

**ELEMENTARY PRINCIPLES
OF THE
ROMAN PRIVATE LAW**

BY
W.W. BUCKLAND, M.A.

William S. Hein & Co., Inc.
Buffalo, New York
2003

Library of Congress Cataloging-in-Publication Data

Buckland, W. W. (William Warwick), 1859-1946.
Elementary principles of the Roman private law / by W.W. Buckland.
p. cm.
Originally published: Cambridge : University Press, 1912.
Includes bibliographical references and index.
ISBN 1-57588-784-3 (alk. paper)
1. Roman law. I. Title.

KJA147.B83 2003
340.5'4--dc22

2003056605

This acid-free reprint was digitally archived under
the strict quality control guidelines established by
William S. Hein & Co., Inc.'s "Preservation Program"
This program was established to preserve the integrity of
legal classics for future generations of legal researchers.

This paper meets the requirements of
ANSI/NISO Z39.48-1992 (Permanence of Paper).



Printed in the United States of America.

ELEMENTARY PRINCIPLES
OF THE
ROMAN PRIVATE LAW

CAMBRIDGE UNIVERSITY PRESS

London: FETTER LANE, E.C.

C. F. CLAY, MANAGER



Edinburgh: 100, PRINCES STREET

London: STEVENS AND SONS, LTD., 119 AND 120, CHANCERY LANE

Berlin: A. ASHER AND CO.

Leipzig: F. A. BROCKHAUS

New York: G. P. PUTNAM'S SONS

Bombay and Calcutta: MACMILLAN AND CO., LTD.

All rights reserved

ELEMENTARY PRINCIPLES
OF THE
ROMAN PRIVATE LAW

BY

W. W. BUCKLAND, M.A.,

FELLOW AND TUTOR OF GONVILLE AND CAIUS COLLEGE, CAMBRIDGE

Cambridge :
at the University Press
1912

Cambridge:

PRINTED BY JOHN CLAY, M.A.

AT THE UNIVERSITY PRESS

PREFACE

THE following pages form a running commentary on the Institutes of Gaius and those of Justinian, designed especially for students who have read their Institutes but little more. The aim of the writer has been throughout to discuss institutions rather than to state rules, to suggest and stimulate rather than to inform. Considerations of space have made selection necessary, and a few topics which give students special difficulty (e.g. *Bonorum Possessio*) have been allowed to occupy a disproportionate amount of space. But an attempt has been made to bring home to the student a fact which, at least in his earliest stages, he is apt to forget, the fact that the Roman Law is not merely a set of rules on paper, a literary product, but a group of institutions under which the Romans actually lived. The hope may be permitted that the student will learn more than the book tells him, and more than was present to the mind of the writer. Our knowledge of the Roman Law is but the knowledge of a track in the wilderness. Around every rule that the student sees there lie innumerable questions. Most of these are, in our state of knowledge, unanswerable, but the student who has learnt even to formulate some of them has made a great step towards the understanding of what he has read.

The true spirit of an ancient institution is hard to capture. In studying the Roman Law it is difficult to rid our minds of

experiences and preconceptions acquired in the course of many centuries. It is not rendered less difficult by the fact that the great line of German scholars to whom we owe most of our knowledge have of necessity been concerned till recently not only, indeed not mainly, with the exposition of Roman Law, but with the development of it. It is not without change that a rule laid down by Julian is made to serve modern needs. We look at the Roman Law through a medium of which we know that it distorts, while for the estimation of the nature and degree of distortion we have but a very imperfect apparatus. These pages attempt to look at legal principle, so far as possible, in the Roman way.

The indebtedness of the book to many writers will be obvious, but in a book which does not aim at stating new doctrine it has not seemed needful to attempt to trace the paternity of each idea mentioned: references to modern literature are given not so much to confirm statements in the text as to direct the reader to sources of fuller information. Accordingly the books cited are in the main those to be found in the libraries of most English law schools. Few references are given to the Institutes: the student ought to be able to find these for himself. References to the Digest are more frequent. Few things are more useful to a student than the tracing of doctrines to their source: the citations are therefore so limited in number that reference to the original texts should be no intolerable burden.

I am much indebted to Dr Henry Bond of Trinity Hall, who has been so kind as to read all the sheets, every one of which is the better for his valuable suggestions.

W. W. B.

CAMBRIDGE, *August* 1912.

TABLE OF CONTENTS

| | PAGES |
|--|---------|
| PREFACE | v, vi |
| CHAPTER I. INTRODUCTION. SCHEME OF THE INSTITUTES | 1—12 |
| Gaius and Justinian (1). Arrangement of the Institutes (2—4). <i>Ius Civile, Gentium, Naturale</i> (5). Sources of <i>Ius Scriptum</i> (6). | |
| CHAPTER II. THE LAW OF PERSONS | 13—57 |
| Subject of Law of Persons (7). What is a Person? (8). What is a Slave? (9). Position of Slaves (10, 11). Enslavement (12). Manumission (13). Latinity (14). <i>Annici Probatio, Erroris Causae Probatio</i> (15). Marriage (16, 17). <i>Coemptio Fiduciae Causa</i> (18). Legitimation (19). Adoption (20, 21). Civil Bondage (22, 23). <i>Capitis Deminutio</i> (24, 25). Guardianship (26—28). Juristic Persons (29). | |
| CHAPTER III. THE LAW OF THINGS. PROPERTY | 58—119 |
| <i>Ius quod ad Res pertinet</i> (30). What is a Res? (31). Classifications of Res (32). Division of <i>Ius Rerum</i> (33). <i>Dominium</i> (34). Bonitary Ownership (35—37). Possession (38—41). Acquisition of Ownership (42). <i>Traditio</i> (43). <i>Usucapion</i> (44, 45). <i>Mancipatio</i> (46). <i>Mancipatio cum Fiducia</i> (47). <i>Cessio in Iure</i> (48). <i>Donatio</i> , etc. (49). Transfer by mere agreement (50). Subsidiary rules of conveyance (51). Restraints on alienation (52). <i>Servitutes</i> (53). Rustic and Urban <i>Servitutes</i> (54). Representation in Acquisition and Alienation of Property (55, 56). | |
| CHAPTER IV. UNIVERSITATES IURIS. SUCCESSION BY WILL | 120—182 |
| <i>Universitas Iuris</i> , Various Cases (57). <i>Hereditas Iacens</i> (58). <i>Testamenti Factio</i> (59—61). Forms of Will (62). <i>Institutio Heredis</i> (63, 64). Classification of <i>Heredes</i> (65). Entry of <i>Heres</i> (66). <i>Institutio of Slaves, Joint Heredes</i> (67). <i>Substitutio</i> (68). <i>Exhereditatio</i> (69). <i>Quærela Inofficiosi Testamenti</i> (70). <i>Postumi</i> (71). Lapsed Gifts, <i>Leges Caducariæ</i> (72). Revocation of Wills (73). Legacy (74). Joint Legacy (75). Conditions in Legacy (76). Types of Legacy (77). <i>Dies Cedit, Dies Venit</i> (78). <i>Regula Catoniana</i> (79). Remedies of Legatee (80). <i>Fideicommissa</i> (81, 82). Creation of Limited Interests by Will (83). | |

| | PAGES |
|--|---------|
| CHAPTER V. SUCCESSION ON INTESTACY. BONORUM POSSESSIO | 183—223 |
| <p>Hatred of Intestacy (84). Changes in Rule, Tendencies (85, 86). <i>Sec. Tertullianum</i> and <i>Orphitianum</i> (87). Justinian's final Rules (88). Succession to <i>Filii familias</i> (89). Succession to Freedmen (90). <i>Bonorum Possessio</i>, General notions (91). Order of Claims (92). Claim and Grant of <i>Bonorum Possessio</i> (93, 94). Remedies of <i>Bonorum Possessor cum Re</i> (95). Remedies of <i>Bonorum Possessor sine Re</i> (96). <i>Bonorum Possessio</i>, when cum and when sine Re (97, 98). Further questions (99).</p> | |
| CHAPTER VI. LAW OF OBLIGATIONS. GENERALIA. SPECIFIC CONTRACTS | 224—285 |
| <p>Nature of Obligation (100—102). Order of treatment by Gaius and Justinian (103). <i>Causa in Contract</i> (104). <i>Nexum</i> (105). <i>Fiducia</i> (106). Actionable Pacts (107). <i>Mutuum</i> (108). Deposit and <i>Commodatum</i> (109). <i>Pignus</i> (110). <i>Stipulatio</i> (111, 112). Correal and Solidary Obligation (113, 114). <i>Adstipulatio</i> (115). <i>Adpromissio</i> (116). <i>Contract Litteris</i> (117). Innominate Contracts (118). Consensual Contracts (119). Sale (120—122). <i>Locatio Conductio</i> (123). <i>Societas</i> (124). <i>Mandatum</i> (125).</p> | |
| CHAPTER VII. LAW OF OBLIGATIONS (CONCLUDED) | 286—335 |
| <p>Impossibility and Error (126, 127). <i>Culpa</i> (128). <i>Naturalis Obligatio</i> (129). Assignment of Obligation (130). Release from Obligation (131). <i>Novatio</i> (132). Quasi-Contract (133). <i>Delict</i> (134). <i>Furtum</i> (135, 136). Damage to Property (137). <i>Iniuria</i>, Quasi-Delict (138). Special peculiarities of Delictal Obligation (139). Acquisition of Rights in <i>Personam</i> through third persons (140). Liability for acts of <i>Extranei</i> (141). Liability on Contracts by members of the <i>Familia</i> (142). Liability for their Delicts (143).</p> | |
| CHAPTER VIII. THE LAW OF ACTIONS | 336—375 |
| <p>What is the Law of Actions? (144). The threefold scheme of the Law (145). <i>Pignoris Capio</i> and <i>Manus Iniectio</i> (146). <i>Sacramentum</i>, <i>Iudicis Postulatio</i> and <i>Condictio</i> (147). The Formula System (148). <i>Condictio in Classical Law</i> (149). The Formula (150). <i>Intentio</i> (151). <i>Exceptio</i> (152). <i>Condemnatio</i> and <i>Arbitrium</i> (153). Praetorian Actions (154). <i>Iudicia Stricta</i>, <i>Bonae Fidei</i> (155). <i>Iudicia Legitima</i>, <i>Imperio Continentia</i> (156). Actions in <i>Rem</i>, in <i>Personam</i> (157). <i>Cognitio Extraordinaria</i> (158).</p> | |
| CHAPTER IX. THE LAW OF ACTIONS (CONCLUDED) | 376—410 |
| <p><i>Litis Contestatio</i> (159). <i>Plus Petitio</i> (160). <i>Compensatio</i> (161). Representation in Litigation (162). Securities taken (163). Proceedings under a judgment (164—166). Interdicts (167). Classification of Interdicts (168). Procedure under Simple Interdicts (169, 170). Procedure under Double Interdicts (171). Interdicts in late law (172).</p> | |
| INDEX | 411—419 |

ERRATA

- p. 31, l. 13, after *utilis* insert *e lege*.
- p. 131, ll. 4, 17, read *caelebs, caelibes*.
- p. 169, l. 4 from end, read *caelebs*.
- p. 273, l. 26, after 'be' insert 'in many cases.'
- p. 312, note 2, read Schulz.

The 5th edition of M. Girard's *Manuel de Droit Romain* having appeared while this book was in the press, the earlier references to it are necessarily to the 4th edition.

INDEX

- Absolutio*, 361, 380
Acceptilatio, 103, 107, 254, 296, 298, 302
Accepti relatio, 299
Accessio, 83, 85
 compensation, 85
 temporis, 75
 Acquisition, through slaves, 118
 ex re, ex operis, 118
 lege, 200
 modes iure civili, 84
 modes iure naturali, 84
 of obligations through third persons, 294, 323
 of possession through slaves, 119
 of property, etc., through third persons, 116
 Act, essential to delict, 308, 317
Actio, ad exemplum institoriae, 277, 281
 adiectivae qualitatis, 59
 ad supplendam legitimam partem, 153
 annua, 368
 arbitraria, 366
 auctoritatis, 94, 269
 certae pecuniae creditae, 349
 civilis, 362
 civilis incerti, 263
 civilis in factum, 264
 confessoria, 372, 400 *sqq.*
 de peculio, 122, 255, 325 *sqq.*
 de peculio annalis, 331
 de peculio et in rem verso, 327, 328, 351, 375
 depensi, 297
 doli, 227, 252, 271
 exercitoria, 325, 329, 351
 ex stipulatu, 347, 350
 factitia, 59, 61, 68, 121, 212, 363, 365
 fiduciae, 236; see also *Fiducia*
 furti, 252
 honoraria, 228, 362
 hypothecaria, 175; see also *Hypotheca*
 in factum, 264, 363, 365, 367, 371
 in personam, 173, 370, 378
 Actio personalis in rem scripta, 370
 in rem, 173, 326, 370, 378
 institoria, 277, 328, 351
 iudicati, 386, 389 *sqq.*
 negatoria, 371, 396, 400, 411
 Actions, Law of, 336 *sqq.*
Actio Pauliana, 393
 perpetua, 368
 praescriptis verbis, 263, 265, 268
 pro socio, 281
 Publiciana, 66 *sqq.*, 92, 363
 quod iussu, 325, 351
 receptitia, 238
 rei uxoriae, 368
 sacramenti, 234; see also *Sacramentum*
 Serviana, quasi Serviana, 63, 242
 tributoria, 326, 328, 330
 utilis, 317, 365
 Active solidarity, 252
Actus legitimi, 54, 106, 298
Addictio, 98, 234, 390
Ademptio legati, 171
Adipiscendae possessionis causa, 398
Aditio, 215, 219, 223
 Adjective law, 336
Adiudicatio, 100, 359
 Administratio of tutor, 53, 291
 Adoption, 36, 41, 99, 155
 by will, 37
 of slave, 38
 under Justinian, 39
Adpromissores, 256 *sqq.*
Adrogatio, 36, 48, 49
 effects, 46, 120 *sqq.*
 of *libertini*, 38
Adsignatio liberti, 123
Adstipulatores, 256, 285
 Aediles, Edict of, 270
Aes confessum, 342 *sq.*
Aes et libra, 92 *sqq.*, 233, 241
Aestimatum, 265
 Agency in acquisition, 116, 281
 imposing liability, 326 *sqq.*
 in litigation, 385 *sqq.*
Ager vectigalis, 65
 Alluvion, 85
Altius tollendi, 115

- Animus domini*, 79 *sqq.*
furandi, 309
habendi, 79, 119
novandi, 300 *sq.*
possidendi, 78 *sq.*, 119
Anniculi probatio, 27, 36, 155
Annus utilis, 204, 368
Antestator, 95
Appeal, 211, 394 *sq.*
Appointment of tutors, 53
Aquaeductus, 113
Aquilian stipulation, 301
Arbitrium, 352, 359 *sq.*, 402, 403, 407
Argentarius, 248
Arra, 274
Assignment of contract, 295
 of person in bondage, 43
Atrox iniuria, 320
Auctoritas prudentium, 11
tutoris, 53
Auditorium, 395

Beneficium abstinendi, 184
cedendarum actionum, 259, 282
competentiae, 359, 392
divisionis, 255
inventarii, 143, 179, 184
ordinis, 259, 283
separationis, 142
Bona adventitia, 118, 194
Bonae fidei iudicia, 344, 352, 354 *sq.*,
 366 *sq.*, 382, 384
Bonae fidei possessor, 66 *sqq.*
actio furti, 311
 noxal liability, 332
Bona fides, 69
 in *usucapio*, 89
Bonitary ownership, 61, 64 *sqq.*, 71,
 72, 107
Bonorum emptio, 73, 122, 364, 390 *sqq.*
Bonorum possessio, 74, 159, 198 *sqq.*
 application, 206, 223
 contra tabulas, 148 *sqq.*, 154, 199,
 211, 217 *sqq.*
 contra tabulas, when *cum re*, 218
 cum re, 198, 208, 211
 effect of grant, 207
 edictalis, 198
 ex edicto, 204, 205, 209, 213, 220
 form of demand, 205, 217
 grant, 206
 limits of time, 204
 not *ex edicto*, 206
 on intestacy, 200
 order of claims, 199
 repudiation, 205
 secundum tabulas, 180, 200, 215
 secundum tabulas, when *cum re*, 218
 sine re, 211 *sqq.*

Bonorum possessio sine re, why given,
 why taken, 221
 unde cognati, 201, 216, 219
 unde cognati manumissoris, 202
 unde decem personae, 200, 219, 220
 unde familia patroni, 201
 unde legitimi, 200, 203, 216, 219
 unde liberi, 188, 200, 215, 216, 219,
 220
 unde patronus, 202
 unde vir et uxor, 202, 219
 uti ex legibus, 203
 when *cum re*, 214 *sqq.*
Bonorum venditio, see *Bonorum emptio*

Caduca, 157
Caelebs, 131, 169, 175
Capitis deminutio, 33, 44, 121, 155,
 188, 293
 in delict, 322
Captivi, 21, 42
Casus, 139, 287
Causa, 230 *sq.*
 possessionis, 79
 traditionis, 87
Cautio, 245
 Muciana, 164
Census, 41
Certa pecunia, res, 349
 verba, 339, 351
Cessio actionum, 255
 bonorum, 392
 in iure, 37, 54, 93, 98, 106 *sqq.*, 235
 in iure hereditatis, 99, 122
 legis, 295
Charge of debts, 178
Children over 14, 55
Civil bondage, 34, 40
 bondsmen, contracts by, 330
 death, 45, 46
Civile ius, 9
 change of meaning, 10
Classifications of contracts, 229
 of obligations, 228
 of things, 60
Clausula arbitraria, 359 *sqq.*
Codicilli, 104, 129, 174 *sqq.*
Coemptio, 33, 42, 235
 fiduciae causa, 53 *sqq.*
Coercitio, 361
Cognitio extraordinaria, 372, 394
Cognitor, 295, 385 *sqq.*
Collatio bonorum, 149, 184, 188, 217
 dotis, 150
Collegia, 57, 110
Coloni, abatement of rent, 275
 compensation for disturbance, 275
Commodatum, 239
Common ownership, 306

- Compensatio*, 381 *sqq.*, 410
Concepta verba, 351
 Concurrence of actions, 317 *sq.*
Condemnatio, 358 *sq.*, 384, 394
 in duplum, 343
Condictio, 101 *sqq.*, 246, 306, 344 *sq.*,
 347 *sq.*
 certae pecuniae, 375, 383, 401, 405,
 406
 certi, 229, 348, 349, 355
 ex lege, 350
 ex poenitentia, 237, 350
 fructuaria, 406
 furtiva, 252, 314, 348, 350
 generalis, 351
 indebiti, 214, 238, 303, 347 *sqq.*
 incerti, 265, 348 *sqq.*, 355
 ob rem dati, 351
 sine causa, 351
 triticaria, 348, 349, 355
 Conditional debts in bankruptcy, 392
 promises, 300
 Conditions in *cessio in iure*, 106
 in institutions, 137
 in institutions of sons, 139
 in legacy, 165, 168, 170 *sq.*
 in *mancipatio*, 106
 in *traditio*, 88, 108
Confarreatio, 32
Confessio, 98, 342 *sq.*
Coniunctim, 163
Consanguinea, 187
Consortium, 279
Constitutum, 257
 possessorium, 86, 103
 Continuous servitudes, 114
 Contract by *servus hereditarius*, 127
 by slave or *filiusfamilias*, 325 *sqq.*
 Contracts, classification, 229
 litteris, 260 *sqq.*, 266, 299
 re, 238
 Roman conception of, 286
Contrahere, 224
 Contrary Publician actions, 72
 Contra-tabular succession, 199
 Contributory negligence, 316
Conventio, 231
 Corporate bodies, 16, 56
 Correalty, 249 *sqq.*, 297
 contribution, 250
 litis contestatio, 253
 Creation of limited interests, 109, 179
Creditum, 229
Cretio, 54, 141
Culpa, burden of proof, 291
 degrees, 289 *sqq.*
 in praetorian obligations, 292
 levis in concreto, 290
Custodia, 292, 310
Curatio, 49, 55
Curator bonorum, 393

Damnus esto, 233 *sqq.*, 342, 343
Dammum iniuria datum, 315 *sqq.*
 concurrent remedies, 317 *sq.*
 praetorian remedies, 317
Dare oportere, 349
Decem personae, 52, 201
Dediticii, 15, 197
Deductio, 381, 382
De glande legenda, 396, 398
 Degrees of *capitis deminutio*, 47 *sqq.*
 of negligence, 290, 316
De itinere, 396, 400
Delatio hereditatis, 141, 180
Delegatio, 103, 302
Delict, 307 *sqq.*
 by member of *familia*, 331
 by several persons, 334
 by slave, *scientia* of *dominus*, 335
 of *capite minutus*, 46
Demonstratio, 353
 Denial, double liability, 304
Deportatus, 48
Depositum, 239, 292
 irregulare, 240
Deprehensus, 313
 Destruction of *res legata*, 172
Detentio, 77
Detentor, actio furti, 310
Dies cedit—venit, 167 *sqq.*
 incertus in wills, 138
 Digest of Justinian, 2, 12
 interpolations, 2
Diligentia, degrees, 289 *sqq.*
 Discharge of obligations, 296 *sqq.*
 per aes et libram, 296 *sq.*
Distinctim, 163
Distractio bonorum, 393 *sq.*
Dolus, burden of proof, 291
Dominium, 60, 64 *sqq.*
 definition, 64 *sq.*, 81
Donatio, 83, 101 *sqq.*
Dos, 30, 252, 292
 Double interdicts, procedure, 404
Duo rei stipulandi or *promittendi*, 351
Dupundius, 145

Ebed, 41
Edicta magistratum, 11
 Effects of marriage, 29
Emancipati, 149, 196
Emancipatio, 40, 41, 235
Emphyteuta, 79, 82
Emptio venditio, 266 *sqq.*
Emptor bonorum, 392; see also *Bonorum*
 emptio
 Enslavement, 18, 20 *sqq.*

- Error*, 287 *sqq.*
Erroris causae probatio, 26, 28, 36, 155
Evictio, 269
Exceptio, 352, 355 *sqq.*, 374, 384, 401
causa cognita data, 358
doli, 211 *sqq.*, 217, 261, 282, 383 *sq.*
in factum concepta, 358
iusti domini, 69 *sqq.*, 358, 410
legis Cinciae, 96, 102
non numeratae pecuniae, 261, 262, 356
pacti conventi, 297
quod facere potest, 357
rei in iudicium deductae, 361, 377, 378
rei iudicatae, 377, 388
rei venditae et traditae, 67, 69
restitutae hereditatis, 175
Exhereditio, 147 *sqq.*, 152 *sqq.*
Exhibitory interdicts, 397
Expensilatio, 260, 266
Expilatio hereditatis, 125
Expromissio, 302
Extraneus heres, 133, 140, 148, 149, 152
manumissor, 50, 220

Facere oportere, 350
Falsa demonstratio, 147
Familia, 28 *sqq.*, 185
Familiae emptor, 131, 141, 159
mancipatio, 92 *sqq.*
Fictitious persons, 14, 16, 56
Fideicommissa, 74, 110, 159, 167, 170, 174 *sqq.*, 180 *sqq.*, 184, 373
of hereditas, 175
of liberty, 24
of single things, 177
purpose of, 129
source of, 305
Fideiussio, 258, 282, 389
indemnitas, 260
Fidepromissio, 258
Fiducia, 3, 33 *sqq.*, 43, 50, 235, 240 *sqq.*, 265, 292
cum amico, 236
cum creditore, 236
in mancipatio, 96 *sq.*
Fiduciary tutors, 50, 235
Filiusfamilias, acquisition through, 323
Fiscus, as a person, 56
as successor, 129
Foreclosure, 243
Forms of legacy, 160
Formula, 352 *sqq.*, 374
arbitraria, 408
in factum, 365

Formula in ius, 355
petitoria, 346
Fourfold classifications, 230
Freeman sold as slave, 22, 26, 269
Fructuum perceptio, 84
separatio, 84
Fugitive slave, theft by, 332
Fundamental error, 289
Furiosi, 55
Furtum, 308 *sqq.*
possessoris, 309
usus, 309
interesse, 309

Gaius, 1 *sqq.*
Gentium, ius, 9
Gift, ad tempus, 104
in causa caduci, 157
Grant of bonorum possessio, effect, 207
Guardianship, 49 *sqq.*
Guilds, 57

Habitatio, 112
Heir and Heres, 185
Heredes, classification, 140
Hereditas, charge of debts, 143
damnosa, 127
divisions, 136
iacens, 16, 124
limits on capacity, 128
personification, 123 *sqq.*
Hereditatis petitio, 63, 367, 371, 410
petitio possessoria, 210, 211, 215, 222
Heres coactus, 178
extraneus, 125
legitimus, 184
necessarius, 99, 123, 124, 184
obligations of, 305
scriptus, 123
Honestum interesse, 311
Honoraria, 283, 373
Horrearius, 292
Horror of intestacy, 183
Hypotheca, 103, 106, 244

Identity of parties, mistake, 288
of subject, mistake, 288
Imperium, 396, 409
Impossibility in contract, 246, 286
Impossible conditions, in wills, 138
Incertae personae, 175, 179, 181
In diem addictio, 274
Indignitas, 156
Individuality of slave, 172, 323
Infans pupillus, 54
Informal manumission, 25
Ingenuitas, claim to, 42
In iure cessio, 98

- Iniuria*, 319 *sqq.*, 332
 principle, 320
 to son or slave, 320
In ius vocatio, 408
 Innominate contracts, 262 *sqq.*
Institor, 19, 255, 329
 Institutes, scheme of, 4 *sqq.*
 sources of, 3
Institutio heredis, restrictions, 135, 137
 of slave, 144
Intentio, 262, 354, 370
 Interdicts, 76, 374, 395 *sqq.*
Interdicta secundaria, 408
 duplicia, 404
Interdictum de glande legenda, 396, 398
de precario, 265
fraudatorium, 393
quorum bonorum, 208
Salvianum, 241, 242
uti possidetis, see *Uti possidetis*
utrubi, see *Utrubi*
Interesse in furtum, 309
 Interpolations, 2
Inter vivos donatio, 102
 Intestacy, 183 *sqq.*
 dislike of, 129
 Inventory, 143, 179, 184
Iteratio, 24

 Joint debtors, contribution, 250
 heirs, 145
 legacies, 163
 Judgment, 389
Iudicia imperio continentia, 368 *sq.*, 377
legitima, 260, 368 *sq.*, 377
Iudicis arbitrive postulatio, 344
Iudicium, 389
bonae fidei, 354, 366 *sq.*
Cascellianum, 406, 407
fructuarium, 406, 407
secutorium, 402, 404, 406
strictum, 347, 354, 366 *sq.*
 Junian Latins, 25
Iura praediorum, 110
 Juristic persons, 56
Ius, 61
accrescendi, 100, 146 *sqq.*, 156, 160,
 198
altius non tollendi, 106
antiquum, 157, 160
capiendi, 131
civile, 9, 10
gentium, 9, 84
in re aliena, 82
in rem, 67
liberorum, 190
naturale, 9, 84
personarum, 7, 13, 338
quod ad actiones pertinet, 58, 336

Ius quod ad personas pertinet, 7, 12,
 13, 338
quod ad res pertinet, 58 *sqq.*, 62, 337
retentionis, 243
scriptum, non scriptum, 10
Iusta causa, 231
traditionis, 87, 101
usucapionis, 89 *sqq.*
Iustae nuptiae, 28, 31

 Land, theft of, 309
Latini, 15, 131, 169, 197
 Law of Actions, 336
 of Citations, 11
 of Persons, 7, 12, 13, 338
 of Persons, Things and Actions, 7
Legatum, 104, 160 *sqq.*
debiti, 166
dotis, 166
generis, 165
liberationis, 166, 174
nominis, 166, 174
optionis, 163
partitionis, 167, 176
peculii, 167
per damnationem, 160 *sqq.*, 177, 297
per vindicationem, 160 *sqq.*, 169
per praeceptionem, 161
rei obligatae, 166
 remedies of legatee, 173
sinendi modo, 161, 163
 to slave of heres, 171
Leges caducariae, 146, 156 *sqq.*, 164,
 169, 184, 190
Juliae, 346, 370
Legis actio, 98, 339, 369, 379, 385,
 387
Legitimae personae, 191
 Legitimation, 36
Legitima tutela, 50, 52
Legitimi, 186, 188
Lex Aebutia, 258, 369, 378, 386
Aelia Sentia, 23, 28
Apuleia, 258
Aquilia, 225 *sqq.*, 303, 315 *sqq.*, 332
Atilia, 50, 53
Calpurnia, 345
Cicereia, 258, 259
Cincia, 96, 102, 356
Claudia, 53
commissoria, 274
Cornelia, 21, 130, 136, 258, 321
Falcidia, 143 *sq.*, 178
Fufia Caninia, 24
Furia de sponsu, 258 *sq.*
Iulia et Papia, 156
Iulia municipalis, 370
Iulia Titia, 50
Iunia, 23, 25

- Lex Papia Poppaea*, 156, 196, 219, 220, 364
Plaetoria, 356
Poetelia, 233
Publilia, 258
Scribonia, 92
Silia, 344, 348
Voconia, 187
 Liability, of *capite minutus*, 46, 322
 for third parties, 324 *sqq.*
Libellus conventionis, 374
defensionis, 374
Libertus ingratus, 22, 25
orcinus, 177
 Liberty, definition, 17
Liberum matrimonium, 29
 Limited interests, 179
Litem defendere, 399
Litis contestatio, 250, 259, 260, 366, 374, 376 *sqq.*, 386, 387
Locatio conductio, 274 *sqq.*
operis, operarum, 275, 276
 risk, 276
 special cases, 276
Longi temporis praescriptio, 106

Magister bonorum, 122, 391
 Maine, on scheme of Institutes, 6
Mancipatio, 72, 75, 92 *sqq.*, 106, 235
cum fiducia, 96 *sq.*, 333
familiae, 92 *sqq.*, 134, 141, 159
 form, 93, 94
 Mancipatory will, 131, 134, 141, 159
Mandatum, 232, 240, 281, 291
credendae pecuniae, 282
 death of party, 284
 its place in scheme of contracts, 283
post mortem, 285
qualificatum, 257, 282
 Manifest theft, 313
 Manumission, 15, 22 *sqq.*, 75
 by will, 24, 160
 modes, 23
Manus, 28, 29, 32 *sqq.*, 48
iniectio, 233 *sqq.*, 297, 339 *sqq.*, 386, 390, 395
iniectio dammati, 342
 Marriage, 28 *sqq.*
 civil, 30
 restrictions, 32
Matrimonium iuris civilis, iuris gentium, 31
 Measure of damages in *Damnum*, 316
 in *Iniuria*, 319
Minus petitio, 353
Missio in possessionem, 181, 353, 373, 391, 393, 402, 408
 Mistake, 287 *sqq.*
 as to identity of parties, 288
 as to nature of act, 287
 in transfer of property, 108
 of status, 26
Modus in legacy, 168
Mora, 300
Mortis causa capio, 153
causa donatio, 101, 104
Mutuae petitiones, 410
Mutumum, 232, 233, 303

Naturale ius, 9
Naturalis obligatio, 293 *sqq.*
 Nature of transaction, mistake, 287
Nauta, 292, 325
Necessarius heres, 140
Negotiorum gestio, 214, 304
 of tutor, 53
Nemo pro parte testatus, 152
Nexum, 224, 233 *sqq.*, 296, 342
Nexi solutio, 386
Non bis in idem, 253, 259
 Non-manifest theft, 313
Novatio, 103, 226, 254, 299, 376
Noxa caput sequitur, 121, 334 *sq.*
 Noxal liability, 225, 228, 334
 death of *dominus*, 334
 death of slave, 334
 nature of, 325
 surrender, 41
Nuncupatio, 97, 233
Nuptiae, 36
iustae, non iustae, 31

 Oath, 361
Oblatio curiae, 36
Obligatio, 224 *sqq.*, 337
 acts of third party, 227
iure civili comprobata, 369
honoraria, 228
naturalis, 362
quasi ex contractu, 302 *sqq.*
 transfer, 226
Occupatio, 83, 84, 161
Officium iudicis, 361, 362
Omnia iudicia absolutoria, 346, 380
Ope et consilio, 312
 Opening of succession, 187
Orbi, 131
 Order in *Bonorum possessio*, 199
Ordo iudiciorum, 374
 Ownership, 64, 81
 by peregrines, 74

 Pact, defence in delict, 332
Pactum antichresis, 243
continuum, 298
displicentiae, 273
de non petendo, 297

- Pactum ex intervallo*, 298
fiduciae, 236
in rem, 254, 298
nudum, 294
praetorium, legitimum, 230, 232, 237, 294
Parens manumissor, 50, 191
Pars legitima, 153
 Passive solidarity, 252
Pater solitarius, 131, 157
Patria potestas, 44
Patrimonium, 58
Peculium, 18, 195
castrense and quasi castrense, 118, 130, 150, 194
 Penal actions, 307
Peregrini, 74, 169, 175
Periculum rei, 271 *sqq.*
Permutatio, 232, 264, 268
 Perpetuities under Justinian, 182
Persona ficta, 14, 16, 125
 Personal nature of *obligatio*, 226
servitutes, 111, 114
Persona singularis, 14
 Persons in *manus*, contracts by, 330
 Things, Actions, 5 *sqq.*
 Person, what is, 15
Pignus, 3, 82, 97; and see Pledge
Pignoris capio, 339 *sqq.*
 Pledge, 63, 241 *sqq.*; and see *Pignus*
 Pledge, *actio furti*, 310
 noxal liability, 333
Plus petitio, 353, 380 *sqq.*
Populus Romanus, 56
 Position of *heres*, 142
Possessio, 75 *sqq.*, 81 *sq.*, 87
 a fact, a right, 80
 acquisition through slaves, *etc.*, 119
 by *hereditas*, 123
 civilis, 78
 iuris, 61, 77
 in relation to ownership, 81
 naturalis, 77, 79
 Possessory claims, plea of title, 222, 410
 interdicts, 76, 81, 209, 398 *sqq.*
Postliminium, 21, 136
Postumi, 154 *sqq.*
 alieni, 175, 179
 praeteriti, 218, 220
Potestas, in relation to noxal liability, 332
Potioris nominatio, 53
Praedes, 257
Praelegatum, 161, 162
Praescripta verba, 263, 265
Praescriptio longi temporis, 92
 pro actore, 353
Praetor fideicommissarius, 174
 Praetorian obligations, 228, 230
 ownership, 212
 will, 134, 218
Precarium, 265, 291
Principum placita, 11
Privata res Caesaris, 56
Procurator, 19, 116, 117, 239, 386
 ad litem, 256
 in rem suam, 226, 281, 295
Prodigi, 55
Pro herede gestio, 142
 Prohibitory interdicts, 397 *sqq.*
Promissio ad diem, 247
Pro parte testatus, 137
 Provincial land, 73
Prudentes, 11
Publicani, 340 *sq.*
 Public ways, 398
Pupillaris substitutio, 146
 Putative *causa in traditio*, 87, 91
 causa in usucapio, 90 *sq.*

Quam hereditatem, 399
Quarta Falcidia, 177
Pegasiana, 177
 Quasi-contract, 225, 302 *sqq.*, 371
 delict, 321
 patron, 50
 possession, 61, 77
 pupillary substitution, 147
 traditio, 105 *sqq.*
Quem fundum, 399
Querela inofficiosi testamenti, 139, 150 *sqq.*
 under Novels, 153
Quod legatorum, 209, 213
Quorum bonorum, 206, 208 *sqq.*, 213 *sqq.*, 221, 222, 398, 410

Rapina, 314, 332
Recuperandae possessionis causa, 399
 Registered hypothec, 244
Regula Catoniana, 168 *sqq.*
Regulae, 6
Remancipatio, 34, 35
 Remedies of legatees, 173
Rem non liquere, 361, 362
 Renunciation of *societas*, 280
Replicatio, 374, 375
 Representation, 225, 326, 328, 337
 in litigation, 385 *sqq.*
 in transfer of property, 115
 Repudiation of *Bonorum possessio*, 205
Rescissio iudicii, 380, 395
Res corporalis, incorporalis, 60, 81, 82, 224
Res, what is, 59
 iudicata, 383
 mancipi, 65, 74, 75, 113, 268

- Res nec mancipi*, *mancipatio* of, 96
nullius, 161
 Resolutive conditions, 273
Responsa prudentium, 11
Restitutio in integrum, 49, 372, 379,
 393, 395
 Restitutory interdicts, 397
 Restrictions on adrogation, 37
 on marriage, 32
 Restrictive covenants in transfer of
 property, 108
Retinendae possessionis causa, 398
Revocatio, 284
 Revocation of will, 159
 Rights less than *dominium*, 61
 Robbery, 314, 332
 Rustic servitudes, 113
 Rutilian *formulae*, 364, 391

Sacra, 35, 37, 40
Sacramentum, 343 *sqq.*, 366
 Sale, 266 *sqq.*
 damage before contract made, 273
 defects, 270
 duties of vendor, 268
 obligations of third parties, 272
 of slaves, restrictive covenants, 109
 resolutive conditions, 273
 risk, 271
 rules as to price, 267
 subjects of, 269
 warranties, 269
 writing, 274
Satisfactio de rato, 388
iudicatum solvi, 388
 Scheme of Institutes, 4 *sqq.*
 source, 5
Scientia domini, 119, 335
 Secondary interdicts, 408
 Secured creditors, 391
 Security in litigation, 388
 Self-sale into bondage, 42
Semel heres semper heres, 137
Senatusconsultum Claudianum, 20
 Largianum, 197
 Macedonianum, 294, 356
 Neronianum, 162
 Orphitianum, 189 *sqq.*, 200
 Pegasianum, 175 *sq.*
 Tertullianum, 189 *sqq.*, 200
 Trebellianum, 175 *sqq.*, 305
 Velleianum, 259
Sententiae et opiniones, 12
 Sequestratio, 240
Servi corruptio, 315
 Servitudes, 61, 110 *sqq.*
 creation, 105, 246
 history, 111
 loss by non-use, 115

Servus hereditarius, 126 *sqq.*, 180
 as witness, 127
 publicus, 19
 poenae, 17, 21
 sine domino, 17, 111
 suis nummis emptus, 373
 Set off, 381 *sqq.*
 Settlements, *inter vivos*, 109
 Single interdicts, procedure, 399 *sqq.*
 Slave, acquisition of obligation through,
 323
 a person, 15
 contract of, 325
 delict of, 331
 family ties, 20
 in commerce, 18
 iniuria to, 320
 institutio of, 144
 Slavery by birth, 20
 nature of, 17
Societas, 266, 276 *sqq.*, 292
 corporate, 280
 death of *socius*, 278
 omnium bonorum, 104, 278 *sqq.*
 vectigalis, 278, 280
 shares, 277
Sodalicia, 57
 Solidarity, 249 *sqq.*
Solidi capacitas, 157, 160
Solum provinciale, 65, 73, 74
Solutio, 299
Solutum non repetere, 304
 Sources of Law, order in Gaius, 10 *sq.*
Spatium deliberandi, 143, 184, 187,
 219, 223
Specificatio, 83, 84
 Specific performance, 360
Sponsio legitimae partis, 345
Sponsiones, 211, 345, 396, 403 *sqq.*
Sponsor, 258, 297
Stabularius, 292
 Status, 14
Stipulatio, 244 *sqq.*, 260, 269, 337
 Aquiliana, 301
 ad diem, 247
 for third person, 247 *sq.*
 habere licere, 270
 partis et pro parte, 176
 post mortem, 249
 praepostere concepta, 248
 Stricta iudicia, 354, 366 *sq.*, 382
Stricti iuris actio, 347
Substitutio, 142, 146, 147, 156
Successio graduum, 186
 Succession, 37
 of *Gentiles*, 185
 of grandchildren through daughters,
 193
 of *emancipati*, 216