers, when referring to their customs (mos, mores maiorum) or their legal opinions (maiores putaverunt) and institutions.

H. Roloff, Maiores bei Ciceró, Diss., Göttlingen, 1938.

Mala fides. See bona fides, fides. The term mala fides superveniens appears in the doctrine of usufructio. i.e., bad faith of the holder of another's thing who at the beginning when he took possession thereof believed in good faith that it belonged to him, but later, before the usucaption was completed, became aware that he had no title to own the thing.


Mala mansio. See mansio mala.


Malae fidei possessio (possessor). See possessio bonae fidei.

Mala. (With reference to legal acts or transactions.) Unlawfully, inefficiently (e.g., to sue), unjustly (e.g., to pass a judgment).

Maleficium. A crime, wrongdoing. It is not a technical juristic term and is used as syn. with both crimen and delictum. At times it is syn. with magia; see maleficus.—See obligatio ex delicto.

Tailenichag. RE 14; Lauria, SDHI 4 (1938) 182; Albennario, Studi 3 (1936) 197.

Maleficus. (Noun.) Commonly denotes a sorcerer. Syn. magus, see magia. In similar connection maleficus (adj.) is syn. with magicus.—C. 9.18.

Malle. To prefer. The term is applied when a person has a choice between two or more things (in contractual relations or legacies). Malle in the meaning of to wish, want (= velle) is listed among the words suspected of interpolation since it frequently occurs in later imperial constitutions.

Guarnet-Ciuti, Indice (1927) 55.

Malum carmen. See carmen malum, incantare.

Malum venenum. See venenum.

Mancipis. One who at a public auction, conducted by a magistrate, through the highest bid obtained the right to collect taxes (a tax farmer) or custom duties, the lease of public land (ager publicus) or other advantages (a monopoly).—In postal organization mancips was a post-station master.

Stinewemer, RE 14; M. Kaser, Das altröm. lus, 1949, 140; P. Noailles, Du droit sacré au droit civil, 1950, 224.


Mancipatio. In historical times a solemn form of conveyance of ownership of a res mancipi, accomplished in the presence of five Roman citizens as witnesses and of a man who held a scale (libriphers), with a prescribed ritual and the solemn utterance of a fixed formula by the transferee (the buyer when the mancipatio involved a sale). The formula was: "I declare that this slave (this thing) is mine under Quirityary law and be he (it) bought by me with this piece of bronze and the bronze scale." The assertion was not denied by the transferee. The transfer of ownership over a res mancipi could be achieved only in this way, otherwise the transferee did not acquire Quiritory ownership, but only possession which might lead to such an ownership through usufructio. The transaction was perhaps originally called mancipium (from manu capere = to grasp with the hand, which was one of the decisive gestures performed during the act). Mancipatio was also applied for other purposes as, e.g., to make a donation, to constitute a dowry, to hand over a thing to another as a trustee, fiduciae causa (see fiducia).

In all these instances the external aspect of the act was that of a sale although the "price" paid was fictitious, a small coin being given as compensation (mancipatio nummo uno). In the further development other legal transactions were performed in the form of mancipatio such as the transfer of power over the wife to the husband, emancipating a child (see emancipatio), making a testament per aes et libram, or constituting a servitude. Various clauses might be added to the oral formula of the mancipatio, except the restriction of the transfer by a condition or term (see actus legitiimus). Such additional declarations of transferor were covered by the term manucipatio. Later, specific duties of the parties were assumed by stipulatio. The increasing use of written documents deprived the mancipatio of its importance. In Justinian's law it does not appear any more. Mention of it in classical texts, accepted into Justinian's codification, was omitted and substituted by the formless traditio; mancipare was replaced simply by dare.—See actio auctorialatis. actio de modo agril, satisfaction secundum mancipium, nummus unus, raedusculus.

Mancipatio familiae. The oldest form of a testament made by mancipatio through which the testator transferred his property to a trustee (a friend) with an oral instruction (mancipatio) as to how the trustee, who formally was the buyer of the estate, familiæ emptor, had to distribute it after the testator’s death. Since the trustee was the immediate successor (hereditis loco) and had to convey the single objects to the persons indicated by the testator, this kind of succession was a succession into specific things and not a universal one.—See familiæ emptor, NCUCIPATIO.


Mancipatio fiduciae causa. See fiducia.

Brasiello. RIDA 4 (= Mtl De Vischer 3. 1950) 201.

Mancipatio nummo uno. The conveyance of property through mancipatio for a fictitious price (a piece of money) for various purposes (making a donation, constitution of a dowry).—See mancipatio, NUMMUS UNUS.

Kunkel. RE 14, 1009; Rabol. ZSS 27 (1906) 127; G. Pugliese. La simulazione 1938, 76.

Mancipatus. The service of a postmaster (manceps) in the postal organization; see MANCEPS, CURSUS PUBLICUS.

Steinwender. RE 14.

Mancipi res. See RES MANCIPIT, MANCIPITUM.

Mancipio accipiens. The transferee of property in a mancipatio. Mancipio datus = the transferor.

Mancipium. Belongs to the earliest juristic terminology. The original meaning (much discussed in literature) is rather obscure—it expressed the idea of power over persons and things—but its later applications show a considerable variance. For its synonymy with mancipatio (mancipio dare, mancipio accipere), see mancipatio. In the technical term res mancipi (mancipi) there is a reminiscence of the original meaning (a thing taken with the hand in the formal act of mancipatio). Personae in mancipio (= in causa mancipi) are free persons who were conveyed through mancipio to another (adopio, emancipatio, nosus dedito). Finally mancipium is often syn. with servus (a slave).—C. 11.63.—See mancipatio, satisfatio secundum mancipium.


Mandare. See mandata pricipium, mandatum.

Mandare actionem. See cessio.

Mandare iurisdictionem. See iurisdictionem.

Mandare tutelam. To appoint a guardian.

Mandata principum. Judicial and administrative rules or general instructions issued by the emperors to high functionaries of the empire, primarily to provincial governors to be applied by them in the exercise of their official functions. They were binding only in the province for which they were issued. When an imperial mandatum affected lower officials or the provincial population, it was made public by an edict of the governor. The jurists did not include the mandata principum into the imperial constitutions but mentioned them as a particular group of imperial enactments.—C. 1.15.

Finkelstein. TR 13 (1934) 150.

Mandatela. See custodes.

Mandator. One who orders, commissions another to do something. In the consensual contract mandatum mandator = is the person on whose order another assumes the duty to perform something without compensation. In penal law mandator is the person who orders another to commit a crime.

Mandator causae. One who orders another to denounced or to accuse a third person of a crime. He is responsible for malicious information or accusation made by a delator on his order.—See delatores.

Mandatum. A consensual contract by which a person assumed the duty to conclude a legal transaction or to perform a service gratuitously in the interest of the mandator or of a third person. The mandatum was based on a personal relationship of confidence (friendship) between the parties, it therefore ended by the death of one of them, by revocation by the mandator or renunciation of the mandatory. Gratuity of the service was essential, since if compensation was given, the agreement was a hiring of services (locatio conductio operarum or operis faciendi). The mandatory could not sue for an honorarium, but he might claim the reimbursement of expenses by an actio mandati contraria. The mandator’s action against the mandatory for restitution of what the latter gained by executing the mandate or for damages caused by fraudulent acting was the actio mandati (directa). The actions were bonae fides (see IUDICIA BONAE FIDELIS), the condemnation of the mandatory involved infamy. Beyond the field of the contractual mandatum, mandare and mandatum are used in a broader sense of an order or authorization given by one person to another. as e.g., by a creditor to his debtor to pay the debt to a third person, or of a commission given to one’s representative to administer his affairs or a specific affair (negotium, see PROCURATOR).—Inst. 3.26; D. 17.1; C. 4.35.—See designatio liberti, renuntiari mandatum.

Kreiler. RE 14; Coq. DS 3; Domatius. NDI 8; Lumignani. Responsabillità per custodes, 2 (1905); Pampaloni. BIDR
Mandatum generale. A general authorization concerning the administration of all affairs (universa negotio) of the mandator. Peters. ZSS 32 (1911) 280.

Mandatum incertum. A mandatum in which the object of the mandate is not precisely defined.


Mandatum meae (tua) gratia. A mandatum "to my (your) advantage," a distinction based on the circumstance whether the mandatum is in the interest of the mandator (meae) or the mandatory (tua gratia). Mandatum aliena gratia = a mandatum in the interest of a third person. A mandate in the exclusive interest of the mandate is treated as an advice; see CONSILITUM.


Mandatum pecuniae credendae. An order given a person to lend money to a third person (mandare aliqui ut credat). It created on the part of the mandator the obligation to secure the mandate against losses from such a transaction. Such a mandate (called by a non-Roman term mandatum qualificatum) made the mandator a surety to the mandatee.

—C. 8.40; 5.20.


Mandatum post mortem. An order which had to be fulfilled by the mandator (normally the heir) after the death of the mandator. Such a mandatum is void, because an obligation could not arise in the person of an heir.


Manare. To remain. The term is applied to legal situations or remedies (actions), to the status of a person or to a contractual relationship which remain valid as they were (in sua causa) in spite of some legal or factual changes which occurred therein.

Manifastare. To make public, manifest. Manifestari = to be made evident, apparent. The term is used of imperial constitutions by which a certain legal rule is settled. Manifestare and the adj. manifestus (manifestissimus) are frequent terms in the language of the imperial chancery of the later Empire and of Justinian.

Manifesti (manifestissimi) iuris est. See IURIS EST.

Manifestissimus (manifestissime). Most evident. See EVIDENTISSIMAE PROBATIONES, PROBATIONES.

Guarnieri-Ciati. Indices (1927) 55.

Manifextum furtum. See FURTUM MANIFESTUM.

Manlius, Manilius. A prominent jurist under the Republic, consul 149 b.c., author of a collection of juristic formularies (known under the name Monumenta Maniliana, Actiones Maniliane); see FORMULAE. He enjoyed high esteem among his contemporaries who consulted him on the forum and at home.

Männer, RE 14, 1135.

Manipulus. A smaller unit within the legion, composed of one hundred and twenty to two hundred men. Originally there were thirty manipuli, each composed of two centuriae.—Manipularius = a common soldier.

Liebenam. RE 6, 1594; Cagnat, DS 3, 1051.

Mansio. A post station located on the principal post roads, with quarters for night's lodging of passengers.

SYL. STATIO.—See MANCEPS.

Kubtschek. RE 14; Humbert, DS 1, 1655.

Mansio mala. An instrument of torture (see TORMENTUM) which immobilized the culprit who was bound to a board.

Taubenich. RE 14.

Mansuetudo. Mildness, clemency. The Christian emperors used to speak of themselves in their enactments "mansuetudo nostra."

Manu iniuriam (damnum) dare. To hurt, to inflict damage by the use of hands.

Manu militari. Through official organs. The term is applied to the execution of judicial orders and judgments in later civil procedure with the assistance of public functionaries. See REI VINDICatio.

Cagnat, DS 3.

Manubiae. Money obtained from the sale of war booty (see PRAEDA). The sale was directed by the military quaestors and was performed by auction. See PECULIATU.


Manumissio. (From manumittere.) The release of a slave from the power (see MANUS) of his master by the latter, i.e., "giving freedom, datio libertatis" (D. 1.1.4). Originally the slave became not fully free (even as late as second century b.c. the term servus is applied to freedmen) and the rights of his former master, the manumitter, were more extensive than in historical times, when the manumitted slave became free, sui iuris (independent from paternal
power) and a Roman citizen, except in certain specific cases in which his liberty was somewhat limited. For the forms of manusmissio, see the following items; for limitations concerning the number of slaves to be manumitted by one master, the age of the slave owner and of the slaves themselves, see Lex Fufia Caninia, Lex Iunia Nortana, Lex Aelia Sentia. The pertinent restrictions were abolished or, at least, considerably softened, by Justinian who also generally suppressed the distinctions in the legal status of freedmen which according to earlier statutes depended upon the kind of manusmissio and the age of the slave. The manusmissio did not tear all ties between the manusmissor and his former slave. Even a restricted right of punishment remained from the former Ius Vitae Necessitque. The freedman was materially independent but could be obligated to services on behalf of his former master (see Iurata Promissio Liberti) who moreover, had the right of tutelage over his libertus and a right of succession when the latter died without leaving legitimate heirs.

—Inst. 1.6; D. 40.1-9; C. 4.14; 7.10; 11; 15. — See Libertus, Libertinus, Patronus, Tutela Legitima, Cause Probatio, Concilium Manumissionum, Ius Accrescendi, Latini Iuniani, Favor Libertatis Iterato, Onerae Libertatem, Ingratus, Servus Dotalis.

Weiss, RE 14; Lacrivain, DS 3 (s.a. libertas); De Dominicus, NDI 8; S. Perrozzi, Seritti 3 (1948, ex 1904) 511; F. Haymann, Freihaarepflicht, 1905; Lotmar, ZSS 33 (1912) 304; Kaser, ZSS 61 (1941); De Visscher, SDHI 12 (1946) 69 (= Nouveaux Etudes, 1949, 117); De Dominicus, AnPer 52 (1938), 57-58 (1947-48) 111; Cosentini, AnCat 2 (1947-48) 374; Lemosse, RIDA 3 (= Mit De Visscher 2, 1949) 39.

Manumissio censu. A manumission of a slave through his enrollment in the list of Roman citizens, with the consent of his master, during the operation of the Census by the censors.

Danbe, JRS 36 (1946) 60; C. Cosentini, St. on Liberti 1 (1948) 14; Lemosse, RH 27 (1949) 161; De Visscher, SDHI 12 (1946) 69; Danieli, SDHI 15 (1949) 198.

Manumissio fideicommissaria. A manumission ordered through a fideicommissio: a testator requested in his testament the heir or any person awarded by him in his last will to manumit a slave through a formal manumission. The slave did not become free until the manumission was performed and the fideicommissary manumitter became the patron of the slave freed. A senatusconsult under the Principate declared the slave free if the heir refused the acceptance of the inheritance or if for any other reason the performance of the manusmissio became impossible. The manusmissio fideicommissaria could be applied with regard to a slave of the heir or of a third person. In the latter case the heir was bound to buy the slave in order to manumit him. Manusmissio fideicommissaria is termed also manusmissio fiduciaria. —See Libertas Fideicommissaria, Sena-

Tusconsultum Dasumianum, Senatusconsultum Rubrianum, Senatusconsultum Vitrasianum.

V. De Villa, Liberatio legata, 1939.

Manumissio fiduciaria. See the foregoing item.

Manumissio in convivio (convivii adhibitio). See Manumissio Inter Amicos.

Manumissio in ecclesia. A manumission performed in a church in the presence of the Christian congregation and priests, with consent of the master. It was introduced by Constantine. The slave manumitted became a Roman citizen.

De Francisci, Rend.Lomb 44 (1911); Mor. idid. 65 (1932); Gaudemet, Rev. d'histoire de l'Eglise de France, 1947, 38; Danieli, StCagn 31 (1947/1948) 263.

Manumissio in fraudem creditorum. A manumission performed by an insolvent debtor in order to defraud the creditors. The manusmissio could be annulled at the request of the creditors. —See Fraudere, Fraus, Lex Aelia Sentia.

Schulz, ZSS 48 (1928); Beseler, TR 10 (1930) 199.

Manumissio inter amicos. A formless manumission by the declaration of the master, made before witnesses, to the effect that the slave be free. If made at a banquet before the guests = manusmissio in convivio.

A. Biscardi, Manumissio per mensam, 1939, 9.

Manumissio per epistulam. An enfranchisement of a slave by a letter of the master addressed to the slave. This form of manusmissio could be applied to an absent slave.

Manumissio per mensam. An informal manumission of a slave through his admission to the master's table and a pertinent declaration of the latter.

Wlasak, ZSS 26 (1905) 401; Funaioli, BidR 44 (1936-37); Paoli, SDHI 3 (1936) 369; A. Biscardi, M. per mensam (Florence, 1939); Henrion, Rev. Belge de philol. et hist., 1943, 198.

Manumissio praetoria. A manumission performed in a less formal act by the slave's master who had no quiritary ownership (dominium ex iure Quiritium) over the slave, but only possessed him in bonis (for instance, if the slave was not conveyed to him through mancipatio, but through an informal traditio). Other forms of manumissiones praetoriae were manusmissio per mensam, inter amicos and per epistulam. They are called in the literature "praetorian" because they were not recognized by the ius civil. The freedom of slaves so manumitted was protected by the praetor (in libertate tvari) under certain conditions although they had no full rights of freedmen. Therefore their status is described as in libertate morari (= to live in freedom), or "to be in freedom through the protection of the praetor" (tuizione praetoris). Wlasak, ZSS 26 (1905) 367; A. Biscardi, M. per mensam e afranzazioni pretorio, 1939.

Manumissio sacratorium causa. A manumission of a slave who assumed the duty to perform sacral rites in behalf of his patron.
Manumissio servi communis. A manumission of a slave by two or more masters in common. The classical law required manumission by all co-owners for the validity of the manumissio of such a slave.—See IUS ADRESCENDI.

Manumissio sub condicione. A manumission under a condition, i.e., the liberty of the slave became effective only when the condition was fulfilled. Such a manumission could be made only in a testament. During the intermediary period the slave remained slave, his liberty being in suspense until the realization of the condition. Such a slave was sold as a slave, but the condition remained in force. Usually the condition consisted in the slave’s payment of a sum to the heir. Such slaves were called during the period of suspense statutiliberi. A child of a statutilibera was a slave. A similar situation was a slave manumitted ex die, i.e., when the manumissio became valid at a fixed date. In the meantime, the slave continued to be a slave.—See STATULIBER.

G. Donati, Statutiliber, 1940.

Manumissio testamento. A manumission through a testamentary disposition of the slave’s master expressed in a traditional formula “my slave X shall be free (liber eeto)” or “I order that my slave X be free (liberum esse inrebo).” The slave became free without any further formality, immediately after the acceptance of the inheritance by the heir. A slave thus manumitted could be instituted as an heir in the same testament. See HERES NECESSARIS. In classical law the institution of a slave as an heir not combined with his manumission was void. In Justinian’s law in such a case the manumission was assumed as self-understood and the slave instituted as an heir became automatically free.—D. 40.4; C. 7.2.—See REDDERE RATIONES.

Tumidei, RISC 64, 65 (1920); C. Cosentini, St sui liberti 1 (1948) 17.

Manumissio vindicta. A manumission before a magistrate, performed through a fictitious trial in which a third person, with the agreement of the slave’s master, claimed that the slave was free. The process was similar to a rei VINDICATIO (suit for the recovery of a thing) in the legis actio procedure. The master did not oppose such affirmation whereupon the magistrate pronounced the slave free. The use of a rod (vindicta) with which the slave was touched by the claimant explains the name of this kind of manumissio.—D. 40.2.—See VINDICTA, ADsertio.

Ch. Appleton, Mèl Fournier 1929; Lévy-Bruhl, St Riccobono 3 (1936) 1; Ara, St Salmi 2 (1941) 301; C. Cosentini, St sui liberti 1 (1948) 11 (Bibl.); Monier, St Albertianus 1 (1952) 197; Kaser, SDHI 16 (1950) 72; Meylan, RIDA 6 (1951) 113.

Manumissor. See MANUMISSIO, MANUMITTERE.

Manumittere. To free a slave; see MANUMISSIO. Manumittere is also used with reference to the re-lease of a person from the status of mancipium and of a son from paternal power.—See MANCIPIUM, EMANCIPIATIO.

Manum depellere. See DEPELLERE MANUM.

Manupretium (manus pretium). Wages paid for handicraft, the value of an artisan’s work.

Manus. Originally the term indicated the power of the head of a family over all its members and the slaves (MANUMISSIO = de manus missio). Later manus was only the husband’s power over his wife, and that over his children was the PATRIA POTESTAS. The husband acquired manus through a special agreement (see CONVENTIO IN MANUM) which accompanied the conclusion of a marriage. The wife under the power (in manus) of her husband had the legal position of a daughter (filiae familias loco).—See MATHRIMONIUM.

Manigk, RE 14; Lecrivain, DS 3; Aon., NDI 8; E. Volterra, La conception du mariage (Padova, 1940); idem, St Solazzi (1948) 67; Bonzani, Manus e matrimonio, AnnLec 15 (1942) 111; Dill, Fesch Wagner 1 (1945) 204; v. Schwind, Sc Ferrimi 4 (Univ. Sacro Cuore, Milan, 1949) 131; Kaser, Juris 1 (1950) 64; Danielli, StUrb 1950; Volterra, ACTIV 3 (1951) 29.

Manus infere. To lay hands upon a person, to hit. It is considered an iniuria re facto.—See INTURIA.

Manus iniectio (manum inicere). See LEGIS ACTIO PER MANUS INJECTIONEM (Bibl.).—Manus iniectio was also the symbolic act (touching the debtor’s shoulder) performed by a plaintiff when he summoned the debtor into court (see in IUS VOCATUM).—See LEX VALLIA, DEPELLERE MANUM.

Taubenschlag, RE 14; Lecrivain, DS 3; Noailles, Revue des Etudes Latines 20 (1942) 110; idem, Fax et ius, 1948, 147; idem, Du droit sacré au droit civil, 1950, 120; M. Kaser, Das altröm. ius, 1949, 191.

Manus iniectio iudicati. Introduced by the Twelve Tables for the execution of judgment-debts.—See LEGIS ACTIO PER MANUS INJECTIONEM.

P. Noailles, Du droit sacré au droit civil, 1950, 110.

Manus iniectio pro iudicato. A manus iniectio “as if upon a judgment,” i.e., an execution of certain kinds of debts in the form of legis actio per manus injectionem as in the case of a manus iugulato for judgment-debts. In the oral formula pronounced by the plaintiff the words pro indicato were added. There was, however, no preceding judgment.—See LEGIS ACTIO PER MANUS INJECTIONEM, ACTIO DEPENSIL.

Manus iniectio pura. A manus iugulato which was neither indicati nor pro indicato but was introduced by special statutes for specific claims; see LEX FURIA TESTAMENTARIA, LEX MARCI against usurers. The defendant was permitted to remove the plaintiff’s hand (depellere manus) and defend himself personally (pro se leges agere).—See LEX VALLIA, and the foregoing items.

Manus sibi infere. To commit suicide. Syn. CONSCIscERE SIBI MORTEM.
Marcellus, Ulpius. A jurist of the second half of the second century after Christ, author of an extensive work, Digesta, of a collection of Responda, and of a commentary on the Digesta of Julian in the form of Notae.

Orestano, NDI 7; Sciascia, BIDR 49-50 (1948) 424.

Marcianus, Aelius. One of the last jurists of the classical period (later first half of the third century), author of Institutiones in 16 books, richly exploited by the compilers of the Digest. He also wrote a collection of Regulas and a few monographs, chiefly on criminal procedure.

Jura, RE 1, 523 (no. 88); Ferrini, Opera 2 (1929, two articles of 1880 and 1901); H. Krüger, St Boniface 2 (1930) 312; Buckland, St Ricobono 1 (1936) 273; De Robertis, RISG 15 (1940) 220.

Mare. The sea is a res communis omnium. “By nature it is open to everyone” (D. 1.8.21; Inst. 2.1.1). Everybody has the right of fishing therein.

—See LITUS.

Costa, Rivista di dir. internazionale 5 (1916) 337; Maroi, RISG 62 (1919); Biondi, St Peruzzi 1925; Branca, AntTr 12 (1941) 5, 91; G. Lombardi, Ricerche in tema di jus gentium, 1946, 99.

Margarita. A pearl.—See GEMMA.

Maritalis affectio. See AFFECTIO MARITALIS, CONCUBINATUS.

Maritimus. See USURAE MARITIMAE.

Maritus. A husband. Maritius may sometimes refer to husband and wife.—See IUS MARITI.—C. 4.12.


Maritimus. A glossator of the twelfth century (died 1166?), a disciple of Iermeus.—See GLOSSATORES.

Anon., NDI 6 (e.g. Gostia Marius); H. Kantorowicz, St in the Glossators of R. Law, 1938, 86.

Mater. “The mother is always certain” (semper certa est, D. 2.4.5), no matter whether the child was born in a legitimate marriage or not. The legal status (liberty, citizenship) of an illegitimate child depends upon that of the mother. A widow-mother was in postclassical times admitted to the guardianship over her children.—C. 4.12; 5.46.—See FEMINA, TUTELA, MANUS, and the following item.

Wenger, ZSS 25 (1905) 449; Frezza, StCapit 12 (1933-34); Sachsen, Fescher Schule 1 (1951) 327.

Mater familias. A woman, a Roman citizen, was either a mater familias (i.e., not under the power of another person, sua potestas) or a filia familias (i.e., under the paternal power of a pater familias, either as his wife, usor in manu, or as his daughter, or daughter-in-law being usor in manu of a filius familias). Originally mater familias was the wife of a pater familias married to him cum manu. In a broader sense, from a moral and social point of view, any woman who lived “not dishonestly” was a mater familias whether she was married or a widow, free born or a freedwoman. Syn. matrona.

Kunkel, RE 14; Bickel, Rhein. Museum für Philol., 65 (1910) 578; Carcaterra, AG 123 (1940) 113; C. Castello, St sul dir. familiare, 1942, 97; R. Laprat, Le rôle de la femme mariée, idél Gonnard 1946, 173.

Mater tutrix. See TUTOR.

Mater (materias). The material, the substance of which a thing is made, in particular the materials used for the construction of a building. “He who is the owner of the material is also the owner of what has been made of it” (D. 41.1.7.7).—See SPECIFICATIO.

C. Ferrini, Opera 4 (1930, ex 1891) 103; S. Porozi, Scritti giur. 1 (1948, ex 1890) 225.

Materna bona. See BONA MATERNA.

Mathematici. Astrologers, persons who exercise the ars mathematica, casting horoscopes. It was reckoned among ares magicæ (see MAGIA) and prohibited as a commendable (dannobilitis) divination.—C. 9.18.

Matricula. An official list of public officials, primarily of military ones.

Ensall, RE 14; Boak, RE 17, 2050.

Matrimonium. A marriage; in legal language syn. with nuptiae. According to a definition by the jurist Modestinus matrimonium was “a union between a man and woman, an association for the whole life, a community of human and divine law” (D. 23.2.1). The definition, which has not remained without heavy attacks as to its classicality, expresses, however, a basic truth about the moral and ethical elements of the Roman marriage, without saying anything about the legal aspect of the institution. The Roman marriage was a factual relation between man and woman, based on affectio maritialis (intention to be husband and wife) and cohabitation as husband and wife, i.e., with the social dignity of a legitimate marriage (see HONOR MATRIMONII, CONCUBINATUS). The aim of the matrimonium was the procreation of legitimate children (see LIBERORUM QUÆRENDORUM CAUSA). The marriage was monogamic and the common living started with the deductio in domum marit. Legal requirements of a valid marriage were IUS CONUBII and consent of the parties. “A marriage is concluded by consent” (= consensus facit nuptias, D. 50.17.30). “A marriage cannot be concluded between persons who do not want to conclude it” (D. 23.2.22). If the future spouses were under paternal power (alieni iuris), the consent of the heads of the family was necessary; likewise the consent of the guardian of a woman sui iuris was required. Impubesces (persons below the age of puberty) and lunatics were incapable of concluding a marriage. Soldiers were not permitted to marry; see MATRIMONIUM MILITUM. For the interdiction of marriage between persons related by blood, see INCESTUM, NUPTEIA INCESTAE. Adoptive relationship and af-
Infinity (see **ADFINITAS**) created incapability of intermarriage to a certain degree. There were also specific prohibitions of marriage, as, for instance, senators and their sons were forbidden to marry freedwomen; persons of senatorial rank could not marry actors or actresses; a tutor or curator could not marry his ward; a high provincial official was forbidden to marry a woman living in his province. In the later Empire marriage between Christians and Jews was prohibited. The legal situation of the married wife depended upon the circumstance whether or not the marriage was accompanied by a *conventio in manum*; see **MANUS, CONVENTIO IN MANUM**. A *matrimonium* was dissolved—aside from divorce (see **DIOVPTUM, REPUDIUM**)—when one of the spouses lost the legal ability to conclude a marriage (see **IUS CONSUIBII**) through the loss of liberty (see **SERVUS POENAE, CAPTIVITY**) or citizenship. The legislation of the Christian emperors and Justinian was considerably influenced by Christian doctrines, in particular by the dogma of the insolubility of marriage.—**Inst.** 1.10; D. 23.2; C. 5.4; 6; 7.—See **AFFECTIONE MARTIALIS MANUS, CONFAVEREATIO, COEMPTIO, USU**, IUS CONSUIBII, LEX CANULEIA, LEX IULIA DE MATRANSIDIES ORDINIBUS, BINA E NUPHIAE, CONCUBINATUM, DOS, DONATI INTER VIRUM ET UXOREM, DONATI ANTE NUPHIAE. **ACTIO RERUM AMATORUM, SECUNDAE NUPHIAE, LUCTUS, ADULTERIUM, BENEFICIUM COMPETENTIAE, POSTILLIMINATIONIUM, CONCUBITOS, DIVORCIIUM, REPUDIUM, SPONSALIA, ORATIO DIVI MARCI**, and the following items.

Kunkel, **RE** 14; Erhardt, **RE** 17 (s.v. **nuptiae**); Lecrivain, **DS** 3; Piola, **NDI** 8; Berger, **OCO** (s.v. **marriage**); Weiss, **ZSS** 29 (1908) 341; Di Marzo, Iesioni su matrimonio, 1 (1919); P. G. Corbett, The R. law of marriage, 1930; Albertario, Studi 1 (1933, three articles); Vavoci, S. Pavia 21 (1936) 85; Levy-Bruhl, Les origines du mariage 2, manum. **TR** 14 (1938) 453; M. Lauria, Matrimonio e dote, Naples, 1952; Lanzfranchi, **SDH** 2 (1936) 148; Koschaker, RHD 16 (1937) 746; Nardi, **StSas** 16 (1938) 173; H. J. Wolf, Written and unwritten marriages in Hellenistic and posthelic. R. law, Haverford, 1939; R. Ballini, Il valore giuridico della celebrazione nazionale cristiana dal primo secolo all’età giustinianea, 1939; De Roberti, AnBari 2 (1939); C. Castello, In tema di matrimonio e concubinato, 1940; Nardi, **SDHI** 7 (1941); Orestano, **BIDR** 47 (1940) 159, 48 (1941) 88, 55–56 (1952) 185; the three articles published in a volume La struttura giuridica del matrimonio rom., 1951, idem, St Bonolita 1 (1942); idem, Scr Ferrini (Univ. Pavia, 1946) 343; idem, Scr Ferrini 2 (Univ. Sacro Cuore, Milan, 1947) 160; Guarino, **ZSS** 63 (1943) 219; C. W. Westrup, Recherches sur les antiques formes de mariage (Danoemark Akad. 30, 1943); P. Rasi, Consensus facit nuptias, 1946; Kößler, **ZSS** 65 (1947) 43; E. Volterra, La concezione del matrimonio d’après les juristes romains, Padua, 1940; idem, **RISG** 1947, 399; idem, **RIDA** 1 (1948) 213; idem, St Solazzi 1948, 675; Wolf, **ZSS** 67 (1950) 288.

**Matrimonium incestum.** See **INCESTUM, NUPHIAE INCESTAE**.

**Matrimonium inustum.** See **MATRIGNUM IUSTUM**.

**Matrimonium iustum.** A marriage validly concluded between Roman citizens or by a Roman citizen with a non-Roman who was granted *ius consubii*. Ant. *matrimonium inustum (non iustum)* between a Roman and a peregrine without consubrium. It is not a *matrimonium iuris gentium*; the latter term occurs in the literature, but is unknown in Roman sources.

Corbett, LQR 44 (1928) 305; idem, The R. law of marriage, 1930, 96; Gaudemet, **RIDA** 3 (= Mél De Visscher 2, 1949) 309.

**Matrimonium legitimum.** In Justinian’s language syn. with *matrimonium iustum*.

**Matrimonium militia.** Soldiers could not conclude a valid marriage. The influence of the husband’s enlistment on the existence of the marriage is controversial. The sources do not give a precise answer as to whether the marriage became automatically null or only suspended. Children conceived and born during the soldier’s service are illegitimate. The emperor Hadrian granted, however, such children rights of succession on intestacy (honorum possessio) upon the father’s death.

Tassistro, SDocSD 22 (1901); Stella-Maranca, _ibid._ 24 (1903); Marenti, _StSt_ 33 (1917) 108; F. Corbett, The R. law of marriage, 1930, 41; Castello, **RISG** 15 (1940) 27; Menken, TR 17 (1941) 311; Wengen, Ansäger Akad. Wiss. Wien, 1945, 104; Berger, _Jour. of Jur. Papyrology_ 1 (1945) 25, 32 (= _BIDR Suppl. Post-Bellum_ 55–56 (1951) 109, 115.

**Matrimonium subsequens.** A marriage concluded between persons living in concubinage.—See **LEGITIMATIUM PER SUBSEQUENS MATRIGNUM**.

**Matrona.** An honorable wife of a Roman citizen even when he is not *pater familiae* and is still under paternal power. See **MATER FAMILIAE**. When summoning a *matrona* into court (in ius vocatio), the plaintiff had to abstain from touching her body. In public a *matrona* appeared in dress reserved for married women (a *stola* with a purple border). Hence a *matrona*, particularly of a higher social rank = *femina stolata*, and the right to wear a *stola = ius stolam habendi*. *Matronalis habitus* = dignified behavior, the dress of a *matrona*.

Schroff, **RE** 14.

**Mauricius, Iunius.** A jurist of the second half of the second century after Christ, author of an extensive commentary on the *Lex Iulia et Papia Poppaea*. Kroll, _RE_ 10 (no. 93).

**Maxime si** (or *cum*). Particularly, especially. The term is often interpolated in order to introduce a special case or a restrictive element to what was said by a classical jurist.

Guarneri-Ciatti, _Indices_ (1927) 51.

**Maximus.** See **OPTIMUS MAXIMUS**.

**Mederi.** To apply a legal remedy in order to “cure” an uncertain legal situation. The verb is frequently used by Justinian’s chancery.

**Medici.** Physicians were considered to exercise a liberal profession (ars liberalis), for this reason their
services were not compensated in earlier times. See HONORARIUM. They could, however, demand a payment if they assumed their duties by contract (locatio conductio operarum). The physician was responsible for inept (imperitio) treatment or operation and could be sued either by a contractual action ex locato or by a delictual one, ex lege Aquilini. The latter was originally applicable only when a slave was the victim of an inept treatment. Later the action was available when a free man was involved. Physicians enjoyed exemption from public charges (munera).—C. 10.53.—See Edictum Vespasiani, Excusationes a Munerior.
Heldrich, JNB 88 (1940) 139; Herzog, RAC 1, 722.

Meditatio de pactis nudis. A Byzantine dissertation on simple pacts (the Greek title is Melete Peri psiôn symphonôn). The pamphlet, composed about the middle of the eleventh century, seems to be the opinion of a judge given in an actual trial. The unknown author reveals a considerable knowledge of the Digest.


Meditatum crimen. A crime committed with premeditation.

Medium tempus. The intervening time. Medio tempore (= in medio) = in the meantime, between two legally important events, as, for instance, between the making of a testament and the death of the testator; between setting a condition and its fulfillment (syn. pendente condicione); while an appeal is pending or when a man is in captivity.

Mela, Fabius. A little known jurist of the Augustan Age.
BraslOv, RE 6, 1830 (no. 117).

Melius est. Introduces a legal opinion which is preferable to another melius est dicere, dici, probari, melius est ut dicamus and the like). The location is not free from suspicion of non-classical origin when used to cut short a discussion.

Guarnieri-Ciuti, Indices (1927) 56, 29; idem, Fackr Koschaker 1 (1939) 142.

Melius aequius. See Bonum et aequum.

Membranae. Appears only once as the title of a juristic work by NERATIUS (in 7 books). The meaning of the word is not quite clear. It refers either to the material (parchment) on which the manuscript was written, or it indicates the nature of the work as "short notes" which the author put down first in a rough draft on loose parchment sheets and of which he later made a collection.

F. Schults, History of R. legal science, 1946, 228.

Membrum ruptum. See os fractum.

Binding, ZSS 40 (1920).

Memoria. See a memoria, scrinium memoriae.
Memoria damnata. See damnatio memoriae.

Memoriales. Officials in the various bureaus of the imperial chancery (scrinia).
Ensalin, RE 15.

Memorialia. Things worthy to be remembered. It appears only once as a title of a juristic work by the jurist Sabinus (in eleven books). The work seems to have been more of an antiquarian than juristic nature.

Menander. See ARRIUS MENANDER.

Mens. Intention, volition (syn. voluntas), purpose, design. Ex mente, ut (syn. so animo, ut) = with the intention that.—See ANIMUS, MENTÉ CAPTUS, COMPOS MENTIS.

Mens legis. The intention, the sense of a statute.

Mensa. See manumissio per mensam.

Mensa. (In bankers' business.) A table (counter) at which money changing transactions were done (mensa argentaria, nummularia). This kind of banker was called mensilarius. They accepted also deposits in cash.—See ARGENTARI, NUMMULARI.

Kruse, RE 15, 945.

Mensis intercalaris. An intercalated month (in February). "It consists of 28 days" (D. 50.16.98.2).—See Lex Acilia de Intercalando.

Mensor. (In the later Empire.) A high imperial official who had to provide quarters for the emperor, his family and staff in Rome and during their travels, a quartermaster. High officials in the provinces and prefectures had also their mensores.

Fabricius, RE 15, 959; Albertario, St 6 (1933) 417.

Mensores aedificorum. Experts in urban constructions.

De Ruggiero, DE 1, 206.

Mensores agrorum. See AGRIENSORES.

Mensores frumentarii. Measurers, surveyors of transportation of corn in Italian ports. They assisted the praefectus annonae in the administration of the supply of corn for Rome.

Cardinal, DE 3, 301.

Mensuum. (Adj. mensuratus.) A monthly pay (salary). Syn. mensura merces. Alimony in money and sustenance in kind (mensura cibaria, mensura frumentum) were normally paid every month.

Mensularius. See MENS, ARGENTARI.

Mensura. Mensuration, the activity of Mensores (AGRIENSORES). Mensura is also an instrument for measuring. The magistrate could order its destruction if it was false and used for fraudulent purposes.—See Res quae pondere numero mensuravisse constant, genus.

Mensura delicti. The gravity of a crime. It influenced the severity of the penalty.

Mente captus. A mentally disordered individual. He is subject to curatorship (cura).

Mercator. A tradesman, a merchant on a lower scale than a negotiator. Sometimes synonymous with emptor (= a buyer).—See NEGOTIATOR.

Cagnat, DS 3: Brewster, Roman craftsmen and tradesmen of the early Empire. (Memphis, Wis.) 1917.

Mercennarius. A hired laborer who works for pay (merces). Servus mercennarius = a slave who is
hired out by his master to another for money.—See LOCATIO CONDUCTIO OPERARUM.

Merces. A payment (wages, salary, rent) in money agreed upon in a lease or hire of services (see LOCATIO CONDUCTIO). A recompense paid for any kind of services, without a preceding agreement (e.g., for saving one's life) is called also merces.—See REX MISSIO MERCEDIS.

Meroe (merer). To deserve. The verb is used in connection with favors granted to deserving persons (e.g., a judicial remedy, the emperor's grace). It is used also when a person deserves an unavailing treatment (a punishment, a disinheritaice). Merere occurs also in the meaning of earning through one's labor or under a testamentary disposition.

Meretrix. A prostitute. Syn. mulier quae palam corpore quastum facit (= a woman who publicly earns money with her body). Palam means "in a house of ill-fame, in inns-taverns, without choice" (D. 23.2.43 pr. 1). A meretrix was branded with infamy even after she ceased to exercise her profession; a legal marriage freed her, however, from the stigma. Meretricies had to register with the adiles. They were excluded from testimony before court, from legacies and inheritance, from visiting public spectacles and were prohibited to wear garments reserved for honest women (stola). They paid a special tax, vectigal meretricium. Senators and their sons were prohibited from marrying meretricies, actresses, ill-famed women or those whose parents were connected with such professions. Relations with meretricies were not punished as StUPRUM. Syn. femina famosa (probroca).

—See MINUS, LUDICRA ABS.

Schneider, RE 15; Navatte, DS 3; Nardi, StSas 16 (1938); Solazzi, BIDR 46 (1939) 49; C. Castello, In tema di matrimonio, 1940, 123; Wedek, CI Weekly 36 (1943); Grosse, SDHI 9 (1943) 289.

Merito. (Adv.) Justly, rightly, with good reason. Merito is frequently coupled with iure (iure ac merito). Jurists used the term when they approved of another jurist's opinion.

Meritum. With reference to a high imperial office, dignity.

Meritum (merita) causae. The essential points of a litigation.

Mex. Merchandise, goods, which can be the object of a sale. Only moveables (with the exclusion of slaves) are covered by the term.—See EMPITO.

Mex peculiaria. Goods belonging to a son's or a slave's peculium (primarily in a commercial business).

Messa. A harvest.—See ORATIO DIVI MARCI, VENDEMIA.

Messius. Probably a jurist. He is mentioned only once linked with Papinian. No further details about him are known.

H. Krüger, St Bonfante 2 (1930) 331.

Metalii. Miners. Their work was supervised by public officials.—C. 11.7.

Metallum. A mine. According to the principle that whatever is under the earth belongs to the owner of the land, mines were either in private ownership or belonged to the state. Public mines were exploited through the intermediary of tax-farmers (publicani) who paid the state a fixed sum. In the first century of the Principate the mines in Italy and the provinces came gradually under the imperial administration whose control was exercised through procuratores of equestrian rank. The system of leasing the mines to private farmers (conductores) was still in use but the more intensive supervision by imperial officials benefited both production and labor. The administration of stone-pits (lapidicinas) and quarries of marble was managed in a similar way.—C. 11.7.

See LEX METALLI VIPASCENSIS.

Rostworzew, DE 3, 128; Orth, RE Suppl. 4, 145, 152 (s.v. Bergbau); Fried, RE 3A, 2250 (s.v. Steinbruch); Mispoulet, Le régime des mines, NRHD 31 (1907) 354. For further bibli. see LEX METALLI VIPASCENSIS. Another lex metallis dicta in Riccobono, FJR 11 (1941) no. 104 (Bibl.);

L. Clerici, Economia e finanza dei Romani, 1 (1942) 466.

Metallum. In metallum (metalla) damnare. To condemn a criminal to work in a mine (or a quarry) for life. This was the severest punishment after the death penalty (proxima morti = nearest to death) since work in mines in addition to rigorous labor involved being kept in fetters. Damnatio in metallum implied loss of freedom (servi poenae). A milder degree of punishment was damnatio in opus metalli.

U. Brasiello, La repressione penale in dir. rom., 1937, 373.

Metatum. (In later imperial constitutions.) Quarters for soldiers. Metator = a quartermaster. The owner of an immovable on whom the duty of billeting soldiers was imposed could be released from the obligation paying a sum of money (epidematim).—C. 12.40.

Metus. Fear. Use of duress in order to compel a person to conclude a transaction, to assume an obligation or to make a payment, is a private crime (delictum) which may be prosecuted by the person who acted under duress by a special action, actio quod metus causa (sc. gestum est = for what was done because of fear). If sued for the fulfillment of a promise given under duress, he might oppose the exceptio metus. Under certain circumstances a restitutio in integrum was granted. Metus is defined as "a trepidation of mind because of an imminent or a future danger" (D. 4.2.1), but not any fear, "only the fear of a greater evil" (D. 4.2.5). A groundless fear (timor vanus, metus vani honoris) is not taken into consideration. The original name of the action might have been formula Octaviana since it was introduced by a praetor Octavius (about 80 B.C.). Later it was called simply actio metus causa. The action was penal (actio poenalis). If brought within
a year, the defendant (the extortioner) was condemned to a fourfold value of the property extorted. — D. 42; C. 2.19.— See COACTUS VOLUI, ACTIONES ARBITRARIAE, TIMOR.

L. Charvet, La restitution des moyeurs, 1920, 22; Schulz, ZSS 43 (1922) 171; v. Lübnow, Der Aedikusstitel quod mutus causa, 1932; G. Maier, Praetorische Bereicherungs- klagen, 1932, 44.91; Sanfilippo, Ancom 7 (1934); C. Longo, BIDR 42 (1934) 68; C. Castello, TIMOR mortis, AG 121 (1939) 195.

Meum. My property. "Mine is what I have the right to claim through vindicatio" (D. 6.149.1). "Meum esse ex iure Quiritium" (= it is mine under Quirity law) was the assertion of the plaintiff in the leges actio sacramento in rem when he claimed a thing from the defendant.—See REI VINDICATIO.

Migrare. To move from one's dwelling.— D. 43.22.—See INTRICICTUM DE MIGRANS.

Miliarium (milliarium). A milestone marking the distance of a thousand paces (mille passus). Civil trials within the first milestone of the city of Rome (intra primum urbis Romae miliariam) belong to the category of IUDICIA LEGITIMA.—The competence of the praefectus urbi embraced the territory within the hundredth milestone of the city.

Schneider, RE Suppl. 6; Lafaye, DS 5; O. Hirschfeld, Klein Schriften, 1913, 703.

Militare. To serve as a soldier. In later times, to serve in a public office, civil or military.—See MILITIA, MILITES.

Militaris. (Adj.) Connected with, or pertaining to, soldiers or military service.—See MILITES, MILITIA, IUS MILITARE, MANT MILITARI, RES MILITARIS, AERARIUM MILITARIS, AER MILITARIS, INTERESSIO MILITARIS, DELICTUM MILITARE, DIPLOMA MILITARE, VESTIS MILITARIS.

Militarius punire. To punish according to military penal law.

Militae. Soldiers enjoyed various privileges in the field of private law. They were allowed to make a testament without the observance of the formalities of the civil or praetorian law, see TESTAMENTUM MILITIS. The liability of a soldier instituted as an heir for the testator's debts was limited to the amount of the inheritance. The rights of succession on intestacy of a soldier's children born during his military service, which were denied by the ius civilis, were recognized by the emperor Hadrian. Soldiers who were under paternal power (filii familiae) were granted the right to have a FECULUM CASTRENSE. A special privilege of soldiers was that under certain circumstances they could be excused on the ground of IGNORANTIA JURIS. On the other hand, however, various restrictions were imposed on militae. They had no ius conubii during the time of service and could not conclude a valid marriage; see MATRIMONIUM MILITIS. They were forbidden to belong to an association (collegium) in castris (see CAstra), and were not admitted to act as, or through, a procurator in a civil trial. In the field of criminal law there were special military crimes which were severely punished. Punishments were different from those applied to civilians; see DELICTA MILITUM. Soldiers were able to appear in court and to act for themselves. In the later Empire special military courts (indices militares) assumed jurisdiction in civil matters when the defendant or both parties were soldiers. An imperial constitution of the later Empire (A.D. 458) prohibited soldiers from taking in lease another's land or from assuming obligations for others as sureties, agents or mandataries. "They should be busy with their military service (arma) and not with other people's affairs" (C. 4.65.31). Soldiers who were peregrines in auxiliary troops (auxiliaris) were granted Roman citizenship after their discharge.—C. 1.46.—See TESTAMENTUM IN PROINCCTU, BENEFICIA COMPETENSSIAE, AES MILITARE, COMMEATUS, EXPLORATIO, LEX FORCIA DE PROVOCATIONE, MISSIO, DIPLOMA MILITARE, NEMEO PRO PARTE, MILITIA, SUICIDIUM MILITIS, DELICTA MILITUM.


Militia. Military service (sometimes the term refers to service in war time). Militiae se (or nomen) dare = to enlist in the army. Ant. legi (from legere) = to be compulsorily enrolled. Illegal enlistment of a person who was not permitted to serve in the army (a slave, a person who was condemned to fight with wild beasts, a former deserter) was punished with death. Voluntary enlistment in order to evade capital punishment or deportation did not offer release from the punishment. After Constantine militia acquired a broader meaning since it also covered employment in civil administration in the various imperial offices and in provincial government, militarily organized. At times in this period a distinction is made between the service in the army (militia armata) and the civil service (militia cohoratalis, palatina or simply militia). The militia which already in classical times (second post-Christian century) appears as the object of a sale or legacy, may refer to a lower public service (in the fire-brigade, apparitores). In the later Empire the purchase of an official post was frequently practiced.—C. 12.33.—See MUTATIO MILITAE, REICERE MILITIA, IRREVERENS.

Mommsen, Röm. Staatsrecht 3 (1887) 450; Marchi, AG 76 (1906) 291; G. Kolias, Aimter und Würdenauf in frühbyzantinischen Reich, 1939.

Militia armata, cohoratalis. See MILITIA.

Militia equestria. Military service of a high grade officer in the cavalry.

Militia palatina. See MILITIA.

Miliarium. See Miliarium.

Mimus. An actor in mimes, a dancer. A troupe of actors sold as an ensemble is considered a unit;
hence the sale of the whole can be rescinded because of defects in one of the group. The same rule applies to tragic actors (tragoedi). Minae (= actresses, dancers) are socially equal to MERETRICES.

Wüst, RE 15, 1743.

Minicius. A jurist of the first century of the Principate, a disciple of Sabinus. His work is known by an extensive commentary of Julian. Steinwenter, RE 15, 1809 (no. 3); Riccobono, BIDR 7 (1894) 225; 8 (1895) 169; A. Guarino, Salutis Julianus, 1946, 38; H. Krüger, St Bonifate 2 (1930) 332.

Minime. By no means, not in the least. The frequency of the adverb in late imperial constitutions, and particularly in those of Justinian, in the meaning of a simple negation (non) makes its authenticity in classical texts rather suspect when it appears there in the place of non.

Guarneri-Ciati, Indice (1927) 56.

Minister. A servant, a subordinate (assistant) of an official under the Empire. In exceptional instances it refers to higher officials, both civil and military. When mentioned in connection with a crime = an abettor, an accomplice. In the Christian Empire, when connected with ecclesiastical service = a Church servant, a minister (ministeria ecclesiarii).

Emslin, RE Suppl. 6.

Ministeriales (ministriani). Officials in the imperial palace of a rather subordinate rank. They had to take care of the imperial household (in the later Empire). They were appointed by the emperor and enjoyed exemption from humble public services (munera sordida). The MAGISTER OFFICIORUM exercised jurisdiction over them.—C. 12.25.—See CASTRENSANI, MINISTRI CASTRENSIS.

Emslin, RE Suppl. 6; J. E. Dunlap, Univ. of Michigan Studies, Human. Ser. 14 (1924) 212; Giffard, RHD 14 (1935) 239.

Ministeriani. See MINISTERIALES.—C. 12.25.

Ministerium. The office (activity) of a MINISTER or of a MINISTERIALIS. In criminal matters ministerium is the assistance in committing a crime, complicity.—See MINISTER.

Ministerium divinum (ecclesiae). A divine service.

Ministerium publicum. A public office. The term is also applied to municipal offices (ministeria municipalia).

Ministerium sacrum. Service in the imperial palace. Syn. ministerium sacri palatii, sacri cubiculi. The emperors speak of their palace staff as "nostrum sacrum ministerium."

Ministerium servorum (servile, servitutis). Slaves' work, services rendered by slaves. Hence ministeria denotes all slaves in the service of the same master.—C. 3.33.

Ministri castrenses. See CASTRENSIANI. There were two kinds of ministri castrenses: statuti = members of the regular staff, and supernumerarii = additional members who were promoted to the rank of statuti to fill vacancies.


Minor aetas. Minority. Syn. adulta, imperfecta aetas. Ant. maior aetas.—See AETAS, MINORES.

Berger, RE 15, 1769 (s.v. Minderjährigkeit), 1862.

Minores. An abridged expression for minores viri quinque annorum (annis) or minores annorum (annis). Minores were persons who exceeded the age of IMPERARES and were under twenty-five years of age. Similar expressions, although not technical in the juristic language, are adultus, adulescens, and invenis. Within the minority there is a special term for the age under eighteen, plena pubertas, the classicality of which is doubtful. It had no particular legal importance. A minor sui iuris (not under paternal power) was considered unable and not experienced enough to manage his affairs because of his juvenile light-heartedness and weakness of mind (infirmitas animi, aetas). Until the curatorship of the minors, cura minorum (see CURATOR MINORIS) was introduced as a general institution, a minor was protected against fraud (see CIRCUMSCRIPTIONE) by the LEX PLAETORIA and the praetorian remedy of RESTITUTIO IN INTEGRUM which remained the most efficient protective measure during the classical period. Under Justinian the cura minorum became compulsory. The ability of a minor to appear in court was restricted by Constantine who ordered that the minor had to be assisted by a curator. In Justinian's codification the cura minorum appears completely assimilated to tutelage (tutela). This was performed through innumerable interpolations but not with consistency. Some details in the development of the cura minorum have remained therefore obscure and the nature of the duties of a curator minoris is still controversial. He certainly was something more than a simple adviser and was not excluded at all from the administration of the ward's property.—D. 4.4; C. 2.21-42; 5.71.—See CURATOR MINORIS, IUSUBANDUM MINORIS.


Minus. Less. "The minus is always included in what is greater (plus)" (D. 50.17.110 pr.). Therefore, "he who is allowed to do what is greater (plus) should not be prohibited from doing less" (D. 50.17.21).

Minus solvere. To pay less than one owes. "He who pays later pays less" (D. 50.17.12.1).

Minutio capitâ (minui capite). See CAPITIS DEMUTatio, CAPUT.

Miscere. See COMMISCERE, MIXTUS.

Miscere (se) hereditati. See IMMISCERE, PRO HEREDe GERERE.
Miserabilis persona. See PERSONA MISERABILIS.

Missilia. Money thrown at largesse to people in the theatre or on the street by emperors, high officials or wealthy individuals. The coins became the property of the persons who picked them up.—See TRADITIO IN INCERTAM PERSONAM, TESSERAE NUMMARIAE.

Berger, RE 9, 552 (s.v. iactus); Fabia, DS 3; Meyer-Collings, Deterlitio, Diss. Erlangen, 1930, 2.

Missio. A discharge from military service. Honesta missio = an honorable discharge after the completion of twenty-five years of irreproachable service. Ant. ignominiosa missio when the dismissal was occasioned by the soldier’s committing a common or military crime. Missio causaria (or simply causaria) = discharge because of mental or physical disability. For missio of peregrine soldiers, see AUXILIA.—See DIPLOMA MILITARE.

Lammert, RE 15, 1666; 4A, 1949; Rowell, Yale Classical St 6 (1939) 73.

Missio in bona. See MISSIOES IN POSSESSIONEM.

Missio in possessionem. See the entries below, after MISSIOES IN POSSESSIONEM.

Missio in rem. See MISSIOES IN POSSESSIONEM. The typical case of such missio by which a claimant was given possession of a single thing (an immovable) belonging to his adversary is MISSIO IN POSSESSIONEM DAMNI INFECTI NOMINE.

Missioes in possessionem (in bona). A coercive measure, applied by the praetor by virtue of his imperium, by which a claimant was authorized to enter into possession of his adversary’s property, in whole or in a part (see MISSIO IN REM). The purposes of missioes were different and so were in the various cases their effects. The praetorian decrees concerning missioes were issued either in order to assure the normal progress of the trial and to prevent the defendant’s attempts to saboage it, or to secure the debtor’s property for the satisfaction of his creditors, or to induce the debtor to assume a special obligation through stipulatio (stipulationes praetoriae) for security purposes if he refused to do it voluntarily. The legal situation of the missus in possessionem created by missio varied from real possession to simple custody and control (custodia et observantia) of the things the holding of which he obtained only to assure that the debtor’s property would remain intact and be used exclusively for the benefit of the creditors. At times the situation of the missus in possessionem was comparable to that of a creditor who received a pledge (pignus praestorum, the term may be not classical), since the missio led finally to the sale of the debtor’s property if he did not satisfy the creditors in the interim. Protection was given certain persons (such as impubes, or those absent in the interest of the state) in that their property generally could not be sold. The edictal clause in which the praetor announced the issue of a missio-decree was in the most cases: “bona possidari proscribii veniretque in-

bebo” (= I shall order the property to be taken into possession, advertised for sale and sold”). The praetor’s missio-decree was withdrawn and the missus in possessionem ordered to surrender possession (decedere de possessione) if the debtor came to an arrangement with the creditor. Missiones were acts designed to exert pressure on the debtor and were, if successful, of a temporary character. They were generally successful when the missus entered into a property occupied by the owner who had to suffer his continuous presence and control. In certain cases the missus in possessionem enjoyed interdictal protection; see INTERDICTA NE VIS ET QUI IN POSSESSIONEM MISSUS EST.—For the various missiones in possessionem or in bona, see the following entries.

—D. 42.4.

Weiss, RE 15; Cug, DS 3; S. Solazzi, Concorso dei creditori 1 (1937); M. F. Lepri, Note sulla natura delle m.i.p., 1939; Branca, St Solazzi 1948, 463.

Missio in possessionem Antoniniana. Introduced by the emperor Caracalla, who admitted a missio in possessionem legatorum servandorum causa also into the property of the heir if, within six months after the presentation of a claim by a legatee, he did not give sufficient guaranty for the payment of the legacy. The legatee missus in possessionem might take the products (fructus) from the heir’s property to satisfy his claim.—See MISSIO IN POSSESSIONEM LEGATORUM SERVANDORUM CAUSA.


Missio in possessionem honorum (bona) pupillii. A missio into the property of an impubes if in a suit over a transaction concluded by his guardian the former (the pupillus) was not defended by his tutor. The missio was rescinded when the tutor or a relative of the pupillus assumed the defense.

Missio in possessionem damni infecti nomine. When the owner of a defective immovable refused to give cautio damni infecti for damages threatening the neighbor’s property, the praetor allowed the latter to enter into possession (missio in rem) of the immovable. If the first decree (missio ex primo decreto) did not produce the desired effect (repairing of the building or giving the cautio) the praetor issued a second decree (missio ex secundo decreto) which put the missus in the position of a possessor ad usucapionem, i.e., he might usucap the immovable.—See USUCAPIO.

Lepri, op. cit. 89; Branca, Dona termino, 1937, 130.

Missio in possessionem dotis servandae causa. One of the cases of the MISSIO IN POSSESSIONEM REM SERVANDAE CAUSA. It was granted a divorced wife or a widow in order to secure her claim for the restitution of the dowry.

Solazzi, Dote e nasciuto, RendLomb 49 (1916) 312.

Missio in possessionem ex edicto Hadriani. In order to assure the prompt payment of the estate-tax
(VICESIMA HEREDITATUM) Hadrian ordered that an heir instituted in a testament apparently valid might take possession of the testator’s estate immediately after the payment of the tax. This kind of missio, which differs essentially from the normal missiones, no longer existed in Justinian’s time.—C. 6.33.

Missio in possessionem legatorum servandorum causa. If an heir to receive a cauto legatorum servandorum causa for the payment of a legacy (or a fideicommissum) left under condition or to be paid at a fixed date (ex die), the legatee could ask for this missio in order to enter into possession of the estate (but not of the private property of the heir) and remain there, together with the heir, as long as the heir did not furnish security. He held the property custodiae causa (= for safekeeping).—D. 36.3; 4; C. 6.54.—See CACTIO LEGATORUM NOMINE, MISSIO IN POSSESSIONEM ANTONIANA.

Lepri, op. cit. 113.

Missio in possessionem (bona) rei servandae causa. Decreed by the praetor in various circumstances during a trial: when the defendant was absent in court and was not defended by a representative, when he intentionally kept hiding (latiare) so as to avoid being summoned to court; or when he was considered indefensor because of his refusal to cooperate in the progress of the trial, as, for instance, when he refused to accept the procedural formula approved by the praetor. See INDEFENSOR. This missio is also the initial stage of the property execution against a defendant who has been condemned by judgment (indictus) or is considered as such (pro indiceto), as the confessio in utre was (see CONFESSIO IN UTERE). The function of this missio was similar in the case of an insolvent debtor or an insolvent inheritance. The creditor or creditores could obtain possession of the debtor’s property or estate which would eventually be sold; see VENDITIO BONORUM, CURATOR BONORUM.

Wess, RE 18; Com. DS 3; P. Ramadura, Les effets de la m. in b. 1911; H. R. Engelmann, Die Vormazetszinnen, der m. in b. 1911; Rocco, Studi sulla storia del fallimento, RDCom 1913 (= Il fallimento, 1917); S. Solazzi, Il concorso dei creditores, 1-4 (1937, 1938, 1940, 1943); Lepri, op. cit. 43.

Missio in bona suspecti hereditis. See SATISDATIO SUSPECTI HEREDITIS.

Missio in possessionem ventris nomine. A missio for the protection of the rights of an unborn heir. Its function was similar to the BONORUM POSSESSIONEM VENTRIS NOMINE when the father of the child was dead. —D. 25.5; 25.6; 37.9.


Missus in possessionem (bona). A person who by the decree of the praetor was granted a missio in possessionem of the property of his debtor or adversary in a trial.—See MISSIONES IN POSSESSIONEM.

Mittendarii. Imperial officials sent to remote provinces with special imperial messages to the governor or in order to collect special taxes.

Mittere. To send (a letter = epistulam, a messenger = munition, a person to perform a specific official or private mission). For mittere in possessionem, see MISSIO IN POSSESSIONEM. For mittere repudium, see REPUDIUM.

Mittere. (With reference to soldiers.) To discharge from military service (ab exercitu, militia).—See MISSIO, DIPLOMA MILITARE.

Mixtus. (From miscere.) With reference to legal institutions (numera, condicione) or procedural remedies (actiones, interdictiones) of a hybrid, mixed nature. The term reflects more the Byzantine mentality than the exact legal thinking of the classical jurists and is suspect as being a late postclassical or Justinian creation.—See ACTIONES MIXTAE, IMPERIUM MERUM, INTERDICTA MIXTA, MUNERA.

Berger, Vol. onorantse Sommerelli, 1913, 183; Guarneri-Ciani, Indice* (1927) 57.

Mobses res. See RES MOBILES.

Moderatio. (From moderare, moderari = to restrain, limit, rule.) The observing of reasonable limits, temperateness. When referring to their acts of grace, or indulgence the emperors used to speak of "moderatio nostra."—A similar expression, moderamen, appears in late constitutions.

Moderator. A ruler. Moderator provinciae = the governor of a province.—See PROFAES PROVINCIAE.

Modestinus, Herennius. One of the last representatives of the classical Roman jurisprudence, a pupil of Ulpian, and a high official in the administration of Rome about A.D. 240. He wrote an extensive collection of Responsum (in 19 books), a work on Differencias (= controversial questions) and Regulae (= legal rules). He was also the author of a Greek treatise on exemptions from guardianship (excusationes). Modestinus was one of the jurists distinguished in the Law of Citations (see TURISPRUDEN-TIA).

Braslaff, RE 8 (ex Herennius, no. 31); H. Krüger, St Boniface 2 (1930) 315.


Modus. A measure, a limit. In the meaning of a burden, a duty imposed in acts of liberality (donations, legacies, manumissions) on a beneficiary, the term is of late origin. It appears in the language of the chancery of later emperors, and in the language of Justinian and his compilers. Sometimes the term covers what was a condicio (condition) in the classical language. In the classical law it was disputable whether a duty imposed as a modus created on the part of the beneficiary a binding obligation. The emperor Gordian set a general rule that the person interested in the fulfillment of a modus of pecuniary value could sue the heir or legatee for
fulfilment.—D. 35.1; C. 6.45.—See donatio sub modo.

Weiss, RE 15: Cou, DS 3; F. Haymann, Schenkung unter 
Umbilc., 1905; P. Lotmar, Freisamungseign., ZSS 33 
(1912) 304; Masina-Virano, St Riccobono 3 (1936) 99.

Modus aedificiorum. A limit regulating height in the 
construction of buildings.—See lex fula de modo 
aedificiorum.

B. Biondi. La categoria romana delle servitutie, 1938, 23; 
Berger, Jurw 1 (1950) 121.

Modus agri. The boundary of a plot of land.—See 
agrimensores, actio de modo agris.

Modus donationis. Limits imposed on the amount of 
donations or with regard to the formalities to be 
accomplished to render a donation valid. See lex 
cinicia. In another sense modus is used with reference 
to gifts; see modus, donatio sub modo.

Modus facultatum. The financial situation of a person, 
mentioned in connection with the constitution of a 
dowry or with alimony which has to correspond to 
the financial means of the person obligated.—See 
factitates, beneficium competentiae.

Modus legatorum (or legit. Falsidiae). The limits 
imposed on the amount of legacies by the lex fal-
cidia. For legatum sub modo, see modus.

Modus servitutis. A modification of the typical con-
tent of a servitude limiting the rights the beneficiary 
has in the exercitio of the servitude, for instance, 
the size of carriages he may use in the servitius actus.

S. Peroci. Scruti 2 (1948, ex 1888) 29; Biondi. Scr. L. 
Buratti 1943, 57; idem, La servitudo prediali, 1946, 46.

Modus usurarum. The limit of the rate of interest 
imposed by law.—See usurae.

Molli. To start the construction of a building.—See 
opcris novi nuntiatio.

Momentaria possessio. See possessio momentaria.

Momentum. Weight, importance. Nullus momenti esse = to be void, of no legal force. Syn. ineffectus, 
nulius, effectus non habere. Ant. value.

Hellmann, ZSS 23 (1902) 421.

Momentum. An instant, a moment. When for legal 
effectiveness a certain period of time must elapse 
as, e.g., for usucapio the time is reckoned in full 
completed days, not according to hours or specific 
momenta (a momento ad momentum).

Monachi. Monks. They were in Justinian's law in-
capable of being guardians. Their property was 
inherited by their monastery if they died without leav-
ing a testament and there were no near relatives. 
Several Justinian Novels (5.76.79.123.133) deal with 
monks and monastic life.—C. 1.3.

Granic, Byzantinische Zeit. 30 (1930) 669; Schaefer, 
ACII 1 (1935) 173; Tabara, Professio monastica caus 
disportit, ibid. 189.

Monachium. See monasterium.—C. 1.3.

Monasterium. A monastery. The ability of a monas-
tery to own property was recognized in the fifth cen-
tury. Legislation of the Christian emperors, par-
ticularly that of Justinian, dealt frequently with 
monasteries, their legal situation, and specifically with
their ability to benefit by testaments as heirs or lega-
tees.—See monaché.—C. 1.3.

A. Ferradou, Des bien des monasteries à Byzance, 1896; 
Branie, Byzantinische Zeit. 29 (1929) 6; Schaefer v. 
Carolsfeld. Geschichte der juristischen Person 1 (1933) 
394; P. W. Duff, Personality in R. law, 1938, 185, 196.

Moneta. Minted money. See falsa moneta. Mo-
netia may also mean the mint itself. Moneta sacra = 
the imperial mint. The theft of coins from the mint 
is punished with work in mines (metalla) or exile.— 
See triumvir monetales, nummularius, tessera 
ummularia, optio.

Monetarii. Workers in the imperial mint. They 
could leave their occupation only with difficulty.— 
C. 11.8.—Monetarius is also the counterfeiter of 
coins.

Monitor. (In the later Empire.) An official who 
reminded the tax-payers of taxes due.—In private 
enterprises = an overseer (over slaves).

Monitorium edictum. See edictum monitorium.

Monopolium. A monopoly, i.e., the exclusive right 
to sell and deal in a specific type of merchandise. 
An imperial constitution of the emperor Zeno (A.D. 
483, C. 4.59.2) forbade the monopolization of the sale 
of certain commodities (clothes, foodstuffs) or items 
of common use, as well as of the performance of certain 
works. There were many other similar prohibitions 
carrying the penalty of confiscation of property and 
exile for life.—C. 4.59.

Heichelheim, RE 16 (Bibl. 191).

Monstrum. An unnatural, monstrous creature (mon-
struosum, prodigiosum, portentosum aliquid, aesten-
tum) which has not the shape of a human being 
(contra formam humani generis) is not considered 
a child. A law ascribed to Romulus allowed the 
keeping of such an offspring immediately after birth.

—See portentum.

Kübler, ZSS 30 (1909) 159; Ambrosino, RendLomb 73 
(1939/40) 70.

Montanus. See paganus.

Monumenta. Written documents, records. Publica 
monumenta (= public records) offer a stronger evi-
dence than the testimony of a witness, according to 
a decree of the senate.

De Vasscher, Arch 15 (1946) 122.

Monumenta Maniliana. See maniliius, formulae.

Monumentum. See sepulcrum.

Monumentum Ancyranum. Called a stone monument 
on which a great part of Augustus' autobiography 
(see res gestae divi augusti) is preserved. Mono-
mentum antiochenum = fragments of the same work 
found in Antioch (Pisidia).

Kosmopulos, RE 16; Momigliano, OCD: Robinson. Amer. 
Journ. of Philology, 47 (1926); W. M. Ramsay and A. v. 
Premerstein, Klio, Beiheft 19, 1924; H. Volkmann. 
Burs. Jahresberichte 279 (1949, Bibl. for 1914-1941); 
Luzzatto, SDHI Suppl. 17 (1952) 167.
Mora. Default. In mora esse = to be in default. "He from whom a payment cannot be demanded because of an exception (he has against the claim) in not in default" (D. 12.1.40). "A thief (fur) is always in default" (D. 13.1.61) with regard to the restoration of the thing stolen.—See Mora Debitoris.

Mora accipiendi. See the following item.

Mora debitoris— creditoris. There is a distinction between mora debitoris, an unjustified failure of a debtor to pay his debt, and mora creditoris, which occurs when the creditor refuses to accept the payment offered him by the debtor in due time, without any just reason or when he makes it impossible for the debtor to discharge his debt by, for instance, being absent. In the case of mora debitoris (mora solvendi, solutionis) the liability of the debtor is augmented: an accidental destruction of the thing due is at his risk; he has to pay interest (usurae morae) when the debt is of a sum of money, and he has to restore all proceeds he had from the time he has been in default (in mora). The debtor is not responsible, however, for a default caused by no fault of his own. The default of the debtor causes the obligation to become everlasting (obligatio perpetuatur). Mora creditoris involves also certain disadvantages to the creditor: the thing due is now at his risk and the debtor is responsible only for fraud (dolus), even if the original obligation imposed on him a larger responsibility. The debtor has the right to free himself from his obligation through a deposition of the sum due; see DEPOSITIO IN AEDE. The consequences of the mora come to an end (purgare, emendare moram) when, in the case of mora debitoris, the debtor offers full payment to the creditor, and, in the case of mora creditoris (syn. mora accipiendi), the latter accepts the payment. The usual expressions for mora are stat per debitorem (or per creditorem) quominus solvatur (= it is caused by the debtor or creditor that the payment is not being made). A general rule (D. 50.17.88) is "there cannot be a mora where there is no claim (petitio)."—See INTERPELLARE, MORA.—D. 22.1.

Kaser, RE 16; Coq. DS 3; Montel, NDI 8; C. Scoto, La mora del creditore, 1905; Siber, ZZS 89 (1909); Gradenwitz, ZZS 34 (1913): Bohacek, AnPal 11 (1924) 341; Guarneri-Ciati, ibid. 232; Genzmer, ZZS 44 (1924) 86; Arnö, AG 100 (1928) 143; A. Montel, Mora del debitore, 1930; Niedermeyer, Feschr Schuls 1 (1951) 399.

Mora solvendi, solutionis. See Mora Debitoris.

Morari. To delay, to defer (a payment); see Mora Debitoris.—Morari (= to stay, to abide at a place) is used of certain lasting legal situations of a person, e.g., morari in possessione (= to be in possession of a thing), in libertate (= to live as a free man).—Morari means also to detain. The formula by which the presiding magistrate dismissed the senators after the meeting, was "nihil vos moramur" (= I do not detain you any longer).

Morbus. A disease. The jurist deals with morbus (D. 21.1.1.7: "an unnatural state of the body which impairs its use") in connection with the liability of the seller of a sick slave. Morbus is distinguished from vitium inasmuch as morbus is "a temporary sickness of the body while vitium (a defect) is a perpetual impediment of the body" (D. 50.16.101.2).—See EMPTIO.

Morbus comitialis. Epilepsy. If a case of epilepsy occurred in a popular assembly an immediate interruption and postponement of the gathering took place, since the disease was considered a bad omen.

Seidl, RE 16.

Morbus perpetuus. A chronic disease. Ant. morbus temporalis.—See CURATOR MUTIL.

Morbus sornicus. A grave, acute sickness. If incurred by a judge or one of the parties during a trial, an adjournment took place. A morbus sornicus of the debtor was considered a valid excuse for non-fulfillment of his obligation.

Lecrivain, DS 3.

More. (Abl.) According to usage (custom); in the way (fashion) of, e.g., more judiciorum judicially, in court, by the normal procedure.

Mores (mos). Customs, "the common consent of all people living together; if observed for a long time (mos inverteratus) it becomes a consuetudo." Certain legal institutions originate from mores (morbus receptum, introductum cist), as, for instance, the interdiction of gifts between husband and wife (donatio inter virum et uxorem), or the management of the affairs of a spendthrift by a curator (cura pro digi).—See DEDUCTIO QUAE MORIBUS FIT, CONSTITUIRE IURA, IUS CONSTITUTUM, CONSUEUTUD, and the following items.

Mores boni. See BONI MORES, CONTRA BONOS MORES.

Mores civitatis (provinciae, regionis). Customs of local character observed in a limited territory (city, province, district).

Mores diurni. Customs observed during a long period and "approved by the consent of the people who apply them, are tantamount to a statute" (legem imitantur, Inst. 1.2.9).—See MORES, CONSUEUD.

Mores (mos) maiorum. Customs of the forefathers, tradition of ideas, usages, customs. For mores maiorum as legal customs, see CONSUEUD. For mores as norms of moral and social correctness, see BONI MORES, CONTRA BONOS MORES. An edict of the censors of 92 B.C. (Suetonius, de rhet. 1) said: "all new that is done contrary to the usage and customs of our ancestors, seems not to be right." In later imperial constitutions and those of Justinian references to ancient customs (mos vetus, antiquus, veterum, antiquitatis, and the like) are very frequent.—See MORES.

Mores mulieris. Misconduct of a wife.—See actio de moribus, retentiones dotaes.

Moris est. It is usual, customary.

Mors. Death. Certain contractual relations, as mandate (mandatum) and partnership (societas) are dissolved by the death of one of the parties. Generally the death of a creditor has no influence on the further existence of the obligation; the death of the debtor extinguishes his obligation if it had to be fulfilled by him as a personal performance. The death of a legatee before the day on which he became entitled to claim the legacy (dies cedens) makes the legacy void. Personal servitudes are extinguished with the death of the person entitled; see servitutes personarum. A person accused of a crime who died before judgment was rendered, was considered blameless (innocent) since death effaced the crime, except in cases of maestas and repandum. In these instances the heir was given the opportunity to defend the deceased, otherwise the latter’s property was seized. Penal actions for private offenses (see actiones poenales) ceased to be available when the offender died.—See dies mortis, poena mortis, mortis causa, conscire si mortem, commbrentes, obligatio post mortem, libera mortis facultas, mandatum post mortem, stipulatio post mortem, res (in a criminal trial).

Mors lita. See libitum, judicium legitima.

Mortalitas. Used in the meaning of Mors, this is of postclassical origin.

Guaneri-Citani, Indice (1927) 57.

Mortis causa. In view of the death (e.g., dispositions made by a testator), because of the death (acquisitions made on the occasion of another’s death).—D. 39.6.—See donatio mortis causa, capio.

S. Cugia, Indagini etc. L’esperienza mortis causa, 1910; Brini, Rendi Bol 6 (1912-1915).

Mor. See Mores, Mores maiorum.

Mors judiciarii. See morre.

Motio ex ordine. (From movere.) Exclusion of a member from the municipal council (ordo decurionum). It was decreed when the member was guilty of a crime or bad behavior. The motio could be ordered for a certain time only, after which the member regained his position (restitutio in ordinem).—C. 10.61.

Kübler, RE 16, 437-442; Orestano. ND 12, 1158; G. Lepointe, Q. Mucius Scævola, Paris, 1926, Bruck, Sew 3 (1945) 16; Kneller, 66 66 (1948) 573; on P. M. Scævola: Kübler, 425, no. 17; on Q. M. Scævola, the augur: Kübler, ibid. 430, no. 21.

Muller. Sometimes indicates any woman, whether married, or not, sometimes only a married woman (= usoria). Syn. femina.—See tuta multium, senatusconsultum vellemian, lex voconia, munera.


Muller quaestuaria. See meretrix.

Multa. A pecuniary penalty, a fine. Syn. poena summaria, pecunia. In earlier times it was paid in cattle. The power of fining (multam discere, irrogare) was a prerogative of magistrates, who used it as a measure of coercion (corrigi). Some statutes fixed the maximum amounts of fines. Multa was the normal penalty for disobeying a magisterial order. It could be inflicted by a higher magistrate on a lower one for disciplinary offenses, by the presiding magistrate in the senate on senators for unjustified
absence, by censors for untrue declarations made in the census proceedings, and the like. Pecuniary penalties were also established in penal statutes for offenses committed in ordinary criminal proceedings before a magistrate or before comitia. The final decision in cases involving fines lay with the comitia (tributa) as an appellate court. A multa could not exceed half of the defendant’s property. Under the Empire multae were largely applied in the cognitio procedure and as a coercive measure. The right to impose fines (ius multae dicenda, dictionis) was granted all prefects in Rome, the provincial governors, and higher administrative officials. The fines were paid to the state. Condemnation to a multa did not involve infamy.—C. 1.54.—See lex aeternia tarpeia, lex iulia patria, multa praetudicialis, and the following items.

Hellebrand, RE Suppl. 6; Lecrivain, DS 3; P. E. Huschke, Multa und Sacramentum, 1874; E. Mayer, TR 6 (1929) 35; U. Brasiolo, La repressione penale, 1937, passim; L. Clerici, Economia e finanza dei Romani, 1 (1943) 491.

Multa. (For the violation of a grave.) A penalty settled in a testament of a Roman citizen for such a wrongdoing. The penalty was not paid to the heir but to the fisc, unless the testator made other disposition.

Pfaff, RE 2A (s.v. Sepulcralmultan); Lecrivain, DS 3, 2019; J. Merkel, Sepulcralmulan, Fg Thering 1897; G. Giorgi, Le multe septolcali, 1910; A. Berger, Strakkausin in den Pappyruskunden, 1111, 96, 100; Arangio-Ruiz, FIR 3 (1943) 257.

Multa fisco debita. (In literature called multa fiscalis.) A fine to be paid to the fisc by one of the parties to a contract in the case of non-fulfillment of his obligation. The insertion of such a clause into a written contract was adopted from provincial practice.


Multa testamentaria. A fine imposed by a testator on an heir or legatee for non-fulfillment of his wish.

Multae dictio. The imposition of a pecuniary fine by a magistrate in the exercise of his coercive power (coercitio).—See multa.

Multare. (Syn. multam dicere, multam irrogare.) See multa.

Mundum. A fair copy (original) of a document.

Munera. Public services, charges, duties or offices which every individual living in the state is obliged to fulfill on behalf of the state or the city (municipium) in which he was born or has his domicile (see domiciliun, incola, origo). The munera also embrace taxes whether paid in money or in kind. Munera have to be distinguished from public offices (magistratus) which are a privilege, a dignity (honos) and not a burden. There was one public office which, originally a honos, later became the most burdensome munus, the decurionatus (seeordo decurionum, decuriones). The systematization of the various munera is a creation of later times and, forced on classical texts, obscured the earlier conceptions. Thus, for instance, the term munera publica is now far from being clear, since in one instance guardianship (tutela) is defined as munus publicum, in another it is not. More evident is the distinction between munera personalia, which are performed by personal work (among them is tutela, cura), and munera patrimonii which encumber property and are performed by the payment of money as a contribution to the costs of public works. Some munera are of a mixed, personal and pecuniary nature (munera mixta); see munera possessionum. The maintenance of public roads, buildings, waterworks, river banks, the contribution of means of transportation for public purposes (for corn supply), were among the munera publica. Exempt from munera personalia were persons over seventy and under twenty-five, women, fathers of several children, and individuals who for personal reasons (weakness, poverty) were unable to fulfill the pertinent duties; see excusationes a muneriibus. Exemptions from munera patrimonii were rarely granted.—D. 50.4; C. 10.41–56; 10.64.—See immunities, vacatio muneriun, notitia, nominatio potioris, sumptus muneris, navicularis, negociatores, notitia, officium vi- rile, palatini, poetae, querimonia, magistri, veteranus, vocari ad munus.

Kübler, RE 16; Kornemann, ibid. 630; Lammert, RE 7A, 2028; F. Oertel, Liturgie, 1917, 62.

Munera civilia. All kinds of munera except those imposed on members of the military. Ant. munera militaria.

Munera militaria. Duties connected with, or in the interest of, the military service. Ant. munera civilia.

Munera municipalia. Services to be rendered by a citizen to his municipality.—See domiciliun, origo.

Munera patrimonii. See munera.

Munera personalia. See munera.

Munera possessionum. Munera which incumber immovable property (land and buildings) without regard to whether or not the owner has his origo or domicilium where the immovable is situated.

Munera sordida. Mean, humble services, such as working in mills, mines, limepits, constructing buildings, roads, bridges. Lists of such munera are given in imperial constitutions of the later Empire. The distinction as to what is a munera sordidum and what is not, was important because of exemptions from them which were granted to various categories of persons, such as those employed in imperial service, lessees of imperial property, philosophers, rhetoricians, grammarians, and the like.—See excusationes a muneriibus.

Ferrari Dalle Spade, Immunità ecclesiastiche. AVRn 99 (1939–40) 122.
Munerarius. A private individual or an official who arranged public games, especially gladiatorial combats (ludi gladiatorii) or fights with wild animals. Schneider, RE 16.

Municipalis. (Noun.) A member of the municipal council. Municipalis (adj.) connected with, or pertaining to municipia.—D. 50.1.—See decuriones, munera municipalis, lex municipalis tarentina, lex iulia municipalis, magistratus municipales, and the following items.

Municipes. Citizens of a municipality (municipium). One became a municipes by birth (see origo), adoption by, or manumission by a municipes. The etymology of the term (munera capere, muneres participes) indicates the principal duties of a municipes towards his municipality: rendering public services and assuming charges for the welfare of the community. The municipes have twofold citizenship, since they are Roman citizens and citizens of their municipium. In their first capacity they participated in the political life of the state when present in Rome, as citizens of a municipium they took part in the local administration. By a decree of the municipal council (ordo decurionum) municipal citizenship could be granted to individuals who were not entitled to it (adlectio inter cives).—D. 50.1; C. 10.39.—See actor municipum, curiae municipiorum, incola, origo, municipium.


Municipium. Any town in Italy except Rome (= urbs). The term superseded gradually analogous expressions (oppidum, colonia, praefectura) and was later applied also to cities in the provinces. Syn. civitas, and, to a certain extent, res publica. Originally there were municipia cum suffragio (with the right to vote in popular assemblies) and cum iure honorum (the right of their citizens to be elected as magistrates in Rome), and municipia sine suffragio (deprived of such rights). The municipia had, however, the privilege of local autonomous government and jurisdiction. An attempt of a general regulation of the municipal organization was made in the so-called lex iulia municipalis. Other municipal statutes, preserved in inscriptions, are lex municipalis tarentina, lex rubria de gallia cisalpina, lex coloniae genetivae iuliae, lex malacitana, lex salpensisana. A uniform organization of the municipal administration was not fully established, and differences in the titles of the municipal magistrates, and their functions, as well as the functions of the municipal councils, were never completely eliminated. Under the Republic a municipium could not be instituted as an heir, but this situation improved in the course of time. First fideicommissa in favor of a municipium were admitted, then a fideicommissum hereditatis (see senatusconsultum aponianum), and finally under Hadrian the full capacity of municipia to be instituted as an heir or legatee was recognized.—D. 50.1.—See decuriones, ordo decurionum, duoviri iuris dicundo, duoviri aediles, curiae municipiorum, patronus municipi, magistratus municipales, tabulae communes.

Kornemann, RE 16; Toutain, DS 3; Sacchi, NDI 8; W. Liebenam, Stätteverwaltung in der Kaiserzeit (1900); L. Mitteis, Röm. Privatrecht, 1908, 376; J. Declerqueil, Quelques problèmes d’hist. des instit. municipales, 1911; Ramadier, Études Girard, 1; J. S. Reid, The municipalities of the R. Empire, 1913; F. F. Abbott-A. C. Johnson, Municipal administration in the Roman Empire, 1927; H. Rudolph, Stadt und Staat im röm. Italien, 1935; B. Eliachevitich, La personnalité juridique en droit privé rom., Thése Paris, 1942, 57; E. Manni, Per la storia dei m. fino alla guerra sociale, 1947; Solazzi, BIDR 49-50 (1947) 393; Schönauer, Iura 1 (1950) 124; Vittinghoff, ZSS 68 (1951) 455; idem, Römische Kolonisations- und Bürgerrechtspolitik unter Caesar und Augustus, Abh. Akademie Wiss. Mainz, 1951 (no. 14) 33.

Munire ripam. See ripa.

Muniri. To be protected, supported by law (ipso iure) or by a legal remedy (exceptiones, praescriptiones). The term is frequent in the language of the imperial chancery.

Munus. See munera.

Munus. A gift presented on a special occasion (on a birthday = munus natalicum, on a wedding = munus nuptiale nuptaliicum).—See donare.

Munus. A public festival (game) arranged by a private person (munus dare, edere). It was customary to bequeath a legacy to a municipality in order that public festivities be made ad honorem civitatis (= to the honor of the city).

Munus nuptiale (nuptaliicum). A wedding gift. Such a gift was customary but not obligatory. Therefore a guardian who gave his ward’s mother or sister a wedding gift could not deduct the expense from the ward’s property.

Murilegulus. A fisherman skilled in catching purplefish.—C. 11.8.

Murus. A wall. City walls were res sanctae. In Rome persons who lived in extramural buildings were considered inhabitants of Rome.—See res divini iuris, roma, urbs, paries.


Mutare causam possessionis. See nemo sibi ipse causam possessionis, etc.

Mutare testamentum. To change a last will. A testator had full power to do so, but if the motive for which he changed his mind and which was expressed in the later testament proved false, the former testamentary disposition might be taken into consideration. If, for instance, the testator believed that the heir first instituted was dead, the latter could claim the inheritance according to an imperial constitution.

Mutat. In the phrase non mutat si (quod or sim.) = it does not matter if . . . . The locution is used to
Mutatio. In the postal service, see mansio.

Mutatio domini. A change in the person of the owner of a thing. It has no influence at all on the rights of a usufructuary or of a person who has a servitude over the thing.

Mutatio familiae. A change in the family status of a person. It takes place when a member of one family enters into another (marriage with conventio in manum) or when a person sui iuris comes under the paternal power of another through adrogatio, or vice versa, when a person alieni iuris becomes sui iuris and consequently the head of a new family (emancipatio). Mutatio familiae produces capitis deminutio minima because the ties with the former family are torn.—See adoptio, status.

Mutatio iudicis. See alienatio iudicii mutandi causa.

Mutatio iudicis. A replacement of a judge after his contestatio, when, for instance, the first judge died before rendering the judgment or became somehow unable to continue his activity.—See translatio iudicis.

Steinwenter, RE Suppl. 5, 351; P. Koschaker, Translatio iudicis, 1905, 311; Wlassak, Der Judikationsbefehl, SWB 197, 4 (1921) 232; Duquesne, La translatio iudicis, 1910, 221.

Mutatio militiae. The transfer of a soldier to another branch of service as a punishment for a minor offense. Syn. in detrimento militiam dare.

Mutatio nominis. A change of name (nomen, cognomen). It was allowed if it was not intended for fraudulent purposes.—C. 9.45.

Mutatio rei. A change of the substance of a thing. It occurs when land became a pond or a marsh through inundation or when a forest was cleared and made into field. Through mutatio rei an usufruct is extinguished” (D. 7.4.S.2).

P. E. Cavin, L’extinction de l’usufruit rei mutatione, 1933.

Mutatio status. See status.

Mutua pecunia. A sum of money given as a loan.—C. 10.6.—See mutuum.

Mutua substitutio. See substitutio.

Mutuae petitiones. Reciprocal claims between two persons who sue each other in separate actions. The claims could be united in one trial in order to be examined and decided by the same judge. Syn. mutuae actiones.

De Francisci, Syllogisma 2 (1916) 539; Lervy, ZSS 52 (1932) 517; S. Solazzi, Compensazione (1950) 107.

Mutuari (mutuare). To borrow, to receive a loan.—See mutuum.

Mutus. A mute person. If he is able to understand the meaning of the transaction he wants to conclude, he can express his will by signs (mutu).—D. 37.3.—See intellectus, mutus, curator muti, tutor.

Mutuum. A loan. The creditor = qui mutuum pecuniam (mutuo) dat, credit; the debtor = qui mutuum (mutuo) accept. A loan is concluded re, i.e., when its object (a sum of money, an amount of fungibles) was handed over to the debtor. The latter is obligated to return in due time the sum of money or the same quantity of fungibles of the same quality as was lent to him. He can be sued for return through the actio certae credidiae pecuniae, when money was involved, or through condicio tritaria if fungibles were borrowed. The borrower becomes owner of the things given to him for consumption. Interest (usurae) must be promised by a special agreement (normally a stipulatio). The loan itself could also be vested in the form of a stipulatio if the debtor promised the payment through stipulatio (a verbal contract).—See res quae ponderare, etc., funtus, usurae.

Kaser, RE Suppl. 6; Cuq, DS 3; G. Segreg, St. Simancelli 1917, 331; C. Longo, Il mutuo (Corso) 1933; P. E. Viard, Mutui datio, Paris, 1939; Robbe, SDHI 7 (1941) 35; P. Voci, II sistema rom. dei contratti (1950) 123; Seidl, Fosch Schulz 1 (1951) 373.

Mutuus dissensus. See consensus contrarius.

Narratio. (In postclassical language.) The oral presentation by the plaintiff or his advocate of the facts and legal arguments on which he based his claim. The reply of the defendant = responsio, contradictio.

P. Collinet, La procédure par libelle, 1932, 208.

Nasci. To be born. “Those who are born dead are considered neither born nor procreated” (D. 50.16.129). Nasci is used of fruits (see fructus) which proceed from the soil (in fundo). With reference to legal institutions nasci is used of actions (actio nascitur = an action arises), interdicts, obligations, and the like, to which a legal situation under discussion gives origin.—See insula in flumine nata.

Nasciturus. A child not yet born (unborn). Syn. qui in utero (in the womb) est. There was a rule that “a nasciturus is considered born when his interests are taken into account” (D. 1.5.26).—See conceptus.

Anon., NDI 7; Stella-Maranza, BIDR 42 (1934) 238; Albertario, Studi 1 (1933, ex 1923) 1; C. A. Masch, Concessione naturalistica, 1937, 66; Jonkers, Vigiliae Christianae 1 (1947) 240.

Natalium restitution. The privileges of a free-born, granted by the emperor to a freedman. All official posts accessible to free-born persons were open to the individual thus privileged. He could enter the ordo equester (the equestrian class, see equites) for which the status of a free-born was required.—D. 40.11; C. 6.8.

A. M. Duff, Freedmen in the R. empire, 1928, 72.

Natura. Nature of things, natural order, natural reality. Natura hominum (huma) = human nature. Natura (abl.) = naturally, in a natural way. Ant. contra naturam.—With reference to legal insti-
tions *natura* = the substance, the essential elements, the structure of an institution (*contractus*, *obligatio*, *nexit*, *stipulatio*, *emphio*, etc.). Theoricians among the law teachers coined this concept under the influence of philosophical ideas. —See the following items.

Gradenwitz, Fg Schirmar 1900, 13; R. Bonzon. *Sulle espressioni natura, naturalita* . . . . 1933; C. A. Maschi. *La concezione naturalistica del dir. e degli istinti giur. rom.*, 1937; Bartosek, *St Albertrio 2* (1952) 470.

**Natura actionis.** The juristic structure of a specific action with regard to its substantial functions. The term is probably of classical origin (*Gaius*), but it was expanded by Justinian’s compilers into a general conception of the nature of actions without regard to a specific action.


**Natura contractua.** Generally or with regard to a specific contract (as, for instance, natura *depositi, societatis, mandati*), the juristic structure of a contract.


**Natura hominum (humanum).** The normal human nature, essential natural characteristics of mankind, moral or psychological attitudes of men. *Natura hominum* in specific circumstances may serve as a criterion for the juristic evaluation of an individual’s acting in a given instance, i.e., whether his act was or was not in accordance with human nature.


**Natura obligationis.** The structure and function of an obligation in general or of a specific obligation.


**Natura rerum.** The reality (existence) of things, all that exists in nature. “What is prohibited by nature of things is not admitted by any law” (D. 50.17.188.1). *In rerum natura esse = to exist*.


**Natura servitutia.** The nature of a servitude. The *natura servitutis* is mentioned with regard to some servitudes, as, for instance, the indivisibility of the servitude *iter* is explained by its nature.


**Naturae ius.** See *IUS NATURALE*.

**Naturalia.** Natural, by nature, connected with nature. For the various uses of the term which—not always for good reasons—have been supposed to have been introduced by the compilers, see the following items.

Guarneri-Cristi, *St Riccubono 1* (1936) 730 (Bibl.).

**Naturalia sequitas.** See *AEQUITAS, IUS NATURALE*.

**Naturalis cognatio.** Blood relationship among slaves.


**Naturalis familia.** The family to which one belongs by birth. Ant. *familia adoptiva* = the family into which one entered by adoption.

**Naturalis filius.** See *FILIIUS NATURALIS*.

**Naturalis lex.** Only mentioned once in juristic sources, namely, with regard to the prohibition of theft (*furustum*) by natural law (*lege naturali*, D. 47.2.1.3, similarly Cicero, *de off. 3.5.21*: *contra naturam*).


**Naturalis obligatio.** See *OBLIGATIO NATURALIS*.

**Naturalis possessio.** See *POSSESSIO*.

**Naturalis ratio.** Natural foundation, conformity with nature, natural reason. The term is indicated as the basic component of *IUS GENTIUM* and appears at times as a ground of justification for certain legal institutions or decisions in specific cases (= reasonableness).


**Naturaliter.** By nature. *Syn. natura* (=bl). *Naturaier possumere = physical, corporeal possession.*

**Nauarchus.** The captain of a vessel. *Nauarchus caesar* = the commander of a fleet of the Roman navy; he had the privilege to make a formless testament according to the military law (*iure militari*), as all soldiers had. See *TESTAMENTUM MILITIS*.

Strack, *RE* 16, 1896.

**Nauculerus.** A shipmaster who effected the transportation of men and goods for the state.—C. 11.2. —See *NAVICULARII*.

Kiesling, *RE* 16, 1937.

**Naufragium.** A shipwreck. It is considered as an unforeseeable accident; see *casus, casus fortuitus*. Pillage committed during a *naufragium* was punished with a penalty of the fourfold value of the goods robbed. —D. 47.9; C. 11.6. —See *DEPOSITUM MISERABLE*.

Weiss, *RE* 16; *CQ*, *DS* 4; Solazzi, *RDN* 3 (1939) 253; *De Robertis, St di dir. penale rom.*, 1943, 77.

**Nauta.** A shipowner. His liability for goods taken for transportation by agreement (*receptum*) was regulated in the praeatorian Edict which showed particular consideration for the interests of the owner of the transported goods. *Syn. exercitor*. In the same section of the Edict was settled the responsibility of inn-keepers (*cauponae*) and stable-keepers (*ziaubarii*). —D. 4.9; 47.5; C. 11.27. —See *RECEPTUM NAUTARUM, NAVICULARIUM*.


**Nauticum fenus.** See *FENU NATUICUM*. *Syn. nautica pecunia*.

**Navicularii.** Shipowners whose primary business was the transportation of men and goods over the Mediterranean Sea. The *navicularii* were organized in *collegia* (associations). Under the Empire they
enjoyed a particular protection by the government because of their importance in supplying Rome with food. Owners of larger vessels (of at least ten thousand modii tonnage) were exempt from munera. Roman citizenship was granted to navicularii of Latin status, the sanctions of the Les Iulia et Papia Poppaea were not applied to them, and women, owners of ships, were not subject to guardianship (tutela mulierum). The manifold privileges were strictly personal: they were granted the shipowners proper navem (because of the ship) and were denied to their sons and freedom whether or not they were members of the professional association. In the later Empire, membership in the collegium navicularii was compulsory. The organization as a whole and all its members were regarded as state employees, obliged to fulfill the orders of the government, under conditions dictated by the latter. Their services, frequently regulated by imperial enactments, became an onus publicum (a public charge), for the fulfillment of which they were responsible to the state with their whole property.—C. 11.2; 3; 4.—See DOMINUS NAVIS, NAUCERUS.

Stockel, RE 16 (Bibli.); Benner, DS 4; De Robertis, Corpus naviculariorum, RDN nav. 3 (1937) 189; L. Schnorr v. Carolisfeld, Gesch. der juristischen Person, 1 (1933) 283; Gaudemet, St Solazzi 1948, 657; Solazzi, RDN Nav. 9 (1948) 45.

Navigium (navigatio). Navigation. For the protection of navigation on public rivers through interdicts, see FLUMINA PUBLICA. The protection was extended on anchoring- and landing-places (= stations) and in the use of roads after landing (tier).

Navis. Any kind of a ship (boat, vessel) serving for the transportation of persons or goods on the sea, rivers and stagnant waters. A ship might be the object of a legacy and of a usufruct. For problems connected with the use of a ship, see EXERCITOR, GUBERNATOR, MAGISTER NAVIS, NAOITA, NAUFRAGIUM, NAVICULARII, LACTUS, NAVIGIUM, EXPUGNARE.—C. 11.4.

E. Gandolfo, La nave nel dir. rom., 1883; De Martino, RDN 3 (1937) 41, 179.

Nec non. And also, and besides. The emphatic affirmation, often strengthened by an et (etiam), is somewhat suspected of being non-classical because it occurs frequently in Justinian's enactment.

Gurmerti-Ciati, Indici (1927) 58.

Necare. To kill. “One who refuses alimony, is similar to one who kills” (D. 25.3.4).

Necessarii (necessariae personae). Relatives, kinsmen.

Necessarius. See IMPENSEAE, HERES NECESSARIUS, HERES SUUS ET NECESSARIUS.

Necessitas. Necessity, exigency, compulsion. The term is opposed to libera voluntas (the free will) of a person performing a legal act. Ex necessitate (necessitate cogente) = by the compulsion of the situation (circumstances), emergency. Ant. nulla necessitate cogente. Syn. necessitudo.—See Coactus Volui, METUS, VIS, SPONTE.

Kochaker, Conf. Cast 1940, 180.

Necessitudo. The tie of relationship, kindred. Neces-
situdo sanguinis = blood relation-
ship.—See NECESSITARI.

Nect. To be bound, e.g., a person bound by an obligation (obligations necti), or involved in a crime (crimen); a thing pledged as a real security (pignori, hypothecae).

Nefast. See PAS.

Nefasti dies. See DIES NEFASTI.

Negare. To deny; in procedural language with refer-
ence to the defendant = to deny a claim; syn. inftirari. With regard to a magistrate who refused the plaintiff the action he demanded negare is syn. with denegare (actionem, petitionem).—See INITIARI, DENEGARE ACTIONEM.

Neglegentia. Negligence, omission. In the sources neglegentia is tantamount to culpa, and similarly graduated (magna, lata neglegentia). Precision in terminology is no more to be found here than in the field of culpa. One text declares (D. 50.16.226): “gross negligence (magna neglegentia) is culpa, magna culpa is dolus”; another (D. 17.1.29 pr., evidently interpolated) says: “gross negligence (dis-
soluto neglegentia) is near to dolus (prope dolum).” In the saying “lata culpa is exorbitant (extreme) negligence, i.e., not to understand (intelligere) what all understand” (D. 50.16.213.2) neglegentia is identi-

tified with ignorance. Some of these and other definitions concerning neglegentia are the result of interpolations by Justinian's compilers.—See DELI-

GENTIA, REMOVERE.


Negota. See NEGOTIUM.

Negotiori. To carry on a business of buying and selling.—See NEGOTTIATOR.

Negotiatio. A commercial business (on a wholesale basis), the business of an inn-keeper, or a shipper.

Negotiator. A tradesman, a dealer who buys and sells merchandise, on a rather large scale. A slave, called negotiator, was the manager of his master's business.

Negotiatores. Under the Empire negotiatores, who provided food for the capital, enjoyed special personal privileges (exemption from munera). They had the right to be organized in associations (col-

legia) and were treated in much the same fashion as shipowners (see NAVICULARII) and other con-

tractors of the government.—C. 12.34.—See con-

SISTENTES.

Kornemann, RE 4, 444; Cagnet, DS 3; H. J. Loane, In-

dustry and commerce in Rome, 1938.

Negotiorum gestio. (From negotia gerere.) The man-
agement of another's affair or affairs without authorization by the person interested (dominus negotii). By such action the negotiorum gestor bound
himself to conduct the matter to the end and to return to the dominus negotii all that he gained or acquired (proceeds, fructus) from the transaction; on the other hand the latter was bound to reimburse the gestor for his expenses. The negotiorum gestio arose from situations when a person acted in the interest of another during the latter's absence in order to defend the absent party's rights. The essential circumstance was that the gestor acted without a mandate. If the dominus negotiorum later gave his consent (ratihabitio) or did not protest against the gestor's meddling in his affairs, after he had knowledge thereof, the legal situation of the matter was considered a mandate. A further requirement on the part of the gestor was that he acted with the intention of serving the interests of another (animus negotia gerendi) and not of himself (sui lucris causa). Therefore there was no negotiorum gestio if he acted in order to execute a contractual duty of his own, fulfilled a moral duty, or made a donation. At any rate he had to abstain from acting prohibente domino, i.e., when the latter exactly forbade the gestor to act in his behalf. The negotiorum gestio created bilateral obligations although there was no agreement between the parties involved (quasi ex contractu). The dominus negotii might sue the gestor for recovery of the proceeds and for damages caused by an improper (fraudulent or culpable) management of the matter (actio negotiorum gestorum); on the other hand the gestor had an action for the reimbursement of his expenses (actio negotiorum gestorum contraria), even when his efforts reasonably made (negotium utiliter coeptum) remained unsuccessful. Postclassical development and Justinian's reforms obscured some details of the institution as they were in classical law; thus, in spite of an abundant literature some points are still controversial.—D. 3.5; C. 2.18; for negotiorum gestio in the interest of a guardian.—D. 27.5; C. 5.45.

Kreller, RE Suppl. 7 (Bibl. 551); Huvelin, DS 4; Scaduto, VDI 6 (s.p. gestione d'affari); G. Segret, StSen 23 (1906) 289; Peters, ZSS 32 (1911) 263; Artisch, St zu neg. g., ZbM 1913; idem. Aus nachgelassenen Schriften, 1931. 96; Riccobono, AnPal 3-4 (1917) 209, 221; Kübler, ZSS 39 (1918) 191; Frese, MIt Corn 1 (1926) 327; idem, St Bonifante 4 (1930) 397; Bossowski, BIDR 37 (1929) 129; Haymann, ACDR Roma, 2 (1935) 451; Ehrhardt, Romantischer Studien (Freiburger rechtsgesch. Abhandlungen 5) 1935; G. Pacchioni, Trattato della gestione d'affari, 3d ed. 1935; M. Morelli, Die Geschäftsführung im klas. röm. R., 1935; Sachers, SDHI 4 (1938) 309; Kreller, ZSS 59 (1939) 390; idem, Fischer Kossakker 2 (1939) 193; V. Arangio-Ruiz, II mandato, 1949, 23.

Negotium (negotia). Any kind of transaction or agreement. Acts involving transfer of property are also covered by this term. Less frequently negotium refers to trials, civil and criminal. Negotia may also connote the economic activity of a person, his commercial, banking, or industrial business. Negotia gerere (administrare) = to administer one's own (or another's) affairs. Some persons administer or cooperate in the management of affairs of others as his legally authorized representatives (tutors, curatores) or in virtue of a special agreement (mandatum, locatio conductio operarum) as his mandatary, agent, inzitter, etc.—See N E G O T I O R U M G E S T I O.

P. Voci, Dottrina rom del contratto, 1946, 47; G. Grosso, Il sistema rom. del contratto, 1950, 43.

Negotium absenlis. A matter which concerns an absent person.

Negotium alienum. A business matter (an affair) of another person. Ant. negotium suum, proprium.

Rabel, St Bonifante 4 (1930) 281.

Negotium civilis. (In imperial constitutions.) A civil trial (litigation). Ant. negotium criminale = a criminal trial.

Negotium forensis. A judicial matter, a trial.—See FERIAE.

Negotium mixtum cum donatione. A bilateral transaction with reciprocal but unequal performances, wherein one of the parties intending to make a donation gave the other party a thing of much greater value than he was receiving. Such a transaction was valid unless the parties thereby attempted to violate the laws concerning unlawful donations.—See DONATION.


Negotium nullum (nullius momenti). A transaction which is legally invalid.

Negotium privatum. A private matter (transaction); ant. negotium publicum = a matter in which the state (populus Romanus) is concerned.


Solazzi. Requisiti e modi di costituzione delle servitù, 1947, 13; idem, SDHI 18 (1952) 223.

Nemo. Nobody, no one. The phrase nemo dubitat (= nobody doubts) is frequently employed by the jurists to indicate that the opinion presented is beyond any doubt. Syn. nullus.—In the following items some legal rules starting with nemo are given.

Nemo alieno nomine agere potest. In the field of civil procedure: one cannot sue in the name of another. In the procedure under legis actiones, representation of a party (lege agere) was inadmissible (D. 50.17.123). A few exceptions were, however, recognized, e.g., in favor of persons who were held in captivity by an enemy or were absent in the interest of the state. For the formulary procedure, see COGNITOR, PROCURATOR. In the field of private law the rule disallows concluding a legal transaction for another. Under fss. civili nobody could act for another, every one must act for himself in acquiring an obligation or a right over a thing (per extraneam personam nobis adquiri non posse, Gaius, Inst. 2.95). The exclusion of direct representation was compensated by the services rendered by persons under power (sons, slaves) as the organs acting for their father (the head of the family) or master. The praetorian
law promoted the acknowledgment of obligations contracted or acquired by representatives (actiones adiecticæ qualitatis, actiones utilit).—Inst. 4.10.—See EXERCITOR NAVIS.

Riccobono, TR 9 (1929) 33; idem, AnPal 14 (1930) 389.

Nemo alteri stipulato potest. No one can accept a promise by stipulatio on behalf of another” (D. 45.1.38.17; Inst. 3.19.19). This was a fundamental rule of the ius civile.—See the foregoing item.

Nemo damnatum facit, nisi qui id facit quod facere ius non habet (D. 50.17.151). No one inflicts a damage (sc. on another) unless he does something that he has no right to do.—See AEMULATIO, UTI LICE SVO, NEMO VIDETUR DOLO ETC.

Nemo de improbitate sua consequitur actionem (D. 47.2.12.1). No one acquires an action through his dishonesty.

Nemo ex consilio obligatur. No one is obligated because of counsel (he gave another).—See CONSILIUM.

Nemo fraudare videtur eos qui sciunt et consentiunt.

See FRAUD.

Nemo invititus ad communionem compellit (D. 12.6.26.4). No one is forced to have common property with another.—See COMMUNIO.

Nemo invitatus. For further analogous rules, see INVITUS.

Nemo plus commodi heredi suo relinquit quam ipse habuit (D. 50.17.120). No one leaves to his heir more rights than he had himself.—See HERES.

Nemo plus iuris in alium transfere potest quam ipse habet (D. 50.17.54). See TRANSFERRE.

Nemo pro parte testatus pro parte intestatus deedere potest (D. 50.17.7; Inst. 2.14.5). A decedent may not leave his property partly by testament, and partly by intestate succession. A testament must cover the whole estate. If the testator disposed in his last will of a part of his estate only, the rest does not pass on intestacy but the entire estate devolves to instituted heir or heirs. Except to this rule was admitted in the case of a soldier’s testament.

Carpentier, NRH 10 (1886) 1; P. Boufant, Scriti 1 (1926, ex 1891) 101; E. Costa, Popiniano 3 (1896) 9; S. Solazzi, Div. ereditario rom. 1 (1932) 212; Sanfilippo, AnPal 15 (1937) 187; Meylan, Fiscr Tuor (Zürich, 1946) 179.

Nemo sibi ipse causam possessionis mutare potest (D. 41.2.3.19). See possesio.

Nemo (nullus) videtur dolo facere qui iure suo utitur (D. 50.17.55). No one who exercises his right is considered to act fraudulently.—See AEMULATIO, DOLUS.

Nepos. A grandson; nepitis = a granddaughter. The term filius sometimes also comprises the nepotes.

Lambranchi, ScCagl 30 (1946) 15.

Neratius, Priscus. A remarkable jurist of the first half of the second century after Christ; member of the councils of Trojan and Hadrian. He was the last known head of the Proculian school (Proculiani). He wrote casuistic works (Response, Epis-
Nexus. (Adj.) Bound by an obligation; when used of a thing (res pignori nesa, pignora nesa) = pledged.
—See nexum.

Nihil agere (agi). To perform an act which is legally invalid.

Hellmann, ZSS 23 (1902) 403.

Nisi. Except, unless, if not. Phrases introduced with nisi and used to complete a preceding legal rule were frequently inserted by the compilers to restrict the applicability of, or to admit an exception to, what had been said before. Many of such nisi-additions are of slight significance and do not represent any innovation upon earlier law. A large number of these additions refer to the requirement of precise evidence (see evidentiissimae probationes, probationes) from which should certainly not be inferred that this requirement was introduced by Justinian. Similarly, restrictions of the following sort: nisi alius actum sit (converterti, and the like) by which an agreement of the parties, contrary to that one which had been discussed before, is admitted, in many instances did not differ from classical law. Therefore, in such instances it has to be ascertained whether what is included in the nisi-clause is in fact simply a repetition of what was already in force in the classical law, or a later innovation.

Guarneri-Citati, Ind. (1927) 60; Berger, CIPhilol 43 (1948) 241.

Nobilissimus. An honorific title of the emperor (nobilissimus Caesar, imperator) from the third century on. After Constantine, members of the emperor’s family were also honored by this title.

Enslin, RE 17.

Nobles, nobilitas. There is no exact definition of these terms in ancient literature. Holders of the highest magistracies, their descendants and senatorial families formed a kind of an aristocratic social group, more in fact than in law. The distinction between nobles and other people not belonging to the noble class (ignobiles) gradually superseded the earlier distinction between patricians and plebeians.

Strasburger, RE 17; Lecrivain, DS 4; Brasiello, NDI 8; Meynial, St Fadda 2 (1906); Galzer, Die Nobilitas der röm. Republik, Hermes 50 (1912) 350; Otto, Hermes 51 (1916) 73; A. Stein, ibid. 52 (1917) 554; Münzer, Die röm. Adelsparteien und Adelsfamilien, 1920; Adelins, CIL I (1938) 407; (1945) 150; Moebs, New Jahrh. für antike Bildung, 1942, 273; K. Hanell, Das altrom. nomen. eponyma Ausl. 1946, 19.

Nocere. To do physical, economic, or moral harm, to be a hindrance. With regard to procedural measures, as e.g., to exceptions, exceptio nocet = an exception may be successful if opposed to the plaintiff’s claim.

Nocturnus fur. See fur DIURNUS, FURTUM.

Nolens. Unwilling. Nolens = without one’s consent, against one’s will. Syn. invito.

Nolle. To be unwilling, not to wish, to refuse (consent, acceptance, or to do something). Ant. velle.

“He who has the right to exercise his volition (velle) may refuse (nolle),” D. 50.17.3.—See NOLENS.

Nomen. A personal name. A free-born Roman citizen normally had three names: praenomen (first name), nomen gentile or gentilicium (the name of the gens, the family group, to which he belonged) and cognomen (a surname, the third name in the order of the full name). Sometimes, two or more first names appear in literary or epigraphic sources; sometimes, the cognomen is missing or two cognomina are given as a special distinction. The three-name-system begins to disappear in the third century in favor of the one-name-system.—In juristic works several typical names are employed to indicate fictitious persons in a legal case, where the parties are men, Titius, Lucius Titius, Gaius, Sempronius, Maevius, Seius, etc., where women, Titia, Gaia, Sempronia, Seta, etc., where slaves, Stichus or Pamphilus. A plaintiff often appears as AULUS AGERIUS, a defendant as NUMERIUS NEGITOR. In some texts the real names of the litigants appear which indicates that a real case is under discussion. Freedmen retained the name they had as slaves, but adopted the nomen gentilicium of their patron.


Nomen. Refers to the name of an author of a book or pamphlet. Hence sine nomine edere librum = to publish a booklet (a defamatory pamphlet) anonymously. Sub nomine = a (true or false) name under which a book is published.

Nomen. With reference to things, the nomen (= denomination, appellation) is distinguished from the thing itself (corpus). “An error in the naming of a thing does not matter if the identity of the thing itself can be established” (D. 18.1.9.1).—See ERROR NOMINIS, DEMONSTRATIO PERSA. It was customary to denote a plot of land by a name (nomen fundo imponere). The jurists use for the specification of a land typical fictitious names, such as fundus Cornelianus, Sempronianus, Titianus, etc.

Nomen. In criminal procedure, see ACCUSATIO (for nomen deferre), NOMEN RECIPERE.

Nomen. In contractual relations, a demand, a claim. Syn. crediditum, res credita. “The term nomen refers to any contract and obligation” (D. 50.16.6 pr.). Collocare pecuniam in nomen (nominibus) = to invest money in loans. See COLLOCARE.—See LEGATURE NOMINIS, NOMINA ARCADIA, NOMINA TRANSCRIPTIA, NOMEN FACERE, PIGNUS NOMINIS.

Nomen actionis. The name of an action. “When commonly used names of actions are lacking, it must be sued praescriptis verbis” (D. 19.5.2).—See ACTIO PRAESCRPTIS VERBIS.
Nomen alienum. See alieno nomine, nemo alieno
nomine. Ant. nomen suum, nomen proprium.
Nomen dare militiae. See MILITIA.
Nomen deferre. See ACCUSATIO.
Nomen facere. To make an entry in an account-book
concerning a loan given to a person, hence to grant
a loan.
Erdmann, ZSS 63 (1943) 396.
Nomen falsum. A false name. Assuming a nomen
falsum for fraudulent purposes (e.g., for claiming
rights of succession) is punished as crimen falsi.—
See FALSUM.
Nomen gentilicium. See GENS, NOMEN.
Pulgram. The origin of the Latin n.g., Harvard St Class
Philol 58 (1948) 163.
Nomen Latinum. See LATINUM NOMEN.
Nomen proprium. The proper name of a person; see
NOMEN SUUM.
Nomen recipere. To enter the name of an accused
person in the official record. Through such an act
a criminal trial, initiated by a formal accusation of
an accuser (nomen deferre, nominis delatio), was in-
stituted after an investigation had been made by an
official organ. Syn. (later) inter reos recipere.—
See ACCUSATIO.
Taubenschlag, RE 17; Eger, RE (receptio nominis) 1 A;
Wlassak, Anlage und Streitbeleistung im Kriminalrecht,
SBWien 184 (1917) 6.
Nomen suum. Sua (proprio) nomine agere = to act
(to sue) for one's own sake, on behalf of oneself.
Ant. alieno nomine.
Nomenclator. A slave whose duty was to remind his
master canvassing for electoral votes of the names of
influential persons. He used to accompany his master
in public during the electoral period.—See CANDIDATI.
Bernet, RE 17; Fabia, DS 4.
Nomen arcaria. Entries in the cash-book of a Roman
citizen concerning payments made from or to the
cash-box (arca), primarily connected with loans given
or repaid. The entries served as evidence that a
debt had been contracted (e.g., through stipulatio),
but they were not as such considered to constitute a
literal contract, i.e., to create an obligation by them-
selves.
Weiss, RE 17.
Nomen trans(s)cripticia. Entries (transcriptiones) in
the cash-book of a Roman citizen stating debts owed
to him and payments made thereon. Usually tran-
scriptiones were made to convert a pre-existing debt
into a literal contract which relieved the creditor from
the burden of proving the origin of the debt. The
essential elements of a transcriptio are the discharg-
ing of an old debt and the contracting of a new one.
There were transcriptiones a re in personam (from
the thing to a person) when the receipt of an old
debt is entered and the same debtor is charged with
a new entry, and transcriptiones a persona in per-
somam (= from one person to another) when a debt
still due is entered as owed by another person who
assumed the debt of the former debtor. The nomen
transcripticia comprised only money debts, the entries
being made under a special system of bookkeeping
and with the consent of the debtor. A transcriptio
created an obligatio litteraria (= a "literal" obligation)
which substituted an earlier obligation originating
from a sale, a partnership or another contract. Cash-
books ceased to be used by private individuals in the
third post-Christian century, but they remained in
use by the bankers.—See CODEX ACCEPTI ET EXPensi,
OBLIGATIO LITTERARUM (Bibl.), NOVATIO, EXPensi-
LATIO.
Steinwender, RE 13, 787; Kunkel, RE 4 A, 1887; Weiss,
RE 17; Huielen, DS 4; Aru, NDI 3, 223; Platon, NRHD
33 (1909) 325; Appert, RHD 11 (1932) 639; Arangio-
Rui, Si Redens 1 (1951) 12.
Nominare. To appoint (a guardian, an heir in a
testament), to mention by name (nominatio enume-
rationis). In criminal matters = to denounce, to accuse
a person of a crime.—See NOMINATIO.
Nominatim. By name (to indicate a person by his
name), exactly.—See EXHEREDARE, CONVENTURE, Tu-
TELA TESTAMENTARIA.
U. Robbe, I postumi, 1937, 232; Grosso, SDHI 7 (1941)
147; Legri, Scr Ferrini 2 (Univ. Sacro Cuore, Milan,
1947) 107.
Nominatio. (In public law.) The presentation of
candidates for magistracies to the senate by the em-
peror. Subsequently, the senate completed the elec-
tion formally by a confirmation of the emperor's pro-
posals. In the election of municipal magistrates which
was effected by the people and in later times by the
municipal council, the candidates designated by the
highest municipal magistrates might propose (nomi-
nare) another candidate. With reference to elections
in colleges of pontiffs, augurs, etc., nominatio meant
the proposal of candidates by the members of the
college. The election was made by the comitia tributa
among the candidates nominated.
Kübler, RE 17.
Nominatio auctoria. See LAUDARE AUCTOREM.
Nominatio potioris. A guardian who was appointed
by a magistrate (in the absence of a testamentary
tutor and one called by law, tutor legitimus) might,
in later classical law, propose (nominare) another in
his place as better qualified (potior) to serve the
interests of the ward either because of his relationship
with the ward or in virtue of his better financial
position. A nominatio potioris was also possible in
the field of public charges (see MUNERA) to the effect
that a person summoned to assume a public service
(munera civilia) could propose in his place a better
qualified one. Details are unknown.—C. 10.67.
Kübler, RE 17, 828; Sachs, RE 7 A, 1534; Solazzi, RISG
54 (1914) 23.
Nominatio tutoris. In later classical law syn. with
datio tutoris.—See TUTELA.
Nominator. A person who exercised his right of nominatio by proposing another for tutorship or a magistracy (particularly in municipalities).—D. 27.7; C. 11.34.—See nominatio potioris.

Nomine. (Abl.) On account of, for the sake of. The use of the word is very frequent in juristic language. It is connected with a noun in the genitive (fili, domini, pupill, emptoris, absentis, etc.) denoting the person for whom one is acting or with an adjective (alieno, suo, propio, meo nomine). See alieno nomine. The phrases refer primarily to acting as another's representative in court. Such relationship is more explicitly expressed by locations such as cognitiorio, procuratorio nomine; see cognitorio, procurator.

Nomine alterius may sometimes mean "because of another, for the fact done by another," as in the case of actiones norales or the so-called actiones adiectiae qualitatis (see exercitor navis).

With regard to things or rights (e.g., hereditatis, pignoris, usufructus, usuvarum nomine) nomine is syn. with alicius rei causa and propter aliquam rem (= because of), and indicates the title under which a person claims anything from another.

Nominis delatio. See accusatio.

Nomocanones. Compilations of ecclesiastical canons collated with the pertinent imperial constitutional excerpts from Justinian's codification, including the Novels. An extensive collection of this kind is the Nomocanon Quinquaginta Titularum (in 50 titles), compiled probably in the first half of the seventh century, and dealing with ecclesiastical matters, marriage, penal law, and some procedural institutions (witnesses, oaths). A similar collection is the Nomocanon Quattuordecim Titularum (in 14 titles) which was several times revised, the last edition being by Theodoros Balsamon in the twelfth century). These Greek collections are of importance for textual reconstruction of a number of constitutional titles.—See Anonymus.


Nomos georgikos. An official Byzantine compilation (in Greek) of the agrarian law of about the middle of the eighth century, "selected from Justinian books."

Montreuil, Histoire du dr. byzantin 1 (1843) 393; Zachariae v. Lingenthal, Gesch. des griechisch-röm. Rechts, 3rd ed. 1892, 249. Editions: Ferrini, Byzantinische Zeitschr. 7 (1896) 338 (= Opera 1, 1929, 376); Ashburner, The farmers' law, Journ. of Hellenic St. 30 (1910) 85.—A. Albertoni, Per una esposizione del dir. bizantino, 1927, 51; Siciliano-Villanueva, Enciclopedia giur. ital. 4 (1912) 41.

Nomos stratosóikos. An official Byzantine compilation of military law in wartime, published about the middle of the eighth century based primarily on legal sources of Justinian's time.


Non liquet. Seeiturare si non liquere, ampliatio.

Non usus (non uti). Making no use, not exercising one's rights. The failure of a person, entitled to a servitude or a usufruct, to exercise his right over another's property during a specified period, might produce the loss of said right. With regard to a usufruct the prescriptive time was one year for movables, two years for immovables.—See usucapi libertatis.


Nonnumquam. See interdum.

Guarneri-Citati, Indice (1927) 61.

Norma. (In the language of postclassical and Justinian's constitutions.) A legal principle, a norm.

Wenger, Canon, SbWien 220, 2 (1942) 70.

Noster (nostrium). What belongs to "us," what is "ours." "What is ours cannot be transferred to another without an act of ours" (D. 50.17.11).

Noster. When connected with an emperor in a juristic writing (princeps noster, imperator noster) it refers to the still reigning emperor. Such allusions allow us to establish the date of composition of a juristic work. Ant. divus, which refers to an emperor no more alive.

Nostra urbs (civitas). In the works of the jurists this means Rome.

Nota censoria. The disqualification of a citizen decreed by the censors for bad behavior in family life, blame-worthy treatment of children, clients, or slaves, neglect of sacred duties, living in luxury, or offenses against good faith in the exercise of the duties of a guardian or a partner. Similarly, misdemeanor in office, bribery of judges or magistrates, and many other offenses could be stigmatized by the nota censoria with the result that the individual censured would be removed from the senate or from the centuriate or tribal organizations (tribu moveri) or reduced to the status of an aerarius. The notatus was branded with ignominia (ignominia), but not with infamy (see infamia), and he was therefore not excluded from military service, from judgeship in a civil trial, and, indeed, in certain circumstances he might even com-
pete for a magistracy.—See REGIMEN MORUM, CENSORES, TRIBUS, SUBSCRIPTIO CENSORIA.

Kübler, RE 17; C. Castello, Studi sul diritto familiare, 1942, 85.

Nota consularis. The decree of a consul excluding a person from the competition for a magistracy, after examination of his personal and moral qualifications.

Nota. Stenographic symbols, shorthand writing. A testament in shorthand writing is not valid, because "notae are not letters" (D. 37.1.6.2). Only a soldier was permitted to make such a testament.—See EXCEPTOR.

Notae. Commentatory annotations to the edition of a work of an earlier jurist. Such more or less extensively annotated editions often contained not only remarks of the annotator which at times did not agree with the opinion commented on, but also citations from other jurists and imperial constitutions. Notae were richly excerpted by the compilers of the Digest and indicated as such ("Paulus notat," or simply by the name of the annotator). On the other hand, however, the compilers often adopted only the opinion of the commentator disregarding the original opinion of the jurist commented on. Many prominent jurists contributed notae to the works of their predecessors; some of the latter have remained obscure. Thus, for instance, Julian wrote Notae to two little known jurists, Minicius and Ursicins Ferox. Among the most important Notae are those of Marcellus to the Digesta of Julian, and of Scaevola to the Digesta of Julian and Marcellus. Paul annotated works of several earlier jurists. The imperial legislation treated the notes by Ulpian and Paul to the works of Papinianus (in Papinianum) in a rather strange fashion: they were invalidated by Constantine as "depraving" the jurist's opinions. This seemingly a tribute to the great jurist Papinian and his work. The ban was repeated in the so-called Law of Citations (see JURISPRUDENTIA) although both Ulpian and Paul appear there among the distinguished jurists. Justinian, however, declared the notae in question valid and permitted their acceptance into the Digest.

Berger, RE 10, 727; Balogh, Et Girard 2 (1913) 422; H. Krüger, St Boniface 2 (1930) 303; Massei, Scr Ferroni (Univ. Pavia, 1946) 43; Sciascia, AnCam 16 (1942-44) 87; idem, BIDR 49-50 (1947) 410.

Nota juris. A collection of abbreviations (by initials) of legal formulae and phrases used in the legis actiones, the praetorian Edict and documents. The collection is generally (but not unanimously) ascribed to Valerius Probus, a grammarian of the second half of the first post-Christian century.


Notare. Used in all the meanings of nota; see the foregoing items. Hence notare = to remark, to comment on, to correct, to blame, to reprimand.

Sciascia, BIDR 49-50 (1948) 429.

Nota. A person, usually a freedman or slave, skilled in shorthand writing; in the later Empire notarius is syn. with scriba. In the imperial chancery of the later Empire there was a confidential secretariat of the emperor, called schola notariorn, headed by the primitercius notariorum. His deputy had the title tribunus et notarius. Both were among the highest functionaries of the state.

Lengle, RE 6A, 2452; Morel, RE Suppl. 7, 586; Lécrivain, DS 4.

Notthus. (From the Greek nothos.) See spurious. The term appears in literary (non juristic) works.

Lanfranchi, StCagl 30 (1946) 30.

Notio. The examination (investigation) of a case. The term refers sometimes also to jurisdiction, but generally the phrase is cuius de ea re notio est means the official (magistrate) competent to examine the controversy in question.

Fallenti, Evolution de la juridiction civile, 1916, 143.

Notitia. Knowledge. The word appears in the definition of JURISPRUDENTIA as "the knowledge of divine and human matters" (divinarum atque humanarum rerum notitia, D. 1.1.10.2). Ulpian attributes to the jurists notitia boni et aequi (D. 1.1.1.2).—See IUS EST BONI ET AEGUL.

Notitia. (In later imperial constitutions.) A list, a catalogue. To an imperial constitution of A.D. 337 (C. 10.66.1) a notitia (= brevis) was annexed enumerating professionals who were exempt from public charges (munera).—See LATERCULUM.

Notitia dignitatum. A list of "all high offices, both civil and military, in the Eastern (Oriens) and Western (Occidens) parts" of the Empire. The list contains the titles of the high functionaries, those of their staff officers, an enumeration of military units and their garrisons, and besides, illustrations of civil and military insignia. The work is ascribed to the end of the fourth or the beginning of the fifth century.

Editions: O. Seeck, N.d., 1856, E. Böcking, in two vol, (1839, 1853); Polacsek, RE 17; Mattingly, OCD; Bury, JRS. 10 (1920) 133; Lot, Rev. des Études anciennes, 25 (1923); Salisbury, JRS 17 (1927) 192.

Notoria. A written denunciation of a crime, made by a police official or a private inquirer (muniator).—See INDICTUM, NUNTIAORES.

Novae clausulae. New rules added by a praetor to the edict of his predecessor. Such a new clause is ascribed to the jurist Julian inserted on the occasion of his codification of the praetorian Edict (see EDICTUM PERPETUUM). It is known as nova clausula de coniungendis cum emancipato liberis eius, and concerns the succession on intestacy of an emancipated son. If his children had remained under the paternal power of his father when he was emancipated, his share was divided into two halves of which he received one and his children the other.—D. 37.8.—See EMANCIPATIO.

Weiss, RE 17 (s.v. nova clausula Iuliani); Cosentini, St Solanzi 1948.
Novatio. The transformation and transfer of a former obligation into a new one (D: 46.2.1 pr.), i.e., an existing obligation is extinguished and substituted by a new one. Novatio was performed by the way of a stipulatio (later through nomen transcriptium, see nomina transcriptia) comprising the same debt, idem debitum, although changes in persons and terms were admitted. It made no difference from what kind of a contract the previous obligation arose. An obligation originating in a testament could also be renewed by a stipulatio. The persons participating in a novatio could be different from those between whom the former obligation existed, since either a new creditor in the place of the former one, or a new debtor might intervene. See expromtiter, delegatio. Through the extinction of the previous obligation the sureties therefor became released and securities ceased to be pledged unless they were extended by agreement of the parties to the new obligation. According to a widespread opinion it was Justinian's law which set the requirement that a novatio was valid only when the parties had the intention to make a novatio (animus novandi). The concept may have been frequently interpolated indeed, although it is hardly conceivable that in the developed classical law, when the abstract nature of the stipulatio was no more of its former strength, the intention of the parties might have been completely neglected. The term novandi causa, which appears in classical texts, alludes clearly to the intention of the contracting parties. The institution was profoundly reformed by Justinian and substantial interpolations obscured its development in the classical period.—D. 46.2; C. 8.41.—See acceptilatio, obligatio naturalis.

Weiss, RE 17; Last, Grz 37 (1910) 450; Vassall, BIDR 27 (1914) 222; Bohacek, ANPali 11 (1924) 341; Kadett, ZSS 44 (1924) 164; Koschaker, Fisch Hamasek 1925, 118; P. Negrö, Les conditions d'existence et de validité de la n., Thése Aix, 1923; Failla, St Perazzi 1923, 407; Guarnieri-Ciatti, Ml Cornel 1 (1926) 432; Thoren, La n. conditionelle, Thése Lausanne, 1927; Cornel, Ml Fourrier 29, 87; Meylan, ACII 1 (1935) 281; A. Hägerstrom, Der röm. Obligationsbegriff, 2 (Uppsala, 1941) Beil. p. 199; B. Stacelmin, Die N. (Basler Studien zur Rechtsgesch. 23, 1948); Daube, ZSS 66 (1948) 90; Sanfilippo, ANCatt 3 (1948-49) 225; Beretta, Ser Ferrari 1 (Univ. Sacro Cuore, Milan, 1947) 77; F. Bonifacio, La novazione nel dir. rom., 1950.

Novella constitutio (lex). A recent imperial constitution. The term appears already in the fourth century after Christ and is also applied to the constitutions issued by Theodosius II after the promulgation of his Code (see codex theodosianus) and by his successors until a.d. 472 (“Post-Theodosian Novels”). They generally are edited as an appendix to the Theodosian Code.—See novellae post-theodosianae.

Novellae Justiniani. (Sc. constitutiones.) Justinian's constitutions (= Novels) promulgated after the second edition of his Code (see codex justianus), in the period between a.d. 534 and 556. They were not edited by him as a supplement to the Code (what they really were) although he had the intention to do it (alia congregatio novellarum constitutionum, Const. Cordi 4). The Novels are known from three collections, (a) Epitome Iluliani, containing 122 Novels, until 555, (b) Authenticum (liber Authenticorum) with 134 Novels, from a.d. 535 until 556, and a Latin translation of the Novels written in Greek, and (c) a collection of 168 novels, compiled under Tiberius II (578-582) containing also four constitutions by Justin II and three by Tiberius II. Most Novels are issued in Greek, some in Latin and Greek, some only in Latin, in particular those which were addressed to the Western part of the Empire or contained supplementary provisions to earlier Latin constitutions.—See authenticum.


Novellae post-Justinianae. (Of the Byzantine emperors after Justinian.) These are quite numerous. Of great importance are the Novels of the Emperor Leo the Wise (586-911).


Novelles post-Theodosianae. See NOVELLA CONSTITUTIO.

Steinwenter, RE 17, 1163; Anon., DS 4; Scherillo, NDI 8, 1139; idem, St Besta 1 (1939) 285.—Translation in C. Pharr, The Theodosian Code (Princeton, 1952) 487.

Novicius (servus). (Syn. mancipium nocticium.) A young slave. Since he generally is more valuable than an older slave (veterator, veteranum mancipium) the aedilician edict provided that a fraudulent sale of an older slave to whom the appearance of a younger one was given could be rescinded by an action of the buyer who had also the choice to sue only for the restitution of a part of the price.

Novus. See IUS NOVUM, OPERIS NOVI NUNTIA TO, NOVÆ CLAUSULÆ, JUSTINI ANI NOVL.

Novæ. Syn. both with delictum (hence a penalty, poena, is a revenge for a noxa) and damnum, damage (hence noxam sactire = damnum solvere, praestare, to indemnify). Besides, noxa may indicate also the "body which inflicted the damage" (Inst. 4.8.1), and finally the indemnification itself. In these various meanings the term is used in a limited field of the
liability of a master of a slave or a father of a son for offenses committed by the slave or the son. The liability was absolute, either to pay the damages or to surrender the offender to the person injured. The latter claimed reparation for the injury sustained through the pertinent action which lay for the offense committed (actio furti, iniuriarum, legis Aquilae, vi bonorum raptorum, etc.) and which was termed actio noxalis when directed against the master or the father. In Justinian's law the noxal liability of the father did not exist any more. Since the son was able to possess property of his own, he could be sued directly. On the principle of noxal liability were also based interdictum de vi and interdictum quod vi act clam. —Handing over a domestic animal which had caused damage to another is analogous to the cases mentioned beforehand; see actio de pauperie. —See scienza domini and the following items.—Inst. 48; D. 9.4; C. 3.41.

Lisowski, RE Suppl. 7, 587, 604; Coq. DS 4; Biondi, NDI 8; Berger, RE 9, 1624; Biondi, AnPal 10 (1925); idem. BIDR 36 (1928) 99; Beseler, ZS 46 (1926) 104; Lenski. ZS 47 (1927); Branca, StUrb 11 (1937) 98; De Visscher, RHD 9 (1930) 411; idem, Le régime romain de la noxalité, 1947; idem, Symb van Oven, 1947, 306; G. L. Luzatto. Per una ipotesi sull'obbligazione romana (1934) 64, 102; Daube, ComLJ 7 (1939) 23; M. Sargenti, Contributo allo studio della responsabilità noxalis (Pubblicazioni Univ. Parma, 104) 1949; M. Kaser, Das altröm. Ins., 1949, 223; Pugliese, St Cornelius 2 (1950) 112.

Noxam committere. To inflict a damage, to commit a private crime (delictum).

Noxam. Syn. with noxa. The rare term occurs a few times in the Twelve Tables.

Noxam sancire. See noxa. Originally (in the Twelve Tables) = to repair the damage done by restitution in kind, not by compensation in money.

M. Kaser, Das altröm. Ins., 1949, 219; Daube, St Solazzi 1948, 7, 61.

Noxius. A slave or son who committed a wrongdoing for which his master or father bears the noxal liability; see noxa. Generally, one who committed a crime.

Nubere. To marry. See matrimonium. Nubere is often mentioned as a condition upon which a liberality (a donation, a legacy) is depending, as, e.g., "if he (she) will marry" or "if he (she) will not marry X (a certain person)." The condition to marry a specific person was valid if the individual was an honest person. If he was indignus (= unworthy, despicable) the condition was considered not binding. This was also the case when a condition to remain unmarried was imposed.


Nuda cautio. See cautio. Anl. Satisdatio.

Nuda conventio. An agreement by which a person assumes an obligation without giving a real security or a surety. A mere agreement is also an agreement which is not accompanied by the delivery of the thing involved.

Nuda pactio. See nuditum pactum.

Nuda proprietias (nudum dominium). Mere ownership, i.e., when the owner has no right to use the object or to take the fruits thereof because these rights are vested in another either by a contract or through a personal servitude (see usus, ususfructus). —C. 7.25.

M. Pampanoli. MéI Girard 2 (1912) 137.

Nuda repromissio. See cautio, satisdatio.

Nuda res. A thing itself, as opposed to proceeds and accessories thereof.

Nuda stipulatio. See cautio.

Nuda traditio. A simple handing over of a thing to another without any just ground (insta causa). —See traditio.

Nuda voluntas. A mere, formless expression of will not accompanied by the delivery of the thing which is the object of a legal act. —See aditio hereditatis.

Nudum dominium. See nuda proprietias.

Nudum ius Quiritium. See dominium duplex, dominium ex iure Quiritium. One who has a mere ownership ex iure Quiritium of a thing (e.g., of a slave) without holding it, because another is entitled to hold it, "has less right in it than a usufructuary or a possessor in good faith (possessor bona fide)," Gaius 3.166. In a constitution of Justinian (C. 7.25.1) the term nudum ius Quiritium is qualified.
as "an empty and superfluous word."—See in bonis esse.

Nudum pactum (nuda pactio). A simple, formless agreement as opposed to stipulatio and contractus. A nudum pactum does not create an obligation but an exception (D. 2.14.7.4).—See pactum.

Nudus. Deprived of means.—For nudus with regard to certain legal institutions, see the foregoing and the following items.

Nudus consensus. See consensus.

Nudus usus. The right (a servitude) to use another's thing but not the proceeds (fructus) thereof.

Nulius momenti esse. See momentum.

Nullus. Nobody, no one (= nemo), not existing.

With regard to legal acts or transactions nullus means invalid, void.—See res nullius.

Helman, ZSS 23 (1902) 425.

N. Divinity. Numer nosterum ("our divinity") is often used by later emperors in their constitutions.

Ennsin, Gottskaiz, Schnitzch 1943, 3rd issue.

Númeras pecunias. To repay a debt in cash. Pecunia numerata = a cash payment. Numerare preium = to pay the price of a thing purchased in cash.—See exceptio non numeratae pecuniae, quae non numeratae pecuniae.

Númerum pecuniae. A cash payment.

Númerarius. An accountant or auditor in higher imperial offices of the later Empire.—C. 12.49.

Ennsin, RE 17: 6a, 1870.

N(umerius) N(egius). See a(ulus) agerius.

Númeri. Military units of infantry or cavalry, composed of soldiers recruited in provinces for service on the boundaries of the state. Their commander was the tribunus numeri.—See auxilia. In numeris = in military service.

Rowell, RE 17: 1327; Vittinghoff, Historia 1 (Baden-Baden, 1951) 390.

Numerus. See res qua re pondere numero, etc.

Nummária poena. A fine. See multa, poena pecuniiaria. Criminal matters in which the culprit was punished with a pecuniary fine = nummariâ res.

Nummularius. The owner of a small bank, primarily for money-changing transactions. See argentarii, mensularius, mensa nummularia, tessera nummularia.—Nummularii were also officials of the mint (officina monetae) who were concerned with the test of coins.—See moneta.—C. 11.18.

Herzog, RE 17; Laum, RE Suppl. 4, 75; Saglio and Humbert, DS 1 (sce. argentii); Voigt, ASchGW 10 (1880); Mittel, ZSS 39 (1898) 203.

Nummus. A coin, a sesterius; in the later Empire the smallest copper coin. In nummis = in cash.—See falsa moneta, corpus.

Schwabacher, RE 17.

Nummus unus. A sale (or lease) in which the buyer (lessee) paid a fictitious price (rent) in the form of a small sum of money (nummo uno = for one piece of money) in order to disguise a donation prohibited by the law, was void.—See donatio, mancipatio nummo uno, septerius.

Nuncupatio (nuncupare). A solemn oral declaration before witnesses. It was an essential part of the ancient acts (negotia) per aes et libram and had to be expressed in prescribed words. In a testament per aes et libram the nuncupatio contained the dispositions of the testator to be executed by a man worthy of his confidence, the familias emptor. The pertinent rule was expressed in the Twelve Tables (uti lingua nuncupasti = as one has disposed orally).—See mancipatio, nexum, per aes et libram, testamentum per nuncupationem.

Düll, RE 17; Anon. ND I 8; Cun, DS 5 (sce. testamentum); Sanfilippo, AnPal 17 (1937) 147; P. Noailles. Du droit sacré au droit civil, 1950, 300; Solazzi, SDHI 18 (1952) 213.

Nundinae. A market, a fair; the period of time (eight days) between two consecutive markets. Nundinae were frequently fixed as a term for the payment of money debts. According to one opinion such payment could be demanded by the creditor on the first day, while other jurists held that the payment could be made during the whole eight-day-period.—D. 50.11; C. 4.60.

Kroll, RE 17; Besnier, DS 4.

Nuntiatio fisco. To denote to the fisc a person holding property due to the fisc or obligated to make payments to the fisc. In a monograph on fiscal law by the jurist Callistratus there is a long list of cases which had to be denounced by private individuals to the fisc in its interest, primarily in matters of successions when the fisc might claim an inheritance. Other instances of such denunciations were the discovery of a treasure (see thesaurus), fines to be paid to the fisc, etc. (D. 49.14.1 pr.). Such fiscal denunciations were frequently made in order to receive a reward (praemium consequendi causa). In criminal matters nuntiare = denuntiare.—See delatores, deferrer fisco, denuntiatio, caducea.

Berger, RE 17, 1475; Solazzi, BIDR 49-50 (1948) 405.

Nuntiatio operis novi. See operis novi nuntiatio.

Nuntiatur. In criminal and fiscal matters.) A denouncer. Syn. denuntiatur.—Nuntiatur = one who protested against a new construction; see operis novi nuntiatio.—Nuntiatur also was the title of an official of a lower rank in the later Empire who publicly announced a felicitous event (e.g., the victorious end of a war). He was prohibited from accepting immediate gifts.—C. 12.63.

Berger, RE 17, 1475; 18, 559.

Nuntius. A messenger. Declarations of will through the medium of a messenger were valid as were those made by letter (per epistulam) except in cases in which one had to give the declaration personally (as in a stipulatio, in acts concluded per aes et libram).

Carboni, Sul concetto di n., Scr Chirom 1 (1915); Düll, ZSS 67 (1950) 163.
Nuptiae. Almost completely syn. with matrimonium in juristic language. It is apparently the earlier term for marriage and is more related to the wedding ceremony than matrimonium.—Inst. 1.10; D. 23.2; C. 5.4; B.—See MATRIMONIUM, VOTA MATRIMONII, CONCUBITUS.

Ehrhardt, RE 17. For further bbl. see MATRIMONIUM.

Nuptiae incestae. A marriage concluded between persons who are prohibited to marry because of near blood relationship or affinity. The marriage is not valid, the wife is non uter and the children are illegitimate (spurii).—See INCESTUS.

Lombardi, Ricerche in tema di ius gentium, 1946, 25.

Nuptiae secundae. See S EcundaE Nuptiae.

Nuptialis. Pertinent to a marriage, e.g., tabulae, instrumentum.

Nutrire. To nourish, to rear.—See ALIMENTA.

Nutritor. A nourisher, a foster parent. The term refers primarily to persons who sustained with nourishment (and education) a child not of their own (a foundling). A nutritor "has no successor rights of succession either under ius civile or honorarium" (C. 6.59.10).—See ALUMNUS.

Nutus. A wink, a sign. Under certain circumstances it might be considered as a valid expression of will, sufficient even for leaving a fiduciamissum.—See MUTUS.

O

Obicere. To oppose a counter-claim to the claim of the plaintiff.

Obicere bestias. To expose to wild beasts a criminal condemned to death ad bestias (= to fight with them). Syn. subicere.

Obicere crimen. To charge a person with a crime.

Obicere exceptionem. To oppose an exception in a civil trial.—See EXCEPTIO.

Oblatio. (From offerre.) An offer (to pay a debt, to give a security, to pay the estimated value of a thing). Oblatio voto, see VOTA.

Oblatio curiae. See LEGITIMATIO PER OBLATIONEM CURiae.

Obligare. To tie around, to bind, in a moral and legal sense.

Obligare rem. To "bind" a thing by the tie of a real security (pignus, hypotheca). Syn. pignorare, if the thing is given to a creditor as a pignus. Hence obligatus (e.g., fundus, ager, res, aedes), with or without the addition of iure pignoris (hypotheca) = a thing given as a pignus or charged with a hypothec.

Brasili, RIDA 4 (= Mél De Visscher 3, 1950) 203.

Obligari (se obligare). To assume an obligation. For obligari civile, see OBLIGATIO CIVILIS (OBLIGATIO NATURALIS). Obligari actione = to be liable by a specific action.—See OBSTRINGI ACTIONE.

G. Segre, St Bonfante 3 (1930) 301.

Obligatio. (From obligare.) Refers to both legal obligations and moral duties. The definition of obligatio in the legal field, in Justinian's Institutes, which obviously goes back to a classical writing, says: "obligatio is a legal tie (vinculum) by which we are forcibly bound (adstringimur) to pay a certain thing (aicus solvenda rei) according to the laws of our nation" (Inst. 3.13 pr.). "The substance of an obligatio consists in binding (adstringere) another person to give us (dar) something, to do (facere) or to perform (praestare) something" (D. 44.7.3). Praestare comprehends any performance by the debtor which is not a dare or facere, in particular, a payment of a penalty in the case of a private wrongdoing (delictum), an additional liability, as, e.g., that of a seller or a lessor in the case of eviction, the liability for dolus and culpa, etc. Both definitions are not fully satisfactory, but they reflect the essential element of the tie (binding) expressed in the term obigari (= to be tied around, obstringere, adstringere). Obligationes arose from wrongdoings (ex delicto) the wrongdoer being obligated to pay a penalty to the injured person, and from contracts (ex contractu) when one party or both parties assumed obligations through agreement; see CONTRACTUS. To embrace other kinds of obligations which did not originate either in an agreement or in a crime, as, e.g., from the management of another's affairs without authorization (see NEGOTORUM GESTIO), from the administration of a ward's property by a guardian, from the payment of a non-existing debt (see INDEBITUM), from a LEGATUM PER DAMNATIONEM, and the like, a comprehensive term variae causarum figurae (= various forms of causes, D. 44.7.1 pr.) was used, a vague expression without any juristic content. Nor much better are the two new categories created by Justinian (Inst. 3.13.2) : obligations "which arise quasi ex contractu" and "quasi ex delicto (maleficio)," although the pertinent liabilities were known already in classical times. As to the object of an obligatio (dare, facere, non facere), the fundamental requirements were the natural possibility of its fulfillment (see IMPOSSIBILITUM NULLA OBLIGATIO), the absence of a content which was against good customs (contra bonos mores), illicit (illicitus) or immoral, and finally, a precise definition of the debtor's duties, either from the origin, through later events, or through the arbitration by a third person. An obligation, the determination of which was completely left to the debtor or to the creditor was not admissible. The terminology for the extinction of an obligation alludes again to the binding "tie": see SOLUTIO (= loosing, unbinding), LIBERATIO (= setting free). For the various sources of obligations (contracts, delicts, etc.), see the pertinent items.—Inst. 3.13; 14; 21; 22; 27; 29; 4.5; D. 44.7; C. 4.10.—See MORA, ACTIONES IN PERSONAM, PERPETUATIO, NOVATIO, IUS VARIANDI, and the following items.
Obligatio civilia. Used in a double meaning: (a) an obligation under ius civilis as opposed to obligations recognized only by the ius honorarium (obligatio praetoria, honoraria); (b) an obligation suable by an action (civil or praetorian) as opposed to an obligatio naturalis, not enforceable by an action at all.—See obligatio naturalis.

Obligatio condicionalis. (Syn. sub condicione.) An obligation the existence of which depends upon the fulfillment of a condition. The obligation does not exist until the condition is materialized. The legal situation became complicated when the debtor died in the meantime or when the thing eventually due perished. Such cases are dealt with in the sources, but the decisions are not uniform.—See condicio.

Obligatio consensu contracta. See consensus.

Obligatio ex contractu. An obligation arising from a contract. The obligatio is unilateral when only one of the contracting parties assumes an obligation (as, e.g., in a minimum, a loan). Bilateral obligations arise when both parties assume reciprocal, but different obligations.—See contractus, contractus innominati, and the entries dealing with the various contracts.

Obligatio ex delicto (maleficio). An obligation arising from a wrongdoing by which harm was done to a private person; see delictum, furtum, rapina, inturia, damnum inturia datum, lex aquilla, actiones poenales.—Inst. 4.1.

Ferrini, NDI 6, 657; V. Mezzii, Die Obligation im Zeichen des Delikts, 1909; E. Costa, Le obbligazioni ex de-

lice, 1909; F. De Visscher, Etudes (1931) 253; F. Alberti,

Obligatio honoraria. See obligatio civilis.

E. Albertario, Studi 3 (1936) 31.

Obligatio in solidum. See duo rei promittendi.

Obligatio indicati. See indicatum.

Obligatio litterarum (litteris contracta). See litterarum obligatio, nomina transcriptionis.—Inst. 3.21.

Obligatio naturalis. An obligation, the fulfillment of which cannot be enforced by an action. The creditor has no means to compel the debtor to pay his debt. Ant. obligatio civilis. An obligatio naturalis, however, was not deprived of legal effects among which the most important was that the payment made by the debtor was valid and could not be claimed back by him through condicio indebiti because an obligatio naturalis was after all a debitum (a debt) and not an indebitum. An obligatio naturalis could be the object of a novatio and a surety (fideius successus) could guarantee the fulfillment thereof. Obligationes naturales were the obligations contracted by a slave (towards his master, another slave, or another person) or by a filius familiae under paternal power (towards his pater familias or another filius familiae under the same paternal power). A filius familiae sued for the repayment of debt (a loan) could oppose an exceptio Senatusconsulti Macedoniani. New instances of obligatio naturalis were added in later and Justinian's law.—See donatio, senatusconsultum Macedonianum.

Gradewitz, Fg Schirmor 1900, 127; H. Sibter, N.O., Liep-

giger rechtswiss. Studien 11, 1923; Besler, TR 8 (1928)

319; Lauria, RISG 1 (1926); Vazny, St Bonifante 4 (1931)

131; W. Flume, Studien zur Akzessorieta der röm. Bürg-

schafftsstipulationen, 1932, 70; Albertario, St 3 (1936) 35;

idem, SDHI 4 (1938) 329; Maschi, Concessione naturalis-

tica, 1937, 121, 348; De Villa, StSta 17 (1939) 85, 185;

18 (1940) 13; idem, Le novare ex pacto, 1937; Di Marzo,

St Calisse 1 (1940) 75; Levy, Natural law (Univ. Notre

dame Natural Law Proceedings 2, 1949, 62 (= SDHI 15,

1949, 15); G. E. Longo, SDHI 16 (1930) 86.

Obligatio post mortem. An obligation which had to become effective after the death of the promisor (e.g., a stipulatio "post mortem mean" creating an obligatio on the part of the heir). Such a promise was not valid since according to an ancient rule "an obligation could not begin (incipere = to come into existence) in the person of an heir" (Gaius 3.100). Justinian admitted such obligations. An obligation "cum moriar" (= when I shall be dying), however, was valid because it was held that the obligation referred to the last moment of the debtor's life. See dies mortis, mandatum post mortem, stipulatio post mortem, adstipulatio.

Schelte, Rechtsprediger Magazin 57 (1938) 380; G.

Segre, BIDR 32 (1922) 286; Solazzi, Jura 1 (1930) 49.

Obligatio praetoria. See obligatio civilis.
Obligatio principalis. The obligation of a principal as opposed to that of a surety, or the obligation of a defendant which existed before litis contestatio as opposed to that after litis contestatio in a trial in which the creditor claimed the payment.

Obligatio quasi ex contractu. (i.e., quae quasi ex contractu nascitur = which arises as if from an agreement). An obligation arising from a situation which resembles one originating from a contract, but is not a contractual one because of the absence of an accord between the parties involved, as, e.g., in the case of negotiorum gestio, legatum per damnationem, the payment of a non-existing debt (indebitum), communio incidentis, guardianship, etc.—Inst. 3.27.—See OBLIGATIO.

Riccobono, AnPol 3-4 (1917) 263.

Obligatio quasi ex delicio (maleñoicio). An obligation arising from an illicit act which is not qualified as a delictum (quae ex delicio debere, tendi) but which nevertheless creates a liability, at times even for another's doings. Instances of such obligations are that of a IUDEX QUI LITEM SUAM FACIT, liability for diccta, effusa, posita, suspensa from one's house or dwellings (see ACTIO DE DELECTIS).—Inst. 4.5.

G. A. Palazzo, Obbligazioni quasi ex d., 1919; Y. Chastaignet. La notion de quasi deliti, Thése Bordeaux, 1927.

Obligatio re contracta. An obligation which originates from a contract concluded re, i.e., by handing over a thing to the future debtor.—See CONTRACTUS, COMMODATUM, DEPOSITUM, MUTUM, PIGNUS.

Brasiliello. St Bonfante 2 (1930) 541.

Obligatio rei. See OBLIGARE REM.

Obligatio verborum (verbis contracta). An obligation assumed through the pronunciation of solemn, prescribed words.—Inst. 3.15; D. 45.1.—See CONTRACTUS, STIPULATIO, DICTIO DOTIS, IURATA PROMISSIO LIBERTI.

Obligationes mutuae. See MUTUA PETITIONES.

Obligatus. (With regard to persons.) Bound by a contractual or delictual obligation; with regard to things (ager, fundus, aedes, res, bona, fructus, etc.) = given as a pledge (pignus) to the creditor or hypothecated (see HYPOTHECA).—See OBLIGARE REM, OBLIGATIO.

Obnuxius. One who is responsible for damages (damnum, mala) done to another; in a broader sense syn. with obligatus. With regard to criminal matters = one guilty of a crime (obnoxius criminis).

Obnuntiatio. Higher magistrates used to give notice (obnuntiare) to plebeian tribunes of unfavorable celestial signs which were considered as a bad prognostic for popular assemblies convoked or already commenced. Consequently, the gathering had to be revoked or interrupted.

Weinstock. RE 17; Bouché-Leclercq, DS 1, 582.

Obreptio. (From obreper.) Surreptitious concealing of true facts in order to obtain an advantage, in particular, to provoke a favorable decision (rescript) of the emperor. The term subreptio (subreper) has a similar meaning and refers rather to telling a falsehood for the same purpose. If one succeeded in obtaining an imperial rescript based on false allegations made by himself, his adversary in the trial proves the untruth of the pertinent facts and the presence of an obreptio, which led to a dismissal of the plaintiff's claim.

Obrogare legem (obrogatio legis). Repealing in part an existing law by the substitution of a new provision. Obscures. Not clear, abstruse. Obscure expressions of will are to be interpreted in a way "which seems more likely or which mostly is being practised" (D. 50.17.114). In the case of unclear terms used in a manifoldation of a slave, the interpretation should be rather in favor of his liberty. Syn. dubius, ambiguus.

Obsumero loco natus = born of low origin.


Obseuquium. A respectful behavior of a freedman towards his patron. There is no juristic definition of obseuquium, but it was taken to be customary (consuetum). A transgression of this duty (use of violence, audacity) exposed the freedman to the charge of ingratitude (see ingratus). A similar term is reverentia which was considered violated if the freedman sued his patron in court without permission of the competent magistrate.—D. 37.15; C. 6.6.

C. Coemini. St sui liberti 1 (1948) 239.

Observatio legis (legum). The observance of the law (laws).—See CONSUEPTU FORI.

Observatio rerum. The control (custody) of another's property. It is given to those who are put in possession of the debtor's property; see MISSIONES IN POSSESSIONEM.

Obse. A hostage. He can make a testament only with a special permission. Killing a hostage is treated as high treason (crimen maiestatis).

E. Vassaux, Des prisonniers de guerre et des otages en droit., Thése Paris, 1890.

Obseignatio (obsignatio). To affix a seal (to a written document, to a testament). Money in a sealed bag could be the object of a deposit; the depositee had no right to use the money and was obligated to return it in the same condition as he received it. This kind of deposit of money was used by a debtor when the creditor was absent or unable to accept the payment; see DEPOSITIO IN AEDIL.

See SIGNUM, SIGNARE.

Radin, RE 17.

Obstare. To impede, to be a hindrance. The term refers to prohibitions or obstacles (obstaculum) resulting from legal provisions or from exceptions which may be opposed to a plaintiff's claim. Nihil obstat = nothing is in the way (there is no hindrance). With this phrase the jurists used to strengthen their opinions and advices as not being opposed by the law.

Obstringere rem (pignus). To give a thing as a pledge to a creditor.
Obstringi. To be bound by an obligation (see obli-
gatio); obstringi actio (interdicto) = to be ex-
posed to, or to be sued by, a specific action (an
interdict).

Obtenerare. To obey. During a judicial proceed-
ing obtenere ius dicenti = to obey the orders of
the jurisdictional magistrate. The praetorian Edict
started with a section “if one did not obey the jur-
sisdictional magistrate (ius dicenti non obten-
ervet),” in which the praetor granted an action (actio
in factum) against the recalcitrant party in a trial,
both defendant and plaintiff. The action was of a
penal nature, the disobedient party being condemned
for the contempt of court to the full value of the
object of litigation (quantis ea res est). The edict
applied primarily to municipal (municipia, coloniae,
fora) courts which had not the necessary auxiliary
organs to enforce their orders.—Obtenerare is also
used of the fulfillment of the testator’s wishes (ob-
tenere voluntar) expressed in his testament.—
D. 2.3.

Lenel, Edictum perpetuum, 3rd ed. 1927. 51.

Obtensus. A pretext alleged in order to evade
the fulfillment of one’s obligations. Obtensus = under
the pretext. In imperial constitutions obtensus = with
regard, in the face of.

Obtinere. To obtain (an inheritance, possession, a
magistracy); obtinere a trial = to win the case.—
See obtinuit.

Obtinere legis vicem. See legis vicem obtinere.

Obtirngere. To accrue to a person (e.g., an inheri-
tance), to fall to a person’s share when common pro-
erty or an estate is divided. Syn. obvenire.

Obtinuit. (Syn. placuit, receptum est.) It is (has
been) held. The phrase refers mostly to the recep-
tion of a legal principle, a juristic opinion or a legal
custom, following the views of the jurists, judicial
practice, or a common usage. Sometimes also the
contrary opinion or principle is mentioned which was
overruled by that which “prevailed (praevaluit).”
Placuit often refers to an opinion of the jurists.
A. B. Schwartz, ZSS 69 (1952) 364.

Obvagulatio. According to the Twelve Tables one
could force a stubborn witness who refused to testify
on an act in which he had participated as a witness,
by summoning him publicly (obvagulatum ire) be-
fore his house, to appear before court as a witness.
Such a spectacular summons, if not justified, was
regarded a personal insult (contumix) since the
refusal of testimony by a person who was requested
to witness an act, was considered a dishonest action.
—See intestabilis.
Havelin, DS 4; Radin, RE 17, 1747; Mommense. Jur.
Schriften 3 (1907, ex 1844) 507.

Obvenire. See obtinere.

Obventiones. Proceeds, profits (distinguished from
natural products, fructus), income in rents from the
lease of a house or a ship (obventiones ex aedificis,
ex nave).

Occasio. An event, a happening (a marriage, an in-
eritance) from which (ex occasione) one acquires
or expects to acquire some gain. Occasio una-
piendi = a situation which affords the possibility of
usucapio.

Occasus solis. See solis occasus.

Occentare. To write or to recite a slanderous poem
(carmen famosum); to affect by witchcraft or sorcery.
Brecht, RE 17; F. Beckmann, Zauberei und Recht in Roma
Frühzeit, 1928; Hendrickson, CPhilo 20 (1925) 289;
Lindsay, Zöf. 44 (1949) 240; R. E. Smith, CI Quarterly
44 (1951) 169.

Occultare (occultatio). To conceal a person (a crimi-
nal); se occultare = to hide oneself to evade sum-

Occultator. A hide, a concealer (of thieves, of stolen
goods or of a deserter).—C. 12.45.

Occupantem melior condicio est. “He who holds a
thing is in a better position” (D. 9.4.14 pr.). The
rule refers to the better procedural situation of the
holder of a thing when other persons claim the same
thing. When several persons sue the same defendant
by actiones nosaues or actiones de peculio, the claim-
ant who first obtained a favorable judgment was in
a better situation than the other claimants since his
claim was first satisfied by nosuae deditio or from the
peculium.
A. Biscardi, Il dogma della collisione alla luce del dir. rom.,
1935, 115.

Occupatio. A profession, employment, both civil and
military.

Occupatio. A mode of acquisition of ownership by
taking possession of a thing which does not belong
to anybody (see res nullius) and is capable of
being in private ownership. Among such things are
in the first place animals caught by hunting or fish-
ing, things found on the seashore, things abandoned
by their owner, and the like.—See venatio, piscatio,
derelictio, insula in flumine Nata, and the fol-
lowing items.
Kaser, RE Suppl. 7; Beauchet, DS 4; Roman, O. delle
res derelictae, AnCam 4 (1930).

Occupatio a fisco. The seizure of private property
by the fisc either for debts due (in particular by tax-
farmers, see publicani) or as a penalty in criminal
matters.

Occupatio rerum hostilium. (Called in literature
occupatio bellica.) In addition to the occupation of
the enemy’s land after a victorious war (see aeger
occupatorius), things belonging to the enemy used
to be seized in war time. When taken by a common
action of the army as a booty (see praeda), they
became property of the Roman state, but, when seized
during an isolated enterprise of a soldier, they became
his property. Occupation of immovables was ex-
cluded from such kind of acquisition of private ow-
ership, since they were always acquired for the state.
Kaser, RE Suppl. 7, 686; Beuchet, DS 4, 143; J. Brav, Étude sur le droit pénal militaire des Rom., 1894, 126; De Francisci, AVen 82 (1923) 967; Vogel, ZSS 66 (1948) 394.

Occurrens. To help one by a procedural or another legal measure.

Octava. A special tax of one-eighth (12½% per cent) of the value of the merchandise imposed on sales on a market.

Millet, Méi Glares 1932, 615.

Octavensus. A Roman jurist of the late first century after Christ.

Berger, RE 17, 1787; Ferrini, Operre 2 (1929, ex 1887) 113.

Octaviana formula. See metus.

Octoviri. A group of eight functionaries in the earlier organization of municipal administration. They had no jurisdictional power.

Rudolph, RE 17; idem, Stadt und Staat im röm. Italien, 1935, 66; E. Manni, Per la storia dei municipi, 1947, 141.

Odofredus. A renowned post-glossator in the thirteenth century (died in 1265).—See GLOSSATORES.

Kummer, NDI 9.

Oeconomus ecclesiae. An administrator of Church property, assistant of the bishop in administrative matters. He acted also as dispensator pumperum (= the guardian of the poor).—See revereNTissimus.

Offendere. To offend, to insult. An offense (offensa) committed by a slave against his master was punished by the latter.—See INIURIA.

Offendere legem (legi). To violate, to commit a breach of a legal enactment (a statute, an edict, a senatusconsultum).

Offensa. See OFFENDER.

Offerre. To make an offer. Offerre pecuniam = to offer the payment of a debt; offerre satisfacionem, cautem = to offer a security.—See ius offerendae pecuniae, obligatio.

Offerre iusiurandum. (Deferre iusiurandum.) See iusiurandum necessarium.

Offerre se lit. See LITI SE OFFERRE.

Officere lumini. See servitutNE LUMINI OFFICIATOR.

Officiales. Officials of a lower grade in the imperial administration (clerks, assistants, even workmen), mostly freedmen and slaves.—C. 12.47.

Boak, RE 17, 2049; Lécivain, DS 4.

Officinatores monetae. Officials of the imperial mint, mostly freedmen.—See nummularius, moneta.

Vittinghoff, RE 17, 1943.

Officium. A moral duty originating in family relationship or friendship (officium amicitiae); a duty connected with the defense of another’s interests (officium tutoris, curatoris, advocatiorum). In public law officium denotes the official duties of any person employed in public service as well as the office (bureau) of a magistrate together with its personnel. The term is applied also to provincial offices and officials, in particular to the provincial governors. The first books of the Digest and of the Code contain a large number of titles dealing with the duties of various imperial officials in Rome and the provinces. Several jurists (Venuleius, Ulpian, Paul, Macer, Arcadius Charissi) wrote monographs “De officio” (= On the duties) of higher governmental officials.

—Ex officio = by virtue of one’s official duties. In officio alicius esse = to be employed in one’s services.

—Inst. 4.17; D. 1.10–22; C. 1.40; 43–46; 48; 11.39.

—See magister officiorum.

Boak, RE 17; E. Bernert, De vi atque usi vocabuli o., Diss. Breslau, 1930.

Officium admissorum. See admissiones.

Officium iudicis. The complex of legal and customary rules (mos iudiciorum, usus fori) which the private judge (iudex) had to observe in his judicial activity in addition to the binding instructions of the formula imposed on him. Syn. officium indicans, officium arbitri. “What a judge has done which does not pertain to his duties, is not valid” (D. 50.17.170).—See usurae quia officio iudicis praestantur.

Officium ius dicentis. Comprises all rights and duties within the competence of a judicial magistrate. The term refers in the first place to the praetor (officium praetoris).—D. 1.14; C. 1.39.

Officium palatinum. An office in the imperial residence. The officia palatina became in the later Empire state offices. Their number increased considerably in the course of time and their holders enjoyed manifold privileges. Princeps officii = the head of an officium palatinum.—See PALATINI.

Officium pietatis. See PIETAS.

Officium praetoria. See officium IUS DICENTIS.

Officium virile. Duties, services accomplished by men (munera virilia) from which women were exempt. An officium virile was representing another in a trial, guardianship, curatorship, and the like.—See munera.

Offilius, Aulus. A jurist of the last century of the Republic. He was a disciple of Servius Sulpicius Rufus and the author of the first commentary on the praetorian Edict.

Müller, RE 17, 2040.

Olim. Once, formerly. Through olim jurists allude to earlier law to which they oppose the law being in force in their own times (nunc, hodie, temporibus nostris = nowadays, in our times).

Omissum legibus. What has been neglected in statutes (laws). “What has been omitted in the laws, will not be neglected by the conscience of those who render judgments” (D. 22.5.13).

Omittere. To fail to fulfill one’s duty, or not to exercise one’s right, e.g., to neglect the formal acceptance of an inheritance or the request of a honorum possession, to fail to bring a suit in due time. In certain cases the failure to make use of one’s right might cause its loss (see non usus). D. 29.2.

Hensig, Eg Richard Schmidt 1 (1932) 3.
Omittere. (In a testament.) To omit a person in a last will by neither instituting him as an heir nor disinheriting him. Syn. praeterire.

Omnem. A constitution of the emperor Justinian concerning the organization of legal studies. It was addressed to the teachers of law and issued on the same day as the Digest (December 16, A.D. 533). Omnim is the first word of the enactment. — See digesta Justiniani.

Ommes. All men, the whole people (populus). — See res communes omnium. Omnes often refers to all jurists (e.g., inter omnes constat, see constat).

Ommes (omnia). In certain phrases, as per omnia (= in every respect), in omnibus casibus (= in any case), omnes omnino (= all throughout), omnimodo (= at any rate), the word occurs frequently in interpolated sentences as an expression of the tendency of Justinian’s collaborators toward generalizations.

Guarnieri-Citati, Indice* (1927) 63; idem, Fische Koschaker 1 (1939) 144.

Ommia iudicia absolutoria sunt. See absolutoriae.

Ommimodo. By all means, at any rate. — See omnes.

Guarnieri-Citati, Indice* (1927) 62.

Ommino. (Combined with omnes, omnin.) See omnes.

Onera hereditatis. Debts, liens, taxes, and all kinds of charges by which an estate is encumbered.

Onera matrimoni. Expenses connected with the common life of married persons. “There should be dowry where there are burdens of marriage” (D. 23.3.56.1). — See dos, parapherna.

Albertario, Studi 1 (1933) 295; Wolff, ZSS 53 (1932) 360; Dumont, RHD 22 (1943) 34.

Onerare libertatem. To aggravate the liberty of a freedman by imposing on him at the manumission heavy duties exceeding the normal obligations of a freedman towards his patron (libertatis onerandae causa imposita). A stipulation of the freedman, assuming that the event that he offended his patron, was void for the reason that he would always have lived in fear of being forced to pay the penalty (metu exactionis). However, a promise made by a slave to pay the patron a certain sum as a compensation for the manumission, and repeated by him after he was freed, was not regarded as a promise libertatis onerandae causa.

C. Astoul, Les charges imposées par la maître à la liberté, Thése Paris, 1890; Albertario, Studi 3 (1936) 397; C. Cosentini, Studi sui liberti 1 (1948) 95.

Onerari. To be burdened with debts and other charges or expenses. The term is applied primarily to an heir on whom the payment of legacies and fideicommissa is imposed. Hence onerosa hereditas an inheritance encumbered with excessive debts and legacies.

Oneratus. See honoratus, onerari.

Onerosa hereditas. See onera hereditatis, onerari.

Onus. See onera, caduca, actio onesis aversi, servitut oneris ferendi.

Onus probandi. The burden of the proof. — See probatio.

Levy, Iura 3 (1952) 171.

Ope consilio. By aid and counsel. The phrase is applied in criminal matters with reference to all kinds of accessories who help another in committing a crime. It occurs in connection with crimes against the state or the emperor, with adultery and, in the field of private delicta, with the theft. In the formula of actio furts the two words were attached to the name of the defendant whether he was the principal thief or an accessory. In the first case the words covered the doing of the thief himself (acting with design, intention, see consilium), in the second case they referred to abettors and instigators. Ope means physical help, consilio means no simple advice, but instructing and encouraging. “He who persuades and impels another to commit a theft and instructs him with advice, is held to give a consilium, one who gives him assistance and help in taking away the goods is acting ope”. (D. 47.2.50.1).

M. Cohn, Beiträge zur Bearbeitung des röm. R., 1880, 10; R. Balouditch, Étude sur la complicité en dr. pénal rom., 1920, 44.

Ope exceptionis. Through an exception. Syn. per exceptionem. Ant. ipsa iure. The phrase is used to indicate that the defendant had to oppose an exception in order to repeal the plaintiff’s claim. — See exceptionem, compensatio.

Opera publica. Public constructions, such as buildings, bridges, harbors, roads. They were under the supervision of the censors (see censors), or special functionaries who from the time of Augustus had the title of curatores and depended upon the praefectus urbi. — D. 50.10; C. 8.11 (12). — See procuratores operum publicorum, exactor.

Lengle, RE 18; Humbert, DS 4; E. De Ruggiero, Lo Stato e le opere pubbliche in Roma antica, 1925.

Operae. (Pl.; rarely used in sing. opera.) Labor in all its manifestations, both manual and intellectual. Syn. labor (from the fourth post-Christian century). Operae applies also to the work of animals (operae iumenti). Operas praestare = to render services. To acquire ex operis (or operis) = by one’s work; the phrase is opposed to acquisitions ex re = by means (money) taken from one’s property. — See locatio conducto operarum, and the following items.

F. De Roberta, Rapporti di lavoro, 1946, 13.

Operae animalium. The right to use another’s beasts of burden. Such right was a personal servitude (usus iumenti, pecoris, ovium), usually left by a legacy. It was perhaps a creation of the later (Justinian’s) law.

G. Grosso, L’uso, abitazione, 1939, 128.
Operae diurnae. Services (work) to be done in daytime.

Operae fabriles. Labor done by professional craftsmen (fabri).

Miteis, ZSS 23 (1902) ; C. Cosentini, St sui liberti 1 (1948) 125.

Operae liberales. (Termed also artes liberales, ingenues.) Services rendered by persons exercising a profession worthy of a free (liber) man, primarily intellectuals (lawyers, physicians, architects, land surveyors, etc.). The operae liberales could not be the object of contract of hire (locatio conductio operarum). But payment for such services could be claimed through proceedings of cognito extra ordinem. Ant. operae illiberales (term unknown in the sources, but used in modern literature).—See HONORARIUM, STUDIA LIBERALIA.

Heidrich, IEb 88 (1940) 142; Siber, ibid. 161; M. Boitard, Les contrats des services gratuits, 1941, 9.

Operae liberti. Services rendered by a freedman to his patron. The duties assumed by the freedman could not be sued for by an action (obligatio naturalis) unless he promised his operae under oath (see IURATA PROMISSIO LIBERTI) or through a stipulatio operarum.—D. 38.1; C.6.3.—See ONERARE LIBERTAE TEM.

Lecrivain, DS 3, 1215; G. Segrè, StSen 23 (1906) 313; Thelohan, Et Girard 1 (1912) ; Biondi, AnPer 28 (1914) ; M. Chevrier, De servent promissorio, Thèse Dijon, 1921, 153; O. Lenvel, Edictum pop. (1927) 338; J. Lambert, Operae liberti, 1934; Giffard, RHD 17 (1938) 92; Lavaggi, Successione dei liberi patroni nelle opere dei liberti, SDH 11 (1945) 236; E. Albertario, Studi 4 (1946) 3, 13; C. Cosentini, St sui liberti 1 (1948) 103, 2 (1950).

Operae officiales. Services of personal nature due by a freedman to his patron, such as to accompany him, to travel with him, to administer his affairs, and the like.

Miteis, ZSS 23 (1902) 143; C. Cosentini, St sui liberti 1 (1948) 125.

Operae quae locari solent. See LOCATIO CONDUCTIO OPERARUM.

Operae servorum. (As a personal servitude.) The right to use the services or labor of another's slave. Syn. usus servi. Such right used to be bequeathed by a legacy.—D. 7.7; 33.2.

Cicogna, Fil 31 (1906) ; G. Grosso, Usu, abitazione, opere dei servi, 1939, 121.

Operarius. A workman, one who renders subordinate services.—See MERCENARIUS.

Operis novi nuntiatio (denuntiatio). A protestation by the owner of an immovable (is qui nuntiat) against a neighbor starting a new construction (opus novum) on his realty which might prevent the former from the use of his property. A nuntiatio is justified when the objector acted to defend his right, to prevent a damage which might be caused by the opus novum, or when the construction endangered the use of a public place or road. In the last instance any Roman citizen was entitled to protest; in other cases, only the owner whose property was exposed to damages, the beneficiary of a servitude, or one who held the land on a right similar to ownership (an emphyteuta, a superficarius). He to whom the protesting notice was given (is qui nuntiatum est) was bound to cease the construction or to give the objector security to the effect that he would not suffer any damages or that the former state would be restored (satisdatio de operis resituiendo). If he failed to give such security, the objector might request an interdict (interdictum ex operis novi nuntiationes, named in literature interdictum demolitorum) by which the praetor ordered the demolition of what had been constructed. A refusal to comply with the interdict led to a normal trial (see INTERDICT). The builder of the opus novum had another remedy to evade the prohibition resulting from the nuntiatio. He might ask the praetor for the annulment of the operis novi nuntiatio (remissio operis novi nuntiationis) if he could prove that the objector had no right to oppose the projected construction. The operis novi nuntiatio was reformed by Justinian and various innovations were introduced through interpolations performed by the compilers on classical texts leaving, however, some details in obscurity.—D. 39.1.—See PATTENTIAM FRAESTARE, DEMOLITIO.

Berg, RE 9, 1670; 18; Humber, DS 4; Bruno, NDL 4, 713; Martin, Et Girard 1 (1912) 123; R. Henle, Unus casu, 1915, 406; Niedermeyer, St Riccobono 1 (1936) 253; Branca, SDH 7 (1941) 313; idem, Antilist 12 (1941) 96, 128, 156; M. David, Et sur l'interdit quand vi aut clam, AnnUniv Lyon 3, ser. 10 (1947) 31; Giosfredi, SDH 13-14 (1947/8) 93; Berger, lura, 1 (1950) 102, 117; Cosentini, AnCat 4 (1949-50) 297.

Opinatores. See OPINIO.

Opifex. A workman, an artisan.


Opinio. (In administrative law.) An estimation of a provincial landed property (in the later Empire) for the assessment of the import in corn to be delivered by the landowner for the army. Opinatores = officials charged with the evaluation and collection of such corn contributions.

Cagnat, DS 4.

Opiniones. Opinions on legal questions, expressed in responsum or elsewhere. There is only one work known under the title Opiniones which was excerpted for the Digest, namely, by Ulpian (in six books). The collection of Ulpian "Opinions" was perhaps compiled in postclassical times.

Jura, RE 5, 1450 (no. 12); G. Rotondi, Scrutini giur. 1 (1922) 453; F. Schulte, History of R. legal science, 1946, 182.

Oportere. A legal obligation recognized and sanctioned by the ius civile. The verb appears in the intentio of the procedural formula in actiones in personam and is there connected with another verb which describes the nature of the defendant's obligation: dare (= to give), dare facere (= to do), damnun decidere
Optinere, Optingere. See Obtinere, Obtingere.

Optio. A title of military and civil officials. In the army optio = a substitute of a centurio. There were also optiones in specific military services as well as in the civil administration, as, for instance, in the staff of the praefectus urbi. Optio was the leading official in the imperial mint.

Lammert, RE 18; Vittinghoff, RE 17, 2044.

Optio. A selection. Syn. electio. A selection between two or more things could be granted the legatee in a testament (see legatum optionis) or established in an agreement in behalf of a contractual party, as, e.g., in a stipulation to give either the slave Stichus or Pamphilus.—See optio servì.

Optio legata. See legatum optionis.—D. 33.5.

Optio servì. The election of a slave. It was granted a legatee as the right to select one slave among those who belonged to the estate. The legatee had the choice also when “a slave” was generally bequeathed without any precise indication, and there were several slaves in the estate. If the testator did not fix a date for the choice, the heir might ask the praetor to settle a term. Non-execution of the selection by the legatee within the term fixed resulted in the loss of the right and the heir might offer the legatee a slave of his own choice.—See legatum optionis.

Optio tutoris. The choice of a guardian (tutor). A husband under whose power (see manus) his wife was, could in his testament dispose that she might freely choose her guardian. The guardian appointed at the widow’s request = tutor optionis. The pertinent disposition of the husband could not be restricted by the addition of a condition.—TUTELA MULIERUM. Sachers, RE 7A, 1592.

Opus. See locatio conductio operis, adprobare, interdictum quod vi aut clam.

Opus metalli. See METALLUM.

Opus novum. See operis novi nuntiatio.

Opus publicum. See opera publica, inscribere operè publico.

Opus publicum. (In criminal law.) Forced labor on a public construction or a public work as a punishment for crimes (damnatio in opus publicum) committed by persons of the lower classes of the population. Working in an opus publicum comprised the construction or restoration of roads, cleaning of sewers, service in public baths, bakeries, weaving-mills (for women) and the like. Condemnation for lifetime involved loss of Roman citizenship; in other cases the status of the condemned person remained unchanged.

Lengle, RE 18, 828; Lécrivain, DS 4; Brasileiro, Repres- siões penais, 1937, 361.

Oraculum. An imperial enactment (in the language of the imperial chancery of the later Empire).

Orare causam. See causas dicere, caussam ferobar.

Oratio (principis in senatu). A speech of the emperor made in the senate by himself or by his repre-
sentative (a quaestor) in order to propose a senatusconsultum which alone became the law. This procedure was observed in the first century of the Principate alongside the other form of proposing senatusconsula by high magistrates. From the time of Hadrian the proposals of magistrates fell into disuse and the emperor’s discourse in the senate, even made by his representative in his absence, became the normal way leading to a senatusconsultum. The emperor’s proposal was approved by the Senate without discussion; the approval became a simple formality. Hence oratio principis as a technical term replaced that of senatusconsultum from which the end of the second century was applied only to earlier senatusconsulta. Thus, in the last analysis, the oratio principio turned out to be an imperial law, promulgated in the senate. For more important orationes, see the following items.—See CONSTITUTIONES PRINCIPUM.

Editions: in all collections of Fontes (see General Bibl., Ch. XII), the most recent in Riccobono, FIR 1°, no. 44 (Bibl.); L. Mitteis, Grundzüge und Christentum der Papyruskunde 2, 2 (1912) no. 370; Stromü, SBMünch 1929, fasc. 3. —Weiss, ZSS 51 (1931) 336.

Oratio Hadrani. Prohibited an appeal from the decisions of the senate to the emperor.

Oratio Hadrani. (On fideicommissa.) Confirmed by a senatusconsultum, ordained that a fideicommissum left to peregrines be confiscated by the state.

Oratio Marci. (On appellatio.) The Emperor Marcus Aurelius ordered that terms fixed for appellatio had to be reckoned as TEMPSUTILE.

Oratio Marci. On crimen expilatae hereditatis.—See CRIMEN EXPIATAE HEREDITATIS.

Oratio Marci. (On in ius vocatio.) Prohibited from summoning one’s adversary into court during the harvest (messis) or vintage (vindemia) except in urgent cases, as, for instance, when the plaintiff would lose his action through the lapse of time.

Oratio Marci. (Of the Emperor Marcus Aurelius.) Admitted children to intestate succession of their mother.—See SENATUSCONSULTUM ORBITIAM.

Oratio Marci. (Of the Emperor Marcus Aurelius.) Protected slaves manumitted in a testament of their master who had been assassinated. According to SENATUSCONSULTUM SILANIATUM in such a case the testament could not be opened (see APERTURA TESTA-

MENTI) before the discovery of the murderer. The oratio settled that, if a slave was manumitted in the testament, his child born in the meantime, i.e., before the opening of the will, was free, and profits which would have come to the slave if he were freed immediately after the testator’s death, belonged to him although the testament entered in force much later.

Oratio Marci. (Of the Emperor Marcus Aurelius.) On confessio in iure. The contents of this oratio is not quite clear; it is mentioned in connection with CONFESSIO IN IURE.

Giffard, RHD 29 (1905) 449; W. Püschel, Confessus pro indicato est, 1924, 156; Wlassak, Konfessio, SBMünch 1934, 42.

Oratio Marci. (Of the Emperor Marcus Aurelius.) On marriages, forbade marriage between a senator’s daughter and a freedman, and between a tutor (or curato) and his ward. In a monograph of Paul the latter prohibition appears as introduced by an oratio “divorum Marci et Commodus” (of the late Emperors Marcus and Commodus).

Oratio Marci. (On transactions concerning alimony.) Ordered that they had to be confirmed by the praetor.

Oratio principia. See oratio.

Oratio Severi. (Of A.D. 195.) Prohibited tutors (and curators?) from alienating or pledging real property of their wards unless the transaction was allowed by the praetor.

Sachers, RE 7A, 1550; Göttner, Fasch Martius 1911, 247; Peters, ZSS 32 (1911) 259; E. Albayrger, Studi 1 (1933) 477; Brasili, St Soluzi 1948, 691; idem, RIDA 4 (= Méth De Visscher 3, 1950) 204.

Oratio Severi et Caracalla. Concerning donations between husband and wife, see DONATIO INTER VIRUM ET UXOREM.

Orator. (In judicial proceedings.) One who assists to a civil trial by advice and speech both before the magistrate (in iure) and the judge (apud iudicium), or who defends the accused in a criminal trial. See ADVOCATUS, PATRONUS CAUSAEL. Although trained in law, the orator needed the help of a professional jurist in a difficult case; in particular in civil matters such help in the first stage of the trial before the praetor might be necessary to write down the formula and its complicated parts or when a new kind of action was requested. Therefore the activity of the orator as an assistant of the party has to be distinguished from that of the jurists. See TURIPRUDENTIA. Some lawyers combined both professions, but instances of a transition from one profession to the other are also known. Under the Principate the two professions are neatly separated. In the second stage of a civil trial before the private judge the eloquence of the orator might exercise a greater influence on the final decision since the proceedings were closed after a recapitulation of the legal arguments and the results of the proofs by the representatives of the parties. Rhetoric had an important role in judicial oratorship inasmuch as the rhetoricians in
their capacity as teachers dealt with legal problems on the ground of real or fictitious cases.—See rhetores (Bibl.), causam perorare, causas dicere.


Orbi. Married persons who have no children.—See lex iulia de maritandis ordinibus, senatusconsultum memmiunum.

Orbis Romanus. The Roman Empire.


Orcinus libertus. See libertus orcinus.

Orbitas. The state of being married and childless.

See orb. In imperial constitutions orbitas means the loss of either a child or a parent.—C. 8.57.

Ordinare. (In the language of the imperial chancery.)

To appoint a tutor, a curator, a procurator.

Ordinare iudicium (ordinatio iudicij). Comprises the whole activity of the magistrate (the prætor) in the proceedings in iure in a civil trial.—See the following item.

Höder, ZSS 24 (1903) 201; Lenin, ibid. 335.

Ordinare litem (ordinatio litis). Apparently a special act in a trial concerning the status of a person as a free man (causa liberalis), in particular of a defender of the liberty of the person involved and the acceptance of a security (cautio) offered by him. The act is of importance since after litis ordinatio (litis ordinata) the person whose liberty was under examination was considered free until the final decision was rendered. With regard to other trials the phrase ordinare litem seems to be of postclassical origin.—See causa liberalis, adlectio.

Wlassak, ZSS 26 (1905) 395; Partsch, ZSS 31 (1910) 424; M. Nicotrau, Causa liberalis, 1933, 116.

Ordinare testamentum (ordinatio testamenti). To make a testament. Ordinare refers also to codicils.

—Inst. 2.10; 6.23.

Ordinarium. Normal, regular. With reference to procedural institutions ordinarius indicates all those which are connected with the normal organization of the courts and the procedure before them (ordo iudiciarum). Ant. extra ordinem, extraordinarius. With regard to officials and offices a distinction is made between dignitates ordinariae (officials in active service) and dignitates honorariae which are only honorific titles.—See iudex ordinarius, ius ordinariurn, iudicium extraordinarium, honorarium.

Börn, RE 18.

Ordo. Generally means a sequence, an order or rather a right order. Hence ordine = in a proper order. In the law of successions ordo refers to the order in which a group (a class) of successors under praetorian law (honorum possessores) are admitted to the inheritance, see honorum possessio intestati, edictum successorum.—Ordo is also the order in which citizens are called to fullfil public services (munita).

—See the following items.

Kübler, RE 18; Sachsen, RE Suppl. 7, 792.

Ordo. (With reference to a group of persons.) The senate (ordo amplissimus). For the municipal council, see ordo decurionum. For ordo in the meaning of a social class, see ordo equester (persons of equestrian rank) and ordo senatorius (persons of senatorial rank). Ordo is also used of professional groups, as, for instance, ordo publicanorum (taxfarmers, see publicani), or of persons in subordinate service of the state (ordo scribarum, apparitorum, and the like), who were organized as associations.—C. 10.61.

Ordo amplissimus. The senate.—See senatus.

Ordo collegii. Indicates either an association, a guild (see collegium) or its administrative board.

Kübler, RE 18, 931.

Ordo decurionum. The municipal council. See municipium. The ordo decurionum was the center of the municipal administration and functioned also as a superior instance for the decisions of municipal magistrates in all administrative and certain judicial matters. The decisions of the ordo were passed by a simple majority, in more important matters by two-thirds or three-fourths of the votes. Members of the council were appointed by the highest magistrates of the municipality (see magistratus municipales), in some municipia by their citizens or by the council itself (see adlectio). The new members paid a fee of admission to the council (summa honorarium, see honorarium). The membership in the ordo decurionum was considered a dignity, and the families of the decuriones constituted the local nobility. From the middle of the third post-Christian century the situation of the decuriones changed radically to their detriment as a result of the interference of the emperors in the municipal administration, especially in financial and taxation matters. Heavy financial burdens were imposed on the decuriones; the former local nobility became in the later Empire the most vexed group of the municipal population. The membership in the curia (this was the new name for the ordo decurionum, the decuriones being termed ever since curiales) became hereditary. The few personal privileges (as, for instance, to be judged by the governor of the province or to be exempt from the most severe penalties or torture in criminal matters) meant very little in face of the financial and personal burdens they had to bear. They were liable for the amount of taxes imposed on the citizens of the municipium. An extensive imperial legislation, of which a considerable portion is preserved in the Theodosian and Justinian Codes, dealt with the curiales, their duties and the penalties inflicted for violation of the pertinent laws and attempts to evade the obligations imposed. Under Justinian the curia became a kind of a penitentiary since the assignment to the curia
was applied as a punishment.—D. 50.2; C. 10.32-35; 12.16.—See Decuriones, Albus Curiae, Quinquennales, Duae Partes, Motio ex Ordine.
Kübler, RE 4 (sv. decurio); Kornemann, RE 16. 621.

Ordo dignitatum. See DIGNITAS.

Ordo equester. See EQUITES.

Ordo iudiciarius privatorum. The ordinary civil, bivartite proceeding in the classical period, to be distinguished from proceedings extra ordinem. The term was coined in literature as a counterpart to the extraordinary procedure, see cognitio extra ordinem.
Sachs, RE Suppl. 7, 793; Lécrivain, DS 4.

Ordo iudiciarius publicorum. The normal criminal procedure (see quaestiones perpetuae) in the last centuries of the Republic and under the Principate, distinguished from cognitio extra ordinem in criminal matters which gradually superseded the quaestiones procedure owing to the imperial legislation and the transfer of the criminal jurisdiction to the emperor and bureaucratic officials.—See accusatio, inquisitio.
Sachs, RE Suppl. 7, 797; Lécrivain, DS 4.

Ordo magistratum. See CURSUM HONORUM.

Ordo senatorius. A privileged social group from the times of Augustus, composed of the members of the senate and their families (agmatic descendants until the third degree with their wives) and of persons to whom the emperor granted the senatorial rank (see clavis lati). Possession of property of the value of at least one million sesterces was required. Theordo senatorius enjoyed various privileges both in civil and criminal matters. The highest civil and military offices in the state (praefectus urbi, praefectus aerarii, legati iuridici, commanders of legions, governors of provinces, etc.) were accessible only to persons of senatorial rank. Lower in social rank was theordo equester (see EQUITES). Persons of equestrian rank could obtain the admission to the senatorial rank from the emperor (see adlectio). Both these privileged classes were referred to as uterque ordo when a legal norm applied to both of them.
Kübler, RE 18, 931.

Oriens. The Eastern part of the Empire.—See COMES ORIENTIS, DIOECESIS.

Originalis. One who belongs to a social group or community by birth (originalis colonus).

—C. 10.39.—See INCOLA.

Origo. The birthplace. A person acquired the local citizenship in his orgeo if he was the son of a citizen of the same locality (municeps). He became a civis suae civitatis (= a citizen of his city). Origo was different from the domicilium of a person, if he took domicile in another municipality than in that of his birth. A manumitted slave acquired ius originis in the origo of his patron, an adopted person in that of his pater adoptivus. Municipal citizenship could be granted by the municipal council to a person who was born elsewhere. A person who had origo in a given community was subject to public charges there without regard to the circumstance whether or not he had his domicile there.—C. 10.39.—See INCOLA, MUNICIPIUM, DOMICILIIUM, MUNERA.
Berger, RE 9; 1252; Cus, DS 4; A. Viscardi. Note preliminare sull'isfoni imper. ram., St Colisse 1940.

Ornamenta. Distinctive titles and insignia of high magistrates (ornamenta consularia, praetoria, quaestoria) or of senators (ornamenta senatoria). Ornamenta were granted under the Principate as a personal distinction to persons who had never been magistrates or had held a magistracy of a lower rank than the ornamenta bestowed on him. See ADLECTIO, HONORARI. Municipal magistrates and decuriones had also ornamenta (ornamenta decurionalia, duoviralia).—See INSIGNIA.
Bocsák, RE 18; Lécrivain, DS 4.

Ornamenta (ornatus) aedium (domus). Things which serve to adorn a building. They are distinguished from instrumentum domus since the latter "pertain to the protection of a house, and the ornaments serve for pleasure" (D. 33.7.12.16). To ornamenta belong pictures, sculptures, and other things which embellish a house.—See INSTRUMENTUM.

Ornamenta iumentorum. An ornamental equipment (carpasion, trappings) of beasts of burden which they used to wear when sold at the market. According to the aedilian edict which dealt with the sale of domestic animals, the ornamenta were considered sold together with the animals, and the buyer could claim them by a specific action.—See DICTUM AEDI-LIUM CURULIUM.

Ornamenta mulierum. Women's ornaments (jewelry). The term is discussed by the jurists in connection with legacies of ornamenta mulierum.—D. 34.2.—See IPUMPS.

Ornamenta triumphalia. Ornaments worn by a military commander during his triumphal entrance in Rome after a victorious war.—See TRIUMPHUS.
Borszák, RE 18, 1121.

Orsatio provinciariae. The assignment of military units to a province for its security, together with the necessary provisions of food and money for the expenses of administration. The senate was the competent authority.
O'Brien-Moore, RE Suppl. 6, 728.

Ost fractum. An injury inflicted on a person and consisting in the fracture of a bone. It is mentioned already in the Twelve Tables as a punishable crime by the side of membro ruptum which comprises major damages to a human body.
Osculum. A kiss. If a man kissed his fiancée at the conclusion of the betrothal (osculo interventiune) and died before the marriage, the woman might keep one-half of the gifts he had given her; the other half had to be returned to the heirs of the deceased, according to postclassical law.

M. B. Pharr, CUI 42 (1947) 393.

Ostendere. To prove. It is a favorite term in Justinian’s constitutions; it occurs also in some interpolated texts.

Guarnieri-Citati, Indice, 1927, 63.

Ostentatio. A display, an exhibition. Consumable things (see res quae usu consumuntur) could be the object of a gratuitous loan (commodatum) if they were used only for an ostentatious show (ostentatio) and a vain display (pompa).

Ostia. A house door. A lease of a house or a dwelling could be unilaterally dissolved by the lessor if the landlord refused to restore doors (and windows, fenestrae) which were in a bad condition. On the other hand the tenant who provided the house with doors at his own expense had the right to take them away (see ius tollendi) after restoring the entrances to their former condition.

Ostius. A janitor, normally a slave.

Otiosus. Idle, unemployed, free from charges. Otiosa pecunia = money not lent out on interest.

Ovatio. See triunphus.

Ovile. An enclosure on the Campus Martius (= the field of Mars in Rome) where the comitia centuriata gathered and voted (suffragia ferre). The term became a popular expression for a voting place. The official term was saeptum. Saepta were also termed the enclosed places assigned to the single tribus or centuriae for the purpose of voting.

Rosenberg, RE 1A (s.aepta).

P

Pabulatores. Military units sent out to provide forage for horses.

Lambert, RE 18.

Pacisci. See pactum, talio.

Pacisci de crimen. An agreement with a wrongdoer to the effect that one would not bring an accusation against him (de non accusando) or would accuse him but conduct the accusation in a way to make the culprit be absolved.—See praetorius, tergiveratio, senatusconsultum turbillianum.

Kaeser, RE 6A, 2016; Levy, ZSS (1933) 186; Bohacek, St Riccobono 1 (1936) 343.

Paconius. An unknown Roman jurist of whom only one text is preserved in the Digest. He is probably identical with Pacunius, also represented by a single text in the Digest.

Berger, RE 19 (no. 6).

Pactio. See pactum.

Pactio collegii. The by-laws of an association (see collegium) voted on and passed by the members to deal with the internal organization of the association (pactionem ferre, constituiere). Syn. lex collegii.

Pactio libertatis (pro libertate). An agreement with the master of a slave under which money was given to him in advance (or promised) in order that the slave be manumitted.

Pactiones et stipulaciones. Facts and stipulations between the interested parties served for the constitution of praedial servitudes or of a usufruct on provincial soil by agreement, since iuscutum and in mere cession, the civil ways of the constitution of such rights, were not applicable to provincial land.—See servitutes praediorum, usufructus.


Pactum. "The agreement (placitum) and consent of two or more persons, concerning the same subject (in idem)" (D. 2.14.1.2). Since the earliest times the term applied to any agreement. Even in international relations an agreement between two states (such as a peace treaty) or between the commanders of two armies engaged in a fight, was termed pactum. In the law of obligations pactum (pacticis) is used in the broadest sense, both with regard to contractual and delictual obligations. With regard to the latter, pactum referred to a composition between the offender and the person injured by the wrongdoing (delictum) and still in classical law a transaction with the person damaged excluded the availability of the pertinent penal action (e.g., in the case of a theft the actio furti, or in the case of iuris the actio iniuriarum). In such cases the pactum produced the extinction of an obligation. In the province of contractual obligations the development of pacta (formless agreements) was due to the praeatorian Edict in which the praeator proclaimed: "I shall protect pacta converta (agreements, mutual understandings) which were concluded neither by fraud, nor contrary to statutes, piebiscites, senatusconsulta, imperial decrees, or edicts, nor with the intention to evade fraudulently one of those enactments" (D. 2.14.7.7). The protection was granted in the form of an exceptio if one party was sued contrary to the agreement reached in a formless pactum. In iudicia bona fides, governed by good faith, an exception was superfluous inasmuch as the judge had to pass the judgment according to the principles of bona fides which implied that any reasonable agreement between the parties be taken into consideration.—D. 2.14; C. 2.3.—See contractus, exceptio pacti, and the following items.

Condannari-Michler, RE 18; Beauxch. DS 4; NDJ 9 (Anon.); Ferrini, Operre 3 (1929 ex 1992) 243; Manenti, StSma 7 (1890) 35, 8 (1891) 1, 31 (1915) 20; G. Platon, Pactes et contrats en droit roman et byzantin, 1917; Stoll.
ZSS 44 (1924) 1; Koschaker, Fschr Hanousek 1925, 118; F. Bonifante, Serviti 3 (1926) 135; Grosso, Efficacia dei patti nei bonas fidei judicia, MemTor 3 (1928); idem, Stuhr 1, 2 (1927, 1928); Riccobono, St Bonifante 1 (1930) 125; idem, Stipulaciones, contractus, pacta, Corso, 1934/5; V. De Villa, Le umrae ex pacto, 1937; Boyer, Le pacte extinctif d'action, Recueil de l'Acad. de législation de Tou- louze, Ser. 4, v. 13 (1937) 61; G. Lombardi, Ricerche in tema di ius gentium, 1946, 200; G. Grosso, Il sistema romano dei contratti, 2nd ed. 1950, 186.

Pactum adiectum. (A non-Roman term.) An additional agreement to a contract involving a change of the typical content thereof. Thus, for instance, a pactum adiectum in a sale was the ADDICTIO IN DIEM, or LEX COMMISSORIA. Condamani-Michier, RE 18, 2142; P. E. Viard, Lex pactae adiunctae aux contrat, 1929; Stoll, ZSS (1930) 551.

Pactum conventum. A term which seemingly was used as a technical one in the praetorian Edict (pacta convenia, see PACTUM). It is uncertain whether the expression is to be understood as two nouns (= pact—agreement) or as a "pact agreed upon."—See IUDICIA BONAE FIDEI.

Pactum custodiae. An agreement by which one party assumed the duty of custody of the other party's things. Such a duty could be the object of a special contract (locatio conductio operarum) or of an additional clause to another contract.—See CUSTODIA.

Pactum de constituto. See CONSTITUTUM.

Pactum de distrahendo (vendendo) or de non distrahendo pignore. An agreement between debtor and creditor concerning the sale (or non-sale) of the pledge in the case of the debtor's default. See TUS DISTRAHENDI. If in the sale of the pledge the creditor obtained a sum bigger than the debt was, he had to restore the surplus (SUPERFLUM) to the debtor.

Manigk, RE 20, 1537.

Pactum de emendo pignore. An agreement between debtor and creditor that the thing given as a pledge (pignus) might be bought by the creditor or by the surety who guaranteed the payment.—C. 8.54.

Manigk, RE 20, 1537.

Pactum de non petendo. A formless agreement between creditor and debtor by which the former assumed the obligation not to sue the debtor in court for the payment of the debt or for the fulfillment of his obligation. Such an agreement could be limited to a specific action, e.g., ne depositi agatur (= not to proceed with the actio depositi) or not to sue for execution of a judgment-debt (actio iudicati); it could be also limited in time, i.e., not to sue within a certain space of time. A creditor who contrary to such an agreement brought an action against the debtor could be repaid by an exceptio pacti. The benefit involved in a pactum de non petendo could be strictly personal, i.e., granted solely to the debtor alone, or extended to all persons engaged in the given obligation (sureties, co-debtors, co-creditors). This distinction is the basis of the terminology pactum de non petendo in personam and in rem, which seems to be of postclassical origin. A pactum de non petendo could be modified or annulled by a later agreement ut petere liceat giving the creditor the right to sue the debtor.

Condamani-Michier, RE 18, 2142; De Villa, NDI 9; Segrè, RDCom 12 (1915) 1062; Rotondi, Sei giuridici 2 (1922, ex 1913) 307; Koschaker, Fschr Hanousek 1925, 118; Albertario, St Caluse 1 (1940) 61; Guarino, St Scorsa 1940, 443.

Pactum de non praestanda evictione. See EVICTIO.

Pactum de retro emendo (vendendo). An additional clause in a sale by which the seller is granted the right to buy back the thing sold, within a certain time at a fixed price. A contrary agreement was in favor of the buyer to the effect that he might sell back the thing purchased to the seller. The terms de retro emendo (vendendo) were coined in the literature.

Pactum de vendendo pignore. See TUS DISTRAHENDI, PACTUM DE DISTRAHENDO PIGNORE.

Pactum displicientiae. An additional clause in a sale to the effect that the buyer is entitled to return the thing to the seller and to annul the sale within a certain time if the thing does not suit him. Such a sale is conditional, its validity depends upon the approval by the buyer. The term pactum displicientiae is not Roman.—See EMPTIO.

Pactum donationis. See DONATIO.

Pactum dotale. An agreement concerning the dowry, in particular its restitution in the case of dissolution of the marriage by divorce or death of one of the spouses.—D. 23.4: C. 5.14.—See DOS, INSTRUMENTUM DOTAILE.

Pactum ex continentii. An additional clause (pactum adiectum) to a contract agreed upon by the parties at the conclusion of the contract. Ant. pactum ex intervallo = an agreement, reached afterwards, primarily in favor of the debtor.—See CONTINENS.

Pactum ex intervallo. See the foregoing item.

Pactum fiduciae. See FIDUCIA.

Pactum in favorem tertii. See CONTRACTUS IN FA- VOREM TERTII.

Pactum legitimum. (In the later Empire.) A formless agreement protected by an action.

Pactum ne dolus praestetetur. A clause attached to a contract governed by bona fides (see CONTRACTUS BONAE FIDEI) to the effect that the debtor is not responsible for fraud (see DOLUS), for instance, in a contract of a deposit (see DEPOSITUM). Such a clause was not admissible; it was considered as being against good faith (contra bonam fidei) and good customs (contra bonos mores) and as such it was void. On the other hand, however, the extension of the liability of the debtor for culpa (see CULPA) in a contract under which he normally was answerable for dolus only (as in the case of a deposit), was valid (pactum ut et culpa praestetetur).—See DOLUS MALUS.
ADOLF BERGER

Pactum nudum. See NUDUM PACTUM.

Pactum praetorium. A formless agreement the fulfilment of which could be enforced by a praetorian action (actio in factum).—See FORMULAE IN ITS CONCEPTAE, RECEPTEM.

Pactum ut minus solvatur. An agreement concluded with an heir by which the creditors of the estate declared to be satisfied with the payment of a portion of the debts if the inheritance was insolvent.

Guarino, St. Socrat 1940, 443; idem, AnCata 4 (1949-50) 196; see Solazzi, Concorso dei creditori 4 (1943) 96.

Pactumetius Clemens. A jurist of the first half of the second century after Christ; he made a brilliant official career (consul a.d. 135). He was frequently employed by Hadrian and Antoninus Pius for official missions into provinces.

Hanslik. RE 18, 2154 (no. 3).

Pacuvius Labeo. A jurist at the end of the Republic, father of the famous jurist Labeo, disciple of the prominent Republican jurist, Servius Sulpicius Rufus.

Berger, RE 18, 2176 (no. 9).

Paedagogium. An educational institution where boys were trained for service as pages in the imperial palace.

Enslin, RE 18, 2204; Navarre, DS 4.

Paedagogus. A slave who escorted the master’s children to school and took care of them in school and at home. A paedagogus enjoyed a privileged position in the master’s house and was manumitted sooner than other slaves.—In the later Empire paedagogus was the director of the PAEDAGOGIUM.

Schuppe, RE 18 (s. paedagogus); Navarre, DS 4.

Paexlex (pelex, pellex). A mistress of a married man; a woman who lived with a man as his wife without being married to him. “She is named by the true name ‘a friend’ (amica) or by the name ‘concubine’ which is a little more honorable” (D. 50.16.144).—See CONCUBINA.

Erdmann, RE 18; C. Castello, In tema di matrimonio e concubinato (1940) 9.

Paenitentia. (From paenitere.) A change of one’s mind concerning a transaction already concluded or concerning the omission of the performance of a legal act within a fixed term (e.g., non-acceptance of an inheritance when the solemn form of creio was prescribed). Generally paenitentia is without any legal effect. However, in Justinian’s law there were some specific cases in which a person could unilaterally withdraw from a legal transaction by a simple change of mind, if the other party had not as yet fulfilled his obligation, and through an action condicio (termed in literature condicio proper paenitentiam, ex paenitentiam) recovered what he had already paid. Thus, for instance, one who had made a donation to a slave’s master to have the slave be manumitted, could revoke the donation before the manumission was performed.—See ARRA, IUS PAENITENDI.


Paganus. (Adj.) See PECULIUM PAGANUM.

Paganus. (Noun.) Used in different meanings: the inhabitant of a PAGUS; the inhabitant of a lower situated place, a valley, as opposed to an inhabitant of a mountain or a hill, montanus; a civilian person (non-soldier), anc. miles, hence the distinction peculiwm paganum—peculiwm castrense; a heathen. A pagan.—C. 1.10; 11.

Kornemann, RE 18; Gilliam, Amer. Jour. of Philol. 73 (1952) 75.

Pagus. In oldest times, an ethnic or tribal group comprising several settlements, an arrangement found in the primitive organization of peoples (populi) in Italy. According to a not quite reliable source, Rome under the last kings consisted of 26 pagi. A minor unit was the vicus (= village). Under the Republic pagus denotes a rural territory, an administrative district. For larger territories with a larger population terms such as civitas, urbs, oppidum, etc., were used. “To indicate a piece of land one should say in which civitas and pagus it is situated” (D. 50.15.4 pr.). The inhabitants of a pagus = pagani. In Italy and the provinces the head of the administration of a pagus is called magister, praefectus, curator or praepositus pagi.

Kornemann, RE 18; Toutain, DS 4.

Palam. Publicly, before witnesses, “in the presence of many persons” (D. 50.16.33).—See PROSCRIBERE.

Palam est. It is obvious, there is no doubt. The locution occurs frequently in the language of the jurists when they want to stress that the opinion expressed is beyond any doubt.

Palam facere. To announce publicly.

Palatini. All persons in civil or military service in the imperial palace. All functionaries in the financial imperial administration which was concentrated in the office of the COMES SACRARUM LAGIOTIONUM and of the COMES HERCM PRIVATARUM, were among the palatini. The palatini in the higher positions enjoyed exemption from public charges (munera), sometimes even after leaving their official post.—C. 12.23; 30.

Enslin, RE 18; Cagnat, DS 4.

Palatini largitionum. See LARGITIONES.—C. 12.23.

Palatium. The imperial palace (sacrum palatium). Qui in sacro palatio militari = persons employed in the imperial palace.—C. 11.77; 12.28.—See ARCHISTE SACRIS PALATII.

Palmarius. A compensation given (or promised) to an advocate after a successful trial.—See HONORARIUM.

Paludamentum. A scarlet military cloak, part of the insignia of a magistrate commanding troops outside Rome.
Pandectae. (From Greek = all an embracing work.)
It was the second title given by Justinian to the Digest ("Digesta seu Pandectae"); see DIGESTA IUSTINIANI.
The term is not an invention by Justinian, since it was previously used as a title of a comprehensive juristic works by Ulpian (in 10 books) and by Modestinus (in 12 books).

Pangere. To agree. Syn. pacisci. Pangere ne petatur is syn. with factum de non petendo.

Panis. (From the fourth century after Christ.) Bread from the state bakeries gratuitously distributed in Constantinople and other cities to meritorious persons or to proprietors of houses in order to stimulate the construction of buildings (panis aedium, aedificio-rum). *Panis popularis* (civitatis, civiticae) = bread distributed to the poor.—See ANNONA CIVILIS.

Papinianus. A pantomime, a stage-dancer. The profession was considered an ABS LUDICRA (dishonest). A pantomimus could be killed on the spot when caught by the husband of an adulterous wife.

Papinianistae. The third year students in Byzantine law schools, so called because the chief subject of their studies was the works of Papinian.

Papinianus, Aemilius. A Roman jurist of the second/third century after Christ. He was praefectus praetorio from 203 until 205. He died in a.d. 212, executed by order of the Emperor Caracalla. His language shows some peculiarities which, however, do not suffice for the assumption of his Syrian or African origin, but his style is a model of conciseness and precision. Papinianus is one of the most remarkable figures among the Roman jurists. His opinions prove an independent mind, his solutions are based on a profound understanding of the necessities of life, on equity, and, at times, on ethical more than merely technical juristic arguments. See AEQUITAS.

His principal works were not comprehensive treatises but collections of cases (Quaestiones in 37 books, Responsa in 19 books) in which other jurists' responses, court decisions and imperial constitutions were often taken into consideration. Other works include: Definitiones (in two books) and a monograph on adultery. Papinianus was appreciated by subsequent writers and Justinian more than any other classical jurist. The so-called Law of Citations (see TURIS-PRUDENTIA) which attributed a particular importance to Papinian's works, is an eloquent evidence of the loftiness of his reputation in postclassical times.—See NOTAE.

Jors, RE 1, 572 (s.v. Aemilius, no. 103); Orestano, NDI 9; Berger, ODC; W. Kalb, Roms Juristen, 1890, 111; Leipold, Über die Sprache des Juristen Papinian, 1891; E. Costa, Papiniano, 1 (1894); H. Fitting, Alter und Folge, 1908, 71; Solazzi, AG 133 (1946) 8; Schulz, Sr Ferrini 4 (Univ. Sacro Cuore, Milan, 1949) 254; W. Kunkel, Hervorragt und sociale Stellung der röm. Juristen, 1952, 224.

Papirius. (First name uncertain.) A pontifex maximus about 500 b.c., author of a collection (called *Ius Papirianum*) of rules of sacral law, generally ascribed to the LEGES REGIAE. The existence of such a collection is based on the mention of a commentary thereon written by a certain Granius Flaccus in the time of Caesar or Augustus, entitled De iure Papiriano.

Steinwenter, RE 10; 18, 3, 1006; Cuq, DS 3, 745; Zocco-Rosa, NDI 7; idem, RISG 39 (1905); Oberziner, Hist 1 (1927); Di Paolo, St Solazzi 1948, 634; Paoli, RHD 24–25 (1946/7) 157; C. W. Westrup, *Introd. to early R. law* 4, 1 (1930) 47.

Papirius Fronto. A little known Roman jurist of the late second post-Christian century, author of a collection of *Responsa*.

Berger, RE 18, 3, 1059.

Papirius Iustus. A jurist of the second half of the second post-Christian century, known only as the author of a collection of imperial constitutions in 20 books, of which only eighteen excerpts were accepted into the Digest. He was the only jurist who edited imperial constitutions in their original text. The edition was without any commentary or criticism. His official career is unknown.

Berger, RE 18, 3, 1059; Scarlata Fazio, SDHI 5 (1939) 414.

Papirius, Sextus. A jurist of the early first century B.C., disciple of Quintus Mucius Scaevola.

Münzer, RE 18, 3, 1012 (no. 25).

Par causa (condicio). A legal situation in which several persons (creditors, sureties) have equal rights. "Among several persons in the same legal situation that one who is in possession (of the thing in dispute) is in the better case" (D. 50.17.128 pr.).

Par imperium. The equal power (imperium) of magistrates who are colleagues in office.—See COLLEGIAE, IMPERIUM.

Par ratio. *Parem rationem adscribere* = the entry in a banker's ledger by which a debt is noted as paid. *Parem rationem facere* = to settle the balance of reciprocal claims; syn. *paria facere*.

Parangaria. Carriages used for the transportation of goods on by-roads.—C. 12.50.—See ANGARIA.

Seek, RE 4, 1852; Humbert, DS 1, 1659.

Parapherna. "Things which belong to the wife beyond the dowry (extra dotem)") (C. 5.14.8). The wife might dispose thereof as she pleased and entitle her husband with the administration. When the marriage was dissolved, the parapherna had to be restored to the wife or her heirs. In the later Empire, the parapherna were held in defraying the burdens of the marriage (ONERA MATRIMONI) and certain legal rules concerning the dowry were extended to the parapherna, as, e.g., the wife was granted a general hypothec on the husband's property as a guaranty for the restitution of the parapherna.—C. 5.14.

B. Bonfante. *Corso di dir. rom.* 1 (1925) 373; Pampiliani, RISG 52 (1912) 162; G. Castelli, I p. nei papiers nelle
Paraphrasis Institutionum Theophilii. A Greek paraphrase of Justinian's Institutes (see INSTITUTIONES JUSTINIANI) by the Byzantine jurist Theophilus in which the author, one of the compilers of Justinian's Institutes himself, used in a considerable measure the Institutes of Gaius. He added some remarks (not always reliable) of an historical nature.—See THEOPHILUS, INSTITUTIONES GAI.

Edition: C. Ferrini, Institutionum graecae paraphrasis, Theophilovulgopublibiblia, 1-2 (1884, 1897); J. and P. Zeppa, Ius Graece-Romanum 3 (Athens, 1931).—Kübler, RE 5A, 2142; Ferrini, Opere 1 (1929) 1-228 (several articles of 1884-1887); Riccobono, BIDR 45 (1938) 1; Nocera, RISG 12 (1937) 251; Masiqhi, Punhu di testa per la ricostruzione del dir. classico, AnTr 18 (1946); idem, Ser Ferrini (Univ. Pavia, 1946) 321; Wiesacker, Fchr J. v. Gierke 1930, 296.

Parare (paratio). To acquire either by purchase (for money) or otherwise. Syn. comparare.

Paratus. Ready, prepared, willing. The term is used primarily of a debtor ready to pay his debt or to give security, or of a debtor summoned to court and willing to assume the role of a defendant in the trial and to cooperate in the continuation of the process (see LITIS CONTESTATIO).

Paratitla. (In Byzantine juristic literature.) Supplementary appendices to single titles of Justinian's codifications (Digest and Code), edited, summarized, or commented on by a Byzantine jurist. The paratitla might contain references to additional texts from other titles, connected with the topic dealt with in a given title as well as references to parallel texts. Justinian specifically excluded such kind of commentary remarks from his ban concerning the commentaries on the Digest.


Parens. A father, in a broader sense "not only the father, but also the grandfather, the great-grandfather and all ascendants, as well as the mother, grandmother, and great-grandmother" (D. 50.16.51). Parents = parents. Parentes also includes the slaves who are parents of a child born in slavery.

Parens binubus. A man who married a second time. If he had children from the first marriage, he could not dispose of his property by testament without taking them into consideration.

Parens manumissor. A father who released a child (a son or daughter) from his paternal power; see EMANCIPATIO. He was entitled to be the guardian of the emancipated child and had a certain right to the intestate inheritance of the child.

Kreller, RE 18, 4, 1456; Solazzi, Ath 5 (1927) 101; Grosso, RISG 4 (1929) 251; W. Erbe, Fidusia, 1929, 170; Buckland, JRS 33 (1943) 11.

Parere (pario). To bring forth, to produce. The term refers to legal transactions or situations from which an obligation, an action or an exception arises for one or both parties involved.

Parere. See SI PARET.

Paria facere. See PAR RATIO.

Pariculum. See PERICULUM.

Paires communia. A party wall which separates two adjoining buildings. It is held in common ownership by the owners of the two buildings. The situation is governed according to the principles of communio except for such measures which are physically impossible, as, for instance, a division.—See DEMOLIRE.

Fougères, DS 4; Brugi, RISG 4 (1887) 161, 363; Voigt, BerSächGIIW 1903, 179, 185; G. Branca, Danmo temuilo, 1937, 79-107; Arango-Ruiz, FIR 3 (1943) no. 107.

Parricidas. A term the origin and primitive meaning of which are uncertain. It occurred allegedly in a law attributed to the king Numa Pompilius (Festus p. 221) in the following provision: "If somebody knowingly and with evil intention killed (literally: delivered to death) a free man, let him be a parricides (PARRICIDAS ESTO)." It is not certain whether the term means here simply a murderer.—See PARRICIDIUM.

Leifer, RE 18, 4, 1472; Riccobono, FIR 1 (1941) 13 (Bibl.) and p. XVI; E. Costa, Crimini e pens, 1915, 20; Pasquali, St Batio 1 (1939) 69; De Vischer, Études de droit rom., 1931, 466; Gernet, Rev. de philologie 63 (1937) 13; Henrion, Rev. belge de philol. et histoire 20 (1941) 219; Leroy, Latomus 4 (1947), 17; Londres da Nobrega, ibid, 9 (1950) 3.

Parricidium. The assassination of a (one's own?) PATERFAMILIAS (the head of a family group). The identification of parricidium with homicide belongs to a later development. Parricidium was one of the first public crimes (crimina publica) prosecuted by the state.—D. 48.9; C. 9.17.—See PARRICIDAS, HOMICIDIO, QUEASTORES PARRICIDII, LEX POMPela DE PARRICIDIO, POENA CULLEI.

Lécritain, DS 4; Berger, OCD; Danieli, Archivo penale, 1949, 315.

Pars. A part, a portion of a whole. Pro parte (= for a part) is opposed to in solidum (= for the whole) with regard to the liability of a person or to the release of a debtor from an obligation.

Pars. (With reference to state territory.) A province, a large administrative district.

Pars. (In judicial proceedings.) A party to a trial. Pars actoris = the plaintiff; pars rei = the defendant.

—See VICTOR.

Pars dimidia. A half.—See LAESIO ENORMIS, SPONSIO TERTIAE PARTIS.

Pars diversa. The adversary in a trial.

Pars (portio) hereditaria (hereditatis). The share one has in an inheritance.

Pars (portio) legitima. The share of an inheritance due to an heir who would succeed under the law on intestacy (heres legitimus, ab intestato). The fourth part of the pars legitima (quarta legitima partis) had to be left certain heirs among the next relatives
Partus abactus (partum abigere). Abortion. A woman guilty of criminal abortion was punished with exile. A person who gave a woman a poisonous liquid (poculum amatorium) to cause abortion was punished with death if the woman died, otherwise with deportation or, when the woman was of a lower social class, with compulsory labor in mines (metalla).

Brecht. RE 18, 4, 2046; Humbert, DS 1 (s.v. abortio).

Partus ancillae. A slave child. Such children were not considered proceeds (see fructus). If the mother was given as a pledge, the child (partus ancillae pignoratae, partus pignoris) shares the legal situation of the mother.—C. 8.24.—See fructus rei figneratae.

Bril, MemBoI 4 (1909/10); V. Basanoff, P.a., Thése Paris, 1929; Carcaterra, AnCon 12. 2 (1938) 51.

Partus perfectus. A child born after a full time of pregnancy. A seven-months’ child was held to be a partus perfectus.


—See edictum carbonianum, inspicerent ventrem, subdicitius.

Kleinfeld, RE 44 A, 952 (s.v. suppositio partus); Brecht, RE 18, 4, 2048; Saggio, DS 4, 1570.

Pascuum. A pasture. The owner of a private pasture land could allow the cattle of others to graze thereon either by a contract of lease (locatio conductio rei) or by constituting a servitude (servitus pecoris pascendi, ius pascui; see compascere). He is liable if poisonous grass injured or killed the others’ animals.

—C. 7.41; 11.60; 61.

Kübler. RE 18, 4, 2052.

Pascuum publicum. Public pasture land. The use of such a land by the citizens of a community was originally free. From the fourth century B.C. a fee (scriptura) had to be paid to the treasury of the community.—C. 11.61.

Kübler. RE 18, 4, 2054.

Passim. Simply, without any further examination of the case under decision. The term is used in the juristic language as ant. to causa cognita, i.e., after a scrupulous examination.—See causae cognitio.

Passus. A pace. A Roman mile = one thousand paces, (about 1620 English yards). Twenty miles were counted as one day’s journey when a magistrate ordered a party to appear in court.

Pastus. (In later imperial constitutions.) The supply and distribution of provisions (primarily for the army).

Pastus pecoris. Pasturing cattle.—See actio de pastu pecoris, servitus pascui, pascuum, ius pascendi.

Coq. DS 4, 340.

Pater civitatis. Syn. with curator civitatis in the later Empire.

Pater. A father. “Father is he whom the marriage indicates (as such)” D. 2.4.5. The term refers also
to a grandfather.—See pater familias, PARENTES.

Pater familias. The head of a family, without regard as to whether or not a person so designated has children, whether he is married or is below the age of puberty. A pater familias must be a Roman citizen and not under paternal power of another. By the death of a pater familias all sons (and grandsons whose father was dead or had been emancipated) who were directly under his paternal power, became patres familias. The pater familias was the first in the family (princeps familias) and was the master of the "house" (in domino dominum habet). His power lasted as long as he lived, without regard to the age of the persons under his paternal power (patria potestas) or their official position. His power was boundless and limited only by custom and social tradition. He alone has the right to dispose of the family property.—C. 4.13; 43.—See patria potestas, filius pater familias, diligens pater familias, emancipatio, interdictum de liberis exhindendis.

Sach. RE 18, 4, 2121 (Bibl.); Anon., NDI 9; Longo, BIDR 40 (1912) 201; C. Castello, Studi sui diritto familiare, 1942, 69; Volterra, RIDA 1 (1948) 213; idem, RISG 85 (1948) 103; Daube, St Albertario 1 (1952) 435; Sach. Fscr Schule 1 (1951) 319.

Pater naturalis. An illegitimate father, sometimes the father of an emancipated son or of one who has been adopted by another.

Lanfranchi, StCagl 30 (1946) 47.

Pater patratus. The head of the group of fetiales who as representatives of the Roman people declared war upon an enemy or acted in the proceedings of deditio (extradition of persons or things).—See fetiales, deditio, bellum, bellum indicere.

De Ruggiero, DE 3, 68; Mller, Mn 55 (1927) 386; Klare, Arch. für Religionswisschatt 34 (1937) 112.

Pater patriae. The first emperor who was granted the title of the "father of the fatherland" was Augustus. Before him the title had been conferred on Caesar, shortly before his death. After Augustus several emperors were honored by this title.

L. Bertinger, Beiträge zur unoffiziellen Titulatur der röm. Kaiser, 1935, 77; M. Grant, From imperium in auctoritas, 1946, p. 444 (Bibl.).

Pater solitarius. A widower and father of legitimate children who after the death of his wife remained unmarried. The Lex Iulia et Papia Poppea contained a provision concerning the pater solitarius as a coeles, but its content is unknown.—See lex Iulia de maritandis ordinibus.

Solazzi, Anno 61 (1942) 184.

Pati. To suffer, to bear (a loss, an injury, damages); with regard to civil judicial matters = to be involved in a controversy or a trial (patri controversiam, actionem, interdictum, exceptionem); in criminal matters to incur a punishment (poenam).

Patentia servitutia. Occurred when the owner of land tolerated the exercising by another (a neighbor) of certain rights (usus servitutis) on his property, such as iter, actus, and the like. This toleration was not understood as a simple passive attitude but as a tacit expression of the will of the owner and a recognition as if the other were entitled to exercise an easement on account of a previous agreement (the constitution of a servitude). In classical law the beneficiary could use the actio publiciana, in Justinian's law the patientia is identified with a voluntary concession of a servitude (traditio servitutis).

See Perozzi, Scrinv 2 (1948, ex 1897); Rabel, Mel Girard 2 (1912) 394; Guarneri-Ciati, Indice (1972) 64; B. Biondi, Servitii prediali, 1948, 229; S. Solazzi, Requisiti e modi di costituzione di servitui pred., 1947, 149.

Patientiam praestare. To tolerate another's (a neighbor's) entering into one's property and performing there certain acts (such as the demolition of a construction which was harmful to a neighbor's property and which the owner was obligated to carry out but failed). This occurred usually when a person other than the owner of a landed property (his lessee, slave, or predecessor in title) built a construction which caused or threatened to cause damage to a neighbor's property. Such construction could be averted by a protesting action on the part of the neighbor (see operis novi nuntiato, actio aquae pluviae ascendae). If the harmful construction was not destroyed by the owner or his lessee, the neighbor might do it at his own expense (which, of course, had to be reimbursed by the owner) and the owner had to tolerate such action on his land.—See the foregoing item.

Patres. The oldest term denoting the members of the king's senate which presumably was composed of the "fathers," i.e., the heads of the gentes (see gens) and prominent families. Livy says that the earliest senators were called patres for dignity's sake (propter honorem). The relatives of the patres and their descendants formed the class of patricii (patricians). Hence patres was used as syn. with patricii, as, e.g., in the norm of the Twelve Tables which forbade marriage between plebeians and patricians (patres).—See auctoritas patrum.

Kübler, RE 18, 4, 2222.

Patres conscripti. Originally the plebeian members of the senate when, about the middle of the fourth century B.C., the plebeians were admitted to the senate, their selection being determined by the censors. Later, the term patres conscripti was applied to senators without distinction as to whether they were patricians or plebeians.

Brassloff, RE 4; De Ruggiero, DE 2, 604; O'Brien-Moore, RE Suppl. 6, 674; Meurs, Mn 55 (1927) 377.

Patria. The native country, the fatherland. "Rome is our common native country" (D. 50.1.33: Roma communis nostra patria est). For patria in the meaning of the entire Roman state, see pater patriae.

E. De Ruggiero, La patria nei dir. pubblici, 1921; L. Krat-
Patricia potestas. The power of the head of a family (see pater familias) over the members, i.e., his children, natural and adoptive (see filius familias), his wife, if the conclusion of the marriage was combined with conventio in manum, the wives of those sons who remained under his power (under the same condition as with regard to his wife). Originally unlimited in the judicial, economic, and moral fields, the patria potestas gradually became a power in the interest of the persons subject to it and was conceived as embracing moral duties (officium), such as protection, maintenance, and assistance. The ius vitae necisque of the earliest law became more and more restricted under imperial legislation, and in the law of Justinian it was only an historical reminiscence. Restrictions were also imposed on the father's right to expose a child (see exponere filium). Only the ius vendendi, i.e., the right to sell a child which made him a persona in mancipio in Rome, and a slave when he was sold abroad, remained in force for a longer period; in Justinian's law selling a child was admitted in the case of extreme poverty of the parents, but the child could redeem himself and become free by paying the buyer the price that he had paid to his father. For surrendering a member of the family for damages done to a third person, see noxa, noxae deditio, actiones noxales. The institution was abolished by Justinian. For the legal situation of a person under paternal power as far as property, legal capacity in transactions, the conclusion of a marriage are concerned, see filius familias, filia familias, peculium. The head of a family acquired patria potestas over his children born in a legitimate matrimony or through adoption of another's offspring (see adoptio, abrogatio). The patria potestas was extinguished through capitis deminutio of the father, or through release from the paternal power, see emancipatio. Without regard to the will of the family's head, the extinction of the patria potestas occurred when the son became a priest (familis Dialis) or the daughter a Vestal virgin. In the law of Justinian a person who obtained a high governmental post or became a dignity in the Church hierarchy, was free from paternal power.—Inst. 1.9; D. 1.7; 12; C. 8.46.—See moreover alieni iuris, alimentera, interdictum de liberis exhereditatis, pater familias.

Beauchet, DS 4; Berger, OCD; Cornil, NRHD 21 (1897) 416; Costa, MemBol 1909/10, 117; Boniface, Scripta 1 (1926, ext 1906) 64; Wenger, Hausgewalt im röm. Altertum, Miscellanea F. Ehle 2 (Rome, 1924); H. Stocker, Entwurf der römischen Gewalt, Zürich, 1903; C. W. Westrup, Introduction to the early Roman Law, 3 (1939); C. Castello, St zuil diritto familiare e genilizio 1942, 63; Cicognà, StSen 59 (1945) 44; Kaser, ZSS 58 (1938) 62, 59 (1939) 31; idem, Das altröm. ius, 1949, passim; idem, ZSS 67 (1950) 474.

Patricii. The earliest patricians were the descendants of the patres, i.e., the members of the Senate in the regal period. The patrician families and groups of families (see gens) were the privileged class in the citizen body (originally perhaps the only Roman citizens), while the lower class, the plebeians (plebii) were deprived of political rights and lived in economically unfavorable conditions. During a long period the patricii were the exclusive holders of magistracies and priestly offices; the assignment of public land (ager publicus) was almost exclusively to their benefit; voting in the comitia was arranged to their advantage; and intermarriage between them and the plebeians was not permitted. The struggle between these two social classes of the Roman people lasted more than two centuries (until the early third century B.C.); it had some dramatic episodes (three secessions of the plebeians), but it brought the plebeians a gradual admission to the magistracies and, in the last analysis, political equality. Among the political conquests of the plebeians were: the creation of tribuni plebis (in 494 B.C.), the legislation of the Twelve Tables (see lex duodecim tabularum, in 451/50 B.C.), intermarriage with patricians (see lex canuleia, 445 B.C.), admission to the military tribunate (see tribuni militum consulari potestas), the leges liciniae sextiae (admission to the consulship, 367 B.C.), admission to the highest pontificate (lex ogulnia), election of the first plebeian censor (in 356 B.C.), the first plebeian dictatorship (in 351 B.C.), the lex publica philonis (339 B.C.), election of the first plebeian praetor (in 337 B.C.), and finally, the lex Hortensia (287 B.C.) which made the plebsites (see plebs citata) of equal legal force with the leges voted in the popular assemblies (comitia). Only some sacerdotal posts, the office of the interrex, the honor of being a princeps senatus and some other minor privileges remained reserved for the patricii. Patriciate was acquired through birth in a legal marriage (instae nuptiae) when the father was a patrician, through adoption by a patrician, through marriage with a patrician, concluded in the form of confarreatio which remained a patrician form of marriage with manus. Under the Princeps meritorious persons were granted the patriciate by the emperor. The patricians as a hereditary nobility lost much of their significance through the rise of a new nobility based on wealth (see equites) or the holding of high imperial office. The Emperor Constantine created the patriciate (patriciatus, patricia dignitas) as a personal (not hereditary) honorific title to be conferred by the emperor on high dignitaries for life (= "highness"). Justinian extended the patriciate to all persons who had the right to the title illustri. This involved exemption from patria potestas.—C. 12.3.—See curiae, transitio ad plebeum.
Patrocinium vicorum (colonorum). Possessors of small landed property in the later Empire (fourth century), vexed by tax collectors and public charges, used to render themselves under the protection of wealthy and influential men (potentiores) as their patroni. The latter exploited this situation for tax evasion. Imperial legislation tried to abolish these practices but in vain. The land taken under protection by the patrons remained in their possession and the former small land-proprietors became the serfs of their protectors.—C. 11.54.—See coloni, latifundia.


Patrona. A woman who manumitted her slave, a patroness of a freedman. See patronus. Marriage between a freedman and his patroness was prohibited.

Patronatus. The relationship between the former master and his freedman. See patronus. Its patronatus. In a broader sense, patronatus refers to any relationship between a person (patronus) who protects (defends) another and the protected person. It refers also to a legal adviser (lawyer) of a party to a trial (patronus causae).—D. 37.14; C. 6.4.—See patrocinium, clienites, its applications.

Patronus. The master of a slave became after manumitting him the patronus of the freedman (libertus). The freedman had various duties towards his manumissor; see ossequium, reverentia. “The person of a patron should always appear honorable and sacred to the freedman and his son” (D. 37.15.9). The freedman had to abstain from accusing the patron of criminal doings and from suing him with actions which involved infamy (actiones famosae). He could, however, sue him by permission of the praetor. For the obligation of the freedman to render certain services to the patron, see operae liberti. Iurata promissio liberti. Between the patron and his freedman there was a reciprocal obligation of maintenance in the case of poverty. The patron had certain rights of succession to the inheritance of his freedman (see bonorum possessio intestati). He could demand the rescinding of alienations and other dispositions made by the freedman with the purpose of defrauding the patron of his rightful inheritance (see actio calvisiana). If a freedman who had no children or had disinherited them, did not in his will reward his patron or his patron’s sons, the praetor granted the patron a bonorum possessio contra tabulas of one half of the freedman’s property. Marriage between a freedman and his patroness (patrona) or with his patron’s daughter was prohibited. After the death of the patron, the patronate went to his heirs, the patron might, however, assign
the freedman to one of the heirs, see ADSIGNATIO
LIBERTI.—D. 37.14; 38.1–3; C. 6.3–7.—See IUDICUM
OPERATUM, INGRATUS LIBERTUS, BENEFICENTIAE
CIVITATIS, LIBERTUS (Bibl.).
La Flora, St iat. di filol. cl. 7 (1929) 145; J. Lam bert,
Les opere liberti, 1934; A. A. Schiller, Legal Essays in
tribute to O. K. McMurray, 1935, 623; Kaser, ZSS 58
(1938) 88; K. Harada, ibid. 138; C. Cosentini, St sui
liberti I (1948) 69, 2 (1930) 11.

Patronus causae. SYN. ADVOCATUS.

Patronus clientinis. See CLIENTES.

Patronus civitatis (coloniae). See PATRONUS MUNICIPII.

Patronus collegii. An honorary protector of an asso ciation,
usually a magistrate or an imperial official.
In the later Empire associations concerned with the
 provision of food for Rome were supervised by
patroni who were members of the associations.
Lécrivain, DS 4, 359; W. Liebenau, Geschichte und
Organisation der röm. Vereinigungen, 1910, 212.

Patronus fisci. See ADVOCATUS FISCI.

Patronus municipii (civitatis). Municipalities used to
place themselves under the protection of one or
more powerful persons (senators, ex-magistrates)
who were selected (adoptare, later cooptare) by the
municipal council and given the title patronus.
The pertinent decree was engraved on a bronze tablet
(tabula patronatus) in two copies, one for the pa-
tronus, the other for the municipality. The patronage
was hereditary. The patronus defended the interests
of the municipality in public and private matters,
subsidized the construction of monuments and public
buildings, etc. The patronage of a colony was similar.
Kornemann, RE 16, 625; Lécrivain, DS 5, 299; Mommsen,
jurist. Schriften I (1905) 237, 345; Thouvenot, CRAI
1941, 133; 1947, 485.

Patronus provinciae. Some provinces had a pro-
tector, patronus, who in case of abuse by a provincial
official intervened with the Roman authorities in
order to obtain the prosecution of the wrongdoers.
The patron was a distinguished and influential person
of the Roman nobility, often a descendant of the con-
quorer of the province.

Pauliana actio. See FRANUS.

Paulus, Iulius. A famous jurist whose prolific literary
activity (about 320 libri) gave Justinian's compilers
the opportunity to excerpt his writings very exten-
sively for the Digest. The dates of his birth and
death are unknown. He was a member of the im-
perial council under Septimius Severus and Caracalla,
and praefectus praetorio under Alexander Severus.
His works were written in the first decades of the
third century. He was the author of an extensive
commentary on the praetorian Edict (in 80 books)
and a treatise on ius civile (ad Sabiniun, in 16
books). Among his writings are also commentaries
on works of some earlier jurists and a great num-
ber of monographs on various topics of public, fiscal,
private, and criminal laws. There is in recent litera-
ture a tendency to deny Paulus' authorship of a
number of writings, a tendency which is not free
from exaggeration. For his Sententiae, see SENTE-
tiae PAULI. Paulus was not an uncritical compiler;
he often expressed opinions of his own and some of
his critical remarks, in particular on the decisions
of earlier jurists, give evidence of the sagacity of his
juristic thinking.
Berger, RE 10, 690 (s.v. Iulius); idem, OCD; Orestano,
NDI 9 (s.v. Paolo); Kübler, Lehrbuch der Gesch. des
r.R., 1925, 283; C. Sanfilippo, Pauli Decretorum libri tres,
Pubbl. Fac. Giur. Catania, 1939; De Robertis, RISG 15
(1940) 205; Scherillo, St Solazii 1948, 439.

Pauperes. Poor people. From the time of Nerva
Roman emperors ordered that public care be taken
of children of poor parents and that nourishment be
provided them from public funds.—See PAUPERETAS.
J. J. Esher, De pauperum cura apud Romanos, 1903; A.
Müller, Jugendfürsorge in der röm. Kaiserzeit, 1903;
Biondi, Ius 3 (1952) 233.

Pauperies. See ACTIO DE PAUPERIES.

Paupertas. Poverty. It was an acceptable excuse
from guardianship and also ground for exclusion from
being an accuser in a criminal matter.—See PAUPERES.

Pax. Peace. A state of war between Roman and
another state was normally ended by an armistice
(induitae). Peace, pia et aeterna pax (= a pious and
eternal peace), was achieved by a special, sol-
lemnly enacted treaty, foedus, which might not only
establish peaceful relations between the former bel-
ligerants but also amicitia (= friendship) and even a
community of political interests (societas, see socii).
The conclusion of a peace treaty was in the compe-
tence of PETIALES or special embassies; the consent
of the people and the senate was required. Under
the Empire it was the emperor who concluded peace.
Gaius (Inst. 3.94) mentions as the form for the con-
clusion of peace the sponsio, an exchange of a ques-
tion (pacem futuram spondes?) and answer (spon-
deo) between the emperor and the sovereign of the
other state.—See SPONSI0, AMICITIA, AMICUS POPULI
ROMANI.
De Ruggiero, DE 2, 767; H. Lévy-Brühl, Quelques pro-
b1èmes du très ancien dr. rom., 1934, 40.

Peccatum. In classical law a violation of a somewhat
criminal nature of a legal norm. A neat distinction
between the term and CRIMEN or DELICTUM can har-
dy be established. In Justinian's law peccatum is not
only a violation of human laws but also that of an
ethical norm.
G. Segré, St Bonifante 3 (1930) 515; Roberi, St Caliaste
1 (1940) 161.

Peculatus. Misappropriation of things belonging to
the state, embezzlement of public money. Hence
peculatus is also named furtum pecuniae publicae, furtum
publicum. A commanding general who appropri-
ates the booty taken from the enemy or the
money obtained from its sale (manubiae) to his own
profit was guilty of peculatus. Augustus' Lex Julia
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peculium, still in force in Justinian’s time, was the basic statute on the matter: “No one should intercept or appropriate any sacred, religious, or public money for his own profit unless he is permitted to do so by law” (D. 48.13.1). The statute also defined peculium as a case in which a person “added anything to ( alloyed ) or mixed with, gold, silver, or copper belonging to the state” (D. ibid.), to the detriment of the state. A particular form of embezzlement occurred when a person who had received money from the treasury for a specific purpose did not spend the money thereon (pecunias residuae). Later imperial legislation increased the penalties for peculium; Justinian ordered deportation or the death penalty, according to the gravity of the case.—D. 48.13; C. 9.23.—See quaestiones perpetuae, lex iulia peculius, residua, praedia.

Brecht, RE Suppl. 7; Coq, DS 4.

Peculiaris. Connected with, or pertaining to, a peculium. Res peculiires = things belonging to a peculium, such as money, claims, goods, business equipment, and the like. Peculii nominis, peculiariiter = ( to hold a thing ) as belonging to a peculium, or ( to buy one ) from the means of the peculium.—See merx peculiariis.

Peculium. A sum of money, a commercial or industrial business, or a small separate property granted by a father to his son or by a master to his slave, for the son’s ( or slave’s ) use, free disposal, and fructification through commercial or other transactions. The origin of the institution is to be found in the increase in the economic need of the Roman citizens to use the services and activity of the persons under their paternal power and of their slaves able to develop independent business activity in the interest of the family group and its head. The peculium remained the father’s ( master’s ) property, but was separate from his own property; the son ( the slave ), however, had the right to administer the separate fund or business and dispose thereof through various transactions ( not by donations ). In Justinian’s law the free administration of the peculium ( libera administratio peculii ) had to be conceded expressly. An existing peculium could be increased ( augeri ) by additional funds or goods, diminished ( minui ) or fully withdrawn ( adimi ) by the grantor. The concession of a peculium by a father ( master ) created on the part of the grantor a civil liability for debts and obligations contracted by the son ( slave ) in transactions concluded with third persons. This liability was, however, restricted to the pecuniary value of the peculium ( dumtaxat de peculio ), after deduction of whatever the son ( slave ) owed to his father ( master ). The creditors of the peculium had a direct action against the father ( master ), actio de peculio; or, when the father ( master ) had a special profit from the transaction concluded with the manager of the peculium, an action called actio de in rem verso ( for his enrichment ). Both these actions, which were introduced by the praetor, belong to the so-called actiones adiectivae qualitatis ( see exercitor navis ).—D. 15.1; 2. C. 4.26; 7.23.—See actio tributoria, legatum peculii, merx peculiariis, and the following items.

V. Uskull, RE 19; Anon., NDI 9; L. Lusignani, Consamuzioni procedeuxa dell’actio de peculio, 1899; idem, Ancora intorno alla consamazione, etc., 1901; Solazi, StSen 23 (1903) 113; idem, St Fadda 1 (1906) 347; idem, St Brugi (1910) 203; idem, BIDR 17, 18, 20 (1905–1908); Seckel, Fg Bekker 1907; L. Lemarié, De l’actio tributoria, Thèse Paris, 1910; Bucklaed, LQR 31 (1915); G. Longo, AG 96 (1928) 184; idem, BIDR 38 (1930) 29; idem, SDHI 1 (1935) 392; G. Micoliere, Pécule et capacité patrimoniale, Thèse Lyon, 1933; E. Albertario, Studi 1 (1933) 139; Biscardi, StSen 60 (1948) 380; G. E. Longo, SDHI 16 (1950) 99.

Peculium adventicum. Used in the literature for everything that a filius familiis acquired through his own labor or the liberality of a third person ( a donation, a legacy ). According to Justinian’s law such acquisitions remained the son’s property, the father having only a usufruct on it. Ant. peculium profecticum ( term not Roman ), the normal peculium granted by a father to his son ( a patre prorectum = coming from the father ).

Peculium castrense. Everything that a filius familiis earned or acquired from, or during, his military service ( in castris ). From the time of Augustus he was permitted to dispose of it by testament. Hadrian extended this privilege to soldiers discharged from service and veterans. The peculium castrense embraced the gifts which the soldier received when he entered service and inheritances received from fellow soldiers. Later, a filius familiis might freely dispose of his peculium castrense since “with regard to it he acts as a head of a family ( pater familiis ),” D. 14.6.2.—D. 49.17; C. 1.3; 12.30; 12.36.

Cognot, DS 4; v. Uskull, RE 19. 15; H. Fitting, Das p.s. in seiner gesch. Entwicklung, 1871; Appleton, VRHD 35 (1911) 593; E. Albertario, Studi 1 (1933) 159; A. Guarino, BIDR 48 (1941) 41; Daube, St Albertario 1 (1952) 435.

Peculium paganum. The name given by Justinian to an ordinary peculium, as distinguished from peculium castrense and peculium quasi castrense.

Peculium profecticum. See PECULIUM ADVENTICIUM.

Peculium quasi castrense. Everything that a filius familiis earned as a public official, as a lawyer, in the service of the Church, or by the liberality of the emperor or empress. The legal situation of a peculium quasi castrense was the same as that of a peculium castrense.

Uskull, RE 19, 16; Orestano, AnMac 11 (1937) 118; Archi, St Beso 1 (1939) 121.

Pecunia. Money. Originally the term denoted property in cattle ( pecus ), as distinguished from other kinds of property; see familia. In classical language “the term pecunia comprises all things, both movable
and immovables, both corporeal things and rights" (D. 50.16.222).—See CREDERE, OTIOSUS.

Pecunia. RE 19; Sachen, RE 18, 3, 2125; Lenormant, DS 4; Pfaff, Festschr Hannesich 1925, 94 (Bibl.); M. Wlaszak, Erb- und Vermächtnisrecht, SbWien 215 (1933) 5; M. F. Lepri, Saggi sul patrimonio 1 (1942); K. F. Thormann, Der doppelte Ursprung der municipatio, 1943, 155; Mattingly, Numismatic Chronicle 1953, 21.

Pecunia compromissae. See COMPROMISSUM.

Pecunia constitutae. A money debt reaffirmed by a CONSTITUTUM.

Pecunia creditae. See CREDERE, ACTIO CERTAE CREDITAE PECEUNIAE, MUTUA PECUNIA.

Pecunia fenebris. Money lent on interest.—See FENUS.

Pecunia (or summa) honoraria. A sum of money (not less than ten thousand sesterces), paid by municipal magistrates (dextrori turi dicundo) when they entered service. On such occasions also other kinds of gifts were also offered to the municipality (a statue or the arrangement of spectacular games, ludi).

Liebermann, RE 5, 1814.

Pecunia indebita. See INDEBITUM, CONDICIO INDEBITI, SOLUTIO INDEBITI.

Pecunia mutua. See MUTUA PECUNIA.

Pecunia numerata. See NUMERARE PECUNIAM.

Pecunia publica. Money belonging or owed to the state treasury (see AERARIUM). Pecunia publica could be lent to private individuals only on interest and with real security.—See PECULATUS.

Pecunia residua. See PECULATUS.

Pecunia sacra. Money belonging to a temple or destined for divine cult and sacrifices. Embezzlement or robbery of such money was qualified as a crimen PECULATUS.

Pecunia traetica. See FENUS NAUTICUM.

Pecuniarius. Expressed or evaluated in a sum of money; concerning a payment in money (causa, liz, res pecuniaria).

G. Pacchioni, La pecuniarietà dell'interesse nelle obbligazioni, 1st app. to the translation of C. F. Savigny’s Obbligazioni, 2 (1915) 305.

Pecus. A domestic four-footed animal, normally living in a herd (gregatim, see GREX), such as “sheep, goats, oxen, horses, mules, donkeys” (D. 9.2.2.2) and pigs. Dogs are excluded. The term appears in the lex AQUILIA, which dealt with damages done to animals (pecudes). Ant. animalia quae pecudes non sunt.—See ANIMALIA QUAE COLLO CORSO DOMANTUR, IUNEMENTUM.

Pedenius iudex. See IUDEX PEDANEUS.

Pedarrii. See SENATORI PEDARI.


Pedius, Sextus. A juris of the first century and the early second. His original and independent ideas are known only from quotations by later jurists, primarily by Ulpian and Paul, because his works were not directly excerpted in the Digest. He is the author of an extensive commentary on the praetoriant and aedilian edicts.

Berger, RE 19, 41 (no. 3); La Pira, BIDR 45 (1938) 293.

Pegasus. A juris of the second half of the first post-Christian century.—See SENATUSCONSULTUM PEGASIANUM.

Berger, RE 19, 64.

Peira. A collection of juridical decisions, written in Greek about the middle of the eleventh century by a judge, Eustathios Romaio (Romanus).


Pellex. See PÆLEX.

Penates. Deities protecting the household of a Roman citizen.—See LAKES.

Weinstock, RE 19, 423.

Pendente condicio. When the condition is still pending. During the time of uncertainty as to whether a condition would be fulfilled or not, the legal situation varies according to the nature of the conditional obligation and the contents of the condition.—See CONDICO.

Pendère (pende). To hang. See FRUCTUS PENDENTES.—Pendere as syn. with in pendenti esse = to be uncertain, in suspense. The term refers to legal situations, rights, or duties which are uncertain until (donec) a specific event or fact happens or until a fixed day arrives upon which the suspended validity of a legal act or transaction depends. “What is in suspense is not considered as existing” (D. 50.17.169.1).—See condicio pendere, in pendenti esse, lite pendente, pendente condicio.

Pendère (pendo). To pay out (a fine, interest, taxes). Penes. (Prep.) In the power (or possession or house) of a person.

Pensatio (from pensare). A recompense.—See COMPENSATIO.

Pensio. Payment by installment, either of a part of a sum due or of a sum due at fixed intervals (such as rents for the lease of a house or a farm, in the case of EMPHYTUSIS, or alimony). Pensio also refers to payments of taxes or other sums due to the fisc. Syn. pensatio.

Wenger, Canon, SbWien 220 (1942) 35.

Pensatio. See PENSIO.

Penus. See LEGATUM PÆNIORIS.

Per aes et libram. Some legal acts of early origin were performed with the use of copper and scales (such as MANNIPATIO, NEXUM, a specific form of testament, COÈMPITO, SOLUTIO PER AES ET LIBRAM) and the pronunciation of prescribed solemn formulae. The acts (gesta, negotia) thus performed required the presence of five Roman citizens as witnesses and of a libripiens (the man who held the scales). Acts per aes et libram went out of use in the later law.
—See mancipare, libra, libripens, familiae emptor, testamentum per aed et libram.

Kunkel, RE 14, 999; Severini, NDI 9; Popescu-Spineni, ACDR 2 Bologna (1935) 533; H. Laty-Brulh, Nouvelles études 1947, 57 (= LQR 1944, 51); W. Geddess, Per aed et libram, Liverpool, 1952.

Peraequatio. (In fiscal administration.) An equitable adjustment of taxes through an increase or reduction of the last year’s taxes. The operation was performed by a special officer, a supervisor in tax assessments (in the later Empire), peraequator.—C. 11.58.

Seek, RE 5, 1184; Enslin, RE 19, 564.

Peragero. To accomplish, to perform a legal act completely, e.g., peragero testamentum; with regard to judicial proceedings to continue one’s activity therein until the defendant in a civil trial, or the accused in a criminal case, is condemned.

Perceptio fructum. Gathering the fruits after their separation from the soil which produced them. See separatio fructum. The perceptio fructum normally coincides with separatio by the same person, unless a third person has a right over the separated fruits.—See fructus percepti, fructus perceptiendi.

Percepere. To gather, collect (proceeds of any kind, revenues, interest, rents, wages).—See perceptio fructuum.

Percutere. To strike a person with the fist or a stick. Such an action constitutes an offense (see inuria). If the person beaten was gravely hurt, the wrongdoer was guilty of inuria aetos.

Perducere. (With regard to testaments.) To cancel, to erase a testamentary disposition or the name of a beneficiary (an heir or legatee). The disposition is considered not written even if the name is still legible. Syn. inducere.

Perducere ad libertatem. To bring a slave to liberty, to make a slave free, either directly through manumission or indirectly by imposing on another the duty to free the slave.—See manusmissio, manusmissio fideicommissaria.

Perduellio. Treason. One is guilty of perdulli who “is inspired by a hostile mind against the state and the emperor” (D. 48.4.11). The Twelve Tables set the death penalty for treason. Perduellius embraced various criminal acts, such as joining the enemy, rousing an enemy against the Roman state, delivering a Roman citizen to the enemy, desertion on the battlefield, and the like. Later, perdullius was gradually absorbed by the crimen maiestatis.—See maiestas, duoviri perdullionis, conscientia, lex varia, deserrere.

Brecht, RE 19; Leclercq, D 54; Berger, OCD; E. Pollack, Majestasöfende im röm. Recht, 1908; Robinson, Goergerum L'I 8 (1919); P. M. Schina, Offences against the state in R. law, London, 1926; Renkomma, No 55 (1927) 395; F. Voringhoff, Der Staatsfeind in der röm. Kaiserzeit, 1928; A. Meili, La conception du crime politique sous la Rèp. rom., 1934; C. Brecht, Perduellio, 1938; idem, ZSS 64 (1944) 354.

Perduellis. See hostis.

Peregrinus. A foreigner, a stranger, a citizen of a state other than Rome. A great majority of the population of Rome were peregrines, subjects of Rome after the conquest of their country by Rome. With the increase of the Roman state the number of peregrines grew constantly without being compensated by the number of new citizens to whom Roman citizenship was granted. Within Roman territory the peregrines enjoyed the rights of free persons unless a treaty between Rome and their native country granted them specific rights. Generally, the legislation under the Republic, both statutes and senatusconsulta, applied to peregrines only when a particular provision extended their validity to them. Peregrines had no political rights, they could not participate in the popular assemblies, and were excluded from military service. A peregrinus might conclude a valid marriage (iustus nuptiae) only when he had the ius commii (see conubium), either granted to him personally or acquired through his citizenship in a civitas which obtained this right from Rome. A peregrine could not make a testament in the forms reserved for Roman citizens nor act as a witness thereto. He could not be instituted an heir of a Roman citizen nor receive a legacy (legatum) except in a testament of a soldier. He was able to conclude a commercial transaction with a Roman citizen if he had the ius commercii, which was granted in the same ways as ius conubii. Though excluded from the proceedings by legis actio, a peregrine had the benefit of protection in Roman courts, in particular before that praetor who had jurisdiction inter peregrinos (see praetores) from the middle of the third century B.C. Certain actions were gradually made available to peregrines and against them by the means of a fiction “as if he were a Roman citizen”; see actiones ficticai und ligationes. Foreigners from the same state concluded transactions in accordance with the laws of that state and litigations among them were settled according to their own laws. A peregrine who obtained Roman citizenship (see civitas romana) ceased to be a peregrine whether he obtained it as a personal grant or within a large group. The sharp distinction between civis and peregrinus lost its emphasis in the legal field in the course of time as a result of the development of commercial relations between Romans and peregrines. On the other hand the extension of Roman citizenship which at the end of the Republic was conferred on the entire population of Italy, furthered the disappearance of the once very sensible differences. The constitii Antoniniana did the rest. In Justinian’s law the only peregrines were the barbarians (see barbari).

For the exceptional status of the Latins, see latium, ius latii, latini. For the influence of the commercial relations between Romans and peregrines
on the development of the Roman private law, see IUS GENTIUM.—See DEDITICI, IUS CIVILE.

Kübler, RE 19; Humbert and Lécuvain, DS 4; Severini, NDI 9; Sherwin-White, OCD; G. Moignier. Les prégrins délictue. Thése Paris, 1930; Taubenschlag, St Boniface 1 (1933) 367; Lewald, Archivum Idontikou Dikaios 3 (1946) 59; Volterra, St Redent 2 (1951) 405.

Peremptorius. See EICTUM PEREMPTORIC, EXCPTIONES PEREMPTORIE.

Perennis (dies). See COMPERENDINUS.

Perennis. See FLUMIN PUBLIC.

Perennitas. Perpetuity, perennity: The term was an honorific title of the Roman emperors in the later Empire.

Perfectissimus (vir). A title of high officials of equestrian rank. From the time of Marcus Aurelius all praefecti (except the praefectus praetorio, who had the title eminentissimus), high officials in the financial administration and in the imperial chancery, and certain military commanders belonged to the group of perfectissimi. Under Diocletian and his successors the circle of viri perfectissimi was greatly extended. Perfectissimatus = the dignity of a vir perfectissimus.

—C. 12.32.

Ensllin, RE 19; Anon. DS 4; O. Hirschfeld, Kleine Schriften, 1913, 652.

Perfectus. Fully accomplished. A sale (emptio) is considered perfecta when the parties agreed upon the object sold, its quantity and quality, and the price, and the agreement was unconditional. A testament was regarded perfectum iure perfectum when all formalities required by the law were fulfilled. —See DONATIO PERFECTA, PERFICERE, AETAS PERFECTA, LEGES PERFECTAE.

Perficere. To conclude a legal transaction (to accomplish a legal act) in a form prescribed by the law. See PERFECTUS (with regard to sales and testaments). .Perficere refers also to the fulfillment of an obligation or to a donation effectively given; see DONATIO PERFECTA.

Seckel and Levy, ZSS 47 (1927) 150.

Perfuga. (From perfugere.) A deserter who went over to the enemy. —See DERERERE.

Perlicitari. To run a risk (e.g., of being liable from a procedural sponsio or cautio if one loses a case in court).

Periculum (pariculum). A written draft of a judgment to be read by the judge to the parties. —See SENTENTIAM DICERE, RECIPIARE.

Kühler, ZSS 54 (1934) 227.

Periculum. A risk, a danger. The term is used of the risk incurred by a party to a trial, plaintiff or defendant, not only of losing the case but also of being subject to an increased liability arising from specific procedural measures (sponsio, cautio). See PERCILITARI. In contractual relations periculum indicates the risk of a loss incurred by one party who expressly assumed a more extensive liability, as, for instance, for damages caused by an accident (casus), periculum praestare, or by suffering such loss under special circumstances. Periculor aliusius esse = to be at one's risk, to be responsible for, or to suffer damages.—C. 5.38; 10.63; 11.34; 35.—See the following items.

Periculum emptoris. See PERCULUM REI VENDITAE.

Periculum rei venditae. The risk of deterioration or destruction of a thing which was sold and not immediately delivered to the buyer. As a matter of rule such risk was with the buyer from the moment the sale was concluded (emptio perfecta), if the loss was caused by accident. He, therefore, had to pay the sale price for the thing perished or deteriorated before the delivery. Exceptions in favor of the buyer were introduced in some cases, in particular if the vendor assumed responsibility in specific events or neglected his duties of custody. Details are controversial in the literature, but it is probable that some attenuations of the principle "periculum est emptoris" were favored by the classical jurists in view of the bona fide character of the contract of sale.—D. 18.6; C. 4.48.—See ERMPTION, PERFECTUS.

Arnò, St Brugi (1910) 153; Haymann, ZSS 40 (1919) 254; 41 (1920) 44; 48 (1928) 314; Rabel, ZSS 42 (1922) 543; M. Konstantinovitch, Le p.r.x., These Lycon, 1923; Hurwitz, RHD 3 (1924) 318; Ch. Appleton. RHD 5 (1926) 375; 6 (1927) 195; Seckel and Levy, ZSS 47 (1927) 117; H. R. Hoetmik, Periculum est emptoris, Haarlem, 1928; Beseler, TR 8 (1928) 279; Vogt, Fescher Keschake 2 (1939) 162; Kruckmann, ZSS 59 (1939) 1. 60 (1940) 1; Meylan, RIDA 3 (= Mél De Visscher 2. 1949) 193; idem, Iura 2 (1950) 253; idem. ACIVER 3 (1932) 389.

Periculum tutelae (tutore). A general term for the responsibility of guardians (tutores) connected with their management of the ward's affairs and the administration of his property. The term periculum is also applied to curatores.—D. 26.7; C. 5.38.—See TUTELA.

Perimere. To make void, to annul, to annhilarte. Perimere = to become inefficacious, extinguished, void (actio, obligatio, pignus perimitur).

M. F. Peterlongo, pluralita di vincoli, 1941, 32.

Perinde (proinde) ac si (ataque). Just as if. Although the locations occur beyond question in some interpolated texts, they may at times refer to cases which were already treated in classical law as analogous to other legal situations, protected by the law, to which the praetor extended his protection by praetorian actions (see ACTIONES UTILES, ACTIONES FICTICIAE).

Riccobono, TR 9 (1929) 13; Guarnieri-Citati, Indice (1927) 65; idem, Fescher Keschake 1 (1939) 145.

Perire. To perish. Actio perit = an action (the right to sue) gets lost, is extinguished. See LUS MORITUR. All actions which are extinguished by the death of one party or by the lapse of a fixed time, survive if they were introduced before court and brought to LITIS CONTESTATIO before the death of the plaintiff or before the term elapsed.
Peritus. See iuris peritus.

Perjurium. (From perjurare.) Perjury. It was not generally punished as a crimen publicum since perjurium was considered an offense to the gods which was revenged by them. It produced, however, a social dishonor (Cicero: humanum dedecus) which might be branded by the censors with a nota censoria. For false testimony, see testimoniwm falsum. Perjury committed in order to obtain a pecuniary profit was qualified as crimen stellionatus. Perjury committed under an oath taken per genium principis (see genus) was treated as crimen maiestatis and, generally, it was severely punished. In pecuniary matters, if one swore that he did not owe money to another or that another owed him money, the punishment was beating (castigatio justibus) with the admonition "do not swear inconsiderately."

Latte, RE 15, 353 (ssw. Meineid).

Perlusorium judicium. See collusio.

Permissium. Permission, leave. The term refers to what is allowed by a statute (permissum legis) or by a magistrate (permissum praetoris), e.g., when a freedman wished to sue his patron, he had to ask the praetor for special permission.

Permutatio. The exchange of one thing for another, a barter. It differs from sale in that instead of money a thing is given as compensation. Permutatio is an inanimate contract (see contractus inominati) of the type "do ut des" (= I give you in order that you give me) and it is not concluded by mere consent of the parties, as sale, but by an actual, real (re) transfer of ownership of a thing from one party to another.

—See actio praescriptum verbis.—D. 19.4; C. 4.54.


Permutatio. (In banking business.) A transaction between two banking firms to make payments from Rome to Italy and the provinces, and vice versa.

Kisseling, RE Suppl. 4, 700 (ssw. Giroverkehr).

Permutatio status. See status.

Perorare causam. See causam perorare.

Perpetua causa servitutiis. The natural conditions of a piece of land involved in a servitude must be such that the exercise of the servitude is permanently (not only temporarily) possible.

S. Perozzi, Scr giur. 2 (1948, ex 1892) 85; C. Ferrini, Opere 4 (1930, ex 1893) 145; B. Biondi, Le servitù prediali, 1946, 156.

Perpetuarii. See perpetuatio.

Perpetuarius. (Noun.) Empyhteaus, emphyteuticusarius. —Ius perpetuariwm = ius emphyteuticum, ius emphyteuticus. See emphyteusis.

Perpetuatio actionis. After the litis contestatio in a civilized trial actio perpetuariwm, i.e., the action, though temporally limited (see actiones temporales), is no longer subject to a limitation of time.

Perpetuatio obligationis (obligatio perpetuatur). See mora.

Gradenwitz, ZSS 34 (1913) 255; Genzmer, ZSS 44 (1924) 102; F. Pastori, Profilo dogmatico e stor. dell'obbligazione rom., 1951, 173.

Perpetuus. Everlasting, perpetual, unlimited in time. Ant. temporarius (= temporary). In perpetuum = forever, for life (e.g., banishment).—See actiones perpetuae, perpetua causa, editicum perpetuum, exceptiones perpetuariae.

Hernandez Tejero, AHDE 19 (1948-49) 593.

Perquisitio lance et licio. See lance et licio.

Persecuto. Indicates an action by which "a thing is sued for" (D. 44.7.28: rei persequendae gratia).

Hence persecuto connected with the object claimed (persecuto hereditatis, legati, pignoris) alludes to the pertinent specific action. Persecuto poenae = an action by which one sues for a private penalty (see actiones poenales).

Persecuto extraordinaria refers to trials conducted in the form of cognitio extra ordinem when the claim cannot be sued in ordinary proceedings, as for instance, in the case of a fiduciommissum.—See persecuti. pettitio.

Persequi. To claim one's right through a judicial proceeding (judicio, actione), to sue for a thing or a private penalty.—See persecuto.

Persolvere. In the meaning of solvere (= to pay a debt) this occurs frequently in interpolated passages.

Guarneri-Citati, Indices (1925) 65.

Persona. A person, an individual, a human being. "The principal division of persons is that into free men (liberi, ingenui) and slaves (servi)." Gaius, Inst. 1.9. The law concerning persons (ius quod ad personas pertinent) is—according to Gaius (1.8)—one of the three groups of legal rules, the other two of which concern things (res) and actions (actiones). The law of persons (ius personarum) consists of those portions of the law which deal with liberty and slavery (status libertatis), citizenship (status civitatis), family (status familiae), marriage, guardianship and curatorship (personaer in iuris, alieni iuris). The law of persons embraces all institutions which have an influence on the legal condition of a person and his capacity to have rights and assume obligations. Persona is also used of slaves to denote them as human beings (persona servi, servilis) although legally they are treated as things (res) and therefore their personal identity is denied them. There are also collective entities which, although not human in nature, "function" as persons (personae vice fungi), such as hereditas (= inheritance), a municipality, a decuria or an association of individuals. In postclassical and Justinian's language the use of persona (in Greek prosopon) became more extensive and was occasionally inserted into classical texts.—Inst. 1.3.—See actiones in personam, exceptiones in personam, exceptiones personae cohaerentes, nascturum, status, caput, capitis deminutio.

Dull, RE 19, 1040; Coq, DS 5, 416; De Marini, NDI 9, 928; S. Schlossmann, Perssona und Prosopon, 1905; Rhein-
Personae. Such texts, e.g., those of certain mercenary soldiers, were used in important technical discussions. — See BENEFICIA.

Personalis. Pertaining to persons or to an individual.

See CONSTITUTIONES PERSONALES, MUNERA PERSONALIA. The term occurs frequently in later imperial constitutions, and was often interpolated in classical texts, as, for instance, actio personalis for actio in personam. — See PERSONA.


Petitio hereditatis. See HEREDITATIS PETITIO.

Petitor. The plaintiff. See actor, quis agit.

Petitoria formula. Petitorium iudicium, in Justinian's language, actio petitoria. — See FORMULA PETITORIA.

Peto. (In the formula of a fideicommissum.) See FIDEICOMMISSUM.

Philosophi. Philosophers were exempt from the duty of assuming a guardianship. They were not reckoned among the profassors and therefore they could not sue for a salary (see HONORARICUM); "they despise mercenary services" (D. 50.13.1.4).

Piaculum. (In later imperial constitutions.) A crime which required expiation (punishment). Piaculum is also an expiatory sacrifice.

Piae causae. Pious, charitable purposes. Gifts to charitable institutions (foundations), such as orphanages, hospitals, poorhouses, almshouses for old people, and the like, were favored by Justinian's legislation. Such institutions were administered by directors who were considered temporary and limited owners and were authorized to appoint their own successors. — See LEX FALCIDA. — C. 1.3.

Pictura. A picture, a painting. The controversial question whether a painting made on another's material (tabula) became the property of the owner of the material or of the painter was later decided in favor of the latter. He had, however, to compensate the owner for the material used.

Bortolucci, BIDR 31 (1923) 151; idem, Pubbl. Univ. Modena 30 (1928) 14; Nardi, AG 121 (1939) 129; idem, Studi sulla ritenzione, 1947, 339.

Pietas. Dutifulness, respectful conduct, sense of duty, affection towards gods, parents, or near relatives; in general noblemenindedness, honest way of thinking.

"It is to be held that we are unable to commit acts which injure our dutiful conduct (pietas), our reputation (exstitutio), our moral way of thinking, and generally speaking, are contrary to good customs." This saying is by Papinian (D. 28.7.15). Although heavily criticized and frequently ascribed to Justinian's compilers, it expresses a late classical idea.

—See INTUTU.

Koch, RE 20; H. Krüger, ZSS 19 (1898) 6; Guarnieri-Ciati, Indices (1927) 66 (Bibl. for interp.); Rabel, St Bonfante 4 (1930) 295; Th. Ulich, P. als politischer Begriff, 1930; E. Remer, Et sur l'historie de la querella inofficios testamenti, 1942, 61; Riccobono, Lineamenta (1949) 71.

Pignoris causa indivisa est. A thing given a creditor as a pledge remains pledged until the debt is paid in full.—See PIGNUS.

Pignus. Both the thing given as a real security (pledge) to the creditor by the debtor and the pertinent agreement under which the security was given (pignorare, pignori dare, pignus obligare). The agreement was a contract concluded re, i.e., by the delivery of the pledge to the pledgee. Pignus implies the transfer of possession (not ownership) of the thing pledged to the creditor (creditor pigneratorius) who held it until his claim was fully satisfied, see PIGNORIS CAUSA. During this time he was protected in his possession of the pledge by possessory interdicts; see INTERDICTUM. For the rights of the pledgee, see IUS DISTRAXHENDI. HYPOCHORA LEX COMMISSORIA, IMPETRATIO DOMINI. As a matter of rule, the creditor had no right over the proceeds (fruits, rents, etc.) of the thing pledged unless it was agreed that he might take them as interest (see ANTICHERESIS). Nor could the pledgee use the thing pledged. "A creditor who makes use of the pledge commits a theft" (Inst. 4.1.6). The pledgee could sue the creditor for restoration of the pledge when he had fulfilled his obligation or when the debt was extinguished (for instance, when the proceeds of the thing had been taken by the creditor, in accordance with an agreement with the debtor, and they exceeded both interest and the principal). The same action, actio pigneratorica, lay against a creditor through whose fault the thing perished or deteriorated. On the other hand, the pledgee had an action against the pledge (actio pigneratorica contraria) for damages caused by the thing pledged through the fault (culpa) of the pledgee, and for reimbursement of necessary expenses (impensa necessaria) incurred in the care of the pledge. Pignus differed from other types of security, FIDUCIA and HYPOTHECA, in that by fiducia ownership was transferred to the creditor, and by hypotheca the thing was not handed over at all, whereas through pignus only possession of the res pignorata was conveyed to the creditor. In Justinian's law the differences between pignus and hypotheca were abolished.—D. 20.1; 3; 6; C. 8.13-32. For actio pigneratorica D. 13.7; C. 4.24.—See PRIOR TEMPORE, VINCULUM PIGNORIS.

Pignoratio, pignoratio (pignare). Handing over a thing to one's creditor as a pledge.—See PIGNUS.

Pignoris capio. (By a magistrate.) Taking a pledge from a person who did not obey the magistrate's command. This was one of the means of the coercive power of a Roman magistrate (coercitio). Originally the thing was destroyed (pignus cedere), later it was kept by the magistrate as pressure on the disobedient citizen. This might finally lead to the sale of the thing or to restoration to the owner in case he submitted. Syn. pignoris capio.

Steinwenter, RE 20, 1234.

Pignoris causa indivisa est. A thing given a creditor as a pledge remains pledged until the debt is paid in full.—See PIGNUS.

Pignus. Both the thing given as a real security (pledge) to the creditor by the debtor and the pertinent agreement under which the security was given (pignorare, pignori dare, pignus obligare). The agreement was a contract concluded re, i.e., by the delivery of the pledge to the pledgee. Pignus implies the transfer of possession (not ownership) of the thing pledged to the creditor (creditor pigneratorius) who held it until his claim was fully satisfied, see PIGNORIS CAUSA. During this time he was protected in his possession of the pledge by possessory interdicts; see INTERDICTUM. For the rights of the pledgee, see IUS DISTRAXHENDI. HYPOCHORA LEX COMMISSORIA, IMPETRATIO DOMINI. As a matter of rule, the creditor had no right over the proceeds (fruits, rents, etc.) of the thing pledged unless it was agreed that he might take them as interest (see ANTICHERESIS). Nor could the pledgee use the thing pledged. "A creditor who makes use of the pledge commits a theft" (Inst. 4.1.6). The pledgee could sue the creditor for restoration of the pledge when he had fulfilled his obligation or when the debt was extinguished (for instance, when the proceeds of the thing had been taken by the creditor, in accordance with an agreement with the debtor, and they exceeded both interest and the principal). The same action, actio pigneratorica, lay against a creditor through whose fault the thing perished or deteriorated. On the other hand, the pledgee had an action against the pledge (actio pigneratorica contraria) for damages caused by the thing pledged through the fault (culpa) of the pledgee, and for reimbursement of necessary expenses (impensa necessaria) incurred in the care of the pledge. Pignus differed from other types of security, FIDUCIA and HYPOTHECA, in that by fiducia ownership was transferred to the creditor, and by hypotheca the thing was not handed over at all, whereas through pignus only possession of the res pignorata was conveyed to the creditor. In Justinian's law the differences between pignus and hypotheca were abolished.—D. 20.1; 3; 6; C. 8.13-32. For actio pigneratorica D. 13.7; C. 4.24.—See PRIOR TEMPORE, VINCULUM PIGNORIS.

Manigk, RE 20; Humbert and Lécrivain, DS 4; Pagge, NDi 9 (z.v. pignus); Berger, OCD (z.v. security); T. C. Jackson, Justinian's Digest Book XX with Engl. translation, 1909; E. Rabel, Die Verpflanzungsbeschränkungen des Verpfänders, 1909; E. Weiss, Pfandrechtsliche Untersuchungen, 1-2 (1909, 1910); F. Messina-Vitramo, Per la storia del diritto di disintrahendi nel pigno, 1910; M. Fehr, Beitrag zur Lehre vom Pfandrecht, Uppsala, 1910; Biondi, AnPap 7 (1920) 233; U. Ratti, Sull'accessorietà del pigno, 1927; Grosso, ATor 65 (1929-30) 111; E. Volterra, Pegno di cosa altrui, 1930; S. Romano. Appunti sul pegno dei frutti, AnCom 5 (1931); La Pira, SI Sen 47 (1933) 61; idem, St Cammef 2 (1933) 1; idem, St Ratti 1934. 225; E. Carrelli, St sull'accessorietà del pegno, 1934; Carcaterra.
AnCam 12, 2 (1938) 51; Arnò, ATor 75 (1939-40); Rabel. Sem 1 (1943) 33; Kreller, ZSS 64 (1944) 306; Bartošek. BIDR 51-52 (1948) 238; Provera. St Soulazzi 1948, 546; Kochsaker, Stu Ferrini 3 (Univ. Sacco Cuore, Milan. 1948) 232.

Pignus Gordianum. According to a reform of the emperor Gordian (A.D. 239) a creditor who had several claims against the same debtor only some of which were secured by a pledge, was allowed to retain the pledge until all debts were paid.


Pignus in causam iudicati captum. A pledge taken from a debtor by order of a magistrate in execution of a judgment-debt adjudicated in a cognitio extra ordinem. The step was accomplished by official organs (apparitores). In Justinian's law this kind of execution was extended to all condemnatory sentences if the defendant refused to fulfill the judgment voluntarily.


Pignus nominis. A pledge the object of which is the debtor's claim (nomen) against a third person. The utilis.—See actiones utiles. creditor might sue the debtor's debtor by an actio

Pignus pignororum. Named in literature by the non-Roman term subpignus, this occurs when a creditor who received a pledge from his debtor gave it in turn to his own creditor as a pledge.

Pignus praetorium. A pledge taken by the creditor upon order of a magistrate; see pignus in causam iudicati captum. The missiones in possessionem had a similar function. In Justinian's language pignus praetorium is "a pledge which is given by the judges." By this phrase the missiones are meant.

—C. 8.21.

S. Soulazzi. Consorz. dei creditori 1 (1937) 208; Branca, StIur 1937. 105; M. P. Lepri, Note sulia natura giuridica delle missiones, 1939.

Pignus publicum. (A non-Roman term.) A pledge constituted in a document (instrumentum) made before a public official (publice confectum). It was recognized as valid in a late imperial constitution (A.D. 472). Justinian permitted setting up a pledge in a private document, signed by three witnesses (instrumentum quasi publice confectum).

Pignus rei alienae. A pledge of a thing which does not belong to the debtor.

Pignus tacitum (tacite contractum). See hypotheca tacita. Certain specific claims involved a right of pledge (ius pignoris, hypotheca) under the law over the property of the debtor. An agreement between the parties was not necessary. Thus, for instance, a person who lent money for the construction or repair of a building or of a ship had the right of pledge on the building or ship; from the time of Constantine the property of a tutor or curator was charged with a general hypothec in favor of the ward's claims. Justinian granted legatees and fideicommissaries the same right over the things belonging to the estate. The privileged position of the fisc with regard to its debtors from contracts or for taxes is designated as velut ture pignoris, pignoris vice.—D. 20.2; C. 8.14.

Wienacker, Fisch. Kochsaker 1 (1939) 239.

Pilleus. A close fitting cap of liberty worn by freedmen on special occasions (e.g., the patron's funeral). Hence pilleare = to put a cap on a slave's head as a sign of manumission.


Pillius. A glossator of the twelfth century.—See glotatorses.

Gabrieli, NDI 9.

Pirata. A pirate. There was no special law concerning robbers on the high sea. They were punished with death by the naval commander who was engaged in a fight against them or by the provincial governor to whom they were handed over. A theft committed during an attack of pirates was subject to a fourfold penalty.—See lex gabinia de pirata.

Kroll. RE 2A. 1042 (s.v. Seerobb); Cary. OCD; Lecrivain. DS 4, 487; Ormerod, Piracy in ancient world, 1924; Levi. Rist. di filol. ed iter. clasico, 2 (1924) 80; Riccobono. FIR 1, 1941, 121 (Bibl.); Jones. JRS 16 (1926) 133.

Piscari (piscatio). Fishing in the sea and in public streams (see FLUMINA PUBLICA) was free; the fisherman acquired ownership of the fish caught as of a res nullius (see occupatio), unless a special and exclusive right of fishing was conferred by the competent authorities to individuals or groups (conductores piscatus) through a lease. There was apparently a tendency to protect the rights of professional fishermen. Fishing in private lakes or fish-ponds (piscina) depended upon the permission of the owner.

—See PORTUS, PISCATORUM.

Kaser. RE Suppl. 7, 684; Lafaye, DS 4; Longhena, NDI 11, 107; Rostowszew. DE 2. 593; Bonfante, Corso 2, 2 (1928) 61; Lombardi. BIDR 53-54 (1948) 339.

Piscatores. Fishermen.

Stöckle, RE Suppl. 4, 460 (s.v. Fischereigewerbe); M. Maxey, Occupation of the lower classes in Roman society, Chicago, 1938, 12.

Pistores. Bakers. Under the empire the bakers of Rome were organized in an association. Their profession enjoyed particular protection by the authorities; occasionally its exercise for a few years was the ground for granting Roman citizenship to a foreigner (a Latin). Bakers were exempt from the duty to assume guardianship. Bakeries were under the supervision of the office of the praefectus annonae. The introduction of gratuitous distribution of bread to poor people by the emperors, and later, the sale of bread at a low price contributed to giving the bakers the character of public servants. Later imperial legislation (C. Theod. 14.3) dealt frequently with the pistores and their legal status and privileges. Their union was called corpus or ordo pistorum and
their task comprised the baking of bread and its distribution and sale.—C. 11.16.

Hug, RE 20; Benner, DS 4; G. Gandi, Pistorae. Nota storico-corporativa sui panificatori, 1931.

Plagiarius. Plausible, persuasive topics. This was the title of a collection of decisions in individual cases by Labeo. The work is known only from an epitome by Paul.

Jörns, RE 1, 2531; Berger, RE 10, 723.

Pittacium. A term of Greek origin used in later imperial constitutions. A tablet, a short note. It was used in the administration of food supply for the army.

Placentinus. A glossator of the twelfth century. He died in 1192. He was the founder of a law school in Montpellier.—See GLOSSATORES.

Kurmer, NDI 9, 1118; F. de Tournon, Placentin, 1876; H. Kantorowicz, Jour. Warburg Inst. 2 (1938) 22; Zanetti, AG 140 (1951) 72.

Placere. Placet, when referring to an individual jurist, is used for introducing his personal opinion. Placet nisi = in my opinion. Placuit, without reference to a specific jurist or jurists, indicated the opinion of several jurists which prevailed over the opinion of other jurists. Syn. obtinuit. Placuit principi refers to an imperial decision or enactment.—See constitutiones principium.

Placitum. What private individuals agreed upon, an agreement. The term is less frequently used than its syn. factum. With reference to legislative provisions placitum denotes either a statutory norm (placitum legis) or that of an imperial constitution (placitum principis).

Plagiarus. One who committed the crime of plagium, a kidnapper. Syn. plagiarote.—See plagium, lex fabia de plagiaris.

Plagium. The legal rules concerning the crimen plagii were settled in the lex fabia de plagiaris which remained in force in Justinian’s legislation, with some alterations introduced by the legislation of the emperors and the interpretation of the jurists.—D. 48.15; C. 9.20.—See lex fabia, vinacula, supprimere, suscipere servum.

Berger, RE Suppl. 7, 385; Brecht, RE 20; Lécrivain, DS 4; Niedermeyer, St Bowman 2 (1938) 381; Lardone, Univ. Detroit Law J 1 (1932) 163; Laurin, AmMac 8 (1932); Berger, BIDR 45 (1938) 267.

Plane. Certainly, to be sure, of course. The particle was often used by the compilers to introduce an explanatory or restrictive remark, mostly of a harmless nature.

Guarnieri-Citati, Indice (1927) 66 (Bibl).

Planta. A plant put in another’s ground became property of the land-owner, provided that it had taken root there.

Plantare (plantatio). See planta, superficies cedit solo, satio.

Planum. See de plano.

Plautius. A jurist of the first post-Christian century. He is known only from commentaries written by later jurists (Neratius, Pomponius, Javolenus, Paulus) on his work which apparently dealt primarily with the praelatorian law. The attention paid by the classical jurists to Plautius (Paul’s commentary had no less than 18 books) is evidence of the great esteem Plautius enjoyed with the later jurisprudence.

Berger, OCD: idem, RE 10, 710; 17, 1835; Sibier. RE 21 (no. 60); Orestano, NDI 9; Riccobono, BIDR 6 (1893) 119; Ferrini, Opere 2 (1927, ex 1894) 205.

Plebeii. See plebs, patricii.

Plebiscitum. A decision, decree or legislative measure passed by the assembly of the plebeians (concilia plebis). Originally the gatherings of the plebeians dealt only with matters which concerned the plebeians. The most important matter was the election of plebeian magistrates (tribuni, aediles plebes). Later, the competence of the concilia plebis was extended on legislative enactments. For the historical development which finally made the legal force of plebiscita equal to that of leges (statutes passed by comitia of the Roman people), see lex valeria horatia, lex publica philonis, lex Hortensia, exaequare, lex, concilia plebis, and the following item.

Sibier, RE 21; Fabia, DS 4; Tilman, Musée Belge, 1906; Baviera, St Brugi 1910; Guarino, Fisc. Schulz 1 (1951) 458; Biscardi, RHG 29 (1951) 153.

Plebs. The great “bulk of the people” (multitudo) opposed to the noble families. In the technical meaning plebs denotes a social class (group, “order”) of the free population of Rome, distinguished from the patricians (see patricii). The uncertainty of the sources made of the origin of the plebs one of the most controversial questions of early Roman history. Originally the plebs probably consisted of various elements, such as the population of the surrounding territories conquered by Rome, clients (see clientes) of patrician families, who lost the protection of a noble genus, and foreigners who came to Rome as workers or to exercise a small commerce. In historical times the plebeians appear already as Roman citizens although not enjoying full political and civil rights of the privileged social group, the patricians. The plebeians were excluded from magistracies and priesthood, and marriage between patricians and plebeians was prohibited. During the first two centuries of the Roman Republic there was a continuous struggle between the two classes during which the plebs gradually obtained the right to have magistracies of their own (tribuni plebis, aediles plebis) and the admission to magistracies and positions formerly reserved for the patricians. For details, see patricii. See also plebiscitum and the related items. Under the Empire the distinction plebeii—patricii acquired a quite different significance. Plebs generally refers to the lower classes of the population without specific
connotations and is opposed to persons of senatorial or equestrian rank, to the classes of officials or wealthy and influential persons; see HONESTIORES, HUMILIIORES.—See PATRICII (Bibl.), TRANSITIO AD PLEBEM.

Siber and Hoffmann, RE 21 (Bibl. 102) ; Lécrivain, DS 4: Di Marco, ADI 9; Momigliano, OAD; Vassalli, StSenn 24 (1907) 131; J. Binder, Puebs, 1909; Bloch, La plette rom., Rev. Historique 106-110 (1910-11); Giorgi, St storici per l’antichità clast. 5 (1912) 249; Rosenberg, Hermes 48 (1913) 339; G. Oberziner, Patriciato e plebe (Pubbl. Accad. Scientif.-Lett., Milan, 1913); V. Arangio-Ruiz, Le genti e la città, 1914, 44; Figuoli, Essai sur les origines de Rome, 1917, 53, 247; Rose, JRS 12 (1922) 106; Hoffmann, Neue Jahrbücher für das klas. Altertum 1938, 82; F. Altheim, Lex sacra. Die Anfänge der plebeischen Organisation (Amsterd. 1940); Last, JRS 35 (1945) 30; A. D’Ell’Oro, La formazione della stato patrino-plebso, 1950, 59.

Plecti. To inflict a penalty. The term occurs in imperial constitutions.—See CAPITAE PUNIRE.

U. Brasili, La repressione penale, 1937, 223.

Plena pubertas. See MINORES.

Plenius. Full, complete, undiminished. The term is often connected with ius, proprietas, dominium, and similar words. It is a favorite adjective in the language of the imperial chancery; particularly frequent are the superlatives plenissimus and plenissime.

Plereque. See INTERDUM.

Guarnieri-Ciati, Indici (1927) 67.

Plumbatura. Soldering two pieces of metal with lead. The parts thus joined remain distinct and may be separated when belonging to two different owners. Syn. adplumbatio.—See FERRUMINATIO.

Plures rei promittendi (stipulandi). See DUO REI.

Plures tutores. See CONTUToRES.

Pluris petito. See PLUSPETITIO.

Plus. See MINUS.

Pluspetitio (pluris petito). Claiming more than is due, an excessive claim. A plaintiff may claim (plus petere) in substance (re) when he claims a bigger amount than is due to him; in time (tempore) when he claims before the payment is due; in place (loco), when he claims at a place (in a city) other than that where the payment had to be performed (see ACTIO DE EO QUO CERTO LOCO) or in cause (causa) when he claims a certain thing although the debtor had the right to chose between two or more things. According to the classical law, a plaintiff who claimed in the intentio of the formula more than he was entitled to, lost the case definitely. His claim could be restored, however, by a RESTITUTIO IN INTEGRUM in circumstances in which this remedy was available. An overstatement in the part of the formula called DEMONSTRATIO did not produce the loss of the case for the plaintiff. After the abolition of the formula-regime the pluspetitio lost its actuality. Imperial legislation modified the severe provisions against overclaims; the plaintiff was allowed to change or limit his claim during the trial, but he incurred some losses because of the unnecessary delay of the trial. In Justinian’s law the plaintiff lost the case only if he maliciously persisted during the whole trial in his overclaim.—C. 3.10.

Schmott v. Caroliède, RE 21; P. Collinet, La procédure pour libelle, 1932, 483; Solazzi, SDHI 5 (1939) 231.

Pluvia aqua. Rain water.—See ACTIO AQUAE PLUVIAE ARCIDAE, SERVIUS STILICICII.

Poena. Punishment, penalty. Poena is both punishment for public crimes (CRIMEN) and pecuniary penalty to be paid to the person wronged by a private wrongdoing (see DELICTUM). The Roman system of penalties was built up on the conception that punishment was of an expiatory and vindictive nature and had to serve as a deterrent measure; correction of the criminal was not taken into consideration. Hence the death penalty was threatened in most cases. For the various kinds of execution, see CRUX, ANIMADVERSIO GLADIUS, FORCA, CULLEUS, CREMATIO, OBICI BESTITIS, DECIRE ET SANO TARPEIO, STRANGULATIO, DECOLLATIO, METALLUM. The death penalty was one of the capital punishments (poena capitalis, poena capitata) which involved either loss of life or only loss of liberty or citizenship (see CAPUT). The loss of liberty (see SERVUS POENAE) was connected with compulsory labor in mines for life (damnatio ad metalla, see METALLUM) or in public works (see OPUS PUBLICUM). For the loss of citizenship see DEPORTATIO, RELEGATIO, EXILII, INTERIDICERE AQUA ET IGNI. Another group of penalties embraced pecuniary penalties (poena pecuniaria, nummaria) such as seizure of property (see ADEMPTIO BONORUM, PUBLICATIO, CONFISCATIO) and fines (see MULTA). Corporal punishment was not strictly a poena but a coercive measure (coercitio) or an aggravation of another kind of punishment (sometimes even applied before the capital execution); see CASTIGARE, FLAGELLUM, FUSTIS, VERRERA. Imprisonment (see CARCER) was applied as a measure of coercion to enforce obedience to an order of a magistrate. Penalties to be inflicted for specific crimes were fixed in the statute which declared the pertinent wrongdoings as a crime to be prosecuted and punished as a crimne publicum, or in imperial constitutions which dealt with criminal matters. Under the Empire penalties were differentiated according to the social status of the person convicted (honestiores—humiliores), persons of lower classes being exposed to severer penalties; in certain cases in which the honestiores (potentiiores) were punished only by banishment, the humiliores suffered the death penalty. Later imperial legislation introduced manifold reforms both in the system of penalties and their applicability. Some of those reforms were of a short duration since the emperors often modified the innovations of their predecessors. Private penalties which superseded private vengeance and retaliation of the earliest law (see TALIO), consisted in the payment of a sum of

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money to the person injured by a private crime (delictum); see FURTUM, RAPIA, INJURIA. The condemnation for a crime involved certain other consequences for the culprit although they were not considered a poena in the strict sense of the word; see POENA EXISTIMATIONIS, INTESTABILITAS, INFAMIA, IGNOMINIA.—D. 48.19; C. 9.47.—See moreover IUDICIA PUBLICA, QUÆSTIONES, COGNITIO, ACTIONES POENALES, LEGATUM POENÆ NOMINE RÉLICTUM, COÆCITUM, GRAVIS, and the following items.

Lécrivain, DS 4; Brasiellio, NDI 12 (sistema delle penae); Bononamici, Il concetto della pena nel dir. giust., St Pelizina 2 (1899) 187; F. Costa, Crimini e pene da Romolo a Giustiniano, 1921; Jolowicz, The assessment of penalties in primitive laws, Cambridge Legal Essays in honor of Bond, Buckland, etc., 1926, 203; C. G. R. Rhein, Museum für Philosophie 91 (1942) 32; U. Brasiellio, La repressione penale, 1937; Levy, BIDR 45 (1938) 27; F. M. De Robertis, ZSS 39 (1939) 219; idem, RISG 14 (1939) 30; idem, AnBari 4 (1941) 217; idem, St in dir. penale rom., 1943, 101; idem, St Solazzi 1948, 168; idem, La variazione della pena nel dir. rom., Parte generale, 1950.

Poena. (In the law of obligations.) A penalty agreed upon by the parties, to be paid by the debtor in the case of non-fulfilment of his obligation in due time. A penalty clause could be added to any agreement either in the form of a stipulatio (stipulatio poenæ) or of a formless pactum attached to a contractus bonae fidei. A penalty clause could be inserted in a testament to compel the heir to fulfill the testator’s orders. See STIPULATIO POENÆ.

Brassloff, ZSS 25 (1904); Guarneri-Ciati, BIDR 32 (1922) 241; P. Voci, Ristampa e pena privata, 1939, 185.

Poena capitalis (capitais). Denotes not only the death penalty but also a penalty connected with the loss of caput (capitis deminutio maxima et media, see CAPUT), to wit, of liberty or citizenship. Locations such as capite pleites, puniri, and the like usually refer to the death penalty. Syn. POENA MORTIS. For the various forms of execution, see POENA. The death penalty was normally executed in public, unless execution in prison was ordered. The execution of a woman was not public. Execution was performed after the final judgment without delay; the execution of a pregnant woman was postponed until after delivery.

Latte, RE Suppl. 7 (s.v. Todesstrafe); U. Brasiellio, La repressione penale, 1937, 215 and passim.

Poena cullei. See CULLEUS.

Poena duplci. See LIS INFITIAM.

Düll, Ser Ferrini 3 (Univ. Sacro Cuore, Milan, 1948) 218.

Poena exilii. See EXILII.

Poena existenceationis. A penalty by which the esteem which a person enjoyed in society was destroyed. See EXISTIMATIO, INFAMIA, IGNOMINIA.

Poena metalli. See METALLUM.

Poena mortis. See POENA CAPITIS.

Poena nummari. See NUMMARIA POENA, POENA PECUNIARIA.

Poena pecuniaria. A fine, a penalty consisting in the payment of a sum of money. The amounts were originally fixed in the penal statutes, often in proportion to the injury caused. The severest form of a pecuniary penalty was the seizure of the whole or of a part of the wrongdoer’s property.—See Multa, ADEMPITO BONORUM, CONFISCATIO, PUBLICATIO.

U. Brasiellio, La repressione penale, 1937, 131.

Poena sanguinis. See SANGUIS.

Poena temere litigantium. Penalties imposed on reckless litigants, both plaintiff and defendant, who initiated or continued a trial inconsiderately.—Inst. 4.16.—See INFIITIAM, CALUMNIA, INFAMIA, ACTIONES FAMOSAE, IMPENSAE LITIS, IUDICIO CONTRARIUM.

Poenalia. Connected with (involving) a penalty. See ACTIONES POENALES, IUDICIA POENALIA. CAUSA POENALIS = a criminal matter (trial).

Poenententia. See PAENENTIENTIA.

Poetas. Poets. An imperial constitution of the middle of the third century (C. 10.53.3) stated: “Poets are not granted any privileges of immunity” (from public charges, contrary to teachers and physicians. See MAGISTRI, MEDICI.

Politio. A contract with a cultivator (politor) who assumed the task of improving the productivity of land. He was rewarded with a portion of the proceeds. The agreement was a combination of a hire and a partnership.

Pollliceri. To promise. The term refers to promises made both in a solemn form (stipulatio) and in a formless agreement. In his Edict the praetor used the term to announce that in certain legal situations he would grant protection (ausilium) through a procedural remedy (actio, iudicium, restitutio in integrum), or in cases of succession, a BONORUM POSSESSIO.

Düll, ZSS 61 (1941) 28.

Pollicitatio. A promise of a gift in money made to a municipality by a person who obtained or sought to obtain an official post in the municipal administration. Such a promise was considered binding and could be sued for. Another kind of pollicitatio was a promise made by a person to a municipality to erect a construction on a public place (a monument, a building for public purposes). The promisor was obligated by such a promise if the construction had been commenced. He had to finish the work or to provide the sum necessary for that purpose.—D. 50.12.

Anon., NDI 9; Brini, MemBol 1908; Ascoli, St Solandra 1928, 215; Archi, RISG 8 (1933) 563; E. Albertario, St 3 (1936) 237; Villers, RHD 18 (1939) 1; Düll, ZSS 61 (1941) 19; Biondi, Ser Ferrini 1 (Univ. Sacro Cuore, Milan, 1947) 131; Roussier, RIDA 3 (1949) 396.

Pollicitatio dotis. The constitution of a dowry trough, a formless promise. A constitution of the emperor Theodosius II (C. 5.11.6, a.d. 428) introduced the
policitarion dotis and made thus the solemn forms (dictio dotis, stipulatio dotis) superfuous.—C. 5.11.

—See PROMISSIO DOTIS.

posal. ZSS 35 (1914) 270; Landucci, AG 94 (1923) 39.

Pompeium. The territory of Rome within the original boundaries (walls) of the city. The pompeium, which from the beginning was somewhat connected with sacral rites, and, later, the territory within the first milestones (see MILLIARUM) was the domain of the magisterial imperium domi (see DOMI). The comitia curiata could gather only within the boundaries of the pompeium (intra pompeium), the comitia centuriana only outside of it (extra pompeium). The emperors had the power to extend the pompeium beyond its former limits.

Besnier, DS 4; Severini, NDI 9; Richmond, OCD; O. Karlowa, Intra p. und extra p., 1896; v. Blumenthal, RE 21, 2 (1952) 1857.

Pompa. See ostentatio.

Bömer, RE 21, 2 (1952) 1978.

Pomponius, Sextus. A prominent jurist of the time of Hadrian and Antoninus Pius (around the middle of the second century). He is the author of three treatises on civil law written as commentaries on works of earlier jurists (ad Quintum Mucium, ad Plautium, ad Sabiniun), of an extensive commentary on the praetorian Edict (known only from citations by later jurists), and of a series of monographs on various topics (on fideicommissa, on stipulations, on senatusconsultum). For his brief history of Roman jurisprudence. see ENCHIRIDION. Two extensive collections of casuistic material (Epistolae and Variæ lectiones) complete the picture of his literary activity which was abundantly exploited by Justinian’s compilers of the Digest.

Berger, OCD; Di Marzo, Saggi critici sui libri di Pomponio Ad Q. Mucium, 1899; Wesenberg, RE 21, 2 (1952) 2415.

Ponderator. An official weigher who ascertained the weight of money (primarily of gold coins) contributed by taxpayers (in the later Empire).—C. 10.73.

Pondus. The weight.—See res quæ ponderæ, numeræ, etc.

Pone. (Imperative.) Let us suppose, assume. The locution frequently occurs in juristic writings to introduce a specific, imaginary instance ("for instance" = verbi gratia) for a better understanding of what was said before.

Ponere. Sometimes syn. with deponere (pecuniam, magistratum), sometimes with opponere (e.g., exceptionem).

Ponere. (With reference to agreements or testaments.) To settle, to order, to dispose.

Ponere diem. To fix a date for the fulfillment of an obligation or for certain procedural acts in a trial.

Pons. A bridge. A bridge over a public river (flumen publicum) built up by the owner or owners of the opposite banks remained private property of the builders.

G. Segrè, BIDR 48 (1941) 26.

Pontifex maximus. The chief pontiff among the pontifices, the head of the pontifical college. He was "considered the judge and arbitrator over divine and human matters" (Festus). The pontifex maximus was appointed for life and could not be removed. He was, in fact, the executor of the pontifical power in all more important actions, the other pontiffs (see PONTIFICES) generally acted as his council. He convoked and presided over the comitia curiata. He had the power of punishing the members of the pontifical college and other priests, as well as the Vestal Virgins (see VESTALES). The dignity of a pontifex maximus was for a long period the privilege of the patricians; the first plebeian pontifex was Tiberius Coruncanius (253 B.C.); see CORUNCANIUS. Under the Principate the emperors held the position of the pontifex maximus.—See LEX PAPILA, REGIA.


Pontifices. High priests who took care of all matters connected with religion and public cult. They constituted a body (collegium) originally of three, later of six members (among them was perhaps the king). In further development the college of pontiffs had nine members (according to Lex Oguiniana four patricians and five plebeians); their number increased to fifteen and more. The pontiffs were creators, guardians of, and experts in, divine and pontifical law (ius dictium, pontificium) and settled the rules for sacred rites (ius sacrum). The close connection between religion and law in the early Roman state gave the pontiffs a particular position in legal matters. They alone knew the law, divine and human (fas—ius), and the legal forms, which, being preserved in the archives of the pontifical college, were accessible to them only. In view of the fact that formalism was the basic element of early law, the pontifices acquired a kind of monopoly in the knowledge of legal forms and rules, which through the first two centuries of the Republic remained their exclusive possession. Their activity in legal life was similar to that of the jurists in later centuries. They advised the magistrates in legal matters and gave answers (responsa) to juridical questions put before them by private individuals and helped them in drafting written documents and in the use of procedural and other forms. The Roman calendar was organized by the pontiffs; they fixed the days on which trials could not take place. The popular assemblies, comitia curiata, were convoked and presided over by the highest priest among the pontifices, the pontifex maximus, and since several acts connected with the family organization were performed there (such as adrogatio, or a testament), the pontiffs, although primarily
interested in the sacral rites (sacra) of the family, acquired a considerable influence in the province of family law. The contribution of the pontiffs to the development of the Roman law was considerable. As late as the third century after Christ, the jurist Ulpian in the definition of jurisprudence mentions in the first place the divinarum rerum notitia (see Jurisprudentia). — In the enactments of the Christian emperors pontifex = bishop. — See pontifex maximus, dies fasti, commentarii Saccodotum, Lex Domitia, Lex Ogulnia.

Berger, RE 10. 1159; Boucè-Leclercq, DS 4; Frezza, nD 9; Rose, OCD; A. Coqueret, De l'influence des pontifes sur le droit privé à Rome, Thèse Caen, 1895; G. Tixer, Influence des pontifes sur le développement de la procédure civile, 1897; G. Wasowska, Religion und Kultus der Romer, 1912; C. W. Westrup, R. pontifical college, 1929; Sogliano, Hist 5 (1931); G. Rohde, Kultuszwecken der röm. P., 1936; F. De Martino, La giurisdizione, 1937, 13; Brock, Sem 3 (1943) 2; F. Schulz, History of R. legal science, 1946, 6; M. Kaser, Das ultrôm. jui, 1949, passim; idem, Religion et droit in Roma arcadia, AmCat 3 (1949) 77; Lante, ZSS 67 (1950) 47; P. Noailles, Du droit sacré au droit civil, 1950, 24.

Pontifices minores. Secretaries (scribae) of the pontifical college. They assisted the pontiffs in their functions.

Pontificium. Used in later imperial constitutions in the meaning of power, right (even in the domain of private law).

Populares. See optimates.

Popularis. (Adj.) See actiones populares, interdicta privata.

Popularia. (Noun.) A member of the populus (population) of a city.

Populus. Cicero (Rep. 1.25.39) gives the following definition of populus: "it is not any assemblage of men brought together in some way, but an assemblage of a crowd associated by law agreed upon and by common interests." The term populus embraces all citizens, and in a narrower sense, all men gathered together in a popular assembly.

G. I. Luzzatto, Epigrafia giuridica greca e romana, 1942, 45.

Populus Romanus (or populus Romanus Quirimum). The whole citizenry of the Roman state, including both patricians and plebeians (originally only patricians). The populus Romanus was a collectivity of physical persons which had its own rights, its existence; it might be owner, debtor, creditor, legatee, heir, manumitter of slaves, vendor or buyer, etc. Its acts and legal transactions, however, were not equal to those of individual citizens and did not give origin to normal trials as between individual citizens, but to measures and remedies of an administrative nature. The Roman jurists did not elaborate a theory of the state as a juristic personality; they dealt with the pertinent problems from the practical point of view in order to protect the social and economic interests of the state. — See aerarium populi, res populi, senatus populusque romanus

Volterra, SAs 2 16 (1938); G. Nocera, Il potere dei consoli, 1940, 15; idem, AnPer 51 (1946) 153; G. Lombardi, AG 126 (1941) 198; idem, Concetti fondamentali dei ius gentium, 1942, 11; Cousin, Rev. Et Latines, 1946, 66.

Portae. The gates of a city. They are considered as res sanctae.

Portentum (portentosum). A monstrous offspring; see monstrum. It was not considered a human being, but was reckoned in favor of the mother for the ius liberorum and to the advantage of its parents in connection with the sanctions of the Lex Iulia et Papiæ Popaeæ against childless parents; see orbis, lex Iulia de maritandis ordinibus.

Portio. In the language of later imperial constitutions, an office, an official post.

Portio hereditaria (hereditatis). The portion of an inheritance to which an heir was instituted by the testator. Portio virilis = a fraction of the inheritance which an heir on intestacy receives equally with other heirs of the same degree of relationship.

Portoria. Custom (export and import) duties, paid primarily in harbors (portus). — See defferre fisco.

Roostovcew, DE 3, 126; Bonelli, SiDocSD 21 (1900) 40; Clerici, Economia e finanza dei Romani 1 (1943) 485; S. J. De Laet, Portorum. Etude sur l’organisation domaniale chez les Romains (Recueil de travaux de la Fac. de Philosophie de l’Univ. de Gand, 1950).

Portus. A harbor. A portus belongs to the category of res publicae. Fishing therein is allowed as in public rivers (flumina publica).

Poscere. To ask, to demand. Used of requests made to public officials (magistrates), in particular, to applications addressed to the praetor in matters of voluntary jurisdiction (jurisdiction voluntaria, see jurisdictio contentiosa), as, e.g., appointment of a tutor or curator.


Posse. Indicates both physical and legal possibility (i.e., what the law permits). — See facere posse.

Possessio. The factual, physical control of a corporeal thing (possessio or posseere corpore) combined with the possessor's intention to hold it under physical control, normally as the owner (animus possidendi, animus domini). The first element, a material one, gives the possessor the opportunity to exercise his power over the thing, the second is a psychical one, based normally on a legal ground (causa possessionis) by which the thing came under the power of the possessor. Possessio is distinguished from the mere physical holding of a thing (tenere, in possessione esse, see detentio) on the one hand; on the other, it differs from ownership (proprietas, dominium) since at times one person may be the owner and another the possessor of the same thing. Possessio is qualified as a res facti, a factual situation, although it produces legal effects and is protected by
the law inasmuch as public order and social interests and security require that the existing possessory situations be protected against any one and any disturbance. In certain circumstances the possessor is even protected against the owner if he is entitled under the law or an agreement with the owner to have the factual control over the thing. Hence the saying, D. 21.2.12.1: "Ownership (proprietas) has nothing in common with possessio." Possessio is acquired when its basic elements, i.e., possessare corpore and animo are materialized, to wit, when the possessor obtains physical power over a thing and has the intention to keep it under his power. Acquisition of possessio is either original when a thing which was not possessed before by another person is taken into possessio (see OCCUPATIO, RES NULLUS) or derivative, when one obtains possessio of a thing from its last possessor (see TRADITIO). Possessio as a factual situation is not transferred to an heir or legatee automatically; physical things belonging to an estate must be taken into material possessio by the beneficiaries. The specific protection of possessio is achieved through interdicta (see INTERDICTUM), in particular the possessory interdicts which serve both for the protection of existing possessory situations (interdicta retinenda possessionis), for the recovery of lost possessio (interdicta recuperanda possessionis) and for obtaining possessio (interdicta adiispescendae possessionis). An owner who has possessio of the thing belonging to him may use all measures available for the protection of possessio. The advantageous position of the possessor found its expression in the saying: "He who has possessio has through this very fact that he is possessor, a better right than he who does not possess." (D. 43.17.2). One of the most important consequences of possessio is that the possessor of a thing who for certain reasons did not acquire ownership (for instance he bought bona fide a thing from a non-owner) might become legal owner after a certain time through usucapition (see USUCAPIO). There was a legal rule concerning possessio: nemo sibi ipsam causam possessionis mutare potest (D. 41.2.3.19) = no one can change by himself the ground on which he obtained possessio, which means that one who acquired possessio under a specific title, e.g., by sale or donation, cannot assert later that he acquired the thing as an heir or legatee, nor can one who holds another's thing, e.g., as a depository or lessee transform the detention into possessio simply by having the intention to possess it for himself (animus possidendi). —D. 41.2; C. 7.32.—See ANIMI DOMINI, ANIMUS POSSIDENDI, DOLO DESINERI POSSIDERE, ACTIO PUBLICIANA, ACCESSIO POSSESSIONIS, TRADITIO BREVI MANU, CONSTITUTUM POSSESSORIUM, CONDICTIO POSSESSIONIS, and the following items.


Possessio ad interdicta. Possession which is protected by interdicta. Interdictal protection was granted also to those who held another's thing according to an agreement with the owner and although they had no intention of possessing it as their own, they could not be disturbed in their right over the thing. Thus a creditor holding a pledge (creditor pignericatus), one who received the thing as a PRECARIUM, a possessor of an ager vectigalis or emphyteuticus, a sequester, all these might ask for an interdict in the case of disturbance by a third person. Other holders of another's things had either special interdicts introduced by the praetorian law for their protection (as the superficiarius, see INTERDICTUM DE SUPERFICIEBUS or the usufructuary, to whom an interdict was granted as interdictum utile, see INTERDICTA UTILIA) or had no interdictal protection at all as in the case of depositum or commodatum. Kaser, ZSS 64 (1944) 389.

Possessio civilis. See POSSESSIO NATURALIS.

Possessio clandestina. See CLADESTINA POSSESSIO, CLAM.

Possessio corporalis (corpore). The factual control over a thing; see POSSESSIO, POSSESSIO NATURALIS.

Possessio ficta. See POSSESSOR FICTUS.

Possessio iniusta. Possession of a thing obtained either vi (by force), clam (secretly, clandestina possessio) or precario (upon request, see PRECARIUM). Syn. possessio vitiosa. Ant. possessio iusta = possessio which is not affected by one of the defects mentioned. Possessio iniusta could be objected only by the person who was deprived of its possessio by the possessor iniustus. Against third persons the latter enjoyed the same protection as a possessor iniustus.—See EXCEPTION VITIOSAE POSSESSIONIS, INTERDICTUM UTI POSSEDITIS.

Possessio iuris (quasi possessio). Possession of a right, as, for instance, of an usufruct. In such cases the classical terminology used the expression ius iuris. Since in classical law possession was limited to corporeal things, the terms possessio iuris and quasi possessio are obviously a postclassical or Justinian's creation.

Di Marzo, StSen 23 (1906) 23; Riccobono, ZSS 34 (1913) 251; Albertario, Studi 2 (1941, ex 1912) 307, 337, 359,
Possessio iusta. See possessio INIUSTA.
Suman, AVen 76 (1917) 1607; E. H. Seligsohn, iusta p., 1927.

Possessio libertatis. The term possessio is sometimes applied with reference to the personal status of a person, e.g., to his liberty (possessio libertatis), citizenship (possessio civitatis) or to his being a slave (possessio servitutis).

Peterlongo, St Albertoni 2 (1937) 195, 213-227.

Possessio momentaria. A vague, non-technical, post-classical term referring to a temporary, provisional possession settled through a possessory remedy (interdictum). The possessio momentaria is opposed to possession definitely decided upon in a trial (actio in rem) in which the question of ownership (causa proprietatis) of the thing in dispute was involved. The confusion in the terminology of imperial constitutions of the fourth and fifth centuries (the use of momentum for possessio momentaria, quaestio momenti for interdictum momentariae possessionis) does not permit a clear picture. The interdictum momentariae possessionis which generally has been identified with the interdictum unde vi, perhaps served originally to protect possession held through a representative (a friend, relative or slave) in the absence of the true possessor, as a provisory arrangement until the absent person returned.

Levy, Ser Ferrini 3 (Univ. Sacro Cuore, Milan, 1948) 111; idem, West Roman Vulgar Law, 1951, 244; J. De Malafosse, L’interdit momentariae possessionis, Thése Toulouse, 1949.

Possessio naturalis (naturaliter possidere). A simple holding of a thing. The holder had no intention rem sibi habendi (= to have the thing for himself) and there was no iusta causa possessios for his holding the thing. Ant. possessio civilis which is based on a iusta causa (= a just legal title) for the acquisition of possession and which, under ius civile, might lead in certain circumstances to the acquisition of property through usucapio. Possessio civilis is protected by the actio publiciana. In Justinian’s law a confusion was brought into the classical distinction possessio civilis—possessio naturalis inasmuch as certain possessory situations which in the classical law were not covered by the term possessio civilis were so qualified by Justinian. In classical law persons with mental defects, and infants could not have a legally valid will (animus) and consequently no possessio civilis. Other cases of possessio naturalis were those of a lessee, depositee and a commodatarium since they are considered holding the thing for the owner; therefore they can not claim interdictal protection.

Riccobono, ZSS 31 (1910) 321; idem, Ser Chironi 1 (1915) 377; Scherillo, Rend.Lomb 63 (1930) 507; Bonfante, Ser giur 3 (1925) 534; Kunkel, Symb Frib Lenel, 1931, 40; Maschi, La concezione naturalistica, 1927, 112; Peterlongo, AnPer 50 (1938) 169; M. Kaiser, Eigentum und Besitz, 1943, 169; idem, Dicentia, in Deutsche Landesreferate zum Dritten Intern. Kongress für Rechtsvergleichung, 1950.

Possessio vacua. See vaca POSSESSIO.
Possessio vitiosa. See possessio INIUSTA.

Possessiones. Great landed property, big estates.

Possessor (possidens). See possessio, PAR CAUSA, AGER OCCUPATORIUS.

Possessor bona fidei (possidere bona fide). One who possesses a thing belonging to another, and believes in good faith that he is the owner; for instance, one who bought a thing from a non-owner. When sued by the real owner for restitution of the thing, he loses the case; when he sues the owner who succeeded in obtaining the thing back, the latter will oppose the exceptio iusti dominii claiming that he is the right owner. Against third persons the possessor bona fidei is protected by interdictum and may also use the actio publiciana. The possessor bona fidei becomes owner under ius civile through possession during a certain period; see usucapio. Ant. possessor malae fidei (possidere malae fide) = one who knows that he is not the owner of the thing he holds unlawfully. The distinction between possessores bona fidei and malae fidei was of importance; when sued by the owner and condemned they had to return the proceeds (see fructus) to the owner. The possessor bona fidei was liable only for the fructus extantia (still existing) and the fructus he gathered (perceptum) after the joinder of issue (iuris contestatio), whereas the possessor malae fidei was liable for all fructus, even fructus perciipienti. Analogous rules were applied in the case of the restitution of an inheritance (see hereditatis petitio) ; the extension of the responsibility of the possessor of the estate depended upon the circumstance whether he was in good or in bad faith.


Possessor fictus (possessio ficta). In literature a person who in reality does not possess the thing which is the object of a dispute but who maliciously feigns to possess it in order to deceive the plaintiff.—See LITI SE OFFERRE, DOLO DESINERE POSSIDERI.


Possessor malae fidei (possidere malae fide). See possessor BONAe FIDEI.

Possessor pro herede. One who holds an estate in the belief that he is the heir.—D. 415.

Possessor pro possessore. One who holds an estate and does not assert that he is the heir but when questioned by the praetor about the title of his possession, he has no other answer than: “I possess because I
possess." He is considered a possessor malae fidei and treated as a praepio.—D. 41.5.

Possessorius. Connected with BONORUM POSSESSIO. See HEREDITATIS PETITIO POSSESSORIA. For interdictum possessoriun, see BONORUM VENDITIO.

Possidere. See POSSESSIO.

Carcattera, AG 115 (1936) 168.

Postcri. See POSSESSIO.

P. (Adv.) Syn. postea. See ex post facto.

Posteri. Descendants. Syn. descendentes, sometimes syn. with postumi. In a broader sense posteri = more distant relatives.

Posterior lex. A statute later than another one referring to the same matter. "A later statute is related to a former one unless it is contrary to it" (D. 1.3.28).—See PRIOR LEX.

Posteriora (libri posteriores). A posthumously edited work. In Roman juristic literature, one such work only is known, the Posteriora of Labeo, allegedly in forty books. A compilation of excerpts from this work (an epitome) was prepared by the jurist IAVOLEUS.

Berger, RE 17. 1836; idem, BIDR 44 (1937) 91; Di Paolo, BIDR 49/50 (1947) 277; F. Schultz, History of Roman Legal Science, 1946, 207.

Postliminium. A Roman citizen who had been caught by an enemy as a prisoner of war became a slave of the enemy, but he regained freedom and "all his former rights through postliminium (iure postliminii)," when he returned to Roman territory. His marriage, however, which was dissolved through his captivity, did not revive; the same applied to possession, which was a factual situation (res facti, see possesso); hence his things had to be taken into possession anew.—D. 49.15; C. 8.50.—See REDEMPTUS AB HOSTIBUS (Bibl.), CAPTVVS, LEX CORNELIA DE CAPTVIS, ACTIO RESCISORIA, DEPORTATIO, TRANSFUGA.

Berger, OCD; Anon., NDL 10; Lécrevain, DS 4; L. Sertori, Le propriez di guerre e il dir. di postliminio, 1916; Solazzi, RendLamb 1916, 636; Beesler, ZSS 45 (1925) 192; Ratti, Alcune repliche in tema di postliminio, 1931; Ambrosino, SDHI 5 (1939) 202; Orestano, BIDR 47 (1940) 283; Guarino, ZSS 61 (1941) 58; A. D’Ors, Revista de la Facultad de derecho de Madrid, 1942, 200; G. Faivrely, Redemptus ob hoste, Thèse Paris, 1942; J. Imbert, Postliminium, Thèse Paris, 1944; P. Rasti, Consuetu faciis munitas, 1946, 107; Solazzi, Sorreni 2 (Univ. Cat. Sacro Cuore, 1947) 288; Bartosek, RADA 2 (1949) 37; De Visscher, Fachs Koscher 1 (1939) 367 (= Nouvelles Etudes 1949, 275); L. Amiranze, Captivitas et p., 1950; Imbert, RHD 27 (1949) 614; Gioffredi, SDHI 16 (1950) 13; Kreiler, ZSS 69 (1952) 172.

Postliminium rei. When certain things (slaves, ships, horses) and not their owner, were taken by an enemy, they returned after the war, when recovered from the enemy, to the owner.

Solazzi, RISG 86 (1949) 1.

Postrema voluntas. In imperial constitutions a last will.

Postulare. (In a civil trial.) "To expound one's claim or that of one's friend in court (in iure) before the magistrate who has jurisdiction or to contradict the adversary's claim" (D. 3.1.1.2). Postulare refers to the request addressed to a magistrate for granting an action, an interdict, an exception, an in integrum restitutio, or a bonorum possessio. The parties usually acted personally, with the assistance of advocates (see ADVOCATUS) or through representatives (see COGNITOR, PROCURATOR). The praetorian Edict contained precise rules as to who might or might not legally act in court. There were three categories of persons in this respect, first persons totally or partially excluded from postulare (such as minors under seventeen years, deaf persons). They might act through an advocate who was assigned by the praetor if they had none by their own choice. The second group were excluded from postulare (acting) for other persons, but not from postulare for themselves (such as women, blind persons, persons condemned for a capital crime, gladiators). The third group included persons permitted to postulate for themselves; among them were persons dishonorably discharged from military service, condemned for certain crimes or in civil trials for acts committed against good faith in contractual relations with other persons. Persons enumerated in this group could act in court also in behalf of their nearest relatives, patrons, and the like.—D. 3.1; C. 2.6.—See INFAMIA.

Solazzi, BIDR 37 (1929) 1.

Postulare. (In criminal matters.) Syn. accusare.

Postulare interdictum. See INTERICTUM.

Postulare pro alii. To act in court in behalf of other persons.—See INTERICTUM.

Postulatio judicis (arbitri). See LEGIS ACTIO PER JUDICIS ARBITRIVE POSTULATIONEM, IUDICES.

Postulatio simplex. In the later civil procedure the initial act of the plaintiff or his lawyer presenting the case against his adversary and asking for the start of a trial.—See LIBELLUS CONVENTIONIS.

P. Collinet, La procédure par lollè, 1932, 239; Steinwenter. ZSS 54 (1934) 377; Filiaux, RHD 8 (1930) 94; Betti, ACDR Roma 2 (1935) 149; Balogh, St Rico-bono 2 (1936) 473.

Postulatio suspicii tutoris. See TUTOR SUSPECTUS.

Postulatio tutoris. A request addressed to the competent authority (a consul or praetor in Rome, a municipal magistrate, a governor of a province) for the appointment of a guardian. The request (petere tutorum) had to be made by a relative, a friend or a creditor of the ward.—See TUTOR DATIVUS.—D. 26.6; C. 5.31; 32.

Sachers, RE 7A, 1518.

Postumus. A child born after the death of the testator within ten months or after the will was made. For the various kinds of posthumous children some of whom had a right of succession to the inheritance of the person whose postumi they were, see the fol-
lowing items. In the developed classical law certain postumi should be instituted as heirs since otherwise the testament was void.—C. 6.29.

Cuq, DS 4; Robbe, NDI 10: idem, I postumi nella succe-
sione testamentaria romana, 1936; B. Biondi, Successione testamentaria, 1943, 114.

Postumus alienus. A child born after the death of the testator, who would not have come under his power had he lived at the time of the birth. Syn. postumus extraneus. Ant. postumus suus.

Postumus Aquilianus. A grandchild born after the death of his grandfather (the testator), whose father (a son under paternal power of the testator) was alive when the testament was made but died before the grandfather. The jurist Aquilius Gallus invented a formula by which such a postumus had to be taken into consideration in the grandfather's testament in order to avoid its nullity. Such a postumus had to be conceived at the time of his father's death (not at the time when the testament was made).

Postumus extraneus. See POSTUMUS ALIENUS.

Postumus Iulianus. A grandchild born after the testament of his grandfather had been made, who became the grandfather's heres suus before his death through the previous death of his own (i.e., the postumus') father. The term postumus Iulianus was coined in literature after the name of the jurist Julian who admitted the institution of such as postumus as an heir or his disinheritance in the grandfather's testament.

Postumus Iunianus. A posthumous child born after a testament was made by his father, but before the latter's death. The term Iunianus (also Vellaeianus), given to such a postumus in literature, originates in the Lex Iunia Vellaea which settled the rules concerning his rights of succession.

Postumus legitimus. A posthumous child born after the death of his father or a grandchild born after the death of his grandfather when his father was no longer alive.

Postumus suus. A posthumous child who would have come under the paternal power of his father if the latter had not died before the child's birth. The child had to be conceived at the time of the making of the testament by the father. A postumus suus was also any person who became heres suus of the testator, i.e., came under his paternal power, after the testament had been made, in a way other than by birth (by adoption, arrogatio, conventio in manum). Postumus suus had to be either instituted as heirs or dis-inherited. Ant. postumus alienus. See PRÆTERIRE.

Postumus Vellaeianus. See POSTUMUS IUNIANUS.

Potentiiores. In the later Empire persons who because of their official position or wealth (great landowners) exercised a more influential economic and social power over their fellow citizens. Their powerful influence in society gave them the opportunity of abusing their privileges to the disadvantage of the poor classes (see HUMILIORES). In order to prevent such abuses, in particular in civil trials, imperial legislation prohibited the cession of claims as well as the alienation of a controversial thing to a potentior made in order to aggravate the situation of one's opponent in the trial.—C. 2.13; 2.14. See DEFENSOR CIVITATIS, HONESTIORES.

Mittis, MéI Girard 2 (1912) 225; R. Paribeni, Potentiories.

Potestas. A term in both public and private law. In the first domain it generally indicates the power of a magistrate whether he is vested with IMPERIUM or not. Potestas embraces all the rights and duties connected with a particular magistracy (iuss edicendi, rights of an executive nature, such as ius minulœ dictionis, ius coercendi, and the like). Colleagues in office had equal power (par potestas), whereas the potestas of magistrates of a different rank in the magisterial hierarchy was differentiated in maior and minor potestas (= greater and lesser power). See MAGISTRATUS, IMPERIUM. At times potestas denotes the office, the official employment itself (similarly as magistratus). Potestas in the field of private law refers either to the power of a head of a family over its members (see PATRIA POTESTAS), or the power over a thing (res, among which are also the slaves, hence the expression dominica potestas is applied to the master's power over his slaves, although in the Roman juristic language the expression is not found). Potestas is also used in the sense of physical power; in particular, with regard to slaves, the master is not considered to have in potestate a slave who runs away or cannot be found. In its broadest sense potestas means either the physical ability (= facultas) or the legal capacity, the right (= ius) to do something.—D. 1.12.

De Villa, NDI 10; L. Wenger, Hausgewalt und Staats-
gewalt, Miscellanea Ehrle (Rome, 1924) 1; A. Casspary, St Albertini 2 (1937) 384; De Vischer, Il concetto di potestà, ConfCast 1940; idem, Nouvelles Études, 1950, 265; Hernandez Tejero, AHDE 17 (1946) 605.

Potestas dominica. See POTESTAS, DOMINICUS.

Potestas gladii. See ITUS GLADI.

Potestas legis. The sphere of effectiveness of a statute, the strength of a law.

Potestas patria. See PATRIA POTESTAS.

Potestas regia. The sovereign power of the king.—See KEK.

Potestas vitae necisque. See ITUS VITAE NECISQUE.

Potestativa condicio. See CONDICIÓ POTESTATIVA.

Potior. See PRIOR TEMPORE.

Potior in pignorie. If a thing was successively pledged to several creditors, the creditor to whom it was pledged first had priority before the later creditors. If, however, a debtor pledged the same thing as a whole (in solidum) to two creditors simultaneously, the legal situation of the creditor to whom the pledge was handed over was more advantageous (melior
condicio possidentis, D. 20.1.10).—D. 20.4; C. 8.17.
—See PIGNUS, SUCCESSIO IN LOCUM PRIORIS CREDITORIS, IUS OFFERENDI PECUNIAM, POSSESSION.
Potiores. Persons in a prominent social position.
Biondi, Ius 3 (1952) 255.
Potioris nominatio. See NOMINATIO POTIORIS.
Potitus est. It is better (preferable) to say. In juristic language the phrase serves to introduce an opinion which should be given preference.
Pp. Abbreviation for proposita (sc. constitutio), i.e., promulgated, officially published. The abbreviation is applied in Justinian's Code to indicate the place and date of the promulgation of an imperial enactment. The indications are given at the end of the text of the constitution. The normal place was the locality where the emperor had actually resided, unless another place was specified.
Praeceptio. See LEGATUM PER PRAECEPTIONEM.
Praecepta Iuris. Legal norms.—See IUS.
Praeceptor. A teacher. See MAGISTER, EDITICUM VES-PASIANI, PROFESSORES, HONORARIUM, STUDIA LIBERALIA.
Praecipere. With reference to statutes, the praetorian Edict, or imperial constitutions = to ordain, to decree, to set a legal rule.—See PRAECEPTA IURIS.
Praecipere. To take beforehand, in advance (praecapere). The term applies to cases in which several claims of various persons occur (as, e.g., in the division of a common property or of an inheritance among the co-heirs, or when several creditors have to be satisfied from the debtor's property) and one of the claimants had to be satisfied before the others. See LEGATUM PER PRAECEPTIONEM. The amount or share which one of the claimants receives before the others is termed praecipum.
Praecipitare de saxo Tarpeio. See DECIRE DE SAXO TARPEIO.
Praecipium. See PRAECIPERE.
Praecones. Criers, heralds. They belonged to the auxiliary staff of higher magistrates whose orders they announced publicly, e.g., the convocation of a popular assembly. They also made public events which interested the population and assisted in public auctions.—See APPARITORES, LEX CORNELIA DE VIGINTI QUAESTORIBUS.
Saglio, DS 4, 609.
Praeda. The booty taken from the enemy in a war through an operation of the army. It became property of the Roman state. The appropriation of such things by an individual soldier was considered as a crime of embezzlement (see PECULATUS) to be punished according to the LEX IULIA PECULATUS. In earlier times such appropriation was allowed.—See RES HOSTILES.
Cagnat, DS 4; Vogel, ZSS 66 (1948) 396.
Praedecessor (prodecessor). A predecessor in office. Certain rules regulated the question as to how long a magistrate or an imperial official remained in office until his successor arrived. The question was of particularly practical significance in provincial administration; a governor might quit his post when his successor arrived in the province.
Praedas. (Sing. praes.) In the earlier law of the Republic sureties who assumed guaranty for a person who concluded a contract with the state (e.g., a lease, a locatio conductio operum), etc.
Humbert and Lécuvain, DS 4; Schlossmann, ZSS 26 (1905) 285; P. Viard, Le prae, 1907; Mitteis, Aus röm. und bürgerl. Recht, Fischer Bekker 1907, 120; Parusch, ASächGW 32 (1920) 659; Gradenzwitz, ZSS 42 (1921) 565; v. Mayr, ibid. 205; J. Maillet, Théâtre de Schuld et Heftung, Thèse Aix-en-Provence, 1944, 99.
Praedas litis et vindicarium. Sureties assuming guaranty for a thing being the object of a trial (lis =res) and for the proceeds (fructus) from it. Such praedas had to be given in the procedure through legis actio sacramentii by the party to a trial concerning the ownership of a thing to whom the praetor assigned possession of it during the trial. The praedas warranted through stipulatio the restoration of the thing and its fructus in the case of defeat of the party to whom possession was assigned. In the later procedure for the recovery of a thing, connected with a sponsio (see AGERE PER SPONSIONEM), it was the defendant who stipulated a certain sum for such event; see CAUTIO PRO PRAEDEA LITIS ET VINDICARII.
—See REI VINDICATIO, PRAEDAS (Bibl.), VINDICIALIA.
V. Lübbow, ZSS 68 (1951) 338.
Praedas sacramenti. Sureties for the payment of the sacramentum in the procedure by LEGIS ACTIO SACRAMENTI. In the later development the amount of the sacramentum was not deposited by the parties at the beginning of the trial; it was only promised and the payment was guaranteed by sureties.
Praedia. Plots of land (estates) together with the buildings erected on them. Syn. fundus.—See the following items.
Humbert and Lécuvain, DS 4.
Praedia curialium (decurionum). Land belonging to CURIALES (DECURIONES) in the provinces could not be alienated in the later Empire without permission of the provincial governor which was given only when the necessity of the sale was proved.—C. 10.33.
Praedia fiscalia. Land owned by the fisc (see FISCUS).
In the later Empire it was administered by a procurator praediorum fiscali.—C. 11.72-74.—See ACTOR PRAEDIORUM FISCALIUM.
Praedia Itala. Plots of land in Italy. Syn. fundus in Italiço solo. Praedia Italia were among res mancipi and consequently were transferable only through
mancipio or in iure cessio. They are distinguished from praedia provincialis (= provincial land) which were res nec mancipi. In the later Empire there was no longer any difference between Italian and provincial landed property.—See res mancipi, solum italicum.

Praedia provincialis. Plots of provincial land. They were res nec mancipi and therefore not transferable through mancipio or in iure cessio. The owners of provincial land were obliged to pay taxes, tributum (soli) in imperial provinces, stipendium in senatorial provinces.—See praedia tributaria, praedia stipendiaria, praedia italica, praescriptio longi temporis.


Germer-Giati, BIDR 43 (1935) 78.

Praedia stipendiaria. “Land in those provinces which are held to be property of the Roman people” (Gaius, Inst. 2.21), i.e., the senatorial provinces. The owners of such land paid the fascia tax called stipendium. Ant. praedia tributaria.—See provinciae populi romanii.


Praedia subsignata. Land pledged to a public body (the state or a municipality) as a security for a debt assumed. The land was not handed over but could be afterwards seized by public authorities when the debt was not paid in due time.—See subsignare.

Praedia tributaria. “Landed property in the provinces regarded as a property of the emperor” (Gaius, Inst. 2.21), i.e., the imperial provinces. The owners paid a land-tax called tributum.—See provinciae caesaris, praedia stipendiaria.

Praedia urbana. Buildings, even when located in the country. Syn. aedes, aedicium. Ant. praedia rustica.—See servitutes praediorum rusticorum. Gardens connected with buildings are considered praedia urba, except when they are exploited for commercial purposes, for instance, for viticulture (D. 50.16.198).—D. 8.4; C. 11.70.—See suburbium praedium.

Germer-Giati, BIDR 43 (1935) 73.

Praediator. The purchaser of a plot of land which had been pledged to the state by a debtor and forfeited. The sale (praediatura) was performed by a public auction the conditions of which were fixed in a lex praediatoria.

Liebenam, RE 5, 1824; O. Karlowa, Röm. Rechtsgeschichte 2 (1901) 5.

Praedicere (praedictio). An oral declaration made at the conclusion of a transaction, for example, by the seller of a slave about the latter’s defects. For praedicere in an auction, see auctio.

Praedio. A robber, pillager; in a broader sense, any possessor in bad faith (possessor malae fidei) who seized another’s property without legal grounds. (D. 50.17.126 pr.)—See possessor pro possessori praestis provinciae. To govern a province. Is qui praestis provinciae = praeses provinciae.

Praefectorius. (Adj.) Connected with, or pertaining to, the office of a praefectus. Praefectianus. A subordinate official in the bureau of the praefectus praetorio.

Praefectorius. (Noun.) An ex-praefect. Praefectura. Indicates either the official position of a praefectus or the territory subject to his authority. For praefectura as an administrative unit after Constantine’s reform of the administration of the Empire, see dioecesis.—See the following items.

Cagnat, DS 4; Beloni, VDI 10.

Praefectura morum. The supervision of public morals. The term is applied to the activity of the censors, see censors.

Praefecturae municipales. In earlier municipalities which were not granted political rights (sine suffragio) jurisdiction over the municipal citizens (municipes) was vested in a praetor in Rome who, however, exercised it by a special delegate, praefectus iuris dicundo. Hence the municipalities without ius suffragii were termed praefecturae.—See suffragium.

Sherwin-White, OCD 725; Fabricius, Skhrij 1924/5, 1, 29; E. Manni, Per la storia dei municipi, 1947, 69.

Praefectus. (From praeficere = to place a person at the head of an office.) The chief of an office in any branch of administration. Commanders of military and naval units also had the title praefectus (alae, castorum = of a military camp, centuriae, classis, cohortis, legionis). In sacred matters there were praefecti of a more local character (praefectus rebus divinis, sacrorum, sacris faciendis). Some praefecti were also called praefossi.—The following items deal with the more important praefectural offices.

Liebenam, RE 6, 1644.

Praefectus Aegypti (also praefectus Alexandræae et Aegypti). The governor of Egypt. He was the chief of the administration, and was appointed and recalled by the emperor. In the provincial administration Egypt occupied a unique position, being more tied with the person of the emperor than any imperial province. Hence the praefectus was considered a personal representative of the emperor. In jurisdictional matters he was assisted by a special official, the iuridicus Aegypti (et Alexandræae), in financial matters by the idologus.—D. 1.17; C. 1.37.

—See praefectus Augustalis, gnomon, iuridici.


Praefectus aervarii militaria. See aervarium militare.
Praefectus aedarii Saturni. See aedarium populi romani.

Praefectus alimentorum. An official of senatorial rank charged with distribution of provisions (alimenta) among poor people and children.—See alimentarius.

Praefectus annonae. The head of food administration, instituted by Augustus (a.d. 6). His was the task to bring in sufficient supplies of corn to the market in Rome; moreover, he supervised the prices. He also had jurisdiction in matters connected with the food administration (see cura annonae) and punished offenses committed by criminal machinations in the corn trade. The praefectus annonae was assisted by subordinate officials (procuratores) in the provinces and in Italy as well as by guilds of professionals active in the corn trade and transportation (navicularii).—C. 1.44; 12.58.—See mensores frumentarii.

De Ruggiero, DE 1. 477; De Robertis. La repressione penale nella circoscrizione dell’urbe, 1937, 35; idem. St di dir. penale romano, 1943, 35; Schiller. RIDA 3 (1949) 322.

Praefectus Augustalis. (Or simply Augustalis.) The title of the praefectus Aegypti from the late fourth century on.—D. 1.17; C. 1.37.—See praefectus Aegypti.

De Ruggiero, DE 1. 824.

Praefectus Caesarius (quinquennalis). See praefectus municipum.

Praefectus civitatis (gentis, nationis). A military administrator of a newly conquered territory on the frontiers of the Empire, before it was organized as a province.


Praefectus castrorum. The commander of a military camp.

Liebenam, RE 6, 1642.

Praefectus classis. The commander of a fleet.

Praefectus collegii. The chairman of an association connected with military service.

Praefectus collegii fabrum. In municipalities the title of a person who, being a member of the municipal council (ordo decurionum), directed the service of firemen and was, normally also, the protector of their association (patronus).—See praefectus fabrum, fabri.

Kornemann, RE 6, 1920; Julian, DS 2, 956; Liebenam, DE 3, 14; Bloch, Musée Belge 7 (1903) 9 (1905).

Praefectus fabrum. The head of the body of technicians in the army in earlier times. In the last centuries of the Republic and under the Principate the praefectus fabrum was an officer appointed by a praetor or proconsul, and later by the emperor, and employed by his superior for confidential missions (an adjutant). The connection with fabri is not quite clear. From the time of Augustus the service of a praefectus fabrum was the beginning of an equestrian career; later it assumed the character of a mere honorary post.—See the foregoing item (Bibl.).

H. C. Maue, Der p.f., 1857.

Praefectus frumenti dandi. (Called also curator frumenti.) An official in charge of the distribution of corn (see frumentatio) among the population of Rome.


Praefectus iuris dicundo. A deputy jurisdictional official in a municipality or one who was temporarily assigned there to judicial matters when the post of the permanent jurisdictional magistrate was vacant. —See lex petronia (of 32 b.C.).

Kornemann, RE 16, 623; Cagnat, DS 4, 611.

Praefectus legionis. The commander of a legion, of equestrian rank (eques). In the development of the Roman army, he was the successor of the legatus legionis.

Praefectus municipii. If a municipality elected the emperor for its highest magistrate (duovir)—this happened frequently—the emperor delegated a praefectus as his substitue who administered the office alone, without any colleague. A praefectus municipii was also appointed when a member of the imperial family was appointed and did not enter the office but in this case the praefectus municipii had a duovir as a colleague. Such praefecti were called praefectus Caesaris quinquennalis because they served five years.

Praefectus orae maritimae. A military official, assisted by a military detachment and appointed for the control and defense of an important sector of the seashore, primarily in provinces. He also had jurisdiction over crimes committed during a shipwreck.

Barbiéri, Rivista di filologia classica 69 (1941) 268; 74 (1946) 166.

Praefectus praetorio. The commander of a military unit in the imperial residence serving as a body-guard of the emperor (cohors praetoria, see praetorium). The number of praefecti praetorio varied from one to four. The praefectus praetorio acquired high political influence being steadily in personal touch with the emperor. Their military command was extended over the troops in Italy. They were assigned administrative and jurisdictional functions, the latter also in criminal matters, from the third century on. Some of the prominent jurists (Papinian, Ulpian, Paul) were praefecti praetorio. Although only of equestrian rank, the praefectus praetorio were the highest governmental officials and the chief advisers of the emperors in military and civil matters. After the division of the territory of the Empire into four praefecturae, each praefectura had its praefectus praetorio.—D. 1.11; C. 7.42; 12.4; for praefectus praetorio Africae C. 1.27; for praefectus praetorio Orientis et Illyrici C. 1.26.—See eminentissimus, excellentissimus, edicta praefectorum praetorio, dioecesis.
Praefectus sociorum. See socil.

Praefectus urbi(s). The prefect of Rome. During the period of kingship the praefectus urbi was the representative of the king in his absence. In the early Republic the practice of appointing a praefectus urbi was continued when all higher magistrates were absent. Since the creation of the urban praetorship (367 B.C.) the praefectus urbi practically disappeared. On one occasion only, when the national feast of the Latins (feriae Latinae) was celebrated in the presence of all Roman magistrates, a special praefectus urbi feriorum Latinarum was instituted. Augustus also reestablished the office of a praefectus urbi, only for the time of his absence from Italy; Tiberius, however, transformed it into a permanent one. Originally the praefectus urbi exercised criminal jurisdiction when he was delegated by the emperor, but later his judicial power increased constantly and when the quaestiones perpetuae ceased to function under Septimius Severus, the competence of the praefectus urbi in criminal matters was almost unlimited not only in Rome but also in the territory within one hundred miles from the city. In the later Empire the praefectus urbi was the head of the administration and jurisdiction in both civil and criminal matters. In the first instance he was the exclusive judge in matters in which persons of senatorial rank were involved. Appeals from judgments of the praefectus annonae, the praefectus vigilum, and other officials of civil jurisdiction (cognitio extra ordinem) went to his court as far as the public order in the city was affected. A small armed unit (cohortes urbanae) for the maintenance of order was under his command.—

D. 1.12; C. 1.28; 12.4.—See millarium, custos urbis, zenonianae constitutiones.

Cagnat, DS 4; De Ruggiero, DE 2, 780; Lambrechts, Philologische Studien, 1937, 17; P. E. Vigneaux, Essai sur l'histoire de la praefectura urbi, 1896; Branches, La jurisdic- tion civile du p. u., 1909; F. M. De Robertis, Origine della giurisdizione criminale del p. u., 1935; idem, La repressione penale nella circoscrizione dell'urbe, 1937; idem, St di dir. pen. rom., 1943, 3; Schiller, RIDA 3 (1949) 322.

Praefectus vehiculorum. The postmaster of the imperial post in Rome (from the time of Hadrian an official of equestrian rank). Later, larger districts in Italy and the provinces had also their praefectus vehiculorum.—See cursus publicus.

Humbert, DS 1, 1651.

Praefectus vigilum. One of the highest officials in the administration of the city of Rome. He was the commander of the fire brigade (vigiles) and exercised the functions of chief of the police. He had to take care of the security in the capital and had jurisdictional power in such criminal matters as arson, robbery, burglary, and the like. His function in civil trials involved controversies arising from leases of houses.—D. 1.15; C. 1.43.—See vigiles (Bibl.).

O. Hirschfeld. Klirne Schriften, 1913, 96; F. M. De Robertis, La repressione penale nella circoscrizione dell'urbe, 1937, 35; idem, St di dir. rom. penale, 1943, 35; Schiller, RIDA 3 (1949) 322.

Praenans. The protection of a pregnant woman after her divorce from the father of the child to be born (nasciturus) was regulated by a special senatusconsul-tum de agnoscendis liberes.—D. 23.5.—See AGNOSCERE LIBEROS, SENATUSCONSULTUM PLANCIAMUM.

Praejudicabile. To prejudice, to impair, to damage. "A judgment which settled a controversy between certain persons does not cause prejudice to others" (D. 42.1.63). There were, however, some exceptions from this rule. In Justinian's language praecidicabile is syn. with nocere.

Praejudicialis. See actiones praecidiciales, formularum praecidiciale, praecidium.

Praejudicialis multa. In later civil procedure a fine imposed on a party to a trial who appealed from an interlocutory judgment; see interlocuto.

Praejudicium. A judicial proceeding for the examination of a preliminary question upon which the decision of a controversy depends. See actiones prae- iodicialis. Since a negative solution of the prejudicial question may eliminate the availability of an action for the principal claim, praecidium is used in the sense of prejudice, damage. For the use of an exception by a defendant in order to prevent that the trial be not extended on questions which may be prejudicial to him for future claims (exceptio ne praecidium hereditatis fiat) see HEREDITATIS PETITIO. For praecidium with regard to interlocutory judgments, see interlocuto. When in a trial the question arose as to whether a party therein involved was a free person (praecidium an liber sit), this question was taken into examination before all.—D. 44.1; C. 3.8; 7.19; 9.31.

Humbert and Lérivain, DS 4; Weis, RE 3A, 2234; H. Passard, Les questions praejudiciales en droit rom., 1907; M. Nicolai, Causa liberael, 1933, 156; Sieber, Fische Wenger 1 (1944) 46; idem, ZSS 65 (1947).

Praelegare (praecelagatio). To make a legacy in favor of an heir who, in addition to his share in the inheritance, receives a specific thing as a legacy. The term praegelargus used in the literature, is not of Roman coinage.—See Legatum per praecelagatem.

C. Ferrari, 1875 (1890 ex 1895) 237; Scutari, RISC 45 (1918) 3; Gangi, RISC 47 (1912) 315; Beseler, ZSS 49 (1929) 155; B. Biodo, Successiones testamentaria, 1943, 466 (Bibl.); v. Lübnow, ZSS 68 (1951) 511.
Praemature. Before a fixed term. A creditor who asks for payment praemature asks for more than is due; see PLUSPETITIO (tempore).

Praemium. See nuntiare fisco, deferre.

Praenomen. See nomen. Under the Empire, foreigners who were granted Roman citizenship by a decree of the emperor took as a praenomen the first name of the emperor. Hence the great number of Aurelius among the new citizens naturalized by the emperor Caracalla who bore the name Aurelius among his praenomina.—See CONSTITUTIO ANTONIANA, IMPERATOR.

Praepone (aliqui rei). To put a person at the head (praesepositus) of a commercial enterprise (see institutum), of the bookkeeping service in a bank, or of a ship (see magister navis). Syn. praeficere. In public law the term praesepositus is used of the chiefs (commanders) of an office, a public institution or a military unit. In some instances it appears in the title of the official who directs the office; see the following items.

Praepositura. The office of a praesepositus.

Praesepositus. See praepone. Praesepositus is the chief of subaltern officers in certain branches of administration. Such as, for instance, the imperial post (praesepositus curorum, tabellariorum), the archives (praesepositus tabulariorum). In the military organization praesepositus is the commander of a detachment of a limited, territorial nature, for instance praesepositus castrorum = the commander of a military camp.—See schola.

Cagnat, DS 4; severini, NDI 10; J. E. Dunlap, in Book and Dunlap. Two studies in later R. and Byzantine administration, 1924, 189.

Praesepositus sacri cubiculi. The chamberlain of the imperial household.—C. 12.5.—See cubiculum.

Dunlap, loc. cit. 160.

Praerogativa. In postclassical period, syn. with privilegeum.

Oestano, AnAc 12-13 (1939) 29, 69.

Praerogativa centuria. See centuria praerogativa.

Præs. See prædes.

Praescripta verba. See actio praescriptis verbis.

Praescriptio. In the procedural formula an extraordinary part of the formula preceding the intentio (praescribere) and serving for a precise delimitation of the claim. Originally there were praescriptiones in favor of the defendant (praescriptio pro reo) and of the plaintiff (praescriptio pro actor). The former fell early into disuse and were replaced by exceptions, as, e.g., the praescriptio ne praesidecem hereditatis fat (see hereditatis petitio, praesudicium). A praescriptio pro actor was applied for, instance, in the case when the plaintiff sued for an installment of a debt. In order to save his right to sue later for further installments, a praescriptio was inserted at the beginning of the formula: "Let the action be (ea res agatur) only for what is already due." In postclassical juristic language praescriptio often replaced the former exceptio and became a general term for any kind of defense opposed by the defendant.—D. 44.1; C. 7.40; 8.35.—See DENAGATIO ACTIONIS, EA RES AGATUR, FORMULA, EXCEPTIO.


Praescriptio longi temporis. An institution similar to usucapio and applied to provincial land which could not be usucapio under ius civile; see usucapio. A possessor of a provincial land might oppose this praescriptio to a claimant who sued him for the delivery of the land if he was in possession of it for ten or twenty years. The period of ten years sufficed inter prasesentes, i.e., if both parties lived in the same locality (later, in the same province); uninterrupted possession through twenty years was required when the parties lived in different cities (provinces). The possession of the defendant had to be based on a just cause (iusta causa) and acquired bona fide (see usucapio). Originally the praescriptio was a way of defense against a rei vindicatio (praescriptio = exceptio), but in later development such a qualified possession gave the possessor the right to claim the recovery of the land if he lost possession. Thus the praescriptio longi temporis became a mode of acquisition of property. In Justinian's law the two institutions, usucapio and praescriptio longi temporis were fused into one. The new terminology was: usucapio for movables, praescriptio longi temporis for immovables. Numerous interpolations became necessary to eliminate any connection between usucapio and immovables; the terms usucapio (usucapere) were substituted by longum tempor, longa possessio (per longum tempus capere).—C. 7.33-36; 40; 22.—See absentes, bona fides, and the following items.


Praescriptio longissimorum temporis. See praescriptio quadraginta annorum.

Praescriptio quadraginta annorum. The Emperor Constantine ordered that any one who held another's thing for forty years could not be sued for its restitution no matter what the origin of his possession might have been (praescriptio longissimorum temporis). Excluded from this kind of acquisition were the lessees of an immovable. Uninterrupted possession through forty years was also required for the usucapion of things belonging to the emperor, the fisc, the church and charitable foundations.—C. 7.39.

Riccobono, F1R 1° (1941) no. 96; Arango-Ruiz, ibid. 3 (1943) no. 101 (Bibl.): idem, Aegyptus 21 (1941) 261 and ANap 61 (1942) 311.
praescriptio quadriennii. The emperor, the empress and the fisc could validly sell things belonging to private individuals. The owners, however, could claim indemnization within four years.—C. 7.37.

praescriptio triginta annorum. According to an enactment of Theodosius II (A.D. 424), any action was extinguished if the plaintiff did not sue the debtor within a period of thirty years from the time he could sue him except in those cases in which an action expired in a shorter time.—C. 7.39.—See actiones perpetuae, actiones temporales.

praescriptio viginti annorum. In Justinian’s language the normal praescriptio longi temporis of immovables which required uninterrupted possession for twenty years inter absentes.


praesens (praesentes). See absentes, stipulatio inter absentes.

praesentia. A person who was employed in the imperial palace.

praesenti die. Immediately, at once, without delay (e.g., debere, solvere, dare). Syn. praesens. “In all obligations in which a date was not fixed for payment, the debt is due at once” (D. 45.1.41.1).

praesae provinciae. (Or simply praesae.) The governor of a province. Originally only governors of imperial provinces (legatus Augusti pro praetore) had the title praesides, later the term referred to all governors of provinces, both imperial and senatorial, and without distinction whether they were of senatorial or equestrian rank. “The title of praeses is a general one. Proconsuls, legates of the emperor and all who govern provinces are called by the name praesides” (D. 1.18.1). In newly acquired provinces the governor was regarded as a military commander who had to subjugate the territory and take care there for order, until a normal provincial administration was introduced. The praesae was the highest official in the province. “His functions embrace those of all magistrates in Rome” (D. 1.18.12). He had the jurisdiction of the praetors in Rome, full imperium, and after the emperor, the greatest authority in his province. During his term of office a governor could not be removed. No one could become governor of his native province without permission of the emperor. Outside his province the governor was considered a private person. Syn. qui praesae provinciae, rector provinciae (in later times).—D. 1.18; C. 1.40; 5.2.—See provincia (Bibl.), edictum provincial, vice.

Chapot. DS 4; Orestano. NDI 10; F. Leifer. Einheit des Geschalldenkm. 1914, 305; H. E. Mirow. The R. provincial governor as he appears in the Digest etc. Colorado Springs, 1926; Solazzi, SDHI 16 (1950) 282.

praesidium. A military garrison.—See curator praesidii.

praesidentia. An honorific title of certain higher officials in the later Empire. The emperors addressed them in their letters with “praesidentia tua.”

praestare. (From praes stare.) To be a guarantee, to be responsible for certain duties which arise from contractual obligations in specific circumstances as, for instance, for dolus, culpa, eviction, and the like (e.g., dolum, culpam, damnnum, custodiam, etc., praestare). The verb appears in the definition of obligatio and covers any liability of the debtor beyond the principal obligations of dare or facere. See obligatio. The term is elastic and is applied in the classical language in a broad sense in various legal situations even those arising from delictual obligations and sometimes in connection with performances in which no legal duty is involved.—See custodia, dolum.

V. Mayr, ZSS 42 (1921) 198; F. Pastori. Profilo dionattico e storico dell’obbligazione romane, 1951, 143.

praestare actionem. To cede an action to another.—See cession.

praestare patientiam. See patientiam praestare.

praestatio. The performance, fulfillment of a duty. See praestare. For praestationes personales in actions for division of common property, see actio communi dividendo.

praestitutue. To fix a date or a space of time (e.g., annum, diem, tempus) for the fulfillment of legal or procedural duties. It is primarily used of terms fixed by legal enactments or by jurisdictional authorities.

praestituisse aliquem. To put a person at the head of an office or a private enterprise. Syn. praeponere, praeficere.

praesumptio. (From praesumere = to presume.) A presumption occurs when a fact is deemed proved although it is not directly proved and its existence is only logically inferred from another fact established through evidence. Such kind of presumption is termed in literature praesumptio facti or praesumptio hominis. E.g., a child born to a married woman is presumed to be the husband’s child and consequently a legitimate child. A counterproof is admissible. Such presumptions are often introduced by phrases like credi debet, creditur (= it is presumed). In later (Justinian’s) law there were some presumptions legally imposed to the effect that a fact had to be considered proved in court as long as no counterproof was offered (praesumptio iuris). Thus, for instance, a presumption was fixed for the event that several persons died simultaneously (e.g., in a shipwreck) to the effect that children below the age of puberty were presumed to have died before their parents, whereas the older children were presumed to have died after them. In certain exceptional cases a counterproof was not admitted (praesumptio iuris et de iure).—
D. 22.3.—See commoriientes.
Donatuli, NDI 10; idem, Le praesumptiones iuris in dir. rom., 1930; idem, Rev. dir. priv. 1933, 161.

Praesumptio Muciana. The jurist Quintus Mucius Scaevola is considered the author of the presumption that everything that a married woman possessed, was given to her by her husband unless she was able to prove the contrary.

Praetereire. To bring forward an excuse (a true or a false one), to pretend, for instance, the ignorance of the law.

Praetereire. See senatum movere.
Praetereire. To pass over in silence a person in a last will. The so-called heredes sui (see heres suus), natural or adoptive, had to be instituted or disinherited (see exheredatio); otherwise if they were not mentioned in the testament at all (praetereire) the latter was void and the testament was deemed intestatus.
—C. 6.28.—See postumus suus.
Beseler, ZSS 55 (1925) 1; Sanfilippo, AnCom 12 (1938) 265.
Praetextatus (scil. facta, negotia). Events which happened in the past, such as crimes committed before the issuance of a pertinent penal statute, legal acts and transactions concluded at a former time. Ant. futura = future events. The antithesis is connected with the problem of the retroactivity of legal enactments. Non-retroactivity is the rule, but in a few exceptional cases some later imperial enactments, even of penal character, admitted retroactivity. Most of them are in the Theodosian Code.—See ex post facto.
Siber, Analogie und Rückwirkung im Strafrecht, ASachW 43 (1936); Berger, Sen 7 (1949) 63; Marky, BIDR 53-54 (1948) 241.
Praetextatus. See toga praetexta, impubes.
Praetextus. See toga praetexta.
Praetor. In the earliest times (before the introduction of the consulship) the praetor was the highest official (praetor = one who goes in the front of the people). As a magistracy (see magistratus) the praetorship was created by the Lex Lictoria Sexia (367 b.c.). It was assigned the civil jurisdiction which it took over from the consuls. The office of the praetor urbanus was first created. Originally a patrician post, the praetorship was made accessible to plebeians since 337 B.C. The praetor urbanus had jurisdiction (ius dicbat) in Rome; later (242 B.C.) a second praetor was instituted and vested with jurisdictional power in civil matters between foreigners (inter peregrinos) and between foreigners and Roman citizens (praetor peregrinus). Since the government of provinces was originally directed by praetors their number constantly increased (up to 16). Later, it became customary to send ex-praetors after their year of service in Rome to provinces as governors. When the permanent criminal courts (see quaestiones perpetuae) were established, their chairmen were taken among the praetors. The praetors were the highest magistrates in the Republic after the consuls and were vested with full imperium and far-reaching authority in military, administrative and judicial matters. But their principal domain was jurisdiction; for their creative activity in the development of the law, see ius honorarium, ius praetorium, ius edicendi, editicum perpetuum. They were obliged to reside in Rome and were not allowed to leave the capital for more than ten days. Under the Principate the activity of praetors was almost exclusively jurisdictional. Afterwards, when the law was taken over by bureaucratic officials, the praetorship became an office without any important activity. Its functions were limited to the arrangement of public games and spectacles.—D. 1.14; C. 1.39; 12.2.—See jurisdictio, stipulatones feaeoriae, in ture, mancissimo praetoria, and the following items.
Praetor aenarii. See aenarium populi romani.
Praetor de liberalibus causa. A praetor with a special jurisdiction in matters concerning the liberty of an individual, in particular, in controversies between slaves and their masters involving the liberty of the slaves. The office was still in existence in Justinian's times.
M. Nicolau, Canon liberalis, 1933, 67.
Praetor fideicommissarius. A praetor instituted in the early Principate with jurisdiction in matters concerned with fideicommissa.—See fideicommissum.
Kübler, DE 3, 75.
Praetor fiscalis. A special praetor with jurisdiction in controversies between the fisc and private individuals. The office was instituted by the emperor Nerva (A.D. 96-98).
Praetor hastarius. A praetor who, in the later Principate presided over the centumviral court.—See centumvir, hastarum.
Wassak, RE 3, 1937.
Praetor iuventutis. See magister iuvenum.
Praetor liberalium causa. See praetor de liberalibus causa.
Praetor maximus. A controversial office; seemingly the highest among three officials who at the beginning of the Republic had the sovereign governmental power (dictator? magister populi?).
Heus, ZSS 64 (1944) 68; Wesenberg, ZSS 65 (1947) 319.
Praetor peregrinus. See Praetor. For the influence of the judicial activity of the praetor peregrinus on the development of the so-called ius gentium, see Ius Gentium (Bibl.).

Nap. TR 12 (1933) 170; Gilbert, Rex Judicatae 2 (Melbourne, 1939) 90; Daube, JRS 41 (1951) 66.

Praetor populii (plebis). An official instituted by Justinian (Nov. 13, A.D. 535) for criminal jurisdiction, with a competence similar to the former PRAEFFECTUS VIGILUM.

Praetor tutelarius (tutelaris). A praetor (from the time of Marcus Aurelius) charged with the appointment of guardians and with jurisdiction in controversies between guardians and their wards.

Preisendanz, RE 7A, 1608.

Praetor urbanus. See Praetor.

Praetoriani. Soldiers of the imperial body-guard, see Praetorium. Syn. cohors praetoria.

Cagnat, DS 4, 632.

Praetorianus. (Adj.) Pertaining to the office of the praefectus praetorio.

Praetorium (cohors praetoria). A military unit serving as the body-guard of the emperor under the command of the PRAEFFECTUS PRAETORIUM.


Praetorium. The residence of a provincial governor; the headquarters of a commanding general. Praetorium is also used of any luxurious mansion. Even situated in the country (a country-seat) it is considered a praedium urbanum.

Cagnat, DS 4, 640; Richmond, OCD; Domaszewski, Bonner Jahrbücher 117 (1908) 97.

Praetorius. (Noun.) A retired praetor.—See Aductio.

Praetorius. (Adj.) Connected with, or pertaining to, the office of a praetor (ius, iurisdicctio, actio, stipulatio, etc.).

Praetura. The office of a praetor.—See Praetor.

Praevaluit. See Obiitnunt.

Praevaricatio (praevacriator). A collusion between the prosecutor (accuser) and the accused in a criminal trial to obtain the latter’s acquittal. The second trial against an accused who had been absolved in a first trial, took place before the same court the first duty of which was to examine whether or not in the first proceedings there had been a praevacriatio. The praevacriator, i.e., the accuser whose guilt was established, was severely punished and branded with infamy. See Accusatio. Praevaccatio was also a collusion between a lawyer and the adversary of his client to the detriment of the latter.—D. 47.15.

Kaser, RE 6A, 2146; Lécrivain, DS 4; Levy, ZSS 53 (1933) 177.

Praevaricatio sanctio. In the later Empire an imperial enactment of a particular importance and of a general and permanent validity. It concerned the general administration, privileges granted larger groups of persons, orders given to officials of a larger administrative body or corporations, etc. Letters by which the emperors of the Eastern and Western parts of the Empire reciprocally exchanged their enactments to be published in the other part of the Empire, were also termed praemática sanctio. Syn. prlemática tussio, prlematica lex, or simply praemática, or prlematica. Special functionaries of the imperial chancery, prlematicarii, were entrusted with the drafting of such enactments.—C. 1.23.—See SANCTIO PRO PETITIOINE VIGILI.

Cué, DS 4, 642; H. Dirksen, Hinterlassene Schriften 2 (1871) 34; Mommsen, ZSS 25 (1904) 51 (=Jur. Schr. 2, 426); Diold'Or, SDHI 11 (1943) 314; Renier, RHD ZZ (1943) 208.

Pragmaticarius. See the foregoing item.

Praemática. A person skilled in legal matters, primarily in the composition of legal documents.

Precario (precarii verbis). By begging, by entreaty, by request. The typical expressions (precario verba) were rogo, peto; they were used in a testament for a fideicommisssum and addressed to the heir as a request to fulfill the testator’s wish. Syn. precatio, precario modo.—See PRECARIUM.

Precarium. “What is given gratuitously a person at his request to be used by him as long as the grantor permits” (D. 43.26.1 pr.). The latter is precario dans, the grantee = precario accipiens. The grantee is liable for fraud only; he has possession of the thing given precario and interdictal protection, but his possession does not count for usucaption. On the other hand the grantor demands the restitution of the precarium by INTERDICTUM DE USUCAPION.—D. 43.26; C. 8.9.

Beauché, DS 4; Anon., NDI 10; Lenel. Edictum perpetuum (1927) 486; Capessoni, ACSR 6 (1928); Scheffilo, RendLomb 62 (1929) 389; Bozza, AnBari 6 (1930) 213; V. Scialoja, St 1 (1931, ex 1888) 341; Alberto. St Salmi 1 (1941) 337 = St 2 (1941) 14; Silva, SDHI 6 (1940) 233; Caracattera, AnBari 4 (1941) 115; Branca, St Salmi 498; Levy, ZSS 67 (1948) 1; Roed, RIDA 6 (1951) 177.

Preactor. A petitioner, particularly one who addresses himself to the emperor with a petition (PRECES).

Prescia. (Sing: prex.) A petition addressed to the emperor by a private person. Since the petition normally was not accompanied by a piece of evidence, the imperial answer (decision, rescript) was given with the reservation “provided that your allegations are based on truth” (si prexes veritate nituntur). See LIBELLUS, SUBSCRIPTION.—In relations between private individuals preces mean a request, entreaty. The term appears in the definition of PRECARIUM.—C. 1.19.

Precices refutatoriae. Syn. libelli refutatorii. See REFFUATATIO, CONSULTATIO.
Prensio. (From *prendere.*) The arresting of delinquents by magistrates with *imperium* and plebeian tribunes. The right to arrest was *ius prersionis.*

**Pretium.** The price fixed in a sale and paid (or to be paid) by the buyer to the seller. See *emptio* *venditio.* The price is an essential element in a contract of sale. Since “there is no sale without a price” (Inst. 3.23.1). The price had to be established in money, otherwise the agreement was not a sale but *permutatio* (an exchange, a barter). The fixing of the price may be left to a third person. The classical jurists did not agree as to the moment when in such a case the sale was concluded. Justinian decided that the sale was concluded after the third person established the price. See *laesio enormis.*—*Pretium* sometimes indicates the sum paid by the lessee in a lease or by the employer to a workman for the work done; see *merces.*

**Pretium iustum.** An adequate, just price. In the classical law there was no requirement of a just price. For the later development, see *laesio enormis.*

**Preq.** See *preces.*

**Pridianum.** A military record concerning the strength of a unit and the changes therein (accessions and losses).


**Primas.** In later imperial constitutions a person who holds the first place in an office, in a public administrative body (a city, a village) or in professional associations (*primus advocatorum*).—C. 11.29.

**Primatus.** The rank of a *primas.*—See the foregoing item.

**Primicerius.** In the later Empire the chief, the highest official, first in rank, in an imperial bureau or the superintendent over several bureaus (e.g., *primicerius scriiorum, officiorum*). Similar expressions: *primas,* *magister.* His deputy = *secundicerius.* The dignity of a *primicerius = primiceriatus.*—C. 12.7.

Cagnat, DS 4.

**Primicerius notariorum.** See *notarii.*—C. 12.7.

**Primipiliarius.** See *following item.*

**Primipilius.** The first among the centurions of a legion. After retiring from service a *primipilius* received the title *primipilius* and was granted certain distinctions and privileges, primarily of a financial nature. *Primipili* were entrusted by the emperor with special military missions or a honorary position, at times with a magistracy in the community of residence.—C. 12.57; 62.—*See centurio.*


**Primiscrinium.** The first official in an imperial bureau (*scrinium*).

**Princeps.** The emperor. The title was first assumed by Augustus in the period between 27 and 23 B.C. not as an official one but in the sense simply of “the first citizen.” Hence the period of the Roman history from that date on is termed the Principate (until Diocletian). The term *princeps* does not appear among the titles of the emperor in official documents. In these his position is stressed instead by the words *Imperator, Caesar, Augustus.* Other distinctive attributes were *Pius* and *Felix* or, referring to victorious enterprises, *Germanicus, Arabicus,* and the like. The basic elements of the *princeps*’ power was on the one hand the tribunician power (*tribunicia potestas*) established by Augustus as a symbol of the restoration of the Republic, which gave him the inviolability of the tribunes (*sacrosanctitas*), the right of *intercessio,* but no collegialship of other tribunes, and the right to summon the *senate* and the people; on the other hand he held the *imperium maius* of a proconsul for life which strengthened his position with regard to the provinces and vested him with the highest military command in the whole empire. The emperor’s consulsiphip and censorship (the latter assumed by some successors of Augustus) completed the external aspect of the power of the *princeps.* Through the duration of the Principate the rights of the emperor were gradually extended without any substantial change in their legal bases. See *lex de imperio Vespasiain, princeps legibus solutus.* The control of the foreign policy and the right to decide about war and peace as well as to conclude treaties with foreign countries and to receive and send ambassadors belonged to the prerogatives of the *princeps.* In the field of legislation the emperor’s wishes were originally (under Augustus) submitted for ratification by the people, an act which in the course of the first post-Christian century became a simple formality and afterwards disappeared. In the jurisdictional domain the emperor was the supreme judge both in criminal and civil matters, either as a first or an appellate instance. The emperor was also *pontifex maximus.* The influence of the emperor on the composition of the senate constantly increased (see *adlectio*) and so did his interference in the election of magistrates (see *commendatio*). Moreover, he had the exclusive right to appoint officials of the imperial chancery, for his personal service and for the imperial household as well. He alone chose the delegates to carry out some of his governmental duties in his name. The imperial service became gradually a state service, at the expenses of the magistracies which under the Principate continued to exist but with responsibilities which continually diminished. For the various imperial offices, the imperial chancery, the administration of the imperial patrimony, and the imperial household, see the pertinent entries; for the role of the senate under the Principate, see *senatus*; for the legislative activity of the *princeps,* see *constitutiones principium; gratio principis;* for his judicial activity, see *decreta, rescripta.* Succession to the throne was not fixed by law. It was not hereditary
but elective; election by the senate as representatives of the people was the rule. There was, however, at times a hereditary succession, in fact, when an emperor indicated his successor (a natural or adoptive son, or a near relative) by designating the latter as his heir thereby implying the wish that his heir might be also his successor as the princeps. A similar designation of a successor might be expressed by the appointment of a co-regent. The juridical structure of the Principate has remained controversial in spite of a tremendous literature in recent times on the occasion of Augustus' bimillenary. The Principate can hardly be classified as a uniform constitutional system. It started from the tendency of Augustus to keep in force certain Republican institutions, but in the course of time some authoritarian features were added at the expense of earlier democratic elements, so that the constitutional aspect at the beginning of the Principate was gradually disappearing in later times, particularly under Hadrian and in the late first half of the third century. With the reign of Diocletian a new epoch started in the Roman constitutional development with an autocratic monarch at the head of the empire (no more princeps, but imperator). This period is termed (perhaps not very appropriately) Dominate, the emperor being now (from the time of Aurelian, A.D. 270–275) the master, dominus, over the territory and the population of the state. See, moreover, Legati Caesaris, Procurator Caesaris, Res Privata Caesaris, Consilium Principis, Piscus, Magistratus, Divus, Genius, Damnatio Memoriae, Epistulae Principis, Domus Divina, Maiestas, Consortes Imperii, Res Gestae Divi Augusti, Antonitas Principis, Mandata Principum.—For the legislative activity and legal policy of the individual emperors, see General Bibliography, Ch. VI.


Princeps. (Generally) An outstanding personage, a chief, in civil or military service.

Princeps agentum in rebus. The chief of the agents in rebus.—C. 12, 21.

Giffard, RHD 14 (1935) 239.

Princeps centurio. See Centurio.

Princeps civitatis. A leading man in the state.

Princeps coloniae (municipii). Not an administrative official but an outstanding personage in a colony (municipium), usually an ex-magistrate of a higher rank.

Kornemann, RE 16, 625.

Princeps iuvenium (iuuentutis). The title of the emperor's son when he put on the toga virilis and entered service in the cavalry. He was the head of the young men of equestrian rank.

Weinstock, RE 6A, 2184; Cagnat, DS 4; Balson, OCD.

Princeps (princeps) legionis. Soldiers of the second line in the legion, older than the first line infantry men (hastati) and sent into combat after them. The commander of a centuria composed of princeps also had the title princeps (centurio).

Princeps legibus solutus. This principle stating that the emperor is above the law appears in Justinian's Digest as a general one. It is clear, however, that in the source (D. 1.3.31) from which it was taken the rule originally referred only to the exemption of the emperor from the restrictions imposed by the Lex Iulia et Papia Poppaea. Under the Principate the rule had the meaning that the emperor might abolish or change the laws as he pleased.—See Lex IULIA DE MARITANDIS ORDINIBUS.


Princeps officiæ. See officium palatinum. Any head of an administrative office, civil or military, used the title princeps, e.g. princeps agentum in rebus.—C. 12, 37.

Marchi, St Fadde 5 (1906) 381; E. Stein, ZSS 41 (1920) 195.

Princeps scriini. The head of an imperial bureau in the later Empire. The princeps scriiniæ were subject to the magister officiorum.

Princeps senatus. A distinguished, leading member of the senate. In the list of senators his name was at the head. Augustus and his successors assumed this Republican title.

O'Brien-Moore, RE Suppl. 6, 699.

Principales. (Noun.) In military service officers of a lower rank, technicians, musicians, etc., in the army. They were organized in associations (collegiae).

Watzinger, DE 2, 367; Drake, Univ. of Michigan Studies, Human. Ser. 1 (1904) 251.
Principalis. (Adj.) Connected with, pertaining to, or originating from the emperor, as, e.g., principalis constitutio, iussio, cognitio, beneficium.

Principalis. (Adj.) First in place, degree, or importance, as opposed to another person or thing of minor or secondary importance. Thus res principalis (= the principal thing) is distinguished from accessio; heres principalis (= the principal heir) is opposed to the substituted heir (see substitutio).

Principalis. (Noun.) The highest official in the municipal administration or in a specific office. Syn. princeps.

Principatus. The high position of the emperor (see princeps); the highest rank in an office.

Principia. See constitutiones principum.

Principia. In military terminology the center of a military camp, the area about the tent of the commanding general (praetorium). In the principia were the tents of higher officers and commanders of minor units. There was also the place where the higher officers gathered to receive orders.

Lecrivain. DS 4, 640; Saglio, DS 1, 945.

Principium. The initial words of an interdictal formula. Some interdicts are denoted by their initial words, as, e.g., interdicia uti possidetis, utrubi, quorum bonorum, quam hereditatem. In citations of texts of Justinian's legislation principium (= pr.) indicates the introductory passage of a text where numbered sections follow.

Prior. Prior in degree, rank, or time. Ant. posterior. Lex prior = an earlier law. Prior heres (syn. principalis) = an heir first instituted, before the heir substituted to him; see substitutio.

Prior. In the election of magistrates, when a candidate for a higher magistracy received a majority of the centuriae voting in the comitia centuriata, the voting was not continued further. The magistrate so elected was designated as prior, e.g., prior (consul) factus est. Liebenam, RE 4, 693.

Prior tempore potior iure. "He who is first in time has a better (stronger) right" (C. 8.17.3). The rule refers to a thing pledged successively to several creditors by the same debtor. The creditor to whom the thing was pledged first had to be satisfied before those to whom the thing was pledged subsequently.—D. 20.4; C. 8.17.—See IGNUS, HYPOTHECA, POTIOR IN FIGORE.

A. Biscardi, Il dogma della collisione, 1935, 49; idem, SDHF 4 (1938) 484.

Priscus. Some jurists had the surname (cognomen) Priscus, among them Iulovenus and Neratius. Therefore, when a text appears under the name of Priscus, the authorship may be doubtful. The jurist Fulcinius (Priscus) enters also into consideration.

Berger, RE 16, 2549; 17, 1832.

Privatian. Officials subordinate to the comes rerum privatuum.

Privatium. Privately, in a private capacity. Ant. publice = in public, publicly. The distinction is parallel to that between publicus and privatus. Privatium refers also to official acts of the praetor when, in exceptional cases, he performed them (as, for instance, manumissions) at home (in villa).—See de plano, in transitu.

Privatus. (Noun.) A private person as opposed to a public official, a corporate body, the fisc, or a member of the military.—See utilitas publica.

Privatus. (Adj.) Connected with, or pertaining to, a private person. Ant. publicus = all that concerns the Roman people (populus Romanus = the state).—See res privatae, res privata Caesaris, actiones privatae, delictum, utilitas, interdicta privata, iter privatum.

Privignus. A stepson, i.e., a son of one's wife by a former marriage or a son by concubinage. Privigna = a stepdaughter.

Privilegium. A legal enactment concerning a specific person or case and involving an exemption from common rules. Originally privilegium might indicate unfavorable treatment of the person involved. The Twelve Tables ordered that "privileges should not be imposed" (privilegia ne irrogato). Later, however, the term assumed the meaning of an exceptional favor granted an individual or an indefinite number of persons, as, for instance, a certain category of creditors (called privilegiarii) to whom a better legal position was assigned than other creditors of the same debtor. There is a distinction between privilegia causae and privilegium personae, the first being connected with the matter itself, as with certain specific claims, the latter being attached to a person or a group of persons with regard to their profession or social position. Only the first were transferable to the heir of the privileged person. Privileged claims were, for instance, the claims of a ward against his guardian or curator, or the claim of a wife against her insolvent husband for the restitution of a dowry. Under the Empire privilegium is used sometimes as syn. with ius singulare.

Beauchet. DS 4; Anon., NDI 10; Legras, NRHD 32 (1908) 584, 650; Ramadier, NRHD 34 (1910) 549; E. Pais, Ricerche sulla storia 1 (1915) 401; R. Orestano, ius singulare e p. Anb1ac 12-13 (1939) 5.

Privilegium exigendi. A right granted certain categories of creditors against an insolvent debtor under which they had to be satisfied before other creditors.

Orestano, Anb1ac 13 (1939) 24; S. Solazzi, Il concorso dei creditori 3 (1940) 132.

Privilegium fisici. See ius fisici.—C. 7.73; 10.1; 5.9.

Privilegium fori. The privilege granted in the later Empire to ecclesiastical persons to have recourse to ecclesiastical jurisdiction.

Genestal, NRHD 32 (1908) 162.

Privilegium funerarium. The expenses for the funeral of an insolvent person had to be covered from
his property first, before the satisfying of the claims of his creditors.

Privilegium (privilegia) militum. The privileges of soldiers in the field of private law, as, for instance, their right to make a testament without observance of the forms prescribed for civilians.—See MILITES.

Pro. (Connected with the title of a high magistrate, proconsul, propraetor, proquaesitor, or separately written pro consule, pro praetore, pro quaestore.) Originally indicated a magistrate who acted as a substitute for the magistrate involved. Under the Republic a pro-magistrate was either a former magistrate whose functioning was extended beyond the year of service for special reasons (see PROBAGATIO) or an official who was temporarily appointed (not elected by the people) as a substitute for another magistrate. At the end of the Republic proconsul was the title of the governor of a province who had been previously a consul (or even only a praetor). Pro-magistrates became later dissociated from former service and were a separate type of office without regard to the fact whether or not the person holding it had been a consul or praetor.

Kübler, RE 14, 430; W. F. Jashemski, The origin and history of the proconsular and praetorianus imperium, Chicago, 1930.

Pro. (In connection with possession as a title, insta causa, for usucaption; see USUCAPIO.) There were various titles which led to usucaption when the holder of a thing erroneously, but in good faith, assumed he was entitled to keep it as his. Thus the title pro empiore possidere means that one held a thing which he acquired by purchase; pro legato was used when one received a thing in fulfillment of a legacy; pro donato, when one received a thing as a gift from a non-owner; pro dote, when a husband received a thing in a dowry; pro soluto, when a thing was given in fulfillment of an obligation; pro derelicto when one took a thing abandoned by a person whom he considered the owner. In all these cases the holder (possessor) of the thing was regarded as possessor pro suo since he possessed it in the belief that he was its owner whereas in actual fact, he was not the owner because the transferor himself (the seller, the donor, etc.) had not been the owner or the legacy or donation were invalid.—D. 41.4–10.—See TRADITIO, USUCAPIO, POSSESSIO, POSSESSOR PRO HERED, POSSESSOR PRO POSSESSORE.

Banmae, RIDA 1 (1948) 27 (for pro legato).

Pro herede gerere (gestio). To act intentionally as an heir (to use the deceased man’s property, to sell or to lease things belonging to the estate, to pay the debts of the deceased, to sue another with hereditatis petitio, and the like). Such doings were considered as an acceptance of the hereditas and had the legal consequences of an ADITIO HEREDITATIS in cases in which an explicit declaration of acceptance of the heir was required, i.e., when the heir was an outside heir (see HERES EXTRANEAUS, VOLUNTARIUS). When a heres suus or heres suus et necessarius acted in the way mentioned, its doings were qualified as se immiscere (miscere) hereditati and resulted in his losing the right to refuse the inheritance (ius abstinenti, see ABSTINERE SE HEREDITATE). In order to avoid such consequences the person so acting could declare before witnesses (testatio) that his acts did not imply the acceptance of the inheritance.

Berger, RE 9, 1108 (s. v. immiscere); Sanfilippo, AnCiv 2 (1947–48) 166.

Pro herede usucapio. See USUCAPIO PRO HERED.

Pro nihil prob. (haberi). To be (considered) legally void.

Helmann, ZSS 23 (1902) 426.

Pro socio actio. See SOCIETAS.

Pro tribunali. In front of the TRIBUNAL, in court.

Ant. de plano, in transitu.

Dill, ZSS 52 (1932) 174.

Pro tutore gerere. To act as if a guardian. “One acts as if a guardian (tutor) when he fulfills the duties of a guardian in the ward’s affairs, no matter whether he does so in the belief that he is the guardian or he knows that he is not, but falsely pretends to be the guardian” (D. 27.5.1.1). He could be sued by actio protutelae for damages caused during his acting.—D. 27.5; 6; C. 5.45.—See FALSCUS TUTOR, ACTIO PROUTELAE.

Sachers, RE 7A, 1325, 1585.

Probare. To approve. The term is used to indicate the approval of one jurist’s opinion by another jurist.

Syn. ADPROBARE.

Probare. In court or extrajudicially, to prove, to ascertain through evidence.—See ONUS PROBANDI, PROBATIO.

Probare opus. In connection with a locatio conductio operis faciendi, see ADPROBARE.

Samter, ZSS 26 (1905) 125.

Probatio. Proof, evidence, the act of proving. In civil trials there was the rule: ei incumbit probatio qui dicit, non qui negat (he who affirms has to prove, not he who denies, D. 22.3.2). The plaintiff therefore, has to prove the facts on which his claim is founded, the defendant those facts which serve as a basis for his denial of the plaintiff’s claim or for his exception opposed thereto. Each party has free choice of the means of evidence he wishes to offer. In the classical law the value of the various means of evidence (documents, witnesses) was equal and the judge had full liberty in the evaluation of the proofs presented. In postclassical and Justinian’s law the tendency prevailed to give preference to written evidence and to debase that of a witness, if not to declare a testimony of the latter in certain cases insufficient. Under the influence of Christianity the oath became more and more predominant as a means of evidence.—D. 22.3; C. 4.19.—See ONUS PROBANDI, TESTIS, INSTRUMENTUM.
Proconsul. See CAUSA PROBATIO.

Probi erroris causae. See CAUSA PROBATIO.

Probo operis. See ADPROBAE, PROBAE, LOCATIO CONDUCTIO OPERIS FACIENDI.

Probationes aperitissimae, evidentissimae, manifestissimae. The most evident conclusive proofs. Terms frequently used by Justinian and his compilers, primarily with reference to proofs concerning the interpretation of wills.

Probatores. Approvers, professional experts who approved of a work done by a contractor.

Probitas (probus). Honesty (honest).

Probatoria. In the later Empire an imperial decree by which an official of the imperial administration was appointed.—C. 12.59.

Procedure. To occur, to take place. Quod ita procedit, si (= this occurs if) is a favorite phrase of Justinian’s compilers which they used to restrict a legal principle previously expressed.

Guerneri-Citati, Indice’ (1927) 50 (l.v. ita).

Probos (Valerius Probus). See NOTAE IURIS.

Proceres. The highest officials in the service of the later emperors.

Procheiros nomos. A succinct official compilation of laws (similar to the ECLOGE) based primarily on Justinian’s codification and published under the emperor Basile Macedo about A.D. 879. A revised edition, enriched by additions from the later legislation and called PROCHIRON AUTUM was made four centuries later, about 1300.


Procinctus. The army in fighting order.—See IN PROINC'TU.

Proclamare (proclamatio) ad (in) libertatem. To assert and defend one’s liberty. Syn. in libertatem adserere.—See ADSEERTIO, CAUSA LIBERALIS.—D. 40.13; C. 7.18.

Leçrivain. DS 4; M. Niclau, Causa liberalis, 1933, 105.

Proconsul (pro consule). Ex-consuls and ex-praetors (pro praetore) whose magisterial power, imperium (not the consulsip or praetorship itself), was prolonged (see PROBOGATIO IMPERII), were entrusted with the administration of provinces. The titles proconsul and propraetor later were applied even when a certain time elapsed between leaving the office in Rome and embarking on the administration of a province. The provinces ruled by the senate were either consulares (as Asia and Africa) when the rank requested for the governor was that of an ex-consul, or praetoriam when they were governed by an ex-praetor. The imperium of a proconsul (imperium proconsulare) comprised jurisdiction, civil and criminal, and the general administration of the province.—D. 1.16; C. 1.35.—See PRO, PROVINCIA,LEGATI PROCONSULIS, IURISDICTIO MANDATA.

Chapot, DS 4; Severini, NDI 10; De Ruggiero, DE 2, 855; Siger, ZSS 64 (1944) 223; W. F. Jashemski, The origins and history of the proconsular and propraetorian imperium to 27 B.C., Chicago, 1950.

Proconsularis. Connected with, or pertaining to, the office of a proconsul (imperium, insignia).—See PRO- CONSUL.

Proconsulatus. The office of a proconsul as governor of a senatorial province.

Procreare (procreation). See LIBERORUM QUÆRENDORUM CAUSA.

Procul dubio. Beyond any doubt. The location is frequently used by Justinian’s compilers to stress the certainty of a legal norm whether of classical or later origin.

Guerneri-Citati, Indice’ (1927) 32.

Proculianii. See SABINIANI.

Proculus. A jurist and law teacher of the middle of the first century after Christ. He is known more from citations by other jurists than by works of his own, of which only his Epistles are certain. They were highly estimated by later jurists. Proculus was the head of the so-called Proculian group (Pro- culiani).—See SABINIANI.

Berger, BIDR 44 (1937) 120.

Procurare (procuratio). To manage another’s affairs, to act for another as his representative in a civil trial. Procuratio refers also to the office of a procurator in administrative law.—See the following items.

Procurator. (In a civil trial.) A representative of the plaintiff or of the defendant. See Cognitor. He was informally appointed by his mandator, without notification necessarily given to the adversary. Even a person without a mandate of the party or in his absence could be admitted to represent him in a trial and to defend his interests. Such a voluntary representative (negotiorum gestor), however, had to offer guaranty that his principal (dominus negotii) would approve of what he as the latter’s procurator has done in the course of the trial; see CAUSTO DE RATO. When such a procurator appeared before court for the defendant, he had to offer the cautio iudicatum solus; see IUDICATUM. In the later development, the procurator in a process, acting under a mandate of his principal was assimilated to the former cognitor; the procurator became the only representative of a party to a trial and the term cognitor was completely eliminated from the classical sources accepted into Justinian’s compilation.—D. 3.3; C. 2.12.—See cau-
ADOLF BERGER

TIO AMPLIUS NON AGI, DOMINUS LITIS, PROCURATOR AD LITEM, INTERVENIRE, NEGOTIORUM GESTIO.


**Procurator.** (In private law.) “One who administers another’s affairs under his authorization (mandatum)” (D. 3.3.1 pr.). Wealthy people used to have a general manager (administrateur) of their property, a procurator omnium bonorum, whose activity for his principal was practically unlimited (alienations were excluded), unless specific restrictions were imposed on him concerning certain kinds of transactions. He was designated as a general agent ad res administrandas datus (= appointed for the administration of the property). Normally such an agent was a freedman (sometimes even a slave). Procuratorship was distinguished from mandatum (in a technical sense) which referred to an authorization to perform a certain act whereas the procurator omnium bonorum acted either under a general authorization or, at times, as a negotiorum gestor and for an absent principal. The procurator unius recti (= for one affair) is a later creation.—Inst. 4.10; D. 3.3; C. 2.12. 48.—See ad-stipulandi, mandatum, negotiorum gestio.


**Procurator (procuratores).** (In the imperial administration.) Augustus was the first to appoint procuratores as officials of the administration. He entrusted them with the management of the imperial property. With the increase of the imperial patrimony, the exploitation of the provinces for the imperial purse, and the introduction of new taxes and sources of income, procuratores were put at the head of all branches of the administration, even those which were not directly connected with the emperor’s property. Thus, beside the procuratores Augusti (procuratores in service of the emperor) there were procuratores active in the interest of the state. Moreover, some offices which in the past were covered by officials with the title of curator or magistrati, were later granted the official title of procurator. Many procuratores were originally freedmen, but, from the time of Hadrian on, only persons of equestrian rank were appointed as procurator. Most of the procuratorial offices were concerned with the financial administration: there were, however, various procuratores with a different and limited competence. The procurator received a salary and four categories were distinguished according to the amount of their salary; see centenarius, ducenarius. The highest salary was 300,000 sesterces (trecentarius), the lowest was 60,000 (sexagenarius). Procuratores were used in the imperial household, chancery, and in special capacities in Rome, in the administration of the fisc in imperial provinces, for the management of specific taxes and revenues, etc., and finally as governors of certain provinces, primarily on the boundaries of the Empire. The more important procuratorships are mentioned among the following items.—See lexi manciana.


**Procurator a censibus.** See a censibus.


**Procurator a rationibus.** A later title of the chief of the central financial administration, previously called a rationibus.

Rostowzew, *DE* 3, 133.

**Procurator absentis.** A person who assumed the defense of the interests of a party to a trial in his absence (with or without his authorization). He was obliged to give the pertinent guaranties; see procurator in a civil trial. Ant. procurator præsentis.

**Procurator ad annamestrum Ostiis.** A grain controller, stationed in Ostia.

**Procurator ad limem.** See procurator in a civil trial.


**Procurator apud acta.** A representative in a litigation who was appointed by his principal through a declaration made in the office of a magistrate. An official record was made of the appointment.

**Procurator aquarium.** An official instituted by the Emperor Claudius for the administration of the water installations and water supply in Rome.

De Ruggiero, *DE* 1, 551.

**Procurator Augusti.** A procurator appointed by the emperor as his representative in administrative functions, primarily in financial matters, but sometimes also in military affairs.—D. 1.19.


**Procurator bibliothecarius.** The supervisor of the administration of public libraries in Rome (from the time of Claudius). The director of a particular library = procurator bibliothecae.

Dziakowski, *RE* 3, 422; De Ruggiero, *DE* 1, 1003.

**Procurator Caesaris.** See procurator Augusti, rationalis.—D. 1.19.

**Procurator castrensis.** See castrensis.
Procurator falsus. See FALSUS PROCURATOR.

Procurator ferrariarum. An imperial procurator appointed for the administration of iron mines.

De Ruggiero, DE 3, 63.

Procurator gynaecii. An imperial official appointed for the management of an imperial garment factory.

—C. 11.8.


Procurator hereditatium. A procurator concerned with the fiscal revenues from inheritance taxes and estates which were taken by the fisc or were left to the emperor by private persons. —See VICESIMA HEREDITATIS, BONA VACANTIA, CADUCA.

De Ruggiero, DE 3, 734.

Procurator in rem suam. A fictitious representative. —See COGNITOR IN REM SUAM, CESSIO.

Procurator metallorum. An imperial delegate appointed for the administration of mines. His official titles is sometimes more specified, as, for instance, procurator argentararium (silver mines), procurator ferrariarum (iron mines), procurator marinarum (marble quarries). His activity is referred to by the word cura, the mines being sub cura procuratoris.

—C. 11.7. —See LEX METALLI VIPASCENSIS.


Procurator monetae. See TRESVIRI MONETALES.

Procurator omnium bonorum (rerum). A person who administers another's property as his representative (agent). —See PROCURATOR.

Arangio-Ruiz, Il mandato, 1949, 8; 49; Dill, ZSS 67 (1930) 170; A. Burdese, Autorizzazioni ad alienare, 1950, 26.

Procurator operum publicorum. At the end of the second century after Christ an imperial superintendent of public buildings was instituted. He replaced the former curator operum publicorum. —See OPERA PUBLICA, CURATORES.

Procurator patrimonii (Caesarsis). The administrator of the PATRIMONIUM CAESARIUM. Originally his functions embraced also the RES PRIVATA of the emperor, but from the time of Septimius Severus the private property of the emperor was administered by a procurator rei privatae.

Procurator praediorum fiscalis. See Praedia FISCALIA.

Procurator praesentis. A procurator in a civil trial acting in the presence of the party whom he represents. Ant. procurator absentis.

Procurator rationis privatae. See PROCURATOR REI PRIVATAE.

Procurator regionum urbis Romae. See REGiones urbis Romae, caesarsis.

Procurator rei privatae. The administrator of the emperor's private property. This high ranking official had also the title procurator rationis privatae or, in the provinces, magister rei privatae. From the time of Constantine his official title was rationalis, and later, comes rerum privatarum. —See RES PRIVATA, RATIONALIS, PROCURATOR PATRIMONII.

Procurator summarum rationum. A deputy administrator of fiscal matters, subordinate to the procurator a rationibus.

Procurator unius rei. An agent of a private person instituted for the management of one specific affair. The institution is probably a later creation. —See PROCURATOR (in private law).

Fresc, Mili Cornil 1 (1926) 327; E. Albertario, Studi 3 (1936) 493; V. Arangio-Ruiz, Il mandato, 1949, 17.

Procuratores. (In the imperial chancery.) The chiefs of the various divisions in the imperial chancery (ab epistulis, a cognitoniibus, a memoria, a studis, a libellis) received in the later Principate the title procuratores.

Prodere instrumenta. To deliver documents which one received from another in deposit (e.g., an agent, procurator, from his principal), secretly to the adversary of the depositor, against the interest of the latter. The wrongdoer was punished for crimen falsi (see FALSEM).

Prodere interregem. To designate an interrex when both consulsips became vacant. The first interrex was appointed by the senate; after five days of interregnum, he himself designated his successor in office for the next five days, and so did his successors until new consuls were elected. —See INTERREGNUM, INTEREX.

Liebenam, RE 9, 1716; O'Brien-Moore, RE Suppl. 6, 676.

Prodigium. See MONSTRUM.

Prodigus. A spendthrift. According to Justinian's definition (D. 27.10.1 pr.) a prodigus is "one who does not regard time or limit in his expenditures, but lavishes (produsit) his property by dissipating and squandering it." After he was interdicted from the administration of his affairs, the prodigus was not able to make a last will. However, a testament made before remained valid. —D. 27.10; C. 5.70. —See CURATOR PRODIGI, INTERICERE BONTIS.

Beauchet, DS 4; A. Audibert, NRHD 14 (1890) 521; idem, Et. sur l'histoire du dr. r. i. La folie et la prodigalité, 1892, 79; I. Pflaum, Zur Gesch. der Prodigalitätsver- klöration, 1911; F. De Visscher, Et de dr. rom. 1931, 21; Collinet, Mili Corni 1 (1926) 149; Solazzi, St Bonfante 1 (1930) 47; Kaser, St Arangio-Ruiz 2 (1952) 152.

Proditio. High treason, in particular the delivery of Roman territory or of a Roman soldier or citizen to the enemy. See PRODITOR. —Proditio is also the denunciation of a crime to the authorities. —See MAESTAS, PERDUCELLIO.

C. Brecht, Perdulilla, 1938, 91; 191.

Proditor. A traitor, a denouncer. A military proditor was an explorator (= a soldier assigned to the reconnoitering service) who betrayed military secrets to the enemy. He was punished with death. Syn. re- nuntiatoR.
Profutus. (From prodere.) Originating from, introduced by (a statute or a praetor in his jurisdictional capacity, as, e.g., an action or exception.)

Profanum. A profane thing. Ant. sacrum; see res sacrae. Profanus locus is the ant. of religious locus. See res religiosa. A place in which a dead person was buried temporarily, merely to be transferred later into a grave remained locus profanus.

Profecticius. See DOS PROFECTIONIA, PECULIUM ADVENTICUM.

Profere. To produce a document (a testament) in court, to present witnesses (testimonia, testes); to produce in public.

Profere diem. To prolong, to deier (the term of a payment).

Profere sententiam. To pronounce a judgment in a trial. Hence sententia prodata = a judgment pronounced by a judge.

Professio. (From professi.) A declaration (return) made before an official authority (apud magistratum, apud acta = for the records). The professions concerned different matters, primarily personal connotations of a person (such as age, liberty, family status), the birth of children, and the like. The professions could be made personally by the individuals involved, by a representative of an absent person or by a guardian for persons under guardianship.—See the following items.

Cass. DS 4; Elmore, JRS 5 (1915) 125; Reid, ibid. 207.

Professio. Candidates for a magistracy had to declare their willingness to compete for a certain magistracy before the magistrate who convened the popular assembly and later presided over the particular election (consul, praetor, plebeian tribune). A statute of the late Republic required a personal appearance on the part of the candidate before the competent magistrate, who in case of acceptance, put the candidate’s name on the list to be announced in public before the election. The magistrate had the power to refuse a candidate’s admission, if the latter seemed to him ineligible for a specific reason.—See CANDIDATUS, MAGISTRATUS.

Brassoff, RE 4, 1697.

Professio censusialis. A declaration concerning his family and property made by a citizen before the censors during the census. These professions served military and taxation purposes. Under the Empire a perfected census system was set up by the imperial bureaucratic machinery. Fraudulent returns were severely punished.

Schwab, RE 7A, 55; Cass. DS 4, 674.

Professio frumentaria. A return made by persons who requested the admission to the list of those who received gratuitous distribution of corn.—See FRUMENTATIO.

Mittels, ZSS 33 (1912) 171; Elmore, JRS 5 (1915) 125; Gittard, Class Quarterly 11 (1915) 27; v. Premerstein, ZSS 43 (1922) 59.

Professio liberorum (natorum). A declaration made before competent authority by the father (mother or grandfather) concerning a new-born child. These returns served as the basis for entries into an official register of births of legitimate children of Roman citizens. The registration was ordered by Augustus.

Cass. DS 4, 675; idem, Mil Fournier 1929, 119; F. Lanfranchi, Ricerche sul valore giuridico delle dichiarazioni di nascita, 1942; Weiss, BIDR 51/52 (1948) 317; Schulz, JRS 32-33 (1942, 1943 = BIDR 53-55, Post-Bellum, 1951, 70); Monteverchi, Aug 28 (1948) 129.

Professor. Syn. magister, antecessor. Professores iuris civilis = law teachers. Teaching law (civilis sapientia) “should not be estimated nor dishonored by a price in money,” since “the wisdom of law is a very sacred thing (civilis sapientia est res sanctissima),” D. 50.13.1.5.—C. 10.53; 12.15.—See MAGISTER, ANTECESSOR, HONORARIUM.

Proficere. To be useful. Proficit is said when a legal transaction or act serves the purpose for which it was done. Ant. non proficere = to be of no legal effect (use).

Profiscisci (a, ab, ex). To originate, to arise from (e.g., the praetorian edict, praetorian jurisdiction, a testament).

Profiteri. See PROFESSION.

Profundere bona. To dissipate one’s property.—See PRODIGUS.

Progenies. Descendants. The term occurs only in imperial constitutions.

Programma. A proclamation, a manifesto of the emperor or of a provincial governor. When addressed to a private person, the term denotes an edictal (public) summons of an absent person.—C. 7.57.


Prohibere. To prohibit, to forbid. The term is used of prohibitions issued in certain situations by a private individual (e.g., by a co-owner or a neighbor) and of prohibitive orders of a magistrate or of a statute. See IUS PROHIBENDI, COMMUNIO, ACTIO PROHIBITORIA, INTERDICTUM, OPERIS NOVI NUNITIATIO, IUS AEDIFICANDI. With reference to criminal offenses prohibere = to impede, to prevent. Generally no one is bound to intervene in order to prevent a crime except when the crime is directed against the state or in certain specified cases, such as counterfeiting of coins, abduction, or murder of a near relative. In such cases one had to prevent the wrongdoer from committing the crime if he could do it (cum prohibere potuit); otherwise he risked being treated as the criminal’s accessory.—See FURTUM PROHIBITUM.

Homing, Fester Heilbron 1930, 63.

Prohibitorius. See ACTIO PROHIBITORIA, INTERDICTA PROHIBITORIA.

Proiectio (projectum). A part of a building projected over a neighbor’s property. The construction of a projectio could be prohibited by the neighbor.—See PROTECTUM, OPERIS NOVI NUNITIATIO.
Proinde. See PERINDAE.

Proles. Syn. with PROGENIES.

Proletarii. Men without property. Originally the term was applied to persons not registered in the classes of the centuriate organization (see CENTURIA) because they had not even the minimum property required for the lowest class. Their sole possession was their children, proles; hence the name. The proletarii were the poorest stratum of the population. Ant. classici = those registered in the first class according to their property, see CLASSICUS.—See AD- SIDIUS, CAPITE CENSI.

Lecrivain, DS 4; Gabba, Ath 27 (1949) 175; idem, Riv. di Filologia Classica 1949, 173.

Prolatae. Fifth-year students in the Eastern law schools.—See LYTAE.

Promerium. See COMMERCUM.

Promiscua condicio. See CONDICIO MIXTA.

Promissio, promissum. (From promittere.) A promise which created an obligation on the part of the promissor. It is a general term applied to both contractual and unilaterally assumed obligations, to written or oral, formal and formless promises. But the specific application of the term is to obligations arising from a stipulatio, either by the principal debtor or by a surety.—See REUS PROMITTENDI, AD-PROMISSIO, CAUCIO. In Justinian’s legislative work the terms promittere and promissio were substituted for obligations which in earlier law had to be contracted through stipulatio.

Promissio dotis. The constitution of a dowry by a formless promise. It replaced both the formal dictio dotis and the stipulatio dotis in later times and was substituted theretofor in classical texts by Justinian’s compilers.—C. 5.11.—See POLLICITATIO DOTIS.

Promissio operarium. See IURATA PROMISSIO LIBERTI.

Promissio post mortem. See OBLIGATIO POST MORTEM.

Promittere. See PROMISSIO.

Promovere (promotio). To confer a higher rank or an honorific title on an imperial official. The term occurs only in imperial constitutions.

Promulgare (promulgatio). To publish, to promulgate a law. In the Republic, the text of a bill submitted to a popular assembly was promulgated in the form of an edict by which the magistrate who proposed the law publicly announced its text. Alterations were not permitted. Between the promulgatio and the gathering of the assembly convened for the purpose a lapse of time called triumnuatwm (presumably twenty-four days) was obligatory.—See PP.


Pronepos (proneptis). A great-grandson (a great-granddaughter).—See NEPOS.

Pronuntiare (pronuntatio). General terms for legally important pronouncements (declarations) made by officials, and on rare occasions by private persons. With reference to judicial trials (primarily civil), the terms are used of declarations by both the magistrate and the judge in the bipartite procedure as well as by the jurisdictional magistrate in the cognitio extra ordinem. Pronuntiari secundum actionem (reum) = to pass a judgment in favor of the claimant (the defendant); pronuntiari adversus (or contra actionem (reum) = to pass a judgment against the plaintiff (the defendant). Pronuntiatio is often used of a judicial decision concerning the status of a free man or slave, the validity of a testament or marriage, etc. In so-called actiones arbitrariae and in the procedure before the emperor (in either the first or the appellate instance) pronuntiatio is used in the sense of an interlocutory decision.—See SENTENTIA, ARBITER EX COMPROMISSO, SENTENTIAM DICERE (Pronuntiari).

G. Beseler, Beiträge zur Kritik 2 (1911) 139, 3 (1913) 3; E. Betti, L’antites di indicare (p.). e dammare nello svolgimento del processo rom., 1915; M. Wlassak, Judikations-befehl, SBWien 197, 4 (1921) 77; Siber, ZSS 63 (1947) 3.

Pronuntiatio sententiaria. In the senate the announcement by the presiding magistrate of opinions expressed by individual senators on a topic on which a vote was to be taken.

O’Brien-Moore, RE Suppl. 6, 715.

Prope (propius) est. It is proper, adequate, easy to understand. The locution is frequent in the juristic language.

Propinquus (proinquitas). Near relatives, neighbors.

—See CONCILIVM PROPINVQRVM.

Proponere. To submit a case (proposita species, quaestio) to a jurist for an opinion. The respondent jurist gave his view on the basis of the facts as alleged by the questioning party (propositum, in proposito). Some jurists, therefore, used to give their opinion with the reservation, “according to what has been alleged,” or with a clause excluding or restricting a certain decision (nihil propone cur . . . = nothing has been alleged as to why or why not . . .).

Proponere (propositio). (With regard to magisterial edicts and imperial enactments.) To expose to public view. From the time of Hadrian, imperial reprints could be made public by propositio.—See PROSCIIBEBRE LEGEM, PP.


Proponere actionem (interdictum). To announce in the praetorian Edict an action and its formula or an interdict to be granted in specific circumstances by the praetor acting in his jurisdictional capacity.

Propositio (propositum). A case presented for a juristic opinion.—See PROPONERE.

Propositum. A poster.—See HONBARIATVS, PROPONERE.

Propos. Intention. The term is used with reference to good or (more frequently) to evil intention (e.g., to commit a crime, to steal).—See IMPETUS.

Propositus. E.g., proposita causa, species.—See PROPONERE.
Propraetor (pro praetore). An ex-praetor as a governor of a senatorial province (provincia praetoria); a praetor whose term was prolonged for exceptional reasons on advice of the senate.—See PRO, PROBREGATIO IMPERII, LEGATI PROCONSULIS, LEGATI PRO PR AETORE, PROCONSUL.

Lecrivain, DS 4; W. F. Jashemski, Origins and history of the praetsural and praetoradian imperium, Chicago, 1950.

Proprietarius. See DOMINUS PROPRIETATIS.

Proprietas. Ownership. Syn. DOMINICUM.—See NUDA PROPRIETAS, DOMINUS PROPRIETATIS.

Proprio (suo) nomine. (E.g., agere.) To act, to sue on one’s own behalf. Ant. alieno nomine.

Proprius. Belonging to a certain person as his own. Ant. alienus, communis. With regard to iurisdiction propria, the ant. is iurisdiction mandata, delegata.

Propter. See DONATIO PROPTE NUTRIAS.

Procuritare legem. The announcement of the vote on a proposed statute passed by a popular assembly.

Weiss, Cotta 12 (1923) 83.

Prorogare (proragatio). To postpone, to defer, to prorogue (e.g., the date a payment is due, a contractual relation); sometimes prorogare = to pay in advance.

Prorogatio imperii. The prolongation of the magisterial imperium of a high magistrate (consul, praetor) as a pro consule or pro praetore beyond the end of his year of office. The prorogatio applied either to his last post or to taking a governorship in a province.—See PRO, PROCONSUL, PROpraETOR.

Proscirbere (proscriptio). To announce publicly (palam) by a poster, easily accessible to the public, containing information which concerned a larger number of people, for instance, the appointment of an insititor in a business.

Proscirbere bona (proscriptio bonorum). To announce publicly that the property of a person (e.g., of a bankrupt debtor) will be sold by auction. During the period of proscriptio (normally thirty days in the case of bankruptcy, fifteen days when an inheritance was involved), creditors had the opportunity to join in the proceedings which led to the sale of the bankrupt estate. See MISSIO IN POSSESSIONEM REI SERVANDAE CAUSA.—Proscirbere bona is also used of the confiscation of a private person’s property by the state. See PUBLICATIO BONORUM. For proscr- bere bona in the praetorian Edict, see MISSIONES IN POSSESSIONEM.—C. 9.49.


Proprietar legem. To make a statute public. The text was written on boards publicly displayed in the forum so that “it could be plainly read from level ground” (de plano, D. 14.3.11.3).—See PROPONERE. F. v. Schwint, Zur Frage der Publikation, 1940, 26.

Proscriptio. (In public law.) Inscribing the name of a person upon a list of outlaws. Simultaneously, a reward was offered for his head. The ill-famed proscriptio by the dictator Sulla were ordered by the Lex Cornelia de proscriptione (82 B.C.). In later imperial constitutions proscriptio (proscriptio) is used of persons sent into exile.—C. 9.49.

Humbert, DS 4.

Proscriptio albi. Listing a person in the publicly exposed Album Decurionum. Entry in the list without a preceding election is without any legal effect.

Proscriptio bonorum. See PROScriBERE BONA.

Proscriptio debitorum. Making public the names of insolvent debtors through an inscription on a wall or on a column in a public place. The publication was by the creditors.

Weiss, RIDA 3 (1950) 901.

Proscriptio locationis. An advertisement, through an inscription on a building, of an apartment to rent under conditions specified in the notice.

Arango-Ruia, FJR 3 (1943) 453; Maimeri, La parola del pasciu 3 (1948) 153.

Prosecutor annonae. An agent appointed for the transportation of food supplies for the army. His duty was a liturgy (munus) and entailed responsibility for the safety of the goods convoyed. The term prosecutor was also used of escorts conveying (prosecutio) arrested persons or gold belonging to the state (prosecutor auri publici), C. 10.74.

Prosectoria. (Sc. epistula.) An imperial letter of commendation.

Prospectus. See servitus ne prospectui officiatu.

Prospercre. To foresee, to provide beforehand, to take precautions. The term refers both to precautionary measures introduced by the praetor in his edict in order to prevent illegal or harmful acts, and to those taken by private persons through such legal remedies as cautio or satisdatio in order to be saved from eventual losses that might result from a transaction concluded.

Prostitutio. To prostitute. If a female slave (ancilla) was sold under the condition that she should not be delivered to prostitution (ne prostituatur) by her new master, a clause was usually added that in the case of a breach she would be free. In such an event she became a freedwoman of the vendor. Under the later imperial legislation, a slave became free if her master forced her into prostitution.—C. 4.56.

W. Buckland, The R. law of slavery, 1908, 70; 603.

Protectora. In the later Empire an infantry unit for the protection of the emperor, his family and the imperial palace. They accompanied the emperor in public ceremonies. The term protectora domestici refers to cavalrymen in the entourage of the emperor.—C. 12.17.—See DOMESTICI.

Protectram. A roof or balcony projecting onto a
neighbor's property. The latter could prohibit such
a construction unless the builder had a servitude,
servitus protegenae.—D. 39.2.—See procere.

Protestari. To make an announcement in public (in
court or by a placard), for instance, to the effect that
a person is not one's representative, agent, or busi-
ness manager.

Protectula. See PRO TUTORE, ACTIO PROTETELAE.

Prout quidque contractum est, ita et solvi debet.
"In the same way in which an obligation was con-
tracted, it should be discharged" (D. 46.3.80).—See
solutio.

Providere (providentia). To foresee, to procure be-
forehand, to provide for. The terms refer to statutes,
seatusconsults, imperial enactments, and orders of
high officials (e.g., provincial governors). The verb
providere was used by the imperial chancery with
great frequency to stress the duty of an official
to take specific measures in a given situation.

Charlesworth, "Harvard Theol. Rev." 29 (1936) 107; Al-
berrario, Ath 6 (1926) 165, 325 (= St. di diritto rom. 6

Provincia. The original meaning of the term was that
of the sphere of action of a magistrate with imperium,
distinguished from the sphere of action of his col-
league (see collega). Provincia was also used of a
district under the ruling of a military commander.
Later, territories outside Italy conquered and
annexed by Rome were assigned as a provincia to a
Roman magistrate (a consul or a praetor) or a high
pro-magistrate vested with imperium and represent-
ing there the authority of the Roman state. The
first instances in which the term provincia was ap-
plied to a conquered and incorporated territory were
Sicily and Sardinia (241 and 238 B.C.). The or-
ganization of a new province was regulated by a lex
provinciae, but there were no general rules for the
administration of provinces. Within the territory
organized as a province there were territorial units,
cities and municipalities, which were granted a spe-
cial status of civitates foederatae or civitates
liberae et immunes. The Lex Cornelia de pro-
vinciis ordinandis (on the organization of provinces,
81 B.C.) set some rules for the administration of
provinces by ex-praetors who, after their year of
service in Rome, assumed the government of a
province as pro-magistrates with a prerogated im-
perium (see prorogatio imperii). Ex-consuls were
admitted to governorship under the same circum-
stances. Later, however, the Lex Pompeia (52 B.C.)
fixed a delay of five years between the tenure of a
high magistracy in Rome and that of a governorship
in a province. From the time of Augustus the gov-
ernors received a fixed salary. The legal status of
the population of a conquered province was that of
peregrini or of peregrini deditici when the conquest
resulted from a victorious war and a surrender of
the enemy (see deditich, deditio). See tributum.

Roman citizenship was granted either to individual
provincials or to larger groups, until the constitutio
antoniniana bestowed citizenship on all inhabitants
of the Empire. The investment of the principis with
imperium proconsulare maius (qualified also as in-
definite, perpetuum) gave the emperor in theory the
highest power over all the provinces. It was granted
for the first time to Augustus by the senate in 23 B.C.,
but very early—already under Augustus—a distinc-
tion was made between imperial (provinciae prin-
cipis, Caesaris) and senatorial provinces (provinciae
senatus). The latter were the pacified, long annexed
provinces, while the imperial provinces were those
which had been recently acquired and in which re-
volts still occurred or were to be expected. The shift
of a province from one category to the other could
be ordered by the emperor. Under Diocletian the pro-
vincial administration acquired a different aspect.
The division of the Empire into praefecturae and
dioeceses (see dioecesis) was connected with the
creation of new provinces, smaller in territory than
under the Principate. The military command was
separated from the civil administration; the governors
retained their jurisdictional power, which was subject
to an appeal to the vicarii and eventually to the em-
peror. In imperial legislation, provincial matters
were among the topics to which the emperors devoted
their greatest attention. The terms provincia and
provincialis are among the most frequent in Justin-
ian's Code. For details concerning the admin-
istration, officials, jurisdiction, etc., in the provinces,
see the pertinent items, e.g., arca provincialis, con-
ventus, conventus civitum romanorum, concilia
provinciarum, leges datae, legati decem, legati
ad census accipiendos, legati iuridici, legati
legionum, lex rufilia, lex pompeia, ornatio pro-
vinciarum, repetundae, fundus provincialis,
peregrini, and the following items.

Chapot. DS 4; Severini, NDI 10; De Ruggiero, DE 2.
847; Stevenson, OCD; C. Halgan, Essai sur l'administra-
tion des provinces senatoriales, 1898; T. Mommsen, Die
translation, 1909); W. T. Arnold, The R. system of pro-
vincial administration, 3rd ed. 1914; L. Falletti, Evolution
de la juridiction civile du magistral provincial sous le
Haut Empire, 1926; Anderson, The genesis of Diocletian's
prov. admin., JRS 22 (1932); Gitti, L'ordinamento prov-
Comrnale di Roma, Bull. del Museo 3 (1932) 47; Pisanu,
RendLomb 74 (1940-41) 118; Durvedak, Symb. t. Oven,
1946, 333; A. Solari, I'impero rom., 4. Impero provincial
(1947) 193; G. H. Stevenson, Rom. provincial administration,
till the age of the Antoneses, 2nd ed. 1949; D. Magie,
Rom. rule in Asia Minor to the end of the third cent. 1-2
(1950).

Provinciae Caesaris (principis). Provinces ruled by
the emperor, who administered them through gov-
ernors appointed by himself (legati Augusti pro
practore). They were assisted by special imperial
Procuratores (primarily for the financial administration) who were subordinate not to the governor but directly to the emperor. On occasion, the emperor sent special delegates in a specific mission who, too, were directly responsible to him. The soil of imperial provinces (praedial tributaria) was considered property of the emperor and all imposts and revenues from these provinces went to the imperial fisc. See tributum. Some provinces annexed to the empire were governed by imperial procuratores of equestrian rank. The emperor exercised his power over those territories not by virtue of the imperium proconsulare vested in him by the people, but as the successor of their former sovereigns (kings or princes).—See provincia.

Provinciae consulariae. Provinces assigned to ex-consuls by the Senate under the Republic.—See senatusconsultum de provinciis consularibus.

Provinciae populi Romani. See provinciae senatoriae.

Provinciae praetoriae. Provinces governed by ex-praetors as governors.

Provinciae principia. See provinciae caesars.

Provinciae procuratoriae. Provinces of the emperor governed by procuratores.—See provinciae caesars.

W. E. Gwatkin, Cappadocia as a R. procuratorial province, Univ. of Missouri Studies V, 4 (1930); P. Horowitz, Le principe de création des provinces procuratorienes, Rev. Belge de philol. et d' hist., 1939.

Provinciae senatus. Provinces under the control of the senate. In the Republic the senate directed the administration of the provinces through governors selected from among former consuls and praetors (hence the distinction between provinciae consulariae and praetoriae). From the time of Augustus there were two categories of provinces, imperial (see provinciae caesars) and senatorial. Henceforth the senate had full control only over the senatorial provinces. The governors of these provinces were proconsuls appointed by the senate and subject to its orders and instructions. From the second century on it became customary for imperial functionaries (correctores, curatores civitatis) to supervise the financial administration, which in these provinces was confided to special officials, quaestores, subordinate to the governor. The soil was considered the property of the Roman people (see praedia stipendiaria). An impost (see stipendium) was levied on communities; they in turn assessed it on the inhabitants.

O'Brien-Moore, RE Suppl. 6, 793; McFadyen, The princes and the senatorial provinces, CIPHil. 16 (1921); J. M. Cobban, Senate and provinces (73-49 B.C.), Cambridge, 1933.

Provincialis. (Adj.) Refers to different matters (res provincialis), both to persons somehow connected with a province and its administration and to provincial soil (fundus provincialis, praedium provinciale).—See editium provinciale.

Provincialis. (Noun.) An inhabitant of a province "who has his domicile there, not one who is born in a province" (D. 30.16.190).—See domicilium.

Provisio. In the sense of a legal enactment (provision), the term prevails in the language of the imperial chancery of the later Empire.

Provocare. To challenge, to provoke (a jurisdictional measure in a trial). The term is primarily used of appeals from judgments of a lower instance to a higher one; see provocation.

Provocare ad populum. See provocation.

Provocare sacramento. To challenge the adversary by a sacramentum; see leges actio sacramento.

Provocare sponsione. To challenge one's adversary in a trial by a sponsio in order to make him promise to pay a certain sum in case of defeat, e.g., "Do you promise to pay me ... if the slave is mine under Quiritary law?"—See age pere sponsionem.

Provocatio (provocation). An appeal by a citizen condemned by a magistrate in a criminal trial, to the popular assemblies (provocatio ad populum, a magistratu, adversus magistratuum) under the Republic. An appeal from capital punishment went to the comitia centuriata, from a pecuniary fine (multa) to the comitia tributa. Several Republican statutes regulated the procedure of provocatio: Lex Valeria de provocatione, Lex Valeria Horatia, Lex Dullia, Lex Porcia, Lex Sempronia. There was no provocatio from a decision of a dictator, from a judgment of the decemviri, or from that of the criminal courts, quaestiones. Under the Empire an appeal was addressed to the emperor (provocatio ad imperatorem, ad Caesarem). In civil matters provocatio is synonym with appellatio.—C. 7.64; 70.—See anquisitio.

Lecravin, DS 4; Strachan-Davidson, Problems of R. criminal law 1 (1912) 127; Dull, ZSS 56 (1936) 1; G. Pugliese, Appunti sui limiti dell'imperium, 1939, 62; Brecht, ZSS 59 (1939) 261; Siber, ZSS 62 (1942) 376; Henze, ZSS 64 (1944) 104.

Provocator. He who appeals through provocatio.

Proxeneta. A broker, an agent. He could sue his client for compensation for his services in a cognito extra ordinem. Proxeneticum = a broker's (factor's) commission.—D. 50.14; C. 5.1.

Siber, JAH 88 (1939-40) 177.

Proximi. (In the administration.) Lower officials, assistants to the head of an office and his substitutes during his absence. Generally they succeeded their superiors when the office became vacant. The various divisions of the imperial chancery each had their proximi (proximi ad epistulis, a libellis, a memoria, a studiis, proximi scribenti).—C. 12.19.

Proximus agnatus. See agnatus proximus.

Proximus infantiæ (infantiæ), pubertati. See infans, impubes.

Prudentes (prudentiores). In the sense of iuris prudentes, see iterisconsultus, iurisprudentia.
Prudentia. Used in imperial constitutions for inirisp\'rudentia.

Pubertas. See IMPUBES, MINORES, HABITUS CORPORIS.

Pubertas plena. See MINORES.

Pubertati proximus. See INFANS.

Pubes. See IMPUBES.

A. B. Schwarz, ZSS 69 (1923) 345.

Pubescere. To become capable of procreation (pubes, see IMPUBES). Ant. qui pubescent non potest = impotent; see SPADO.

Publicani. Farmers of public revenues (taxes, salt and metal mines, chalk pits, etc.). They were organized in financial companies (societates publicanorum) which at the public auctions arranged by the state for the lease of the pertinent rights acted collectively through their representative (manceps). Senators were prohibited from participating in collection of taxes or other imposts. The publicani were business men of equestrian rank. During the Punic wars they acquired great fortunes and, subsequently, also a great influence in political life. The affairs of the association of publicani were managed by a magister societatis publicanorum, assisted by a staff of subordinates throughout the territory (province) in which the society had leased the particular revenues involved. The provincials suffered much under that system of tax-collecting. The societas was not dissolved by the death of a member; his heir could be accepted in his place. Tax-farming was also practiced in municipalities.—D. 39.4.—See conductores vectigalium, redemptor vectigalium, SOCI, EDICTUM DE PUBLICANIS.


Publicatio bonorum (publicare bona). Confinement of the property of a person convicted of a crime against the state. The confiscated wealth became the property of the state (res publica). See CONFI\'ASCATION, PROSCRIBERE BONA. Publicatio is also called the act of expropriation for reasons of public utility (see EMPTO AB INVITO).—See SECTIO BONORUM.

Humbert and Lécrivain, DS 4; U. Brasiello, Repressione femelre, 1937, 112.

Publicatio legis. The making public of a statute.

Under the Republic the publication of a statute passed by the competent comitia was not obligatory. The magistrate who proposed a bill could make it public, if he wished, by posting the text in the forum or on the walls of a temple (proscribere). Some statutes contained clauses concerning their publication. Trea-

ties concluded with other states were engraved on two bronze tablets, one of which was posted on the Capitol in Rome. For the publication of edicts of magistrates (praetors), see ALBUM. Senatusconsultula acquired legal force when deposited in the aerarium; public exposition was not compulsory. As for imperial legislation, enactments of general import, binding throughout the whole empire or in a larger part of it (all edicta and decreta of special significance), were sent to the provincial governors who took care of making them public in the cities.—See PP., PRO-

PONERE, PROMULGARE.


Publica. In public, in the public interest, in a public place (in court). Syn. in publico.—See INTER\'EALCITUS, UTILIS PUBLICE.

Publice venire. To be sold at a public auction. Ant. privatum venire.

Publiciana in rem actu. See ACTIO IN REM PUBLICIANA.

Publicum (publica). Public property (of the Roman people), public treasury (see AERARIUM). In publico = publice.

Publicus. Connected with, pertinent to, available to, or in the interest of the Roman people. “Public property (bona publica) is what belongs to the Roman people” (D. 50.16.15). The adjective publicus is applied to various concepts in contrast to privatus, such as ins, iudicia, res, leges, causa, utilitas, crimina, officium, etc.—See also RES PUBLICA, DELICTUM, LOCUS PUBLICUS, INTERDICTA DE LOCIS PUBLICIS, AGER PUBLICUS, ITER, VIA, MUNERA, MONUMENTA, VIS, ABOLITIO, SERVII PUBLICI, PASCUM, NEGOTIA PRIVATA, OPERA PUBLICA, USU, DISCIPLINA, SACRA, SUMPTU PUBLICO.

Kaser, SDHI 17 (1951) 24.

Pudicitia. Chastity, a crime against chastity. The lex iulia de adulterinis is also called de pudicitia. Pudicitia adempta = an offense against the reputation of an honest woman committed in public (on a street) by pursuing her constantly or making indecent proposals. It was considered an iniuria and persecuted accordingly.

Puella. See Puer.

Puer. Used in various senses: (a) a slave. Some names of slaves were combined with puer, as, e.g., Marci\'pam = Marci puer; (b) a boy, ant. puella (= a girl); (c) syn. for pueris aetas, pueritia = youth. The term puer is not technical and does not indicate a specific age.

Pueritia. See Puer. In D. 3.1.1.3 pueritia is used of the age of persons under seventeen. They were excluded from acting in court.

Pugnus. A fist. Pugno percuteere = striking a person with the fist. Such an action was considered a corporal injury (iniuria); it was not, however, an out-
rage to the master of a slave when the latter was struck by a third person, although generally an injury to a slave was treated as an outrage to the master himself.—See inturia.

Pulsare. To strike a person. That is the typical case of inturia, as in the Lex Cornelia de injuriis.—See inturia.

Pulsari actione (lile). To be persecuted by an action in court, both in civil and criminal cases; the term is used only in the language of the imperial chancery.

Punire. To punish. Punire is mentioned as one of the tasks and forces of the laws (statutes, see lex). The term refers to all kinds of punishment (capital, corporal, and pecuniary) imposed on wrongdoers for crimes and delictual offenses, public and private.—See capite puniri.


Pupillaris. Concerning, or belonging to, a ward (pu- pillars) under guardianship (tutela).—See res pu- pillares, testamentum—pupillare, substititio pupillaris, uscurae pupillares.

Pupillus (pupilla). "One below the age of puberty (impubes) who ceased to be under the power of his father by the latter's death or through emancipation" (D. 50.16.239 pr.). An impubes who became sui iuris was under guardianship (tutela impuberum). In a broader sense pupillus is used of all who are below the age of puberty, hence etas pupiliaris = the age below puberty. A pupillus could not alienate property or assume an obligation without the consent of his guardian (auctoritas tutoris). The opinions of the jurists were divergent as to whether a pupillus could acquire possession; some required the guardi- an's cooperation. Justinian declared the acquisition valid when the pupillus was beyond the age of infancy. In Justinian's Law, the property of a pupillus was not accessible to usucaption.—D. 26.8; 27.2; C. 5.49; 50.—See tutela impuberum, impubes, filius familias, obligation naturalis, infantia.

Solazzi, BIDR 22-25 (1910-1912); Suman, L'obbligazione naturale del pupillo, Fil 1914; De Villa, StSas 18 (1940) 13.

Purgatio morae. See mora.

Purpurea. Purple. In the later Empire the private fabrication of purple materials and garments was prohibited, the production being reserved as a monop- oly of the state. Likewise, wearing purple cloths (holohera vestimenta) and even possession were prohibited.—See toga purpurea. adoratio purpurae.

Purus. Free from charges, unconditional (ant. condi- cionalis, sub condizione, see condicio), not limited by a fixed date (sine die, ant. in diem, ex die, see dies). A similar distinction exists between the adverbs pura and conditionaliter.—See stipulatio pure facta.

Puta. See utputa.

Putare. To believe, to think. The term is also used of persons who erroneously assume something to exist which is not true, e.g., that one is an heir or a guardian (se heredem, tutorem esse, see ususcapio pro hereede, falsus tutor), and act accordingly. Opinions of jurists are introduced in juristic wri- tings with putare, e.g., ego puta, X putat.

Puteolanus. An unknown Roman jurist, cited once by Ulpian, author of a work Libri adessoriorum.—See adessorium.

Q

Qua de re agitur. A clause in the procedural formula by which the object of the controversy, already defined in the foregoing part of the formula, was pointed out once more for better identification (= "that which is the object of the trial").—See formula.

H. Krüger, ZSS 29 (1908) 378.

Quadragesima litium. A tax amounting to one- fortieth of the value of the object of litigation (21/5 per cent) imposed in civil trials. It was in force for only a brief period in the first century after Christ.

R. Cagnat, Étude hist. sur les impôts indirects chez les Romains, 1882, 235; Bondell, StDocSD 21 (1900) 323.

Quadriga. A team of four horses regarded as a unit. Killing one horse is considered a destruction of the whole, and, according to the Lex Aquilia, the wrong- doer is liable for the value of all four.

Quadrupes. A four-footed animal.—Inst. 4.9; D. 9.1.

—See animal, actio de pauperie, Lex aquilia.

Quadruplatores. Informers (see delatores) who received one-fourth of the property seized from culprits denounced by them, in case of condemnation. Quadruplatores also were the accusers of persons who if convicted had to pay a four-fold penalty (such as gamblers, aleatores, and usurers).

Quauerere. In the sense of to acquire, to obtain, to earn, syn. with adquirere. Quauerere in the sense of to investigate, to inquire, to search after, is used in both civil and criminal matters. Syn. inquirere.

Quauerere liberos. procreare.—See liberorum qua- rendorum causa.

Quaeritur (quaestionem est). The jurists used these locutions to introduce doubtful cases in which "a question arises" ("it has been questioned") about the legal solution of the situation presented. The terms occur not only in collections of so-called quaestiones, but also in other writings of the casuistic type. Similar phrases were: quaestio (quaestionis) est, quaestio in eo consistit (= the question consists in that).

Quaesitor. An investigator in a criminal matter.—See tortor.

Quaestio. As a form of criminal proceedings. see quaestiones perpetuae.

Quaestio de maiestate. A Sullan statute, Lex cornelia de maiestate (81 B.C.), established a permanent court for criminal offenses qualified as crimen maiestatis.

Cramer, Stm 10 (1952) 3.

Quaestio Domiciana. A case presented to the jurist Celsus by a certain Domitius Labeo who inquired
whether a person who wrote a testament for another might be a witness thereto (D. 28.1.27). The case became famous because of the rude answer of the jurist who called the query "very stupid and ridiculous." The name Quaestio Domitiana was coined in the literature.—See SCRIPTOR TESTAMENTI, TESTIS AD TESTAMENTUM ADHIBITUS.

C. Appleton, Mtt Girard 2 (1912) 1; Kretschmar, ZSS 57 (1937) 52.

Quaestio facti. See RES FACTI.

Quaestio per tormenta. Inquiry under torture. Slaves were interrogated in criminal trials under torture until they confessed to the crime of which they were accused, in particular when their masters were the accusers. Citizens could not be tortured except those of the lower classes (humiliores).—See TORMENTA.

Lecrivain, DS 4.

Quaestio status. An examination (investigation) concerning the personal status of a person (citizenship, liberty).—See STATUS, ACTIONES PRAEUJICIALES, LIBERTINITAS.

Quaestorinarius. (Syn. a quaestionibus.) A military official attached to a military court for criminal matters.

Cagnat, DS 4.

Quaestiones. (As a type of juristic writing.) Collections of cases, true or fictitious, discussed by the jurists. Many of the cases might originate in the jurists' discussions in the classroom with their pupils. Other material for the Quaestiones came from cases with which the jurists dealt in their capacity as respondents (responda). Quaestiones which arose from real discussions are identified by the introductory term quaestirur, quaesitum est (= it is [has been] asked). Several jurists published Quaestiones (Celsus, Africanus, Scaevola, Papinian, Paul, Callistratus, and Tertullianus). In the juristic literature the Quaestiones are among the most instructive works; they reveal the acumen of juristic thinking of their authors and the strength of their criticism of divergent opinions.

Riccobono. NDI 10; Berger, RE 10, 1173.

Quaestiones perpetuae. Permanent criminal courts, composed of persons of senatorial and (later) equestrian rank. The first quaestio was established by the lex Calpurnia (149 B.C.) to try extortions (see REPETUNDAE) committed by provincial governors. Later statutes introduced additional tribunals for other crimes: treason (MAESTAS), sacrilege (SACRILEGII), embezzlement (PECULIUM), forgery of wills, documents, coins, weights, etc. (FALSUM), bribery and other corrupt practices at elections (AMBITUS), and the like. The courts consisted of thirty or more jurors and were normally presided over by a praetor. For the personal qualifications of the jurors (judices) and the proceedings before the quaestiones, see LEX SEMPRONIA IUDICIARIA, LEX AURELIA, ALBUM IUDICUM, SORTITIO, REECTIO. Some of the statutes which instituted the quaestiones perpetuae had particular provisions concerning the jurors and the procedure. The trial started with an accusatio by a citizen. Penalties were fixed in the pertinent statutes. The judgment of a majority of the jurors was final; there was no appeal. There was, in criminal matters, another kind of procedure, cognitio extra ordinem, in which bureaucratic officials exercised jurisdiction through the whole process from the investigation to the final judgment.—D. 48.18; C. 9.41; 44.—See AMPLIATIO, IUDICIA PUBLICA, LEX IULIA IUDICIORUM PUBLICORUM, ORDO IUDICIORUM PUBLICORUM.

Berger, OCD (s.v. quaestio); Belloni, NDI 10; A. H. J. Greenidge. The legal procedure of Cicero's time, 1901, 415; H. F. Hitzig, Die Erscheinung des Schauergerichts im röm. Strafprozeß, 1909; Fraccaro, RendLomb 52 (1919) 344; Lengle, ZSS 53 (1933) 75.

Quaestores. The quaestorship was established at the beginning of the Republic although certain sources place its origin in the period of kingship. Originally two quaestores were assistants of the consuls and were appointed by them; later they were elected by the comitia tributa. The activity of the quaestores was concentrated on the financial affairs of the state. During the Republican period their number constantly increased and reached twenty under Augustus (from 45 B.C. there were forty). The large number is to be explained by the fact that several quaestores accompanied the army commanders on expeditions to administer the finances of the military units. The quaestores also managed the finances of the provinces. Those quaestores who remained in Rome (quaestores urbani) supervised the treasury and the financial administration of the state; see QUAESTORES AERARII. The quaestorship was the initial office in the magisterial career. Under the Republic the quaestores had no imperium, no lictors, no sella curulis, but from the time of Sulla they were eligible to a seat in the Senate. In the later Empire the quaestores functioned as city officials with less important functions; their principal task was to organize public games.—D. 1.13; C. 1.30; 12.6.—See IVARIS IN LEGES, LEX CORNELIA DE VIGINTI QUÆSTORIUS and the following items.

Kübler, RE 14, 406; Lecrivain, DS 4; Anon, NDI 10; Stevenson, OCD; Latte, T.AmPhilolAs 67 (1936) 24.

Quaestores aerarii. Two quaestores in Rome charged with the supervision of the treasury; see AERARIUM, with all its extended tasks. They made agreements with contractors for the construction of public works (opera publica) and with the tax-farmers (publicani); they executed payments requested by other high magistrates (primarily the consuls). Under the Principate the activity of the quaestores suffered considerable restrictions because of the interference of imperial officials, but the nature of the office remained
unchanged. Two *quaestores* were assigned to the emperor for his personal service; see *quaestores candidati principis*. One *quaestor* accompanied the emperor on his travels and functioned as a paymaster.

De Ruggiero, *DE* 1, 204.

*Quaestores aquaritii*. Quaestors entrusted with the supervision of the aqueducts.

*Quaestores candidati principis*. Two quaestors appointed on the proposal of the emperor (*candidati principis*) to act as his private secretaries. They read the addresses of the emperor in the senate.

*Quaestores militares*. Quaestors assigned to generals in the field for the administration of the legions.—See *manubiae*.

*Quaestores municipales*. The quaestorship was also a municipal office in some *municipia*, charged with the financial administration.

*Quaestores Ostienses*. One quaestor was obliged to live in Ostia, the port of Rome, in order to supervise the grain supply for the capital.

*Quaestores parricidi*. Mentioned in the Twelve Tables. Possibly they had already been instituted in the regal period for the prosecution of the crime of *parricidium*.

*Quaestores pro praetore*. Either governors of small provinces or officials assigned to provincial governors (*proconsula*) as their assistants and substitutes.—See the following item.

*Quaestores provinciales*. Only in senatorial provinces; see *provinciae senatus*. They had the rank of praetors and a limited jurisdiction corresponding to that of *aediles curules* in Rome. They supervised the financial administration of the provinces. Small provinces had quaestors for governors, but generally the provincial quaestors assisted the governors and acted in their place when one died or left the province.

*Quaestores sacri palatii*. The *quaestor sacri palatii* was one of the highest civil functionaries in the later Empire, concerned with the preparation of enactments and legal decisions to be issued by the emperor. He was the principal legal adviser of the emperor and he was therefore chosen from among persons with considerable legal training.

*Quaestores urbani*. Quaestors acting in Rome as *quaestores aerarii*. Ant. *quaestores municipales* and *quaestores provinciales*.

*Quaestores urbis*. The office of a *quaestor urbis* was created by Justinian for the control of foreigners, beggars, and other suspected elements in Constantinople.

*Quaestorius*. (Adj.) Connected with, or pertinent to, the office of a quaestor.

*Quaestorius*. (Noun.) A former quaestor.—See *adlectio*.

*Quaestuaria mulier* (mulier quae corpore quaestum facit). A prostitute.—*See meretrix*.

*Quaestura*. The office, the rank, of a quaestor. In the later Empire = the office of the *quaestor sacri palatii*.

*Quaestus*. A profit, a gain. With regard to the contract of partnership (*societas*) the term is defined as the profit which is derived from a partner’s work (industry).—See *lucrum, quaestuaria mulier*.

*Quamvis*. See *licet*.

*Quanti ea res est*. What is the value of the thing. This clause, connected with the object of a pending civil trial, occurred in the part of the procedural formula called *condemnatio*. It referred to the evaluation of the object of the controversy. In certain formule the clause referred to the past (*quanti ea res fuit*), i.e., to the time when the wrong was committed (e.g., in *actio furti* or *actio legis Aquilae*), in others to the present (*est*), i.e., to the time of the *litis contestatio* (which was the normal case), or to the future (*quanti et res erit*), i.e., when the evaluation was to be made at the time of the judgment.


*Quanti minoria*. See *actio quanti minoris*.—D. 21.1.

*Quarta pars*. One-fourth of the whole. One-fourth (*quarta*) of an estate (*hereditatis*) refers to the so-called *quarta Falcidia* (see *lex Falcidia*) unless another meaning, a simple fourth part of the inheritance, is evident.

*Quarta Afinitiana*. See *senatusconsultum afinitanum*.

*Quarta Antonina*. See *quarta divi pii*.

*Quarta debita*e portionis. See *querela inofficiosi testamenti*.

*Quarta Divi Pii*. (Called in literature *quarta Antonina*.) A person below puberty (see *impures*) who had been adopted (see *adoptio*), had the right to a fourth part of the inheritance of his *adrogator*, after being emancipated without just reason or unjustly disinherited by the latter. This rule has been set by an enactment of Antonius Pius.

Beseler, *Subsecio*, 1931, 2; David, *ZSS* 51 (1931) 528.

*Quarta Falcidia*. See *lex Falcidia*.

*Quarta legittima*e partia. See *pars legitima*.

*Quarta Pegasiana*. See *senatusconsultum pegasianum*.


*Quarta Trebelliana*. The term used in the literature for the quarter of an inheritance analogous to the *Quarta Pegasiana* after the reform of the law of *fideicommissa* by Justinian on the basis of the *senatusconsultum Trebellianum*.—See *fideicommissum, senatusconsultum pegasianum*.

*Quasi*. As if, as it were. The word is often used by classical jurists when applying recognized institutions or rules to similar relations and situations (analogy). This type of adaptation is accomplished by such
phrases as: *perinde (pro eo) est quasi (ac si)*, and the like. Such locutions allude at times to situations in which an *actio ficticia* (see *actiones ficticiae*) might be given, since the situation was dealt with "as if." On the other hand, however, it cannot be denied that *quasi* is one of those elastic expressions which fit into the mentality of the Byzantine jurists. The adverb occurs frequently in Justinian's constitutions and is therefore suspect in many texts. But its presence cannot be considered a decisive criterion of interpolation.—See *LEX AQUALIA, ACTIO QUASI INSTITIO, PECULIUM QUASI CASTRENSE.*


Quasi contractus—quasi delictum. These terms, often used in modern literature, are not Roman. The Roman jurists speak of *quasi ex contractu* (quasi *ex delicto*) *nascitur obligatio, debere, tenere, obligari*, which means an obligation arises, to be obligated, to owe "as if from a contract (as if from a delict)." In these locutions *quasi* is to be connected with the verb, and not with *contractus or delictum* (maleficium). The Roman idea was that from certain situations or doings obligations arise analogous to those which originate from contracts or wrongdoings; the jurists did not create a category of "almost contracts" or "almost wrongdoings."


Quasi possessio. See *POSSESSIO JURI.*


Quasi usufructus. An exceptional form of a usufruct of things which are consumed in use. Such things were generally not susceptible of *usufructus.* The usufructuary is bound to return the same quantity of things of the same quality. The term *quasi usufructus* was coined in Justinian law. If a usufruct of a complex of things was bequeathed and among them were consumable things (*res quae us consumentur*), the usufruct was valid, according to a decree of the senate under Tiberius on the condition that security was given to the heir to the effect that the same quantity of goods would be returned after expiration of the usufruct.—D. 7.5.—See *USUFRUCTUS.*


Quattuorviri aediles (or quattuorviri iuris dicundo). A board of four officials in Italian and provincial cities in colonies and municipalities appointed for administrative and judicial functions. —See *DUOVIRI IURI DICUNDO.*


Quattuorviri praefecti Capuam, Cumas. See *VIGNITISEXVIRI.*

Quattuorviri viis purgandis. See *VIGNITISEXVIRI.*

Querela inofficiosae donationis (dotis). A complaint made by an heir entitled to a legitimate share of the estate (see *Pars Legitima, Querela inofficiosi testamenti*), asking the rescission of an excessive donation which the testator made when still alive with the purpose of diminishing the heir's legitimate share. See *INOFFICIOSUS.* The action for restitution of the gift was permissible against the donee and his heirs provided it was brought within five years. An analogous remedy was the *querela inofficiosae dotis* when the estate was diminished to the disadvantage of such an heir by an excessive dowry constituted by the testator.—C. 3.29; 30.

Donatuti, St Riccobono 3 (1936) 427; H. Krüger, *ZSS* 60 (1940) 81.

Querela inofficiosae dotis. See the foregoing item.

Querela inofficiosi testamenti. A complaint of an heir who would be legitimate in intestacy but who was omitted (see *PRAETREIRE*) or unjustly disinherited in the testator's will (see *EXHEREDATIO*). The complaint was based on the ground that the testament was *inofficiosum (= contra officium pietas, see *inofficiosus*),* the testator having disregarded his natural duties towards his nearest relatives. If the plaintiff succeeded in his *querela,* the whole testament was declared null (*testamentum rescizum*) since it was assumed that the testator was not mentally sound when he made his will (see *COLOR INSANIAE*), and a succession in intestacy took place. The *querela inofficiosi testamenti* could be brought by the descendants of the testator, or, when there were none, by ascendants; and later (from the time of Constantine) by consanguineous brothers and sisters in the absence of descendants and ascendants. The *querela* was excluded when the heir received through the testator's disposition (a legacy or a *donatio mortis causa*) one-fourth of what he would have received as his share in intestacy (*quarta legiitnias partis*). If the testator left less than a quarter of the *legitima pars* to the heir entitled to it, the latter had the right to sue for the completion of the *pars legitima.* Under this action he obtained what was missing up to the legitimate share (*actio ad suppleendum legitimum* which probably was available from the fourth century after Christ). Justinian reformed thoroughly the *querela* and the action mentioned to the benefit of the heirs.—Inst. 2.18; D. 5.2; C. 3.28; Nov. 115.—See *CENTUMVIRI, SEPTEMVIRALE IUDICIDIO, PARS LEGITIMA, BONORUM POSSESSIO CONTRA TABULAS, PERSONA TURPI, TESTAMENTUM MILITIS.*

Querela non numerata pecuniae. The complaint of a debtor who had issued a promissory note in advance and then did not receive the money which he had acknowledged to owe. Through the querela he might obtain the annulment of the note, if he sued within a certain time (in Justinian law within two years). The querela is a counter-part to the exception non numeratae pecuniae with which the defendant could oppose the plaintiff when the latter sued for payment.—C. 4.30.

Collinet, Atti del IV. Congr. Intern. di Papirologia, 1936, 89; Kreller, St Riccobono 2 (1936) 235; H. Kruger, ZSS 58 (1938) 1; Arch, Scer Ferroni (Univ. Pavia) 1946. 702; LemmOs, St Sozietat 1948. 470.

Querella. See Querela.

Queri. To complain, to make a charge about a person to a magistrate (for instance, when a slave complains about bad treatment by his master, a patron about his freedman, or a ward or his relatives about a guardian). Queri is also used of all kinds of querelas (see the foregoing items) and of a complaint against an order of a magistrate.

Querimonia. A complaint made to a public official; an appeal from the assignment of a public service (see munera). The term is used by the imperial chancellery.

Quid enim (tamen) si? What, however, if? This rhetorical question occurs often in juristic works as an introduction to a case slightly different from the case discussed immediately before. Some of these, and similar, rhetorical questions may be of later origin (interpolations) but certainly not all of them.

Guarnieri-Ciasti, Indici (1927) 33, 75; G. Beseler, Beiträge zur Kristik 1 (1910) 61; Berger, Ievaj 14 (1912) 434; Ambrosio, RISG 1940, 18.

Quidem. In phrases such as si quidem... si vero (sin autem, quod si), this occurs in juristic writings when two different legal situations are taken into consideration: if...; if, however... Such juxtapositions in classical texts are branded with the suspicion of non-classical origin; but they are not fully reliable as criteria of interpolation.

Guarnieri-Ciasti, Indici (1927) 74.

Quiescere. Actio quiescit = an action which temporarily cannot be brought. In the language of the imperial chancery quiescere frequently means to become void, inefficient.

Quilibet ex populo. Any Roman citizen. In the so-called actiones populares and interdicta popu-

LARIA any one of the Roman people might act as a plaintiff.

Quinconces usurae. Five per cent interest per annum (i.e., five-twelfths of usura centesima, 12 per cent).

—See USURAE CENTESIMAE.

Quincunx. Five-twelfths of a whole (an as or an inheritance, hence heres ex quinconce = an heir who receives 5/12 of the estate).

Quindecimviri sacris faciundis. See DOVURI SACRIS FACIUNDIS. They supervised the foreign cults in Rome.

Bloch, DS 2, 428; Rose, OCD; M. W. Hoffmann. Am Philos. 1932.

Quingenarium sacramentum. A sacramentum of 500 asses; quinquagenarium sacramentum = a sacrament of fifty asses.—See LEGIS ACTIO SACRAMENTO.

Quinquagesinta decisiones. Fifty constitutions issued by Justinian after the publication of the first Code A.D. 529 but before the start of the work on the Digest, i.e., during 529 and 530. No collection of these constitutions, which seemingly were separately published, is preserved.—See CODEX JUSTINIANIUS.

Jørs, RE 4, 2275; Anon., NDI 4, 593; P. Kruger, Fg Bes-

ker, Aus röm. und bürgerlichem Recht, 1907; S. Di Marco, Le Q. D., 1, 2 (1899-1900); G. Rotondi, Scritti uin. 1 (1922) 277; P. Boniface, BIDR 32 (1922) 278; Fringsheim, ACDR Roma 1 (1934) 457.

Quinquefascales. Governors of imperial provinces (legati Augusti pro praetore), so-called because they were each assigned five lectores (see lectores).—See LEGATI PROCONSULIS.

Quinquennalis (quinquennalicus). A municipal magistrate appointed for five years; he was also called quinquennalis perpetuus.—See MAGISTER COLLEGI, DOSUPERI QUINQUENNALI.

R. Magnussen. The q. Johns Hopkins Univ. Studies, Balti-

more, 1913; Larten, CPhilo 1931, 322.

Quinquevirale judgment. See IUDICIUM QUINQUA-

VIRALE.

Quinqueviri. A group of five officials who served as the night police in Rome.

Quinqueviri agris dandis assignandis. See TRUC-

VIRI COLONIAE DEDUCCENDAE.

De Ruggiero, DE 2, 430.

Quirites. The earliest name for the Romans. According to an explanation given by Justinian (Inst. 1.2.2), the name originates from Quirinus, a surname of Romulus, the legendary founder of Rome.

—See URS QUIRITIUM, DOMINICUM EX IURE QUIRI-

TIM, NUDUM IUS QUIRITIUM.

Severini, NDI 10; Kretschmer, Glotta 10 (1920) 147.

Quivis ex populo. See QUILIBET EX POPULO.

Quodammodo. To some extent, to a certain degree. This vague, elastic term is used by the Byzantines with predilection and is not rare in interpolated texts. It is not unknown, however, in the classical language and is applied by the jurist to underscore an analogy.

Guarnieri-Ciasti, Indici (1927) 76.
Rapina. See rapina, raptus.

Rapina. Robbery. *Rapina* was considered a form of *furtum* (theft) committed with the use of violence (*vi*). Only moveables (*vi bona rapita*) could be the object of *rapina*. *Rapina* was a private wrongdoing (*delictum*), prosecuted only at request of the person injured. Under a praetorian, penal action, *actio vi bonorum raptorum*, which if brought within one year of the time of the robbery, could lead to the condemnation of the convicted defendant to a four-fold value of the things stolen as a penalty to be paid to the plaintiff. After a year the condemnation was only in *simpium* (see *actiones in simpulum*). The condemned robber was branded with infamy.—Inst. 4.2; D. 47.8; C. 9.34.—See interdictum de vi, Turba.

Kleinoller, RE 1A; Lécivain, DS 4; Brazilio, NDI 10; E. Levy, Konturcns der Actianen 2, 1 (1922) 194.

Raptus. The abduction of a woman against the will of her parents. The abductor (*raptor*) was punished with death from the time of Constantine, under whom *raptus* became a *crimen publicum*, and so was the woman (until Justinian) when she had consented. Justinian's enactment (C. 9.13.1) extended the penalties for *raptus* (death and seizure of property) on *raptores* of widows and nuns (*sanctimoniales*).

Eger, RE 1A; Lécivain, DS 4.

Ratihanbatio. (From *ratum habere*.) Ratification, approval. *Ratihanbatio* occurs when a person on whom a behalf another had concluded a transaction or accomplished a legally important act (e.g., by appearing for him in court and defending his interests) without authorization, approved of what had been done for him. "Ratihanbatio is equivalent to a mandate" (D. 46.3.12.4). Hence, by his approval the principal party (*dominus negotii*) assumed any liability which resulted from the act done in his favor.—D. 46.8; C. 5.74.—See negotiorum gesto, mandatum.


Ratio. Reason, a ground, a motive, consideration. *Rationem habere aliusuis rei* = to take into consideration. See ratio iuris. Ratio in the writings of the Roman jurists is not a philosophical concept and has no universal value. It is invoked only where it seems opportune for a specific reason. Hence the saying: "It is impossible to give reasons for all that our ancestors laid down" (D. 1.3.20, Julian) and "therefore it should not be inquired into the reasons for what is being ordained (quaes constituntur), otherwise much that is secure would be undermined" (D. 1.3.21).—Another group of meanings of *ratio* is connected with *rationes* = an account book. Thus *ratio* may indicate an account, a calculation, a computation. See expenderi (ratio accepti et expensi).

— *Rationes* refer to the complex of financial matters of the emperor, of a public corporate body or of a private individual, and to its financial management.—See actio de rationibus distractensis, a rationibus, *codex* rationum domesticarum, reddere rationes, and the following items.

Lécivain, DS 4.

Ratio accepti et expensi. See expenderi.

Ratio aequitatis. See aequitas.


Ratio castrensis. A part of the administration of the imperial court, particularly concerned with the military treasury of the emperor and his residences in the provinces.

Rostowzew, DE 3, 106; Lécivain, DS 4, 812.

Ratio domus Augustae. The management of the financial matters of the imperial palace.—See domus Augusta.

Ratio Faldicidiae. The deduction (computation) made with regard to a legacy according to the lex Faldicia.


Ratio iuris. The reasonableness (rationality) of a legal provision, the logic of the law. The Roman jurists stress the ratio iuris as a means of interpretation of the law (ratio swatet, efficat, and the like).

Ratio legis. The reason (ground) of a written law (a statute), the spirit to be drawn from the law itself (not from external elements), the purpose, the motive which inspired the promulgation of a specific law, as, e.g., ratio legis Faldicidiae.—See ratio Voconiana.

Biondi, NDI 10; Gaudemet, RHD 17 (1938) 141.

Ratio naturalis. See naturalis ratio, ius naturale.

Ratio privata Caesaris (principis). See ratio caesaris, res privata caesaris.

Ratio Voconiana. The motives which led to the issuance of the Lex Voconia.—See lex voconia.

Kübler, ZSS 41 (1920) 24.

Ratiocinator. A bookkeeper, an accountant.

Ratiocinia. (In financial administration.) Keeping accounts, concerning the financial management of public institutions, works and buildings (*ratiocinia operum publicorum*).—C. 8.12; 3.21.

Rationalis. (Noun.) The title *rationalis* first appears in the third century after Christ for provincial pro-
curators and for the head of the fisc. Later, it became more frequent, being used in both the fiscal administration and that of the rei privata of the emperor. Rationalis was substituted for the former magister and procurator (a rationibus) and was afterwards replaced by a comes. Thus the rationalis summae rei (the chief of the fiscal administration) became between A.D. 340 and 343 comes sacrarium largitionum and the rationalis privatae (rei) comes rei privatae. Both these high officials had representatives also called racionales (summarum or rerum privatarum respectively) whose competence embraced the territory of a dioecesis of a provincia. The frequent changes in official titles in the postclassical bureaucracy makes a precise delimitation of their competence extremely difficult.—D. 1.19.—See the following item.

Liebenam, RE 1A; Lécuvain, DS 4; O. Hirschfeld, Kaufverwaltungsbeamte (1905) 34; E. Stein, Gesch. des späteren Reiches 1 (1928) 58.

Rationes. Various branches of the imperial financial administration. Some had local divisions (stationes) at important places. There were rations metallorum (for mines), rationes operum publicorum (for public buildings and enterprises), rationes bibliothecarum (for libraries), etc. In all these offices, functionaries called racionales fulfilled the tasks of accountants.—See a rationibus.

Liebenam, RE 1A (s.v. ratio).

Rationes. Account books of a banker.—See argentarii, ratio.

Ratum habere. See rathabitto.—C. 5.74.

Ratus. Legally valid (e.g., ratum testamentum, legis). Ant. irritus.

Raudusculum. A small rod of bronze used during the performance of a mancipatio. The man who held the scale (libripens) handed over the raudusculum to the transferee who touched the scale with it, thereby indicating that he acquired the object mancipated.

Reatus. The state of being accused in a criminal trial.—See reus, accusatio, nomen recipere, inscribere.

Eger, RE 1A.

Recedere. To withdraw, to retreat, to recede. "There is no doubt that with the consent of the persons who assumed reciprocal obligations, one may withdraw from a sale, a lease and other similar obligations provided that everything remained unchanged" (D. 2.14.58).

Receptaculum aquae. See castellum.

Receptator (receptor). One who hides a thief or who receives stolen goods to be concealed. He is subject to the same penalties as the principal wrongdoer. Only hiding near relatives was punished more mildly. A man who received money or a part of the stolen things and dismissed the robber when he could have apprehended him, was himself treated as a receptor.

—D. 47.16.

Eger, RE 1A; Humbert and Lécuvain, DS 4; Savioni, AG 55 (1895) 353; H. Baloudticher, Compilaeus en droit rom., These Monpellier, 1920, 83.

Recepticia actio. See receptica argentarii.

Recepticia dos. See dos recepticia.

Recepticius servus. A term known only in literary (non juristic) sources and already a subject of controversy among the ancient grammarians. It probably indicated a slave who was returned to the seller because of physical or mental defects.—See redhibitio.

De Senarecens. TR 12 (1933) 390; Kornhardt, ZSS 58 (1938) 162; Solazzi, SDHI 5 (1939) 222.

Receptor. See receptator.

Receptum. The term covers different transactions (see the following items) which have in common the sole point that they originated in so-called praetorian pacts (see PACTUM PRÆTORIUM) recognized by, and enforceable under, praetorian law. It is likely that the pertinent obligations were assumed by the use of the word recipio (= "I accept").

Klingmüller, RE 1A; Parisch, ZSS 29 (1908) 403.

Receptum arbitii. An agreement by which a person elected as arbitrator by the common consent of the parties involved in a dispute assumed the duty to settle their controversy by an arbitration (arbitrium).

—D. 4.8; C. 2.55.—See ARBITER EX COMPROMISSO, COMPROMISSUM.

Wenger, RE 1A; Lécuvain, DS 4; Frezza, NDI 11.

Receptum argentarii. A formless promise to pay another's debt (see constitutum debiti alienti) by which a banker (argentarius) assumed the obligation to pay a client's debt at a fixed date. The action against the banker to enforce payment = actio recepticia. Justinian abolished the action, primarily for the reason that under it the banker was liable even when the original obligation was not valid. In Justinian's law the receptum argentarii was subjected to the general (reformed) rules concerning the constitutum debiti alienti.

Wenger, RE 1A; Frezza, NDI 11; Parisch, ZSS 29 (1908) 412; Platon, RHDS 33 (1909) 157, 289; De Dominica, APad 49 (1933); G. Astuti, St intorno alla promessa del pagamento 2 (Il constituto), 1941, 282.

Receptum est. See obtinuit, usus.

Receptum nautae (cauponis, stabulacrii). An agreement by which a shipowner (the keeper of an inn or of a stable) assumed goods for transportation or custody, with the addition of a specific proviso salutum foris (recipient), i.e., that the things confined them will be safe. The responsibility of such persons was greater than in a simple locatio conductio. They were not liable for vit pis or maius (shipwreck or a major assault of robbers which could not be resisted) but they had to make good damages or destruction caused by themselves or their personnel and they were
answerable if the goods were stolen. Inn-keepers were even responsible for any persons living permanently in their inns. The extended responsibility of those persons was established in the praetorian Edict with the justification that the "dishonesty (improbitas) of this kind of persons" required such measures (D. 9.4.3.1.1).

Klingmüller, RE 1A; Humbert and Lécrivin, DS 4, Severini, NDI; L. Lusignani, Responsabilita per custody, 1 (1902); Schulz, Grz 38 (1911), 41; H. Vincent, Recepita, Thése Montpellier, 1920; P. Huelim, Et d'hist. du droit commercial rom., 1929, 138; Parusch, ZSS 29 (1929) 403; Bonolis, Scritti Zorli, 1929, 477; De Dominici, APad 49 (1933); Carrelli, RDNau 4 (1928) 323; De Martino, ibid. 201; De Robertis, AnBari 12 (1932).

Recidere. To come back, to return into a former legal situation, e.g., to the same paternal power (in potestatem) under which one had been previously. Recidere sometimes has the sense of cadere, e.g., when said of an inheritance is to come, to accrue to a person, to fall to a person's share.

Reciperratio (reciperratio). A treaty between Rome and another state under which reciprocal protection of the citizens of one state in the territory of the other was established, in particular in case of litigation for the recovery of property. The judges in the pertinent procedure were the reciperratores (reciperratores) who later might also function as judges in trials between Roman citizens.—See RECIPERATORES.

Wenger, RE 1A; Lécrivin, DS 4; Severini, NDI 11.

Recipere. To receive (e.g., an inheritance), to receive back what one has given, lent, or lost. Recipere means also to assume an obligation for oneself or for another (as a surety; see RECEPTEM ARGENTARI). When syn. with escipere, recipere = to reserve a certain right or advantage for oneself on the occasion of the transfer of property (e.g., an easement, a usufruct).

Wenger, RE 1A; De Robertis, AnBari 12 (1932) 15.

Recipere arbitrium. To assume the function of an arbitrator.—See RECEPTEM ARBITRII.

Recipere nomen. See ACCUSATIO.

Recipere usu. See USU RECEPTIO.

Recitare (recitatio). To recite, to read out in court (a written testimony of an absent witness, any document), in the senate (an oratio principis) or in public (a proclamation of a magistrate). Recitatio sententiae = the reading by the judge of the final judgment in a trial. In postclassical proceedings the judge had to read it from a written draft.

Recitatio testamenti. See APERTURA TESTAMENTI.

Recludere. To shut up (in carcere = in a prison).

Recognoscere. (With regard to written documents.) To examine the authenticity, to control the exactness, of a copy by comparison with the original. The clause confirming the fact that a copy was made in an office and its exactness verified was: descriptum et recognitum factum (D. 10.2.5; 29.3.7). Recognoscere was also used to indicate that the written text of a document agreed with the dictated text. The acknowledgment of the authenticity of a seal on a document = recognoscere signum (see SIGNUM). Recognoscere = I have verified.


Reconcillare matrimonium. See REDINTEGRARE.

Reconductio. The renewal of a lease (locationem renovare). A tacit reconductio is assumed when the tenant holds the thing (immovable) rented after the expiration of the first lease. Securities given for the original lease remain pledged for the following one.

Recte (rectius, rectissime). With these terms the jurists used to express their approval of other jurists' opinions (correctly, rightly). Sometimes Justinian and his compilers manifested their approval of earlier legal norms in the same way.—Recte, when referring to the performance of a legal act, indicates that it was accomplished in conformity with the law being in force, in particular, that the prescribed solemn forms were observed.

Guarnieri-Ciati, Indice (1927) 77; Riccobono, ZSS 34 (1913) 224.

Rector provinciae. The governor of a province. The title is not used in juristic writings but is frequent in later imperial constitutions.—C. 1.40.

Recuperatio. See RECIPERATIO.

Reciperratores. A court composed of at least three judges for civil trials in various matters (actio inquiratum, quassatio status), acting under a somewhat accelerated procedure. Originally established in international treaties, the court later became competent in disputes between Romans and peregrines and between Roman parties alone. The procedure was per formulas (see FORMULA) and the reciperratores were private jurors acting as indici in the second stage of the trial (see IN TURE). Apparently there was no precise delimitation of their competence; according to a prevailing opinion the parties to the trial had the right of choice whether to put their dispute before reciperratores or before a single judge (unus indicus). Reciperratores also appears in post-interdtrial trials. In postclassical law there is no trace of reciperratores. No mention of them occurs in Justinian's legislation.—See ORATIO CLAUDII, VADIMONI RECIPERATORIBUS SUPPOSITIS.

P. F. Girard, Mtl 2 (1923) 391; Wenger, RE 1A, 418; Bozzi, DE 4, 159; Poggi, Riv. ist. di dir. internazionale privato 2 (1932) 525; Wlassak, Judikationsbezleit, 5B 1921, 4 (1921) 51, 131; M. Nicolau, Casa liberalis, 1933, 32; M. Lemosse, Cognoscio, 1944, 173; Y. Bonert, in Varia. Et. de dr. rom., Paris, 1932.

Recuperatorium judicium. A trial before the court of RECIPERATORES.

Reddere. "Although the term rededere means to give back (to return), it has, however, in itself the meaning of giving" (D. 50.16.94). Reddere = to pay back
a loan or whatever one owes to another; in a broader sense = dare.

Reddere actionem (judicium). When referring to the judicial activity of a magistrate, syn. with DARE ACTIONEX.

Reddere interdictum. To issue an interdict.—See INTERDICTUM.

Reddere ius. Indicates the jurisdictional activity of the praetor.

Reddere pignus. To return the pledge to the debtor when the debt was paid. Syn. restitutione with regard to FIDUCIA.

Kreller, ZSS 62 (1942) 170.

Reddere rationes (rationem). To render an account of management of another's affairs, and to pay the remainder to the person entitled to it. It was customary to free a slave in a testament under the condition “si rationes reddideris” (= if he paid what remained over from the administration of the master's business to the latter's heir).

Redemptor. (With references to taxes.) A taxfarmer (redemptor vectigalium). Syn. conductor vectigalium, mancipes, publicanus.

Redemptor litium (causarum). One who buys creditors' claims against third persons. Transactions of this kind were made in the form of cessio, chiefly by speculators who acquired the claims at a low price in order to sue later the debtors for the whole.

The LEX ANASTASIANA (A.D. 506) made such speculative activity unprofitable.

Severini, NDI 11.

Redemptor operis. A contractor. Syn. conductor operis.—See LOCATIO CONDUCTIO OPERIS FACIENDI.

Humbert, DS 4.

Redemptor vectigalium. See REDEMPTR.

Redemptus ab hoste. A prisoner of war who was redeemed from the enemy by a ransomor. The redeemed prisoner was bound to repay the ransom and the ransomor had a lien on him until the debt was discharged by payment or by services. During this time the redemptus had no ius postliminii (see POSTLIMINUM). In postclassical law the period of service to the ransomor was limited to five years.

If a slave was redeemed from the enemy not by his master, the latter might regain him by repayment of the amount to the ransomor.—D. 49.15; C. 8.50.—See CAPTIVUS, VINCULUM FIGNIORIS.

Pampaloni, BIDR 17 (1905) 125; Albertoni, Riv. di dir. internazionale 17 (1925) 358, 500; Romano, RISG 5 (1930) 3; H. Krüger, ZSS 51 (1930) 203; 52 (1931) 351; W. Felgenträger, Antikes Lämmrecht, 1933, 95; G. Fairey, R. a. k., These Paris, 1942; Levy, CLPhilol 38 (1943) 159 (= BIDR 55-56, 1951, Post-Belgium, 70).

Redemptus suis nummis (sc. servus). A slave redeemed from his master by a third person, a fiduciary, through payment of a sum of money. The money either came from the slave's peculium or was given to the redeemer by a person who acted in the slave's interest (for instance, one to whom the slave promised services in the future or repayment of the loan after manumission). The redeemer was obliged to free the slave but only a rescript of Marcus Aurelius and Verus entitled the slave to seek a remedy in court (in a cognitio extra ordinem) for enforcing the manumission (D. 40.1.5 pr.). Syn. emptus suis nummis.


Redhibere. See the following item.

Fezzana, RISG 88 (1951) 274.

Redhibitio. The restitution of a purchased thing (e.g., a slave) to the seller because of its essential defects, while the seller returned the price to the buyer. Such rescission of a sale was obtained by the buyer under the actio redhibitoria; see EMPTIO. The term redhibitio comes from redhibere = "to have the seller get back what he had before" (D. 21.1.1 pr.).—D. 21.1.

Redigere. To bring a person (e.g., a slave) or a thing back into its former legal situation.

Redigere pecuniam. To obtain money, to gain a pecuniary profit from a transaction.

Redintegrare. To renew (syn. renovare, e.g., a lease), to restore to integrity or to former legal status. Matrimonium redintegratum = a second marriage concluded between persons who had been married to each other and divorced. Syn. reconciliare. Such a marriage abolished a pending actio rerum amobarum of the husband against the wife.

Reditus. Income, proceeds; often syn. with fructus.

Reditus civilis = revenues of the state from taxes, etc.—C. 11.70.

Redundare. To devote (e.g., a risk, liability, charges, losses) from one person to another.

Referendarius. See REGERENDARIUS.

Referre. To enter (in public records, in census lists, in account books). In juristic writings referre is used to introduce a citation or a literal quotation from another jurist's work (X referre hoc, apud Labenem relation est [referetur] Sabinium existimasse = it is related by Labeo that Sabinus' opinion was, and the like). Referre is also used when a jurist relates the contents of an imperial rescript or senatusconsult.

Referre. (In judicial matters.) To make a report in postclassical procedure to a higher judge or to the emperor on substantial circumstances of the matter in dispute.—D. 49.1; C. 7.61.

Referre iusurandum. See ISTIURANDUM NECES-

Refert. It is of importance. Multum (maxime) referit = it is of great (greatest) importance. Ant. nihil (parvi) referit = it does not matter. The locutions are used by the jurists to stress (or exclude) the
importance of a factual or legal element in the decision of a case.

Reficere. To restore an injured thing to its former condition. See INTERDICTA DE REFIICIENDO. Repairing (reficere) a building is considered a kind of aedificare; accordingly, it is exposed to a protestation by a neighbor (see OPERIS NOVI NUNIATIAO) in the same way as a new building.

Reficere testamentum. To make a new testament.

Refragari. To be opposed to, to be contrary to, to be a hindrance. The term is applied to legal acts or opinions which are contrary to a law, to ratio iuris, to auctoritas iuris.

Seeckel in Humann's Handlexikon, 1907, 499; Berger, Krej'14 (1912) 436; Guarnieri-Ciati, Indice (1927) 77.

Refuga. A runaway, one who escaped from prison or custody.

Refundere. To repay, to reimburse, to refund (expenses, proceeds lost).

Refutatio (refutare). In later civil procedure a written refutation by one party to a trial of the appeal made by the adversary. The refutatio was sent to the emperor's court, either in an appeal procedure or together with the lower judge's consultatio (relatio) by which the emperor was requested for an opinion in a specific case; see CONSULTATIO. In the latter instance both parties could oppose the judge's statement by written presentations proie refutatoriae, libelli refutatori.

Regens exercitum. A military commander. "His duty was not only to order military discipline but also to observe it" (D. 49.16.12 pr.). He was forbidden to use a soldier for his private service or for his advantage (hunting or fishing).

Regens provinciam. See RECTOR PROVINCIAE.

Regere fines. To draw the boundaries between two neighboring lands.—See ACTIO FINITUM REGUNDORUM.

Regerendarius (referendarius). An auxiliary official in the office of a praefectus praetorio, dux, or other high official in the provinces. In Justinian's times there were several referendarit palatu = officials of the imperial court charged with tasks of a more confidential nature. Their functions were established in Justinian's Nov. 10.

Regesta. A collection (register, list) of imperial enactments or other official documents of lasting importance (regesta officii). The institution was introduced in the later Empire.

Regia (sc. domus). The king's house. In historical times regia was the official building in which the pontifex maximus had his office. The pontiffs gathered there for their meetings and solemn religious ceremonies. Rosenberg, RE 1A.

Regia lex. See Lex REGIA.

Regiae leges. See LEGES REGIAE.

Regimen morum. The control and supervision of public morals. The regimen morum was a domain of the censors' activity; see CENSORES. They exercised this control when selecting worthy persons for the senate (see LECTIO SENATUS) or when excluding from that body those senators whose moral life was blemished (see SENATU MOVERE). The censors had to qualify certain persons as unfit for public service by the nota censoria which branded them with ignominy for the current five-year period (iustrum). Syn. cura morum.

Regio. A territory of an indefinite extent, a locality. —See CONSUETUDO REGIONIS, TRACTUS.

Regiones Italiæ. Eleven administrative districts into which Italy was divided probably by Augustus, simultaneously with the division of Rome into fourteen regions; see REGIONES URBIS ROMAE. There were no changes in this administrative organization until Constantine.


Regiones iuridicorum. See IURIDICI, DIOCESIS URBICA.

Regiones urbis Romae. The first division of the city of Rome into four districts (regiones or tribus urbanæ) is attributed to the king Servius Tullius. Augustus divided Rome into fourteen administrative regiones, each under the supervision of a magistrate (praetor, tribune, aedil). Under Hadrian each regio had two curatores urbis Romae who by the end of the second century were called procuratores regionum. In the regional organization established by Augustus, the regiones were subdivided into vici, each of which was under the control of four magistri vicorum (vicomagistri). —See VIGILES, REGIONES ITALIÆ.

Grafunder, RE 1A, 480; Thèdénat, DS 4; Richmond, OCD.

Regius. Either connected with the kings of the period of Roman kingship or with the emperors of the Empire. Similarly regnare (= to reign) refers both to the kings and the emperors.—See LEX REGIA, LEGES REGIAE.

Regnum. Kingship, government by kings. Regnum refers to the earliest period of Rome's history, from the foundation of Rome (753 B.C.) until the constitution of the Republic (the beginning of the sixth century B.C.). See Rex. In a broader sense regnum = sovereignty. Regnum refers also to foreign kingdoms (regnum alienum).

Fustel de Coulanges, DS 4, 824; Westrup, Archives d'histoire du droit oriental 4 (1949) 85; Coli, SDHI 17 (1951) 2.

Regradare (regradatio). To regrade an official in rank, in particular one in the emperor's service (domestici) for a longer unjustified absence from office.

Regressus. (From regredi.) A recourse, making use of a legal remedy (a suit), in particular for recovery
of damages (e.g., in [or ad] venditorem in a case of eviction, ad mandatorem = for the reimbursement of expenses).

Regula (iuris). An abstract legal principle of a more general nature whether originating in jurisprudence or in an imperial enactment. “A rule is that which briefly expounds a matter” (rem breviter narrat, D. 50.17.1). The legal rules are concise formulations drawn from the law which is in force; “the law is not derived from rules (regulae) but a rule is derived from the existing law” (D. ibid.). Therefore the rule itself does not create law. Syn. (in the language of imperial constitutions) norma (not used by classical jurists). The legal maxims set up in earlier law were at times criticized by the classical jurists insomuch as they were no longer applicable to the developed economic relations and necessities of everyday legal life. The final title of the Digest (D. 50.17), entitled “on various rules of the ancient law” contains a collection of legal rules of the ius antiquum. Some of them are a repetition of texts inserted in former titles of the Digest; many of them drawn out from the context in which they were expressed in the original juristic writings, were thus made applicable as general rules although originally they referred only to specific situations. Other legal rules of classical origin are to be found in the Digest beyond the title 50.17, but some of them were limited in their general application through words like pleurnque (= often), interdum (= sometimes), inserted by the compilers.—See CANON, NORMA, DEFINITIO, the following items and some legal rules quoted under NEMO, etc.

Riccobono, NDI 11; Leonhard, RE 1A; Fringsheim, Fischel Lenes 1921, 244; Brugi, St Del Vecchio 1 (1930) 38; Stella-Mananca, Rec Geny 2 (1934) 91; Arango-Ruiz, La rgle de droit dans lantiquit classique, Egypte Contemporaine, 1938; Wengen, Canon, SHWen Z20; 1 (1942) 47; Riccobono, S. Ferrero (Univ. Pavia, 1946) 22; G. Nocera, Ius Publicum (D.2.14.38), Rome, 1946; Berger, ACIVer 2 (1951) 193 (= Sem 9 (1951) 42).

Regula Catoniana. (Also sententia Catoniana.) A rule concerning legacies. “A legacy which would have been void if the testator died at the time of making the testament, is invalid whenever he shall have died” (D. 34.7.1 pr.). This rule, whose author was one of the two Catones (see CATO), was in later classical law not fully validated. —D. 34.7.

Ferroni, NDI 2, 1143; Clerici, AG 77 (1906) 441; G. Borgna, Origine e fondamento della r. C., 1909; CIAela, S. Sen 31 (1915) 21; J. Lambert, La rgle Catonienne, Thése Lyon, 1925; Appleton, TR 11 (1931-32) 19; B. Bondi, Successiones testamentaria, 1943, 416.

Regulæ. A type of juristic writing. Under this title collections of rules were written by Neratius, Pomponius, Gaius, Scaevola, Marcellus, and Modestinus; Ulpian and Paul wrote even two compilations of Regulæ. Excerpts from juristic collections of “rules” show, however, a picture different from the title 50.17 of the Digest, De regulis iuris (see REGULA). The texts in the collections of Regulae are by far not so concisely formulated as generally regulae were.

Berger, RE 10, 1174.

Regulæ Ulpiæ. See Ulpiæus, tituli ex corpore Ulpiæ.

Regulariter. Regularly, normally. Regulariter definire = to establish in the form of a rule.

Rei vindicatio. An action which served for the protection of quiritary ownership. Under this action the owner of a thing sued the possessor of his thing for its recovery. The victorious plaintiff regained possession of the object claimed. If the defendant denied the plaintiff’s ownership, the plaintiff had to prove the acquisition of it under the rules of the ius civile from its previous quiritary owner. Such proof might be difficult in certain circumstances and, if so, the plaintiff could avoid it by using another action, ACTIO Publiciana in rem, in which he had only to prove that, before having been deprived of the possession of the thing in dispute, he possessed it under conditions which normally led to usucaption (in condicione usucapiendi). The defendant, when defeated, had to return the thing cum sua causa (see CASCA), i.e., with all that the plaintiff would have had if the thing were delivered at the time of the litis contentatio (proceeds, fructus) and was liable for damages done to the thing after the litis contentatio. The liability of the defendant for fructus and damages in the period before litis contentatio depended upon whether he held the thing in good faith (in the belief to be its owner) or in bad faith; see POSSESSOR BONÆ FIDEI.

If the defendant refused to deliver the thing claimed, the plaintiff could estimate under oath (iamumentum in item) the value which the actual restitution represented to him (litis aessimatio). The defendant was adjudicated to pay the sum but he retained the thing. Only Justinian admitted an execution on the thing itself, which was performed with the assistance of public officials (MANU MILITARI). — D. 6.1.; C. 3.32.; 7.38.—See actiones in personam, actiones arbitratioe, leges actionis sacramento, exhibere, ius tollendi, impensa, quanti ea res est, litis aestimatio, agere per sponsionem, formulæ petitoria, laudare autorem, possessio fictus, dolo desinere possidere, interdictum quem fundum, duci vel ferri iubeere, adprehendere, liti se offerere, hereditatis petitio, restitutæ, unus casus.

Leonhard, RE 1A; Beaucet, DS 4: Cuq, DS 5 902; Sternheim, NDI 11; Berger, OCD (s.d. vindicatio); H. Siber, Passus legitimatio bei der r. v., 1907; Last, Grz 36 (1909) 431; Lenzi, Grz 37 (1910) 515; Maria, Et Girard 2 (1913) 223; Beti, Fil 1915, 321; idem, Renal Lumb 48 (1915) 503; E. Abagrowicz, Essai sur la pravé dans la r. v., Thése Paris, 1916; Herilitzka, ZSS 49 (1929) 274; Kaser, ZSS 51 (1931) 92; idem, Restitutæ als Prozessgegebenstand, 1932; idem, Eigentum und Besitz, 1943 (passim); idem, Das abstr. ius, 1949 (passim);
Rei vindicatio utilis. A *rei vindicatio* extended to cases lying beyond its normal applicability. Some of these cases were introduced by praetorian jurisdiction, some by imperial legislation of a later period. A *rei vindicatio utilis* was granted, for instance, when the action concerned a thing not identical with that which the owner originally possessed, e.g., a garment that had been made by the defendant from the plaintiff’s wool, or a picture painted on the plaintiff’s table.—See SPECIFICATIO.

Cug. DS 5. 904; Mancaleni, St Sus. 1 (1900) 11; v. Mayr, ZSS 26 26 (1906) 83; Bortolences, BIDR 33 (1923) 151; F. Pringsheim, *Kauf mit fremdem Geld*, 1916, 123.

Reicere. See REJECTIO.

Reicetio civitatis. Giving up Roman citizenship through the acquisition of the citizenship of another state.

Reicetio iudicis. Rejection of a judge. A party to a civil trial had the right to reject a judge who was unacceptable to him for personal reasons. See ALBUM IUDICIIUM, SORTITIO. Rejection was also permitted in criminal trials in the procedure through QUESTIONES. It was executed by the accuser and the accused, each having the right to reject the same number. In the year 59 a.C., a *Lex Vatinia* settled the rules for the rejection procedure.


Reicetio militia. Dismissal from military service as a punishment for a minor military offense. Syn. EXAUSTRARE.

Reicere rem. To throw away a thing. Syn. RELINQUERE, DERELINQUERE.—See DERELICTIO.

Relatio. (From referre.) See REFERRE.

Relatio. In civil procedure of the later Empire, see CONSULTATIO.—D. 49.1; C. 7.61.

Létrinaur. DS 4.

Relatio. In the senate (*referre ad senatum*), a report made by the magistrate, who convoked the senate, to the gathered senators concerning the subject matter which had to be discussed and voted on.

O’Brien-Moore, RE Suppl. 6. 707, 768.

Relatio criminis. The bringing in of a counter-accusation by the accused against the accuser in a criminal trial. Such a maneuver did not impede the proceedings.

Relatum est. See REFERRE.

Relagare pecuniam. To order one’s banker (*argentarius*) to make a payment from one’s deposit. Syn. Delegare ab argentario.

Laum. RE Suppl. 4. 77.

Relagatio. The expulsion of a citizen ordered either by an administrative act of a magistrate or by judgment in a criminal trial. In the latter case the *relegatio* was sometimes combined with additional punishments, such as confiscation of the whole or of a part of the property of the condemned person, loss of Roman citizenship, confinement in a certain place. A milder form of *relegatio* was the exclusion of the wrongdoer from residence in a specified territory. Illicit return was punished with death penalty.—D. 48.22.—See EXILIIUM, DEPORTATIO.


Relagatio dotis. Leaving on the part of the testator the amount of the dowry to the person to whom he had to restore it in the event of a dissolution of his marriage.

Relevare. To relieve a person from his duties, obligations or charges.

Religio. When used with reference to public officials, judges, etc., conscientiousness, scrupulousness in the fulfillment of official duties.


Religiosus. See LOCUS RELIGIOSUS, RES RELIGIOSAE. In the constitutions of the Christian emperors religiosus (and religiosissimus) is used of ecclesiastical persons (bishops) and institutions (churches, cemeteries).

Relinquere (rem). Syn. DERELINQUERE.—See DERELICTIO.

Relinquere. In the law of succession, to leave. Refers either to the person (*relinquere heredem* = to leave an heir) who after the death of another is his heir (either instituted in his testament or by intestacy), or to an inheritance (*relinquere hereditatem*), a legacy (*relinquere legatum, fidicommissum*) or freedom (*relinquere libertatem*).

Reliquio. (From reliquori.) An unpaid remnant of a debt.—See RELIQUUM, RESIDUUM.

Reliquor. A person in arrears who owes a part of his debt. A person who owed the fisc or a municipality some money from the management of public matters was excluded from honorific positions until he repaid the rest. This measure did not apply to those who were debtors through private transactions with the fisc or municipalities.

Reliquor vectigalium. A tax-farmer who owed the fisc a part of the rent. He was not admitted to a new lease until he had fully discharged his debt.

Reliquum (reliqua). The balance one owes to a private person or a public body (tax-arrrears).

Relocatio (relocare). A renewal of a lease or a hire (see RECONDUCTIO). *Relocatio operis* = hiring another to finish a work which the first contractor failed
Remissio (remissicare). A retransfer of a thing through mancipatio to the person from whom one acquired it by mancipatio, or to a third person. Remissio also was the retransfer of a son through mancipatio to his father from whom the transferor had acquired him through mancipatio and had held him as persona in mancipio (see MANcipITUM).—See EMANCIPATIO, DIVORTIUM, COEMPTIO FIDUCIARIA CAUSA.

Kaser, ZSS 67 (1950) 492.

Remissio. See EMANSOR.

Remissio mercedis. A reduction of the rent, granted to the lessee of a land in the case of a lean crop (sterilitas). The abatement could be conceded with the condition that it would be made good if next year's crop was abundant.

Remissio operis novi nuntiationis. See OPERIS NOVI NUNTIATI.

Berger, RE 9, 1671; 17, 573; idem, IURA 1 (1950) 105; 117.

Remittere. Sometimes syn. with mittere, permittere. —See the following items, REMISSIO.

Remittere. With reference to wrongdoings and criminal offenses, to forgive, to condone (remittere crimen, dolum, insursum).—See REMITTERE POENAM.

Remittere actionem. To renounce an action; also to renounce an exception (remittere exceptionem) or a servitude (remittere servitutem).

Remittere causam (cognitionem). To assign, to allot a civil or criminal case to a judicial magistrate (a praetor, a provincial governor, a praefectus) or to transfer a case to the imperial court.

Remittere conditionem. To release a beneficiary of a testament from the necessity of fulfilling a condition imposed in the will.—See CONDICI0 TURFIS, CONDICI0 FURSTIURANDI.

Remittere debitum (obligationem). To release a person from an obligation.

Remittere pignus. To release a pledge (pignus) given to a creditor by the debtor.—C. 8.25.

Remittere poenam (multam). To remit a penalty (a fine).

Remotio suspecti tutoris. See TUTOR SUSPECTUS.

Removere. To remove a senator from the senate (see MOVERE SENATU), to remove a guardian from the administration of his ward's property because of negligence or incapacity (see TUTOR SUSPECTUS). Removere officio = to remove a public official from office (propter neglegentiam = because of negligence in fulfillment of his duties). Removere is also applied to the denial of a right of succession (to an inheritance or legacy). In judicial proceedings removere = to exclude from acting in court (postulatio).

Remunerare. To give a reward to a person for a service gratuitously rendered. To give such a reward is a kind of liberaly since it is not a fulfillment of a legal duty and not even of an obligation naturalis, the only motive being to recompense another for a meritorious performance to which he was not obligated to do.

P. Timbal, Les donations rémunératoires en dr. rom., 1925.

Remuneratio. See REMUNERARE. The noun occurs in later imperial constitutions. Remuneratio sacra = a remuneration (liberaly) by the emperor.

Renovare locationem. See RELOCATIO, RECONDUCTIO.

Syn. locare ex integro.

Renuntiare. To renounce (a right, a privilege, an inheritance or a legacy, a legal remedy such as an action, a querela).—Remuntiare is often syn. with denuntiare.

Renuntiare mandatum. A unilateral withdrawal of a mandatory from the mandate. It was admissible only at a time when the mandator notified of the withdrawal could manage the matter himself or by another mandatory.

V. Arangio-Ruiz, IL mandato, 1949, 136.

Renuntiare societatem. See SOCIETAS.

Solazzi, Jure 2 (1951) 152.

Renuntiatio. (In military law.) Treason. A person (a soldier or a civilian) who betrayed to an enemy important military information (renuntiatio consiliorum) was punished with death (by crematio).—See PROCTOR.

Renuntiatio. (In public law.) The announcement of the names of the magistrates elected by the comitia. From that moment the magistrate was considered designatus; see MAGISTRATUS DESIGNATI.

Klingmüller, RE 1A.

Renuntiatio legis. An official announcement that a statute was decreed by a popular assembly (comitia). After the renuntiatio an interceptio (protestation, veto) was no longer admissible.

Klingmüller, RE 1A.

Reparatio temporum. In late postclassical procedure. A plaintiff who did not appear in court before the end of a four-months' period after DENUNCIATIO LITIS lost the case. He could, however, obtain a restoration of the term and permission to appear in court at a later date if his non-appearance was excusable.—C. 7.63.

Renuntiatore. See PROCTOR.

Repellere. In civil trials the verb is used of exceptions entered by the defendant against the plaintiff's claim which, when successful, effected the loss of the case by the plaintiff (see EXCEPTIO). When used of a magisterial decision, repellere denotes that a petitioner's claim was denied. Sometimes repellere = renuntiare, repudiare (= to refuse the acceptance of
a senator who received money for expressing a certain opinion in the senate. Sons of officials were also guilty of repetundae when taking money with the understanding that they would influence the activity of their fathers. Manifold misdemeanors of officials and persons not embraced by the definition quoted above (which in its general formulation may contain non-classical elements) were subject to the penalties for crimen repetundarum. Originally the giver could claim the recovery of the sum he paid under extor- tion; later, he could claim a double or fourfold amount, within a year after retirement of the official from service. In extreme instances, seizure of the whole property of the condemned person took place. Persons who had a share in the bribe money (ad quos pecunia pervenit) were liable as well. A person con- demned for repetundae could not obtain a magistracy or membership in the senate; he would not be a witness or representative of another in court, or function as a judge. More drastic infractions were punished with exile. Penalties became more and more severe in the course of time. The Lex Aelia (of 123 B.C.) contained detailed provisions concerning the procedure in trial for extortion.—D. 48.11; C. 9.27.—For the statutes on repetundae: see lex Aelia, cal- purnia, cornelia, iulia, servilia; see also sena- tuscultum Claudianum, concussio.

Kleineller, re 1A; Léclercvain, DS 4; Berger, ocd; idem, re 12, 2390; R. O. Jolliffe, Phases of corruption in Roman administration in the last half century of the R. Republic, Chicago, 1919; Blum, Revue gén. de droit 46 (1922) 197; v. Premerstein, ZSS 48 (1928) 305; J. P. Baldon, History of the extortion court at Rome, PBritSR 14 (1938); F. De Visscher, Les editions d'Auguste découvertes à Cyrene, 1940, 138; Sherwin-White, PBritSR 17 (1949) 5; idem, JRS 42 (1952) 43; Henderson, JRS 41 (1951) 71.

Reipignare. To redeem a thing given as a pledge (pignus) to a creditor by paying the debt.

Replicatio. An exception (see exceptio) opposed by the plaintiff to an exception of the defendant. Through replicatio the plaintiff rejects what the defen- dant's exception asserted. To a replicatio the defendant may again reply by an exception called duplicatio by Gaius, once triplicatio by Ulpian. An example of a replicatio is as follows: if the defendant opposed to the claim of the plaintiff the exceptio pacti de non petendo, i.e., that the plaintiff had agreed not to sue the defendant in court, the plaintiff might op- pose a replicatio to the effect that by a later agreement (pactum) the first had been annulled or limited to a certain time.—Inst. 4.14. Leonard, re 1A.

Replicatio legis Cinciae. See replicatio, lex cinca. If a donor claimed back the thing he had given as a gift, as contrary to the provisions of the Lex Cincia, and the donee opposed an exception that the thing had been donated and delivered (exceptio rei donatae et traditae) and therefore could not be claimed back, the donor might reply by replicatio legis Cinciae, to
the effect that the ownership of the thing donated was not acquired by the donee, e.g., because the thing, a res mancipi, was conveyed through traditio, and not by mancipatio, which was necessary for the transfer of ownership of the thing donated.

Repiscere. To claim a thing which had to be returned to the claimant, e.g., a deposit or a thing given as a precarium or commodatum.

Repraesentare. To pay, to perform an obligation, which is owed on a condition or at a fixed date, before the condition is materialized or before the due time. Commodum repraesentationis = the profit a creditor has in such a case, when the debtor pays the debt in advance before it is due.—In a more general sense repraesentare = praestare, solvere, reddere (post-classical use).

Schnorr v. Carolfeld, Fscb Kochscher 1 (1939) 103.

Reprehendere (reprehensio). To blame, to reprove, to find fault with a person.

Reprehensa Mucii capita. (Also entitled Nota Mucii.) A collection of critical notes written by the jurist servius sulpicius rufus on the work of his predecessor Quintus Mucius Scaevola, see Mucius.

Reprobare. To disapprove, to reject (another’s opinion). Ant. PROBARE.


Repromissio. (From repromittere.) A kind of cautio by which a debtor promises through stipulatio the performance of an already existing obligation or of an obligation not suitable under the law.

Repromissio secundum mancipium. A stipulation by which the seller of a thing guarantees the buyer against eviction.—See evictio, Satisdatio secundum mancipium.

Repudiare. To refuse to accept, to reject. The most frequent use of the verb is with reference to acquisitions to be made under a testamentary disposition (an inheritance, a legacy) or under the law (on intestacy) from another’s estate.—C. 6.19; 31.—For repudiare matrimonium, uxorem, see repudium.—In procedural language repudiare = to reject (an appeal).

Repudiatio hereditatis (bonusor possessionis). See repudiare.

H. Krüger, ZSS 66 (1944) 394.

Repudium. A unilateral breaking up of a betrothal; see sponsalia. The term refers also to the dissolution of a marriage existing made by one of the spouses either by an oral declaration before witnesses, by a letter, or through the intermediary of a messenger (per numinum) who transmitted to the other party the wish that the marriage be solved (mittere, remittere repudium, or numinum). The actual interruption of common living as husband and wife had to accompany such declarations. The written form (libellus repudii) became mandatory in the later Empire. A repudium ex iusta causa caused pecuniary losses (the loss of the dowry or nuptial donations) to the party whose bad behavior justified the divorce. The term repudium occurs also in cases of a divorce of the spouses.—D. 24.2; C. 5.17.—See divorcium.

Klingmüller, RE 1A; E. Levy, Berichtig der röm. Ehescheidung, 1925, 55; Solazzi, BIDR 34 (1925) 312; Basanndo, St Riccibono 3 (1936) 175.

Reputare (reputatio). To calculate, to compute, in particular to take into account the counterclaims of the debtor. Syn. compuslare, impuslare.—C. 2.47.

Requirere. To inquire after, to search for somebody (e.g., a runaway slave) or anything (e.g., a stolen thing), to investigate. A particular application of the term occurs with reference to persons absent (fugitives) against whom a criminal trial was to be instituted, the so-called requirendi (the searched for ones). Their names were publicly announced in posters and their property was seized unless they appeared in court within a year from the public summons.—D. 48.17; C. 9.40.

Res. Used in the juristic language in various senses; it applies to both corporeal things and incorporeal, abstract conceptions. See res corporales. For the division of things, see the items below.—D. 1.8; Inst. 2.1.—Res (in sing.) also refers to the entire property of a person (see ex re alicitus adquire, in rem versio) and in this sense it is syn. with bona, patrimoniwm. Res is often syn. with hereditas. The use of the term res by the jurists ranges from the most general meaning of “everything that exists” (in reum natura, in rebus humanis esse) to specific objects. An interpretative rule by Ulpian says: “the term res comprises both causae (legal relations, judicial matters, see causa) and irura (rights),” D. 50.16.23. The inclusion of the vague term causa renders this saying likewise indefinite. With reference to judicial trials, res means both the object of the controversy (see quanti EA res est, qua de re agitur) and the litigation itself; see res judicata. Res in iudicium deducta, actus remum. In the law of contracts res indicates the physical delivery of a thing to another person which was the decisive element in the so-called real contracts (contractus re factus, obligatio re contracta, re contrahere, see contractus).—See obligare rem.

Leonhard, RE 1A; Beschuetz, DS 4; S. Di Marto, Le case e i diritti sulle case, 1922; Grosso, St Besta 1 (1939) 33; G. Scherillo, Lezioni. Le case 1, 1945; Kretler, ZSS 66 (1948) 572.

Res amotae. See actio remum amotarium, retentiones dotales.

Res capitalis. See causa capitalis.

Res castrense. Things belonging to a pecullum castrense; also things used by a soldier during his military service.
Res communes. Things belonging to two or more owners (co-owners, co-heirs) as a common property. —See COMMUNIO, ACTIO COMMUNI DIVIDUNDO.—C. 4.52; 8.20.

Res communes omnium. Things which "by natural law are the common property of all men" (D. 1.8.2 pr., 1), such as air, flowing water, the sea and its shores, etc. They could not be appropriated by a private individual.—See RES PUBLICAE, AER, AQUA PROFLUENS, MAR, LITUS.

Pernice, Fo Dornburg, 1900; Debray, Rev. générale de droit 45 (1921) 1; Branca, AnTr 12 (1941); G. Lombardi, Ricerche in tema di ius gentium, 1946, 90.

Res corporales. Physical things which "by their nature can be touched" (D. 1.8.1.1). Ant. res incorporea. Naber, StxDi 13 (1940) 379; Villey, RHD 25 (1946-47) 209; Pfiuger, ZSS 65 (1947) 339; Monier, RHD 26 (1948) 374; idem, St Solazii 1948, 360; Albanese, AnPal 20 (1949) 232.

Res coddiana. The title of a work (in seven books) ascribed to the jurist Gaius, "the everyday legal matters." It is of a rather elementary nature. The authenticity of the work which appears in the sources also under the title " Aurea" ( = Golden words, rules) is not beyond doubt.

Arangio-Ruiz, St Bonifante 1 (1929) 495; Albertario, Studi 3 (1936) 95; Felgenträger, Symb Frib Lencl, 1930, 365 (Bibl.); Di Marzo, BIDR 31-32 (1946) 1.

Res creditae. Things (money) given as a loan.—D. 12.1; C. 4.1.—See CREDERE, MUTUM.

Res cuius (quorum) commercium non est. Generally in literature called by the non-Roman term res extra commercium = things which cannot be the object of exchange or of any legal commercial transaction between private individuals, such as res divini iuris, res communes omnium.—See COMMERC.

Scherrillo, loc. cit. 29; G. Longo, St Bonifante 3, 1930; Biondi, St Riccobono 4, 1936; W. G. Vehling, Domaine public et res extra c. (Alphen a. d. Rijn, 1950); Kaser, St Arangio-Ruiz 2 (1952) 161.

Res derelictae. See DERELICTIO.

Res divini iuris. Things under divine law, as res RELIGIOSAE, SACRAE, SANCTAE. They are not negotiable and excluded from any legal transaction. Ant. RES HUMANI IURIS.

Scherrillo, loc. cit. 40; Archi, SDHI 3 (1937) 5.

Res dominica. The private property of the emperor. C. 7.38; 11.67.—See RES PRIVATA CAESARIS.

Res dubiae. Doubtful legal questions arising from ambiguous expressions used, e.g., by a testator in his last will. In such cases, broadly discussed in D. 34.5, "always preference should be given to the more benevolent (benign, liberal, benigniora) interpretation" (D. 50.17.56). The solution should be in favor of the act and avoid its annulment.


Res extra commercium. See RES CUIUS COMMERCII NON EST.

Res extra patrimonium (nostrum). Things which cannot be in private ownership (see RES PUBLICAE, RES COMMUNES OMNIIUM), nor the object of any legal transaction between private individuals; see RES CUIUS COMMERCII NON EST. Ant. res in patrimonio nostro = all things not expressly excluded from private ownership.

Scherrillo, loc. cit. 29; Branca, AnTr 12 (1941).


Res familiaris. Private property, patrimony.

Res fiscalia. Things belonging to the fiscus (fiscus). "They are in some way private property of the emperor" (D. 43.8.2.9).—C. 10.4.

Vassalli, StSen XXV (1908) 222 (= St giuridici 2 [1939] 5).

Res furulvae. Things taken by theft (furtum) from the owner or from whoever holds them in his name. They could not be acquired by USUCAPIO either by the thief himself or by any one who got them from him, according to a rule of the Twelve Tables, and a later statute, the lex ATINIA. Syn. res subreptae; in earlier times the stolen thing was called also fur.

—See USUCAPIO.

Berger, RE 12, 2331; v. Lüdtow, Fachr Schulz 1 (1951) 263.

Res gestae divi Augusti. An autobiography of the emperor Augustus, written in the last months of his life (finished probably in a.d. 13). It contains a record of the emperor's achievements, political and military. The original, written in Latin was read after his death in a solemn session of the senate; Greek translations were made and sent to Greek-speaking provinces where they were engraved on bronze tablets and set up publicly. Extensive fragments in both languages are known (see MONUMENTUM ANCUMANUM). Augustus presents himself in this "Index rerum a se gestarum" (= a register of things achieved by himself) as a head of the state who governed it, authorized and supported by the confidence of the senate and of the people.—See AUCTORITAS PRINCIPIS.


Res hereditariae. Things belonging to an inheritance HEREDITAS. Syn. corpora hereditaria. Together, all res hereditariae of one estate are also called UNIVERSITAS (bonorum). Res hereditariae are consid-
erred as belonging to no one until someone qualifies as heir (HERES).

Res hominum. See RES PRIVATAE.

Res hostiles. Things belonging to an enemy of the Roman state, see HOSTIS. If at the outbreak of war they are on Roman soil, they become property of the occupants, and not public property (RES PUBLICAE). —See OCCUPATIO REMI HOSPITIIUM.

Res humani iuris. All things which are not res divini iuris. They are governed by human law. The distinction between res humani iuris and res divini iuris is the main division of things (SUMMA DIVISIO RERUM). Res humani iuris are either public (RES PUBLICAE) or private property (RES PRIVATAE).


Res immobiles. Immovables: land (FUNDUS) and buildings (AEDES, AEDIFICIA). Syn. res soli, or res quae solo continentur (= which consist in land). Ant. RES MOBILES. As early as the Twelve Tables, a differentiation was introduced with regard to the acquisition through USUCAPIO, and the interdictal protection was built up on the distinction between REA IMMOBILES and REA MOBILES. The distinction acquired particular importance in Justinian’s law when the division of things into RES MANCIPI and RES NEC Mancipi became insignificant.

Schiller. ACDR. Rome 2. 1935; Kühler, St Bonfante 3. 1930; Naber, SDH 14, 1941; Di Marzo, BIDR 49-50 (1948) 236.

Res in iudicium deducta. A judicial controversy which after the joinder of issue (LITIS CONTESTATIO) passed to the second stage of the trial, before the private judge (INDEX). The defendant is protected against a reiterated claim in the same matter by an exception that the claim has already been the object of a trial (exceptio rei in iudicium deducta). This exception is similar to the EXCEPTIO REI JUDICATAE. The difference is that the latter could be applied when a judgment has already been rendered.—See LITIS CONTESTATIO.

M. Kaser, Restitutio als Prozessgegenstand, 1932.

Res in publico usu. Things belonging to the state, the use of which is allowed to all people, as streets, theatres.


Res in patrimonio nostro. See RES EXTRA PATRIMONIUM.

Res incorporales. Things “which cannot be touched, such as those consisting in rights, e.g., an inheritance, a usufruct, obligations” (D. 1.8.1.1), intangible things. Ant. RES CORPORALI.—Inst. 2.2.

Res integra. See INTEGR.

Res indicata. “A controversy which was concluded by the judgment of a judge” (D. 42.1.1). Res indicata creates a new legal situation between the parties to the trial thus finished and “is considered as truth” (PRO VERITATE ACCIPITUR, D. 1.5.25). The sources speak of an auctoritas (authority, validity, legal power) REI IUDICATAE, whereas auctoritas rerum similiter indicatarum (= authority of identical judgments) is referred to as reflecting the judicial practice of courts constantly (PERPETUO) manifested through identical judgments in similar legal controversies (D. 1.3.38). Justinian ordered (C. 7.45.13) that “judgments should be rendered not according to precedents (EXEMPLA) but in conformity with the laws.”—D. 42.1; C. 7.52.—See IUDICATUM.

Esmein, Mil Gerardin 1907, 229; Weiss, Fiscr Wach 2 (1913); E. Betri, Limiti soggettivi della cosa indicata, 1922; Guarnieri-Cichis, BIDR 33 (1924) 204; Darrillier, Justinian, Recueil Acad. Ligué. Toulousain 13 (1937) 147; Jolowicz, BIDR 46 (1939) 394; Zasny, BIDR 47 (1940) 108; Siber, ZSS 63 (1947) 1.

Res iuris. See RES FACTI.

Res litigiosa. The object of a pending suit after LITIS CONTESTATIO. Its alienation was void and so was its dedication to a god in order to make it A RES SACRA. The defendant holding the thing was protected against any claim by a third person through an exception (exceptio rei litigiosae).—D. 44.6; C. 8.36.

Gradenwitz, ZSS 53 (1933) 409.

Res lucrativae. Things which one acquired without any compensation. EX CAUSA LUCRATIVA (e.g., an inheritance, a legacy, a donation). Such things were in later law charged with a special tax, DESCRIPTIO.—C. 10.36.

Res mancipii. The ownership of which is transferable only by the solemn act of MANCIPATIO (hence the name) or by IN IURE CESSIO. Res mancipii included buildings and land on Italian soil, rustic (not urban) servitudes connected with such land, slaves, and farm animals of draft and burden, such as oxen, horses, mules, asses” (Gaius, Inst. 1.120). All these things and rights (servitudes) represented the highest value in a primitive rural economy, and the wealth of a Roman peasant consisted primarily in them. The distinction lost its importance in the later Empire; officially it was not abolished until Justinian who destroyed its basic idea by abrogating the requirements of solemn formalities in the transfer of ownership of Res mancipii. Ant. RES NEC Mancipi.—See MANCIPATIO.

Marchi, AG 85 (1921); Bonfante, Ser piuortici 3 (1918); De Viescher, SDHI 2 (1936) 253 (= Nouvelles Études, 1949, 236); Ferrabino, SDHI 3 (1937); Cornal, RH 1937, 553; Clerici, Economia e finanza di Roma 1 (1943) 311; Fernandez Tejero, AHDE 16 (1945) 290.

Res militaris. Military matters, legal rules concerning soldiers and their legal situation, military discipline, and organization, and particularly military penal law. Several jurists (Tarruntenus, Arrius Menander, Macer, and Paul) wrote monographs on military law.—D. 49.16; C.12.35 (36).

Res mobiles. Movables. Syn. mobilia. Ant. RES IMMOBILES, RES SOLI. The distinction is of importance
in various institutions of Roman private law and procedure (possessio, usucapio, mancipatio, dos, interdicta, etc.). A special category of res moviles (syn. res moventes, moventia) consists of res se moventes.

Res nec mancipi. See res mancipi.

G. Segré, Ator 1936; Solazzi, ACNSR (2. Congr.) 1931; Tejeró, AHDE 16 (1945) 290.

Res nullius. Things belonging to nobody. He who takes possession of them (occupatio) acquires ownership by this very act provided that they are accessible to private ownership since some res nullius, such as res divini iuris, are excluded from it. — See HEREDITAS IACENS, FURTUM, SERVUS SINE DOMINO.

Riccobono, NDII 11.

Res nummariæ. See nummarius.

Res pecuniæ. Things belonging to the peculium of a slave or a filius familias, or affairs connected with the management of a peculium. — See peculium.

Res praesentia. See hypotheca omnium bonorum.

Res principia. See principia.

Res privata Caesarius (principis). The purely private property of the emperor. From the time of Septimius Severus it was neatly separately from the patrimoniun caesarii. Syn. ratio privata.


Res propria. See res sua.

Res publica (res publicae). The term corresponds in a certain measure to the modern conception of the State, but is not synonymous with it. It comprises the sum of the rights and interests of the Roman people, populus Romanus, understood as a whole. Therefore it often means simply the Roman people and is separate from the emperor, the Roman empire, the fisc as well as from other public bodies, such as municipia, or coloniae which are sometimes also called res publicae, but different from the Roman one. The meaning of res publica is particularly manifest when the sources speak of services rendered to the res publica, of holding a high office in the res publica or of a man’s being absent in the interest or for the benefit of the res publica (rei publicae causa absesse) which saved him from detrimental consequences his absence might otherwise bring him. — See absentia, senatusconsultum ultimum, interest aliciurn.

Rotenberg, RE 1A; R. Stark, R. a. Diss. Tbingen, 1937; Lombardi, AC 126 (1941) 200; idem, Ricerche in tema di ius gentium, 1946, 49; De Francisci, SDII 10 (1944) 150; Guarino, RIDA 1 (1948) 95; Nocera, AnPer 58 (1948) 5.

Res publicae. Public property, such as theatres, market places, rivers, harbors, etc. Publicum is all that “belongs to the Roman people’’ (D. 50.16.15).

Therefore the res publicae may be used by every one, e.g., fishing in public rivers; see flumina. On the contrary res communes omnium were not considered property of the Roman people although their use was accessible to all citizens. — D. 50.8; C. 11.31.

Vassalli, StStm 25 (1908) = St giuridici 2 (1939); G. Scherillo, Lessiani. Le case 1 (1945) 89; G. Lombardi, Ricerche in tema di ius gentium, 1946, 49; Branca, AnTr 12 (1941) 78; idem, St Redenti 1 (1951) 179.

Res pupiliares. The property (the affairs) of a ward (pupillus). — D. 27.9; C. 5.37.

Res quae pondere numero mensuravie constant. Things which are weighed, counted or measured, such as wine, oil, grain, coined money, etc. When given in loan, the debtor returns things of the same kind, and not the same things in specie. — See mutuum.

Brassloff, Wiener Studien 36 (1919) 348; Savagnone, BDTR 55-56 (1952) 18.

Res quae usu consumuntur. Things the normal use of which consists in full or partial consumption. Such things, as e.g., articles of food, cannot be the object of transactions in which the restitution of the things given in use is involved, as usus, ususfructus, commodatum. — D. 7.5. — See quasi ususfructus.

Res religiosae. Things "dedicated to the gods of lower regions" (dis Manibus, Gaius Inst. 2.4), such as tombs or burial grounds. They belong to the category of res divini iuris. A piece of land being in private ownership became locus religiosis when the owner or another person acting with his permission, buried a human body in it. A burial by an unauthorized person did not render the soil religiosis. With the permission of the pontiffs, the owner could remove the corpse, and had a praetorian action against the wrongdoer for damages. Res religiosae could not be the object of a legal transaction. The owner who legally made a res religioso of his land, especially when the funeral of the deceased person was his duty, had no ownership on the place, but he acquired a special right on the grave, ius sepulcri, which implied various duties, such as taking care of the tomb, observing sepulcrum cult, sacrifices, and the right to bury other dead there (ius mortuum inferendi). — D. 11.7; C. 3.44. — See sacriulagem.

Leonard, RE 1A (s. religiosa); Toutain, DS 4; C. Fadda, St. e questioni di dir. 1 (1910); Cuq, RHd 9 (1930) 383; G. Scherillo, Lessiani. Le case 1 (1945) 48.

Res sacrae. Sacred things, i.e., consecrated to the gods in heaven by virtue of a statute "through the authority of the Roman people, by a decree of the Senate" (Gaius, Inst. 2.4; 5), or by the Emperor. They belong to the res divini iuris. In Justinian's law res sacrae were also gifts "duly dedicated to the service of God" (Inst. 2.1.8). — See sacriulagem.

Res sanctae. Hallowed things, such as city walls and gates. Any wrong done to them was punished by death.—See Res divini iteris.

Res se (se, per se) moventes (or moventia). Things moving by themselves, such as slaves and animals. This type of things (mentioned first in the fifth century) was added to the twofold classification: Res immobiles and Res mobiles.

Res singulae (singulares). Single, individual things, not composed of several things, but made up as a whole from one substance (corpus quod uno spiritu continetur). Ant. Corpus ex coraerentibus, a complex of things, such as an inheritance (hereditas), the whole property of a person (bona).

Bianco, N.DI 4, 371 (s. v. case simplici).

Res soli. See Res mobiles.

Res sua (propria). One was excluded from certain activities in affairs of one’s own, e.g., from being judge (see index in res propria) or witness (see testis in res propria), or from giving consent as a guardian to his ward’s transaction when his own interests were involved. The affairs of one’s father, wife, children, and freedmen were also considered res sua. Syn. causa propria.—See cognitor in rem suam. Procurator in rem suam.

Gomme, RHD 16 (1937) 196.

Res subrepta. See res furitvae, lex atinia.

Berger, RE 12, 2331.

Res turpis. Syn. turpis causa.—See condicio ob turpem causam.


Res universitatis. Things belonging to a corporate body, primarily of public law as civitates, municipia. Res universitatis include, e.g., theatres and stadia.

Res uxorii. Dowry.—See dos.

Res vi possedae. Things taken by force from the owner or from whoever possessed them for him. They were barred from usucapio to the same extent as stolen things (res furitvae).—See lex iulia et plautia, vis lex atinia.

Berger, RE Suppl. 7. 405.

Resarcire. To restore, to make good (losses, damages). Syn. sarcire.

Rescindere (rescissio). To annul; to make void, to repeal. The verb applies to judicial judgments (sententiae), agreements between private persons, legal effects resulting from certain situations (e.g., usucapio), wills, etc., annulled either by law, a magisterial order, a judicial judgment or another remedy (e.g., in integrum resistenti) at request of a person interested in the rescission.—D. 49.8; C. 7.50.

Hellmann, ZS 25 (1903) 94.

Rescindere venditionem. To annul a sale.—D. 18.5; C. 4.44.—See empto venditto, redemptitio.

Rescindere usucapitionem. See actio rescissoria, usucapio.

Rescissio. See rescindere.

Rescissoria actio. See actio rescissoria.

Rescibere. To answer by writing. The verb is used both of written answers given by jurists to questions on which they were asked for an opinion (see response prudentium) and of written answers (decisions) of the emperors (see rescripta principum).

Rescripta principum. Written answers given by the emperor to queries of officials (relatio, consultatio, suggestio) or to petitions of private persons (præces, libellus, supplicatio). The rescripts were issued either on the petition itself in the form of a subscriptio or in a separate letter (epistulae principum). A rescript expressed the emperor’s opinion upon a legal question or a decision in a specific case. It often gave rise to a legal innovation when the emperor’s view introduced a new legal rule which, although in principle binding only in the case for which it was issued, nevertheless, because it emanated from the emperor’s authority, easily could acquire a general binding force. In particular, when a specific rule was repeatedly expressed by various emperors (phrases like imperatore saepe rescriptum est, saepe [saepissime] rescriptum est, and the like, occur frequently in juristic writings), it became law in fact. For the development of a special proceeding in civil matters by imperial rescript, see consultatio.—C. 1.23.—See constitutiones principum, legitimatio per rescriptum principis, liber libellorum rescriptorum.

Klingmüller, RE 1A. 1668; Cuv. DS 4, 952; Lébrina, DS 4; Berger, OCD; Wücken, Hermes 55 (1920) 1; Sickle, CIPhilol 23 (1928) 270; W. Felgenräger, Antikes Lösungsrecht, 1933. 3; F. v. Schwind, Zur Frage der Publikation, 1940. 167; De Robertis, AnBari 4 (1941) 281; L. Vinc, Ancit 1 (1947) 320; De Dominica, I descripti dei rescripti imperiali, Annu. Univ. Ferrara 6, parte 3 (1950); Wolff, ZS 55 (1952) 128.

Rescriptio. Rescriptum. See the foregoing item.

Rescriptum Domitiani de medicis. (On physicians.) See edictum vespanianum.

Residua (residues pecuniae). Sums embezzled by public officials. The lex iulia peculatus contains some specific provisions concerning residua, hence the statute was named also lex iulia de residuis.—D. 48.13.—See peculatus.

Acta Divi Augusti 1 (Rome, 1945) 165.

Residuum. A remainder. The noun refers in particular to the sum which remained due because the amount obtained by a creditor from the sale of his debtor’s pledge (pignus, hypotheca) did not cover the whole sum owed.—See hyperocha.

Manigk, RE 20, 1257.

Resignare. To unseal a document, primarily a sealed testament either for the official opening (see apertura testamenti) or by a private person for purposes of a forgery. Illegal removing the seals from a testament was punished under the lex Cornelia de falsis.—See falsum.
Resistere. To oppose, to resist. The term is primarily used of physical resistance to another's force (viz) in self-defense.

Resolvere. To annul, to rescind a transaction either by mutual consent of both contracting parties (contrario consensi) or, in specific circumstances, by a unilateral act of one of the persons involved. Resolvi to be rescinded, to become void (e.g., a mandate, mandatum, by the death of one party).

Resolvi sub condicione. A conditional transaction or testamentary disposition became null through the fulfillment of the condition if the act had contained a clause providing for its rescission in the event of fulfillment.

Respicere. To take into consideration, to have regard to. The jurists used the verb in calling attention to specific points which were decisive for the juristic evaluation of the case under discussion.

Respondere. See responsa prudentium, ius respondendi, proponere.

Responsa. A type of juristic writing. The jurists used to publish their answers (see responsa prudentium) in collections entitled Responsa. We know of responsa of Labeo, Sabinus, Neratius, Marcellus, Scaevola, Papinian, Paul, Ulpian, and some other jurists. The adaptation of the original responsa for publication required sometimes the addition of specific argumentation, particularly when opinions of other jurists were being rejected. Some jurists dealt with the cases, on which they had given opinions (responsa) as respondent lawyers, in other works, such as quaestiones, or Digesta (Celsus, Julian, Marcellus) and vice versa, they inserted some real or fictitious cases they discussed as teachers in the works published as Responsa.

Berger, RE 10, 1167.

Responsa pontificum. Opinions of the pontiffs on questions concerning sacral law, in particular, whether an intended sacral act was admissible or an act already performed was legal. Responsa pontificum were given also at the request of magistrates.

F. Schults, History of R. legal science, 1946, 16.

Responsa prudentium. Oral or written answers (opinions) given by the jurists when they were queried by persons involved in a legal controversy or in litigation. Responsa were given also to magistrates or judges if they addressed themselves to a jurist for opinion on a legal problem. The giving of responsa was an old Roman custom, going back to the times when the pontiffs were the exclusive experts in law (see responsa pontificum). Responsa are given in writing when they had to be presented in court. "The answers of the jurists are the views and opinions of those to whom it was permitted to lay down the laws (iura condere). If the opinions of all of them agree, that which they so hold stands in the place of a statute. However, if they disagree, the judge is free to follow the opinion he pleases." These rules are attributed by Gaius (Inst. 1.7) to a reform by the emperor Hadrian. See condere iura, ius respondendi, optinere legis vicem. The term responsa does not cover opinions of the jurists expressed in theoretical discussions or in their literary products. The importance of the responding activity of the jurists suffered somewhat after the codification of the praetorian Edict under Hadrian (see edictum perpetuum) and the granting of ius respondendi became certainly rarer (if practiced at all), while on the other hand, the authority of those jurists who participated in the emperor's council (consilium principis) became predominant. Some problems in the field of the ius respondendi have remained still controversial despite the copious recent literature. As a matter of fact, collections of responsa (see responsa), reflecting the responding activity of the jurists, appear through the century after Hadrian. For the influence of the responsa prudentium on the development of the law, see iurisprudentia.

Berger, RE 10, 1167; Wenger, RE 2A, 2427; Cq. DS 4 (i.e. prudentium r.): Anan., NDI 10 (i.e. prudentium r.); Pringle, IJS 24 (1934) 146; Wiesacker, in Romanistische Studien, Freiburger rechtsgesch. Abhandlungen 5 (1933) 43; Arangio-Ruiz, StSas 16 (1938) 17; De Zulueta, TULR 22, (1947) 173; for earlier literature, see Massei, Scor Ferrari (Univ. Favia, 1946) 430; for further recent literature, see ius respondendi.

Responsio (responsum). As a part of the stipulatio, the answer of the debtor assuming an obligation to the question (interrogatio) of the creditor.

Responsio (respondere). In a trial the reply of the defendant or his representative to the presentation of the case by the plaintiff; see narratio. Responsio comprises all means of defense (defensio) used by the defendant for the denial of the plaintiff's claim.

Responsio in iure. The answer given by a party to a trial questioned in iure by the magistrate; see interrogatio in iure.

Berti, ATor 30 (1914-15) 389.

Responsitare. A rare term indicating the responding activity (respondere) of the jurists.—See responsa prudentium.

Restitulatio. (In interdictal procedure.) See agere per sponsionem, interdictum.

Restitulatio tertiae partis. See sponsio tertiae partis.

Restitutere. To reinstate (a building, a construction, a road, and the like) to its former condition (in pristinum statum). Restitutere = "to take away what one did (constructed on another's property) or to restore on its place what was taken away." (D. 43.3.2.43). In this sense restitutere is used in the formulae of interdicta restitutoria ("restitusae"), i.e., restoration into such condition as to enable the plaintiff to regain the full utility (omnis utilitas) he had before the destruction or damage caused by the
defendant. Restitutio also involved the compensation for all losses and irreparable damages.

Restitutio (rem, hereditatem, bona). To return, to restore (a thing, an inheritance) with all fruits and proceeds derived therefrom. "When the words 'you are to restore (restituas) are used in a law, the proceeds also are to be restored although nothing expressly has been said thereof" (D. 50.7.173.11). Restitutio with reference to guardianship or curatorship (restitutio tutelam, curam) = to render accounts concerning the management of the ward's property and affairs by the guardian (curator) when the guardianship (curatorship) came to an end.


Restitutio in integrum. A reinstatement into the former legal position. This was an extraordinary praetorian remedy (ausilia) granted at the request of a person who had suffered an inequitable loss or was threatened by such a loss. A thorough investigation of the case (causa cognitio) preceded the in integrum restitutio as a result of which the praetor could annul through a decree (decretum) a transaction, valid according to the ius civilis. He passed such a decree when reasons of equity appeared to him sufficient enough to treat legally important events or transactions as non-existing and thereby to deprive them of the consequences which were prejudicial to the person involved. Granting a restitutio in integrum was rather an act of the praetor's imperium than of his iusdictio. The reasons and situations in which this remedy could be applied, were manifold; the most typical are dealt with in the items below. The praetor could also save a party from unjust losses in another way; he might grant him an action, as if nothing had happened before and the legal situation had remained unchanged, or, in the case of a person who was sued under a transaction deserving annulment, grant him an exception. The reforms in the civil procedure and the regime of bureaucratic jurisdiction gave the restitutio in integrum a different aspect: from the extraordinary procedural remedy depending on the discretion of the praetor, it became in the later Principate and the Empire a "beneficium" (a legal benefit) and other measures made it in certain cases superfluous.

—D. 4.1; C. 2.21–41; 43; 46; 47; 49; 52; 53.—See USUCATIO, ALIENATIO IUDICII MUTANDI CAUSA.

Klingmüller, RE 1A; Lécluse, DS 4; Sciascia, NDI 11; L. Charvet, Evolution de la restitutio des majorum, Diss. Strassbourg, 1920; Lauria, St Bonfante 2 (1930) 513; Jobbé-Duval, St Bonfante 3 (1930) 183; W. Felgenträger, Antikes Lösnungswesen, 1933, 101; Gallet, RHD 16 (1937) 407; Carrell, SDHI 4 (1938) 5. 195; idem, AnnBori 1 (1938) 129; Beretta, RICR 8 (1948) 357; Archi, St Solazzi 1948, 740; Levy, ZSS 68 (1951) 360.

Restitutio in integrum militarum. Granted to soldiers; see the following item.—C. 2.50.

Restitutio in integrum propert propter absentiam. Granted to persons who because of their absence had incurred damages, as, for instance, the loss of an action through praescriptio, usucapton of the absent person's property by a third person. Absence in the interests of the state, captivity, or absence enforced by duress, was considered absence which justified a restitutio in integrum. A request for restitutio had to be brought within a year from the end of the period of absence.

—C. 2.50.—See ABSENTES.

Gallet, RHD 16 (1937) 407.

Restitutio in integrum propert propter aetatem. Granted to minors (see MINORES) who had concluded a prejudicial transaction. In the praetorian Edict there was a section which concerned this kind of restitutio: "If a transaction will be said to have been concluded with a minor below twenty-five years of age, I shall give attention to the case according to its particular circumstances" (D. 4.4.1.1). Therefore this restitutio in integrum was not conceded in just any case; the injured minor had to prove that it was only because of lack of experience due to his age that he had concluded the transaction, since the minor's right to be protected by restitutio was considered a privilege of age (beneficium aetatis). There were several cases in which a restitutio was refused. The request for annulment of the harmful transaction had to be made within a year after the minor attained the age of majority.

Solazzi, BIDR 27 (1914) 296.

Restitutio in integrum propert capaciti deminutio- nem. A creditor who lost his claim against a debtor because of the latter's CAPITIS DEMINUITIO (when, e.g., he was adopted by ARROGATIO, or when a female debtor concluded a marriage with CONVENTIO IN MNUM) might request restitutio in integrum from the praetor.

Carrell, SDHI 2 (1936) 141.

Restitutio in integrum propert dolum. See DOLUS.

Duquesne, MIF Fournier 1929, 185.

Restitutio in integrum propert mutum. Reestablished the legal situation which existed before a transaction was concluded (or an act was done, e.g., the refusal of the acceptance of an inheritance) under duress. The annulment of the pertinent transaction or act was decreed at the request of the person who had acted under duress. In his Edict the praetor proclaimed: "I shall not approve of what has been done because of fear" (D. 4.2.1).—See METUS.

Restitutio in ordinem. See MOTIO EX ORDINE.

Restitutio indulgentia principis. The restoration of a person, who had been condemned to deportation for a crime, into his former rights through an act of grace by the emperor. Such restitutio is also called restitutio in integrum. The result was that the one so restored (restituus) was regarded as if he never had been condemned. Some restrictive clauses might be
added to the emperor's decree and the return of confiscated property had to be expressly granted. The imperial restitution was also applied in cases when a person was condemned to forced labor in mines (see MÆTALCM).—See ABOLITIO, INDULGENTIA.

Carrelli, AnBari 2 (1937) 55; Dessautx, TR 7 (1927) 281.

Restituto natalium. See NATALIUM RESTITUTIO.

Restitutorius. See ACTIO QUÆ RESTITUTIT OBLIGATIO-NEM, INTERDICTA RESTITUTORIA.

Retentio. (From retinere.) The retaining of a thing by a person who normally is obligated to return it to its owner. This kind of self-help could occur in various situations, especially when a person had to bear expenses on another's thing (see IMPENSAE), which he was temporarily holding. When sued by the owner for recovery he might oppose an exception doli which, when proved justified, liberated him from the restoration of the thing until his claims were satisfied. Retentio was admitted also when an heir claimed the quarta Falcidia (see LEX FALCIDIA) before paying a legatum or a fideicommissum to the beneficiary. It seems that the retentio was applicable in classical law in various legal situations which because of alterations made by the compilers on the pertinent texts are no longer recognizable. The ius retentionis (= the right to retain another's thing) was, however, not admitted in any instance in which one who claimed a payment from another person, was holding the latter's property under a specific title (for instance, as deposit or a gratuitous loan). Generally, there had to be a relationship between the thing retained and the claim.—The more important cases of retentio are dealt with in the following items. Leonhard, RE 1A: Coq. DS 4; D'Avanzo, NDI 11, 834; Last, GR 26 (1909) 502; Ricchonono, AnPal 3-4 (1917) 178: E. Nardi, Ritenzione e pegno Gordiano, 1939; idem, AG 124 (1940) 74, 139; idem, ScR Ferrini 1 (Univ. Catolica Sacro Cuore, Milan, 1947) 354: idem, St sulle ret- tenzione, 1. Fonti e casi, 1947; E. Provenzi, Contributo allo studio dell'efficacia dell'exc. doli a fine di ritenzione, 1948.

Retentio pignoros. See PIGNUS GORDIANUM.

Retentio propter res donatas. See RETENTIONES DOTALES.

Siber, St Riccobono 3 (1936) 241.

Retentiones dotales (ex dote). In certain cases a husband had the right to retain a portion of the dowry when the restitution thereto was to be performed. Retentiones propter liberos (= retention in favor of children): in the event of the wife's death, the husband could retain one-fifth of the dowry for each child, in the case of divorce by fault of the wife one-sixth, but in neither case more than a half altogether. Retentiones propter mores = retention in case of divorce arising from a misconduct of the wife: one-sixth when she was guilty of adultery (mores graviores), one-eighth when her improper conduct was less grave (mores leviiores). Retentiones propter res donatas = retention because of donations which the husband had made to the wife under violation of the prohibition of such donations (see DONATIO INTER VIRUM ET UXOREM). Retentiones propter impensas = retention because of expenditure made on the objects constituted as dowry. Retentiones propter res amotas = retention because of the husband's things which were taken away by the wife (see ACTIO REUM AMOTARUM). In the last three instances the heirs of the husband also had the ius retentionis. The retentiones was materialized through an exception doli opposed by the husband (or his heir) when he was sued for the restitution of the dowry under the actio REI UXORIAE. Justinian's reform of the dowry law abolished the retentiones. The claims of the husband were partly suppressed, partly (as those for impensae) made suitable under specific actions or allowed to compensate for the reciprocal claim for the restoration of the dowry. The compilers replaced the term retentio with the terms exactio and compensatio.—See RETENTIO.

E. Nardi, St sulla ritenzione 1 (1947) 146.

Retinere. See RETENTIO.

Retractare (retractatio). To revoke, to rescind a juristic act, to deny the validity (e.g., of a testament). Leonhard, RE 1A.

Retractare causam. To try in court anew (ex integro) a case which had already been decided in a previous trial. This was possible only inasmuch as the rule bis de eadem re ne sit actio (see BIS IDEM EXIGERE) was not applicable and an exception REI JUDICATAE could not be opposed. Retractare causam was admissible only in exceptional cases, for instance, if it could be proved that the former judge had been bribed or new documents were found (nova instrumenta) which reversed the evidence presented in the first trial. Imperial constitutions were particularly innovating in this respect. The fisc was especially privileged in retractare causam if it could offer new evidence on its behalf, but only within three years from the first decision.—C. 10.9.

Biondi, St Bonfante 4 (1930) 96.

Retractare sententiam. To change a judgment from which a party had appealed.—See RETRACTARE CAUSAM, ERROR CALCULI.

Hellman, ZSS 24 (1903) 87.

Retro agere. To rescind a transaction (a sale, a donation).

Retro dare. To return, to repay a debt. Syn. solvere.

Reus. A defendant in a civil trial. Syn. is cum quo agitur. Ant. actor. There was a rule on behalf of the defendant: "Defendants are regarded as deserving more favorable treatment than plaintiffs" (D. 50.17.125). Another rule defined: "That which is not permitted to the defendant should not be allowed to the plaintiff" (D. 50.17.41 pr.). By opposing an exception to the plaintiff's claim the defendant assumed the role of a plaintiff; see EXcipere, EXception.
In the so-called divisory actions (actus familiae er- ciscundae, actio communi dividendo, actio finium reg- gundorum) each party to the trial is both plaintiff and defendant.—See JUDICIA DIPLICA.—Reus is also the accused in a criminal trial. In connection with a specific crime (reus homicidii, falsi, maiestatis) = guilty. The death of the accused produced the discontinuance of the trial.—C. 9.6.

Eger, RE 1A; Létrivain, DS 4.

Reus. (In obligatory relations.) Refers both to the debtor (primarily) and to the creditor. See reus credendi, reus promittendi, reus stipulandi, duorum. With reference to suretyship reus is applied both to the principal debtor (see reus principalis) and to the surety (fideiusor).

Reus credendi. A creditor. Ant. reus debendi = a debtor.—See creditor.


Berger, KV 14 (1912) 436.

Reus debendi. See reus credendi, debitor.

Reus excipiendo actor est. The rule applies to the defendant in a civil trial: by opposing a claim the defendant acts as a plaintiff.—See excipere, excepto, reus.

Reus principalis. The principal debtor as opposed to a surety (fideiusor, adpromissors). Syn. principalis debitor.

Reus promittendi. One who becomes a debtor by assuming an obligation through stipulatio (qui promittit, promissor). Ant. reus stipulandi.


Revendere. To sell back. The term is applied to the sale of a freedman's services (operae liberti) to the freedman himself by the patron. Through such a transaction the freedman was released from the obligation of performing further work for the patron. Passive revendere (re-vendere) = to be sold back.

Reverentia. Respect due by children to their parents or by a freedman to his patron.—See obsequium.

Kaser, ZS 58 (1938) 117; C. Coemintini, St sui liberti 1 (1948) 251.

Reverentissimus. A title given to high ecclesiastical dignitaries (archbishops, bishops, oeconomus eccle- siae).

Reverti. To return. See animus revertendi. Reverti is used of persons (slaves) who reverted under the power of the same person under whom they had been before, and of things which returned to the same owner to whom they belonged.

Revocare (revocatio). To revoke unilaterally a legal act (a donation, a testamentary disposition), to annul it by a manifestation of will to the effect that the previous legal situation be restored.—See REVOCARE ALIENATONEM, REVOCARE DONATIONEM.

Leonhard, RE 1A; Coq, DS 4.

Revocare alienationem. To rescind an alienation.

Used of a creditor who called into question an aliena- tion made by his debtor with the purpose of defraud- ing the creditors.—C. 7.75.—See fRAUS.

Revocare domum. See IUS REVOCANDI DOMUM.

Revocare donationem. In classical law a donation already accomplished (see DONATIO PERFECTA) was irrevocable. In certain specific cases, however, the postclassical law admitted the revocability of a donation, as in the case of a flagrant ingratitude of the donee or of donations made to villainous or irreverent children. A donation could also be revoked (from the third century after Christ on) if the donee did not fulfill the duty (see modus) imposed on him by the donor. The revocation was allowed to the donor alone, not to his successors. A patron might revoke a donation made to his freedman if the latter proved ungrateful, see ingratus libertus. In the later law (from the time of Constantine) a gift made to a freedman by a childless patron could be revoked if the donor begot a child afterwards. A DONATIO MORTIS CAUSA was always revocable according to Justinian's law.—C. 8.55.—See PAENTITENTIA.

B. Biondi, Successione testamentaria, 1943, 693; C. Coemintini, St sui liberti 1 (1948) 223; S. Di Paolo, Donatio mortis causa, 1930, 66.

Revocare in patriam potestatem. From the time of Constantine a father could recall an emancipated son under his paternal power because of the latter's ingratitude.

Revocare in servitutem. To revoke a manumission. A patron might revocare in servitutem an ungrateful freedman (see ingratus libertus) in a case of particular gravity.

De Francisci, Mé, Cornill 1 (1926) 295.

Revocare legatum. See ADEMPITO LEGATI.

Revocare mandatum. See MANDATUM.

Revocare Romam. To call a judicial matter into a Roman court. Already in the later Republic the senate or the consuls could order important judicial matters transferred from a province to Rome.

Revocare testamentum. To revoke a testament by making another valid one or by annulment or de- struction (e.g. by removing the seals, see LINUM). This was a fundamental principle of the Roman law on testaments: "the will of a testator is changeable until the very end of his life" (D. 34.4.4). This was in conformity with the conception of the testament as the "last will" (suprema, ultima voluntas) of the deceased. A testator could not relinquish that right by inserting in his testament a clause invalidating any future testament. Such a clause was not binding; Justinian, however, required that the testator when making a new testament should expressly declare that he was acting against his previous decision.

R. Bozoni, 2 testamento r. primeiro e a sua revocabilita, 1904; De Francisci, BIDR 27 (1915) 7; Bohacek, St Bon- fante 4 (1930) 307; B. Biondi, Successione testamentaria, 1943, 591.
Revocari per legem. To be declared ineffective by a legal enactment (a statute, the praetorian edict, an imperial constitution).

Hellmann, ZSS 24 (1903) 104.

Revocatio. See revocare.

Revocatio in duplum. A defendant condemned in a trial could without awaiting the plaintiff’s action for execution (Actio Iudicati) challenge the judgment as invalid. Such a complaint was called revocatio in duplum since in the case of failure he had to pay double the amount of the previous judgment.

Biondi. St Bonfante 4 (1930) 92.

Rex. During the period of kingship, which lasted about 250 years from the foundation of Rome, a king (rex) was at the head of the Roman people as the holder of the highest military and judicial power. The king was also the highest priest and presided over the sacred ceremonies; his religious duties were the most important in peace time. Tradition preserved the names of seven kings from the legendary founder of Rome, Romulus, to the last king, Tarquinius Superbus, whose expulsion (in 509 B.C.) marked the end of the regal regime. The constitutional structure of the state and the legal institutions of this period are obscure in many details. Later historical sources are not fully reliable because of their tendency to retroject the origin of certain Republican institutions back to the times of the kings. The power of the rex was not hereditary; he was elected by the people for life, the election being confirmed by the senate. The composition, election (nomination by the king?) and activity of the senate are also obscure. Its principal role might have been that of an advisory council of the king. The number of the senators (patres), originally one hundred, was increased to three hundred. Popular assembles (comitia curiata) also existed already in the regal period.—See regnum, curia, leges regiae, ius papirianum.


Rex sacrorum (sacrisculus). A priest who officiated at certain religious observances. The office was created at the beginning of the Republic; the rex sacrorum first assumed the sacral functions of the king, hence the title of rex was conferred on him. He was, however, lower in rank than the pontifex maximus, who was his superior. The rex sacrorum existed still in the Empire.

Rosenberg. RE 1A.

Rex socius. The king of a foreign country with whom Rome had a treaty of alliance.—See socii.

Rhetor. A rhetorician. See orator. A rhetor giving instruction in rhetoric was reckoned among teachers (magistri), and his discipline among the artes liberales. A rhetorician was at his request exempt from the duties of a judge in a civil trial. For the privileges granted to the rhetoricians, see magistri. The problem of the influence of rhetoric on Roman jurisprudence is the subject of controversy. Attempts to deny any influence are futile; but it is hardly possible to delimit this influence with any certainty. There is also in the literature a tendency to exclude certain words and phrases from the juristic language although they occur frequently in the language of the rhetoricians. Such a method applied in the search for interpolations is erroneous. After all, the jurists studied rhetoric in their youth like all well educated Romans, and it would be quite natural for them to use words and locations they heard from their teachers.


Rhopai. A Byzantine juristic writing of the seventh century composed in Greek by an unknown author and published under the title “On spaces of time from one moment (rhope = a moment) to one hundred years.” It is an exact collection of the various extents of time which occur in Justinian’s legislation. The Novels included.


Rigor iuris. The severity, inflexibility, rigidity of the law. A rule defined by the late classical jurist, Modestinus (D. 49.1.19) recommended: “If a judgment is rendered clearly against the rigor iuris, it shall not be valid, and therefore the matter should be brought again into court even without an appeal.”

Ripa. The bank of a river. If the bank of a public river was in private ownership, its use was accessible to all for navigation, transportation, fishing, etc. The owner’s right to repair or strengthen the bank (munire ripam) was protected by a special interdict, interdictum de ripa munienda, against any interference with the necessary repairs or improvements provided they did not impair navigation. On the other hand the demolition of constructions which impeded navigation (quo navigatio deterior sit) could be enforced by another interdict.—D. 43.12; 15.—See interdicta de fluminibus publicis. interdicta de reficiendo.
Rite. In due, solemn form, prescribed by law.

Riccobono. ZSS 34 (1913) 224.

Rivales. Persons using water from the same stream.

Rivus. A brook, a stream, a minor flowing of water. *Rivus* is also a ditch (a channel) through which water runs from one man's property to another's in the case of a *servitus aquaeductus*. —See *INTERdictum de rivis, interdicta de repiciendo*.

Roger. See *TERGITIA*.

Rogerius. *Rogatio* —Used the formula of a *fideicommissum*.

Rogo. A glosator of the second half of the twelfth century. —See *Glossatores*.

Rogato. At request. —See *rogo*.

Rogatus. Tellers who collected and counted the votes in a popular assembly. *Syn. diribitori* since their activity was called *diribiri*.

Rogator legio. One who proposed a statute to a popular assembly. —See *Rogerio legi*.

Rogatores. Tellers who collected and counted the votes in a popular assembly. *Syn. diribitori* since their activity was called *diribiri*.

Rogatores. Tellers who collected and counted the votes in a popular assembly. *Syn. diribitori* since their activity was called *diribiri*.

Rogarius. A glosator of the second half of the twelfth century. —See *Glossatores*.

Rogutana. Used in the formula of a *fideicommissum*.

Rogus. A funeral pile. —See *Rustus, ursina*.


Rustici. Peasants; simple men lacking experience, particularly in legal matters. *Rustici* might be excused for ignorance of the law and errors. A privilege which citizens normally could not claim. —See *ignorianta iuris*.

Rusticitas. Simplicity, quality of being rustic, inexperienced. —See *Rustici*.

Rusticus. (Adj.) Rural, connected with, or pertaining to, life and work in the country. —See *praedia rusticana, servitutes praediorum rusticorum, familia rusticana, villa*.

Ruta et caesa. Things taken out of the soil (= *eruta* such as sand, clay, quarry-stones) or cut down (such as trees). If separated from the soil, they could be reserved for the seller (*excepta*) on the occasion of selling the land. According to another opinion, they always remained in the ownership of the seller unless they were expressly sold together with the land.

Rutiliana actio, constitutio. See *actio rutiliana, constitutio, Rutilius Rufus, usucapio ex rutiliana constitutione*.


Rutilius Rufus (Publius). A jurist of the first half of the first century B.C., a disciple of the famous republican jurists, Manilius, Brutus, and P. Mucius Scaevola. He was in great demand for juristic
opinions (responsa). He was the creator of the actio rutiliana, and perhaps also of the actions granted the patron for services due by his freedmen (see judicium operarium) which are attributed to a praetor Rutilius.—See constitutio.

Münzer, RE 1A. 1269 (no. 34); Orestano. ND 11, 948.

S

Sabinian. The name of a school (schola, secta) of legal thought in the first and the early second centuries after Christ. The name refers to the famous jurist Massarius Sabinus (see SABINUS), a prominent leader of the group. The “school” is called also Cassiani after the name of the jurist C. Cassius Longinus, Sabinus’ successor. The origin of the Sabinians as well as that of the rival school of Proculians (Proculiani, Proculian), so-called after the name of their leader PROCULUS, goes back to the time of Augustus. The founders may have been Labeo and Capito (the latter was predecessor of Sabinus).

A considerable number of controversial questions, on which the opinions of the leading representatives of the two groups differed, is known but it is difficult to find a common basis—a political, philosophical, or economic background—that will explain the differences in their opinions. According to a recent view the distinction between the two schools is based on the real existence of two legal educational institutions. Among the prominent Sabinians after Sabinus and Cassius were Iulvenus, Gaius, and Julian, among the Proculians Pegasus, Celsus the Younger, and Neratius.—See schola.

Kübler, RE 1A (t.s. Rechtschulen); Berger, OCD (s.s. Sabinus); G. Baviere. Le due scuole dei giureconsulti rom., 1898; Di Marzo, RISG 63 (1919) 109; Ebrard, ZSS 45 (1925) 134; P. Frezza, Metodi ed attività delle scuole rom. di diritto, 1938; F. Schulz, History of R. legal science, 1946, 119; 338.

Sabinus, Caecilius. See CAECILIUS SABINUS.

Sabinus, Massarius. A famous jurist of the early first century after Christ, head of the school of Sabinians (see SABINIANI), author of an extensive, systematic treatise on ius civile which was commented on by later jurists until the third century in Works entitled “Ad Sabinum.” The system adopted by Sabinus in his fundamental work followed this scheme: law of successions (testamentary and intestate), law of persons, law of obligations and law of things. Sabinus wrote also a commentary to the praetorian Edict, a collection of responsa, and a monograph on theft.

Steinwender, RE 1A. 1600; Berger, OCD; O. Lenel. Das Sabinussystem (Eg ihering, Strassburg, 1896); F. Schulz, Sabinusfragmente in Ulpianis Sabiniumkommentar, 1906; P. Frezza, Osservazioni sopra il sistema di Sabino, RISG 8 (1933) 412.

Saccarius. One who steals money from another’s purse, a pick-pocket. A sacculus was more severely punished than an average thief.

Saccus (sacculus). A sack, a money-purse. A deposit of a sealed purse containing money was treated as a normal deposit (depositum).—See depositum irregulare.

Sacer. (In sacral law.) Sacred, consecrated to gods. —See locus sacer, res sacrae, consecratio, dedicatio, pecunia sacra. Ius sacrum.

Ganschietz, RE 1A, 1626.

Sacer. (In earlier penal law.) Some of the oldest provisions of the Roman criminal law established as a punishment for certain crimes the sacratio of the wrongdoer by proclaiming “sacer esto” (= that he be consecrated to gods, be outlawed). This involved exclusion from the community, from divine and human protection. The death penalty was not inflicted directly, but killing a sacer homo was not considered murder. Sacratio was decreed for crimes against institutions which were under divine protection, for removing boundary stones (see terminum movebre), for fraud committed by a patron against his client, and from the middle of the fifth century B.C. for an injury done to a plebeian tribe. In addition to the sacratio capitis the property of the sacer was forfeited to gods (consecratio or sacratio honorum).—See interdicere aqua et igni, leges sacriiiae, sacrosanctus, sacramentum, termini motio.

Ganschietz. RE 1A, 1627; Lecrivain. DS 4 (s.s. sacriium capitis); J. L. Strachan-Davidson. Problems of the R. criminal law 1 (1912) 3; W. W. Fowler, Roman essays, 1920, 115; Groh. St Riccibono 2 (1936) 5; M. Kaiser, Das atrium. Ius, 1949, 45.

Sacer. (With reference to the emperor.) Sacred, imperial. Imperial enactments are termed sacrae constitutiones. The term sacer is very frequent in later imperial constitutions and is applied to everything connected with the emperor (sacrae santitiae, sacra oratio, sacrum auditorium, etc.)—See praepositus sacri cubiculi, largitiones sacrae. Comes sacriiurum largitionum, cognitio sacra. Iudicium vice sacra.

Sacerdotes. A general term for priests. See pontifices, flamines, augures. Fetiales, fratures arvalis, duovirini (decemviri, quindecemviri) sacris faciundis, collegia sacerdotum. Under the Christian emperors sacerdotes = ministers of the Church; sometimes sacerdos indicates a bishop (episcopus). In Justinian’s legislative work the term sacerdotes as well as sacerdotium (= priesthood, the office of a priest), even when quoted from the work of a pagan jurist, is to be understood in the new sense.

Riewald, RE 1A; Chaplo, DS 4; Rose, OCD (s.s. priest); E. Pian, Ricerche sulla storia 1 (1915) 27; Carter, The organization of the Roman priesthoods at the beginning of the Republic, Mem. Amer. Academy in Rome 1 (1916).

Sacerdotes municipales. Priests in municipalities. The municipia had their pontifices, augures, flamines, Vestales, and also priests whose sacral service was connected with a specific municipal deity. The ap-
pointment of sacerdotes municipales was made by the ordo decurionum (= the municipal council).
Riewald, RE 1A, 1651.
Sacerdotes provinciales. Priests in provinces. Their service was dedicated not only to gods, but also to the worship of the emperor.
Sacerdotium. Priesthood.—See SACERDOTES.
Sacra. All kinds of relations between men and gods.
The most important domain of the sacra were the sacrifices performed by bodies of public character (including communities) and by private persons. Hence the division into sacra publica and sacra privata. The former were carried out at the expense of the state or other public body (sumptu publico) and on behalf of the people (pro populo) by priests and high magistrates without active participation of the people; the latter were a private affair which concerned an individual or a group of individuals (familia, gens). Within the family group the sacra familiaria included worship of a special deity, protector of the family (see LARES, PENTATES), as well as of the ancestors of the family. These religious rites were celebrated by the heirs, not only the descendants of the last head of the family, but also by heirs appointed in a testament even when they were strangers to the family. Thus the continuity of the sacra familiaria was intimately connected with the succession to the family property. Of an analogous nature but on a larger scale were the sacra of a gens (sacra gentilicia), i.e., the common worship and religious rites celebrated by the members of a gens. This community of sacra (communio sacrorum) of the members of a gens was a strong tie uniting them (the gentiles). The pontiffs assisted private persons with advice as to rites and forms to be applied in the performance of sacred ceremonies and exercised a certain supervision of the pertinent activities.—See IUS SACRUM, IUS PONTIFICII, REX SACRORUM, DETESTATIO SACRORUM, MANUMISSIO SACRORVM CAUSA.
Geiger, RE 1A; Toutain, DS 4; Severini, NDI 11; G. Wissowa, Religion und Kultus der Römer, 2nd ed. 1912; Bruck, Sem 3 (1945) 4; idem, Scr Ferrini 4 (Univ. Sacro Cuore, Milan, 1949) 6; Biondi, Iura 1 (1950) 155.
Sacra familiaria (familiae). Sacra performed on behalf of a family (sacra pro familiaris).—See SACRA FAMILIA, SACRA PRIVATA.
Sacra gentilicia. See SACRA, GENS. Syn. sacra pro gentibus. Some of the more influential gentes were assigned the performance of sacred rites on behalf of specific gods usually honored by sacra publica.
G. Castello, St sul diritto familiare e gentilizio, 1942, 25.
Sacra nocturna. Sacrifices and religious ceremonies performed at night. They were not prohibited, but were generally regarded as undertaken for evil purposes (sacra impia). The use of magical arts (see MAGIA) on such occasions was punished by death.
Sacra popularia. Religious festivals arranged for the whole people.
Sacra privata. Sacrifices and religious rites performed "on behalf of individuals, families, and gentes" (Festus 245).—See SACRA.
A. De Marchi, II culto privato di Roma antica, 1896; R. Leclercq, Des s. p. en droit romain, 1928; Bruck, Scr Ferrini 4 (Univ. Sacro Cuore, Milan, 1949) 6; 35.
Sacra publica. See SACRA, IUS SACRUM, IUS PONTIFICII, SACRA GENTILICIA.
Sacrae largetiones. See LARGITIONES SACRAE.
Sacramentum. An oath. For oaths in civil trials, see IUSURANDUM, IURAMENTUM, IURARE.
P. Noailles, Du droit sacré au droit civil, 1950, 275.
Sacramentum. In the procedure through leges actiones; see LEGIS ACTIO SACRAMENTO, INIUSTUM SACRAMENTUM.
Sacramentum. In military and civil service, sacramentum = the soldier's oath of allegiance to the standards. In the Empire the soldiers were sworn in by an oath to the emperor. The violation of the sacramentum rendered the offender an outlaw; see SACER. Magistrates and imperial officials (militia civilis) took a similar oath to observe the laws.—In later imperial constitutions, sacramentum = an official post.—C. 10.55.
Sacrarium. In Justinian's language, a court-hall.
Sacratio. See SACER, CONSECRATIO, RES SACRAE, LEGES SACRATAE.
Sacratissimus. Most sacred. This epithet was applied to the emperors and institutions connected with them (see PALATIUM, AERARIUM) already during the Principate. Sacratissima constitutio = an imperial enactment. In the later Empire churches and ecclesiastical institutions were termed sacratissae.
Sacrificium. A sacrifice. See SACRA. Malum sacrificii = a sacrifice in which a human being was the victim (hominem immolare). The offender was punished by death. Heathen sacrifices were forbidden by the emperor Constantius (A.D. 354, C. 1.11.1). Imperial legislation of the fourth and fifth centuries concerning pagan religious institutions and customs (temples, sacrifices) is found in Justinian's Code, 1.11.—See SACRA, SUPPLICATIONES.
Latte, RE 9 (s.v. immolatio); Toutain, DS 4, 972; G. Wissowa, Religion und Kultus der Römer, 1912; Ettrem, OCD.
Sacrilegium. Theft of sacred things (furtum sacrorum) or of RES RELIGIOSAE. Stealing things used for divine service from a temple was punished with death. See QAESTIONES PERFECTAE. The offender who committed such a crime = sacrilegus (furt sacrorum). In the later Empire the conception of sacrilegium was somewhat distorted and those "who through ignorance or negligence confounded, violate and offend the sanctity of a divine law" (C. 9.29.1) were con-
considered guilty of sacrilegium. "Divine" is here used in the sense of imperial, issued by the emperor; see divinus. Thus sacrilegium and sacrilegus became rather general terms applied to the neglect or violation of imperial orders or enactments.—D. 48.13; C. 9.29.—See lex Iulia peculatus.

Pfaff, RE 1A, Coq. DS 4.

Sacrilegus. See sacrilegium.

Sacrorum detestatio. See detestatio sacrorum.

Sacrosanctus. The term was applied to plebeian tribunes (see tribuni plebes) in indication of their inviolability and sanctity of person. This distinct quality was proclaimed by the plebeians at the very creation of the office and sanctioned solemnly by their oath to the effect that any one who attacked a tribune and hindered him in the performance of his official duties would be considered an outlaw (see Sacker) and might be killed by anyone at will. The patrician statute, lex Valeria Horatia (449 B.C.) confirmed the inviolability of the tribunes. The potestas sacrosancta of the tribunes was opposed to the imperium of the magistrates. In the later Empire and by Justinian sacrosanctus is applied to the Christian Church and its institutions.—C. 1.2.—See lex Iulia, scripturae sacer sanctae.

Kübler, RE 1A; Lengle, RE 6A, 2460; Romeaud. Rev. des Et. latines, 1926, 218; Groh, St Riccobono 2 (1936) 3; Gioffredi, SDHI (1945) 37.

Sacrae laudes. See ludi sacrae lares.

Saepta. See ovile.

Rosenberg, RE 1A.

Sagittarii. Archers, light-armed troops recruited primarily among soldiers who came from countries where archery was in use. They were organized in cohortes and alas.

Fiebigcr, RE 1A.

Salariorius. A person who received pay for his services (salarium).—See the following item.

Fiebigcr, RE 1A.

Salarium. An honorarium given to persons exercising a liberal profession (ars liberalis), such as physicians, teachers, and the like, who enjoyed high esteem in society. In municipalities the municipal council could grant such persons a yearly salary. Augustus introduced a fixed salary for public officials serving in Italy and overseas. The sum was understood to be an allowance for covering-living expenses (salarium = money for salt). See cibaria. A similar allowance, called vassarium = furniture money, could be assigned by a provincial governor to members of his staff. In the army salarium was paid to so-called evocati; the regular soldier's pay = stipendium.—C. 10.37.—See vassarium, honorarium, magister, studia liberalia.

Rosenberg, RE 1A; Lécrivain, DS 4; Marchi, AG 76 (1906) 303; Siber, JYb 88 (1939-40) 179.

Salarius. See salinae.

Salinae. Salt-works. They were property of the state and were exploited through lease to private persons (conduc tores salinarum, salarii). The condemnation of a criminal to compulsory work in salt-mines was equal to damnatio in metallum.—See metallum.

Blümmer, RE 1A, 2077; L. Clerici. Economia e finanza dei Romani 1 (1943) 463; 472.

Saltarius. A person charged with the service as guard of a saltus, being in either private or public ownership.—See the following item.

Saltus. Woodland-pasture, mountainous place, un conducive to agricultural exploitation. Later (in the early Principate) the term was used of large estates, public and private (primarily in Africa). Large landed property belonging to the emperor or the imperial family was also called saltus (saltus divinae domus, saltus dominici). Syn. fundus saltuensis.—C. 11.62-64; 66; 67.

Kübler, RE 18, 3. 2053 (s. v. pastura); Kornemann, RE Suppl. 4, 255; Lécrivain, DS 3, 958; Cigogné, AG 74 (1905) 273, 382; 75 (1905) 59.

Saltus aestivi (hiberni). Pasture lands used only during a part of the year (in winter = saltus hiberni, in summer = saltus aestivus). The lands were considered to be in the continuous possession of the person who used them only during the appropriate season.

Salva rerum substantia. See ususfructus.

Salvianum interdictum. See interdictum salvianum.

Salvum forum recipere. See receptum nauarium.

Salvus. Safe, uninjured. Salvo iure = without prejudice, without detriment to one's right (e.g., salva Falcidia).

Sanctire. To ordain (by a statute = leged, by an edict = edicto, by custom = moribus), to enact (e.g., principis sanzerunt). Sancti = to be established, sanctioned (by law, etc.).


Sanctio (legis). A clause in a statute which strengthens its efficacy by fixing a penalty for its violation, by forbidding its derogation through a later enactment, or by releasing from responsibility any one who by acting in accordance with the statute violated another law. The purpose of the sanction clause was to settle the relation between the new statute and former and future legislation. Thus the sanctio could also state that a previous statute remained fully or partially in force without being changed by the new one.—See lex, leges perfectae, sanctus.

Kübler, RE 1A; Rosandi. Leges publicae populi Rom., 1912, 151; Gioffredi, Archivio penale 2 (1946) 166.

Sanctio pragmatica. See pragmatica sanctio.

Sanctio pragmatica pro petitione Vigilii. An enactment by Justinian, issued in 554 at request of Pope Vigilius, on the legal order in Italy (after the libera-
tion of Rome from the Goths). By this enactment Justinian ordered that his existing legislative work (the Institutes, the Digest and the Code) and all his later enactments should be in force in Italy.

Edition: App. VII in the edition of Justinian's Novels (Corpus juris civilis, 3) by Scholl and Kroll (fifth ed. 1928); M. Conrat (Cohn), Gesch. der Quellen und Literatur des röm. R. im Mittelalter, 1891, 131.

Sanctus. "What is defended and protected against injury by men" (D. 1.8.8) and "what is neither sacred (sacrum) nor profane, but is confirmed by a kind of sanction (sanctio) without being consecrated to a god" (D. 1.8.9.3). See RES SANCTAE.

Sane. Certainly, of course, to be sure. The word occurs in texts suspected of interpolation.

Guarnieri-Ciati, Indice (1927) 79.

Sanguis. Blood. Poena sanguinis = the death penalty, hence in sanguine = in a criminal matter in which the accused is threatened by the death penalty.—See cognatio, IUS SANGUINIS, CONSANGUINEUS.

Sapiens. See SEMPRONIUS.

Sarcinator. A mender of clothes. He was liable for CUSTODIA of the clothes which had been given him for repair.

Sarcire. To repair. See damnum (nosciam) = to make good damages, losses, to indemnify.

Satio. Sowing seed. The product belongs to the owner of the land even when another's seed was used.—See planta, superficies cedit solo.

Satis. Enough. sufficient, satisfactory. When connected with a verb (see the following items), satis refers primarily to security given by the debtor and accepted by the creditor. In connection with dare (datio) and facere (factio) satis is written either separately (satis dare, satis facere) or joined with the pertinent verbs or nouns (satis dare, satis facere, satisdatio, satisfactio).

Satis accipere. Used of a creditor who is satisfied with a debtor's performance, with his formal promise (stipulatio) or with the securities or sureties offered by him (satisfactionem accipere). The corresponding term for the debtor is satisfacere.

Satis desiderare. To demand a security from a debtor; syn. satis exigere, postulare, petere.

Satis facere (satisfacere). See satis ACCIPERE, satisfactio.

Satis offerre. To offer sufficient security to one's creditor.

Satisdatio (satisfacere). Security given to the creditor by a debtor through a personal guaranty assumed by a surety (sponsor, fideiusssor). Satisdatio is opposed to a simple promise (nuda promissio, repromissio) by the principal debtor and to a security given in the form of a pledge. The usual satisfactiones which were a form of a cautio, are dealt with under cautio; see also the following items.—Inst. 4.11; 1.24; C. 2.56.

Steinwenter, RE 2A; Severini, NDI; R. De Roggiero. Satisdatio et pignoratio nelle stipulazioni pretorio, St Padda 2 (1906) 101.

Satisdatio de opere restituendo. See OPERIS NOVI NUNTIATIO.

Berger, iura 1 (1950) 117.

Satisdatio legatorum. See CAUTIO LEGATORUM CAUSA.

Satisdatio pro praeed litis et vindiciarum. See CAUTIO PRO PRAEDE LITIS ET VINDICARIUM.

Satisdatio rem pupilli salvam fore. See CAUTIO REM PUPILLI SALVAM FORE.

Satisdatio secundum manicipium. A guarantee connected with MANcipatio, probably a formal promise (stipulatio) by the seller to deliver the immovable alienated with all proceeds and profits he had derived therefrom in the time between the manicipatio and the effective delivery.

Maylan, RHD 26 (1948) 1 (Bibl.).

Satisdatio suspeti heredis. A security by sureties, required by the creditors of an heir who was thought to be unable to pay the debts of the deceased. In case of refusal the creditors might obtain possession (missio in possessionem) of the heir's whole property.—See HEBES SUSPECTUS.

S. Solazzi, Concorso dei creditori 1 (1937) 98.

Satisdatio usufructuaria. See CAUTIO USUFRUCTURIA.

Satisfactionem accipere. See satis ACCIPERE.

Satisdatio cavere (defendere, promittere). Satisdare (= to give a surety).

Satisdator. A surety.—See Satisfacere, FIDEIUSSSOR.

Satisfacere (satisfacere). Generally to fulfill another's wish, to gratify the desire of a person; when used of a debtor = to carry out an obligation whatever is its origin (a contract, a testament, a statute). At times satisfacere is opposed to the effective fulfillment (payment, solutio) of an obligation and refers to other kinds of extinction of an obligation, in particular to giving security (in any form). Hence the saying: "satisfacere pro solutione est" (satisfacere takes the place of solutio, D. 46.3.32) and: "under the term solutio any kind of satisfaction (of the creditor) is to be understood" (D. 50.16.176).—See SOLUTIO, SATISDATIO.

Grosso, Remissione del pegno e s., ATor 65 (1930); Braschiello, SIsen 52 (1938) 41.

Saturninus, Claudius. A jurist of the second half of the second century after Christ, author of a monograph on penalties of which a long excerpt is preserved in the Digest (48.19.16). His identification in the INDEX FLORENTINUS with Venuleius Saturninus is not reliable.

Jöö, RE 3, 2865 (n. 333).

Saturninus, Quintus. A jurist mentioned twice by Ulpius, once as the author of a commentary on the
Edict. He is perhaps to be identified with Venuleius Saturninus.

H. Krüger, GrZ 41 (1915) 318.

Saturninus, Venuleius. See VENULEIUS.

Saxum Tarpeium. See DEICERE.

Scaenicus. An actor; scaenica = an actress. Syn. histrio. See AB LUDICA, MINUS, PANTOMIMUS.

Ludi scaenici (= theatrical performances) played an important part among the LUDI PUBLICI under the Republic.

Habel. RE Suppl. 5, 610.

Scaevola. Quintus Cervidius. A famous and most original jurist of the second half of the second post-Christian century. He was a legal adviser of Marcus Aurelius and teacher of the jurist Paul and perhaps of Papinian. His works (Quaestiones in 20 books, Responsa in 6 books, and Digesta in 40 books) are predominantly of casuistic nature. Many of his responsa deal with provincial cases. A sagacious and independent mind, Scaevola wrote his opinions in a very concise and dogmatic manner, often without any argumentation. He wrote also Notae to the Digesta of Julian and Marcellus.—See quaesto DODIMITIANA.

jors. RE 3 (s.c. Cervidius, no. 1); Orestano, ND1 11, 1158; Berger, OCD 798 (no. 5); Samter, ZSS 27 (1906) 151; Schulz, Überliefenungssch. der Responsen des C. S., Symb Lenel, 1931, 143; Sciascia. Le annotazioni ai Digesta e Resp. di S., AnCom 16 (1942-44) 87.

Scaevolae. For Scaevolae of the gens Mucia, see MUCIUS.

Scheda. A written draft of a document to be copied for the original document. It was binding when written by a notary (see TABELLO).

Schola. Used with reference to the schools of Sabini- nians and Proculians; see SABINIAN. Syn. secta. It is only Gaius who frequently speaks of the Sabini- nians as his school (nostri scholae auctores) and of the Proculians as diversae scholae auctores. The two schools of legal thought are mentioned as scholae only by one other jurist (Venuleius), and Justinian follows Gaius’ terminology sporadically in his Institutes.

Scholae. (In the later Empire.) From the fourth century on the term scholae is applied to larger groups of persons in military service or officials organized in military fashion (see MILITIA) under the command of a tribunus or a praepositus. In particular, officials of the imperial palace or attached to the person of the emperor as his bodyguards and the AGENTES in REBUS were united in scholae (see SCHOLAE PALATINAE). Scholares = members of such scholae.—C. 12.29.—See SCHOLAE PALATINAE.

Cagnat. DS 4, 1122; E. Stein, ZSS 41 (1920) 194.

Scholae palatinae. Military units or militarily organized groups in the service of the emperor, stationed either in the imperial palace or in its neighborhood. They stood under the supervision of the MAGISTER OFFICIORUM and were commanded by a tribunus or a comes. The members of the scholae palatinae received a higher stipend than ordinary soldiers did, and they enjoyed special privileges. They replaced the earlier praetorians as bodyguards of the Emperor.

Seeck, RE 2A; Babut. Rev. historique 114 (1913) 230.

Scholares. See SCHOLAE.

Babut, Rev. historique 114 (1913) 238; P. Collinet, La procédure par libellé, 1932, 415.

Scholasticus. (In the later Empire.) An advocate, a lawyer who assisted a party during a trial or served as a legal counselor of a high officer. Sometimes he assumed an official function, such as that of a defensor civitas or judge.

Preisske. RE 2A, 624.

Scholia Sinaitica. A collection of brief comments on some parts of Ulpian’s work Ad Sabiniun. A manuscript thereof was discovered on the Mount Sinai. It is a pre-Justinian work, containing quotations from the latest classical jurists (Ulpian, Paul, Modestinus, and others) and from the three Codes (Gregorianus, Hermogenianus, Theodosianus). The unknown author might have been a teacher in one of the law schools in the Eastern Empire. Some additions were perhaps inserted after the publication of the Digest.

Editions: Kübler in Huscbeer’s Jurisprudentia antiotini- ana 2, 2 (sixth ed., 1927, 461); Baviera, FIR 2 (second ed. 1940) 461; Girard. De droit rom. (sixth ed. by Senn. 1937) 609.—Wintrada, CPKhol 2 (1907) 201; Riccobono, BIDR 9 (1896) 217; idem, AnPal 12 (1929) 550; Peters, Die oström. Digestenkommentare, BerSächGW 65 (1913) 90.

Schollia. To the Basilica, see BASILICA.

Scieniund est. It should be understood. This is a favorite locution of many jurists to introduce an important, general legal rule. The location is frequently strengthened by in summa (= generally speaking on the whole), generaliter, and the like.

Sciens. One who has knowledge, one who does something knowingly (that it is forbidden or invalid). At times, sciens is syn. with conscius (see CONSCIENTIA).—See SCIENTIA.

Sciens dole malo. See DOLUS MALUS.

Scientia. Knowledge. The term refers both to a professional knowledge (as, e.g., scientia iuris, scientia artis) and to the knowledge of a fact, of another’s doing, of a specific legal provision, etc. Ant. ignorantia.

Scientia domini. The master’s knowledge of a wrong- doing about to be committed by his slave. In certain circumstances scientia domini could be considered as complicity and the master could not free himself from responsibility by delivering the slave (noxae dediti).

H. Lévy-Brühl, Nouvelles études sur le très ancien dr. rom., 1947, 128.

Scientia iuris (civilis). Knowledge of the law. Scientiam iuris profiteri = to exercise the profession of a jurist. For the lack of knowledge of legal norms involved in a specific case, see IGNORANTIA IURIS.
In order to avoid the harmful consequences of the ignorance of the law, one had to consult a professional lawyer, since "scientia iuris is the knowledge one has by himself or may acquire by consulting persons more learned in law (prudentiores)," D. 37.1.10.

Scientia iusti et iniusti. The knowledge of what is just and what unjust. Appears in the definition of IURISPRUDENTIA by Ulpian (D. 1.1.10.2).

Scientia legitima. See SCIENTIA IURIS.

Seciicit. Of course, certainly, evidently, to be sure. See IN EST. Some phrases introduced by SCICIT may have originated in marginal, explanatory glosses which later copyists inserted in the text of a juristic writing, and which subsequently were copied by the compilers of the Digest.


Scipio Nasica (Gaicus). A highly estimated jurist of the second century B.C. According to a (not fully reliable) remark by Pomponius he was offered a house at public expense in order to make him readily accessible for consultation.

Münzer, *RE* 4, 1501 (no. 353).

Scire. See SCIENTIA, SCIENS, SCIENDUM EST.

Scire leges. See INTERPRETATIO.

Seitum. A decree, an ordinance, a generally recognized legal rule.—See PLEBISCITUM.

Scriba. A clerk in a court or in an office, a secretary (in an association, collegium). The *scriba* in a magisterial office (*scribae ædilicui, tribunici, quaestorii*) belonged to the subordinate personnel, the *apparitores*. Municipal magistrates had also their *scribas*. A *scriba* is to be distinguished from a *librarius* who was simply a copyist. When a *scriba* performed the tasks of a *librarius*, his title was *scriba librarius*—C. 10.71.—See APPARITORES.—See PONTIFICES MINORES.


Scriba quaestorius (or ab aetorio). A clerk in the office of a quaestor. Among the magisterial clerks the *scribae quaestorii* were the most important; they were the bookkeepers of the treasury (see AERARIUM) and, in view of the many tasks they had to fulfill in connection with the financial administration, the most numerous (6).


Scribendo adesse. When a record of the passing of a *senatusconsultum* was written, several senators were present ("scribendo adjuverunt") to assure the accuracy of the written text.

Scribere. To write. Used of all kinds of public and private announcements or declarations made in writing. *Scribere* refers both to what the praetor promulgated in his edict or a provincial governor in his ordinances and letters, and to what the emperor ordained in his enactments. *Scribere* is used of all written legal documents (testamentum, instrumentum, chirographum, etc.). Quotations from juristic writings are also introduced by *scribere* ("Labo scribit") with or without indication of the work from which the quotation was taken.—See the following item, SCRIPTURA.

Klingmüller, *RE* 1A.

Scribere heredem (tutorem, exheredem). To institute an heir (to appoint a guardian, disinherit a person) in a testament. Hence heres scriptus = an heir instituted in a testament. Ant. heres legitimus.

Scrinia. Subdivisions of the bureaus of the imperial chancery in the later Empire. Literally the term indicates the buckets in which the official papers were stored. The chiefs of those offices, which were called also sacra scrinia, the magistri, proximi, comites, were subject to the MAGISTER OFFICIORUM. The various *scrinia* were indicated by an additional term as to their specific functions, e.g., *scrinia epistularum, libellorum*.—See the following items.—C. 12.9.


Scriinarii. Officials employed in the *scrinia*.—C. 12.49.


Scrinium a memoria (memoriae). A bureau in the imperial chancery which, under the direction of the magister (sacrae) memoriae, performed the secretarial work on all decisions in writing, letters, appointments, and orders issued by the emperor.

Seck, *RE* 2A, 897.

Scrinium dispositionum. See COMES DISPOSITIONUM.

Seck, *RE* 2A, 909.

Scrinium epistularum. Under the direction of a magister epistularum, in the later Empire this replaced the former office AB EPISTULIS.


Scrinium libellorum. An office in the imperial chancery in the later Empire concerned with all kinds of petitions (libelli) addressed to the emperor. Libellensius = an official in this bureau.


Scrinium memoriae. See SCRINIA A MEMORIA.

Scripta. Things written (e.g., a testament, document, juristic writing). A legal transaction (act) is termed *sine scriptis* when concluded only orally, without a written instrument.—See SCRIPTURA, INSTRUMENTUM.

Scriptor testamenti. The person who wrote a testament for a testator. He might also serve as a witness to the will.—C. 9.23.—See QVAESTOR DOMITIANA, TESTIS AD-TESTAMENTUM ADHIBITUS.

Scriptura. A written document (a receipt, an acknowledgment of a debt, a testament, a contract, etc.). Syn. in *scriptis, instrumentum*. Ant. *sine scriptura, sine scriptis*. Generally a *scriptura* was made for the purpose of evidence. In postclassical times written acts became more and more usual. In Justinian’s law certain transactions had to be concluded in writing to be valid. *Scriptura* is also used
of a single disposition of a written last will. For *scriptura* in Justinian’s language, see *LIterarum Obligatio*.


*Scriptura* (With reference to a jurist.) An opinion expressed by a jurist (*scriptura Sabini, Iuliani*) in a published work.

*Scriptura.* (In administrative law.) A fee paid for the use of public pasture land.


*Scriptura exterior—interior.* See *Dyptichum*.

*Scriptura legis* (senatusconsulti). The written text, or a single proviso of a legal enactment (a *senatus-consultum*).

*Scripturae Sacrosanctae.* Holy Writ. Justinian ordered (C. 3.1.14.1) that in all kinds of courts the judges (*omnes ommino iudices Romani iuris disceptatores = all judges who decided according to Roman law*) should not start the proceedings until a copy of the Scripturæ was deposited in court, where it had to remain until the end of the proceedings.

*Scripturarius ager.* See *Ager Scripturariorum*.

Burdese, *St all’agro publicus*, *MemTor. Sei.* II, 76 (1952) 36, 90.

Scutari. Heavily armed bodyguards of the emperor in the later Empire. They were among the *scholares* of the *scholae palatinae*.

Seeck, *RE* 3A, 621.

Secare partes. This expression occurred in the Twelve Tables in connection with the creditors’ right of execution on the person of a debtor in default. The pertinent provision as related by Gellius (*Noctes Att.* 20.1.52) ordained: “on the third market day they (*scil. the creditors*) might cut [the debtor] to pieces; cutting more or less [of the body of the debtor] would not be a fraud.” The meaning of the phrase is not beyond any doubt; it seems to allude to an old custom of bringing an insolvent debtor to the market on three consecutive market days and pronouncing publicly what he owed, in order to give his relatives and friends an opportunity to pay for him. If they did not, the creditors were authorized to kill him. Whatever the meaning of this provision, literary sources note that no instance of such a custom on the part of creditors was known.


*Secretarium.* A closed court-hall (in the later Empire) in which trials were held and judgments rendered. Syn. *secretum*. These terms allude to a time when proceedings were held in secret and the public was separated from the court by a curtain (*velum*) which was lifted only in specific cases. Constantine ordered that proceedings be public.


*Secretum.* See *Secretarium*.

*Secta.* A group of followers of a school of thought (*secta studiores*). Syn. *Schola*. See *Sabiniani*.—*Secta* means also a religious sect, primarily with reference to heretics. See *Haeretici*. The followers of a sectarian religious doctrine = *sectatores*.

*Sectatores.* In religious matters, see *secta*.

*Sectatores.* Adherents of a candidate to a magistracy who used to accompany him in public during the campaign period in order to impress the voters. The custom was condemned by some statutes against *amittus*, as an unfair practice.

Fluss, *RE* 2A.

*Sectio bonorum*. The purchase of confiscated property sold by the fisc at public auction in a lump. The purchaser = *sector bonorum*. The institution is not well known; in Justinian’s time it no longer existed. If some items among the confiscated property were still held by a private individual, the *sector* was granted a special indictment, the so-called *interdictum sectorium* under which he obtained possession of the things in question.


*Sectio.* See *sectio bonorum, auctio*.

*Secundae nuptiae*. A second marriage. The conclusion of a second marriage after the dissolution of the previous marriage through death or divorce, was generally permitted—to men without restrictions, to women (originally only widows, and later also divorced women) after ten months (later one year). See *Luctus, turbatio sanguinis*. Augustus’ legislation (see *LEX IULIA DE MARITANDIS ORDINIBUS*) fostered even second marriages by inflicting financial disadvantages to unmarried and childless persons. Under the influence of Christianity the later imperial legislation became unfavorable to second marriages. From the fourth century on, it imposed upon men and women married a second time various restrictions of a financial nature in favor of children born of the first marriage.—C. 5.9: Nov. 22.—See *UNIVIRA*.

*Secundae tabulae*. See *testamentum pupillare*.

*Secundarum interdictum*. See *interdictum secundarum*.

*Secundarius.* See *primicerius*.—C. 12.7.

*Secundum*. In favor of, according to, e.g., to render a judgment in favor of the plaintiff (*secundum actorem*), to decide according to the testament (*secundum tabulas*) in favor of the heir. *Ant. contra*. 
Secundum tabulas (sc. testamenti). According to the testament. Ant. contra tabulas.—See bonorum possessio secundum tabulas.

Securitas. Security, guaranty. Securitas rei publicae (publica) = the security of the state, public safety.

Securitates. In the meaning of receipts, syn. with apochae. They attested the debtor’s discharge of his debts. Official securitates were issued for the discharge of compulsory public services (munera).

Securus. Irresponsible, free from responsibility, not exposed to an action or exception. Juristic decisions to the effect that a person is securus (= secure) meant that he need not fear a suit or judicial prosecution. Securus was also used of a creditor who received sufficient securities (pledge, sureties) from his debtor.

Secutores. Soldiers, attendants (orderlies) assigned to the personal service of high military commanders, military tribunes, etc. Naval commander had also their secutores.

Fiebig, RE 2A.

Sedes. With reference to private persons, residence. Syn. domicilium. With reference to imperial offices (in the language of the imperial chancery), the office itself. Sedes urbana (or urbicaria) = the office of the praefectus urbi. Sedes praetoria = the office of the praefectus praetorio. The emperors, in addressing high government officials, used to call their office “sedes vestra.”—See excelsa sedes.

Seditio. Open resistance, an uprising of a rather large group of persons with the use of—armed or unarmed—force against magistrates; a violent disturbance of a popular assembly or of a meeting of the senate. Leaders and instigators (actores) were punished by death. The participants (seditiosi) were tried under the Lex Iulia de vi, or for crimen maiestatis. A sedition in the army (mutiny) was treated with particular severity. Viciproser demonstrations or complaints of soldiers, although called also seditio, were milder punished.

Pfaff, RE 2A; Humbert and Lécrivain, DS 3, 1558.

Seditiosi. Those who participated in a sedition (see seditio) and, according to imperial constitutions, those who incited the lower class of the people (plebs) against “the public order” (C. 9.30.1).—C. 9.30.

Semia. See nomen.

Sella curulis. See magistratus curules, subsellium.

Semel heres semper heres. “Once an heir always an heir.” One who at law or by entry into an inheritance (see additio hereditatis) became an heir of a deceased person, remained his heir (see heres) forever. Therefore an heir could not be appointed for a limited period.

C. Sanfilippo, Storia antica della hereditas, 1946, 93; Ambrosio, SDHI 17 (1951) 222.

Semenstria. See Commentarii principiium.

Semenstris pensio. Payments (e.g., rents) in six-month-installments.

Semis. See ex asse, usurai semisses.

Sempronius. See nomen.

Sempronius. An unknown jurist of the third century B.C. (consul 305 B.C.?), popularly known by the Greek epithet Sophos (= Sapiens) because of his profound knowledge of the law.—A similar case is that of the also unknown jurist, Publius Attilus (he appears in Cicero as Lucius Acilius), of the second century B.C., who was honored with the title of Sapiens.

Münzer, RE 2, 1437 (no. 85); Klebs, RE 1, 252; W. Kunkel, Herkunft und soziale Stellung der röm. Juristen, 1932, 6, 10.

Semuncia. One twenty-fourth part of a whole (e.g., of an inheritance).—See as, ex asse.

Senaculum. The place where the senate gathered. Originally, it was an open place in the forum, later a building (a curia or temple).

Klotz, RE 2A.

Senatores. Members of the senate. See patres. After the admission of plebeians to the senate (the time cannot be exactly fixed, probably at the beginning of the Republic), a distinction between the patrician and plebeian members of the senate was reflected in the expression patres (et) conscripti by which the senators were addressed, the term conscripti seemingly referring to the plebeian senators (conscripti = enrolled in the list of senators, see patres conscripti). The lex publica Philonis (339 B.C.) abolished the differentiation between patrician and plebeian senators. In the later Republic a kind of hierarchy among the senators came into existence, based on the magistracies the senators (ex-magistrates) had held before. Those who had been magistriatus curules (ex-consuls, ex-praetors, ex-aedils) preceded those who had held other offices (ex-tribunes, ex-aedils of the plebs) or none at all. Before the lex ovinia (318–312 B.C.) senators were nominated by the consuls or by the extraordinary magistrates (dictators) temporarily replacing the consuls. According to an early custom, ex-magistrates of high rank became automatically members of the senate; after the lex ovinia, by which the censors were entrusted with the selection of the senators, that custom became a fixed rule. Eligible for membership in the senate were only Roman citizens who were free-born or sons of free-born fathers. Excluded were women, persons condemned in an actio fames or branded with infamy, persons who practiced an ignominious profession, and bankrupts. The age of a newly-appointed senator varied according to the magistracy he had held; see magistratus. The youngest were the ex-quaestors (over thirty-one). Under Augustus the minimum age was lowered to twenty-five. The financial independence of the senators who generally came from the wealthiest families, was guaranteed by the requirement of a minimum property which was fixed by Augustus at one million sesterces. Senators were forbidden to partici-
pate in a business enterprise; see lex claudia.—
D. 19; C. 3.24.—see senatus (Bibl.),ordo sena-
torius, senatum cogere.

senatores. (In municipalities.) Members of the
municipal council (ordo decurionum). Syn. decuriones.
Kübler, RE 14, 2321.

Senatores ab actis senatus. Senators entrusted by the
emperor with the edition and custody of the acta
senatus.

Senatores nondum lecti. Ex-magistrates not yet
selected by the censors for the senate.

Senatores pedarii. The term is not quite clear; its
origin was obscure to ancient writers, as related by
gellius (N. Att. 3.18). Senatores pedarii were
either senators who had held a lower, non-curule
magistracy or ex-magistrates who had not yet been
enrolled into the list of senators by the censors. The
term pedarius was perhaps connected somehow with
the senate's way of voting by a division of the voters
(pedibus in sententiam ire, see discessio). The
senatores pedarii could participate only in this form
of voting and were excluded from taking part in
discussion.—see magistratus curules, lectio se-

natus.
O'Brien-Moore, RE Suppl. 6, 680; M. A. De Dominica,
Il has sententiae nel senato rom., 1932.

senatorius. Connected with, or pertaining to, sena-
torial rank (e.g., nuptiae, ornamenta, dignitas, ordo,
etc.).—see ordo senatorius.

senatu movere. See movere (de) senatu, nota cen-
soria, lectio senatus. The censors could refuse
the admission of an ex-magistrate who according to
his rank was eligible to the senate, by omitting his
name (practirre) from the list of senators.
O'Brien-Moore, RE Suppl. 6, 763.

senatum cogere (convocare, vocare). To convok
the senate. See senatum habere. Senators were
required to reside in Rome and to attend the meet-

ings. They were subject to fines for unjustified
absence.

senatum consulere. See senatusconsultum.

senatum dare. To give persons (e.g., foreign em-
bassies, delegations from provinces, provincial gov-
ernors) the opportunity of being heard by the senate
by convoking it for this purpose.

senatum habere. To convok the senate in order to
present an important matter to the senators (e.g., to
propose a law, to ask for an opinion). The convok-
ing magistrate presided over the meeting.—See se-
natum dare.

senatum mittere (dimittere). To declare a meeting
of the senate adjourned.

senatus. The senate was one of the earliest Roman
consitutional institutions; it remained in existence
throughout the entire history of the Roman state, not,
of course, without fundamental changes in its struc-
ture and its legal and political importance. For the

senatus in the regal period, see rex. In the Re-
public, the senate became the most important organ
of foreign and internal policy. Its activity was not
fixed by a written law; in particular, its rights
with respect to the popular assemblies (counia) on
one hand, and to the magistrates on the other,
were not defined by statutes. The pertinent rules
were customary law. In the field of foreign relations
the senate received foreign ambassadors and ap-
pointed embassies for missions abroad. Decision
concerning war and peace lay with the people (see
ges de bello indicendo), but a previous opinion
of the senate was binding. In case of war the senate
appointed the commanders for the various fronts and
designated the armed and naval forces therefor.
Incompetent generals were removed by the senate.
Treaties with foreign countries were concluded by the
Senate but had to be ratified by a popular assembly.
In financial matters the senate decided about taxes,
the sale of public land (ager publicius), expenses
for conducting a war, for sacred institutions, and the like;
the seized the administration of public funds (see
Aerarium Populi Romani). The senate also had
the control of the religious life, and could institute
the cult of new deities. In matters of internal policy
the senate functioned as an advisory body (sententia-
dicere) to the high magistrates (consuls, praetors).
The magistrates who had the right of convoking the
senate (ius agendi cum patriis, in the Republic con-
suls, praetors, dictators, and later the plebeian
tribunes) submitted to the senators for their opinion
proposals for new laws, administrative measures
of major importance, problems concerning the political
life of the state, and the like, but such consultation
was only customary, not mandatory. Nor was the
advice of the senate binding upon the magistrates.
A clause "si magistratus videbimus" (= if the magis-
trates deem it right) made compliance with the sen-
ate's advice officially optional. Normally, however,
the advice was followed, since it was not in the in-
terest of the magistrate to provoke a conflict with the
senate. For the administration of provinces, see pro-
vinciae senatus. Only members of the senate
(originally 300, later 600, under Caesar 900, in the
Empire 600 again) were admitted to the meetings
of the senate, which took place with the doors of the
meeting house open but with the public excluded.
In the Principate the senate obtained legislative func-
tions (see senatusconsulta) and jurisdiction in
criminal matters, primarily in crimes involving the
state. Formally the senate elected the emperor (see
princeps, lex de imperio). It also obtained
the right to appoint the magistrates, but this right in
the course of time lost its importance since the em-
perors used to nominate candidates (see candidati
Caesarius) and the senate's approval became a mere
formality. Gradually the senate was compelled to
give up much of its independence, and its powers and activity depended, in fact, upon the attitude of the reigning emperor. In the late Empire the importance of the senate declined continuously with the increase in the autocratic power of the emperor. Its functions, as far as they were exercised at all, became a pure formality, as did also the election of the emperor, which was performed to carry out the wishes of the army leaders. The supreme authority being vested in the emperor, the senate with its exorbitant number of members (2,000) was nothing more than a municipal council of Rome (and Constantinople, since Constantine created a second senate there), with a specific competence in conferring honorific titles and distinctions.—See Senatores, Senatusconsultula, Amplissimius ordo, ordo senatorius, Patres, Authoritas patrum, Interregnum, Pronuntiarii, Sententiam, Plebiscita, Lectio Senatus, Sententiam Bogare, Clarissimius, Acta Senatus, Acclamatio, Album senatorium, Allocutio, Movere de Senatu, Commentare, Istitutum, its Anului Acrei, Lex Maenia, Lex Pufia, Prodictio, Solution Legibus, Solis Oculus, Discessio, Interrogatio, Relatio, Legati Decem, Verba Facere, Decuria, and the foregoing and following items.


Senatus legitimi. Regular meetings of the senate, normally twice a month. Extraordinary sessions were frequently convoked, especially by the emperors.

Senatus municipalis (municipii). See Ordo decurionum.

Kübler, RE 4, 2319; Lécrivain, DS 4; H. U. Instinsky, S. im Gemeinwohn geregrinen Rechts, Philol 96 (1944).

Senatus populusque Romanus (abbr. S.P.Q.R.). A traditional formula, applied in official acts to indicate the government of the Roman state (in the Republic and even in the early Principate). It stresses the part of the Roman people in the organization of the government as a constitutional organ equal to the role of the senate. The abbreviation is preserved in many inscriptions.

Mommsen, Röm. Staatsrecht 3, 2 (1888) 1257; H. Dessau, Inscriptiones Latinarae Selectae, 3, 1 (1914) 589; G. Nocera, Il potere dei comizi, 1940, 244.

Senatusconsultula. Decisions, decrees of the senate issued in response to requests for advice (senatum consulere) from one of the high magistrates (consul, praetor, tribunus plebis, under the Principate the praefectus urbi) who after presenting the matter (verba facere) asked the senators for their individual opinions. From the very beginning a senatusconsultum was what the name expresses: an advice to the magistrate requesting it. The magistrate normally followed the advice in exercising his functions or incorporated it into his edict giving a more binding character thereto. Some of the republican senatusconsultula made reference to previous statutes and plebiscites. For the indirect influence of the senate on the legislative activity of the popular assemblies, see Autoritas Senatus. As to the legislative force of the senatusconsultula, there is no doubt that about the middle of the second century after Christ the senatusconsultula acquired the legal force of statutes, as attested by Gaius (Inst. 1.4): “Senatusconsultum is what the senate orders and decrees; it has the force equal to that of a statute (legis vicem optinat) although this has been questioned.” This remark suggests that under the Republic and the early Principate the senate had no legislative power. Accordingly, one century later, Ulpian stated (D. 1.3.9): “it is beyond doubt that the senate can make the law.” From the third century B.C. it became customary to write the decrees of the senate and to deposit a copy in the AERARIUM SATURNI where they were preserved under the supervision of the aediles. More important senatusconsultula were inscribed on bronze tablets posted in public. Under the early Principate the senatusconsultula superseded the comitial legislation, but were later in turn superseded by imperial enactments. The senatusconsultula were usually named after the proposer (a magistrate or imperial official). The senatusconsultula concerned various matters; a considerable number of them dealt with private law.

—D. 1.3.—See Oratio principis, Senatus, Lex Valeria Horatia, Immunitas, Censere, Scribendo adesse, Publicatio legis, and the following items.

O’Brien-Moore, RE Suppl. 6, Lécrivain, DS 4; Volterra, NDI 12; Momigliano, OCD; Lorini-Lorini, S. Bonfante 4 (1930) 377.

Senatusconsultum Acilianum. Forbade legacies of things which were joined to buildings as their ornamental (e.g., statues, sculptures, vases). The purpose of the senatusconsultum was to protect buildings from loss of their embellishment. In practice the senatusconsultum was also applied to sales of such things. The name Acilianum is not preserved in the sources; it was coined in the literature from the name of one of the consuls, Acilius Aviola, under whose consulship the senatusconsultum was passed (A.D. 122).

Bachofen, Ausgewählte Lehrer, 1844, 209; Voigt, Die röm. Bauwesen, BerSächG 1903, 195; Bonfante, Corso 2, 1 (1926) 266; M. Pampaloni, AG 30 (1883) 250 = Ber. giur. 1 (1941) 225.
Senatusconsultum Afinianum. (Of unknown date.)
Dealt with the rights of succession of a child who being one of three brothers was adopted by a third person. He had a right to a quarter of the adoptive father's estate, even after his emancipation by the latter.


Senatusconsultum Apronianum. (Under Hadrian.)
Permitted awarding fideicommissa hereditatis to cities (civitates).

Senatusconsultum Articulaneum. (A.D. 123.)
Concerned fideicommissary manumissions in provinces.

Senatusconsultum Calvisianum. (4 B.C.)
Dealt with penal procedure in trials for crimen repetundarum held in provinces.


Senatusconsultum Calvisianum. (A.D. 61.)
Oftained that a marriage of a man over sixty with a woman over fifty did not exempt them from the sanctions of the *Lex Iulia de Maritandis Ordinis*.

Senatusconsultum Claudianum. 1. (A.D. 47.)
Forbade advocates to claim more than 10,000 sesterces as an honorarium on pain of being prosecuted for crimen repetundarum; see *Senatusconsultum de Advocationibus*. 2. (A.D. 49.)
Permitted marriage with a niece (to make possible the marriage of the emperor Claudius with his niece). 3. (A.D. 52.)
Contained among other things the provision that a free woman living in a conjugal union with a slave (condubium) became a slave (and her children as well) if after three warnings by the slave's master she continued her relation with the slave. She was then attributed to the slave's master as his slave. Later legislation gradually modified the penalties of this *senatusconsultum*.—There were still some other *senatusconsulta* in the times of Claudius.—Inst. 3.12; D. 29.5; C. 7.24; 9.11.

Brecht, *RE* 18. 4, 2049; (Volterra) N*DI* 12, 36; Rossello, *StSer* 11-12 (1894, 1896); Albanese, *Il Cerclo giuridico* 22 (Palermo, 1951) 86; Bioldi, *Iura* 3 (1952) 142.

Senatusconsultum Dasumianum. (Ca. A.D. 119.)
Provided remedies for fideicommissary manumissions when through absence or impurity of the beneficiary the manumission ordered by the testator could not be performed.


Senatusconsultum de advocationibus. (A.D. 55.)
Prohibited the payment or promise of an honorarium to advocates before the trial. "All who have a lawsuit will be ordered before proceeding to take an oath that they have not given, promised, or guaranteed by a custio any sum to anybody with regard to his activity as an advocate (advocatio) in the trial" (Pliny, *Ep.* 9.4). They could, however, after the conclusion of the trial pay an honorarium not exceeding the amount of 10,000 sesterces; see *Senatusconsultum Claudianum* (under no. 1).

Senatusconsulta de aedificiis non diruendis. (A.D. 44 and 58.)
Prohibited the acquisition of buildings with the intention of destroying them for profit (diruendo plus adquirere). Such a transaction was void and the buyer had to pay double the price to the fisc as a penalty. The two *senatusconsulta* are called Hosidianum and Volusianum after their proposers.


Senatusconsultum de agnoscendis liberis. See *AGNOSCERE LIBEROS, SENATUSCONSULTUM PLANCIANUM*.

Senatusconsultum de aquaeductibus. (11 B.C.)
See *AQUAEUCCTUS*.

Riccobono, *FIR* 1° (1941) no. 41; Kornemann, *RE* 4, 1784; De Robertis, *La espropriazione per pubblica utilita*, 1936, 95; *idem*, *AnBari* 7-8 (1947) 177.

Senatusconsultum de Asclepiade. (78 B.C.)
Granted various privileges (e.g., exemption from all taxes and requisitions) to the captains of three Greek ships for the help given Rome in the Social War time. It is preserved completely in Greek, partly in Latin. Riccobono, *FIR* 1° (1941) no. 35; Gallet, *RHD* 1937, 242; 387; E. H. Warmington, *Remains of ancient Latin* 4 (1940) 444; Pietrangeli, *BIDR* 51-52 (1948) 281.

Senatusconsultum de Bacchanalibus. (186 B.C.)
Instituted proceedings against the participants in the so-called Bacchalian conspiracy who committed various crimes. In order to suppress the orgiastic outrages performed under the cover of Dionysiac festivities the consuls were authorized to conduct the trials in an extraordinary procedure (quaestio extra ordinem) without regard to the rules of appeal, and beyond the walls of the city of Rome. The text of the *senatusconsultum* is preserved.


Senatusconsultum de collegia. A decree of the senate of unknown date (Augustus?) concerning the foundation of collegia (associations) and ordering their dissolution in the case of an activity against the state. The relation of the *senatusconsultum* to the *Lex Iulia de collegiis* is not quite clear. Doubtful also is the question of whether a portion of a *senatusconsultum* preserved epigraphically belongs to this *senatusconsultum*.—See *COLEGIA*.

Riccobono, *FIR* 1° (1941) 291; Arangio-Ruiz, *FIR* 3 (1943) 10; Volterra, N*DI* 12, 34; F. M. De Robertis, *Diritto associativo romano*, 1938, 244; 292; *Acta Divi Augusti* 1 (1945) 266; Berger, *Epigraphica* 9 (1947) 44.
Senatusconsultum de collusione detegenda. See Senatusconsultum Ninnianum.

Senatusconsultum de Iudaeis. (132 b.c.) An answer to the Jewish state concerning its complaints against Antiochus, king of SyriA. The knowledge of this senatusconsultum as of several others dealing with Jewish matters, comes from Flavius Josephus. J. Juster, Les Juifs dans l’Empire Rom. 1 (1914) 135.

Senatusconsultum de ludis saecularibus. (17 b.c. and a.d. 47.) Partly preserved, concern the national games called Ludi saeculares, in the arrangement of which the quindecim viri sacris faciundis played an important role.

Ricobono, FIR 1 (1941) no. 40; Acta Divi Augusti 1 (1945) 240; Nilson, RE 1A, 1696; Pighi, De ludis saecularibus, 1941.

Senatusconsultum de nundinis salutis Buguensis. (A.D. 138.) Granted market privileges to a locality in the province of Africa.

Ricobono, FIR 1 (1941) no. 47.

Senatusconsultum de pago Montano. (Of the first century b.c.)? Prohibited the dumping of refuse in certain zones outside of Rome.

Ricobono, FIR 1 (1941) no. 39; Philipp. RE 16, 204.

Senatusconsultum de philosophis et rhetoribus. (161 b.c.) Forbade Greek philosophers and rhetoricians to reside in Rome.

Senatusconsultum de provinciis consulariis. (51 b.c.) Settled the rules for the relations between the senate and the magistrates of consular provinces.

Senatusconsultum de suntipibus ludorum gladiato riorn minuendis. (A.D. 176.) Issued provisions in order to diminish the expenses connected with gladiatorial games.—See Ludi gladiatorii.

Ricobono, FIR 1 (1941) no. 49; L. Robert, Les gladiatorii dans l’orient grec, 1940, 284.

Senatusconsultum de Thibensibus. (170 b.c.) Concerned the relations with the city of Thibae in Boeotia.

Ricobono, FIR 1 (1941) no. 31.

Senatusconsultum de Tiburtinis. (159 b.c.) Granted a general amnesty to the city of Tibur.

Ricobono, FIR 1 (1941) no. 33.

Senatusconsultum Geminianum. Extended the penalties of the Lex Cornelia de falsis on persons who accepted money for a false testimony.—See FALSUM.

Senatusconsultum Hosidianum. (A.D. 44.) Directed against speculation in house property.—See SENATUSCONSULTA DE AEDIFICISI NON DIREND.

De Phactitre, Mil Cognat 1912; May, RHD 14 (1935) 1.

Senatusconsultum Iuncinianum. (A.D. 127.) Established again (see SENATUSCONSULTUM DASNIUNIANTUM) some rules concerning a fideicommissary manumission of slaves in the case of absence of the person who for any reason (ex quacumque causa) had to free them.

Senatusconsultum Juventianum. (Decreed under Hadrian on the proposal of the jurist Juventius Celsius.) Dealt with claims of the servarium populi Romani against private individuals for the recovery of vacant inheritances. The rules of the senatusconsultum appear extended to hereditatis petitiones among private persons, but apparently a good part of this extension belongs to later development, if not to postclassical and Justinian’s law. The senatusconsultum established the liability of an illegal holder of an estate who fraudulently sold objects belonging to the inheritance or gave up possession thereof (dolo desit possidere) as well as the duty of restitution of products and profits (interest) which the unlawful possessor of the estate derived therefrom. Distinction was made between possessors in good faith and such in bad faith.—See HEREDITATIS PETITIO.


Senatusconsultum Largianum. (A.D. 42.) Established the order of succession for inheritances of LATINI IUNIANI.

Senatusconsultum Libonianum. (A.D. 16.) Declared testamentary dispositions in favor of the writer of the testament to be void. By an enactment of the Emperor Claudius the writer was in such a case subject to the penalties of the Lex Cornelia de falsis.—D. 48.10.—See FALSUM.

De Martino, Sert in memoria di E. Massari, 1938, 331.

Senatusconsultum Licinianum. (A.D. 27? 45?) Dealt with conspiracy to forge a testament and false testimony concerning a testament.

Senatusconsultum Macedonianum. (Under Vespasian.) Forbade loans to sons under paternal power (filiis familias). The transaction was not void, but the son was protected by an exceptio (exceptio senatusconsulti Macedoniani) against the claim of the lender even after the father’s death.—D. 14,6; C. 4,28.—See STUDIUM.

Volterra, NDI 12, 38; Devilla, SisSa 18 (1941) 235; Daube, ZSS 65 (1947) 261.

Senatusconsultum Memmianum. (A.D. 63.) Contained the provision that childless persons (orbi) could not evade the disadvantages introduced by the Lex Iulia de maritandis ordinibus by a fictitious adoption of children.

Senatusconsultum Neronianum. (A.D. 57?) Extended the provisions of the senatusconsultum Silaniunum on the slaves of the widow of an assassinated master.

Senatusconsultum Neronianum de legatis. (Between A.D. 60 and 64.) Abolished the distinction among the various forms of legacies (legata). It decreed that a legacy expressed in less appropriate terms should be as valid as if it had been made in
the most favorable form (optimo iure, i.e., per damnationem).—See LEGATUM, LEGATUM PER DAMNATIONEM.—There were several other senatusconsulta decreed under Nero.

Volterra, NDI 12, 37; Ciapponi, St Bonfant 3 (1930) 649; Piaget, Le S. N. (Lausanne, 1936); C. A. Maschi, St sull’interpretazione dei legati, 1938, 104; B. Biondi, Suceccione testamentaria (1943) 282.

Senatusconsultum Ninnianum de collusione determinanda. (Under Domitian.) Contained provisions against collusion between patron and freedman with a view to having the latter declared free-born.—See COLLUSIO.

Senatusconsultum Orficianum. (A.D. 178.) Gave a woman’s children preference as to her inheritance over her brothers, sisters, and other agnates.—Another senatusconsultum (of the same year) declared testamentary manumissions of slaves valid when their identity could be established beyond doubt, even if they were not indicated in the testament by name, as the lex Fufia Caninia required.—Inst. 3.4; D. 37.17; C. 6.57.

G. La Pira, La successione ereditaria intestata, 1930, 293; Lavaregi, SDHI 12 (1946) 174; Sanfilippo, Fischl Schulz 1 (1951) 364.

Senatusconsultum Pegasianum. (About A.D. 73.) Granted an heir the right to keep a fourth part of the fideicommissa he had to deliver according to the testator’s will. This provision is analogous to that of the lex Falcidia with regard to legacies. The initiative for the senatusconsultum was apparently taken by the jurist Pegasus. In Justinian’s legislation the senatusconsultum Pegasianum does not appear, references to it having been replaced by those to the senatusconsultum Trebellianum.—Another senatusconsultum Pegasianum (A.D. 72) extended the privilege of anniuli cause probatio to Latinis intestati over thirty years of age; see CAUSA PROBATIO.

Solazzi, RISG 86 (1949) 30.

Senatusconsultum Pisonianum. (A.D. 57.) Concerned the sale of a slave who might be subject to torture and the penalties provided in the senatusconsultum Silanianum because his master was found assassinated. The sale was null and the seller had to return the purchase price to the buyer.

Senatusconsultum Planianum. (Before the reign of Hadrian.) Ordered that a pregnant woman had to notify (denuntiare) her divorced husband of her condition within thirty days after divorce. The husband had either to send attendants (custodes) to watch the woman until the child was born or to deny (contra denuntiare) his paternity.—D. 25.3.—See AGNOSCERE LIBERUM.

Weiss, RE 3A. 1889; P. Tisset, Présomption de paternité (Montpellier, 1921) 180.

Senatusconsultum Rubrianiun. (After A.D. 100.) Ordered the praetor to declare a slave free when the person who had to perform the manumission according to the testator’s will refused to do so.

Senatusconsultum Silanianum. (A.D. 10.) When a master of slaves was assassinated and the murderer could not be found, all slaves who lived with him “under the same roof” were subjected to torture and eventually condemned to death. A slave who revealed the murderer was declared free by the praetor’s decree.—See SENATUSCONSULTUM NERONIANUM, PISONIANUM, ORATIO MARI, TECTUM, VINDICARE NECEM.

Luzzatto, St Ratti (1934) 545; Aru, ibid. 211; Acta Diö. Augsburg 1 (1945) 258; Herrmann, ADO-RIDA 1 (1952) 495.

Senatusconsultum Tertullianum. (Of the time of Hadrian.) Granted a mother who had the ius liberorum a right of succession on intestacy to her children’s inheritance. But it gave priority to the children’s children, their father and some agnates. Later imperial legislation improved the rights of succession of the mother. Justinian abolished the requirement of ius liberorum.—Inst. 3.3; D. 38.17; C. 6.56.

G. La Pira, La successione ereditaria intestata, 1930, 277; G. Gontelle. De la lutte entre adoption et cognition à post du S. T., 1934; Sanfilippo, Fischl Schulz 1 (1951) 364.

Senatusconsultum Trebellianum. (A.D. 56.) Ordered that “if an inheritance was delivered over to anyone on account of a fideicommissum, the actions which would lie at ius civile for, or against, the heir, should also be given in favor of, or against, him to whom the inheritance has been made over” (Gaius, Inst. 2.253). The pertinent actions were proposed in the praetorian edict as actiones utiles.—D. 36.1; C. 6.49.—See EXCEPTIO RESTITUTAE HEREDITATIS, HEREDITATIS PETITIO FIDEICOMMISSARIA.

Lemercier, RHD 14 (1935) 623; B. Biondi, Successione testamentaria (1943) 477; Bartošek, Scrl Ferrari 3 (Milan, 1948) 308.

Senatusconsultum Turpillianum. (A.D. 61.) Contained provisions against tertiversatio.—D. 48.16; C. 9.45.

Volterra, SICap 17 (1929) 114; Levy, ZSS 53 (1933) 213; Boháček, St Riccobono 1 (1936) 361.

Senatusconsultum ultimum. A decree of the senate in times of extreme emergency (ultima necessitas) ordering “that the consuls see to it that the state (res publica) suffered no harm” (Cic. pro Mil. 26.70) or, in other words, to defend the res publica. By virtue of such a decision the consuls (or the highest magistrate available) were authorized to apply any extraordinary measures required by the situation (tumultus, war), even a temporary suspension of certain constitutional institutions (see TUSTITUTUM). The first application of this exceptional remedy was during the Gracchan movement (121 B.C.; it was proposed for the first time in 133 B.C., but was rejected owing to resistance of the then consul, the jurist P. M. Scælova).

O’Brien-Moore, RE Suppl. 6, 756; Momigliano, OCD; C. Barbagallo, Una minora eccezionale dei Romani, ü S. U.
Senatusconsultum Velleianum (or Vellaeanum). (About A.D. 46.) Forbade women to assume liability for other persons (intercedere, intercessio). The transaction was not void, but lost its efficacy if the woman when sued by the creditor opposed the exceptio senatusconsulti Velleiani. She could also claim the return of what she had paid in fulfillment of her obligation. In certain instances the exception was inadmissible (e.g., against a minor, or when the transaction was in the interest of the woman). Sureties and heirs of the woman might use the exception too. Justinian reformed the whole institution of women’s intercession by requiring a public act before witnesses, and excluding the benefits of the senatusconsultum Velleianum if the woman renewed the intercession after two years and in certain other specific cases.—See intercessio, actio quae restituit (institutum) obligationem.—D. 16.1; C. 4.29.

Leonhard, RE 9 (s.v. intercessio); Cuj. DS 3 (s.v. intercessio); Volterra, NDF 12, 35; Carrelli, RISG 12 (1937) 65; idem, SDHI 3 (1937) 305; P. Pietret. La s. Vellieum, 1947; Vogt, Studien zum A.V., Bonn, 1952.

Senatusconsultum Vitrasiannum. (Before or during the reign of Hadrian.) Concerned the case of the fideicommissary manumission of a slave when one of the co-heirs was a child.

Senatusconsultum Volusianum. (A.D. 56.) See senatusconsulta de aedificis non diruendi.

May, RHD 14 (1935) 1.

Senectus (senex). Old age (an old man). There was no legal definition as to when a person had to be considered old. Senility, however, was taken into consideration as an excuse from guardianship, for exemption from munera personalia, and the like, as well as in certain agreements, for instance, concerning alimony. A guardian who could not fulfill his duties because of old age might ask for the assignment of a curator for the administration of the ward’s property.

Seniores. In military centuries, see juniores.

Sensus. In the legal field the capacity of understanding the significance of one’s doings, in particular, whether they are wrong or right. Children in infancy (see infantes) have no sensus; likewise lunatics, except during intervalla delucida. Sensus also means the intention, the desire of a testator; syn. voluntas.

Sententia. (With reference to a jurist.) The opinion of a jurist expressed either in his writing or in a responsum.

Sententia. (In judicial proceedings.) The final judgment in a civil trial, rendered by a judge (iudex) in the bipartite procedure or by a judicial official in the cognitio extra ordinem. The sententia put an end to the controversy between the parties and the matter in dispute became now a res indicata. The judgment was either condemnatory (condemnatio, damnatio) or absolute (absolutio). In the formulary procedure the condemnatory judgment was always for a sum of money (see condemnatio pecuniarum) without regard to the object of the controversy. In the procedure through cognitio a condemnatio pecuniarum was no longer exclusive. A judgment once pronounced could not be changed or revoked by the judge who passed it. See erro calculi. The execution of a judgment was achieved by a second action; see actio jucdicii. The judgment was pronounced orally, without indication of motives; in the later law a written judgment was required in addition to the oral pronouncement; see sententiam dicere. Sententia is also the judgment of an arbitrator; see arbitrer, compromissum.—The terminology in criminal trials was also condemnatio (damnatio) for condemnatory sentences, absolutio for an acquittal.—D. 42.1; C. 7.43-47; 55; 10.9; 50.—See res jucdici, jucdicatum, retractare causam, appellatio, pro- vocatio, periculum, sententiam proferre, litis aemptio.


Sententia adversus fiscum. A sentence rendered against the fisc.—C. 10.9.—See retractare causam.

Sententia contra constitutiones. A judgment rendered contrary to imperial constitutions. The judge who rendered such a judgment was guilty of crimen falsi.—See falsum.

Biondi, St Bonfante 4 (1930) 69; Levy, BIDR 45 (1938) 138; De Robertus, ZZS 62 (1942) 255.

Sententia definitiva. See definitiva sententia, interlocutiones.

Sententia jucdiciis. See sententia.

Sententia legis (edicti, senatusconsulti). The intention, the purpose, the spirit of a legal enactment (a statute, an edict, a senatusconsultum).—See ex lege.

Wenger, RE 2A, 1502.

Sententia Minuciorum. See termiinare.

Sententia senatus. See sententiam roare, pronun- tiare sententiam.

Wenger, RE 2A, 1496.

Sententiae Pauli. A work by the jurist Paul in five books, entitled Sententiarum ad filium libri quinque. Excerpts of this work are to be found in the Digest, Fragmenta Vaticana, Collatio, and Consularia, and probably one-sixth of the whole work in an Epitome appended to the Lex Romana Visigathorum. It is assumed (not without opposition) that the work was not written by Paul himself, but was an anthology compiled about A.D. 300 from various works of Paul’s by an unknown hand. The work as is preserved
undoubtedly contains postclassical additions, the more important problem is to determine what in the work is classical and what not. As a matter of fact, Constantine, less than a century after Paul’s death (C. Theod. 1.4.2, A.D. 327 or 328), extolled the value of the work in glowing terms and ordered that it should have full authority when produced in court. The Law of Citations (see IURISPRUDENTIA) of A.D. 426 reiterated the validity of Paul’s Sentences.

Editions in all collections of Fontes iuris Rom. (see General Bibl. Ch. XII), the most recent by Baviera, FIR Z (1940)—Berger, RE 10, 731; M. Conrat, Der westgotische Paulus, Amsterdam, 1907; G. Bezeler, Beiträge zur Kritik 1 (1910) 99; 3 (1913) 6; 4 (1920) 336; B. Kübler, Gesch. des röm. R., 1925; 284; Schuler, ZSS 47 (1927) 39; Levy, ZSS 50 (1920) 272; Lauria, ANMoc 6 (1930) 33; Volterra, ACDR 1 (Roma, 1934) 33; idem, Riv. Storia dir. ital. 8 (1935) 110 (Bibl.); Scheler, St Riccobono 1 (1936) 39; E. Levy, Medievoio et Humanismo 1 (1943) 14; idem, Paul S., a Palimpsestra of the opening titles (Ithaca, 1945); idem, BIDR 55/56 (1951) 226; F. Schuler, History of R. legal science, 1946, 176.

Sententiam dare. See Sententiam dicere. Sententiam diecere. (In judicial proceedings.) To pronounce judgment. The judge had to do it orally, in later law reading the decision from a written draft. Syn. sententiam dare, pronuntiare, proferre.—See PERICULUM.

Sententiam dicere. (In the senate.) See Sententiam rogare.

Sententiam rogare. To ask the senators for their opinions. It was the presiding magistrate who requested the senators to express their opinion by vote (sententiam dicere). Hence sententia often means the result of the vote, the final decision (ex sententia sentatus).—See VERBA FACERE.

Sentire aliquid (or de aliqua re). To have in mind, to wish, to intend, to understand. The term occurs frequently in texts dealing with the intention of a testator when the expressions he used in his will were not fully clear.—See SENSUS, VOLUNTAS.

Sentire damnum. To suffer damage (loss). Ant. sentire commodum, lucrum = to gain a profit.

Separare. To divide, to separate, to disjoin. See FRUCTUS SEPARATI. With reference to a marriage = to divorce; hence separatio = divorcium.

Separatio bonorum. The separation of the heir’s property from the estate he inherited. The separatio bonorum served to protect the creditors of the deceased by reserving the estate for them and excluding the creditors of the heir, who might be insolvent. The institution, called beneficium separationis, was extended to the benefit of the legatees, but not of the creditors of the heir when the inheritance was insolvent. See BENEFICiUM INVENTARI. The separatio bonorum comprised the estate at the time of death, together with subsequent products and accretions which occurred afterwards.—D. 42.6; C. 7.72.

Ferrini, Opere 4 (1930, ex 1099-1901) 167; 175; 183; G. Baviera, Il commodum separationis, 1901; Solazzi, BIDR (1901) 247; Milani, StDucSD 25 (1904) 5; C. Tumebri, Le z. dei beni ereditari, 1927; Guarino, ZSS 60 (1940) 185; idem, SDHI 10 (1944) 240; Solazzi, Il concorso dei creditori 4 (1943) 1.

Separatio fructuum. Separation of fruits from the thing which produced them.—See FRUCTUS, FRUCTUS SEPARATI.

Separatio. See CONTINUTUM. Syn. disjunctum. Septemvirale judicium. A court composed of seven persons competent (presumably) to judge complaints concerning undutiful testaments; see QUERELA INOFFICIOSI TESTAMENTI.

Leonhard, RE 2A (s.v. septemviri); Eisele, ZSS 35 (1914) 320.

Sepulcri violatio. See VIOLATIO SEPULCRI.

Sepulcrum (sepulchrum). A grave, a burial place “where a corpse or bones are laid down” (D. 11.7.2.5). A sepulcrum is a locus religiosus, also when a slave has been buried, but not the grave of an enemy. A monument (monumentum) erected “in order to preserve the memory of a dead person” (D. 11.7.2.6) is not a locus religiosus if the person is not buried there.—D. 11.8; 47.12; C. 9.19.—See ITER AS SEPULCRUM, IUS SEPULCRI, ILLATIO MORTUI.

C. Fadda, St e questioni di diritto 1 (1910) 147; Taubenschlag, ZSS 38 (1917) 244; M. Mored, Le s. (Annales Univ. Grenoble) 1928; E. Albertario, Studi di dir. rom 2 (1941) 1, 29; 39; Arangio-Ruiz, FIR 3 (1943) no. 80; F. De Visscher, AnCl 15 (1946) 123; idem, SDHI 13-14 (1947-48) 278; idem, BIDR 1 (1948) 199; idem, Le regime jurid. des plus anciens cimetieres chrétiens, Analecta Sollandiana 69 (1951) 39; Chrichton, JWR 60 (1948) 138; Biondi, Jura 1 (1950) 160; Dull, Fasch Schulz 1 (1951) 191.

Sepulcrum familiar (hereditarium). See IUS SEPULCRI.

Sequela. (With reference to an obligation.) A secondary obligation, as distinguished from the principal obligation of a debtor.

Sequenc. “One with whom the parties to a controversy deposit the object of the dispute” (D. 50.16.110). The sequencer was a depositee and his liability was the same as in the case of a normal deposit; see DEPOSITUM. The recovery of the thing deposited could be claimed by an action, called actio (depositi) sequestrasia. Unlike the normal depositee, the sequencer was considered possessor of the thing and was protected by possessory interdicts.

Wais, RE 2A; Beaucardet, DS 4; Arangio-Ruiz, AG 76 (1906) 471; 78 (1907) 233; Albertario, St Solimi 1 (1941) 349; Dull, Fasch Schulz 1 (1951) 203.

Sequestrare (sequœstratio). To deposit a controversial thing with a third person as a sequencer. Syn. in sequestrare deponere.—C. 4.4.—See SEQUENTER.

Sequenter. In sequenter, see SEQUESTRARE.

Sequi. Used of rights and obligations which are devolved, after the death of a person, on his heir, as well as of rights connected with an immovable (such as servitudes) which in the case of its transfer pass to the acquirer.
Sequii caput alicuius. See NOX CAPUT SEQUITUR.
Sequii condicionem alicuius. To follow a person in his personal status (freedom, citizenship). Legitimate children share the status of the father; children born out of wedlock follow that of the mother.—See VULGO CONCEPTI.
Sequii idem alicuius. To put one’s trust, to have confidence (faith) in another’s promise or good faith, to confide.
Serenissimus (serenitas). An honorific title of the emperor in the later Empire (from the fourth century on). The emperors used to speak of themselves in their enactments serenitas nostra (“our serenity”).
Servare. To take care of, to protect. The praetor used the term in his edict when he promised to protect certain transactions or agreements (e.g., “pacta conventa servabo”). —See MISSIO IN POSSESSIONEM DOTIS (REI) SERVANDAE CAUSA, MISSIO IN POSSESSIONEM LEGATORUM SERVANDORUM CAUSA.
Servare (ab aliquo). To obtain by a suit what is due, to recover (e.g., expenses made for another, indemnification).
Servari. In locations such as servandum est, servabitur, syn. with observari (= to be observed, to be acted according to the law).
Servi. Slaves.—See SERVUS.
Servile supplicium. See CRUX.
Servilis. Connected with slavery or pertaining to slaves. Servilis condicio = the legal and social condition of a slave. Servilis cognatio, see SERVUS.
Servire. Refers to the legal situation of a slave (see SERVUS) or to that of an immovable encumbered by a servitude (praedium quod servit). The terms praedium serviens and praedium dominans, used in the literature, are unknown in Roman sources.
Servitium. Comprised all persons who were in the service of another. They constituted his familia (see FAMILIA). In the language of imperial constitutions servitium was used in the sense of any kind of service.
Servitus. Slavery. “We compare slavery almost with death” (D. 50.17.209). “Slavery is an institution of the law of all nations (ius gentium) under which one is subject to the mastership (dominium) of another, contrary to nature” (D. 1.5.4.1). —See SERVUS (Bibl.), SERVITUTEM SERVIRE, REVOCATIO IN SERVITUTEM, VINDICATIO IN LIBERTATEM.
Servitus (servitutes). A servitude, an easement. Servitutes were classified among iura in re aliena (= rights over another’s property) since their substance consisted in a right of a person, other than the owner, primarily the proprietor of a neighborly immovable, to make a certain use of another’s land. This right was vested in the beneficiary not as a personal one, but as a right attached to the immovable (land or building) itself, regardless of the person who actually happened to own it. These servitutes are servitutes praediorum (also servitutes rerum, iura praediorum). Among them there is a distinction between servitutes praediorum rusticorum and servitutes praediorum urbanorum according to the economic exploitation of the benefiting immovable, i.e., either for agricultural production or for urban utilization (housing, commercial or industrial buildings) regardless of the location of the immovable in a city or in the country. Later (postclassical or Justinian’s) law added to the servitutes a new category, the personal servitutes (servitutes personarum, hominum), in which the beneficiary was a specific person. But only the term, servitutes personarum, was a later creation, the pertinent rights to use another’s property (iura in re aliena) were known in the classical law and discussed and developed by the classical jurisprudence. At the death of the beneficiary a personal servitute was extinguished, whereas in predial (rustic or urban) servitutes the death of the actual beneficiary was without any effect on the existence of the servitute which as connected with the immovable passed to the successor of the owner. Predial servitutes were of a very different nature. Some of them were more typical and the extension of the pertinent rights vested in the owner of the dominant land were determined by law or custom. Modifications were, however, admitted in specific cases; see MODUS SERVITUTIS. There was a legal rule: “Nemini (nulli) res sua servit” (D. 8.2.26, no one can have a servitude on a property of his own), since ownership as such implied all kinds of utilization of the thing. Another rule was that a predial servitude could not impose on the owner of the servient immovable the duty of doing something. His liability went only so far as to abstain from doing something to the detriment of the beneficiary of the servitute or to tolerate the latter using his property in some way. A predial servitude, being strictly connected with the dominant immovable, could not be transferred to another person unless the immovable itself was alienated. By the alienation the new owner became the beneficiary of the servitute. A servitude was constituted through MANcipatio or IN TURE CESSIO when it was reckoned among RES MANcipi, as the rustic servitutes were, or on the occasion of the division of a common landed property in favor of the owners of the shares. In a last will a servitude could be granted only in the form of a LEGATUM PER VINDICATIONEM. Praetorius law introduced the establishment of a servitude by an agreement; see PACTIONES ET STIPULATIONS. In Justinian’s law the stipulation became usual for this purpose. A predial servitute was extinguished when one of the two immovables, the servient or the dominant, was destroyed, or when the owner of one acquired the other; see CONFUSIO.
—Servitus in the language of Justinian indicates at times restrictions imposed by the law on owners of
Servitus: immovables, as, for instance, in the buildings regulations set in a constitution of the Emperor Zeno. See ZENONIANAE CONSTITUTIONES. The following items deal with typical predial servitudes, both rural and urban. Some of them appear in the sources as ius (iura). For the so-called personal servitudes, see USUS, USUSFRUCTUS, HABITATIO, OPERAE SERVORUM.

—Inst. 2.3; D. 8.1-3; C. 3.34.—See USUCAPIO SERVITUTIS, USUCAPIO LIBERTATIS, NON USUS, PATI, VINIFICATIO SERVITUTIS, PERPETUA CAUSA SERVITUTIS, INTERDICTUM QUAM HEREDITATEM.

Leonhard, RE 2A; Beaucer, DS 4; Cicciagione, NDI 12; Berger, OCD; Longo, BIDR 11 (1899) 281; Buckland, LQR 42 (1925); idem, St Riccobono 1 (1936) 27; Boniante, St Ascoli (1931) 179; Arrangio-Ruiz, Foro Ital., 59 (1952); Frezza, Stcagli 22 (1934); Grosso, In tema di costituzione ius cati di servitut, BIDR 42 (1934) 326; idem, SDHI 3 (1937) 274; idem, Riv. di dir agrario 17 (1938) 174; idem, Problemi di diritti reali (1944) 25; Guarnericati, BIDR 43 (1935) 19; Ciapessoni, StPav 22 (1937) 107; B. Biondi, La categoria ram. delle servitut, 1938; idem, Le servitù prediali (Corso) 1946; E. Albertario, Studi 2 (1941) 339; S. Solazzi, Requisiti e modi di costituzione delle servitù prediali, 1947; idem, Specific e estinzione delle servitù prediali, 1948; idem, La tutela e il possesso delle servitù prediali, 1949; E. Levy, West Roman vulgar law. 1951, 55.

Servitus actus (ius agens). See ACTUS, INTERDIC-TUM DE INNITRE ACTUQUE.

Servitus altius non tollendi (sc. aedae). An urban servitude which imposed on the owner of a building the duty not to build higher over a certain limit. A counterpart was a servitude ius altius tollendi which gave the beneficiary the right to build higher. Buonamici, Annali Univ. Tuscan., 32 (1913); A. Perret, Ius a. tollendi, Thèse Paris, 1924; Grosso, St. Albioneri 1 (1935) 453; Branca, St. A. Ciru 1 (1951) 105.

Servitus aquaeductus (aqua ducendae). A rural servitude consisting in the right of the owner of the dominant land to conduct water from, or across, another’s land through pipe or canals. The servitut was protected by interdicts granted against any one who prevented the beneficiary from exercising his right or who tried to render the water or the necessary constructions useless.—See INTERDICTUM DE AQVA CAESTELLUM.

Manigk, RE 10; Berger, RE 9, 1630; Gianziano, NDI 1 172; aqua prava, Orestano, BIDR 43 (1935) 217; De Robertis, AnBari 1 (1938) 61; Maschi, BIDR 46 (1939) 313; Solazzi, Fschr Schulz 1 (1951) 380.

Servitus aquae haustus. The right to take water from a fountain, a pond, or a spring located on another’s property. This easement implied free access (itter) to the place. Syn. servitus aquae hausturiae.—See FONS, INTERDICTA DE FONTE.

Leonhard, RE 2; Grosso, BIDR 40 (1932) 401.

Servitus arenae fodiendi. The right to dig for sand in a land belonging to another.

Servitus calcis coquenda. The right to burn lime on another’s land.

Servitus cloacae immittendae. The right to have a drain through a neighbor’s land.—See CLOACA.

Servitus cretae eximendae. A rural servitude which entitled one to take chalk from another’s soil.

Servitus eundi. See ITER.

Servitus fumi immittendi. See FUMUS.

Servitus itineris. See ITER.

Servitus itineris ad sepulcrum. See ITER AD SEPUL-CRUM.

Servitus lapidis eximendae. A rural servitude to take stones from a quarry belonging to another.

Servitus luminis. The right to profit by the light from a neighbor’s land.

Servitus ne luminibus officiatur. An urban servitude which entitled the beneficiary to prevent his neighbor from building a house which might shut him off from the light. A counterpart to this servitude was the right ius officiendi luminibus vicini which gave the beneficiary the right to build on his land as he pleased, regardless of the neighbor’s suffering a limitation or loss of light.—See SERVITUS ALTUS NON TOLLENDI.

Servitus ne prospectui officiatur. This servitude gave the owner of an immovable the right to prevent his neighbor from building a house or planting trees which might impede the beneficiary’s pleasant view.

—See SERVITUS NE LUMINIBUS OFFICIATUR.

Servitus oneris ferendi. An urban servitude involving the right of the beneficiary to have his building supported by the neighbor’s wall. The latter was bound to keep his wall in good condition.

Cicciagione, NDI 12. 1, 165; Riccobono, ibid. 218; Scialoia, St pwr. 1 (1933, ex 1881) 84; G. Segré, BIDR 41 (1932) 52; idem, St Ascoli (1931) 681.

Servitus pacus (pecoris pascondi). See IUS PASCEN-DI.

Servitus praetoria. A servitude constituted in a form introduced by praetorian law.—See SERVITUS, FAC-TIONS ET STIPULATIONES.

H. Krüger, Die prätorische Servitut, 1911; Rabel, Méi Girard 2 (1912) 387; Berger, GRZ 40 (1913) 299; Maschi, BIDR 46 (1939) 274; B. Biondi, Le servitù prediali (1946) 213.

Servitus proiciendi. See the following item.

Servitus protegenti. An urban servitude which entitled the beneficiary to project a roof on the neighbor’s property. A similar servitude was servitus proiciendi concerning a balcony projected over the neighbor’s land.—See PROTECTUM.

Servitus servitutis esse non potest. A servitude cannot be imposed on a servitude. There was no possibility to transfer the exercise of a servitude wholly or in part to another.

Perugi, BIDR 29 (1916) 181.

Servitus silvae caeduae. The right to cut wood on another’s property.

Servitus stillicidii. There were different servitudes connected with the use of dropping rain-water: (a) servitus stillicidi immittendi = the right to discharge
the dropping rain-water from the eaves or spouts of one's building on the property of a neighbor; the latter was obliged to receive it; (b) servitus stelllicidii avertendi = the right to divert the rain-water from the roof of a neighbor's building to make it run on the beneficiary's land; (c) servitus stelllicidii recipiendi = the right to receive the rain drip from a neighbor's property.

Anon., NDI 12, 1: 903; Grosso, St Albertoni 1 (1935) 465; Guarnieri-Citati, Rend.Lomb 39 (1926); B. Biondi, La categoria rom. delle servitute (1938) 129.

Servitus tigni immittendi. An urban servitude which entitled the beneficiary to introduce a beam serving for his building into the wall of a neighbor's building. —See TIGNUM LUXMUM.

Servitus viae. See VIA.

Servitutem debere. Used of a land which is encumbered with a predial servitude. Fundo servitus debetur is used of a land the owner of which is the beneficiary of a predial servitude.

S. Solazzi, Tutela della servitù prediali, 1949, 163.

Servitutem servire. Denotes a factual (not legal) condition of a person who although being free performed services of a slave. —See LIBER HOMO BONA FIDE SERVIENS.

J. Ellul, Evolutio et natura iurid. du mancepium (1936) 282.

Servitutes personarum. See SERVITUS.

C. Sanfilippo, S. P. (Corso), 1944; Giaconeoni, CentCod Pov (1934) 879; B. Biondi, Le servitù prediali, 1946, 50.

Servitutes praediorum (rustiorum, urbanorum). See SERVITUS.

Servitus Sulpicius Rufus. A prominent jurist of the second half of the first century of the Republic, consul in 51 B.C., orator and a famous legal teacher. His writings amounted to 180 books; among them was the first commentary on the praetorian Edict. According to Cicero, he furthered the application of equity (see Aequitas) in settling legal disputes.

Münzer, RE 4A, 651 (no. 95); E. Vernay, Servitus et son école, 1909; Peters, ZSS 32 (1911) 463; Kübler, ACDR Roma 1 (1934) 96; Strozz, ibid. 130; Di Marzo, BIDR 45 (1938) 261; P. Meloni, S. S. R. e i suoi tempi, Annali Fac. Lettere e Filosofia Univ. Cagliari, 13 (1946).

Servus. A slave. Syn. terms: homo, mancipium, ancilla (a female slave), puer. Although a human being, legally a slave was considered a thing (res) without any legal personality. He belonged to his master as a res mancipi, and therefore the transfer of ownership of a slave was to be performed through mancipatio. All that the slave acquired belonged to his master and he could not assume an obligation for his master. Hence there was no action against the latter from transactions concluded by the slave. Exceptions from this rule were introduced by the praetorian law; see peculium, actio tributoria, institor. Aside from these specific cases a general rule was that the legal situation of a master might be improved by a contractual activity of his slave, but could not be made worse. The master was, however, liable for delictual offenses of the slave (see DELICTUM), but when sued with an actio nosa for the slave's wrongdoing (see NOXIA), he might free himself from liability by handing over (surrendering) the slave to the person injured (nosae dedicio). A slave could not be sued nor could he be plaintiff in a trial. In the earlier law the master haditus vitae necisique over the slave, and even during the period of the Republic a slave had no protection against his master's cruelty. See LEX PETRONIA. The law of the Empire brought several restrictions to the master's power. A master who killed his slave without just grounds was punished, and in the case of ill-treatment of a slave he could be compelled to sell him. The pertinent provisions were frequently changed in the later Empire in favor of the slaves under the influence of Christianity. A slave had no family; his marriage-like union was not considered a marrimonium; see CONTUBERNIUM. Blood tie created through a servile union (cognatio servili) was later regarded as an impediment to a marriage between persons thus related, after their manumission. Specific rules were in force in criminal law and procedure as far as slaves were concerned. Penalties inflicted on slaves were generally severer than those to which free men were exposed. A slave was not allowed to testify in a criminal trial against his master, except in the case of crimen maiestatis. A testimony contrary to this rule was capitalipunished. Usually, a slave as a witness in criminal matters was subject to torture; see QUAESTIO PER TORMENTA. Slavery arose by birth from a slave mother. A foreigner of an enemy country became a slave in the Roman state when taken as a prisoner of war. The same happened to a stranger belonging to a country, not allied with Rome with a treaty of friendship, even when he was caught not in time of war. Other causes of enslavement were: venditio trans Tiberim (= the sale of a free man beyond the Tiber, i.e., abroad, see ADDICTUS), the case sanctioned by the SENATUSCONSULTUM CLAUDIANUM, the case of an INCRATUS LIBERTUS (= a freedman ungrateful towards his patron), and the case of a fraudulent sale of a free man (over twenty) as a slave who gave his consent to such a transaction in order to participate in the price. For enslavement as a result of a condemnation for a crime, see SERVUS POENAE. For the specific rules governing the sale of a slave and the liability of the master for physical and mental defects of the slave sold, see EDICTUM AEDILII CURRULIUM, DICTA, REDHIBITIO. —D. 11.3; 18.7; C. 6.1; 2; 7.7–9; 13.—See moreover, ACTIO SERVI CORRUPTI, OPERAE SERVORUM, ANCILLA, PARTUS ANCELLAE, HOMO, NOMEN, EVINCER, MANUMISSIO, DEDITICII EX AELIA SENTIA, PECULIUM, LIBER HOMO BONA FIDE SERVIENS, EXPOERIRE SERVUM, CAPTIVITAS, SENATUSCONSULTUM SILIANUM, FAMILIA.
Servus actus. See acto.

Servus alienus. A slave belonging to another. If another's slave was instituted as an heir in a testament, his master acquired the inheritance. Freedom given to another's slave in a will was without any effect unless the testator ordered his heir to buy the slave from his master and to manumit him, or the testator rewarded the slave's master on condition that he would free the slave.—See supplicere servum alienum.

Deserteaux, RHD 12 (1933) 35; G. Dulcik, Erblasingerwelle und Erwerbsruelle (1934) 94.

Servus Caesaris. A slave belonging to the emperor either as servus patrimonialis (see patrimonium caesaris) or a servus rei privatae Caesaris (see res privatae caesaris).

Servus communis. A slave who belongs to more than one master as a common property.—C. 77.—See manusmission servi communis.

Servus corruptus. See actio servi corruptus.

Servus derelictus. A slave whom his master abandoned (servus quem dominus pro derelicto habet). Such a slave was a servus sine domino (= a slave without a master, a resnullis). His former master had no claim for his recovery. In Justinian's law a servus derelictus was considered free.—See Decreti (Bibl.), Expositio servi.

Fasciato, RHD 27 (1949) 458; Philibborn, RHD 28 (1950) 402.

Servus dotalis. A slave among things constituted as a dowry. The husband was permitted to manumit the slave, even without the consent of the wife, and he became patron of the slave freed. He had to account, however, for the loss which through the manumission resulted to the dos, unless his wife assented to the manumission with the intention to make a gift to her husband. Such a gift manumittendi causa (= with the purpose of manumission) was not banned by the prohibition of donations between husband and wife.—See donatio inter viorem et uxorem.

Berga, Philologus 73 (1914) 96; Cozentini, SDHI 9 (1942) 291.

Servus fiscalis (fisci). A slave employed in the business of the fisc. Slaves came under the mastership of the fisc when the master died without an heir, or when the heir instituted in a testament refused to enter the inheritance (see caduco), or when the fiscseized the property of a person condemned for a crime (see confiscatio, publicatio).—See fiscus.

Servus fructuaris. A slave on whom a person other than the owner had a usufruct (see ususfructus).

All that such a slave acquired ex re of the usufructuary (i.e., from his money or other property, or from the peculium granted by him to the slave), or ex operis suis (= from the slave's labor), belonged to the usufructuary; other acquisitions, such as an inheritance or legacies went to the profit of the slave's master. A servus fructuaris freed by his master without the fructuary's consent, became a servus sine domino (= a slave without a master); under the law of Justinian he became free.—See ex re allicuitus.

Berga, Philologus 73 (1914) 61, 91; idem, ZSS 43 (1922) 398; Pringsheim, ZSS 50 (1930) 408; G. Dulcik, Erblasingerwelle und Erwerbsruelle (1934) 26, 101; Solazzi, BIDR 49-50 (1947) 373.

Servus fugitivus. A slave who ran away from his master with the intention not to return to him. A servus fugitivus also was a slave who ran away from his master's creditor, to whom he had been given as pledge (creditor pignoraticus), or from a teacher, and did not return to his master. When caught by a public organ or a private individual, a servus fugitivus had to be delivered to the master. Concealing a fugitive slave or helping a slave to escape from his master was considered a theft; see lex fabia de plagio. Syn. in fugae esse, fugitivus (noun). A fugitive could be usucapit if the man who held him was in good faith (e.g., he believed to hold a masterless slave).—See Caitio de servu persequendo.

D. 11.4; C. 6.1.

Arnò, St. Perozzi1925, 259; Carcaterra, AG 120 (1938) 158; M. Roberi, La lettera di San Paolo a Filemone e la condizione del servus fugitivus, 1933; E. Albertario, St di dir rom. 2 (1941) 273; Pringsheim, Si Solazzi 1948, 602; idem, Fisch- Schule 1 (1951) 279; Coleman-Norton, St in honor of A. C. Johnson (Princeton, 1951) 172.

Servus hereditarius. A slave belonging to an inheritance. Such a slave was interrogated under torture when the authenticity of the testament was questioned, without regard to whether he was freed therein or not.

Servus ordinarius. A slave who had in his peculium a slave (see servus vicarius).

Servus peculiaris. A slave who was a part of a peculium. A slave in a soldier's peculium (peculium castrense) was the soldier's slave. A filius familias endowed with a peculium could not manumit a slave belonging to the peculium without his father's authorization.

Servus poenae. A free man who became a slave through condemnation with capital punishment (death penalty, fight with wild beasts, forced labor in mines).
He was considered a slave sine domino (not belonging to anybody). If a slave was condemned to capital punishment, the ownership of his master was destroyed and did not revive any more. A servus poenae could not be freed. In certain cases, a sentence, even when not involving capital punishment, could impose on the condemned slave the additional penalty "ne manu
mitatur" which meant that he could not be manumitted and remain slave for life.

Pfaff, RE 2A; Lecrivain, DS 4, 1284; Donatini, BIDR 42 (1934) 219; U. Brasiello, St Virgili (1935) 41; idem, Repressiones penales (1937) 416.

Servus publicus (servus populi Romani). A slave owned by the state (the Roman people). Public slaves were employed in the offices of magistrates, in Rome and municipalities, in temples, pontifical offices and the like, for minor auxiliary work and servant duties. They were granted some personal privileges and, if they had a peculium, they might dispose thereof in part. Better qualified slaves were employed in accounting and secretarial service; they obtained at times influential positions and were soon rewarded by their masters with liberty. In the later Empire there was a tendency to exclude slaves from civil service. The manumission of a servus publicus was performed by a pertinent declaration of a magistrate with the previous authorization of the senate; in the Empire the emperor granted liberty to a servus publicus. In municipalities the manumission was decreed by the municipal council.—C. 79.

De Ruggiero, DE 2, 750; L. Halkin, Les esclaves publics chez les Rom., 1897.

Servus recepticius. See RECEP'TICUS SERVUS.

Servus redemptus. See REDEMPTUS AB HOSlE.

Servus redemptus suis nummis. See REDEMPTUS SUI NUMMIS.

Servus sine domino. A slave without a master, not owned by anybody. His legal situation was that of a res nulius.—See SERVUS POENAE, SERVUS DECE-LICTUS, SERVUS FRUCTUARIUS.

F.X. Affalter, Die Persönlichkeit des herrenlosen Sklaven, 1913.

Servus usarius. See USARIUS (adj.), USUS.

Servus vicarius. The slave of a slave, a slave in another slave's peculium. He is servus peculiaris while his superior is servus ordinarius. A servus vicarius could have a peculium for himself, peculium vicarii. The manumission of a servus vicarius could be performed by the master of the servus ordinarius.

Lecrivain, DS 5, 823; H. Erman, S.v. (Recueil publié par la Faculté de droit de l'Univ. de Lausanne, 1896) 391; Däll, ZSS 67 (1950) 173.

Servus. (Adj.) Used both of persons (slaves) and of immovables encumbered with a servitude (see servitus), as servus fundus, servum praeedium. Syn. praeedium quod servit.

Sessio. (From sedere). A praetor's sitting in court (praetor sedit) whether he is acting pro tribunali or de plano.

Sestertium. One thousand sestertces (sestertii).—See SESTERTIUS, SOLIDUS.

Lenormant, DS 2, 95.

Sestertius (scil. nummus). A silver coin in the Republic, a brass coin in the Principate. It was first equivalent to two and a half asses, later to four asses (see AS). Abbreviation: HS. Sestertio nummu
uso occurs in inscriptions for nummus uno; see NUMMUS USUS.—See SOLIDUS.

Regling, RE 2A; Babelon, DS 4; Lenormant, DS 2, 94; Mattingly, OCD (s.v. coinage).

Sestertius pes. See AMBITUS.

Severus Valerius. See VALERIUS SEVERUS.

Seviri (seviri) Augustales. See AUGUSTALES.

Sexagenarius. See PROCURATORES in public law.

Sexprimi. The "first six." They were the chairmen of the association of subordinate officials (see APPARITORES).

Si paret. See INTENTIO (a part of the procedural formula).

Si quidem . . . , si vero . . . If . . . , if, however. Sentences in which two or more contrasting legal situations are taken into consideration occur in interpolated passages. This and similar constructions are, however, not an absolutely reliable criterion of interpolation.

Guarnieri-Ciampi, Indice* (1927) 81; idem, Feste Koschaker 1 (1937) 132.

Si quis. See SIGNIFICATIO VERBORVM.

Sicarius. A murderer. Sulla's LEX CORNELIA DE SICARIIS introduced a quasstito perpetua (a permanent court) for murderers (sicarii) and poisoners (venefici). In classical law a sicarius was also one who was going around armed with the intention to assassinate someone or to commit a theft, furthermore one who in his capacity as a magistrate or chairman of a criminal court induced a witness to make false testimony in order to prosecute and convict an innocent person of a crime, and a magistrate or judge who received a bribe to accuse a person of a capital crime. "It makes no difference whether one killed a man or caused his death" (D. 48.8.15). Under the influence of jurisprudence and imperial legislation the mentioned Lex Cornelia, which remained in force still under Justinian, was applied to various kinds of offenses which resulted in the death of a man. Death penalty was inflicted on the criminal and his property was seized. In many cases the accuser was rewarded.—D. 48.8; C. 9.16.—See LEX CORNELIA DE SICARIIS, HOMICIDIAM, FARRIDICIAM.

Pfaff, RE 8, 2249; Coq, DS 3, 1140; Hitzig, Schweizerische Ztschr. für Strafrechts 9 (1896) 28; Condameri-Michter, Scr Ferrini 3 (1948), Univ. Sacro Cuore, Milan 70.

Sigillum. A seal affixed to a written document. Syn. SIGNUM.


Blabel, RE 2A; Berger, BIDR 55-56 Post-Bellum (1951) 158; 166.
Signare. To subscribe a document (a last will); syn. subscribere. Signare denotes also to seal with a signum (with a seal ring = anulus signatorius), e.g., wax-tablets on which a testament was written. In a wider sense signare = to provide a thing with a sign or a mark to indicate the owner.—See signum, anulus.

Signare pecuniam. To seal a little bag (sacculum) containing money to be deposited with a banker or a friend. The depository was obliged to restore the bag untouched. If the depositor died special precautions were prescribed when one of the heirs demanded the delivery of his share.

Wenger, RE 2A, 2377.

Signatores testamenti. Those who signed and sealed a testament as witnesses. When a testament had to be opened after the death of the testator (see apertura testamenti), the signatores had to be convoked to acknowledge their seals.

Arch., StPac. 26 (1941) 84; Macqueron, RHD 24 (1945) 164.

Signifer. A standard-bearer in a legion.

Kubitschek, RE 2A.

Significatio verborum. The meaning of words. The title 50.16 of the Digest (De significatio verborum) gives explanations of several hundreds of terms, both juristic and non-juristic. The definitions were collected from various juristic works in which almost all classical jurists were represented. The collection was prepared for furthering a better understanding of terms and locations used in the Digest. The title starts with the explanation of the phrase "si quis" (= if anybody . . .) which is interpreted to the effect that it "comprises both men and women" (D. 50.16.1).—C. 6.38.

Signum. (With reference to military units.) A standard, a banner.

Kubitschek, RE 2A, 2349.

Signum. (On written documents.) A seal (a stamp) put on to close a document in order to make its contents inaccessible to unauthorized persons and protect it against forgery, or at the end of it after the written text. In the latter case the seal (without or with a signature) indicated that the sealer recognized the written declaration as his (subscriberi, subsignatio). Signum is also the seal of a witness who was present at the making of a document. In certain specific instances sealing a document was legally required. See testamentum septem signis (sigillis) signatum. Sealing a forged testament or an illicit removing of a seal from a testament was punished under the Lex Cornelia de falsis.—See obsignatio, signare, anulus.

Wenger, RE 2A; Chapot. DS 4; Erman, ZSS 20 (1899) 181; Wenger, ZSS 42 (1921) 611.

Signum agnos cere. To acknowledge a seal as one's own. Syn. recognos cere.

Silentiarii. A body of thirty officials in the later Empire, to maintain order in the imperial palace and at court-meetings in the imperial consistorium. They also had their assignment in the court ceremonial. Created in the fourth century, they acquired later some military functions. Their commanders (decuriones) were considered among the highest functionaries of the imperial palace.—C. 12.16.

Seeck, RE 3A; Lecrivain, DS 4; J. E. Dunlap, Univ. of Michigan Studies, Humanistic Ser. 14 (1924) 220.

Silentium. Silence. Generally, silentium is not considered a manifestation of will. Sometimes, however, the silence of a person who in a given situation had to speak, was regarded as non-opposition (non contradicere, non dissentire) and as such as a tacit consent, e.g., the silence of a father with regard to a marriage of his son (filius familiaris).—Silentium was also used of the inaction on the part of a person who was entitled to act as a plaintiff. Longum silentium = such inaction during a longer time; it might produce the loss of an action; see longi temporis prae- scriptio. For silentium of a party during a trial, see tacere, interrogatio in criminal trials.

G. Borma, Del silen­zio nei negozj giuridici, 1901; P. Bou­fante, Scr giur 3 (1926) 150; Donzuki, St Bonfante 4 (1930) 459; Peruzzi, Scr 2 (1948, ex 1956) 599.

Siliqua. A small silver coin equal to one twenty-fourth of a solidus aureus.

Regling, RE 3A; Seeck, ibid. 65.

Siliquaticum. A sales tax in the later Empire, reckoned in siliquae.


Silva. A wood, a woodland. There was a distinction between a silva caedus (exploited by cutting trees for timber) and silva pasceua (used as pasture for cattle). The usufructuary of another's woodland should use it in an economically reasonable way ("as a father of a family," D. 7.1.9.7) and not abuse it to the detriment of the owner.

Burdese, St sull'ager publicus, MemTor ser. II, 76 (1952) 117.

Similitudo. Resemblance, analogy. Ad similitudinem is syn. with ad instar, ad exemplum.—See INSTAR, EXEMPLUM.

Steinwenter, St Arangio-Ruiz 2 (1952) 172.

Simplaria venditio. A sale in which the seller did not specify any particular quality or defect of the thing sold (for instance, a slave sold as "no good, no bad"). Such sales which normally concerned ordinary things of no great value, could not be rescinded by redebitio.

Brum and Sachau, Syriac-röm. Rechtsbuch, 1880, 207.

Simplicia interdicta. See interdicta simplicia.

Simplicitas. Simplicity, clearness. "Simplicity (clarity) in laws seems to us more desirable than intricacy" (Justinian, Inst. 2.23.7)

Simpliciter. Simply, plainly. The adverb is used in different meanings, depending on with what it is
contrasted. Thus, for instance, to promise (to give a donation, to bequeath a legacy) *simpliciter* = unconditionally (when opposed to *sub conditione*); to assume an obligation *simpliciter* = without giving security (when opposed to *cum satisfactione*); to stipulate *simpliciter* = without a penalty (when opposed to a *stipulatio* under penalty). With reference to judicial measures to be granted by a magistrate *simpliciter* is opposed to *causa cognitio* (after investigation of the case, see *causae cognitio*).

**Simiplum.** See *actiones in simplum.*

**Simulare (simulatio).** To feign, to simulate, to pretend. In contractual relations a *simulatio* occurred when the parties with mutual understanding concluded a transaction while their intention was to conclude another or none at all. The purpose of such fictitious transactions was either to give thereto the appearance of a legal act, while in fact the transaction was illicit (e.g., the parties covered a prohibited donation with a fictitious sale) or to feign that a legal situation existed which in fact did not exist (e.g., an imaginary marriage, *nuptiae simulatae*), to avoid the disadvantages imposed on unmarried persons by the Augustan legislation on marriages, see *lex iulia et papia poppaea*). Acts concluded *simulate* (simulated acts) were not valid since they were not intended by the parties; nor was the act which the parties wanted to conclude valid if it was contrary to the law. The rubric of the title 4.22. of the Code, defines: “More valid is what is being done than what is being expressing in simulated terms.” The rule lay stress in particular on the “truth of the matter” (*veritas rei*) and not on what had been feigned in a written deed.—C. 4.22.—See IMAGINARIUS, DICIS CAUSA.

Berger, RE 9, 1094 (i.e. imaginarius); Rabel, ZSS 27 (1906) 290; Parch, ZSS 42 (1921) 122; *idem*, *Aus nachgelassenen Schriften*, 1931, 122; G. Longo, *St Riccobono* 3 (1936) 113; *idem*, *AG 115* (1936) 117; 116 (1937) 35; Berti, BIDR 42 (1934) 239; *idem*, Fischer Roscher 1 (1939) 297; *idem*, *ACSR*, IV Congr., 1938; G. Pugliese, *La simulazione nei negozi giudizi*, 1938.

**Sinceritas.** A complimentary title used by the emperors in official letters (rescripts) addressed to higher officials of the Empire (“sinceritas tua” = your sincerity).

**Sine dia.** Refers to obligations for the fulfillment of which a term was not fixed. “What is due without a date being fixed, has to be paid immediately” (D. 45.1.41.1).

**Sine die et consule.** Without indication of the day and the consul, i.e., without a date. Constantine ordained that undated imperial constitutions were not valid.

Niedermeyer, *ACDR* Roma 1 (1934) 366.

**Sine domino.** See SERVUS SINE DOMINO.

**Sine re.** See BONORUM POSSESSIO SINE RE.

**Sine suffragio.** When a juror did not indicate on his voting tablet whether he was for the acquittal or condemnation of the defendant, the tablet was *sine suffragio* (= without any vote).—See CIVITATES SINE SUFFRAGIO.

**Sinere.** See LEGATUM SINENDI MODO.

**Singular ius.** See IUS SINGULARE.

**Singuli.** Individual citizens (as opposed to the whole people, *populus Romanus*); members of an association (as opposed to the whole body, *universitas*).

**Sistere aliquem.** To assume the obligation by giving security (to guarantee) that a certain person engaged in a lawsuit (primarily the defendant) will appear in court (*iudicio siste*) at a fixed date.—See CACTIO IUDICIO SISTI, VADIMENTUM, VINDEX.

**Sisti (sa) iudicio.** To appear in court.—D. 2.10.

**Societas.** A contract of partnership concluded between two or more persons with the purpose to share profits and losses. The contractual relationship among the partners (socii) arose through simple consent (consensus) of the partners. The intention to conclude a societas is termed *affectio sociatiae*; it certainly makes no difference whether the term is a classical or later creation since, in fact, it does not denote more than *consensus*. The partners contributed to the common business money, goods, rights, claims against third persons, or their personal professional skill and labor. Funds and things collected became joint ownership of all partners, normally in equal shares unless different shares were established at the conclusion of the societas, when the contributions of the partners were not equal or when their parts in labor or personal services were of a different value. Accordingly, the share of each partner in profits and losses was fixed by agreement. The societas had no legal personality; the partners were liable for the debts of the societas, without regard to its funds, on the other hand the claims of the societas against its debtors were claims of the partners. A societas was dissolved by a mutual agreement of the partners (dissensus), by the death of one partner, his *capitis deminutio* or bankruptcy, or by *renuntiatio* of one partner, i.e., his unilateral withdrawal from the societas. Controversies among the partners were settled in an action, *actio pro socio*, brought by one partner against the other. The action was an *actio bonae fidei*; the defendant could be condemned only in *id quod facere potest* (see BENEFICITUM COMPETENTIAE), but the condemnation involved infamy. The division of the common property of the partners was achieved through *actio communis dividundo*. The origin of societas goes back to the community of property (see CONSORTIUM) among filii familias, heirs of their father, which served as a model for common ownership and common management of affairs among persons not tied by the origin from a common ancestor.—The term societas occurs at times in the sense of an association (= *collegium, corpus*).—Inst. 3.25; D. 17.2; C. 4.37.—See COMMUNIO, CONSORTIUM.
ECTO NON CITIO, ACTIO COMMUNI DIVIDUNDO, COMMUNICATIO LUCI ET DAMNI, ACTIO PRO SOCIO, QUAESTUS, VIATICUM.

Manigk, RE 3A; Lécivain, DS 4; Rodino, NDI 12, 1 (s.v. societas civile); C. H. Monro, Digest 17, 2; "Pro socio" (Cambridge, 1902); E. Levy, Konverrenz der Aktionen 2, 1 (1922) 139; E. Del Chiaro, Le contrat de société en dir. privé rom., 1928; A. Poppi, Il contratto di società, 1-2 (1930, 1934); Guarneri-Citati, BIDR 42 (1934) 166; F. Wieacker, ZSS 54 (1934) 35; idem, Societas, Haussgemeinschaft und Erwerbsgesellschaft, 1936; Arangio-Ruiz, St Riccobono 4 (1936) 357; Dehn, Camb. J. 6 (1937) 381; C. Arno, Il contratto di società (Lisbon) 1938; D. Marzo, BIDR 45 (1938) 261; Condamin-Michler, St Besta 3 (1939) 510; Pfüger, ZSS 65 (1947) 188; E. Schlechter, Le contrat de société en Babylone, en Grèce et à Rome, 1947; Frezza, St Solazzi (1948) 529; V. Arangio-Ruiz, La società in dir. rom. (Corso), 1950; Weiss, Fischer Schulz 2 (1951) 86; Solazzi, Iura 2 (1951) 152; Van Oven, TR 19 (1951) 448; idem, St Arangio-Ruiz 2 (1952) 433; Wieacker, ZSS 62 (1952) 302.

Societas leonina. A societas in which one partner participates only in the losses and is excluded from sharing the profits. Such a contract was not valid.

V. Arangio-Ruiz, La società in dir. rom., 1950, 110.

Societas maleficii. A group of persons intent to commit a crime together.

Societas negotiationis. See societas UNIUS NEGOTII.

Societas omnium bonorum. A partnership embracing the whole property of all partners. Such a kind of societas was the earliest form of joint ownership of an estate among the heirs; see CONSORTIUM.

V. Arangio-Ruiz, La società in dir. rom., 1950, 16; Van Oven, TR 19 (1951) 448.

Societas publicanorum. See publicani.

Societas quaestus. A partnership which comprises gains obtained from the economic activity and legal transactions (sales, leases) of the partners. Excluded from the community are donations, legacies and inheritances.

Societas re contracta. A societas existing independently from the consent of the parties. This occurred when one or more things came into common ownership of several persons. The notion of societas re contracta is a post-Classical creation.

Arangio-Ruiz, St Riccobono 4 (1936) 357; idem, La società in dir. rom., 1950, 35.

Societas unius negotii (societas negotiationis). A partnership concerning a commercial or industrial business. All juristic and economic operations connected with it are covered by the partnership.

Arangio-Ruiz, La società in dir. rom., 1950, 141.

Societas unius rei. A partnership concerning one, commercial or non-commercial, transaction (a sale, a lease, etc.)—See politor.

Societas vectigalium. See societas publicanorum.

—See publicani.

Socius. (In private law.) A partner in a company (see societas), a co-owner, a member of an association (collegium).

Socius. (In penal law.) An accomplice, an accessory, an abettor, one who gives assistance (iuvat, adiuvat, adiutorium praebet) to a criminal before, during, or after the crime. Syn. conscius, consors, particeps.

As a matter of rule, the socius was punished by the same punishment as the principal wrongdoer; exceptions from this rule were introduced later in favor of the accessory.—See OPE CONSILIO, LEX FABIA.

Pfaff, RE 3A; R. Balouglicht, Etude sur la complicité (These Montpellier, 1920); K. Poetsch, Begriff und Bedeutung des z. im rom. Strafrecht (Diss. Göttingen, 1934).

Socius. (In public law and international relations.) An allied state with which Rome had a treaty of alliance (foedus) delimiting the ally's rights and duties towards Rome. In internal administration an allied state was autonomous in retaining its constitution, its government, its control of finances and its legal system. Among its duties that of furnishing a contingent of troops under Roman command (praefecti sociorum) was the most burdensome. The privileges granted an ally were not uniform; their extension depended upon the closeness of his attachment to the Roman state. An ally had no right to conclude a treaty with another state or to make war independently of Rome. During the third and second centuries B.C. restrictions were gradually imposed upon the autonomy of the allies. The situation of the allies in Italy (socii Italici) turned to the worse; after the Social War (91-88 B.C.) Roman citizenship was granted to all cities in Italy which brought the expansion of Roman law and jurisdiction over the whole peninsula. There were also socii beyond Italy, more or less dependent on Rome. Their number increased after the Roman victory over Carthage. After various modifications the provincialization of the former allies was achieved and the Roman rule expanded over territories in which the autonomous institutions fell soon into oblivion giving place to Roman power and governors.—See FOEDUS, CIVITATES FOEDERATAS, FOEDUS, AMICUS POPULI ROMANI.

Lécivain, DS 4, 1367; Sherwin-White, OCD; Matthaei, Class. Quarterly Rev., 1907, 182.

Sodales. Members of an association (collegium, sodali
tas). In a more specific sense the term refers to colleges of a religious character, primarily to minor priesthoods.

Bailey, OCD.

Sodales Augusti. A college of priests instituted by the emperor Tiberius after the death of Augustus and charged with the cult of the late emperor. Later, similar groups of priests were entrusted with the cult of the emperors Titus, Hadrian, and Antoninus Pius (sodales Flaviae, Hadrianae, Antoniniani).

Cagnat, DS 4.

Sodalicia. See the following item.

Sodalitates (sodalicia). Groups of persons organized under the chairmanship of a magister as a body for
specific purposes. In the political life the sodalitates were a union of individuals who illegally worked for a candidate during the electoral period; see Lex Licinia de Sodaliciis.

Pfaff. RE 3A; Ziebarth, RE 3A; Riswol, RE 1A, 1640; U. Coli. Collegio e sodalitates, 1913.

Solaccium. An indemnification, a compensation for damages. In imperial constitutions the term is used in the meaning of a stipend or a salary.

Solarium. See superficies.

Solere. To use to do something. Used of customs and usages, practiced in legal and commercial life as well as in courts.

Solidare. In imperial constitutions to confirm, to strengthen (a legal transaction).

Solidum. (Noun.) A thing in its entirety, a whole, a sum due as a whole. Solidum occurs primarily in locutions in solidum and pro solido, e.g., to acquire or to sell a thing as a whole, to sue one of more debtors for the whole debt. See duo rei promittendi. For solidum in the law of successions, see capacitás, capax, leges caducariae.—See pervenire ad aliquem.

Solidus. (Adj.) Actiones solidae = lawsuits for the whole debt. Solida successio = the whole inheritance.

Solidus. (Noun.) aureus (syn. aureus solidus, solidus aureus), a gold coin containing from the time of Constantine \( \frac{1}{2} \) of a Roman pound (libra) of gold. Justinian's compilers interpolated the solidus in juristic writings for the former one thousand sesterces (see septertium); thus both septertium and sestertius disappeared in Justinian's codification.


Solas occasus. Sunset. According to the Twelve Tables a trial in court had to be closed before sunset by the pronouncement of a judgment by the judge. Meetings of the senate, which normally started early in the morning, were to be ended at sunset.

Solitarius. See pater solitarius.

Solitus. Customary, usual.—See solere.

Solemne ius. Opposed to the law created by the praetor (ius praetorium, ius honorarium). Solemne ius is syn. with ius civile and refers primarily to the solemn formalities prescribed by that law.

Solemnia (iuris). Legal formalities prescribed by the law for certain acts, such as the acts per aed et libram, testaments, leges actions, stipulatio, etc. Syn. sollemnitates iuris. Praetorian law and imperial legislation gradually alleviated and partly abolished the formalities of the earlier law. In a rescript issued in a particular case Emperor Marcus Aurelius stated: “Although in solemn legal formalities changes should not easily be made, yet where obvious equity (sequitas) requires help must be granted” (D. 4.1.7 pr.).

This rule was accepted by Justinian as a general one through its repetition in the final title of the Digest, De diversis regulis iuris antiqui (D. 50.17.183). In the language of the imperial chancery the sollemnia found a wide application, being connected with any act for which certain formalities were prescribed (e.g., sollemnia accusations, adoptionis, appellationis, iuris iurandi, etc.).

Riccobono, L'importanza e il decadimento delle forme solenni, Miscellaneous Vermeersch 2 (1935).

Solemnia testamenti. Formalities required for the validity of a testament.

Solemnia verbis. See verba certa et sollemnia.

Solemnis. Prescribed by law, human or sacral, or observed through tradition. See sollemnia (iuris). Hence sollemnis indicates any act performed under observance of the prescribed formalities.

Solemnitatis, sollemniter. See sollemnia (iuris), sollemnis.

Solicitator. A suitor.—See actio servit corrupti.

Solum. See superficies, res mobiles.

Solutio. In a broader sense solutio indicates any kind of liberation of the debtor from his debt. Obligations contracted in a specific form (litteris, verbis) had to be extinguished in a similar form; see publica. Thus a literal obligation (litterarum obligatio) was extinguished by expensilatio, a stipulatio by a parallel oral form, the acceptatio. In a narrower sense solutio denotes the payment, the fulfillment of an obligation. Payment could be made by anyone, not only by the debtor himself, but even without his knowledge and against his will. The creditor was not obliged to accept a part of the debt nor another thing in lieu of that which was actually due (aliud pro alio). Failure to pay at the term fixed produced for the debtor the disadvantages of a default (see mora debitoris). A creditor who refused the acceptance of the payment could also be in default (in mora); see mora creditoris.—D. 46.3; C. 8.42; 11.40.—See obligatio, satisfactio, addictus solutionis causa, beneficium competentiae, datio in solutum, apocrea, usucapio pro soluto.


Solutio imaginaria. The solemn acts of liberation of the debtor, the acceptatio, and the solutio per aed et libram, are qualified as solutio imaginaria, see imaginarius. Through these acts the debtor was liberated from his obligation whether or not he effectively paid the debt.

Solutio indebiti. The payment of a debt which in fact did not exist.—See indebitum, conductio indebiti.

P. Voci, La dottrina rom. del contrasto (1946) 98.

Solutio legibus. In the Republic the senate could decree in exceptional cases that a law being in force
should not be applied in a specific case. Normally such a decree of the senate had to be followed by a confirming vote of a popular assembly. Such dispensations of magistrates from a strict application of a law, or of an individual person from a legal requirement, were issued as an exceptional measure in case of urgency. This rule was not always observed and abuses were not rare. See lex CORNELIA DE LEGIBUS SOLVENDO (of 67 B.C.). The right of the senate to grant a solutio legibus was still exercised in the early Principate.

O'Brien-Moore, RE Suppl. 6, 746; Mommsen, Röm Staatsrecht 3, 2 (1888) 1229; G. Rotondi, Leges publicae populi Rom. (1912) 165; 520.

Solutio per aes et libram. The payment of a debt which arose from a transaction concluded in the solemn form per aes et libram. The liberation of the debtor had to be performed in the same form, with the assistance of five witnesses and a balance-holder (librrptn). This form of solutio was applied also with regard to judgment-debts (see IUDICATUM) and legacies bequeathed in the form of legatum per damnationem.—See solutio imaginaria.

Michon. Recueil Geny 1 (1934) 42.

Solutio causa adjectus. See adiectus solutionis causa.

Solutum. See datio in solutum.

Solutus. See vinctus.

Solvend o esse. To be solvent. "No one is considered solvent unless he is able to pay the whole debt" (D. 50.17.95). The term is applied both to persons and estates. Ant. solvendo non esse. An insolvent person was exempt from the duty to assume a guardianship. Insolvency of a debtor which was effected by fraudulent acts of his own (donations, manumissions) performed in fraudem creditorum, could be remedied by the creditors; see fraus, interdictum fraudatorium, idoneus, facere posse. Fringsheim, ZSS 41 (1920) 252; Schult, ZSS 48 (1928) 214; Kübler, St Alberteni 1 (1935) 493; G. Noera, insolvenza e responsabilità sussidiaria (1942) 19.

Solvere. To pay a debt. "We say solvere when somebody did what he had promised to do" (D. 50.16.176). See solutio. In a broader sense solvere means to dissolve a legal (contractual) relationship by mutual agreement of the parties involved. For the rule that an obligation assumed by a contract should be discharged (solvit) in the same way, see proib quisque, etc. Hence verbal contracts had to be dissolved orally, through the use of prescribed words, and literal contracts (see obligatio litterarum) by written forms (litterae). Solvui = to be liberated from an obligation or any legal binding, to be dissolved (e.g., matrimonium).

Solvende legibus. See solutio legibus.—See lex CORNELIA DE LEGIBUS SOLVENDO.

Sonticus morbus. A serious disease which prevented a person from the fulfillment of his duties. It was a justified excuse for non-appearance in court.

Sordida munera. See munera sordida.

Soror. A sister. Soror was also a mother or stepmother who acquired in the family the legal situation of a daughter through marriage with the father of the family combined with convenitio in manum and thus became a sister of the latter's children.—See filla familias, manus.

Sors. A lot. When two co-owners or co-heirs applied to a court for the division of the common property (inheritance) under actio communis dividundo or actio familliae eriscundae, it used to be determined by lot which of the parties had to institute the trial as the plaintiff.—See sortitio.

Sors. A sum lent at interest, the principal.—See usurae.

Sors. A plot of ager publicus assigned to a member of a colony.

Sortitio. Determination by lot.—See album iudicum, subsortitio.

Ehrenberg, RE 13, 1495 (s.v. Lawson); Lécrivain, DS 4, 1417.

Sortitio. (In public law.) In centuriate assemblies (comitia centuriata) the centuria which had to vote first (centuria praerogativa) was determined by lot (sortitio). If in an election of magistrates two candidates received an equal number of votes, it was decided by lot which of the two was to obtain the magistracy. In some other instances (of minor importance) designation by lot was alternative with the decision by a superior magistrate.

Ehrenberg, RE 13, 1493 (s.v. Lawson).

Sortitio. Among colleagues in office, see the following item.

Sortitio provinciarum. Drawing by lot for the assignment of the various spheres of activity (provinciae) to colleagues in office (see collega), as consuls, praetors, municipal magistrates, etc. The division of functions concerned primarily military command and jurisdiction. It could be settled by common agreement which made the drawing of lots superfluous (sine sorte). Sortitio was mandatory with regard to the functions of praetors.

Spado. Incapable of procreation, either by nature or through castration. A spado was permitted to marry and adopt.—See pubescere, castriati, eunuchi. Pfaff, RE 2A.

Spatium. Indicates both space in room (e.g., an interval between two buildings, see ambitus) and in time (a period of time within which a legal act had to be accomplished).

Spatium deliberandi. See deliberare, tempus ad deliberandum.

Specialis. Special; specialitatis especially, expressly, in particular. The words occur frequently in Jus-
tinian’s constitutions and, together with ant. generalis and generaliter, are among his favorite expressions. They are generally considered as criteria of interpolations; their occurrence, however, in works of rhetoricians does not permit their definite exclusion from the language of the jurists. In particular, the adverb specialiter often occurs in connection with specific clauses inserted in an agreement. —See Generalis, Judicia generalia, Iurisdictio mandata, Nisi.

Guarneri-Ciati, Indice ed (1927) 83; Peters, ZSS 32 (1911) 183; E. Albertario, Studi 4 (1946) 79.

Species. An individual thing, to be distinguished from genus = a kind, sort of things, with common qualities. The distinction is of importance in obligatory relations; see genus. Species is also used of a specific legal problem submitted for a decision or discussion. When connected with a legal institution (e.g., species legati, fideicommissi) species means the legal form in which an act was performed (a legacy). Speciem novam facere = to make a new thing from a raw material; see specificatio. In later imperial constitutions species (in plur.) indicates natural, agricultural products; hence in species = in kind, in natura. Sub specie = under the pretext of.

Scarpello, NDI 12, 2; S. Perozzi, Scritti 1 (1948) ex 1890) 241; Ferrini, Opere 4 (1930, ex 1891) 103; A. Hågerström, Der röm. Obligationsbegriff 1 (1927) 236; Savagnone, BIDR 55–56 (1952) 241.

Specificatio. Making one thing from another (raw material). The term is not of Roman coinage; its origin is to be traced to the locution novam speciem facere; see species. Jurisprudentially specificatio becomes important if a person makes a thing from another’s material without the latter’s authorization; the problem as to who is the owner of the nova species, the owner of the material or the worker (the maker), was largely discussed by the jurists and not always decided according to the same principle. The opinions of the two schools, the Sabinians and Proculians, differed in this respect. Justinian solved the problem from the point of view of the reducibility of the new thing (nova species) to its former shape. If the new thing was made partly from the maker’s material, it became property of the maker. For the various types of specificatio, see commixtio, confusio, conjunctio, textura, tabula picta, accessio, planta, satio.

Weiss, RE 3A: Lécrinav, DS 4; R. Piccard, Recherches sur l’histoire de la t. (Thèse Lausanne, 1926); De Martino, RDNeo 3 (1937) 179; Kaser, ZSS 65 (1947) 242.

Speciosa persona. A person (man or woman), primarily of senatorial rank, who was entitled to be distinguished by the appellative clarissimus. Syn. spectabilis.

Spectabilis. An honorific title of higher officials in the later Empire. The spectabiles formed the second rank after the illustres. They enjoyed various personal privileges similar to those of the clarissimi; exemption from the decurionate (see ordo decurionum) was their most important right. After a period of nearly two centuries, during which the honorific titles were fluctuating, from the beginning of the fifth post-Christian century a strict distinction was made among the three high-ranking groups, illustres, spectabiles and clarissimi.

Enslin, RE 3A; Chapot, DS 4; P. Koch, Byzantinische Beamtentitel (1903) 22; O. Hirschfeld, Kleine Schriften (1913) 664; 670.

Spectaculum. A show. See Ludi. It is characteristic that the title 11.41 of Justinian’s Code deals with spectacula together with actors and lenones (match-makers).

Spectare. Through spectandum est the jurists used to call attention to specific circumstances which should be taken into consideration at the examination of a case. Spectare aliquem = to concern a person (for instance, a debt, a risk).


Regling, RE 13.

Spectio. The activity and the right to observe celestial or other signs during the auspicia. They were a prerogative of the highest magistrates.

Marbach, RE 3A.

Speculatores. Soldiers or cavalrmy men in the intelligence service of the army (normally ten in a legion). Speculatores were also particularly qualified soldiers who served as bodyguards of the emperor. They were also employed as military couriers. At times speculator indicates an executioner.

Lammert, RE 3A; Cagnat, DS 4, 657; Jones, JRS 39 (1949) 44; O. Hirschfeld, Kleine Schriften (1913) 585; 598.

Spez. See demptio spei, demptio rei sperratae.

Bartoek, RIDA 2 (1949) 20.

Splendidiores personae. See HoneStores.

Spennere. To repudiate (e.g., an inheritance, a legacy), to reject, to condemn (the decision of an arbitrator in order to sue one’s adversary before an ordinary court).

Spolia. Weapons and armor taken from an enemy in time of war. They became the property of the victorious soldier who killed him. Spolia was also used of what a person condemned to death had on himself before his execution. He was stripped of them and the executioner had the right to claim them.—See Speculatores.

Lammert, RE 3A; Cagnat, DS 4; Vogel, ZSS 66 (1948) 394.

Spoliatio cadaveris. Larceny of property committed on a dead body.—See Cadaver.

Spondere. The decisive expression in the formula of stipulatio by which a person promised to pay a sum of money or assumed any obligation (spondesme spondeo). In lieu of spondere, later other words
were admitted. See \textit{stipulatio}. The term \textit{spondere} also indicates the obligation assumed by a surety; see \textit{sponsio, fidiusuisso}.

**Spansa.** A fiancée.—See \textit{sponsalia}.

**Spansalia.** A betrothal. "\textit{Spansalia} are the promise (\textit{mentio}) and the counterpromise for a future marriage" (D. 23.1.1). In ancient law the father of the fiancée promised his daughter to the future husband or to his father in the solemn form a \textit{sponsio} (question and answer). Later, a simple consent sufficed for a betrothal. \textit{Spansalia} were not binding and even a penalty clause attached to the pertinent agreement was void since "it was considered dishonest that marriage be enforced by the tie of a penalty" (D. 45.1.134 pr.). \textit{Spansalia} had nevertheless some legal effects, though of minor importance. Thus the conclusion of a new betrothal before the former was dissolved, involved infamy. A personal offense (\textit{inimoria}) of the fiancée could be prosecuted by her fiancé. A fiancé could not be compelled to testify against his future father-in-law and vice versa. A fiancé could accuse his fiancée of adultery. In the fourth century after Christ earnest money (\textit{arra spansalia}) served as a guarantee for the fulfillment of \textit{spansalia} since the party which broke off the betrothal without any just ground lost the \textit{arra} given or had to return double the amount received. \textit{Spansalia} could be dissolved by mutual consent or by a simple declaration of one party; see \textit{republicum}. Gifts between betrothed persons are termed \textit{spansalia} in imperial constitutions. —D. 23.1; C. 5.1.—See \textit{matrimonium, arra spansalia} (Bibl.), \textit{donatio ante nuptias, filia familia, patria potestas, osculum, republicum}.

Weiss, RE 3A; Lécrivain, DS 3, 1654; Kochscher, ZSS 33 (1912) 392; Solazzi, AT 51 (1916) 749; idem, S Albertinii 1 (1935) 42; Volterra, BIDR 40 (1932) 87; idem, RISG 10 (1935) 3; idem, SDHI 3 (1937) 135; E. Herman, Die Schlüssel des Verbißmisses im Rechte Jus. ANANIA Gregoriana 8 (1935); Massari, BIDR 47 (1940) 148; Beseler, Conf. Just. 1940, 38. L. Amé, Les rites des fiancailles (Diss. Louvain, 1941); A. Magdalain, Les origines de la spansonio (1943) 98; Gaudenzio, J. R. D. I, 1 (1946) 79; R. Orestano, La struttura giuridica del matrimonio rom., 1952, 339 (= BIDR 55-56, 1952, 221).

**Spansalia largitas.** Gifts given to a fiancée by her fiancé. Syn. \textit{donatio spansalia}.—See \textit{donatio ante nuptias}.


**Sponsio.** (From \textit{spondeo}.) The earliest form of an obligation under \textit{ius civil} assumed through an oral answer ("\textit{spondeo}") to the future creditor's question ("\textit{spondeo}?"). The \textit{sponsio}, conceived in this broader sense, was in the course of time absorbed by the \textit{stipclatio}. In a narrower sense \textit{sponsio} denoted the obligation of a surety who equally through exchange of question and answer obligated himself to pay what another had promised; see \textit{adpromissio}. This function of the \textit{sponsio} was probably the earlier one.—See \textit{lex apuleia, lex furia de sponsio, promovare sponsione, actio defensio, agere per sponsionem, sponsio, and the following items.}

Weiss, RE 3A; Anon., ND 12; Mittels. F. Beker (1907) 109; E. Levy, Sponsio, fidepromissio, fideusuc, 1907; idem, ZSS 54 (1934) 258; Wengler, ZSS 30 (1909) 410; Parzuch, ASW 22 (1920) 659; W. Flume, Studien zur Abhängigkeit der rom. Bürgschaftsverträgen, 1932; G. Segré, BIDR 42 (1934) 497; Ph. Meylan, Accepillation et paiement (Lausanne, 1934) 69; Leifer, BIDR 44 (1936-37) 160; F. De Martino, Studi sulle garanzie personali, 1-2 (1937, 1938); idem, SDHI 6 (1940) 132; A. Magdalain, Essai sur les origines de l. s. (Thèse Paris, 1943); J. Maillet, La Théorie de Schuldt et Haltung (1944) 144; Westrup, Not on sponsio, Kgl. Danske Videnskab. Hist.-Filol. Meddelser 31, 2 (1947); Pastori, SDHI 13-14 (1948) 217; Seidl, Ser Ferrini 4 (Univ. Sacco Corei, Milan, 1949) 168; M. Kaser, Das altröm. ius (1949) 256; Düll, ZSS 68 (1951) 209.

**Sponsio.** (In interdictual procedure.) See \textit{agere per sponsionem, interdictum}.

**Sponsio.** (In international relations.) An arrangement concluded by the commanding Roman general with the enemy concerning an armistice. The commander acted on his own responsibility. The reciprocal duties were established through the exchange of questions and answers.—See \textit{pax}.


**Sponsio.** (In trials concerning ownership.) See \textit{agere per sponsionem} (under 2).

**Sponsio dimidia partis.** See \textit{sponsio tertiae partis}.

**Sponsio poenalis.** A promise in the form of a \textit{spansionio} (\textit{stipulatio}) to pay a sum of money as a penalty in the case of non-fulfillment of an obligation or of a magisterial command (\textit{interdictum}).—See \textit{poena} (in the law of obligations).

**Sponsio praecedialis.** See \textit{agere per sponsionem} (under 2), \textit{lex creperea}.

**Sponsio tertiae (or dimidia) partis.** In certain specific trials any party could demand that his adversary promised through \textit{spansionio} (\textit{stipulatio}) to pay one-third (\textit{tertia pars}) or one-half (\textit{dimidia pars}) of the amount claimed as a penalty in the case of defeat. In return the party who made such a promise could demand a similar counterpromise (\textit{resipulatio dimidiaeiae or tertiae partis}) from the other party. The reciprocal promises were given in the first stage of the lawsuit before the praetor (in iure) and under his supervision. The purpose of these procedural \textit{spansiones} was to restrain inconsiderate litigation.—See \textit{constitutum, actio certae creditiae pecuniae}.


**Sponsor.** One who assumed an obligation as a surety. The term was in earlier times probably applied to any person who through \textit{sponsio} assumed an obligation as a principal debtor.—See \textit{sponsio}.

Daube, LQR 62 (1946) 256.
Sponsus. (Noun.) sponsio.—See lex Aphiela, lex fiancé (fiancée).—See sponsalia.

FURIA DE SPONSU.

Sponsus (sponsa). A betrothed man (woman), a Sponte. (With or without sua.) Spontaneously, freely, of one’s free will. The expression refers to the opposite of situations in which one is bound to do something by law, agreement, order of a magistrate or of the person under whose power he is, or by necessity (necessario, necessitate cogente).

Sportellarius (sportellaris). An exposed child.—See EXPOERRE FIBILUM.

Sportulae. In the later Empire fees to be paid to subaltern officials for their activity in judicial matters.

—C. 3.2.—See executor negotii. Wlassak, RE 4, 217; Hug, RE 3A; Lécrivain, DS 4; Jones, IRS 39 (1949) 51.


Spurius. A child whose father is unknown (“a child without a father, as it were,” Inst. 1.10.12). See vulgo conceptus. If the mother was a Roman citizen, the spurius was also a Roman citizen. A spurius became immediately sui iuris (free from patria potestas) and proximus agnatus of his mother. He was reckoned in favor of her ius liberorum.—C. 5.12.—See filius naturalis. Weiss, RE 3A, 1889; idem, ZSS 49 (1929) 260; Kubitschek, Wiener Studien 47 (1929) 130; Lanfranconi, SICr 30 (1946) 33.

Stabularius. A stable-keeper. The liability of a stabularius for the custody of horses assumed by agreement with the owner (receipsum stabularii) was settled in the praetorian Edict, in the section concerning similar agreements with shipowners and innkeepers (receipsum nautarum et cauponum).—D. 4.9; 47.5.—See receipsum nautarum. De Robertis, Anb 12 (1952) 125.

Stagnum. A pond.—See lacus, flumina publica. Stare (alicui rei). To cling to, to hold on firmly to (e.g., to an agreement), to fulfill exactly (e.g., a testator’s will).

Stat per aliquem. It is one’s fault, one is the cause of.—See mora.

Statim. Immediately. In certain situations the jurists admitted a rather liberal interpretation of the term if a payment had to be made statim. “It is understood, of course, with a moderate extension of the time if something is to be paid immediately” (D. 46.3.105).—See sine die.

Statio. A public place (at a forum or market) or an office where a tabellio exercised his notarial activity.

Statio. See navigium. Statio is also a station of the state postal service: syn. mansio, stativa. Humbert, DS 1, 1655.


Statio vicesimae hereditatium. A fiscal office concerned with the inheritance taxes.—See APERTURA TESTAMENTI, VICESIMA HEREDITATUM.

Stationarii. Military police officers assigned to posts throughout the country for the purpose of public security.—See latrunclator. Lammert, RE 3A; Lécrivain, DS 4.

Stationes fisci. Divisions of the fisc for the administration of revenue in fixed districts. Weiss, RE 3A, 2212.


Statores. Subordinate officials in the service of the emperor (statores Augusti) or high officials (provincial governors). They exercised police functions and were authorized to arrest private persons. They were in part successors of the vigiles. Kühler, RE 3A, 2228; Lammert, ibid. n.d. 2.

Statua Caesaris. See CONFUGERE AD STATCAM CAE- SARIS.

Statuere. To ordain, to enact (e.g., lex, imperator statuit), to settle by an agreement.—See tempus statutum.

Statullber. A slave manumitted in a testament by his master upon a suspensive condition. He remained a slave as long as the condition was not fulfilled. If the condition consisted in an act of the slave himself (e.g., he had to pay a certain sum to the heir, or to render accounts of his administration of the master’s property), it was considered satisfied if the heir or another person prevented the fulfilling of the condition, and the slave became free despite the nonfulfillment of the testator’s wish.—D. 40.7.—See manumissio sub condicione. Weiss, RE 3A; G. Donatelli, Lo s., 1940; Bartošek, RIdA 2 (1949) 32.

Status. Generally indicates a legal situation or condition. With regard to an individual, the term refers either to his official rank or to his position as a free Roman citizen and head of a family. In the latter sense it is syn. with caput. In the distinction status libertatis, status civitatis, and status familiaris only the first occurs in the sources. A change in one of these three fundamental elements of the legal status of an individual, liberty, citizenship, and headship of a family (mutatio, permutatio status), could either im-
prove his legal condition (when a slave became free, a foreigner became a Roman citizen, a person *alieni iuris* became *sui iuris*) or make it worse (loss of freedom, or citizenship or of the position as head of a family). When the status of a person was doubtful (*quaestio, controversia status*), in particular when it was uncertain whether he was free, free-born or a slave, his condition was examined in a trial; see *CAUSA LIBERALIS*.—D. 1.5; C. 3.22.—See *CAPITUS*, *CAPITIS DEMINUTIO*.

Weiss, RE 3A, 2433; Léérvain, DS 4; Orestano, NDL 12; Ciec. *St Simonselli* 1917, 61; Allen, LQR 46 (1930) 277.

**Status civitatis.** The legal status of a person as a *Roman*. Ant. the *status* of a stranger (*peregrinus*).—See *IVES*, *CIVITAS ROMANA*.

**Status controversia (quaestio).** See *STATUS*.

**Status defuncti.** The legal status of a person before his death, primarily the question of whether he was free or a slave. It could not be the object of a trial if five years elapsed after his death.—D. 40.15; C. 7.21.

**Status familiae.** The legal connection of a person with a family either as its head (*pater familias*) or member. —See *SUI IURIS*.

**Status legitimus.** The age of majority.

**Status libertatis.** The legal status of a person of being free, and not a slave. With regard to a free person the question might arise as to whether he was free-born or a freedman. —See *LIBERTAS*, *MANCUMISIO*, *CAPITIS DEMINUTIO*, *STATULIBER*, *CAUSA LIBERALIS*, *LIBERTINITAS*, *INGENITAS*.

**Status pristinus.** The former factual or legal state (condition, situation) of a thing or a person.—See *RESTITUERE*, *RESTITUTO IN INTEGRUM*.

**Status rei publicae.** The existence, organization, welfare of the state. The expression occurs in the definition of *ius publicum* by Ulpian (D. 1.1.1.2).—See IUS PUBLICUM.


**Statuti.** See MINISTRI CASTRENSES.

**Statutum.** A law, an enactment. *Statuta imperialia* = imperial constitutions.

**Statutum tempus.** A term fixed either by an agreement of the parties involved concerning the date on which a certain act (a payment) was to be performed, or by law (a statute, the praetorian Edict, an imperial constitution) for certain legal achievements, such as *usuajo*, for actions or exceptions, *cretio*, *longi temporis praescriptio*, etc. In Justinian’s legislation, in many classical texts the general, indefinite term, *statutum tempus* (*statuta tempora*) replaced the former exact indications of periods of time if the latter had been changed by postclassical or Justinian’s legislation.


**Stellionatus.** A crime committed by fraud, trickery, deception, or cheating, if such a wrongdoing in specific circumstances is not qualified as another crime (*si alium crimem non sit*), for instance, a theft (*furtum*) or forgery (*falsum*). There is no definition of *stellionatus* in the sources. The formula defining that “what in private controversies gives origin to an *actio* is in criminal matters prosecuted as *stellionatus*” (D. 47.20.3.1), is not precise enough to permit an exact delimitation of the elements of *stellionatus*. Evil intention, deceit, shrewdness (*calliditas*), imposture (*impostura*) are mentioned in the various cases of *stellionatus*, which seemingly primarily applied to fraud in commercial relations. Perjury could also be punished as *stellionatus*. *Stellionatus* was not a *crimen publicum*. If an accusation of *stellionatus* was brought before the competent magistrate (*praefactus urbii*, a provincial governor), it depended upon his decision whether or not a criminal proceeding (*extra ordinem*) would be started against the accused. The penalty was differentiated according to the social status of the culprit, temporary banishment for *nestores*, forced labor for *humiliores*.—D. 47.20; C. 9.34.

Pfaff, RE 3A; Beauchet, DS 4; Brasileto, NDL 12; Volterra. *StSz* 7 (1929) 107.

**Stemma cognitionum.** A genealogical tree. A picture containing the names of relatives (ancestors in six generations and descendants) of a person was found in some manuscripts of the *LEX ROMANA VISIGOThORUM*.

Editions: in all collections of pre-Justinian legal sources, see General Bibl. Ch. XII; the most recent one in *FIR* 1 (1940) 633.—Ferrini, *Opere* 1 (1926, ex 1900) 224; Poland, RE 3A.

**Stephanus.** A Byzantine jurist, law professor in Constantinople (or Beirut?) under Justinian. He was, however, not the emperor’s collaborator in the compilation of the Digest, nor is he mentioned among the compilers of the Code. He wrote an annotated summary (see *INDEX*) of the Digest and was highly thought of by later Byzantine jurists. His work was extensively exploited for scholia to the Basilica.


**Sterillis pecunia.** Money not loaned at interest. Syn. *nummi steriles*. The adj. *sterilis* is used also of a dowry (*dox*), from which the husband had no profit.

**Stillicidium.** See *SERVIATUS STILICIDII*.

**Adren. Erasos (Actu Philol. Suecena) 43 (1945) 1.**

**Stipendiarius.** See *CIVITATES STIPENDIARIAE*, *PRAEDIA STIPENDIARIA*, *STIPENDIUM* (in public law).

**Stipendium.** The soldier’s pay. From the fourth post-Christian century on the soldiers received the *stipendium* in kind (see *ANNONA*) which in times of shortage was replaced by money.—See *ADAERATIO*, *DONATIVUM*. 
Stipendium. (In public law.) A contribution imposed on the defeated enemy; it served to cover the expenses of war. During the armistice the enemy had to pay the Roman soldiers' salary (stipendium). This may explain how the term came to mean contribution. In later times stipendium was the term for land-taxes paid by the provincials. The rate of the stipendium was fixed whereas the so-called tributum depended upon the value of the proceeds from the soil.—See Praedial Stipendialia.

Lammert, RE 3A, 2537; v. Domaszewski, Neue Heidelberger Jahrbücher, 1900, 218 ff; Schlossmann, Archiv für lat. Lexigraphie 14 (1906) 211.

Stipendiaria. A monthly fee paid by members of an association (collegium) for common purposes (e.g., banquets, celebrations of religious nature).

Kornemann, RE 4, 437; Hug, RE 3A, 2540.

Stipulare. To accept a promise made in the form of stipulatio. It is the creditor who stipulatur (reus stipulandi), i.e., who pronounced the question to be answered accordingly by the debtor (reus promissendi). Only in exceptional cases stipulare is used of the debtor (= to promise).—See Stipulatio.

Stipulatio. An oral solemn contract concluded in the form of a question (interrogatio) by the creditor: "sponseinum centum dare?" (= "do you promise to pay one hundred?") and an affirming answer (responso) of the debtor ("spondeo" = "I promise"). The answer had to agree perfectly with the question; any difference or restriction (addition of a condition) made the stipulatio void. Presence of both parties was required, and any interruption between question and answer was inadmissible. Stipulatio was used for any kind of obligation, from the payment of a sum of money to the most complicated performances. It was employed for the promise of marriage (see sponsalia), the constitution of a dowry (see dos), the various kinds of promises in the course of a civil trial (caustiones, stipulaciones praetoriae), a novatio and delegatio, the assumption of a guaranty for another's debt (sureties), the constitution of certain rights on another's property (see pactiones et stipulaciones), etc. The stipulatio was abstract in content, to wit, the cause (causa) for which the debtor assumed an obligation was not indicated in the stipulatio (e.g., whether it was for a loan or an unpaid price of a thing purchased). A promise made through stipulatio was suable if the oral exchange of question and answer was performed, without regard as to whether there was a ground for the obligation or not. Any obligation, contracted otherwise, could be transferred into a stipulatio (stipulatio Aquiliana, see acceptilatio). This brought the creditor the advantage in case of a controversy that he had to prove only the fact that a stipulatio had taken place. In the course of time, however, the praetorian law granted an exceptio doli to the debtor if the obligation he had assumed was not based on a just cause. Witnesses at the conclusion of a stipulatio were not necessary. The elasticity of the stipulatio together with its simple formality made it the most common instrument for providing any promise with legal efficacy. Originally accessible only to Roman citizens (see sponsio), the stipulatio was later made available to foreigners, and not only the realm of permissible Latin words was extended (in lieu of spondeo the use of dare [facere] promittere, and, for sureties: fidipromittere, fidumbere) but also Greek, and perhaps other languages, were admitted in order to respond to the needs of commercial relations with other nations. In further development, written "stipulations" came into use under the influence of the practice observed by other peoples. Provisions of the agreement were written and the oral promise embraced in one phrase the promise "to give all that had been written down above" (ea omnia quae supra scripta sunt dabi), which in the opinion of the Roman jurists contained in fact as many stipulations as there were provisions. The written document was in origin only a piece of evidence, but later the importance of the written agreement prevailed so that in postclassical times it could be stated: "if it was written in a document (instrumentum) that one made a promise, it is considered as if an answer were given to a preceding question" (Paul. Sent. 5.7.2; Inst. 3.19.17). Thus, through a fiction, which normally excluded a counter-proof, it was held that a stipulatio had taken place (stipulatio inter absentes). In Justinian law the stipulatio appears as a written act, without any formal requirements. For an oral stipulation certa verba were no longer a condition of its validity; the debtor's answer could be expressed by signs and after a brief interval, even some slight discrepancies between question and answer were not harmful. The intervention of an interpreter was permitted if one party did not understand the language used by the other. The actions from a stipulatio available to the creditor in the classical law were: actio certas creditas pecunias (condictio certae pecuniae), when the stipulatio concerned the payment of a fixed sum of money, condictio certae rei when the object was a certa res (an individual thing), condictio tritarica when things were indicated generically (as a genus), and, finally, actio ex stipulatu, when the object was not precisely defined in a way mentioned above and the stipulatory obligation concerned a certain performance by the debtor. The classical origin of some denominations of these actions is not beyond doubt. —Inst. 3.17–19; D. 45.3; 46.5; C. 8.37; 38.—See besides the following items, acceptilatio, cautio, sponsio, novatio, nemo alteri stipulatur, favor.
DEBITORIIS, EXPRESSISSIMO, DONATIO, DIEZ MORTIS, TRANSACTIO.

Weiss, RE 3 a.1.; Cau, DS 4; Riccobono, ND 12; Carrelli, ibid. 904; Berger, OCD; Mitter, Aus röm. und bürgerl. Recht, Fs. Bacher (1907) 107; Collison, Mill. Gérardin 1907, 75; Riccobono, ZS 35 (1914) 214, 45 (1922) 262; idem, BIDR 31 (1921) 28; idem, AnFai 12 (1925) 540; idem, Stipulatio, contractus, pacta. Corso, 1935; idem, ACDR Roma 1 (1934) 338; G. Segré, St. Simonecelli 1917, 331; Scherillo, BIDR 36 (1928) 29; idem, St. Bonfanle 4 (1930) 203; H. Steinacker, Die antiken Grundlagen der frühmittelalterlichen Privatrückschriften (1927) 83; V. De Gaudard, Les rapports entre la stipulatio et l'écrit stipulatoire (Thèse Lausanne, 1931); F. Brandileone, Scritti 2 (1931) 419 (= RSDIt 1, 1928); A. Segré, AG 108 (1932) 179; idem, Annuaire de l'Inst. de Philol. et d'Hist. orientales et slaves 7 (1944) 243; D. Ochsenhein, La transmissibilité heréditaire de l'obligation conditionnelle ex stipulatu (Thèse Lausanne, 1935); Leifer, BIDR 44 (1936-37) 160; A. Hagerström, Der röm. Obligationsbegriff 2 (1941); Arch. Sc. Ferrini (Univ. Pavia, 1946) 688; G. Lombardi, Ricerche in tema di ius gentium, 1946, 175; M. Kaser, Das istrôm. Us., 1949, 267; Decker, RIDA 4 (= Mêl De Fischier 3, 1930) 361; Dull, ZS 68 (1951) 192; R. Nisar, LR 69 (1953) 63.

Stipulatio aedilicia. A stipulatio imposed by an aedile to a party in a trial which took place under his jurisdiction.—See, for analogy, STIPULATIO PRAETORIA.

Stipulatio aliquem siti. The promise of a person who assumed the guaranty that a defendant in a trial would appear in court on a fixed date.—See VINDEX, VADIMONIUM, SISTERE ALIQUEM.

Stipulatio amplius non agi. See CAUTO AMPLIUS NON AGI.

Stipulatio Aquiliana. See ACCEPTATIUM.

Stipulatio argentina. A promise made by a banker, in charge of a public auction, to the owner of the object to be sold, to the effect that the latter would receive the full proceeds from the sale, after deduction of the banker’s fees and expenses.


Stipulatio certa. A stipulatio in which the thing promised (quid = what), its quality ( quale) and quantity (quantity) were precisely fixed. Ant. stipulatio incerta.

Stipulatio communis. A stipulation which could be imposed during a civil trial either by the jurisdictional magistrate (praetor, aedile) in iure or by the judge in the second stage of a civil trial (apud iudicem).—See STIPULATIO PRAETORIA, STIPULATIO IUDICIALIS. In a different sense the phrase communiter stipulari is used. It refers to a stipulation on behalf of two or more creditors.

Stipulatio condicionalis (or sub condicione). A promise whereby one assumes an obligation depending on whether a certain event will happen or not.—See CONDICIO.

Stipulatio conventionalis. A stipulatio based on an agreement of the parties, as opposed to a stipulatio ordered by a magistrate (stipulatio praetoria, aedilicia) or a judge (stipulatio iudicialis).

Stipulatio cum moriari. A stipulatio for payment at death ("when I shall be dying") of either party was valid since it was held that a man was alive at the moment of his death. However, a stipulatio concerning a payment "pridie quam moriari" (= a day before my death) or several days before the death either of the debtor or the creditor was void since until the actual death it could not be told when the obligation was due. Justinian declared such a stipulatio valid.

Stipulatio de (or cautio de) dol. A stipulatio imposed by the judge on the defendant in specific circumstances, particularly in suits concerning claims for a thing (actiones in rem). Under such a stipulatio the defendant stipulated that he had not committed, nor would commit fraud in the matter under controversy. This stipulatio was a form of a stipulatio iudicialis. Such a stipulatio could take place extrajudicially as when a creditor demanded a promise from the debtor to abstain from any fraud in the fulfillment of the obligation.—See DOLUS.

Stipulatio dona. A promise of a donation made in the form of a stipulatio. The stipulatio created an obligation of the donor to transfer the promised thing (to pay the promised sum) to the donee.—See DONATIO.

Stipulatio dotis. A promise of a dowry made in the form of a stipulatio.—See DOS, PROMISSIO DOTIS.

Stipulatio duplae (sc. pecuniae). A stipulation by the seller to pay the buyer double the price of the thing sold in the event of eviction of the thing by a third person.—D. 21.2.—See EMPTIO VENDITIO, EVICTIO.

P. F. Girard, Méi de droit rom. 2 (1923) 78, 113; H. Vincent, Le droit des édiles, 1922, 154; Kamphuisen, RHD 16 (1927) 610; Coing, Seminar 8 (1950) 9.

Stipulatio emptae el vendita hereditatis. See FIDEI-COMMISSUM HEREDITATIS.

Stipulatio evictionis (or de evictione). See EVICTIO.

Stipulatio habere licere. A guaranty made in the form of a stipulatio by the seller to the buyer, to the effect that the latter would peacefully possess and use the thing sold and take proceeds from it (habere, uti frui licere).—See EMPTIO, EVICTIO.

Stipulatio in diem. A stipulatio in which payment on a fixed date is promised.

Stipulatio in faciendo. A promise through stipulatio to do something, to render certain services to the creditor. Stipulatio operis faciendo = a stipulatio concerning the construction (accomplishment) of a work. Ant. stipulatio in non faciendo = a stipulatio to abstain from doing something.

Stipulatio incerta. See STIPULATIO CERTA.

Stipulatio inter absentes. A stipulatio between persons who were not together. Such a stipulatio was void in classical law since the stipulatory question and answer were to be exchanged without interruption (inter procerentes, see STIPULATIO). Justinian
modified the rule in that if a written document stated that the parties were present, a counterproof was permitted only when both parties were in different localities on the day when the stipulatio allegedly took place.

Stipulatio judicialis. A compulsory stipulatio imposed by the judge in a civil trial on one or both parties during the second stage (apud iudicem), in order to assure the normal continuation of the trial.

Stipulatio operarum. See Opera Liberti.

Stipulatio partis et pro parte. See Partitio Legata.

Stipulatio poenae. A stipulatio concerning the payment of a penalty by a debtor if he failed to perform his obligation as agreed upon. The penalty settled in the stipulatio might serve either as a substitute for the losses suffered by the creditor (in such a case he might sue the debtor for the payment of the penalty without proving the amount of his actual losses) or as a mere penalty (poenae nomine) to be paid beside the indemnification for effective losses.—See Poena (in the law of obligations), Spontio Poenalis.

Debray, Revue générale du droit 32 (1908) 97, 217, 289; Donatini, SDHI 1 (1935) 299; Biscardi, Silen 60 (1948) 589.

Stipulatio post mortem. A stipulatio under which one promised the payment of a debt after the death of the creditor (“post mortem mean dari spondes?”) or after his own death by his heir (“post mortem tuam dari spondes?”). Such stipulations were null since neither could an heir be obligated before entering the inheritance nor could an obligation arise in his behalf. Consequently, a stipulatio by which the debtor assumed an obligation to the benefit of the heir of the creditor (“do you promise to pay my heir?”) was without any legal effect. Justinian permitted such stipulations.—See Obligatio post mortem, Mandatum post mortem, Designatio Liberti, Adstipulatio, Dies Mortis.

Roussel, Annales Faculté droit Bordeaux, Sér. jurid. 3 (1952) 7.

Stipulatio praepostera (or praepostere concepta). A stipulatio under which one assumed an immediate obligation but made it depend upon the fulfillment of a condition in the future (e.g., a promise to give today when a certain event will happen afterwards). In the classical law such a stipulatio was null, but Justinian recognized its validity; payment could be demanded after the fulfillment of the condition.

L. Mitteis, Rom. Privatrecht, 1908, 180; Archi, RISP 88 (1951) 225.

Stipulatio praetoria. A stipulatio ordered by the praetor in his capacity as a jurisdictional magistrate. Such a compulsory stipulatio could be imposed on one or both parties to a trial in order to ascertain the normal continuation of the trial and to prevent an interruption as well as to assure a certain behavior of the parties by making them assume the duty of doing or refraining from doing something. If the promise embodied in the stipulatio was not fulfilled, an ordinary action lay against the contravening party. A refusal of the praetor’s order or the absence of the party on whom the stipulatio was to be imposed led to a missio in possessionem in favor of his adversary. If the plaintiff refused to make the stipulatory promise ordered by the praetor, he lost the case through negation actionis by the praetor. The praetorian stipulations were primarily applied for procedural purposes (see Caution). They could, however, be ordered beyond a judicial trial at the request (postulatio) of the interested party. In such a case the adversary was summoned before the praetor.—D. 46.5.—See Caution amplius non agi, Caution de Rato, Caution Iudicatum solvi, Caution pro Praebe Litis et Vindiciarum.

Cug. DS 4, 1520; Anon., VDI 12; Jobbé-Duval, St. Bonfante 3 (1930) 178; v. Woess. ZSS 33 (1933) 407; A. Palermo, Il procedimento cianonale, 1942; Guarino, SDHI 8 (1942) 316.

Stipulatio pridie quam moriar. See Stipulatio cum moriar.

Stipulatio pro praebé litis et Vindiciarum. See Caution pro Praebe Litis et Vindiciarum.

Stipulatio pure facta. A stipulatio not limited by a fixed date or on condition. Ant. stipulatio in diem, stipulatio sub condicione (conditionalis).

Stipulatio rei uxoriae. See Caution rei uxoriae.

Stipulatio sortis et usurarum. A stipulatio in which the payment of both principal and interest is promised. Normally the promise of interest was made in a separate stipulatio (stipulatio usurarum).

Stipulatio sub condicione. See Stipulatio conditionalis.

Stipulatio turpis. See Turpis Stipulatio.

Stipulatio usurarum. See Stipulatio sortis et usurarum.

Stipulator. The creditor in a stipulatio. Syn. reus stipulandi. "Ambiguous stipulations should be interpreted against the creditor" (D. 34.5.26; 45.1.38.18).


Stipulatum. (Noun.) See Stipulatio.

Stipris. Descendants in a straight line from a common ancestor. When an inheritance is divided in stirpes each son of the same father receives an equal part. All descendants of a son who died before his father receive together as much as any other son alive; if they are all of the same degree of relationship with the deceased, e.g., all are grandchildren. The share of a stipris (i.e., the descendants of one son) is divided in capita (in the example mentioned among the grandchildren) in equal portions.

Stola. A garment of an honorable, married woman.

—See Matrona, Toga.

Bieber, RE 4A; Leroux, DS 4.

Strangulare (strangulatio). To strangle a person with a rope (laqueus) to death. This form of execution was forbidden under the Principate.

Pfaff, RE 4.
Stratores. In the late Empire, subaltern officers in the imperial palace who took care of the emperor's horses. The stratores were subordinates of the conus stabuli (the equerry). There also were stratores in the service of the praefectus urbi and provincial governors in imperial provinces. Superintendents of prisons were also called stratores.—C. 12.24.—See CUSTOS.

Lammert, RE 4A.

Strena. A gift donated on the occasion of a festivity, in particular on New Year's Day (e.g., Kalendis Januariis darsi solet = what is used to be given on Kalends of January), e.g., to physicians.

Strepitus. A noise, a din. In the language of the later imperial constitutions the term refers to voices of the audience in a court-room during a criminal trial. Hence it denotes sometimes a criminal proceeding.

Strictus. Rigorous, governed by precise rules.—See U'S STRIC'TUM, IUDICIA BONAE FIDEI.

Fringheim, ZSS 42 (1921) 63.

Structores. Workers (such as masons, carpenters, etc.) active in building a house or a ship. Primarily freedmen and slaves, they were organized in associations (collegia).

Hug, RE 4A; Sagio, DS 5.

Studium (studia). Study, learning. Studiorum causa = for the purpose of learning. Absence for such a reason was taken into consideration as an excuse when a person was obliged to appear before a public authority (iustissima causa = the most just cause). In a trial against a person absent for studies the praetor had to protect his interests. A stay in Rome for studies was not decisive for establishing a domicile (domicilium) since a sojourn there was considered temporary. A loan given to a filius familias for studies was not subject to the provisions of the SENATUS CONSULUM MACEDONICUM.

Studium liberale. Studies (occurrences) befitting a free man. "worthily of a noble-minded man" (as Cicero, Acad. 2.1.1, defined it) were reckoned among studia liberales. Among such professions were those of rhetorician (rhetor), grammarian (grammaticus), land-surveyor (geometra), physician (medicus), and the like. Teachers of studia liberale (praepoetores) could demand an honorarium only in a trial through cognitio extra ordinem.—D. 50.13; C. 11.19.—See PRaePETO'RES, MAGISTRI, PROFESSEORES, HONORARIUM, OPERAE LIBERAES, EDICTUM VESPASIANI.

Studiosus iuris. A person devoted to the study of law, a practicing lawyer (not a iurisconsultus endowed with ius respondendi), a juristic writer.

Stuprare. To commit a STUPRUM. The term refers only to men (=stuprator).—See the next item.

Stuprum. Illicit intercourse with an unmarried woman or a widow of honorable social conditions. Stuprum is distinguished from adultery (adulterium) where a married woman is involved. Both parties were punished by seizure of half of their property; the woman was acquitted if the man had used violence.—C. 9.9.—See MERETRIX.

Piaf, RE 4A; Lecrivain, DS 4; Guarino, ZSS 63 (1943) 184.

Stuprum cum masculo (puero). Pederyasty. Originally it was punished by death, later only with a fine of money. In the later Empire the death penalty was inflicted again.—See LEX SCANTINIA.

Piaf, RE 4A, 424; Lecrivain, DS 4, 1547.

Suadere. To give advice. The term is used of the activity of lawyer's when consulted by clients for legal advice.—See CONSILIO.

Suae aetatis fieri. Not a precise technical term. It may mean to become either maior (over twenty-five years of age) or puubes (over fourteen, see IMPUBES).

Berger, RE 15, 1862.

Suae mentis esse (fieri). To be (become) mentally sound. Ant. suae mentis (or suus) non esse = to be insane.

Suae potestatis esse. See SUI IURIS.

Suari. Swine dealers. In the later Empire they were compulsorily organized in associations, as other food merchants.—C. 1.17.

Hug, RE 4A, 469; 12, 689; Baudrillart, DS 4, 923.

Sub. (When prefixed to the title of an official) An assistant official, subordinate to the head of an office (e.g., subcurator operum publicorum, subcurator aedium sacrarum, subpraefectus, subprocurator).

Sub modo. See DONATIO SUB MODO, LEGATUM SUB MODO.

Sub potestate esse. To be under paternal power; see PATRIA POTESTAS.

Subcurator. An official of equestrian rank acting as an assistant (advisor) of a curator, e.g., subcurator aedium sacrarum (see AEDES), subcurator operum publicorum (for the administration of public buildings), subcurator aquarum (for the water administration), and others.—See CURATORES AEDUM SACRARUM, CURATORES OPERUM PUBLICORUM, CURATORES AQUARUM.

Kubitschek, RE 4A.

Subdicticus filius. A fraudulently substituted (suppositious) son. Syn. partus suppositus, subjictus. If a person instituted as his heir one whom he falsely believed to be his son and who in fact was supposititious, the institution was null if it could be proved that the testator would not have appointed him, had he known the truth.

Subdole. Deceitfully, deceptively. Syn. dolose.—See DOLUS.

Subducere. To take away by stealth, to hide. In another sense subducere = to take into account, to deduct (e.g., the proceeds one had from a thing, the quarta Falcidia).

Subhastarius. Sold at a public auction.
Subhastatio (subhastare). A public auction.—See HASTA, AUCTIO. Syn. venditio sub hasta.
Voigt, BerSchGW 1903, 13.

Subicere. To add to an agreement, a clause, e.g., concerning the liability of a party for fraud (clausula doli), or a penalty clause. In another meaning subicere = to substitute one thing or person for another (persona subiecta, see SUBDICTIUS). Subicere is used of a forged testament being substituted for the real one; see FALSUM.

Subicere falsum partum. See PARTUS SUPPOSITUS, SUBDICTIUS.

Subici. To be subject (subjectus) to one’s jurisdiction (jurisdictioni); to be exposed to a penalty (poenae); to be liable for taxes or public charges (vestigalibus, muneribus).

Subiectum nomen. A false name, the name of another person assumed for fraudulent purposes (e.g., when one buys or takes a lease under another’s name).

Subiectus partus. See SUBICERE PARTUM, PARTUS SUPPOSITUS.

Subiectus furi alieno (or alienus). Subject to paternal power; see PATRIA POTESTAS, ALIENI IURIS.

Subire. To undergo, to assume, to risk (condemnation in a civil trial, duties, charges [= onera], a guaranty). Subire poenam = to suffer, to endure a penalty.

Sublimissimus (vir). An honoriéf epithet of the highest officials in the late Empire (e.g., praefectus praetorio, magister officiorum). They were addressed by the emperor under the title “sublimitas tua” (“your excellency”). Syn. magnificentia, eminencia.

Sublimitas. See the foregoing item.

Sublugere. Refers to a lower degree of mourning (e.g., after the death of a child below three years).—See LUCTUS, TEMPUS LUGENDI.

Submittere. To substitute one thing for another. With reference to an usufruct of a herd = to replace a dead head of cattle by a new one when the herd was to be returned to the owner.—See GREX.
Kübler, RE 4A, 483.

Subnotare (subnotatio). To sign (a signature).—See SUBSCRIBERE.

Subornare. To bribe a witness to bear false testimony, to suborn, to instigate a person by bribery to commit a crime.

Subpignus. (Non-Roman term.) See FIGNUS PIGNORI DATUM.

Subpraefectus annonae. An assistant (aditus) of the praefectus annonae.
O. Hirschfeld, Kai. Verwaltungsbeamte (1905) 246.

Subpraefectus classis. A deputy commander of a fleet, subordinate to the praefectus classis.
O. Hirschfeld, Kai. Verwaltungsbeamte (1905) 228.

Subpraefectus vigilium. A deputy commander of the vigiles, subordinate to the praefectus vigilium.
O. Hirschfeld, Kai. Verwaltungsbeamte (1905) 256.

Subprocurator. An assistant procurator in an imperial province designated by the emperor for a special branch of administration (e.g., for the management of mines).
O. Hirschfeld, Kai. Verwaltungsbeamte (1905) 400.

Subreptio (subreperere). See OSREPATIO.

Subripere. To take away secretly, to steal.—See LEX ATINIA. Res subreptae = res furtivae.
Berger, RE 12, 2331.

Subripere instrumentum. To remove fraudulently a document (a testament) in order to make it impossible to produce it in court or to put a forged one in its place.

Subrogare legem. To add a supplementary provision to an earlier law.

Subscribendarius. A lower ranking official in the later Empire charged with the preparation of the draft of a decision to be made by his superior.
Enslin, RE 4A; Humbert, DS 4; Henne, Consulat 1947 (1950) 117.

Subscribere. To sign.—See TESTAMENTUM TRIPTURITUM, SUBSCRIPTIO.

Subscriptio. (From subscribere.) A signature. With regard to private documents (subscriptio instrumenti, subscriptio chirographi) there were signatures of both parties who concluded an agreement, or only of the party who assumed an obligation, and eventually of his surety. The subscriptio consisted of the name of the subscriber and a brief summary of the content of the document or of the nature of the obligation the subscriber assumed. The signatures of witnesses (testis) contained the indication that they acted as witnesses. With the increase of the use of written documents the imperial legislation issued detailed provisions concerning the signatures of the parties, the notary involved, and the witnesses. The subscription of the party became an important element in a document when its body was written by another person.
—See SUBSCRIPTIO TESTAMENTI, SUPERSUBSCRIPTIO.
Kübler, RE 4A; Lécrivain, DS 4.

Subscriptio. (In a criminal trial.) A written accusation (see INSCRIPTIO) or an oral accusation written down in the records of the competent office and signed by the accuser. The accuser and those who signed the accusation together with him to support the accusation = subscriptores.—C. 7,57.
Kübler, RE 4A, 490; Kleinfeld. ibid. (i.e. subscriptores).
Riccobono. ZSS 34 (1913) 246; Wlassak. Anklage und Strenbebefestigung, Schw. 184, 1 (1917) 89.

Subscriptio. (In military administration.) The signing of documents concerning the distribution of food among soldiers by the officer involved.—See SUBSCRIBENDARIUS.

Subscriptio censoria. See NOTA CENSORIA.
Kübler, RE 4A, 490.

Subscriptio principis. A signature of the emperor. When written at the foot of a petition addressed to him, it was a kind of an imperial rescript (rescriptum
principis) since it was the emperor’s answer to the petition (*proces, libellus*). The petition provided with the answer and the emperor’s signature was publicly exposed. The petitioner received a copy at request.

Premester, RE 13, 39; Kübler, RE 4A, 399; De Dominici, RendLomb 83 (1950).

**Subscriptio testamenti.** The signature of the testator on a written testament, which was valid under praetorian law, was not necessary when the will was sealed by seven witnesses. However, when the testator re-warded the writer of the testament, he had to confirm the pertinent disposition with his own hand. See *Senatusconsultum Libonianum.* Forcery of a signature in a testament or another document was under pain of the penalties of the *Lex Cornelia De Falsis.*—See *Superscriptio.*

Kübler, RE 4A, 493; Macqueron, RHD 24 (1945) 160.

**Subscriptor.** One who subscribed (a document, a testament).—See *subscriptio,* in a criminal trial.

Kleinfeiler, RE 4A.

**Subsellium.** A bench used in court or in certain offices. It was lower than the *SELLA CURULIS,* which was the privilege of higher magistrates only. Judges in criminal trials (*quaestiones*) were seated on *subsellia* and so were also the accuser and the lawyers. Hence *subsellium* is used sometimes to mean a court. Plebeian tribunes and aediles had no right to a *sella curulis* and could use only a *subsellium.*

Hug, RE 4A; Chiapol. DS 4.

**Subsidere.** To remain. Used of legacies which the legatee refused to accept and which therefore remained with the heir.

**Subsidiarius.** See *actio subsidiaria.*

**Subsidium.** Help, assistance. The term is used of legal remedies granted to a person in order to save him from a loss (e.g., an action, an exception, an interdict, a *restitutio in integrum*).

**Subsignare.** To sign, to subscribe (syn. *subscribere*), to seal (syn. *signare*).—In another meaning *subsignare* = to give a landed property to the state or a municipality as security for obligations owed them (e.g., to collect taxes, to construct a building). In constitutions of the later Empire, *subsignare* is used for setting up real securities in general.—See *praedia subsignata.*

Hardy, *Three Spanish charters,* 1912, 78.

**Subsistere.** To defend oneself or another in a trial against an adversary. See *laude auctorem.* When used of a legal act (e.g., a testament, a judicial judgment) = to be valid.

**Subsortitio.** A supplementary selection of a juror in a criminal trial if after the selection (*sortitio*) of jurors for a specific trial a seat became vacant by death or election of a juror to a magistracy).—See *album iudicum.*

Kübler, RE 4A; Ehrenberg, RE 13, 1495.

**Substantia.** The substance, the essential nature or function, social or economic, of a thing (*substantia rei*) or of a legal transaction (*substantia empiosis, obligationis*). In several constitutions by Diocletian the word is strengthened by the addition of *veritatis* (= the true nature of a legal transaction). *Substantia* also refers to the entire property of a person (e.g., *substantia paterna* = the father’s property) or to an inheritance as a whole (*substantia hereditatis, substantia defuncti.* *Substantia* was a favorite term of the imperial chancery and occurs in interpolated passages.—See *error in substantia, ususfructus.*


**Substituere.** To appoint, to substitute one person in the place of another (e.g., a representative in a trial, a guardian, a curator). The term was of particular importance in the law of successions.—See the following items.

**Substitutio.** The appointment of another heir by a testator in the event that the heir first instituted did not take the inheritance either because he would not or could not do so. The heir instituted in the second place = *heres substitutus, heres secundus.* Several heirs could be substituted to the heir first appointed, and one person to two or more heirs. Likewise the heirs first instituted could be reciprocally substituted one to the other (*substitutio mutua, reciproca*) and a *heres tertius* (a third heir) to the *heres secundus.* Through a *substitutio* the testator saved the validity of the testament which would have become void if the heir first appointed did not accept the inheritance.

Syn. *substitutio vulgaris* (= ordinary *substitutio,* to be distinguished from *substitutio pupillaris.*—Inst. 2.15; D. 28.6; C. 6.25; 26.


**Substitutio duplex.** A *substitutio vulgaris* (see *substitutio*) combined with a *substitutio pupillaris.* It occurred when a testator appointed a third person as a substitute to a child in his power and below the age of puberty (*impubes*) for the event that the child might die before him (i.e., the testator) or before puberty after becoming heir. In the later development (still in classical law) it was held that a pupillary *substitutio* implied automatically an ordinary *substitutio* (*substitutio vulgaris*) unless the testator disposed otherwise. Ant. *substitutio simplex* = a *substitutio* limited by the testator to one of the two basic forms of *substitutio.*—See *substitutio, substitutio pupillaris.*

**Substitutio mutua.** See *substitutio.*

**Substitutio pupillaris.** The appointment of a substitute by the father for his child instituted as an heir in his testament. The substitute became heir if the child, after the acceptance of the inheritance, died
before reaching puberty, i.e., before being able to make a testament. Through *substitutio pupillaris* the father provided in his testament for a successor to his child. *Substitutio pupillaris* was permitted only in the father's testament, and then only along with the institution of the child as heir in the first place. See, however, *testamentum pupillare*. Justinian introduced a new form of *substitutio*, modeled on the *substitutio pupillaris* (*ad exemplum pupillaris substitutio*, C. 6.26.9) for use with insane descendants. The father could appoint an heir for his insane descendant to succeed in the event that the latter did not recover sanity. This form of *substitutio* is called in the literature *substitutio quasi pupillaris*. The testator (father or mother) had, however, to appoint first a nearest relative of the insane, and only in the absence of relatives could he appoint an heir of his own choice.—Inst. 2.16; D. 28.6; C. 6.26.—See CURIANA CAUSA.

La Piria, St Bonifante 3 (1930) 271; Wolff, St Ricobono 3 (1936) 437; Vazzy, BIDR 46 (1939) 68, 67 (1940) 31; B. Biondi, *Successione testamentaria* (1943) 252; Consentini, *Ann. di dir. comp. e di st. legislativi* 22 (1946) 152; Perrin, *RHD* 47 (1949) 335, 318; *idem, in Varia, Et de droi rom.*, *Publications de l'Institut de droit rom.*, *de l'Univ. de Paris*, 9, 1952) 267.

*Substitutio quasi pupillaris.* See *SUBSTITUTIO PUPILLARIS*.

*Substitutio reciproca.* See *SUBSTITUTIO*.

*Substitutio simplex.* See *SUBSTITUTIO DUPLEX*.

*Substitutio vulgaris.* See *SUBSTITUTIO*.

*Subtilitas legum.* In the language of Justinian's constitutions, severity, rigorous formalities of the earlier law. The expressions *subtilis, subtilitas*, and *subtiliter* when used with regard to ancient law to stress its rigidity, are frequently interpolated.


*Subtrahere.* To take away, to remove. The term is used in connection with theft. *Se subtrahere* = to withdraw illegally from public services (*munera, military service*).

*Suburbanum praedium.* A plot of land located in the vicinity of a city. Its possibilities for economic exploitation decided whether it qualified as urban (*praedium urbanum*) or rustic land (*praedium rusticum*). *Praedia suburbana* were among the landed properties the sale of which by a guardian was prohibited by the *Oratio Severi*.

*Suburbariae regiones.* Territories bordering on Rome. They are mentioned in a few constitutions of the Theodosian Code. They are not specific administrative units.—See VICOVITIO IN URB.

*Subvas.* See *VAS*.

*Subvenire.* To come to the aid. Used of judicial remedies granted primarily to persons who in particular situations or for specific reasons deserve such help. The term refers to *restitutiones* in *integrum* and exceptions.

Succedere (*successio*). To succeed, to take the place of a person either as his successor in office or as his heir. In the latter case a person (*successor*) enters into the legal situation of a defunct person (*succeedere in ius, in locum, in ius et locum defuncti*) both as creditor and debtor in all his legal relations except those which are extinguished by death (as, e.g., *mandatum, societas*) or are merely factual, as *possessio*. In postclassical and Justinian's law the terms *succeedere* and *successio* were extended to cases in which one succeeded in one specific relationship of the deceased (*succeedere in rem, in singulas res, in rei dominium = in the ownership of one thing*) which is opposed to *successio in universum ius* (*in universum dominium, in universa bona = in the whole property*). It is generally accepted that the definition of successors, preserved in the Digest (39.2.24.1a): “successors are not only those who succeed to a whole property, but also those who succeeded in the ownership of one thing are covered by this term,” is an interpolation by Justinian's compilers. *Succedere hereditario iure = to succeed as an heir. Successio indicates at times the right of succession, and it is used as a collective term embracing all heirs (descendants) of a person.—Inst. 3.2; 5; 7. C. 6.59.

—See UNIVERSITAS, SUCCESSOR, HEREDITAS, BONORUM POSSESSIO, HERES, SUCCESSIO IN UNIVERSUM IUS.


Successio graduum. See BONORUM POSSESSIO INTESTATI, EDICTUM SUCCESSIONUM.

De Crescenzi, *NDI* 12, 960.

Successio in locum prioris creditoris. Succession into the place of a prior creditor. It happened when the same thing was hypothecated successively to several creditors; see HYPOTHECA. A creditor earlier in date had priority over creditors to whom the thing was hypothecated later. Renunciation by one creditor or extinction of his claim (e.g., by payment) caused the creditor next in order to enter in his place. Such a succession could also be agreed upon between two creditors.—D. 20.4; C. 8.18.—See IT'S OFFERENDI PECUNIA, POTIOR IN PIGNORE.

Successio in possessionem (possessio). Succession into the possession of a thing. In the case of succession through inheritance an heir did not automatically succeed in possession through the acceptance of the inheritance (see ADITIO HEREDITATIS). He had to take physical possession of all things belonging to the estate (*res hereditariae*). This gave him the opportunity to continue and complete the usucaption of individual things if their possession by the defunct person satisfied the conditions of usucapio.

—See ACCESSIO POSSESSIONIS, USUCAPIO.
Successio in universum ius. See succedere, universitas.—For universal succession in the property of a living person, see adrogatio, bonorum venditio, conventio in manum.

Catalano, AmCat 1 (1947) 314.

Successio ordinum. See bonorum possessio intestatti, edictum successorium.—D. 38.15.

De Crescenio, ND1 12, 960.

Successio in usu cacipionem. See successio in possessionem, usucapio.

Successor. One who succeeded another in office or as his heir.—See succedere.—C. 10.63.

Successor honorarius. A person who inherited another’s property according to praetorian law, either under a testament valid according to praetorian law or according to the order of succession on intestacy established in the praetorian edict.—See bonorum possessio, edictum successorium.

Successor legitimus. An heir inheriting under ius civile. Ant. successor honorarius, praetorius.

Successor praetorius. See honorarius.

Successores ceteri. All other successors who inherit beside heredes and bonorum possessores. Wherever the successores ceteri appear along with heredes or with heredes and bonorum possessores the expression successores ceteri is interpolated. Through this addition the compilers wished to extend certain legal rules applicable to heirs, to other persons who under any title acquired another’s property.

Longo. BIDR 14 (1902) 150; Guarnieri-Ciati, Indice (1907) 17.

Successorium edictum. See edictum successorium.

Succidere. See actio arborum furtum caesarum.

Succurrere. To help. The term is used of procedural measures (exceptions, resitiutio in integrum) by which the praetor saved persons who for special reasons (e.g., minor age) deserved protection from losses. Syn. subvenire.

Suffectus. A magistrate (e.g., a consul) elected to fill a vacancy which occurred during the service year.

Kübler, RE 4A.

Sufferre. To bear, to undergo, to suffer (losses or penalties) either a pecuniary fine through a decision of a magistrate (see multa) or a penalty to be paid in accordance with an agreement for default in fulfillment of an obligation (see poena) or, in a civil trial, the disadvantage of a litis aematio.

Sufficere. To suffice. Often used of an action or another procedural remedy available to a person for putting forward his claim.

Suffragator. One who used his influence to support another in an electoral campaign for a magistracy, or one who intervened with the emperor in favor of another person. Any such action = suffragatio.—See suffragatum.

Kübler, RE 4A.

Suffragium. A vote, the right to vote. Suffragium refers to both the vote in popular assemblies (comitia) and in criminal courts (quaestiones). For abbreviations used see a, c, u.r. To start voting = suffragium iniur, ferre.—C. 4.3.—See civitates sine suffragio, tabellae, ius suffragii, leges tabellariae, rogator, diribito.

Kübler, RE 4A; Saggio, DS 4; De Marchi, La sincerité del voto nei comizi rom., Rend.Lomb 1912, 653; G. Rotondi, Leges publicae populi Rom. (1912) 19; Fraccaro, La procedure del voto nei comizi, ATor 49 (1913/14) 600.

Suffragium. (In the later Empire.) Recommendation of a person to the emperor or a high official for an official position or a special privilege. The person on behalf of whom the suffragator intervened usually promised an honorarium for the service rendered; the pertinent agreement = contractus suffragii. An imperial constitution of AD. 394 ordered that such a promise had to be made in the solemn form of a sponsio (C. 4.3.1). Suffragium is also used of gratuitous recommendations or interventions on behalf of another.—C. 4.3.—See suffragator.

Kübler, RE 4A, 657.

Suggere. To advise, to prompt, to suggest. The verb occurs in texts suspected of interpolation. It is rare in classical language, but frequent in imperial constitutions.

Guarnieri-Ciati, Indice (1927) 84.

Suggestio. A query or a report presented by a lower official to a higher one or to the emperor. The term is used primarily in imperial constitutions.

Sui. (In a general meaning.) The next relatives of a person; persons living in the same household under the one head of the family.—See suus.

Sui iuris (esse). To be legally independent, not under the paternal power (patrœ potestas) of another. Syn. suae potestatis esse. Ant. alieni iuris.—See suus.

Suicidium. A suicide. See consciscere sibi mortem, liberae mortis faciatis. “A soldier who attempted to commit suicide and did not succeed, is to be punished by death unless he wanted to die because of unbearable pains, sickness, affliction (mourning), or for another reason; in such cases he is to be dishonorably discharged” (D. 48.19.38.12).

Sumere arbitrum (judicem). To take an arbitrator or judge by common agreement of the parties involved in a controversy.—See compromissum, iudex.

J. Mazeaud, La nomination du iudex unus, 1933, 121.

Sumere poenam (supplicium). To exact punishment (e.g., the death penalty).

Summa. An enactment by Justinian through which the first Code (see codex iustinianus) was promulgated (April 16, 529). The constitution starts with the words summa rei publicae.

Summa. See in summa.

Summa (pecuniae). A sum of money; the term is frequently connected with a noun indicating the origin or nature of the obligation (summa debiti, sacramenti, sponsiosis, dotis, condemnationis, etc.).
Summa honoraria. See HONORARIUM.

Kübler, RE 4A.

Summa Perusina. A summary of imperial constitutions from the first eight books of Justinian’s Code, entitled Adnotationes Codicrum Domini Iustiniani. The author of the Summa which was written in the seventh or eighth century and is preserved in one manuscript (now in Perugia), is unknown.

Editions: Heinbach, Anecdota 2 (1840); Patetta, BIDR 12 (1900).—Monti, NDI 12, 1; M. Conrat, Gesch. der Quellen und Literatur des röm. R. im frühen Mittelalter (1891) 182; Besta, Atti Accad. Palermo 1908.

Summa res. See Summae rationes.

Summae. Called in the literature brief abstracts (summaries) of Justinian’s Digest and the Code which were written in Greek by Byzantine jurists soon after the publication of Justinian’s codification to make the large legislative works more easily accessible to practitioners.—See INDEX.


O. Hirschfeld, Kais. Verwaltungsbeamte (1903) 32.

Summatim cognoscere. A summary, simplified procedure applied in the cognitio extra ordinem in specific civil cases when a speedy investigation of the matter (e.g., when alimony was sought) was desirable. With the cooperation of the parties the course of the proceedings was hastened. Summatim rem exponere is used of lawyers who briefly summarized the case in court.

Wlassak, RE 4, 213; Biondi, BIDR 30 (1921) 220; H. Krüger, ZSS 45 (1925) 39; Wenger, Institutes of the R. civil procedure (1940) 324.

Summum excludere. To exclude (e.g., from an inheritance or guardianship). The principal application of the term is with reference to procedural exceptions (see exceptio) when the plaintiff’s claim is successfully opposed by the defendant’s exceptio.

Summum supplicium. The death penalty. Syn. ultimum supplicium.—See SUPPLICIUM.

Summus. The highest. The superlative is primarily used of institutions and things that pertained to, or were connected with, the emperor.

Sumptu publico. At the expense of the state or a municipality.—See sumptus.

Sumptuariae leges. See the following item.

Sumptus. Generally all kinds of expenses (syn. impen sae), also those which one incurs for another in contractual relations or other legal situations. See NEGOTIATORUM GESTIO, POSSESSOR BONAE FIDELIS. In a specific sense sumptus = expenses connected with a luxurious life. In the Republic a series of statutes were issued in order to suppress the increasing luxury in Roman life (leges sumptuariae). They prohibited luxurious clothes for women, the excessive use of jewelry, and prodigality in banquets and feasts. The legislation apparently was not successful since the prohibitions, combined with high taxes, were frequently repeated. See LEX AEMILIA, FANNA, OPPIA, ORCHIA. Luxurious funerals were also repeatedly prohibited, first by the Twelve Tables. Later on, the censors frequently intervened with prohibitions. The last lex sumptuaria was lex Iulia sumptuaria by Augustus.

Kübler, RE 4A; Lecrivain, DS 4; G. Longo, NDI 7 (s. e. leges sumptuariae); Richter, NDI 12, 1 (s. e. sumptuariae leges); E. Giraudias, Études historiques sur les lois sumptuaires (These Poitiers, 1910); G. Rotondi, Leges publicae populi Rom. (1912) 98.

Sumptus funeris (in funus). See sumptus, actio funeraria, impen sae funeraria.

Sumptus litis (in litem). The emperor Zenon (C. 751.5, A.D. 487) introduced a general rule that anyone who was defeated in a trial, plaintiff or defendant, whether he was in good or bad faith, had to pay the victorious adversary the expenses connected with the trial. Syn. expensa litis.—C. 75.11.—See CALUMNIA, POENA TEMERE LITIGATIUM.

Chiovenda, BIDR 7 (1894) 275; idem, RISG 299 (1898) 3. 161; H. Erman, Restitution des frais de procès en dr. rom., Lausanne, 1892.

Sumptum ludorum. Expenses connected with the arrangement of public games.—See LUDI, SENATUS-CONSULTE DE SUMPTIBUS LUDORUM MINUENDIS.

Sumptus muneris. Expenses connected with the fulfillment of public charges (munera). If a person was assigned a certain public service together with others, but he alone fulfilled the duties imposed, the others who failed to cooperate had to reimburse him for the expenses he incurred on their behalf.—C. 11.38; 10.69.

Suo nomine. See nomine.

Supellex (suppelllex). Household goods.—See LEGATUM SUPPELLECTILI.—D. 33.10.

Super. When followed by an ablative it is syn. with de. A Grecism frequently occurring in the language of the imperial chancery and in interpolated passages. Guerner-Citati, Index (1927) 85.

Superare aliquem. (When referring to a civil trial.) To be victorious over one’s adversary, to win the case. With reference to a criminal trial = to establish the guilt of the accused, to convict.

Superexactio (superexigere). See exactio.—C. 10.20.

Flore, St Bonfante & (1930) 345.

Superficiaris aedae. A building built on leased land. It belongs to the owner of the land.

Superficarius. (Noun.) One who has the right of superficies on another’s land.

Superficarius. (Adj.) An immovable, land or building, encumbered with the right of superficies on behalf of a person other than the owner.—See superficies.
Superficies. All that is connected with the soil whether it comes out from it (trees, plants, etc.) or is built upon it. All this "goes with the soil" (superficies cedit solo, Gaius, Inst. 2.73, D. 43.17.3.7), i.e., it becomes property of the owner (see inaedificatio, plantatio, satio) even if the material used for constructions, plants, seed, etc., belongs to another person.—Superficies as a right over another's property = the right to use all that is on the surface of another's land. The origin of superficies as far as buildings are concerned, arose from arrangements made between the owner of a given piece of land and the constructor of the building thereon (first on public land, later on private property). Under such agreements the builder acquired a right similar to that of a lessee (see locatio conductio rei), but perpetual and hereditary. The superficiarius (= the person entitled to superficies) had a specific legal situation not only with regard to the owner of the land (to whom he paid an annual rent, solarium) but also to third persons against whom he was protected by a special interdict (interdictum de superficiebus). In later development certain other actions were granted the superficiarius, actions which normally were available to owners only. In Justinian's law the superficies appears as a fully developed institution, as a strong right on another's property, protected by legal means analogous to those which were granted to the owner. The development of the superficies, though doubtful in details, shows the transformation of the institution from a merely obligatory relationship to a real right (ius in re aliena) over another's property endowed with nearly all advantages which resulted from ownership.—D. 43.18.

—See AEDES, USUSFRUCTUS, POSSESSIO AD INTERDICTA.

Riccoboni, Am.Pal 3-4 (1917) 508; Wenger, Philologus 42 (1933) 254; C. A. Maschini, La concezione naturalistica (1937) 284; idem, St Arango-Ruiz 4 (1953) 135.

Superficium. See superficies.

Superfluus. Unnecessary, superfluous. An imperial constitution (C. 6.23.17) pointed out the distinction between necessary and unnecessary clauses in a contract or testament. The omission of necessary clauses which are required for the validity of the act invalidated it whereas the addition of superfluous details because of exaggerated cautiousness did not since "superflua non nocent" (= superfluous additions do no harm).

Superindictio (superindictum). In the later Empire an extraordinary additional charge or tax levied when the normal taxes or public charges (munera) did not suffice. A superindictio was primarily decreed in war time. The owners of large estates (possessores) were the first to be charged with superindictio.—C. 10.18.—See INDICTIO.

Enslin, RE 4A; Lecrivain, DS 4; Thibault, Rev. générale du droit, de la législation 24 (1900) 112.

Superior. In the official hierarchy higher in rank. Superius imperium = the power of a magistrate higher in rank; see IMPERIUM. Ant. inferior.

Superiores. Relatives in ascendant line.—See GRADUS.

Supernumerarii. In the later Empire, see MINISTRI CASTRENSES.

Superscriptio. The signature of a person placed on a document alongside its seal (nomen adscribere).

Such an additional signature was required in testaments.—See SUBSCRIPTIO.

Supersedere. To neglect, to omit. The term is used of failure in fulfilling one's duties and of omission of certain required procedural measures in due course.

Honig, Fl G. Schmidt 1 (1932) 21.

Superstitio. Used of religions other than the Roman. Thus the emperors Severus and Caracalla spoke of superstition Judaica (D. 50.2.3.3). To Christian emperors any non-Christian religion was superstition (haeretica, paganorum, Judaica, etc.).—In the later Principate the profession of new religious doctrines "by which human minds are perturbed" (Paul. Sent. 5.21.2) was treated as a capital crime for which persons of higher social classes (Honestiores) were punished with deportation.—Superstitio also occurs in the meaning of an excessive, superstitious fear of a divinity in a rescript of the emperor Marcus Aurelius (D. 48.19.30) by which a person who "made weak-minded individuals terrified by a superstitious fear of a deity" was to be punished with deportation to an island.—See APOSTATA, CHRISTIANI, HAERETICI, IUDAICI.

Pfaff, RE 4A; Mommsen, Religionsfrevel, Jurist. Schriften 3 (1907, ex 1890) 389; Martroye, RHD 9 (1930) 669.

Superveniens. See MALA FIDES.

Supervivere. To survive.—See COMMORMENTES.

Suppleare. To complete, to make full (e.g., usuaptionem, fideicommissum, aetatem, tempus, numerum).


Suppleare ius civile. See IUS HONORARIUM.

Supplicatio. A petition directly addressed to the emperor with a request for his decision in a judicial matter. Syn. libellus, preces. The supplicatio developed in later times into an appeal when a petitioner asked the emperor for a renewed examination in a matter in which normally no appeal was permitted (e.g., from judgments passed by praetorian prefects).—C. 1.19.

Arango-Ruiz, BIDR 49/50 (1947) 55.

Supplicaciones. Bloodless sacrifices performed by private persons at home. Supplicaciones also were sacrifices celebrated by the whole nation and arranged by public authorities in order to ask aid of the gods in times of national calamity or to thank them in the case of a happy event.

Wasiowa, RE 4A; Toutain, DS 4; Rose, OCD.

Supplicium. Death, death penalty, penalty in general. For the kinds of execution, see POENA.


Supplicium fustuarium. See FUSTUARIUM SUPPLICIUM.

Supplicium servile. See SERVILE SUPPLICIUM, CRUX. Supplicium summum. See SUMMUM SUPPLICIUM.

Supplicium supremum. See SUPRENUM SUPPLICIUM.


Supponere. In later imperial constitutions to give a creditor a thing as a pledge.

Supponere partum. See PARTUS SUPPOSITUS. Syn. subicere partum.—See SUBDICTICIUS.

Supposita persona. See INTERPOSITA PERSONA.

Suppressio. See SUPPRIMERE SERVUM ALIENUM.

Supprimere (suppressio). To conceal, to hide a thing in order to defraud another (a creditor, the fisc), to embezzle.

Supprimere servum alienum. To conceal another’s slave. The wrongdoer was guilty of PLAGIUM and was punished under the LEX FABIA.

Supprimere tabulas (testamentum). To conceal a testament (or a codicil) to the detriment of the heir instituted therein (or a legatee). See INTERDICITUM DE TABulis EXHIBENDIS. A slave who believed himself to have been manumitted in a testament concealed by the heir in order to frustrate the manumission, was permitted to accuse the latter on that charge (accusatio suppressi testamenti).

Supremum supplicium. The death penalty.

Supremus. Last, final. When connected with a noun referring to the will of a person (suprema voluntas, supremum iudicium, supremae tabulae, supremae preces) or simply suprema (plur. neut.) = a testament.—See IUDICIIUM SUPREMIUM, VOLUNTAS SUPREMA.

Surdus. Deaf. A deaf person could not promise by stipulatio nor accept a stipulatory promise because he was unable to hear the question or the answer. He was excluded from personal participation in oral transactions and from being a witness thereto. A person hard of hearing (tardc exaudire) is not considered surdus.—See CURATOR MUTI, TUTOR.—D. 37.3.

Susceptor (susceptio). (From SUPPlicERe.) In the financial administration of the later Empire = a collector of taxes in money or in kind (grain, wine = susceptor vini, clothes = susceptor vestium).—C. 10.72; 11.17.

Lammert, RE 4A.

Suscipere. In financial administration of the later Empire, see SUSCEPTOR.

Suscipere. In contractual and obligatory relations, to assume a unilateral obligation (e.g., mandatum, depositum, commodatum), to incur a debt (suscipere mutuum, suscipere aequum alienum). Suscipere obligationem = to assume an obligation as one’s own or for another (suscipere obligationem alienam) by releasing the principal debtor or as his surety (fideiussor).

Suscipere actionem (iudicium, litem). In civil trials, when referring to the formulary procedure, this is synonymous with accipere iudicium (see LITIS CONTESTATIO). With reference to the procedure through cognitio extra ordinem the term indicates that the defendant assumed the role of the plaintiff’s adversary in the trial. Suscipere defensionem = to assume the defense of a defendant.

Suscipere filium (liberum). To beget a child. Susci = to be born (susceptus). Suscipere filium alienum = to adopt another’s child.


Suscipere servum alienum. To give harbor to a slave who had left his master. Keeping the slave secretly (celare, supprimere) against the will of his master was considered a crime (see PLAGIUM) and punished under LEX FABIA.—See SUPPRIMERE SERVUM ALIENUM.

Suspectus. See HERES SUSPECTUS, SATISDATIO SUSPECTI HEREDITIS, TUTOR SUSPECTUS, IUDEX SUSPECTUS, SUSPECTUS REUS.

Suspectus reus. A person suspected of having committed a crime. A slave suspected of a crime could be submitted to torture in order to obtain his confession if other evidence was not available.—See TORMENTA, SUSCPIO.

Suspendere (laqueo). To hang a person with a rope.

See LAQUEUS, FURCA. This kind of punishment was practiced on slaves by some masters. The death of the slave was treated as homicide (homicidium).—C. 9.14.

Suspensa. Syn. res suspensae. See ACTIO DE DELECTIS.

Suspensus sub condicione. See CONDICIO, IN SUSPENSO ESSE.
Suspicio. Suspicion. The emperor Trajan ordered that "no one should be condemned on the ground of suspicion alone" (D. 48.19.5).

Sustinere. To undergo (an accusation or a punishment), to suffer (losses), to be liable (for a debt, expenses, etc.). Sustinere actionem (judicium). To suspend proceedings and judgment in a trial until a preliminary (prejudicial) question was cleared up. If, e.g., a noxal action (see actio noxalis, noxia) was brought against a master for a wrongdoing committed by his slave while a proceeding concerning the slave's liberty was pending, the noxal trial was to be suspended until the status of the slave was established.—See dilatio.

Sustinere partem actoris (rei). To assume the role of the plaintiff (or defendant) in a trial. Sustinere personam aliquam = to represent a person. Thus, a tutor or a curatores represents the ward; an inheritance represents the personality of the defunct (personam defuncti sustinet).

Suum. All that belongs to a person, his whole property. The plural sua is also used in the same sense. Suum sometimes means only what is due to a person (swum petere). Suum facere aliquid = to acquire ownership of a thing.

Suum aes. See aes alienum.

Suum cuique tribuere. See ius.

Suus. See sui, suis iuris, suae potestatis, suae aetatis, suae mentis. Suus is often used for heres suis.

Suus et necessarius heres. See heres suis et necessarius.

Suus heres. See heres suus.

Suus index. In the language of the imperial chancery a judge designated by law to decide upon a specific case.

Symbolum. A sign of recognition (e.g., a ring = annulus), a proof of authorization (a document, provided with a seal). A messenger of a creditor had to prove by a symbolum to the debtor that he was authorized to receive payment.

Bickermann. RE 4A, 1088.

Synallagma. Indicated in Greek law any agreement from which an obligation arose. In Roman sources it acquired a somewhat different meaning, referring only to agreements from which reciprocal (bilateral) obligations of both parties originated (D. 2.14.7.2; 50.16.19); the authenticity of the two texts is, however, controversial. In postclassical and Justinian's law synallagma is synonymous with contractus.


Syndicus. A representative of a public or private corporate body (civitas, municipium, collegium). The term is of Greek origin. Syn. actor.

Seidl, RE 4A, 1333; Chapot, DS 4; Albertario, Studi 1 (1933) 121.

Syngraphe. In classical law a form of literal obligation (see Litteratum obligatio) contracted between peregrines (Greeks) or between a Roman and a peregrine. The term and the institution came into Roman legal life early through the commercial relations between Rome and Greece. A syngraphe was written in two copies and signed by both parties; each kept one copy. It is doubtful whether a syngraphe was valid if the obligation assumed therein by a party was not based on a real transaction.

Kunkel, RE 4A, 1384; Beauchet, DS 4; Moschella, NDJ 12, 1, 1240.

Synopsis Basilicorum. A collection of brief abstracts from the basilica, composed in alphabetical order by an unknown author in the tenth century. The text is preserved in several manuscripts which suggests that the collection was widely used. The Synopsis is important for the knowledge of the missing parts of the basilica. The title of the collection is "Elegio and Synopsis of the sixty books of the basilica with references thereto, arranged alphabetically." From this Synopsis, termed in the literature Synopsis Maior, a lesser abstract, also in alphabetical topical order was composed about the beginning of the thirteenth century under the title Nomimon kata stoichiaion (= a legal book in alphabetical order). The latter is called Synopsis Basilicorum Minor.


Tabelliae. Wax covered wooden tablets on which the voters in a popular assembly recorded their vote in legislative and jurisdictional matters through appropriate abbreviations, such as A. C. U.R. In elections of magistrates votes also were made on tablets on which the names of the candidates were inscribed. The pertinent rules concerning the use of tablets in voting = leges tabelliae.

Liebenam. RE 4. 692; Lafaye, DS 5 5.

Tabellariae leges. See tabellae, leges tabellariae.

Tabellarius. A messenger (courier) charged with the delivery of private letters (tabellae). The term seems to have been applied also to officials of the cursus publicus (post service) concerned with the movement of the official correspondence.—See statio.

Schoff, RE 4A; Lafaye, DS 5.

Tabellio. A private, professional person who drew up written documents for private individuals. The jurists and lawyers advised their clients about legal problems; the tabelliones assisted them in writing legal documents (testaments, transactions) and applications (libelli, preces) to be addressed to the emperor or higher officials. The tabelliones exercised their profession on public places (fora, markets) or in offices
(stationes) assisted by clerks and secretaries (scribae, notarii). Their activity was controlled by governmental officials who were authorized to inflict penalties for fraud or negligence or for cooperation in illicit transactions. Justinian required every tabellio to obtain official permission (auctoritas), and settled rules about the formalities to be observed by a tabellio in his work (C. 4. 21. 17, A.D. 528, Nov. 44). In the case of a dispute between the parties, the tabellio was obliged to testify about the conformity of the document with the transaction concluded with his cooperation.—The ceiling-price schedule issued by Dio-
cletian (see Edictum Diocletiani de Pretiis) fixed the fees to be paid to a tabellio, by the lines of the written document.—See instrumentum, tabula-
rius.

Sachera, RE 4A: Lécivain, DS 5; Rota, NDI 12; M. Tardy, Les tabelliones romains (Thèse Bordeaux, 1901); T. Piaff, Tabellio und Tabularius, 1905; H. Steinaeker, Die antiken Grundlagen der frühmittelalterlichen PrivatUr-
kunde (1927) 79; A. Segre, BIDR 35 (1927) 87; J. C. Brown, Origin and early history of the office of notary (Edinburgh, 1936) 17; Berger, Journ. of Juristic Papyrol-

Tabernae. A shop used for the sale of merchandise or for an industrial or commercial activity. Taberna argentiaria = a banker’s shop. Usually, tabernae were built by private individuals on public ground along streets and roads or in the vicinity of marketplaces, with the permission of local authorities. The builder was permitted to transfer the use of the taberna to another person.

Schneider, RE 4A, 1864; Kübler, ibid. 929; Chapot, DS 5.

Tabernarius. The owner of a Taberna. Tabernarius
(or tabernaria) was also the keeper of an inn-tavern.

Schneider, RE 4A.

Tabula (tabulae). A tablet used for writing, in both public and private life. See Tabulae ceratae. The administration used tabulæ of bronze or of wood covered with white paint (see album) for public announcements, such as publication of laws, the praetorian Edict, and imperial enactments (see promulgatio) and in public offices for records, registration, accounting books, documents, etc. See Tabulæ publicæ. In private life the use of tabulæ (in the plural, since normally two tablets were joined to-
together, see diptychum) was widespread: in the household for notes on income and expenses (see codex accepti et expensi), for records of the family history, in banking for account books, and generally for all kinds of transactions and legal acts. Thus the term tabula occurs in connection with the pertinent contractual relation (tabula emptionis, tabula cautionis, tabula contractus, tabula chirographi, and the like). The most frequent use is tabulae testamenti = a testament.—See testimonia per tabulas.

Sachera, RE 4A: Lafaye, DS 5; H. Steinaeker, Die antiken Grundlagen der frühmittelalterlichen Urgunde (1927) 82.

Tabula Bantina. See Lex Latina tabulæ Bantinae.

Tabula Hebana. See destinatio.

Coli, Parola del Passato 6 (1951) 433; idem, Iwra 3 (1952) 90; Staveley, AmPhiloi 74 (1953) 1.

Tabula Heracleensis. See lex Iulia municipalis.

Tabula picta. See pictura.

Tabulæ censoriae. Registers made by the censors during the registration of the population (see census). The tabulæ censoriae, also called libri censorii, were first preserved in the censors’ office, but were later transferred to the state archives (see aerarium). Tabulæ censoriae actually comprised all documents connected with the activity of the censors, in particular the contracts concluded by them with private persons (contractors) concerning professional services rendered to the state.—See Censores, tabulæ uniorum.

Tabulæ ceratae. Wooden tablets covered with wax on which writing was done with a stylus. Syn. tabulæ ceracae. On the use of such tablets for documents, see tabula, diptychum, triptychum. Many such tablets have been preserved in the mines of Transylvania Pompei, and in Herculanum.

Lafaye, DS 5, 12; Editions in the Corpus Inscriptionum Latinarum and in the collections of pre-Justinian sources (Fontes, see General Bibliography, Ch. XIII), the most recent one by Arango-Ruiz, FIR 3 (1943). For the wax tablets of Herculanum: Maiuri, La parola del passato 1 (1946/7) 373, 8 (1948) 165; Pugliese-Carratelli, ibid. 1, 379; Arango-Ruiz, ibid. 8 (1948) 129; idem, RIDA 1 (1948) 9; F. Krüger, Gesch. der Quellen (1912) 267.

Tabulæ communes municipi. Account books concerning the administration of municipalities. They also contain records of contracts concluded with private persons.

Tabulæ dotales (ditus). See instrumentum do-
tale, tabulæ nuptiales.

Tabulæ duodecim. See lex duodecim tabularum.

Tabulæ honestae missiones. See missio, diploma militare.

Lammert, RE 4A.

Tabulæ uniorum. Registers of young men to be called to military service. The tabulæ were a part of the tabulæ censoriae.—See uninores.

Tabulæ nuptiales. A written marriage contract. Its usage appears as early as the beginning of the Principate. The contract was not a requisite for the validity of the marriage. It contained among other things provisions concerning the dowry, its constitution, and restitution when the marriage would be dissolved. The tabulæ nuptiales acquired particular importance in Justinian’s law (C. 5.27.10, A.D. 529) inasmuch as children born of a non-marital union of two persons who later made an instrumentum dotale (generally considered a proof of the existence of a marriage), were regarded as legitimate. Justinian also made a written marriage contract mandatory for some marriages (e.g., with a slave [Nov. 22.11; 78.3], with actresses or their daughters). Syn. tabulæ

Tabulae nuptiales.
intramioniales, instrumentum nuptiale.—See instrumentum dotale.

Kübler, RE 4A, 1949; Castelli, SDHI 4 (1938) 208; J. P. P. Levy, RDH 30 (1932) 468.

Tabularium patronatus. See patronus municipil.

Tabulae primae. See testamentum pupillare.

Tabulae publicae. Tablets used in public administration, in particular records of the official activities of the magistrates. When the year of service of a magistrate was over, his official tabulae were transferred to the aerarium populi romani which served as a general state archive under the supervision (cura tabularium publicum) of the quaestors. In the Principate the archive was under the control of curatores tabularium publicum who later were replaced by praefecti.

Kornemann, RE 4A.

Tabulæ quaestoriae. The account books of the quaestores, concerning financial administration.

Tabulae secundae. See testamentum pupillare.

Tabulae signatae (septem sigillis). A written testimony signed and sealed by (seven) witnesses to serve as evidence that a transaction was concluded or that a legally important event happened. —See testimonium per tabulas, testatio.


Tabulae testamenti. (Or simply tabular.) A written testament.—D. 37.2; 38.6.—See testamentum, bonorum possessio secundum tabulas, bonorum possessio contra tabulas.

Archi. St. Pac 26 (1941) 63.

Tabulæ triumphales. See triumphus.

Tabulærium. An archive in which documents (tabulae) were kept. The central archive was the aerarium populi romani. See tabulae publicae. In addition, there were several special tabularia, as, e.g., one in the temple of Ceres for plebs clericorum and senatus consultum. Tabularium Caesaris = a general archive for the imperial administration, the emperor's correspondence. Reports from provincial governors, and the like. In the provinces there were a special tabularium for the records of the provincial administration and a tabularium principis (Caesaris) chiefly concerned with the financial administration the imperial domains included. The latter was called also tabularium publicum. The municipalities had a tabularium civitatis. See Sachers. RE 4A; Lafaye, DS 5; Del Prete. NDI 12, 1; Richmond. OCD.

Tabularium castrense. A special archive for military administration. In the Empire it was a part of the imperial archive. Tabularium legionis = the archive of a legion.

Tabularius. A subordinate official in the fiscal administration. Chiefly concerned with taxes. Originally slaves (servi publici), later freedmen, occupied the posts of tabularii who were active in the various branches of the general and financial administration (rationes) and subject to a chief, praepositus tabularium. They were organized as a collegium. Tabularii were also found in provincial and municipal administration as well as in the army. Their connection with the archives and public records in the various offices (hence their official title), their collaboration in drawing up public documents in the different domains of public administration, and their experience in such work led in the later Empire to their being permitted to assist private persons in writing documents. The activity of tabularii in the private field became similar to that of private notaries (tabelliones). In post-Justinian times there was no difference between tabelliones and tabularii.—C. 10.71.

Sachers, RE 4A; Lafaye, DS 5; L. Pfaff, Tabellino und tabularius, 1905; H. Steinacker. Die antiken Grundlagen der frühmittelalterlichen Privatrechturkunde, 1927, 78.

Tacer. To be silent, to give no answer. In classical law there were no strict rules about the significance of the silence of a person who gave no answer in court when questioned by a magistrate or judge. With regard to confessio in iure the jurists assumed that "he who is silent does not confess at all, but it is true that he does not deny" (D. 11.1.11.4). In Justinian's Digest the compilers promoted this opinion to a general rule by placing it in the final title "On legal rules" (D. 50.17.142). Only with reference to interrogatio in iure was silence on the part of a person interrogated by the magistrate considered a contempt of court and interpreted in his disfavor.—In certain contractual relations the silence of a party could be regarded as consent in particular when the renewal of an agreement was at issue; see silentium, tacite.

Tacite. Secretly, not expressly stated, self-understood. Some clauses are assumed to be agreed upon (tacite insinu) if the parties do not exclude them. Thus, e.g., in a pledge of rustic lands it is self-understood that the proceeds (fructus) are also pledged.—See tacere, silentium, and the following items.

Tacitum fideicommissum. A fideicommissum based on a secret agreement between the testator and the heir to the effect that after the testator's death the heir was to deliver the legacy to an incapable person. Such an agreement, concluded in order to defraud the law, was void, the thing involved was seized by the fisc, and the heir became indignus and was excluded from any benefit under the testament.

Tacitum pignus (or tacite contractum). See hypotheca tacita.—C. 8.14.

Taciurnitas. See silentium.

Tacitus. See hypotheca tacita, reconditio, consensus, and the foregoing items.

Tacitus consensus omnium (or populi). Alleged as the foundation of customary law.—See consuetudo, mores.
Talia. Retaliation, infliction of the same injury on the
delinquent as that done by him. Talio was a kind
of private vengeance which was permitted under the
earliest law. The institution is already established in
the Twelve Tables (VIII 2) as a sanction in the case
of membrum ruptum. Retaliation was carried out
by the injured person himself or in the case of his
inability by his nearest relative. The parties might,
however, agree on a pecuniary compensation to be
paid by the offender (pacisci de talione redimenda),
according to the Twelve Tables; in this case the
application of talio was excluded. In the penal law
of the later Empire penalties for certain crimes are
somewhat reminiscent of the ancient idea of retalia-
tion, e.g., in case of arson the culprit was punished
by death through burning; see crematio.
Horstieck, RE 4A; Jolowicz, The assessment of penal-
ties in primitive law, in Cambridge Legal Essays (1926)
203; Genzer, ZSS 62 (1942) 122.
Talia. When used with reference to someone or some-
thing (tale) mentioned before, instead of is (id), this
is not classical Latin. It occurs frequently in inter-
polated passages.
Guarneri-Ciati, Indice* (1927) 86.
Tangere. To touch. The verb appears in the defini-
tion of corporeal things: quae tangi possunt (= which
can be touched upon).—See res corporales.
Tanta. Justinian's enactment of December 16, 533,
by which the Digest was promulgated. The Greek
version (not a literal translation) of this constitution
is called dedoken (from the initial word). Both
constitutions are very instructive for the understand-
ing of the emperor's intentions and the nature of his
legislative work, made up of excerpts taken from the
writings of the classical jurists.—See digesta justi-
niani, dedoken.
Ebrard, ZSS 40 (1919) 113.
Tarrutunenus Patermus. A Roman jurist of the second
half of the second century after Christ. He wrote a
treatise De re militari (= on military matters) which
dealt with tactics and with legal problems connected
with the military service. From one excerpt of the
work (D. 50.6.7) we know of a long list of profes-
sionals who worked for the army and were therefore
exempt from public service (munera).
Berger, RE 4A, 2405; W. Kunkel, Herkunft und sociale
Taxatio. The establishment of a maximum to which
the defendant in a civil trial could be condemned.
The limit was expressed in the part of the procedural
formula called condemnatio through a clause start-
ing with the word dumtaxat (= not exceeding, only)
followed by the indication of the amount which the
condemnation could not exceed. The limit could be
determined otherwise, by a specification of the fund
from which the plaintiff was to be satisfied, e.g., the
defendant's peculium (dumtaxat de peculio). See
beneficium competentiae.—Another kind of taxa-
tio was in the case of iusturandum in litem. The
judge could impose on the plaintiff as the utmost
limit his estimation of the value of the object in
litigation.
Kaser, RE 5A; Levy, ZSS 36 (1915) 64.
Tectum. A roof. Tectum praestare (exhibere) alicui
= to grant someone a dwelling. Sub eodem loco =
under the same roof, in the same household. The
last expression was broadly interpreted by the jurists
in connection with the senatusconsultum silanini-
um which submitted to investigation and torture all
slaves living sub eodem loco when their master was
assassinated and the murdered not discovered.—
Tecta sarta (from sarcire) = roofs well repaired,
buildings in good condition. The question as to who
is obliged to repair the roof of a house is discussed
by the jurists with regard to a usufruct and use (usus)
(agreeed upon or bequeathed) of the house.
O. Karlows, Röm. Rechtsgeschichte 1 (1885) 247.
Telum. A missile, a weapon of any kind. The mean-
ing of the term is discussed by the jurists in connection
with the lex Julia de vi publica, under which an
aggressor who used a telum against the victim or an
armed thief was guilty of violence of a higher degree.
There the term was interpreted in the broadest sense;
telum was anything by which a man could hurt an-
other. "a stone, a piece of wood or iron thrown by hand"
(D. 50.16.233.2).—See vis armata. Tura.
Temere litigare. See poenae temere litigantium, temeritas.
Temeritas. Rashness, lack of caution, of reflection, in
starting a lawsuit or accusing a person of a crime.
—See calumnia, poenae temere litigantium.
Chiowenda, RISG 26 (1898) 26.
Temo. A recruit-tax, levied primarily on landowners
for being used for wages for mercenary soldiers and for
payments to be made as commutation for actual serv-
ice in the army.—See aurum trionum. Temonarii
= collectors of the tax.
Kubitscheck, RE 5A; Humbert, DS 1, 579.
Temperare. To moderate, to apply moderation. In
the language of the imperial chancery the term is
frequently used of the activity of jurisdictional offici-
als in moderating the consequences of a strict appli-
cation of the law.
Tempestas. A storm. A tempestas is among those
unioseen accidents (casus fortuiti), like inundation
(viz fluvium = flood) which were accepted as an
excuse for non-appearance in court.
Templa. Places (edifices) in which solemn sacrifices
(e.g., auspicia) were celebrated. The establishment
and surveyance of templae were duties of the augures.
—See sacrifice. —Templa in the later Empire =
churches.—C. 11.70; 71; 79; 7.38.
Wissowa, RE 2, 2337; Dorigny, DS 5: Blumenthal. Klio
37 (1934) 1.
Templa pagana. Pagan temples. They were ordered
closed by Constantine (C. 1.11.1. A.D. 354).
Tempora. When referring to certain procedural institutions, terms fixed by law, within which certain remedies are available to parties involved in a legal controversy (e.g., for an action, an appeal, an interdict, a restitution in integrum).—C. 2.52; 7.63.

Temporalis (temporarius). Limited in time (quod tempore finitum), continuing for a limited time. Ant. perpetuus.—See actiones temporales, exceptions dilatoriae.

Tempus. Time, a period. Cerum tempus = a fixed day (dies) or a fixed interval of time within which (intra certum tempus) certain legal acts were to be performed in order to avoid loss. Ad (certum) tempus = for a fixed time. Ant. in perpetuum = forever. Justinian's compilers in many instances replaced the terms established for certain legal acts in earlier law by colorless expressions, such as tempus legitimum, statutum, constitutum (= legal, established time) thereby adopting the older texts to later legislation by which the pertinent terms were changed.—See prior tempore potior fure, accessio temporis, statutum tempus, temporalis, pluspetitio. and the following items.

Pagae. NDI 12. 238 (s. v. termini); Milone, Dottrina romana del computo del tempo, ANap 1912; Guerneri-Citati, indice (1927) 87.

Tempus ad deliberandum (deliberationis). At the request of the creditors of an inheritance, the praetor could impose on the heir (heres voluntarius) a fixed term, normally one hundred days in which to decide whether or not to accept the inheritance.—See deliberare.—D. 28.8; C. 6.30.

Tempus continuum. A period of time computed according to the calendar without the omission of any days. Ant. tempus utile.—See dies continuit, annus continuus.

Tempus iudicati. The period of time granted to a defendant to comply with the judgment-debt (judicatum). The Twelve Tables fixed the term for thirty days (triginta dies); see dies iusti. In the cognito extra ordinem the official who rendered the judgment could settle another period. In Justinian law the tempus iudicati was extended to four months.—See iudicatum.

Tempus legitimum. See legitimus, tempus.

Tempus lugendi. See luctus, sublugere.

Tempus statutum (tempora statuta). See statutum tempus, tempus.

Tempus utile. An interval of time in which certain days are not computed, to wit, days in which the action which had to be accomplished during a fixed time could not be taken. The reasons were either personal (captivity of the person who had to perform the action, his absence in the interest of the state, sickness, and the like) or official when judicial activity of the courts were suspended (see dies nefasti) or the magistrate to whom the action was to be performed could not be reached. Ant. tempus continuum.—See annus utilis, dies utiles, iustitium.

Kübler, RE 5 A; NDI 12. 1; Ubbelohde, Berechnung des t. u. bei honorarischen Temporalklagen, 1891.

Templatio. Drunkenness.—See impetus.

Tenere (aliquid). To hold a thing, to have physical power over a thing.—See detentio.

Tenere. (Intransitive.) To be legally valid (e.g., obligatio, stipulatio tenet).

Teneri. To be liable (under a statute = lege, under a senatusconsultum = senatusconsulto), to be suable (actione, interdicio).


Tenor. The content, text of a statute or a senatusconsultum, a legal rule.

Tenuiores. See humiliores. Ant. honestiores.—See collegia funeraria.

Cardascia, RHD 28 (1950) 308.

Terentius Clemens. A little known jurist of the second century after Christ, author of an extensive treatise on the lex iulia et papia (in 20 books). He is not cited by later jurists, but his work was used by Justinian's compilers.

Berger, RE 5A. 650.

Tergiversatio. (From tergiversari.) The withdrawal of the accuser from a criminal trial. The accused could demand that the trial be brought to an end so that he could sue the accuser for calumnia. The Senatusconsultum Turpilianum (A.D. 61) fixed a fine and declared the accuser who deserted the accusation (tergiversator) to be infamous. The accuser's withdrawal could be declared expressly during the trial or manifested by his non-appearance in court. He might, however, justify his withdrawal by a reasonable excuse. Syn. deserere, desistere, destituer e accusationem.—D. 48.16.—See calumnia.

Tauberthalag, RE 5A; Lééirvin, DS 5; M. Wlassak, Anlage und Streitbefestigung im Kriminalrecht der Römer, SbWien 184. 1 (1917) 199; Levy, ZSS 53 (1933) 211; Lauria, St Ratti 1934, 124; Bobacek, St Richelbno 1 (1936) 361.

Terminare. To fix the boundaries of a municipality or of landed property belonging to a public corporate body or a private person through boundary stones (terminus, cippus, lapis). The judgment of arbitrators in a boundary dispute between two communities in the district of Liguria is preserved in an inscription, called Sententia Minuciorum.

Fabricius, RE 5A; Tautain, DS 5; for Sent. Minuciorum: Arango-Ruiz, FIR 3 (1943) no. 163 (Bibl.).

Terminare litum. To end a controversy by judgment in a trial or by arbitration.

Termini. Boundary stones indicating the borders of a landed property. Syn. cippus, lapis.—D. 47.21.—See terminare, actio fintum regundorum, terminare.

Tautain, DS 5, 121; Holland, Amer. Jour. of Archeology 37 (1933) 549.
Terminus movere (termini motio). To remove a boundary stone in order to change the existing ownership situation of landed property. According to an ancient provision (attributed to King Numa Pompilius), destruction or disarrangement of such stones which were considered as being under religious sanction, made the wrongdoing an outlaw (see Sacer). An agrarian law by Caesar and enactments by the emperors Nerva and Hadrian ordered severe penalties for terminus movere. Syn. terminum avellere, auferre.—D. 47.21.—See ACTIO DE TERMINO MOTO.

Taubenschlag, RE 5A; Lécritain, DS 5.

Terrae motus. An earthquake. It is reckoned among the cases of vis maior; see CASUS FORTUITUS.

Tertenus. See IUGATIO TERRENA.

Terribiles libri. The "terrible books," Justinian's term for books 47 and 48 of the Digest (Tantus, 8c) which contain rules on crimes and penalties.

Territorium. The territory of a community or the whole land assigned to a colony; see UNIVERSITAS AGRORUM. Territorium is also the territory in which a magistrate exercised his jurisdictional activity. "A magistrate who exercises jurisdiction beyond his territory may be disobeyed with impunity" (D. 2.1.20).

Toutain, DS 5.

Terror. See MERTUS.

Tertullianus. A little known jurist represented in Justinian's Digest by five texts. Author of Quaestiones and a monograph on Peculum castrense. His identification with the contemporaneous Church Father, Tertullianus (middle of the third century), often assumed, is very doubtful.


Tessera. A square tablet, a token used as a proof of identity, a ticket. Tesserae for public spectacles (ludi) were distributed to poor people by the curatores ludoarum.—See the following items.

Lafaye, DS 5, 134; Rosowew, Röm. Briessersae, 1905.

Tessera frumentaria. A token for a certain quantity of grain (five modii monthly) which gratuitously was distributed to needy people by the government.—See FRUMENTATIO.

Rostowzew, RE 7, 179; Regling, RE 5A, 852; Cardinali, DE 3, 271; Lafaye, DS 5, 133; Rota, NDI 12, 2; Van Berchem, Distributions de blé à la pèbèle romaine (1939) 85.

Tessera hospitalis. A token of identity which permitted recognition of a stranger (hospes) to whom as an individual or to whose nation Rome granted HOSPITIUM.

Tessera militaris. A token of identity given to soldiers of a military unit through which they could be distinguished from the enemy and recognized as members of the Roman army. The tesserae were provided with a catchword. An officer of lower rank charged with the distribution of the tessera = tesseraarius.

Lafaye, DS 5, 135; Lammert, RE 5A.

Tessera nummularia. Similar to the TESSERA FRUMENTARIA. It gave the right to a sum of money which some emperors used to distribute to the people as a gift.—See MISSILLIA.

Cardinali, DE 3, 271.

Tessera nummularia. A tablet, attached to a sealed bag with coins, certifying that the coins are genuine. The statement was issued by a mint officer; see NUMMULARIUS, SPECTATOR.

Regling, RE 13; Laum, RE Suppl. 4, 78; Hersog, Abhandlungen der Giessenor Hochschulgesellschaft 1 (1919); Cary, IRS 13 (1923) 110.

Tesserae militares. See TESSERA MILITARIS.

Testamentarius. (Adj.) Pertaining to, connected with, or established in, a testament (e.g., hereditas, libertas, numumissio, tutor, tutela). Lex testamentaria = a statute which was concerned with the making of a testament; see Lex Furia, Falsum (for Lex Cornelii).

Testamentarius. (Noun.) One who wrote a testament for another. Syn. scritor testamenti.—See SENATUS CONSULTUM LIBONIANUM, QAESTIO DOMITIA.

Testamenti apertura. See APERTURA TESTAMENTI.

Testamentarii facio. The legal capacity of a person to make a testament (ius testamenti faciendi). This testamentarii facio (called in the literature by the non-Roman term, testamentarii facio activo) is to be distinguished from the capacity to be instituted heir in a testament or to be rewarded with a legacy (testamentarii facio passivo). For active testamentarii facio the Roman juristic language used the expression testator habet testamentarii facionem cum aliquo (cum herede, cum legatorio) for the so-called testamentarii facio passivo: heres (legarius) habet testamentarii facionem cum testatore. Testamentarii facio also refers to the ability to witness a testament of a specific person. Testamentarii facio was required on the part of the testator both when the testament was being made and at the time of his death. A testament made by a person without capacity did not become valid if he later acquired it. See FACTIO LEGIS CORNELIAE. Those unable to make a testament were slaves (except public slaves, servi publici, who could dispose of half their peculium by a last will), persons alieni iuris as long as they were under paternal power, persons below the age of puberty, lunatics (see FURIOSIUS), spendthrifts (see PRODICIUS) and women (see COEPTIO FIDUCIAE CAUSA). From the time of Hadrian women were permitted to make a testament with the consent of their guardians (see TUTELA MULIERUM). In later postclassical law apostates and heretics were excluded from making a testament (see APOSTATA, HAERETICI) and from taking under one. Only Roman citizens could be instituted heirs in the testament of
a Roman citizen. For restrictions concerning women, see lex voconia. Persons aliens in ire could be heirs and legatees, but whatever they acquired went to their pater familias. A testator's slave could be instituted as an heir only cum libertate, i.e., if he were freed in the same testament. Another man's slave acquired all that he received from a testament for his master, for the ability that later had testamenti factio passiva. The institution of "uncertain persons" (see personae incertae) was not permitted. Exceptions in favor of the state, municipalities, charitable institutions (see piae causae) and collegia, were gradually admitted. See also postumii, de, ecclesia. For the ability to witness a will, see testis ad testamentum adhibitus.—Inst. 2.12; D. 28.1.

De Crescenzo. NDI 12. 1, 964; Schulte, ZSS 35 (1914) 112; H. Kruger, ZSS 33 (1933) 505; Volterra, BIDR 48 (1941) 74; B. Biondi, Istituti fondamentali 2 (1948) 6.

Testamentum. A solemn act by which a testator instituted one or more heirs to succeed to his property after his death. The appointment of an heir was the fundamental element of a testament (see institutio heredis); a last will in which an heir was not appointed was not valid. A testament could contain other dispositions, such as legacies (legata, fidicommisae), manumission of slaves, appointment of a guardian. Since a testament "derived its efficiency from the institution of an heir" (Gaius, Inst. 2.229), all dispositions made in the testament prior to the institution of the heirs were null under the classical law. This principle was abolished by Justinian. For the various forms and types of testaments, see the following items. A will could be revoked by a later one; see revocare testamentum. The later testamentum invalidated the first since nobody could leave two testaments. See codicilli.

The existence of a valid testament excluded the admission of heirs on intestacy. Syn. tabula testamenti, tabulariae.—Inst. 2.10; 17; D. 28.1; 29.3; 35.1; C. 6.23.

—See testamenti facio, contextus, supprimere tabulas, senatusconsultum libonianum, querela inofficiosi testamenti, lex voconia, bonorum possesso secundo tabulas, nuncupatio, mancipatio familiaris, favor testamenti, voluntas de functi, liniuin, manumissio testamento.

Kähler, RE 5A; Cuq, DS 5; Arangio-Ruiz, FMR 3 (1943) no. 47 ff; C. Appleton, Le testament romain, 1903 (= Rev. gén. de droit 27, 1902/3); Liebenthal, Uebragung und Enthaltung des röm. Testaments, 1914; A. Suman, Favor testamenti et voluntas testamenti, 1916; Lévy-Brühl, NRH 44 (1920) 618; 45 (1920) 634; Goldmann, ZSS 51 (1931) 223; David, ZSS 52 (1932) 314; F. Wieacker, Hausgenossenschaft und Erbenentstehung. Über die Anfänge des röm. Testaments. Fischer Siber 1940; Volterra, BIDR 48 (1941) 74; B. Biondi, Successione testamentaria, 1943; Van Oyen, in the collective work Het testament (Arnhem, 1951) 9.

Testamentum apud acta conditum. A testamentum made before a judicial or municipal authority. An official record was made and entered in the archives of the office.

Testamentum calitatis comititis. See comitia calata. The solemn performance before the popular assembly was a kind of adoption to have an heir in the event of the testator's death; its primary purpose was to secure his own and his ancestors' worship.

B. Biondi, Successione testamentaria, 1943, 47; C. Cosentini, St sui liberii 1 (1948) 17; M. Kaser, Das altrom. Ins (1949) 148 (Bibl.).

Testamentum caeci. The testament of a blind man. Under the classical law he could make a testament per aes at libram. In later law a written testamentum was permitted in the presence of an additional eighth witness (or a city official, tabularius) who wrote down the testament as dictated by the testator before seven witnesses.

Testamentum desertum. See testamentum destitutum.

Testamentum destitutum. A testament, all the heirs of which died before the testator or before the acceptance of the inheritance, or refused to accept it. Syn. testamentum desertum (= an abandoned testament). In such a case succession on intestacy took place.—See lex voconia.

Testamentum duplex. See testamentum pufillare.

Testamentum falsum. A forged testament. It is null since it does not express the will of the testator.—See falsum, senatusconsultum libonianum.

B. Biondi, Successione testamentaria (1943) 590.

Testamentum holographum. A testament written by the testator in his own hand. In classical law such a testament was subject to all the requirements of a written testament. Only an imperial constitution (Nov. 21.2 of Theodosius II and Valentinian III of A.D. 446) recognized the validity of such a testament without witnesses. The constitution was, however, not accepted into Justinian's Code.—See testamentum parentis inter liberos, testamentum muti.

Testamentum imperfectum. A testament in which the rules of form were not fully satisfied, in particular when the witnesses did not sign or seal it. It was void.

Testamentum in procinctu. A testament made by a soldier when a battle was imminent or, at least, when the army was in a permanent camp.

Zoeoco-Rosa, RISG 35 (1903) 302; idem, II i. i. p., 1910; C. Cosentini, St sui liberii 1 (1948) 21.

Testamentum iniustum. A testament made by a person who backed testamenti factio or one in which an heir (heres) was not appointed. Ant. testamentum iustum.—D. 28.3.

Testamentum inofficiosum. See querela inofficiosi testamenti, testamentum rescissum.

Testamentum inutilis. An invalid testament.—See testamentum ruptum, testamentum nullum.

Testamentum irritum. A testament which was valid when the testator made it, but which became void
because he lost his capacity (Testamenti factio) later (e.g., through capitis diminutio when he lost liberty or citizenship).—D. 28.3.

Testamentum iure factum. A testament made by a testator able to make a will (see Testamenti factio) with all the formalities prescribed for its validity observed. Testamentum iure praetorio factum. See Testamentum Praetorium.

Testamentum iustum. See Testamentum iustum.

Testamentum militia. A soldier's testament. It was exempt from all formalities. Soldiers might make a testament "in any way they want and can" (D. 29.1.1 pr.). Even a will written by a soldier, dying in battle, with his blood on the scabbard of his sword or with the point of the sword on the sand, was valid. Several legal rules which were binding with regard to all other testaments were not applicable to a testamentum militia. A soldier could make two testaments, and he could dispose of a part of his property while the remainder went to his heirs on intestacy. Neither querela inofficiis testamenti nor Lex Falcidia were applicable to a soldier's testament. A testamentum militia was the testament the soldier made during his service. It was valid for one year after his discharge. Justinian made, however, an important change, restricting the privileges to soldiers engaged in a battle with the enemy. Syn. testamentum iure militari factum.—Inst. 2.11; D. 29.1; 37.13; C. 6.21.

—See Testamentum in proculo.

Cud. DS 5, 140; Kübler, RE 5, 1000; Arango-Ruiz, BIDR 18 (1906) 157; Calderini, Atene e Roma, 1915, 259; Tamassia, AVen 85 (1927); Weiss, ZSS 45 (1934) 567; Guarino, RendLomb 72, 2 (1938/9) 355; A. Haegerstrom. Der röm. Obligationsbegriff 2 (1943) Bell, 32; B. Biondi, Successione testamentaria (1943) 73; S. v. Bolla, Aus röm. und bürgerlichen Erbrecht (1950) 1.

Testamentum muti (sordi). A testament of a dumb (or deaf) man. It should be written in his own hand according to an enactment by Justinian.

Testamentum nullum. A testament which is void from the beginning, e.g., when the testator lacked Testamenti factio, when the prescribed forms were not observed, or when there was no appointment of an heir (see Heredes institutio).

Testamentum parentis inter liberos. A testament by which a father (pater familias) disposed of his property in favor of his children alone. Such a testament could be made without witnesses if the testator wrote it in his own hand and gave the exact names of the heirs and their shares. It was a different act when a father ordered the way in which his property was to be divided among his children on intestacy (divisio inter liberos). This was no testament at all and the document had to be signed by the father and the children.

Rabel, Elterliche Teilung. Fachv. 49. Versammlung deutscher Philologen, Basel, 1907; B. Biondi, Successione testamentaria (1943) 70; Solazzi, SDHI 10 (1944) 356.

Testamentum per aes et libram. See Mancipatio familias, Familiae emptor, Nuncipatio, Per aes et libram, Testamentum domesticum.

Kamps, RHD 15 (1936) 142; Amelotti, SDHI 15 (1849) 34.

Testamentum per nuncipationem. See Nuncipatio. According to the civil law (ius civilis) the oral declaration made before seven witnesses should be pronounced in a prescribed formula (Gaius, Inst. 2.204) in which the testator referred to his detailed written dispositions. The praetor, however, granted Bonorum possessio secundum tabulas even when the prescribed formula was not pronounced. Later imperial legislation recognized a merely oral testament (testamentum per nuncipationem), without any written document, when the testator announced his wishes and his appointed heirs in the presence of witnesses. An heir thus appointed = heres nuncipatus.—See Testamentum per aes et libram.

Solazzi, SDHI 17 (1951) 262, 18 (1952) 312.

Testamentum (iure, rite) perfectum. See Perfectus, Testamentum imperfectum.

Testamentum pestis tempore. A testament made in time of pestilence. The witnesses were not bound to be present simultaneously.

Testamentum posterus. A later testament made by a testator in order to revoke an earlier one. See Revocare Testamentum. The first testament was "broken" (Testamentum ruptum).

Kübler, RE 5A, 1008.

Testamentum praetorium. A testament valid according to the praetorian law (but invalid under civil law). The praetorian Edict granted Bonorum possessio secundum tabulas if some of the formalities required by ius civilis (mancipatio familias, nuncipatio) had not been observed and a written will was made in the presence of seven witnesses and sealed by them. —See Testamentum per Nuncipationem.

B. Biondi, Successione testamentaria (1943) 49.

Testamentum principi oblatum. A testament consigned to the emperor. Later, deposition in a public archive sufficed.

Testamentum pupillare. That part of a father's testament in which he made a testament for a child then under his paternal power and below the age of puberty for the event that the child died before reaching puberty. See Substitutio pupillaris. Later, it became customary to write down the child's testament (Testamentum filii, Testamentum pupillare) in a second, separate document (tabulae secundae) in order to avoid the child's heir becoming known when the father's testament was opened upon his death. The prospective heir of the child who would inherit only if the child died before reaching puberty, might be interested in the child's premature death and therefore it was advisable to keep secret the content of the testamentum pupillare. In the case of a separate document for the substitutio pupillaris the
father's testament is called testamentum duplex, the tabulae secundae being only a supplement to the real testament which dealt with the succession to the father's property (tabulae primae).

B. Biondi, Successionem testamentaria (1943) 254.

Testamentum rescissum. A testament rescinded as inofficiosum as a result of a QUERELA INOFFICIOSI TESTAMENTI.—See RESCINDERE.

Testamentum ruptum. A testament which was "broken" by a later event (e.g., by the birth of a posthumous child who was omitted in the father's testament, see POSTUMUS SUI) or was revoked by the testator through a later testament; see TESTAMENTUM POSTERIUM.—D. 28.3.

Kübler, RE 5A, 1008; Sanfilippo, AnPal 17 (1937) 73; De Sarlo, AG 142 (1952) 69.

Testamentum rurii conditum. A testament made in the country by a rustic person. In Justinian law such a testament was valid if only five persons were present. If some of the witnesses were illiterate others might sign for them.

Testamentum surdi. See TESTAMENTUM MUTI.

Testamentum tripertitum. A particular type of testament the requirements for which were fixed in a late imperial constitution (C. 6.23.11, A.D. 429): it had to be made without interruption (una contextus, see CONTEXTUS), in the presence of seven witnesses (who had to subscribe and seal it), and, in addition, the testator had to sign it ("subscriptum" = "I signed"). If he was illiterate, another could sign for him. The term tripertitum (= tripartite), used by Iust., Inst. 2.10.3, derives from the fact that in the formalities mentioned three sources of law are combined: ius civilis, ius praeceptorium and imperial legislation.

Richobono, Archiv für Rechtswissenschaft 16 (1922) 503.

Testari. To be a witness to a legal act or transaction, to testify, to make a legally important declaration before a witness. Hence testari also means to invite another person to be a witness, and consequently to let the witness sign a written document to be used as evidence (in testatum redigere). In some texts testari is syn. with testamentum facere.—See TESTATIO, TESTIS, TESTIMONIUM.—D. 29.6; C. 6.34.

V. Wengler, RE 2A, 2427; Schulz, JRS 33 (1943) 61; Kinkel, ZSS 66 (1948) 425.

Testatio. A document containing a declaration made in presence of, and signed by, witnesses for the purpose of evidence. Testatio is also the oral or written testimony of a witness.—See TESTIS, CONTEXTATIO.

Kaser, RE 5A, 1030; Vazny, AnPal 8 (1921) 481; Taubenschlag, ZSS 38 (1917) 255; Weiss, BIDR 51/52 (1948) 316; Arangio-Ruiz, RIDA 1 (1948) 18; J. P. P. Levy, RH 93 (1952) 453.

Testator. (Adv.) In the presence of a witness or witnesses (e.g., to notify someone of something legally important to another, to summon, to make a declaration). Testato edecere (mori) = to die after having made a testament. Ant. intestato.
acts, in which their presence was not required by law but was requested by a party for the purpose of evidence, two witnesses were sufficient. Near kinship with a person involved in the transaction, living with him in the same household (see testimoniun domesticum), close friendship or open enmity barred a witness from giving testimony. Descendants were not admitted to testimony in matters concerning their ascendants and vice versa; similarly freedmen and their descendants with regard to their manumitters. There were no strict rules for the evaluation of the testimony of witnesses and of other means of evidence. The judges were advised to "explore exactly whether a witness was worthy of confidence" (D. 22.5.3 pr.) through examination of his social situation, his financial condition, his moral reliability (e.g., whether he would do anything for profit) and the like. The directive given by the emperor Hadrian to a high official is characteristic: "you should estimate through the judgment of your mind (ex sententia animi tui) what you should assume to be true and what to be no more than barely proved" (D. 22.5.3.3).—D. 22.5; C. 4.20.—See testimoniun, testatio, subscriptio, intestabilis, vacillare, senatusconsultum silianianum (concerning testimony of slaves), tormenta, antestatus, litis contestatio, and the following items.

Kaser, RE 5A: Lécivain, DS 5, 152; Berger, OCD (s.v. testimonianum); Messina, Riv. penale 73 (1911) 278.

Testis ad testamentum adhibitus. A witness present at the making of a testament. The capacity of a person to be a witness to a specific testament is also termed testamenti factio. The witness had to be invited (see testis rogatus)—not forced—to serve and to be present near the testator during the entire act. He should know that it was a will which he witnessed, but the contents could remain unknown to him. At the opening of the testament (see apertura testamenti) he had to recognize the authenticity of his seal. Specific restrictions were imposed with regard to witnesses belonging to the immediate family of the testator. See testamentum domesticum. Women and slaves were excluded. The rules concerning the admission of a person (or persons subject to his paternal power) to witness a testament in which he was instituted as an heir were finally settled by Justinian who excluded them all. Legatees, however, were admitted.—See testamentum, quaestio domitiana, scriptor testamenti.

Kaser, RE 5A, 1041; B. Bondi, Successiones testamentaria (1943) 59.

Testis idoneus. A person legally able to be a witness. There were general reasons for excluding a person from being a witness in all cases (see testis) and specific reasons which applied only in particular cases, the hindrance being a special relationship between the proposed witness and the acting person or the act itself. See testis, testimonium domesticum, testis ad testamentum adhibitus. No one could be a witness if forced or ordered to do so by the acting person.—See testis rogatus.

Testis in re propria (sua). "No one is a proper witness in his own matter" (D. 22.5.10).

Testis rogatus. A witness who was requested (not forced or ordered) to be a witness. He had to be informed only about the nature of the act he was to witness.

Textere (textura). For weaving one's wool or another material into another man's cloth, see intexere.

Thalelæus. A law teacher (probably in Beirut), contemporary with Justinian, author of an extensive commentary on Justinian's Code. His work was abundantly excerpted for the basilica, their scholia and for later Byzantine legal works.

Kübier, RE 5A (s.v. Thalelæus, no. 4); Berger, BIDR 55-56 (1952) 124.

Theatrum. Theatres were public property (res publicae, res universitatis) and could not be in private ownership. Admission was free. A person who was prevented from entering a theatre could sue the opponent by actio inuriarum (see inuria). An outrage inflicted on a person in a theatre was treated as inuria atrox. But a creditor could summon his debtor to court in a theatre (in ius vocatio).—See lex roscia, lex ijula theatrialis.

Navatte, DS 5, 204; A. Guichard, De la législation du théâtre à Rome (Thése Doct. 1830).

Theodorus Scholasticus. Born in Hermopolis in Egypt (hence he is called Hermopolitanus or Thebanus), a juristic writer of the second half of the sixth century. He wrote a summary (index) of Justinian's Code and an abridged edition of the emperor's Novels (Epitome, Symtomos Neoran).

Kübier, RE 5A, 1863 (no. 43); Zachariae, Aeneotota (1831) p. XXIV and 7 (edition of the Symtomos ton neoran diataseon); Heimbach, Basilica 6 (1870) 80, 88; J. A. B. Molkerei, Histoire du droit byzantin 1 (1843) 306.

Theophilus. A law teacher in Constantinople, one of the most active collaborators of Justinian in the codification of the laws. He was a member of the commission which compiled the first Code and the Digest, and together with Dorotheus he composed the Institutes (institutiones Justinian). He wrote a summary of the initial part of the Digest and a paraphrase of Justinian's Institutes, a work which despite some occasional errors is instructive from different points of view.—See paraphrasis institutionum.

Kübier, RE 5A, 2138 (no. 14).

Thesaurænsis. An official of the later Empire charged with the administration of public (imperial) storehouses.—See thesaurus.

Doring, DS 5, 224; O. Hirschfeld, Kaiserliche Verwaltungsbeamte* (1903) 308.

Thesauri. (In the Empire.) The treasury of the emperor. It was administered by the procurator thesaurorum, in the later Empire by the comes thesauro-
Thesaurus. A treasure-trove, a valuable movable (primarily money) which had been hidden for so long a time so that its actual owner was unknown and his identity could no longer be established. The finder of a *thesaurus* (inventor *thesauri*) could keep it for himself if he found it on his own land or in a sacred place (locus sacer or religiosus). If he found it in another's land by accident, only one-half belonged to him and the other half to the landowner. If the *thesaurus* was found in ground which was a *publicus*, the finder shared the *thesaurus* with the fisc. A finder who did not report his find to the fisc when the latter was emitted to a half, lost his share and had to pay the entire amount of the *thesaurus* to the fisc. Finding a *thesaurus* in another's land through deliberate search gave the finder no right at all.—C. 10.15.


*Thesaurus*. (In administrative law.) A storehouse.

—See HORREUM, THESAURI.

Tiberius. The river Tiber. For *renditio trans Tiberim* (= selling a free person beyond the Tiber), see SERVUS, ADDICTUS, TRANS TIBERIM.

Tignum junctum. A beam used for the construction of a house; in a broader sense, any material used for that purpose. According to the rule, *superficies cedit solo* (see *SUPERFICIES*) the owner of the building became owner of the material used even if it originally belonged to another. The latter could not sue the former for the recovery of the material as long as the house stood firm; if it collapsed or if the material was separated in some other way, he might then claim his property. He had an action, however, the *actio de tigno uncto*, against the owner for double the value of the material if the latter was used in bad faith (e.g., if it was stolen). A claim for separation of the material was not permissible. Justinian introduced the *ius tollendi* in favor of the owner of the material.—D. 47.3. —See SERVITUS TIGNI IMMITTENDI.


Timor. Fear, anxiety. "A groundless fear is no just excuse" (D. 50.17.184). —See METUS.

Tingere. To dye. If one dyed another's fabric (wool) by applying a product (e.g., purple) of his own, the owner of the material remained owner of the colored stuff.—See FULLO.

Tipoukeitos. A peculiar Byzantine juristic product of the late eleventh century, a repertory, or kind of "table of contents," indicating all the topics dealt with in the *basilica*, in the order of their titles and sections. The origin of the name is the Greek phrase *"ti pou kei"* (= what is where, sc. in the Basilica). The author was a judge, Patzes.


Tiro. In military service a recruit, a soldier newly enlisted, without sufficient training. The *tirones* were mostly 17 to 20 years of age.—C. 12.43. —*DELICTA MILITUM*.

Lammert, *RE* 6A; Cagnat, DS 5.

Tiro. A beginner in a profession, also in that of a lawyer. *Tiro* was also a young man solemnly introduced in the *forum* by his parents for the first time. On this occasion he wore the *toga praetexta* (*toga civilis*).

Tirocinium. The state of being a *tiro* (a beginner in military service, in a profession or in political life). Hence *tirocinium* is used in the sense of lack of experience.


Tironatus. See *Tirocinium*.

Titia. See RAMNES.

Schachurma, *RE* 6A.

Titii sodales. A college of priests charged with special religious duties (sacrifices), the nature of which is not quite clear.

Weinstock, *RE* 6A; Cagnat, DS 5.

Titius (Lucius Titius). A fictitious name frequently used in juristic writings to indicate a party involved in the case under discussion.—See NOMEN.

Tituli ex corpore Ulpiani. (Also called *Epitome Ulpiani* or *Regulae Ulpiani* in the literature.) An apocryphal collection of legal rules, attributed until recent times to Ulpian. It was perhaps written by a later unknown jurist about the end of the third century or shortly thereafter. Many rules of the collection remind one of the Institutes of Gaius.


Titulus. A dedicatory or honorary inscription on a temple, gravestone, or building; a placard placed on a house to indicate that there is an apartment for
rent; a tablet hung on a slave offered for sale in the market. *Titulus* is also the title of a book, of a chapter in a juristic work, or of a section in the praetorian Edict (e.g., *titulus de in ius vocando*).—The word has a specific meaning in connection with the acquisition of ownership, predominantly in the field of usucapio.

Schulz, ZSS 68 (1951) 21.

Toga. The outer garment (robe, cloak) of a Roman citizen when he appeared in public (at the forum); hence it was called *vestis forensis* (garment for the forum). The use of a toga was prohibited to soldiers, foreigners, and persons condemned to exile. Originally women also wore a toga, but it was soon replaced by the stola, the toga being reserved for women of ill fame condemned in a criminal trial (*judicium publicum*) or for adultery, and for prostitutes. The normal toga of a Roman citizen (of white wool) was also called *toga pura* or *libera*.—See *TAREA, CLAVUS*.

Courby, DS 5; Wright, OCD; L. Wilson. The R. toga (1924).

Toga candida. See *Candidatus*.

Toga picta. A purple robe embroidered with gold. It was one of the insignia of higher Republican officials, worn only on the occasion of a triumph (see *TRIUMPHI*) or other solemn celebration. The custom was adopted by the emperors. Syn. *toga palatina*.—See *TOGA PURPUREA*.

Ehlers, RE 7A, 505; Courby, DS 5, 349.

Toga praetexta. A white robe with a purple border stripe. It was one of the insignia of consuls, praetors, and priests. In the Principate the emperor wore a toga praetexta when he appeared within the walls of Rome in public. Young men over fourteen wore the toga praetexta as a sign of manhood before they put on the toga virilis. Hence *togatus* (*praetextatus*) = a youth in the age of manhood.—See *IMPUBES*.

Goebert, RE 6A, 1659; Regner, ibid. 1451.

Toga pura. See *Toga*.

Toga purpurea. A toga of purple color. It was the toga of the kings. Later it was used by a triumphant army commander when he entered Rome after a victorious war; see *TRIUMPHI*.—See *TOGA PICTA*.

Toga sordida. A dark grey toga worn when one was mourning or appeared in court as an accused.

Toga virilis. The normal white toga of a Roman citizen. There was no fixed age for wearing the toga virilis; normally young men between sixteen and eighteen put on the toga virilis. After a solemn ceremony which usually took place at a religious feast, dedicated to Bacchus, the youth wearing the white toga was introduced to the forum accompanied by his parents and relatives, after which he ceased to wear the toga praetexta.—See *IMPUBES*.

Regner, RE 6A, 1451; Hunziker, DS 5.

Togatus. A Roman citizen wearing (or having the right to wear) the toga virilis. In later juristic lan-

guage *togatus* was any state official wearing the toga as his official robe. The term was also applied to lawyers pleading in court (*togatus fori*).

Steinwenter, RE 6A, 1666; Philipp, ibid. 1662; Ehlers, RE 7A, 305.

Tollere. See *TOLLENDI*.

Tollere altius. See *SERVITUS ALTUS NON TOLLENDI*.

Tollere legem. To abolish a statute by promulgating a new one.

Tollere liberum. To lift a child. According to an ancient custom when a married woman bore a son, the father (*pater familios*) lifted him up from the earth, thus denoting symbolically that he was accepting him in the family as his son. The act had no legal significance; the omission of this gesture was without legal effects.


Tollii. With reference to legal acts and transactions, to be annulled, to become void (e.g., a testament, an agreement, an obligation, a stipulation). *Actio tollitarius* = the right to sue a person is abolished.

Tormentum. Torture. It was applied in Roman criminal procedure as a means to extort (*torquere*) from a person suspected of a crime a confession or a testimony from a witness. On the other hand, *tormentum* was applied as a penalty, in particular as an aggravation of the death penalty, in the Republic only to slaves, in the Empire also to free citizens, as, e.g., in the case of *crimen maiestatis* or murder through poisoning. From the late second century on, distinction was made between *honestiores* and *humiliores* insomuch as with regard to the former torture was applied only in the case of heinous crimes (*maiestas, magia*). In the later Empire torturing became more frequent.—The use of torture in questioning witnesses (*tormentum* became almost synonymous with *quastio*) was severely criticized by jurists and by some emperors. “Many persons undergo torture through endurance so that by no means can the truth be extorted from them; others instead are so unable to suffer pains that they prefer to lie than to be tortured. It so happens that they confess in different ways incriminating not only themselves but also others” (D. 48.18.1 pr.). A slave could not be compelled by torture to testify against his master. Torture as a penalty for crimes committed by slaves was practiced in a large measure. Masters were permitted to torture their slaves if the crime was directed against the masters themselves (until the third century). In other cases permission to torture had to be secured from the authorities. For the torture of slaves suspected as murderers of their master, see *SENNATUSCONSULTUM SILIANUM*. Torture was applied as a penalty against an accuser who initiated a
criminal trial against another for treason (crimen maiestatis) and was not able to prove his accusation. — Tormentum is also the instrument used for torturing. — D. 48.18; C. 9.41. — See quaestio per tormenta, talio, fustis, supplicium fustumarium, flagellum. Verraca, Malam mansio.

Ehrhardt, RE 6A; Lafaye, DS 5; Berger, OCD.

Torquere. See tormentum.

Torrentia flumina. See flumina torrentia. Tortor. One who executed the torture, the torturer. He is to be distinguished from the quaesitor, the official who questioned the accused or a witness. — See tormentum, carnifex.

Trabae. A toga with purple and scarlet worn by the kings and in the Republic by consuls on specific solemn occasions. Hence trabae is used in the meaning of consulship, and the adj. trabeatus is syn. with consularis. Certain high priests, as the flamens Dialis, and persons of equestrian rank also wore the trabae.

Schuppe. RE 6A; Courby, DS 5.

Tractare. To treat. The term refers to the treatment to be applied to certain categories of criminals. The verb is also used of the administration of property or the management of one's own or another's affairs (tractare bona, negotia, pecuniæ). With reference to juristic discussions (oral or written) tractare = to deal with, to discuss a problem (quaestionem, materiam). Hence tractatus = a juristic dissertation.

Tractatores. Officials in the financial administration (in the later Empire) subordinate to the praefectus praetorio.

Tractus. See tractare.

Tractus de gradibus cognitionum. See de gradibus cognitionum.

Tractus de peculiiis. See de peculiis.

Tractoria. A written official permission for the use of the state post. The tractoria implied also board and lodging at the expense of the state for travelers in official mission. From the second half of the fourth century on the tractoria were signed by the emperor. — C. 12.51 (52).

Emmsin, RE 6A; Humbert, DS 5; Gansboi, TR 8 (1928) 69.

Tractus. A larger tract of land (a district) in the emperor's domain, administered by a procurator who also exercised certain jurisdictional functions in the name of the emperor in disputes between the principal lessee of the domain (conductor) and the sublessee (colonus). Syn. regio.

Tractus temporis. A lapse (a period) of time. A legal rule (D. 50.17.29) stated: "what is invalid at the beginning cannot become valid through lapse of time (tractus temporis)." — See initium.

Tradere. To teach. Justinian used frequently the term in his constitution omne as syn. with docere, when he dealt with the courses which the teachers of law had to offer in the law schools. — See traditio, traditio.

Traditio. (From tradere.) The transfer of ownership over a res nec mancipi (see res mancipi) through the handing over of it to the transferee by the owner. A simple delivery of res mancipi did not transfer ownership (see mancipatio), the transferee acquired only the so-called bonitary ownership (see in bonis esse) which could be converted in quiritary ownership (under ius civile) through usucapio. The classical traditio required a just cause (iusta causa) since, being only a transfer of possession of a thing from one person to another, it had, in order to transfer ownership, to be based on a special legal relationship of an obligatory or another nature between transferrer and transferee. "A simple delivery of a thing never transfers ownership, unless a sale or another just cause preceded the delivery" (D. 41.31 pr.). A iusta causa also was a donation. There was, however, no just cause if the transaction, which was followed by traditio, was prohibited by law, as, e.g., a gift between husband and wife (see donatio inter virum et uxorem). Transfer of ownership could be performed only by the owner of the thing or by a person authorized by him or by the law (see alienatio). Normally traditio was a material act: the effective delivery of the thing to be transferred from hand to hand which, when movables (money) were concerned, was very simple. The delivery of an immovable (a piece of land) was executed through introduction of the acquirer on the land and his walking around the boundaries of the property. In later development the acquirer's entering on the premises or even a more simplified formality sufficed; see traditio longa manu, traditio ficta, claves, custos. Traditio was an institution iuris gentium which arose from relations with foreigners. It was therefore available to peregrines. With regard to provincial land (fundus provincialis) it was the only mode of acquisition of ownership. In Justinian's law the distinction between res mancipi and res nec mancipi having been abolished, the traditio served as a general means for the transfer of ownership. The compilers substituted in many texts traditio for mancipatio which was no longer actual, and tradere for mancipio dare (or accipere). — D. 21.3; 41.1; 41.2; C. 7.32. — See EXCEPTIO REI VENITAE ET TRADITAE.

Ehrhardt, RE 6A; Beuchet and Collinet, DS 5; Ari, NDI 12; P. De Francisci, Il trasferimento delle proprietà (1924); Betti, St Bonifate 1 (1930) 305; idem, BIDR 41 (1933) 143; H. Lange. Das kautale Element im Testament der klaas. Eigentumsstradition, 1930; Monier, St Bonifate 3 (1930) 219; A. Ehrhardt, Iusta causa traditio- nat, 1931; D. Hasselnink-Suringa, Mancipatio et f. (Am- sterdam, 1932); G. G. Archi, Il trasferimento della propri- età, 1934; H. H. Pfüger, Zur Lehre vom Erwerb des Eigentums, 1937; Thayer, BIDR 44 (1937) 439; S. Ro- mano, Nuovi studi sul trasferimento della proprietà, 1937;
Traditio brevi manu. Occurred when the transferee held already the thing, the ownership of which had to be transferred, but not as its owner, as, e.g., when a depositee or commodatarius of a thing acquired the ownership of it through sale or donation. A handing over of the thing in such a case was superfluous.—See CONSTITUTUM POSSESSORIUM.

Stella-Maranca, NDI 2, 544; Schulz, Einführung in das Studium der Digesten (1916) 62; Arnó, StPav 16 (1931).

Traditio chartae (per chartam). The delivery of an immovable through the handing over of a written deed of conveyance of property to the transferee. This form of traditio was practiced in the later Empire. The document was termed also epistula traditionis. Syn. TRADITIO INSTRUMENTI.

Brandlione, St Scialoja 1 (1905) 3; Riccobono, ZSS 33 (1912) 277; H. Steinacker, Die antiken Grundlagen der frühmittelalterlichen Urkunde (1927) 88.

Traditio clavium. See CLAVES.

Traditio ficta. (A non-Roman term.) A symbolic handing over of a thing which was to be delivered to the transferee. There was no physical delivery thereof but other acts, performed instead, manifested the transfer of the thing beyond any doubt. The typical case of such a traditio was the delivery of keys of a shop, or of a house, to the transferee.

Biermann, T. f., 1891; Riccobono, ZSS 33 (1912) 259, 34 (1913) 159; C. A. Fumaioli, Traditio, 1942, 29.

Traditio in incertam personam. Called in the literature a form of traditio in which the transferee was not a certain individual but any one of the people. Such a case was the so-called iactus missilium; see MISSILIA. Berger, RE 9, 553; idem, BIDR 32 (1922) 154; F. Pringsheim, Kauf mit fremdem Geld (1916) 66; Kaden, ZSS 53 (1933) 613.

Traditio instrumenti. See TRADITIO CHARTAE.

Traditio longa manu. A form of traditio in which the thing to be transferred to the acquirer was placed with his knowledge and consent in his sight (in conspicu) so that he might take possession thereof whenever he pleased. The handing over of a thing to a person other than the real acquirer with the consent of the latter or in his presence, had the same legal effect.


Traditio nuda. See NUDA TRADITIO.

Traditio possessionis (traderer possessionem). Handing over possession. The expression correctly stresses the external aspect of traditio.—See TRADITIO, VACUA POSSESSIO.

Traditio servitutis. The "delivery" of a servitude could hardly be an institution of the classical law since traditio was applicable only to corporeal things and not to rights. The meaning of the expression was to put the beneficiary of the servitude in the position of being able to exercise his right (e.g., an usufruct = traditio usufructus).

Riccobono, ZSS 34 (1913) 208.

Traditur (traditum est). It is taught, held, handed down. The expression is used of doctrines which have been prevailing among jurists for a long period of time (through tradition).

Tragoedus. See MIMUS.

Traiecticia pecunia. See FENUS NAUTICUM. Traiecticus contractus, an agreement concerning a maritime loan (FENUS NAUTICUM).

Trans Tiberim. Beyond the river Tiber, i.e., beyond the boundaries of the city of Rome (urbs), abroad.—See ADDICTUS, SERVUS, TIBERIS.

Sautel, in Varia, Études de droit romain (Publications de l'Inst. de dr. rom. de l'Univ. de Paris, 9) 1952, 86.

Transactio. (From transigere.) An extrajudicial agreement between two parties involved in a controversy in order to settle it in a friendly way and avoid a trial in court. Transigere = "to settle a doubtful matter, an uncertain and unfinished controversy" (D. 2.15.1). Usually the parties made reciprocal concessions, the claimant renouncing his action, the debtor recognizing his liability and either paying immediately his debt or promising to do so in the future, normally through stipulatio to make the claim easily suitable. From the juristic point of view the transactio was a pact (pactum). A transactio over a controversy already decided by a judgment was not permissible unless (under later law) an appeal from it was brought. Postclassical and Justinian's legislation favored the transactio as a friendly settlement of controversies. The transactio became an autonomous legal institution similar in type and effect to innominate contracts (see CONTRACTUS INNOMINATI).—D. 2.15; C. 2.4.

Kaser, RE 6A; C. Bertolini, Transazione, 1900; M. E. Peterlongo, La transazione, 1936; G. Boyer, Pacte exstrictic d'action en dr. civil rom., Recueil de l'Acad. de législation de Toulouse, 13 (1937); Riccobono, Miscellanea G. Mercati, 5 (1946) 24.

Transcripticia nomina. See NOMINA TRANSCRIPTIA.

Transcriptio. See NOMINA TRANSCRIPTIA.

Transferre. To transfer to another (a right, a thing, possession, etc.). There was a fundamental rule concerning the transfer of property or rights to another: "No one can transfer to another more rights (plus iuris) than he has himself" (D. 50.17.34). Another rule stated: "What belongs to us cannot be transferred to another without an action of ours (sine facto nostro)." D. 50.17.11.

Transferre. (When referred to a legal norm.) To apply a legal principle to an analogous case.

Transferre actionem (translatio actionis). See CESSIO.
Transf erre domicillum. To transfer the domicile. The transfer was to be real and factual (re et facto, D. 50.1.20), not simply by a declaration before witnesses.

Transf erre possessionem. See TRADITIO.

Transfuga. (From transfugere.) A soldier who runs over to the enemy (ad hostem transit, transfugit). In war time he was punished by flogging to death. Transfuga also was a soldier who when taken by the enemy as a prisoner did not escape although he had the opportunity to do so. A transfuga was regarded as an enemy and had no ius postlimini. Syn. perfuga.

Schnorr v. Carolsfeld. RE 6A.

Transfusio. See the definition of NOVATIO.

Transigere. See TRANSACTIO.

Transire. To pass over, to devolve to, to be transferred to another (e.g., an inheritance, a right or an obligation, ownership, a legal remedy such as an actio, exceptio or querela).

Transire ad hostem. To desert to the enemy. Syn. transfugere. See TRANSFUGA.

Transitio ad plebeum. Transition from the patrician order to the plebeian. This brought the new plebeian the advantage of his eligibility to the plebeian tribunate. The transition was achieved through adoption by a plebeian performed in an assembly of the plebeians (CONCILIUM PLEBIS).

Kubler. RE 6A; Siber, RE 21, 125; Humbert, DS 2, 1509.

Transitus. See in TRANSITU.

Translatio dominii. See TRANSLATIO IURIS.

Translatio iudicis. An alteration in the procedural formula in a specific trial after the issue was framed (LITIS CONTESTATIO). Such alteration became necessary when a change of a person involved in the trial occurred, e.g., the death of the judge, appointed in the procedural formula, or of one of the parties or his representative (death of a cognitor, withdrawal of, or loss of citizenship by, the cognitor). Minor complications were caused if the change concerned other representatives of a party, a procurator (see PROCURATOR in a civil trial), a guardian or a curator. The technical side of the translatio iudicis in the events mentioned is not quite clear, in particular, whether a new liitis contestatio, a restitutio in integrum, or a specific agreement between the parties, confirmed by the competent magistrate, was necessary. It is likely that all instances of translatio iudicis were technically not treated in the same way.


Translatio iuris. The transfer of a right from one person to another either by an act inter vivos (an agreement, a donation) or mortis causa, through succession. See TRANSPERRE. Translatio rei (domini) = the transfer of ownership. See CESSIO, DOMINUM.

Kaser. RE 6A. 2158.

Translatio legati. See ADEMPTEO LEGATI.—Inst. 2.21; 34.4.

Kaser. RE 6A. 2168; Sanfilippo. ANPal 17 (1937) 120.

Translatio rei. See TRADITIO. TRANSLATIO IURIS.

Kaser. RE 6A. 2159 (Bibl.).

Transmittere (transmissio). Primarily used of the transfer of a right from one person to another through inheritance or legacy (mortis causa). In a specific, technical sense, transmittit (pass.) refers to a transfer of the right to accept an inheritance by the appointed heir to his successors. Under the classical law, when an heir upon whom an inheritance was conferred (dedito, see DEFERRE HEREDITATEM) died before the acceptance of the inheritance (see ADITIO HEREDITATIS), the latter was not "transmitted" to another. Some exceptions from this rule, however, were admitted in the later law. Two cases of transmissio are particularly important. First, the so-called transmissio Theodosiana (C. 6.52.1), which occurred when a testator appointed his descendant as an heir and the latter died before the testament was opened (see APERTURA TESTAMENTI). In such an event the heir's nearest descendant had the right to accept the inheritance. In a much larger measure the classical rule was superseded by the so-called transmissio Iustiniana (C. 6.30.19): if an heir (a testamentary one or on intestacy) died before a year elapsed from the time he had notice of the delatio or before the time for deliberation (see DELIBERARE. TEMPSUS AD DELIBERANDUM) expired, his heirs could accept the inheritance during the rest of the time. If an heir died without having knowledge of the inheritance conferred upon him, the pertinent terms (one year or the tempsus ad deliberandum, respectively) ran fully in favor of his heirs.—C. 6.50; 52.

P. Bondante. CORSO DI DIR. ROM. 6 (1930) 243; B. Biondi. Successione testamentaria (1942) 251.

Transversus. See LINEA, LATTUS.

Trebatus, Caius T. Testa. One of the last Republican jurists, contemporary with, and friend of, Cicero, teacher of Labeo. No direct excerpt from his works is preserved in the Digest, nor is a title of a writing of his cited. Literary sources make it clear that he wrote a treatise on civil law (de iure civili) and an extensive work on divine law. He enjoyed high esteem with the classical jurists.

Sommer. RE 6A. 2251; Berger. RE Suppl. 7. 1619; idem. OCD.

Trecenarii. Imperial officials receiving the highest annual salary of 300,000 sesterces. Lower groups were ducenarii (with a salary of 200,000 sesterces), centenarii (100,000) and sexagenarii (60,000).—See PROCURATORES (IN PUBLIC LAW).

Kubitschek. RE 3; Seekh. RE 5 (e.v. ducenarii); A. Segré. TAMPhilolAs 74 (1943) 102.

Trecenarius. In the army, the highest officer (centurio) in the praetorium.

Lammert. RE 6A.
Tres faciunt collegium. The minimum number of members of an association was three (D. 50.16.85).
—See collegium.

Tres partes. In some manuscripts of the Digest a part of the second (middle) portion (see infortiatum), to wit, from D. 35.2.82 until the end of book 38, appears as a separate volume starting with the words "tres partes." The division has no essential significance at all; it might be a jest of the scribe who saw in these two words an allusion to the division of the Digest into three volumes.—See vulgata.

Kantorowicz, TR 15 (1937) 40.

Tresviri (triumviri). A body of three officials associated in the same official functions. Additional words indicate the office and functions for which they were appointed. They acted in common or separately if they agreed upon the division of their functions among themselves.—See the following items.

Strasburger, RE 7 A (i.e. triumviri); Lécivain, DS 5.

Tresviri aediles. (In municipalities.) In some municipla there were three aediles instead of two (duoviri aediles).

E. Manni, Per la storia dei municipi (1947) 159.

Tresviri (triumviri) agris dandis (or dividundis).

See tresviri coloniae deducendae.

Tresviri aere argento auro flando feriundo. See tresviri monetales.

Tresviri capitales. Magistrates of a lower rank (magistratus minorcs) belonging to the group of vigintisexviri. They exercised police functions in Rome and fulfilled certain tasks in criminal and civil jurisdiction (arresting suspect persons, castigating thieves and slaves, supervising executions of persons condemned to death). They also collected pecuniary fines (multae), the sum of sacramentum from the party defeated (see legis actio sacramentum), if the sum was not deposited before. A Lex Papiria of an unknown date (between 242 and 122 B.C.) ordered their election by comitia tributa, presided over by the praetor urbanus. The tresviri capitales still existed in the third century after Christ but most of their functions were performed under the Principate by the vigiles.

Strasburger, RE 7 A, 518; Lécivain, DS 5, 413; G. Roth, Leges publicae populi Romani (1912) 312.

Tresviri (triumviri) coloniae deducendae. Three commissioners appointed for the foundation of a colony and the distribution of plots of land among the colonists. Their number increased in the course of time (quinqueviri, septemviri, decemviri) and their official title was enlarged through the addition of words such as agris dandis, assignandis, indicandis.

Strasburger, RE 7 A, 511; Schulten, DE 2. 429; Bayet, Rev. des Études Latines 6 (1928) 270.

Tresviri monetales. Masters of the mint. They were magistrates of lower rank (magistratus minorcs) and belonged to the group of officials called by the collective name vigintisexviri. Under the Republic their names were impressed on the coins. From the time of Augustus their official title was tresviri aere argento auro flando feriundo (= the officials to blow and coin bronze, silver and gold). From the third century the masters of the mint bore the title procuratores monetae; from the time of Diocletian they were appointed for each diocese.

Strasburger, RE 7 A, 515.

Tresviri nocturni. See vigintisexviri. They were probably predecessors of the tresviri capitales.

Strasburger, RE 7 A, 518.

Tria verba. See DO DICO ADDICO.

Paoli, NRH 30 (1952) 297.

Triarii. See CENTURIO.

Lammert, RE 7 A; H. M. D. Parker, The Roman legions (1928) 10.

Tribonianus. Justinian's principal collaborator and adviser in his legislative work. He was a member of the commission appointed by the emperor for the compilation of the first Code and presided over the commissions which composed the Institutes, the Digest, and the second Code. Hence the changes made by the compilers on the texts of classical juristic writings and imperial constitutions, collected for Justinian's codification, are termed in the literature emblemata Triboniani ("Tribonianisms"). During the work on the codification he was— with a brief interruption—quaeator sacri palatii and temporarily magister officiorum. He probably also was the author of Justinian's earlier Novels. He died about A.D. 545. In spite of some critical remarks about his character by a contemporary writer (Procopius of Caesarea) the reliability of which are not beyond doubt, Tribonianus was the most prominent personality of Justinian's epoch. The emperor speaks of him with the highest praise. His collection of rare juristic works which served the compilers in the preparation of the Digest, is particularly emphasized by Justinian (Tanta c. 17).

Kübner, RE 6 A.; Berger, OCD; E. Stein, Bull. de la Classe des Lettres, Acad. Royale de Belgique, 23 (1937) 365.

Tribu moveri. See NOTA CENSORIA.

Tribuere. To grant, to concede. The term refers to legal remedies granted both by law (a statute) and a jurisdictional magistrate. Tribuere appears in the classical definition of justice (see iustitia): ius suum cuique tribuere (= to render everyone his due).—See tribuctio, actu tributoria, ulbro tributa.

Tribunal. A platform for a court, in the open air or (under the Principate) in a basilica. The jurisdictional magistrate, his secretary, and his council (consilium) were seated on the tribunal. The seat of the presiding magistrate was in the middle on the front of the tribunal (pro tribunali). The magistrate acted pro tribunali when he decided about honorum possessio, missiones, restitution in integrum, appointment of guardians, adoptions, manumissions, and the like.
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Art. de plano. Tribunal was later used in the sense of a court.—See in transitu, centumviri.

Weiss, RE 6 A; Chapot, DS 5; Severini, NDI 12 2; Pernice, ZSS 14 (1893) 115; Kübler, Festschrift für O. Hirschl (1923) 58; H. D. Johnson, The R. tribunal, Baltimore, 1927; Dull, ZSS 52 (1932) 174; Wenger, ZSS 59 (1939) 376.

Tribunal. (In a military camp.) A higher platform on which a military commander and his retinue were seated.

Lammert, RE 6 A, 2430.

Tribunatus. The office of a tribune in military service (in the army or in the imperial guard).

Tribuni. The following items deal with the more important officials bearing the title of tribunus. There were some more functionaries called tribuni, during the whole period of Roman history, for some specific functions of subordinate nature. Several of them were involved in the administration of military supplies.

Lengle, RE 6 A.

Tribuni acerarii. Originally they were officials of the tribus charged with the payment of stipend to soldiers, collection of the necessary means for this purpose (tributum) imposed on the members of the tribus, and the management of contributions and booty taken from the enemy. Since these functions were assigned to financially reliable persons, the term tribuni acerarii was later applied to persons classified in higher classes of the census. A lex Aurelia (70 B.C.) ordered that one-third (300) of the jurors in criminal courts (quaestiones) be selected among the tribuni acerarii, but a statute issued under the dictator Caesar abolished this privilege. Although the census of tribuni acerarii was lower than that of persons of equestrian rank (see equites), they belonged to the well-to-do group of the society.—See lex aurelia iudiciaria, tribus.

Lengle, RE 6 A, 2432; Treves, OCD; Hill, Am/Philol 67 (1946) 61.

Tribuni celerum. See celerex.

Tribuni civitatis. Military commanders and high officials of the civil administration in larger cities in the later Empire (particularly in Egypt).

Lengle, RE 6 A. 2435.

Tribuni classis. Commanders of navy units, probably of a lower rank than the praefectus classis.

Lengle, RE 6 A, 2436.

Tribuni cohortis. Military commanders of cohortes praetoriae, subordinate to the praefectus praetorio. Later the title was given to specific (voluntary) units of the military forces in the field.

Lengle, RE 6 A, 2436.

Tribuni laticlavi. Among all military tribunes who normally were of equestrian rank, they ranked highest since they belonged to the senatorial class.

Tribuni militum. The highest officers in the legions, normally of equestrian rank (see tribuni laticlavi). There were six tribuni militum in a legion; one of them assumed in times of war the command of the whole legion. In peace time their activity was manifold, as described by the jurist Macer, in his work "On military matters" (de re militari): "to hold the soldiers in the camps, to make them exercise for training, to keep the keys of the gates, to make sometimes the rounds of the watch, to supervise the distribution of the food, to examine the grain, to restrain frauds attempted by the furnishers of food, to punish offenses, to be frequently present in the headquarters, to hear the complaints of the legionnaires, to inspect their healthy conditions," etc. (D. 49.16.12.2). Under the Principate the title tribuni militum was conferred on commanders of other units of a more or less military character and on officials of the imperial administration.—See lex licinia cassia.

Liebenam, RE 6. 1639; Parker. OCD.

Tribuni militum consularis potestate. Military tribunes with consular power. The tribuni militum consularis potestate were created first in 444 B.C. in the place of consuls. Their number varied from three to six, and they were appointed as extraordinary magistrates by a decree of the senate. They disappeared as a constitutional institution in 367 B.C. when the praetorship was established.

Lengle, RE 6 A, 2446; Bernardi, RendLomb 79 (1945-46) 3.

Tribuni numerorum. See numerus.

Tribuni plebis. Plebeian tribunes. The office was created in 494 B.C. after the first secession of the plebeians to the Sacred Mount (Mons Sacer). The tribuni plebis were originally not magistrates of the state but officials of the plebeian order (see plebs). Their number increased gradually from two to ten. The development of the plebeian tribunate reflects the development of the rights and social situation of the plebs. The primary function of the tribuni was the defense of the plebeians against illegal acts and abuses of the patrician magistrates (ius auxilii, see auxilium, intercessio tribunicia). The house of the tribuni had to be accessible even during the night; a tribunus could not be absent from Rome longer than one day. Originally the tribunes were elected by the plebeian assemblies (see concilia plebis), later by comitia tributa. The office and the person of a tribunus were sacrosanct (see sacrosanctitas); one who violated the sacrosanctity of a tribunus became an outlaw (see sacer, leges sacrae). For the right of the tribunes to protest against the administrative acts and legislative proposals of the magistrates (ius intercedendi), see intercessio in public law. A tribunus had the right to invoke a gathering of the plebs (concilia plebis), to preside over it, and to make proposals of bills to the plebeian assembly or which the plebs voted (see plebiscita). The tribunes
obtained the greatest success in the field of legislation when they were admitted to the meetings of the senate and were granted the right to make legislative proposals which after approval by the senate were transmitted to the *comitia tributa* for a vote. Later, the *tribuni* were authorized to convocate the senate and under the *Lex Atilia* (149 B.C.) they obtained a seat in the senate after their term of service. Tribunes had *ius coerendi* (see *coercitio*) over persons who offended their dignity or opposed their orders. They could order the arrest of the wrongdoer which was made by the *aediles plebis* or the subordinates of the *tribuni*, the *votarii*. In the field of jurisdiction the tribunes assumed the competence of the former *duo- \( \text{viri perpetuallionis} \) in cases qualified as *perduellionis* and decided upon offenses against their person. Generally they inflicted fines (*multae*), but they had the power to pronounce even the death penalty. The latter and higher fines (over 3020 sesterces), however, had to be confirmed by the *comitia centuriata* or *tributa* (for fines). Only a plebeian could be a tribune (see *transito ad plebem*). The *tribuni* had no *imperium*, but their legal position became in the later Republic very similar to that of magistrates.

The great importance of the plebian tribunate is evidenced by the fact that Augustus based his sovereign power primarily on *tribunicia potestas*, against which no *ius intercedendi* (either by tribunes or by magistrates) could be applied. Consequently, the tribunes lost much of their prestige although their *ius intercedendi* against the orders of magistrates, the *ius auxilii*, and some minor rights as well as their honorific privileges remained undiminished. Mention of *tribuni plebis* still occurs in the fifth century, but only as an honorary title.—See moreover, *ius agendi cum plebe*, *lex aurelia*, *lex cornelia* (on tribunes), *lex hortensia*, *lex publica philonis*. *Lex pompeia licinia*, *lex icilia*, *lex publica voleronis*. *Lex valeria horatia*, *tribunicia potestas*.


Tribuni scholarum. *See scholae*.

Tribuni vigilum. *See vigiles*.

Tribuni voluptratum. Police officers in the later Empire who had the supervision of public games and theatrical spectacles, and the control of public morals.

Tribunicia potestas. The fullness of power conferred on plebeian tribunes. Caesar and Augustus had the title *tribunicia potestate* conferred on them in order to be inviolable (*sacrosanctus*).—See *tribuni plebris*.


Tribunicius. (Adj.) Connected with the office of a *tribunus plebis*.

Tribunicius. (Noun.) A retired tribune.—See adlectio.

Tribunus et notarius. *See notarius*.

Tribus. A tribe. The original three tribes, Ramnes, Tities, and Luceres (see *ramnes*) were of ethnic character. The later division of the territory of Rome into four *tribus* (ascribed to King Servius Tullius) was a local one and superseded the ethnic division. In 495 B.C., sixteen county *tribus* were added to the former urban ones and after 241 B.C. there were thirty-five *tribus* altogether. The original four urban *tribus* (*tribus urbanae*) and thirty-one "rustic" (*tribus rusticae*) covering the whole country. In the *tribus rusticae* the landowners were concentrated, whereas the city-*tribus* embraced (since 304 B.C.) the non-owners of land. The *tribus rusticae* became thus more distinguished and the assignment to an urban *tribus* was implied in a *tribu moveri* (expulsion from a *tribus rustica*) through a *nota censoria*. Each Roman citizen had to be registered in a *tribus* during the *census*. The registration gave him the right to vote in the popular assembly of the *tribus* (*comitia tributa*). The division in *tribus* served for calling to military service and taxation within the *tribus* (*tributum*). The *tribuni aerearii* functioned as chairmen of the *tribus*. Their principal duty was to pay off the soldiers of the *tribus* (*aes militare*) and to collaborate in the assessment of the landed property for taxation purposes. In the later Republic the territorial basis for the enrollment into a *tribus* was not strictly observed. Under the Principate the *tribus* became an organization for relief of its poor members who were entitled to some help in grain and food from the state. *See tesserae frumentariae.—See curiae municipiorum*.


Tribus municipiorum. *See curiae municipiorum*.

Tributarius. (Noun.) A taxpayer. The term refers to payers of taxes of any kind. *Tributarius* (adj.) = connected with, or pertinent to, the payment of *tributum*.—See *praedia tributaria*.

Tributum. By tribus, e.g., voting tributum in the comitia tributa.—See TRIBUS, LEX VALERIA HORATIA.

Tributo. (From tribuere.) Distribution of an insolvent commercial peculium belonging to a slave or finus familiae among its creditors (see Actio Tributoria).—See Tributum.

Tributoria actio. See Actio Tributoria.

Tributum. In earlier times an extraordinary charge in kind imposed (indicere) on citizens, non-soldiers, in war time in order to secure equipment and nourishment for the army. After a victorious war the tributum was sometimes reimbursed to the payers if the booty and contribution taken from the enemy was large enough to cover the expenses of the war. Syn. tributio. Later, tributum became a general term for taxes; see the following items. For tributum in the provinces. see Tributum Soli, Stipendium, Praedia Tributaria.—C. 10.16; 21.


Tributum capitis. A tax imposed on the population of certain provinces. The tax was not uniform. It was either a tax from property other than land or a poll-tax levied as a capitatio plebs (humana) which was paid by certain groups of the population subjugated.—See Capitatio in the provinces.


Tributum soli. A land tax, the most important impost in the provinces paid either in kind or in money. It was based on a survey of the land and an evaluation by experts. Originally there was no difference between stipendium and tributum; under the Principate distinction was made depending upon the circumstance whether the province was imperial or senatorial: tributum was paid in imperial provinces, stipendium in senatorial.—See Praedia Stipendiaria, Praedia Tributaria.

Schwahn, RE 7A, 10; 62; 70; Anon., VDI 12, 2.

Tributum temerarium. A general extraordinary tax paid voluntarily in times of urgent necessity (emergency) by well-to-do persons in order to save the state from financial calamity. The money given was considered a loan to be repaid by the state when its financial situation would improve. The tributum temerarium was practiced only in the Republic.

Schwahn, RE 7A, 58.

Triginta dies. A period of thirty days. It was applied in both criminal and civil procedure on various occasions. Its origin was perhaps in sacrail law (armistic) from which it was by statute or custom transferred into legal procedural practice.—See Dies Iusti, Tempus Iudicati, Lex Pinaria, Lex Cicerela.

F. Kleineidam, Persone.xecution der Zweiß Tafeln (1904) 130; Düll, Fachr Kochkater-1 (1939) 27.

Trinoctium. Three consecutive nights. Through a wife’s intentional absence for three nights from the common dwelling with her husband, the acquisition of manus (power) over her through usus was interrupted. The marriage concluded through cohabitation remained valid and could be continued when the wife returned to the common home.—See usurpare.


Triunundinum. See nundinae, promulgare, lex caecilia didia. Syn. triun um nundinum.


Tripertita. The title of the earliest Roman juristic treatise, written by the jurist Sextus Aelius Petus Catus; see aelius.

Tripertitum ius. See Testamentum Tripertitum.

Triplio. See duplicatio, replicatio.

Triptychum. Three wooden, wax covered, square tablets bound together like a booklet with six pages. Pages one and six were left blank, pages from two to five contained the text of the document (scriptura interior on pages two and three was sealed by the witnesses on page four, scriptura exterior was written on pages four and five).—See Tabulae, Tabulæ Ceratae, Dipyclchum.


Triticaria condicio. See condicio triticaria.

Triumphator. A military commander (an emperor or a high magistrate) entering Rome under an imposing ceremonial (see Triumphus) after a victorious war. As an honorific title the term was applied to emperors in the later Empire.

Triumphus. The solemn entrance of a military commander in Rome after a victorious war. Under the Republic it was only a dictator, a consul, or a praetor (magistrates with imperium) who had the right to celebrate the victory of his troops (or the navy, triumphus navalis, maritimus) in this way, if they were still in office (in magistratu) and a previous decision of the senate granting the triumphus was passed before they returned to the city of Rome (pomerium). Only a victory over the enemy obtained by bloodshed (at least five thousand enemies killed) gave the right to a triumphus, according to a lex Maria Porcia of 62 B.C., which fixed penalties for commanders who gave false information about the number of enemies killed in war. In the Empire, the triumphus was a prerogative of the emperor. The triumphator had the right to certain special insignia (ornamenta triumphalia) such as a chariot richly ornamented with gold, ivory, and laurels (currus triumphalis), a toga picta (vestis triumphalis), a Laurel crown (corona triumphalis) on his head, while another crown (made of gold) was held over his head by a public slave, etc. A lesser triumphus (minor triumphus), called ovatio, was also granted.
by the senate in cases in which the military success did not justify a full triumph or when the campaign was of lesser importance.—See ACCLAMATIO.

Ehlers, RE 7A; Borssák, RE 18, 1122; Rohde, RE 18, 1890 (s.v. ostio); Cagnat, DS 5; Cuy, DS 3, 1155; G. Rotondi, Leges publicae populi Rom. (1912) 362.

Triumvirale judicium. In postclassical times three arbitrators chosen by the parties to settle a controversy between them.

Triumviri. See TRESVIRI.

Triumviri rei publicae constituendae causa. See LEX TITIA.

Tryphoninus, Claudius. A jurist of the first half of the third century, member of the council of the emperor Septimius Severus, a disciple of the famous jurist Cervidius Scaevola. He wrote notes (notae) to his teacher's work and an extensive casuistic collection, Disputationes (in 21 books).—See CLAUDIUS.


Tubero, Quintus Aelius. A jurist of the second half of the last century of the Republic. He wrote on constitutional law (on the senate) and on the duties of a judge. Of another jurist of the same name, who was consul in 118 B.C., very little is known. He was highly praised by Cicero.

Klebs, RE 1, 535 (no. 155), 537 (no. 156); Grosso, ATor 78 (1942/3) 180.

Tuditanus, Caius Sempronius. Consul 129 B.C., the first jurist who wrote on public law, author of a treatise on magistracies (at least in 13 books).

Münzer, RE 2A, 1441.

Tueri. To defend, to protect, to take care, to administer carefully (one's property, affairs). The term is frequently applied to legal institutions and procedural remedies (actions, exceptions, interdicts) by which a person could defend his rights and interests in court or be granted protection by the praetor; see TUTTIO PRAETORIS.

Tuito praetoria. Protection, defense, granted by the praetor in specific cases in which, under ius cive, such a protection was not available.—See IPSO TURE, MANUMISSIO PRAETORIA, SERVITUTES PRAETORIAE, IUS HONORARIUM.


Tumultus. A riot, an uproar, a violent agitation (re- volt) of the people against public authorities (adversus rem publicam) when an internal critical situation was threatening. In such circumstances exceptional measures were taken, as, e.g., calling all citizens to arms and suspension of exemptions from military service. The state of tumultus was publicly proclaimed by the senate. With regard to contractual obligations the impossibility of their fulfillment caused by accidents during a tumultus were considered a vis maior.—See IUSTITIUM, SENATUSCONSULTUM ULTIMUM, DEPOSITUM MISERABILE, TURBA, SEDITIO.

Sachers, RE 7A, 1345.

Tune enim (or-autem, etenim, certe, deinde). Occurs in interpolated texts, in particular when the locutions follow a negative conditional phrase (mihi ... ) and serve to define precisely the exceptional case (tunc = in that case). The locutions, however, are not an absolutely reliable criterion of interpolation, as often has been assumed.

E. Albertario, Fil 36 (1911) 801; Berger, KrWJ 14 (1912) 419; Guarnieri-Ciardi, Indice 1927, s.v. enim, tunc.

Turba. A riot, a tumult. Robbery committed during a riot in which many persons ("not three or four.") 47.8.43 were engaged was more severely punished than a simple rapina. Turba also refers to a multitude of persons whom a man gathered in order to enter with violence another's house for the purpose of plundering. If the accomplices were armed (turba cum telis), the culprit was punished by death.—D. 47.8.—See TUMULTUS.

Esmien, Médi Girard 1 (1912) 458.

Turbatio. A tumultuous disturbance of public order and peace.—See TURBA.

Turbatio sanguinis. See LUCTUS.

Turma. A small cavalry unit, normally of thirty caval- rymen, one-tenth of all horsemen attached to a legion. See EQUITES LEGIONIS. Commander of a turma was the decurio commanding the first decuria (= ten caval- rymen) of the turma. The decuria was the smallest cavalry unit. In the Empire a larger unit was the Ala which consisted of sixteen or more turmae.

Lammt, RE 7A; Cagnat, DS 5.

Turmariti. Imperial officers in the later Empire concerned with the enlistment of recruits for the cavalry.

Turpis. See CONDICTIO TURPI, CONDICTIO OB TURPEM CAUSAM, ACTIONES FAMOSAE, RES TURPI, and the following items.

Turpis persona. A person whose occupation or conduct was disreputable. Among personae turpes were actors (see SCAENICUS), gladiators (see HAREMARINI), prostitutes (see MERETRIX), owners of houses of lewdness (see LENA, LENO). A turpis persona was excluded from guardianship and could not contest a testament through QUERELA INOFFICIOSI TESTAMENTI. —See TURPITUDO.

Sachers, RE 7A, 1435.

Turpis stipulatia. A stipulatio under which a person assumed an obligation to commit a crime. The promise was null. Stipulatio ex turpi causa = a stipulatio in which the ground of the promise was immoral although the object was not (e.g., a promise made to prevent a crime intended by another). In such a case the promisor when sued for payment, could oppose the exceptio doli; on the other hand the magis- trate could refuse the plaintiff the actio (denegatio actionis) against the promisor.—See CONDICTIO OB TURPEM CAUSAM.

Siber, St Bonfanti 4 (1930) 105.

Turpitudo. The quality of a person to be of bad repute (TURPIS PERSONA) because of his profession,
immoral or improper conduct. Such persons were condemned by public opinion and branded factually with infamy although legally they were not infamous (infamia). In the literature this kind of infamy is called infamia facti, to be distinguished from infamia iuris, i.e., infamy inflicted by law.—See INFAMIA, EXISTIMATIO, TURPI PERSONA, ACTIONS FAMOSAE, NOTA CENSORIA, IGNOMINIA.

Sachers, RE 7A.

Tuscius. A jurist of the second century after Christ, successor of Iulius in the leadership of the Sabine school (see SABINIUS). No excerpt of his works is known.


Tutela. See TUTELA IMPUBERUM, the primary type of guardianship.

Tutela agnaturum. See TUTELA LEGITIMA AGNATORUM.

Tutela dativa. See TUTELA TESTAMENTARIA, TUTOR DATIVUS.

Tutela fiduciaria. Fiduciary guardianship. One instance of tutela fiduciaria occurs in connection with the COEMPTIO FIDUCIAE CAUSA. Another instance was connected with EMANCIPATIO, when the person who purchased a son from his father for the third time did not remanipulate him to the father but manu-

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Tutela impuberum. Guardianship over persons sui iuris (not under paternal power) who were below the age of puberty (see IMPUBES). The definition of tutela, given by the Republican jurist Servius Sulpicius Rufus (and quoted by Justinian in his Inst. 1.13.1), runs: "a right and power over a free person, granted and allowed under his civile, to protect him who, because of his age, is not able to defend himself" (D. 26.1.1. pr.). The guardian (tutor = tutor) had to protect the person and the property of the ward (pupillus) and his functions are qualified as a power (potesitas) although it was not so extensive as the paternal power (patria potestas). "A tutor does not only administer the property of the ward (res pupilli) but he also has to take care of his moral behavior" (mores, D. 26.7.12.3). Tutela is not only a right; it created on the part of the tutor duties for the fulfillment of which he was responsible. Consequently guardianship was considered a munus (a charge); under the later Principate it was designated as a munus publicum (= a public service) inasmuch as the protection of young people unable to manage their affairs was also in the public interest. The further development of the institution was dominated by the tendency to extend the liability of the guardians and to submit them more and more to the control of the public authorities. The original independence of the tutor in the administration of the ward's affairs—

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demned. For security given by the guardian, see cautio rem pupillii salvam fore. From the time of Constantine the ward had a general hypotheca (hypotheca omnium honorum) on the guardian's property. The guardian could seek a reimbursement of his expenses made in the interest of ward through actio tutelae contraria.—In Justinian's codification the law of guardianship was thoroughly reformed. Alterations of classical texts obscured many details in the development of the institution and in the field of the guardian's duties and responsibilities. Moreover, the tendency towards equalization of the different types of tutela with respect to the forms of appointments contributed considerably to the confusion of the picture.—Inst. 1.13-15, 17-22, 24-26; D. 26.2.1-10, 27.1-9; C. 5.28-68, 71-75; 9.10.—See moreover, excusatio, potioris nominatio, praetor tutelaris, actio subsidiaria, inventarium, periculum tutelae, abdicatio, in uire cessio tutelae, actio rationibus distrahendis, contutores, usurae pupillares, and the following items.

Sachers, RE 7A; Beuchtel and Collinet, DS 5; Solazzi, NDI 12, 2; Berger, OCD 400 (s.w. guardianship); Remard, NRH (1901) 634; Peters, ZSS 32 (1911) 188; R. Taubenschlag, Studien (1913); Solazzi, Tutela e curatela, RJSG 53 (1913) 263, 54 (1914) 17, 273; idem, RendLomb 49 (1916) 638, 53 (1920) 121; idem, Institut tutelari (1929); idem, StPav 6 (1921) 115; idem, St sulla tutela, Pubbli. Univ. Modena 9 (1925), 13 (1925); E. Levy, Die Konkurrenz der Aktionen 1 (1918) 143; La Fira, BIDR 38 (1929) 53; Vazny, ACGR Roma 2 (1935) 529; Laura, St Riccobono 3 (1936) 283; Kübler, St Bestia 1 (1939) 75; V. Arrango-Ruiz, Rariora (1946) 149; Siber, ZSS 65 (1947) 162; Levy-Brühl, St Solazzi (1948) 318; Guarino, ibid. 31; Biondi, Fisch Sprichwörter 1 (1951) 52; Provera, Iludicor contraria, MemTor Ser. II, 75 (1952) 45.

Tutela legitima. Guardianship in which the choice of the guardian was fixed by law (lex). Under "law" the Twelve Tables are meant (see legitimus). If a testator failed to appoint a tutor to his son or descendant who was below the age of puberty (impuubes) and was to become sui iuris at the death of the testator, the nearest agnates, the same who succeeded ab intestato, had to be the guardians of the persons mentioned. If such relatives were lacking, the Twelve Tables called members of the testator's gens (gentiles) nearest in relationship. Justinian's reform of the succession on intestacy (Nov. 118) devolved guardianship to the cognates of the deceased.—Inst. 1.15; 17; 18; D. 26.4; C. 5.30.

Tutela legitima parentis. A father who emancipated his son (pars manumissor) before the latter became puubes was under the law (see legitimus) the guardian of the son.—Inst. 1.18.—See pars manumissor, emancipatio.

Tutela legitima patroni. A patron (and after his death his son) became guardian of his freedman whom he manumitted from slavery when the slave was below the age of puberty.—Inst. 1.17.

Tutela mulierum. Guardianship over women sui iuris, i.e., who were neither under paternal power (patrea potestas) nor under that of her husband (manus). In the developed stage of the institution the principal function of the tutor mulieris was to give his authorization (auctoritas) to more important transactions or acts performed by the woman, such as manumission of slaves, acceptance of an inheritance, making a testament, assuming an obligation, alienations, constitution of a dowry, and the like. The women's weakness of sex (see infirmitas sexus), light-mindedness, and ignorance of business and court-affairs are given as grounds for their protection through tutelage. The appointment of a woman's guardian was made in the same way as the tutela imparabrum: by testament of the person in whose power (paternal or marital) she was, by law (tutela legitima) of the agnates and of members of the gens, gentiles, in earlier times) or by a magistrate (tutela dativa). The woman could enforce the auctoritas of the guardian in the case of an unjustified refusal of approval by applying to a magistrate. The tutela mulierum was still in force under Diocletian. In the Theodosian Code there is no mention thereof.—See coemptio fiduciae causa, optio tutoris, ius liberorum, vestales, tutor ad certam rem, lex Claudia de tutela mulierum, usucapio ex rutiliana constitutione.

Sachers, RE 7A, 1588; Solazzi, Aeg 2 (1921) 153.

Tutela testamentaria. Appointment of a tutor by a testator in his last will for his son or a descendant in his paternal power below the age of puberty who at his death would become sui iuris (independent of paternal power). If there was no guardian appointed by testament or if the appointed guardian was excused, legitimate guardianship (tutela legitima) entered into account. The appointment had to be made by name (nominatum). Guardians appointed by testament were treated by legislation with favorable regard as deserving particular confidence inasmuch as they had been selected by the testator.—Inst. 1.14; D. 26.2; C. 5.28.—See cautio rem pupillii salvam fore, confirmare tuorem, tutore datum.

Tutelaris (tutelarius). See praetor tutelarius.

Schneider, RE 7A, 1608.

Tutor. A guardian. Only Roman citizens could be guardians (some exceptions were admitted in favor of Latins, see latini). Minority was a ground for exemption from assuming a guardianship; Justinian set the age of twenty-five as the minimum age for tutors. Persons with physical defects (dumbness, deafness) were excluded whereas mental defects were only a ground for excuse. Soldiers could not be appointed as guardians. Women were not admitted to guardianship, since it was considered a man's work (manus masculorum, manus virile). From a.d. 390 grandmothers and mothers were permitted to assume
the tutorship of their grandchildren or children if they were widows and solemnly declared not to marry again, and if there was no testamentary or legitimate tutor (C. 5.35.2).—For the rights and duties of a tutor, see TUTELA.—D. 26.5; C. 5.34; 35.—See NOMINATIO POTIORIS.

Solazzi, RISG 64 (1920) 2; Frezza, StCagl 22 (1934).

Tutor ad augmentum datus. An additional guardian appointed to assist the primary guardian when the ward’s property substantially increased (e.g., through an inheritance).

Tutor ad certam rem. A guardian could not be appointed for one specific affair. An exception was the tutor praetorius, appointed for a woman under guardianship, for the constitution of dowry if the guardian under law (tutor legitimus) was unable to exercise his functions. In the case of larger estates consisting of distant properties the appointment of a tutor for certain locally delimited affairs was admissible; see TUTOR AD AUGMENTUM DATUS, TUTOR ADIUNCTUS.

Tutor adiunctus. An additional tutor appointed by a magistrate when the principal tutor was temporarily unable to fulfill his duties (e.g., he became a prisoner of war).—C. 5.36.

Sachers, RE 7A, 1524.

Tutor Attilianus. See LEX ATILIA.

Tutor cessans. One of two or more guardians (see CONTUTORES) who did not participate in the management of the ward’s affairs at all. Originally he was not liable but later he could be compelled by the prae- tor to fulfill his duties, and from the time of Marcus Aurelius he could be sued by an actio tutelae utilis for damages if he did not excuse himself within fifty days.—See TUTOR GERENS.

Sachers, RE 7A, 1577; Solazzi, RISG 54 (1914) 35.

Tutor cessicius. See IN TURE CESSIO TUTELAE.

Tutor dativus (datus). A guardian appointed by a magistrate: in Rome by the praetor urbanus (see LEX ATILIA), in the provinces by the governor under the Lex Iulia et Titia. Under the Principate consuls and praetors appointed guardians, and from the time of Marcus Aurelius a special praetor was concerned with tutelary matters; see PRAETOR TUTELARIUS. The term tutor dativus refers sometimes to a tutor appointed in a testament.—D. 26.5; C. 5.47.

Sachers, RE 7A, 1512; Solazzi, RISG 54 (1914) 17, 273.

Tutor ex lege Iulia et Titia. See LEX IULIA ET TITIA.

—Inst. 1.20.

Tutor falsus. See FALSUS TUTOR, PRO TUTORE GERERE, ACTIO PROTUTELAE.

Tutor fiduciarius. See TUTELA FIDUCIARIA.

Tutor gerens. A guardian who factually administered the ward’s property (gerere), alone or together with another tutor (see CONTUTORES) and performed acts connected with the guardianship as a whole (administratio tutelae). Ant. tutor cessans.—D. 26.7.

Sachers, RE 7A, 1523; Solazzi, RISG 54 (1914) 35.

Tutor honorarius (honoris causa datus). An honorary tutor. He was free from any responsibility since he actually did not participate in the management of the ward’s affairs.


Tutor in litem. A tutor especially appointed for the defense of the ward’s interest in a trial against his guardian. In Justinian’s law a curato accomplished such a task. —See TUTOR PRAETORIUS.—C. 5.44.

Tutor legitimus. See TUTELA LEGITIMA.

Tutor mulieris. See TUTELA MULIERUM.

Tutor notitia causa datus. A guardian appointed in a testament, in addition to the principal guardian, who had to assist and instruct the latter (ad instruendos contutores) in the administration of the ward’s affairs. Normally he was the testator’s freedman who was acquainted with the ward’s affairs.

Sachers, RE 7A, 1552; Levy, ZSS 37 (1916) 49.

Tutor optivus. See OPTIO TUTORIS.

Tutor praetorius. In the case of a controversy between the guardian and the ward during the guardianship the praetor appointed a special tutor who protected the ward’s interests in the trial. Under Justinian’s law a curato was appointed for this purpose. —See TUTOR IN LITEM.

Peters, ZSS 32 (1911) 221.

Tutor suspectus. A person who for various reasons (primarily of moral or financial nature) was not suitable for a specific guardianship. A guardian could be considered suspectus not only before he started the administration of the ward’s property, but also when he later performed an act or concluded a transaction from which by his fraud or negligence a considerable loss resulted for the ward, or when through his inexcusable absence he proved that he did not care for the ward’s interest. There were also other cases which rendered the tutor suspect, among them his open enmity against the pupillus and his family or his moral conduct (mores) which clearly indicated that he did not deserve confidence. A tutor suspectus could be denounced to the tutelary authority (postulare, accusare tutorem suspectum) by any one, but not by the ward himself; when the allegations of the accuser proved true in a special proceeding (de specto tutore cognoscere), he could be removed (removere, remotio) from the guardianship. The removed tutor was branded with infamy only when his actions were fraudulent. The accusatio suspecti tutoris (called also crimen suspecti tutoris) known already in the Twelve Tables, was in postclassical law extended to curatores.—Inst. 1.26; D. 26.10; C. 5.43.

Sachers, RE 7A, 1556; Solazzi, La minore età (1912) 259; R. Tausendthalslag, Lehrbuch der privatrechtlichen Strootscheinungen (1913) 27; Berger, ZSS 35 (1914) 39; Solazzi, BIDR 28 (1915) 131; idem, Instituti tutelari (1929) 207; R. Laprai, Crimen suspecti tutoris (1926); Kaden, ZSS 48 (1928) 699; Cardascia, RHD 28 (1950) 312.
Tutor temporarius. A guardian temporarily appointed when the tutor testamentarius or legitimus was absent (e.g., in the interest of the state) or temporarily unable to fulfill his duties (e.g., because of sickness).

Sachera. RE 7A, 1521.

Tutore auctore. Refers to acts of the ward which could be performed only with the authorization of his guardian; see auctoritas tutoris, tutela, tutela mulierum.

Tutorio nomine agere. To act in court as a guardian in the interest of the ward.

Tutrix. A woman appointed as guardian. In classical law women were excluded from guardianship. Exceptions were introduced in postclassical law.—C. 3.27.—See TUTOR.

U

U.R. Abbreviation for uti rogas. See A.

Ugo (Ugolino dei Presbiteri). A glossator of the first half of the twelfth century.

Kutner, NDL 12, 2, 680.

Ulpianus, Domitius. A jurist whose works were excerpted in a large measure by the compilers of the Digest; nearly one-third thereof originates from Ulpian's pen. He was born in Tyre (Phoenicia). He held various high imperial offices, was prefect of the praetorians from A.D. 222, and died in 228. assassinated by his subordinates. Contemporary with Paul (see Paulus) and like Paul a very productive author, he had a perfect knowledge of the juristic literature; opinions of other jurists are amply quoted by him, but no quotation from Paul occurs in his works. He was an elegant writer, more of a compiler than an original thinker, but far from being a slavish copyist. He wrote many treatises, monographs (some of which are quite extensive) on topics, such as particular statutes, public law, imperial offices (e.g., proconsuls, consuls, praefectus urbi, praeator tutelarius), on procedural problems, etc. In addition, elementary works (Institutiones) and collections of legal rules (Regulæ), definitions (see definitiones) and opinions (see opiniones) are among his writings. Two collections of Regulæ appear under the name of Ulpian, one (in 7 books) represented in the Digest by a few texts only, and another, Liber singularis Regularum, preserved in a manuscript under the title "Selections from Ulpian's works"; see tituli ex corpore Ulpiani. On Ulpian's Notes on the writings of Papinian, whose younger contemporary he was, see notaI. Ulpian's standard works were a commentary on the praetorian Edict (Libri ad edicum. in 81 books) and an incomplete treatise on the ius civile (Libri ad Sabinum, in 51 books).

Jörs, RE 5, 1435 (no. 88); Berger, OCD; Orestano, NDL 12, 2; Pernice, Ulpian als Schriftsteller, StBerl (1885) 443; H. Fitting, Alter und Folge der Schriften röm. Juristen (1908) 99; F. Schulz, Sabinusfragmente in Ulpian Sabiniumkommentar (1908); H. Krüger, St Bonifate 2 (1930) 303; Buckland, LQR 38 (1922) 38; 53 (1937) 508; Volterra, SDHI 3 (1937) 158; F. De Zaulieta, St Bestia 1 (1939) 137; Schulz, History of R. legal science (1946) passim; Solazi, AG 133 (1948) 1 (on Liber Disputationum); Wolff, Zur Überlieferungsgesch. Ulp. Libri ad Sab., Fscrh Schulz 2 (1951) 145; W. Kunkel, Herkunft und soziale Stellung der röm. Juristen, 1952, 245.


Ultimus. See dispositio ultima, voluntas ultima.

Ulto. Voluntarily, spontaneously, i.e., without any obligation, authorization or mandate. The term is applied to acts accomplished for another by a negotium gestor.

Ulto citroque. Reciprocal, on both sides. The expression is used of reciprocal obligations arising from a bilateral agreement and of the pertinent actions which are available to each party against the other.

Ulto tributa. Public works (constructions and buildings) assigned at a public auction to contractors who offered to build them at the lowest price.—See Redemptores, opera publica.

Köhler, Gesch. des röm. Rechts (1925) 92; idem, RE 4A, 484; Mommens. Staatrecht 2, 1° (1887) 432, 443.

Uncia. One-twelth of an as. Hence the twelfth part of a whole, in particular of an inheritance. Heres unciarius or heres ex uncia = an heir whose share in the inheritance was one-twelth.

Babeton, DS 5, 590.

Unciae usurai. One-twelth of usurai centesimae (= 12 per cent), i.e., one per cent per annum.

Unciarium fenus. See fenus unciarium.

Unciarius heres. See uncia.

Unde cognati (legitimi, liberti, vir et uxor). The sections of the praetorian Edict which fixed the four groups of successors under praetorian law (see bonorum possesio intestati).—D. 38.6-8; C. 6.14; 15; 18.

Unde vi. Three indictics against dispossession through violence were proposed under this title in the praetorian Edict; see interdictum de vi.—D. 43.16; C. 8.4.

Berger, RE 9, 1677.

Universaler venire. To be sold at a lump sum.

Universi cives. See populus romanus.

Universitas. A union of persons or a complex of things, treated as a unit (a whole). As far as a universitas of persons is concerned, the term is applied by the jurists in the field of both public (persons associated in a community, civitas, municipia, collegia of a public character) and private law (private collegia, societates). Universitas of persons is distinguished from its members (singuli). As a universitas of things are treated things which economically (e.g., a herd = gressax. a building = universitas aedificii, aedium) or socially are considered a whole. In the last instance universitas comprises the complex of things and rights connected with an individual, such as an inheritance (hereditas, universitas honorum),
or in a more restricted sense, a *peculum*, a dowry. In this sense *universitas* is opposed to *singulae res. singula corpora* which refer to the individual things embraced by the term *universitas* as a whole. In later imperial constitutions *universitas* occurs in connections such as *fideicommissum universitas, donatio universitatis*. The term *universitas* has been suspected as non-classical for various (not always convincing) reasons. —D. 3.4; 38.3; 403.—See *actor universitatis, interdicta de universitate, res hereditaria, piae causae*.


*Universitas agrorum.* All plots of land within the limits of one city (*civitas*). They are the territory (*territorium*) of the *civitas* (*D. 50.16.239.8*).

*Universitas facti—Universitas iuris.* These non-Roman terms were coined in the literature to distinguish a group of things which though physically separated are treated as a whole, their single components not being taken in consideration, *universitas facti* (e.g., a library, a collection of pictures), from a group of persons or things which as a whole has a legal existence, distinct from that of its members or parts (*universitas iuris*).

*Universitas hominum.* A rather vague term indicating a larger group of persons organized along social lines.

*Universitas Iudaeorum.* Occurs only in a rescript of the emperor Caracalla (C. 1.9.1) in connection with a legacy bequeathed to it. The emperor declared the legacy not suitable. In the case in question the term was used by a *testatrix* with reference to the Jews living in Antioch, and evidently not as a legal technical term, but in the meaning *universitas iudaei*.

Schnorr *v. Carolsheld, Zur Gesch. der juristischen Person* 1 (1933) 69.

*Universitas iuris.* See *universitas facti*.

Bortolucci, *NDI* 12.2

*Universius ius.* See *successio in universum ius, hereditas, universitas*.

*Univira* (*univiria*). A woman who after the death of her husband remained unmarried. Women twice married were socially less esteemed. Augustus' legislation (*Lex Julia de Maritandis Ordinis*), however, compelled widows and divorced women to marry a second time by inflicting on them considerable material disadvantages.—See *luctus, secundae nuptiae*.


Unus casus. A unique case. Contrary to the basic rule concerning the *rei vindicatio* in one case only (*unus casus*)—according to Justinian's Institutes. 4.62.—A plaintiff could sue his adversary although he himself had possession of the thing vindicated. The case has remained unknown despite the various attempts on the part of scholars to find it in the Digest where it should be found according to Justinian's assertion.

R. Heule, *U. c.* (1915) 725; *Scialoja, St Simoncello* (1917) 611 (= *St 2* [1934] 273); *Nicolaus, RHD* 13 (1934) 597, 14 (1935) 184.

Unus iudex. See *iudex unus, iudicium legitimum*.

Unus testis. See *testimonium unius*.

*Urbana familia.* See *familia Rustica*.

*Urbana (urbicaria) praefectura.* *Praefectura urbis,* see *praefectus urbi*.

*Urbanus.* See *praedia urbana, sedes, praetor, villa*.

*Urbicarius.* Connected with, or pertinent to, the capital (Rome and later Constantinople). The adjective occurs only in imperial constitutions.

Urbicum editum. The edit of the *praetor urbanus*.

—See *editum praetoris*.

*Urbicus.* Refers only to Rome (see *urbs*); the term does not occur in Justinian's Code.

*Urbs.* In the Digest this refers to Rome, in later imperial constitutions to Constantinople. Distinction is made between *urbs* = the city surrounded by walls, and *Roma* as a topographical concept: it is the complex of buildings (*continentia adiectiva*) regardless of the walls (*muri, D. 50.16.2 pr.; 87*).—See *regiones urbis, murus, continentia, vicarius in urbe, vicarius urbis*.

*Urbs Constantinopolitana.* See *Constantinopolitana urbs*.

*Ureus.* To burn.—See *cadaver*.

*Urgere (urguere).* To press, to urge. The term is very rare in the Digest, but frequent in imperial constitutions, particularly in those of Diocletian. It is used in the sense of suing an adversary (debor) in court in order to obtain satisfaction.

*Ursaeus Ferox.* A jurist of the late first century after Christ. He is primarily known through a commentary by Julian (Ad Urseius Ferocem, in four books); the title of Ursaeus' work itself—apparently of a casuistic nature—is unknown.


*Usitatius (usitatissimus, usitatissimum)* est. It is usual, customary, it is generally held. The adjective is used of both legal customs and common juristic opinions.

*Ustrina (ustrinum).* A place for burning the dead. The establishment of such places was subject to various restrictions (not within the boundaries of a city). With regard to Rome, according to Augustus' order, they had to be located at least two thousand steps beyond the city.
Usuarius. (Adj.) A thing (res ususaria) or a slave (servus ususarius) of whom a person other than the owner had the right of usus.

Usuarius. (Noun.) A person who has the right of usus on another's thing or slave.

Usucapere (usu capere). To acquire ownership over another's thing through usucapio.—See the following items.

Usucapio. Acquisition of ownership of a thing belonging to another through possession of it (possessio) for a period fixed by law. Further requirements of usucapio under ius civile were (a) bona fides (good faith), i.e., the possessor's honest belief that he acquired the thing from the owner (while, in fact, he acquired it from a non-owner, a non domino), and through a transaction which legally was suitable for the transfer of ownership (while, in fact, it was not, if, e.g., the thing which was a res mancipi was conveyed by traditio). Good faith was required on the part of the possessor only at the beginning of his possession. If he lost later his good faith by getting knowledge of the true situation, the completion of the usucapio was not impaired; (b) a just cause (iusta causa, also called iustus titulus); see pro in connection with possession. Such a just cause was either an act of liberality (donatio) of the owner or an agreement with him (a purchase) which would justify the acquisition of ownership if there were not a defect in the transaction itself (e.g., traditio of a res mancipi instead of mancipatio) or in the person of the transferor (a non-owner). An erroneous belief of the usucaptor that there was a just cause (e.g., a valid sale or donation) did not suffice for usucapio. Possession of the usucaptor had to be continuous and uninterrupted. If he lost possession during the period required for usucapio (according to the Twelve Tables two years for immovables, one year for other things) the previous time during which he possessed under conditions sufficient for usucapio did not count any longer. Usucapio was accessible only to Roman citizens and on things on which Quiritary ownership was admissible. Things belonging to the fisc and res publicae were excluded from usucapio. For provincial land and the later development, see praescriptio longi temporis. In Justinian's law the term usucapio refers only to usucaption of movables for which possession for three years was required. Excluded from usucapio were stolen things (res furitiae, see lex atrinata) and things taken by violence (res vi possesseae, see lex illia et titia) even when possessed by a person who acquired them bona fide from the wrongdoer.

—D. 41.3; Inst. 2.6; C. 7.30; 31.—See possessio, mancipatio, actio auctoritatis, interpellatio, explere, accessio possessorius, successio in possessionem, bona fides, mala fides, usurpatio, actio publiciana, praescriptio longi temporis, and the subsequent items.

Cug. DS 5; Bortolucci, NDI 12.2; Zanuccchi, AG 72 (1904) 177; see Galgano, I limiti subbotivi dell'antica usucapio (1913); Suman, Risq 59 (1917) 225; Bonfante, Scr. giur. 2 (1926) 459-738; Collinet, Méli Fournier (1929) 71; Voci, St Ratti (1934) 367; idem, SDHI 15 (1949) 159; idem, St Carnelluti 4 (1950) 155; J. Faure, Iusta causa et bona fide (Lausanne, 1936); M. Kaiser, Eigentum and Besitz (1943) 293; Meyers, Scr. Ferrini 4 (Univ. Sacro Cuore, Milan, 1949) 203.

Usucapio ex Rutiliana constitutione. If a man bought a res mancipi from a woman who acted without the auctoritas of her guardian (see tutela mulierum), he did not acquire ownership, but he could usucap the thing. The woman could, however, interrupt the usucapio if she paid back the buyer the price.—See constitutio.

Usucapio libertatis. Refers to landed property encumbered by a predial servitude. The owner of a land on which another had a servitude could free his land from the servitude if through a construction or a definite action he prevented the person entitled from exercising his right and the latter tolerated it for a certain time (two years in classical law, ten or twenty under Justinian law), D. 413.4.28.—See non usus.

Grosso, Foro Italiano 62 (1937) part 4, 266; B. Biondi, Serviti prediali (1946) 267.

Usucapio pro derelicto. Usucaption of a thing abandoned by a non-owner and possessed by the usucaptor pro derelicto (as if abandoned by the owner).—D. 417.—See pro in connection with possession.


Usucapio pro donato. Usucaption of a thing received as a gift from a person who was not the owner of it and possessed by the usucaptor pro donato (as if donated by the owner).—D. 41.6; C. 7.27.

Bonfante, Scr. giur. 2 (1926) 563; Levet, RHD 11 (1932) 387, 12 (1933) 1.

Usucapio pro dote. Usucaption of a thing which a husband received among the things constituted as a dowry and which was not owned by the person who constituted the dowry. This usucapio starts from the time of the conclusion of the marriage.—D. 41.4; C. 7.28.—See dos, pro in connection with possession.

Bonfante, Scr. giuridici 2 (1926) 569.

Usucapio pro emporte. Usucaption of a thing by the buyer to whom it was sold and delivered and who, however, did not acquire ownership thereof because of a legal defect in the act of transfer or because the seller was not the owner. The possession of the thing by the buyer is pro emporte (as if the purchase were valid).—See D. 41.4; C. 7.26.—See emptio, pro in connection with possession.

P. Bonfante, Scr. giuridici 2 (1926) 575.

Usucapio pro herede. If a person possessed a thing which was a part of an inheritance and of which the
his did not yet obtain possession, he acquired ownership thereof, called pro herede (= as if an heir). For this kind of usucapio possession for a year sufficed even for immovables. Knowledge on the part of the usucapior that the thing belonged to an heir, was not a hindrance since neither bona fides nor iusta causa were required. The reason for this unfair form of acquisition of ownership on another's thing—it was considered by the jurists "lucrativa" (= profitable, gratuitous)—was, according to Gaius (Inst. 2.55), that the ancient Romans wanted inheritances to be accepted by the heir as soon as possible in order that the familiar religious rites (see SACA FAMILIARIA) be continued soon after the death of a head of a family, and that the creditors be satisfied without delay. Under Hadrian a senatorius-consultum abolished the usucapio pro herede.—D. 41.5.; C. 7.29.—See HERES, CAUSA LUCRATIVA.

H. Krüger, ZSS 54 (1934) 80; Collinet, St Riccobono 4 (1931) 131; Kamps, Arch. d'histoire du droit oriental 3 (1948) 264; Biondi, Istituti fondamentali di dir. ereditario 2 (1948) 114; Albanese, ANP 20 (1949) 276.

Usucapio pro legato. A usucapio based on possession of a thing, bequeathed in a valid testament: in the form of a legatum per vindicationem, of which, however, the legatee could not acquire ownership because the testator had no ownership of it. The possession of the usucapior is pro legato (as if the legacy were valid).—D. 41.6.—See LEGATUM PER VINDICATIONEM, PRO (in connection with possession).

P. Boniane, Ser. giuridici 2 (1926) 611; Bamutte, RIDA 1 (1948) 27.

Usucapio pro soluto. Usucapition of a thing which one received from his debtor in repayment of a debt and of which the creditor did not acquire ownership because of a legal defect in the transfer of the thing to him.

P. Boniane, Ser. giuridici 2 (1926) 533.

Usucapio pro suo. Usucapio of a thing which one possessed "as his own" on the ground of any just cause. The term pro suo is a general one and was applied whenever there was not a specific title indicated by an appropriate term (see the foregoing items).—D. 41.10.

P. Boniane, Ser. giur. 2 (1926) 631; Albertario, Studi 2 (1941) 185; H. H. Pfüger, Erwerb des Eigentums (1937) 42.

Usucapio servitutis. The acquisition of a servitude (see SERVITUS) through the exercise (usus) of the rights connected with it for a certain period of time. Usucapio servitutis was admitted in earlier law probably only with regard to rustic servitudes, namely iter, actus, via, and aquaeductus; it was later forbidden by the LEX SCRIBONIA.

Ascoli, AG 38 (1887) 51, 198; B. Biondi, Le servitut pre-diali (1946) 233.

Usucapionem rescindere. See ACTIO RESCISSORIA.

Usufructarius. See USUSFRUCTUS.

Usuriae. Interest generally paid periodically in money (or in fungibles) by the debtor to the creditor as long as the principal (sors, caput) was not repaid. Usuriae are regarded to be proceeds (see FRUCTUS) of the capital. Interest was due when agreed upon by the parties (normally through stipulatio), a simple informal pact (usuriae ex pacto) did not suffice, but could be taken into consideration in trials governed by good faith (see IUDICIA NONAE FIDEI). An agreement was superfluous when the obligation to pay interest was imposed by the law (usuriae legitimae). Interest paid in an amount higher than permitted by law or though prohibited by law (see LEX GENUCIA) could be claimed back by the debtor who had paid them, through CONDUCTIO OR INUSTAM CAUSAM (see LEX MARCIA).—D. 22.1; C. 4.32.—See FENUS, FENUS NAULTICUM, FENUS UNCIARIUM, MUTUM, INTER-USURIVUS, VERBUSA.

Coq, DS 5: De Villa, NDI 7, 51; Butera, NDI 12, 2, 801; Heichelheim, OCD 453; G. Bileter, Gesch. des Zinsfusses im Altertum (1898); Garofalo, AG 66 (1901) 137; V. A. Cottino, Usura (1906); Rotondi, Ser 3 (1922 ex 1911) 399; G. Cassinelli, Les interets dans la legislation de Justinien (1931); De Villa, Usurae ex pacto (1937).

Usuriae centesimae. Monthly interest of one-hundredth of the sum due, i.e., twelve per cent per annum. The Romans counted interest by a fraction of the principal and monthly. Usuriae dimidiae centesimae = six per cent per annum (syn. usuriae semisses).

Usuriae ex mora (usuriae morae). Interest to be paid by the debtor on account of his default. In contracts based on good faith (contractus bonae fidei) interest for default could be claimed by the creditor. The judge decided upon it in the judgment about the principal debt. Usuriae ex mora were due under the law in case of default in fulfillment of a fideicommissum, but not when a legatum under ius civile was concerned. Justinian abolished the distinction.—C. 6.47.—See MORA DEBITORIS.


Usuriae ex pacto. Interest promised by a simple pact. Generally such usuriae were not enforceable. "If interest was agreed upon by a mere pact (pactum nudum), the pact is invalid" (Paul. Sent. 2.14.1). If the interest agreement was connected with a contract governed by good faith (contractus bonae fidei) the judge could take into consideration the question of interest and condemn the defendant to pay it according to the agreement, especially if such payment was customary. In certain specific cases, as in loans given by cities, in loans of fungibles other than money (in later classical law), or in loans made with bankers (under Justinian), a pact concerning interest was considered valid.

De Villa, Le us. ex pacto, 1937.

Usuriae fiscales. The fisc could claim interest from his debtors (e.g., from tax farmers) who failed to pay
in due time. The fisc, however, did not pay interest at all except when it inherited a debt from which interest was due.—C. 10.8.—See FISCUS.

Usuriae legítímae. The rate of interest which was imposed or fixed by law. In the late Republic the highest admissible rate was twelve per cent (USURAE CENTESIMAE). Higher interest was granted in a FENUS NAUTICUM until Justinian limited it to twelve per cent. Under his law the normal rate was six per cent (C. 4.32.26.2); merchants could demand eight per cent, persons of higher social rank (PERSONAE ILLUSTRES) only four per cent.—See LEGITIMUS.

G. Biller, Gesch. des Zinseszuges (1898) 257.

Usuriae maritímae. See FENUS NAUTICUM.

Usuriae pupillárae. See USURAE EX MORA.

Usuriae quaes. See USURAE EX MORA.

Usuriae quae officio iudicis praestantur, actionable only together with the principal obligation and as far as the latter was enforceable, but the decision as to whether they are due or not, and to what extent, lay with the judge (OFFICIO IUDICIS). To the latter category belonged USURAE EX MORA; interest to be paid by a manager of another’s property (a guardian, a mandator) when he used money entrusted to him for his own profit or when, through negligence, he failed to place the administered funds at interest; interest due to minors, to the fisc or to charitable institutions.

Usuriae quae officio iudicis praestantur. See the foregoing item.

C. Fadda, St e questioni di diritto, 1 (1910) 229.

Usuriae quintincuncæ. Five-twelfths of USURAE CENTESIMAE, i.e., five per cent per annum.

Usuriae rei iudicatae. Justinian ordered that a debtor who did not pay a judgment debt within four months after the judgment was rendered or confirmed on appeal, had to pay twelve per cent interest from the judgment sum.—C. 7.54.

P. De Francisci, Saggi romanistici, 1913. 61.

Usuriae semíßae. See USURAE CENTESIMAE.

Usuriae ultra duplum. Interest exceeding the principal. Syn. USURAE ULTRA ALTERUM TANTUM. The accumulation of interest due and not paid could not exceed the amount of the debt; a debtor never had to pay in overdue interest more than the amount of the debt. Justinian extended the rule to interest already paid, to wit, no interest could be demanded by the creditor once the interest paid equaled the sum due.

Usuriae usurarum. Compound interest.—See ANATOMICUS.
Usus. As a personal servitude, the right to use (ius utendi) another's property, without a right to the produce (fructus) of the thing (contrary to usufruct). Usus was strictly personal. When it was granted for dwelling in another's house, the beneficiary (usuarium) could reside therein together with his family, household, slaves and guests, but he could not leave the house and let it as a whole to others. Normally usus was left as a legacy. If no other use of the thing was possible than by taking the fruits (e.g., a vegetable garden or an orchard), the usuarium could use the fruits for himself and his household but not sell them to others.—See OPERAE ANIMALIUM.

—Inst. 25: D. 7.4; 6; 8; 33.2.

Cic. DL 5. 611; Ricci, NDT 1. 36 (ius abitazione e usus); Riccobono, St Scialoja 1 (1905) 579; Pampaloni, RISG 49 (1911) Ch. III e V; Meylan, St Albertoni 1 (1935) 92; G. Grosso, Us. abitazione (Corso. 1939) 139; idem, SDHI 5 (1939) 139; Solazzi, SDHI 7 (1941) 373; Villera, RHD 28 (1950) 538; Laura, St Anargo-Ruiz 4 (1953) 225.

Usus. In the law of marriage, a formless acquisition of marital power (manus) over the wife through an uninterrupted cohabitation of a man and a woman for one year with the intention of living as husband and wife (affectio maritalis). However, a deliberate absence of the woman from the common household for three consecutive nights produced the interruption of the usus which was considered as a kind of usucapio of the manus. The marriage based on living together as husband and wife remained valid but without the husband's power over the wife (ius manus) if the latter repeated the practice of three-night absence every year.—See TRINCTION.

Kumkel, RE 14, 2261; C. W. Westrup, Quelques observations sur les origins du mariage par usus, 1926; E. Volterra, La conception du mariage (Padova, 1940) 5; H. Lévy-Bruhl, Nouvelles Etudes (1947) 64; Köstler, ZSS 65 (1947) 50; Villera, RHD 28 (1950) 536; M. Kasar, Das alltröm. ius (1949) 316; idem, iusro 1 (1950) 70.

Usus auctoritas. According to Cicero (Top. 4. 23) the expression was used in the Twelve Tables in reference to the earliest USUCAPIO. The exact meaning of the term is not quite clear. Usus seemingly alludes to the uninterrupted possession (use) and physical control over the thing which was to be acquired by usucapio.—See ACTIO AUTORITATIS.

Leifer, ZSS 57 (1937) 124; M. Kasar, Eigentum und Besitz (1943) 86; F. De Visscher, Nouvelles Etudes (1949) 179; P. Novelles, Droit du sacre au droit civil (1950) 256; Kasar, ZSS 68 (1951) 135.

Usus iudiciarum. See CONSUETUDO FORI.

Usus iumenti, ovium, pecoris. See OPERAE SERVORUM.

Usus iuris. The exercise of a right, e.g., of a servitude.—See POSSESSIO IURIS, USUCAPIO SERVITUTIS.

Usus loci. A local custom, see USUS.

Usus longaeus. See LONGAEVS USUS.

Ususfructus. The right to use (uti, ius utendi) another's property and to take produce (fructus) therefrom (ius fruendi), without impairing (i.e., destroying, diminishing, or deteriorating) its substance (salva rerum substantia, D. 7.1.1). The usufruct is reckoned by Justinian among personal servitudes (see SERVITUS). As a strictly personal right the usufructus is neither transferable nor alienable. A transfer of a usufructus through in iure cessio was possible only from the beneficiary of the usufructus (usufructarius, fructarius) to the owner of the thing. A usufruct was usually constituted in the last will of the owner through a legacy, but it could arise from a transaction between the owner and the usufructuary through in iure cessio and, later, under praetorian law, by formal or formless agreement; see PACTI'ONES ET STIPULATIONES. A usufructus was extinguished by the death or by capitis dominio, maxima or media, of the usufructuary. Perishable things and those used by consumption (see RES QUAE USU CONSUMENTUR) could not be the object of usufructus; see, however, QUASI USUSFRUCTUS. Ususfructus is characterized by the jurists as a part of ownership (pars dominii), since practically it comprised all the benefits connected with ownership. The owner retained mere ownership (nuda proprietas) and he might dispose of the thing without violating the rights of the fructarius. The limitation salva rerum substantia imposed certain duties on the usufructuary: he could not change the economic function or destiny of the property, construct a building thereon, or encumber the property with a servitude or acquire one on behalf of it. But his ius fruendi was extended to all kinds of proceeds (see fructus), hence he could let the property or a part of it to another person.—Inst. 2.4; D. 7. 1; 2; 4-6; 9; 33.2; C. 3.3.—See CAUTIO USUFRUCTARIA, DEDUCTIO USUSFRUCTUS, FRUCTARIUS, SILVA, INTERDICITUM QUCM HEREDITATEM, MUTATIO REI, VENATIO.

Beauchet and Collinet, D5 5; De Dominicius, NDI 12. 2; Pampaloni, BIDR 22 (1910) 109; idem, RISG 49 (1911) ch. IV—VI; Albertario, BIDR 23 (1914) 140; Riccobono, BIDR 24 (1914) 309; W. H. Buckland, LQR 43 (1927) 326; De Franceschi, St Ascoli (1931) 55; F. E. Cavin, L'estinction de l'usufruit rei mutatione (Lausanne, 1933); F. Frezza, Appunti esegetici in tema di modi pretiori di costituzione dell'usufruit. StCapl 22 (1933) 92; Masson, RHD 13 (1934) 1, 161; Meylan, St Albontius 1 (1935) 122; Bohecak, BIDR 44 (1936-37) 19; G. Grosso, L'usufruit (Corso, 1938); idem, 5 (1939) 483, 9 (1943) 157; Kasar, Eschr Kochacher 1 (1939) 458; R. F. Vaucher, Usufruit et pars dominii (Thése Lausanne, 1940); P. Ramelet, L'acquisition des fruits par l'usufruiteur (Thése Lausanne, 1945); Kagan, Camb.L 9 (1946) 159; idem, TwL 22 (1947) 94; Riccobono, BIDR 49-50 (1948) 33; Sanfilippo, ibid. 58; Kasar, ZSS 65 (1947) 363; Solazzi, SDHI 6 (1940) 162; idem, La tutela delle servitù prediali (1949) 93; idem, SDHI 16 (1950) 277; 18 (1952) 229; Ambroseino, ibid. 183; Albanese, AnPal 21 (1951) 21; Levy, West Roman vulgar law, 1921, passim; Reggi, AG 142 (1952) 229; Biondi, St Anargo-Ruiz 2 (1952) 86.

Ut. (Conj.) When followed by an indicative or an accusative with an infinitive in lieu of a subjunctive, this occurs in interpolated phrases. But as a criterion of an interpolation it is not fully reliable
because in corrupt texts the erroneous construction may have originated from a copyist's error or negligence. It can hardly be assumed that the compilers did not know that uti had to be followed by a subjunction.


Ut puta. See *UTPUTA*.

Uterini. Brothers (uterinus frater) and sisters (uterina soror) born of the same mother.—See *FRATEL*.

Uterus. In utero = in the womb. Syn. venter.—See *NASCITURUS*.

Usani. *Bollettino di filol. classico* 16 (1910) 85.

Ut. To use.—See *USUS*; *USUSFRUCTUS*.

Uti. Technical term for the use of procedural remedies (e.g., uti actione, interdicto, formula, exceptione, defensione) or of benefits granted by specific laws (e.g., uti lega Falcidia = to claim the quarta Falcidia according to lex Falcidia).—See *UTIMUR HOC IURE*.

Uti frui habere possidere. To use, to take proceeds, to hold, to possess. The four words (sometimes with omissions) are used in leases of public land and in treaties with autonomous cities (civitates liberae) to indicate the most important functions of ownership of landed property which are granted to a lessee to be exercised by him without the right of ownership.


Ut optimus maximus. See *OPTIMUS MAXIMUS*.

Uti possidetia. See *INTERDICUM UTI POSSIDETIS*.

Uti rogas. (Abbreviation U.R.) See *A*.

Uti iure suo. To make use of (to exercise) one's right. Several legal rules empower a person to make use of his right regardless of whether or not another person suffers a loss thereby. "No one is considered to act fraudulently (dolo facere), to commit a wrong (damnnum facere), or to use violence (virm facere) who avails himself of his right (qui iure suo utitur)" (D. 50.17.53 and 155.1).—See *AEMULATIO*, *NEMO DAMNUM FACIT, NEMO VIDETUR DOLO*, etc.

Ricobono, *BIDR* 46 (1939) 3.

Utilis. Used of legal acts, transactions, and procedural steps which have been, or can be, successfully accomplished in a given situation. In a technical sense the adjective is used in the following connections: *ANNUS UTILIS*, *DIES UTILES*, *TEMPS UTILE*, *IMPENSAE UTILES*, *ACTIONES UTILES*, *INTERDICTA UTILIA*.—See *UTILITER*.

Seckel, in Heumann's *Handlexikon* (1907) 608.


Utilitas. With regard to an individual, his interest, benefit (see *INTEREST ALICUTUS*). *Utilitas privatorum* = the interest of private persons. Ant. *utilitas publica* (*communis*). Some legal rules are qualified as having been established *utilitatis causa* (proper *utilitatem*), i.e., either for public utility (welfare), or on behalf of certain categories of individuals (such as minors, lunatics, absent persons) or for general expediency and suitableness for practical purposes. "When new rules are introduced, their utility must be evident as to whether a law which has been considered just for a long time is to be changed" (D. 1.4.2).


Utilitas communis. See *UTILITAS PUBLICA*. "It can be proved by innumerable instances that many rules have been introduced by the *ius civilis* in the public interest against the principles of reasoning" (D. 9.2.51.2).

Utilitas contrahentium. The benefit of the contracting parties.—See *CULPA*.

Utilitas publica. The welfare (interest) of the state. "Consideration of the public interest is preferable to the convenience of private individuals (commodis privatorum)," Paul, *Sent.* 2.19.2. "Public welfare is to be preferred to private agreements (*privatorum contractibus*)," Diocl., C. 12.62.3.—*Utilitates publicae* (in the later Empire) = public services (contributions in money or labor, so-called liturgies) rendered by the citizens or certain groups of them for the benefit of the state or municipalities.—C. 1.22.—See *MUNERA*.


Utiliter. See *UTILIS*. *Utiliter agere* = either to sue successfully (syn. *utiliter experiri, petere, intendere*) or to sue with an *actio utilis*; see *ACTIONES UTILIS*, *INTERDICTA UTILIA*. *Utiliter* in connection with other verbs, indicates the validity of an act performed or to be performed (e.g., *utiliter testari, insinuare heredem, dare legata, legare, relinquere faidecomissum, all in the law of succession; utiliter obligari, gerere negotium, stipulari, in the law of obligations*).

Utimur hoc (eo) iure. This is the law we apply. It is a typical phrase in juristic writings indicating a legal rule which is generally observed. Ant. *alio iure utimur*. The location is frequent in Gaius' Institutes. At times the compilers of the Digest applied the phrase, which they learned from the classical jurists, especially when they wished to shorten the discussion in a classical text. By no means, however, can the phrase be considered a criterion of an interpolation.


Utputa (ut puta). As, for instance; suppose that; as in the case. The adverbial phrase was used by both classical jurists and Justinian's compilers to introduce illustrative material.

Guarnieri-Ciati, *Indice* (1927) 72 (s.v. *puta*, Bibl.).
Vacans possessio. See vacua possessio.

Vacantes. With reference to public officials in the later Empire, see honorarii.

Kühler, RE 7A.

Vacantia (vacus) bona. See bona vacantia.

Vacare. To be accessible to all. See res communes omnium. Vacare a (muneribus) = to be exempt from (certain charges or duties); see vacatio.

Vacarius. A professor at the law school of Bologna in the twelfth century, founder of the school of law at Oxford; author of summaries of Justinian’s Institutes and Digests.


Vacatio. The period of time granted a widow or a divorced woman to remain unmarried after the husband’s death or the divorce, according to the Lex Iulia et Papia Poppaea (two years or one year and a half, respectively).—See secundae uxoriae, univira.

Vacatio. Exemption from public charges, services, or taxes, exemption from the duty to assume a guardianship.—C. 10.45.—See vacatio munerum, excusatones a tutela.

Lammert, RE 7A.

Vacatio a forensibus negotii. See feriae.

Vacatio honorum. See bona vacantia.

Vacatio militiae. See immunis.

Vacatio munerum (a muneribus). Exemption from compulsory public services and charges (see munera). It expired when the reason therefor (sickness, old age, absence in the interest of the state) disappeared.—D. 50.5; C. 10.46.

Kühler, RE 16, 648.

Vacatio tutelae (a tutela). See excusationes a tutela.

Vacillare. To hesitate, to be unsteady in bearing testimony. A witness who is unsettled in his testimony does not deserve belief and “should not be heard” (D. 22.5.2).

Vacua pecunia. Money not placed at interest.—See usurae.

Vacua possessio. Free and unimpeded possession of an immovable, which the buyer might enter without being disturbed by the seller or by a third person. Delivery of such possession (vacuum possessionem tradere) by putting the immovable under the purchaser’s control was the primary duty of the seller. With reference to the buyer, the sources speak of in vacuo possessionem ire (or intrare = to enter).—See exemptio venditio, traditio.

V. Scialoja, Scu. giur. 2 (1934, ex 1907) 247; Seckel and Leroy, ZSS 47 (1927) 226; M. Busmann, L’obligation de déliverance du vender (Lausanne, 1933) 98; J. De Malafosse, L’interdit momenutarum possessionis (Thése Toulous., 1949) 90.


Vades. See vas.

Vadimonium. A promise in the form of a stipulatio made by a defendant in a trial already under way, or by a debtor summoned by his creditor, concerning due appearance in court. In the case of summons by the plaintiff (see in tusc vocatio) to go with him immediately to court, when the defendant was not able or willing to do so and did not offer a personal surety (see vindex), the vadimonium took place extrajudicially. The vadimonium promise was made in court if the proceedings before the magistrate were not concluded on the first day and the defendant had to guarantee his reappearance on another day. In certain cases the vadimonium was a vadimonium purum (i.e., without security), in others it was strengthened by an oath or a real security. The vadimonium could not exceed half the value of the object in dispute, and in no case one hundred thousand sesterces. If the defendant failed to appear, the plaintiff could sue him for payment of the vadimonium on the ground of his stipulatory promise, unless the defendant could justify his absence. The changes in civil procedure in the later law rendered the vadimonium obsolete. It does not appear in Justinian’s legislative work, where it was replaced by the cautio (satisdatio) iudicio siri.—See vas and the following items.


Vadimonium desertum. (From deserere.) Occurred when the defendant did not appear in court on the date fixed, contrary to his vadimonium promise.—See vadimonium.

Steinwenter, RE 7A, 2059; Hersen, NRHD 35 (1911) 145.

Vadimonium facere adversario. An extrajudicial declaration (“vadimonium tibi facio”) made by a
creditor to his debtor on the occasion of in ius vocatio, by which he imposed on the latter, who did not follow him immediately to court, the duty to appear on a certain day and hour "ante tribunal praetoris urbani" (= before the tribunal of the urban praetor). The declaration was followed by a stipulatio under which the summoned debtor assumed the pertinent obligation.

Arangio-Ruiz, La parola del passato, fasc. 8 (1948) 138.

Vadimonium iure iurandu. In provincial practice (only in Egypt?) the stipulatory promise of a vadimonium was strengthened by an oath.

La Pira. St Albertoni 1 (1935) 443.

Vadimonium Romam faciendum. A promise of a vadimonium made in a municipal court, before which the plaintiff’s claim was brought, to appear on a fixed day before the praetor in Rome in the same matter.

Filiaux. DS 5. 621; Lenel, Edictum perpetuum (1927) 55; La Pira. St Albertoni 1 (1935) 443.

Vadimonium recuperatoribus suppositis. A promise of a vadimonium in which it was stipulated that, in the case of the defendant’s non-appearance in court, the matter was to be presented immediately to the tribunal of recuperatores who could condemn him to the sum of the vadimonium without delay.


Vagari. To stroll from place to place. A vagrant slave = erru.

Valens. See ABRUNIUS.

Valere. With regard to legal transactions and acts. to be legally valid (effective). Syn. effectum, vires habere (tener), iure consistere, ratum esse. Ant. non valere, nullius esse momenti. With regard to things valere = to have a certain value.

Helm. ZSS 23 (1902) 423.

Valerius Probus. See NOTAE IURIS.

Valerius Severus. (Also mentioned as Severus Valerius.) An unknown jurist of the first century of the Principate. He is cited by Julian and Ulpius.


Valerudo. Health. The term is generally used for bad health, physical or mental disease. In specific circumstances sickness was recognized as an excuse for non-appearance in court or for exemption from assuming a guardianship.—See MORBUS.

Validus. Strong, important, legally valid. Ant. invalidus, nullius, nullius momenti.—See VALERE.

Vallare. To strengthen the efficiency or validity of a legal transaction or act by a stipulatio, or by some better means of evidence. The term occurs in the language of the imperial chancery.

Vanus. Legally worthless, useless. For vanus homo, timor vanus, see METUS.

Variae causarum figurae. Various types of ‘causes.’

This general expression includes all sources of obli-

gations (D. 44.7.1 pr.) beyond the typical ones (consensus, res, verba, litterae).—See OBLIGATIO.

Variae. See IUS VARIANDI.

Varius Lucullus. An unknown jurist of the first century of the Principate (?), mentioned but once in the Digest.


Varro, Marcus Terentius. (Died 27 B.C.) The famous author of Le lingua Latina (On the Latin Language) and Res rusticae (Country-life), cited as the author of a treatise (in fifteen books), De iure civili, which is not preserved. Valuable juristic material is to be found in the works just mentioned above.


Varus. See ALPENUS VARUS.

Vas. (Pl. vades.) A warranty which guaranteed the appearance of the defendant before the magistrate in the earliest law, in the procedure by LEGIS ACTIO. Origin and details are obscure but a connection with VADIMONIUM is beyond any doubt. According to Varro, de l. Lat. 6.74, vas = qui pro altero vadimonium promittebat (he who promised a vadimonium for another). A vas could himself offer security through a surety, subvas. Vades were also acceptable in criminal matters in the earlier procedure.


Vasa. Vessels. In a legacy of wine, the testator’s vessels in which the wine was kept were understood to be included.

Vasaria publica. Public archives in which the records concerning the census of the population were preserved (from the fifth century after Christ on).

Vasarium. Allowance of money given to the provincial governor for food, transportation, clothing, domestic establishment, and salary of his staff.—See SALARIA, CIBARIA.

Vates. See VATICINATOR.

Vaticana fragmenta. See FRAGMENTA VATICANA.

Vaticinatio. Fortune-telling, prophecy; see VATICINATOR, DIVINATIO.

Vaticinator. A fortune-teller, a soothsayer. The profession of a vaticinator was reckoned among artes magicas which endangered the public order since “through human credulity public morals were corrupted and the minds of the people confused” (Paul, Sent. 5.21.1). A vaticinator was punished in the later Empire by exile, after castigation, and by death
if he proscribed about the health of the emperor or the welfare of the state. The same penalty was inflicted on anyone who asked about such matters.—See MAGNUS MAJORIST.

 Tmin-tertius, DEP. 377. Paee. OCT. 35. See mention, etc.

 Vetus. The term paid by the lessee of an appurtenance—See AGES VECTICANS. ACTIO VECTICANS, ITS VESTIGES.

 Vetus (vectigalis). A general term denoting all sorts of public revenues, such as rents and periodic payments made by lessees of public lands. 1000 public contributions: the foregoing item, pastures, woods, salt mines, lakes, rivers, etc., as well as all kinds of taxes, impost, and customs duties, collected by tax-farmers see PUBLICIAN; whether they were paid in kind or in money.—D. 254. C. 456. 21—See ACTIO VECTICANS, VECTIGAL MANUFACTUERS, VECTIGAL HEREDITATUM, PORTUICANS, CENTUM TESTIS VENALITAS, FRATRABE VECTICAL, ROMEN FRATICA VECTICAL, VICTORIAN VECTICAL, RELIGIUS VECTICAL, CONDUCTUS VECTICAL.


 Vetically, Cumstemium. A tax levied in kind, grain, in certain provinces, primarily Egypt in order to supply Rome.


 Vettical,レンタル, a sales tax. See Centv-

 EKTA RENT VENALITAS. Under the later Primiparat the sales-tax, originally introduced for auctions, became more general. Tipp. N. 36. 12. 12. —See EXPOSTIUM.

 Vettigalia. Connected with, or pertinent to, any kind of VETICANS—See ACTIO VECTICAL.

 Vettigalas ager (fundus, vettigale praedium). See AGES VECTICAL.

 Vector. A ship passenger or an owner of merchandise being shipped.

 Soliains, P. 7. 157. 246.

 Vescita. Goods to be transported or the sum paid (or charged) for their transportation. The term is primarily used with regard to transportation by sea. If the ship was lost, restoration of any freight charges paid in advance could be claimed.

 Vel. Or, also, even. The conjunction, which frequently occurs in Justian's constructions and in doubtless interpolated passages in various combinations and structures (vel enim, vel maxime, vel . . . or . . ., vel . . ., vel . . ., and the like), is nevertheless not a reliable criterion of alterations made by Justian's compilers on classical texts accepted into the Digest.

 Guarnari-Crati. INDICT. (1927) 90; De Martino. ANEP 58 (1937) 252 (on vel enim).

 Valumamentum. A pretext, an excuse (real or false). 20145, under the pretext—See PRAGMA.

 The term which occurs only in imperial constitutions, particularly of Theodosian, was used when a person under a true or false excuse tried to rescind the consequences of his former acts, e.g., or the excuse his lawyer's absence or of lack of experience. In all cases the decision was against him.—See exceptions.

 Valenti. See ACCESS.

 Valentes. Light armed troops 3,200 later 1,500 men in the four earlier legions of the Roman army recruited from poor citizens. They disappeared about the end of the second century B.C.

 Cagna. DEP. 5.

 Valentium, A request addressed to the gathered people by a magistrate, presiding over a popular assembly for approval of a proposed statute ("please, approve and order") —See ACTIO LEGIS.

 Vale (voio). Refers to the wish well, of a person, to the expression of his will, and more narrowly to the declaration of will by a person, who had a right to choose (aluere obtine, see ELECTIO, LEGITIMUS OPTIO, OPTIO SEDILIS) between two or more things. The expression of will was taken into consideration only when it was free from compulsion or fear. "He who obeys his father's or master's command is not held to express his own will." D. 507. 5. "Vale" (= I wish) was the expression a testator used in his testament when he ordered a muniment, designated a guardian, or bequeathed a legacy ("dari voio") —See VECITAS, NOL.

 Venallicius. A dealer in slaves.

 V. Arrigina-Rus. LE INTRUS (1930) 141.

 Venallicium. See VECTICAL RENT VENALUM.

 Venalis (venalicius). Offered for sale at a market or public auction. In another sense = venal, capable of being bought for money (bribe), e.g., venalis aecruum (a judgment which could be obtained by bribing the judge).

 Venation. Hunting. A hunter acquired ownership of a wild animal (see FERAE, not domesticated by another, even when he killed or caught it on another's property. If the animal was only wounded, it was held to belong to the hunter as long as he had chased it. Justian decided that only the capture of an animal made it the property of the hunter. Among other controversial questions was whether game was among the proceeds (TRACTA) of the landed property and consequently belonged to the usufructuary or not (see USTUCTUS). The prevailing opinion was in the affirmative, if hunting was the only source of profit of the usufructuary who had no other proceeds from the land. The owner of a land could prohibit hunting on his property, but even then a hunter acquired ownership of an animal he caught or killed. He could, however, be repelled by the owner acting.
in self-defense. Weapons used for hunting were considered part of the *instrumentum fundi* when the chief gain from the land came from hunting.—C. 11.45.—See *ingredi in fundum alienum, occupatio*.


**Vendere, venditio.** See *eextio.—See exceptio rei venditiae et traditiae, lex venditionis*.

**Vendere actionem.** To sell a claim against someone to a third person. *Syn. venditio nominis.* Such a transaction was possible either as part of the sale of one's whole property (see *bonorum venditio, venditio hereditatis*) or as the cession of a single claim (see *cessio*).—D. 18.4; C. 4.39.

**Vendere hereditatem.** See *eextio hereditatis.—D. 18.4; C. 4.39.*

**Venditio bonorum.** See *bonorum venditio*.

**Venditio nominis.** See *vendere actionem*.

**Venditio sub corona.** Sale of a war prisoner into slavery. He was crowned with a chaplet.

Ehrhardt, *RE Suppl. 7*, 96.

**Venditio sub hasta.** See *hasta, auctio.—Syn. subhastatio*.

**Venditio trans Tiberim.** See *servus, addictus, tiberis*.

**Veneficii.** Poisoners. According to the *lex Cornelia de sicariis et veneficiis* (under Sulla’s dictatorship) a *veneficus* was “one who killed a man by the hateful means of poison or magic practices, or one who publicly sold poisonous drugs” (Inst. 4.18.5). *Veneficii* were also those who prepared or kept poison for killing men.—D. 48.8; C. 9.16.—See *veneficium, venenum*.

**Veneificentium.** A murder by poison. Capital punishment was inflicted on the poisoner. Persons of lower social status (*humiliores*) were crucified or condemned to fight wild animals.—See *venenum, veneficii*.

Lécridain, *DS* 5.

**Venenum.** Poison. A poison to be used for criminal purposes, *venenum malum*, was distinguished from *venenum bonum*, a drug which, although poisonous, was used for treatment in certain diseases. *Venenum amatorium* = a love potion. Severe penalties (deportation, forced labor in the mines) were inflicted for giving a woman such a drink to cause an abortion (syn. *poculum, venenum amatorium*), the death penalty if she died.

**Venerabilis.** Worthy of veneration. In the later Empire the adj. is applied to the emperor and his family, to the senate, and to the Church (also *veneranda Ecclesia*). Similar was the use of *venerari* and *veneratio*.

**Venia.** In criminal matters, remission of a penalty by way of indulgence and forbearance for particular personal reasons (mental deficiency, error, or juvenile impropriety of the culprit) or because of circumstances which recommended forgiveness. *Venia* was granted by the senate, later by the emperor (see *indulgentiae principis*). *Venia* might also be granted in civil wrongdoings with regard to the liability of the defendant if his act, though of a delictual nature, was excusable for specific reasons.—See *restitutio indulgentiae principis*.

Gatti, *AG* 115 (1936) 44.

**Venia aetatis.** A privilege granted by the emperor to a minor whereby he was considered to have attained his majority before the age of twenty-five; the honesty of his life and his sagacity could recommend such a benefit. *Venia aetatis* gave the minor full capacity to conclude legal transactions (except alienation and hypothecation of immovables); in addition, he was freed from curatorship. In the later Empire, *venia aetatis* was granted only to men over twenty and to women over eighteen. *Venia aetatis* is also used as syn. with *beneficium aetatis* = the advantage of being a minor and enjoying protection through *restitutio in integrum*.—C. 2.44.


**Venire.** (From *venio*.) To be sold. To be offered for sale.—See *venenum dare*.

**Venire.** For *dies venit*, see *cedere*.

**Venire ad aliquem.** To come (fall) to a person (by inheritance or legacy). In another sense, the expression means to sue a person in court, to hold one responsible.—*Venire ad aliquid* = to obtain (e.g., possession, inheritance, ownership, freedom).

**Venire contra aliquem.** To sue a person, to go to court as a plaintiff against another person. *Venire contra (adversus) aliquid* = to act against the law or contrary to an agreement.

**Venire ex.** To originate from; hence *venientes ex alique* = one’s descendants.

**Venire in aliquid.** To be taken into consideration (e.g., in *actionem, iudicium, compromissum, stipulatio- nemen, collationem*), to be computed (in *hereditatem* = in an inheritance). The phrase *venit in iudicium* is used of the object of a judicial trial to be considered by the judge.

**Venter.** The womb. *Syn. uterus.* *Qui in ventre est = nasciturus.*—D. 37.9.—See *bonorum possessio ventris nomine, missio in possessionem ventris nomine, inspicere ventrem, senatusconsultum planctum*.

**Veneuleius Saturninus.** A jurist of the second half of the second century after Christ, author of extensive treatises on actions, on interdicts, and on stipulations. Minor works of his deal with the proconsulship and with criminal procedure (*iudicia publica*). No details about his official career are known. He has fre-
frequently been identified with two other jurists by the name of Saturninus, Claudius S., and Quintus S.—See SATURNINUS.


Verbum dare (venundare). Vendere (to sell); verbum ire, vendere (from vendo) = to be sold privately or at a public auction.

Verba. Words. When referring to an oral declaration of a person, the verba are distinguished from either his intention (VOLUNTAS, MENS, ANIMUS, SENSUS) or a written document (see SCRIPTURA). Another distinction is verba — consensum, as sources creating a contract: on the one hand contracts concluded through the use of prescribed oral formulae, on the other hand contracts arising from a simple forceless consent of the parties.—See CONCEPTA VERBA, CONCEPTIO VERBorum, ACTIO RAESCPITIS VERBIS, OBLIGATIO VERBorum, INTERPRETATIO, and the following items.

Verba certa ac (et) sollemnia. Words the use of which is prescribed for the validity of an act concluded (e.g., stipulatio, acceptatio, dictio doia, confarrearatio, appointment of a cognitor in a trial, etc.). In the earlier law, the use of words other than the certa ac sollemnia, rendered the whole transaction void. Gradually, minor changes became permissible. For the development of the stipulatio, the most typical act performed by the use of certa et sollemnia verba, see STIPULATIO.—See OBLIGATIO VERBorum.

Verba facere. In the senate, to make a report, as the presiding magistrate or as the proponent of a law, on the topic submitted to the senate for discussion or vote. The report was followed either by an immediate vote or by an exchange of opinion among the senators upon request of the chairman (sententias rogare). Senators who were functioning magistrates could participate in the discussion but could not vote.—See DISCORSso.

O'Brien-Moore, RE Suppl. 6, 709.

Verba facere ad populum. See CONTIO.

Verba formularia. The text of the procedural FORMULA. —See CONCEPTA VERBA, ACTIO RAESCPITIS VERBIS.

Verba legis (edicti, senatusconsulti). The text of a statute (an edict of a magistrate or a senatusconsultum). Sometimes the reference to the verba legis is followed by a literal quotation. From the text of a legal enactment is distinguished its spirit, its intention (ratio, mens, sententia).

Verberare (vereratio). See CASTIGARE, FUSTIS, FLAGELLUM.

Lecriviain, DS 5.

Verbi gratia. For example. The locution is frequent in Gaius.

Verborum obligatio. See OBLIGATIO VERBorum.

Vereaundia. Respect, reverence for another person (a parent or a patron), conscientiousness, honesty.

Lecriviain, NRHD 14 (1890) 487; Cicogna, StiSen 54 (1940) 53.

Veredi. See ANGARIA.

Verginia. The tragic story of Verginia, as related by Livy (book 44) and Dionysius of Halicarnassus (11.28–37), is connected with the history of the Twelve Tables (see LEX DUCEDIC TABULARUM) and the downfall of the decemvirs (see DECEMVIRI LEGIBUS SCRIBUNDIS). It gives an interesting picture of a CAUSA LIBERALIS, a trial over the personal status of a girl Verginia, whom the tyrannical decemvir Appius Claudius (450 B.C.) wanted to have declared a slave in court (vindicatio in senatuum). The presentation of the case by the historians touches upon a series of problems connected with the earliest procedure in a CAUSA LIBERALIS; no matter whether the story is true or legendary.

C. Appleton, RHD 24 (1924) 592; M. Nicolau, CAusa liberalis (Thése Paris, 1943) 96; P. Nicolas, Ins et Fasc (1949) 187; v. Oven, TR 18 (1950) 159.

Veritas. Truth. The search for truth (veritatem quaerere, exquirere, perquirere, inquireire, inquireire, spectare) is frequently stressed in both criminal and civil trials. For the rule res indicata pro veritate accipitur, see RES JUDICATA. In veritate esse = to be real, true. The phrase occurs in discussions about the real value of a thing which is the object of a judicial trial, as opposed to the value (interest) it represents to the plaintiff. Hence, ex veritate ascitam one m facere = to estimate a thing according to its real value (vera aestimatio rei).

Verna. A slave born in the house of his parents' master. Such slaves generally received better treatment.

Starr, CJPhiol 1942, 314.

Versari. To act. The term is used primarily of persons who administer the affairs of others (guardians, curators, negotiorum gestores) when their management is incorrect or to the disadvantage of the beneficiaries because of fraud, negligence, or lack of experience on the part of the managers. Versari (in passive voice) = to be taken into account, to be examined (e.g., the factual and legal elements of a case by a judge or by a magistrate when he was requested to grant an action or in the course of a cognitio). Syn. verii.

Versum in rem. (Sc. patris, or domini.) What turned to the advantage of a father (or master of a slave) from a transaction concluded by a son (filius familiaris) or slave. Under the actio de in rem verso (see PECULIUM) the father was liable only to the extent of the enrichment he obtained through the transaction (even when he had given his consent thereto), if the son (or slave) did not fulfill the obligation assumed in the transaction. The term versio in rem, used in the literature, is not Roman.—C. 4.26.

SOLAZZI, Si Brugi (1910) 205.
Versura. The conversion of a loan at interest into another loan at a different rate of interest.

G. Biileter, Gesch. des Zinsfuisses (1898) 138.

Vert. See VERSAI.

Verum est. It is true, it is correct. Through this expression which occurs very frequently in juristic writings, the jurists either underscored indisputable opinions or limited a previous rule by referring it solely to a specific situation: “this holds true only when . . .” (quod iia demum verum est, si . . . or totiens quotiens = in any case whenever . . .). The jurists also used a negative formula with verum est (quod non, or minus verum est) to express their disagreement with another opinion. Sometimes an approval expressed in the form of verum est may originate from the pen of Justinian’s compilers, especially when two divergent opinions are cited. The same is true of the locution quod verum (verus, verissimum) est, when a discussion is closed by such a statement (or quae sententia vera est). The decision as to whether such a clause in a specific text is interpolated or not is a very difficult one, since, after all, the jurists must have had and used certain expressions to stress their agreement with another author’s opinion.—See VERUS.

Guarneri-Ciati, Indice (1927) 91 and St Riccobono 1 (1936) 719 (z.w. esse).

Verus. Real, true, authentic. It is opposed to fasus (e.g., verus tutor, verum testamentum, veri codicilli, verum testimonium). For vera rei aetatisatio, see VERITAS. The adjective is also used to indicate the real (not simulated or fictitious) legal quality of a transaction or personal situation (e.g., veris empor, debitor, heres, dominus, vera donatio, verum divor- tium). Sententia vera = a just, correct legal opinion; see VERUM EST.

Vestales virgines. Priestesses (originally five or even fewer, later six) of the goddess Vesta, the symbol of chastity. Their legal situation was similar to that of the pontifices and flamines. They were not subject to patria potestas nor bound by any family ties. Nor were they under tutela mulierum. They were subject to the jurisdiction of the pontiffs for negligence in the fulfillment of their religious duties; there was no appeal from the judgment of the pontifices. For unchastity they were scourged to death. The Vestales were selected among girls of six to ten years of age, born of patrician parents whose marriage had been concluded through coniuratio. Normally their service lasted thirty years, thereafter they were permitted to leave and to marry.—See LEX PAPA, LEX VOCONIA.

Hild. DS 5; Rosc. OCD; G. Wisowa, Religion und Kultus der Römer (1902) 433; Aron, NRHD 28 (1904) 5; Braslaff, Zeitschr. für vergleichende Rechtswissenschaft 22 (1909); T. C. Worsfold, The history of the Vestal Vir- gins of Rome, London (1934); Münzer, Philologus 92 (1937) 47, 199; Solazzi, SDHI 9 (1943) 113.

Vestis collatio (vestis militaris). A tax for military equipment.

Cagnat, DS 5, 773.

Vestis forensis. See TOGA.

Vestis militaris. Clothes for soldiers; they were to be furnished by the provincial population (in the Empire) in the same way as food (see ANNONA MILITARIS).—C. 12.39.


Vetare. To forbid, to prohibit. The term is used of legal enactments (statutes, imperial constitutions) which forbade a transaction or act (lex vetat), of magistrates who issued a prohibitive order, or of private persons (a principal, a master, a father) who within the framework of their authority forbade persons depending upon them to do something. For the formula vim fieri veto (or a simple veto), see INTERDICTA PROHIBITORIA, VIM FIERI VETO.—See IUDICARE VETARE.

Veteranum mancipium. See NOVICIUS.

Veteranus. A soldier who completed his years of service and was honorably discharged. According to an enactment of Augustus, a legionnaire was discharged after twenty years of service. The veterani were united in an elite detachment which had its own standard, vererium; hence the unit was called veceilla- tio veteranorum. It could be called to service in the event of emergency; see EVOCATIO. The veterans enjoyed various privileges among which the most important was exemption from compulsory personal services to the state (muneria); they were, however, not exempt from charges which were imposed on real property (munera patrimonii) and they paid taxes. In penal law certain more humiliating penalties (such as flogging, castigatio justibus, forced labor in mines or public works) were not applicable to veterans. Generally they were not compelled to assume a guardianship or curatorship except when the ward was a child of a soldier or of a veteran. Veterans were permitted to have their own associations, col- legia veteranorum. Syn. vetus miles.—D. 38.12; 49.18; C. 5.63; 12.46.—See PECULIUM CASTRENSE, MISSIO, EMERITI, EXCUSATIONES A MONERIBUS.

Mispoulet, DS 5; Walting, DE 2, 350, 368; Scheibl, Das Edict Dissolutions über die Immunitäten der Veteranen, Aeg 13 (1933) 137.

Veterator. See NOVICIUS.

Veteres. The ancestors. With regard to earlier jurists, the term is used of jurists who lived in more or less remote times. In postclassical and Justinian sources the term refers to the classical jurists without distinction as to whether they lived in the Republic or the early or late Principate.—See ANTIQUIT.

Vetus consuetudo. See CONSUETUDO. Syn. veteribus moris fuit (= the ancients used to).

Vetus ius. Ancient law, the law of past times, an old legal principle. The term may refer to a legal norm
which originating in earlier times was still in force or to an earlier legal norm which was amended by later law. *Imitatio veterti iuris* = a new law which followed the pattern of former law. —See *Ius Antiquum*.

**Vetustas.** Ancient times in Justinian's constitutions, e.g., *iuva vetustatis*. Syn. *antiquitas*. In the language of the jurists *vetustas* is used of situations of very long duration which were considered as legal if there was no evidence to the contrary. The rule that "*vetustas is considered as a law*" (*pro lege habetur*, D. 39.3.2 pr.) was of particular importance in relations between neighbors when the owner of land from time immemorial had certain profits from a neighbor's property (e.g., use of water). In another sense, *vetustas* indicates the bad state of a building (e.g., dilapidation) which required repair because of its "old age." The owner was bound to repair the defects for the benefit of the tenants.

**Vetustiores.** Ancestors.

**Vetustus.** Ancient, old. *Vetustum* (*vetustissimum*) *ius vetustae leges* = the ancient law (laws).

**Vexare.** To molest, to harass (*vexare adversarium iitiis* = to harass one's adversary with lawsuits). —See *Calumnia*.

**Vexillarius.** The soldier who bore the standard or a soldier of a military detachment (see *Vexillatio*).

**Vexillatio.** (From *vexillum* = a military banner.) A military detachment. The term applies to infantry units, cavalry squadrons, auxiliary troops and marines, even to smaller units to which a special military task was assigned. Sometimes *vexillum* is used in the sense of *vexillatio*. For *vexillatio veteranorum*, see *Veteranus*. In the later Empire, military units serving in the imperial palace (*vexillationes palatinae*). *Cagnat*, *DS* 5; *Liebenam*, RE 6, 1606; *M. Mayer*, *Vexillum et vexillio* (Diss. Strassburg, 1910).

**Vi bona raptas.** Goods taken away from the owner (or possessor) by force. —See *Rapina*.

**Via.** A rustic servitude (see *Servitudes Praediorum Rusticorum*) which entitled the owner of a land to use a road on his neighbor's land for driving in a carriage or riding on horseback. The *servitus viae* automatically implied the right to walk and pass (see *iter*) as well as to drive draught animals and vehicles (see *actus*) through the other's property.

*Severini*, *NDI* 12, 2; *Arango-Ruiz*, *St Brugi* (1910) 247; *Aru, St Cagol* 24 (1936) 405; *Biondi*, *St Bestia* 1 (1939) 267; *Sorazzi*, *SDHI* 17 (1951) 227.

**Viae.** Roads. A distinction was made between private and public roads. Private roads (*viae privatae*, called also *griariae*) were the roads which led through private land. Use could be granted by the owner to private individuals or to groups of neighbors, in an unlimited or limited measure (see *via*, *iter*, *actus*). Public roads (*viae publicae*) were open to the use of the people. They are also called *viae consulares* or *viae praestoriae* when their construction was ordered by a consul or praetor. Several Republican statutes dealt with the construction and maintenance of public roads. Construction was in the hands of the higher magistrates and the censors, the administration and supervision was assigned to the *aediles*, later (under the Principate) to special *curatores viarum*. In the later Empire, the owners of bordering property were generally bound to maintain the roads running along their property (Cod. Theod. 15.3). Erection of monuments on public roads was prohibited. The use of *viae publicae* by the population was under interdictal protection; see *Interdictum de viis Publicis*.

—D. 43.8; 10; 11. —See *Quattuor viis in urbem purgandis*, *Duoviri viis extra urbe purgandis*. *Chapot*, *DS* 5; *Voigt*, *Röm. System der Wege*, BerSächGW 1872.

**Viae consulares, praestoriae.* See *Viae.*

**Viae militares.** Roads built for military purposes.

**Viae vicinales.** Roads which are in, or lead to, villages. They were generally public if they served for traffic to, and from, the village even when maintained by the owners of the adjacent lands.

**Viasit vicani.** Beneficiaries of public land (*ager publicus*) to whom plots situated alongside a public road were assigned. They were bound to maintain the corresponding sections of the road.

*Grenier*, *DS* 5, 857.

**Viaticum.** Travel expenses. A plaintiff who inconsiderately (*temere*) summoned another to court had to reimburse him for the expenses connected with his appearance before the magistrate. Expenses also had to be paid to a partner in a *societas* who made a journey in its interest. A small amount of money which exiled persons were permitted to take with them when going into exile, was also called *viaticum*. Finally, *viaticum* was the travel money given to ambassadors sent on an official mission abroad.

*Le Grim*, *DS* 5.

**Vialtores.** Subordinate officials, assigned to the office of a high magistrate or of a plebeian tribune, who carried out orders of their superiors, summoned or arrested persons and brought them to court, transmitted messages to senators or other magistrates, intervened in the convocation of the senate, and the like. They belonged to the lower official personnel (see *Apparitores*). —See *Lex Cornelia de Viginti Quaestoribus*.

*Lange*, *RE* 6A, 2488; *Le Grim*, *DS* 5.

**Vicanus.** An inhabitant of a village (*vicus*). —C. 11.57. —See *Viasit.*

**Vicarianus.** (Or *Vicarius*, adj.) Connected with, or pertinent to, a *vicarius*, the governor of a *dioecesis* (in the later Empire).

**Vicarius.** One who acts in another's place as his substitute. Syn. *vice agent* . —See *Vice.*

**Vicarius.** In public law, the chief of the administration (governor) of a *dioecesis* in the later Empire.
They were purely civil officials also charged with the administration of justice.—C. 1.38.

Lecrivain, DS 5; De Villa, NDI 12, 2.

Vicarius in urbe (Roma). Following Diocletian’s reform of the administration, the vicarius residing in Rome was the head of the administration of the southern part of the dioecesis Italia (the so-called suburbaniae regiones and the islands) except for the district subject to the praefectus urbi. Under Constantine he assumed the functions of the former vicarius praefecturae urbis and had from that time the title of vicarius urbis Romae.

Kornemann, RE 5, 731; F. M. De Robertis. La repressione penale nella circoscrizione dell’urbe (1937) 43; idem, Studi di diritto penale rom. (1940) 33.

Vicarius Italicus. The chief of the administration of the northern part of the dioecesis Italia (the districts north of the Apennines) after Diocletian’s reform of the administration. His residence was in Milan.

—See VICESIMUS IN URBE.

Kornemann, RE 5, 731.

Vicarius iudeus. In the later Empire, a judge (jurisdictional official) acting in the place of the iudex ordinarius. Since the latter title was used for provincial governors, the vicarius was in fact the substantive of the governor. In the first two centuries of the Principate the title vicarius was already being used for officials who substituted for provincial governors in their absence or upon their death.

Vicarius praefecti praetorio. A permanent deputy of the praefectus praetorio after Diocletian’s reform of the administration. One was appointed by the emperor in each dioecesis of the Empire.

Lecrivain, DS 5, 821; Coq, NRHD 23 (1899) 193.

Vicarius praefecturae urbis. A deputy of the praefectus urbi. The office was abolished by Constantine and its functions transferred to the VICARIUS IN URBE.

Enslin, Byzantinische Zeitschrift 36 (1936) 320.

Vicarius servus. See SERVUS VICARIUS.

Vicarius urbis Romae. See VICARIUS IN URBE.

Vice. Added to the title of a high administrative official (e.g., vice praedids, legati, proconsulis) this indicates an official (a procurator) in the provinces who temporarily assumed the functions of an absent or dead governor. Syn. agens vices (partes) praedids, partibus praedids fungi. Vice alcuius fungi = to act in place of another. Vice alcuius rei (e.g., testamenti, legati, pignoris) = to be considered as being in the place of (a testament, a legacy, a pledge).

—See the following items.

Vice (or vices agens) praefecti praetorio. The deputy praefectus praetorio appointed (from the time of Diocletian) by the emperor. Appeals from his judicial decisions went directly to the emperor and not to the praefectus praetorio.—See VICARIUS PRAEFECTI PRAETORIO.

De Ruggiero, DE 1, 154; Cantarelli, Bull. Comm. Archéol. Comunale di Roma, 1890, 28; Coq, NRHD 23 (1899) 393; A. Stein, Hermes 50 (1925) 97.

Vice sacra. (Acting) in place of the emperor. The praefecti praetorio in the praefecturae of the Empire and the praefectus urbi in Rome (after Diocletian’s reform of the administration) were considered as acting vice sacra.—See IUDICANS VICE SACRA.

Vicem legis obtinere. See LEGIS VICEM OBTINERE.

Vices (vicem, vice) agens. A deputy official in provincial and military administration.

De Ruggiero, DE 1, 353.

Vicesima hereditatium. A five per cent inheritance tax paid by Roman citizens on testamentary and intestate successions worth 200,000 (?) sesterces or more. It was introduced by Augustus. Responsibility for collecting the vicesima hereditatium was in the hands of special officers, procuratores hereditatium.—C. 6.33.

—See APERTURA TESTAMENTI, LEX IULIA (?) DE VICESIMA HEREDITATIUM, STATIO VICESIMAE, MISSIO IN POSSESSIONEM EX DICTIO HABRIANI, EDICTUM HABRIANI.

Cagnat, DS 5; Severini, NDI 12, 2 (t. v. vicesima): De Ruggiero, DE 3, 726; CatineILL, StDocSD 6 (1885) 273, 7 (1886) 33; Bonelli, ibid. 21 (1900) 288; E. Guillaud, Etude sur la v. h. (These Paris, 1893); Stella-Maranca, RendLinc 33 (1924) 263; Acta Dici Augusti 1 (Rome, 1943) 219; De Laet, AntCl 16 (1947) 29; Gilliam, AmPhilol 73 (1952) 397.

Vicesima libertatis. See VICESIMA MANUIMISSIONUM.

Vicesima manuimissionum. A manumission tax of five per cent of the slave’s value, paid by the master if freedom was granted by him, but paid by the slave if he redeemed himself by his own money; see REDEMPTUS SUIS NUMMIS. Syn. vicesima libertatis, aurum vicesimarum.

Lecrivain, DS 3, 1220; Humbert, DS 1 (s. aurum vicesimarum); Bonelli, StDocSD 21 (1900) 52; Wlassak, ZSS 28 (1907) 89; L. Clerici, Economia e finanza dei Romani 1 (1943) 505.

Vicinus. A neighbor. In relations between neighbors, owners of land, servidues were of great importance (see SERTUTUS PRAEDIORUM RUSTICORUM, SERTUTUS PRAEDIORUM URBANORUM) inasmuch as they determined the extent to which one neighbor might use the property of the other. Controversies between neighbors arose for various reasons involving actual or threatened violation of the rights of one by the other.—See CAUTIO DAMNI INFECTI, OPERIS NOVI NUNTIAE, ACTIO AQUAE PLUVIAE ARCEDARUM, PARIES COMMUNIS, TIGNIS IUNC- TICUM, ACTIO FINIUM REGUNDORUM, CONTROVERSA DE FINE, IMMISSIO, INTERDICTA.


Vicemagistri. See REGIONES URBS ROMAE.

Grenier, DS 5.

Victor. Used of the successful party in a lawsuit. Syn. victiris pars. Similarly, victoria may refer to a victory in court.
Vicus. Nourishment, all that is necessary for living (ad victum necessaria, ad vivendum homini necessaria), hence not only the necessary food, drink, and clothing, but also "anything else which we use for the protection and the care of our body" (D. 50.16.44). This interpretation of the term was important in cases when one was obligated to take care of a person (e.g., a father, a guardian) or to furnish victus to another (e.g., as a legacy or under another title).

Viculus. A settlement, a village, a territorial unit, smaller than a municipium or an oppidum, occupied by a group of families forming a rural community. In larger cities vicus indicated a street, a block of buildings.—See Fagus, Regiones Urbis Romae.

Videbimus. We shall examine. The jurists used this word to stress a point to which they wanted to devote particular attention or an important problem that arose from a case under discussion. Similar locutions are videamus (= let us see whether), videndum est (= it is to be examined).

Videtur (aliciui). A favorite term of the jurists to introduce their own ("mihi videtur" = it seems to me) or another jurist's (e.g., "Iuliano videtur") opinion. In reporting a judge's decision expressions like videbatur, visum est, are used.

Vidua. A widow or a woman who has never been married. Vīdūa = widowhood.—C. 3.14; 6.40; 9.13.—See Luctus, Secundae Nuptiae, Tutela Muliebrum, Raptus.

L. Caes, De statu jurisprud. de sponsalitibus larptis et earn habe a ma ore eore, Courtau, 1949.

Vigiles. The fire brigade of Rome. Augustus created seven divisions (cohortes) of firemen, totaling seven thousand men. Each cohors had seven centuriae under the command of tribunes. The commander of all the vigiles was the praefectus vigilum. One cohors was assigned to two districts of Rome (see Regiones Urbis Romae). The vigiles also exercised police functions, chiefly at night.—D. 1.15; C. 1.45.—See Lex Vellisia.

Cagnat, DS 5; Balsdon, OCD: De Magistris. La militia vigilium nella Roma Romana (1896); P. K. Billie Reymonds, The c. of imperial Rome (1926); G. Mancini, I vigili dell'anica Roma (1939).

Vigintiviri. See VINGINTISEXVIRI.

Leclercq, DS 5.

Vigintiseviri. A collective term embracing 26 minor magistrates in the Republic with different functions. Among them were: the decemviri statibus iudicandis, tresviri capitales, (previously called tresviri nocturni), the tresviri monetales, the quattuorviri via in urbe purgandis (four officials who had to keep the streets of Rome clean), the duoviri viis extra urbe purgandis (who had similar duties with regard to the roads around the capital), and the quattuorviri praefecti Capuanum, Cumas (who acted as representatives of the praetorian jurisdiction in the region of Campania). The latter six magistrates (the duoviri and the quattuorviri praefecti) were abolished by Augustus, henceforth the remaining twenty magistrates were collectively called vigintivirii.

Vilicus (villicus). The administrator of a country estate (villa), normally a slave who supervised all the personnel (slaves, see Familia Rustica).

Lafaye, DS 5.

Villa. A country estate, a country house. Villa urbane = the residential part of a country establishment; villa rustica = farm buildings, quarters for slaves working in the agricultural part of the estate.—See AGER.

Villicus. See VILICUS.

Vim fieri veto. "I forbid force to be used." The so-called prohibitory interdicts (see Interdicta Prohibitoria) were provided with this clause by which the praetor forbade the defendant to hinder the plaintiff in the exercise of his right. Vīs does not mean violence (physical force) here; it indicates any activity of the defendant which might prevent the plaintiff from making use of a right to which he was entitled.

Berger, RE 9, 1613.

Vim vi repellere licet. Force may be repelled by force. "All statutes and all laws allow this" (D. 9.2.45.4). The principle admits self-defense by force against an aggressor. A well-known instance was self-defense against a thief (see Fur, Furtum): the victim could kill a burglar at night, but in the daytime only if the thief defended himself with a weapon (telum).—See Vindicatio.


Vincire. To defeat.—See VINCITUS, VINCULA.

Vinctus. Fettered. Ant. solutus = liberated from fetters.—See VINCULA.

Wenger, ZSS 61 (1941) 655.

Vincula. Fetters. Fettering (vincire) was applied as a punishment of slaves by their masters. Fettering a free citizen was considered a crimen plagii (see Plagium) and punished according to the Lex Faba. It was permitted, however, as a means of coercion (see coercitio) or as an additional punishment in prison. Vincula are mentioned in the Twelve Tables (see Lex Duodecim Tabularum) as a coercive measure applied by a creditor against a debtor who did not fulfill a judgment debt. The law permitted shackling the debtor nervo aut compedibus (with fetters of iron or wood) but limited their weight to fifteen pounds.—See NEXUM.

Vollgraff, DS 5; Wenger, ZSS 61 (1941) 655.

Vincula publica. A public prison. Syn. CARCER. Persons suspected of a crime were held in prison until the matter was cleared up. Incarceration was,
however, not a punishment for a culprit condemned. Ant. vincula privata = fetters applied by private persons, see VINCULA.—See CUSTODIA REORUM.

Vinculum juris. A legal tie (bond). The expression is used in the definition of OBLIGATIO.

Vinculum pignoris. The tie by which a pledge (pignus) is bound on behalf of the creditor. Vinculum pignoris is also the right of a ransomer over the prisoner of war whom he redeemed from the enemy; see REDEMPTVS AB HOSTE.

G. Faivrely, Redemptus ab hoste (Thése Paris, 1942) 112.

Vindemia. The vintage season (tempus vindemiae, vindemiarum). It was taken into consideration by the law in the same way as the harvest period (tempus messis vindemiae). During these seasons jurisdictional activity was exercised only in cases which might be lost to the plaintiff because of lapse of time (praescriptio, or usucapio on the part of the defendant) or when permissible things were involved.—See ORATIO MARCI ON IN IUS VOCATIO.

Vindex. For the vindex intervening for a person summoned to court, see in IUS VOCATIO. The vindex guaranteed the appearance of the defendant at a fixed later date. Should the defendant fail to do so, the vindex was liable to the plaintiff and could be sued under the formulary procedure by a praetorian actio in factum. A vindex was acceptable to the magistrate only if he was wealthy enough to guarantee the eventual payment.—A vindex (garantor) was also permissible in the LEGIS ACTIO PER MANUS INJECCTIONEM to save the defendant, who had been condemned in a previous trial and did not pay the judgment debt, from being led off to the plaintiff’s house and put in fetters. The vindex had either to pay the judgment debt of the principal debtor at once or to defend him by denying that the manus iniectio was justified. When defeated in the trial, the vindex had to pay the plaintiff’s double. Both kinds of vindices disappeared in later law. In Justinian’s legislation they were replaced by the fideissor iudicio sistendi causa (qui aliquem iudicium sisti promiserit = one who promised to bring another to court).—D. 2.10.—See VADIMONIUM, IUDICATUM, MANUS INJECTIO.

Cuc, DS 5; Severini, VDI 12, 2; F. Kleinseidam, Die Personalexekution der Zwill Tafeln (1904) 146; Lenel, ZSS 26 (1905) 232; Schlossmann, ibid. 308; G. Ciocuna, V. e radioninum (1911); N. Corodeanu, Sur la fonction du v. (Bucharest, 1919); Lenel, Edictum perpetuum (1927) 65; Dül, ZSS 54 (1934) 112; Leiter, Zuchter. für vergl. Rechts堆放, 50 (1935) 5; L. Maillet, La théorie de Schuld et Hofnung (Thése Aix-en-Provenç. 1944) 84; Fuglieon, RIDA 2 (1940) 251; Kaser, Das altröm. Eus (1940) 194; P. Noailles, Du droit sacré au droit civil (1950) 143.

Vindex civitas. See DEFENSOR CIVITATIS.

Vindicare (vindicatio). Eventually assumed a general meaning—beyond the domain of REI VINDICATIO—of laying claim to, asserting one’s right to.—See the following items.

Juncque, Gedächtnisschrift für E. Schell (1927) 209; Dül, ZSS 54 (1934) 98; P. Noailles, Du droit sacré au droit civil (1950) 52.

Vindicare necem (mortem). To avenge the assassination of a man by an unknown murderer by prosecuting all the slaves who lived with him in the same household.—See SENATUSCONSULTUM SIOLIANUM, QUÆSTIO PER TORMENTA, TECTUM.

Vindicatio (vindicare). In earlier times, the act of avenging an offense, self-defense against the violence of an aggressor. Later, the term was applied to the defense of one’s property by seeking its recovery in court. Gaius (Inst. 4.5) called all actiones in rem (see ACTIONES IN PERSONAM) vindicaciones and Justinian accepted his terminology (Inst. 4.6.15). See REI VINDICATIO. Vindicatio is also used for the prosecution of certain wrongdoings, such as ADUTERIUM, or corruptio albi (see ACTIO DE ALBO CORRUPTO). For other applications of the term, see the following items.—See LEGATUM PER VINDICATIONEM.

Vindicatio coloni (or in colonatum). In the later Empire, the claim of a landowner asserting that a certain person was his COLONUS.

Vindicatio familiae pecuniaeque. The earliest form of HEREDITATIS PETITIO.

Vindicatio filii. The claim of the head of a family for the delivery of his son held by another. Analogous was the vindicatio of a wife being under the marital power (in manu) of her husband, by the latter since her legal situation was that of a daughter (filiae loco).—See INTERDICUM DE LIBERIS EXHIBENDIS.

Vindicatio gregis. See GREX.

Vindicatio hereditatis. See HEREDITATIS PETITIO. VINDICATIO FAMILIAE PECUNIAEQUE.

Vindicatio in ingenuitatem. See the following item.

Vindicatio in libertatem. An action in favor of a free person held by another as a slave. See ADJURATIO, CAUSA LIBERALIS. A similar case was the vindicatio in ingenuitatem whereby one defended the status of another man as free-born; see INGENITAS. Ant. vindicatio in servitutem whereby the claimant asserted that another man was his slave though generally considered free.

Vindicatio in servitutem. See VINDICATIO IN LIBERATEM, VERNGINIA.

Vindicatio pignoris. Often applied to the action of a creditor who claimed the recovery of a pledge from the debtor on the ground that his obligation had been discharged.—See HYPOPTECA, ACTIO QUASI SERVIANA.

Vindicatio servitutis. The action of a person against the owner of land on which the plaintiff claims a servitude. The action is also called actio confessoria. On the other hand, the landowner was protected against any one to whom he denied a servitude on his property by an action called actio negatoria or actio negativa. Similar was the use of an action termed actio prohibitoria (its origin is controversial)
by which the landowner asserted his right to prevent another from exercising a servitude on his land.

Leonhard, RE 4, 871 (s.v. confessorium actio); V. Arangio-Ruiz, Reritala (1946, ex 1918) 1; G. Segre, Mél Girard 2 (1912) 511; Ricordi, AnNat 5 (1929) 93; Buckland, LQR 46 (1913) 447; Bohaček, BIDR 44 (1937) 19, 46 (1939) 142; Solazzi, Tutela delle servitù prediali (1949) 1; Albas- nese, AnPal 21 (1950) 24; Grosso, St Albertario 1 (1951) 593.

Vindicatio tutelae. The claim for guardianship of a person who was entitled by law to be the guardian (tutor legitimus) of a near relative.—See TUTELA LEGITIMA.

Vindicatio ususfructus. Analogous to vindicatio servitutis when a usufruct on another’s man property is claimed.—See VINDICATIO SERVITUTIS.

G. Grosso, I problemi dei diritti reali (1944) 132; Sciascia, BIDR 45-50 (1948) 471.

Vindicatio uxorii. See VINDICATIO FILII.

Vindiciae. Possession of a thing which was the object of a judicial trial under the procedure of LEGIS ACTIO SACRAMENTO and which was assigned for possession (vindicias dicere) to one of the parties, normally to the actual possessor, by the jurisdictional magistrate. If this party lost the case (vindiciae falsae), he had to hand over the thing together with double the proceeds he may have received from it in the meantime. In earlier Latin vindiciae (or vindicia) was the thing itself about which there was a controversy.—See FRAEDES LITIS ET VINDICARIUM, CAUTIO PRO FRAEDE LITIS ET VINDICARIUM.

Cuq, DS 5; E. Weiss, Fesch Peterka (Prague, 1929) 65.

Vindiciae falsae. Occurred if the party to a trial who received temporary possession of the thing in dispute from the praeotor (see VINDICIAE) lost the case under the judgment. According to the Twelve Tables he had to restore to the adversary the thing itself and double the proceeds (fructus duplum). The assignment of possession by the praeator to the wrong party was termed vindicias falsas dicere.

E. Petot, Etudes Girard (1912) 229; Weiss, Fesch Peterka (Prague, 1929) 72; Ratti, St Riccobono 2 (1936) 421; Levy, ZZS 54 (1934) 306; M. Kaser, Estiuerse als Possessgiestand (1932) 16; idem, Eigentum und Besitz (1943) 72.

Vindiciae dicere. See VINDICIAE, VINDICIAE FALSAE.

M. Kaser, Eigentum und Besitz, 1943, 76.

Vindiciae dicere secundum libertatem. Occurred in a trial over the status of liberty (status libertatis) of a person, the praetor ordering that he be considered a free man until the final decision.—See CAUSA LIBER-

Ralis, VINDICATIO IN LIBERTATEM, VINDICATIO IN SERVITUTEM, VIRGINIA.

P. Noailles, Du droit sacré au droit civil (1950) 192; Van Oven, TR 18 (1950) 172.

Vindicta. A rod used for symbolic gestures in the enfranchisement, called MANUMISSIO VINDICTA, and in the LEGIS ACTIO SACRAMENTO in rem in which the question of Quiritian ownership of a thing was examined. The controversial object was touched with a rod by the person asserting his ownership. Gaius (Inst. 4.16) identifies vindicta with PESTUCA.

According to a recent opinion, the term is derived from vim dicere (vis dicta), indicating the act by which the parties emphasized their power over the thing in dispute.—D. 40.2; C. 7.1.

Cuq, DS 5; Beseler, Hermes 77 (1942) 79; M. Kaser, Das atröm. ius (1949) 377; P. Noailles, Ius et Fas (1948) 46 (s.v. RHD 19-20 [1940-41] 1); P. Meylan, M ét F. Guisan (Lausanne, 1950) 99.

Vindicata. With regard to criminal offenses, vengeance, retribution, a penalty inflicted in return for an of-

fense, criminal prosecution.

Vindius Verus. A little known jurist of the second century, member of the council of the emperor Antoninus Pius.


Vinum. For crimes committed by intoxicated persons (per vinum), see IMPETUS. Drunkness = ebrietas, templaatio.

Violatio sevulcri. Violation, desecration, of a grave.

Different offenses were punished as a crimen violati sevulcri, in the first place burglarizing a grave be-

longing to another or opening one in order to bury a dead body therein. The wrongdoer could be sued for damages by the person who had the ius sevulcri over the grave under the ACTIO SEPULCRI VIOLATI. This was an actio popularis so that if the person interested in the first place did not accuse the culprit, any Roman citizen could do so. Penalty for minor infractions was a fine of 100,000 sesterces and infamy. Major violations, such as taking away a corpse or robbery committed with the help of armed accom-

plices, were punished by death.

Pfaff, RE 2A, 1625; Gerner, RE 7A, 1742; Lévevin, DS 4, 1208; Cuq, RHD 11 (1932) 109; F. Wesenberg, Der strafrechtliche Schutz der geheiligten Geigenstätte (Diss. Göttingen, 1912) 95; A. Parrot, Malédiction et violation des tombs (1939); Arango-Ruiz, FIR 3 (1943) no. 83.

Violentia. Violence, use of physical force.—See vis. Niedermeyer, St Bonifatius 2 (1930) 281.

Vir bonus. An honest, upright man (a Roman citi-

zen). In certain contractual relations, particularly in those governed by good faith (bona fides), the judgment (arbitrium) of a third impartial and honest person was decisive whether a party had fulfilled his obligation or not, e.g., the approval of a work done by a contractor or an artisan (locatio conductio operis). The moral qualifications of a vir bonus were honesty and righteousness.—See BONUS PATER FAMILIAS, ARBITRIUM BONI VIRI.

T. Sinko, De Romanorum viri bono, Transactions (Ros-

prywy) of the Academy of Sciences in Cracow 36 (1903) 631; v. Liubow, ZZS 52 (1944) 520.

Vires. (Pl. of vir.) The financial strength (means) of a person, an inheritance, or of a separate complex of goods (a dowry, a peculium).—See FACLUTATES.
Virga. A rod, a whip used for flogging.—See casti-
gare.

Virgo Vestalis. See VESTALES VIRGINES.

Virilis. Befitting a man (not a woman); see OFFICIIUM 
VIRILE; a share in an intestate inheritance pertaining 
to one heir and equal to the shares of other heirs = 
pars virilis.—See PORTIO HEREDITARIA.

Viripotens. A marriagable woman.—See IMPLUBES.

Viritim. Personally, individually. Viritim donatus 
civitate Romana (in inscriptions) = a foreigner who 
was personally granted Roman citizenship. Viritim 
distribuere = to distribute (e.g., an inheritance) among 
several persons in equal shares.—See VIRILIS.

Virtus. Bravery, courage. Competition in athletic 
games was considered a contest in bravery (certamen 
in virtute).—See LEX CORNELIA DE ALEATORIBVS.

Vis. The power one has over a free person (vis ac 
potestas). With reference to legal enactments (vis 
legis), to contractual relations (vis stipulationis), or 
unilateral acts (vis testamenti) = validity, effective-
ness. Hence vim (vires) habere = to be valid; vim 
(vires) accipere, optinere = to become legally valid.
Ant. nullas vires habere.

Vis. Violence, force. The term occurs in both private 
and penal law, but it is defined differently for the 
two provinces. Whereas in the first the concept of 
vis is taken in a broader sense and even in different 
implications, for the penal law it is understood as 
a major infraction and qualified as crimen vis (crime 
of violence). In the law of obligations, vis (the use 
of physical force or moral compulsion by one person 
against another) might provoke fear (metus) in the 
latter. Hence the two elements “force and fear” (vis ac 
metus) are mentioned together in discussions of 
the influence of metus on legal transactions. The 
praetorian Edict dealt with vis not only in the section 
concerning duress (metus) but also with regard to 
possessions when a person was dispossessed by force. 
In several provisions the praetor forbade the use of 
force to disturb existing possessory situations (see 
vim fieri veto), or he protected public works and 
institutions against any hindrance (“ne vis fial!”) 
which might impair their public use. Such actions 
were considered as vis, no matter whether real force 
was actually applied or not. See INTERDICTA PRO-
HIBITORIA, INTERDICTUM QUOD VI AUT CLAM, INTER-
DICTUM DE VI. Thus arose the rule: “All that one 
has done when he was prohibited (from doing it) is 
considered to have been done with violence” (D. 
50.17.73.2). Vis appears among the so-called visia 
possessorum (legal defects of possession) inasmuch as 
leadership acquired by force was qualified as pos-
sesso viiosa (iniuria). See EXCEPTIO VIITIOSAE POS-
SESSIONIS, INTERDICTUM UTI POSSIDETIS, RES VI POS-
SESSAE. He who uses force to defend and retain his 
possessions, when illegally attacked by another, is 
not regarded as possessing by force (vi). In the 
field of penal law, the distinction between vis pri-
vata and vis publica is fundamental: “whatever is 
done by violence is either a crime of vis publica 
or of vis privata” (D. 50.17.152 pr.). The vis 
privata, force used against a private individual in 
order to commit robbery, was considered a private 
delict, like theft (furtum), and was prosecuted by a 
penal action (actio poenalis) of the person injured, 
the actio vi bonusarum raptorum; see RAPINA. The 
concept of vis publica, a crime committed with vio-
lene and prosecuted by the state in a criminal trial 
(judicium publicum), was first established in the LEX 
PLAUTIA DE VI (73-63 B.C.?) and, later, by the com-
prehensive legislation of Augustus, LEX IULIA DE VI 
PUBLICA and LEX IULIA DE VI PRIVATA. The distinc-
tion which was neatly defined in this legislation was 
later distorted through imperial enactments and in 
Justinian’s compilation. The sources are frequently 
contradictory in the qualification of certain outrageous 
acts as vis publica or privata. The original distinc-
tion may have been based on whether the crime vi-
olated direct interests of the state (vis publica) or 
those of a private person (vis privata). “Many crim-
nal offenses are covered by the term of violence” 
(C. 9.12.6); among the instances of vis publica are 
mentioned acts of violence committed in public with 
the assistance of armed bands in order to provoke a 
riot or sedition, disturbing a trial in court, a popular 
assembly during a vote or election, or the senate, 
exercising pressure on a judge, appearance in public 
with arms or armed bands to prepare an attack 
against temples or city gates, disturbing a funeral, 
etc. Various kinds of abuses committed by officials 
and major breaches of official duty were also punished 
as vis publica. Even in certain cases of vis privata 
(more atrocious assaults, the use of arms) public 
prosecution of the crime was possible in addition to 
the private penal action of the individual injured. 
Together with the extension of the instances of vis 
pública more severe punishment was inflicted in the 
later imperial legislation (deportation combined with 
confiscation of property became the normal penalty, 
and from the time of Constantine the death penalty 
was very frequent).—D. 4.2; 43.16; C. 2.19; 8.4; 5. 
For vis publica Inst. 4.2; D. 47.8; C. 9.33.—See UTI 
SUO IURE, INTROIRE DOMUM, VIS ARMATA, VI BONA 
RAPTA, LEX POMPEDIA DE VI, TUMULTUM, TURBA, and 
the following items.

Lécrivain, DS 5; Berger, RE 9. 1614. 1663. 1677: Nieder-
meyer, St Bonfante 2 (1930) 400; U. v. Lübbow, Der 
Edictenrecht vis metus causa (1932) 101; C. Longo, 
BIDR 42 (1934) 99; Nardi, SDHI 2 (1936) 120; Castello, 
RISC 14 (1939) 279; M. David, Interdict quod vi aut clam (1947) 
25. For vis publica: Mommsen, Röm. Strafrecht, 1899; 
633; J. Coroi, La violence en droit crim. rom. (1915) 
Berger, Götttingische Gelehrte Anzeigen, 1917, 344; Costa, 
RendBal 2 (1917/18) 23; Flore, St Bonfante 4 (1930) 335; 
Vis armata. Violence committed with the use of arms (arma). By arms are understood not only all kinds of weapons (see TELUM) but also stones and clubs (justitia). The term vis armata occurs in connection with the dispossession of another from his property. If the aggressor was armed but did not make use of the arms, his assault was nevertheless considered as vis armata since his having arms alone produced fear (terror armorum) in the person attacked.—D. 43.16. See INTERDICTUM DE VI.

Berger. RE 9, 1680.

Vis atrox. Violence committed in a particularly atrocious manner.—See INTURIA ATROX.

Vis divina. See VIS MAIOR.

Vis ex convivio. Violence under agreement, a simulated violence used by one of the parties to a controversy about possession of an immovable after the pertinent interdict (e.g., uti possidetis) was issued. The interdict being only a provisory settlement of the case, it was necessary, in order to bring the controversy to an end, that one of the parties act against the order of the praetor vim fieri veto by dispossessing the actual possessor. Instead of using real force, this was accomplished by agreement of the parties through a violenceless, peaceful dispossession which made the post-interdictal procedure possible. See INTERDICTUM SECUNDARIUM. The connection of the vis ex convivio (to which only Gaius, Inst. 4.170. alludes, without using the term itself) with an institution mentioned solely by Cicero (pro Cacc. 7.20; 10.27; 11.32; 32.95; pro Tullio 8.20; vis ex convivio: Cie. pro Cacc. 8.22), deducit quae moribus sit (putting one out of possession) according to the customs, is not quite clear.

Berger. RE 9, 1696; Saleilles. NRHD 16 (1892) 32; Mitten. ZSS 23 (1902) 298; Chabrum. NRHD 32 (1908) 3; Costa, Cicerone giureconsulto 1 (1927) 125.

Vis fluminis. A great flow of water in a river, a flood. It is considered equal to an earthquake or storm as a FORTUITUS CASUS which excused a person from appearance in court at a fixed date.—See VIS MAIOR, CASUS.

Vis maior. Superior force, an accident which cannot be foreseen or averted because of "human infirmity" (D. 44.7.1.4), such as an earthquake (see TERRAE MOTUS), a flood (see VIS FLUMINIS), a storm (see TEMPESTAS), incursion of an enemy, violent attack by robbers or pirates (not a simple theft) which cannot be repulsed, and the like.—See RECEPTUM NAUTARUM, CASUS, TUMULTUS.

De Medio, BIDR 20 (1908) 157; D. Behrens. Die vis m. und das klassische Haftungssystem, Giessen (1936); G. I. Luzzatto. Caso fortuito e forza maggiore 1 (1938); Condarnai-Michler, Fiscer Wenger 1 (1944) 236.

Vis privata, vis publica. See VIS.

Vita. See VIS VitaE NECISQUE.

Vitellius. A little known jurist of the time of Augustus, contemporary with Labeo. The jurist Paul wrote a commentary on the work of Vitellius (ad Vitellium); it seems, however, that he did not use Vitellius' writings directly, but Sabinus' commentary ad Vitellium.


| Vites. Vines. Gaius used vines as an example to illustrate the necessity imposed by the Twelve Tables of applying the precise words of that legislation in the legis actiones. "If one sued another for having cut down his vines and used the word vites, he lost the claim because the Twelve Tables, on which his claim was based, spoke of 'trees' and therefore he had to refer to trees cut down in his claim" (Inst. 4.11). Vitiari. To be legally defective, to have no legal effectiveness. 

Hellmann. ZSS 23 (1902) 413.

Vitiocse. Used of acts, transactions, possession, securities, etc., which suffer from a legal defect (see VITIUM) and, consequently, are invalid. Ant. sine vitio.

Vitiocosit. See VITIOSE. "What is defective (vitiocatum) from the very beginning cannot become valid by a lapse of time" (D. 50.17.29).—See TRACTUS TEMPORIS, POSSIBILITATE VITIUM POSSIBILITATIS.

Vitium. When referring to a legal act or transaction, a legal defect resulting from non-observance of the prescribed formalities or the legal inability of the acting person. Hence sine vitio = blameless, without any defect. Vitium is also used in the sense of a loss, damage (damnium), as, e.g., vitium facere, or of a fault (culpa).—See the following items.

Cic. DS 5.

Vitium aedificum. A defective and dangerous condition of a building or other construction (of a work done vitium operis). Syn. actes vitiosae.—See DAMNUM INFECTUM.

G. Branca. Damno temuto (1937) 105 and passim.

Vitium animi. A mental (psychical) defect or disease. Ant. vitium corporis (corporale) = a chronic physical defect (e.g., blindness, deafness). The distinction is discussed in connection with the sale of slaves and the remedies granted by the aedilician Edict in the case of uninvisible defects of slaves sold. —See ACTIONS AEDILICIAE, MORBUS, ERRO, SERVUS FUGITIVUS, REDHIBITIO, ACTIO QUANTI MINORIS.

H. Vincent. Le droit des édiles (1922) 43; R. Monier. La garantie contre les vices cachés dans la vente romaine (1930).

Vitium corporis (corporale). See VITIUM ANIMI.

Vitium operis. See VITIUM AEDICUM. Vitium operis, when referring to a construction of a building, is distinguished from vitium soli = the bad condition of the soil on which the construction was built. If the building (construction, opus) collapsed because of a defect in the construction, the contractor was liable; if, however, this happened because of the bad state of the soil, the owner had to bear the loss.
Vitium possessionis. See possessio iniusta, excep-
tio vitiosae possessionis, clam.

Vitium rei. A legal “defect” in a thing which renders its acquisition through usucapio impossible (e.g., stolen things = res furvarae, things taken by violence = res vi possessae, things belonging to the fisc).

Vitium soli. See vitium openus.

Vitium verborum. A defect in a written or oral decla-
ration, resulting from the use of words other than those prescribed by law.

Vivianus. A little known jurist of the first century after Christ, author of a commentary on the praetoriat and aedicilian Edicts.

Vocare (vocatio). To summon a person to appear in court. A magistrate could summon a witness to testify, a guardian to render an account of his admin-
istration of a ward’s property, an accused in a crim-
inal matter (vocare in crimen).

Vocare ad hereditatem. To designate an heir. The term is used both of an intestate inheritance (lex vocat) and of the appointment of an heir by a testator in his will.

Vocari ad munus. To be called by an official order to render compulsory personal service or to assume a certain charge (munus) in the interest of the state.

Vocatio. See evocatio.

Vocatio in ius. See in ius vocatio.

Vociferatio. See convicium.

Voconiana ratio. See lex voconia, ratio voconiana.

Volcatius. An unknown jurist of the early first cen-
tury A.C., a disciple of the renowned jurist Quintus
Mucius Scaevola.


Volens. One who agrees, who gives his consent.

“There is no injury done to a person who consents (in volentem)” (D. 47.10.1.5).—See fraudare.

Severino, NDi 12, 2, 1135.

Volgo. See vulgo.

Volo. See velle.

Voluntaria iurisdictionis. See jursidiciio contentiosa.

Voluntarii. Volunteer soldiers organized in special units, cohortes voluntariorum.

Voluntarius heres. See heres voluntarius.

Voluntas. A wish, a desire, a will, an intention.

Voluntas as an element of one’s action in the legal field acquires importance in the legal life of a social group and of an individual when it is expressed orally or in writing or is manifested in some other manner in a clear, unambiguous way, either in a unilateral act (a testament) or in a contract. The manifestation of will is taken into consideration as valid only if the person involved is able to express his will. Infants and lunatics (see furosusus) were considered not to have a will at all. The will of a person, appropriately expressed, produced legal ef-

fects only if it was free, i.e., not produced by error (see error), fraud (see dolus) or by violence (see vis, metus). Except for cases for which the law prescribed a specific form (words, witnesses, writing) the formless manifestation of will could be expressed orally (verbis), in writing (in scriptis, scriptura), by signs (see nutos) or by acting in a way which did not admit of any doubt about the person’s will (tacte, see silentium). Hence the distinction between a voluntas factually expressed in one way or another and the voluntas the person really had. “There is a
difference between a will which was expressed (volun-
tas expressa) and one which really exists” (D. 45.1.138.1). “If there is no ambiguity in the words used, a query about the will (voluntas) should not be admitted” (D. 32.25.1). Doubts arise when one’s voluntas was expressed in obscure, ambiguous words, written or spoken. “In an ambiguous (equivocal) saying we do not say both one and another thing, but only that one we want to say; but he who says anything other than what he wished, neither says what the words (vocis) signify because he does not want it, nor what he wants because he did not say it” (D. 34.5.3). In the earlier law a contrast between voluntas and its expression through verba or scripta was not taken into consideration. In a formalistic legal system, only what had been expressly said had legal value. But already at the end of the Republic a contradiction between voluntas and verba became a problem which did not escape the jurists’ interest. The remark in Quintilian (Inst. orat. 7.6.1) “the jurists very frequently raise the question of written words and intention (voluntas) and a major part of controversial law (ius controversum) depends upon it,” was not a fantasy of the famous rhetorician, who expressly states (7.5.6) that his saying refers not only to statutes but “also to testaments, agreements, stipulations and any written documents, and to oral declarations as well.” The once widely diffused doctrine in the Romanistic literature to the effect that expressions like animus, affectio, mens, voluntas, concerned with the individual will of a person, as well as decisions based on taking it into consideration, are suspect in the writings of classical jurists, may now be considered exaggerated and misleading. The rules set by Papinian, “It has been held that in agreements between contracting parties the will should be rather taken into consideration than the words” (D. 50.16. 219), and with regard to testaments, “in conditions settled in a testament the will (xc. of the testator) should be considered (considerari) rather than the words” (D. 35.1.101 pr.) doubtless reflect the opinion prevailing in his time in favor of the element of volition. In Justinian’s law voluntas reached its climax in the whole legal system as a decisive element in the evaluation of the validity, and in the interpre-
tation, of manifestations of will.—Voluntas sometimes
means consent, approval (voluntatem dare). For
voluntas of persons committing crimes or illicit acts
(="evil intention"), see dolus malus, animus, conatus,
consilium, intentio.—See, moreover, verba, nuda volunta,
animus, mens, affectio, silentium, simulatio, iocus, interpretatio, and the fol-
lowing items.
Guarneri-Ciati. Indice (1927) 91; idem, St Riccobono 1
(1936) 743; idem, Fasc. Koschaker 2 (1939) 156 (for
interpolations).—Donatini, BIDR 34 (1925) 185; Soko-
lowski. Milo Corneli 2 (1926) 425; Brasiletti, S. Urb. 3
(1929) 103; Levy, S. S. 48 (1928) 74; Jelowitz, LQR 48
(1932) 180; Alberbino, St Bonifacius 1 (1930) 645 (= Studi
5, 1937, 112); Himmelschein. Symb Frib Lenel (1931)
373; Fringsheim. LQR 49 (1933) 43, 379; Grosso, St Ric-
cobono 3 (1936) 163; Riccobono, Milo Cornili 2 (1926)
357; idem, ACDR Roma 1 (1934) 177; idem, BIDR 53/4
(1948) 356; idem, Ser Ferrini 4 (Univ. Sacro Cuore,
Milan. 1949) 55; idem, Fasc. Schulz 1 (1951) 302;
Voluntas contrahentium. See voluntas.
E. Costa, Popiniano 4 (1898).

Voluntas defuncti. The wish of the deceased ex-
pressed in his testament.—See voluntas, voluntas
testantis, mens testantis.

Voluntas legis. The intention of a statute.—See
mens legis, ratio legis, sententia legis.

Voluntas postrema. A testament. Syn. voluntas
suprema, ultima.

Voluntas sceleris. The intention to commit a crime.
Syn. voluntas maleficii.—See voluntas, cogitatio,
conatus.

Voluntas testantis. The wish of a testator expressed
in his last will. Syn. voluntas defuncti. See voluntas.
Very frequently the jurists stress that the deci-
sion in a specific case concerned with a testamentary
disposition depends upon the inquiry into the testa-
tor's wish (quaestio voluntatis).
E. Costa, Popiniano 3 (1896); A. Suman. Favor testamento
e v. testamentum, 1916; idem, La ricerca della v. s., Fil
1917; Donatini, BIDR 34 (1925) 185; G. Dulckeit, Erblasse-
rus und Erworbsume, 1934; idem, Fasc. Koschaker 2
(1939) 316; Grosso, St Riccobono 3 (1932) 155; C. A.
Maschi, St sull'interpretazione dei legati. Verba e volun-
tas (1938); idem, Ser Ferrini 1 (Univ. Sacro Cuore,
Milan, 1947) 317; Koschaker, ConFest (1940) 106.

Voluptariae impensae. See impensae voluptariae.

Volusius. See maeclianus.

Vota. (In the later Empire.) Gifts offered to the
emperor on New Year's Day. Vota pro salute imperatoris
(from the time of Augustus) = vows on the
occasion of prayers for the health of the emperor
and his family.

Vota matrimonii (nuptiarum). In later imperial con-
stitutions, syn. with nuptiae.

Votum. (From vovere.) A solemn vow (promise)
made in favor of a divinity. A votum was not su-
bble under the law, but the promisor (and after his
death, his heir) was obligated to the divinity (numini
obligatus) under sacral law. It is doubtfull whether
the priests of the divinity had any action against the
promisor.

Toutain. DS 5; Ferrini, NDI 12, 2, 932; Eitrem, OCD;
Brini, RendBo! 1908; Wissowa, Religion und Kultur der
Römer (1912) 380.

Vox. A spoken word, an oral declaration.—See vol-
untas.

Vulgaris. Common, generally used. The term also
refers to actions (vulgaris formula, actio, vulgar
judicium) but has no technical meaning. It indicates
an ordinary action as opposed to those granted ex-
tionally in specific circumstances (as actions
utilis, actions in factum).

Vulgaris cretio. See cretio.

Vulgaris mulier. See meretrix.

Vulgaris substitutio. See substitutio.

Vulgata. (Sc. littera.) Manuscripts of the Digest
of the eleventh and following centuries. They are
also called Littera Bononiensis because they were
used in the University of Bologna.

Kantorowicz. Die Entstehung der Digestum-Vul
gata, ZSS 30 (1909) 183, 31 (1910) 14; P. Kretschmar.
ZSS 48 (1928) 88; idem, Mützalerische Zahlensymbolik
und die Entstehung der Digestum-Vulgate (1930); idem,
ZSS 58 (1938) 320; Mor, CercoCodPar (1924) 559.

Vulgo. Generally, commonly. It is used of legal rules
and sayings generally recognized (vulgo dicitur, re-
ceptum est, respondetur).

Vulgo conceptus (or quasitus). A child born out
of wedlock, neither in a legitimate marriage nor in a
concubinage (see concubinatus) or contuber-
ium, the offspring of a promiscuous intercourse.
Such a child had no father, since the latter was un-
known. The mother was bound to maintain the child
who was admitted to her intestate inheritance.

X

Xenia. Small gifts (also called xenilia) made to a
provincial governor; they were originally permitted.
Later imperial legislation, however, forbade, donations
to governors and higher officials of the provincial
administration, except on the occasion of their leav-
ing the post.

Brillant, DS 5.

Xenodochium. A hospital. Xenodochia were reck-
oned among pieae causae. Legacies and donations
to them were favored by the later imperial legisla-
tion.—C. 1.3.

Z

Zenonianae constitutiones. Enactments of the em-
peror Zeno (A.D. 474–491). Some of them are men-
tioned by Justinian in his Institutes; they are inserted
in full in his Code. The most renowned among this
emperor's enactments is C. 8.10.12 (the exact date is unknown). It was concerned with the construction of buildings in Constantinople and contained provisions about the height of buildings, the distance between neighboring houses, staircases, etc. There were also procedural rules concerning controversies among neighbors. Penalties for contravention were set not only against the owner of the ground but also the architects and workmen. A contractor who refused to finish the construction he was obligated to build was punished by a fine; in the case of insolvency and consequent impossibility of continuing the work, he was castigated and expelled from the city. Jurisdiction in all these matters was vested in the praefectus urbi.—See AEDIFICATIO.

H. E. Dirksen. Hinterlassene Schriften 2 (1871) 229; Brugi, RISC 4 (1887) 395; Voigt, BerSächGIV 1903, 190; Biondi, BIDR 44 (1937) 362.
Abandon a child. *Exponere filium*
Abandonment. *Derelictio*
Abduction of a woman. *Raptus*
Abettor. See Accomplice
Abolish a statute. *Tollere legem*
Abortion. *Partus abactus*
Absence in a trial. *Contumacia, eremodicium*
Absent without leave. *Emansor*
Abuse of rights. *Aemulatio*
Accept a stipulatory promise. *Stipulari*
Acceptance of an inheritance. *Aditio hereditatis*
Access to a grave. *Iter ad sepolcrum*
Accident. *Casus*
Accomplice. *Socius, conscius, particeps, minister, see OPE ET CONSIGIO*
Account-book. *Rationes, codex accepti et expensae*
Accrual. See *IUS ADRESCENDI*
Accusation, malicious. *Calumnia*
Accusation, written. *Libellus inscriptionis, subscriptio*
Acknowledge a seal. *Agnoscre (recognoscere) signum*
Acknowledge paternity. *Agnoscre liberum*
Acquittal. *Absolutio*
Act in court. *Postulare*
Actor. *Scenicus minus, qui artem ludicram exercet*
Adjournment of a trial. *Dilatio*
Administrator. *Procurator, curator; administrator of another's property = procurator omnium honorum*
Adoption. *Adopio, adrogatio*
Advantage. *Commodum, emolumentum*
Adversary in a trial. *Pars diversa*
Advice. *Consilium*
Adviser, legal (of magistrates, judges). *Adssor*
Adviser of the emperor. *Consiliarius*
Advocate. *Advocatus, patronus causae, orator, causidicus, scholasticus*
Against good customs. *Contra bonos mores*
Against one's will. *Invito (aliquo)*
Age. *Aetas*
Age below puberty. *Aetas pupillaris*
Agent. *Actor, procurator*
Agreement not to sue in court. *Pactum de non petendo*
Agreement. *Pactum, contractus, placium, conventio*
Agreement, extrajudicial about a controversy. *Transactio*
Agreement with reciprocal obligations. *Synallagma*
Air, airspace. *Aer, coelum*
Alliance. *Foedus*
Ally. *Socius populi Romani*
Ambassador. *Legatus*
Amnesty. *Indulgentia principis*

Ancestors. *Maiores*
Animal, domestic. *Pecus, quadrupes, animal*
Animal, wild. *Fera (bestia)*
Announce (publicly). *Proscribere (palam)*
Annul a statute. *Abrogare, tollere legem, see DEROGARE*
Anonymous. *Sine nomine, see LIBELLI FAMOSIUS*
Answer (decision) of the emperor. *Rescriptum*
Answers (opinions) of the jurists. *Responsa prudentium*
Appeal. *Appellatio, provocatio*
Appeal, written. *Libelli appellatorii, see APPELLO*
Application (written) to court. *Libellus conventionis*
Appointment of an heir. *Institutio hereditatis*
Appointment of a substitute heir. *Substitutio*
Approval. *Approbatio, probatio, auctoritas*
Approval by a principal. *Rathhabitio*
Appurtenance of a land. *Instrumentum, instructum fundi*
Arbitration, agreement on. *Compromissum*
Arbitrator. *Arbiter, index compromissarius*
Archive. *Tabularium, tabulae publicae*
Arnistice. *Induicia*
Army. *Exercitus*
Arrest. *Prensi*
Arson. *Incendium*
Ascendants. *Maiores, superiores*
Assemblies of the people. *Comitia*
Assembly, plebeian. *Concilium plebis*
Assessment of taxes. *Descriprio*
Assistance. *Auxilium, see IUS AUXILI*
Association. *Collegium,odialium*
Assume an obligation. *Suscipere obligationem*
Astrologus. *Astrologer, mathematicus*
Asylum. See *CONFUGA*
Attempt, criminal. *Conatus*
Auction. *Subhastatio*
Authentic. *Verus*
Authority. *Auctoritas*
Authorization. *Iussum, mandatum*
Avenge an offense. *Indicare*

Bad faith. *Mala fides*
Bad (forged) money. *Adulterina, reprobata, falsa pecunia*
Bakers. *Pistores*
Bandit. *Latro*
Banishment. *Deportatio, relegatio, exilium*
Bank of a river. *Ripa*
Banker. *Argentarius, nummularius, mensularius*
Bankrupt. *Decoctor*
Barter. *Permutatio*
ADOLF BERGER

Chief of the palace offices. Magister officiorum
Child. Infans, liber
Child, unborn (in the womb). Nasciturus, in utero
Child of an unknown father. Spurius, vulgo conceptus
Childless. Orbus
Children. Liber, see IUS LIBERORUM
Choice. Optio
Church. Ecclesia
Citizen. Civitas
Citizens of a municipality. Municipes
Civilian. Paganus
Claim. Petio
Claim back. Repetere, reposcere
Claim for the recovery of a pledge. Vindicatio pignoris
Claim of a servitude. Vindicatio servititis
Claim of an inheritance. Hereditatis petitio
Class, equestrian (senatorial). Ordo equester (senatorius)

Classes, social higher. Potentiiores, honestiores
Classes, social lower. Humiliores, teniores
Clerk, in a court. Scriba, executor
Coercive measures. Coercitio
Co-heirs. Coheredes
Coins. Nummi
Collapse of a building. Ruina
Collusion between accuser and accused. Praecalicatio
Command. Iussum
Commander. Praepositus, praefectus
Commander, military. Imperator, regens exercitum
Commander of a fleet unit. Navarchus (classis)
Commander of a ship. Magister navis
Commander of the cavalry. Magister equitum
Commander of the infantry. Magister peditum
Commissioner. Procurator, curator
Common ownership. Communio
Common thing. Res communis
Complain. Queri
Complaint. Querela, querimonia
Complex of things as a unit. Universitas (rerum), corpus ex distantibus
Conceal another’s slave. Celare, suscipere, supprimmere servum alienum

Concealer. Occulator
Conceived. Conceptus, in utero
Conclude a fictitious transaction. Simulare
Concurrent crimes. Delicta concurrentia
Confere a higher rank. Promovere
Confiscation. Ademptio, publicatio, proscriptio (bonorum)

Construction of a house. Aedificatio. See SUPERFICIES
Contempt of court. Contumacia, see OBTEMPEARE
Contractor. Redemptor, conductor (operis)
Control of public morals. Regimen morum
Controversy in court. Lis, see IURGISUIM
Conveyance of a res mancipi. Mancipatio, in iure cessio
Conveyance of property. Translatio dominii
Copper and scales. See PER AES ET LIBRAM
Copy. make a copy. Describere
Copy of a document. Exemplum
Corporal punishment. Castigatio, verbeario, justigatio
Corporate body. Universitas, corpus, collegium
Corpse. Cadaver
Controversy. See DUO REI PERMITTENDI
Corruption of a slave. See ACTIO SERVI CORRUPTI
Council. Consilium
Council, municipal. Ordo (consilium) decurionum, curia
Counterfeit money. Moneta (pecunia) adulterina, falsa
Court days. Actus rerum, see FERIAE, DIES FASTI
Court hall. Secretarium
Court practice. Consuetudo fori
Creditor by stipulatio. Reus stipulandi, stipulator
Crime. Crimen, delictum, maleficiun
Crime through cheating, fraud, deceit. Stellionatus
Crimes prosecuted by the person injured. Delicta (private)
Crimes prosecuted by the state. Crimina publica
Criminal courts. Quaestiones
Criminal offense. Aduinisum, flagitiun
Crown property of the emperor. Patrimonium Caesariu
Customary law. Consuetudo, mos, mores maiorum, us moribus constitutum
Custom duties. Portoria
Customs (good). Mores (boni)
Customs, local. Usus loci, mores civitatis (regionis)

Damage done by domestic animals. Pauperies
Damage done to property. Damnum inuria datum, see LEX AGUILLIA
Damage, threatened. Damnum infectum
Danger. Periculum, see DAMNUM INFECTUM
Daughter. Filia
Deaf. Surdus
Death. Mors
Death penalty. Supplicium (ultimum), poena capitatis (capitalis)
Death, upon (because of). Mortis causa
Debt. Debittum
Debt, non existing. Indebitiun
Debt-book. Kalendarium
Debtor. Reus (debendi), debitor
Debtor through stipulation. Reus promittendi, promisser
Debtors, joint. Correii, duo rei.
Decapitation. Decollatio, capitis amputatio

Deceased. Defunctus
Deceit. Dolus, fraud
Deceitfully. Dolo, dolosc, subdole
Deceive creditors. Fraudare creditorum
Decemviral legislation. Lex duodecim tabularum
Decision of a magistrate (emperor). Decretum
Decision of an arbitrator. Arbitrium, sententia arbitri
Decision of the senate. Sententia senatus
Declaration before censors. Professio censusalis
Declaration before officials. Professio
Declaration before witnesses. Testatio
Declarations concerning the birth of children. Profes- siones librorum natorum
Decree. Decretum
Defamation. Iniuria, convicium
Defamatory letter (poem). Libellus famosus (carmen famosum)
Default. Mora, contumacia, absentia
Defect, legal. Vitium
Defect mental. Vitium animi
Defective condition of a building (construction). Vi- tium aedium (opera)
Defective, legally. Vitiosus
Defects concealed (latent) in a sale. See ACTIO RED- EBITORIA
Defendant. Reus, is cum quo agitur
Defenceless in trial. Indefensus
Defraud. Fraudare
Defrauding young men. Circumscriptio aedescenium
Degree of relationship. Gradus
Denial of a claim. Ininitiatio, negatio
Denouncer. Deliator, nuntiator
Dependant upon another's paternal power. Alieni iuris, in potestate
Deputy official. Vices (vice) agens, vicarius, proximus
Descendants. Descendentes, posteri, progenies
Desecration of a grave. Violatio sepulcri
Deserter. Perjuga, transfuga, see DESERERE
Designation of an heir. Institutio heredis
Destruction. Demolitio
Determination by lot. Sortitio
Disapprove. Reprobare
Discharge, honorable, from military service. Missio honesta
Disease. Morbus; chronic disease. Morbus perpetuus
Disherson. Exheredito
 Dishonest. Improbus, contra bonam fidem
Disinherit. Exheredare
Dismissal from military service. Reiectio militia
Disobedience to a magisterial order. See OBTEMPERARE
Dispossess. Deicere de possessione
Dissolve a legal tie. Solvere
Distinctive insignia (titles). Ornamenta
Distribution of money among people. Missilia, iactus missilium

Districts, administrative in Rome (Italy). Regiones

Disuse of a law. Desuetudo

Divine law. Ius divinum, ius sacrum, jas

Division of common inheritance. See actio familliae Eriscundae

Division of common property. See actio communis dividundo

Division of process (bipartition). See in Iure, apud Iudicem

Divorce. Divortium, repudium, separatio

Document. Instrumentum, charta, scriptura

Door. Ostia

Dowry. Dos, res usoria

Draft by lot. Sortitio

Draft, written of a judgment. Pariculum

Drunkenness. Ebrietas, temulatio, see vinum

Dumb. Mutus

Dress. See Metus

Duties, public, for the state or city. Munera

Earnest (money). Arra

Earthquake. Terrae motus

Easement. Servitus

Ecclesiastical jurisdiction. See episcopalis audientia

Elected magistrate (for the next term). Designatus

Election between alternative obligations. Optio, see ius variandi

Elections, dishonest practices in. Ambitus

Embezzler. Decoctus

Embezzlement in office. Peculatus

Emergency. Necessitas

Emergency tax. Tributum temerarium

Emperor. Princeps, imperator

Enactment, imperial, of particular importance. Sanctio pragmatica

Enactment of a plebeian assembly. Plebiscitum

Enactments of the emperors. Constitutiones principum, statuta impartialia

Endow with a dowry. Dotare

Enemy. Hostis

Enforce payment. Exigere

Enfranchisement of a slave. Manumissio

Enriched. Locupletior factus

Enrichment. Id quod pervenit, versum in rem alicuius

Enrichment, unjustified. See conductio

Enslavement by penalty. See servus poenae

Entry in a cash-book. Nomen, see nomina transscripticia

Equal legal situation. Par causa

Equipment of a house (land). Instrumentum, instructum domus (fundi)

Equity. Aequitas

Error concerning law. Ignorantia (error) iuris

Estate (inheritance). Hereditas, res hereditariae

Estate tax. Vicesima hereditatium

Esteem. Exstima

Estimation. Taxatio, aestimatio

Evade law. Circumvenire, fraudare legem, in fraudem legis agere

Evade summons in court by hiding. Latitare

Evidence. Probatio

Evidence, circumstantial. Indicium

Examination of a case in court. Causae cognitio

Examine (confirm) the correctness of a copy. Recognoscere

Excessive claim. Pluspetitio

Exchange. Permutatio

Exclude from the senate. Senatu movere

Excuse. Excusatio, velamentum

Execution of a judgment. See actio iudicati, manus injictio

Execution through taking a pledge. See pignus in causam iudicati

Execution of a criminal. See poena capitalis, poena

Executioner. Speculator

Exemption, excuse, from guardianship or public charges. Excusatio

Exemption from law. Solutio legibus

Exemption from taxes. Immunitas, vacatio

Exercise of a right. Usus iuris, ut suo iure

Exile, voluntary. See interdicere aqua et igni

Ex-master of a slave. Patronus

Expenses. Impensa, iudicium, sunptus

Expenses connected with a lawsuit. Sumptus litis

Explanation of laws (or last wills). Interpretatio

Expose to public view. Proponere, publicare, proscire, promulgar

Expropriation. Expiatio ab invito

Expulsion. Relegatio

Extinction of obligations. See solutio, liberatio, acceptatio, datio in solutum, confusio

Extrajudicial oath. Lusurandum voluntarium

Extort. Torquere, extorquere

Extortion. Concussio, crimen repetundarum

Factual situation. Res facti

Fair and just. Bonum et aequum

Faith (good, bad). Fides (bona, mala)

False judgment. See unjust judgment

Family council. Consilium propinquorum, domesticum

Farmers of public revenues. Publicani
Father.  Pater (familias), pares
Fear.  Metus, timor
Fees, judicial.  Sportulae
Female slave.  Ancilla
Festivities, public.  Ludi publici
Fetters.  Incula
Fiancé (fiancée).  Sponsus (sponsa)
Fiduciary agreement.  Pactum fiduciae
Financial matters.  Rationes
Financial means of a person.  Facultates, modus facultatum
Fine.  Multa, poena nummaria (pecuniaria)
Fire.  Incendium
Fire brigade.  Vigiles
First name.  Praenomen
Fishing.  Piscari
Fleet.  Classis
Flock of animals.  Grex
Flowing water.  Aqua profunda
Food administration.  Ammona
Forbid.  Prohibere, vetare
Force (physical).  Fis, violentia
Foreclosure of pledge.  See lex commodior, impe-
   tratio domini
Foreigner.  Peregrinus
Forgery.  Falsum
Formalities, legal.  Solummitates iuris
Formless agreement.  Pactum (nudum), placitum
Formless promise of a dowry.  Pollicitatio dotis
Formularies for documents.  Formulae
Formulary procedure.  See formula
Fortune-teller.  Vaticinator
Foster parent.  Nutritor
Foundations, charitable.  Piae causae
Four-footed animal.  Quadrupes
Fracture of a bone.  Os fractum
Fraud.  Dolus
Fraudulently.  Subdole, dolose
Free.  Liber
Free a slave.  Manumittere
Free from charges.  Immunitis, see optimo iure
Free man enslaved through condemnation.  Servus
   poenae
Free will.  Libera voluntas
Freeborn.  Ingenuus
Freedman.  Libertus, liberinus
Freedman's services.  Opera liberti
Fruits.  Fructus
Funeral.  Funus
Funeral association.  Collegium funeraticum
Funeral oration.  Oratio funebris
Furlough.  Commeatus
Gain.  Lucrum
Gain in a transaction.  Lucrari, lucrifacere
Gambler.  Aleator, see alea
Games (public).  Ludi (publici)
Gates of a city.  Portae
General authorization.  Mandatum generale
Gift.  Donatio, domum, manus
Gifts between spouses.  Donationes inter virum et
   uxorem
Give a dowry.  Dote
Give notice.  Denuntiare
Give security.  Cavere
Good customs (manners).  Boni mores
Good faith.  Bona fides
Goods transported by sea.  Vinctura
Governor of a diocese.  Vicarius
Governor of a province.  Praeses (rector) provinciae
Grace of the emperor.  Indulgentia principis
Gratuitous loan of things for use.  Commodatum
Grant an action.  Dare actionem
Grant of majority rights to a minor.  Venia aetatis
Grave.  Sepulcrum
Gross negligence.  Magna (lata) culpa, magna negle-
   gencia
Group of persons as a unit.  Universitas
Guaranties in process.  See vadinonium, cautio judici-
   cio sisti
Guaranty for eviction.  See actio auctoritatis, stipu-
   latio duplæ
Guardian.  Tutor
Guardianship.  Tutela
Guild.  Collegium, ordo
Guilty.  Reus
Harbor.  Portus
Harvest.  Messis
Head of an office.  Praefectus, praepositus, magister,
   curator
Head of the fiscal administration.  Rationalis
Health (bad).  Valetudo
Heir.  Heres
Heirless estate.  Bona vacantia
Help through procedural measures.  Succurrere, sub-
   venire
Herald.  Praeco
Herd.  Grex
Hesitate in testimony.  Vacillare
High treason.  Crimen maiestatis, perduellio, proditio
Higher in rank.  Superior
Highway robber.  Latro, grissator
Hire another's labor.  Locatio conductio operarum
   (operis)
Hold a thing. Detinere, naturaliter possidere
Holidays. Feriae
Honest man. Vir bonus
Honesty. Bona fides, probitas
Honorarium for intellectual services. Salarium
Hospital. Xenodochium
Hostage. Obes
House. Domus, aedes
Hunting. Venatio
Husband. Maritus

Ignorance of a fact (law). Error, ignorantia facti
(iiuris)
Illegal. Illicitus
Illegitimate child (father). Filii (pater) naturalis
Iliterate. Ignarus litterarium (see litterae)
Imaginary marriage. Nuptiae simulatae
Immovables. Res immobiles
Imperial council. Consilium principis, consistorium
Imperial enactments. Constitutione principium
Impulse. Impetus
In court. Pro tribunali
Inaction. Silentium
Incapable to be a witness. Intestabilis
Income. Reditus
Independent of another (legally). Sui iuris
Individual thing. Species
Ineffective, legally. Inutilis
Infamous. Qui notatur infamia
Infantrymen. Pedites
Informal proceedings, out of court. De plano
Informant. Denuntiatus, index, delator
Inhabitant. Incola
Inheritance. Hereditas
Inheritance tax. Vicesima hereditatium
Innkeeper. Caupo, see receptum nautae
Inquire. Quaerere
Insane. Demens, furiosus, mente captus
Insubordination. Contumacia
Insult. Contumelia, iniuria, convicium
Intellectual profession (services). Artes (operae)
liberales
Intent to commit a crime. Consilium, voluntas sceleris
Intention. Animus, affectio, mens, cogitatio, voluntas, proposition
Intention of a statute. Mens, sententia legis
Intentionally (with evil intention). Dolo malo, dolose
Intercourse with an unmarried woman. Stiprum
Interest. Usurae, genus
Interest for default. Usurae morae
Interest from interest. Usurae usurarum, anatocismus
Interest of twelve per cent. Usurae centesimae

Interest, public. Utilitas publica, see interesse utilis
Intermediary. Interposita persona
 Interruption (of usufruct). Interpellatio, usurpatio
Intestate succession. Hereditas legitima (ab intestato), bonorum possessio intestati
Intoxication. Ebrietas, temulatio. See vinum
Inundation. Vis fluminis
Invalidate another's property. Introire, ingredi
Invalid, legally. Irritus, invalidus, nullus, nullius momenti
Invest money. Collocare pecuniam
Investigator. Quaesitor
Inviolable. Sacrosanctus
Island. Insula
Issue a decree. Decernere
Issue an interdict. Reddere interdictum

Jail. Carcer
Jettison. Iactus mercium
Joinder of issue. Litis contestatio
Joinder of possessions. Accessio possessionis
Joint debtors. Correli, duo rei promittendi
Joint creditors. Duo rei stipulandi
Judge. Judex
Judgment. Sententia
Judgment debt. Indicatum
Judicial matter. Causa
Jurist. Iurisprudens, prudens, iurisconsultus, iuris per
Yritis
Just title. Iusta causa

Keeper of stables. Stabularius, see receptum nautae
Keys. Claves
Kidnapper. Plagiarius, plagiator
Kidnapping. Plagium
Kind of things. Genus
King. Rex
Kingship. Regnum
Kiss. Osculum
Knowledge. Scientia
Knowledge of law. Iuris scientia, iurisprudentia

Labor (manual and intellectual). Opera
Lack of knowledge of the law. Ignorantia iuris
Lack of professional skill. Imperitia
Lampoon. Carmen famosum, libellus famosus
Land (plot of land). Ager, fundus, praedium
Land dedicated to the gods. Locus sacer
Land for agricultural production. Praedium rusticum
Land for urban utilization. Praedium urbanum
Land in Italy (provinces). Fundus Italicus (provincialis), solum, praedium Italicum (provinciale)
Manager of another's affairs. Procuration; without authorization = negotiorum gestor
Manslaughter. Homicidium
Manumission tax. Vicesima manumissionum
Maritime loan. Fenus nauticum, pecunia traiecticia
Market. Nundinum
Market place. Forum
Marriage. Matrimonium, nuptiae
Marriage contract. Tabulae nuptiales (dotaes)
Marriage, incestuous. Nuptiae incestae, see INCESTUS
Marriage-like union of slaves. Contubernium
Master of a slave. Dominus
Master of ceremonies. Magister admissionum
Matter of fact. Res (quaestio) facti
Matter of law. Res (quaestio) iuris
Meeting, informal, of the people. Contio
Members of a corporation (association). Socii, sodales, corporati, collegiati
Merchandise. Merx
Merchants. Negotiatorum, mercatores
Messenger. Navis
Messengers in office. Viatores
Milestone. Millarium
Military court. Indices militares
Military delicts. Delicta militum
Military law. Ius militare (militum)
Military service. Militia
Mines. Metallum
Minor magistrates. See VIGINETSEXVIRI
Minority. Minor actas
Min. Moneta
Mistake. Error
Money. Pecunia, nummi
Money lent. Pecunia credita
Monk. Monachus
Moral duty. Officium pietatis
Motive of a statute. Ratio legis
Mourning. Luctus
Moveables. Res mobiles
Move to another place. Migrare, see INTERDICTUM DE MIGRANDO
Municipal senate (council). Consilium (ordo) decurionum
Municipality. Municipium
Murder. Homicidium, see PARRICIDNUM
Murder by poison. Veneficium
Murderer. Sicarius
Name. Nomen
Natural law. Ius naturale (naturae)
Navy. Classis
Negligence. Culpa
Neighbor. *Vicinus*
Newborn child. *Partus*
Norm, legal. *Praeceptum (regula) iuris, praescriptum*
Non-appearance in court. *Contumacia*
Non-use of a right. *Non usus*
Notary. *Tablellio, tabularius*
Notification of action to the defendant. *Editio actionis*
Notify. *Denuntiare*
Nourishment. *Vicrus*
Null. *Nullus, nullius momenti, invalidus*

Oath. *Iuramentum, iusiurandum*
Oath in a civil trial. See *IURAMENTUM NECESSARIUM*
Oath of a magistrate. See *IViare IN LEGES, EIURATIO*
Oath of soldiers. *Sacramentum*
Object of a lawsuit. *Res de qua agitur, lis*
Object of a pending trial. *Res litigiosa*
Objection in trial. *Exceptio*
Obsolescence. *Desuetudo*
Offense against the state. *Maiestas, perdueillo*
Offense, personal. *Inuria*
Offenses, military. *Delicta militum*
Offer. *Oblatio*
Office, public. *Ministerium*
Officers, highest, in the legion. *Tribuni militum*
Offices, regional, of the fisc. *Stationes fisc*
Official duties. *Officium*
Official, highest, in an imperial office. *Primicerus, princeps*

Officials in the fiscal administration. *Rationales*
Officials in the imperial palace. *Palatini*
Omission, negligent. *Neglegentia, culpa in non faciendo*
Omit a person in a will. *Praetereire, omittede*
Opening of a will. *Apertura testamenti*
Opposing an exception. *Excipere*
Oral solemn declaration. *Nuncupatio*
Oral will. *Testamentum per nuncupationem*
Orator. *Rhetor*
Ordain. *Statuire*
Order (authorization). *Iussum*
Order of a magistrate. *Decretum, iussum*
Order of payment from a bank deposit. *Relegare pecuniam, delegare ab argentario*
Order, public. *Disciplina*
Order to lend money. *Mandatum pecuniae credenda*
Order to take possession, issued by a praetor. *Missio in possessionem*
Ordinary civil procedure. *Ordo iudiciorn privatorum*
Ordinary criminal procedure. *Ordo iudiciorn publicorum*
Original of a document. *Exemplar, authenticum*
Outlawed. *Proscriptus, interdictus aqua et igni, sacer*

Outside the court. *Extra iudicium*
Owner. *Dominus, proprietarius*
Ownerless estate (inheritance). *Bona vacantia*
Ownerless things. *Res nullius*
Ownership. *Dominium, proprietas*
Ownership protected by praetorian law. See in bonis

Face. *Passus*
Painting. *Pictura*
Panel of judges. *Album iudicum*
Parcel of public land. *Locus publicus*
Partition. *Divisio*
Partner. *Socius*
Partnership. *Societas*
Party to a trial. *Pars, litigator*
Party wall. *Pares communi*
Pasquill. *Libellus famosus*
Pass a judgment. *Sententiam ferre, iudicare*
Pasture land. *Pastum*
Pasture servitude. *Ius pascenti*
Paternal power. *Patria potestas*
Patronage. *Patoimium*
Pay a debt. *Solve, retro dare*
Payment by installment. *Pensio*
Payment of a debt. *Solutio*
Peace. *Pax*
Pederasty. *Stuprum cum masculo*
Penalty. *Pena*
Period of time. *Tempus, intervallum*
Periods, lucid (in an insane person). *Dilucida (lucida) intervalla*

Perjury. *Periurium*
Person not belonging to a family. *Extraneus*
Personal offense. *Inuria, contumelia*
Personnel, auxiliary, in an office. *Apparitores*
Petition. *Preces, libellus, supplicatio*
Physical things. *Res corporales*
Physician. *Medicus*
Plaintiff. *Acto, petitor, is qui agit*
Platform for the court. *Tribunal*
Plead in court a case. *Causam dicere, perorare*
Plebeian assembly. *Concilium plebis*
Plot of land. *Ager, fundus, praedium*
Plurality of creditors. *Dub rei stipulandi*
Plurality of debtors. *Dub rei promittendi*
Plurality of guardians. *Contutores*
Plurality of heirs. *Coheredes*
Poison. *Venenum*
Poisoner. *Venericus*
Police officials. *Curiosi*
Poll-tax. *Tributum capitis*
Popular assembly. *Comitia*
Possession of a right. *Possessio in re, quasi possessio*

Possessor in good (bad) faith. *Possessor bonae fidei*

Possessory remedies. See INTERDICTA

Postal service. *Cursus publicus*

Poster. *Propositor*

Posthumous child. *Postumus*

Postpone. *Prorogare*

Poverty. *Egestas*

Power. *Potestas*

Power of higher magistrates. *Imperium*

Praetorian Edict, commentaries on. *Libri ad edictum*

Precedent. *Exemplum, see RES IUDICATA*

Predecessor in title. *Auctor*

Preliminary decision in litigation. *Interlocutio*

Prescription, acquisitive. *Usucapio*

Prescription, extinctive. *Longi temporis praescriptio*

Presentation of the case by plaintiff. *Narratio*

Pretext. *Obensum, velamentum, see SPECIES*

Price. *Pretium*

Priests. *Sacerdotes, flamines, augures, haruspices*

Principal. *Dominus negotii*

Principal (sum). *Sors, caput*

Prison. *Cercer, vincula publica*

Prisoner of war. *Captivus*

Privy purse of the emperor. *Res privata principis*

Procedural stipulations. *Stipulationes praeorae, see JUDICIAE*

Proceeds. *Fructus*

Proclamation. *Programma*

Products. *Fructus*

Professional association. *Collegium, ord*

Professional services. *Operae*

Profit. *Commodum, lucrum*

Prohibit. *Vetare, prohibere*

Prohibited by law or custom. *Illicitus*

Prolongation of magisterial power. *Prorogatio imperii*

Promise. *Promissio, promissum, polllicitatio*

Promise of a dowry. *Dictio, promissio, polllicitatio dotis*

Promissory note. *Chiromathum*

Protest. *Probatio*

Proof. *Probare*

Protest about a new construction. *Operis notis nun-

natio*

Prove. *Probare*

Provincial land. *Praedium (solum) provinciale*

Public constructions. *Opera publica*

Public interest (welfare). *Utilitas publica*

Public law. *Ius publicum*

Publicly. *Palam, publice*

Punishment. *Poena*

Punishment, capital. *Poena capitalis, supplicium*

Purchase. *Emptio*

Purpose of a statute. *Ratio legis*

Pursue a claim. *Experiri actione*

Question. *Interrogatio*

Quinquennial period. *Lustrum*

Rain drip. *Stillicidium*

Rate of interest fixed by law. *Usurae legiminae*

Ratification. *Ratificatione, ratum habere*

Ratification by the senate. *Auctoritas senatus (patrum)*

Read in court. *Recitare*

Real. *Verus*

Real right. *Ius in re (aliena)*

Real security. See *FIDUCIA, PIGNUS, HYPOTHECA*

Reason, natural. *Naturalis ratio*

Receipt. *Receipt, the praetor.*

Reciprocal claims. *Mutuae petitiones*

Reciprocally. *Imicrem*

Recompense. *Remunerare*

Records, official. *Acta, commentarii, tabulae publicae, gesta, monumenta*

Recourse. *Regressus*

Recovery of property, action for. *Rei vindicatio*

Recovery of unjustified enrichment, action for. *Con-
dictio*

Recruit. *Tiro*

Redeem a pledge. *Emere pignus*

Redeemed from the enemy. *Redemptus ab hoste*

Reduction of rent. *Remissio mercedis*

Refusal of action by the praetor. *Denegatio actionis*

Refuse an inheritance. *Abstinerre (se) hereditate*

Registered as taxpayer. *Censius*

Reimburse. *Refundere*

Reinstatement to the former (legal) condition. *Resti-
tutio in integrum*

Reiteration of evidence. *Ampliatio*

Relationship (kinship). *Necessitudo, see AGNATIO, COGNATIO*

Relationship among slaves. *Cognatio servilis*

Release of debt. *Acceptatio*

Release from an obligation. *Remissio debiti*

Remitting a penalty. *Remissio poenae*

Remnant, unpaid of a debt. *Residuum, reliquatio, re-
lignum*

Removal of a boundary stone. *Termini motio*
Render judgment. *Iudicare, sententiam ferre.*
Renew. *Renovare redintegrare*
Renewal of an accusation. *Repetere accusationem*
Renewal of a lease. *Reconductio, relocatio*
Rent. *Mercis*
Rent in a long-term lease. *Canon, pensio*
Renunciation. *Abdicatio*
Repair. *Reficere*
Replacement of a judge. *Mutatio iudicis, see TRANS-LATIO IUDICII*
Reply of the defendant. *Contradictio, responsio, libel-lus contradictionis*
Report to a higher judge. *Referre*
Represent a person. *Sustinere personam alcuins*
Representative of a corporate body. *Syndicus, actor*
Representative of a party in a trial. *Cognitor, procurator*
Request a magistrate. *Postulare*
Request for opinion. *Consultatio*
Rescind. *Rescindere, resolvore, revocare*
Rescission of a sale. *Redhibitio*
Reserve a servitude (usufruct) for the alienator. *De-ducere, excipere servitutem (usumfructum)*
Residence. *Domicilium, sedes*
Responsibility (risk) of a guardian. *Periculum tutoris*
Responsible for damages. *Obnoxius*
Restore. *Restitutio*
Retaliation. *Talio*
Retention of a dowry. *Retentiones donales*
Return (give back). *Reddere*
Revenues of the state. *Vetigalia*
Revocation of a legacy. *Ademptio legati*
Revolt. *Tumultus, seditio*
Rhetorician. *Rhetor, orator*
Right. *Ius*
Right and just. *Bonum et aequum*
Right of life and death. *Ius vitae necisque*
Right on another's property. *Ius in re aliena*
Right to promulgate edicts. *Ius edicendi*
Right to take produce of another's property. *Ius fru-endi, see USUSFRUCTUS*
Right to use another's property. *Ius utendi, see USUS*
Right to vote. *Ius suffragii*
Rights of way on another's property. See *ITER, VIA, ACTUS*
Riot. *Tumultus, seditio*
Risk. *Periculum*
Risk in a sale. *Periculum rei venditaes*
River. *Flumen, rius*
River bed. *Alveus*
Roads. *Viae*
Robber. *Praedo*
Robbery. *Rapina*

**Roman people.** *Populus Romanus*
**Rome, city of.** *Urbs*
**Rule, legal.** *Regula iuris*
**Runaway (slave).** *Servus fugitus*

**Salary.** *Mercis*
**Sale.** *(Emptio) venditio, distractio*
**Sale of a free man.** *Plagium*
**Sale (purchase) of a future thing.** *Emptio spei, empto rei speratae*
**Sale of a pledge.** *Distractio pignoris, see IUS DISTRA-HENDI*
**Sale of a war prisoner.** *Venditio sub corona*
**Sale of the property of an insolvent debtor.** *Bonorum venditio*
**Sale, public, by auction.** *Auctio*
**Sales tax.** *Centesima (vestigal) rerum venalium*
**Schedule (inventory) of an estate.** *Inventarium, re-pertorium*
**Sea.** *Mar,*
**Seal.** *Signum, sigillum*
**Seal a document.** *Signare, obsignare, consignare*
**Search for stolen things.** *Perquisitio, see LANCE ET LICIO*
**Seashore.** *Litus*
**Second marriage.** *Secundae nuptiae*
**Second marriage between the same persons.** *Matrimo-nium redintegratum*
**Security.** *Cautio, satisdatio*
**Security for appearance in court.** *Cautio iudicio sisti, vadimonium*
**Seizure by the fisc.** *Confiscatio, occupatio a fisco*
**Selection.** *Electio, optio*
**Selection by lot.** *Sortitio*
**Selection of jurors.** *Editio iudicum*
**Selection of senators.** *Lectio senatus*
**Self-defense.** *See VIM VI REPELLERE, VINDICARE*
**Sell at a public auction.** *Publice vendere; to be sold = publice venire*
**Senators.** *Patres ("fathers"), senatores*
**Senility.** *Senectus*
**Sequence in magisterial career.** *Cursus honorum*
**Serfdom.** *See COLONATUS*
**Servitude of dwelling in another's house.** *Habitatio*
**Servitudes, rustic.** *Servitutes praediorum rusticorum*
**Servitudes, urban.** *Servitutes praediorum urbanorum*
**Set off.** *See COMPENSATIO*
**Settle a controversy.** *Transigere*
**Share of an inheritance.** *Portio (pars) hereditatis*
**Ship.** *Navis*
**Shipowner.** *Navicularius, nauta, see RECEPTUM NAV-
TAE*
**Shipper.** *Exercitor navis, nauclerus*
Shipwreck. Naufragium
Shorthand writing. Notae
Shrewdness. Dolus bonus
Sign. Subscribere, subnotare
Signature. Scriptio
Silence. Silentium, see tacere
Slander. See defamatio
Slanderous poem. Carmen famosum, libellus famosus, see occentare
Slave. Servus, homo, mancipium, puer
Slave, female. Ancilla
Slave manumitted on condition. Statuliber
Slave of a slave. Servus vicarius
Slave of the state. Servus publicus
Slavery. Servitut
Social classes, higher. Potentiores, honestiores, altiores
Social classes, lower. Humiliores, tenuiores
Soil. Solum
Soldier. Miles
Soldier’s pay. Stipendium
Soldier’s will. Testamentum militis
Solidarity in obligations. See Correality
Solvent. Solvendo esse, Jacere posse
Son under paternal power. Filius familias
Sorcery. Magia, see excantare
Space between neighboring houses. Ambitus
Speech of the emperor. Oratio principis
Spendthrift. Prodigus
Sphere of competence. Provincia
Spy. Explorator, proditor
State. See res publica
State land. Ager publicus
Status of a freeborn. Ingenuitas
Statute. Lex
Statute of a collegium (association). Lex collegii
Statute of limitations. Praescriptio longi temporis
Statutes against luxury. Leges sumptuariae
Statutes on voting. Leges tabellariae
Statutory norm. Placitum legis
Steal. Furari, subquire
Stepson. Privigenus
Stipulatory promise. Stipulatio
Storehouse. Horreum, thesaurus
Storm. Tempestas
Straw man. Interposita (supposita) persona
Subject to another’s power. Alieni iuris, in potestate
Submission to arbitration. Compromissum
Subordinate personnel in offices. Apparitores
Subscribe. Signare
Substitute heir. Heres substitutus, heres secundus
Substitute of an official. Vice agens, vicarius
Substitute of a provincial governor. See index
Succeed as an heir. Successere hereditario iure
Succession according to praetorian law. Bono rum possessio
Sue in court. Venire contra aliquem, conveneri
Suicide. Suicidium, consciscere sibi mortem, super facultas mortis
Suit, written. Libellus conventionis
Sum lent at interest. Sors, copna
Summary. Index
Summary civil proceeding. Summatim cognoscere
Summons to court. In ius vocari, demaniiari, evocari
Suppositious child. Partus substutictus, subjectus, suppositus
Superior force. Vis maior
Supervision. Cura, curatio
Surety. Sponsor, fideiussor, fideipromissor, see appromissio, praedea
Surety in process. Vindex, vas, prae
Surname. Cognomen
Surrender of a son or slave for damages. In maxem dedere
Surrender of an enemy. Deditio
Survive. Supervivere, see commorientes
Suspension of judicial activity. Iustitium
Sustenance. Alimenta
Taking possession of an ownerless thing. Occupatio
Taking upon death of a person. Mortis causa capio
Tax. Tectigal
Tax assessment officials. Censuales
Tax collector. Susceptor
Tax evasion. Fraudare vectigal
Tax farmer. Publicanus redemptor, conductor
Tax farmers’ association. Societas publicanorum
Tax office, regional. Statio
Tax officials. Tabularii
Tax on inheritance. Vicesima hereditatium
Tax on manumissions. Vicesima manumissionum
Tax on sales. See Sales tax
Tax payer. Tributarius
Taxes in provinces. See tributum, capitatio, stipendium
Teachers. Magistri, praecentores, professores, antecessores
Ten-men group. Decuria
Tenant. Habitat, inquilinus, conductor
Tenement house. Insula
Territory of Rome. See pomerium
Testament, capacity to make one or to take under one. Testamenti facio
Testify. Testari
Testimony. Testimonium, testatio, attestatio
Testimony, written. Testimonium per tabulas, tabulae signatae
Theatrical art. *Ars iudicata*

Theft. *Furtum*

Theft of sacred things. *Sacrilegium*

Things stolen. *Res furtivae, subreptae*

Things of the husband, stolen by his wife. *Res amota*

Things without an owner. *Res nullius*

Time, fixed. *Tempus certum, statutum*

Time for the payment of a judgment debt. *Tempus indicati*

Tomb. *Sepulcrum*

Torture. *Tormentum*

Token (ticket). *Tessera*

Touch the debtor's shoulder. *Manum inicere*

Trade. *Commercio*

Tradesman. *Mercator, negotiator*

Traitor. *Proditor*

Transaction. *Negotium, transactio*

Transfer of a claim. *Cessio*

Transfer of jurisdiction. *Iurisdictio mandata, delegata*

Transfer of ownership. *Translatio dominii*

Transfer of ownership, formless. *Traditio*

Transfer of the right to an inheritance. *Transmissio*

Transferee (transierit) in a mancipatio. *Mancipio accipiensi (dans)*

Travel expenses. *Vaticum*

Treason. *Perduellio, crimen maiestatis*

Treasure-trove. *Thesaurus*

Treasury. *Aerarium, arca*

Treasury, imperial. *Fiscus, largitiones*

Treaty, international, for protection of citizens. *Recipatio*

Treaty of alliance. *Foedus*

Treaty of friendship. *Foedus amicitiae*

Trial, civil. *Liis, see legis actiones, formula, cognitio extra ordinem*

Trial, civil, partition of. *See in iure, apud iudicem*

Trial concerning freedom. *Causa liberalis*

Truth. *Veritas*

Try a case in court anew. *Retractare causam*

Turmoil. *Turba, rixa*

Twelve Tables. *Lex duodecim tabularum*

Unborn child. *Nasciturus*

Undutiful will, gift. *Inofficiosus, see querela inofficiosi testamenti (inofficiosae donationis)*

Ungrateful. *Ingratus*

Unjust. *Iniquus, inimius*

Unjust judgment intentionally rendered by a judge. *See index qui litem suam facit*

Unlawful. *Illegitimus, illicitus*

Unlawfully. *Iniuria, non iure, illicito*

Unlimited in time. *Perpetuus*

Unnamed contracts. *Contractus innominati*

Unseal. *Resignare*

Unworthy heir. *Indignus heres*

Uprising. *Seditio*

Uproar. *Tumulus*

Urge a debtor to pay. *Interpellare*

Usage, use. *Usus*

Usage, legal. *Consuetudo, mos*

Usufructuary. *Fructuarius, usufructuarius*

Vacant inheritance (legacy). *Caducum*

Vagrant slave. *Erro*

Valid, to be legally. *Valere, vim (cries) habere*

Valid marriage. *Iustae nuptiae*

Valuation in money. *Aestimatio*

Vessel. *Navis*

Veteran. *Vetus miles, veteranus*

Veto. *Interessio*

Vexation with a suit, malicious. *Calumnia*

Village. *Vicus*

Vintage. *Vindemiae*

Violence. *Vis*

Void. *Nullus, irritus, ineficax, nullius momenti, nullas vires habere*

Vote. *Suffragium*

Voting. *Ferre suffragium*

Voting place. *Saepium, ovile*

Vow. *Votum*

Wages. *Merces*

Walls of a city. *Muri*

War. *Bellum*

War booty. *Praeda*

War, to declare. *Denuntiare, indicere bellum*

Warranty against latent defects in a sale. *See edictum aedilium curulum, actio redhibitoria*

Warranty against eviction. *See actio auctoritatis, stipulatio duela*

Water conduits. *Aquaeductus*

Wax-covered tablets. *Cerae, tubulae ceratae, tabellae*

Wealth. *Facultates*

Wealthy. *Locuples, assiduus*

Weapon. *Teum, arma*

Welfare, public. *Utilitas publica*

Whole. *See corpus*

Widow. *Vidua*

Wife. *Uxor*

Wild animals. *Ferae (bestiae)*

Will. *Voluntas, animus, mens, see velle*

Will (last). *Testamentum, ultima (postrema) voluntas*

Wink. *Nutus*

Withdraw from a transaction. *Recedere*
Withdrawal of a peculium. Ademptio peculii
Withdrawal of an action. Cedere actione, resistere, de-
severe actionem
Without (against) one's will. Invito
Witness. Testis
Witness to a will who signed and sealed it. Signator
testamenti
Words, solemn and prescribed by law. Certa et sol-
lemnia verba
Words, spoken or written. Verba
Woman. Femina, mulier
Wooden tablet. Lignum, tabula, tabella

Work (construction). Opus
Workman. Operarius, mercennarius, opifex
Writer of a testament. Scriptor testamenti, see QUAES-
TIO DOMITIANA
Written law. Ius scriptum
Written stipulation. Cautio stipulatoria
Written unilateral divorce. Libellus repudii
Wrongful damage to another's property. Damnum in-
iuria datum
Wrongful possession. Possessio inusta

Youth. Pueritia, iuvenis
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