

## Glossary of Latin terms<sup>1</sup>

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[X] [Y] [Z]

### A

*accessio*: one of the *ius gentium* modes of acquisition of ownership. Where two or more objects (movable or immovable) belonging to different owners, were either physically joined together (or, if liquid, mixed together) in such a way that it was extremely difficult if not impossible to separate them, the rules of accession were used to solve disputes concerning the ownership of the constituent objects. As a general rule, the owner of the more important/valuable (principal) object acquired ownership of the less important/valuable (accessory) object by way of incorporation (*accessio*).

*actio* (*actiones* pl.): this term, which originated in Roman procedural law, denoted the plaintiff's entitlement by law to bring a lawsuit in a court of law. The noun, *actio*, is derived from the Latin verb *ago, agere* (3) to bring a lawsuit. Actions were classified in a number of ways. A basic distinction was drawn between personal actions (*actiones in personam*) and real actions (*actiones in rem*). The aim of a real action was to establish the strength of the parties' claims to legal rights over movable or immovable property (*res*). Once this had been established, a real action could also be employed to reclaim it from other parties. A claim of ownership of movable or immovable property was also instituted using a real action, but in these circumstances the claim was known as a *vindicatio*. Personal actions, on the other hand, were brought to enforce performance by the defendant arising out of an existing (contractual or delictual) obligation. Such performance could include delivery of an object or the payment of money. Another (overlapping) distinction was drawn between actions arising from the *ius civile* (*actiones civiles*) and actions arising from praetorian law (*actiones honorariae*). The former referred to actions that were only available Roman citizens, while the latter referred to actions that were created by the Praetor to amend the *ius civile* and which were available to citizens and foreigners (of course this classification ceased to be important when citizenship was extended to nearly all inhabitants by the *Constitutio Antoniniana* in 212 AD). In the realm of praetorian amendments to the *ius civile*, the distinction between *actiones in factum* and *actiones utiles* also deserves mention. The former were a type of action the Praetor granted on an *ad hoc* basis to deal with claims of which the legal basis was not covered by the *formula* of the action. The latter were actions based on a praetorian modification of an existing formula to cover a new situation. Other modes of classifications (of both civilian and praetorian actions) were also possible e.g. actions which could only be brought within a fixed period of time (*actiones temporales*); actions which had not time limit (*actiones perpetuae*); actions which could be brought by any member of the public in the interest of public order (*actio popularis*) and actions in which the defendant, if found guilty, was branded with *infamia* (*actiones famosae*).

*adiudicatio*: a specific element of the *formula* only used in actions concerning the division of property (e.g. division of common property held by co-owners of partners) as well as the *actio finium regundorum* (boundary disputes) where a judge was authorised to assign ownership of the object to the successful litigant by way of his judgement.

*administratio*: administration/control e.g. the guardian's administration of the ward's property/private affairs and the restrictions which existed in this regard. The term was also used to denote the administration of public office.

*adoptio*: the legal act whereby a person was absorbed into a new *familia*. Two forms of adoption existed in Roman law. This first, called *adrogatio*, was the process whereby a *sui iuris* man (under Diocletian, also women, but with certain restrictions) could adopt another *sui iuris* man (with the advent of the Principate it was extended to women and freed persons), originally by bringing a motion (*rogatio*) before the *comitia curiata*. (There were certain requirements as to the age of the person adopting vis-à-vis the person being adopted). During the Republic, these formalities were abandoned and the act now merely had to be performed during a ceremonial meeting of thirty *lictors*. The purpose of *adrogatio* was to insure the continuation of the *familia*, its cult and its name. The adopted person, his property and all the persons under his *potestas*, fell under the *potestas* of his new *paterfamilias*. Adoption of a person *alieni iuris* took place by way of *adoptio* (in a narrow sense). This act was partly based on the rule of the triple sale of the son found in the Twelve Tables (different requirements were laid down for daughters and grandchildren) and in practice took place before the Praetor. Justinian changed the procedure –an official record entry made in presence of the child as well as a declaration by the adopter was required. Justinian also introduced various changes concerning the adopted child's ability to inherit from his original family.

1. This list is designed to supplement the text of the third edition of Borkowski's *Textbook on Roman Law*. It should not be viewed as comprehensive, since only the primary meanings of words have been explored. The definitions are based on Berger, A. *Encyclopedic Dictionary of Roman Law* (Philadelphia 1953); Lewis, C.T. and Short, C. *A Latin Dictionary* (Oxford 1962) (First Impression 1879); Kaser, M. *Roman Private Law* (Durban 1968) (2nd edition) (Translated from German by R. Dannenbring).

*adpromissio*: a system of personal security whereby a number of sureties promised to pay a debt arising from *stipulatio* if the principal debtor failed to pay.

*adsertor libertatis*: the term used to describe a citizen who took part in the manumission ritual using a staff/rod (*manumissio vindicta*) before the Praetor. The citizen touched the slave with a staff/rod and asserted that he was free. If the master of the slave failed to object to this claim, the slave was freed and his freedom was formally confirmed by an adjudication of the Praetor.

*adstipulatio*: Two parties enter into a *stipulatio*. The *stipulator* wishes to "strengthen" his legal claim against the *promissor* and the parties agree to create

an accessory stipulation for this purpose. One method of “strengthening” this claim was to obtain a third party (the *adstipulator*) to enter into a *stipulatio* with the *promissor* for the exact same thing. The *adstipulator* thus effectively became the “mandatary” of the *stipulator*. If the former decided to sue on the basis of his identical stipulation with the *promissor*, he would be liable to the *stipulator* for any proceeds obtained from such a suit. There is support for the view that *adstipulatio* was discussed in chapter 2 of the *Lex Aquilia*. It became obsolete in classical Roman law and was replaced by the contract of mandate.

*aestimatum*: one of the innominate contracts, the contract for sale or return. The working of this contract is best explained by an example: A and B agree that A will hand his property to B, who will attempt to sell it. If B succeeds in selling the property, he only has to pay a fixed sum to A (which could be less than the value of the object). If B is unsuccessful in selling the object, he has to return it to A.

*affectio maritalis*: marriage in Roman law was not a sacrament, but a legal and social relationship. It was defined as union for life, supported by the spouses’ consciousness that their union was a marriage. This consciousness was known as the *affectio maritalis*.

*ager publicus*: state-owned land (both in Italy and the provinces) which could not be privately owned, but over which certain lesser real rights could be exercised. The possessor of state-owned land in time came to enjoy a degree of protection in his possession by way of praetorian interdicts.

*album iudicum*: Litt. a list of judges. This was an official register drawn up by the Praetor each year listing persons who were eligible to serve as judges in civil (and criminal) lawsuits. Candidates on this list originally had to be of senatorial rank, but in the latter second century AD, members of the *equites* were also included.

*alieni iuris*: this term described all those who were subject to the *potestas* of the *paterfamilias*. It included his wife (if the marriage was *in manu*), his sons and daughters who had not been emancipated, and all his slaves. Persons under the *paterfamilias*’ tutelage or guardianship were not regarded as being *alieni iuris*.

*alluvio*: a species of *accessio* involving movable and immovable property. It was the gradual and imperceptible increase of a riverbank through silting. The owner of that portion of the riverbank is regarded as having obtained ownership of the deposits of silt through *accessio*.

*animus*: mental intention of a person concluding a transaction with another or acting unilaterally where said actions had certain consequences in law. The term was also used in the Roman law of delict to describe intent.

*anniculi probatio*: proof of having a child of one year. This was part of the

requirements whereby a lunian Latin could obtain citizenship for him and his family if certain requirements were met.

*anulus aureus*: A freedman could acquire the status of a freeborn person through an Imperial act of clemency (*natalium restitutio*). He could also achieve a lesser (freeborn) status by being granted the *ius anuli aurei* (Litt. the right of the golden ring). The wearing of a golden ring was generally permitted only for those who were freeborn.

*arbiter*: a judge with a wider discretion and presumably therefore some legal knowledge (as opposed to the normal system of lay-judges, *iudices*) which was appointed where a lawsuit required technical knowledge (e.g. division of common property or inheritance as well as boundary disputes).

*arrha* (or *arra*): a token of the earnest intention to conclude an agreement (often found in the consensual contract of sale). The *arra* was known to Greek and Semitic legal systems as well. In pre-classical and classical Roman law, a token of value, such as a ring, was often given as proof of the purchaser's intention to conclude the contract of sale. Once the contract had been concluded, the object could be reclaimed with the purchaser's action on sale or, if a sum of money had been given as a token, it could be set-off against the purchase price. The *arra* reappears in Justinianic law where the parties had concluded a written agreement of sale. Failure to conclude the agreement generated certain penalties for the giver of the *arra*.

*auctoritas*: This term occurs in many areas of Roman law and its primary meaning is that of authorisation. It is often used in the context of tutorship where it is used to denote the guardian's express verbal consent to juristic acts performed by a minor which created a legal obligation or burdened his rights.

*avulsio*: The term does not occur in Roman legal literature. It is one of the *ius gentium* modes of acquisition of ownership, *accessio* of immovable to movable property. Where the force of a river dislodged a sizable portion of the extant riverbank and deposited it elsewhere, it did not become the property of the owner of that portion of the riverbank to which it had adhered until such time as the plants or trees upon the portion of the riverbank began to take root in the soil.

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*beneficium inventarii*: a legal measure introduced by Justinian to limit the heir's liability resulting from an insolvent will. Within thirty days after the reading of will or of the heir becoming aware of his rights to succession, the heir had to make an inventory of the deceased's estate. The inventory had to be made in the presence of a notary and had to be completed within sixty days. The notary had to sign the inventory upon completion to affirm that none of the assets or

liabilities had been omitted. By drawing up such an inventory, the heir confined his liability for the debts of the deceased estate to those listed (up to  $\frac{3}{4}$  of the value of the estate, the remaining  $\frac{1}{4}$  being earmarked for the so-called “*quarta falcidia*”).

*bona vacantia*: where an insolvent estate was left without an heir or a *bonorum possessor*, it was known as *bona vacantia*. Ownership of the estate lapsed and it was treated as a gift to the *aerarium*, later to the *fiscus*.

*bonorum possessio*: the Praetorian system of succession whereby certain persons were placed in the position of a civil heir and granted extensive legal protection of their proprietary interests in the deceased's estate.

*bonorum venditio*: a form of real execution under the formulary procedure. Once it had been ascertained, following a lawsuit, that the creditor's right of execution was certain, he applied to the Praetor for personal or real execution. Real execution began with the Praetor ordering a seizure of the debtor's possessions. This was merely a preliminary procedure as a public notice first had to be served informing all other creditors with claims to the debtor's possessions of an impending sale of the goods. The creditors were summoned before the Praetor and told to choose one out of their ranks to oversee the sale of the debtor's goods (*venditio bonorum*).

*brevi manu*: Litt. with the short hand. It was a form of *traditio* where actual physical delivery of the object did not take place, because the new owner was already in possession of it when *traditio* occurred.

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## C

*capitis deminutio*: any reduction in the status of an individual which affected his liberty, citizenship or affiliation to a specific family or *gens*.

*causa*: cause/reason/foundation in law/circumstance. It was also used to denote a court case e.g. the famous *causa curiana*. Scholars have rightly observed that it is one of the vaguest terms in Roman legal language.

*cautio*: a promise for security whereby a party agreed to pay damages if another party should suffer any loss through the actions of the former e.g. the *cautio damni infecti*. Berger defines it as an obligation assumed as a guarantee for the execution of an existing obligation not protected by law.

*caveat emptor*: if the purchaser had an opportunity to inspect the object of sale before concluding the contract, he cannot rescind the contract of sale if the object turns out to be defective.

*centumviri*: Litt. one hundred men. The centumviral court dealt with matters of public interest, mainly concerning property disputes of considerable value, inheritance matters and the *querela inofficiosi testamenti*. It was staffed by a 100 (later 105) judges under headed by the *Praetor Urbanus*. It seems as if individual cases were tried by smaller “committees” selected from the available number of judges. The system of procedure used in this court was always the actions-at-law, even after it had been formally replaced by the formulary procedure.

*cessio bonorum*: where a debtor had become insolvent owing to unforeseen circumstances, he could, under the formulary procedure, avoid the infamy attached to execution by petitioning a magistrate to allow him to make a voluntary cession of his property (*cessio bonorum*) to his creditors.

*cessio in iure*: Litt. cession before a court. It was a ritual procedure (imitating the procedure of the *legis actio sacramento in rem*) already known by the time of the Twelve Tables that was used to create, transfer or extinguish certain rights (specifically the so-called “Quiritary rights”). It partly fell into disuse in classical Roman law.

*coemptio*: a form of marriage *cum manu* concluded using a variation on the *mancipatio* act whereby the *paterfamilias* of the woman transferred his *potestas* over her to the husband by way of a symbolic act in the presence of five witnesses and the holder of a pair of scales in return for the payment of a symbolic purchase price.

*cognitio*: a bureaucratic investigative procedure created during the time of Augustus. The essential difference between this form of procedure and the formulary procedure was that the whole lawsuit was handled by a single judge instead of the division between the *in iure* and *apud iudicem* phase.

*collatio bonorum*: this measure was designed to counteract the benefit that emancipated children, who may have received a portion of their deceased parent's estate on emancipation, would have vis-à-vis other *sui heredes*. The Praetor stated that if the emancipated child wished to inherit in the same category as other *sui heredes*, he had to declare the property received from the testator as he then was. This principle was later extended to married daughters of the deceased to whom a dowry had been given. If the daughter wished to inherit in the same category as other *sui heredes*, the value of the dowry had to be taken into account.

*collegia*: a group of officials like the “college” of Pontiffs including associations of both public and private character. The main points of contention were whether these “colleges” had corporate identity and whether their founding required State sanctioning.

*coloni adscripticii*: a class of tenants of agricultural land that arose during the

latter years of the Empire and who became the object of intense legislative regulation, since they were “bound” to the land even though they were technically “free”.

*comitia*: this term was used to describe an assembly of the Roman people convened at a specific place with the aim to make a decision on a piece of legislation or to reach a verdict concerning a certain matter. These assemblies were characterised by ritual and formality.

*commercium*: one of the primary benefits of Roman citizenship. It was the right (the *ius commercii*) to use *mancipatio* as a means to acquire ownership of *res mancipi*. Some authors also speculate that it included the right to use the forms and procedures of the *ius civile* to enter into and to conclude commercial transactions.

*commixtio*: the term does not occur in Roman legal sources. It describes those circumstances where two solids are mixed together

*commodatum*: one of the real contracts - the gratuitous loan of a thing for use.

*concilium plebis*: the assembly of the Plebeians headed by the Tribunes of the Plebs. The decision of this body, plebiscites, had no legal effect until the enactment of the *Lex Hortensia* of 287 BC.

*concilium*: a term used to describe a political gathering of the people (also non-Romans). It rarely occurs as a technical legal term.

*condemnatio*: that part of the formula which instructed the judge to condemn or absolve the defendant. Under the formulary procedure the judge was normally instructed to condemn the defendant to pay a certain amount of money. In certain cases, however, the amount was left to the discretion of the judge.

*condictio*: the *condictio* originated in the *legis actio* procedure (*legis actio per conductionem*). In the formulary procedure it came to refer to a specific type of personal action whereby a specific thing (*certa res*) or a specific sum of money (*certa pecunia*) without having to state the source of the obligation. It was therefore a very flexible action that could be used for the recovery of almost any monetary debt.

*confarreatio*: one of the earliest forms of marriage *cum manu*. It was a religious ceremony originally seemingly confined to patrician families. The term is derived from s spelt cake (*libum farreum*) which was eaten during the ceremony.

*confusio*: the term is sometimes used in accession – the *ius gentium* mode of acquisition of ownership to describe the case where liquids or metals are blended together. It also used to describe the extinction of limited real rights in an object

where ownership of the object vests in the holder of the limited real right.

*constitutio*: this term has two primary meanings; that of an institution e.g. slavery is an institution of the *ius gentium* or that of an Imperial decree e.g. the *Constitutio Antoniniana*.

*constitutum debiti*: a formless praetorian pact whereby a certain day was fixed for performance of an obligation.

*constitutum possessorium*: a medieval term used to describe the case where an object is sold by B to A, but before it can be transferred to the new owner (A), it is immediately let out to the former owner (B). Thus, the parties' rights over the object have changed despite physical delivery to the new owner not having taken place.

*contrectatio*: the requirement of theft (*furtum*) that there should have been a form of wrongful handling of the object either by transferring it to a different location or by unlawfully retaining an object already in your possession.

*contumacia*: where a person disregarded the summons to appear under the *cognitio* procedure, a court could find favour of the other party by default on account of his refusal (*contumacia*) to take part in the legal proceedings.

*conubium*: one of the benefits of Roman citizenship. The right (*ius conubii*) to conclude a valid marriage recognised in terms of the *ius civile* with another Roman citizen.

*corpore corpori*: Liability for wrongful damage to property could only be established under the *Lex Aquilia* if it could be proven, amongst other things, that physical damage had been done by a body (*corpori*) to a body/thing (*corpore*). In time, the Praetor granted factual and *utiles* actions to cover those cases of wrongful damage to property which did not fully meet these requirements.

*corpus*: a word capable of many definitions. In its most basic form, it merely denoted a body, a physical object or a physical requirement.

*corrumpere*: the third chapter of the *Lex Aquilia* contained three "harm-verbs" to describe the actions which were covered by this provision. One of these "harm-verbs", to smash (*rumpere*) was extended by way of juristic interpretation to include all kinds of direct physical damage (*corrumpere*). This was probably one of the earliest examples of the extension of the scope of this statute by way of juristic interpretation.

*cretio*: a formal declaration in early Roman law using set words to demonstrate the intention to accept an inheritance.

*cura*: the term referred to a system of protection of the interests (largely financial) of certain persons (mentally incapacitated persons, but later also legally incapacitated persons such as minors and women) dating back to the Twelve Tables.

*curia* (*curiae* pl.): This term referred to a number of *gentes* (groups of related families) that came together, possibly at first for the purpose of common defence, to form a *curia*. The *curia* was one of the smaller subdivisions of the Roman citizen body during the Monarchy and formed the basis of the *comitia curiata*.

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*damnum emergens*: a term used in the discussion of the *Lex Aquilia* to refer to loss, quantifiable in money, suffered to property due to extrinsic circumstances. The term does not occur in Roman juristic language.

*decemviri*: Litt. ten men. The commission of ten men who allegedly drafted the Twelve Tables were known as the *decemviri legibus scribundis*. The term also referred to a special type of court established in the third century BC to deal with more complex cases (*decemviri stlitibus iudicandis*).

*decretum* (*decreta* pl.): judgements given by the Emperor in legal matters coming before him either as a court of first instance or on appeal.

*decurio* (*decuriones* pl.): each of the provincial towns in the Roman Empire had its own assemblies and magistrates. The town-councils were modelled on the senate in Rome. Members of these councils were known as *decuriones*, possibly because certain councils consisted of a hundred men.

*Dediticii*: citizens of states vanquished by the Roman Empire. Since these states had ceased to exist, the local law no longer applied to these people and they were subject to the Roman *ius gentium*. They were technically “free”, but did not receive Roman citizenship.

*demonstratio*: a clause in the *formula* setting out the facts/subject matter on which the claim was based.

*denarius*: a Roman silver coin, first minted post 269 BC, that originally contained ten (later eighteen) *asses*.

*depositum*: one of the real contracts that involved the handing over of a movable object to another to take care of it free of charge. The object had to be returned on demand.

*detentio*: a modern term used to describe a state of factual control of an object

that did not qualify as possession under the *ius civile* or the *ius honorarium*. In Roman law, this situation was described as *possessio naturalis*.

*dicta promissave*: an aspect of the law of sale, where the vendor had expressly stated (*dicta*) that the object of sale possessed certain qualities or affirmed it by way of stipulation (*promissa*).

*divus*: the term used to describe an deceased Emperor whose cult had been deified by the senate.

*dominium*: this term, which acquired a technical meaning in the late Republic, described full Roman ownership in terms of the *ius civile*. This form of ownership was confined to Roman citizens and could only be exercised over movable property or land in Italy.

*donatio*: a gift given either *inter vivos* or *mortis causa*.

*dos*: this institution, seemingly of customary origin, consisted of a promise by the *paterfamilias* of the bride to deliver an amount of property to her husband upon marriage. Ownership of the dotal property passed to the husband (until the time of Justinian), but there was a moral duty to use the dowry to look after the wife and to maintain her standard of living.

*dotis dictio*: a type of verbal contract containing a contractually agreed promise in the form of a unilateral verbal declaration to provide a dowry or part of it.

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## E

*edictum* (edicta pl.): the Emperor, by virtue of his *imperium*, could issue instructions to his subordinates. These instructions came in the form of an edict. The term was also used to refer to the whole or part of the edict of a magistrate with *imperium*.

*edictum perpetuum*: Litt. the perpetual edict – a term used to describe the annual edict of the Praetor in which the scope and extent of legal aid in the form of generic formulae for certain action was set out. It was described as “perpetual”, since it remained in force for the Praetor’s full term of office.

*emancipatio*: the legal act by which a child *alieni iuris* was released from paternal power to become *sui iuris*.

*emphyteusis*: a form of long-term lease of imperial private property that arose during the third century A.D.

*emptio venditio*: the consensual contract of sale.

*emptor familiae*: a trustworthy person to whom the testator mancipated his entire estate according to the *testamentum per aes et libram*, but with the added instruction on its division upon the death of the testator.

*epistula*: Litt. a letter. The term was used to describe a form of imperial rescript where the emperor's reply to a petition was delivered in the form of a separate letter (*epistula*). These letters were drafted by the imperial office *ab epistulis* and were generally addressed to provincial officials. The term was also used to describe a category of legal opinions given by jurists to judges and private petitioners.

*eques* (*equites* pl.): the class of people who ranked between the patricians and the plebeians in Roman society. This class seems to have been created (on a limited scale) already during the reign of Romulus. In the late Republic, the *equites* exerted great political and economic influence in Roman society.

*error*: a doctrine that the Roman jurists developed largely in the realm of consensual contracts to deal with the impact of *dissensus* on the validity of the agreement.

*exceptio*: an device originating in the law of procedure whereby a defendant could counteract the plaintiff's assertions. In the formulary procedure it was generally inserted in the *formula* on the request of the defendant. Exceptions later developed into a substantive right to reject the plaintiff's claim.

*exhereditatio*: The perpetuation of the *familia* and its assets was a prime concern in Roman family law. To ensure this, many rules concerning disinheriting (*exhereditatio*) were developed.

*extranei heredes*: those heirs who were not *sui* or *necessarii heredes* i.e. subject of the testator's *potestas* upon his death. Unlike the latter category, these heirs had to expressly accept the inheritance before it passed to them.

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F

*factio testamenti*: the capacity to make a will (t.f. activa), to partake in the process of will-making or to be a beneficiary under a Roman will (t.f. passiva).

*familia*: the Roman family unit, which not only included the *Paterfamilias*, but also his wife, children, dependants and slaves.

*fasces*: a ceremonial bundle of rods with an axe at its centre - a vestige of the period of the Monarchy - that symbolised the *imperium* of magistrates.

*ferruminatio*: a form of *accessio*, the welding together of objects belonging to different owners.

*fideicommissum*: originally merely an informal request by the testator to an heir or a legatee to permit a third party to enjoy some benefit, but by the time of Augustus it had become legally enforceable.

*fiscus*: provincial revenue offices created during the reign of Augustus to act independently from the state treasury in Rome (*aerarium*). In the mid first century AD, imperial reforms consolidated these provincial *fisci* into the *fiscus caesaris* which in time replaced the *aerarium* as the state treasury.

*formula*: the crux of the formulary procedure that contained the entire programme of litigation. Each action (except those granted ad hoc by the Praetor) had its own standard formula listed in abbreviated format in the Praetorian edict. These could be adapted to take specific circumstances into account.

*fragmenta*: a fragment.

*frangere*: Litt. to break. One of the “harm-verbs” occurring in chapter 3 of the Lex Aquilia on wrongful damage to property.

*furiosus*: a mentally-ill person.

*furtum*: the Roman delict of theft.

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G

*gens*: a group of families descended from a common ancestor and sharing the same name.

*gestor*: a term occurring in *negotiorum gestio* and referring to the person who manages the affairs of another without instruction.

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H

*habitatio*: one of the personal servitudes. It was the right to live in the house belonging to another. Justinian regarded it as a personal servitude and he granted the holder of *habitatio* the right to rent the house to another.

*hereditas*: an inheritance.

*heres* (*heredes* pl.): an heir.

*honestiores*: persons of noble birth. The distinction between persons of noble and humble birth was particularly important in criminal law as it dictated the severity of the penalty.

*humiliores*: persons of humble birth.

*hypotheca*: a form of real security that developed, probably in the classical period, and shared various similarities with pledge (*pignus*). The main difference between hypothec and pledge was, however, that in the former possession of the object did not have to be transferred to the creditor. Hypothec therefore came to be known as “pledge without possession”.

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I

*imperium*: a comprehensive term used to describe the constitutional, administrative, legal and military power of senior magistrates in the republican hierarchy. In the empire, the term came to be used to signify the powers of the emperor.

*impubes* (*impuberes* pl.): young children who had not yet reached the stage of puberty (boys until their fourteenth year, girls at the end of their twelfth year).

*incerta persona*: an unspecified person – a term sometimes found in Roman wills.

*indefensus*: a person who failed to defend an action brought against him or through his negative attitude failed to co-operate. The appropriate penalty was *missio in possessionem*.

*infames*: people who have been branded with *infamia*. The esteem of such persons not only diminished in the eyes of Roman society, but they were also legally barred from holding certain offices and from bringing a civil or criminal action in a court of law.

*infamia*: lack of honour and integrity/disgrace/ill repute.

*ingenuus* (*ingenui* pl.): a freeborn person.

*iniuria*: a delict that developed from the Twelve Tables, where it was mainly concerned with physical injury to the person of another, by way of praetorian intervention to become a delict with a wide scope of application that included any deliberate infringement of the good name or reputation of another. It was also used in the realm of delict to denote that an act had been committed “wrongfully”.

*institutio heredis*: the institution of an heir, an indispensable clause found in any Roman will.

*insula*: Litt. an island, but also used when referring to a tenement building.

*intentio*: that part of the *formula* containing the foundation of the action as well as the subject-matter of the claim.

*inter amicos*: between friends.

*inter vivos*: among the living.

*interdictum*: a praetorian remedy designed to achieve rapid results. The plaintiff stated his claim and, after the legal basis of the claim had been investigated, the Praetor issued an interdict (i.e. a prohibition directed at the defendant). If the defendant obeyed this order, litigation was not required. However, if the defendant disregarded the order or challenged it, the matter went to trial. Interdicts were classified according to their purpose.

*interpretatio*: the intellectual process, fundamental to the growth of Roman law, whereby legal rules or norms were explained and interpreted by the jurists to discover their true meaning.

*intestabiles*: certain classes of people (e.g. those convicted of libel) who were barred from being witnesses in court or from acting as witnesses in ritual transactions (*mancipatio*).

*in ius vocatio*: see *vocatio in ius*.

*iudex qui litem suam fecit*: Litt. a judge who has made a case his own. One of the quasi-delicts which enabled a party to sue a judge for his handling of a trial.

*iudex*: a lay judge in a civil case.

*ius (publice) respondendi*: a right granted by Augustus to certain jurists to give authoritative opinions in the name of the emperor on questions of law.

*ius abstinendi*: the right given by the Praetor to *sui et necessarii heredes* to refuse the inheritance.

*ius accrescendi*: where a co-heir could not or did not want to inherit, his share was proportionally divided amongst the remaining heirs.

*ius civile*: the law applicable to Roman citizens only.

*ius edicendi*: the right given to certain magistrates by virtue of their *imperium* to produce edicts.

*ius gentium*: this term broadly referred to those institutions that the Roman legal system shared with other legal systems of the ancient world e.g. slavery, contract of sale. A narrower definition of the term is that body of legal rules that governed relations between Roman citizens and foreigners. The main agent in the development of this body of rules was the Praetor through his edict.

*ius honorarium*: a body of law built upon the right of certain magistrates to issue edicts. The edicts of the Praetor constituted an important component of the *ius honorarium*.

*ius strictum*: strict law.

*ius tollendi*: the right to remove improvements. A person who held an object belonging to another by virtue of an established right (.e.g lease) was entitled to remove any improvements to the object when said right expired, providing that that the object was not damaged in the process.

*iusiurandum liberti*: the oath of the freedman to render certain services to his former owner.

*iusta causa*: valid reason/just cause.

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L

*laesio enormis*: a measure whereby a contract of sale could be avoided on account of huge loss (*laesio enormis*). The seller could terminate the contract and reclaim the object of sale if the purchase price was less than half the value of the thing sold. There is support for the view that this remedy was introduced by Justinian. The terminology is not Roman.

*Latini Prisci*: the Italian tribes of Latin origin who had been granted Roman citizenship.

*legatum*: a legacy of a specific object/transaction given by the testator in his will to someone.

*leges caduciariae*: where it had been established that no heirs existed, the estate became *bona vacantia* and was gifted to *fiscus* in terms of the *leges caduciariae* (*Lex Iulia de Maritandis Ordinibus* and the *Lex Papia Poppaea*).

*legis actiones*: the law of procedure in the archaic period based on various actions at law (*legis actiones*). This term is potentially derived from the fact that most of these procedures seem to have originated in statute (the Twelve Tables and other subsequent statutes), but there is support for the view that certain of these procedures originated in custom prior to the Twelve Tables.

*legitimus heres* (*legitimi heredes* pl.): those who had a statutory claim to inherit.

*lenocinium*: enticement/pandering/pimping.

*lex* (*leges* pl.): a law promulgated by a competent authority (*comitia curiata/comitia centuriata/ concilium plebis*) following a discussion of its provisions. Roman legislation only fulfilled a limited role in the development of private law (with the exception of the Twelve Tables). It was used to solve pressing social or political problems and generally had narrow application. Furthermore, litigants using the provisions of a piece of legislation as the basis of their claim had to follow its wording precisely. A distinction was drawn between laws that were initially proposed as bills by officials with the required authority (*lex rogata*) and those that were drafted by commissions and introduced to the assemblies with the authority of the senate (*lex data*).

*libellus*: a word capable of many different meanings. Litt. a booklet, pamphlet. In Roman law, a *libellus* could be a petition to the emperor by an individual, the response to which was drafted by the imperial office *a libellis* and signed by the emperor.

*libertinus* (*libertini* pl.): a manumitted slave.

*libripens*: *mancipatio* was an act *per aes et libram* (with bronze (ingots) and a pair of scales). The scales and symbolic weighing of the bronze ingots were remnants from the archaic period, before the introduction of coined money in Rome, when *mancipatio* signified an actual sale. The person holding the scales during the *mancipatio* act was called a *libripens* (Litt. holder of the scales).

*litis contestatio*: joinder of the issue. In the *legis actio* procedure *litis contestatio* consisted of a solemn verbal recitation of the action attested to by witnesses. In the formulary procedure, these requirements had disappeared and mere informal consent of the litigating parties was required.

*longa manu*: Litt. with the long hand. A form of *traditio* whereby the object was merely pointed out (e.g. land) instead of transferring actual physical control of it.

*longi temporis praescriptio*: a legal defence developed in imperial law whereby long-term possession of provincial land (incapable of *usucapio*) and later movables were protected from the *vindicatio* of the owner.

*lucrum cessans*: a medieval term used to describe a notion prevalent in Roman law that loss of a reasonable profit or earnings could also be claimed as part of a claim for damages/compensation.

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## M

*mancipatio*: a ritualistic formal act whereby ownership of certain classes of property (*res Mancipi*) was transferred. The act could also be used to transfer power, akin to ownership, over persons.

*mandatum* (*madata* pl.): one the consensual contracts whereby one person (the mandatory) instructed another (the mandatarius) to act on his behalf without compensation.

*manus iniectio*: The term referred to a ritual “laying-on of hands” accompanied by formal words. It could either be used to enforce a summons or for the execution of a debt.

*manus*: Litt. a hand. The term was used to convey the notion of the husband's power over his wife if the parties were married *cum manu* (with the hand).

*matrimonium*: a marriage.

*metus*: duress – one of the praetorian delicts. The use of force to compel someone enter into a legal act was a delict.

*minor*: persons who had already reached the age of puberty, but who were younger than twenty-five. Under Roman law, persons younger than 25 were regarded as minors and consequently had limited legal capacity.

*missio in possessionem*: a procedural device developed by the praetor whereby specific goods of an unsuccessful litigant, who refused to honour the court's judgement, could be seized.

*mortis causa*: on account of death. a gift given *mortis causa* was given with the expectation that the acceptor would survive the donor. Ownership of the gift could either be transferred immediately e.g. where the donor feared that death was imminent or it could be postponed subject to the donor's death.

*mos maiorum*: the custom of the ancients.

*mulier*: a wife/female.

*municipium* (*municipia* pl.): a town/city (mostly in Italy) the inhabitants of which had been granted Roman citizenship, but was governed by its own laws.

*munus* (*munera* pl.): a service/an office/a duty.

*mutuum*: one of the real contracts, a loan for consumption.

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N

*negotiorum gestio*: one of the quasi-contracts, where one person (the *gestor*) managed the affairs of another without the latter's consent or permission.

*nominatio iudicis*: a clause added to the formula in which a specific judge was nominated.

*nota censoria*: a comment added by the censors to the census list in which their disapproval with the behaviour of an individual was expressed.

*novella (constitutiones)*: the term used to denote imperial enactments of Justinian that were delivered after the publication of the Codex.

*nuntiatio*: a notice/declaration/announcement.

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O

*oblatio curiae*: a testamentary measure originating in late classical law whereby illegitimate children were given the right to succeed to their father where no other legitimate children existed. This measure was related to attempts to attract people to the unpopular and financially cumbersome office of *decurio*.

*obsequium*: a duty of respect and reverence owed by the freed slave to his former owner.

*occidere*: Litt. to kill. One of the "harm-verbs" occurring in chapter 1 of the *Lex Aquilia* on wrongful damage to property.

*occupatio*: one of the *ius gentium* modes of acquisition of ownership. Where a person seized an object without owner (*res nullius*) he became the owner of that object.

*ops*: aid or assistance.

*opus (opera pl.)*: a task.

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P

*pactum (pacta pl.)*: agreements for which no action were available under the *ius civile*, but which were eventually made actionable by the Praetor or through imperial legislation.

*parricidium*: homicide (of a *paterfamilias*/father of a blood relative).

*paterfamilias*: the oldest living male relative of a particular Roman *familia*.

*peculium* (*peculia* pl.): a separate fund of property given to the slave or son in power that they were allowed to administer themselves.

*peculium castrense*: money/property acquired by sons in power while on military service. Augustus and later emperors granted these sons, who were technically incapable of owning property, the right to dispose of their *peculium castrense* by way of a will. Eventually in post-classical law, this privilege was extended to property obtained by certain civil servants and clerics while in service (*peculium quasi castrense*).

*peregrinus* (*peregrini* pl.): a foreigner. A citizen of a foreign state.

*permutatio*: a change/exchange/barter.

*pictura*: a form of *accessio* affecting movable property. It dealt with ownership-issues arising from the case where one person painted on the canvass of another using his own paint.

*pignoris capio*: taking of a pledge e.g. in the *legis actio per pignoris capionem*. It could either form part of the magistrate's coercive power or it could be used as a form of execution.

*pignus*: a form of real security whereby the debtor handed over an object to the creditor to act as security for the fulfilment of his obligation.

*plebiscitum* (*plebiscita* pl.): decisions of the *concilium plebis*, which were given the general force of law through a series of enactments culminating in the *Lex Hortensia* of 287 BC.

*plumbatura*: an exception to the rules of *accessio*. Where objects belonging to different people were welded together (*ferruminatio*), they were regarded as being inseparably attached and the rules of *accessio* would have to be used to determine ownership of the newly formed object. Where objects belonging to different owners had been soldered together, on the other hand, each owner retained ownership of his part of the newly formed object, since soldering was not regarded as sufficient to join the objects together in a permanent manner and the rules of *accessio* therefore did not apply.

*portio*: a share/portion (usually of an inheritance).

*possessio bonorum*: see *bonorum possessio*.

*possessio*: the factual power over an object combined with the requisite mental

intention. Classical Roman law distinguished possession derived from the *ius civile* (i.e. *possessio civilis*) and possession derived from Praetorian law (merely known as possession or *possessio ad interdicta* because this form of possession was protected by Praetorian interdicts).

postliminium: return to a prior legal status. A freeborn Roman citizen, wrongly enslaved by the enemy, could claim the benefit of the *ius postliminii* (the right of *postliminium*). His rights and status as a Roman citizen were suspended during the period of his captivity and were restored on application once he returned to Roman territory.

*postulatio*: a legal claim or request to the Praetor to be allowed to bring an action of law.

*postumi*: children born within 10 months after the death of their father (the testator).

*potestas*: a term capable of many meanings. Its primary meaning is that of the legal power exercised by the *Paterfamilias* in the realm of private law over his *familia*.

*praefectus praetorio*: an imperial office created under Augustus to act as the head of his personal bodyguard. By the third century AD, the function of this office had changed and the holders (there could be up to four at any given point) exercised great political, administrative and military power.

*praescriptio*: a procedural device developed in post-classical law that replaced the *exceptio* in the *formula*. The term was also used to describe a form of prescriptive acquisition of ownership of property (*longi temporis praescriptio*).

*precarium*: a “loan” on request. The use and enjoyment of an object was given to another, but it could be revoked at any time.

*princeps*: the emperor.

*probatio operis*: the final approval of the “work” in *locatio conductio operis*.

*procurator*: a form of legal representation that arose in civil procedure during the Republic whereby a party to a lawsuit could use a *cognitor* or *procurator* to act on his behalf. This practice was later extended to other areas of commercial life (business managers).

*prodigus*: a spendthrift. Although these persons were regarded as having full legal capacity, restrictions were imposed upon their capacity to transact from as early as the Twelve Tables.

*publicani*: tax-farmers.

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Q

*quaestiones perpetuae*: a system of standing criminal courts consisting of senators (later *equites*) presided over by a Praetor that developed during the Republic.

*querela inofficiosi testamenti*: a procedure developed during the late Republic to avoid the provision of a will that did not adequately provide for the deceased's immediate family e.g. where an heir who would have legitimately shared in the inheritance if the testator had died intestate, was wrongfully omitted from the will.

*Quirites*: the etymological origins of this word are obscure. Some scholars identify it with the name originally given to the inhabitants of the Sabine town of *Cures*. According to these scholars, the Romans began to use the term to refer to the populace when the Sabine culture was absorbed into Roman culture during the reign of Romulus. Others maintain that the term originally meant "bearers of the lance" or that it was somehow related to the word *curia*.

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R

*rapina*: one of the Roman delicts, robbery, that developed during the late Republic from an existing delictual offence of violence perpetrated by gangs.

*receptum*: an informal assumption of a guarantee for a specific effect or specific result e.g. *receptum argentarii* whereby a banker "guaranteed" that a third party would be paid, either by himself or another. The term is also used in Roman law to express the agreement to submit to arbitration (*receptum arbitri*) and the "guarantee" provided by the captain of a ship, an innkeeper or a stable keeper for the belongings of third parties.

*regula*: a rule (of law). A general principle of abstract nature originating from jurisprudence or Imperial enactments.

*replicatio*: that portion of the *formula* in which the plaintiff raised a plea designed to counteract the defendant's *exceptio*.

*repudium*: the unilateral repudiation of a betrothal or marriage in archaic Roman law where the betrothed/wife was suspected of adultery or other serious misconduct.

*res*: a thing/object.

*res mancipi*: a category of things that were presumably valuable in an agrarian society. Owing to their value, any transfer of ownership of these things had to be done in a ritual public form using a prescribed act (e.g. *mancipatio*).

*res nullius*: property belonging to no-one. Ownership could be acquired by way of *mancipatio*.

*res religiosae*: burial places and tombs consecrated to the gods of the underworld. Things subject to divine law and therefore incapable of private ownership.

*res sacrae*: a term used in the classification of “things” to describe that category of objects, incapable of private ownership, which were consecrated to the gods above by way of statute/senatorial decree/Imperial decree such as temples, statues, altars and the like.

*res sanctae*: these were non-religious objects which stood under divine protection because they had been consecrated e.g. city walls, city gates and the boundaries between private land.

*res suspensae*: one of the quasi-delicts. The owner of the building could be held liable for things suspended over a common road where many people passed by.

*rescriptum* (*rescripta* pl.) *principum*: answers to questions of law arising from actual or hypothetical lawsuits addressed to the Emperor by individuals or bureaucratic officials. There was a degree of controversy whether these were generally binding and could therefore modify the law.

*responsum* (*responsa* pl.): a form of juristic writing/answers to questions of law. The Emperor Augustus granted the right (*ius publice respondendi*) to give authoritative advice on matters of law (*responsa*) to a select group of prominent jurists. Initially this right seems to have been given only to members of the senatorial class, but it was extended to the equestrian classes by the reign of Tiberius. Hadrian gave the *responsa* of those jurists who had the *ius respondendi* the force of law, but he also seems to have abandoned the idea of the *ius respondendi*.

*restitutio in integrum*: a praetorian remedy used in specific circumstances e.g. where the presence of duress, fraud, sometimes error affected or threatened to affect the performance of an obligation. Once the Praetor had established that such circumstances were present, he granted restitution to erase the effects of these circumstances on the performance of the obligation.

*restitutio natalium*: a freedman could acquire the status of a freeborn person by way of an imperial act (*restitutio natalium*). The consent of the patron and his children was generally required as their rights over the freedmen would cease to

exist.

*rumpere*: see *corrumpere*.

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S

*sacramentum*: a fixed sum of money waged by both parties using the *legis actio sacramento* to support the truth of their claim. Once the case had been reached, the unsuccessful party forfeited his wager to the treasury. There is support for the view that the *sacramentum* originated from a type of oath whereby parties swore to the truth of their claims.

*senatusconsultum* (*senatusconsulta* pl.): decisions of the senate on matters tabled by a magistrate with *imperium* which in theory did not have the force of law during the early Republic, but were followed in practice. They were regarded as merely advisory and had to be incorporated into the edict of a magistrate to attain the force of law. By the end of the Republic, decisions of the senate were recognised as an independent source of law.

*sententia*: insight/judgement/point of view in juristic writing. In civil procedure this term was also used to describe the final judgement in a civil trial.

*separatio bonorum*: a praetorian measure introduced to separate the estate of the heir from that of the testator. This measure served a twofold purpose. It could either be granted to protect a slave (*heres necessarius*), who had been appointed heir of an insolvent estate and who could not refuse the inheritance, or it could be granted to protect the creditors of a wealthy estate where the heir was insolvent.

*servi corruptio*: a delictual action introduced by the Praetor to punish those who purposely made a slave less valuable by physical, mental or moral deterioration.

*servus*: a male slave

*sesterces*: a small silver coin minted during the Republic, originally worth two and a half asses, or one fourth of a *denarius* (its weight and value was later reduced). It was the ordinary coinage in which large sums were expressed.

*societas*: the consensual contract of partnership – the union of two or more individuals to pursue a common venture using their combined assets.

*specificatio*: one of the *ius gentium* modes of acquisition of ownership - the creation of a new thing out of raw material belonging to another without his authorisation e.g. the production of wine from grapes. There was some debate between the Sabinians and the Proculians whether the owner of the raw material

retained his ownership of the newly formed product. This problem was resolved in Justinianic law by the introduction of an equitable solution based on the ability to reduce the newly formed product to its raw components.

*spes*: expectation/hope.

*stipulatio*: an oral promise using prescribed words that could be used to secure performance of any obligation as long as it was physically possible and not illegal. The creditor (*stipulator*) asked the debtor (*promissor*) whether he promised a specifically defined performance. The *promissor* answered in the affirmative using the set words. Both parties had to be physically present, the question and answer had to be oral, consecutive and the words had to match exactly.

*stuprum*: defilement/dishonour/disgrace/debauchery/violation. Illicit intercourse with an unmarried woman or an honourable widow.

*subscriptio*: written responses to petitions addressed to the emperor by private individuals were usually prepared by the office *a libellis* and signed by the emperor (*subscriptio*). This practice of attesting the validity of a document using a signature exhibits some similarities with Hellenistic practices and it was also employed in other areas of Roman law. In the Justinianic will (*testamentum tripertitum*), for example, the testator and witnesses had to sign the will for the purposes of identification (*subscriptio*).

*substitutio*: the institution of an heir in a Roman will could be made subject to various suspensive conditions. One such condition was the institution of an alternative heir (*substitutio*). Two forms of substitution existed of which the most common was *substitutio vulgaris* – an alternative heir was appointed in the event that the person instituted as the primary heir failed to become the heir (e.g. because he died before the testator or refused the inheritance). The other form, *substitutio pupillaris*, was used when a testator, who had appointed a young child under the age of puberty as heir, instituted an alternative heir to inherit from the child in the event of the latter's unforeseen death before reaching puberty.

*sui iuris*: Litt. of his/her own power/right. This term describes any person in Roman law who was free from the power of another. There were generally only two categories of *sui iuris* persons in Roman law, namely a *paterfamilias* or single men/women without a *paterfamilias*.

*superficies*: building/construction work. This term features in an important maxim relating to the *accessio* of movable and immovable property – *superficies solo cedit*. [ownership of] a building cedes to the land.

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## T

*tabula*: Litt. a tablet or a piece of wood. The term is used in legal sources to describe a wax-covered writing tablet used for personal correspondence or the boards on which the provisions of a statute were sometimes copied.

*talio*: retaliation – a form of private vengeance. The principle of *talio* dictated that a victim (or his family) could only inflict injury upon his attacker in proportion to the injury suffered.

*textura*: a form of *accessio* whereby the property of one party is woven into that of another e.g. where golden thread belonging to one party is woven into the garment of another.

*traditio*: the most common *ius gentium* mode of acquisition of ownership. It was the informal transfer of physical possession of an object (usually *res nec mancipi*) by the owner based on a *iusta causa* which also caused the transfer of ownership. Variations on the requirement of physical delivery were introduced to accommodate specific circumstances.

*transactio*: a compromise or an informal settlement of a legal dispute by making reciprocal concessions in order to avoid litigation.

*tutela*: a system of guardianship developed to manage and protect the personal and financial interests of young people under the age of puberty and women, if *sui iuris*, because of the limited legal capacity.

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## U

*urere*: Litt. to burn. One of the “harm-verbs” used in chapter 3 of the *Lex Aquilia*.

*usucapio*: one of the original modes of acquisition of ownership. It was the acquisition of ownership of (mostly) immovable property by using it for a period of time.

*usus*: a word capable of many meanings in Roman law. The term was used to describe one of the forms of marriage *cum manu*. A woman became subject to the *manus* of her husband if she cohabited with him uninterruptedly for a period of one year. The term was also used to describe a personal servitude which entitled its holder to use the object of the servitude, but without the benefit of drawing fruits from it.

*uxor*: wife.

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## V

*vadimonium*: a formal promise (in the form of a stipulation) by the defendant in the context of an ongoing trial to appear in court.

*venditio bonorum*: see *bonorum venditio*.

*vindex*: a third party who intervened to release the debtor from *manus iniectio* in the *legis actio* procedure. In the formulary procedure a *vindex* could also be used to guarantee that the defendant would appear in court.

*vindicatio*: this legal measure (also known as the *rei vindicatio*) was mainly used to defend *ius civile* (or quiritary) ownership of an object (movable or immovable). It was the action used by the owner, who was not in possession of his property, to reclaim it from third parties. The action had a twofold purpose. It served to determine ownership of the object. Once this had been established, it could be used to reclaim the property from any third party in whose possession it may be or, if the object itself had been lost or destroyed, the monetary value of the object.

*vindicta*: a ceremonial rod or staff also known as a *festuca* used in the manumission ceremony *per vindictam* to touch the head or body of the slave thereby signifying that he has been granted his freedom.

*vir*: a man/husband.

*vis maior*: superior force which cannot be resisted or controlled.

*vituperatio*: blame/censure. This was a form of ritual verbal abuse commonly used by advocates in a lawsuit to discredit the person of the defendant.

*vocatio in ius*: A summons (*in ius vocatio*), in which the plaintiff instructed the defendant to appear in person before the Praetor or to present a *vindex*. Elements of the archaic right of self-help in the Twelve Tables remained in this form of summons and a plaintiff could compel an unwilling defendant to appear using a praetorian penal action.

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