Lytae. Students in the fourth year of studies in the law schools. After Justinian's reform of the law curriculum, they studied ten books of the Digest concerned with family law, guardianship and law of inheritance.

Berger, *RE* 14; Cantarelli, *RendLinc* Ser. 6, vol. 2 (1926) 20.

M

Macer, Aemilius. A jurist of the first half of the third century, author of monographs on procedure, military law, and provincial governorship.

Jörs, *RE* 1 (*s.v. Aemilius*, no. 86).

Machinatio. (From *machinari.*) Appears in the definition of *dolus malus* as a "trick (ruse) used to deceive, to cheat, to defraud another" (D. 4.3.1.2).

Macula. A taint of infamy or of immoral behavior.

Maecianus, Volusius. A jurist of the middle of the second century, law teacher of Marcus Aurelius. and later, after a brilliant official career, member of the imperial council. His principal work was *Questiones de fideicommissis* (concerning *fideicommissa*), in 16 books. He wrote also on penal procedure and a monograph on the *Lex Rhodia.*

H. Krüger, *St Bonfante* 2 (1930) 314; Levy, *ZSS* 52 (1932) 352.

Magia. Sorcery, the exercise of magical arts. *Magia* was a crime when it was performed with an evil intention to harm or defraud another. The term covered various kinds of sorcery, such as the use of magic formulae, nocturnal sacrifices made in order to produce supernatural results, the use of magic liquids, and the like. Penalty for sorcery was death, for both the sorcerer and his associates. Possession of magic books was forbidden and punished by death or relegation; the books were burnt in public. Syn. *magica ars.*—See FRUGES EXCANTARE, OCCENTARE, MATHEMATICI.

Kleinfeller, *RE* 14; Hopfner, *ibid.* 301; Hubert, *DS* 3; P. Huvelin, *Magie et droit individuel. Année sociologique* 1905–6; Stoicescu, *Mél Cornil* 2 (1926) 455; Martroye, *RHD* 9 (1930) 669; C. Pharr, *TAmPhilolA* 63 (1932) 269; E. Massonneau, *La magie dans l'antiquité romaine*, 1934; V. A. Georgescu, *La magie et le dr. rom., Revista clasica* 1–2 (Bucharest, 1939–40); Cramer, *Sem* 10 (1952).

Magica ars. See MAGIA.

Magis. More. The term is applied in various phrases, such as *magis est, placet, videtur, dicendum est*, etc., to give preference to one legal opinion over another (= it is preferable, more correct, more proper to say that . . .). The compilers of the Digest often use such an expression to cut short a discussion on a controversial matter and to give a solution without any further reasoning.

Guarneri-Citati, *Indice*[2] (1925) 51 (Bibl.).

Magister. A general term (title) indicating a person who exercises high (or the highest) functions in an organization, association, or a public office. For the various *magistri*, whose particular function is normally indicated by the specification of the body in which they function as a *magister*, see the following items. *Magister* is also a teacher "in any field of learning (*cuiuslibet disciplinae praeceptor*)," D. 50.16.57 pr. The services of teachers were reckoned among *operae liberales* and could not be the object of contract of hire (see LOCATIO CONDUCTIO OPERARUM). Teachers enjoyed exemption (*immunitas. vacatio*) from certain public charges (*munera civilia*). The emperor Constantine considerably enlarged the privileges of *professores litterarum* and protected them against "vexation."—C. 10.53.—See IMMUNITAS, OPERAE LIBERALES, EDICTUM VESPASIANI.

Cagnat, *DS* 3; De Dominicis, *NDI* 8; A. E. R. Boak. *The R. magistri in the civil and military service, Harvard Studies in Class. Philology* 26 (1915); *idem, Univ. of Michigan Studies, Humanistic Ser.* 14 (1924) 123; Herzog, *Urkunden zur Hochschulpolitik der röm. Kaiser, SbBerl* 1935, 967; S. Riccobono, Jr., *AnPal* 17 (1937) 50; T. O. Martin, *Sem* 10 (1952) 60.

Magister admissionum. The master of ceremonies in the imperial court.—See ADMISSIONES.

Magister auctionis. The manager of a public auction. —See AUCTIO, BONORUM VENDITIO, MAGISTER BONORUM.

Magister bonorum. A man appointed by the creditors of an insolvent debtor to prepare and direct the sale of the debtor's property.—See BONORUM VENDITIO.

Solazzi, *Concorso dei creditori* 2 (1938) 70.

Magister census (censuum, a censibus). The highest officer among the CENSUALES. He was concerned with matters of taxation of the senators. He also intervened in the opening of a testament.—See APERTURA TESTAMENTI.

Seeck, *RE* 3, 1191.

Magister census. An official who kept a register of students of liberal arts who came to Rome for studies. He supervised their conduct and took care for their moral discipline. For bad behavior students were publicly flogged, expelled from Rome and sent back to their place of origin.

Seeck, *RE* 3, 1192.

Magister collegii. See CURATOR COLLEGII. He was the leading functionary of a *collegium* both in private associations and in colleges of public officials and priests. Some *collegia* had several *magistri* whose attributions in the management were different. They were elected for five years, hence their appellation *"quinquennales."*

Magister creditorum. See MAGISTER BONORUM.

Magister epistularum. The chief of the division of the imperial chancery concerned with the correspondence of the emperor.—See AB EPISTULIS, EPISTULAE, SCRINIUM EPISTULARUM.

Magister equitum. The commander of the cavalry. He was the deputy of the DICTATOR who appointed him. He was the first-in-command when the dictator was absent. For the *magister equitum* in the post-

Constantinian epoch, see MAGISTER MILITUM.—See MAGISTER POPULI.

Westermayer, *RE* Suppl. 5, 631; Cagnat, *DS* 3; Momigliano. *Bull. Commissione archeol. comunale di Roma* 58 (1930) 35.

Magister iuvenum (iuventutis). The head of the organization of young men of noble families (*iuvenes*) in Italian cities. In some places his title was *praetor iuventutis*.—See IUVENES.

Magister libellorum. The chief of the bureau of the imperial chancery concerned with *libelli, scrinium libellorum*.—See A LIBELLIS.

V. Premerstein, *RE* 13, 20.

Magister memoriae. The chief of the bureau *a memoria* of the imperial chancery. "He dictates all *adnotationes* and sends them out; he gives also answers to petitions (*preces, Notitia Dign. Occid.* XVII, 11).—See A MEMORIA, ADNOTATIO.

Seeck, *RE* 2A, 896; Fluss, *RE* 15, 656.

Magister militum. From the time of Constantine the emperor as the supreme commander of the army was assisted by one *magister militum* or two *magistri* (*magister utriusque militiae*), one for the infantry (*magister peditum*), the other for the cavalry (*magister equitum*). The number of the *magistri* increased with the reform of the administration of the empire and its division into praefecturae (*magister militum per Orientem, per Illyricum, per Thraciam*, etc.).—C. 1.29; 12.4.

Cagnat, *DS* 3, 1526; R. Grosse, *Röm. Militärgeschichte*, 1920, 180.

Magister navis. One "who is entrusted with the care of the entire ship" (D. 14.1.1.1). See EXERCITOR NAVIS. His agreement with the owner of the ship was either a contract of hire (*locatio conductio operarum*) or a *mandatum* when he assumed the duties gratuitously.

A. E. R. Boak, *Univ. of Michigan Studies, Human. Ser.* 14 (1924) 134; Ghionda, *RDNav* 1 (1935) 327.

Magister officiorum. In the later Empire, the highest official among the court offices (*officia palatina*) with extensive and manifold functions. He was entrusted with the supervision of certain court bureaus and the secretariat.—C. 1.31; 12.6.—See OFFICIUM, OFFICIALES, SCRINIA.

De Dominicis, *NDI* 8, 2; Boak, *RE* 17, 2048; *idem, The Master of the Offices, Univ. of Michigan Studies, Human. Ser.* 14 (1924).

Magister officiorum (operarum). In private service. Large private estates employing a great number of slaves were divided into units each with a separate management (*officium*) headed by a *magister*.—C. 1.31; 12.6.—See SCHOLAE PALATINAE.

Magister pagi. See PAGUS.

Boak, *Univ. of Michigan Studies, Human. Ser.* 14 (1924) 136.

Magister peditum. See MAGISTER MILITUM.

Cagnat, *DS* 3.

Magister populi. In the Republic, the title of a DICTATOR as the commander of the army, whereas the commander of the cavalry was the *magister equitum*.

Westermayer, *RE* Suppl. 5, 633.

Magister rei privatae. See PROCURATOR REI PRIVATAE. From A.D. 340 his title is COMES RERUM PRIVATARUM.

Magister sacrarum cognitionum. The head of the imperial bureau concerned with judicial matters brought before the imperial court (from the end of the third century).—See A COGNITIONIBUS.

Magister scrinii. The head of any bureau in the imperial chancery in the later Empire. His deputy was *proximus scrinii*.—See SCRINIUM.—C. 12.9.

Magister societatis publicanorum. A leading personality in the association of tax farmers.—See PUBLICANI.

Magister universitatis. A *magister* in a corporate body.—See MAGISTER COLLEGII.

Magister utriusque militiae. See MAGISTER MILITUM.

Magister vici. The chief of the local administration of a village, or of a *vicus* in Rome.—See VICUS, REGIONES URBIS ROMAE.

Boak, *Univ. of Michigan Studies, Human. Ser.* 14 (1924) 136; De Robertis, *Hist* 9 (1935) 247.

Magisterium (magisteria potestas). The office of a magister whatever his special functions were. The term is frequent in imperial constitutions. *Magisterium* refers also to the employment of a *magister navis* as well as of a teacher.—See the foregoing items.

Magistratus. Denotes both the public office and the official himself. Magistracy was a Republican institution; under the Principate some *magistratus* continued to exist but with gradually diminishing importance; in the post-Diocletian Empire some former magistracies still exist but reduced nearly completely to an honorific title. The magisterial power is based on two fundamental conceptions, IMPERIUM and POTESTAS, of which the first is the broader one. For the distinction between *imperium domi* and *imperium militiae*, see DOMI. The *imperium domi* was hampered by the right of intercession of magistrates of higher or equal rank, and primarily of plebeian tribunes (see INTERCESSIO). The most characteristic features of the Republican magistracy were the limited duration (one year) and colleagueship since each magistracy was covered by at least two persons (see COLLEGAE) with equal power. Colleagueship meant complete equality of competence and functions; colleagues in office could act in common or divide their functions by agreement. Unilateral action by one magistrate could be stopped by the veto of his colleague. Simultaneous holding of two ordinary magistracies was prohibited; iteration was admitted only after ten years; see ITERATIO. For the tenure of a magistracy later a minimum age was prescribed; likewise the periods, after which the tenure of another higher office was permitted, were fixed by statute; see LEX VILLIA ANNALIS. The magistrates were

elected by the people, namely, those with *imperium* and the censors in the *comitia centuriata*, others in *comitia tributa*. The election of plebeian magistrates was directed by the plebeian tribunes, that of other magistrates by one of the consuls, in exceptional situations by a dictator, an *interrex*, or a military tribune. The candidates had to present themselves personally to the competent magistrate (*profiteri*) who was authorized to accept their candidacy or to reject it, see CANDIDATUS, AMBITUS. Non-citizens, freedmen, individuals branded with infamy, women, persons with certain physical (blindness, lameness) or mental defects were not eligible. During his year of service a *magistratus* could not be removed. Misdemeanor in office could be prosecuted only after the term, hence the tenure of an office for two consecutive years was prohibited. Specific crimes could be committed only by *magistratus* through violation of their official duties; see PECULATUS, REPETUNDAE. The tenure of a public office was considered an honor; for that reason the magistrates did not receive any compensation. Their political influence was, however, of greatest importance; membership in the senate and the possibility to continue the official career (for which a certain sequence was prescribed, see CURSUS HONORUM) and to obtain a high post in the administration of a province were attractive enough to assume the financial charges connected with a higher magistracy (as, e.g., the arrangement of public games, *ludi*). —D. 1.2; 27.8; C. 5.75; 11.35.—For the particular magistrates (consuls, praetors, quaestors, etc.), see the pertinent items; for the auxiliary personnel, see APPARITORES, LICTORES, PRAECO, SCRIBA, VIATORES. See also HONOR, ABACTUS, LEX CORNELIA DE MAGISTRATIBUS, KALENDAE, IUS AGENDI CUM POPULO, IURISDICTIO, POMERIUM, DESTINATIO, ACTIO SUBSIDIARIA, CREATIO, IURARE IN LEGES, EIURARE, NOMINATIO, PROFESSIO, LEX POMPEIA (on candidates), MULTA, COMPARATIO and the following items.

Kübler, *RE* 14; Brassloff, *RE* 4, 1686 (*s.v. creatio*); Lécrivain, *DS* 3; De Dominicis, *NDI* 8; Treves, *OCD*; F. Leiter, *Die Einheit des Gewaltgedankens im röm. Staatsrecht*, 1914; Buckland, *Civil proceedings against ex-magistrates in the Republic*, *JRS* 27 (1937); H. Siber, *Die plebeischen Magistraturen*, 1938; Gonnet, *RHD* 16 (1937) 193; Nocera, *Il fondamento del potere dei magistrati*, *AnPer* 57 (1946) 145; T. R. S. Broughton and M. Patterson, *The magistrates of the R. Republic*, New York, 1951.

Magistratus curules. *Magistratus* who had the right to be seated on a folding ivory chair, *sella curulis*, when acting officially (dictators, consuls, praetors, censors, aedils). The *sella curulis* belonged to their official insignia and was carried about everywhere they had to perform an official act.—See SUBSELLIUM, SELLA CURULIS.

Kübler, *RE* 2A (*s.v. sella curulis*); Chapot, *DS* 4 (*s.v. sella c.*).

Magistratus designati. Magistrates elected for the next term (normally in July) during the whole period which preceded their entering on the official duties (since 153 B.C., January first).—See KALENDAE, RENUNTIATIO.

Magistratus maiores—minores. The *magistratus maiores* were elected by the *comitia centuriata*, the *magistratus minores* by *comitia tributa* (see MAGISTRATUS). The *magistratus minores* were officials of minor importance, they had no *imperium* and were vested with a restricted jurisdiction and some functions in specific fields. The collective denomination for a group of *magistratus* of a lower degree was VIGINTISEXVIRI. The tenure of a minor magistracy opened the way for the quaestorship, the first step in the career of *magistratus maiores*.—See CURSUS HONORUM.

Lécrivain, *DS* 3; Kübler, *RE* 14, 401.

Magistratus minores. See MAGISTRATUS MAIORES.

Magistratus municipales. Magistrates in municipalities (MUNICIPIA) who managed the local administration, finances, and jurisdiction. They were elected by the local assemblies, later by the *decuriones* and from among the members of the municipal council, *ordo decurionum*. The principles of colleagueship were also applied to them as well as the institution of INTERCESSIO. They had no *imperium*.—C. 1.56. —See DUOVIRI IURI DICUNDO, QUATTUORVIRI, QUAESTORES MUNICIPALES, DUOVIRI AEDILES, PRAEFECTI IURI DICUNDO, HONORARIUM, NOMINATIO.

Lécrivain, *DS* 3; Kübler, *RE* 14, 434; E. Manni, *Per la storia dei municipi*, 1947.

Magistratus patricii—plebei. The distinction is based on the circumstance whether a magistracy was accessible only to patricians or to plebeians. In the course of time all magistracies which originally were reserved to patricians, could be obtained by plebeians. Specifically plebeian magistrates were the plebeian tribunes and the *aediles plebis*.—See TRANSITIO AD PLEBEM.

Magistratus populi Romani. Magistrates in Rome; ant. MAGISTRATUS MUNICIPALES.

Magistratus suffecti. Magistrates (chiefly consuls) elected when a magistracy became vacant by death or resignation of the magistrate in office.—See CONSULES ORDINARII.

Magna culpa. "Equal to *dolus* (*dolus est*)," D. 50.16.226.—See CULPA, CULPA LATA, DOLUS.

De Medio, *St Fadda* 2 (1906).

Magnificus (magnificentia). A title of high imperial functionaries in the later Empire.

P. Koch, *Byzantinische Beamtentitel*, 1903, 45; O. Hirschfeld, *Kleine Schriften*, 1913, 672.

Magnitudo. Occurs in the imperial correspondence as a term of address to the highest dignitaries of the Empire ("*magnitudo tua*").

Magus. See MAGIA.

Maiestas. Dignity, supremacy, the greatness of the state (*maiestas populi Romani*). *Maiestas* was also an honorific title of the emperor.—For *maiestas* in

penal law, see CRIMEN MAIESTATIS, QUAESTIO DE MAIESTATE.

Maior. A person higher in official rank.—See MAGISTRATUS MAIORES.

Maior (natu). Older, in particular one who is over twenty-five years of age. Ant. MINOR. MAIOR AETAS = the age over twenty-five.—C. 2.53.

Maiores. Ancendants of a person, from the sixth degree. Generally *maiores* = ancestors, forefathers, when referring to their customs (*mos, mores maiorum*) or their legal opinions (*maiores putaverunt*) and institutions.

H. Roloff, *Maiores bei Cicero*, Diss., Göttingen, 1938.

Mala fides. See BONA FIDES, FIDES. The term *mala fides superveniens* appears in the doctrine of USUCAPIO, i.e., bad faith of the holder of another's thing who at the beginning when he took possession thereof believed in good faith that it belonged to him, but later, before the usucaption was completed, became aware that he had no title to own the thing.

Levet, *RHD* 12 (1933) 1; A. Hägerström, *Der röm. Obligationsbegriff* 1 (1927) 145; 2 (1940) 364.

Mala mansio. See MANSIO MALA.

Malae artes. Syn. *artes magicae*. See MAGIA.

Malae fidei possessio (possessor). See POSSESSIO BONAE FIDEI.

Male. (With reference to legal acts or transactions.) Unlawfully, inefficiently (e.g., to sue), unjustly (e.g., to pass a judgment).

Maleficium. A crime, wrongdoing. It is not a technical juristic term and is used as syn. with both *crimen* and *delictum*. At times it is syn. with *magia*; see MALEFICUS.—See OBLIGATIO EX DELICTO.

Taubenschlag, *RE* 14; Lauria, *SDHI* 4 (1938) 182; Albertario, *Studi* 3 (1936) 197.

Maleficus. (Noun.) Commonly denotes a sorcerer. Syn. *magus*, see MAGIA. In similar connection *maleficus* (adj.) is syn. with *magicus*.—C. 9.18.

Malle. To prefer. The term is applied when a person has a choice between two or more things (in contractual relations or legacies). *Malle* in the meaning of to wish, want (= *velle*) is listed among the words suspected of interpolation since it frequently occurs in later imperial constitutions.

Guarneri-Citati, *Indice*[2] (1927) 55.

Malum carmen. See CARMEN MALUM, INCANTARE.

Malum venenum. See VENENUM.

Manceps. One who at a public auction, conducted by a magistrate, through the highest bid obtained the right to collect taxes (a tax farmer) or custom duties, the lease of public land (*ager publicus*) or other advantages (a monopoly).—In postal organization *manceps* was a post-station master.

Steinwenter, *RE* 14; M. Kaser, *Das altröm. Ius*, 1949, 140; P. Noailles, *Du droit sacré au droit civil*, 1950, 224.

Mancipare. See MANCIPATIO. Syn. *mancipio dare*.

Mancipatio. In historical times a solemn form of conveyance of ownership of a RES MANCIPI, accomplished in the presence of five Roman citizens as witnesses and of a man who held a scale (LIBRIPENS), with a prescribed ritual and the solemn utterance of a fixed formula by the transferee (the buyer when the *mancipatio* involved a sale). The formula was: "I declare that this slave (this thing) is mine under Quiritary law and be he (it) bought by me with this piece of bronze and the bronze scale." The assertion was not denied by the transferor. The transfer of ownership over a RES MANCIPI could be achieved only in this way, otherwise the transferee did not acquire Quiritary ownership, but only possession which might lead to such an ownership through USUCAPIO. The transaction was perhaps originally called *mancipium* (from *manu capere* = to grasp with the hand, which was one of the decisive gestures performed during the act). *Mancipatio* was also applied for other purposes as, e.g., to make a donation, to constitute a dowry, to hand over a thing to another as a trustee, *fiduciae causa* (see FIDUCIA). In all these instances the external aspect of the act was that of a sale although the "price" paid was fictitious, a small coin being given as compensation (*mancipatio nummo uno*). In the further development other legal transactions were performed in the form of *mancipatio* such as the transfer of power over the wife to the husband, emancipating a child (see EMANCIPATIO), making a testament *per aes et libram*, or constituting a servitude. Various clauses might be added to the oral formula of the *mancipatio*, except the restriction of the transfer by a condition or term (see ACTUS LEGITIMI). Such additional declarations of transferor were covered by the term *nuncupatio*. Later, specific duties of the parties were assumed by *stipulatio*. The increasing use of written documents deprived the *mancipatio* of its importance. In Justinian's law it does not appear any more. Mention of it in classical texts, accepted into Justinian's codification, was omitted and substituted by the formless TRADITIO; *mancipare* was replaced simply by *dare*.—See ACTIO AUCTORITATIS, ACTIO DE MODO AGRI, SATISDATIO SECUNDUM MANCIPIUM, NUMMUS UNUS, RAUDUSCULUM.

Kunkel, *RE* 14; Lécrivain, *DS* 3; Volterra, *NDI* 7; Berger, *OCD*; W. Stintzing, *Mancipatio*, 1904; S. Schlossman, *In iure cessio und m.*, 1904; A. Hägerström, *Röm. Obligationsbegriff* 1 (1927) 35, 372; 2 (1940) 301; Huvelin, *ZSS* 50 (1930) 478; D. Hazewinkel-Suringa, *M. en traditio*, Amsterdam, 1932; De Visscher, *RHD* 12 (1933) 603; G. G. Archi, *Il trasferimento della proprietà*, 1934, 79; Leifer, *ZSS* 56 (1936) 136, 57 (1937) 172; S. Romano, *Nuovi studi sul trasferimento della proprietà*, 1937, 55; H. Pfüger, *Erwerb des Eigentums*, 1937, 97; v. Lübtow, *Festschr Koschaker* 2 (1939) 114; K. F. Thormann, *Der doppelte Ursprung der M.*, 1943; M. Kaser, *Eigentum und Besitz*, 1943, 107; *idem, Das altröm. Ius*, 1949, *passim*; Meylan, *Scr Ferrini* 4 (Univ. Sacro Cuore, 1949) 190; *idem, Conflust* 1947 (1950) 173; P. Noailles, *Du droit sacré au droit civil*, 1950, 199.

Mancipatio familiae. The oldest form of a testament made by *mancipatio* through which the testator transfered his property to a trustee (a friend) with an oral instruction (*nuncupatio*) as to how the trustee, who formally was the buyer of the estate, *familiae emptor*, had to distribute it after the testator's death. Since the trustee was the immediate successor (*heredis loco*) and had to convey the single objects to the persons indicated by the testator, this kind of succession was a succession into specific things and not a universal one.—See FAMILIAE EMPTOR, NUNCUPATIO.

Kampa, *RHD* 15 (1936) 142, 413; Leifer, *Fschr Koschaker* 2 (1939) 227; Bruck, *Sem* 3 (1945) 11; C. Cosentini, *Si sui liberi* 1 (1948) 24; Lévy-Bruhl, *RIDA* 2 (= *Mél De Visscher* 2, 1949) 163; *idem*, *Fschr Schulz* 1 (1951) 253; B. Albanese, *Successione ereditaria*, *AnPal* 20 (1949) 164, 294.

Mancipatio fiduciae causa. See FIDUCIA.

Brasiello, *RIDA* 4 (= *Mél De Visscher* 3, 1950) 201.

Mancipatio nummo uno. The conveyance of property through *mancipatio* for a fictitious price (a piece of money) for various purposes (making a donation, constitution of a dowry).—See MANCIPATIO, NUMMUS UNUS.

Kunkel, *RE* 14, 1009; Rabel, *ZSS* 27 (1906) 327; G. Furliese, *La simulazione* 1938. 76.

Mancipatus. The service of a postmaster (*manceps*) in the postal organization; see MANCEPS, CURSUS PUBLICUS.

Steinwenter, *RE* 14.

Mancipi res. See RES MANCIPI, MANCIPIUM.

Mancipio accipiens. The transferee of property in a MANCIPATIO. *Mancipio dans* = the transferor.

Mancipium. Belongs to the earliest juristic terminology. The original meaning (much discussed in literature) is rather obscure—it expressed the idea of power over persons and things—but its later applications show a considerable variance. For its synonymity with *mancipatio* (*mancipio dare*, *mancipio accipere*), see MANCIPATIO. In the technical term *res mancipi* (*mancipii*) there is a reminiscence of the original meaning (a thing taken with the hand in the formal act of *mancipatio*). *Personae in mancipio* (= *in causa mancipii*) are free persons who were conveyed through *mancipatio* to another (*adoptio*, *emancipatio*, *noxae dedidio*). Finally *mancipium* is often syn. with *servus* (a slave).—C. 11.63.—See MANCIPATIO, SATISDATIO SECUNDUM MANCIPIUM.

Humbert and Lécrivain, *DS* 3; Volterra, *NDI* 8; Pampaloni, *Persone in causa mancipii*, *BIDR* 17 (1905); J. Ellul, *Etudes sur l'évolution de la notion juridique du m.*, 1936; Giffard, *Rev. de Philologie*, 1937, 396; Cornil, *Fschr Koschaker* 1 (1939) 404; J. G. A. Wilms, *De wording van het rom. dominium*, Gent, 1939–40, 13; Monier, *RHD* 19–20 (1940–41) 364; K. F. Thormann, *Der doppelte Ursprung der mancipatio*, 1943, 58, 175; Tejero, *AHDE* 15 (1945) 310; P. Noailles, *Fas et ius*, 1948, 144; M. Kaser, *Eigentum u. Besitz*, 1943, 107; *idem*, *Das altröm. Ius*, 1949, 136, 328; De Visscher, *Nouvelles études*. 1949, 193; M. David and H. L. Nelson, *TR* 19 (1951) 439.

Mandare. See MANDATA PRINCIPUM, MANDATUM.

Mandare actionem. See CESSIO.

Mandare iurisdictionem. See IURISDICTIO MANDATA.

Mandare tutelam. To appoint a guardian.

Mandata principum. Judicial and administrative rules or general instructions issued by the emperors to high functionaries of the empire, primarily to provincial governors to be applied by them in the exercise of their official functions. They were binding only in the province for which they were issued. When an imperial *mandatum* affected lower officials or the provincial population, it was made public by an edict of the governor. The jurists did not include the *mandata principum* into the imperial constitutions but mentioned them as a particular group of imperial enactments.—C. 1.15.

Finkelstein, *TR* 13 (1934) 150.

Mandatela. See CUSTODELA.

Mandator. One who orders, commissions another to do something. In the consensual contract *mandatum* *mandator* = is the person on whose order another assumes the duty to perform something without compensation. In penal law *mandator* is the person who orders another to commit a crime.

Mandator causae. One who orders another to denounce or to accuse a third person of a crime. He is responsible for malicious information or accusation made by a *delator* on his order.—See DELATORES.

Mandatum. A consensual contract by which a person assumed the duty to conclude a legal transaction or to perform a service gratuitously in the interest of the mandator or of a third person. The *mandatum* was based on a personal relationship of confidence (friendship) between the parties, it therefore ended by the death of one of them, by revocation by the mandator or renunciation of the mandatary. Gratuity of the service was essential, since if compensation was given, the agreement was a hiring of services (*locatio conductio operarum* or *operis faciendi*). The mandatary could not sue for an honorarium, but he might claim the reimbursement of expenses by an *actio mandati contraria*. The mandator's action against the mandatary for restitution of what the latter gained by executing the mandate or for damages caused by fraudulent acting was the *actio mandati* (*directa*). The actions were *bonae fidei* (see IUDICIA BONAE FIDEI), the condemnation of the mandatary involved infamy. Beyond the field of the contractual *mandatum*, *mandare* and *mandatum* are used in a broader sense of an order or authorization given by one person to another, as e.g., by a creditor to his debtor to pay the debt to a third person, or of a commission given to one's representative to administer his affairs or a specific affair (*negotium*, see PROCURATOR).—Inst. 3.26; D. 17.1; C. 4.35.—See ADSIGNATIO LIBERTI, RENUNTIARE MANDATUM.

Kreller, *RE* 14; Cuq, *DS* 3; Donatuti. *NDI* 8; Lusignani. *Responsabilità per custodia*, 2 (1905); Pampaloni, *BIDR*

20 (1908) 210; Donatuti, *AnPer* 39 (1927) 1; Kreller, *Arch. für civilistische Praxis* 133 (1931); Frese, *St Riccobono* 4 (1936) 397; Pringsheim, *St Betta* 1 (1937) 325; F. Bossowski, *Die Abgrenzung des m. und negotiorum gestio* (Lwów, 1937); Sachers, *ZSS* 59 (1939); Pfüger, *ZSS* 65 (1947) 169; Sanfilippo, *AnCat* 1 (1946–7) 167; *idem. Corso di dir. rom., Il mandato*, Catania, 1947; G. Longo, *Scr Ferrini* 2 (Univ. Sacro Cuore, 1948); Kreller, *ZSS* 66 (1948) 58; Arangio-Ruiz, *Festhr Wenger* 2 (1945) 60; *idem, Il mandato*, 1949; A. Burdese, *Autorizzazione ad alienare*, 1950, 57.

Mandatum generale. A general authorization concerning the administration of all affairs (*universa negotia*) of the mandator.
Peters, *ZSS* 32 (1911) 280.

Mandatum incertum. A *mandatum* in which the object of the mandate is not precisely defined.
Donatuti, *BIDR* 33 (1924) 168; G. Longo, *Scr Ferrini* 2 (Univ. Sacro Cuore, 1942) 138; Arangio-Ruiz, *Il mandato*, 1949, 110.

Mandatum mea (tua) gratia. A *mandatum* "to my (your) advantage," a distinction based on the circumstance whether the *mandatum* is in the interest of the mandator (*mea*) or the mandatary (*tua gratia*). *Mandatum aliena gratia* = a *mandatum* in the interest of a third person. A mandate in the exclusive interest of the mandatary is treated as an advice; see CONSILIUM.
F. Mancaleoni, *M. tua gratia*, 1899; Last, *AnPal* 15 (1936) 252; Rabel, *St Bonfante* 4 (1930) 283; Arangio-Ruiz, *Il mandato*, 1949, 120.

Mandatum pecuniae credendae. An order given a person to lend money to a third person (*mandare alicui ut credat*). It created on the part of the *mandator* the obligation to secure the mandatary against losses from such a transaction. Such a mandate (called by a non-Roman term *mandatum qualificatum*) made the mandator a surety to the mandatary. —C. 8.40; 5.20.
G. Segrè, *RISG* 28 (1900) 227 (= *Scr giur* 1, 1930, 267); Bortolucci, *BIDR* 27 (1914) 129, 28 (1915) 191; G. C. Müller, *Kreditauftrag als m. qualificatum*, Zürich, 1926; C. G. Constadaky, *Le mandat de crédit en dr. rom.*, Thèse Paris, 1932; Last, *AnPal* 15 (1936) 237; Arangio-Ruiz, *Il mandato*, 1949, 118.

Mandatum post mortem. An order which had to be fulfilled by the mandatary (normally the heir) after the death of the mandator. Such a *mandatum* is void, because an obligation could not arise in the person of an heir.
Sanfilippo, *St Solazzi* 1948. 554; Arangio-Ruiz, *Il mandato*, 1949, 142; Rouxel, *Annales Faculté de droit Bordeaux*, 3 (1952) 87.

Manere. To remain. The term is applied to legal situations or remedies (actions), to the status of a person or to a contractual relationship which remain valid as they were (*in sua causa*) in spite of some legal or factual changes which occurred therein.

Manifestare. To make public, manifest. *Manifestari* = to be made evident, apparent. The term is used of imperial constitutions by which a certain legal rule is settled. *Manifestare* and the adj. *manifestus* (*manifestissimus*) are frequent terms in the language of the imperial chancery of the later Empire and of Justinian.

Manifesti (manifestissimi) iuris est. See IURIS EST.

Manifestissimus (manifestissime). Most evident.—See EVIDENTISSIMAE PROBATIONES, PROBATIONES.
Guarneri-Citati, *Indices* (1927) 55.

Manifestum furtum. See FURTUM MANIFESTUM.

Manilius, Manlius. A prominent jurist under the Republic, consul 149 B.C., author of a collection of juristic formularies (known under the name *Monumenta Manliana, Actiones Manilianae*); see FORMULAE. He enjoyed high esteem among his contemporaries who consulted him on the forum and at home.
Münzer, *RE* 14, 1135.

Manipulus. A smaller unit within the legion, composed of one hundred and twenty to two hundred men. Originally there were thirty *manipuli*, each composed of two *centuriae*.—*Manipularius* = a common soldier.
Liebenam, *RE* 6, 1594; Cagnat, *DS* 3, 1051.

Mansio. A post station located on the principal post roads, with quarters for night's lodging of passengers. Syn. STATIO.—See MANCEPS.
Kubitschek, *RE* 14; Humbert, *DS* 1, 1655.

Mansio mala. An instrument of torture (see TORMENTUM) which immobilized the culprit who was bound to a board.
Taubenschlag, *RE* 14.

Mansuetudo. Mildness, clemency. The Christian emperors used to speak of themselves in their enactments "*mansuetudo nostra.*"

Manu iniuriam (damnum) dare. To hurt, to inflict damage by the use of hands.

Manu militari. Through official organs. The term is applied to the execution of judicial orders and judgments in later civil procedure with the assistance of public functionaries.—See REI VINDICATIO.
Cagnat, *DS* 3.

Manubiae. Money obtained from the sale of war booty (see PRAEDA). The sale was directed by the military quaestors and was performed by auction.—See PECULATUS.
Lammert, *RE* 14; Brecht, *RE* Suppl. 7, 919; Vogel, *ZSS* 66 (1948) 408; L. Clerici, *Economia e finanza dei Romani*, 1943, 143, 153.

Manum inicere. See MANUS INIECTIO.

Manumissio. (From *manumittere*.) The release of a slave from the power (see MANUS) of his master by the latter, i.e., "giving freedom, *datio libertatis*" (D. 1.1.4). Originally the slave became not fully free (even as late as second century B.C. the term *servus* is applied to freedmen) and the rights of his former master, the manumitter, were more extensive than in historical times, when the manumitted slave became free, *sui iuris* (independent from paternal

power) and a Roman citizen, except in certain specific cases in which his liberty was somewhat limited. For the forms of *manumissio*, see the following items; for limitations concerning the number of slaves to be manumitted by one master, the age of the slave owner and of the slaves themselves, see LEX FUFIA CANINIA, LEX IUNIA NORBANA, LEX AELIA SENTIA. The pertinent restrictions were abolished or, at least, considerably softened, by Justinian who also generally suppressed the distinctions in the legal status of freedmen which according to earlier statutes depended upon the kind of *manumissio* and the age of the slave. The *manumissio* did not tear all ties between the *manumissor* and his former slave. Even a restricted right of punishment remained from the former IUS VITAE NECISQUE. The freedman was materially independent but could be obligated to services on behalf of his former master (see IURATA PROMISSIO LIBERTI) who moreover, had the right of tutorship over his *libertus* and a right of succession when the latter died without leaving legitimate heirs. —Inst. 1.6; D. 40.1–9; C. 4.14; 7.10; 11; 15.—See LIBERTUS, LIBERTINUS, PATRONUS, TUTELA LEGITIMA, CAUSAE PROBATIO, CONCILIUM MANUMISSIONUM, IUS ACCRESCENDI, LATINI IUNIANI, FAVOR LIBERTATIS ITERATIO, ONERARE LIBERTATEM, INGRATUS, SERVUS DOTALIS.

Weiss, *RE* 14; Lécrivain, *DS* 3 (*s.v. libertas*); De Dominicis, *NDI* 8; S. Perozzi, *Scritti* 3 (1948, ex 1904) 511; F. Haymann, *Freilassungspflicht*, 1905; Lotmar, *ZSS* 33 (1912) 304; Kaser, *ZSS* 61 (1941); De Visscher, *SDHI* 12 (1946) 69 (= *Nouvelles Etudes*, 1949, 117); De Dominicis, *AnPer* 52 (1938), 57–58 (1947–48) 111; Cosentini, *AnCat* 2 (1947–8) 374; Lemosse, *RIDA* 3 (= *Mél De Visscher* 2, 1949) 39.

Manumissio censu. A manumission of a slave through his enrollment in the list of Roman citizens, with the consent of his master, during the operation of the CENSUS by the censors.

Daube, *JRS* 36 (1946) 60; C. Cosentini, *St sui liberti* 1 (1948) 14; Lemosse, *RHD* 27 (1949) 161; De Visscher, *SDHI* 12 (1946) 69; Danieli, *SDHI* 15 (1949) 198.

Manumissio fideicommissaria. A manumission ordered through a *fideicommissum*: a testator requested in his testament the heir or any person awarded by him in his last will to manumit a slave through a formal manumission. The slave did not become free until the manumission was performed and the fideicommissary manumitter became the patron of the slave freed. A senatusconsult under the Principate declared the slave free if the heir refused the acceptance of the inheritance or if for any other reason the performance of the *manumissio* became impossible. The *manumissio fideicommissaria* could be applied with regard to a slave of the heir or of a third person. In the latter case the heir was bound to buy the slave in order to manumit him. *Manumissio fideicommissaria* is termed also *manumissio fiduciaria*.—See LIBERTAS FIDEICOMMISSARIA, SENATUSCONSULTUM DASUMIANUM, SENATUSCONSULTUM RUBRIANUM, SENATUSCONSULTUM VITRASIANUM.

V. De Villa, *Libertas legata*, 1939.

Manumissio fiduciaria. See the foregoing item.

Manumissio in convivio (convivii adhibitione). See MANUMISSIO INTER AMICOS.

Manumissio in ecclesia. A manumission performed in a church in the presence of the Christian congregation and priests, with consent of the master. It was introduced by Constantine. The slave manumitted became a Roman citizen.

De Francisci, *RendLomb* 44 (1911); Mor, *ibid.* 65 (1932); Gaudemet, *Rev. d'histoire de l'Eglise de France*, 1947, 38; Danieli, *StCagl* 31 (1947/1948) 263.

Manumissio in fraudem creditorum. A manumission performed by an insolvent debtor in order to defraud the creditors. The *manumissio* could be annulled at the request of the creditors.—See FRAUDARE, FRAUS, LEX AELIA SENTIA.

Schulz, *ZSS* 48 (1928); Beseler, *TR* 10 (1930) 199.

Manumissio inter amicos. A formless manumission by the declaration of the master, made before witnesses, to the effect that the slave be free. It made at a banquet before the guests = *manumissio in convivio*.

A. Biscardi, *Manumissio per mensam*, 1939, 9.

Manumissio per epistulam. An enfranchisement of a slave by a letter of the master addressed to the slave. This form of *manumissio* could be applied to an absent slave.

Manumissio per mensam. An informal manumission of a slave through his admission to the master's table and a pertinent declaration of the latter.

Wlassak, *ZSS* 26 (1905) 401; Funaioli, *BIDR* 44 (1936–37); Paoli, *SDHI* 3 (1936) 369; A. Biscardi, *M. per mensam* (Florence, 1939); Henrion, *Rev. Belge de philol. et hist.*, 1943, 198.

Manumissio praetoria. A *manumissio* performed in a less formal act by the slave's master who had no quiritary ownership (*dominium ex iure Quiritium*) over the slave, but only possessed him IN BONIS (for instance, if the slave was not conveyed to him through *mancipatio*, but through an informal *traditio*). Other forms of *manumissiones praetoriae* were *manumissio per mensam*, *inter amicos* and *per epistulam*. They are called in the literature "praetorian" because they were not recognized by the *ius civile*. The freedom of slaves so manumitted was protected by the praetor (*in libertate tueri*) under certain conditions although they had no full rights of freedmen. Therefore their status is described as *in libertate morari* (= to live in freedom), or "to be in freedom through the protection of the praetor" (*tuitione praetoris*).

Wlassak, *ZSS* 26 (1905) 367; A. Biscardi, *M. per mensam e affrancazioni pretorie*, 1939.

Manumissio sacrorum causa. A manumission of a slave who assumed the duty to perform sacral rites in behalf of his patron.

Manumissio servi communis. A manumission of a slave owned by two or more masters in common. The classical law required manumission by all co-owners for the validity of the *manumissio* of such a slave.—See IUS ADCRESCENDI.

Manumissio sub condicione. A manumission under a condition, i.e., the liberty of the slave became effective only when the condition was fulfilled. Such a manumission could be made only in a testament. During the intermediary period the slave remained slave, his liberty being in suspense until the realization of the condition. Such a slave was sold as a slave, but the condition remained in force. Usually the condition consisted in the slave's payment of a sum to the heir. Such slaves were called during the period of suspense *statuliberi*. A child of a *statulibera* was a slave. A similar situation was a slave manumitted *ex die*, i.e., when the *manumissio* became valid at a fixed date. In the meantime, the slave continued to be a slave.—See STATULIBER.

G. Donatuti, *Statuliber*, 1940.

Manumissio testamento. A manumission through a testamentary disposition of the slave's master expressed in a traditional formula "my slave X shall be free (*liber esto*)" or "I order that my slave X be free (*liberum esse iubeo*)." The slave became free without any further formality, immediately after the acceptance of the inheritance by the heir. A slave thus manumitted could be instituted as an heir in the same testament. See HERES NECESSARIUS. In classical law the institution of a slave as an heir not combined with his manumission was void. In Justinian's law in such a case the manumission was assumed as self-understood and the slave instituted as an heir became automatically free.—D. 40.4; C. 7.2.—See REDDERE RATIONES.

Tumedei, *RISG* 64, 65 (1920); C. Cosentini, *St sui liberti* 1 (1948) 17.

Manumissio vindicta. A manumission before a magistrate, performed through a fictitious trial in which a third person, with the agreement of the slave's master, claimed that the slave was free. The process was similar to a REI VINDICATIO (suit for the recovery of a thing) in the *legis actio* procedure. The master did not oppose such affirmation whereupon the magistrate pronounced the slave free. The use of a rod (*vindicta*) with which the slave was touched by the claimant explains the name of this kind of *manumissio*.—D. 40.2.—See VINDICTA, ADSERTIO.

Ch. Appleton, *Mél Fournier* 1929; Lévy-Bruhl, *St Riccobono* 3 (1936) 1; Aru, *St Solmi* 2 (1941) 301; C. Cosentini, *St sui liberti* 1 (1948) 11 (Bibl.); Monier, *St Albertario* 1 (1952) 197; Kaser, *SDHI* 16 (1950) 72; Meylan, *RIDA* 6 (1951) 113.

Manumissor. See MANUMISSIO, MANUMITTERE.

Manumittere. To free a slave; see MANUMISSIO. *Manumittere* is also used with reference to the release of a person from the status of *mancipium* and of a son from paternal power.—See MANCIPIUM, EMANCIPATIO.

Manum depellere. See DEPELLERE MANUM.

Manupretium (manus pretium). Wages paid for handicraft, the value of an artisan's work.

Manus. Originally the term indicated the power of the head of a family over all its members and the slaves (MANUMISSIO = *de manu missio*). Later *manus* was only the husband's power over his wife, and that over his children was the PATRIA POTESTAS. The husband acquired *manus* through a special agreement (see CONVENTIO IN MANUM) which accompanied the conclusion of a marriage. The wife under the power (*in manu*) of her husband had the legal position of a daughter (*filiae familias loco*).—See MATRIMONIUM.

Manigk, *RE* 14; Lécrivain, *DS* 3; Anon., *NDI* 8; E. Volterra, *La conception du mariage* (Padova, 1940); *idem*, *St Solazzi* (1948) 675; Bozza, *Manus e matrimonio*, *AnMac* 15 (1942) 111; Düll, *Fschr Wenger* 1 (1945) 204; v. Schwind, *Scr Ferrini* 4 (Univ. Sacro Cuore, Milan, 1949) 131; Kaser, *Iura* 1 (1950) 64; Danieli, *StUrb* 1950; Volterra, *ACIVer* 3 (1951) 29.

Manus inferre. To lay hands upon a person, to hit. It is considered an *iniuria re facta*.—See INIURIA.

Manus iniectio (manum inicere). See LEGIS ACTIO PER MANUS INIECTIONEM (Bibl.)—*Manus iniectio* was also the symbolic act (touching the debtor's shoulder) performed by a plaintiff when he summoned the debtor into court (see IN IUS VOCATIO).—See LEX VALLIA, DEPELLERE MANUM.

Taubenschlag, *RE* 14; Lécrivain, *DS* 3; Noailles, *Revue des Etudes Latines* 20 (1942) 110; *idem*, *Fas et ius*, 1948, 147; *idem*, *Du droit sacré au droit civil*, 1950, 120; M. Kaser, *Das altröm. Ius*, 1949, 191.

Manus iniectio iudicati. Introduced by the Twelve Tables for the execution of judgment-debts.—See LEGIS ACTIO PER MANUS INIECTIONEM.

P. Noailles, *Du droit sacré au droit civil*, 1950, 110.

Manus iniectio pro iudicato. A *manus iniectio* "as if upon a judgment," i.e., an execution of certain kinds of debts in the form of *legis actio per manus iniectionem* as in the case of a *manus iniectio* for judgment-debts. In the oral formula pronounced by the plaintiff the words *pro iudicato* were added. There was, however, no preceding judgment.—See LEGIS ACTIO PER MANUS INIECTIONEM, ACTIO DEPENSI.

Manus iniectio pura. A *manus iniectio* which was neither *iudicati* nor *pro iudicato* but was introduced by special statutes for specific claims; see LEX FURIA TESTAMENTARIA, LEX MARCIA against usurers. The defendant was permitted to remove the plaintiff's hand (*depellere manum*) and defend himself personally (*pro se lege agere*).—See LEX VALLIA, and the foregoing items.

Manus sibi inferre. To commit suicide. Syn. CONSCISCERE SIBI MORTEM.

Marcellus, Ulpius. A jurist of the second half of the second century after Christ, author of an extensive work, *Digesta*, of a collection of *Responsa*, and of a commentary on the *Digesta* of Julian in the form of *Notae*.

Orestano, *NDI* 7; Sciascia, *BIDR* 49–50 (1948) 424.

Marcianus, Aelius. One of the last jurists of the classical period (later first half of the third century), author of *Institutiones* in 16 books, richly exploited by the compilers of the Digest. He also wrote a collection of *Regulae* and a few monographs, chiefly on criminal procedure.

Jörs, *RE* 1, 523 (no. 88); Ferrini, *Opere* 2 (1929, two articles of 1880 and 1901); H. Krüger, *St Bonfante* 2 (1930) 312; Buckland, *St Riccobono* 1 (1936) 273; De Robertis, *RISG* 15 (1940) 220.

Mare. The sea is a *res communis omnium*. "By nature it is open to everyone" (D. 1.8.2.1; Inst. 2.1.1). Everybody has the right of fishing therein. —See LITUS.

Costa, *Rivista di dir. internazionale* 5 (1916) 337; Maroi, *RISG* 62 (1919); Biondi, *St Perozzi* 1925; Branca, *AnTr* 12 (1941) 5, 91; G. Lombardi, *Ricerche in tema di ius gentium*, 1946, 99.

Margarita. A pearl.—See GEMMA.

Maricalis affectio. See AFFECTIO MARITALIS, CONCUBINATUS.

Maritimus. See USURAE MARITIMAE.

Maritus. A husband. *Mariti* may sometimes refer to husband and wife.—See IUS MARITI.—C. 4.12.

Berger, *Amer. Jour. of Philology*, 67 (1946) 332.

Martinus. A glossator of the twelfth century (died 1166?), a disciple of Irnerius.—See GLOSSATORES.

Anon., *NDI* 6 (*s.v. Gozio Martino*); H. Kantorowicz, *St in the Glossators of R. Law*, 1938, 86.

Mater. "The mother is always certain" (*semper certa est*, D. 2.4.5), no matter whether the child was born in a legitimate marriage or not. The legal status (liberty, citizenship) of an illegitimate child depends upon that of the mother. A widow-mother was in postclassical times admitted to the guardianship over her children.—C. 4.12; 5.46.—See FEMINA, TUTELA, MANUS, and the following item.

Wenger, *ZSS* 26 (1905) 449; Frezza, *StCagl* 12 (1933–34); Sachers, *Festschr Schulz* 1 (1951) 327.

Mater familias. A woman, a Roman citizen, was either a *mater familias* (i.e., not under the power of another person, *suae potestatis*) or a FILIA FAMILIAS (i.e., under the paternal power of a *pater familias*, either as his wife, *uxor in manu*, or as his daughter, or daughter-in-law being *uxor in manu* of a *filius familias*). Originally *mater familias* was the wife of a *pater familias* married to him *cum manu*. In a broader sense, from a moral and social point of view, any woman who lived "not dishonestly" was a *mater familias* whether she was married or a widow, free born or a freedwoman. Syn. *matrona*.

Kunkel, *RE* 14; Bickel, *Rhein. Museum für Philol.*, 65 (1910) 578; Carcaterra, *AG* 123 (1940) 113; C. Castello, *St sul dir. familiare*, 1942, 97; R. Laprat, *Le rôle de la femme mariée, Mél Gonnard* 1946, 173.

Mater tutrix. See TUTOR.

Materia (materies). The material, the substance of which a thing is made, in particular the materials used for the construction of a building. "He who is the owner of the material is also the owner of what has been made of it" (D. 41.1.7.7).—See SPECIFICATIO.

C. Ferrini, *Opere* 4 (1930, ex 1891) 103; S. Perozzi, *Scritti giur.* 1 (1948, ex 1890) 225.

Materna bona. See BONA MATERNA.

Mathematici. Astrologers, persons who exercise the *ars mathematica*, casting horoscopes. It was reckoned among *artes magicae* (see MAGIA) and prohibited as a condemnable (*damnabilis*) divination.—C. 9.18.

Matricula. An official list of public officials, primarily of military ones.

Enßlin, *RE* 14; Bosk, *RE* 17, 2050.

Matrimonium. A marriage; in legal language syn. with *nuptiae*. According to a definition by the jurist Modestinus *matrimonium* was "a union between a man and woman, an association for the whole life, a community of human and divine law" (D. 23.2.1). The definition, which has not remained without heavy attacks as to its classicality, expresses, however, a basic truth about the moral and ethical elements of the Roman marriage, without saying anything about the legal aspect of the institution. The Roman marriage was a factual relation between man and woman, based on *affectio maritalis* (intention to be husband and wife) and cohabitation as husband and wife, i.e., with the social dignity of a legitimate marriage (see HONOR MATRIMONII, CONCUBINATUS). The aim of the *matrimonium* was the procreation of legitimate children (see LIBERORUM QUAERENDORUM CAUSA). The marriage was monogamic and the common living started with the DEDUCTIO IN DOMUM MARITI. Legal requirements of a valid marriage were IUS CONUBII and consent of the parties. "A marriage is concluded by consent" (= *consensus facit nuptias*, D. 50.17.30). "A marriage cannot be concluded between persons who do not want to conclude it" (D. 23.2.22). If the future spouses were under paternal power (*alieni iuris*), the consent of the heads of the family was necessary; likewise the consent of the guardian of a woman *sui iuris* was required. *Impuberes* (persons below the age of puberty) and lunatics were incapable of concluding a marriage. Soldiers were not permitted to marry; see MATRIMONIUM MILITUM. For the interdiction of marriage between persons related by blood, see INCESTUM, NUPTIAE INCESTAE. Adoptive relationship and af-

finity (see ADFINITAS) created incapability of intermarriage to a certain degree. There were also specific prohibitions of marriage, as, for instance, senators and their sons were forbidden to marry freedwomen; persons of senatorial rank could not marry actors or actresses; a tutor or curator could not marry his ward; a high provincial official was forbidden to marry a woman living in his province. In the later Empire marriage between Christians and Jews was prohibited. The legal situation of the married wife depended upon the circumstance whether or not the marriage was accompanied by a *conventio in manum*; see MANUS, CONVENTIO IN MANUM. A *matrimonium* was dissolved—aside from divorce (see DIVORTIUM, REPUDIUM)—when one of the spouses lost the legal ability to conclude a marriage (see IUS CONUBII) through the loss of liberty (see SERVUS POENAE, captivity) or citizenship. The legislation of the Christian emperors and Justinian was considerably influenced by Christian doctrines, in particular by the dogma of the insolubility of marriage.—Inst. 1.10; D. 23.2; C. 5.4; 6; 7.—See AFFECTIO MARITALIS MANUS, CONFARREATIO, COËMPTIO, USUS, IUS CONUBII, LEX CANULEIA, LEX IULIA DE MARITANDIS ORDINIBUS, BINAE NUPTIAE, CONCUBINATUS, DOS, DONATIO INTER VIRUM ET UXOREM, DONATIO ANTE NUPTIAS, ACTIO RERUM AMOTARUM, SECUNDAE NUPTIAE, LUCTUS, ADULTERIUM, BENEFICIUM COMPETENTIAE, POSTLIMINIUM, CONCUBITUS, DIVORTIUM, REPUDIUM, SPONSALIA, ORATIO DIVI MARCI, and the following items.

Kunkel, *RE* 14; Erhardt, *RE* 17 (*s.v. nuptiae*); Lécrivain, *DS* 3; Piola, *NDI* 8; Berger, *OCD* (*s.v. marriage*); Weiss, *ZSS* 29 (1908) 341; Di Marzo, *Lezioni su matrimonio*, 1 (1919); P. G. Corbett, *The R. law of marriage*, 1930; Albertario, *Studi* 1 (1933, three articles); Vaccari, *St Pavia* 21 (1936) 85; Lévy-Bruhl, *Les origines du mariage sine manu*, *TR* 14 (1936) 453; M. Lauria, *Matrimonio e dote*, Naples, 1952; Lanfranchi, *SDHI* 2 (1936) 148; Koschaker, *RHD* 16 (1937) 746; Nardi, *StSas* 16 (1938) 173; H. J. Wolff, *Written and unwritten marriages in Hellenistic and postclass. R. law*, Haverford, 1939; R. Ballini, *Il valore giuridico della celebrazione nuziale cristiana dal primo secolo all'età giustinianea*, 1939; De Robertis, *AnBari* 2 (1939); C. Castello, *In tema di matrimonio e concubinato*, 1940; Nardi, *SDHI* 7 (1941); Orestano, *BIDR* 47 (1940) 159, 48 (1941) 88, 55–56 (1952) 185; the three articles published in a volume *La struttura giuridica del matrimonio rom.*, 1951; *idem*, *St Bonolis* 1 (1942); *idem*, *Scr Ferrini* (Univ. Pavia, 1946) 343; *idem*, *Scr Ferrini* 2 (Univ. Sacro Cuore, Milan, 1947) 160; Guarino, *ZSS* 63 (1943) 219; C. W. Westrup, *Recherches sur les antiques formes de mariage* (*Danemark Akad.* 30, 1943); P. Rasi, *Consensus facit nuptias*, 1946; Köstler, *ZSS* 65 (1947) 43; E. Volterra, *La conception du mariage d'après les juristes romains*, Padua, 1940; *idem*, *RISG* 1947, 399; *idem*, *RIDA* 1 (1948) 213; *idem*, *St Solazzi* 1948, 675; Wolff, *ZSS* 67 (1950) 288.

Matrimonium incestum. See INCESTUM, NUPTIAE INCESTAE.

Matrimonium iniustum. See MATRIMONIUM IUSTUM.

Matrimonium iustum. A marriage validly concluded between Roman citizens or by a Roman citizen with a non-Roman who was granted *ius conubii*. Ant. *matrimonium iniustum* (*non iustum*) between a Roman and a peregrine without *conubium*. It is not a *matrimonium iuris gentium*; the latter term occurs in the literature, but is unknown in Roman sources.

Corbett, *LQR* 44 (1928) 305; *idem*, *The R. law of marriage*, 1930, 96; Gaudemet, *RIDA* 3 (= *Mél De Visscher* 2, 1949) 309.

Matrimonium legitimum. In Justinian's language syn. with *matrimonium iustum*.

Matrimonium militis. Soldiers could not conclude a valid marriage. The influence of the husband's enlistment on the existence of the marriage is controversial. The sources do not give a precise answer as to whether the marriage became automatically null or only suspended. Children conceived and born during the soldier's service are illegitimate. The emperor Hadrian granted, however, such children rights of succession on intestacy (*bonorum possessio*) upon the father's death.

Tassistro, *SDocSD* 22 (1901); Stella-Maranca, *ibid.* 24 (1903); Marenti, *StSen* 33 (1917) 108; P. Corbett, *The R. law of marriage*, 1930, 41; Castello, *RISG* 15 (1940) 27; Menkman, *TR* 17 (1941) 311; Wenger, *Anzeiger Akad. Wiss. Wien*, 1945, 104; Berger, *Jour. of Jur. Papyrology* 1 (1945) 25, 32 (= *BIDR Suppl. Post-Bellum* 55–56 [1951] 109, 115).

Matrimonium subsequens. A marriage concluded between persons living in concubinage.—See LEGITIMATIO PER SUBSEQUENS MATRIMONIUM.

Matrona. An honorable wife of a Roman citizen even when he is not *pater familiias* and is still under paternal power. See MATER FAMILIAS. When summoning a *matrona* into court (*in ius vocatio*), the plaintiff had to abstain from touching her body. In public a *matrona* appeared in dress reserved for married women (a *stola* with a purple border). Hence a *matrona*, particularly of a higher social rank = *femina stolata*, and the right to wear a *stola* = *ius stolam habendi*. *Matronalis habitus* = dignified behavior, the dress of a *matrona*.

Schroff, *RE* 14.

Mauricianus, Iunius. A jurist of the second half of the second century after Christ, author of an extensive commentary on the *Lex Iulia et Papia Poppaea*.

Kroll, *RE* 10 (no. 93).

Maxime si (or **cum**). Particularly, especially. The term is often interpolated in order to introduce a special case or a restrictive element to what was said by a classical jurist.

Guarneri-Citati, *Indices* (1927) 51.

Maximus. See OPTIMUS MAXIMUS.

Mederi. To apply a legal remedy in order to "cure" an uncertain legal situation. The verb is frequently used by Justinian's chancery.

Medici. Physicians were considered to exercise a liberal profession (*ars liberalis*), for this reason their

services were not compensated in earlier times. See HONORARIUM. They could, however, demand a payment if they assumed their duties by contract (*locatio conductio operarum*). The physician was responsible for inexpert (*imperite*) treatment or operation and could be sued either by a contractual action *ex locato* or by a delictual one, *ex lege Aquilia*. The latter was originally applicable only when a slave was the victim of an inexpert treatment. Later the action was available when a free man was involved. Physicians enjoyed exemption from public charges (*munera*).—C. 10.53.—See EDICTUM VESPASIANI, EXCUSATIONES A MUNERIBUS.

Heldrich, *IkJb* 88 (1940) 139; Herzog, *RAC* 1, 722.

Meditatio de pactis nudis. A Byzantine dissertation on simple pacts (the Greek title is *Melete Peri psilōn symfonōn*). The pamphlet, composed about the middle of the eleventh century, seems to be the opinion of a judge given in an actual trial. The unknown author reveals a considerable knowledge of the Digest.

H. Monier and G. Platon, *NRHD* 37–38 (1913–14).

Meditatum crimen. A crime committed with premeditation.

Medium tempus. The intervening time. *Medio tempore* (= *in medio*) = in the meantime, between two legally important events, as, for instance, between the making of a testament and the death of the testator; between setting a condition and its fulfillment (syn. *pendente condicione*); while an appeal is pending or when a man is in captivity.

Mela, Fabius. A little known jurist of the Augustan Age.

Brassloff, *RE* 6, 1830 (no. 117).

Melius est. Introduces a legal opinion which is preferable to another *melius est dicere, dici, probari, melius est ut dicamus* and the like). The locution is not free from suspicion of non-classical origin when used to cut short a discussion.

Guarneri-Citati, *Indice*[2] (1927) 56, 29; *idem, Fschr Koschaker* 1 (1939) 142.

Melius aequius. See BONUM ET AEQUUM.

Membranae. Appears only once as the title of a juristic work by NERATIUS (in 7 books). The meaning of the word is not quite clear. It refers either to the material (parchment) on which the manuscript was written, or it indicates the nature of the work as "short notes" which the author put down first in a rough draft on loose parchment sheets and of which he later made a collection.

F. Schulz, *History of R. legal science*, 1946, 228.

Membrum ruptum. See OS FRACTUM.

Binding, *ZSS* 40 (1920).

Memoria. See A MEMORIA, SCRINIUM MEMORIAE.

Memoria damnata. See DAMNATIO MEMORIAE.

Memoriales. Officials in the various bureaus of the imperial chancery (*scrinia*).

Enßlin, *RE* 15.

Memorialia. Things worthy to be remembered. It appears only once as a title of a juristic work by the jurist Sabinus (in eleven books). The work seems to have been more of an antiquarian than juristic nature.

Menander. See ARRIUS MENANDER.

Mens. Intention, volition (syn. *voluntas*), purpose, design. *Ea mente, ut* (syn. *eo animo, ut*) = with the intention that.—See ANIMUS, MENTE CAPTUS, COMPOS MENTIS.

Mens legis. The intention, the sense of a statute.

Mensa. See MANUMISSIO PER MENSAM.

Mensa. (In bankers' business.) A table (counter) at which money changing transactions were done (*mensa argentaria, nummularia*). This kind of banker was called *mensularius*. They accepted also deposits in cash.—See ARGENTARII, NUMMULARII.

Kruse, *RE* 15, 945.

Mensis intercalaris. An intercalated month (in February). "It consists of 28 days" (D. 50.16.98.2).—See LEX ACILIA DE INTERCALANDO.

Mensor. (In the later Empire.) A high imperial official who had to provide quarters for the emperor, his family and staff in Rome and during their travels, a quartermaster. High officials in the provinces and prefectures had also their *mensores*.

Fabricius, *RE* 15, 959; Albertario, *St* 6 (1953) 417.

Mensores aedificiorum. Experts in urban constructions.

De Ruggiero, *DE* 1, 206.

Mensores agrorum. See AGRIMENSORES.

Mensores frumentarii. Measurers, surveyors of transportation of corn in Italian ports. They assisted the *praefectus annonae* in the administration of the supply of corn for Rome.

Cardinali, *DE* 3, 301.

Menstruum. (Adj. *menstruus.*) A monthly pay (salary). Syn. *menstrua merces*. Alimony in money and sustenance in kind (*menstrua cibaria, menstruum frumentum*) were normally paid every month.

Mensularius. See MENSA, ARGENTARII.

Mensura. Mensuration, the activity of MENSORES (AGRIMENSORES). *Mensura* is also an instrument for measuring. The magistrate could order its destruction if it was false and used for fraudulent purposes.—See RES QUAE PONDERE NOMERO MENSURAVE CONSTANT, GENUS.

Mensura delicti. The gravity of a crime. It influenced the severity of the penalty.

Mente captus. A mentally disordered individual. He is subject to curatorship (*cura*).

Mercator. A tradesman, a merchant on a lower scale than a *negotiator*. Sometimes syn. with *emptor* (= a buyer).—See NEGOTIATOR.

Cagnat, *DS* 3; Brewster, *Roman craftsmen and tradesmen of the early Empire*, (Menasha, Wis.) 1917.

Mercennarius. A hired laborer who works for pay (*merces*). *Servus mercennarius* = a slave who is

hired out by his master to another for money.—See LOCATIO CONDUCTIO OPERARUM.

Merces. A payment (wages, salary, rent) in money agreed upon in a lease or hire of services (see LOCATIO CONDUCTIO). A recompense paid for any kind of services, without a preceding agreement (e.g., for saving one's life) is called also *merces*.—See REMISSIO MERCEDIS.

Longo, *Mél Girard* 2 (1912) 105.

Merere (mereri). To deserve. The verb is used in connection with favors granted to deserving persons (e.g., a judicial remedy, the emperor's grace). It is used also when a person deserves an unfavorable treatment (a punishment, a disinheritance). *Merere* occurs also in the meaning of earning through one's labor or under a testamentary disposition.

Meretrix. A prostitute. Syn. *mulier quae palam corpore quaestum facit* (= a woman who publicly earns money with her body). *Palam* means "in a house of ill-fame, in inn-taverns, without choice" (D. 23.2.43 pr. 1). A *meretrix* was branded with infamy even after she ceased to exercise her profession; a legal marriage freed her, however, from the stigma. *Meretrices* had to register with the *aediles*. They were excluded from testimony before court, from legacies and inheritance, from visiting public spectacles and were prohibited to wear garments reserved for honest women (*stola*). They paid a special tax, *vectigal meretricium*. Senators and their sons were prohibited from marrying *meretrices*, actresses, ill-famed women or those whose parents were connected with such professions. Relations with *meretrices* were not punished as STUPRUM. Syn. *femina famosa* (*probrosa*).—See MINUS, LUDICRA ARS.

Schneider, *RE* 15; Navarre, *DS* 3; Nardi, *StSas* 16 (1938); Solazzi, *BIDR* 46 (1939) 49; C. Castello, *In tema di matrimonio*, 1940, 120; Wedeck, *Cl Weekly* 36 (1943); Grosso, *SDHI* 9 (1943) 289.

Merito. (Adv.) Justly, rightly, with good reason. *Merito* is frequently couped with *iure* (*iure ac merito*). Jurists used the term when they approved of another jurist's opinion.

Meritum. With reference to a high imperial office, dignity.

Meritum (merita) causae. The essential points of a litigation.

Merx. Merchandise, goods, which can be the object of a sale. Only movables (with the exclusion of slaves) are covered by the term.—See EMPTIO.

Merx peculiaris. Goods belonging to a son's or a slave's PECULIUM (primarily in a commercial business).

Messis. A harvest.—See ORATIO DIVI MARCI, VENDEMIA.

Messius. Probably a jurist. He is mentioned only once linked with Papinian. No further details about him are known.

H. Krüger, *St Bonfante* 2 (1930) 331.

Metallarii. Miners. Their work was supervised by public officials.—C. 11.7.

Metallum. A mine. According to the principle that whatever is under the earth belongs to the owner of the land, mines were either in private ownership or belonged to the state. Public mines were exploited through the intermediary of tax-farmers (*publicani*) who paid the state a fixed sum. In the first century of the Principate the mines in Italy and the provinces came gradually under the imperial administration whose control was exercised through *procuratores* of equestrian rank. The system of leasing the mines to private farmers (*conductores*) was still in use but the more intensive supervision by imperial officials benefited both production and labor. The administration of stone-pits (*lapidicinae*) and quarries of marble was managed in a similar way.—C. 11.7.—See LEX METALLI VIPASCENSIS.

Rostowzew, *DE* 3, 128; Orth, *RE* Suppl. 4, 145, 152 (*s.v. Bergbau*); Fiehn, *RE* 3A, 2280 (*s.v. Steinbruch*); Mispoulet, *Le régime des mines*, *NRHD* 31 (1907) 354. For further bibl. see LEX METALLI VIPASCENSIS. Another *lex metallis dicta* in Riccobono, *FIR* 1² (1941) no. 104 (Bibl.); L. Clerici, *Economia e finanza dei Romani*, 1 (1945) 466.

Metallum. In metallum (metalla) damnare. To condemn a criminal to work in a mine (or a quarry) for life. This was the severest punishment after the death penalty (*proxima morti* = nearest to death) since work in mines in addition to rigorous labor involved being kept in fetters. *Damnatio in metallum* implied loss of freedom (*servi poenae*). A milder degree of punishment was *damnatio in opus metalli*.

U. Brasiello, *La repressione penale in dir. rom.*, 1937, 373.

Metatum. (In later imperial constitutions.) Quarters for soldiers. *Metator* = a quartermaster. The owner of an immovable on whom the duty of billeting soldiers was imposed could be released from the obligation paying a sum of money (*epidemetica*).—C. 12.40.

Metus. Fear. Use of duress in order to compel a person to conclude a transaction, to assume an obligation or to make a payment, is a private crime (*delictum*) which may be prosecuted by the person who acted under duress by a special action, *actio quod metus causa* (*sc. gestum est* = for what was done because of fear). If sued for the fulfillment of a promise given under duress, he might oppose the *exceptio metus*. Under certain circumstances a *restitutio in integrum* was granted. *Metus* is defined as "a trepidation of mind because of an imminent or a future danger" (D. 4.2.1), but not any fear, "only the fear of a greater evil" (D. 4.2.5). A groundless fear (*timor vanus, metus vani hominis*) is not taken into consideration. The original name of the action might have been *formula Octaviana* since it was introduced by a praetor Octavius (about 80 B.C.). Later it was called simply *actio metus causa*. The action was penal (*actio poenalis*). If brought within

a year, the defendant (the extortioner) was condemned to a fouriold value of the property extorted. —D. 4.2; C. 2.19.—See COACTUS VOLUI, ACTIONES ARBITRARIAE, TIMOR.

L. Charvet, *La restitution des majeurs*, 1920, *ZI*; Schulz, *ZSS* 43 (1922) 171; v. Lübtow, *Der Edikтsitel quod metus causa*, 1932; G. Maier, *Praetorische Bereicherungsklagen*, 1932, 44.91; Sanfilippo, *AnCam* 7 (1934); C. Longo, *BIDR* 42 (1934) 68; C. Castello, *Timor mortis*, *AG* 121 (1939) 195.

Meum. My property. "Mine is what I have the right to claim through *vindicatio*" (D. 6.1.49.1). "*Meum esse ex iure Quiritium*" (= it is mine under Quiritary law) was the assertion of the plaintiff in the *legis actio sacramento in rem* when he claimed a thing from the defendant.—See REI VINDICATIO.

Migrare. To move from one's dwelling.—D. 43.22.—See INTERDICTUM DE MIGRANDO.

Miliarium (milliarium). A milestone marking the distance of a thousand paces (*mille passus*). Civil trials within the first milestone of the city of Rome (*intra primum urbis Romae miliarium*) belong to the category of IUDICIA LEGITIMA.—The competence of the *praefectus urbi* embraced the territory within the hundredth milestone of the city.

Schneider, *RE* Suppl. 6; Lafaye, *DS* 3; O. Hirschfeld, *Kleine Schriften*, 1913, 703.

Militare. To serve as a soldier. In later times, to serve in a public office, civil or military.—See MILITIA, MILITES.

Militaris. (Adj.) Connected with, or pertaining to, soldiers or military service.—See MILITES, MILITIA, IUS MILITARE, MANU MILITARI, RES MILITARIS, AERARIUM MILITARIS, AES MILITARIS, INTERCESSIO MILITARIS, DELICTUM MILITARE, DIPLOMA MILITARE, VESTIS MILITARIS.

Militariter punire. To punish according to military penal law.

Milites. Soldiers enjoyed various privileges in the field of private law. They were allowed to make a testament without the observance of the formalities of the civil or praetorian law, see TESTAMENTUM MILITIS. The liability of a soldier instituted as an heir for the testator's debts was limited to the amount of the inheritance. The rights of succession on intestacy of a soldier's children born during his military service, which were denied by the *ius civile*, were recognized by the emperor Hadrian. Soldiers who were under paternal power (*filii familias*) were granted the right to have a PECULIUM CASTRENSE. A special privilege of soldiers was that under certain circumstances they could be excused on the ground of IGNORANTIA IURIS. On the other hand, however, various restrictions were imposed on *milites*. They had no *ius connubii* during the time of service and could not conclude a valid marriage; see MATRIMONIUM MILITIS. They were forbidden to belong to an association (*collegium*) *in castris* (see CASTRA), and were not admitted to act as, or through, a *procurator* in a civil trial. In the field of criminal law there were special military crimes which were severely punished. Punishments were different from those applied to civilians; see DELICTA MILITUM. Soldiers were able to appear in court and to act for themselves. In the later Empire special military courts (*iudices militares*) assumed jurisdiction in civil matters when the defendant or both parties were soldiers. An imperial constitution of the later Empire (A.D. 458) prohibited soldiers from taking in lease another's land or from assuming obligations for others as sureties, agents or mandataries. "They should be busy with their military service (arms) and not with other people's affairs" (C. 4.65.31). Soldiers who were peregrines in auxiliary troops (*auxiliarii*) were granted Roman citizenship after their discharge.—C. 1.46.—See TESTAMENTUM IN PROCINCTU, BENEFICIUM COMPETENTIAE, AES MILITARE, COMMEATUS, EXPLORATIO, LEX PORCIA DE PROVOCATIONE, MISSIO, DIPLOMA MILITARE, NEMO PRO PARTE, MILITIA, SUICIDIUM MILITIS, DELICTA MILITUM.

D. Jacomet, *Les militaires en dr. rom.*, Lyon, 1882; A. Segrè, *Il diritto dei militari peregrini*, *Rend Accademia Pontificia*, 1940–1941, 167.

Militia. Military service (sometimes the term refers to service in war time). *Militiae se* (or *nomen*) *dare* = to enlist in the army. Ant. *legi* (from *legere*) = to be compulsorily enrolled. Illegal enlistment of a person who was not permitted to serve in the army (a slave, a person who was condemned to fight with wild beasts, a former deserter) was punished with death. Voluntary enlistment in order to evade capital punishment or deportation did not offer release from the punishment. After Constantine *militia* acquired a broader meaning since it also covered employment in civil administration in the various imperial offices and in provincial government, militarily organized. At times in this period a distinction is made between the service in the army (*militia armata*) and the civil service (*militia cohortalis*, *palatina* or simply *militia*). The *militia* which already in classical times (second post-Christian century) appears as the object of a sale or legacy, may refer to a lower public service (in the fire-brigade, *apparitores*). In the later Empire the purchase of an official post was frequently practiced.—C. 12.33.—See MUTATIO MILITIAE, REICERE MILITIA, IRREVERENS.

Mommsen, *Röm. Staatsrecht* 3 (1887) 450; Marehl, *AG* 76 (1906) 291; G. Kolias, *Amter und Würdenbau im frühbyzantinischen Reich*, 1939.

Militia armata, cohortalis. See MILITIA.

Militia equestris. Military service of a high grade officer in the cavalry.

Militia palatina. See MILITIA.

Milliarium. See MILIARIUM.

Mimus. An actor in mimes, a dancer. A troupe of actors sold as an ensemble is considered a unit;

hence the sale of the whole can be rescinded because of defects in one of the group. The same rule applies to tragic actors (*tragoedi*). *Mimae* (= actresses, dancers) are socially equal to MERETRICES.

Wüst, *RE* 15, 1743.

Minicius. A jurist of the first century of the Principate, a disciple of Sabinus. His work is known by an extensive commentary of Julian.

Steinwenter, *RE* 15, 1809 (no. 3); Riccobono, *BIDR* 7 (1894) 225, 8 (1895) 169; A. Guarino, *Salvius Julianus*, 1946, 38; H. Krüger, *St Bonfante* 2 (1930) 332.

Minime. By no means, not in the least. The frequency of the adverb in late imperial constitutions, and particularly in those of Justinian, in the meaning of a simple negation (*non*) makes its authenticity in classical texts rather suspect when it appears there in the place of *non*.

Guarneri-Citati, *Indice*[2] (1927) 56.

Minister. A servant, a subordinate (assistant) of an official under the Empire. In exceptional instances it refers to higher officials, both civil and military. When mentioned in connection with a crime = an abettor, an accomplice. In the Christian Empire, when connected with ecclesiatical service = a Church servant, a minister (*ministeria ecclesiarum*).

Ensslin, *RE* Suppl. 6.

Ministeriales (ministeriani). Officials in the imperial palace of a rather subordinate rank. They had to take care of the imperial household (in the later Empire). They were appointed by the emperor and enjoyed exemption from humble public services (*munera sordida*). The MAGISTER OFFICIORUM exercised jurisdiction over them.—C. 12.25.—See CASTRENSIANI. MINISTRI CASTRENSES.

Ensslin, *RE* Suppl. 6; J. E. Dunlap, *Univ. of Michigan Studies, Human. Ser.* 14 (1924) 212; Giffard, *RHD* 14 (1935) 239.

Ministeriani. See MINISTERIALES.—C. 12.25.

Ministerium. The office (activity) of a MINISTER or of a MINISTERIALIS.—In criminal matters *ministerium* is the assistance in committing a crime, complicity.—See MINISTER.

Ministerium divinum (ecclesiae). A divine service.

Ministerium publicum. A public office. The term is also applied to municipal offices (*ministeria municipalia*).

Ministerium sacrum. Service in the imperial palace. Syn. *ministerium sacri palatii, sacri cubiculi*. The emperors speak of their palace staff as *"nostrum sacrum ministerium."*

Ministerium servorum (servile, servitutis). Slaves' work, services rendered by slaves. Hence *ministeria* denotes all slaves in the service of the same master. —C. 3.33.

Ministri castrenses. See CASTRENSIANI. There were two kinds of *ministri castrenses: statuti* = members of the regular staff, and *supernumerarii* = additional members who were promoted to the rank of *statuti* to fill vacancies.

J. E. Dunlap, *Univ. of Michigan Studies, Human. Ser.* 14 (1924) 213.

Minor aetas. Minority. Syn. *adulta, imperfecta aetas*. Ant. *maior aetas*.—See AETAS, MINORES.

Berger, *RE* 15, 1769 (*s.v. Minderjährigkeit*), 1862.

Minores. An abridged expression for *minores viginti quinque annorum* (*annis*) or *minores annorum* (*annis*). *Minores* were persons who exceeded the age of IMPUBERES and were under twenty-five years of age. Similar expressions, although not technical in the juristic language, are *adultus, adulescens*, and *iuvenis*. Within the minority there is a special term for the age under eighteen, *plena pubertas*, the classicality of which is doubtful. It had no particular legal importance. A *minor sui iuris* (not under paternal power) was considered unable and not experienced enough to manage his affairs because of his juvenile light-heartedness and weakness of mind (*infirmitas animi, aetatis*). Until the curatorship of the minors, *cura minorum* (see CURATOR MINORIS) was introduced as a general institution, a minor was protected against fraud (see CIRCUMSCRIBERE) by the LEX PLAETORIA and the praetorian remedy of RESTITUTIO IN INTEGRUM which remained the most efficient protective measure during the classical period. Under Justinian the *cura minorum* became compulsory. The ability of a *minor* to appear in court was restricted by Constantine who ordered that the *minor* had to be assisted by a curator. In Justinian's codification the *cura minorum* appears completely assimilated to tutorship (TUTELA). This was performed through innumerable interpolations but not with consistency. Some details in the development of the *cura minorum* have remained therefore obscure and the nature of the duties of a *curator minoris* is still controversial. He certainly was something more than a simple adviser and was not excluded at all from the administration of the ward's property.—D. 4.4; C. 2.21–42; 5.71.—See CURATOR MINORIS, IUSIURANDUM MINORIS.

Berger, *RE* 15 (Bibl. p. 1889); Cuq, *DS* 3; Albertario, *Studi* 1 (1933, ex 1912) 407, 427, 475, 499; *idem, SDHI* 2 (1936) 170; G. Solazzi, *La minore età*, 1913; *idem, AVen* 75 (1916) 1599; Lenel, *ZSS* 35 (1915).

Minus. Less. "The *minus* is always included in what is greater (*plus*)" (D. 50.17.110 pr.). Therefore, "he who is allowed to do what is greater (*plus*) should not be prohibited from doing less" (D. 50.17.21).

Minus solvere. To pay less than one owes. "He who pays later pays less" (D. 50.17.12.1).

Minutio capitis (minui capite). See CAPITIS DEMINUTIO, CAPUT.

Miscere. See COMMISCERE, MIXTUS.

Miscere (se) hereditati. See IMMISCERE, PRO HERede GERERE.

Miserabilis persona. See PERSONA MISERABILIS.

Missilia. Money thrown as largesse to people in the theatre or on the street by emperors, high officials or wealthy individuals. The coins became the property of the persons who picked them up.—See TRADITIO IN INCERTAM PERSONAM, TESSERAE NUMMARIAE.

Berger, *RE* 9, 552 (*s.v. iactus*); Fabia, *DS* 3; Meyer-Collings, *Derelictio*, Diss. Erlangen, 1930, 2.

Missio. A discharge from military service. *Honesta missio* = an honorable discharge after the completion of twenty-five years of irreproachable service. Ant. *ignominiosa missio* when the dismissal was occasioned by the soldier's committing a common or military crime. *Missio causaria* (or simply *causaria*) = discharge because of mental or physical disability. For *missio* of peregrine soldiers, see AUXILIA.—See DIPLOMA MILITARE.

Lammert, *RE* 15, 1666; 4A, 1949; Rowell, *Yale Classical St* 6 (1939) 73.

Missio in bona. See MISSIONES IN POSSESSIONEM.

Missio in possessionem. See the entries below, after MISSIONES IN POSSESSIONEM.

Missio in rem. See MISSIONES IN POSSESSIONEM. The typical case of such *missio* by which a claimant was given possession of a single thing (an immovable) belonging to his adversary is MISSIO IN POSSESSIONEM DAMNI INFECTI NOMINE.

Missiones in possessionem (in bona). A coercive measure, applied by the praetor by virtue of his *imperium*, by which a claimant was authorized to enter into possession of his adversary's property, in whole or in a part (see MISSIO IN REM). The purposes of *missiones* were different and so were in the various cases their effects. The praetorian decrees concerning *missiones* were issued either in order to assure the normal progress of the trial and to prevent the defendant's attempts to sabotage it, or to secure the debtor's property for the satisfaction of his creditors, or to induce the debtor to assume a special obligation through *stipulatio* (*stipulationes praetoriae*) for security purposes if he refused to do it voluntarily. The legal situation of the *missus in possessionem* created by *missio* varied from real possession to simple custody and control (*custodia et observantia*) of the things the holding of which he obtained only to assure that the debtor's property would remain intact and be used exclusively for the benefit of the creditors. At times the situation of the *missus in possessionem* was comparable to that of a creditor who received a pledge (*pignus praetorium*, the term may be not classical), since the *missio* led finally to the sale of the debtor's property if he did not satisfy the creditors in the interim. Protection was given certain persons (such as *impuberes*, or those absent in the interest of the state) in that their property generally could not be sold. The edictal clause in which the praetor announced the issue of a *missio*-decree was in the most cases: "*bona possideri proscribi venirique iubebo*" (= I shall order the property to be taken into possession, advertised for sale and sold"). The praetor's *missio*-decree was withdrawn and the *missus in possessionem* ordered to surrender possession (*decedere de possessione*) if the debtor came to an arrangement with the creditor. *Missiones* were acts designed to exert pressure on the debtor and were, if successful, of a temporary character. They were generally successful when the *missus* entered into a property occupied by the owner who had to suffer his continuous presence and control. In certain cases the *missus in possessionem* enjoyed interdictal protection; see INTERDICTA NE VIS FIAT EI QUI IN POSSESSIONEM MISSUS EST.—For the various *missiones in possessionem* or *in bona*, see the following entries. —D. 42.4.

Weiss, *RE* 15; Cuq, *DS* 3; S. Solazzi, *Concorso dei creditori* 1 (1937); M. F. Lepri, *Note sulla natura delle m.i.p.*, 1939; Branca, *St Solazzi* 1948, 483.

Missio in possessionem Antoniniana. Introduced by the emperor Caracalla, who admitted a *missio in possessionem legatorum servandorum causa* also into the property of the heir if, within six months after the presentation of a claim by a legatee, he did not give sufficient guaranty for the payment of the legacy. The legatee *missus in possessionem* might take the products (*fructus*) from the heir's property to satisfy his claim.—See MISSIO IN POSSESSIONEM LEGATORUM SERVANDORUM CAUSA.

Lepri, *op. cit.* 123; F. M. De Robertis, *Di una pretesa innovazione di Caracalla*, *AnBari* N.S. 1 (1938) 99.

Missio in possessionem bonorum (bona) pupilli. A *missio* into the property of an *impubes* if in a suit over a transaction concluded by his guardian the former (the *pupillus*) was not defended by his tutor. The *missio* was rescinded when the tutor or a relative of the *pupillus* assumed the defense.

Missio in possessionem damni infecti nomine. When the owner of a defective immovable refused to give CAUTIO DAMNI INFECTI for damages threatening the neighbor's property, the praetor allowed the latter to enter into possession (*missio in rem*) of the immovable. If the first decree (*missio ex primo decreto*) did not produce the desired effect (repairing of the building or giving the *cautio*) the praetor issued a second decree (*missio ex secundo decreto*) which put the *missus* in the position of a *possessor ad usucapionem*, i.e., he might usucapt the immovable.—See USUCAPIO.

Lepri, *op. cit.* 89; Branca, *Danno temuto*, 1937, 130.

Missio in possessionem dotis servandae causa. One of the cases of the MISSIO IN POSSESSIONEM REI SERVANDAE CAUSA. It was granted a divorced wife or a widow in order to secure her claim for the restitution of the dowry.

Solazzi, *Dote e nascituro*, *RendLomb* 49 (1916) 312.

Missio in possessionem ex edicto Hadriani. In order to assure the prompt payment of the estate-tax

(VICESIMA HEREDITATIUM) Hadrian ordered that an heir instituted in a testament apparently valid might take possession of the testator's estate immediately after the payment of the tax. This kind of *missio*, which differs essentially from the normal *missiones*, no longer existed in Justinian's time.—C. 6.33.

Missio in possessionem legatorum servandorum causa. If an heir refused to give a *cautio legatorum servandorum causa* for the payment of a legacy (or a *fideicommissum*) left under condition or to be paid at a fixed date (*ex die*), the legatee could ask for this *missio* in order to enter into possession of the estate (but not of the private property of the heir) and remain there, together with the heir, as long as the heir did not furnish security. He held the property *custodiae causa* (= for safekeeping).—D. 36.3; 4; C. 6.54.—See CAUTIO LEGATORUM NOMINE, MISSIO IN POSSESSIONEM ANTONINIANA.

Lepri, *op. cit.* 113.

Missio in possessionem (bona) rei servandae causa. Decreed by the praetor in various circumstances during a trial: when the defendant was absent in court and was not defended by a representative, when he intentionally kept hiding (*latitare*) so as to avoid being summoned to court; or when he was considered *indefensus* because of his refusal to cooperate in the progress of the trial, as, for instance, when he refused to accept the procedural formula approved by the praetor. See INDEFENSUS. This *missio* is also the initial stage of the property execution against a defendant who has been condemned by judgment (*iudicatus*) or is considered as such (*pro iudicato*), as the *confessus in iure* was (see CONFESSIO IN IURE). The function of this *missio* was similar in the case of an insolvent debtor or an insolvent inheritance. The creditor or creditors could obtain possession of the debtor's property or estate which would eventually be sold; see VENDITIO BONORUM, CURATOR BONORUM.

Weiss, *RE* 15; Cuq, *DS* 3; P. Ramadier, *Les effets de la m. in b.*, 1911; H. R. Engelmann, *Die Voraussetzungen der m. in b.*, 1911; Rocco, *Studi sulla storia del fallimento*, *RDCom* 1913 (= *Il fallimento*, 1917); S. Solazzi, *Il concorso dei creditori*, 1–4 (1937, 1938, 1940, 1943); Lepri, *op. cit.* 43.

Missio in bona suspecti heredis. See SATISDATIO SUSPECTI HEREDIS.

Missio in possessionem ventris nomine. A *missio* for the protection of the rights of an unborn heir. Its function was similar to the BONORUM POSSESSIO VENTRIS NOMINE when the father of the child was dead.—D. 25.5; 25.6; 37.9.

S. Solazzi, *Il concorso dei creditori*, 1 (1937) 20.

Missus in possessionem (bona). A person who by the decree of the praetor was granted a *missio in possessionem* of the property of his debtor or adversary in a trial.—See MISSIONES IN POSSESSIONEM.

Mittendarii. Imperial officials sent to remote provinces with special imperial messages to the governor or in order to collect special taxes.

Mittere. To send (a letter = *epistulam*, a messenger = *nuntium*, a person to perform a specific official or private mission). For *mittere in possessionem*, see MISSIONES IN POSSESSIONEM. For *mittere repudium*, see REPUDIUM.

Mittere. (With reference to soldiers.) To discharge from military service (*ab exercitu*, *militia*).—See MISSIO, DIPLOMA MILITARE.

Mixtus. (From *miscere.*) With reference to legal institutions (*munera*, *condiciones*) or procedural remedies (*actiones*, *interdicta*) = of a hybrid, mixed nature. The term reflects more the Byzantine mentality than the exact legal thinking of the classical jurists and is suspect as being a late postclassical or Justinian creation.—See ACTIONES MIXTAE, IMPERIUM MERUM, INTERDICTA MIXTA, MUNERA.

Berger, *Vol. onoranze Simoncelli*, 1915, 183; Guarneri-Citati, *Indice*[2] (1927) 57.

Mobiles res. See RES MOBILES.

Moderatio. (From *moderare*, *moderari* = to restrain, limit, rule.) The observing of reasonable limits, temperateness. When referring to their acts of grace, or indulgence the emperors used to speak of "*moderatio nostra.*"—A similar expression, *moderamen*, appears in late constitutions.

Moderator. A ruler. *Moderator provinciae* = the governor of a province.—See PRAESES PROVINCIAE.

Modestinus, Herennius. One of the last representatives of the classical Roman jurisprudence, a pupil of Ulpian, and a high official in the administration of Rome about A.D. 240. He wrote an extensive collection of *Responsa* (in 19 books), a work on *Differentiae* (= controversial questions) and *Regulae* (= legal rules). He was also the author of a Greek treatise on exemptions from guardianship (*excusationes*). Modestinus was one of the jurists distinguished in the Law of Citations (see IURISPRUDENTIA).

Brassloff, *RE* 8 (*s.v. Herennius*, no. 31); H. Krüger, *St Bonfante* 2 (1930) 315.

Modicus. Moderate-sized, moderate, restrained. The term, applied to punishments, losses, expenses, lack of preciseness. *Modicum tempus* = a short time. *Modicus* appears in texts suspected of interpolation.

Guarneri-Citati, *Indice*[2] (1927) 57.

Modus. A measure, a limit. In the meaning of a burden, a duty imposed in acts of liberality (donations, legacies, manumissions) on a beneficiary, the term is of late origin. It appears in the language of the chancery of later emperors, and in the language of Justinian and his compilers. Sometimes the term covers what was a CONDICIO (condition) in the classical language. In the classical law it was disputable whether a duty imposed as a *modus* created on the part of the beneficiary a binding obligation. The emperor Gordian set a general rule that the person interested in the fulfillment of a *modus* of pecuniary value could sue the heir or legatee for

fulfillment.—D. 35.1; C. 6.45.—See DONATIO SUB MODO.

Weiss, *RE* 15; Cuq, *DS* 3; F. Haymann, *Schenkung unter Auflage*, 1905; P. Lotmar, *Freilassungsauflage*, *ZSS* 33 (1912) 304; Messina-Vitrano, *St Riccobono* 3 (1936) 99.

Modus aedificiorum. A limit regulating height in the construction of buildings.—See LEX IULIA DE MODO AEDIFICIORUM.

B. Biondi, *La categoria romana delle servitutes*, 1938, 23; Berger, *Iura* 1 (1950) 121.

Modus agri. The boundary of a plot of land.—See AGRIMENSORES, ACTIO DE MODO AGRI.

Modus donationis. Limits imposed on the amount of donations or with regard to the formalities to be accomplished to render a donation valid. See LEX CINCIA. In another sense *modus* is used with reference to gifts; see MODUS, DONATIO SUB MODO.

Modus facultatum. The financial situation of a person, mentioned in connection with the constitution of a dowry or with alimony which has to correspond to the financial means of the person obligated.—See FACULTATES, BENEFICIUM COMPETENTIAE.

Modus legatorum (or legis Falcidiae). The limits imposed on the amount of legacies by the LEX FALCIDIA. For *legatum sub modo*, see MODUS.

Modus servitutis. A modification of the typical content of a servitude limiting the rights the beneficiary has in the exercising of the servitude, for instance, the size of carriages he may use in the *servitus* ACTUS.

S. Perozzi, *Scritti* 2 (1948, ex 1888) 29; Biondi, *Scr L. Barassi* 1943, 57; *idem*, *Le servitù prediali*, 1946, 46.

Modus usurarum. The limit of the rate of interest imposed by law.—See USURAE.

Moliri. To start the construction of a building.—See OPERIS NOVI NUNTIATIO.

Momentaria possessio. See POSSESSIO MOMENTARIA.

Momentum. Weight, importance. *Nullius momenti esse* = to be void, of no legal force. Syn. *ineficax, nullus, effectum non habere*. Ant. VALERE.

Hellmann, *ZSS* 23 (1902) 421.

Momentum. An instant, a moment. When for legal effectiveness a certain period of time must elapse (as, e.g., for USUCAPIO) the time is reckoned in full completed days, not according to hours or specific moments (*a momento ad momentum*).

Monachi. Monks. They were in Justinian's law incapable of being guardians. Their property was inherited by their monastery if they died without leaving a testament and there were no near relatives. Several Justinian Novels (5.76.79.123.133) deal with monks and monastic life.—C. 1.3.

Granic, *Byzantinische Ztschr.* 30 (1930) 669; Schaefer, *ACII* 1 (1935) 173; Tabera, *Profezzio monastica causa divortii*, *ibid.* 189.

Monachium. See MONASTERIUM.—C. 1.3.

Monasterium. A monastery. The ability of a monastery to own property was recognized in the fifth century. Legislation of the Christian emperors, particularly that of Justinian, dealt frequently with monasteries, their legal situation, and specifically with their ability to benefit by testaments as heirs or legatees.—See MONACHI.—C. 1.3.

A. Ferradou, *Des biens des monastères à Byzance*, 1896; Branic, *Byzantinische Ztschr.* 29 (1929) 6; Schnorr v. Carolsfeld, *Geschichte der juristischen Person* 1 (1933) 394; P. W. Duff, *Personality in R. law*, 1938, 185; 196.

Moneta. Minted money. See FALSA MONETA. *Moneta* may also mean the mint itself. *Moneta sacra* = the imperial mint. The theft of coins from the mint is punished with work in mines (*metalla*) or exile.—See TRIUMVIRI MONETALES, NUMMULARIUS, TESSERA NUMMULARIA, OPTIO.

Monetarii. Workers in the imperial mint. They could leave their occupation only with difficulty.—C. 11.8.—*Monetarius* is also the counterfeiter of coins.

Monitor. (In the later Empire.) An official who reminded the tax-payers of taxes due.—In private enterprises = an overseer (over slaves).

Monitorium edictum. See EDICTUM MONITORIUM.

Monopolium. A monopoly, i.e., the exclusive right to sell and deal in a specific type of merchandise. An imperial constitution of the emperor Zeno (A.D. 483, C. 4.59.2) forbade the monopolization of the sale of certain commodities (clothes, foodstuffs) or items of common use, as well as of the performance of certain works. There were many other similar prohibitions carrying the penalty of confiscation of property and exile for life.—C. 4.59.

Heichelheim, *RE* 16 (Bibl. 199).

Monstrum. An unnatural, monstrous creature (*monstruosum, prodigiosum, portentosum aliquid, ostentum*) which has not the shape of a human being (*contra formam humani generis*) is not considered a child. A law ascribed to Romulus allowed the killing of such an offspring immediately after birth.—See PORTENTUM.

Kübler, *ZSS* 30 (1909) 159; Ambrosino, *RendLomb* 73 (1939/40) 70.

Montanus. See PAGANUS.

Monumenta. Written documents, records. *Publica monumenta* (= public records) offer a stronger evidence than the testimony of a witness, according to a decree of the senate.

De Visscher, *AntCl* 15 (1946) 122.

Monumenta Maniliana. See MANILIUS, FORMULAE.

Monumentum. See SEPULCRUM.

Monumentum Ancyranum. Called a stone monument on which a great part of Augustus' autobiography (see RES GESTAE DIVI AUGUSTI) is preserved. *Monumentum Antiochenum* = fragments of the same work found in Antioch (Pisidia).

Kornemann, *RE* 16; Momigliano, *OCD*; Robinson, *Amer. Jour. of Philology*, 47 (1926); W. M. Ramsay and A. v. Premerstein, *Klio*, Beiheft 19, 1924; H. Volkmann, *Burians Jahresberichte* 279 (1949, Bibl. for 1914–1941); Luzzatto, *SDHI* Suppl. 17 (1952) 167.

Mora. Default. *In mora esse* = to be in default. "He from whom a payment cannot be demanded because of an exception (he has against the claim) in not in default" (D. 12.1.40). "A thief (*fur*) is always in default" (D. 13.1.8.1) with regard to the restoration of the thing stolen.—See MORA DEBITORIS.

Mora accipiendi. See the following item.

Mora debitoris—creditoris. There is a distinction between *mora debitoris*, an unjustified failure of a debtor to pay his debt, and *mora creditoris*, which occurs when the creditor refuses to accept the payment offered him by the debtor in due time, without any just reason or when he makes it impossible for the debtor to discharge his debt by, for instance, being absent. In the case of *mora debitoris* (*mora solvendi, solutionis*) the liability of the debtor is augmented: an accidental destruction of the thing due is at his risk, he has to pay interest (*usurae morae*) when the debt is of a sum of money, and he has to restore all proceeds he had from the time he has been in default (*in mora*). The debtor is not responsible, however, for a default caused by no fault of his own. The default of the debtor causes the obligation to become everlasting (*obligatio perpetuatur*). *Mora creditoris* involves also certain disadvantages to the creditor: the thing due is now at his risk and the debtor is responsible only for fraud (*dolus*), even if the original obligation imposed on him a larger responsibility. The debtor has the right to free himself from his obligation through a deposition of the sum due; see DEPOSITIO IN AEDE. The consequences of the *mora* come to an end (*purgare, emendare moram*) when, in the case of *mora debitoris*, the debtor offers full payment to the creditor, and, in the case of *mora creditoris* (syn. *mora accipiendi*), the latter accepts the payment. The usual expressions for *mora* are *stat per debitorem* (or *per creditorem*) *quominus solvatur* (= it is caused by the debtor or creditor that the payment is not being made). A general rule (D. 50.17.88) is "there cannot be a *mora* where there is no claim (*petitio*)."—See INTERPELLARE, MORA.—D. 22.1.

Kaser, *RE* 16; Cuq, *DS* 3; Montel, *NDI* 8; C. Scuto, *La mora del creditore*, 1905; Siber, *ZSS* 39 (1909); Gradenwitz, *ZSS* 34 (1913); Bohacek, *AnPal* 11 (1924) 341; Guarneri-Citati, *ibid.* 232; Genzmer, *ZSS* 44 (1924) 86; Arnò, *AG* 100 (1928) 143; A. Montel, *Mora del debitore*, 1930; Niedermeyer, *Fschr Schulz* 1 (1951) 399.

Mora solvendi, solutionis. See MORA DEBITORIS.

Morari. To delay, to defer (a payment); see MORA DEBITORIS.—*Morari* (= to stay, to abide at a place) is used of certain lasting legal situations of a person, e.g., *morari in possessione* (= to be in possession of a thing), *in libertate* (= to live as a free man).—*Morari* means also to detain. The formula by which the presiding magistrate dismissed the senators after the meeting, was *"nihil vos moramur"* (= I do not detain you any longer).

Morbus. A disease. The jurist deals with *morbus* (D. 21.1.1.7: "an unnatural state of the body which impairs its use") in connection with the liability of the seller of a sick slave. *Morbus* is distinguished from *vitium* inasmuch as *morbus* is "a temporary sickness of the body while *vitium* (a defect) is a perpetual impediment of the body" (D. 50.16.101.2).—See EMPTIO.

Morbus comitialis. Epilepsy. If a case of epilepsy occurred in a popular assembly an immediate interruption and postponement of the gathering took place, since the disease was considered a bad omen.

Seidl, *RE* 16.

Morbus perpetuus. A chronic disease. Ant. *morbus temporarius*.—See CURATOR MUTI.

Morbus sonticus. A grave, acute sickness. If incurred by a judge or one of the parties during a trial, an adjournment took place. A *morbus sonticus* of the debtor was considered a valid excuse for non-fulfillment of his obligation.

Lécrivain, *DS* 3.

More. (Abl.) According to usage (custom); in the way (fashion) of, e.g., *more iudiciorum* judicially, in court, by the normal procedure.

Mores (mos). Customs, "the common consent of all people living together; if observed for a long time (*mos invveteratus*) it becomes a *consuetudo*." Certain legal institutions originate from *mores* (*moribus receptum, introductum est*), as, for instance, the interdiction of gifts between husband and wife (DONATIO INTER VIRUM ET UXOREM), or the management of the affairs of a spendthrift by a curator (CURA PRODIGI).—See DEDUCTIO QUAE MORIBUS FIT, CONSTITUERE IURA, IUS CONSTITUTUM, CONSUETUDO, and the following items.

Mores boni. See BONI MORES, CONTRA BONOS MORES.

Mores civitatis (provinciae, regionis). Customs of local character observed in a limited territory (city, province, district).

Mores diuturni. Customs observed during a long period and "approved by the consent of the people who apply them, are tantamount to a statute" (*legem imitantur*, Inst. 1.2.9).—See MORES, CONSUETUDO.

Mores (mos) maiorum. Customs of the forefathers, tradition of ideas, usages, customs. For *mores maiorum* as legal customs, see CONSUETUDO. For *mores* as norms of moral and social correctness, see BONI MORES, CONTRA BONOS MORES. An edict of the censors of 92 B.C. (Suetonius, *de rhet.* 1) said: "all new that is done contrary to the usage and customs of our ancestors, seems not to be right." In later imperial constitutions and those of Justinian references to ancient customs (*mos vetus, antiquus, veterum, antiquitatis*, and the like) are very frequent.—See MORES.

Steinwenter, *RE* 16; Cuq, *DS* 3; Rech, *M.m.*, Diss. Marburg, 1936; Schiller, *Virginia L Rev* 24 (1938) 271; Kaser, *ZSS* 59 (1939) 52; Volkmann, *Das neue Bild der Antike* 2 (1942) 246; Gioffredi, *SDHI* 13–14 (1948) 80; Volterra, *RendLinc* Ser. VIII, 4 (1949) 530.

Mores mulieris. Misconduct of a wife.—See ACTIO DE MORIBUS, RETENTIONES DOTALES.

Moris est. It is usual, customary.

Mors. Death. Certain contractual relations, as mandate (MANDATUM) and partnership (SOCIETAS) are dissolved by the death of one of the parties. Generally the death of a creditor has no influence on the further existence of the obligation; the death of the debtor extinguishes his obligation if it had to be fulfilled by him as a personal performance. The death of a legatee before the day on which he became entitled to claim the legacy (DIES CEDENS) makes the legacy void. Personal servitudes are extinguished with the death of the person entitled; see SERVITUTES PERSONARUM. A person accused of a crime who died before judgment was rendered, was considered blameless (INTEGER) since death effaced the crime, except in cases of MAIESTAS and REPETUNDAE. In these instances the heir was given the opportunity to defend the deceased, otherwise the latter's property was seized. Penal actions for private offenses (see ACTIONES POENALES) ceased to be available when the offender died.—See DIES MORTIS, POENA MORTIS, MORTIS CAUSA, CONSCISCERE SIBI MORTEM, COMMORIENTES, OBLIGATIO POST MORTEM, LIBERA MORTIS FACULTAS, MANDATUM POST MORTEM, STIPULATIO POST MORTEM, REUS (in a criminal trial).

Mors litis. See LIS MORITUR, IUDICIA LEGITIMA.

Mortalitas. Used in the meaning of MORS, this is of postclassical origin.

Guarneri-Citati, *Indice*[2] (1927) 57.

Mortis causa. In view of the death (e.g., dispositions made by a testator), because of the death (acquisitions made on the occasion of another's death).—D. 39.6.—See DONATIO MORTIS CAUSA, CAPIO.

S. Cugia, Indagini etc. *L'espressione mortis causa*, 1910; Brini, *RendBol* 6 (1912–1913).

Mos. See MORES, MORES MAIORUM.

Mos iudiciorum. See MORE.

Motio ex ordine. (From MOVERE.) Exclusion of a member from the municipal council (*ordo decurionum*). It was decreed when the member was guilty of a crime or bad behavior. The *motio* could be ordered for a certain time only, after which the member regained his position (*restitutio in ordinem*).—C. 10.61.

Kübler, *RE* 4, 2329.

Motus animi. An impulse, a motive which incites a person to do something, to conclude a transaction with another person (*in unum consentire*).—See CONSENSUS.

Motus iudicialis. (In imperial constitutions.) A court decision.

Motus terrae. See TERRAE MOTUS.

Moventia. See RES MOBILES, RES SE MOVENTES.

Movere. To set in motion, to initiate a judicial measure, to sue (*movere controversiam, litem, actionem, interdictum, querelam*), to accuse (*movere accusationem*).

Movere. (A person.) To induce, to influence (a praetor, a judge). In juristic discussions *movere* = to bewilder, to confuse, to induce one to change his mind. *"Movet me* (or *moveor*) *quia"* a jurist used to say to introduce an objection against what was said before. Phrases like *"nec me movet"* or *"nec nos movere debet"* are used to introduce the rejection of an eventual objection.

Ratti. *RISG* 2 (1927) 53.

Movere (de) ordine. See MOTIO EX ORDINE.

Movere (de) senatu. To deprive a senator of membership in the senate. Under the Republic the exclusion was decreed by the censors through a NOTA CENSORIA, under the Empire by the emperor.

O'Brien-Moore, *RE* Suppl. 6, 688.763.

Movere terminum. See TERMINUS, ACTIO DE TERMINO MOTO.

Muciana cautio. See CAUTIO MUCIANA.

Mucius. There were three jurists by the family name of Mucius. The most prominent among them was Quintus Mucius Scaevola, a *pontifex maximus* who was consul in 95 B.C. and died in 82. He was an outstanding jurist; his treatise on *ius civile* is the most important juristic work written under the Republic. It was the first attempt of a systematic presentation of the private law and was commented on by later jurists (Gaius, Pomponius). The Mucian system was adopted by several writers on IUS CIVILE. See DEFINITIONES.—His predecessors were Publius Mucius Scaevola, consul in 133 B.C., also a *pontifex maximus* and Quintus Mucius Scaevola, consul in 117 B.C., an augur and teacher of law (Cicero attended his lectures). As jurists they are of lesser importance in the history of Roman jurisprudence.

Kübler and Münzer, *RE* 16, 437.442; Orestano, *NDI* 12, 1158; G. Lepointe, *Q. Mucius Scaevola*, Paris, 1926, Bruck, *Sem* 3 (1945) 16; Kreller, *ZSS* 66 (1948) 573; on P. M. Scaevola: Münzer 425, no. 17; on Q. M. Scaevola, the augur: Münzer *ibid.* 430, no. 21.

Mulier. Sometimes indicates any woman, whether married, or not, sometimes only a married woman (= *uxor*). Syn. FEMINA.—See TUTELA MULIERUM, SENATUSCONSULTUM VELLEIANUM, LEX VOCONIA, MUNERA.

P. Pierret, *Le sénatusconsulte Velléien*, 1947, 21.

Mulier quaestuaria. See MERETRIX.

Multa. A pecuniary penalty, a fine. Syn. *poena nummaria, pecuniaria*. In earlier times it was paid in cattle. The power of fining (*multam dicere, irrogare*) was a prerogative of magistrates, who used it as a measure of coercion (COËRCITIO). Some statutes fixed the maximum amounts of fines. *Multa* was the normal penalty for disobeying a magisterial order. It could be inflicted by a higher magistrate on a lower one for disciplinary offenses, by the presiding magistrate in the senate on senators for unjustified

absence, by censors for untrue declarations made in the census proceedings, and the like. Pecuniary penalties were also established in penal statutes for offenses committed in ordinary criminal proceedings before a magistrate or before *comitia*. The final decision in cases involving fines lay with the *comitia* (*tributa*) as an appellate court. A *multa* could not exceed half of the defendant's property. Under the Empire *multae* were largely applied in the *cognitio* procedure and as a coercive measure. The right to impose fines (*ius multae dicendae, dictionis*) was granted all prefects in Rome, the provincial governors, and higher administrative officials. The fines were paid to the state. Condemnation to a *multa* did not involve infamy.—C. 1.54.—See LEX AETERNIA TARPEIA. LEX IULIA PAPIRIA, MULTA PRAEIUDICIALIS, and the following items.

Hellebrand, *RE* Suppl. 6; Lécrivain, *DS* 3; P. E. Huschke, *Multa und Sacramentum*, 1874; E. Mayer, *TR* 8 (1928) 35; U. Brasiello, *La repressione penale*, 1937, *passim*; L. Clerici, *Economia e finanza dei Romani*, 1 (1943) 491.

Multa. (For the violation of a grave.) A penalty settled in a testament of a Roman citizen for such a wrongdoing. The penalty was not paid to the heir but to the fisc, unless the testator made other disposition.

Pfaff, *RE* 2A (*s.v. Sepulcralmulten*); Lécrivain, *DS* 3, 2019; J. Merkel, *Sepulcralmulten, Fg Ihering* 1897; G. Giorgi, *Le multe sepolcrali*, 1910; A. Berger, *Strafklauseln in den Papyrusurkunden*, 1911, 96, 100; Arangio-Ruiz, *FIR* 3 (1943) 257.

Multa fisco debita. (In literature called *multa fiscalis*.) A fine to be paid to the fisc by one of the parties to a contract in the case of non-fulfillment of his obligation. The insertion of such a clause into a written contract was adopted from provincial practice.

Kübler, *RE* 4A, 157; A. Berger, *Die Strafklauseln in den Papyrusurkunden*, 1911, 34, 93; G. Wesenberg, *Verträge zugusten Dritter*, 1949, 56.

Multa testamentaria. A fine imposed by a testator on an heir or legatee for non-fulfillment of his wish.

Multae dictio. The imposition of a pecuniary fine by a magistrate in the exercise of his coercive power (COERCITIO).—See MULTA.

Multare. (Syn. *multam dicere, multam irrogare*.) See MULTA.

Mundum. A fair copy (original) of a document.

Munera. Public services, charges, duties or offices which every individual living in the state is obliged to fulfill on behalf of the state or the city (*municipium*) in which he was born or has his domicile (see DOMICILIUM, INCOLA, ORIGO). The *munera* also embrace taxes whether paid in money or in kind. *Munera* have to be distinguished from public offices (*magistratus*) which are a privilege, a dignity (*honos*) and not a burden. There was one public office which, originally a *honos*, later became the most burdensome *munus*, the *decurionatus* (see ORDO DECURIONUM, DECURIONES). The systematization of the various *munera* is a creation of later times and, forced on classical texts, obscured the earlier conceptions. Thus, for instance, the term *munera publica* is now far from being clear, since in one instance guardianship (*tutela*) is defined as *munus publicum*, in another it is not. More evident is the distinction between *munera personalia*, which are performed by personal work (among them is *tutela, cura*), and *munera patrimonii* which encumber property and are performed by the payment of money as a contribution to the costs of public works. Some *munera* are of a mixed, personal and pecuniary nature (*munera mixta*); see MUNERA POSSESSIONUM. The maintenance of public roads, buildings, waterworks, river banks, the contribution of means of transportation for public purposes (for corn supply), were among the *munera publica*. Exempt from *munera personalia* were persons over seventy and under twenty-five, women, fathers of several children, and individuals who for personal reasons (weakness, poverty) were unable to fulfill the pertinent duties; see EXCUSATIONES A MUNERIBUS. Exemptions from *munera patrimonii* were rarely granted.—D. 50.4; C. 10.41–56; 10.64.—See IMMUNITAS, VACATIO MUNERUM, NOTITIA, NOMINATIO POTIORIS, SUMPTUS MUNERIS, NAVICULARII, NEGOTIATORES, NOTITIA, OFFICIUM VIRILE, PALATINI, POETAE, QUERIMONIA, MAGISTRI, VETERANUS, VOCARI AD MUNUS.

Kübler, *RE* 16; Kornemann, *ibid.* 630; Lammert, *RE* 7A, 2028; F. Oertel, *Liturgie*, 1917, 62.

Munera civilia. All kinds of *munera* except those imposed on members of the military. Ant. *munera militaria*.

Munera militaria. Duties connected with, or in the interest of, the military service. Ant. *munera civilia*.

Munera municipalia. Services to be rendered by a citizen to his municipality.—See DOMICILIUM, ORIGO.

Munera patrimonii. See MUNERA.

Munera personalia. See MUNERA.

Munera possessionum. *Munera* which incumber immovable property (land and buildings) without regard to whether or not the owner has his *origo* or *domicilium* where the immovable is situated.

Munera sordida. Mean, humble services, such as working in mills, mines, limepits, constructing buildings, roads, bridges. Lists of such *munera* are given in imperial constitutions of the later Empire. The distinction as to what is a *munera sordidum* and what is not, was important because of exemptions from them which were granted to various categories of persons, such as those employed in imperial service, lessees of imperial property, philosophers, rhetoricians, grammarians, and the like.—See EXCUSATIONES A MUNERIBUS.

Ferrari Dalle Spade, *Immunità ecclesiastiche, AVen* 99 (1939–40) 122.

Munerarius. A private individual or an official who arranged public games, especially gladiatorial combats (*ludi gladiatorii*) or fights with wild animals.

Schneider, *RE* 16.

Municipalis. (Noun.) A member of the municipal council. *Municipalis* (adj.) connected with, or pertaining to *municipia*.—D. 50.1.—See DECURIONES, MUNERA MUNICIPALIA, LEX MUNICIPALIS TARENTINA, LEX IULIA MUNICIPALIS, MAGISTRATUS MUNICIPALES, and the following items.

Municipes. Citizens of a municipality (*municipium*). One became a *municeps* by birth (see ORIGO), adoption by, or manumission by a *municeps*. The etymology of the term (*munera capere, muneris participes*) indicates the principal duties of a *municeps* towards his municipality: rendering public services and assuming charges for the welfare of the community. The *municipes* have twofold citizenship, since they are Roman citizens and citizens of their *municipium*. In their first capacity they participated in the political life of the state when present in Rome, as citizens of a *municipium* they took part in the local administration. By a decree of the municipal council (*ordo decurionum*) municipal citizenship could be granted to individuals who were not entitled to it (*adlectio inter cives*).—D. 50.1; C. 10.39.—See ACTOR MUNICIPUM, CURIAE MUNICIPIORUM, INCOLA, ORIGO, MUNICIPIUM.

A. N. Sherwin-White, *The Roman citizenship*, 1939, 36; E. Manni, *Per la storia dei municipi fino alla guerra sociale*, 1947.

Municipium. Any town in Italy except Rome (= *urbs*). The term superseded gradually analogous expressions (*oppidum, colonia, praefectura*) and was later applied also to cities in the provinces. Syn. *civitas*, and, to a certain extent, *res publica*. Originally there were *municipia cum suffragio* (with the right to vote in popular assemblies) and *cum iure honorum* (the right of their citizens to be elected as magistrates in Rome), and *municipia sine suffragio* (deprived of such rights). The *municipia* had, however, the privilege of local autonomous government and jurisdiction. An attempt of a general regulation of the municipal organization was made in the so-called LEX IULIA MUNICIPALIS. Other municipal statutes, preserved in inscriptions, are LEX MUNICIPALIS TARENTINA, LEX RUBRIA DE GALLIA CISALPINA, LEX COLONIAE GENETIVAE IULIAE, LEX MALACITANA, LEX SALPENSANA. A uniform organization of the municipal administration was not fully established, and differences in the titles of the municipal magistrates, and their functions, as well as the functions of the municipal councils, were never completely eliminated. Under the Republic a *municipium* could not be instituted as an heir, but this situation improved in the course of time. First *fideicommissa* in favor of a *municipium* were admitted, then a *fideicommissum hereditatis* (see SENATUSCONSULTUM APRONIANUM), and finally under Hadrian the full capacity of *municipia* to be instituted as an heir or legatee was recognized.—D. 50.1.—See DECURIONES, ORDO DECURIONUM, DUOVIRI IURI DICUNDO, DUOVIRI AEDILES, CURIAE MUNICIPIORUM, PATRONUS MUNICIPII, MAGISTRATUS MUNICIPALES, TABULAE COMMUNES.

Kornemann, *RE* 16; Toutain, *DS* 3; Sacchi, *NDI* 8; W. Liebenam, *Städteverwaltung in der Kaiserzeit*[a] (1900); L. Mitteis, *Röm. Privatrecht*, 1908, 376; J. Declareuil, *Quelques problèmes d'hist. des instit. municipales*, 1911; Ramadier, *Etudes Girard*, 1 (1912); J. S. Reid, *The municipalities of the R. Empire*, 1913; F. F. Abbott-A. C. Johnson, *Municipal administration in the Roman Empire*, 1927; H. Rudolph, *Stadt und Staat im röm. Italien*, 1935; B. Eliachevitch, *La personnalité juridique en droit privé rom.*, Thèse Paris, 1942, 57; E. Manni, *Per la storia dei m. fino alla guerra sociale*, 1947; Solazzi, *BIDR* 49–50 (1947) 393; Schönbauer, *Iura* 1 (1950) 124; Vittinghoff, *ZSS* 68 (1951) 455; *idem, Römische Kolonisations- und Bürgerrechtspolitik unter Caesar und Augustus, Abh. Akademie Wiss. Mainz*, 1951 (no. 14) 33.

Munire ripam. See RIPA.

Muniri. To be protected, supported by law (*ipso iure*) or by a legal remedy (*exceptiones, praescriptiones*). The term is frequent in the language of the imperial chancery.

Munus. See MUNERA.

Munus. A gift presented on a special occasion (on a birthday = *munus natalicium*, on a wedding = *munus nuptiale nuptalicium*).—See DONARE.

Munus. A public festival (game) arranged by a private person (*munus dare, edere*). It was customary to bequeath a legacy to a municipality in order that public festivities be made *ad honorem civitatis* (= to the honor of the city).

Munus nuptiale (nuptalicium). A wedding gift. Such a gift was customary but not obligatory. Therefore a guardian who gave his ward's mother or sister a wedding gift could not deduct the expense from the ward's property.

Murilegulus. A fisherman skilled in catching purple-fish.—C. 11.8.

Murus. A wall. City walls were *res sanctae*. In Rome persons who lived in extramural buildings were considered inhabitants of Rome.—See RES DIVINI IURIS, ROMA, URBS, PARIES.

R. L. Richmond, *The city walls of the imperial Rome*, 1930.

Mutare causam possessionis. See NEMO SIBI IPSE CAUSAM POSSESSIONIS, etc.

Mutare testamentum. To change a last will. A testator had full power to do so, but if the motive for which he changed his mind and which was expressed in the later testament proved false, the former testamentary disposition might be taken into consideration. If, for instance, the testator believed that the heir first instituted was dead, the latter could claim the inheritance according to an imperial constitution.

Mutat. In the phrase *non mutat si* (*quod* or sim.) = it does not matter if. . . . The locution is used to

state that a legal rule which was expressed beforehand, has to be applied to another legal situation.

Mutatio. In the postal service, see MANSIO.

Mutatio domini. A change in the person of the owner of a thing. It has no influence at all on the rights of a usufructuary or of a person who has a servitude over the thing.

Mutatio familiae. A change in the family status of a person. It takes place when a member of one family enters into another (marriage with *conventio in manum*) or when a person *sui iuris* comes under the paternal power of another through *adrogatio*, or *vice versa*, when a person *alieni iuris* becomes *sui iuris* and consequently the head of a new family (*emancipatio*). *Mutatio familiae* produces CAPITIS DEMINUTIO MINIMA because the ties with the former family are torn.—See ADOPTIO, STATUS.

Mutatio iudicii. See ALIENATIO IUDICII MUTANDI CAUSA.

Mutatio iudicis. A replacement of a judge after *litis contestatio*, when, for instance, the first judge died before rendering the judgment or became somehow unable to continue his activity.—See TRANSLATIO IUDICII.

Steinwenter, *RE* Suppl. 5, 351; P. Koschaker, *Translatio iudicii*, 1905, 311; Wlassak, *Der Judikationsbefehl*, *SBWien* 197, 4 (1921) 232; Duquesne, *La translatio iudicii*, 1910, 221.

Mutatio militiae. The transfer of a soldier to another branch of service as a punishment for a minor offense. Syn. *in deteriorem militiam dare*.

Mutatio nominis. A change of name (*nomen*, *cognomen*). It was allowed if it was not intended for fraudulent purposes.—C. 9.45.

Mutatio rei. A change of the substance of a thing. It occurs when land became a pond or a marsh through inundation or when a forest was cleared and made into field. "Through *mutatio rei* an usufruct is extinguished" (D. 7.4.5.2).

P. E. Cavin, *L'extinction de l'usufruit rei mutatione*, 1933.

Mutatio status. See STATUS.

Mutua pecunia. A sum of money given as a loan.—C. 10.6.—See MUTUUM.

Mutua substitutio. See SUBSTITUTIO.

Mutuae petitiones. Reciprocal claims between two persons who sue each other in separate actions. The claims could be united in one trial in order to be examined and decided by the same judge. Syn. *mutuae actiones*.

De Francisci, *Synallagma* 2 (1916) 539; Levy, *ZSS* 52 (1932) 517; S. Solazzi, *Compensazione*² (1950) 107.

Mutuari (mutuare). To borrow, to receive a loan.—See MUTUUM.

Mutus. A mute person. If he is able to understand the meaning of the transaction he wants to conclude, he can express his will by signs (*nutu*).—D. 37.3.—See INTELLECTUS, NUTUS, CURATOR MUTI, TUTOR.

Mutuum. A loan. The creditor = *qui mutuam pecuniam* (*mutuo*) *dat*, *credit*; the debtor = *qui mutuum* (*mutuo*) *accipit*. A loan is concluded *re*, i.e., when its object (a sum of money, an amount of fungibles) was handed over to the debtor. The latter is obligated to return in due time the sum of money or the same quantity of fungibles of the same quality as was lent to him. He can be sued for return through the *actio certae creditae pecuniae*, when money was involved, or through *condictio triticaria* if fungibles were borrowed. The borrower becomes owner of the things given to him for consumption. Interest (*usurae*) must be promised by a special agreement (normally a *stipulatio*). The loan itself could also be vested in the form of a *stipulatio* if the debtor promised the payment through *stipulatio* (a verbal contract).—See RES QUAE PONDERE, etc., FENUS, USURAE.

Kaser, *RE* Suppl. 6; Cuq, *DS* 3; G. Segrè, *St Simoncelli* 1917, 331; C. Longo, *Il mutuo* (*Corso*) 1933; P. E. Viard, *Mutui datio*, Paris, 1939; Robbe, *SDHI* 7 (1941) 35; P. Voci, *Il sistema rom. dei contratti*² (1950) 123; Seidl, *Fschr Schulz* 1 (1951) 373.

Mutuus dissensus. See CONSENSUS CONTRARIUS.

N

Narratio. (In postclassical language.) The oral presentation by the plaintiff or his advocate of the facts and legal arguments on which he based his claim. The reply of the defendant = *responsio*, *contradictio*.

P. Collinet, *La procédure par libelle*, 1932, 208.

Nasci. To be born. "Those who are born dead are considered neither born nor procreated" (D. 50.16.129). *Nasci* is used of fruits (see FRUCTUS) which proceed from the soil (*in fundo*). With reference to legal institutions *nasci* is used of actions (*actio nascitur* = an action arises), interdicts, obligations, and the like, to which a legal situation under discussion gives origin.—See INSULA IN FLUMINE NATA.

Nasciturus. A child not yet born (unborn). Syn. *qui in utero* (in the womb) *est*. There was a rule that "a *nasciturus* is considered born when his interests are taken into account" (D. 1.5.26).—See CONCEPTUS.

Anon., *NDI* 7; Stella-Maranca, *BIDR* 42 (1934) 238; Albertario, *Studi* 1 (1933, ex 1923) 1; C. A. Maschi, *Concezione naturalistica*, 1937, 66; Jonkers, *Vigiliae Christianae* 1 (1947) 240.

Natalium restitutio. The privileges of a free-born, granted by the emperor to a freedman. All official posts accessible to free-born persons were open to the individual thus privileged. He could enter the *ordo equester* (the equestrian class, see EQUITES) for which the status of a free-born was required.—D. 40.11; C. 6.8.

A. M. Duff, *Freedmen in the R. empire*, 1928, 72.

Natura. Nature of things, natural order, natural reality. *Natura hominum* (*humana*) = human nature. *Naturā* (abl.) = naturally, in a natural way. Ant. *contra naturam*.—With reference to legal insti-

tutions *natura* = the substance, the essential elements, the structure of an institution (*contractus, obligationis, negotii, stipulationis, emptionis*, etc.). Theoreticians among the law teachers coined this concept under the influence of philosophic ideas.—See the following items.

Gradenwitz, *Fg Schirmer* 1900, 13; R. Bozzoni, *Sulle espressioni natura, naturalis . . .*, 1933; C. A. Maschi, *La concezione naturalistica del dir. e degli istituti giur. rom.*, 1937; Bartosek, *St Albertario* 2 (1952) 470.

Natura actionis. The juristic structure of a specific action with regard to its substantial functions. The term is probably of classical origin (Gaius), but it was expanded by Justinian's compilers into a general conception of the nature of actions without regard to a specific action.

C. Longo, *St Scialoja* 1 (1905) 607; *idem*, *BIDR* 17 (1905) 34; Pringsheim, *SDHI* 1 (1935) 73; C. A. Maschi, *La concezione naturalistica*, 1937, 73.98; P. Collinet, *La nature des actions*, 1947; Solazzi, *BIDR* 49–50 (1947) 346.

Natura contractus. Generally or with regard to a specific contract (as, for instance, *natura depositi, societatis, mandati*), the juristic structure of a contract.

Rotondi, *Scritti* 2 (1922) 159; C. A. Maschi, *La concezione naturalistica*, 1937, 73.92; Pringsheim, *SDHI* 1 (1935) 73.

Natura hominum (humana). The normal human nature, essential natural characteristics of mankind, moral or psychological attitudes of men. *Natura hominum* in specific circumstances may serve as a criterion for the juristic evaluation of an individual's acting in a given instance, i.e., whether his act was or was not in accordance with human nature.

C. A. Maschi, *La concezione naturalistica*, 1937, 7.

Natura obligationis. The structure and function of an obligation in general or of a specific obligation.

C. A. Maschi, *La concezione naturalistica*, 1937, 82.

Natura rerum. The reality (existence) of things, all that exists in nature. "What is prohibited by nature of things is not admitted by any law" (D. 50.17.188.1). *In rerum natura esse* = to exist.

C. A. Maschi, *La concezione naturalistica*, 1937, 65.

Natura servitutis. The nature of a servitude. The *natura servitutis* is mentioned with regard to some servitudes, as, for instance, the indivisibility of the servitude ITER is explained by its nature.

C. A. Maschi, *La concezione naturalistica*, 1937, 78.

Naturale ius. See IUS NATURALE.

Naturalis. Natural, by nature, connected with nature. For the various uses of the term which—not always for good reasons—have been supposed to have been introduced by the compilers, see the following items.

Guarneri-Citati, *St Riccobono* 1 (1936) 730 (Bibl.).

Naturalis aequitas. See AEQUITAS, IUS NATURALE.

Naturalis cognatio. Blood relationship among slaves.

Levy, *Natural Law*, in *Univ. of Notre Dame Natural Law Proc.* 2 (1949) 60 (= *SDHI* 15, 1949, 14).

Naturalis familia. The family to which one belongs by birth. Ant. *familia adoptiva* = the family into which one entered by adoption.

Naturalis filius. See FILIUS NATURALIS.

Naturalis lex. Only mentioned once in juristic sources, namely, with regard to the prohibition of theft (*furtum*) by natural law (*lege naturali*, D. 47.2.1.3, similarly Cicero, *de off.* 3.5.21: *contra naturam*).

C. A. Maschi, *La concezione naturalistica*, 1937, 358.

Naturalis obligatio. See OBLIGATIO NATURALIS.

Naturalis possessio. See POSSESSIO.

Naturalis ratio. Natural foundation, conformity with nature, natural reason. The term is indicated as the basic component of IUS GENTIUM and appears at times as a ground of justification for certain legal institutions or decisions in specific cases (= reasonableness).

Koschembahr-Lyskowski, *St Bonfante* 3 (1930) 467; C. A. Maschi, *La concezione naturalistica*, 1937, 236; De Martino, *AnBari* 7–8 (1947) 117; Kaser, *ZSS* 65 (1947) 219; Levy, *Natural Law, Univ. of Notre Dame Natural Law Proc.* 2 (1949, = *SDHI* 15, 1949); Bartosek, *St Albertario* 2 (1952) 474.

Naturaliter. By nature. Syn. *natura* (abl.). *Naturaliter possidere* = physical, corporeal possession.

Nauarchus. The captain of a vessel. *Nauarchus classis* = the commander of a fleet of the Roman navy; he had the privilege to make a formless testament according to the military law (*iure militari*), as all soldiers had.—See TESTAMENTUM MILITIS.

Strack, *RE* 16, 1896.

Nauclerus. A shipmaster who effected the transportation of men and goods for the state.—C. 11.2.—See NAVICULARII.

Kiesling, *RE* 16, 1937.

Naufragium. A shipwreck. It is considered as an unforeseeable accident; see CASUS, CASUS FORTUITUS. Pillage committed during a *naufragium* was punished with a penalty of the fourfold value of the goods robbed.—D. 47.9; C. 11.6.—See DEPOSITUM MISERABILE.

Weiss, *RE* 16; Cuq, *DS* 4; Solazzi, *RDNav* 5 (1939) 253; De Robertis, *St di dir. penale rom.*, 1943, 77.

Nauta. A shipowner. His liability for goods taken for transportation by agreement (RECEPTUM) was regulated in the praetorian Edict which showed particular consideration for the interests of the owner of the transported goods. Syn. EXERCITOR. In the same section of the Edict was settled the responsibility of inn-keepers (*caupones*) and stable-keepers (*stabularii*).—D. 4.9; 47.5; C. 11.27.—See RECEPTUM NAUTARUM, NAVICULARII.

Del Prete, *NDI* 7, 873, 875; Messina-Vitrano, *Note intorno alle azioni contro il nauta*, 1909; M. A. De Dominicis, *La clausola editale salvum fore recipere*, 1933; Mackintosh, *JurR* 47 (1935) 54; Carrelli, *RDNav* 4 (1938) 323; Solazzi, *ibid.* 5 (1939) 35; Brecht, *ZSS* 62 (1942).

Nauticum fenus. See FENUS NAUTICUM. Syn. *nautica pecunia.*

Navicularii. Shipowners whose primary business was the transportation of men and goods over the Mediterranean Sea. The *navicularii* were organized in *collegia* (associations). Under the Empire they

enjoyed a particular protection by the government because of their importance in supplying Rome with food. Owners of larger vessels (of at least ten thousand *modii* tonnage) were exempt from *munera*. Roman citizenship was granted to *naviculārii* of Latin status, the sanctions of the *Lex Iulia et Papia Poppaea* were not applied to them, and women, owners of ships, were not subject to guardianship (*tutela mulierum*). The manifold privileges were strictly personal: they were granted the shipowners *propter navem* (because of the ship) and were denied to their sons and freedmen whether or not they were members of the professional association. In the later Empire, membership in the *collegium naviculārii* was compulsory. The organization as a whole and all its members were regarded as state employees, obliged to fulfill the orders of the government, under conditions dictated by the latter. Their services, frequently regulated by imperial enactments, became an *onus publicum* (a public charge), for the fulfillment of which they were responsible to the state with their whole property.—C. 11.2; 3; 4.—See DOMINUS NAVIS, NAUCLERUS.

Stöckle, *RE* 16 (Bibl.); Besnier, *DS* 4; De Robertis, *Corpus naviculariorum*, *RDNav* 3 (1937) 189; L. Schnorr v. Carolsfeld, *Gesch. der juristischen Person*, 1 (1933) 283; Gaudemet, *St Solazzi* 1948, 657; Solazzi, *RDNav* 9 (1948) 45.

Navigium (navigatio). Navigation. For the protection of navigation on public rivers through interdicts, see FLUMINA PUBLICA. The protection was extended on anchoring- and landing-places (= *stationes*) and in the use of roads after landing (*iter*).

Navis. Any kind of a ship (boat, vessel) serving for the transportation of persons or goods on the sea, rivers and stagnant waters. A ship might be the object of a legacy and of a usufruct. For problems connected with the use of a ship, see EXERCITOR, GUBERNATOR, MAGISTER NAVIS, NAUTA, NAUFRAGIUM, NAVICULARII, IACTUS, NAVIGIUM, EXPUGNARE.—C. 11.4.

E. Gandolfo, *La nave nel dir. rom.*, 1883; De Martino, *RDNav* 3 (1937) 41, 179.

Nec non. And also, and besides. The emphatic affirmation, often strengthened by an *et* (*etiam*), is somewhat suspected of being non-classical because it occurs frequently in Justinian's enactment.

Guarneri-Citati, *Indice*[2] (1927) 58.

Necare. To kill. "One who refuses alimony, is similar to one who kills" (D. 25.3.4).

Necessarii (necessariae personae). Relatives, kinsmen.

Necessarius. See IMPENSAE, HERES NECESSARIUS, HERES SUUS ET NECESSARIUS.

Necessitas. Necessity, exigency, compulsion. The term is opposed to *libera voluntas* (the free will) of a person performing a legal act. *Ex necessitate* (*necessitate cogente*) = by the compulsion of the situation (circumstances), emergency. Ant. *nulla necessitate cogente*. Syn. *necessitudo*.—See COACTUS VOLUI, METUS, VIS, SPONTE.

Koschaker, *ConfCast* 1940, 180.

Necessitudo. The tie of relationship, kindred. *Necessitudo sanguinis* (*consanguinitatis*) = blood relationship.—See NECESSARII.

Necti. To be bound, e.g., a person bound by an obligation (*obligatione necti*), or involved in a crime (*crimine*); a thing pledged as a real security (*pignori, hypothecae*).

Nefas. See FAS.

Nefasti dies. See DIES NEFASTI.

Negare. To deny; in procedural language with reference to the defendant = to deny a claim; syn. *infitiari*. With regard to a magistrate who refused the plaintiff the action he demanded *negare* is syn. with *denegare* (*actionem, petitionem*).—See INFITIARI, DENEGARE ACTIONEM.

Negligentia. Negligence, omission. In the sources *neglegentia* is tantamount to CULPA, and similarly graduated (*magna, lata neglegentia*). Precision in terminology is no more to be found here than in the field of *culpa*. One text declares (D. 50.16.226): "gross negligence (*magna neglegentia*) is *culpa, magna culpa* is *dolus*"; another (D. 17.1.29 pr., evidently interpolated) says: "gross negligence (*dissoluta neglegentia*) is near to *dolus* (*prope dolum*)." In the saying "*lata culpa* is exorbitant (extreme) negligence, i.e., not to understand (*intelligere*) what all understand" (D. 50.16.213.2) *neglegentia* is identified with ignorance. Some of these and other definitions concerning *neglegentia* are the result of interpolations by Justinian's compilers.—See DILIGENTIA, REMOVERE.

F. H. Lawson, *Negligence in the civil law*, 1950.

Negotia. See NEGOTIUM.

Negotiari. To carry on a business of buying and selling.—See NEGOTIATOR.

Negotiatio. A commercial business (on a wholesale basis), the business of an inn-keeper, or a shipper.

Negotiator. A tradesman, a dealer who buys and sells merchandise, on a rather large scale. A slave, called *negotiator*, was the manager of his master's business.

Negotiatores. Under the Empire *negotiatores*, who provided food for the capital, enjoyed special personal privileges (exemption from *munera*). They had the right to be organized in associations (*collegia*) and were treated in much the same fashion as shipowners (see NAVICULARII) and other contractors of the government.—C. 12.34.—See CONSISTENTES.

Kornemann, *RE* 4, 444; Cagnat, *DS* 3; H. J. Loane, *Industry and commerce in Rome*, 1938.

Negotiorum gestio. (From *negotia gerere*.) The management of another's affair or affairs without authorization by the person interested (*dominus negotii*). By such action the *negotiorum gestor* bound

himself to conduct the matter to the end and to return to the *dominus negotii* all that he gained or acquired (proceeds, *fructus*) from the transaction; on the other hand the latter was bound to reimburse the *gestor* for his expenses. The *negotiorum gestio* arose from situations when a person acted in the interest of another during the latter's absence in order to defend the absent party's rights. The essential circumstance was that the *gestor* acted without a mandate. If the *dominus negotiorum* later gave his consent (*ratihabitio*) or did not protest against the gestor's meddling in his affairs, after he had knowledge thereof, the legal situation of the matter was considered a mandate. A further requirement on the part of the *gestor* was that he acted with the intention of serving the interests of another (*animus negotia gerendi*) and not of himself (*sui lucri causa*). Therefore there was no *negotiorum gestio* if he acted in order to execute a contractual duty of his own, fulfilled a moral duty, or made a donation. At any rate he had to abstain from acting *prohibente domino*, i.e., when the latter exactly forbade the gestor to act in his behalf. The *negotiorum gestio* created bilateral obligations although there was no agreement between the parties involved (*quasi ex contractu*). The *dominus negotii* might sue the *gestor* for recovery of the proceeds and for damages caused by an improper (fraudulent or culpable) management of the matter (*actio negotiorum gestorum*); on the other hand the *gestor* had an action for the reimbursement of his expenses (*actio negotiorum gestorum contraria*), even when his efforts reasonably made (*negotium utiliter coeptum*) remained unsuccessful. Postclassical development and Justinian's reforms obscured some details of the institution as they were in classical law; thus, in spite of an abundant literature some points are still controversial.—D. 3.5; C. 2.18; for *negotiorum gestio* in the interest of a guardian.—D. 27.5; C. 5.45.

Kreller, *RE* Suppl. 7 (Bibl. 551); Huvelin, *DS* 4; Scaduto, *NDI* 6 (*s.v. gestione d'affari*); G. Segrè, *StSrn* 23 (1906) 289; Peters, *ZSS* 32 (1911) 263; Partsch, *St zur neg. g., Sberbünch* 1913; *idem*, *Aus nachgelassenen Schriften*, 1931, 96; Riccobono, *AnPal* 3–4 (1917) 209, 221; Kübler, *ZSS* 39 (1918) 191; Frese, *Mél Cornil* 1 (1926) 327; *idem*, *St Bonfante* 4 (1930) 397; Bossowski, *BIDR* 37 (1929) 129; Haymann, *ACDR* Roma, 2 (1935) 451; Ehrhardt, *Romanistische Studien* (*Freiburger rechtsgesch. Abhandlungen* 5) 1935; G. Pacchioni, *Trattato della gestione d'affari*, 3rd ed. 1935; M. Morelli, *Die Geschäftsführung im klas. röm. R.*, 1935; Sachers, *SDHI* 4 (1938) 309; Kreller, *ZSS* 59 (1939) 390; *idem*, *Fschr Koschaker* 2 (1939) 193; V. Arangio-Ruiz, *Il mandato*, 1949, 28.

Negotium (negotia). Any kind of transaction or agreement. Acts involving transfer of property are also covered by this term. Less frequently *negotium* refers to trials, civil and criminal. *Negotia* may also connote the economic activity of a person, his commercial, banking, or industrial business. *Negotia gerere* (*administrare*) = to administer one's own (or another's) affairs. Some persons administer or cooperate in the management of affairs of others as his legally authorized representatives (*tutores, curatores*) or in virtue of a special agreement (*mandatum, locatio conductio operarum*) as his mandatary, agent, *institor*, etc.—See NEGOTIORUM GESTIO.

P. Voci, *Dottrina rom. del contratto*, 1946, 47; G. Grosso, *Il sistema rom. dei contratti*², 1950, 43.

Negotium absentis. A matter which concerns an absent person.

Negotium alienum. A business matter (an affair) of another person. Ant. *negotium suum, proprium.*

Rabel, *St Bonfante* 4 (1930) 281.

Negotium civile. (In imperial constitutions.) A civil trial (litigation). Ant. *negotium criminale* = a criminal trial.

Negotium forense. A judicial matter, a trial.—See FERIAE.

Negotium mixtum cum donatione. A bilateral transaction with reciprocal but unequal performances, wherein one of the parties intending to make a donation gave the other party a thing of much greater value than he was receiving. Such a transaction was valid unless the parties thereby attempted to violate the laws concerning unlawful donations.—See DONATIO.

B. Biondi, *Successione testamentaria*, 1943, 717.

Negotium nullum (nullius momenti). A transaction which is legally invalid.

Negotium privatum. A private matter (transaction); ant. *negotium publicum* = a matter in which the state (*populus Romanus*) is concerned.

Nemini res sua servit. See SERVITUS.—D. 8.2.26.

Solazzi, *Requisiti e modi di costituzione delle servitù*, 1947, 13; *idem*, *SDHI* 18 (1952) 223.

Nemo. Nobody, no one. The phrase *nemo dubitat* (= nobody doubts) is frequently employed by the jurists to indicate that the opinion presented is beyond any doubt. Syn. *nullus*.—In the following items some legal rules starting with *nemo* are given.

Nemo alieno nomine agere potest. In the field of civil procedure: one cannot sue in the name of another. In the procedure under *legis actiones*, representation of a party (*lege agere*) was inadmissible (D. 50.17.123). A few exceptions were, however, recognized, e.g., in favor of persons who were held in captivity by an enemy or were absent in the interest of the state. For the formulary procedure, see COGNITOR, PROCURATOR. In the field of private law the rule disallows concluding a legal transaction for another. Under *ius civile* nobody could act for another, every one must act for himself in acquiring an obligation or a right over a thing (*per extraneam personam nobis adquiri non posse*, Gaius, Inst. 2.95). The exclusion of direct representation was compensated by the services rendered by persons under power (sons, slaves) as the organs acting for their father (the head of the family) or master. The praetorian

law promoted the acknowledgment of obligations contracted or acquired by representatives (*actiones adiecticiae qualitatis, actiones utiles*).—Inst. 4.10.—See EXERCITOR NAVIS.

Riccobono, *TR* 9 (1929) 33; *idem*, *AnPal* 14 (1930) 389.

Nemo alteri stipulari potest. No one can accept a promise by *stipulatio* on behalf of another" (D. 45.1.38.17; Inst. 3.19.19). This was a fundamental rule of the *ius civile*.—See the foregoing item.

Nemo damnum facit, nisi qui id fecit quod facere ius non habet (D. 50.17.151). No one inflicts a damage (*sc.* on another) unless he does something that he has no right to do.—See AEMULATIO, UTI IURE SUO, NEMO VIDETUR DOLO etc.

Nemo de improbitate sua consequitur actionem (D. 47.2.12.1). No one acquires an action through his dishonesty.

Nemo ex consilio obligatur. No one is obligated because of counsel (he gave another).—See CONSILIUM.

Nemo fraudare videtur eos qui sciunt et consentiunt. See FRAUDARE.

Nemo invitus ad communionem compellitur (D. 12.6.26.4). No one is forced to have common property with another.—See COMMUNIO.

Nemo invitus. For further analogous rules, see INVITUS.

Nemo plus commodi heredi suo relinquit quam ipse habuit (D. 50.17.120). No one leaves to his heir more rights than he had himself.—See HERES.

Nemo plus iuris in alium transferre potest quam ipse habet (D. 50.17.54). See TRANSFERRE.

Nemo pro parte testatus pro parte intestatus decedere potest (D. 50.17.7; Inst. 2.14.5). A decedent may not leave his property partly by testament, and partly by intestate succession. A testament must cover the whole estate. If the testator disposed in his last will of a part of his estate only, the rest does not pass on intestacy but the entire estate devolves to instituted heir or heirs. Exception to this rule was admitted in the case of a soldier's testament.

Carpentier, *NRHD* 10 (1886) 1; P. Bonfante, *Scritti* 1 (1926, ex 1891) 101; E. Costa, *Papiniano* 3 (1896) 9; S. Solazzi, *Dir. ereditario rom.* 1 (1932) 212; Sanfilippo, *AnPal* 15 (1937) 187; *Meylan, Fschr Tuor* (Zürich, 1946) 179.

Nemo sibi ipse causam possessionis mutare potest (D. 41.2.3.19). See POSSESSIO.

Nemo (nullus) videtur dolo facere qui iure suo utitur (D. 50.17.55). No one who exercises his right is considered to act fraudulently.—See AEMULATIO, DOLUS.

Nepos. A grandson; *neptis* = a granddaughter. The term *filii* sometimes also comprises the *nepotes*.

Lanfranchi, *StCagl* 30 (1946) 15.

Neratius, Priscus. A remarkable jurist of the first half of the second century after Christ; member of the councils of Trojan and Hadrian. He was the last known head of the Proculian school (*Proculiani*). He wrote casuistic works (*Responsa, Epistulae*), one work with the unusual title MEMBRANAE, a collection of *Regulae*, and a monograph *De nuptiis* (On marriage).

Berger, *RE* 16, 2549; G. Grosso, *ATor* 67 (1932).

Nerva, M. Cocceius. There were two jurists by this name, father (*Nerva pater*) and son (*Nerva filius*). The older (he died in A.D. 33) was head of the Proculian school (*Proculiani*) after Labeo. No specific work of his is known, but he is frequently quoted by later jurists. Little is known about his son, who was also of the Proculian school, and author of a monograph *De usucapionibus* (On usucaptions).

Arnò, *TR* 4 (1923) 210 (on the father).

Nesennius Apollinaris. A disciple of the jurist Paul (third century).

Berger, *RE* 17, 68.

Nex. A violent death.—See IUS VITAE NECISQUE.

Nexum. A legal institution of the ancient Roman law, mentioned in the Twelve Tables. Despite an extensive modern literature the character of *nexum* has remained somewhat obscure. The sources show that already about the end of the Republic the jurists had no precise knowledge about it. It seems clear, however, that *nexum* was a bilateral transaction accomplished like the *mancipatio* (with which it is sometimes identified because of the phrase *nexum mancipiumque* in the Twelve Tables) in the solemn form *per aes et libram* by which according to one opinion the debtor assumed an obligation (e.g., in the case of a loan); according to another view, the debtor sold himself or gave himself to the creditor as a pledge through self-mancipation as a guarantee for an existing or a future debt. Through an oral declaration (*nuncupatio*) the debtor settled his condition as *nexus*, i.e., though remaining free, he was bound to work for the creditor until the debt was paid and he remained with the creditor in a situation factually not very different from that of a slave. He gave his work or his labor power (*operas suas*), as Varro, *De lingua Lat.* 7.105 says, "into slavery (*in servitutem*)." The creditor had the right to put him in fetters. The *nexum* was abolished by the LEX POETELIA PAPIRIA.—See MANCIPATIO, PER AES ET LIBRAM.

Düll, *RE* 17; Berger, *RE* Suppl. 7, 407; Huvelin, *DS* 4; Ascon., *NDI* 8; Mitteis, *ZSS* 22 (1901) 96; Lenel, *ZSS* 23 (1902) 64; Kübler, *ZSS* 25 (1904) 254; H. H. Pflüger, *Nexum und mancipium*, 1908; Kretschmar, *ZSS* 29 (1908) 227; Pacchioni, *Mél Girard* 2 (1912) 319; A. Segrè, *AG* 102 (1929) 28; Popescu-Spineni, *ACDR* Roma 2 (1935) 545; Michon, *Rec Génv* 1 (1934) 42; v. Lübtow, *ZSS* 56 (1936) 239; S. Riccobono, Jr., *AnPal* 41 (1939) 45; De Martino, *SDHI* 6 (1940) 138; Noailles, *RHD* 19–20 (1940–41) 205 (= *Fas et ius*, 1948, 91); M. Kaser, *Eigentum und Besitz*, 1943, 154; *idem*, *Das altröm. Ius*, 1949, 233; H. F. Thormann, *Der doppelte Ursprung der mancipatio*, 1943, 176; Hernandez Tejero, *AHDE* 16 (1945) 296; J. Maillet, *Théorie de Schuld et Haftung*, Paris, 1944, 130; Westrup, *Note ser sponsio et nexum, Kgl. Danske Videnskab., Hist. Filol. Meddedelser* 31, 2 (1947); H. Lévy-Bruhl, *Nouvelles Etudes*, 1947, 97; v. Lübtow, *ZSS* 67 (1950) 112.

Nexus. (Adj.) Bound by an obligation; when used of a thing (*res pignori nexa, pignora nexa*) = pledged. —See NEXUM.

Nihil agere (agi). To perform an act which is legally invalid.

Hellmann, *ZSS* 23 (1902) 403.

Nisi. Except, unless, if not. Phrases introduced with *nisi* and used to complete a preceding legal rule were frequently inserted by the compilers to restrict the applicability of, or to admit an exception to, what had been said before. Many of such *nisi*-additions are of slight significance and do not represent any innovation upon earlier law. A large number of these additions refer to the requirement of precise evidence (see EVIDENTISSIMAE PROBATIONES, PROBATIONES) from which should certainly not be inferred that this requirement was introduced by Justinian. Similarly, restrictions of the following sort: *nisi aliud actum sit* (*convenerit*, and the like) by which an agreement of the parties, contrary to that one which had been discussed before, is admitted, in many instances did not differ from classical law. Therefore, in such instances it has to be ascertained whether what is included in the *nisi*-clause is in fact simply a repetition of what was already in force in the classical law, or a later innovation.

Guarneri-Citati, *Indice*[2] (1927) 60; Berger, *ClPhilol* 43 (1948) 241.

Nobilissimus. An honorific title of the emperor (*nobilissimus Caesar, imperator*) from the third century on. After Constantine, members of the emperor's family were also honored by this title.

Enslin, *RE* 17.

Nobiles, nobilitas. There is no exact definition of these terms in ancient literature. Holders of the highest magistracies, their descendants and senatorial families formed a kind of an aristocratic social group, more in fact than in law. The distinction between *nobiles* and other people not belonging to the noble class (*ignobiles*) gradually superseded the earlier distinction between patricians and plebeians.

Strasburger, *RE* 17; Lécrivain, *DS* 4; Brasiello, *NDI* 8; Meynial, *Si Fadda* 2 (1906); Gelzer, *Die Nobilität der röm. Republik*, *Hermes* 50 (1912) 395; Otto, *Hermes* 51 (1916) 73; A. Stein, *ibid.* 52 (1917) 564; Münzer, *Die röm. Adelsparteien und Adelsfamilien*, 1920; Afzelius, *ClMed* 1 (1938) 40, 7 (1945) 150; Moebus, *Neue Jahrb. für antike Bildung*, 1942, 275; K. Hanell, *Das altröm. eponyme Amt*, 1946, 19

Nocere. To do physical, economic, or moral harm, to be a hindrance. With regard to procedural measures, as e.g., to exceptions, *exceptio nocet* = an exception may be successful if opposed to the plaintiff's claim.

Nocturnus fur. See FUR DIURNUS, FURTUM.

Nolens. Unwilling. *Nolente* = without one's consent, against one's will. Syn. *invito*.

Nolle. To be unwilling, not to wish, to refuse (consent, acceptance, or to do something). Ant. *velle*. "He who has the right to exercise his volition (*velle*) may refuse (*nolle*)," D. 50.17.3.—See NOLENS.

Nomen. A personal name. A free-born Roman citizen normally had three names: *praenomen* (first name), *nomen gentile* or *gentilicium* (the name of the *gens*, the family group, to which he belonged) and *cognomen* (a surname, the third name in the order of the full name). Sometimes, two or more first names appear in literary or epigraphic sources; sometimes, the *cognomen* is missing or two *cognomina* are given as a special distinction. The three-name-system begins to disappear in the third century in favor of the one-name-system.—In juristic works several typical names are employed to indicate fictitious persons in a legal case, where the parties are men, Titius, Lucius Titius, Gaius, Sempronius, Maevius, Seius, etc., where women, Titia, Gaia, Sempronia, Seia, etc., where slaves, Stichus or Pamphilus. A plaintiff often appears as AULUS AGERIUS, a defendant as NUMERIUS NEGIDIUS. In some texts the real names of the litigants appear which indicates that a real case is under discussion. Freedmen retained the name they had as slaves, but adopted the *nomen gentilicium* of their patron.

Frankel, *RE* 16, 1648 (*s.v. Namenwesen*); Morel, *DS* 3; Augustinus, *De nominibus propriis in Pandectis*, in Otto, *Thesaurus iuris R.*, 1 (1790) 259; Schultze, *Geschichte der röm. Eigennamen*, *Abh. Göttingische Gesellschaft der Wissenschaften*, 1904; B. Doer, *Untersuchungen zur röm. Namensgebung*, 1937.

Nomen. Refers to the name of an author of a book or pamphlet. Hence *sine nomine edere librum* = to publish a booklet (a defamatory pamphlet) anonymously. *Sub nomine* = a (true or false) name under which a book is published.

Nomen. With reference to things, the *nomen* (= denomination, appellation) is distinguished from the thing itself (*corpus*). "An error in the naming of a thing does not matter if the identity of the thing itself can be established" (D. 18.1.9.1).—See ERROR NOMINIS, DEMONSTRATIO FALSA. It was customary to denote a plot of land by a name (*nomen fundo imponere*). The jurists use for the specification of a land typical fictitious names, such as *fundus Cornelianus*, *Sempronianus*, *Titianus*, etc.

Nomen. In criminal procedure, see ACCUSATIO (for *nomen deferre*), NOMEN RECIPERE.

Nomen. In contractual relations, a demand, a claim. Syn. *creditum*, *res credita*. "The term *nomen* refers to any contract and obligation" (D. 50.16.6 pr.). *Collocare pecuniam in nomina* (*nominibus*) = to invest money in loans. See COLLOCARE.—See LEGATUM NOMINIS, NOMINA ARCARIA, NOMINA TRANSCRIPTICIA, NOMEN FACERE, FIGNUS NOMINIS.

Nomen actionis. The name of an action. "When commonly used names of actions are lacking, it must be sued *praescriptis verbis*" (D. 19.5.2).—See ACTIO PRAESCRIPTIS VERBIS.

Nomen alienum. See ALIENO NOMINE, NEMO ALIENO NOMINE. Ant. *nomen suum, nomen proprium.*

Nomen dare militiae. See MILITIA.

Nomen deferre. See ACCUSATIO.

Nomen facere. To make an entry in an account-book concerning a loan given to a person, hence to grant a loan.

Erdmann, *ZSS* 63 (1943) 396.

Nomen falsum. A false name. Assuming a *nomen falsum* for fraudulent purposes (e.g., for claiming rights of succession) is punished as *crimen falsi*.—See FALSUM.

Nomen gentilicium. See GENS, NOMEN.

Pulgram, *The origin of the Latin n.g., Harvard St Class Philol* 58 (1948) 163.

Nomen Latinum. See LATINUM NOMEN.

Nomen proprium. The proper name of a person; see NOMEN SUUM.

Nomen recipere. To enter the name of an accused person in the official record. Through such an act a criminal trial, initiated by a formal accusation of an accuser (*nomen deferre, nominis delatio*), was instituted after an investigation had been made by an official organ. Syn. (later) *inter reos recipere*.—See ACCUSATIO.

Taubenschlag, *RE* 17; Eger, *RE* (*receptio nominis*) 1A; Wlassak, *Anklage und Streitbefestigung im Kriminalrecht, SbWien* 184 (1917) 6.

Nomen suum. *Suo* (*proprio*) *nomine agere* = to act (to sue) for one's own sake, on behalf of oneself. Ant. *alieno nomine.*

Nomenclator. A slave whose duty was to remind his master canvassing for electoral votes of the names of influential persons. He used to accompany his master in public during the electoral period.—See CANDIDATI.

Bernert, *RE* 17; Fabia, *DS* 4.

Nomina arcaria. Entries in the cash-book of a Roman citizen concerning payments made from or to the cash-box (*arca*), primarily connected with loans given or repaid. The entries served as evidence that a debt had been contracted (e.g., through *stipulatio*), but they were not as such considered to constitute a literal contract, i.e., to create an obligation by themselves.

Weiss, *RE* 17.

Nomina trans(s)cripticia. Entries (*transcriptiones*) in the cash-book of a Roman citizen stating debts owed to him and payments made thereon. Usually *transcriptiones* were made to convert a pre-existing debt into a literal contract which relieved the creditor from the burden of proving the origin of the debt. The essential elements of a *transcriptio* are the discharging of an old debt and the contracting of a new one. There were *transcriptiones a re in personam* (from the thing to a person) when the receipt of an old debt is entered and the same debtor is charged with a new entry, and *transcriptiones a persona in personam* (= from one person to another) when a debt still due is entered as owed by another person who assumed the debt of the former debtor. The *nomina transcripticia* comprised only money debts, the entries being made under a special system of bookkeeping and with the consent of the debtor. A *transcriptio* created an *obligatio litteris* (= a "literal" obligation) which substituted an earlier obligation originating from a sale, a partnership or another contract. Cash-books ceased to be used by private individuals in the third post-Christian century, but they remained in use by the bankers.—See CODEX ACCEPTI ET EXPENSI, OBLIGATIO LITTERARUM (Bibl.), NOVATIO, EXPENSILATIO.

Steinwenter, *RE* 13, 787; Kunkel, *RE* 4A, 1887; Weiss, *RE* 17; Huvelin, *DS* 4; Aru, *NDI* 3, 223; Platon, *NRHD* 33 (1909) 325; Appert, *RHD* 11 (1932) 639; Arangio-Ruiz, *Si Redenti* 1 (1951) 12.

Nominare. To appoint (a guardian, an heir in a testament), to mention by name (*nominatim enumerare*). In criminal matters = to denounce, to accuse a person of a crime.—See NOMINATIO.

Nominatim. By name (to indicate a person by his name), exactly.—See EXHEREDARE, CONVENIRE, TUTELA TESTAMENTARIA.

U. Robbe, *I postumi*, 1937, 232; Grosso, *SDHI* 7 (1941) 147; Lepri, *Scr Ferrini* 2 (Univ. Sacro Cuore, Milan, 1947) 107.

Nominatio. (In public law.) The presentation of candidates for magistracies to the senate by the emperor. Subsequently, the senate completed the election formally by a confirmation of the emperor's proposals. In the election of municipal magistrates which was effected by the people and in later times by the municipal council, the candidates designated by the highest municipal magistrates might propose (*nominare*) another candidate. With reference to elections in colleges of pontiffs, augurs, etc., *nominatio* meant the proposal of candidates by the members of the college. The election was made by the *comitia tributa* among the candidates nominated.

Kübler, *RE* 17.

Nominatio auctoris. See LAUDARE AUCTOREM.

Nominatio potioris. A guardian who was appointed by a magistrate (in the absence of a testamentary tutor and one called by law, *tutor legitimus*) might, in later classical law, propose (*nominare*) another in his place as better qualified (*potior*) to serve the interests of the ward either because of his relationship with the ward or in virtue of his better financial position. A *nominatio potioris* was also possible in the field of public charges (see MUNERA) to the effect that a person summoned to assume a public service (*munera civilia*) could propose in his place a better qualified one. Details are unknown.—C. 10.67.

Kübler, *RE* 17, 828; Sachers, *RE* 7A, 1534; Solazzi, *RISG* 54 (1914) 23.

Nominatio tutoris. In later classical law syn. with *datio tutoris*.—See TUTELA.

Nominator. A person who exercised his right of NOMINATIO by proposing another for tutorship or a magistracy (particularly in municipalities).—D. 27.7; C. 11.34.—See NOMINATIO POTIORIS.

Nomine. (Abl.) On account of, for the sake of. The use of the word is very frequent in juristic language. It is connected with a noun in the genitive (*filii, domini, pupilli, emptoris, absentis,* etc.) denoting the person for whom one is acting or with an adjective (*alieno, suo, proprio, meo nomine*). See ALIENO NOMINE. The phrases refer primarily to acting as another's representative in court. Such relationship is more explicitly expressed by locutions such as *cognitorio, procuratorio nomine*; see COGNITOR, PROCURATOR. *Nomine alterius* may sometimes mean "because of another, for the fact done by another," as in the case of *actiones noxales* or the so-called *actiones adiecticiae qualitatis* (see EXERCITOR NAVIS). With regard to things or rights (e.g., *hereditatis, pignoris, ususfructus, usurarum nomine*) *nomine* is syn. with *alicuius rei causa* and *propter aliquam rem* (= because of), and indicates the title under which a person claims anything from another.

Nominis delatio. See ACCUSATIO.

Nomocanones. Compilations of ecclesiastical canons collated with the pertinent imperial constitutions excerpted from Justinian's codification, including the Novels. An extensive collection of this kind is the *Nomocanon Quinquaginta Titulorum* (in 50 titles), compiled probably in the first half of the seventh century, and dealing with ecclesiastical matters, marriage, penal law, and some procedural institutions (witnesses, oath). A similar collection is the *Nomocanon Quattuordecim Titulorum* (in 14 titles) which was several times revised, the last edition being by Theodoros Balsamon in the twelfth century). These Greek collections are of importance for textual reconstruction of a number of imperial constitutions.—See ANONYMUS.

Editions: Voellus and Justellus, *Bibliotheca iuris canonici veteris* 2 (1869) 603, for N. 50 tit.; Pitra, *Juris eccles. historia et monumenta* 2 (1868) 433.—Zachariae v. Lingenthal, *Die griechischen N., Mem. Acad. St.-Petersbourg*, Ser. 7, vol. 23 (1877); De Clercq, *Dictionnaire de droit canonique* 3 (1935) 1171.

Nomos georgikos. An official Byzantine compilation (in Greek) of the agrarian law of about the middle of the eighth century, "selected from Justinian books."

Mortreuil, *Histoire du dr. byzantin* 1 (1843) 393; Zachariae v. Lingenthal, *Gesch. des griechisch-röm. Rechts*, 3rd ed. 1892, 249. Editions: Ferrini, *Byzantinische Ztschr.* 7 (1898) 558 (= *Opere* 1, 1929, 376); Ashburner, *The farmers' law, Jour. of Hellenic St* 30 (1910) 85.—A. Albertoni, *Per una esposizione del dir. bizantino*, 1927, 50; Bach, *ClMed* 5 (1942) 70; Dölger, *Fschr Wenger* 2 (1945) 18; De Malafosse, *Recueil de l'Acad. de Législation* 19 (Toulouse, 1949).

Nomos Rhodion nauticos. The maritime law of the Rhodians, "selected from Book 14 of the Digest," as the title of this official codification of the eighth century indicates.—See LEX RHODIA DE IACTU.

Pardessus, *Les lois maritimes* 1 (1828) 231; J. B. Mortreuil, *Histoire du droit byzantin* 1 (1843) 398; Zachariae v. Lingenthal, *Grach. des griechisch-röm. Rechts*, 3rd ed. 1892, 313; Dareste, *Études d'histoire de droit*, 3. sér. 1906, 93; W. Ashburner, *The Rhodian Sea Law*, 1909; A. Albertoni, *Per una esposizione del dir. bizantino*, 1927, 51; Siciliano-Villanueva, *Enciclopedia giur. ital.* 4 (1912) 41.

Nomos stratiotikos. An official Byzantine compilation of military law in wartime, published about the middle of the eighth century based primarily on legal sources of Justinian's time.

J. B. Mortreuil, *Histoire du droit byzantin* 1 (1843) 388; Zachariae v. Lingenthal, *Geschichte der griechisch-röm. Rechts*, 3rd ed. 1892, 17; *idem, Byzant. Ztschr.* 2 (1893) 606, 3 (1894) 437.

Non liquet. See IURARE SIBI NON LIQUERE, AMPLIATIO.

Non usus (non uti). Making no use, not exercising one's rights. The failure of a person, entitled to a servitude or a usufruct, to exercise his right over another's property during a specified period, might produce the loss of said right. With regard to a usufruct the prescriptive time was one year for movables, two years for immovables.—See USUCAPIO LIBERTATIS.

Grosso, *Il Foro ital.*, 62 (1937) part IV, p. 266; B. Biondi, *Servitù prediali*, 1944, 191; Branca, *Scr Ferrini* 1 (Univ. Sacro Cuore, Milan, 1947) 169.

Nonnumquam. See INTERDUM.

Guarneri-Citati, *Indice*[2] (1927) 61.

Norma. (In the language of postclassical and Justinian's constitutions.) A legal principle, a norm.

Wenger, *Canon, SbWien* 220, 2 (1942) 70.

Noster (nostrum). What belongs to "us," what is "ours." "What is ours cannot be transferred to another without an act of ours" (D. 50.17.11).

Noster. When connected with an emperor in a juristic writing (*princeps noster, imperator noster*) it refers to the still reigning emperor. Such allusions allow us to establish the date of composition of a juristic work. Ant. DIVUS, which refers to an emperor no more alive.

Nostra urbs (civitas). In the works of the jurists this means Rome.

Nota censoria. The disqualification of a citizen decreed by the censors for bad behavior in family life, blameworthy treatment of children, clients, or slaves, neglect of sacred duties, living in luxury, or offenses against good faith in the exercise of the duties of a guardian or a partner. Similarly, misdemeanor in office, bribery of judges or magistrates, and many other offenses could be stigmatized by the *nota censoria* with the result that the individual censured would be removed from the senate or from the centuriate or tribal organizations (*tribu moveri*) or reduced to the status of an AERARIUS. The *notatus* was branded with ignominy. (IGNOMINIA), but not with infamy (see INFAMIA), and he was therefore not excluded from military service, from judgeship in a civil trial, and, indeed, in certain circumstances he might even com-

pete for a magistracy.—See REGIMEN MORUM, CENSORES, TRIBUS, SUBSCRIPTIO CENSORIA.

Kübler, *RE* 17; C. Castello, *Studi sul diritto familiare*, 1942, 85.

Nota consularis. The decree of a consul excluding a person from the competition for a magistracy, after examination of his personal and moral qualifications.

Notae. Stenographic symbols, shorthand writing. A testament in shorthand writing is not valid, because "*notae* are not letters" (D. 37.1.6.2). Only a soldier was permitted to make such a testament.—See EXCEPTOR.

Notae. Commentatory annotations to the edition of a work of an earlier jurist. Such more or less extensively annotated editions often contained not only remarks of the annotator which at times did not agree with the opinion commented on, but also citations from other jurists and imperial constitutions. *Notae* were richly excerpted by the compilers of the Digest and indicated as such ("*Paulus notat*." or simply by the name of the annotator). On the other hand, however, the compilers often adopted only the opinion of the commentator disregarding the original opinion of the jurist commented on. Many prominent jurists contributed *notae* to the works of their predecessors; some of the latter have remained obscure. Thus, for instance, Julian wrote *Notae* to two little known jurists, Minicius and Urseius Ferox. Among the most important *Notae* are those of Marcellus to the *Digesta* of Julian, and of Scaevola to the *Digesta* of Julian and Marcellus. Paul annotated works of several earlier jurists. The imperial legislation treated the notes by Ulpian and Paul to the works of Papinian (*in Papinianum*) in a rather strange fashion: they were invalidated by Constantine as "depraving" the jurist's opinions. This was seemingly a tribute to the great jurist Papinian and his work. The ban was repeated in the so-called Law of Citations (see IURISPRUDENTIA) although both Ulpian and Paul appear there among the distinguished jurists. Justinian, however, declared the *notae* in question valid and permitted their acceptance into the Digest.

Berger, *RE* 10, 727, 1175; Balogh, *Et Girard* 2 (1913) 422; H. Krüger, *St Bonfante* 2 (1930) 303; Massei, *Scr Fermi* (Univ. Pavia, 1946) 43; Sciascia, *AnCam* 16 (1942–44) 87; *idem*, *BIDR* 49–50 (1947) 410.

Notae iuris. A collection of abbreviations (by initials) of legal formulae and phrases used in the *legis actiones*, the praetorian Edict and documents. The collection is generally (but not unanimously) ascribed to Valerius Probus, a grammarian of the second half of the first post-Christian century.

Edition: Baviera, *FIR* 1² (1940) 453.—P. F. Girard, *Mélanges* 1 (1912) 177; P. Krüger, *Mél Girard* 2 (1912); Orestano, *BIDR* 43 (1935) 186.

Notare. Used in all the meanings of *notae*; see the foregoing items. Hence *notare* = to remark, to comment on, to correct, to blame, to reprimand.

Sciascia, *BIDR* 49–50 (1948) 429.

Notarius. A person, usually a freedman or slave, skilled in shorthand writing; in the later Empire *notarius* is syn. with *scriba*. In the imperial chancery of the later Empire there was a confidential secretariat of the emperor, called *schola notariorum*, headed by the *primicerius notariorum*. His deputy had the title *tribunus et notarius*. Both were among the highest functionaries of the state.

Lengle, *RE* 6A, 2452; Morel, *RE* Suppl. 7, 586; Lécrivain, *DS* 4.

Nothus. (From the Greek *nothos*.) See SPURIUS. The term appears in literary (non juristic) works.

Lanfranchi, *StCagl* 30 (1946) 30.

Notio. The examination (investigation) of a case. The term refers sometimes also to jurisdiction, but generally the phrase *is cuius de ea re notio est* means the official (magistrate) competent to examine the controversy in question.

Falletti, *Evolution de la juridiction civile*, 1916, 143.

Notitia. Knowledge. The word appears in the definition of IURISPRUDENTIA as "the knowledge of divine and human matters" (*divinarum atque humanarum rerum notitia*, D. 1.1.10.2). Ulpian attributes to the jurists *notitia boni et aequi* (D. 1.1.1.2).—See IUS EST ARS BONI ET AEQUI.

Notitia. (In later imperial constitutions.) A list, a catalogue. To an imperial constitution of A.D. 337 (C. 10.66.1) a *notitia* (= *brevis*) was annexed enumerating professionals who were exempt from public charges (*munera*).—See LATERCULUM.

Notitia dignitatum. A list "of all high offices, both civil and military, in the Eastern (*Orientis*) and Western (*Occidens*) parts" of the Empire. The list contains the titles of the high functionaries, those of their staff officers, an enumeration of military units and their garrisons, and besides, illustrations of civil and military insignia. The work is ascribed to the end of the fourth or the beginning of the fifth century.

Editions: O. Seeck, *N.d.*, 1876. E. Böcking, in two vol. (1839, 1853); Polascheck, *RE* 17; Mattingly, *OCD*; Bury, *JRSt* 10 (1920) 133; Lot, *Rev. des Études anciennes*, 25 (1923); Salisbury, *JRSt* 17 (1927) 192.

Notoria. A written denunciation of a crime, made by a police official or a private informer (*nuntiator*).—See INDICIUM, NUNTIATORES.

Novae clausulae. New rules added by a praetor to the edict of his predecessor. Such a new clause is ascribed to the jurist Julian inserted on the occasion of his codification of the praetorian Edict (see EDICTUM PERPETUUM). It is known as *nova clausula de coniungendis cum emancipato liberis eius*, and concerns the succession on intestacy of an emancipated son. If his children had remained under the paternal power of his father when he was emancipated, his share was divided into two halves of which he received one and his children the other.—D. 37.8.—See EMANCIPATIO.

Weiss, *RE* 17 (*s.v. nova clausula Iuliani*); Cosentini, *St Solazzi* 1948.

Novatio. The transformation and transfer of a former obligation into a new one (D. 46.2.1 pr.), i.e., an existing obligation is extinguished and substituted by a new one. *Novatio* was performed by the way of a *stipulatio* (later through *nomen transcripticium*, see NOMINA TRANSCRIPTICIA) comprising the same debt, *idem debitum*, although changes in persons and terms were admitted. It made no difference from what kind of a contract the previous obligation arose. An obligation originating in a testament could also be renewed by a *stipulatio*. The persons participating in a *novatio* could be different from those between whom the former obligation existed, since either a new creditor in the place of the former one, or a new debtor might intervene. See EXPROMITTERE, DELEGATIO. Through the extinction of the previous obligation the sureties therefor became released and securities ceased to be pledged unless they were extended by agreement of the parties to the new obligation. According to a widespread opinion it was Justinian's law which set the requirement that a *novatio* was valid only when the parties had the intention to make a *novatio* (*animus novandi*). The concept may have been frequently interpolated indeed, although it is hardly conceivable that in the developed classical law, when the abstract nature of the *stipulatio* was no more of its former strength, the intention of the parties might have been completely neglected. The term *novandi causa*, which appears in classical texts, alludes clearly to the intention of the contracting parties. The institution was profoundly reformed by Justinian and substantial interpolations obscured its development in the classical period.—D. 46.2; C. 8.41.—See ACCEPTILATIO, OBLIGATIO NATURALIS.

Weiss, *RE* 17; Last, *GrZ* 37 (1910) 450; Vassalli, *BIDR* 27 (1914) 222; Bohaček, *AnPal* 11 (1924) 341; Kaden, *ZSS* 44 (1924) 164; Koschaker, *Fschr Hanausek* 1925, 118; P. Nègre, *Les conditions d'existence et de validité de la n.*, Thèse Aix, 1925; Scialoja, *St Perozzi* 1925, 407; Guarneri-Citati, *Mél Cornil* 1 (1926) 432; Thorens, *La n. conditionnelle*, Thèse Lausanne, 1927; Cornil, *Mél Fournier* 1929, 87; Meylan, *ACII* 1 (1935) 281; A. Hägerström, *Der röm. Obligationsbegriff*, 2 (Uppsala, 1941) Beil., p. 199; B. Staehelin, *Die N. (Basler Studien zur Rechtsgesch.* 23, 1948); Daube, *ZSS* 66 (1948) 90; Sanfilippo, *AnCat* 3 (1948–49) 225; Beretta, *Scr Ferrini* 1 (Univ. Sacro Cuore, Milan, 1947) 77; F. Bonifacio, *La novazione nel dir. rom.*, 1950.

Novella constitutio (lex). A recent imperial constitution. The term appears already in the fourth century after Christ and is also applied to the constitutions issued by Theodosius II after the promulgation of his Code (see CODEX THEODOSIANUS) and by his successors until A.D. 472 ("Post-Theodosian Novels"). They generally are edited as an appendix to the Theodosian Code.—See NOVELLAE POSTTHEODOSIANAE.

Novellae Iustiniani. (*Sc. constitutiones.*) Justinian's constitutions (= Novels) promulgated after the second edition of his Code (see CODEX IUSTINIANUS), in the period between A.D. 534 and 556. They were not edited by him as a supplement to the Code (what they really were) although he had the intention to do it (*alia congregatio novellarum constitutionum*, Const. *Cordi* 4). The Novels are known from three collections, (*a*) *Epitome Iuliani*, containing 122 Novels, until 555, (*b*) *Authenticum* (*liber Authenticorum*) with 134 Novels, from A.D. 535 until 556, and a Latin translation of the Novels written in Greek, and (*c*) a collection of 168 novels, compiled under Tiberius II (578–582) containing also four constitutions by Justin II and three by Tiberius II. Most Novels are issued in Greek, some in Latin and Greek, some only in Latin, in particular those which were addressed to the Western part of the Empire or contained supplementary provisions to earlier Latin constitutions.—See AUTHENTICUM.

Edition: Vol. 3 of the stereotype edition of the *Corpus Iuris Civilis* (by Mommsen-Krüger-Schoell), fifth ed. by Schoell-Kroll, 1928.—Steinwenter, *RE* 17, 1164; Anon., *DS* 4; Cuq, *NRHD* 28 (1904) 265; P. Noailles, *Les collections des Novelles de Temperour Justinien. Origine et formation sous Justinien*, 1912; *idem*, *La Collection grecque de 168 Novelles*, 1914; E. Stein, *St Bizantini e Neoellenici* 5 (1930) 709; *idem*, *Bull. de l'Acad. de Belgique, Cl Lettres* 23 (1937) 383.

Novellae post-Iustinianae. (Of the Byzantine emperors after Justinian.) These are quite numerous. Of great importance are the Novels of the Emperor Leo the Wise (886–911).

Editions: Zachariae v. Lingenthal, *Ius Graeco-Romanum* 3 (1857); J. and P. Zepos, *Ius Graeco-Romanum*, 1 (1931); H. Monnier, *Les Novelles de Léon le Sage*, 1923; P. Noailles and A. Dain, *Les Novelles de Léon VI le Sage*, 1944.—A. Albertoni, *Per una esposizione del dir. bizantino*, 1927, 47, 57; G. Ferrari, *Il dir. penale nelle Novelle di Leone il Filosofo, Riv. penale*, 67 (1908).

Novelles post-Theodosianae. See NOVELLA CONSTITUTIO.

Steinwenter, *RE* 17, 1163; Anon., *DS* 4; Scherillo, *NDI* 8, 1139; *idem*, *St Besta* 1 (1939) 295.—Translation in C. Pharr, *The Theodosian Code* (Princeton, 1952) 487.

Novicius (servus). (Syn. *mancipium novicium.*) A young slave. Since he generally is more valuable than an older slave (*veterator*, *veteranum mancipium*) the aedilician edict provided that a fraudulent sale of an older slave to whom the appearance of a younger one was given could be rescinded by an action of the buyer who had also the choice to sue only for the restitution of a part of the price.

Novus. See IUS NOVUM, OPERIS NOVI NUNTIATIO, NOVAE CLAUSULAE, IUSTINIANI NOVI.

Noxa. Syn. both with *delictum* (hence a penalty, *poena*, is a revenge for a *noxa*) and *damnum*, damage (hence *noxam sarcire* = *damnum solvere*, *praestare*, to indemnify). Besides, *noxa* may indicate also the "body which inflicted the damage" (Inst. 4.8.1), and finally the indemnification itself. In these various meanings the term is used in a limited field of the

liability of a master of a slave or a father of a son for offenses committed by the slave or the son. The liability was alternative, either to pay the damages or to surrender the offender to the person injured. The latter claimed reparation for the injury sustained through the pertinent action which lay for the offense committed (*actio furti, iniuriarum, legis Aquiliae, vi bonorum raptorum*, etc.) and which was termed *actio noxalis* when directed against the master or the father. In Justinian's law the noxal liability of the father did not exist any more. Since the son was able to possess property of his own, he could be sued directly. On the principle of noxal liability were also based *interdicta noxalia*, applicable only in the case of an INTERDICTUM DE VI and INTERDICTUM QUOD VI AUT CLAM. —Handing over a domestic animal which had caused damage to another is analogous to the cases mentioned beforehand; see ACTIO DE PAUPERIE.—See SCIENTIA DOMINI and the following items.—Inst. 4.8; D. 9.4; C. 3.41.

Lisowski, *RE* Suppl. 7, 587, 604; Cuq, *DS* 4; Biondi, *NDI* 8; Berger, *RE* 9, 1624; Biondi, *AnPal* 10 (1925); *idem*, *BIDR* 36 (1928) 99; Beseler, *ZSS* 46 (1926) 104; Lenel, *ZSS* 47 (1927); Branca, *StUrb* 11 (1937) 98; De Visscher, *RHD* 9 (1930) 411; *idem*, *Le régime romain de la noxalité*, 1947; *idem*, *Symb van Oven*, 1947, 306; G. L. Luzzatto, *Per una ipotesi sull'obbligazione romana* (1934) 64, 102; Daube, *CambLJ* 7 (1939) 23; M. Sargenti, *Contributo allo studio della responsabilità noxale* (*Pubblicazioni Univ. Pavia*, 104) 1949; M. Kaser, *Das altröm. Ius*, 1949, 223; Pugliese, *St Carnelutti* 2 (1950) 115.

Noxa caput sequitur (D. 9.1.1.12). Noxal liability (see NOXA) followed the person of the offender when his dependence upon another's power underwent a change. When after the wrong was committed, the slave or the son came under the power of another person, the liability of the master (or father), at the moment of the wrongdoing, was transferred to the master or father at the time when the noxal suit was brought in. Consequently, if the slave was manumitted in the meantime or the son became independent (*sui iuris*), there was no longer any noxal action, but a direct action against the wrongdoer himself.

Lisowski, *RE* Suppl. 7, 601; De Visscher, *Noxalité* (1947) 147.

Noxa solutus. Released from noxal responsibility.

Noxae datio, deditio (dare, dedere). Handing over (surrendering) the slave who committed the wrongdoing for which his master was liable, was achieved by the transfer of the ownership of the slave to the plaintiff of the noxal action. The *noxae datio* of a son was performed by the *mancipatio* of the son (*ex noxali causa mancipio dare*). The son became thus not a slave of the injured person, but a person *in mancipio* (*in causa mancipii*); see MANCIPIUM.—See NOXA (Bibl.), SCIENTIA DOMINI.

De Visscher, *RHD* 9 (1930) 411; Frezza, *SDHI* 5 (1939) 185.

Noxam committere. To inflict a damage, to commit a private crime (*delictum*).

Noxia. Syn. with NOXA. The rare term occurs a few times in the Twelve Tables.

Noxiam sarcire. See NOXA. Originally (in the Twelve Tables) = to repair the damage done by restitution in kind, not by compensation in money.

M. Kaser, *Das altröm. Ius*, 1949, 219; Daube, *St Solazzi* 1948, 7, 61.

Noxius. A slave or son who committed a wrongdoing for which his master or father bears the noxal liability; see NOXA. Generally, one who committed a crime.

Nubere. To marry. See MATRIMONIUM. *Nubere* is often mentioned as a condition upon which a liberality (a donation, a legacy) is depending, as, e.g., "if he (she) will marry" or "if he (she) will not marry X (a certain person)." The condition to marry a specific person was valid if the individual was an honest person. If he was *indignus* (= unworthy, despicable) the condition was considered not binding. This was also the case when a condition to remain unmarried was imposed.

Nubilis. A girl capable of marriage. Syn. *viripotens*. —See IMPUBES.

Nuda cautio. See CAUTIO. Ant. SATISDATIO.

Nuda conventio. An agreement by which a person assumes an obligation without giving a real security or a surety. A mere agreement is also an agreement which is not accompanied by the delivery of the thing involved.

Nuda pactio. See NUDUM PACTUM.

Nuda proprietas (nudum dominium). Mere ownership, i.e., when the owner has no right to use the object or to take the fruits thereof because these rights are vested in another either by a contract or through a personal servitude (see USUS, USUSFRUCTUS).—C. 7.25.

M. Pampaloni, *Mél Girard* 2 (1912) 337.

Nuda repromissio. See CAUTIO, SATISDATIO.

Nuda res. A thing itself, as opposed to proceeds and accessories thereof.

Nuda stipulatio. See CAUTIO.

Nuda traditio. A simple handing over of a thing to another without any just ground (*iusta causa*).—See TRADITIO.

Nuda voluntas. A mere, formless expression of will not accompanied by the delivery of the thing which is the object of a legal act.—See ADITIO HEREDITATIS.

Nudum dominium. See NUDA PROPRIETAS.

Nudum ius Quiritium. See DOMINIUM DUPLEX, DOMINIUM EX IURE QUIRITIUM. One who has a mere ownership *ex iure Quiritium* of a thing (e.g., of a slave) without holding it, because another is entitled to hold it, "has less right in it than a usufructuary or a possessor in good faith (POSSESSOR BONAE FIDEI)," Gaius 3.166. In a constitution of Justinian (C. 7.25.1) the term *nudum ius Quiritium* is qualified

as "an empty and superfluous word."—See IN BONIS ESSE.

Nudum pactum (nuda pactio). A simple, formless agreement as opposed to *stipulatio* and *contractus*. A *nudum pactum* does not create an obligation but an exception (D. 2.14.7.4).—See PACTUM.

Nudus. Deprived of means.—For *nudus* with regard to certain legal institutions, see the foregoing and the following items.

Nudus consensus. See CONSENSUS.

Nudus usus. The right (a servitude) to use another's thing but not the proceeds (*fructus*) thereof.

Nullius momenti esse. See MOMENTUM.

Nullus. Nobody, no one (= *nemo*), not existing. With regard to legal acts or transactions *nullus* means invalid, void.—See RES NULLIUS.

Hellman, *ZSS* 23 (1902) 425.

Numen. Divinity. *Numen nostrum* ("our divinity") is often used by later emperors in their constitutions.

Enßlin, *Gottkaiser, SbMünch* 1943, 3rd issue.

Numerare pecuniam. To repay a debt in cash. *Pecunia numerata* = a cash payment. *Numerare pretium* = to pay the price of a thing purchased in cash.—See EXCEPTIO NON NUMERATAE PECUNIAE, QUERELA NON NUMERATAE PECUNIAE.

Numeratio pecuniae. A cash payment.

Numerarius. An accountant or auditor in higher imperial offices of the later Empire.—C. 12.49.

Enßlin, *RE* 17; 6A, 1870.

N(umerius) N(egidius). See A(ULUS) AGERIUS.

Numeri. Military units of infantry or cavalry, composed of soldiers recruited in provinces for service on the boundaries of the state. Their commander was the *tribunus numeri*.—See AUXILIA. *In numeris* = in military service.

Rowell, *RE* 17, 1327; Vittinghoff, *Historia* 1 (Baden-Baden, 1951) 390.

Numerus. See RES QUAE PONDERE NUMERO, etc.

Nummaria poena. A fine. See MULTA, POENA PECUNIARIA. Criminal matters in which the culprit was punished with a pecuniary fine = *nummariae res*.

Nummularius. The owner of a small bank, primarily for money-changing transactions. See ARGENTARII, MENSULARIUS, MENSA NUMMULARIA, TESSERA NUMMULARIA.—*Nummularii* were also officials of the mint (*officina monetae*) who were concerned with the test of coins.—See MONETA.—C. 11.18.

Herzog, *RE* 17; Laum, *RE* Suppl. 4, 75; Saglio and Humbert, *DS* 1 (*s.v. argentarii*); Voigt, *ASächsGW* 10 (1880); Mitteis, *ZSS* 19 (1898) 203.

Nummus. A coin, a *sestertius*; in the later Empire the smallest copper coin. *In nummis* = in cash.—See FALSA MONETA, CORPUS.

Schwabacher, *RE* 17.

Nummus unus. A sale (or lease) in which the buyer (lessee) paid a fictitious price (rent) in the form of a small sum of money (*nummo uno* = for one piece of money) in order to disguise a donation prohibited by the law, was void.—See DONATIO, MANCIPATIO NUMMO UNO, SESTERTIUS.

Nuncupatio (nuncupare). A solemn oral declaration before witnesses. It was an essential part of the ancient acts (*negotia*) *per aes et libram* and had to be expressed in prescribed words. In a testament *per aes et libram* the *nuncupatio* contained the dispositions of the testator to be executed by a man worthy of his confidence, the FAMILIAE EMPTOR. The pertinent rule was expressed in the Twelve Tables (*uti lingua nuncupassit* = as one has disposed orally).—See MANCIPATIO, NEXUM, PER AES ET LIBRAM, TESTAMENTUM PER NUNCUPATIONEM.

Düll, *RE* 17; Anon., *NDI* 8; Cuq, *DS* 5 (*s.v. testamentum*); Sanfilippo, *AnPal* 17 (1937) 147; P. Noailles, *Du droit sacré au droit civil*, 1950, 300; Solazzi, *SDHI* 18 (1952) 213.

Nundinae. A market, a fair; the period of time (eight days) between two consecutive markets. *Nundinae* were frequently fixed as a term for the payment of money debts. According to one opinion such payment could be demanded by the creditor on the first day, while other jurists held that the payment could be made during the whole eight-day-period.—D. 50.11; C. 4.60.

Kroll, *RE* 17; Besnier, *DS* 4.

Nuntiare fisco. To denounce to the fisc a person holding property due to the fisc or obligated to make payments to the fisc. In a monograph on fiscal law by the jurist CALLISTRATUS there is a long list of cases which had to be denounced by private individuals to the fisc in its interest, primarily in matters of successions when the fisc might claim an inheritance. Other instances of such denunciations were the discovery of a treasure (see THESAURUS), fines to be paid to the fisc, etc. (D. 49.14.1 pr.). Such fiscal denunciations were frequently made in order to receive a reward (*praemii consequendi causa*). In criminal matters *nuntiare* = *denuntiare*.—See DELATORES, DEFERRE FISCO, DENUNTIATIO, CADUCA.

Berger, *RE* 17, 1475; Solazzi, *BIDR* 49–50 (1948) 405.

Nuntiatio operis novi. See OPERIS NOVI NUNTIATIO.

Nuntiator. (In criminal and fiscal matters.) A denouncer. Syn. DENUNTIATOR.—*Nuntiator* = one who protested against a new construction; see OPERIS NOVI NUNTIATIO.—*Nuntiator* also was the title of an official of a lower rank in the later Empire who publicly announced a felicitous event (e.g., the victorious end of a war). He was prohibited from accepting immoderate gifts.—C. 12.63.

Berger, *RE* 17, 1475; 18, 559.

Nuntius. A messenger. Declarations of will through the medium of a messenger were valid as were those made by letter (*per epistulam*) except in cases in which one had to give the declaration personally (as in a *stipulatio*, in acts concluded *per aes et libram*).

Carboni, *Sul concetto di n., Scr Chironi* 1 (1915); Düll, *ZSS* 67 (1950) 163.

Nuptiae. Almost completely syn. with *matrimonium* in juristic language. It is apparently the earlier term for marriage and is more related to the wedding ceremony than *matrimonium*.—Inst. 1.10; D. 23.2; C. 5.4; 8.—See MATRIMONIUM, VOTA MATRIMONII, CONCUBITUS.

Ehrhardt, *RE* 17. For further bibl. see MATRIMONIUM.

Nuptiae incestae. A marriage concluded between persons who are prohibited to marry because of near blood relationship or affinity. The marriage is not valid. the wife is no *uxor* and the children are illegitimate (*spurii*).—See INCESTUS.

Lombardi, *Ricerche in tema di ius gentium*, 1946, 25.

Nuptiae secundae. See SECUNDAE NUPTIAE.

Nuptialis. Pertinent to a marriage, e.g., *tabulae, instrumentum*.

Nutrire. To nourish, to rear.—See ALIMENTA.

Nutritor. A nourisher, a foster parent. The term refers primarily to persons who sustained with nourishment (and education) a child not of their own (a foundling). A *nutritor* "has no successorial rights of succession either under *ius civile* or *honorarium*" (C. 6.59.10).—See ALUMNUS.

Nutus. A wink. a sign. Under certain circumstances it might be considered as a valid expression of will, sufficient even for leaving a *fideicommissum*.—See NUTUS.

O

Obicere. To oppose a counter-claim to the claim of the plaintiff.

Obicere bestiis. To expose to wild beasts a criminal condemned to death *ad bestias* (= to fight with them). Syn. *subicere*.

Obicere crimen. To charge a person with a crime.

Obicere exceptionem. To oppose an exception in a civil trial.—See EXCEPTIO.

Oblatio. (From *offerre*.) An offer (to pay a debt, to give a security, to pay the estimated value of a thing). *Oblatio votorum*, see VOTA.

Oblatio curiae. See LEGITIMATIO PER OBLATIONEM CURIAE.

Obligare. To tie around, to bind, in a moral and legal sense.

Obligare rem. To "bind" a thing by the tie of a real security (*pignus, hypotheca*). Syn. *pignerare*, if the thing is given to a creditor as a PIGNUS. Hence *obligatus* (e.g., *fundus, ager, res, aedes*), with or without the addition of *iure pignoris* (*hypothecae*) = a thing given as a *pignus* or charged with a hypothec.

Brasiello, *RIDA* 4 (= *Mél De Visscher* 3, 1950) 203.

Obligari (se obligare). To assume an obligation. For *obligari civiliter* (*naturaliter*), see OBLIGATIO CIVILIS (OBLIGATIO NATURALIS). *Obligari actione* = to be suable by a specific action.—See OBSTRINGI ACTIONE.

G. Segrè, *St Bonfante* 3 (1930) 501.

Obligatio. (From *obligare*.) Refers to both legal obligations and moral duties. The definition of *obligatio* in the legal field, in Justinian's Institutes, which obviously goes back to a classical writing, says: "*obligatio* is a legal tie (*vinculum*) by which we are forcibly bound (*adstringimur*) to pay a certain thing (*alicuius solvendae rei*) according to the laws of our nation" (Inst. 3.13 pr.). "The substance of an *obligatio* consists in binding (*obstringere*) another person to give us (*dare*) something. to do (*facere*) or to perform (*praestare*) something" (D. 44.7.3). *Praestare* comprehends any performance by the debtor which is not a *dare* or *facere*, in particular, a payment of a penalty in the case of a private wrongdoing (*delictum*), an additional liability, as, e.g., that of a seller or a lessor in the case of eviction. the liability for *dolus* and *culpa*, etc. Both definitions are not fully satisfactory, but they reflect the essential element of the tie (binding) expressed in the term *ob-ligari* (= to be tied around, *obstringi, adstringi*). *Obligationes* arose from wrongdoings (*ex delicto*) the wrongdoer being obligated to pay a penalty to the injured person, and from contracts (*ex contractu*) when one party or both parties assumed obligations through agreement; see CONTRACTUS. To embrace other kinds of obligations which did not originate either in an agreement or in a crime, as, e.g., from the management of another's affairs without authorization (see NEGOTIORUM GESTIO), from the administration of a ward's property by a guardian, from the payment of a non-existing debt (see INDEBITUM), from a LEGATUM PER DAMNATIONEM, and the like, a comprehensive term *variae causarum figurae* (= various forms of causes, D. 44.7.1 pr.) was used, a vague expression without any juristic content. Nor much better are the two new categories created by Justinian (Inst. 3.13.2): obligations "which arise *quasi ex contractu*" and "*quasi ex delicto* (*maleficio*)," although the pertinent liabilities were known already in classical times. As to the object of an *obligatio* (*dare, facere, non facere*), the fundamental requirements were the natural possibility of its fulfillment (see IMPOSSIBILIUM NULLA OBLIGATIO), the absence of a content which was against good customs (*contra bonos mores*), illicit (*illicitus*) or immoral, and finally, a precise definition of the debtor's duties, either from the origin, through later events, or through the arbitration by a third person. An obligation, the determination of which was completely left to the debtor or to the creditor was not admissible. The terminology for the extinction of an obligation alludes again to the binding "tie"; see SOLUTIO (= loosing, unbinding), LIBERATIO (= setting free). For the various sources of obligations (contracts, delicts, etc.), see the pertinent items.—Inst. 3.13; 14; 21; 22; 27; 29; 4.5; D. 44.7; C. 4.10.—See MORA, ACTIONES IN PERSONAM, PERPETUATIO, NOVATIO, IUS VARIANDI, and the following items.

Radin, *RE* 17; Huvelin, *DS* 4; Brasiello, *NDI* 8 (Bibl. 1196); Perozzi, *Obbligazioni rom.*, 1903 (= *Scr.giur.* 2, 1948, 313); *idem*, *Obbligazioni ex delicto* (= *Scr.giur.* 2, 1948, 441, ex 1915–16); Marchi, *BIDR* 25 (1912), 29 (1916); Cornil, *Mél Girard* 1 (1912); *idem*, *St Bonfante* 3 (1930) 41; G. Pacchioni, *Concetto e origine dell'obbligazione rom.*, Append. to the Ital. translation of Savigny, *Das Obligationenrecht*, 1912; P. De Francisci, *Synallagma, Storia e dottrina dei contratti innominati*, 1–2 (1913, 1916); Betti, *St Pavia* 1920; *idem*, *AG* 93 (1925) 272; Arangio-Ruiz, *Mél Cornil* 1 (1926) 83; A. Hägerström, *Der röm. Obligationsbegriff* 1 (1927), 2 (1943); G. Segrè, *St Bonfante* 3 (1930) 499; M. Biondi, *ACSR* 1931, 3, 251; Leifer, *KrVj* 26 (1933); G. I. Luzzatto, *Per un'ipotesi sulle origini e la natura delle obblig. rom.*, 1934; Lauria, *SDHI* 4 (1938); Albertario, *Studi* 3 (1936) 1; De Martino, *SDHI* 6 (1940) 132; L. Maillet, *Le théorie de Schuld et Haftung en dr. rom.*, Thèse Aix-en-Provence, 1944; Arangio-Ruiz, *Fschr Wenger* 2 (1945) 56; Pflüger, *ZSS* 65 (1947) 121; G. Scisciа, *Lineamenti del sistema obligatorio rom.*, 1947; M. Kaser, *Das altröm. Ius*, 1949, 188; J. Macqueron, *Cours de dr. rom.* 2. *Les obligations* 1949; F. Pastori, *Profilo dogmatico e storico dell'obbligazione rom.*, 1951; Biscardi, *StSen* 63 (1951) 40; v. Lübtow, *Betrachtungen zum Gajanischen Obligationenschema*, *ACIVer* 3 (repr. 1951) 241; A. de la Chevalerie, *Observations sur la classification des obligations chez Gaius*, *ADO–RIDA* 1 (1952) 379.

Obligatio civilis. Used in a double meaning: (*a*) an obligation under *ius civile* as opposed to obligations recognized only by the IUS HONORARIUM (*obligatio praetoria, honoraria*); (*b*) an obligation suable by an action (civil or praetorian) as opposed to an *obligatio naturalis*, not enforceable by an action at all.—See OBLIGATIO NATURALIS.

Obligatio condicionalis. (Syn. *sub condicione.*) An obligation the existence of which depends upon the fulfillment of a condition. The obligation does not exist until the condition is materialized. The legal situation became complicated when the debtor died in the meantime or when the thing eventually due perished. Such cases are dealt with in the sources, but the decisions are not uniform.—See CONDICIO.

Vassalli, *RISG* 56 (1915) 195; Bohacek, *AnPal* 11 (1923) 329; Seckel-Levy, *ZSS* 47 (1927) 168; Riccobono, *St Perozzi* 1925, 349; Beseler, *TR* 10 (1930) 233; Flume, *TR* 14 (1936) 19.

Obligatio consensu contracta. See CONSENSUS.

Obligatio ex contractu. An obligation arising from a contract. The *obligatio* is unilateral when only one of the contracting parties assumes an obligation (as, e.g., in a *mutuum*, a loan). Bilateral obligations arise when both parties assume reciprocal, but different obligations.—See CONTRACTUS, CONTRACTUS INNOMINATI, and the entries dealing with the various contracts.

Obligatio ex delicto (maleficio). An obligation arising from a wrongdoing by which harm was done to a private person; see DELICTUM, FURTUM, RAPINA, INIURIA, DAMNUM INIURIA DATUM, LEX AQUILIA, ACTIONES POENALES.—Inst. 4.1.

Ferrini, *NDI* 6, 657; V. Meltzl, *Die Obligation im Zrichen des Deliktr*, 1909; E. Costa, *Le obbligazioni ex delicto*, 1909; F. De Visscher, *Études* (1931) 255; F. Albertario, *Studi* 3 (1936) 88, 99; Lavaggi, *SDHI* 13–14, 1948, 141.

Obligatio honoraria. See OBLIGATIO CIVILIS.

E. Albertario, *Studi* 3 (1936) 31.

Obligatio in solidum. See DUO REI PROMITTENDI.

Obligatio iudicati. See IUDICATUM.

Obligatio litterarum (litteris contracta). See LITTERARUM OBLIGATIO, NOMINA TRANSCRIPTICIA.—Inst. 3.21.

Obligatio naturalis. An obligation, the fulfillment of which cannot be enforced by an action. The creditor has no means to compel the debtor to pay his debt. Ant. *obligatio civilis*. An *obligatio naturalis*, however, was not deprived of legal effects among which the most important was that the payment made by the debtor was valid and could not be claimed back by him through *condictio indebiti* because an *obligatio naturalis* was after all a *debitum* (a debt) and not an *indebitum*. An *obligatio naturalis* could be the object of a NOVATIO and a surety (FIDEIUSSOR) could guarantee the fulfillment thereof. *Obligationes naturales* were the obligations contracted by a slave (towards his master, another slave, or another person) or by a *filius familias* under paternal power (towards his *pater familias* or another *filius familias* under the same paternal power). A *filius familias* sued for the repayment of debt (a loan) could oppose an *exceptio Senatusconsulti Macedoniani*. New instances of *obligatio naturalis* were added in later and Justinian's law.—See DONATIO, SENATUSCONSULTUM MACEDONIANUM.

Gradenwitz, *Fg Schirmer* 1900, 137; H. Siber, *N.O., Leipziger rechtsvriss. Studien* 11, 1925; Beseler, *TR* 8 (1928) 319; Lauria, *RISG* 1 (1926); Vazny, *St Bonfante* 4 (1931) 131; W. Flume, *Studien zur Akzessorietät der röm. Bürgschaftsstipulationen*, 1932, 70; Albertario, *St* 3 (1936) 55; *idem*, *SDHI* 4 (1938) 529; Maschi, *Concezione naturalistica*, 1937, 121, 348; De Villa, *StSas* 17 (1939) 85, 185; 18 (1940) 13; *idem*, *Le usurae ex pacto*, 1937; Di Marzo, *St Calisse* 1 (1940) 75; Levy, *Natural law* (*Univ. Notre Dame Natural Law Proceedings* 2, 1949, 62 (= *SDHI* 15, 1949, 15); G. E. Longo, *SDHI* 16 (1950) 86.

Obligatio post mortem. An obligation which had to become effective after the death of the promisor (e.g., a *stipulatio "post mortem meam"* creating an obligation on the part of the heir). Such a promise was not valid since according to an ancient rule "an obligation could not begin (*incipere* = to come into existence) in the person of an heir" (Gaius 3.100). Justinian admitted such obligations. An obligation *"cum moriar"* (= when I shall be dying), however, was valid because it was held that the obligation referred to the last moment of the debtor's life. See DIES MORTIS, MANDATUM POST MORTEM, STIPULATIO POST MORTEM, ADSTIPULATIO.

Scheltema, *Rechtsgeleerd Magazijn* 57 (1938) 380; G. Segrè, *BIDR* 32 (1922) 286; Solazzi, *Iura* 1 (1950) 49.

Obligatio praetoria. See OBLIGATIO CIVILIS.

Obligatio principalis. The obligation of a principal as opposed to that of a surety, or the obligation of a defendant which existed before LITIS CONTESTATIO as opposed to that after *litis contestatio* in a trial in which the creditor claimed the payment.

Obligatio quasi ex contractu. (I.e., *quae quasi ex contractu nascitur* = which arises as if from an agreement). An obligation arising from a situation which resembles one originating from a contract, but is not a contractual one because of the absence of an accord between the parties involved, as, e.g., in the case of NEGOTIORUM GESTIO, LEGATUM PER DAMNATIONEM, the payment of a non-existing debt (*indebitum*), *communio incidens*, guardianship, etc.—Inst. 3.27.—See OBLIGATIO.

Riccobono, *AnPal* 3-4 (1917) 263.

Obligatio quasi ex delicto (maleficio). An obligation arising from an illicit act which is not qualified as a *delictum* (*quasi ex delicto debere, teneri*) but which nevertheless creates a liability, at times even for another's doings. Instances of such obligations are that of a IUDEX QUI LITEM SUAM FACIT, liability for *deiecta, effusa, posita, suspensa* from one's house or dwellings (see ACTIO DE DEIECTIS).—Inst. 4.5.

G. A. Palazzo, *Obbligazioni quasi ex d.*, 1919; Y. Chastaignet, *La notion de quasi délit*, Thèse Bordeaux, 1927.

Obligatio re contracta. An obligation which originates from a contract concluded *re*, i.e., by handing over a thing to the future debtor.—See CONTRACTUS, COMMODATUM, DEPOSITUM, MUTUUM, PIGNUS.

Brasiello, *St Bonfante* 2 (1930) 541.

Obligatio rei. See OBLIGARE REM.

Obligatio verborum (verbis contracta). An obligation assumed through the pronunciation of solemn, prescribed words.—Inst. 3.15; D. 45.1.—See CONTRACTUS, STIPULATIO, DICTIO DOTIS, IURATA PROMISSIO LIBERTI.

Obligationes mutuae. See MUTUAE PETITIONES.

Obligatus. (With regard to persons.) Bound by a contractual or delictual obligation; with regard to things (*ager, fundus, aedes, res, bona, fructus*, etc.) = given as a pledge (PIGNUS) to the creditor or hypothecated (see HYPOTHECA).—See OBLIGARE REM, OBLIGATIO.

Obnoxius. One who is responsible for damages (*damnum, noxa*) done to another; in a broader sense syn. with *obligatus*. With regard to criminal matters = one guilty of a crime (*obnoxius criminis*).

Obnuntiatio. Higher magistrates used to give notice (*obnuntiare*) to plebeian tribunes of unfavorable celestial signs which were considered as a bad prognostic for popular assemblies convoked or already commenced. Consequently, the gathering had to be revoked or interrupted.

Weinstock, *RE* 17; Bouché-Leclercq, *DS* 1, 582.

Obreptio. (From *obrepere*.) Surreptitious concealing of true facts in order to obtain an advantage, in particular, to provoke a favorable decision (rescript) of the emperor. The term *subreptio* (*subrepere*) has a similar meaning and refers rather to telling a falsehood for the same purpose. If one succeeded in obtaining an imperial rescript based on false allegations made by himself, his adversary in the trial proves the untruth of the pertinent facts and the presence of an *obreptio*, which led to a dismissal of the plaintiff's claim.

Obrogare legem (obrogatio legis). Repealing in part an existing law by the substitution of a new provision.

Obscurus. Not clear, abstruse. Obscure expressions of will are to be interpreted in a way "which seems more likely or which mostly is being practised" (D. 50.17.114). In the case of unclear terms used in a manumission of a slave, the interpretation should be rather in favor of his liberty. Syn. *dubius, ambiguus*. *Obscuro loco natus* = born of low origin.

Solazzi, *SDHI* 13-14 (1947-48) 276.

Obsequium. A respectful behavior of a freedman towards his patron. There is no juristic definition of *obsequium*, but it was taken to be customary (*consuetum*). A transgression of this duty (use of violence, audacity) exposed the freedman to the charge of ingratitude (see INGRATUS). A similar term is *reverentia* which was considered violated if the freedman sued his patron in court without permission of the competent magistrate.—D. 37.15; C. 6.6.

C. Cosentini, *St sui liberti* 1 (1948) 239.

Observatio legis (legum). The observance of the law (laws).—See CONSUETUDO FORI.

Observatio rerum. The control (custody) of another's property. It is given to those who are put in possession of the debtor's property; see MISSIONES IN POSSESSIONEM.

Obses. A hostage. He can make a testament only with a special permission. Killing a hostage is treated as high treason (*crimen maiestatis*).

E. Vassaux, *Des prisonniers de guerre et des otages en dr. rom.*, Thèse Paris, 1890.

Obsignare (obsignatio). To affix a seal (to a written document, to a testament). Money in a sealed bag could be the object of a deposit; the depositee had no right to use the money and was obligated to return it in the same condition as he received it. This kind of deposit of money was used by a debtor when the creditor was absent or unable to accept the payment; see DEPOSITIO IN AEDE.—See SIGNUM, SIGNARE.

Radin, *RE* 17.

Obstare. To impede, to be a hindrance. The term refers to prohibitions or obstacles (*obstaculum*) resulting from legal provisions or from exceptions which may be opposed to a plaintiff's claim. *Nihil obstat* = nothing is in the way (there is no hindrance). With this phrase the jurists used to strengthen their opinions and advices as not being opposed by the law.

Obstringere rem (pignus). To give a thing as a pledge to a creditor.

Obstringi. To be bound by an obligation (see OBLIGATIO); *obstringi actione (interdicto)* = to be exposed to, or to be sued by, a specific action (an interdict).

Obtemperare. To obey. During a judicial proceeding *obtemperare ius dicenti* = to obey the orders of the jurisdictional magistrate. The praetorian Edict started with a section "if one did not obey the jurisdictional magistrate *(ius dicenti non obtemperaverit)*," in which the praetor granted an action *(actio in factum)* against the recalcitrant party in a trial, both defendant and plaintiff. The action was of a penal nature, the disobedient party being condemned for the contempt of court to the full value of the object of litigation *(quanti ea res est)*. The edict applied primarily to municipal *(municipia, coloniae, fora)* courts which had not the necessary auxiliary organs to enforce their orders.—*Obtemperare* is also used of the fulfillment of the testator's wishes *(obtemperare voluntati)* expressed in his testament.—D. 2.3.

Lenel, *Edictum perpetuum*, 3rd ed. 1927. 51.

Obtentus. A pretext alleged in order to evade the fulfillment of one's obligations. *Obtentu* = under the pretext. In imperial constitutions *obtentu* = with regard, in the face of.

Obtinere. To obtain (an inheritance, possession, a magistracy); *obtinere* in a trial = to win the case.—See OBTINUIT.

Obtinere legis vicem. See LEGIS VICEM OBTINERE.

Obtingere. To accrue to a person (e.g., an inheritance), to fall to a person's share when common property or an estate is divided. Syn. *obvenire*.

Obtinuit. (Syn. *placuit, receptum est.*) It is (has been) held. The phrase refers mostly to the reception of a legal principle, a juristic opinion or a legal custom, following the views of the jurists, judicial practice, or a common usage. Sometimes also the contrary opinion or principle is mentioned which was overruled by that which "prevailed (*praevaluit*)." *Placuit* often refers to an opinion of the jurists.

A. B. Schwarz, *ZSS* 69 (1952) 364.

Obvagulatio. According to the Twelve Tables one could force a stubborn witness who refused to testify on an act in which he had participated as a witness, by summoning him publicly (*obvagulatum ire*) before his house, to appear before court as a witness. Such a spectacular summons, if not justified, was regarded a personal insult (*convicium*) since the refusal of testimony by a person who was requested to witness an act, was considered a dishonest action. —See INTESTABILIS.

Huvelin, *DS* 4; Radin, *RE* 17, 1747; Mommsen, *Jur. Schriften* 3 (1907, ex 1844) 507.

Obvenire. See OBTINGERE.

Obventiones. Proceeds, profits (distinguished from natural products, *fructus*), income in rents from the lease of a house or a ship (*obventiones ex aedificiis, ex nave*).

Occasio. An event, a happening (a marriage, an inheritance) from which (*ex occasione*) one acquires or expects to acquire some gain. *Occasio usucapiendi* = a situation which affords the possibility of USUCAPIO.

Occasus solis. See SOLIS OCCASUS.

Occentare. To write or to recite a slanderous poem (*carmen famosum*); to affect by witchcraft or sorcery.

Brecht, *RE* 17; F. Beckmann, *Zauberei und Recht in Roms Frühzeit*, 1928; Hendrickxen, *ClPhilol* 20 (1925) 289; Lindsay, *ibid.* 44 (1949) 240; R. E. Smith, *Cl Quarterly* 44 (1951) 169.

Occultare (occultatio). To conceal a person (a criminal); *se occultare* = to hide oneself to evade summons into court. Syn. *latitare*.—C. 9.39.

Occultator. A hider, a concealer (of thieves, of stolen goods or of a deserter).—C. 12.45.

Occupantis melior condicio est. "He who holds a thing is in a better position" (D. 9.4.14 pr.). The rule refers to the better procedural situation of the holder of a thing when other persons claim the same thing. When several persons sue the same defendant by *actiones noxales* or *actiones de peculio*, the claimant who first obtained a favorable judgment was in a better situation than the other claimants since his claim was first satisfied by *noxae deditio* or from the *peculium*.

A. Biscardi, *Il dogma della collisione alla luce del dir. rom.*, 1935, 115.

Occupatio. A profession, employment, both civil and military.

Occupatio. A mode of acquisition of ownership by taking possession of a thing which does not belong to anybody (see RES NULLIUS) and is capable of being in private ownership. Among such things are in the first place animals caught by hunting or fishing, things found on the seashore, things abandoned by their owner, and the like.—See VENATIO, PISCATIO, DERELICTIO, INSULA IN FLUMINE NATA, and the following items.

Kaser, *RE* Suppl. 7; Beauchet, *DS* 4; Romano, *O. delle res derelictae, AnCam* 4 (1930).

Occupatio a fisco. The seizure of private property by the fisc either for debts due (in particular by taxfarmers, see PUBLICANI) or as a penalty in criminal matters.

Occupatio rerum hostilium. (Called in literature *occupatio bellica.*) In addition to the occupation of the enemy's land after a victorious war (see AGER OCCUPATORIUS), things belonging to the enemy used to be seized in war time. When taken by a common action of the army as a booty (see PRAEDA), they became property of the Roman state, but, when seized during an isolated enterprise of a soldier, they became his property. Occupation of immovables was excluded from such kind of acquisition of private ownership, since they were always acquired for the state.

Kaser, *RE* Suppl. 7, 686; Beauchet, *DS* 4, 143; J. Bray, *Essai sur le droit pénal militaire des Rom.*, 1894, 126; De Francisci, *AVen* 82 (1923) 967; Vogel, *ZSS* 66 (1948) 394.

Occurrere. To help one by a procedural or another legal measure.

Octava. A special tax of one-eighth (12½ per cent) of the value of the merchandise imposed on sales on a market.
Millet, *Mél Glotz* 1932, 615.

Octavenus. A Roman jurist of the late first century after Christ.
Berger, *RE* 17, 1787; Ferrini, *Opere* 2 (1929, ex 1887) 113.

Octaviana formula. See METUS.

Octoviri. A group of eight functionaries in the earlier organization of municipal administration. They had no jurisidictional power.
Rudolph, *RE* 17; *idem*, *Stadt und Staat im röm. Italien*, 1935, 66; E. Manni, *Per la storia dei municipii*, 1947, 141.

Odofredus. A renowned postglossator in the thirteenth century (died in 1265).—See GLOSSATORES.
Kuttner, *NDI* 9.

Oeconomus ecclesiae. An administrator of Church property, assistant of the bishop in administrative matters. He acted also as *dispensator pauperum* (= the guardian of the poor).—See REVERENTISSIMUS.

Offendere. To offend, to insult. An offense (*offensa*) committed by a slave against his master was punished by the latter.—See INIURIA.

Offendere legem (legi). To violate, to commit a breach of a legal enactment (a statute, an edict, a *senatusconsultum*).

Offensa. See OFFENDERE.

Offerre. To make an offer. *Offerre pecuniam* = to offer the payment of a debt; *offerre satisdationem, cautionem* = to offer a security.—See IUS OFFERENDAE PECUNIAE, OBLATIO.

Offerre iusiurandum. (*Deferre iusiurandum.*) See IUSIURANDUM NECESSARIUM.

Offerre se liti. See LITI SE OFFERRE.

Officere lumini. See SERVITUS NE LUMINI OFFICIATUR.

Officiales. Officials of a lower grade in the imperial administration (clerks, assistants, even workmen), mostly freedmen and slaves.—C. 12.47.
Boak, *RE* 17, 2049; Lécrivain, *DS* 4.

Officinatores monetae. Officials of the imperial mint, mostly freedmen.—See NUMMULARIUS, MONETA.
Vittinghoff, *RE* 17, 2043.

Officium. A moral duty originating in family relationship or friendship (*officium amicitiae*); a duty connected with the defense of another's interests (*officium tutoris, curatoris, advocationis*). In public law *officium* denotes the official duties of any person employed in public service as well as the office (bureau) of a magistrate together with its personnel. The term is applied also to provincial offices and officials, in particular to the provincial governors. The first books of the Digest and of the Code contain a large number of titles dealing with the duties of various imperial officials in Rome and the provinces. Several jurists (Venuleius, Ulpian, Paul, Macer, Arcadius Charisius) wrote monographs *"De officio"* (= On the duties) of higher governmental officials. —*Ex officio* = by virtue of one's official duties. *In officio alicuius esse* = to be employed in one's services. —Inst. 4.17; D. 1.10–22; C. 1.40; 43–46; 48; 11.39. —See MAGISTER OFFICIORUM.
Boak, *RE* 17; E. Bernert, *De vi atque usu vocabuli o.*, Diss. Breslau, 1930.

Officium admissionum. See ADMISSIONES.

Officium iudicis. The complex of legal and customary rules (*mos iudiciorum, usus fori*) which the private judge (*iudex*) had to observe in his judicial activity in addition to the binding instructions of the formula imposed on him. Syn. *officium iudicantis, officium arbitri.* "What a judge has done which does not pertain to his duties, is not valid" (D. 50.17.170).—See USURAE QUAE OFFICIO IUDICIS PRAESTANTUR.

Officium ius dicentis. Comprises all rights and duties within the competence of a judicial magistrate. The term refers in the first place to the praetor (*officium praetoris*).—D. 1.14; C. 1.39.

Officium palatinum. An office in the imperial residence. The *officia palatina* became in the later Empire state offices. Their number increased considerably in the course of time and their holders enjoyed manifold privileges. *Princeps officii* = the head of an *officium palatinum*.—See PALATINI.

Officium pietatis. See PIETAS.

Officium praetoris. See OFFICIUM IUS DICENTIS.

Officium virile. Duties, services accomplished by men (*munera virilia*) from which women were exempt. An *officium virile* was representing another in a trial, guardianship, curatorship, and the like.—See MUNERA.

Ofilius, Aulus. A jurist of the last century of the Republic. He was a disciple of Servius Sulpicius Rufus and the author of the first commentary on the praetorian Edict.
Münzer, *RE* 17, 2040.

Olim. Once, formerly. Through *olim* jurists allude to earlier law to which they oppose the law being in force in their own times (*nunc, hodie, temporibus nostris* = nowadays, in our times).

Omissum legibus. What has been neglected in statutes (laws). "What has been omitted in the laws, will not be neglected by the conscience of those who render judgments" (D. 22.5.13).

Omittere. To fail to fulfill one's duty, or not to exercise one's right, e.g., to neglect the formal acceptance of an inheritance or the request of a *bonorum possessio*, to fail to bring a suit in due time. In certain cases the failure to make use of one's right might cause its loss (see NON USUS). D. 29.2.
Honig, *Fg Richard Schmidt* 1 (1932) 3.

Omittere. (In a testament.) To omit a person in a last will by neither instituting him as an heir nor disinheriting him. Syn. PRAETERIRE.

Omnem. A constitution of the emperor Justinian concerning the organization of legal studies. It was addressed to the teachers of law and issued on the same day as the Digest (December 16, A.D. 533). *Omnem* is the first word of the enactment.—See DIGESTA IUSTINIANI.

Omnes. All men, the whole people (*populus*).—See RES COMMUNES OMNIUM. *Omnes* often refers to all jurists (e.g., *inter omnes constat*, see CONSTAT).

Omnes (omnia). In certain phrases, as *per omnia* (= in every respect), *in omnibus casibus* (= in any case), *omnes omnino* (= all throughout), *omnimodo* (= at any rate), the word occurs frequently in interpolated sentences as an expression of the tendency of Justinian's collaborators toward generalizations.

Guarneri-Citati, *Indice*[2] (1927) 63; *idem*, *Fachr Koschaker* 1 (1939) 144.

Omnia iudicia absolutoria sunt. See ABSOLUTORIUS.

Omnimodo. By all means, at any rate.—See OMNES. Guarneri-Citati, *Indice*[2] (1927) 62.

Omnino. (Combined with *omnes*, *omnia*.) See OMNES.

Onera hereditatis. Debts, liens, taxes, and all kinds of charges by which an estate is encumbered.

Onera matrimonii. Expenses connected with the common life of married persons. "There should be dowry where there are burdens of marriage" (D. 23.3.56.1).—See DOS, PARAPHERNA.

Albertario, *Studi* 1 (1933) 295; Wolff, *ZSS* 53 (1932) 360; Dumont, *RHD* 22 (1943) 34.

Onerare libertatem. To aggravate the liberty of a freedman by imposing on him at the manumission heavy duties exceeding the normal obligations of a freedman towards his patron (*libertatis onerandae causa imposita*). A stipulation of the freedman, assuming such obligations in the event that he offended his patron, was void for the reason that he would always have lived in fear of being forced to pay the penalty (*metu exactionis*). However, a promise made by a slave to pay the patron a certain sum as a compensation for the manumission, and repeated by him after he was freed, was not regarded as a promise *libertatis onerandae causa*.

C. Astoul, *Des charges imposées par le maître à la liberté*, Thèse Paris, 1890; Albertario, *Studi* 3 (1936) 397; C. Cosentini, *Studi sui liberti* 1 (1948) 95.

Onerari. To be burdened with debts and other charges or expenses. The term is applied primarily to an heir on whom the payment of legacies and *fideicommissa* was imposed. Hence *onerosa hereditas* an inheritance encumbered with excessive debts and legacies.

Oneratus. See HONORATUS, ONERARI.

Onerosa hereditas. See ONERA HEREDITATIS, ONERARI.

Onus. See ONERA, CADUCA, ACTIO ONERIS AVERSI, SERVITUS ONERIS FERENDI.

Onus probandi. The burden of the proof.—See PROBATIO.

Levy, *Iura* 3 (1952) 171.

Ope consilio. By aid and counsel. The phrase is applied in criminal matters with reference to all kinds of accessories who help another in committing a crime. It occurs in connection with crimes against the state or the emperor, with adultery and, in the field of private *delicta*, with the theft. In the formula of *actio furti* the two words were attached to the name of the defendant whether he was the principal thief or an accessory. In the first case the words covered the doing of the thief himself (acting with design, intention, see CONSILIUM), in the second case they referred to abettors and instigators. *Ope* means physical help, *consilio* means no simple advice, but instructing and encouraging. "He who persuades and impels another to commit a theft and instructs him with advice, is held to give a *consilium*, one who gives him assistance and help in taking away the goods is acting *ope*" (D. 47.2.50.1).

M. Cohn, *Beiträge zur Bearbeitung des röm. R.*, 1880, 10; R. Balougditch, *Étude sur la complicité en dr. pénal rom.*, 1920, 44.

Ope exceptionis. Through an *exceptio*. Syn. *per exceptionem*. Ant. IPSO IURE. The phrase is used to indicate that the defendant had to oppose an *exceptio* in order to repeal the plaintiff's claim.—See EXCEPTIO, COMPENSATIO.

Opera publica. Public constructions, such as buildings, bridges, harbors, roads. They were under the supervision of the censors (see CENSORES), or special functionaries who from the time of Augustus had the title of *curatores* and depended upon the *praefectus urbi*.—D. 50.10; C. 8.11(12).—See PROCURATORES OPERUM PUBLICORUM, EXACTOR.

Lengle, *RE* 18; Humbert, *DS* 4; E. De Ruggiero, *Lo Stato e le opere pubbliche in Roma antica*, 1925.

Operae. (Pl.; rarely used in sing. *opera*.) Labor in all its manifestations, both manual and intellectual. Syn. *labor* (from the fourth post-Christian century). *Operae* applies also to the work of animals (*operae iumenti*). *Operas praestare* = to render services. To acquire *ex operis* (or *operis*) = by one's work; the phrase is opposed to acquisitions *ex re* = by means (money) taken from one's property.—See LOCATIO CONDUCTIO OPERARUM, and the following items.

F. De Robertis, *Rapporti di lavoro*, 1946, 13.

Operae animalium. The right to use another's beasts of burden. Such right was a personal servitude (*usus iumenti, pecoris, ovium*), usually left by a legacy. It was perhaps a creation of the later (Justinian's?) law.

G. Grosso, *L'uso, abitazione*, 1939, 128.

Operae diurnae. Services (work) to be done in daytime.

Operae fabriles. Labor done by professional craftsmen (*fabri*).

Mitteis, *ZSS* 23 (1902); C. Cosentini, *St sui liberti* 1 (1948) 125.

Operae liberales. (Termed also *artes liberales, ingenuae.*) Services rendered by persons exercising a profession worthy of a free (*liber*) man, primarily intellectuals (lawyers, physicians, architects, landsurveyors, etc.). The *operae liberales* could not be the object of contract of hire (*locatio conductio operarum*). But payment for such services could be claimed through proceedings of *cognitio extra ordinem*. Ant. *operae illiberales* (term unknown in the sources, but used in modern literature).—See HONORARIUM, STUDIA LIBERALIA.

Heidrich, *Ihlb* 88 (1940) 142; Siber, *ibid.* 161; M. Boitard, *Les contrats des services gratuits*, 1941, 9.

Operae liberti. Services rendered by a freedman to his patron. The duties assumed by the freedman could not be sued for by an action (*obligatio naturalis*) unless he promised his *operae* under oath (see IURATA PROMISSIO LIBERTI) or through a *stipulatio operarum*.—D. 38.1; C.6.3.—See ONERARE LIBERTATEM.

Lécrivain, *DS* 3, 1215; G. Segrè, *StSen* 23 (1906) 313; Thelohan, *Et Girard* 1 (1912); Biondi, *AnPer* 28 (1914); M. Chevrier, *Du serment promissoire*, Thèse Dijon, 1921, 153; O. Lenel, *Edictum perp.*[3] (1927) 338; J. Lambert, *Operae liberti*, 1934; Giffard, *RHD* 17 (1938) 92; Lavaggi, *Successione dei liberi patroni nelle opere dei liberti, SDHI* 11 (1945) 236; E. Albertario, *Studi* 4 (1946) 3, 13; C. Cosentini, *St sui liberti* 1 (1948) 103, 2 (1950).

Operae officiales. Services of personal nature due by a freedman to his patron, such as to accompany him, to travel with him, to administer his affairs, and the like.

Mitteis, *ZSS* 23 (1902) 143; C. Cosentini, *St sui liberti* 1 (1948) 125.

Operae quae locari solent. See LOCATIO CONDUCTIO OPERARUM.

Operae servorum. (As a personal servitude.) The right to use the services or labor of another's slave. Syn. *usus servi*. Such right used to be bequeathed by a legacy.—D. 7.7; 33.2.

Cicogna, *Fil* 31 (1906); G. Grosso, *Usu, abitazione, opere dei servi*, 1939, 121.

Operarius. A workman, one who renders subordinate services.—See MERCENNARIUS.

Operis novi nuntiatio (denuntiatio). A protestation by the owner of an immovable (is *qui nuntiat*) against a neighbor starting a new construction (*opus novum*) on his realty which might prevent the former from the use of his property. A *nuntiatio* is justified when the objector acted to defend his right, to prevent a damage which might be caused by the *opus novum*, or when the construction endangered the use of a public place or road. In the last instance any Roman citizen was entitled to protest; in other cases, only the owner whose property was exposed to damages, the beneficiary of a servitude, or one who held the land on a right similar to ownership (an *emphyteuta*, a *superficiarius*). He to whom the protesting notice was given (*is cui nuntiatum est*) was bound to cease the construction or to give the objector security to the effect that he would not suffer any damages or that the former state would be restored (*satisdatio de opere restituendo*). If he failed to give such security, the objector might request an interdict (*interdictum ex operis novi nuntiatione*, named in literature *interdictum demolitorium*) by which the praetor ordered the demolition of what had been constructed. A refusal to comply with the interdict led to a normal trial (see INTERDICTUM). The builder of the *opus novum* had another remedy to evade the prohibition resulting from the *nuntiatio*. He might ask the praetor for the annulment of the *operis novi nuntiatio* (*remissio operis novi nuntiationis*) if he could prove that the objector had no right to oppose the projected construction. The *operis novi nuntiatio* was reformed by Justinian and various innovations were introduced through interpolations performed by the compilers on classical texts leaving, however, some details in obscurity.—D. 39.1.—See PATIENTIAM PRAESTARE, DEMOLITIO.

Berger, *RE* 9, 1670; 18; Humbert, *DS* 4; Brumo, *NDI* 4, 713; Martin, *Et Girard* 1 (1912) 123; R. Henle, *Unus casus*, 1915, 406; Niedermeyer, *St Riccobono* 1 (1936) 253; Branca, *SDHI* 7 (1941) 313; *idem*, *AnTriest* 12 (1941) 96, 128, 156; M. David, *Et sur l'interdit quod vi aut clam*, *AnsUnivr Lyon* 3. ser. 10 (1947) 31; Gioffredi, *SDHI* 13–14 (1947/8) 93; Berger, *Iura*, 1 (1950) 102, 117; Cosentini, *AnCat* 4 (1949–50) 297.

Opinator. See OPINIO.

Opifex. A workman, an artisan.

G. Kühn, *De opificum Rom. condicione*. Diss. Halle, 1910.

Opinio. (In administrative law.) An estimation of a provincial landed property (in the later Empire) for the assessment of the import in corn to be delivered by the landowner for the army. *Opinatores* = officials charged with the evaluation and collection of such corn contributions.

Cagnat, *DS* 4.

Opiniones. Opinions on legal questions, expressed in *responsa* or elsewhere. There is only one work known under the title *Opiniones* which was excerpted for the Digest, namely, by Ulpian (in six books). The collection of Ulpian "Opinions" was perhaps compiled in postclassical times.

Jörs, *RE* 5, 1450 (no. 12); G. Rotondi, *Scritti giur.* 1 (1922) 453; F. Schulz, *History of R. legal science*, 1946, 182.

Oportere. A legal obligation recognized and sanctioned by the *ius civile*. The verb appears in the INTENTIO of the procedural formula in *actiones in personam* and is there connected with another verb which describes the nature of the defendant's obligation: *dare* (= to give), *dare facere* (= to do), *damnum decidere*

(= to indemnify), *praestare* (= to perform) *oportere*. *Oportere* occurs also only in the so-called *actiones in ius conceptae;* see FORMULA IN IUS CONCEPTA, OBLIGATIO.

Paoli, *Rev. des ét latines*, 15 (1937) 326; Kunkel, *Fschr Koschaker* 2 (1939) 4.

Oppidum. A town (originally any place surrounded by walls). The term was later replaced, usually by *municipium*.

Kornemann, *RE* 18.

Opponere. To oppose. The term refers primarily to exceptions (*opponere exceptionem*) which the defendant opposed to the plaintiff's claim; see EXCEPTIO. It is also applied to counterclaims by which the defendant repeals the plaintiff's demand, as e.g., *opponere compensationem*.—See COMPENSATIO.

Opprobrium. An ignominious, disgraceful doing. Syn. *probrum*. "Some doings are ignominious by nature, as theft or adultery, some by the customs of the country" (D. 50.16.42), as, e.g., bad management of a ward's affairs by his guardian, followed by a condemnation in *actio tutelae*.

Optimates. A political group ("the best ones," the aristocrats) composed of wealthy and influential senators and senatorial families in the later Republic who controlled the public administration and finances as an oligarchy, eager to defend their privileged, monopolistic position against the opposing group, the *populares* who fought for the extension of the political rights of the people and the defense of its interests. The two groups were not political parties but assemblages of ambitious individuals and families struggling incessantly for the defense of the interests of their own and their members.

Strasburger, *RE* 18; L. R. Taylor, *Party politics in the age of Caesar* (Los Angeles, 1949) 11.

Optare. See OPTIO.

Optimo iure (optima lege). Refers to persons and things, free from legal restrictions and charges. A person *optimo iure* is one who has full legal capacity. A land *optimo iure* indicates a real property free from private charges (servitudes, pledge) and from taxes and public burdens as well.—See LEX TERENTIA.

Kübler, *RE* 18. 772; Ciapessoni, *St Bonfante* 3 (1930) 661; Beseler, *St Albertoni* 1 (1933) 432; Kaser, *ZSS* 61 (1941) 25.

Optimus (princeps). An attribute ("the best") given to the reigning emperor (*optimus princeps noster*), sometimes enhanced by the addition of *maximus* (*optimus maximusque princeps noster*).

Optimus maximus. These words were usually added in sales or legacies of immovables (e.g., *fundus uti optimus maximusque*) to indicate the legal and factual conditions of the land or building. Through this clause a seller assumed the liability that the immovable was free from easements (*optimus*) and had the size affirmed by him (*maximus*).

Kübler, *RE* 18, 803; E. Rabel, *Haftung des Verkäufers für Mängel im Recht*, 1912, 92.

Optinere, optingere. See OBTINERE, OBTINGERE.

Optio. A title of military and civil officials. In the army *optio* = a substitute of a *centurio*. There were also *optiones* in specific military services as well as in the civil administration, as, for instance, in the staff of the *praefectus urbi*. *Optio* was the leading official in the imperial mint.

Lammert, *RE* 18; Vittinghoff, *RE* 17, 2044.

Optio. A selection. Syn. *electio*. A selection between two or more things could be granted the legatee in a testament (see LEGATUM OPTIONIS) or established in an agreement in behalf of a contractual party, as, e.g., in a stipulation to give either the slave Stichus or Pamphilus.—See OPTIO SERVI.

Optio legata. See LEGATUM OPTIONIS.—D. 33.5.

Optio servi. The election of a slave. It was granted a legatee as the right to select one slave among those who belonged to the estate. The legatee had the choice also when "a slave" was generally bequeathed without any precise indication, and there were several slaves in the estate. If the testator did not fix a date for the choice, the heir might ask the praetor to settle a term. Non-execution of the selection by the legatee within the term fixed resulted in the loss of the right and the heir might offer the legatee a slave of his own choice.—See LEGATUM OPTIONIS.

Optio tutoris. The choice of a guardian (*tutor*). A husband under whose power (see MANUS) his wife was, could in his testament dispose that she might freely choose her guardian. The guardian appointed at the widow's request = *tutor optivus*. The pertinent disposition of the husband could not be restricted by the addition of a condition.—TUTELA MULIERUM.

Sachers, *RE* 7A, 1592.

Opus. See LOCATIO CONDUCTIO OPERIS, ADPROBARE, INTERDICTUM QUOD VI AUT CLAM.

Opus metalli. See METALLUM.

Opus novum. See OPERIS NOVI NUNTIATIO.

Opus publicum. See OPERA PUBLICA, INSCRIBERE OPERE PUBLICO.

Opus publicum. (In criminal law.) Forced labor on a public construction or a public work as a punishment for crimes (*damnatio in opus publicum*) committed by persons of the lower classes of the population. Working in an *opus publicum* comprised the construction or restoration of roads, cleaning of sewers, service in public baths, bakeries, weaving-mills (for women) and the like. Condemnation for lifetime involved loss of Roman citizenship; in other cases the status of the condemned person remained unchanged.

Lengle, *RE* 18, 828; Lécrivain, *DS* 4; Brasiello, *Repressione penale*, 1937, 361.

Oraculum. An imperial enactment (in the language of the imperial chancery of the later Empire).

Orare causam. See CAUSAS DICERE, CAUSAM PERORARE.

Oratio (principis in senatu). A speech of the emperor made in the senate by himself or by his repre-

sentative (a *quaestor*) in order to propose a *senatusconsultum* which alone became the law. This procedure was observed in the first century of the Principate alongside the other form of proposing *senatusconsulta* by high magistrates. From the time of Hadrian the proposals of magistrates fell into disuse and the emperor's discourse in the senate, even made by his representative in his absence, became the normal way leading to a *senatusconsultum*. The emperor's proposal was approved by the Senate without discussion; the approval became a simple formality. Hence *oratio principis* as a technical term replaced that of *senatusconsultum* which from the end of the second century was applied only to earlier *senatusconsulta*. Thus, in the last analysis, the *oratio principio* turned out to be an imperial law, promulgated in the senate. For more important *orationes*, see the following items.—See CONSTITUTIONES PRINCIPUM.

Radin, *RE* 18; Pottier, *DS* 4; Orestano, *NDI* 9; Volterra, *NDI* 12. 29; Cuq, *Le conseilum principis*, *Mémoires Acad. Insc. et Belles Lettres*, Sér. 1, v. 9 (1884) 424.

Oratio (orationes) Claudii. (On *recuperatores*, and on *accusatores* in criminal matters, A.D. 42–51). The oration of the Emperor Claudius (there may have been two orations), confirmed by a decree of the senate, set the age of twenty-five completed years for RECUPERATORES, and declared guilty of *calumnia* those accusers in a criminal trial who without any just reason abandoned an accusation in a trial already in course.—See ACCUSATIO, SENATUSCONSULTUM TURPILLIANUM, CALUMNIA.

Editions: in all collections of *Fontes* (see General Bibl., Ch. XII), the most recent in Riccobono, *FIR* 1², no. 44 (Bibl.); L. Mitteis, *Grundzüge und Chrestomathie der Papyruskunde* 2. 2 (1912) no. 370; Stroux, *SbMünch* 1929, fasc. 3.—Woess, *ZSS* 51 (1931) 336.

Oratio Hadriani. Prohibited an appeal from the decisions of the senate to the emperor.

Oratio Hadriani. (On *fideicommissa*.) Confirmed by a *senatusconsultum*, ordained that a FIDEICOMMISSUM left to peregrines be confiscated by the fisc.

Oratio Marci. (On APPELLATIO.) The Emperor Marcus Aurelius ordered that terms fixed for *appellatio* had to be reckoned as TEMPUS UTILE.

Oratio Marci. On *crimen expilatae hereditatis*.—See CRIMEN EXPILATAE HEREDITATIS.

Oratio Marci. (On IN IUS VOCATIO.) Prohibited from summoning one's adversary into court during the harvest (*messis*) or vintage (*vindemiae*) except in urgent cases, as, for instance, when the plaintiff would lose his action through the lapse of time.

Oratio Marci. (Of the Emperor Marcus Aurelius.) Admitted children to intestate succession of their mother.—See SENATUSCONSULTUM ORFITIANUM.

Oratio Marci. (Of the Emperor Marcus Aurelius.) Protected slaves manumitted in a testament of their master who had been assassinated. According to SENATUSCONSULTUM SILANIANUM in such a case the testament could not be opened (see APERTURA TESTAMENTI) before the discovery of the murderer. The *oratio* settled that, if a slave was manumitted in the testament, his child born in the meantime, i.e., before the opening of the will, was free, and profits which would have come to the slave if he were freed immediately after the testator's death, belonged to him although the testament entered in force much later.

Oratio Marci. (Of the Emperor Marcus Aurelius.) On *confessio in iure*. The contents of this *oratio* is not quite clear; it is mentioned in connection with CONFESSIO IN IURE.

Giffard, *RHD* 29 (1905) 449; W. Püschel, *Confessus pro iudicato est*, 1924, 156; Wlassak, *Konfessio*, *SbMünch* 1934. 42.

Oratio Marci. (Of the Emperor Marcus Aurelius.) On marriages, forbade marriage between a senator's daughter and a freedman, and between a *tutor* (or *curator*) and his ward. In a monograph of Paul the latter prohibition appears as introduced by an *oratio "divorum Marci et Commodi"* (of the late Emperors Marcus and Commodus).

Oratio Marci. (On transactions concerning alimony.) Ordered that they had to be confirmed by the praetor.

Oratio principis. See ORATIO.

Oratio Severi. (Of A.D. 195.) Prohibited tutors (and curators?) from alienating or pledging real property of their wards unless the transaction was allowed by the praetor.

Sachers, *RE* 7A, 1550; G. Kuttner, *Fschr Martitz* 1911, 247; Peters, *ZSS* 32 (1911) 299; E. Albertario, *Studi* 1 (1933) 477; Brasiello, *St Solazzi* 1948, 691; *idem*, *RIDA* 4 (= *Mél De Visscher* 3, 1950) 204.

Oratio Severi et Caracallae. Concerning donations between husband and wife, see DONATIO INTER VIRUM ET UXOREM.

Orator. (In judicial proceedings.) One who assists a party to a civil trial by advice and speech both before the magistrate (*in iure*) and the judge (*apud iudicem*), or who defends the accused in a criminal trial. See ADVOCATUS, PATRONUS CAUSAE. Although trained in law, the *orator* needed the help of a professional jurist in a difficult case; in particular in civil matters such help in the first stage of the trial before the praetor might be necessary to write down the formula and its complicated parts or when a new kind of action was requested. Therefore the activity of the *orator* as an assistant of the party has to be distinguished from that of the jurists. See IURISPRUDENTIA. Some lawyers combined both professions, but instances of a transition from one profession to the other are also known. Under the Principate the two professions are neatly separated. In the second stage of a civil trial before the private judge the eloquence of the *orator* might exercise a greater influence on the final decision since the proceedings were closed after a recapitulation of the legal arguments and the results of the proofs by the representatives of the parties. Rhetoric had an important role in judicial oratorship inasmuch as the rhetoricians in

their capacity as teachers dealt with legal problems on the ground of real or fictitious cases.—See RHETORES (Bibl.), CAUSAM PERORARE, CAUSAS DICERE.
Himmelschein, *Symb. Frib. Lenel*, 1931, 373; Steinwenter, *ZSS* 65 (1947) 106; J. Stroux, *Röm. Rechtswissenschaft und Rhetorik*, Potsdam, 1949; F. Schulz, *History of R. legal science*, 1946, 108.

Orbi. Married persons who have no children.—See LEX IULIA DE MARITANDIS ORDINIBUS, SENATUSCONSULTUM MEMMIANUM.

Orbis Romanus. The Roman Empire.
J. Vogt, *O.R. Zur Terminologie des röm. Imperialismus*, 1922.

Orcinus libertus. See LIBERTUS ORCINUS.

Orbitas. The state of being married and childless. See ORBI. In imperial constitutions *orbitas* means the loss of either a child or a parent.—C. 8.57.

Ordinare. (In the language of the imperial chancery.) To appoint (a *tutor*, a *curator*, a *procurator*).

Ordinare iudicium (ordinatio iudicii). Comprises the whole activity of the magistrate (the *praetor*) in the proceedings *in iure* in a civil trial.—See the following item.
Hölder, *ZSS* 24 (1903) 201; Lenel, *ibid.* 335.

Ordinare litem (ordinatio litis). Apparently a special act in a trial concerning the status of a person as a free man (*causa liberalis*), in particular of a defender of the liberty of the person involved and the acceptance of a security (*cautio*) offered by him. The act is of importance since after *litis ordinatio* (*lite ordinata*) the person whose liberty was under examination was considered free until the final decision was rendered. With regard to other trials the phrase *ordinare litem* seems to be of postclassical origin.—See CAUSA LIBERALIS, ADSERTIO.
Wlassak, *ZSS* 26 (1905) 395; Partsch, *ZSS* 31 (1910) 424; M. Nicolau, *Causa liberalis*, 1933, 116.

Ordinare testamentum (ordinatio testamenti). To make a testament. *Ordinare* refers also to codicils. —Inst. 2.10; 6.23.

Ordinarius. Normal, regular. With reference to procedural institutions *ordinarius* indicates all those which are connected with the normal organization of the courts and the procedure before them (*ordo iudiciorum*). Ant. *extra ordinem*, *extraordinarius*. With regard to officials and offices a distinction is made between *dignitates ordinariae* (officials in active service) and *dignitates honorariae* which are only honorific titles.—See IUDEX ORDINARIUS, IUS ORDINARIUM, IUDICIA EXTRAORDINARIA, HONORARII.
Born, *RE* 18.

Ordo. Generally means a sequence, an order or rather a right order. Hence *ordine* = in a proper order. In the law of successions *ordo* refers to the order in which a group (a class) of successors under praetorian law (*bonorum possessores*) are admitted to the inheritance, see BONORUM POSSESSIO INTESTATI, EDICTUM SUCCESSORIUM.—*Ordo* is also the order in which citizens are called to fulfill public services (*munera*). —See the following items.
Kübler, *RE* 18; Sachers, *RE* Suppl. 7, 792.

Ordo. (With reference to a group of persons.) The senate (*ordo amplissimus*). For the municipal council, see ORDO DECURIONUM. For *ordo* in the meaning of a social class, see ORDO EQUESTER (persons of equestrian rank) and ORDO SENATORIUS (persons of senatorial rank). *Ordo* is also used of professional groups, as, for instance, *ordo publicanorum* (taxfarmers, see PUBLICANI), or of persons in subordinate service of the state (*ordo scribarum*, *apparitorum*, and the like), who were organized as associations.—C. 10.61.

Ordo amplissimus. The senate.—See SENATUS.

Ordo collegii. Indicates either an association, a guild (see COLLEGIUM) or its administrative board.
Kübler, *RE* 18, 931.

Ordo decurionum. The municipal council. See MUNICIPIUM. The *ordo decuriorum* was the center of the municipal administration and functioned also as a superior instance for the decisions of municipal magistrates in all administrative and certain judicial matters. The decisions of the *ordo* were passed by a simple majority, in more important matters by two-thirds or three-fourths of the votes. Members of the council were appointed by the highest magistrates of the municipality (see MAGISTRATUS MUNICIPALES), in some *municipia* by their citizens or by the council itself (see ADLECTIO). The new members paid a fee of admission to the council (*summa honorarii*, see HONORARIUM). The membership in the *ordo decurionum* was considered a dignity, and the families of the *decuriones* constituted the local nobility. From the middle of the third post-Christian century the situation of the *decuriones* changed radically to their detriment as a result of the interference of the emperors in the municipal administration, especially in financial and taxation matters. Heavy financial burdens were imposed on the *decuriones*; the former local nobility became in the later Empire the most vexed group of the municipal population. The membership in the *curia* (this was the new name for the *ordo decurionum*, the *decuriones* being termed ever since *curiales*) became hereditary. The few personal privileges (as, for instance, to be judged by the governor of the province or to be exempt from the most severe penalties or torture in criminal matters) meant very little in face of the financial and personal burdens they had to bear. They were liable for the amount of taxes imposed on the citizens of the *municipium*. An extensive imperial legislation, of which a considerable portion is preserved in the Theodosian and Justinian Codes, dealt with the *curiales*, their duties and the penalties inflicted for violation of the pertinent laws and attempts to evade the obligations imposed. Under Justinian the *curia* became a kind of a penitentiary since the assignment to the *curia*

was applied as a punishment.—D. 50.2; C. 10.32–35; 12.16.—See DECURIONES, ALBUM CURIAE, QUINQUENNALES, DUAE PARTES, MOTIO EX ORDINE.

Kübler, *RE* 4 (*s.v. decurio*); Kornemann, *RE* 16. 621.

Ordo dignitatum. See DIGNITAS.

Ordo equester. See EQUITES.

Ordo iudiciorum privatorum. The ordinary civil, bipartite proceeding in the classical period, to be distinguished from proceedings *extra ordinem*. The term was coined in literature as a counterpart to the extraordinary procedure, see COGNITIO EXTRA ORDINEM.

Sachers, *RE* Suppl. 7, 793; Lécrivain, *DS* 4.

Ordo iudiciorum publicorum. The normal criminal procedure (see QUAESTIONES PERPETUAE) in the last centuries of the Republic and under the Principate, distinguished from *cognitio extra ordinem* in criminal matters which gradually superseded the *quaestiones* procedure owing to the imperial legislation and the transfer of the criminal jurisdiction to the emperor and bureaucratic officials.—See ACCUSATIO, INQUISITIO.

Sachers, *RE* Suppl. 7, 797; Lécrivain, *DS* 4.

Ordo magistratuum. See CURSUS HONORUM.

Ordo senatorius. A privileged social group from the times of Augustus, composed of the members of the senate and their families (agnatic descendants until the third degree with their wives) and of persons to whom the emperor granted the senatorial rank (see CLAVUS LATUS). Possession of property of the value of at least one million sesterces was required. The *ordo senatorius* enjoyed various privileges both in civil and criminal matters. The highest civil and military offices in the state (*praefectus urbi, praefectus aerarii, legati iuridici*, commanders of legions, governors of provinces, etc.) were accessible only to persons of senatorial rank. Lower in social rank was the *ordo equester* (see EQUITES). Persons of equestrian rank could obtain the admission to the senatorial rank from the emperor (see ADLECTIO). Both these privileged classes were referred to as *uterque ordo* when a legal norm applied to both of them.

Kübler, *RE* 18, 931.

Oriens. The Eastern part of the Empire.—See COMES ORIENTIS, DIOECESIS.

Originalis. One who belongs to a social group or community by birth (*originalis colonus*).

Originarii. Citizens of a community by birth (*origo*).—C. 10.39.—See INCOLA.

Origo. The birth place. A person acquired the local citizenship in his *origo* if he was the son of a citizen of the same locality (*municeps*). He became a *civis suae civitatis* (= a citizen of his city). *Origo* was different from the *domicilium* of a person, if he took domicile in another municipality than in that of his birth. A manumitted slave acquired *ius originis* in the *origo* of his patron, an adopted person in that of his *pater adoptivus*. Municipal citizenship could be granted by the municipal council to a person who was born elsewhere. A person who had *origo* in a given community was subject to public charges there without regard to the circumstance whether or not he had his domicile there.—C. 10.39.—See INCOLA, MUNICIPIUM, DOMICILIUM, MUNERA.

Berger, *RE* 9, 1252; Cuq, *DS* 4; A. Visconti. *Note preliminarie sull'o. nelle fonti imper. rom., St Calisse* 1940.

Ornamenta. Distinctive titles and insignia of high magistrates (*ornamenta consularia, praetoria, quaestoria*) or of senators (*ornamenta senatoria*). *Ornamenta* were granted under the Principate as a personal distinction to persons who had never been magistrates or had held a magistracy of a lower rank than the *ornamenta* bestowed on him. See ADLECTIO, HONORARII. Municipal magistrates and *decuriones* had also *ornamenta* (*ornamenta decurionalia, duoviralia*).—See INSIGNIA.

Borcsák, *RE* 18; Lécrivain, *DS* 4.

Ornamenta (ornatus) aedium (domus). Things which serve to adorn a building. They are distinguished from *instrumentum domus* since the latter "pertain to the protection of a house, and the ornaments serve for pleasure" (D. 33.7.12.16). To *ornamenta* belong pictures, sculptures, and other things which embellish a house.—See INSTRUMENTUM.

Ornamenta iumentorum. An ornamental equipment (caparison, trappings) of beasts of burden which they used to wear when sold at the market. According to the aedilician edict which dealt with the sale of domestic animals, the *ornamenta* were considered sold together with the animals, and the buyer could claim them by a specific action.—See EDICTUM AEDILIUM CURULIUM.

Biondi, *Actiones arbitrariae, AnPal* 1 (1911) 153.

Ornamenta mulierum. Women's ornaments (jewelry). The term is discussed by the jurists in connection with legacies of *ornamenta mulierum*.—D. 34.2.—See SUMPTUS.

Ornamenta triumphalia. Ornaments worn by a military commander during his triumphal entrance in Rome after a victorious war.—See TRIUMPHUS.

Borzsák, *RE* 18, 1121.

Ornatio provinciae. The assignment of military units to a province for its security, together with the necessary provisions of food and money for the expenses of administration. The senate was the competent authority.

O'Brien-Moore, *RE* Suppl. 6, 728.

Os fractum. An injury inflicted on a person and consisting in the fracture of a bone. It is mentioned already in the Twelve Tables as a punishable crime by the side of *membrum ruptum* which comprises major damages to a human body.

Binding, *ZSS* 40 (1919) 106; Appleton, *Mél Cornil* 1 (1926) 51; Di Paola, *AnCat* 1 (1947) 268.

Osculum. A kiss. If a man kissed his fiancée at the conclusion of the betrothal (*osculo intervenienti*) and died before the marriage, the woman might keep one-half of the gifts he had given her; the other half had to be returned to the heirs of the deceased, according to postclassical law.
M. B. Pharr, *CJ* 42 (1947) 393.

Ostendere. To prove. It is a favorite term in Justinian's constitutions; it occurs also in some interpolated texts.
Guarneri-Citati, *Indice*², 1927, 63.

Ostentatio. A display, an exhibition. Consumable things (see RES QUAE USU CONSUMUNTUR) could be the object of a gratuitous loan (COMMODATUM) if they were used only for an ostentatious show (*ostentatio*) and a vain display (*pompa*).

Ostia. A house door. A lease of a house or a dwelling could be unilaterally dissolved by the lessee if the landlord refused to restore doors (and windows, *fenestrae*) which were in a bad condition. On the other hand the tenant who provided the house with doors at his own expense had the right to take them away (see IUS TOLLENDI) after restoring the entrances to their former condition.

Ostiarius. A janitor, normally a slave.

Otiosus. Idle, unemployed, free from charges. *Otiosa pecunia* = money not lent out on interest.

Ovatio. See TRIUMPHUS.
Rohde, *RE* 18.

Ovile. An enclosure on the *Campus Martius* (= the field of Mars in Rome) where the *comitia centuriata* gathered and voted (*suffragia ferre*). The term became a popular expression for a voting place. The official term was *saeptum*. *Saepta* were also termed the enclosed places assigned to the single *tribus* or *centuriae* for the purpose of voting.
Rosenberg, *RE* 1A (*s.v. saepta*).

P

Pabulatores. Military units sent out to provide forage for horses.
Lambertz, *RE* 18.

Pacisci. See PACTUM, TALIO.

Pacisci de crimine. An agreement with a wrongdoer to the effect that one would not bring an accusation against him (*de non accusando*) or would accuse him but conduct the accusation in a way to make the culprit be absolved.—See PRAEVARICATIO, TERGIVERSATIO, SENATUSCONSULTUM TURPILLIANUM.
Kaser, *RE* 6A, 2416; Levy, *ZSS* (1933) 186; Bohacek, *St Riccobono* 1 (1936) 343.

Paconius. An unknown Roman jurist of whom only one text is preserved in the Digest. He is probably identical with Pacunius, also represented by a single text in the Digest.
Berger, *RE* 19 (no. 6).

Pactio. See PACTUM.

Pactio collegii. The by-laws of an association (see COLLEGIUM) voted on and passed by the members to deal with the internal organization of the association (*pactionem ferre, constituere*). Syn. *lex collegii*.

Pactio libertatis (pro libertate). An agreement with the master of a slave under which money was given to him in advance (or promised) in order that the slave be manumitted.

Pactiones et stipulationes. Pacts and stipulations between the interested parties served for the constitution of praedial servitudes or of a usufruct on provincial soil by agreement, since *mancipatio* and *in iure cessio*, the civil ways of the constitution of such rights, were not applicable to provincial land.—See SERVITUTES PRAEDIORUM, USUSFRUCTUS.
Condanari-Michler, *RE* 18, 2150; P. Krüger, *Die praetorische Servitut*, 1911; Frezza, *StCagl* 22 (1935) 98; B. Biondi, *Servitù prediali*, 1946, 215; S. Solazzi, *Requisiti e modi di costituzione delle servitù prediali*, 1947, 109.

Pactum. "The agreement (*placitum*) and consent of two or more persons, concerning the same subject (*in idem*)" (D. 2.14.1.2). Since the earliest times the term applied to any agreement. Even in international relations an agreement between two states (such as a peace treaty) or between the commanders of two armies engaged in a fight, was termed *pactum*. In the law of obligations *pactum* (*pacisci*) is used in the broadest sense, both with regard to contractual and delictual obligations. With regard to the latter, *pactum* referred to a composition between the offender and the person injured by the wrongdoing (*delictum*) and still in classical law a transaction with the person damaged excluded the availability of the pertinent penal action (e.g., in the case of a theft the *actio furti*, or in the case of INIURIA the *actio iniuriarum*). In such cases the *pactum* produced the extinction of an obligation. In the province of contractual obligations the development of *pacta* (formless agreements) was due to the praetorian Edict in which the praetor proclaimed: "I shall protect *pacta conventa* (agreements, mutual understandings) which were concluded neither by fraud, nor contrary to statutes, plebiscites, *senatusconsulta*, imperial decrees, or edicts, nor with the intention to evade fraudulently one of those enactments" (D. 2.14.7.7). The protection was granted in the form of an EXCEPTIO if one party was sued contrary to the agreement reached in a formless *pactum*. In IUDICIA BONAE FIDEI, governed by good faith, an exception was superfluous inasmuch as the judge had to pass the judgment according to the principles of *bona fides* which implied that any reasonable agreement between the parties be taken into consideration.—D. 2.14; C. 2.3.—See CONTRACTUS, EXCEPTIO PACTI, and the following items.
Condanari-Michler, *RE* 18; Beauchet, *DS* 4; *NDI* 9 (Anon.); Ferrini, *Opere* 3 (1929 ex 1892) 243; Manenti, *StSen* 7 (1890) 85, 8 (1891) 1, 31 (1915) 203; G. Platon, *Pactes et contrats en droit romain et byzantin*, 1917; Stoll,

ZSS 44 (1924) 1; Koschaker, *Fschr Hanausek* 1925, 118; P. Bonfante, *Scritti* 3 (1926) 135; Grosso, *Efficacia dei patti nei bonae fidei iudicia*, *MemTor* 3 (1928); *idem*, *StUrb* 1, 2 (1927, 1928); Riccobono, *St Bonfante* 1 (1930) 125; *idem*, *Stipulationes, contractus, pacta*, *Corso*, 1934/5; V. De Villa, *Le sanzioni ex pacto*, 1937; Boyer, *Le pacte extinctif d'action*, *Recueil de l'Acad. de législation de Toulouse*, Sér. 4, v. 13 (1937); G. Lombardi, *Ricerche in tema di ius gentium*, 1946, 200; G. Grosso, *Il sistema romano dei contratti*, 2nd ed. 1950, 186.

Pactum adiectum. (A non-Roman term.) An additional agreement to a contract involving a change of the typical content thereof. Thus, for instance, a *pactum adiectum* in a sale was the ADDICTIO IN DIEM, or LEX COMMISSORIA.

Condanari-Michler, *RE* 18, 2142; P. E. Viard, *Les pactes adjoints aux contrats*, 1929; Stoll, *ZSS* (1930) 551.

Pactum conventum. A term which seemingly was used as a technical one in the praetorian Edict (*pacta conventa*, see PACTUM). It is uncertain whether the expression is to be understood as two nouns (= pact—agreement) or as a "pact agreed upon."—See IUDICIA BONAE FIDEI.

Pactum custodiae. An agreement by which one party assumed the duty of custody of the other party's things. Such a duty could be the object of a special contract (*locatio conductio operarum*) or of an additional clause to another contract.—See CUSTODIA.

Pactum de constituto. See CONSTITUTUM.

Pactum de distrahendo (vendendo) or de non distrahendo pignore. An agreement between debtor and creditor concerning the sale (or non-sale) of the pledge in the case of the debtor's default. See IUS DISTRAHENDI. If in the sale of the pledge the creditor obtained a sum bigger than the debt was, he had to restore the surplus (SUPERFLUUM) to the debtor.

Manigk, *RE* 20, 1557.

Pactum de emendo pignore. An agreement between debtor and creditor that the thing given as a pledge (*pignus*) might be bought by the creditor or by the surety who guaranteed the payment.—C. 8.54.

Manigk, *RE* 20, 1557.

Pactum de non petendo. A formless agreement between creditor and debtor by which the former assumed the obligation not to sue the debtor in court for the payment of the debt or for the fulfillment of his obligation. Such an agreement could be limited to a specific action, e.g., *ne depositi agatur* (= not to proceed with the *actio depositi*) or not to sue for execution of a judgment-debt (*actio iudicati*); it could be also limited in time, i.e., not to sue within a certain space of time. A creditor who contrary to such an agreement brought an action against the debtor could be repealed by an *exceptio pacti*. The benefit involved in a *pactum de non petendo* could be strictly personal, i.e., granted solely to the debtor alone, or extended to all persons engaged in the given obligation (sureties, co-debtors, co-creditors). This distinction is the basis of the terminology *pactum de non petendo in personam* and *in rem*, which seems to be of postclassical origin. A *pactum de non petendo* could be modified or annulled by a later agreement *ut petere liceat* giving the creditor the right to sue the debtor.

Condanari-Michler, *RE* 18, 2142; De Villa, *NDI* 9; Segrè, *RDCom* 12 (1915) 1062; Rotondi, *Scr giuridici* 2 (1922, ex 1913) 307; Koschaker, *Fschr Hanausek* 1925, 118; Albertario, *St Calisse* 1 (1940) 61; Guarino, *St Scorza* 1940, 443.

Pactum de non praestanda evictione. See EVICTIO.

Pactum de retro emendo (vendendo). An additional clause in a sale by which the seller is granted the right to buy back the thing sold, within a certain time at a fixed price. A contrary agreement was in favor of the buyer to the effect that he might sell back the thing purchased to the seller. The terms *de retro emendo* (*vendendo*) were coined in the literature.

Pactum de vendendo pignore. See IUS DISTRAHENDI, PACTUM DE DISTRAHENDO PIGNORE.

Pactum displicentiae. An additional clause in a sale to the effect that the buyer is entitled to return the thing to the seller and to annul the sale within a certain time if the thing does not suit him. Such a sale is conditional, its validity depends upon the approval by the buyer. The term *pactum displicentiae* is not Roman.—See EMPTIO.

Pactum donationis. See DONATIO.

Pactum dotale. An agreement concerning the dowry, in particular its restitution in the case of dissolution of the marriage by divorce or death of one of the spouses.—D. 23.4; C. 5.14.—See DOS, INSTRUMENTUM DOTALE.

Pactum ex continenti. An additional clause (*pactum adiectum*) to a contract agreed upon by the parties at the conclusion of the contract. Ant. *pactum ex intervallo* = an agreement, reached afterwards, primarily in favor of the debtor.—See CONTINENS.

Pactum ex intervallo. See the foregoing item.

Pactum fiduciae. See FIDUCIA.

Pactum in favorem tertii. See CONTRACTUS IN FAVOREM TERTII.

Pactum legitimum. (In the later Empire.) A formless agreement protected by an action.

Pactum ne dolus praestetur. A clause attached to a contract governed by *bona fides* (see CONTRACTUS BONAE FIDEI) to the effect that the debtor is not responsible for fraud (see DOLUS), for instance, in a contract of a deposit (see DEPOSITUM). Such a clause was not admissible; it was considered as being against good faith (*contra bonam fidem*) and good customs (*contra bonos mores*) and as such it was void. On the other hand, however, the extension of the liability of the debtor for *culpa* (see CULPA) in a contract under which he normally was answerable for *dolus* only (as in the case of a deposit), was valid (*pactum ut et culpa praestetur*).—See DOLUS MALUS.

Pactum nudum. See NUDUM PACTUM.

Pactum praetorium. A formless agreement the fulfullment of which could be enforced by a praetorian action (*actio in factum*).—See FORMULAE IN IUS CONCEPTAE. RECEPTUM.

Pactum ut minus solvatur. An agreement concluded with an heir by which the creditors of the estate declared to be satisfied with the payment of a portion of the debts if the inheritance was insolvent.

Guarino, *St Scorza* 1940, 443; *idem, AmCat* 4 (1949–50) 196; see Solazzi, *Concorso dei creditori* 4 (1943) 96.

Pactumeius Clemens. A jurist of the first half of the second century after Christ; he made a brilliant official career (consul A.D. 135). He was frequently employed by Hadrian and Antoninus Pius for official missions into provinces.

Hanslik. *RE* 18, 2154 (no. 3).

Pacuvius Labeo. A jurist at the end of the Republic, father of the famous jurist LABEO, disciple of the prominent Republican jurist, Servius Sulpicius Rufus.

Berger, *RE* 18, 2176 (no. 9).

Paedagogium. An educational institution where boys were trained for service as pages in the imperial palace.

Ensslin, *RE* 18, 2204; Navarre, *DS* 4.

Paedagogus. A slave who escorted the master's children to school and took care of them in school and at home. A *paedagogus* enjoyed a privileged position in the master's house and usually was manumitted sooner than other slaves.—In the later Empire *paedagogus* was the director of the PAEDAGOGIUM.

Schuppe, *RE* 18 (*s.v. paidagogos*); Navarre, *DS* 4.

Paelex (pelex, pellex). A mistress of a married man; a woman who lived with a man as his wife without being married to him. "She is named by the true name 'a friend' (*amica*) or by the name 'concubine' which is a little more honorable" (D. 50.16.144).—See CONCUBINA.

Erdmann, *RE* 18; C. Castello, *In tema di matrimonio e concubinato* (1940) 9.

Paenitentia. (From *paenitere.*) A change of one's mind concerning a transaction already concluded or concerning the omission of the performance of a legal act within a fixed term (e.g., non-acceptance of an inheritance when the solemn form of CRETIO was prescribed). Generally *paenitentia* is without any legal effect. However, in Justinian's law there were some specific cases in which a person could unilaterally withdraw from a legal transaction by a simple change of mind, if the other party had not as yet fulfilled his obligation, and through an action *condictio* (termed in literature *condictio propter paenitentiam, ex paenitentiam*) recovered what he had already paid. Thus, for instance, one who had made a donation to a slave's master to have the slave be manumitted, could revoke the donation before the manumission was performed.—See ARRA, IUS PAENITENDI.

F. Manns, *Pönitenzrecht*, 1879; O. Gradenwitz, *Interpolationen in den Pandekten* 1887, 146; N. Verney, *Ius poenitendi*, Thèse Lyon, 1890; J. Bendixen, *Das ius poenitendi*, Diss. Göttingen 1889; W. Felgenträger, *Antikes Lösungsrecht*, 1933, 27.

Paganus. (Adj.) See PECULIUM PAGANUM.

Paganus. (Noun.) Used in different meanings: the inhabitant of a PAGUS; the inhabitant of a lower situated place, a valley, as opposed to an inhabitant of a mountain or a hill, *montanus*; a civilian person (non-soldier), ant. *miles*, hence the distinction *peculium paganum—peculium castrense*; a heathen, a pagan.—C. 1.10; 11.

Kornemann, *RE* 18; Gilliam, *Amer. Jour. of Philol.* 73 (1952) 75.

Pagus. In oldest times, an ethnic or tribal group comprising several settlements, an arrangement found in the primitive organization of peoples (*populi*) in Italy. According to a not quite reliable source, Rome under the last kings consisted of 26 *pagi*. A minor unit was the VICUS (= village). Under the Republic *pagus* denotes a rural territory, an administrative district. For larger territories with a larger population terms such as *civitas, urbs, oppidum*, etc., were used. "To indicate a piece of land one should say in which *civitas* and *pagus* it is situated" (D. 50.15.4 pr.). The inhabitants of a *pagus* = *pagani*. In Italy and the provinces the head of the administration of a *pagus* is called *magister, praefectus, curator* or *praepositus pagi*.

Kornemann, *RE* 18; Toutain, *DS* 4.

Palam. Publicly, before witnesses, "in the presence of many persons" (D. 50.16.33).—See PROSCRIBERE.

Palam est. It is obvious, there is no doubt. The locution occurs frequently in the language of the jurists when they want to stress that the opinion expressed is beyond any doubt.

Palam facere. To announce publicly.

Palatini. All persons in civil or military service in the imperial palace. All functionaries in the financial imperial administration which was concentrated in the office of the COMES SACRARUM LARGITIONUM and of the COMES RERUM PRIVATARUM, were among the *palatini*. The *palatini* in the higher positions enjoyed exemption from public charges (*munera*), sometimes even after leaving their official post.—C. 12.23; 30.

Ensslin, *RE* 18; Cagnat, *DS* 4.

Palatini largitionum. See LARGITIONES.—C. 12.23.

Palatium. The imperial palace (*sacrum palatium*). *Qui in sacro palatio militant* = persons employed in the imperial palace.—C. 11.77; 12.28.—See ARCHIATER SACRI PALATII.

Palmarium. A compensation given (or promised) to an advocate after a successful trial.—See HONORARIUM.

Paludamentum. A scarlet military cloak, part of the insignia of a magistrate commanding troops outside Rome.

Pandectae. (From Greek = an all embracing work.) It was the second title given by Justinian to the Digest (*"Digesta seu Pandectae"*) ; see DIGESTA IUSTINIANI. The term is not an invention by Justinian, since it was previously used as a title of comprehensive juristic works by Ulpian (in 10 books) and by Modestinus (in 12 books).

Pangere. To agree. Syn. *pacisci*. *Pangere ne petatur* is syn. with PACTUM DE NON PETENDO.

Panis. (From the fourth century after Christ.) Bread from the state bakeries gratuitously distributed in Constantinople and other cities to meritorious persons or to proprietors of houses in order to stimulate the construction of buildings (*panis aedium, aedificiorum*). *Panis popularis* (*civilis, civicus*) = bread distributed to the poor.—See ANNONA CIVILIS.

Kübler, *RE* 18, 3, 606; *idem, St Bonfante* 2 (1930) 351; D. Van Berchem, *Distribution de blé* (Genève, 1939) 102.

Panis farreus. See CONFARREATIO.

Pantomimus. A pantomine, a stage-dancer. The profession was considered an ARS LUDICRA (dishonest). A *pantomimus* could be killed on the spot when caught by the husband of an adulterous wife.

Papinianistae. The third year students in Byzantine law schools, so called because the chief subject of their studies was the works of Papinian.

Papinianus, Aemilius. A Roman jurist of the second/third century after Christ. He was *praefectus praetorio* from 203 until 205. He died in A.D. 212, executed by order of the Emperor Caracalla. His language shows some peculiarities which, however, do not suffice for the assumption of his Syrian or African origin, but his style is a model of conciseness and precision. Papinianus is one of the most remarkable figures among the Roman jurists. His opinions prove an independent mind, his solutions are based on a profound understanding of the necessities of life, on equity, and, at times, on ethical more than merely technical juristic arguments. See AEQUITAS. His principal works were not comprehensive treatises but collections of cases (*Quaestiones* in 37 books, *Responsa* in 19 books) in which other jurists' *responsa*, court decisions and imperial constitutions were often taken into consideration. Other works include: *Definitiones* (in two books) and a monograph on adultery. Papinianus was appreciated by subsequent writers and Justinian more than any other classical jurist. The so-called Law of Citations (see IURISPRUDENTIA) which attributed a particular importance to Papinian's works, is an eloquent evidence of the loftiness of his reputation in postclassical times.—See NOTAE.

Jörs, *RE* 1, 572 (*s.v. Aemilius*, no. 105); Orestano, *NDI* 9; Berger, *OCD*; W. Kalb, *Roms Juristen*, 1890, 111; Leipold, *Über die Sprache des Juristen Papinian*, 1891; E. Costa, *Papiniano*, 1 (1894); H. Fitting, *Alter und Folge*², 1908, 71; Solazzi, *AG* 133 (1946) 8; Schulz, *Scr Ferrini* 4 (Univ. Sacro Cuore. Milan, 1949) 254; W. Kunkel, *Herkunft und soziale Stellung der röm. Juristen*, 1952, 224.

Papirius. (First name uncertain.) *A pontifex maximus* about 500 B.C., author of a collection (called *Ius Papirianum*) of rules of sacral law, generally ascribed to the LEGES REGIAE. The existence of such a collection is based on the mention of a commentary thereon written by a certain Granius Flaccus in the time of Caesar or Augustus, entitled *De iure Papiriano*.

Steinwenter, *RE* 10; 18, 3, 1006; Cuq, *DS* 3, 745; Zocco-Rosa, *NDI* 7; *idem, RISG* 39 (1905); Oberziner, *Hist* 1 (1927); Di Paola, *St Solazzi* 1948, 634; Paoli, *RHD* 24–25 (1946/7) 157; C. W. Westrup, *Introd. to early R. law* 4, 1 (1950) 47.

Papirius Fronto. A little known Roman jurist of the late second post-Christian century, author of a collection of *Responsa*.

Berger, *RE* 18, 3, 1059.

Papirius Iustus. A jurist of the second half of the second post-Christian century, known only as the author of a collection of imperial constitutions in 20 books, of which only eighteen excerpts were accepted into the Digest. He was the only jurist who edited imperial constitutions in their original text. The edition was without any commentary or criticism. His official career is unknown.

Berger, *RE* 18, 3, 1059; Scarlata Fazio, *SDHI* 5 (1939) 414.

Papirius, Sextus. A jurist of the early first century B.C., disciple of Quintus Mucius Scaevola.

Münzer, *RE* 18, 3, 1012 (no. 25).

Par causa (condicio). A legal situation in which several persons (creditors, sureties) have equal rights. "Among several persons in the same legal situation that one who is in possession (of the thing in dispute) is in the better case" (D. 50.17.128 pr.).

Par imperium. The equal power (*imperium*) of magistrates who are colleagues in office.—See COLLEGAE, IMPERIUM.

Par ratio. *Parem rationem adscribere* = the entry in a banker's ledger by which a debt is noted as paid. *Parem rationem facere* = to settle the balance of reciprocal claims; syn. *paria facere*.

Parangariae. Carriages used for the transportation of goods on by-roads.—C. 12.50.—See ANGARIA.

Seeck, *RE* 4, 1852; Humbert, *DS* 1, 1659.

Parapherna. "Things which belong to the wife beyond the dowry (*extra dotem*)" (C. 5.14.8). The wife might dispose thereof as she pleased and entitle her husband with the administration. When the marriage was dissolved, the *parapherna* had to be restored to the wife or her heirs. In the later Empire, the *parapherna* were held in defraying the burdens of the marriage (ONERA MATRIMONII) and certain legal rules concerning the dowry were extended to the *parapherna*, as, e.g., the wife was granted a general hypothec on the husband's property as a guaranty for the restitution of the *parapherna*.—C. 5.14.

P. Bonfante, *Corso di dir. rom.* 1 (1925) 373; Pampaloni, *RISG* 52 (1912) 162; G. Castelli, *I p. nei papiri e nelle*

fonti rom., 1913 (= *Scr giuridici* 1, 1923); A. Ehrhardt. *Iusta causa traditionis*, 1931, 96.

Paraphrasis Institutionum Theophili. A Greek paraphrase of Justinian's Institutes (see INSTITUTIONES IUSTINIANI) by the Byzantine jurist Theophilus in which the author, one of the compilers of Justinian's Institutes himself, used in a considerable measure the Institutes of Gaius. He added some remarks (not always reliable) of an historical nature.—See THEOPHILUS, INSTITUTIONES GAI.

Edition: C. Ferrini. *Institutionum graeca paraphrasis, Theophilo vulgo tributa*, 1–2 (1884, 1897); J. and P. Zepos. *Ius Graeco-Romanum* 3 (Athens, 1931).—Kübler, *RE* 5A, 2142; Ferrini, *Opere* 1 (1929) 1–228 (several articles of 1884–1887); Riccobono, *BIDR* 45 (1938) 1; Nocera, *RISG* 12 (1937) 251; Maschi, *Punti di vista per la ricostruzione del dir. classico*, *AnTr* 18 (1946); *idem*, *Scr Ferrini* (Univ. Pavia, 1946) 321; Wieacker, *Fschr J. v. Gierke* 1950, 296.

Parare (paratio). To acquire either by purchase (for money) or otherwise. Syn. *comparare*.

Paratus. Ready, prepared, willing. The term is used primarily of a debtor ready to pay his debt or to give security, or of a debtor summoned to court and willing to assume the role of a defendant in the trial and to cooperate in the continuation of the process (see LITIS CONTESTATIO).

Paratitla. (In Byzantine juristic literature.) Supplementary appendices to single titles of Justinian's codifications (Digest and Code), edited, summarized, or commented on by a Byzantine jurist. The *paratitla* might contain references to additional texts from other titles, connected with the topic dealt with in a given title as well as references to parallel texts. Justinian specifically excluded such kind of commentatory remarks from his ban concerning the commentaries on the Digest.

Berger, *Bull. Polish Inst. of Arts and Sciences* 3 (New York, 1945) 661 (= *BIDR* 55–56, Post-Bellum, 1951, 129).

Parens. A father, in a broader sense "not only the father, but also the grandfather, the great-grandfather and all ascendants, as well as the mother, grandmother, and great-grandmother" (D. 50.16.51). *Parentes* = parents. *Parentes* also includes the slaves who are parents of a child born in slavery.

Parens binubus. A man who married a second time. If he had children from the first marriage, he could not dispose of his property by testament without taking them into consideration.

Parens manumissor. A father who released a child (a son or daughter) from his paternal power; see EMANCIPATIO. He was entitled to be the guardian of the emancipated child and had a certain right to the intestate inheritance of the child.

Kreller, *RE* 18, 4, 1456; Solazzi. *Ath* 5 (1927) 101; Grosso, *RISG* 4 (1929) 251; W. Erbe, *Fiducia*, 1929, 170; Buckland, *JRS* 33 (1943) 11.

Parere (pario). To bring forth, to produce. The term refers to legal transactions or situations from which an obligation, an action or an exception arises for one or both parties involved.

Parere. See SI PARET.

Paria facere. See PAR RATIO.

Pariculum. See PERICULUM.

Paries communis. A party wall which separates two adjoining buildings. It is held in common ownership by the owners of the two buildings. The situation is governed according to the principles of *communio* except for such measures which are physically impossible, as, for instance, a division.—See DEMOLIRE.

Fougères, *DS* 4; Brugi, *RISG* 4 (1887) 161, 363; Voigt, *Ber-SächsGW* 1903, 179, 185; G. Branca, *Danno temuto*, 1937, 79.107; Arangio-Ruiz, *FIR* 3 (1943) no. 107.

Parricidas. A term the origin and primitive meaning of which are uncertain. It occurred allegedly in a law attributed to the king Numa Pompilius (Festus p. 221) in the following provision: "If somebody knowingly and with evil intention killed (literally: delivered to death) a free man, let him be a *parricidas* (PARICIDAS ESTO)." It is not certain whether the term means here simply a murderer.—See PARRICIDIUM.

Leifer, *RE* 18, 4, 1472; Riccobono, *FIR* 1² (1941) 13 (Bibl.) and p. XVI; E. Costa, *Crimini e pene*, 1915, 20; Pasquali, *St Besta* 1 (1939) 69; De Visscher, *Études de dr. rom*, 1931, 466; Gernet, *Rev. de philologie* 63 (1937) 13; Henrion, *Rev. belge de philol. et histoire* 20 (1941) 219; Leroy, *Latomus* 6 (1947), 17; Londres da Nobrega, *ibid.* 9 (1950) 3.

Parricidium. The assassination of a (one's own?) *pater familias* (the head of a family group). The identification of *parricidium* with homicide belongs to a later development. *Parricidium* was one of the first public crimes (*crimina publica*) prosecuted by the state.—D. 48.9; C. 9.17.—See PARRICIDAS, HOMICIDIUM, QUAESTORES PARRICIDII, LEX POMPEIA DE PARRICIDIO, POENA CULLEI.

Lécrivain, *DS* 4; Berger, *OCD*; Danieli, *Archivio penale*, 1949, 315.

Pars. A part, a portion of a whole. *Pro parte* (= for a part) is opposed to *in solidum* (= for the whole) with regard to the liability of a person or to the release of a debtor from an obligation.

Pars. (With reference to state territory.) A province, a large administrative district.

Pars. (In judicial proceedings.) A party to a trial. *Pars actoris* = the plaintiff; *pars rei* = the defendant. —See VICTOR.

Pars dimidia. A half.—See LAESIO ENORMIS, SPONSIO TERTIAE PARTIS.

Pars diversa. The adversary in a trial.

Pars (portio) hereditaria (hereditatis). The share one has in an inheritance.

Pars (portio) legitima. The share of an inheritance due to an heir who would succeed under the law on intestacy (*heres legitimus*, *ab intestato*). The fourth part of the *pars legitima* (*quarta legitimae partis*) had to be left certain heirs among the next relatives

(descendants, ascendants, and later, consanguineous brothers and sisters) in any form. Otherwise, i.e., if the share left to them was less than the required fourth, or if they were not mentioned in the testament at all or were unjustly disinherited, they had the QUERELA INOFFICIOSI TESTAMENTI which might lead to the rescission of the whole testament.

G. La Pira, *La successione ereditaria ab intestato e contro il testamento*, 1930.

Pars maior. A majority in a public or private corporate body. "What is done by the majority concerns all" (D. 50.17.160.1).

Pars pro indiviso. A part of a thing expressed through a fraction, when the thing cannot be physically divided into parts. Syn. *pars indivisa*; ant. *pars pro diviso*.—See COMMUNIO. INDIVISUS.

Pars virilis. See VIRILIS, PORTIO HEREDITARIA.

Partes. (With reference to an official or a judge.) The official functions (activity) or duties of a magistrate or a judge. *Partes sustinere* = to assume the part or functions, primarily in a civil or criminal trial, such as that of a plaintiff, a defendant, a representative, an accuser, etc. Syn. *partibus fungi*.—See VICE.

Partes formulae. The parts of a formula in the formulary procedure.—See FORMULA. INTENTIO, DEMONSTRATIO, ADIUDICATIO, EXCEPTIO. PRAESCRIPTIO.

Partiarius. See COLONIA PARTIARIA, PARTITIO LEGATA.

Particeps fraudis. See CONSCIUS FRAUDIS.

Participare. To partake, to share in common with others (in profits or losses). The term is used also in a bad sense, to participate in a wrongdoing (fraud, theft).

Partitio legata. A legacy by which a fraction of an estate is left to the legatee (*legatarius partiarius*) who shares the inheritance with the heirs instituted in a testament. The pertinent disposition of the testator runs as follows: "my heir shall divide my estate with . . . ." A *legatarius partiarius* is not a universal successor, therefore he cannot be sued directly by the creditors of the estate. His proportional liability was settled through a special arrangement with the heirs, namely, through reciprocal stipulations (*stipulationes partis et pro parte*) which at the same time guaranteed the legatee the appropriate portion of the sums paid by the debtors of the testator. Syn. *legatum partitionis*.—See SENATUSCONSULTUM PEGASIANUM.

Wlassak, *ZSS* 31 (1910) 200; B. Biondi, *Successione testamentaria*, 1943, 442.

Partus. An embryo in the womb. Before birth it is considered a part of the woman and not a human being. *Partus* can also mean a new-born child (see PARTUS PERFECTUS).—See NASCITURUS, INSPICERE VENTREM, INFANTICIDIUM. AGNOSCERE LIBERUM. SENATUSCONSULTUM PLANCIANUM, and the following items.

Ambrosino, *RISG* 15 (1940) 3.

Partus abactus (partum abigere). Abortion. A woman guilty of criminal abortion was punished with exile. A person who gave a woman a poisonous liquid (*poculum amatorium*) to cause abortion was punished with death if the woman died, otherwise with deportation or, when the woman was of a lower social class, with compulsory labor in mines (*metalla*).

Brecht, *RE* 18, 4, 2046; Humbert, *DS* 1 (*s.v. abortio*).

Partus ancillae. A slave child. Such children were not considered proceeds (see FRUCTUS). If the mother was given as a pledge, the child (*partus ancillae pignoratae, partus pignoris*) shares the legal situation of the mother.—C. 8.24.—See FRUCTUS REI PIGNERATAE.

Brini, *MemBol* 4 (1909/10); V. Basanoff, *Pa.*, Thèse Paris, 1929; Carcaterra, *AnCam* 12, 2 (1938) 51.

Partus perfectus. A child born after a full time of pregnancy. A seven-months' child was held to be a *partus perfectus*.

Partus suppositus. A fraudulently substituted (suppositious) child. Syn. *partus subiectus, subditicius*.—See EDICTUM CARBONIANUM, INSPICERE VENTREM, SUBDITICIUS.

Kleinfeller, *RE* 4A, 952 (*s.v. suppositio partus*); Brecht, *RE* 18, 4, 2048; Saglio, *DS* 4, 1570.

Pascuum. A pasture. The owner of a private pasture land could allow the cattle of others to graze thereon either by a contract of lease (*locatio conductio rei*) or by constituting a servitude (*servitus pecoris pascendi, ius pascui*; see COMPASCERE). He is liable if poisonous grass injured or killed the others' animals.—C. 7.41; 11.60; 61.

Kübler, *RE* 18, 4, 2052.

Pascuum publicum. Public pasture land. The use of such a land by the citizens of a community was originally free. From the fourth century B.C. a fee (*scriptura*) had to be paid to the treasury of the community.—C. 11.61.

Kübler, *RE* 18, 4, 2054.

Passim. Simply, without any further examination of the case under decision. The term is used in the juristic language as ant. to CAUSA COGNITA, i.e., after a scrupulous examination.—See CAUSAE COGNITIO.

Passus. A pace. A Roman mile = one thousand paces (about 1620 English yards). Twenty miles were counted as one day's journey when a magistrate ordered a party to appear in court.

Pastus. (In later imperial constitutions.) The supply and distribution of provisions (primarily for the army).

Pastus pecoris. Pasturing cattle.—See ACTIO DE PASTU PECORIS, SERVITUS PASCUI, PASCUUM, IUS PASCENDI.

Caq, *DS* 4, 340.

Pater civitatis. Syn. with CURATOR CIVITATIS in the later Empire.

Pater. A father. "Father is he whom the marriage indicates (as such)" D. 2.4.5. The term refers also

to a grandfather.—See PATER FAMILIAS, PARENS.

Pater familias. The head of a family, without regard as to whether or not a person so designated has children, whether he is married or is below the age of puberty. A *pater familias* must be a Roman citizen and not under paternal power of another. By the death of a *pater familias* all sons (and grandsons whose father was dead or had been emancipated) who were directly under his paternal power, became *patres familiae*. The *pater familias* was the first in the family (*princeps familiae*) and was the master of the "house" (*in domo dominium habet*). His power lasted as long as he lived, without regard to the age of the persons under his paternal power (*patria potestas*) or their official position. His power was boundless and limited only by custom and social tradition. He alone has the right to dispose of the family property.—C. 4.13; 43.—See PATRIA POTESTAS, FILIUS FAMILIAS, BONUS PATER FAMILIAS, DILIGENS PATER FAMILIAS, EMANCIPATIO, INTERDICTUM DE LIBERIS EXHIBENDIS.

Sachers, *RE* 18, 4, 2121 (Bibl.); Anon., *NDI* 9; Longo, *BIDR* 40 (1932) 201; C. Castello, *Studi sul diritto familiare*, 1942, 69; Volterra, *RIDA* 1 (1948) 213; *idem*, *RISG* 85 (1948) 103; Daube, *St Albertario* 1 (1952) 435; Sachers, *Fschr Schulz* 1 (1951) 319.

Pater naturalis. An illegitimate father, sometimes the father of an emancipated son or of one who has been adopted by another.

Lanfranchi, *StCagl* 30 (1946) 47.

Pater patratus. The head of the group of *fetiales* who as representatives of the Roman people declared war upon an enemy or acted in the proceedings of *deditio* (extradition of persons or things.)—See FETIALES, DEDITIO, BELLUM, BELLUM INDICERE.

De Ruggiero, *DE* 3, 68; Muller, *Mn* 55 (1927) 386; Krahe, *Arch. für Religionswissenschaft* 34 (1937) 112.

Pater patriae. The first emperor who was granted the title of the "father of the fatherland" was Augustus. Before him the title had been conferred on Caesar, shortly before his death. After Augustus several emperors were honored by this title.

L. Berlinger, *Beiträge zur inoffiziellen Titulatur der röm. Kaiser*, 1935, 77; M. Grant, *From imperium to auctoritas*, 1946, p. 444 (Bibl.).

Pater solitarius. A widower and father of legitimate children who after the death of his wife remained unmarried. The *Lex Iulia et Papia Poppaea* contained a provision concerning the *pater solitarius* as a COELEBS, but its content is unknown.—See LEX IULIA DE MARITANDIS ORDINIBUS.

Solazzi, *ANap* 61 (1942) 184.

Pati. To suffer, to bear (a loss, an injury, damages); with regard to civil judicial matters = to be involved in a controversy or a trial (*pati controversiam, actionem, interdictum, exceptionem*); in criminal matters to incur a punishment (*poenam*).

Patientia servitutis. Occurred when the owner of land tolerated the exercising by another (a neighbor) of certain rights (*usus servitutis*) on his property, such as ITER, ACTUS, and the like. This toleration was not understood as a simple passive attitude but as a tacit expression of the will of the owner and a recognition as if the other were entitled to exercise an easement on account of a previous agreement (the constitution of a servitude). In classical law the beneficiary could use the ACTIO PUBLICIANA, in Justinian's law the *patientia* is identified with a voluntary concession of a servitude (*traditio servitutis*).

See Perozzi, *Scritti* 2 (1948, ex 1897); Rabel, *Mél Girard* 2 (1912) 394; Guarneri-Cinati, *Indice* (1927) 64; B. Biondi, *Servitù prediali*, 1948, 229; S. Solazzi, *Requisiti e modi di costituzione di servitù pred.*, 1947, 149.

Patientiam praestare. To tolerate another's (a neighbor's) entering into one's property and performing there certain acts (such as the demolition of a construction which was harmful to a neighbor's property and which the owner was obligated to carry out but failed). This occurred usually when a person other than the owner of a landed property (his lessee, slave, or predecessor in title) built a construction which caused or threatened to cause damage to a neighbor's property. Such construction could be averted by a protesting action on the part of the neighbor (see OPERIS NOVI NUNTIATIO, ACTIO AQUAE PLUVIAE ARCENDAE). If the harmful construction was not destroyed by the owner or his lessee, the neighbor might do it at his own expense (which, of course, had to be reimbursed by the owner) and the owner had to tolerate such action on his land.—See the foregoing item.

Patres. The oldest term denoting the members of the king's senate which presumably was composed of the "fathers," i.e., the heads of the *gentes* (see GENS) and prominent families. Livy says that the earliest senators were called *patres* for dignity's sake (*propter honorem*). The relatives of the *patres* and their descendants formed the class of *patricii* (patricians). Hence *patres* was used as syn. with *patricii*, as, e.g., in the norm of the Twelve Tables which forbade marriage between plebeians and patricians (*patres*).—See AUCTORITAS PATRUM.

Kübler, *RE* 18, 4, 2222.

Patres conscripti. Originally the plebeian members of the senate when, about the middle of the fourth century B.C., the plebeians were admitted to the senate. their selection being determined by the censors. Later, the term *patres conscripti* was applied to senators without distinction as to whether they were patricians or plebeians.

Brassloff, *RE* 4; De Ruggiero, *DE* 2, 604; O'Brien-Moore, *RE* Suppl. 6, 674; Meurs, *Mn* 55 (1927) 377.

Patria. The native country, the fatherland. "Rome is our common native country" (D. 50.1.33: *Roma communis nostra patria est*). For *patria* in the meaning of the entire Roman state, see PATER PATRIAE.

E. De Ruggiero, *La patria nel dir. pubblico*, 1921; L. Krat-

tinger. *Der Begriff des Vaterlandes im republ. Rom*, Zurich. 1944.

Patria potestas. The power of the head of a family (see PATER FAMILIAS) over the members, i.e., his children, natural and adoptive (see FILIUS FAMILIAS), his wife, if the conclusion of the marriage was combined with *conventio in manum*, the wives of those sons who remained under his power (under the same condition as with regard to his wife). Originally unlimited in the judicial, economic, and moral fields, the *patria potestas* gradually became a power in the interest of the persons subject to it and was conceived as embracing moral duties (*officium*), such as protection, maintenance, and assistance. The IUS VITAE NECISQUE of the earliest law became more and more restricted under imperial legislation, and in the law of Justinian it was only an historical reminiscence. Restrictions were also imposed on the father's right to expose a child (see EXPONERE FILIUM). Only the *ius vendendi*, i.e., the right to sell a child which made him a *persona in mancipio* in Rome, and a slave when he was sold abroad, remained in force for a longer period; in Justinian's law selling a child was admitted in the case of extreme poverty of the parents, but the child could redeem himself and become free by paying the buyer the price that he had paid to his father. For surrendering a member of the family for damages done to a third person, see NOXA, NOXAE DEDITIO, ACTIONES NOXALES. The institution was abolished by Justinian. For the legal situation of a person under paternal power as far as property, legal capacity in transactions, the conclusion of a marriage are concerned, see FILIUS FAMILIAS, FILIA FAMILIAS, PECULIUM. The head of a family acquired *patria potestas* over his children born in a legitimate matrimony or through adoption of another's offspring (see ADOPTIO, ARROGATIO). The *patria potestas* was extinguished through CAPITIS DEMINUTIO of the father, or through release from the paternal power, see EMANCIPATIO. Without regard to the will of the family's head, the extinction of the *patria potestas* occurred when the son became a priest (*flamen Dialis*) or the daughter a Vestal virgin. In the law of Justinian a person who obtained a high governmental post or became a dignity in the Church hierarchy, was free from paternal power.—Inst. 1.9; D. 1.7; 12; C. 8.46.—See moreover ALIENI IURIS, ALIMENTA, INTERDICTUM DE LIBERIS EXHIBENDIS, PATER FAMILIAS.

Beauchet, *DS* 4; Berger, *OCD*; Cornil, *NRHD* 21 (1897) 416; Costa, *MemBol* 1909/10, 117; Boniante, *Scritti* 1 (1926, ex 1906) 64; Wenger, *Hausgewalt im röm. Altertum, Miscellanea F. Ehrle* 2 (Rome, 1924); H. Stockar, *Entzug der väterlichen Gewalt*, Zürich, 1903; C. W. Westrup, *Introduction to the early R. law*, 3 (1939); C. Castello, *Sì sul diritto familiare e gentilizio* 1942. 63; Cicogna, *StSen* 59 (1945) 44; Kaser, *ZSS* 58 (1938) 62, 59 (1939) 31; *idem*, *Das altröm. Ius*, 1949, *passim*; *idem*, *ZSS* 67 (1950) 474.

Patricii. The earliest patricians were the descendants of the PATRES, i.e., the members of the senate in the regal period. The patrician families and groups of families (see GENS) were the privileged class in the citizen body (originally perhaps the only Roman citizens), while the lower class, the plebeians (*plebeii*) were deprived of political rights and lived in economically unfavorable conditions. During a long period the *patricii* were the exclusive holders of magistracies and priestly offices; the assignment of public land (*ager publicus*) was almost exclusively to their benefit; voting in the *comitia* was arranged to their advantage; and intermarriage between them and the plebeians was not permitted. The struggle between these two social classes of the Roman people lasted more than two centuries (until the early third century B.C.); it had some dramatic episodes (three secessions of the plebeians), but it brought the plebeians a gradual admission to the magistracies and, in the last analysis, political equality. Among the political conquests of the plebeians were: the creation of TRIBUNI PLEBIS (in 494 B.C.?), the legislation of the Twelve Tables (see LEX DUODECIM TABULARUM, in 451/50 B.C.), intermarriage with patricians (see LEX CANULEIA, 445 B.C.), admission to the military tribunate (see TRIBUNI MILITUM CONSULARI POTESTATE), the LEGES LICINIAE SEXTIAE (admission to the consulship, 367 B.C.), admission to the highest pontificate (LEX OGULNIA), election of the first plebeian censor (in 356 B.C.), the first plebeian dictatorship (in 351 B.C.), the LEX PUBLILIA PHILONIS (339 B.C.), election of the first plebeian praetor (in 337 B.C.), and finally, the LEX HORTENSIA (287 B.C.) which made the plebiscites (see PLEBISCITUM) of equal legal force with the *leges* voted in the popular assemblies (*comitia*). Only some sacerdotal posts, the office of the INTERREX, the honor of being a PRINCEPS SENATUS and some other minor privileges remained reserved for the *patricii*. Patriciate was acquired through birth in a legal marriage (*iustae nuptiae*) when the father was a patrician, through adoption by a patrician, through marriage with a patrician, concluded in the form of CONFARREATIO which remained a patrician form of marriage with *manus*. Under the Principate meritorious persons were granted the patriciate by the emperor. The patricians as a hereditary nobility lost much of their significance through the rise of a new nobility based on wealth (see EQUITES) or the holding of high imperial office. The Emperor Constantine created the patriciate (*patriciatus*, *patricia dignitas*) as a personal (not hereditary) honorific title to be conferred by the emperor on high dignitaries for life (= "highness"). Justinian extended the patriciate to all persons who had the right to the title ILLUSTRIS. This involved exemption from *patria potestas*.—C. 12.3.—See CURIAE, TRANSITIO AD PLEBEM.

Kübler, *RE* 18, 4, 2222; Lécrivain, *DS* 4; Di Marzo, *NDI* 9; Momigliano, *OCD*; Oberziner, *Patriziato e plebe, Pubbl. dell'Accad. Scientifico-Letteraria*, Milan, 1 (1913); Rose, *JRS* 12 (1922) 106; Picotti, *Arch. storico ital.*, Ser. 7, vol. 9 (1928) 3; Fruin, *TR* 9 (1929) 142; Ensslin, *Der Konstantinische Patriziat, Annuaire de l'Institut de Philol. et d'Hist. orient. et slaves*, 2 (1934) 361; Bernardi, *Rend Lomb* 1945/6, 3.

Patricius (Patrikios). A prominent jurist and teacher in the Law School of Beirut in the second half of the fifth century after Christ. Excerpts of his writings, mostly devoted to imperial constitutions, occur in the scholia to the BASILICA.

Berger, *RE* 18, 4, 2244 (under no. 2).

Patrimonialis. See PATRIMONIUM CAESARIS.

Patrimonium. The whole property of a person; in a narrower sense, the property inherited from one's father (ancestor).—See MUNERA PATRIMONII, RES EXTRA PATRIMONIUM.

Pfaff, *Zur Lehre vom Vermögen, Festsch Hanausek* 1925, 89; M. F. Lepri, *Saggi sul patrimonio* 1 (1942); Albanese, *Successione ereditaria, AnPal* 20 (1949) 135; Scherillo, *Lezioni I. Le cose* (1945) 4.

Patrimonium Caesaris (principis). Under the Principate the crown property of the emperor, inherited from his predecessor and left by him to his successor. It gradually assumed larger and larger dimensions through inheritances, purchases, and confiscations (see BONA DAMNATORUM) and was administered by *procuratores patrimonii*. Transfer of objects belonging to the *patrimonium* through sale or donation was admitted. In the later Empire the official term was *sacrum patrimonium*. A *comes sacri patrimonii* was at the head of the administration. The distinction between the *patrimonium principis* and the privy purse of the emperor (RES PRIVATA PRINCIPIS) was in the later Empire not so precisely observed as it was before and revenues of the *patrimonium principis* went to the private property of the emperor. Many details are still doubtful and the frequent changes in the administration of the pertinent funds and lands do not facilitate a neat distinction. The general tendency was to attribute as much as possible to the emperor. The adj. *patrimonialis* refers in the later Empire to persons and land pertaining to the *sacrum patrimonium* (*coloni, fundi, agri, patrimoniales*).—C. 1.34; 11.62–65.—See RES PRIVATA PRINCIPIS. RATIO PRIVATA, FUNDI PATRIMONIALES.

Lécrivain, *DS* 4 and 3, 961; Orestano, *NDI* 9, 515; O. Hirschfeld, *Kaiserliche Verwaltungsbeamte*² (1905) 1; L. Mitteis, *Röm. Privatrecht* 1 (1908) 358.

Patrocinari. To give protection, to defend by legal remedies.

Patrocinium. Patronage, protection, a relationship between two persons in which one, the *patronus*, grants protection to the other. *Patrocinium* is also used of the legal assistance given to a party in a trial by an advocate.

Kornemann, *RE* Suppl. 4.

Patrocinium vicorum (colonorum). Possessors of small landed property in the later Empire (fourth century), vexed by tax collectors and public charges, used to render themselves under the protection of wealthy and influential men (POTENTIORES) as their *patroni*. The latter exploited this situation for tax evasion. Imperial legislation tried to abolish these practices but in vain. The land taken under protection by the patrons remained in their possession and the former small land-proprietors became the serfs of their protectors.—C. 11.54.—See COLONI, LATIFUNDIA.

Kornemann, *RE* Suppl. 4, 265; M. Gelzer, *Studien zur byzantinischen Verwaltung Aegyptens*, 1909, 69; F. De Zulueta, *De patrociniis vicorum, Oxford St. in Social and Legal History* 1, 1909; Lewald, *ZSS* 32 (1911) 473; G. Rouillard, *L'administration civile de l'Egypte rom.*, 1928, 10; Martroye, *RHD* 7 (1928) 201.

Patrona. A woman who manumitted her slave, a patroness of a freedman. See PATRONUS. Marriage between a freedman and his patroness was prohibited.

Patronatus. The relationship between the former master and his freedman. See PATRONUS, IUS PATRONATUS. In a broader sense, *patronatus* refers to any relationship between a person (*patronus*) who protects (defends) another and the protected person. It refers also to a legal adviser (lawyer) of a party to a trial (*patronus causae*).—D. 37.14; C. 6.4.—See PATROCINIUM, CLIENTES, IUS APPLICATIONIS.

Patronus. The master of a slave became after manumitting him the *patronus* of the freedman (*libertus*). The freedman had various duties towards his manumissor; see OBSEQUIUM, REVERENTIA. "The person of a patron should always appear honorable and sacred to the freedman and his son" (D. 37.15.9). The freedman had to abstain from accusing the patron of criminal doings and from suing him with actions which involved infamy (*actiones famosae*). He could, however, sue him by permission of the praetor. For the obligation of the freedman to render certain services to the patron, see OPERAE LIBERTI, IURATA PROMISSIO LIBERTI. Between the patron and his freedman there was a reciprocal obligation of maintenance in the case of poverty. The patron had certain rights of succession to the inheritance of his freedman (see BONORUM POSSESSIO INTESTATI) and he could demand the rescinding of alienations and other dispositions made by the freedman with the purpose of defrauding the patron of his rightful inheritance (see ACTIO CALVISIANA). If a freedman who had no children or had disinherited them, did not in his will reward his patron or his patron's sons, the praetor granted the patron a *bonorum possessio contra tabulas* of one half of the freedman's property. Marriage between a freedman and his patroness (*patrona*) or with his patron's daughter was prohibited. After the death of the patron, the patronate went to his heirs, the patron might, however, assign

the freedman to one of the heirs, see ADSIGNATIO LIBERTI.—D. 37.14; 38.1–3; C. 6.3–7.—See IUDICIUM OPERARUM, INGRATUS LIBERTUS, BENEFICIUM COMPETENTIAE, LIBERTUS (Bibl.).

La Pira, *St ital. di filol. clas.* 7 (1929) 145; J. Lambert, *Les operae liberti*, 1934; A. A. Schiller, *Legal Essays in tribute to O. K. McMurray*, 1935, 623; Kaser, *ZSS* 58 (1938) 88; K. Harada, *ibid.* 138; C. Cosentini, *St sui liberti* 1 (1948) 69, 2 (1950) 11.

Patronus causae. Syn. ADVOCATUS.

Patronus clientis. See CLIENTES.

Patronus civitatis (coloniae). See PATRONUS MUNICIPII.

Patronus collegii. An honorary protector of an association, usually a magistrate or an imperial official. In the later Empire associations concerned with the provision of food for Rome were supervised by *patroni* who were members of the associations.

Lécrivain, *DS* 4. 359; W. Liebenam, *Geschichte und Organisation des röm. Vereinswesens*, 1910. 212.

Patronus fisci. See ADVOCATUS FISCI.

Patronus municipii (civitatis). Municipalities used to place themselves under the protection of one or more powerful persons (senators, ex-magistrates) who were selected (*adoptare*, later *cooptare*) by the municipal council and given the title *patronus*. The pertinent decree was engraved on a bronze tablet (*tabula patronatus*) in two copies, one for the *patronus*, the other for the municipality. The patronage was hereditary. The *patronus* defended the interests of the municipality in public and private matters, subsidized the construction of monuments and public buildings, etc. The patronage of a colony was similar.

Kornemann, *RE* 16, 625; Lécrivain, *DS* 3. 299; Mommsen, *Jurist. Schriften* 1 (1905) 237, 345; Thouvenot, *CRAI* 1941, 133; 1947, 485.

Patronus provinciae. Some provinces had a protector, *patronus*, who in case of abuse by a provincial official intervened with the Roman authorities in order to obtain the prosecution of the wrongdoers. The patron was a distinguished and influential person of the Roman nobility, often a descendant of the conqueror of the province.

Pauliana actio. See FRAUS.

Paulus, Iulius. A famous jurist whose prolific literary activity (about 320 *libri*) gave Justinian's compilers the opportunity to excerpt his writings very extensively for the Digest. The dates of his birth and death are unknown. He was a member of the imperial council under Septimius Severus and Caracalla, and *praefectus praetorio* under Alexander Severus. His works were written in the first decades of the third century. He was the author of an extensive commentary on the praetorian Edict (in 80 books) and a treatise on *ius civile* (*ad Sabinum*, in 16 books). Among his writings are also commentaries on works of some earlier jurists and a great number of monographs on various topics of public, fiscal, private, and criminal laws. There is in recent literature a tendency to deny Paulus' authorship of a number of writings, a tendency which is not free from exaggeration. For his *Sententiae*, see SENTENTIAE PAULI. Paulus was not an uncritical compiler; he often expressed opinions of his own and some of his critical remarks, in particular on the decisions of earlier jurists, give evidence of the sagacity of his juristic thinking.

Berger, *RE* 10, 690 (*s.v. Iulius*); *idem*, *OCD*; Orestano, *NDI* 9 (*s.v. Paolo*); Kübler, *Lehrbuch der Gesch. des r.R.*, 1925, 283; C. Sanfilippo, *Pauli Decretorum libri tres, Pubbl. Fac. Giur. Catania*, 1939; De Robertis, *RISG* 15 (1940) 205; Scherillo, *St Solazzi* 1948, 439.

Pauperes. Poor people. From the time of Nerva Roman emperors ordered that public care be taken of children of poor parents and that nourishment be provided them from public funds.—See PAUPERTAS.

J. J. Esser, *De pauperum cura apud Romanos*, 1903; A. Müller, *Jugendfürsorge in der röm. Kaiserzeit*, 1903; Biondi, *Ius* 3 (1952) 233.

Pauperies. See ACTIO DE PAUPERIE.

Paupertas. Poverty. It was an acceptable excuse from guardianship and also ground for exclusion from being an accuser in a criminal matter.—See PAUPERES.

Pax. Peace. A state of war between Roman and another state was normally ended by an armistice (*indutiae*). Peace, *pia et aeterna pax* (= a pious and eternal peace), was achieved by a special, solemnly enacted treaty, *foedus*, which might not only establish peaceful relations between the former belligerants but also *amicitia* (= friendship) and even a community of political interests (*societas*, see SOCII). The conclusion of a peace treaty was in the competence of FETIALES or special embassies; the consent of the people and the senate was required. Under the Empire it was the emperor who concluded peace. Gaius (Inst. 3.94) mentions as the form for the conclusion of peace the *sponsio*, an exchange of a question (*pacem futuram spondes?*) and answer (*spondeo*) between the emperor and the sovereign of the other state.—See SPONSIO, AMICITIA, AMICUS POPULI ROMANI.

De Ruggiero, *DE* 2, 767; H. Lévy-Bruhl, *Quelques problèmes du très ancien dr. rom.*, 1934, 40.

Peccatum. In classical law a violation of a somewhat criminal nature of a legal norm. A neat distinction between the term and *crimen* or *delictum* can hardly be established. In Justinian's law *peccatum* is not only a violation of human laws but also that of an ethical norm.

G. Segrè, *St Bonfante* 3 (1930) 515; Roberti, *St Calisse* 1 (1940) 161.

Peculatus. Misappropriation of things belonging to the state, embezzlement of public money. Hence *peculatus* is also named *furtum pecuniae publicae, furtum publicum*. A commanding general who appropriates the booty taken from the enemy or the money obtained from its sale (*manubiae*) to his own profit was guilty of *peculatus*. Augustus' *Lex Iulia*

peculatus, still in force in Justinian's time, was the basic statute on the matter: "No one should intercept or appropriate any sacred, religious, or public money for his own profit unless he is permitted to do so by law" (D. 48.13.1). The statute also defined *peculatus* as a case in which a person "added anything to (alloyed) or mixed with, gold, silver, or copper belonging to the state" (*D. ibid.*), to the detriment of the state. A particular form of embezzlement occurred when a person who had received money from the treasury for a specific purpose did not spend the money thereon (*pecuniae residuae*). Later imperial legislation increased the penalties for *peculatus*; Justinian ordered deportation or the death penalty, according to the gravity of the case.—D. 48.13; C. 9.28.—See QUAESTIONES PERPETUAE, LEX IULIA PECULATUS, RESIDUA, PRAEDA.

Brecht, *RE* Suppl. 7; Cuq, *DS* 4.

Peculiaris. Connected with, or pertaining to, a PECULIUM. *Res peculiares* = things belonging to a *peculium*, such as money, claims, goods, business equipment, and the like. *Peculiari nomine, peculiariter* = (to hold a thing) as belonging to a *peculium*, or (to buy one) from the means of the *peculium*.—See MERX PECULIARIS.

Peculium. A sum of money, a commercial or industrial business, or a small separate property granted by a father to his son or by a master to his slave, for the son's (or slave's) use, free disposal, and fructification through commercial or other transactions. The origin of the institution is to be found in the increase in the economic need of the Roman citizens to use the services and activity of the persons under their paternal power and of their slaves able to develop independent business activity in the interest of the family group and its head. The *peculium* remained the father's (master's) property, but was separate from his own property; the son (the slave), however, had the right to administer the separate fund or business and dispose thereof through various transactions (not by donations). In Justinian's law the free administration of the *peculium* (*libera administratio peculii*) had to be conceded expressly. An existing *peculium* could be increased (*augeri*) by additional funds or goods, diminished (*minui*) or fully withdrawn (*adimi*) by the grantor. The concession of a *peculium* by a father (master) created on the part of the grantor a civil liability for debts and obligations contracted by the son (slave) in transactions concluded with third persons. This liability was, however, restricted to the pecuniary value of the *peculium* (*dumtaxat de peculio*), after deduction of whatever the son (slave) owed to his father (master). The creditors of the *peculium* had a direct action against the father (master), *actio de peculio;* or, when the father (master) had a special profit from the transaction concluded with the manager of the *peculium*, an action called *actio de in rem verso* (for his enrichment). Both these actions, which were introduced by the praetor, belong to the so-called *actiones adiecticiae qualitatis* (see EXERCITOR NAVIS).—D. 15.1; 2; C. 4.26; 7.23.—See ACTIO TRIBUTORIA, LEGATUM PECULII, MERX PECULIARIS, and the following items.

V. Uxkull, *RE* 19; Anon., *NDI* 9; L. Lusignani, *Consumazione processuale dell'actio de peculio*, 1899; *idem, Ancora intorno alla consumazione, etc.*, 1901; Solazzi, *StSen* 23 (1905) 113; *idem, St Fadda* 1 (1906) 347; *idem, St Bruzi* (1910) 203; *idem, BIDR* 17, 18, 20 (1905–1908); Seckel, *Fg Bekker* 1907; L. Lemarié, *De l'actio tributoria*, Thèse Paris, 1910; Buckland, *LQR* 31 (1915); G. Longo, *AG* 96 (1928) 184; *idem, BIDR* 38 (1930) 29; *idem, SDHI* 1 (1935) 392; G. Micolier, *Pécule et capacité patrimoniale*, Thèse Lyon, 1932; E. Albertario, *Studi* 1 (1933) 139; Biscardi, *StSen* 60 (1948) 580; G. E. Longo, *SDHI* 16 (1950) 99.

Peculium adventicium. Used in the literature for everything that a *filius familias* acquired through his own labor or the liberality of a third person (a donation, a legacy). According to Justinian's law such acquisitions remained the son's property, the father having only a usufruct on it. Ant. *peculium profecticium* (term not Roman), the normal *peculium* granted by a father to his son (*a patre profectum* = coming from the father).

Peculium castrense. Everything that a *filius familias* earned or acquired from, or during, his military service (*in castris*). From the time of Augustus he was permitted to dispose of it by testament. Hadrian extended this privilege to soldiers discharged from service and veterans. The *peculium castrense* embraced the gifts which the soldier received when he entered service and inheritances received from fellow soldiers. Later, a *filius familias* might freely dispose of his *peculium castrense* since "with regard to it he acts as a head of a family (*pater familias*)," D. 14.6.2.—D. 49.17; C. 1.3; 12.30; 12.36.

Cagnat, *DS* 4; v. Uxkull, *RE* 19. 15; H. Fitting, *Das p.c. in seiner gesch. Entwicklung*, 1871; Appleton, *NRHD* 35 (1911) 593; E. Albertario, *Studi* 1 (1933) 159; A. Guarino, *BIDR* 48 (1941) 41; Daube, *St Albertario* 1 (1952) 435.

Peculium paganum. The name given by Justinian to an ordinary *peculium*, as distinguished from *peculium castrense* and *peculium quasi castrense*.

Peculium profecticium. See PECULIUM ADVENTICIUM.

Peculium quasi castrense. Everything that a *filius familias* earned as a public official, as a lawyer, in the service of the Church, or by the liberality of the emperor or empress. The legal situation of a *peculium quasi castrense* was the same as that of a *peculium castrense*.

Uxkull, *RE* 19, 16; Orestano, *AnMac* 11 (1937) 118; Archi, *St Besta* 1 (1939) 121.

Pecunia. Money. Originally the term denoted property in cattle (*pecus*), as distinguished from other kinds of property; see FAMILIA. In classical language "the term *pecunia* comprises all things, both movables

and immovables, both corporeal things and rights" (D. 50.16.222).—See CREDERE, OTIOSUS.

Mickwitz, *RE* 19; Sachers, *RE* 18, 3, 2125; Lenormant, *DS* 4; Pfaff, *Fschr Hanausek* 1925, 94 (Bibl.); M. Wlassak, *Erb- und Vermächtnisrecht, SbWien* 215 (1933) 5; M. F. Lepri, *Saggi sul patrimonio* 1 (1942); K. F. Thormann, *Der doppelte Ursprung der mancipatio*, 1943, 155; Mattingly, *Numismatic Chronicle* 1953, 21.

Pecunia compromissa. See COMPROMISSUM.

Pecunia constituta. A money debt reaffirmed by a CONSTITUTUM.

Pecunia credita. See CREDERE, ACTIO CERTAE CREDITAE PECUNIAE, MUTUA PECUNIA.

Pecunia fenebris. Money lent on interest.—See FENUS.

Pecunia (or summa) honoraria. A sum of money (not less than ten thousand sesterces), paid by municipal magistrates (*duoviri iuri dicundo*) when they entered service. On such occasions also other kinds of gifts were also offered to the municipality (a statue or the arrangement of spectacular games, *ludi*).

Liebenam, *RE* 5, 1814.

Pecunia indebita. See INDEBITUM, CONDICTIO INDEBITI, SOLUTIO INDEBITI.

Pecunia mutua. See MUTUA PECUNIA.

Pecunia numerata. See NUMERARE PECUNIAM.

Pecunia publica. Money belonging or owed to the state treasury (see AERARIUM). *Pecunia publica* could be lent to private individuals only on interest and with real security.—See PECULATUS.

Pecunia residua. See PECULATUS.

Pecunia sacra. Money belonging to a temple or destined for divine cult and sacrifices. Embezzlement or robbery of such money was qualified as a *crimen* PECULATUS.

Pecunia traiecticia. See FENUS NAUTICUM.

Pecuniarius. Expressed or evaluated in a sum of money; concerning a payment in money (*causa, lis, res pecuniaria*).

G. Pacchioni, *La pecuniarietà dell'interesse nelle obbligazioni*. 1st app. to the translation of C. F. Savigny's *Obbligazioni*, 2 (1915) 305.

Pecus. A domestic four-footed animal, normally living in a herd (*gregatim*, see GREX), such as "sheep, goats, oxen, horses, mules, donkeys" (D. 9.2.2.2) and pigs. Dogs are excluded. The term appears in the LEX AQUILIA, which dealt with damages done to animals (*pecudes*). Ant. *animalia quae pecudes non sunt*.—See ANIMALIA QUAE COLLO DORSO DOMANTUR, IUMENTUM.

Pedaneus iudex. See IUDEX PEDANEUS.

Pedarii. See SENATORES PEDARII.

Pedes (pedester). An infantryman. *Militia pedestris* = infantry.

Pedius, Sextus. A jurist of the late first century and the early second. His original and independent ideas are known only from quotations by later jurists, primarily by Ulpian and Paul, because his works were not directly excerpted in the Digest. He is the author of an extensive commentary on the praetorian and aedilian edicts.

Berger, *RE* 19, 41 (no. 3); La Pira, *BIDR* 45 (1938) 293.

Pegasus. A jurist of the second half of the first post-Christian century.—See SENATUSCONSULTUM PEGASIANUM.

Berger, *RE* 19, 64.

Peira. A collection of juristic decisions, written in Greek about the middle of the eleventh century by a judge, Eustathios Romaios (Romanus).

Editions: Zachariae v. Lingenthal, *Ius Graeco-Romanum* 1 (1856); J. and P. Zepos, *Ius Graeco-Romanum* 4 (Athens, 1931).—Mortreuil, *Histoire du droit byzantin* 2 (1844) 474; Zachariae v. Lingenthal, *Krit. Jahrbücher für die deutsche Rechtswissenschaft*, 1847, 596.

Pellex. See PAELEX.

Penates. Deities protecting the household of a Roman citizen.—See LARES.

Weinstock, *RE* 19, 423.

Pendente condicione. When the condition is still pending. During the time of uncertainty as to whether a condition would be fulfilled or not, the legal situation varies according to the nature of the conditional obligation and the contents of the condition.—See CONDICIO.

Pendēre (pendeo). To hang. See FRUCTUS PENDENTES.—*Pendere* as syn. with *in pendenti esse* = to be uncertain, in suspense. The term refers to legal situations, rights, or duties which are uncertain until (*donec*) a specific event or fact happens or until a fixed day arrives upon which the suspended validity of a legal act or transaction depends. "What is in suspense is not considered as existing" (D. 50.17.169.1).—See CONDICIO PENDET, IN PENDENTI ESSE, LITE PENDENTE, PENDENTE CONDICIONE.

Pendēre (pendo). To pay out (a fine, interest, taxes).

Penes. (Prep.) In the power (or possession or house) of a person.

Pensatio (from pensare). A recompense.—See COMPENSATIO.

Pensio. Payment by installment, either of a part of a sum due or of a sum due at fixed intervals (such as rents for the lease of a house or a farm, in the case of EMPHYTEUSIS, or alimony). *Pensio* also refers to payments of taxes or other sums due to the fisc. Syn. *pensitatio*.

Wenger, *Canon, SbWien* 220 (1942) 35.

Pensitatio. See PENSIO.

Penus. See LEGATUM PENORIS.

Per aes et libram. Some legal acts of early origin were performed with the use of copper and scales (such as MANCIPATIO, NEXUM, a specific form of testament, COËMPTIO, SOLUTIO PER AES ET LIBRAM) and the pronunciation of prescribed solemn formulae. The acts (*gesta, negotia*) thus performed required the presence of five Roman citizens as witnesses and of a *libripens* (the man who held the scales). Acts *per aes et libram* went out of use in the later law.

—See MANCIPARE, LIBRA, LIBRIPENS, FAMILIAE EMPTOR, TESTAMENTUM PER AES ET LIBRAM.

Kunkel, *RE* 14, 999; 1006; Severini, *NDI* 9; Popescu-Spineni, *ACDR* 2 Bologna (1935) 553; H. Lévy-Bruhl, *Nouvelles études* 1947, 97 (= *LQR* 1944, 51); W. Geddes, *Per aes et libram*, Liverpool, 1952.

Peraequatio. (In fiscal administration.) An equitable adjustment of taxes through an increase or reduction of the last year's taxes. The operation was performed by a special officer, a supervisor in tax assessments (in the later Empire), *peraequator*.—C. 11.58.

Seeck, *RE* 5, 1184; Ensslin, *RE* 19, 564.

Peragere. To accomplish, to perform a legal act completely, e.g., *peragere testamentum*; with regard to judicial proceedings to continue one's activity therein until the defendant in a civil trial, or the accused in a criminal case, is condemned.

Perceptio fructuum. Gathering the fruits after their separation from the soil which produced them. See SEPARATIO FRUCTUUM. The *perceptio fructuum* normally coincides with *separatio* by the same person, unless a third person has a right over the separated fruits.—See FRUCTUS PERCEPTI, FRUCTUS PERCIPIENDI.

Percipere. To gather, collect (proceeds of any kind, revenues, interest, rents, wages).—See PERCEPTIO FRUCTUUM.

Percutere. To strike a person with the fist or a stick. Such an action constitutes an offense (see INIURIA). If the person beaten was gravely hurt, the wrongdoer was guilty of *iniuria atrox*.

Perducere. (With regard to testaments.) To cancel, to erase a testamentary disposition or the name of a beneficiary (an heir or legatee). The disposition is considered not written even if the name is still legible. Syn. *inducere*.

Perducere ad libertatem. To bring a slave to liberty, to make a slave free, either directly through manumission or indirectly by imposing on another the duty to free the slave.—See MANUMISSIO, MANUMISSIO FIDEICOMMISSARIA.

Perduellio. Treason. One is guilty of *perduellio* who "is inspired by a hostile mind against the state and the emperor" (D. 48.4.11). The Twelve Tables set the death penalty for treason. *Perduellio* embraced various criminal acts, such as joining the enemy, rousing an enemy against the Roman state, delivering a Roman citizen to the enemy, desertion on the battlefield, and the like. Later, *perduellio* was gradually absorbed by the CRIMEN MAIESTATIS.—See MAIESTAS, DUOVIRI PERDUELLIONIS, CONSCIENTIA, LEX VARIA, DESERERE.

Brecht, *RE* 19; Lécrivain, *DS* 4; Berger, *OCD*; E. Pollack, *Majestätsgedanke im röm. Recht*, 1908; Robinson, *Georgetown LJ* 8 (1919); P. M. Schissa, *Offences against the state in R. law*, London, 1926; Renkema, *Mn* 55 (1927) 395; F. Vittinghoff, *Der Staatsfeind in der röm. Kaiserzeit*, 1926; A. Mellor, *La conception du crime politique sous la Rép. rom.*, 1934; C. Brecht, *Perduellio*, 1938; idem, *ZSS* 64 (1944) 354.

Perduellis. See HOSTIS.

Peregrinus. A foreigner, a stranger, a citizen of a state other than Rome. A great majority of the population of Rome were peregrines, subjects of Rome after the conquest of their country by Rome. With the increase of the Roman state the number of peregrines grew constantly without being compensated by the number of new citizens to whom Roman citizenship was granted. Within Roman territory the peregrines enjoyed the rights of free persons unless a treaty between Rome and their native country granted them specific rights. Generally, the legislation under the Republic, both statutes and *senatusconsulta*, applied to peregrines only when a particular provision extended their validity to them. Peregrines had no political rights, they could not participate in the popular assemblies, and were excluded from military service. A *peregrinus* might conclude a valid marriage (*iustae nuptiae*) only when he had the IUS CONUBII (see CONUBIUM), either granted to him personally or acquired through his citizenship in a *civitas* which obtained this right from Rome. A peregrine could not make a testament in the forms reserved for Roman citizens nor act as a witness thereto. He could not be instituted an heir of a Roman citizen nor receive a legacy (*legatum*) except in a testament of a soldier. He was able to conclude a commercial transaction with a Roman citizen if he had the IUS COMMERCII, which was granted in the same ways as *ius conubii*. Though excluded from the proceedings by LEGIS ACTIO, a peregrine had the benefit of protection in Roman courts, in particular before that praetor who had jurisdiction *inter peregrinos* (see PRAETORES) from the middle of the third century B.C. Certain actions were gradually made available to peregrines and against them by the means of a fiction "as if he were a Roman citizen"; see ACTIONES FICTICIAE. Foreigners from the same state concluded transactions in accordance with the laws of that state and litigations among them were settled according to their own laws. A peregrine who obtained Roman citizenship (see CIVITAS ROMANA) ceased to be a peregrine whether he obtained it as a personal grant or within a large group. The sharp distinction between *cives* and *peregrini* lost its emphasis in the legal field in the course of time as a result of the development of commercial relations between Romans and peregrines. On the other hand the extension of Roman citizenship which at the end of the Republic was conferred on the entire population of Italy, furthered the disappearance of the once very sensible differences. The CONSTITUTIO ANTONINIANA did the rest. In Justinian's law the only peregrines were the barbarians (see BARBARI).—For the exceptional status of the Latins, see LATIUM, IUS LATII, LATINI. For the influence of the commercial relations between Romans and peregrines

on the development of the Roman private law, see IUS GENTIUM.—See DEDITICII, IUS CIVILE.

Kübler, *RE* 19; Humbert and Lécrivain, *DS* 4; Severini, *NDI* 9; Sherwin-White, *OCD*; G. Moignier, *Les pérégrins déditices*. Thèse Paris, 1930; Taubenschlag, *St Bonfante* 1 (1930) 367; Lewald, *Archeion Idiotikou Dikaiou* 3 (1946) 59; Volterra, *St Redenti* 2 (1951) 405.

Peremptorius. See EDICTUM PEREMPTORIUM, EXCEPTIONES PEREMPTORIAE.

Perendinus (dies). See COMPERENDINUS.

Perennis. See FLUMINA PUBLICA.

Perennitas. Perpetuity, perennity. The term was an honorific title of the Roman emperors in the later Empire.

Perfectissimus (vir). A title of high officials of equestrian rank. From the time of Marcus Aurelius all *praefecti* (except the *praefectus praetorio*, who had the title *eminentissimus*), high officials in the financial administration and in the imperial chancery, and certain military commanders belonged to the group of *perfectissimi*. Under Diocletian and his successors the circle of *viri perfectissimi* was greatly extended. *Perfectissimatus* = the dignity of a *vir perfectissimus*. —C. 12.32.

Ensslin, *RE* 19; Anon., *DS* 4; O. Hirschfeld, *Kleine Schriften*, 1913, 652.

Perfectus. Fully accomplished. A sale (EMPTIO) is considered *perfecta* when the parties agreed upon the object sold, its quantity and quality, and the price, and the agreement was unconditional. A testament was regarded *perfectum* (*iure perfectum*) when all formalities required by the law were fulfilled.—See DONATIO PERFECTA, PERFICERE, AETAS PERFECTA, LEGES PERFECTAE.

Perficere. To conclude a legal transaction (to accomplish a legal act) in a form prescribed by the law. See PERFECTUS (with regard to sales and testaments). *Perficere* refers also to the fulfillment of an obligation or to a donation effectively given; see DONATIO PERFECTA.

Seckel and Levy, *ZSS* 47 (1927) 150.

Perfuga. (From *perfugere*.) A deserter who went over to the enemy.—See DESERERE.

Periclitari. To run a risk (e.g., of being liable from a procedural *sponsio* or *cautio* if one loses a case in court).

Periculum (periculum). A written draft of a judgment to be read by the judge to the parties.—See SENTENTIAM DICERE, RECITARE.

Kübler, *ZSS* 54 (1934) 327.

Periculum. A risk, a danger. The term is used of the risk incurred by a party to a trial, plaintiff or defendant, not only of losing the case but also of being subject to an increased liability arising from specific procedural measures (*sponsio, cautio*). See PERICLITARI. In contractual relations *periculum* indicates the risk of a loss incurred by one party who expressly assumed a more extensive liability, as, for instance, for damages caused by an accident (*casus*), *periculum praestare*, or by suffering such loss under special circumstances. *Periculo alicuius esse* = to be at one's risk, to be responsible for, or to suffer damages.—C. 5.38; 10.63; 11.34; 35.—See the following items.

Periculum emptoris. See PERICULUM REI VENDITAE.

Periculum rei venditae. The risk of deterioration or destruction of a thing which was sold and not immediately delivered to the buyer. As a matter of rule such risk was with the buyer from the moment the sale was concluded (*emptio perfecta*), if the loss was caused by accident. He, therefore, had to pay the sale price for the thing perished or deteriorated before the delivery. Exceptions in favor of the buyer were introduced in some cases, in particular if the vendor assumed responsibility in specific events or neglected his duties of custody. Details are controversial in the literature, but it is probable that some attenuations of the principle "*periculum est emptoris*" were favored by the classical jurists in view of the *bona fide* character of the contract of sale.—D. 18.6; C. 4.48.—See EMPTIO, PERFECTUS.

Arnò, *St Brugi* (1910) 153; Haymann, *ZSS* 40 (1919) 254; 41 (1920) 44; 48 (1928) 314; Rabel, *ZSS* 42 (1922) 543; M. Konstantinovitch, *Le p.r.v.*, Thèse Lyon, 1923; Huvelin, *RHD* 3 (1924) 318; Ch. Appleton, *RHD* 5 (1926) 375; 6 (1927) 195; Seckel and Levy, *ZSS* 47 (1927) 117; H. R. Hoetink, *Periculum est emptoris*, Haarlem, 1928; Beseler, *TR* 8 (1928) 279; Vogt, *Fschr Koschaker* 2 (1939) 162; Krückmann, *ZSS* 59 (1939) 1, 60 (1940) 1; Meylan, *RIDA* 3 (= *Mél De Visscher* 2, 1949) 193; *idem, Iura* 1 (1950) 253; *idem, ACIVer* 3 (1952) 389.

Periculum tutelae (tutorum). A general term for the responsibility of guardians (*tutores*) connected with their management of the ward's affairs and the administration of his property. The term *periculum* is also applied to *curatores*.—D. 26.7; C. 5.38.—See TUTELA.

Perimere. To make void, to annul, to annihilate. *Perimi* = to become inefficacious, extinguished, void (*actio, obligatio, pignus perimitur*).

M. F. Peterlongo, *Pluralità di vincoli*, 1941, 32.

Perinde (proinde) ac si (atque). Just as if. Although the locutions occur beyond question in some interpolated texts, they may at times refer to cases which were already treated in classical law as analogous to other legal situations, protected by the law, to which the praetor extended his protection by praetorian actions (see ACTIONES UTILES, ACTIONES FICTICIAE).

Riccobono, *TR* 9 (1929) 13; Guarneri-Citati, *Indice* (1927) 65; *idem, Fschr Koschaker* 1 (1939) 145.

Perire. To perish. *Actio perit* = an action (the right to sue) gets lost, is extinguished. See LIS MORITUR. All actions which are extinguished by the death of one party or by the lapse of a fixed time, survive if they were introduced before court and brought to LITIS CONTESTATIO before the death of the plaintiff or before the term elapsed.

Peritus. See IURIS PERITUS.

Periurium. (From *periurare.*) Perjury. It was not generally punished as a *crimen publicum* since *periurium* was considered an offense to the gods which was revenged by them. It produced, however, a social dishonor (Cicero: *humanum dedecus*) which might be branded by the censors with a *nota censoria.* For false testimony, see TESTIMONIUM FALSUM. Perjury committed in order to obtain a pecuniary profit was qualified as *crimen* STELLIONATUS. Perjury committed under an oath taken *per genium principis* (see GENIUS) was treated as *crimen maiestatis* and, generally, it was severely punished. In pecuniary matters, if one swore that he did not owe money to another or that another owed him money, the punishment was beating (*castigatio fustibus*) with the admonition "do not swear inconsiderately."

Latte, *RE* 15, 353 (*s.v. Meineid*).

Perlusorium iudicium. See COLLUSIO.

Permissum. Permission, leave. The term refers to what is allowed by a statute (*permissu legis*) or by a magistrate (*permissu praetoris*), e.g., when a freedman wished to sue his patron, he had to ask the praetor for special permission.

Permutatio. The exchange of one thing for another, a barter. It differs from sale in that instead of money a thing is given as compensation. *Permutatio* is an innominate contract (see CONTRACTUS INNOMINATI) of the type "*do ut des*" (= I give you in order that you give me) and it is not concluded by mere consent of the parties, as sale, but by an actual, real (*re*) transfer of ownership of a thing from one party to another. —See ACTIO PRAESCRIPTIS VERBIS.—D. 19.4; C. 4.64.

M. Ricca-Barberis, *La garenzia per evizione, Mem. Ist. giur. Univ. Torino*, Ser. II, 40 (1939).

Permutatio. (In banking business.) A transaction between two banking firms to make payments from Rome to Italy and the provinces, and *vice versa.*

Kiessling, *RE* Suppl. 4, 700 (*s.v. Giroverkehr*).

Permutatio status. See STATUS.

Perorare causam. See CAUSAM PERORARE.

Perpetua causa servitutis. The natural conditions of a piece of land involved in a servitude must be such that the exercise of the servitude is permanently (not only temporarily) possible.

S. Perozzi, *Scr giur* 2 (1948, ex 1892) 85; C. Ferrini, *Opere* 4 (1930, ex 1893) 145; B. Biondi, *Le servitù prediali*, 1946, 156.

Perpetuari. See PERPETUATIO.

Perpetuarius. (Noun.) *Emphyteuta, emphyteuticarius.—Ius perpetuarium* = *ius emphyteuticum, ius emphyteuticarium.* See EMPHYTEUSIS.

Perpetuatio actionis. After the LITIS CONTESTATIO in a civil trial *actio perpetuatur*, i.e., the action, though temporally limited (see ACTIONES TEMPORALES), is no longer subject to a limitation of time.

Perpetuatio obligationis (obligatio perpetuatur). See MORA.

Gradenwitz, *ZSS* 34 (1913) 255; Genzmer, *ZSS* 44 (1924) 102; F. Pastori, *Profilo dogmatico e stor. dell'obbligazione rom.*, 1951, 173.

Perpetuus. Everlasting, perpetual, unlimited in time. Ant. *temporarius* (= temporary). *In perpetuum* = forever, for life (e.g., banishment).—See ACTIONES PERPETUAE, PERPETUA CAUSA, EDICTUM PERPETUUM, EXCEPTIONES PEREMPTORIAE.

Hernandez Tejero, *AHDE* 19 (1948–49) 593.

Perquisitio lance et licio. See LANCE ET LICIO.

Persecutio. Indicates an action by which "a thing is sued for" (D. 44.7.28: *rei persequendae gratia*). Hence *persecutio* connected with the object claimed (*persecutio hereditatis, legati, pignoris*) alludes to the pertinent specific action. *Persecutio poenae* = an action by which one sues for a private penalty (see ACTIONES POENALES). *Persecutio extraordinaria* refers to trials conducted in the form of COGNITIO EXTRA ORDINEM when the claim cannot be sued in ordinary proceedings, as for instance, in the case of a FIDEICOMMISSUM.—See PERSEQUI. PETITIO.

Persequi. To claim one's right through a judicial proceeding (*iudicio, actione*), to sue for a thing or a private penalty.—See PERSECUTIO.

Persolvere. In the meaning of *solvere* (= to pay a debt) this occurs frequently in interpolated passages.

Guarneri-Citati, *Indice* (1925) 65.

Persona. A person, an individual. a human being. "The principal division of persons is that into free men (*liberi, ingenui*) and slaves (*servi*)," Gaius, Inst. 1.9. The law concerning persons (*ius quod ad personas pertinet*) is—according to Gaius (1.8)—one of the three groups of legal rules, the other two of which concern things (*res*) and actions (*actiones*). The law of persons (*ius personarum*) consists of those portions of the law which deal with liberty and slavery (*status libertatis*), citizenship (*status civitatis*), family (*status familiae*), marriage, guardianship and curatorship (*personae sui iuris, alieni iuris*). The law of persons embraces all institutions which have an influence on the legal condition of a person and his capacity to have rights and assume obligations. *Persona* is also used of slaves to denote them as human beings (*persona servi, servilis*) although legally they are treated as things (*res*) and therefore legal personality is denied them. There are also collective entities which, although not human in nature, "function" as persons (*personae vice fungi*), such as *hereditas* (= inheritance), a municipality, a *decuria* or an association of individuals. In postclassical and Justinian's language the use of *persona* (in Greek *prosopon*) became more extensive and was occasionally inserted into classical texts.—Inst. 1.3.—See ACTIONES IN PERSONAM, EXCEPTIONES IN PERSONAM, EXCEPTIONES PERSONAE COHAERENTES, NASCITURUS, STATUS, CAPUT, CAPITIS DEMINUTIO.

Düll, *RE* 19, 1040; Coq, *DS* 4, 416; De Martino, *NDI* 9, 928; S. Schlossmann, *Persona und Prosopon*, 1905; Rhein-

ielder, *Das Wort p., Beihefte zur Ztschr. f. romanische Philologie* 77 (1928); L. Schnorr v. Carolsfeld, *Gesch. der juristischen Person*, 1 (1932) 52; P. W. Duff, *Personality in R. private law*, 1938, 1.—For p. in interpolated texts: Guarneri-Citati, *Indice*[2] (1927) 65, *St Riccobono* 1 (1936) 733, *Fschr Koschaker* 1 (1939) 145; Nédoucelle, *Revue des sciences réligieuses*, 1948, 277.

Persona extranea. See EXTRANEUS.

Persona miserabilis. A person deserving pity (because of age or sickness). Such persons were granted certain personal privileges in proceedings before the imperial court.—C. 3.14.

Persona turpis. See TURPIS PERSONA.

Personae exceptae. See EXCEPTAE PERSONAE.

Personae in mancipio. See MANCIPIUM.

Personae incertae. (In a testament.) Persons who are not precisely designated, whose existence is uncertain (see POSTUMI ALIENI) or of whom the testator had no precise idea (e.g., a legacy left to the person who would first come to the testator's funeral). Such testamentary dispositions in favor of *personae incertae* were void. Postclassical and Justinian's law permitted some exceptions.—C. 6.48.

Personae legitimae. The term occurs in later imperial constitutions in various meanings, primarily in that of a person capable to conclude a legal transaction or to act personally in court.

P. W. Duff, *Personality in R. private law*, 1938, 9.

Personalis. Pertaining to persons or to an individual. See CONSTITUTIONES PERSONALES, MUNERA PERSONALIA. The term occurs frequently in later imperial constitutions and was often interpolated in classical texts, as, for instance, *actio personalis* for *actio in personam*.—See PERSONA.

Guarneri-Citati, *Indice*[2] (1927) 65.

Personam alicuius sustinere. To represent (to replace) another person. With regard to an inheritance it is said (D. 41.1.34) that "it represents the person of the defunct, not of the heir."

Perterritus. Frightened. The term is used of a person who acted *metu* (= under fear).—See METUS.

Pertinere ad aliquem. To belong to a person as his property. The verb is used "in a very broad sense . . . it applies also to things which we possess under any title, although we have no ownership over them; we also say *pertinere* of things which are neither in our ownership nor possession but may become such" (D. 50.16.181), as, e.g., an inheritance "*pertinet*" to the heir although he did not yet enter it. The phrase "*is ad quem ea res pertinet*" may indicate a person who is interested in, or concerned with, a certain matter. *Pertinere ad aliquem* denotes sometimes a legal or moral duty of a person; when connected with a magistrate or a judge, it refers to his official duty.

Pervenire ad aliquem. What someone has obtained, gained (from another's property or to another's detriment). The term is important in the law of succession since, in certain instances, the liability of the heir (*teneri*) does not go beyond what he received from the estate. Syn. *in quantum quis locupletior factus est*. See ACTIONES IN ID QUOD PERVENIT. Ant. *in solidum teneri* = to be liable for the whole without regard to what the defendant had in fact received.—See LOCUPLETARI, BENEFICIUM INVENTARII.

F. Schulz, *Die actiones in id quod pervenit*, Diss. Breslau, 1905; P. Voci, *Risarcimento e pena privata*, 1939, 193.

Pervenire ad (in) aliquid. To obtain, to reach, to come to; *pervenire in senatum* = to become a senator; *pervenire ad libertatem* = to become a free person; *pervenire ad pubertatem* = to reach puberty.

Petere. See PETITIO, PACTUM DE NON PETENDO, and the following items.

De Sarlo, *Causa petendi*, *BIDR* 51/52 (1948).

Petere bonorum possessionem. To demand BONORUM POSSESSIO from the praetor. *Bonorum possessio* was granted only at the request of the person entitled to it.

Petere tutorem. See POSTULATIO TUTORIS.—D. 26.6; C. 5.31; 32.

Petitio. (In private law.) *Actio*. The term generally refers, however, to *actiones in rem* (see ACTIONES IN PERSONAM). A neat technical distinction between *actio* and *petitio* seemingly never existed nor can a substantial differentiation be found between the two terms and PERSECUTIO; the three words occur sometimes together without any indication whatsoever of the distinctions among them. In the language of the imperial chancery of the later Empire *petitio* is used of a petition addressed to the emperor or a high official.—See PLURIS PETITIO.

Schnorr v. Carolsfeld, *RE* 19.

Petitio hereditatis. See HEREDITATIS PETITIO.

Petitor. The plaintiff. See *actor, is qui agit*.

Petitoria formula. *Petitorium iudicium*, in Justinian's language, *actio petitoria*.—See FORMULA PETITORIA.

Peto. (In the formula of a *fideicommissum*.) See FIDEICOMMISSUM.

Philosophi. Philosophers were exempt from the duty of assuming a guardianship. They were not reckoned among the professors and therefore they could not sue for a salary (see HONORARIUM); "they despise mercenary services" (D. 50.13.1.4).

Piaculum. (In later imperial constitutions.) A crime which required expiation (punishment). *Piaculum* is also an expiatory sacrifice.

Piae causae. Pious, charitable purposes. Gifts to charitable institutions (foundations), such as orphanages, hospitals, poorhouses, almshouses for old people, and the like, were favored by Justinian's legislation. Such institutions were administered by directors who were considered temporary and limited owners and were authorized to appoint their own successors.—See LEX FALCIDIA.—C. 1.3.

Saleilles, *Mél Gérardin* 1907, 513; Cugia, *St Fadda* 5 (1906) 229; A. Sarrazin, *Etudes sur les fondations*, Thèse Paris, 1909; P. W. Duff, *Charitable foundations of Byzantium, Cambridge Legal Essays presented to Bond, Buck-*

land, 1926, 83; *idem*, *Personality in R. private law*, 1938, 203; L. Schnorr v. Carolsfeld, *Gesch. der juristischen Person*, 1 (1933) 15; J. M. Casoria, *De personalitate juridica piorum causarum*, (Naples) 1937; Bruck, *Sem* 6 (1948) 18; Philipsborn, *RIDA* 6 (1951) 141.

Pictura. A picture, a painting. The controversial question whether a painting made on another's material (*tabula*) became the property of the owner of the material or of the painter was later decided in favor of the latter. He had, however, to compensate the owner for the material used.

Bortolucci, *BIDR* 33 (1923) 151; *idem*, *Pubbl. Univ. Modena* 30 (1928) 14; Nardi, *AG* 121 (1939) 129; *idem*, *Si sulla ritenzione*, 1947, 339.

Pietas. Dutifulness, respectful conduct, sense of duty, affection towards gods, parents, or near relatives; in general noblemindedness, honest way of thinking. "It is to be held that we are unable to commit acts which injure our dutiful conduct (*pietas*), our reputation (*existimatio*), our moral way of thinking, and generally speaking, are contrary to good customs." This saying is by Papinian (D. 28.7.15). Although heavily criticized and frequently ascribed to Justinian's compilers, it expresses a late classical idea. —See INTUITU.

Koch, *RE* 20; H. Krüger, *ZSS* 19 (1898) 6; Guarneri-Citati, *Indice*[2] (1927) 66 (Bibl. for interp.); Rabel, *St Bonfante* 4 (1930) 295; Th. Ulrich, *P. als politischer Begriff*, 1930; E. Renier, *Et sur l'histoire de la querela inofficiosi testamenti*, 1942, 61; Riccobono, *Lineamenti* (1949) 71.

Pietas. An honorific title of the emperors. From the time of Diocletian they used to speak of themselves as "*pietas nostra*" (*mea*).

Pigneraticius creditor. A creditor who accepted a pledge from his debtor as a security. *Pigneraticius fundus* = land given as a security (*pignori datus*). For *actio pigneraticia* (*iudicium pigneraticium*), see PIGNUS.—See EXCEPTIO PIGNERATICIA.

Pigneratio, pignoratio (pignerare). Handing over a thing to one's creditor as a pledge.—See PIGNUS.

Pignoris capio. (By a magistrate.) Taking a pledge from a person who did not obey the magistrate's command. This was one of the means of the coercive power of a Roman magistrate (COËRCITIO). Originally the thing was destroyed (*pignus caedere*), later it was kept by the magistrate as pressure on the disobedient citizen. This might finally lead to the sale of the thing or to restoration to the owner in case he submitted. Syn. *pignoris captio*.

Steinwenter, *RE* 20, 1234.

Pignoris capio. (Through judicial proceeding.) A way of executing a debt due, see LEGIS ACTIO PER PIGNORIS CAPIONEM, PIGNUS. Tax-farmers had the right to take a pledge from a tax-debtor through this *legis actio*. In the provinces they could do so in simpler extrajudicial proceedings.

Steinwenter, *RE* 20, 1235; Carcaterra, *AnBari* 5 (1942); Hill, *AmJPhilol* 67 (1946) 60; M. Kaser, *Das altrömische Ius*, 1949, 205.

Pignoris causa indivisa est. A thing given a creditor as a pledge remains pledged until the debt is paid in full.—See PIGNUS.

Pignus. Both the thing given as a real security (pledge) to the creditor by the debtor and the pertinent agreement under which the security was given (*pignerare*, *pignori dare*, *pignus obligare*). The agreement was a contract concluded *re*, i.e., by the delivery of the pledge to the pledgee. *Pignus* implies the transfer of possession (not ownership) of the thing pledged to the creditor (*creditor pigneraticius*) who held it until his claim was fully satisfied, see PIGNORIS CAUSA. During this time he was protected in his possession of the pledge by possessory interdicts; see INTERDICTUM. For the rights of the pledgee, see IUS DISTRAHENDI, HYPEROCHA, LEX COMMISSORIA, IMPETRATIO DOMINII. As a matter of rule, the creditor had no right over the proceeds (fruits, rents, etc.) of the thing pledged unless it was agreed that he might take them as interest (see ANTICHRESIS). Nor could the pledgee use the thing pledged. "A creditor who makes use of the pledge commits a theft" (Inst. 4.1.6). The pledge could sue the creditor for restoration of the pledge when he had fulfilled his obligation or when the debt was extinguished (for instance, when the proceeds of the thing had been taken by the creditor, in accordance with an agreement with the debtor, and they exceeded both interest and the principal). The same action, *actio pigneraticia*, lay against a creditor through whose fault the thing perished or deteriorated. On the other hand, the pledgee had an action against the pledger (*actio pigneraticia contraria*) for damages caused by the thing pledged through the fault (*culpa*) of the pledger, and for reimbursement of necessary expenses (*impensae necessariae*) incurred in the care of the pledge. *Pignus* differed from other types of security, FIDUCIA and HYPOTHECA, in that by *fiducia* ownership was transferred to the creditor, and by *hypotheca* the thing was not handed over at all, whereas through *pignus* only possession of the *res pignorata* was conveyed to the creditor. In Justinian's law the differences between *pignus* and *hypotheca* were abolished.—D. 20.1; 3; 6; C. 8.13–32. For *actio pigneraticia* D. 13.7; C. 4.24.—See PRIOR TEMPORE, VINCULUM PIGNORIS.

Manigk, *RE* 20; Humbert and Lécrivain, *DS* 4; Page, *NDJ* 9 (s.v. *pegno*); Berger, *OCD* (s.v. *security*); T. C. Jackson, *Justinian's Digest Book XX with Engl. translation*, 1909; E. Rabel, *Die Verfügungsbeschränkungen des Verpfänders*, 1909; E. Weiss, *Pfandrechtliche Untersuchungen*, 1–2 (1909, 1910); F. Messina-Vitrano, *Per la storia del ius distrahendi nel pegno*, 1910; M. Fehr, *Beiträge zur Lehre vom Pfandrecht*, Uppsala, 1910; Biondi, *AnPal* 7 (1920) 233; U. Ratti, *Sull'accessorietà del pegno*, 1927; Grosso, *ATor* 65 (1929–30) 111; E. Volterra, *Pegno di cosa altrui*, 1930; S. Romano, *Appunti sul pegno dei frutti*, *AnCam* 5 (1931); La Pira, *StSen* 47 (1933) 61; *idem*, *St Cammeo* 2 (1933) 1; *idem*, *St Ratti* 1934, 225; E. Carrelli, *St sull'accessorietà del pegno*, 1934; Carcaterra,

AnCam 12, 2 (1938) 51; Arnò, *ATor* 75 (1939–40); Rabel, *Sem* 1 (1943) 33; Kreller, *ZSS* 64 (1944) 306; Bartošek, *BIDR* 51–52 (1948) 238; Provera, *St Solazzi* 1948, 346; Koschaker, *Scr Ferrini* 3 (Univ. Sacro Cuore, Milan, 1948) 232.

Pignus Gordianum. According to a reiorm oi the emperor Gordian (A.D. 239) a creditor who had several claims against the same debtor only some of which were secured by a pledge, was allowed to retain the pledge until all debts were paid.

E. Nardi, *Ritenzione e pegno Gordiano*, 1939; *idem*, *St sulle ritenzione. 1. Fonti e casi*, 1947.

Pignus in causam iudicati captum. A pledge taken from a debtor by order of a magistrate in execution of a judgment-debt adjudicated in a *cognitio extra ordinem*. The step was accomplished by official organs (*apparitores*). In Justinian's law this kind of execution was extended to all condemnatory sentences ii the defendant refused to fulfill the judgment voluntarily.

Manigk, *RE* 20, 1273; P. Dienstag, *Die rechtliche Natur des p.i.c.i.c.*, 1908; Sanfilippo, *St Riccobono* 2 (1936) 521.

Pignus nominis. A pledge the object of which is the debtor's claim (*nomen*) against a third person. The *utilis*.—See ACTIONES UTILES.

creditor might sue the debtor's debtor by an *actio*

Pignus pignori datum. Named in literature by the non-Roman term *subpignus*, this occurs when a creditor who received a pledge from his debtor gave it in turn to his own creditor as a pledge.

Pignus praetorium. A pledge taken by the creditor upon order of a magistrate; see PIGNUS IN CAUSAM IUDICATI CAPTUM. The MISSIONES IN POSSESSIONEM had a similar function. In Justinian's language *pignus praetorium* is "a pledge which is given by the *iudices*." By this phrase the *missiones* are meant. —C. 8.21.

S. Solazzi, *Concorso dei creditori* 1 (1937) 208; Branca, *StUrb* 1937, 105; M. F. Lepri, *Note sulla natura giuridica delle missiones*, 1939.

Pignus publicum. (A non-Roman term.) A pledge constituted in a document (*instrumentum*) made before a public official (*publice confectum*). It was recognized as valid in a late imperial constitution (A.D. 472). Justinian permitted setting up a pledge in a private document, signed by three witnesses (*instrumentum quasi publice confectum*).

Pignus rei alienae. A pledge of a thing which does not belong to the debtor.

Pignus tacitum (tacite contractum). See HYPOTHECA TACITA. Certain specific claims involved a right of pledge (*ius pignoris, hypotheca*) under the law over the property of the debtor. An agreement between the parties was not necessary. Thus, for instance, a person who lent money for the construction or repair of a building or of a ship had the right of pledge on the building or ship; from the time of Constantine the property of a tutor or curator was charged with a general hypothec in favor of the ward's claims. Justinian granted legatees and fideicommissaries the same right over the things belonging to the estate. The privileged position of the fisc with regard to its debtors from contracts or for taxes is designated as *velut iure pignoris, pignoris vice*.—D. 20.2; C. 8.14.

Wieacker, *Fachr Koschaker* 1 (1939) 239.

Pilleus. A close fitting cap of liberty worn by freedmen on special occasions (e.g., the patron's funeral). Hence *pilleare* = to put a cap on a slave's head as a sign of manumission.

Paris, *DS* 4.

Pillius. A glossator of the twelfth century.—See GLOSSATORES.

Gabrieli, *NDI* 9.

Pirata. A pirate. There was no special law concerning robbers on the high sea. They were punished with death by the naval commander who was engaged in a fight against them or by the provincial governor to whom they were handed over. A theft committed during an attack of pirates was subject to a fourfold penalty.—See LEX GABINIA DE PIRATIS.

Kroll, *RE* 2A, 1042 (*s.v. Seeraub*); Cary, *OCD*; Lécrivain, *DS* 4, 487; Ormerod, *Piracy in ancient world*, 1924; Levi, *Riv. di filol. ed istr. classica*, 2 (1924) 80; Riccobono, *FIR* 1², 1941, 121 (Bibl.); Jones, *JRS* 16 (1926) 155.

Piscari (piscatio). Fishing in the sea and in public streams (see FLUMINA PUBLICA) was free; the fisherman acquired ownership of the fish caught as of a *res nullius* (see OCCUPATIO), unless a special and exclusive right of fishing was conierred by the competent authorities to individuals or groups (*conductores piscatus*) through a lease. There was apparently a tendency to protect the rights of professional fishermen. Fishing in private lakes or fish-ponds (*piscina*) depended upon the permission of the owner. —See PORTUS, PISCATORES.

Kaser, *RE* Suppl. 7, 684; Lafaye, *DS* 4; Longhena, *NDI* 11, 107; Rostowzew, *DE* 2, 593; Bonfante, *Corso* 2, 2 (1928) 61; Lombardi, *BIDR* 53–54 (1948) 339.

Piscatores. Fishermen.

Stöckle, *RE* Suppl. 4, 460 (*s.v. Fischereigewerbe*); M. Maxey, *Occupation of the lower classes in Roman society*, Chicago, 1938, 12.

Pistores. Bakers. Under the empire the bakers of Rome were organized in an association. Their profession enjoyed particular protection by the authorities; occasionally its exercise for a few years was the ground for granting Roman citizenship to a foreigner (a Latin). Bakers were exempt from the duty to assume guardianship. Bakeries were under the supervision of the office of the *praefectus annonae*. The introduction of gratuitous distribution of bread to poor people by the emperors, and later, the sale of bread at a low price contributed to giving the bakers the character of public servants. Later imperial legislation (C. Theod. 14.3) dealt frequently with the *pistores* and their legal status and privileges. Their union was called *corpus* or *ordo pistorum* and

their task comprised the baking of bread and its distribution and sale.—C. 11.16.

Hug, *RE* 20; Besnier, *DS* 4; G. Gandi, *Pistores. Note storico-corporative sui panificatori*, 1931.

Pithana. Plausible, persuasive topics. This was the title of a collection of decisions in individual cases by Labeo. The work is known only from an epitome by Paul.

Jörs, *RE* 1, 2551; Berger, *RE* 10, 723.

Pittacium. A term of Greek origin used in later imperial constitutions. A tablet, a short note. It was used in the administration of food supply for the army.

Placentinus. A glossator of the twelfth century. He died in 1192. He was the founder of a law school in Montpellier.—See GLOSSATORES.

Kuttner, *NDI* 9, 1118; P. De Tourtoulon, *Placentin*, 1876; H. Kantorowicz, *Jour. Warburg Inst.* 2 (1938) 22; Zanetti, *AG* 140 (1951) 72.

Placere. *Placet*, when referring to an individual jurist, is used for introducing his personal opinion. *Placet mihi* = in my opinion. *Placuit*, without reference to a specific jurist or jurists, indicated the opinion of several jurists which prevailed over the opinion of other jurists. Syn. *obtinuit*. *Placuit principi* refers to an imperial decision or enactment.—See CONSTITUTIONES PRINCIPUM.

Placitum. What private individuals agreed upon, an agreement. The term is less frequently used than its syn. PACTUM. With reference to legislative provisions *placitum* denotes either a statutory norm (*placitum legis*) or that of an imperial constitution (*placitum principis*).

Plagiarius. One who committed the crime of *plagium*, a kidnapper. Syn. *plagiator*.—See PLAGIUM, LEX FABIA DE PLAGIARIIS.

Plagium. The legal rules concerning the *crimen plagii* were settled in the LEX FABIA *de plagiariis* which remained in force in Justinian's legislation, with some alterations introduced by the legislation of the emperors and the interpretation of the jurists.—D. 48.15; C. 9.20.—See LEX FABIA, VINCULA, SUPPRIMERE. SUSCIPERE SERVUM.

Berger, *RE* Suppl. 7, 386; Brecht. *RE* 20; Lécrivain, *DS* 4; Niedermeyer, *St Bonfante* 2 (1930) 381; Lardone, *Univ Detroit Law J.* 1 (1932) 163; Lauria, *AnMac* 8 (1932); Berger, *BIDR* 45 (1938) 267.

Plane. Certainly, to be sure, of course. The particle was often used by the compilers to introduce an explanatory or restrictive remark, mostly of a harmless nature.

Guarneri-Citati, *Indice*[2] (1927) 66 (Bibl.).

Planta. A plant put in another's ground became property of the land-owner, provided that it had taken root there.

Plantare (plantatio). See PLANTA, SUPERFICIES CEDIT SOLO, SATIO.

Planum. See DE PLANO.

Plautius. A jurist of the first post-Christian century. He is known only from commentaries written by later jurists (Neratius, Pomponius, Javolenus, Paulus) on his work which apparently dealt primarily with the praetorian law. The attention paid by the classical jurists to Plautius (Paul's commentary had no less than 18 books) is evidence of the great esteem Plautius enjoyed with the later jurisprudence.

Berger, *OCD*; *idem*, *RE* 10, 710; 17, 1835; Siber, *RE* 21 (no. 60); Orestano, *NDI* 9; Riccobono, *BIDR* 6 (1893) 119; Ferrini, *Opere* 2 (1927, ex 1894) 205.

Plebeii. See PLEBS, PATRICII.

Plebiscitum. A decision, decree or legislative measure passed by the assembly of the plebeians (*conciiia plebis*). Originally the gatherings of the plebeians dealt only with matters which concerned the plebeians. The most important matter was the election of plebeian magistrates (*tribuni, aediles plebis*). Later, the competence of the *concilia plebis* were extended on legislative enactments. For the historical development which finally made the legal force of *plebiscita* equal to that of *leges* (statutes passed by *comitia* of the Roman people), see LEX VALERIA HORATIA, LEX PUBLILIA PHILONIS, LEX HORTENSIA, EXAEQUARE, LEX, CONCILIA PLEBIS, and the following item.

Siber, *RE* 21; Fabia, *DS* 4; Tilman, *Musée Belge*, 1906; Baviera, *St Brugi* 1910; Guarino, *Fschr Schulz* 1 (1951) 458; Biscardi, *RHD* 29 (1951) 153.

Plebs. The great "bulk of the people" (*multitudo*) opposed to the noble families. In the technical meaning *plebs* denotes a social class (group, "order") of the free population of Rome, distinguished from the patricians (see PATRICII). The uncertainty of the sources made of the origin of the *plebs* one of the most controversial questions of early Roman history. Originally the *plebs* probably consisted of various elements, such as the population of the surrounding territories conquered by Rome, clients (see CLIENTES) of patrician families, who lost the protection of a noble *gens*, and foreigners who came to Rome as workers or to exercise a small commerce. In historical times the plebeians appear already as Roman citizens although not enjoying full political and civil rights of the privileged social group, the patricians. The plebeians were excluded from magistracies and priesthood, and marriage between patricians and plebeians was prohibited. During the first two centuries of the Roman Republic there was a continuous struggle between the two classes during which the *plebs* gradually obtained the right to have magistracies of their own (*tribuni plebis, aediles plebis*) and the admission to magistracies and positions formerly reserved for the patricians. For details, see PATRICII. See also PLEBISCITUM and the related items. Under the Empire the distinction *plebeii—patricii* acquired a quite different significance. *Plebs* generally refers to the lower classes of the population without specific

connotations and is opposed to persons of senatorial or equestrian rank, to the classes of officials or wealthy and influential persons; see HONESTIORES, HUMILIORES, POTENTIORES.—See PATRICII (Bibl.), TRANSITIO AD PLEBEM.

Siber and Hoffmann, *RE* 21 (Bibl. 102); Lécrivain, *DS* 4: Di Marzo, *NDI* 9; Momigliano, *OCD*; Vassalli, *StSen* 24 (1907) 131; J. Binder, *Plebs*, 1909; Bloch, *La plèbe rom., Rev. Historique* 106–7 (1910–11); Giorgi, *St storici per l'antichità clas.* 5 (1912) 249; Rosenberg, *Hermes* 48 (1913) 359; G. Oberziner, *Patriciato e plebe* (*Pubbl. Accad. Scientif.-Lett.*, Milan, 1913); V. Arangio-Ruiz, *Le genti e la città*, 1914, 64; Piganiol, *Essai sur les origines de Rome*, 1917, 53, 247; Rose, *JRS* 12 (1922) 106; Hoffmann, *Neue Jahrbücher für das klas. Altertum* 1938, 82; F. Altheim, *Lex sacrata. Die Anfänge der plebeischen Organisation* (Amsterdam, 1940); Last, *JRS* 35 (1945) 30; A. Dell'Oro, *La formazione della stato patrizio-plebeo*, 1950, 59.

Plecti. To inflict a penalty. The term occurs in imperial constitutions.—See CAPITE PUNIRE.

U. Brasiello, *La repressione penale*, 1937, 223.

Plena pubertas. See MINORES.

Plenus. Full, complete, undiminished. The term is often connected with *ius, proprietas, dominium*, and similar words. It is a favorite adjective in the language of the imperial chancery; particularly frequent are the superlatives *plenissimus* and *plenissime*.

Plerumque. See INTERDUM.

Guarneri-Citati, *Indices* (1927) 67.

Plumbatura. Soldering two pieces of metal with lead. The parts thus joined remain distinct and may be separated when belonging to two different owners. Syn. *adplumbatio*.—See FERRUMINATIO.

Plures rei promittendi (stipulandi). See DUO REI.

Plures tutores. See CONTUTORES.

Pluris petitio. See PLUSPETITIO.

Plus. See MINUS.

Pluspetitio (pluris petitio). Claiming more than is due. an excessive claim. A plantiff may overclaim (*plus petere*) in substance (*re*) when he claims a bigger amount than is due to him; in time (*tempore*) when he claims before the payment is due; in place (*loco*), when he claims at a place (in a city) other than that where the payment had to be performed (see ACTIO DE EO QUOD CERTO LOCO); or in cause (*causa*) when he claims a certain thing although the debtor had the right to chose between two or more things. According to the classical law, a plaintiff who claimed in the INTENTIO of the formula more than he was entitled to, lost the case definitely. His claim could be restored, however, by a RESTITUTIO IN INTEGRUM in circumstances in which this remedy was available. An overstatement in the part of the formula called DEMONSTRATIO did not produce the loss of the case for the plaintiff. After the abolition of the formula-regime the *pluspetitio* lost its actuality. Imperial legislation modified the severe provisions against overclaims; the plaintiff was allowed to change or limit his claim during the trial, but he incurred some losses because of the unnecessary delay of the trial. In Justinian's law the plaintiff lost the case only if he maliciously persisted during the whole trial in his overclaim.—C. 3.10.

Schnorr v. Carolsfeld, *RE* 21; P. Collinet, *La procédure par libelle*, 1932, 483; Solazzi, *SDHI* 5 (1939) 231.

Pluvia aqua. Rain water.—See ACTIO AQUAE PLUVIAE ARCENDAE, SERVITUS STILLICIDII.

Poena. Punishment, penalty. *Poena* is both punishment for public crimes (CRIMEN) and pecuniary penalty to be paid to the person wronged by a private wrongdoing (see DELICTUM). The Roman system of penalties was built up on the conception that punishment was of an expiatory and vindictive nature and had to serve as a deterrent measure; correction of the criminal was not taken into consideration. Hence the death penalty was threatened in most cases. For the various kinds of execution, see CRUX, ANIMADVERSIO GLADII, FURCA, CULLEUS, CREMATIO, OBICI BESTIIS, DEICERE E SAXO TARPEIO, STRANGULATIO, DECOLLATIO, METALLUM. The death penalty was one of the capital punishments (*poena capitalis, poena capitis*) which involved either loss of life or only loss of liberty or citizenship (see CAPUT). The loss of liberty (see SERVUS POENAE) was connected with compulsory labor in mines for life (*damnatio ad metalla*, see METALLUM) or in public works (see OPUS PUBLICUM). For the loss of citizenship see DEPORTATIO, RELEGATIO, EXILIUM, INTERDICERE AQUA ET IGNI. Another group of penalties embraced pecuniary penalties (*poena pecuniaria, nummaria*) such as seizure of property (see ADEMPTIO BONORUM, PUBLICATIO, CONFISCATIO) and fines (see MULTA). Corporal punishment was not strictly a *poena* but a coercive measure (*coërcitio*) or an aggravation of another kind of punishment (sometimes even applied before the capital execution); see CASTIGARE, FLAGELLUM, FUSTIS, VERBERA. Imprisonment (see CARCER) was applied as a measure of coercion to enforce obedience to an order of a magistrate. Penalties to be inflicted for specific crimes were fixed in the statute which declared the pertinent wrongdoings as a crime to be prosecuted and punished as a *crimen publicum*, or in imperial constitutions which dealt with criminal matters. Under the Empire penalties were differentiated according to the social status of the person convicted (*honestiores—humiliores*), persons of lower classes being exposed to severer penalties; in certain cases in which the *honestiores* (*potentiores*) were punished only by banishment, the *humiliores* suffered the death penalty. Later imperial legislation introduced manifold reforms both in the system of penalties and their applicability. Some of those reforms were of a short duration since the emperors often modified the innovations of their predecessors. Private penalties which superseded private vengeance and retaliation of the earliest law (see TALIO), consisted in the payment of a sum of

money to the person injured by a private crime (*delictum*); see FURTUM, RAPINA, INIURIA. The condemnation for a crime involved certain other consequences for the culprit although they were not considered a *poena* in the strict sense of the word; see POENA EXISTIMATIONIS, INTESTABILITAS, INFAMIA, IGNOMINIA.—D. 48.19; C. 9.47.—See moreover IUDICIA PUBLICA, QUAESTIONES, COGNITIO, ACTIONES POENALES, LEGATUM POENAE NOMINE RELICTUM, COËRCITIO, GRAVIS, and the following items.

Lécrivain, *DS* 4; Brasiello, *NDI* 12 (*sistema delle pene*); Buonamici, *Il concetto della pena nel dir. giust., St Pessina* 2 (1899) 187; E. Costa, *Crimini e pene da Romolo a Giustiniano*, 1921; Jolowicz, *The assessment of penalties in primitive law, Cambridge Legal Essays in honor of Bond, Buckland, etc.*, 1926, 203; Ciulei, *Rhein. Museum für Philologie* 91 (1942) 32; U. Brasiello, *La repressione penale*, 1937; Levy, *BIDR* 45 (1938) 57; F. M. De Robertis, *ZSS* 59 (1939) 219; *idem*, *RISG* 14 (1939) 30; *idem*, *AnBari* 4 (1941) 17, 9 (1948) 1; *idem*, *St in dir. penale rom.*, 1943, 101; *idem*, *St Solazzi* 1948, 168; *idem*, *La variazione della pena nel dir. rom., Parte generale*, 1950.

Poena. (In the law of obligations.) A penalty agreed upon by the parties, to be paid by the debtor in the case of non-fulfillment of his obligation in due time. A penalty clause could be added to any agreement either in the form of a *stipulatio* (*stipulatio poenae*) or of a formless *pactum* attached to a *contractus bonae fidei*. A penalty clause could be inserted in a testament to compel the heir to fulfill the testator's orders. —See STIPULATIO POENAE.

Brassloff, *ZSS* 25 (1904); Guarneri-Citati, *BIDR* 32 (1922) 241; P. Voci, *Risarcimento e pena privata*, 1939, 185.

Poena capitalis (capitis). Denotes not only the death penalty but also a penalty connected with the loss of *caput* (*capitis deminutio maxima* and *media*, see CAPUT), to wit, of liberty or citizenship. Locutions such as *capite plecti, puniri*, and the like usually refer to the death penalty. Syn. *poena mortis*. For the various forms of execution, see POENA. The death penalty was normally executed in public, unless execution in prison was ordered. The execution of a woman was not public. Execution was performed after the final judgment without delay; the execution of a pregnant woman was postponed until after delivery.

Latte, *RE* Suppl. 7 (*s.v. Todesstrafe*); U. Brasiello, *La repressione penale*, 1937, 215 and *passim*.

Poena cullei. See CULLEUS.

Poena dupli. See LIS INFITIANDO.

Düll, *Ser Ferrini* 3 (Univ. Sacro Cuore, Milan, 1948) 218.

Poena exilii. See EXILIUM.

Poena existimationis. A penalty by which the esteem which a person enjoyed in society was destroyed.—See EXISTIMATIO, INFAMIA, IGNOMINIA.

Poena metalli. See METALLUM.

Poena mortis. See POENA CAPITIS.

Poena nummaria. See NUMMARIA POENA, POENA PECUNIARIA.

Poena pecuniaria. A fine, a penalty consisting in the payment of a sum of money. The amounts were originally fixed in the penal statutes, often in proportion to the injury caused. The severest form of a pecuniary penalty was the seizure of the whole or of a part of the wrongdoer's property.—See MULTA, ADEMPTIO BONORUM, CONFISCATIO, PUBLICATIO.

U. Brasiello, *La repressione penale*, 1937, 131.

Poena sanguinis. See SANGUIS.

Poenae temere litigantium. Penalties imposed on reckless litigants, both plaintiff and defendant, who initiated or continued a trial inconsiderately.—Inst. 4.16.—See INFITIATIO, CALUMNIA, INFAMIA, ACTIONES FAMOSAE, IMPENSAE LITIS, IUDICIUM CONTRARIUM.

Poenalis. Connected with (involving) a penalty. See ACTIONES POENALES, IUDICIA POENALIA. *Causa poenalis* = a criminal matter (trial).

Poenitentia. See PAENITENTIA.

Poetae. Poets. An imperial constitution of the middle of the third century (C. 10.53.3) stated: "Poets are not granted any privileges of immunity" (from public charges), contrary to teachers and physicians.—See MAGISTRI, MEDICI.

Politio. A contract with a cultivator (*politor*) who assumed the task of improving the productivity of land. He was rewarded with a portion of the proceeds. The agreement was a combination of a hire and a partnership.

Polliceri. To promise. The term refers to promises made both in a solemn form (*stipulatio*) and in a formless agreement. In his Edict the praetor used the term to announce that in certain legal situations he would grant protection (*auxilium*) through a procedural remedy (*actio, iudicium, restitutio in integrum*), or in cases of succession, a BONORUM POSSESSIO.

Düll, *ZSS* 61 (1941) 28.

Pollicitatio. A promise of a gift in money made to a municipality by a person who obtained or sought to obtain an official post in the municipal administration. Such a promise was considered binding and could be sued for. Another kind of *pollicitatio* was a promise made by a person to a municipality to erect a construction on a public place (a monument, a building for public purposes). The promisor was obligated by such a promise if the construction had been commenced. He had to finish the work or to provide the sum necessary for that purpose.—D. 50.12.

Anon., *NDI* 9; Brini, *MemBol* 1908; Ascoli, *St Salandra* 1928, 215; Archi, *RISG* 8 (1933) 563; E. Albertario, *St* 3 (1936) 237; Villers, *RHD* 18 (1939) 1; Düll, *ZSS* 61 (1941) 19; Biondi, *Ser Ferrini* 1 (Univ. Sacro Cuore, Milan, 1947) 131; Roussier, *RIDA* 3 (1949) 296.

Pollicitatio dotis. The constitution of a dowry trough, a formless promise. A constitution of the emperor Theodosius II (C. 5.11.6, A.D. 428) introduced the

pollicitatio dotis and made thus the solemn forms (*dictio dotis, stipulatio dotis*) superfluous.—C. 5.11. —See PROMISSIO DOTIS.

Riccobono, *ZSS* 35 (1914) 270; Landucci, *AG* 94 (1923) 39.

Pomerium. The territory of Rome within the original boundaries (walls) of the city. The *pomerium*, which from the beginning was somewhat connected with sacral rites, and, later, the territory within the first milestones (see MILIARIUM) was the domain of the magisterial *imperium domi* (see DOMI). The *comitia curiata* could gather only within the boundaries of the *pomerium* (*intra pomerium*), the *comitia centuriata* only outside of it (*extra pomerium*). The emperors had the power to extend the *pomerium* beyond its former limits.

Besnier, *DS* 4; Severini, *NDI* 9; Richmond, *OCD*; O. Karlowa, *Intra p. und extra p.*, 1896; v. Blumenthal, *RE* 21, 2 (1952) 1867.

Pompa. See OSTENTATIO.

Bömer, *RE* 21, 2 (1952) 1978.

Pomponius, Sextus. A prominent jurist of the time of Hadrian and Antoninus Pius (around the middle of the second century). He is the author of three treatises on civil law written as commentaries on works of earlier jurists (*ad Quintum Mucium, ad Plautium, ad Sabinum*), of an extensive commentary on the praetorian Edict (known only from citations by later jurists), and of a series of monographs on various topics (on *fideicommissa*, on stipulations, on *senatusconsulta*). For his brief history of Roman jurisprudence, see ENCHIRIDIUM. Two extensive collections of casuistic material (*Epistulae* and *Variae lectiones*) complete the picture of his literary activity which was abundantly exploited by Justinian's compilers of the Digest.

Berger, *OCD*; Di Marzo, *Sangi critici sui libri di Pomponio Ad Q. Mucium*, 1899; Wesenberg, *RE* 21, 2 (1952) 2415.

Ponderator. An official weigher who ascertained the weight of money (primarily of gold coins) contributed by taxpayers (in the later Empire).—C. 10.73.

Pondus. The weight.—See RES QUAE PONDERE, NUMERO, etc.

Pone. (Imperative.) Let us suppose, assume. The locution frequently occurs in juristic writings to introduce a specific, imaginary instance ("for instance" = *verbi gratia*) for a better understanding of what was said before.

Ponere. Sometimes syn. with *deponere* (*pecuniam, magistratum*), sometimes with *opponere* (e.g., *exceptionem*).

Ponere. (With reference to agreements or testaments.) To settle, to order, to dispose.

Ponere diem. To fix a date for the fulfillment of an obligation or for certain procedural acts in a trial.

Pons. A bridge. A bridge over a public river (*flumen publicum*) built up by the owner or owners of the opposite banks remained private property of the builders.

G. Segrè, *BIDR* 48 (1941) 26.

Pontifex maximus. The chief pontiff among the pontifices, the head of the pontificial college. He was "considered the judge and arbitrator over divine and human matters" (Festus). The *pontifex maximus* was appointed for life and could not be removed. He was, in fact, the executor of the pontifical power in all more important actions, the other pontiffs (see PONTIFICES) generally acted as his council. He convoked and presided over the *comitia curiata*. He had the power of punishing the members of the pontificial college and other priests, as well as the Vestal Virgins (see VESTALES). The dignity of a *pontifex maximus* was for a long period the privilege of the patricians; the first plebeian *pontifex* was Tiberius Coruncanius (253 B.C.); see CORUNCANIUS. Under the Principate the emperors held the position of the *pontifex maximus*.—See LEX PAPIA, REGIA.

G. Wissowa, *Religion und Kultus der Römer*, 1902, 437; M. F. Martroye, *Le titre de p.m. et les empereurs chrétiens, Bull. de la Société des Antiquaires de France*, 1928, 192; Leifer, *Klio*, Beiheft 23 (1931) 122; Zmigryder-Konopka, *Eos* 34 (1933) 361; L. R. Taylor, *ClPhilol* 1942, 427; Gioffredi, *Bull. Commissione archeol. Comunale* 71 (1945) 129.

Pontifices. High priests who took care of all matters connected with religion and public cult. They constituted a body (*collegium*) originally of three, later of six members (among them was perhaps the king). In further development the college of pontiffs had nine members (according to *Lex Ogulnia* four patricians and five plebeians); their number increased to fifteen and more. The pontiffs were creators, guardians of, and experts in, divine and pontifical law (*ius divinum, pontificium*) and settled the rules for sacred rites (*ius sacrum*). The close connection between religion and law in the early Roman state gave the pontiffs a particular position in legal matters. They alone knew the law, divine and human (*fas—ius*), and the legal forms, which, being preserved in the archives of the pontifical college, were accessible to them only. In view of the fact that formalism was the basic element of early law, the *pontifices* acquired a kind of monopoly in the knowledge of legal forms and rules, which through the first two centuries of the Republic remained their exclusive possession. Their activity in legal life was similar to that of the jurists in later centuries. They advised the magistrates in legal matters and gave answers (*responsa*) to juridical questions put before them by private individuals and helped them in drafting written documents and in the use of procedural and other forms. The Roman calendar was organized by the pontiffs; they fixed the days on which trials could not take place. The popular assemblies, *comitia curiata*, were convoked and presided by the highest priest among the *pontifices*, the *pontifex maximus*, and since several acts connected with the family organization were performed there (such as *adrogatio*, or a testament), the pontiffs, although primarily

interested in the sacral rites (*sacra*) of the family, acquired a considerable influence in the province of family law. The contribution of the pontiffs to the development of the Roman law was considerable. As late as the third century after Christ, the jurist Ulpian in the definition of jurisprudence mentions in the first place the *divinarum rerum notitia* (see IURISPRUDENTIA).—In the enactments of the Christian emperors *pontifex* = bishop.—See PONTIFEX MAXIMUS, DIES FASTI, COMMENTARII SACERDOTUM, LEX DOMITIA, LEX OGULNIA.

Berger, *RE* 10, 1159; Bouché-Leclercq, *DS* 4; Frezza, *NDI* 9; Rose, *OCD*; A. Coqueret, *De l'influence des pontifes sur le droit privé à Rome*, Thèse Caen, 1895; O. Tixier, *Influence des pontifes sur le developpement de la procédure civile*, 1897; G. Wissowa, *Religion und Kultus der Römer*², 1912; C. W. Westrup, *R. pontifical college*, 1929; Sogliano, *Hist* 5 (1931); G. Rohde, *Kultsatzungen der röm. P.*, 1936; F. De Martino, *La giurisdizione*, 1937, 13; Bruck, *Sem* 3 (1945) 2; F. Schulz, *History of R. legal science*, 1946, 6; M. Kaser, *Das altröm. Ius*, 1949, *passim*; *idem*, *Religione e diritto in Roma arcaica*, *AnCat* 3 (1949) 77; Latte, *ZSS* 67 (1950) 47; P. Noailles, *Du droit sacré au droit civil*, 1950, 24.

Pontifices minores. Secretaries (*scribae*) of the pontifical college. They assisted the pontiffs in their functions.

Pontificium. Used in later imperial constitutions in the meaning of power, right (even in the domain of private law).

Populares. See OPTIMATES.

Popularis. (Adj.) See ACTIONES POPULARES, INTERDICTA PRIVATA.

Popularis. (Noun.) A member of the *populus* (population) of a city.

Populus. Cicero (*Rep.* 1.25.39) gives the following definition of *populus:* "it is not any assemblage of men brought together in some way, but an assemblage of a crowd associated by law agreed upon and by common interests." The term *populus* embraces all citizens, and in a narrower sense, all men gathered together in a popular assembly.

G. I. Luzzatto, *Epigrafia giuridica greca e romana*, 1942, 45.

Populus Romanus (or populus Romanus Quiritium). The whole citizenry of the Roman state, including both patricians and plebeians (orginally only patricians). The *populus Romanus* was a collectivity of physical persons which had its own rights, its existence; it might be owner, debtor, creditor, legatee, heir, manumitter of slaves, vendor or buyer, etc. Its acts and legal transactions, however, were not equal to those of individual citizens and did not give origin to normal trials as between individual citizens, but to measures and remedies of an administrative nature. The Roman jurists did not elaborate a theory of the state as a juristic personality; they dealt with the pertinent problems from the practical point of view in order to protect the social and economic interests of the state.—See AERARIUM POPULI, RES POPULI, SENATUS POPULUSQUE ROMANUS.

Volterra, *StSas* 16 (1938); G. Nocera, *Il potere dei comizi*, 1940, 15; *idem*, *AnPer* 51 (1946) 153; G. Lombardi, *AG* 126 (1941) 198; *idem*, *Concetti fondamentali del ius gentium*, 1942, 11; Cousin, *Rev. Et Latines*, 1946, 66.

Portae. The gates of a city. They are considered as RES SANCTAE.

Portentum (portentosum). A monstrous offspring; see MONSTRUM. It was not considered a human being, but was reckoned in favor of the mother for the IUS LIBERORUM and to the advantage of its parents in connection with the sanctions of the *Lex Iulia et Papia Poppaea* against childless parents; see ORBI. LEX IULIA DE MARITANDIS ORDINIBUS.

Portio. In the language of later imperial constitutions, an office, an official post.

Portio hereditaria (hereditatis). The portion of an inheritance to which an heir was instituted by the testator. *Porto virilis* = a fraction of the inheritance which an heir on intestacy receives equally with other heirs of the same degree of relationship.

Portoria. Custom (export and import) duties, paid primarily in harbors (*portus*).—See DEFERRE FISCO.

Rostowzew, *DE* 3, 126; Bonelli, *StDocSD* 21 (1900) 40; Clerici, *Economia e finanza dei Romani* 1 (1943) 485; S. J. De Laet, *Portorium. Etude sur l'organisation douanière chez les Romains (Recueil de travaux de la Fac. de Philosophie de l'Univ. de Gand*, 1950).

Portus. A harbor. A *portus* belongs to the category of RES PUBLICAE. Fishing therein is allowed as in public rivers (*flumina publica*).

Poscere. To ask, to demand. Used of requests made to public officials (magistrates), in particular, to applications addressed to the praetor in matters of voluntary jurisdiction (*iurisdictio voluntaria*, see IURISDICTIO CONTENTIOSA), as, e.g., appointment of a *tutor* or *curator*.

Posita. *Res positae*. See ACTIO DE DEIECTIS.

Posse. Indicates both physical and legal possibility (i.e., what the law permits).—See FACERE POSSE.

Possessio. The factual, physical control of a corporeal thing (*possessio* or *possidere corpore*) combined with the possessor's intention to hold it under physical control, normally as the owner (*animus possidendi, animus domini*). The first element, a material one, gives the possessor the opportunity to exercise his power over the thing, the second is a psychical one, based normally on a legal ground (*causa possessionis*) by which the thing came under the power of the possessor. *Possessio* is distinguished from the mere physical holding of a thing (*tenere, in possessione esse*, see DETENTIO) on the one hand; on the other, it differs from ownership (*proprietas, dominium*) since at times one person may be the owner and another the possessor of the same thing. *Possessio* is qualified as a *res facti*, a factual situation, although it produces legal effects and is protected by

the law inasmuch as public order and social interests and security require that the existing possessory situations be protected against any one and any disturbance. In certain circumstances the possessor is even protected against the owner if he is entitled under the law or an agreement with the owner to have the factual control over the thing. Hence the saying, D. 21.2.12.1: "Ownership (*proprietas*) has nothing in common with *possessio*." *Possessio* is acquired when its basic elements, i.e., *possidere corpore* and *animo* are materialized, to wit, when the possessor obtains physical power over a thing and has the intention to keep it under his power. Acquisition of *possessio* is either original when a thing which was not possessed before by another person is taken into possession (see OCCUPATIO, RES NULLIUS) or derivative, when one obtains *possessio* of a thing from its last possessor (see TRADITIO). *Possessio* as a factual situation is not transferred to an heir or legatee automatically; physical things belonging to an estate must be taken into material *possessio* by the beneficiaries. The specific protection of *possessio* is achieved through *interdicta* (see INTERDICTUM), in particular the possessory interdicts which serve both for the protection of existing possessory situations (*interdicta retinendae possessionis*), for the recovery of lost *possessio* (*interdicta recuperandae possessionis*) and for obtaining possession (*interdicta adipiscendae possessionis*). An owner who has *possessio* of the thing belonging to him may use all measures available for the protection of possession. The advantageous position of the possessor found its expression in the saying: "He who has possession has through this very fact that he is possessor, a better right than he who does not possess" (D. 43.17.2). One of the most important consequences of *possessio* is that the possessor of a thing who for certain reasons did not acquire ownership (for instance he bought *bona fide* a thing from a non-owner) might become legal owner after a certain time through usucapion (see USUCAPIO). There was a legal rule concerning *possessio: nemo sibi ipse causam possessionis mutare potest* (D. 41.2.3.19) = no one can change by himself the ground on which he obtained possession, which means that one who acquired possession under a specific title, e.g., by sale or donation, cannot assert later that he acquired the thing as an heir or legatee; nor can one who holds another's thing, e.g., as a depositee or lessee transform the detention into possession simply by having the intention to possess it for himself (*animus possidendi*).—D. 41.2; C. 7.32.—See ANIMUS DOMINI, ANIMUS POSSIDENDI, DOLO DESINERE POSSIDERE, ACTIO PUBLICIANA, ACCESSIO POSSESSIONIS, TRADITIO BREVI MANU, CONSTITUTUM POSSESSORIUM, CONDICTIO POSSESSIONIS, and the following items.

Beauchet, *DS* 4; Rossi, *NDI* 10; Berger, *OCD*; Schlossmann, *ZSS* 24 (1903) 13; Riccobono, *ZSS* 31 (1910) 321; *idem*, *Scr Chironi* 1 (1911) 377; G. Rotondi, *Scr giur* 3 (1922 = *BIDR* 30, 1920) 94; see Brassloff, *P. in den Schriften der röm. Juristen*, 1928; G. Longo, *BIDR* 42 (1934) 469; Bozza, *AnMac* 6 (1930); Grimm, *St Riccobano* 4 (1936) 173; Rabel, *ibid.* 203; Kunkel, *Symb. Friburgenses Lenel*, 1931; A. Carcaterra, *Possessio. Ricerche di storia e dogmatica*, 1938; *idem*, *AnBari* 4 (1941) 128; E. Albertario, *Studi* 2, 2 (1941, several articles); B. Fabi, *Aspetti del possesso ram.*, 1946; Riccobono, *BIDR* 49–50 (1947) 40; Branca, *St Solazzi* (1948) 483; Lauria, *ibid.* 780; K. Olivecrona, *Three essays in R. law*, 1949, 52; J. De Malafosse, *L'interdit momentariae possessionis*, Thèse Toulouse, 1949; Monier, *St Albertario* 1950, 197; Kaser, *Detentia, Deutsche Landesreferate zum 3. intern. Kongress für Rechtsvergleichung*, 1950, 85 (Bibl.); Branca, *St Carnelutti* 4 (1950) 369; E. Levy, *West Roman Vulgar Law*, 1951, *passim*.

Possessio ad interdicta. Possession which is protected by *interdicta*. Interdictal protection was granted also to those who held another's thing according to an agreement with the owner and although they had no intention of possessing it as their own, they could not be disturbed in their right over the thing. Thus a creditor holding a pledge (*creditor pignerativius*), one who received the thing as a PRECARIUM, a possessor of an *ager vectigalis* or *emphyteuticarius*, a *sequester*, all these might ask for an interdict in the case of disturbance by a third person. Other holders of another's things had either special interdicts introduced by the praetorian law for their protection (as the *superficiarius*, see INTERDICTUM DE SUPERFICIEBUS or the usufructuary, to whom an interdict was granted as *interdictum utile*, see INTERDICTA UTILIA) or had no interdictal protection at all as in the case of *depositum* or *commodatum*.

Kaser, *ZSS* 64 (1944) 389.

Possessio civilis. See POSSESSIO NATURALIS.

Possessio clandestina. See CLANDESTINA POSSESSIO, CLAM.

Possessio corporalis (corpore). The factual control over a thing; see POSSESSIO, POSSESSIO NATURALIS.

Possessio ficta. See POSSESSOR FICTUS.

Possessio iniusta. Possession of a thing obtained either *vi* (by force), *clam* (secretly, *clandestina possessio*) or *precario* (upon request, see PRECARIUM). Syn. *possessio vitiosa*. Ant. *possessio iusta* = possession which is not affected by one of the defects mentioned. *Possessio iniusta* could be objected only by the person who was deprived of its possession by the *possessor iniustus*. Against third persons the latter enjoyed the same protection as a *possessor iustus*.—See EXCEPTIO VITIOSAE POSSESSIONIS, INTERDICTUM UTI POSSIDETIS.

Possessio iuris (quasi possessio). Possession of a right, as, for instance, of an usufruct. In such cases the classical terminology used the expression *usus iuris*. Since in classical law possession was limited to corporeal things, the terms *possessio iuris* and *quasi possessio* are obviously a postclassical or Justinian's creation.

Di Marzo, *StSen* 23 (1906) 23; Riccobono, *ZSS* 34 (1913) 251; Albertario, *Studi* 2 (1941, ex 1912) 307, 337, 359,

369; G. Segrè, *BIDR* 32 (1922) 293; Desoyes, *Fschr Koschaker* 2 (1939) 304; A. Carcaterra, *Il possesso dei diritti*, 1942; Sargenti, *Scr Ferrini* 2 (Univ. Pavia, 1947) 226; S. Solazzi, *La tutela delle servitù*, 1949, 139.

Possessio iusta. See POSSESSIO INIUSTA.

Suman, *AVen* 76 (1917) 1607; E. H. Seligsohn, *Iusta p.*, 1927.

Possessio libertatis. The term *possessio* is sometimes applied with reference to the personal status of a person, e.g., to his liberty (*possessio libertatis*), citizenship (*possessio civitatis*) or to his being a slave (*possessio servitutis*).

Peterlongo, *St Albertoni* 2 (1937) 195, 213.227.

Possessio momentaria. A vague, non-technical, post-classical term referring to a temporary, provisional possession settled through a possessory remedy (*interdictum*). The *possessio momentaria* is opposed to possession definitely decided upon in a trial (*actio in rem*) in which the question of ownership (*causa proprietatis*) of the thing in dispute was involved. The confusion in the terminology of imperial constitutions of the fourth and fifth centuries (the use of *momentum* for *possessio momentaria*, of *quaestio momenti* for *interdictum momentariae possessionis*) does not permit a clear picture. The *interdictum momentariae possessionis* which generally has been identified with the INTERDICTUM UNDE VI, perhaps served originally to protect possession held through a representative (a friend, relative or slave) in the absence of the true possessor, as a provisory arrangement until the absent person returned.

Levy, *Scr Ferrini* 3 (Univ. Sacro Cuore, Milan, 1948) 111; *idem*, *West Roman Vulgar Law*, 1951, 244; J. De Malafosse, *L'interdit momentariae possessionis*, Thèse Toulouse, 1949.

Possessio naturalis (naturaliter possidere). A simple holding of a thing. The holder had no intention *rem sibi habendi* (= to have the thing for himself) and there was no *iusta causa possessionis* for his holding the thing. Ant. *possessio civilis* which is based on a *iusta causa* (= a just legal title) for the acquisition of possession and which, under *ius civile*, might lead in certain circumstances to the acquisition of property through USUCAPIO. *Possessio civilis* is protected by the ACTIO PUBLICIANA. In Justinian's law a confusion was brought into the classical distinction *possessio civilis—possessio naturalis* inasmuch as certain possessory situations which in the classical law were not covered by the term *possessio civilis* were so qualified by Justinian. In classical law persons with mental defects, and infants could not have a legally valid will (*animus*) and consequently no *possessio civilis*. Other cases of *possessio naturalis* were those of a lessee, depositee and a *commodatarius* since they are considered holding the thing for the owner; therefore they can not claim interdictal protection.

Riccobono, *ZSS* 31 (1910) 321; *idem*, *Scr Chironi* 1 (1915) 377; Scherillo, *RendLomb* 63 (1930) 507; Bonfante, *Scr giur* 3 (1926) 534; Kunkel, *Symb Frib Lenel*, 1931, 40; Maschi, *La concezione naturalistica*, 1937, 112; Peterlongo, *AnPer* 50 (1938) 159; M. Kaser, *Eigentum und Besitz*, 1943, 169; *idem*, *Deutsche Landesreferate zum Dritten Intern. Kongress für Rechtsvergleichung*, 1950.

Possessio vacua. See VACUA POSSESSIO.

Possessio vitiosa. See POSSESSIO INIUSTA.

Possessiones. Great landed property, big estates.

Possessor (possidens). See POSSESSIO, PAR CAUSA, AGER OCCUPATORIUS.

Possessor bonae fidei (possidere bona fide). One who possesses a thing belonging to another, and believes in good faith that he is the owner; for instance, one who bought a thing from a non-owner. When sued by the real owner for restitution of the thing, he loses the case; when he sues the owner who succeeded in obtaining the thing back, the latter will oppose the *exceptio iusti dominii* claiming that he is the right owner. Against third persons the *possessor bonae fidei* is protected by *interdicta* and may also use the ACTIO PUBLICIANA. The *possessor bonae fidei* becomes owner under *ius civile* through possession during a certain period; see USUCAPIO. Ant. *possessor malae fidei* (*possidere mala fide*) = one who knows that he is not the owner of the thing he holds unlawfully. The distinction between *possessores bonae fidei* and *malae fidei* was of importance; when sued by the owner and condemned they had to return the proceeds (see FRUCTUS) to the owner. The *possessor bonae fidei* was liable only for the *fructus extantes* (still existing) and the *fructus* he gathered (*percepti*) after the joinder of issue (*litis contestatio*), whereas the *possessor malae fidei* was liable for all *fructus*, even FRUCTUS PERCIPIENDI. Analogous rules were applied in the case of the restitution of an inheritance (see HEREDITATIS PETITIO); the extension of the responsibility of the possessor of the estate depended upon the circumstance whether he was in good or in bad faith.

Aru, *BIDR* 45 (1938) 191; De Martino, *St Scorza* 1940, 275; Fabi, *AnCam* 16 (1942–44) 53; Daube, *CambLJ* 9 (1945) 31; P. Ramelet, *L'acquisition des fruits par l'usufruitier et par le p.b.f.*, 1945; Henrion, *RIDA* 4 (= *Mél De Visscher* 3, 1950) 579; Albanese, *AnPol* 21 (1950) 91.

Possessor fictus (possessio ficta). In literature a person who in reality does not possess the thing which is the object of a dispute but who maliciously feigns to possess it in order to deceive the plaintiff.—See LITI SE OFFERRE, DOLO DESINERE POSSIDERE.

Arnò, *Mem. Accad. Torino, Scienze morali*, 70, 2 (1939–40) 39.

Possessor malae fidei (possidere mala fide). See POSSESSOR BONAE FIDEI.

Possessor pro herede. One who holds an estate in the belief that he is the heir.—D. 41.5.

Possessor pro possessore. One who holds an estate and does not assert that he is the heir but when questioned by the praetor about the title of his possession, he has no other answer than: "I possess because I

possess." He is considered a *possessor malae fidei* and treated as a PRAEDO.—D. 41.5.

Possessorius. Connected with BONORUM POSSESSIO. See HEREDITATIS PETITIO POSSESSORIA. For *interdictum possessorium*, see BONORUM VENDITIO.

Possidere. See POSSESSIO.

Cárcaterra, *AC* 115 (1936) 168.

Post. (Adv.) Syn. *postea*. See EX POST FACTO.

Posteri. Descendants. Syn. *descendentes*, sometimes syn. with *postumi*. In a broader sense *posteri* = more distant relatives.

Posterior lex. A statute later than another one referring to the same matter. "A later statute is related to a former one unless it is contrary to it" (D. 1.3.28).—See PRIOR LEX.

Posteriora (libri posteriores). A posthumously edited work. In Roman juristic literature, one such work only is known, the *Posteriora* of Labeo, allegedly in forty books. A compilation of excerpts from this work (an epitome) was prepared by the jurist IAVOLENUS.

Berger, *RE* 17, 1836; *idem*, *BIDR* 44 (1937) 91; Di Paola, *BIDR* 49/50 (1947) 277; F. Schulz, *History of Roman Legal Science*, 1946, 207.

Postliminium. A Roman citizen who had been caught by an enemy as a prisoner of war became a slave of the enemy, but he regained freedom and "all his former rights through *postliminium* (*iure postliminii*)," when he returned to Roman territory. His marriage, however, which was dissolved through his captivity, did not revive; the same applied to possession, which was a factual situation (*res facti*, see POSSESSIO); hence his things had to be taken into possession anew.—D. 49.15; C. 8.50.—See REDEMPTUS AB HOSTIBUS (Bibl.), CAPTIVUS, LEX CORNELIA DE CAPTIVIS, ACTIO RESCISSORIA, DEPORTATIO, TRANSFUGA.

Berger, *OCD*; Anon., *NDI* 10; Lécrivain, *DS* 4; L. Sertorio, *La prigionia di guerro e il dir. di postliminio*, 1916; Solazzi, *RendLomb* 1916, 638; Beseler, *ZSS* 45 (1925) 192; Ratti, *Alcune repliche in tema di postliminio*, 1931; Ambrosino, *SDHI* 5 (1939) 202; Orestano, *BIDR* 47 (1940) 283; Guarino, *ZSS* 61 (1941) 58; A. D'Ors, *Revista de la Faculdad de derecho de Madrid*, 1942, 200; G. Faiveley, *Redemptus ab hoste*, Thèse Paris, 1942; J. Imbert, *Postliminium*, Thèse Paris, 1944; P. Rasi, *Consensus facit nuptias*, 1946, 107; Solazzi, *Scr Ferrini* 2 (Univ. Catt. Sacro Cuore, 1947) 288; Bartošek, *RIDA* 2 (1949) 37; De Visscher, *Fschr Koschaker* 1 (1939) 367 (= *Nouvelles Etudes* 1949, 275); L. Amirante, *Captivitas e p.*, 1950; Imbert, *RHD* 27 (1949) 614; Gioffredi, *SDHI* 16 (1950) 13; Kreller, *ZSS* 69 (1952) 172.

Postliminium rei. When certain things (slaves, ships, horses) and not their owner, were taken by an enemy, they returned after the war, when recovered from the enemy, to the owner.

Solazzi, *RISC* 86 (1949) 1.

Postrema voluntas. In imperial constitutions a last will.

Postulare. (In a civil trial.) "To expound one's claim or that of one's friend in court (*in iure*) before the magistrate who has jurisdiction or to contradict the adversary's claim" (D. 3.1.1.2). *Postulare* refers to the request addressed to a magistrate for granting an action, an interdict, an exception, an *in integrum restitutio*, or a *bonorum possessio*. The parties usually acted personally, with the assistance of advocates (see ADVOCATUS) or through representatives (see COGNITOR, PROCURATOR). The praetorian Edict contained precise rules as to who might or might not legally act in court. There were three categories of persons in this respect, first persons totally or partially excluded from *postulare* (such as minors under seventeen years, deaf persons). They might act through an advocate who was assigned by the praetor if they had none by their own choice. The second group were excluded from *postulare* (acting) for other persons, but not from *postulare* for themselves (such as women, blind persons, persons condemned for a capital crime, gladiators). The third group included persons permitted to postulate for themselves; among them were persons dishonorably discharged from military service, condemned for certain crimes or in civil trials for acts committed against good faith in contractual relations with other persons. Persons enumerated in this group could act in court also in behalf of their nearest relatives, patrons, and the like.—D. 3.1; C. 2.6.—See INFAMIA.

Solazzi, *BIDR* 37 (1929) 1.

Postulare. (In criminal matters.) Syn. *accusare*.

Postulare interdictum. See INTERDICTUM.

Postulare pro aliis. To act in court in behalf of other persons.—See POSTULARE.

Postulatio iudicis (arbitri). See LEGIS ACTIO PER IUDICIS ARBITRIVE POSTULATIONEM, IUDICES.

Postulatio simplex. In the later civil procedure the initial act of the plaintiff or his lawyer presenting the case against his adversary and asking for the start of a trial.—See LIBELLUS CONVENTIONIS.

P. Collinet, *La procédure par libelle*, 1932, 239; Steinwenter, *ZSS* 54 (1934) 377; Fliniaux, *RHD* 9 (1930) 94; Betti, *ACDR* Roma 2 (1935) 149; Balogh, *St Riccobono* 2 (1936) 473.

Postulatio suspecti tutoris. See TUTOR SUSPECTUS.

Postulatio tutoris. A request addressed to the competent authority (a consul or praetor in Rome, a municipal magistrate, a governor of a province) for the appointment of a guardian. The request (*petere tutorem*) had to be made by a relative, a friend or a creditor of the ward.—See TUTOR DATIVUS.—D. 26.6; C. 5.31; 32.

Sachers, *RE* 7A, 1518.

Postumus. A child born after the death of the testator within ten months or after the will was made. For the various kinds of posthumous children some of whom had a right of succession to the inheritance of the person whose *postumi* they were, see the fol-

lowing items. In the developed classical law certain *postumi* should be instituted as heirs since otherwise the testament was void.—C. 6.29.

Cuq, *DS* 4; Robbe, *NDI* 10: *idem, I postumi nella successione testamentaria romana*, 1936; B. Biondi, *Successione testamentaria*, 1943, 114.

Postumus alienus. A child born after the death of the testator, who would not have come under his power had he lived at the time of the birth. Syn. *postumus extraneus*. Ant. *postumus suus*.

Postumus Aquilianus. A grandchild, born after the death of his grandfather (the testator), whose father (a son under paternal power of the testator) was alive when the testament was made but died before the grandfather. The jurist Aquilius Gallus invented a formula by which such a *postumus* had to be taken into consideration in the grandfather's testament in order to avoid its nullity. Such a *postumus* had to be conceived at the time of his father's death (not at the time when the testament was made).

Postumus extraneus. See POSTUMUS ALIENUS.

Postumus Iulianus. A grandchild born after the testament of his grandfather had been made, who became the grandfather's *heres suus* before his death through the previous death of his own (i.e., the *postumus*') father. The term *postumus Iulianus* was coined in literature after the name of the jurist Julian who admitted the institution of such as *postumus* as an heir or his disinheritance in the grandfather's testament.

Postumus Iunianus. A posthumous child born after a testament was made by his father, but before the latter's death. The term *Iunianus* (also *Vellaeianus*), given to such a *postumus* in literature, originates in the LEX IUNIA VELLAEA which settled the rules concerning his rights of succession.

Postumus legitimus. A posthumous child born after the death of his father or a grandchild born after the death of his grandfather when his father was no longer alive.

Postumus suus. A posthumous child who would have come under the paternal power of his father if the latter had not died before the child's birth. The child had to be conceived at the time of the making of the testament by the father. A *postumus suus* was also any person who became HERES SUUS of the testator, i.e., came under his paternal power, after the testament had been made, in a way other than by birth (by adoption, *arrogatio*, *conventio in manum*). *Postumi sui* had to be either instituted as heirs or disinherited. Ant. *postumus alienus*.—See PRAETERIRE.

Postumus Vellaeianus. See POSTUMUS IUNIANUS.

Potentiores. In the later Empire persons who because of their official position or wealth (great landowners) exercised a more influential economic and social power over their fellow citizens. Their powerful influence in society gave them the opportunity of abusing their privileges to the disadvantage of the poor classes (see HUMILIORES). In order to prevent such abuses, in particular in civil trials, imperial legislation prohibited the cession of claims as well as the alienation of a controversial thing to a *potentior* made in order to aggravate the situation of one's opponent in the trial.—C. 2.13; 2.14.—See DEFENSOR CIVITATIS, HONESTIORES.

Mitteis, *Mél Girard* 2 (1912) 225; R. Paribeni, *Potentiores*.

Potestas. A term in both public and private law. In the first domain it generally indicates the power of a magistrate whether he is vested with IMPERIUM or not. *Potestas* embraces all the rights and duties connected with a particular magistracy (*ius edicendi*, rights of an executive nature, such as *ius multae dictionis*, *ius coërcendi*, and the like). Colleagues in office had equal power (*par potestas*), whereas the *potestas* of magistrates of a different rank in the magisterial hierarchy was differentiated in *maior* and *minor potestas* (= greater and lesser power). See MAGISTRATUS, IMPERIUM. At times *potestas* denotes the office, the official employment itself (similarly as *magistratus*). *Potestas* in the field of private law refers either to the power of a head of a family over its members (see PATRIA POTESTAS), or the power over a thing (*res*, among which are also the slaves, hence the expression *dominica potestas* is applied to the master's power over his slaves, although in the Roman juristic language the expression is not found). *Potestas* is also used in the sense of physical power; in particular, with regard to slaves, the master is not considered to have *in potestate* a slave who runs away or cannot be found. In its broadest sense *potestas* means either the physical ability (= *facultas*) or the legal capacity, the right (= *ius*) to do something.—D. 1.12.

De Villa, *NDI* 10; L. Wenger, *Hausgewalt und Staatsgewalt*, *Miscellanea Ehrle* (Rome, 1924) 1; A. Caspary, *St Albertoni* 2 (1937) 384; De Visscher, *Il concetto di potestà*, *ConfCast* 1940; *idem*, *Nouvelles Études*, 1950, 265; Hernandez Tejero, *AHDE* 17 (1946) 605.

Potestas dominica. See POTESTAS, DOMINICUS.

Potestas gladii. See IUS GLADII.

Potestas legis. The sphere of effectiveness of a statute, the strength of a law.

Potestas patria. See PATRIA POTESTAS.

Potestas regia. The sovereign power of the king.—See REX.

Potestas vitae necisque. See IUS VITAE NECISQUE.

Potestativa condicio. See CONDICIO POTESTATIVA.

Potior. See PRIOR TEMPORE.

Potior in pignore. If a thing was successively pledged to several creditors, the creditor to whom it was pledged first, had priority before the later creditors. If, however, a debtor pledged the same thing as a whole (*in solidum*) to two creditors simultaneously, the legal situation of the creditor to whom the pledge was handed over was more advantageous (*melior*

condicio possidentis, D. 20.1.10).—D. 20.4; C. 8.17. —See PIGNUS, SUCCESSIO IN LOCUM PRIORIS CREDITORIS, IUS OFFERENDI PECUNIAM, POSSESSIO.

Potiores. Persons in a prominent social position.
Biondi, *Ius* 3 (1952) 235.

Potioris nominatio. See NOMINATIO POTIORIS.

Potius est. It is better (preferable) to say. In juristic language the phrase serves to introduce an opinion which should be given preference.

Pp. Abbreviation for *proposita* (*sc. constitutio*), i.e., promulgated, officially published. The abbreviation is applied in Justinian's Code to indicate the place and date of the promulgation of an imperial enactment. The indications are given at the end of the text of the constitution. The normal place was the locality where the emperor had actually resided, unless another place was specified.

Praecellens, praecellentissimus. An honorific title of high dignitaries in the later Empire. Syn. *excellentissimus*.

Praeceptio. See LEGATUM PER PRAECEPTIONEM.

Praecepta iuris. Legal norms.—See IUS.
E. Levy, *Univ. of Notre Dame. Natural Law Inst. Proc.* 2 (1949) 67 (= *SDHI* 15, 1949, 18); A. Carcaterra, *Iustitia nelle fonti*, Bari, 1949, 81.

Praeceptor. A teacher. See MAGISTER, EDICTUM VESPASIANI, PROFESSORES, HONORARIUM, STUDIA LIBERALIA.

Praecipere. With reference to statutes, the praetorian Edict, or imperial constitutions = to ordain, to decree, to set a legal rule.—See PRAECEPTA IURIS.

Praecipere. To take beforehand, in advance (*praecaperc*). The term applies to cases in which several claims of various persons occur (as, e.g., in the division of a common property or of an inheritance among the co-heirs, or when several creditors have to be satisfied from the debtor's property) and one of the claimants had to be satisfied before the others. See LEGATUM PER PRAECEPTIONEM. The amount or share which one of the claimants receives before the others is termed *praecipuum*.

Praecipitare de saxo Tarpeio. See DEICERE DE SAXO TARPEIO.

Praecipuum. See PRAECIPERE.

Praecones. Criers, heralds. They belonged to the auxiliary staff of higher magistrates whose orders they announced publicly, e.g., the convocation of a popular assembly. They also made public events which interested the population and assisted in public auctions.—See APPARITORES, LEX CORNELIA DE VIGINTI QUAESTORIBUS.
Saglio, *DS* 4, 609.

Praeda. The booty taken from the enemy in a war through an operation of the army. It became property of the Roman state. The appropriation of such things by an individual soldier was considered as a crime of embezzlement (see PECULATUS) to be punished according to the LEX IULIA PECULATUS. In earlier times such appropriation was allowed.—See RES HOSTILES.
Cagnat, *DS* 4; Vogel, *ZSS* 66 (1948) 396.

Praedecessor (prodecessor). A predecessor in office. Certain rules regulated the question as to how long a magistrate or an imperial official remained in office until his successor arrived. The question was of particularly practical significance in provincial administration; a governor might quit his post when his successor arrived in the province.

Praedes. (Sing. *praes*.) In the earlier law of the Republic sureties who assumed guaranty for a person who concluded a contract with the state (e.g., a lease, a *locatio conductio operarum*, etc.).
Humbert and Lécrivain, *DS* 4; Schlossmann. *ZSS* 26 (1905) 285; P. Viard, *Le praes*, 1907; Mitteis, *Aus röm. und bürgerl. Recht, Fschr Bekker* 1907, 120; Partsch, *ASächsGW* 32 (1920) 659; Gradenwitz, *ZSS* 42 (1921) 565; v. Mayr, *ibid.* 205; J. Maillet, *Theorie de Schuld et Haftung*, Thèse Aix-en-Provence, 1944, 99.

Praedes litis et vindiciarum. Sureties assuming guaranty for a thing being the object of a trial (*lis* =*res*) and for the proceeds (*fructus*) from it. Such *praedes* had to be given in the procedure through *legis actio sacramenti* by the party to a trial concerning the ownership of a thing to whom the praetor assigned possession of it during the trial. The *praedes* warranted through *stipulatio* the restitution of the thing and its *fructus* in the case of defeat of the party to whom possession was assigned. In the later procedure for the recovery of a thing, connected with a *sponsio* (see AGERE PER SPONSIONEM), it was the defendant who stipulated a certain sum for such event; see CAUTIO PRO PRAEDE LITIS ET VINDICIARUM. —See REI VINDICATIO, PRAEDES (Bibl.), VINDICIAE.
V. Lübtow, *ZSS* 68 (1951) 338.

Praedes sacramenti. Sureties for the payment of the *sacramentum* in the procedure by LEGIS ACTIO SACRAMENTI. In the later development the amount of the *sacramentum* was not deposited by the parties at the beginning of the trial; it was only promised and the payment was guaranteed by sureties.

Praedia. Plots of land (estates) together with the buildings erected on them. Syn. *fundus*.—See the following items.
Humbert and Lécrivain, *DS* 4.

Praedia curialium (decurionum). Land belonging to CURIALES (DECURIONES) in the provinces could not be alienated in the later Empire without permission of the provincial governor which was given only when the necessity of the sale was proved.—C. 10.33.

Praedia fiscalia. Land owned by the fisc (see FISCUS). In the later Empire it was administered by a *procurator praediorum fiscalium*.—C. 11.72–74.—See ACTOR PRAEDIORUM FISCALIUM.

Praedia Italica. Plots of land in Italy. Syn. *fundus in Italico solo*. *Praedia Italica* were among *res mancipi* and consequently were transferable only through

mancipatio or *in iure cessio*. They are distinguished from PRAEDIA PROVINCIALIA (= provincial land) which were *res nec mancipi*. In the later Empire there was no longer any difference between Italian and provincial landed property.—See RES MANCIPI, SOLUM ITALICUM.

Praedia provincialia. Plots of provincial land. They were *res nec mancipi* and therefore not transferable through *mancipatio* or *in iure cessio*. The owners of provincial land were obliged to pay taxes, *tributum* (*soli*) in imperial provinces, *stipendium* in senatorial provinces.—See PRAEDIA TRIBUTORIA, PRAEDIA STIPENDIARIA, PRAEDIA ITALICA, PRAESCRIPTIO LONGI TEMPORIS.

Praedia rustica. Landed property situated on the outside of cities and exploited for agriculture. Syn. *fundus, ager, locus*. Ant. *praedia urbana*.—See SERVITUTES PRAEDIORUM RUSTICORUM.—D. 8.4; C. 11.70.

Guarneri-Citati, *BIDR* 43 (1935) 78.

Praedia stipendiaria. "Land in those provinces which are held to be property of the Roman people" (Gaius, Inst. 2.21), i.e., the senatorial provinces. The owners of such land paid the fisc a tax called STIPENDIUM. Ant. PRAEDIA TRIBUTARIA.—See PROVINCIAE POPULI ROMANI.

Solazzi, *AnBari* 5 (1942) 7.

Praedia subsignata. Land pledged to a public body (the state or a municipality) as a security for a debt assumed. The land was not handed over but could be afterwards seized by public authorities when the debt was not paid in due time.—See SUBSIGNARE.

Praedia tributaria. "Landed property in the provinces regarded as a property of the emperor" (Gaius, Inst. 2.21), i.e., the imperial provinces. The owners paid a land-tax called TRIBUTUM.—See PROVINCIAE CAESARIS, PRAEDIA STIPENDIARIA.

Praedia urbana. Buildings, even when located in the country. Syn. *aedes, aedificium*. Ant. *praedia rustica*.—See SERVITUTES PRAEDIORUM RUSTICORUM. Gardens connected with buildings are considered *praedia urbana*, except when they are exploited for commercial purposes, for instance, for viticulture (D. 50.16.198).—D. 8.4; C. 11.70.—See SUBURBANUM PRAEDIUM.

Guarneri-Citati, *BIDR* 43 (1935) 73.

Praediator. The purchaser of a plot of land which had been pledged to the state by a debtor and forfeited. The sale (*praediatura*) was performed by a public auction the conditions of which were fixed in a *lex praediatoria*.

Liebenam, *RE* 5, 1824; O. Karlowa, *Röm. Rechtsgeschichte* 2 (1901) 5.

Praedicere (praedictio). An oral declaration made at the conclusion of a transaction, for example, by the seller of a slave about the latter's defects. For *praedicere* in an auction, see AUCTIO.

Praedo. A robber, pillager; in a broader sense, any possessor in bad faith (*possessor malae fidei*) who seized another's property without legal grounds. (D. 50.17.126 pr.).—See POSSESSOR PRO POSSESSORE.

Praeesse provinciae. To govern a province. *Is qui praeest provinciae* = *praeses provinciae*.

Praefectorius. (Adj.) Connected with, or pertaining to, the office of a *praefectus*.

Praefectianus. A subordinate official in the bureau of the PRAEFECTUS PRAETORIO.

Praefectorius. (Noun.) An ex-praefect.

Praefectura. Indicates either the official position of a *praefectus* or the territory subject to his authority. For *praefectura* as an administrative unit after Constantine's reform of the administration of the Empire, see DIOECESIS.—See the following items.

Cagnat, *DS* 4; Belloni, *NDI* 10.

Praefectura morum. The supervision of public morals. The term is applied to the activity of the censors, see CENSORES.

Praefecturae municipales. In earlier municipalities which were not granted political rights (*sine suffragio*) jurisdiction over the municipal citizens (*municipes*) was vested in a *praetor* in Rome who, however, exercised it by a special delegate, *praefectus iuri dicundo*. Hence the municipalities without *ius suffragii* were termed *praefecturae*.—See SUFFRAGIUM.

Sherwin-White, *OCD* 725; Fabricius, *SbHeid* 1924/5, 1, 29; E. Manni, *Per la storia dei municipii*, 1947, 69.

Praefectus. (From *praeficere* = to place a person at the head of an office.) The chief of an office in any branch of administration. Commanders of military and naval units also had the title *praefectus* (*alae, castrorum* = of a military camp, *centuriae, classis, cohortis, legionis*). In sacral matters there were *praefecti* of a more local character (*praefectus rebus divinis, sacrorum, sacris faciendis*). Some *praefecti* were also called *praepositi*.—The following items deal with the more important praefectural offices.

Liebenam, *RE* 6, 1644.

Praefectus Aegypti (also praefectus Alexandreae et Aegypti). The governor of Egypt. He was the chief of the administration, and was appointed and recalled by the emperor. In the provincial administration Egypt occupied a unique position, being more tied with the person of the emperor than any imperial province. Hence the *praefectus* was considered a personal representative of the emperor. In jurisdictional matters he was assisted by a special official, the *iuridicus Aegypti* (*et Alexandreae*), in financial matters by the IDIOLOGUS.—D. 1.17; C. 1.37.—See PRAEFECTUS AUGUSTALIS, GNOMON, IURIDICI.

De Ruggiero, *DE* 1, 278; O. W. Reinmuth, *The Prefects of Egypt, Klio, Beiheft* 34, 1935; H. F. K. Hübner, *P. Aeg. von Diokletian bis zum Ende der Röm. Herrschaft*, Diss. Erlangen, 1948; A. Stein, *Die Präfekten von Aegypten in der röm. Kaiserzeit*, Bern, 1950.

Praefectus aerarii militaris. See AERARIUM MILITARE.

Praefectus aerarii Saturni. See AERARIUM POPULI ROMANI.

Praefectus alimentorum. An official of senatorial rank charged with distribution of provisions (*alimenta*) among poor people and children.—See ALIMENTARIUS.

Praefectus annonae. The head of food administration, instituted by Augustus (A.D. 6). His was the task to bring in sufficient supplies of corn to the market in Rome; moreover, he supervised the prices. He also had jurisdiction in matters connected with the food administration (see CURA ANNONAE) and punished offenses committed by criminal machinations in the corn trade. The *praefectus annonae* was assisted by subordinate officials (*procuratores*) in the provinces and in Italy as well as by guilds of professionals active in the corn trade and transportation (NAVICULARII).—C. 1.44; 12.58.—See MENSORES FRUMENTARII.

De Ruggiero, *DE* 1, 477; De Robertis, *La repressione penale nella circoscrizione dell'urbe*, 1937, 35; *idem*, *St di dir. penale romano*, 1943, 35; Schiller, *RIDA* 3 (1949) 322.

Praefectus Augustalis. (Or simply *Augustalis*.) The title of the *praefectus Aegypti* from the late fourth century on.—D. 1.17; C. 1.37.—See PRAEFECTUS AEGYPTI.

De Ruggiero, *DE* 1, 824.

Praefectus Caesaris (quinquennalis). See PRAEFECTUS MUNICIPUM.

Praefectus civitatis (gentis, nationis). A military administrator of a newly conquered territory on the frontiers of the Empire, before it was organized as a province.

H. Zwicky, *Die Verwendung des Militärs in der Verwaltung der Kaiserzeit*, 1944, 11.

Praefectus castrorum. The commander of a military camp.

Liebenam, *RE* 6, 1642.

Praefectus classis. The commander of a fleet.

Praefectus collegii. The chairman of an association connected with military service.

Praefectus collegii fabrum. In municipalities the title of a person who, being a member of the municipal council (*ordo decurionum*), directed the service of firemen and was, normally, also the protector of their association (*patronus*).—See PRAEFECTUS FABRUM, FABRI.

Kornemann, *RE* 6, 1920; Jullian, *DS* 2, 956; Liebenam, *DE* 3, 14; Bloch, *Musée Belge* 7 (1903); 9 (1905).

Praefectus fabrum. The head of the body of technicians in the army in earlier times. In the last centuries of the Republic and under the Principate the *praefectus fabrum* was an officer appointed by a praetor or proconsul, and later by the emperor, and employed by his superior for confidential missions (an adjutant). The connection with *fabri* is not quite clear. From the time of Augustus the service of a *praefectus fabrum* was the beginning of an equestrian career; later it assumed the character of a mere honorary post.—See the foregoing item (Bibl.).

H. C. Maue, *Der p.f.*, 1887.

Praefectus frumenti dandi. (Called also *curator frumenti*.) An official in charge of the distribution of corn (see FRUMENTATIO) among the population of Rome.

Rostowzew, *RE* 7, 176; Mommsen, *Hist. Schriften* 1 (1906, ex 1870) 192.

Praefectus iuri dicundo. A deputy jurisdictional official in a municipality or one who was temporarily assigned there to judicial matters when the post of the permanent jurisdictional magistrate was vacant.—See LEX PETRONIA (of 32 B.C.).

Kornemann, *RE* 16, 623; Cagnat, *DS* 4, 611.

Praefectus legionis. The commander of a legion, of equestrian rank (*eques*). In the development of the Roman army, he was the successor of the LEGATUS LEGIONIS.

Praefectus municipii. If a municipality elected the emperor for its highest magistrate (*duovir*)—this happened frequently—the emperor delegated a *praefectus* as his substitute who administered the office alone, without any colleague. A *praefectus municipii* was also appointed when a member of the imperial family was appointed and did not enter the office but in this case the *praefectus municipii* had a *duovir* as a colleague. Such *praefecti* were called *praefectus Caesaris quinquennales* because they served five years.

Praefectus orae maritimae. A military official, assisted by a military detachment and appointed for the control and defense of an important sector of the seashore, primarily in provinces. He also had jurisdiction over crimes committed during a shipwreck.

Barbieri, *Rivista di filologia classica* 69 (1941) 268; 74 (1946) 166.

Praefectus praetorio. The commander of a military unit in the imperial residence serving as a body-guard of the emperor (*cohors praetoria*, see PRAETORIUM). The number of *praefecti praetorio* varied from one to four. The *praefecti praetorio* acquired high political influence being steadily in personal touch with the emperor. Their military command was extended over the troops in Italy. They were assigned administrative and jurisdictional functions, the latter also in criminal matters, from the third century on. Some of the prominent jurists (Papinian, Ulpian, Paul) were *praefecti praetorio*. Although only of equestrian rank, the *praefectus praetorio* were the highest governmental officials and the chief advisers of the emperors in military and civil matters. After the division of the territory of the Empire into four *praefecturae*, each *praefectura* had its *praefectus praetorio*.—D. 1.11; C. 7.42; 12.4; for *praefectus praetorio Africae* C. 1.27; for *praefectus praetorio Orientis et Illyrici* C. 1.26.—See EMINENTISSIMUS, EXCELLENTISSIMUS, EDICTA PRAEFECTORUM PRAETORIO, DIOECESIS.

Cagnat, *DS* 4; Cuq, *NRHD* 23 (1899) 393; *idem*, *Mél Boissier* 1903; E. Stein, *Untersuchungen über das officium des Prätorianerpräfekten seit Diocletian*, 1922; *idem*, *Bull. Comm. archeol. com. di Roma*, 52 (1924) 9; *idem*, *Her* 60 (1925) 94; *idem*, *Rhein. Museum* 74 (1925) 347; Baynes, *JRS* 15 (1925) 204; J. Palanque, *Essai sur la préf. du prét. du Bas-Empire*, 1933; De Robertis, *La repressione penale nella circoscrizione dell'urbe*, 1937, 13; *idem*, *St di dir. pen. rom.*, 1943, 19; G. Lopuszanski, *La transformation du corps des officiers supérieurs de l'armée rom.*, *Mél. Ecole Franc. Rome*, 1938, 131; L. L. Howe, *The Praetorian Prefect* A.D. 180–305, 1943; De Laet, *Rev. Belge de Philol. et d'hist.* 22 (1943), 25 (1947); Pastori, *StUrb* 19 (1950–1951) 37.

Praefectus sociorum. See SOCII.

Praefectus urbi(s). The prefect of Rome. During the period of kingship the *praefectus urbi* was the representative of the king in his absence. In the early Republic the practice of appointing a *praefectus urbi* was continued when all higher magistrates were absent. Since the creation of the urban praetorship (367 B.C.) the *praefectus urbi* practically disappeared. On one occasion only, when the national feast of the Latins (*feriae Latinae*) was celebrated in the presence of all Roman magistrates, a special *praefectus urbi feriarum Latinarum* was instituted. Augustus also reestablished the office of a *praefectus urbi*, only for the time of his absence from Italy; Tiberius, however, transformed it into a permanent one. Originally the *praefectus urbi* exercised criminal jurisdiction when he was delegated by the emperor, but later his jurisdictional power increased constantly and when the QUAESTIONES PERPETUAE ceased to function under Septimius Severus, the competence of the *praefectus urbi* in criminal matters was almost unlimited not only in Rome but also in the territory within one hundred miles from the city. In the later Empire the *praefectus urbi* was the head of the administration and jurisdiction in both civil and criminal matters. In the first instance he was the exclusive judge in matters in which persons of senatorial rank were involved. Appeals from judgments of the *praefectus annonae*, the *praefectus vigilum*, and other officials of civil jurisdiction (*cognitio extra ordinem*) went to his court as far as the public order in the city was affected. A small armed unit (*cohortes urbanae*) for the maintenance of order was under his command.—D. 1.12; C. 1.28; 12.4.—See MILIARIUM, CUSTOS URBIS, ZENONIANAE CONSTITUTIONES.

Cagnat, *DS* 4; De Ruggiero, *DE* 2, 780; Lambrechts, *Philologische Studiën*, 1937, 13; P. E. Vigneaux, *Essai sur l'histoire de la praefectura u.*, 1896; Brancher, *La jurisdiction civile du p.u.*, 1909; F. M. De Robertis, *Origine della giurisdizione criminale del p.u.*, 1935; *idem*, *La repressione penale nella circoscrizione dell'urbe*, 1937; *idem*, *St di dir. pen. rom.*, 1943, 3; Schiller, *RIDA* 3 (1949) 322.

Praefectus vehiculorum. The postmaster of the imperial post in Rome (from the time of Hadrian an official of equestrian rank). Later, larger districts in Italy and the provinces had also their *praefectus vehiculorum*.—See CURSUS PUBLICUS.

Humbert, *DS* 1, 1651.

Praefectus vigilum. One of the highest officials in the administration of the city of Rome. He was the commander of the fire brigade (*vigiles*) and exercised the functions of chief of the police. He had to take care of the security in the capital and had jurisdictional power in such criminal matters as arson, robbery, burglary, and the like. His function in civil trials involved controversies arising from leases of houses.—D. 1.15; C. 1.43.—See VIGILES (Bibl.).

O. Hirschfeld, *Kleine Schriften*, 1913, 96; F. M. De Robertis, *La repressione penale nella circoscrizione dell'urbe*, 1937, 35; *idem*, *St di dir. rom. penale*, 1943, 35; Schiller, *RIDA* 3 (1949) 322.

Praegnans. The protection of a pregnant woman after her divorce from the father of the child to be born (*nasciturus*) was regulated by a special *senatusconsultum de agnoscendis liberis*.—D. 23.5.—See AGNOSCERE LIBEROS, SENATUSCONSULTUM PLANCIANUM.

Praeiudicare. To prejudice, to impair, to damage. "A judgment which settled a controversy between certain persons does not cause prejudice to others" (D. 42.1.63). There were, however, some exceptions from this rule. In Justinian's language *praeiudicare* is syn. with *nocere*.

Praeiudicialis. See ACTIONES PRAEIUDICIALES, FORMULAE PRAEIUDICIALES, PRAEIUDICIUM.

Praeiudicialis multa. In later civil procedure a fine imposed on a party to a trial who appealed from an interlocutory judgment; see INTERLOCUTIO.

Praeiudicium. A judicial proceeding for the examination of a preliminary question upon which the decision of a controversy depends. See ACTIONES PRAEIUDICIALES. Since a negative solution of the prejudicial question may eliminate the availability of an action for the principal claim, *praeiudicium* is used in the sense of prejudice, damage. For the use of an exception by a defendant in order to prevent that the trial be not extended on questions which may be prejudicial to him for future claims (*exceptio ne praeiudicium hereditati fiat*) see HEREDITATIS PETITIO. For *praeiudicium* with regard to interlocutory judgments, see INTERLOCUTIO. When in a trial the question arose as to whether a party therein involved was a free person (*praeiudicium an liber sit*), this question was taken into examination before all.—D. 44.1; C. 3.8; 7.19; 9.31.

Humbert and Lécrivain, *DS* 4; Weiss, *RE* 3A, 2234; H. Pissard, *Les questions préjudicielles en droit rom.*, 1907; M. Nicolau, *Causa liberalis*, 1933, 156; Siber, *Fschr Wenger* 1 (1944) 46; *idem*, *ZSS* 65 (1947).

Praelegare (praelegatio). To make a legacy in favor of an heir who, in addition to his share in the inheritance, receives a specific thing as a legacy. The term *praelegatum* used in the literature, is not of Roman coinage.—See LEGATUM PER PRAECEPTIONEM.

C. Ferrini, *Opere* 4 (1930 ex 1895) 237; Scuto, *RISG* 45 (1910) 3; Gangi, *RISG* 47 (1912) 315; Beseler, *ZSS* 49 (1929) 155; B. Biondi, *Successione testamentaria*, 1943, 466 (Bibl.); v. Lübtow, *ZSS* 68 (1951) 511.

Praemature. Before a fixed term. A creditor who asks for payment *praemature* asks for more than is due; see PLUSPETITIO (*tempore*).

Praemium. See NUNTIARE FISCO, DEFERRE.

Praenomen. See NOMEN. Under the Empire, foreigners who were granted Roman citizenship by a decree of the emperor took as a *praenomen* the first name of the emperor. Hence the great number of *Aurelii* among the new citizens naturalized by the emperor Caracalla who bore the name *Aurelius* among his *praenomina*.—See CONSTITUTIO ANTONINIANA, IMPERATOR.

Rosenberg, *RE* 9, 1148 (for *p. imperatoris*).

Praeponere (alicui rei). To put a person at the head (*praepositus*) of a commercial enterprise (see INSTITOR), of the bookkeeping service in a bank, or of a ship (see MAGISTER NAVIS). Syn. *praeficere*. In public law the term *praepositus* is used of the chiefs (commanders) of an office, a public institution or a military unit. In some instances it appears in the title of the official who directs the office; see the following items.

Praepositura. The office of a *praepositus*.

Praepositus. See PRAEPONERE. *Praepositus* is the chief of subaltern officers in certain branches of administration, such as, for instance, the imperial post (*praepositus cursorum, tabellariorum*), the archives (*praepositus tabulariorum*). In the military organization *praepositus* is the commander of a detachment of a limited, territorial nature, for instance *praepositus castrorum* = the commander of a military camp.—See SCHOLAE.

Cagnat, *DS* 4; Severini, *NDI* 10; J. E. Dunlap, in Boak and Dunlap, *Two studies in later R. and Byzantine administration*, 1924, 189.

Praepositus sacri cubiculi. The chamberlain of the imperial household.—C. 12.5.—See CUBICULUM.

Dunlap, *loc. cit.* 160.

Praerogativa. In postclassical period, syn. with PRIVILEGIUM.

Orestano, *AnMac* 12–13 (1939) 29, 69.

Praerogativa centuria. See CENTURIA PRAEROGATIVA.

Praes. See PRAEDES.

Praescripta verba. See ACTIO PRAESCRIPTIS VERBIS.

Praescriptio. In the procedural formula an extraordinary part of the formula preceding the INTENTIO (*prae-scribere*) and serving for a preciser delimitation of the claim. Originally there were *praescriptiones* in favor of the defendant (*praescriptio pro reo*) and of the plaintiff (*praescriptio pro actore*). The former fell early into disuse and were replaced by exceptions, as, e.g., the *praescriptio ne praeiudicium hereditati fiat* (see HEREDITATIS PETITIO, PRAEIUDICIUM). A *praescriptio pro actore* was applied, for instance, in the case when the plaintiff sued for an installment of a debt. In order to save his right to sue later for further installments, a *praescriptio* was inserted at the beginning of the formula: "Let the action be (*ea res agatur*) only for what is already due." In postclassical juristic language *praescriptio* often replaced the former *exceptio* and became a general term for any kind of defense opposed by the defendant.—D. 44.1; C. 7.40; 8.35.—See DENEGATIO ACTIONIS, EA RES AGATUR, FORMULA, EXCEPTIO.

Beauchet, *DS* 4, 626; Bortolucci, *NDI* 10; see Schlossmann, *P. und praescripta verba*, 1907; Wlassak, *ZSS* 33 (1912) 81; J. Petrau-Gay, *Evolution hist. des exceptiones et praescriptiones*, Thèse Lyon, 1916; Steinwenter, *ZSS* 65 (1947) 98.

Praescriptio longi temporis. An institution similar to *usucapio* and applied to provincial land which could not be usucapted under *ius civile*; see USUCAPIO. A possessor of a provincial land might oppose this *praescriptio* to a claimant who sued him for the delivery of the land if he was in possession of it for ten or twenty years. The period of ten years sufficed *inter praesentes*, i.e., if both parties lived in the same locality (later, in the same province); uninterrupted possession through twenty years was required when the parties lived in different cities (provinces). The possession of the defendant had to be based on a just cause (*iusta causa*) and acquired *bona fide* (see USUCAPIO). Originally the *praescriptio* was a way of defense against a *rei vindicatio* (*praescriptio* = *exceptio*), but in later development such a qualified possession gave the possessor the right to claim the recovery of the land if he lost possession. Thus the *praescriptio longi temporis* became a mode of acquisition of property. In Justinian's law the two institutions, *usucapio* and *praescriptio longi temporis* were fused into one. The new terminology was: *usucapio* for movables, *praescriptio longi temporis* for immovables. Numerous interpolations became necessary to eliminate any connection between *usucapio* and immovables; the terms *usucapio* (*usucapere*) were substituted by *longum tempus, longa possessio* (*per longum tempus capere*).—C. 7.33–36; 40; 22.—See ABSENTES, BONA FIDES, and the following items.

Bortolucci, *NDI* 10, 203 (*s.v. prescrizione*); Partsch, *Die longi temporis p.*, 1906; Wenger, *Hist. Jahrb.*, 1940, 359; Levy, *BIDR* 51/52 (1948) 352; *idem, West Roman Vulgar Law*, 1951, 180; Schönbauer, *Anzeiger Akad. Wiss. Wien* 88 (1951) 431.

Praescriptio longissimi temporis. See PRAESCRIPTIO QUADRAGINTA ANNORUM.

Praescriptio quadraginta annorum. The Emperor Constantine ordered that any one who held another's thing for forty years could not be sued for its restitution no matter what the origin of his possession might have been (*praescriptio longissimi temporis*). Excluded from this kind of acquisition were the lessees of an immovable. Uninterrupted possession through forty years was also required for the usucapion of things belonging to the emperor, the fisc, the church and charitable foundations.—C. 7.39.

Riccobono, *FIR* 1² (1941) no. 96; Arangio-Ruiz, *ibid.* 3 (1943) no. 101 (Bibl.); *idem, Aegyptus* 21 (1941) 261 and *ANap* 61 (1942) 311.

Praescriptio quadriennii. The emperor, the empress and the fisc could validly sell things belonging to private individuals. The owners, however, could claim indemnization within four years.—C. 7.37.

Praescriptio triginta annorum. According to an enactment of Theodosius II (A.D. 424), any action was extinguished if the plaintiff did not sue the debtor within a period of thirty years from the time he could sue him except in those cases in which an action expired in a shorter time.—C. 7.39.—See ACTIONES PERPETUAE, ACTIONES TEMPORALES.

Praescriptio viginti annorum. In Justinian's language the normal PRAESCRIPTIO LONGI TEMPORIS of immovables which required uninterrupted possession for twenty years *inter absentes*.

Praescriptum (praescriptio) legis. A legal rule, a norm settled in a statute. Syn. *praecepta legis*.
G. Rotondi, *Leges publ. populi Romani*, 1912, 150.

Praesens (praesentes). See ABSENTES, STIPULATIO INTER ABSENTES.

Praesentalis. A person who was employed in the imperial palace.

Praesenti die. Immediately, at once, without delay (e.g., *debere, solvere, dare*). Syn. *praesens*. "In all obligations in which a date was not fixed for payment, the debt is due at once" (D. 45.1.41.1).

Praeses provinciae. (Or simply *praeses*.) The governor of a province. Originally only governors of imperial provinces (*legatus Augusti pro praetore*) had the title *praesides*, later the term referred to all governors of provinces, both imperial and senatorial, and without distinction whether they were of senatorial or equestrian rank. "The title of *praeses* is a general one. Proconsuls, legatees of the emperor and all who govern provinces are called by the name *praesides*" (D. 1.18.1). In newly acquired provinces the governor was regarded as a military commander who had to subjugate the territory and take care there for order, until a normal provincial administration was introduced. The *praeses* was the highest official in the province. "His functions embrace those of all magistrates in Rome" (D. 1.18.12). He had the jurisdiction of the praetors in Rome, full *imperium*, and after the emperor, the greatest authority in his province. During his term of office a governor could not be removed. No one could become governor of his native province without permission of the emperor. Outside his province the governor was considered a private person. Syn. *is qui praeest provinciae, rector provinciae* (in later times).—D. 1.18; C. 1.40; 5.2.—See PROVINCIA (Bibl.), EDICTUM PROVINCIALE, EDICTA PRAESIDUM, VICE.
Chapot, *DS* 4; Orestano, *NDI* 10; F. Leifer, *Einheit des Gewaltgedankens*, 1914, 305; H. E. Mierow, *The R. provincial governor as he appears in the Digest etc.*, Colorado Springs, 1926; Solazzi, *SDHI* 16 (1950) 282.

Praesidalis. Connected with, or pertaining to the office of a provincial governor.

Praesidium. A military garrison.—See CURATOR PRAESIDII.

Praestantia. An honorific title of certain higher officials in the later Empire. The emperors addressed them in their letters with "*praestantia tua*."

Praestare. (From *praes stare*.) To be a guarantee, to be responsible for certain duties which arise from contractual obligations in specific circumstances as, for instance, for *dolus, culpa*, eviction, and the like (e.g., *dolum, culpam, damnum, custodiam*, etc., *praestare*). The verb appears in the definition of *obligatio* and covers any liability of the debtor beyond the principal obligations of *dare* or *facere*. See OBLIGATIO. The term is elastic and is applied in the classical language in a broad sense in various legal situations even those arising from delictual obligations and sometimes in connection with performances in which no legal duty is involved.—See CUSTODIA, DOLUS.
V. Mayr, *ZSS* 42 (1921) 198; F. Pastori, *Profilo dogmatico e storico dell'obligazione romana*, 1951, 143.

Praestare actionem. To cede an action to another.—See CESSIO.

Praestare patientiam. See PATIENTIAM PRAESTARE.

Praestatio. The performance, fulfillment of a duty. See PRAESTARE. For *praestationes personales* in actions for division of common property, see ACTIO COMMUNI DIVIDUNDO.

Praestituere. To fix a date or a space of time (e.g., *annum, diem, tempus*) for the fulfillment of legal or procedural duties. It is primarily used of terms fixed by legal enactments or by jurisdictional authorities.

Praestituere aliquem. To put a person at the head of an office or a private enterprise. Syn. *praeponere, praeficere*.

Praesumptio. (From *praesumere* = to presume.) A presumption occurs when a fact is deemed proved although it is not directly proved and its existence is only logically inferred from another fact established through evidence. Such kind of presumption is termed in literature *praesumptio facti* or *praesumptio hominis*. E.g., a child born to a married woman is presumed to be the husband's child and consequently a legitimate child. A counterproof is admissible. Such presumptions are often introduced by phrases like *credi debet, creditur* (= it is presumed). In later (Justinian's) law there were some presumptions legally imposed to the effect that a fact had to be considered proved in court as long as no counterproof was offered (*praesumptio iuris*). Thus, for instance, a presumption was fixed for the event that several persons died simultaneously (e.g., in a shipwreck) to the effect that children below the age of puberty were presumed to have died before their parents, whereas the elder children were presumed to have died after them. In certain exceptional cases a counterproof was not admitted (*praesumptio iuris et de iure*).—

D. 22.3.—See COMMORIENTES.

Donatuti, *NDI* 10; *idem*, *Le praesumptiones iuris in dir. rom.*, 1930; *idem*, *Riv. dir. priv.* 1933, 161.

Praesumptio Muciana. The jurist Quintus Mucius Scaevola is considered the author of the presumption that everything that a married woman possessed, was given to her by her husband unless she was able to prove the contrary.

Kübler, *RE* 16, 445; G. Donatuti, *Le praesumptiones iuris in dir. rom.*, 1930. 15; G. Balis, *Die p.M., Mél Streit* Athens, 1939.

Praetendere. To bring forward an excuse (a true or a false one), to pretend, for instance, the ignorance of the law.

Praeterire. See SENATU MOVERE.

Praeterire. To pass over in silence a person in a last will. The so-called *heredes sui* (see HERES SUUS), natural or adoptive, had to be instituted or disinherited (see EXHEREDATIO); otherwise if they were not mentioned in the testament at all (*praeteriti*) the latter was void and the testator was deemed *intestatus*. —C. 6.28.—See POSTUMUS SUUS.

Besele, *ZSS* 55 (1925) 1; Sanfilippo, *AnCam* 12 (1938) 265.

Praeterita (scil. facta, negotia). Events which happened in the past, such as crimes committed before the issuance of a pertinent penal statute, legal acts and transactions concluded at a former time. Ant. *futura* = future events. The antithesis is connected with the problem of the retroactivity of legal enactments. Non-retroactivity is the rule, but in a few exceptional cases some later imperial enactments, even of penal character, admitted retroactivity. Most of them are in the Theodosian Code.—See EX POST FACTO.

Silser, *Analogie und Rückwirkung im Strafrechte, ASächGW* 43 (1936); Berger, *Sem* 7 (1949) 63; Marky, *BIDR* 53–54 (1948) 241.

Praetextatus. See TOGA PRAETEXTA, IMPUBES.

Praetextus. See TOGA PRAETEXTA.

Praetor. In the earliest times (before the introduction of the consulship) the *praetor* was the highest official (*prae-itor* = one who goes in the front of the people). As a magistracy (see MAGISTRATUS) the praetorship was created by the *Lex Licinia Sextia* (367 B.C.). It was assigned the civil jurisdiction which it took over from the consuls. The office of the *praetor urbanus* was first created. Originally a patrician post, the praetorship was made accessible to plebeians since 337 B.C. The *praetor urbanus* had jurisdiction (*ius dicebat*) in Rome; later (242 B.C.) a second praetor was instituted and vested with jurisdictional power in civil matters between foreigners (*inter peregrinos*) and between foreigners and Roman citizens (*praetor peregrinus*). Since the government of provinces was originally directed by praetors their number constantly increased (up to 16). Later, it became customary to send ex-praetors after their year of service in Rome to provinces as governors. When the permanent criminal courts (see QUAESTIONES PERPETUAE) were established, their chairmen were taken among the praetors. The praetors were the highest magistrates in the Republic after the consuls and were vested with full *imperium* and far-reaching authority in military, administrative and judicial matters. But their principal domain was jurisdiction; for their creative activity in the development of the law, see IUS HONORARIUM, IUS PRAETORIUM, IUS EDICENDI, EDICTUM PERPETUUM. They were obliged to reside in Rome and were not allowed to leave the capital for more than ten days. Under the Principate the activity of praetors was almost exclusively jurisdictional. Afterwards, when the jurisdiction was taken over by bureaucratic officials, the praetorship became an office without any important activity. Its functions were limited to the arrangement of public games and spectacles.—D. 1.14; C. 1.39; 12.2.—See IURISDICTIO, STIPULATIONES PRAETORIAE, IN IURE, MANUMISSIO PRAETORIA, and the following items.

Lécrivain, *DS* 4; Anon., *NDI* 10; Treves, *OCD*; F. Leifer, *Die Einheit des Gewaltgedankens*, 1916. 196; H. Lévy-Bruhl, *Prudent et prêteur*, 1916; G. T. Sadler, *The R. praetors*, London, 1922; Wenger, *Prätor und Formel, SbMünch* 1926; E. Betti, *St Chiovenda* 1927; Riccobono, *TR* 9 (1929) 6; F. Wieacker, *Vom röm. Recht*, 1944. 86; Gioffredi, *SDHI* 13–14 (1948) 102.

Praetor aerarii. See AERARIUM POPULI ROMANI.

Praetor de liberalibus causis. A praetor with a special jurisdiction in matters concerning the liberty of an individual, in particular, in controversies between slaves and their masters involving the liberty of the slaves. The office was still in existence in Justinian's times.

M. Nicolau, *Causa liberalis*, 1933, 67.

Praetor fideicommissarius. A praetor instituted in the early Principate with jurisdiction in matters concerned with *fideicommissa*.—See FIDEICOMMISSUM.

Kübler, *DE* 3, 75.

Praetor fiscalis. A special praetor with jurisdiction in controversies between the fisc and private individuals. The office was instituted by the emperor Nerva (A.D. 96–98).

Praetor hastarius. A praetor who, in the later Principate presided over the centumviral court.—See CENTUMVIRI, HASTA.

Wlassak, *RE* 3, 1937.

Praetor iuventutis. See MAGISTER IUVENUM.

Praetor liberalium causarum. See PRAETOR DE LIBERALIBUS CAUSIS.

Praetor maximus. A controversial office; seemingly the highest among three officials who at the beginning of the Republic had the sovereign governmental power (*dictator? magister populi?*).

Heuss, *ZSS* 64 (1944) 68; Wesenberg, *ZSS* 65 (1947) 319.

Praetor peregrinus. See PRAETOR. For the influence of the judicial activity of the *praetor peregrinus* on the development of the so-called *ius gentium*, see IUS GENTIUM (Bibl.).

Nap. *TR* 12 (1933) 170; Gilbert, *Res Iudicatae* 2 (Melbourne, 1939) 50; Daube, *JRS* 41 (1951) 66.

Praetor populi (plebis). An official instituted by Justinian (Nov. 13, A.D. 535) for criminal jurisdiction, with a competence similar to the former PRAEFECTUS VIGILUM.

Praetor tutelarius (tutelaris). A praetor (from the time of Marcus Aurelius) charged with the appointment of guardians and with jurisdiction in controversies between guardians and their wards.

Preisendanz, *RE* 7A, 1608.

Praetor urbanus. See PRAETOR.

Praetoriani. Soldiers of the imperial body-guard, see PRAETORIUM. Syn. *cohors praetoria*.

Cagnat, *DS* 4, 632.

Praetorianus. (Adj.) Pertaining to the office of the *praefectus praetorio*.

Praetorium (cohors praetoria). A military unit serving as the body-guard of the emperor under the command of the PRAEFECTUS PRAETORIO.

Cagnat, *DS* 4, 632; Parker, *OCD*; H. Zwicky, *Die Verwendung des Militärs in der Verwaltung*, Zürich, 1944, 64; M. Durry, *Les cohortes prétoriennes*, 1938; A. Passerini, *Le coorti pretorie*, 1939; H. Lorenz, *Untersuchungen zum Praetorium*, Diss. Halle, 1936.

Praetorium. The residence of a provincial governor; the headquarters of a commanding general. *Praetorium* is also used of any luxurious mansion. Even when situated in the country (a country-seat) it is considered a *praedium urbanum*.

Cagnat, *DS* 4, 640; Richmond, *OCD*; Domaszewski, *Bonner Jahrbücher* 117 (1908) 97.

Praetorius. (Noun.) A retired praetor.—See ADLECTIO.

Praetorius. (Adj.) Connected with, or pertaining to, the office of a praetor (*ius, iurisdictio, actio, stipulatio*, etc.).

Praetura. The office of a praetor.—See PRAETOR.

Praevaluit. See OBTINUIT.

Praevaricatio (praevaricator). A collusion between the *prosecutor* (accuser) and the accused in a criminal trial to obtain the latter's acquittal. The second trial against an accused who had been absolved in a first trial, took place before the same court the first duty of which was to examine whether or not in the first proceedings there had been a *praevaricatio*. The *praevaricator*, i.e., the accuser whose guilt was established, was severely punished and branded with infamy. See ACCUSATIO. *Praevaricatio* was also a collusion between a lawyer and the adversary of his client to the detriment of the latter.—D. 47.15.

Kaser, *RE* 6A. 2146; Lécrivain, *DS* 4; Levy, *ZSS* 53 (1933) 177.

Pragmatica sanctio. In the later Empire an imperial enactment of a particular importance and of a general and permanent validity. It concerned the general administration, privileges granted larger groups of persons, orders given to officials of a larger administrative body or corporations, etc. Letters by which the emperors of the Eastern and Western parts of the Empire reciprocally exchanged their enactments to be published in the other part of the Empire, were also termed *pragmatica sanctio*. Syn. *pragmatica iussio, pragmatica lex*, or simply *pragmatica*, or *pragmaticum*. Special functionaries of the imperial chancery, *pragmaticarii*, were entrusted with the drafting of such enactments.—C. 1.23.—See SANCTIO PRO PETITIONE VIGILII.

Cuq, *DS* 4, 642; H. Dirksen, *Hinterlassene Schriften* 2 (1871) 54; Mommsen, *ZSS* 25 (1904) 51 (= *Jur. Schr.* 2, 426); Dell'Oro, *SDHI* 11 (1945) 314; Renier, *RHD* 22 (1943) 208.

Pragmaticarius. See the foregoing item.

Pragmaticus. A person skilled in legal matters, primarily in the composition of legal documents.

Precario (precariis verbis). By begging, by entreaty, by request. The typical expressions (*precaria verba*) were *rogo, peto;* they were used in a testament for a *fideicommissum* and addressed to the heir as a request to fulfill the testator's wish. Syn. *precative, precativo modo*.—See PRECARIUM.

Precarium. "What is given gratuitously a person at his request to be used by him as long as the grantor permits" (D. 43.26.1 pr.). The latter is *precario dans*, the grantee = *precario accipiens*. The grantee is liable for fraud only; he has possession of the thing given *precario* and interdictal protection, but his possession does not count for usucapion. On the other hand the grantor demands the restitution of the *precarium* by INTERDICTUM DE PRECARIO.—D. 43.26; C. 8.9.

Beauchet, *DS* 4; Anon., *NDI* 10; Lenel, *Edictum perpetuum*[3] (1927) 486; Capessoni, *ACSR* 6 (1928); Scherillo, *RendLomb* 62 (1929) 389; Bozza, *AnMac* 6 (1930) 213; V. Scialoja, *St* 1 (1931, ex 1888) 341; Albertario, *St Solmi* 1 (1941) 337 = *St* 2 (1941) 14; Silva, *SDHI* 6 (1940) 233; Caracaterra, *AnBari* 4 (1941) 115; Branca, *St Solazzi* 1948, 498; Levy, *ZSS* 67 (1948) 1; Roels, *RIDA* 6 (1951) 177.

Precator. A petitioner, particularly one who addresses himself to the emperor with a petition (PRECES).

Preces. (Sing. *prex*.) A petition addressed to the emperor by a private person. Since the petition normally was not accompanied by a piece of evidence, the imperial answer (decision, rescript) was given with the reservation "provided that your allegations are based on truth" (*si preces veritate nituntur*). See LIBELLUS, SUBSCRIPTIO.—In relations between private individuals *preces* mean a request, entreaty. The term appears in the definition of PRECARIUM.—C. 1.19.

Preces refutatoriae. Syn. *libelli refutatorii*. See REFUTATIO, CONSULTATIO.

Prensio. (From *prendere.*) The arresting of delinquents by magistrates with *imperium* and plebeian tribunes. The right to arrest = *ius prensionis.*

Pretium. The price fixed in a sale and paid (or to be paid) by the buyer to the seller. See EMPTIO VENDITIO. The price is an essential element in a contract of sale, since "there is no sale without a price" (Inst. 3.23.1). The price had to be established in money, otherwise the agreement was not a sale but PERMUTATIO (an exchange, a barter). The fixing of the price may be left to a third person. The classical jurists did not agree as to the moment when in such a case the sale was concluded. Justinian decided that the sale was concluded after the third person established the price. See LAESIO ENORMIS.—*Pretium* sometimes indicates the sum paid by the lessee in a lease or by the employer to a workman for the work done; see MERCES.

Pretium iustum. An adequate, just price. In the classical law there was no requirement of a just price. For the later development, see LAESIO ENORMIS.

Prex. See PRECES.

Pridianum. A military record concerning the strength of a unit and the changes therein (accessions and losses).

Fink, *Trans. Amer. Philol. Assoc.*, 63 (1942) 61; Gilliam, *Yale Clas St* 11 (1950) 222.

Primas. In later imperial constitutions a person who holds the first place in an office, in a public administrative body (a city, a village) or in professional associations (*primus advocatorum*).—C. 11.29.

Primatus. The rank of a PRIMAS.—See the foregoing item.

Primicerius. In the later Empire the chief, the highest official, first in rank, in an imperial bureau or the superintendent over several bureaus (e.g., *primicerius scriniorum, officiorum*). Similar expressions: *primas, magister.* His deputy = *secundocerius.* The dignity of a *primicerius* = *primiceriatus.*—C. 12.7.

Cagnat, *DS* 4.

Primicerius notariorum. See NOTARIUS.—C. 12.7.

Primipilarius. See the following item.

Primipilus. The first among the centurions of a legion. After retiring from service a *primipilus* received the title *primipilarius* and was granted certain distinctions and privileges, primarily of a financial nature. *Primipili* were entrusted by the emperor with special military missions or a honorary position, at times with a magistracy in the community of residence.—C. 12.57; 62.—See CENTURIO.

Cagnat, *DS* 4; v. Domaszewski, *RE* 3 (*s.v. centurio*); De Laet, *Le rang social du p., AntCl* 9 (1940) 13.

Primiscrinius. The first official in an imperial bureau (SCRINIUM).

Princeps. The emperor. The title was first assumed by Augustus in the period between 27 and 23 B.C. not as an official one but in the sense simply of "the first citizen." Hence the period of the Roman history from that date on is termed the Principate (until Diocletian). The term *princeps* does not appear among the titles of the emperor in official documents. In these his position is stressed instead by the words *Imperator, Caesar, Augustus.* Other distinctive attributes were *Pius* and *Felix* or, referring to victorious enterprises, *Germanicus, Arabicus,* and the like. The basic elements of the *princeps'* power was on the one hand the tribunician power (*tribunicia potestas*) established by Augustus as a symbol of the restoration of the Republic, which gave him the inviolability of the tribunes (*sacrosanctitas*), the right of INTERCESSIO, but no colleagueship of other tribunes, and re the right to summon the senate and the people; on the other hand he held the *imperium maius* of a proconsul for life which strengthened his position with regard to the provinces and vested him with the highest military command in the whole empire. The emperor's consulship and censorship (the latter assumed by some successors of Augustus) completed the external aspect of the power of the *princeps.* Through the duration of the Principate the rights of the emperor were gradually extended without any substantial change in their legal bases. See LEX DE IMPERIO VESPASIANI, PRINCEPS LEGIBUS SOLUTUS. The control of the foreign policy and the right to decide about war and peace as well as to conclude treaties with foreign countries and to receive and send ambassadors belonged to the prerogatives of the *princeps.* In the field of legislation the emperor's wishes were originally (under Augustus) submitted for ratification by the people, an act which in the course of the first post-Christian century became a simple formality and afterwards disappeared. In the jurisdictional domain the emperor was the supreme judge both in criminal and civil matters, either as a first or an appellate instance. The emperor was also *pontifex maximus.* The influence of the emperor on the composition of the senate constantly increased (see ADLECTIO) and so did his interference in the election of magistrates (see COMMENDATIO). Moreover, he had the exclusive right to appoint officials of the imperial chancery, for his personal service and for the imperial household as well. He alone chose the delegates to carry out some of his governmental duties in his name. The imperial service became gradually a state service, at the expenses of the magistracies which under the Principate continued to exist but with responsibilities which continually diminished. For the various imperial offices, the imperial chancery, the administration of the imperial patrimony, and the imperial household, see the pertinent entries; for the role of the senate under the Principate, see SENATUS; for the legislative activity of the *princeps,* see CONSTITUTIONES PRINCIPUM; GRATIO PRINCIPIS; for his judicial activity, see DECRETA, RESCRIPTA. Succession to the throne was not fixed by law. It was not hereditary

but elective; election by the senate as representatives of the people was the rule. There was, however, at times a hereditary succession, in fact, when an emperor indicated his successor (a natural or adoptive son, or a near relative) by designating the latter as his heir thereby implying the wish that his heir might be also his successor as the *princeps*. A similar designation of a successor might be expressed by the appointment of a co-regent. The juridical structure of the Principate has remained controversial in spite of a tremendous literature in recent times on the occasion of Augustus' bimillenary. The Principate can hardly be classified as a uniform constitutional system. It started from the tendency of Augustus to keep in force certain Republican institutions, but in the course of time some authoritarian features were added at the expense of earlier democratic elements, so that the constitutional aspect at the beginning of the Principate was gradually disappearing in later times, particularly under Hadrian and in the late first half of the third century. With the reign of Diocletian a new epoch started in the Roman constitutional development with an autocratic monarch at the head of the empire (no more *princeps*, but *imperator*). This period is termed (perhaps not very appropriately) Dominate, the emperor being now (from the time of Aurelian, A.D. 270–275) the master, *dominus*, over the territory and the population of the state. See, moreover, LEGATI CAESARIS, PROCURATOR CAESARIS, RES PRIVATA CAESARIS, CONSILIUM PRINCIPIS, FISCUS, MAGISTRATUS, DIVUS, GENIUS, DAMNATIO MEMORIAE, EPISTULAE PRINCIPIS, DOMUS DIVINA, MAIESTAS, CONSORTES IMPERII, RES GESTAE DIVI AUGUSTI, AUCTORITAS PRINCIPIS, MANDATA PRINCIPUM.—For the legislative activity and legal policy of the individual emperors, see General Bibliography, Ch. VI.

Cagnat, *DS* 4; Lécrivain, *ibid.* (*s.v. principatus*); Baldon, *OCD*; O. Th. Schulz, *Wesen des röm. Kaisertums der ersten zwei Jahrhunderte*, 1916; Domaszewski, *Die Consulate der röm Kaiser*, *SbHeid* 1918, 6; Schönbauer, *ZSS* 47 (1927) 264; Gagé, *Rev. historique* 177 (1927) 264; E. Kornemann, *Doppelprinzipat und Reichsteilung*, 1930; L. R. Taylor, *The divinity of the R. Emperor*, 1931; H. Siber, *Zur Entwicklung der röm. Prinzipatsverfassung*, *ASächGW* 42 (1933), 44 (1940); A. Gwosdz, *Der Begriff des röm. P.*, Diss. Breslau, 1933; M. Hammond, *The Augustean Principate*, 1933; L. Berlinger, *Beiträge zur inoffiziellen Titulatur der röm. Kaiser*, 1935; Hohl, *Herm* 70 (1935) 350; F. De Martino, *Lo stato di Augusto*, 1936; Wagenvoort, *Philologus* 91 (1936) 206, 323; W. Weber, *Princeps*, 1936; S. Riccobono, Jr., *Augusto e il problema della nuova costituzione*, *AnPal* 15 (1934) 363; Arangio-Ruiz, *SDHI* 1 (1935) 196, 2 (1936) 466, 5 (1939) 570; A. v. Premerstein, *Wesen und Werden des Prinzipats*, *ABayAW* 1937; Sickle, *Changing bases of the R. imperial power*, *AntCl* 8 (1939) 153; Beranger, *L'hérédité du Principat*, *Rev. Et Lat* 17 (1939) 171; R. Syme, *The R. revolution*, 1939, 313; P. De Francisci, *Genesi e struttura del principato augusteo*, *Mem. Accad. d'Italia*, Ser. VII, 1941; idem, *Arcana imperii*, 3 (1948) 169; Kolbe, *Klio* 36 (1943) 22; Ensslin, *SbMünch* 1943, 6 Heft; Wickert, *Klio* 36 (1943) 1; De Laet, *AntCl* 14 (1945) 145; Schönbauer, *SbVien* 224, 2 (1946) 75; J. Magdelain, *Auctoritas principis*, Paris, 1947; Rogers, *TAmPhilolA* 78 (1947) 140; Dell'Oro, *SDHI* 13–14 (1947–1948) 316; F. De Visscher, *Nouvelles Etudes*, 1949, 3; Beranger, *Museum Helveticum* 5 (1949) 178; De Robertis, *RIDA* 4 (1950) 409.

Princeps. (Generally.) An outstanding personage, a chief, in civil or military service.

Princeps agentium in rebus. The chief of the AGENTES IN REBUS.—C. 12.21.

Giffard, *RHD* 14 (1935) 239.

Princeps centurio. See CENTURIO.

Princeps civitatis. A leading man in the state.

Princeps coloniae (municipii). Not an administrative official but an outstanding personage in a colony (*municipium*), usually an ex-magistrate of a higher rank.

Kornemann, *RE* 16, 626.

Princeps iuvenum (iuventutis). The title of the emperor's son when he put on the *toga virilis* and entered service in the cavalry. He was the head of the young men of equestrian rank.

Weinstock, *RE* 6A, 2184; Cagnat, *DS* 4; Balsdon, *OCD*.

Princeps (principes) legionis. Soldiers of the second line in the legion, older than the first line infantry men (*hastati*) and sent into combat after them. The commander of a centuria composed of *principes* also had the title *princeps (centurio)*.

Princeps legibus solutus. This principle stating that the emperor is above the law appears in Justinian's Digest as a general one. It is clear, however, that in the source (D. 1.3.31) from which it was taken the rule originally referred only to the exemption of the emperor from the restrictions imposed by the *Lex Iulia et Papia Poppaea*. Under the Principate the rule had the meaning that the emperor might abolish or change the laws as he pleased.—See LEX IULIA DE MARITANDIS ORDINIBUS.

De Francisci, *BIDR* 34 (1925) 321; Schulz, *Ennl. Hist. Rev.* 60 (1945) 155; A. Magdelain, *Auctoritas principis*, Paris, 1947, 109.

Princeps officii. See OFFICIUM PALATINUM. Any head of an administrative office, civil or military, used the title *princeps*, e.g., *princeps agentium in rebus*.—C. 12.57.

Marchi, *St Fadda* 5 (1906) 381; E. Stein, *ZSS* 41 (1920) 195.

Princeps scrinii. The head of an imperial bureau in the later Empire. The *principes scriniorum* were subject to the *magister officiorum*.

Princeps senatus. A distinguished, leading member of the senate. In the list of senators his name was at the head. Augustus and his successors assumed this Republican title.

O'Brien-Moore, *RE* Suppl. 6, 699.

Principales. (Noun.) In military service officers of a lower rank, technicians, musicians, etc., in the army. They were organized in associations (*collegia*).

Waltzing, *DE* 2, 367; Drake, *Univ. of Michigan Studies, Human. Ser.* 1 (1904) 261.

Principalis. (Adj.) Connected with, pertaining to, or originating from the emperor, as, e.g., *principalis constitutio, iussio, cognitio, beneficium.*

Principalis. (Adj.) First in place, degree, or importance, as opposed to another person or thing of minor or secondary importance. Thus *res principalis* (= the principal thing) is distinguished from ACCESSIO; *heres principalis* (= the principal heir) is opposed to the substituted heir (see SUBSTITUTIO).

Principalis. (Noun.) The highest official in the municipal administration or in a specific office. Syn. *princeps.*

Principatus. The high position of the emperor (see PRINCEPS); the highest rank in an office.

Principi placuit. See CONSTITUTIONES PRINCIPUM.

Principia. In military terminology the center of a military camp, the area about the tent of the commanding general (*praetorium*). In the *principia* were the tents of higher officers and commanders of minor units. There was also the place where the higher officers gathered to receive orders.

Lécrivain, *DS* 4, 640; Saglio, *DS* 1, 945.

Principium. The initial words of an interdictal formula. Some interdicts are denoted by their first words, as, e.g., *interdicta uti possidetis, utrubi, quorum bonorum, quam hereditatem.* In citations of texts of Justinian's legislation *principium* (= *pr.*) indicates the introductory passage of a text where numbered sections follow.

Prior. Prior in degree, rank, or time. Ant. *posterior. Lex prior* = an earlier law. *Prior heres* (syn. *principalis*) = an heir first instituted, before the heir substituted to him; see SUBSTITUTIO.

Prior. In the election of magistrates, when a candidate for a higher magistracy received a majority of the *centuriae* voting in the *comitia centuriata*, the voting was not continued further. The magistrate so elected was designated as *prior*, e.g., *prior (consul) factus est.*

Liebenam, *RE* 4, 693.

Prior tempore potior iure. "He who is first in time has a better (stronger) right" (C. 8.17.3). The rule refers to a thing pledged successively to several creditors by the same debtor. The creditor to whom the thing was pledged first had to be satisfied before those to whom the thing was pledged subsequently.—D. 20.4; C. 8.17.—See PIGNUS, HYPOTHECA, POTIOR IN PIGNORE.

A. Biscardi, *Il dogma della collisione*, 1935, 49; *idem, SDHI* 4 (1938) 484.

Priscus. Some jurists had the surname (*cognomen*) Priscus, among them Iavolenus and Neratius. Therefore, when a text appears under the name of Priscus, the authorship may be doubtful. The jurist Fulcinius (Priscus) enters also into consideration.

Berger, *RE* 16, 2549; 17, 1832.

Privatiani. Officials subordinate to the COMES RERUM PRIVATARUM.

Privatim. Privately, in a private capacity. Ant. *publice* = in public, publicly. The distinction is parallel to that between *publicus* and *privatus. Privatim* refers also to official acts of the praetor when, in exceptional cases, he performed them (as, for instance, manumissions) at home (*in villa*).—See DE PLANO, IN TRANSITU.

Privatus. (Noun.) A private person as opposed to a public official, a corporate body, the fisc, or a member of the military.—See UTILITAS PUBLICA.

Privatus. (Adj.) Connected with, or pertaining to, a private person. Ant. *publicus* = all that concerns the Roman people (*populus Romanus* = the state).—See RES FAMILIAE, RES PRIVATA CAESARIS, ACTIONES PRIVATAE, DELICTUM, UTILITAS, INTERDICTA PRIVATA, ITER PRIVATUM.

Privignus. A stepson, i.e., a son of one's wife by a former marriage or a son by concubinage. *Privigna* = a stepdaughter.

Privilegium. A legal enactment concerning a specific person or case and involving an exemption from common rules. Originally *privilegium* might indicate unfavorable treatment of the person involved. The Twelve Tables ordered that "privileges should not be imposed" (*privilegia ne inrroganto*). Later, however, the term assumed the meaning of an exceptional favor granted an individual or an indefinite number of persons, as, for instance, a certain category of creditors (called *privilegiarii*) to whom a better legal position was assigned than other creditors of the same debtor. There is a distinction between *privilegia causae* and *privilegium personae*, the first being connected with the matter itself, as with certain specific claims, the latter being attached to a person or a group of persons with regard to their profession or social position. Only the first were transferable to the heir of the privileged person. Privileged claims were, for instance, the claims of a ward against his guardian or curator, or the claim of a wife against her insolvent husband for the restitution of a dowry. Under the Empire *privilegium* is used sometimes as syn. with IUS SINGULARE.

Beauchet, *DS* 4; Anon., *NDI* 10; Legras, *NRHD* 32 (1908) 584, 650; Ramadier, *NRHD* 34 (1910) 549; E. Pais, *Ricerche sulla storia* 1 (1915) 401; R. Orestano, *Ius singulare e p., AnMac* 12–13 (1939) 5.

Privilegium exigendi. A right granted certain categories of creditors against an insolvent debtor under which they had to be satisfied before other creditors.

Orestano, *AnMac* 13 (1939) 24; S. Solazzi, *Il concorso dei creditori* 3 (1940) 132.

Privilegium fisci. See IUS FISCI.—C. 7.73; 10.1; 5; 9.

Privilegium fori. The privilege granted in the later Empire to ecclesiastical persons to have recourse to ecclesiastical jurisdiction.

Genestal, *NRHD* 32 (1908) 162.

Privilegium funerarium. The expenses for the funeral of an insolvent person had to be covered from

his property first, before the satisfying of the claims of his creditors.

Privilegium (privilegia) militum. The privileges of soldiers in the field of private law, as, for instance, their right to make a testament without observance of the forms prescribed for civilians.—See MILITES.

Pro. (Connected with the title of a high magistrate, *proconsul, propraetor, proquaestor,* or separately written *pro consule, pro praetore, pro quaestore.*) Originally indicated a magistrate who acted as a substitute for the magistrate involved. Under the Republic a pro-magistrate was either a former magistrate whose functioning was extended beyond the year of service for special reasons (see PROROGATIO) or an official who was temporarily appointed (not elected by the people) as a substitute for another magistrate. At the end of the Republic *proconsul* was the title of the governor of a province who had been previously a consul (or even only a praetor). Pro-magistracies became later dissociated from former service and were a separate type of office without regard to the fact whether or not the person holding it had been a consul or praetor.

Kübler, *RE* 14, 430; W. F. Jashemski, *The origin and history of the proconsular and propraetorian imperium*, Chicago, 1950.

Pro. (In connection with possession as a title, *iusta causa,* for usucaption; see USUCAPIO.) There were various titles which led to usucaption when the holder of a thing erroneously, but in good faith, assumed he was entitled to keep it as his. Thus the title *pro emptore possidere* means that one held a thing which he acquired by purchase; *pro legato* was used when one received a thing in fulfillment of a legacy; *pro donato,* when one received a thing as a gift from a non-owner; *pro dote,* when a husband received a thing in a dowry; *pro soluto,* when a thing was given in fulfillment of an obligation; *pro derelicto* when one took a thing abandoned by a person whom he considered the owner. In all these cases the holder (*possessor*) of the thing was regarded as *possessor pro suo* since he possessed it in the belief that he was its owner whereas in actual fact, he was not the owner because the transferor himself (the seller, the donor, etc.) had not been the owner or the legacy or donation were invalid.—D. 41.4–10.—See TRADITIO, USUCAPIO, POSSESSIO, POSSESSOR PRO HERede, POSSESSOR PRO POSSESSORE.

Banmate, *RIDA* 1 (1948) 27 (for *pro legato*).

Pro herede gerere (gestio). To act intentionally as an heir (to use the deceased man's property, to sell or to lease things belonging to the estate, to pay the debts of the deceased, to sue another with *hereditatis petitio,* and the like). Such doings were considered as an acceptance of the *hereditas* and had the legal consequences of an ADITIO HEREDITATIS in cases in which an explicit declaration of acceptance of the heir was required, i.e., when the heir was an outside heir (see HERES EXTRANEUS, VOLUNTARIUS). When a *heres suus* or *heres suus et necessarius* acted in the way mentioned, his doings were qualified as *se immiscere* (*miscere*) *hereditati* and resulted in his losing the right to refuse the inheritance (*ius abstinendi,* see ABSTINERE SE HEREDITATE). In order to avoid such consequences the person so acting could declare before witnesses (*testatio*) that his acts did not imply the acceptance of the inheritance.

Berger, *RE* 9, 1108 (*s.v. immiscere*); Sanfilippo, *AnCat* 2 (1947–48) 166.

Pro herede usucapio. See USUCAPIO PRO HEREDE.

Pro nihilo esse (haberi). To be (considered) legally void.

Hellmann. *ZSS* 23 (1902) 426.

Pro socio actio. See SOCIETAS.

Pro tribunali. In front of the TRIBUNAL, in court. Ant. *de plano, in transitu.*

Düll, *ZSS* 52 (1932) 174.

Pro tutore gerere. To act as if a guardian. "One acts as if a guardian (*tutor*) when he fulfills the duties of a guardian in the ward's affairs, no matter whether he does so in the belief that he is the guardian or he knows that he is not, but falsely pretends to be the guardian" (D. 27.5.1.1). He could be sued by *actio protutelae* for damages caused during his acting.—D. 27.5; 6; C. 5.45.—See FALSUS TUTOR, ACTIO PROTUTELAE.

Sachers, *RE* 7A, 1525, 1585.

Probare. To approve. The term is used to indicate the approval of one jurist's opinion by another jurist. Syn. *adprobare.*

Probare. In court or extrajudicially, to prove, to ascertain through evidence.—See ONUS PROBANDI, PROBATIO.

Probare opus. In connection with a *locatio conductio operis faciendi,* see ADPROBARE.

Samter, *ZSS* 26 (1905) 125.

Probatio. Proof, evidence, the act of proving. In civil trials there was the rule: *ei incumbit probatio qui dicit, non qui negat* (he who affirms has to prove, not he who denies, D. 22.3.2). The plaintiff therefore, has to prove the facts on which his claim is founded, the defendant those facts which serve as a basis for his denial of the plaintiff's claim or for his exception opposed thereto. Each party has free choice of the means of evidence he wishes to offer. In the classical law the value of the various means of evidence (documents, witnesses) was equal and the judge had full liberty in the evaluation of the proofs presented. In postclassical and Justinian's law the tendency prevailed to give preference to written evidence and to debase that of a witness, if not to declare a testimony of the latter in certain cases insufficient. Under the influence of Christianity the oath became more and more predominant as a means of evidence.—D. 22.3; C. 4.19.—See ONUS PROBANDI, TESTIS, INSTRUMENTUM.

Riccobono. *ZSS* 34 (1913) 231; De Sarlo, *AG* 114 (1935) 184; Tozzi, *Riv. dir processuale civile*, 17 (1940) 125, 212; M. Lemosse, *Cognitio*, 1944, 233; J. P. Levy, *La formation de la theorie des preuves, St Solazzi* 1948, 418; Levy, *Iura* 3 (1952) 155.

Probatio annicuii causae. See CAUSAE PROBATIO.

Probatio erroris causae. See CAUSAE PROBATIO.

Probatio operis. See ADPROBARE, PROBARE, LOCATIO CONDUCTIO OPERIS FACIENDI.

Probationes apertissimae, evidentissimae, manifestissimae. The most evident conclusive proofs. Terms frequently used by Justinian and his compilers, primarily with reference to proofs concerning the interpretation of wills.

Probatores. Approvers, professional experts who approved of a work done by a contractor.

Probitas (probus). Honesty (honest).

Probatoria. In the later Empire = an imperial decree by which an official of the imperial administration was appointed.—C. 12.59.

Procedere. To occur, to take place. *Quod ita procedit, si* (= this occurs if) is a favorite phrase of Justinian's compilers which they used to restrict a legal principle previously expressed.

Guerneri-Citati, *Indice*[2] (1927) 50 (*s.v. ita*).

Probus (Valerius Probus). See NOTAE IURIS.

Proceres. The highest officials in the service of the later emperors.

Procheiros nomos. A succinct official compilation of laws (similar to the ECLOGE) based primarily on Justinian's codification and published under the emperor Basile Macedo about A.D. 879. A revised edition, enriched by additions from the later legislation and called *Prochiron Auctum* was made four centuries later, about 1300.

Anon., *NDI* 10, 643; Editions: Zachariae v. Lingenthal, *P.N.*, 1837; *idem, Jus Graeco-Romanum* 6 (1870); J. and P. Zepos. *Jus Graeco-Romanum* 2 (Athens, 1931) 3, 107 (Bibl. p. XII); E. H. Freshfield. *A manual of Eastern R. law. P.N.*, Cambridge. 1928; *idem, A provincial manual of later R. law, the Calabrian Procheiron*, 1931; F. Brandileone and V. Pusitoni. *Prochiron legum, pubblicato secondo il Cod. Vat. Gr. 845. Fonti per la storia d'Italia*, 1895.

Procinctus. The army in fighting order.—See IN PROCINCTU.

Proclamare (proclamatio) ad (in) libertatem. To assert and defend one's liberty. Syn. *in libertatem adserere.*—See ADSERTIO, CAUSA LIBERALIS.—D. 40.13; C. 7.18.

Lécrivain, *DS* 4; M. Nicolau, *Causa liberalis*, 1933, 105.

Proconsul (pro consule). Ex-consuls and ex-praetors (*pro praetore*) whose magisterial power, *imperium* (not the consulship or praetorship itself), was prolonged (see PROROGATIO IMPERII), were entrusted with the administration of provinces. The titles *proconsul* and *propraetor* later were applied even when a certain time elapsed between leaving the office in Rome and embarking on the administration of a province. The provinces ruled by the senate were either *consulares* (as Asia and Africa) when the rank requested for the governor was that of an ex-consul, or *praetoriae* when they were governed by an ex-praetor. The *imperium* of a proconsul (*imperium proconsulare*) comprised jurisdiction, civil and criminal, and the general administration of the province. —D. 1.16; C. 1.35.—See PRO, PROVINCIA, LEGATI PROCONSULIS, IURISDICTIO MANDATA.

Chapot. *DS* 4; Severini, *NDI* 10; De Ruggiero, *DE* 2, 855; Siber, *ZSS* 64 (1944) 233; W. F. Jashemski, *The origins and history of the proconsular and propraetorian imperium to 27 B.C.*, Chicago, 1950.

Proconsularis. Connected with, or pertaining to, the office of a proconsul (*imperium, insignia*).—See PROCONSUL.

Proconsulatus. The office of a proconsul as a governor of a senatorial province.

Procreare (procreatio). See LIBERORUM QUAERENDORUM CAUSA.

Procul dubio. Beyond any doubt. The locution is frequently used by Justinian's compilers to stress the certainty of a legal norm whether of classical or later origin.

Guarneri-Citati, *Indice*[2] (1927) 32.

Proculiani. See SABINIANI.

Proculus. A jurist and law teacher of the middle of the first century after Christ. He is known more from citations by other jurists than by works of his own, of which only his *Epistulae* are certain. They were highly estimated by later jurists. Proculus was the head of the so-called Proculian group (*Proculiani*).—See SABINIANI.

Berger, *BIDR* 44 (1937) 120.

Procurare (procuratio). To manage another's affairs, to act for another as his representative in a civil trial. *Procuratio* refers also to the office of a *procurator* in administrative law.—See the following items.

Procurator. (In a civil trial.) A representative of the plaintiff or of the defendant. See COGNITOR. He was informally appointed by his mandator, without notification necessarily being given to the adversary. Even a person without a mandate of the party or in his absence could be admitted to represent him in a trial and to defend his interests. Such a voluntary representative (*negotiorum gestor*), however, had to offer guaranty that his principal (*dominus negotii*) would approve of what he as the latter's *procurator* has done in the course of the trial; see CAUTIO DE RATO. When such a *procurator* appeared before court for the defendant, he had to offer the *cautio iudicatum solvi*; see IUDICATUM. In the later development, the procurator in a process, acting under a mandate of his principal was assimilated to the former *cognitor*; the *procurator* became the only representative of a party to a trial and the term *cognitor* was completely eliminated from the classical sources accepted into Justinian's compilation.—D. 3.3; C. 2.12.—See CAU-

TIO AMPLIUS NON AGI, DOMINUS LITIS, PROCURATOR AD LITEM, INTERVENIRE, NEGOTIORUM GESTIO.

F. Eisele, *Cognitur und Procuratur*, 1882; Heumann-Seckel, *Handlexikon*[9] (1907) 463 (*s.v. procurator*); Orestano, *NDI* 10, 1092; Solazzi, *ANap* 58 (1937) 19, 62 (1948) 3; *idem*, *BIDR* 49–50 (1947) 338; Arangio-Ruiz, *Il mandato*, 1949, 12.

Procurator. (In private law.) "One who administers another's affairs under his authorization (*mandatu*)" (D. 3.3.1 pr.). Wealthy people used to have a general manager (*administrator*) of their property, a *procurator omnium bonorum*, whose activity for his principal was practically unlimited (alienations were excluded), unless specific restrictions were imposed on him concerning certain kinds of transactions. He was designated as a general agent *ad res administrandas datus* (= appointed for the administration of the property). Normally such an agent was a freedman (sometimes even a slave). Procuratorship was distinguished from MANDATUM (in a technical sense) which referred to an authorization to perform a certain act whereas the *procurator omnium bonorum* acted either under a general authorization or, at times, as a *negotiorum gestor* and for an absent principal. The *procurator unius rei* (= for one affair) is a later creation.—Inst. 4.10; D. 3.3; C. 2.12; 48.—See ADSTIPULARI, MANDATUM, NEGOTIORUM GESTIO.

Bouché-Leclercq, *DS* 4; G. Le Bras, *L'évolution du procurateur*, Thèse Paris, 1922; Donatuti, *AnPer* 36 (1922); *idem*, *AG* 89 (1923) 190; Solazzi, *RendLomb* 56 (1923) 142, 735; 57 (1924) 302; *idem*, *Aeg* 5 (1924) 3; Bonfante, *Scritti* 3 (1926) 250; B. Frese, *Procuratur u. negotiorum gestio*, *Mél Cornil* 1 (1926) 327; *idem*, *St Bonfante* 4 (1931) 400; *idem*, *St Riccobono* 4 (1936) 399; De Robertis, *AnBari* 8 (1935); F. Serrao, *Il procurator*, 1947 (Bibl.); Düll, *ZSS* 67 (1950) 168; Dumont, *Un nouvel aspect du procurator*, Bourges, 1949; Rouxel, *Annales de la Faculté droit Bordeaux, Sér. juridique* 3 (1952) 94.

Procurator (procuratores). (In the imperial administration.) Augustus was the first to appoint *procuratores* as officials of the administration. He entrusted them with the management of the imperial property. With the increase of the imperial patrimony, the exploitation of the provinces for the imperial purse, and the introduction of new taxes and sources of income, *procuratores* were put at the head of all branches of the administration, even those which were not directly connected with the emperor's property. Thus, beside the *procuratores Augusti* (*procuratores* in service of the emperor) there were *procuratores* active in the interest of the state. Moreover, some offices which in the past were covered by officials with the title of *curatores* or *magistri*, were later granted the official title of *procurator*. Many *procuratores* were originally freedmen, but, from the time of Hadrian on, only persons of equestrian rank were appointed as *procurator*. Most of the procuratorial offices were concerned with the financial administration; there were, however, various *procuratores* with a different and limited competence. The *procurator* received a salary and four categories were distinguished according to the amount of their salary; see CENTENARIUS, DUCENARIUS. The highest salary was 300,000 sesterces (*trecenarius*), the lowest was 60,000 (*sexagenarius*). *Procuratores* were used in the imperial household, chancery, and in special capacities in Rome, in the administration of the fisc in imperial provinces, for the management of specific taxes and revenues, etc., and finally as governors of certain provinces, primarily on the boundaries of the Empire. The more important procuratorships are mentioned among the following items.—See LEX MANCIANA.

Cagnat, *DS* 4; Orestano, *NDI* 10; Mattingly, *OCD*; Horovitz, *Rev. Belge de philologie et d'hist.* 17 (1938) 53, 775; *idem*, *Rev. de philol.* 13 (1939) 47, 218; Besnier, *Rev. Belge de philol. et d'hist.* 28 (1950) 440; H. G. Pflaum, *Essai sur les procurateurs equestres sous le Haut Empire*, 1950.—A list of imperial *procuratores* who occur in inscriptions in Dessau, *Inscr. Lat. sel.* 3, 1 (1914) 408, 426.

Procurator a censibus. See A CENSIBUS.

Oliver, *Amer. Jour. Philol.* 67 (1946) 311.

Procurator a rationibus. A later title of the chief of the central financial administration, previously called A RATIONIBUS.

Rostowzew, *DE* 3, 133.

Procurator absentis. A person who assumed the defense of the interests of a party to a trial in his absence (with or without his authorization). He was obliged to give the pertinent guaranties; see PROCURATOR in a civil trial. Ant. *procurator praesentis*.

Procurator ad annonam Ostiis. A grain controller, stationed in Ostia.

Procurator ad litem. See PROCURATOR in a civil trial.

Solazzi, *ANap* 62 (1948).

Procurator apud acta. A representative in a litigation who was appointed by his principal through a declaration made in the office of a magistrate. An official record was made of the appointment.

Procurator aquarum. An official instituted by the Emperor Claudius for the administration of the water installations and water supply in Rome.

De Ruggiero, *DE* 1, 551.

Procurator Augusti. A procurator appointed by the emperor as his representative in administrative functions, primarily in financial matters, but sometimes also in military affairs.—D. 1.19.

Sherwin-White, *Papers of the Brit. School at Rome* 15 (1939) 11.

Procurator bibliothecarum. The supervisor of the administration of public libraries in Rome (from the time of Claudius). The director of a particular library = *procurator bibliothecae*.

Dziatzko, *RE* 3, 422; De Ruggiero, *DE* 1, 1003.

Procurator Caesaris. See PROCURATOR AUGUSTI, RATIONALIS.—D. 1.19.

Procurator castrensis. See CASTRENSIS.

Procurator falsus. See FALSUS PROCURATOR.

Procurator ferrariarum. An imperial *procurator* appointed for the administration of iron mines.
De Ruggiero, *DE* 3, 63.

Procurator gynaecii. An imperial official appointed for the management of an imperial garment factory.
—C. 11.8.
A. W. Persson, *Staat und Manufaktur im röm. Reiche*, Lund, 1923, 70.

Procurator hereditatium. A *procurator* concerned with the fiscal revenues from inheritance taxes and estates which were taken by the fisc or were left to the emperor by private persons.—See VICESIMA HEREDITATIS, BONA VACANTIA, CADUCA.
De Ruggiero, *DE* 3, 734.

Procurator in rem suam. A fictitious representative.
—See COGNITOR IN REM SUAM, CESSIO.

Procurator metallorum. An imperial delegate appointed for the administration of mines. His official titles is sometimes more specified, as, for instance, *procurator argentariarum* (silver mines), *procurator ferrariarum* (iron mines), *procurator marmorum* (marble quarries). His activity is referred to by the word *cura*, the mines being *sub cura procuratoris*.
—C. 11.7.—See LEX METALLI VIPASCENSIS.
Cuq, *NRHD* 32 (1908) 668; U. Täckholm, *Bergbau in der röm. Kaiserzeit*, Uppsala, 1937, 101; 117; 148.

Procurator monetae. See TRESVIRI MONETALES.

Procurator omnium bonorum (rerum). A person who administers another's property as his representative (agent).—See PROCURATOR.
Arangio-Ruiz, *Il mandato*, 1949, 8, 49; Düll, *ZSS* 67 (1950) 170; A. Burdese, *Autorizzazione ad alienare*, 1950, 26.

Procurator operum publicorum. At the end of the second century after Christ an imperial superintendent of public buildings was instituted. He replaced the former *curator operum publicorum*.—See OPERA PUBLICA, CURATORES.

Procurator patrimonii (Caesaris). The administrator of the PATRIMONIUM CAESARIS. Originally his functions embraced also the RES PRIVATA of the emperor, but from the time of Septimius Severus the private property of the emperor was administered by a *procurator rei privatae*.

Procurator praediorum fiscalium. See PRAEDIA FISCALIA.

Procurator praesentis. A *procurator* in a civil trial acting in the presence of the party whom he represents. Ant. *procurator absentis*.

Procurator rationis privatae. See PROCURATOR REI PRIVATAE.

Procurator regionum urbis Romae. See REGIONES URBIS ROMAE, CAESARIS.

Procurator rei privatae. The administrator of the emperor's private property. This high ranking official had also the title *procurator rationis privatae* or, in the provinces, *magister rei privatae*. From the time of Constantine his official title was *rationalis*, and later, *comes rerum privatarum*.—See RES PRIVATA, RATIONALIS, PROCURATOR PATRIMONII.

Procurator summarum rationum. A deputy administrator of fiscal matters, subordinate to the *procurator a rationibus*.

Procurator unius rei. An agent of a private person instituted for the management of one specific affair. The institution is probably a later creation.—See PROCURATOR (in private law).
Frese, *Mél Cornil* 1 (1926) 327; E. Albertario, *Studi* 3 (1936) 495; V. Arangio-Ruiz, *Il mandato*, 1949, 17.

Procuratores. (In the imperial chancery.) The chiefs of the various divisions in the imperial chancery (*ab epistulis, a cognitionibus, a memoria, a studiis, a libellis*) received in the later Principate the title *procuratores*.

Prodere instrumenta. To deliver documents which one received from another in deposit (e.g., an agent, *procurator*, from his principal), secretly to the adversary of the depositor, against the interest of the latter. The wrongdoer was punished for *crimen falsi* (see FALSUM).

Prodere interregem. To designate an *interrex* when both consulships became vacant. The first *interrex* was appointed by the senate; after five days of *interregnum*, he himself designated his successor in office for the next five days, and so did his successors until new consuls were elected.—See INTERREGNUM, INTERREX.
Liebenam, *RE* 9, 1716; O'Brien-Moore, *RE* Suppl. 6, 676.

Prodigium. See MONSTRUM.

Prodigus. A spendthrift. According to Justinian's definition (D. 27.10.1 pr.) a *prodigus* is "one who does not regard time or limit in his expenditures, but lavishes (*profundere*) his property by dissipating and squandering it." After he was interdicted from the administration of his affairs, the *prodigus* was not able to make a last will. However, a testament made before remained valid.—D. 27.10; C. 5.70.—See CURATOR PRODIGI, INTERDICERE BONIS.
Beauchet, *DS* 4: A. Audibert, *NRHD* 14 (1890) 521; *idem, Et. sur l'histoire du dr. r. I. La folie et la prodigalité*, 1892, 79; I. Pfaff, *Zur Gesch. der Prodigalitätserklärung*, 1911; F. De Visscher, *Et. de dr. rom.* 1931, 21; Collinet, *Mél Cornil* 1 (1926) 149; Solazzi, *St Bonfante* 1 (1930) 47; Kaser, *St Arangio-Ruiz* 2 (1952) 152.

Proditio. High treason, in particular the delivery of Roman territory or of a Roman soldier or citizen to the enemy. See PRODITOR.—*Proditio* is also the denunciation of a crime to the authorities.—See MAIESTAS, PERDUELLIO.
C. Brecht, *Perduellio*, 1938, 91; 191.

Proditor. A traitor, a denouncer. A military *proditor* was an *explorator* (= a soldier assigned to the reconnoitering service) who betrayed military secrets to the enemy. He was punished with death. Syn. *renuntiator*.

Proditus. (From *prodere*.) Originating from, introduced by (a statute or a praetor in his jurisdictional capacity, as, e.g., an action or exception).

Profanum. A profane thing. Ant. *sacrum*; see RES SACRAE. *Profanus locus* is the ant. of *religiosus locus*. See RES RELIGIOSAE. A place in which a dead person was buried temporarily, merely to be transferred later into a grave remained *locus profanus*.

Profecticius. See DOS PROFECTICIA, PECULIUM ADVENTICIUM.

Proferre. To produce a document (a testament) in court, to present witnesses (*testimonia, testes*); to produce in public.

Proferre diem. To prolong, to defer (the term of a payment).

Proferre sententiam. To pronounce a judgment in a trial. Hence *sententia prolata* = a judgment pronounced by a judge.

Professio. (From *profiteri*.) A declaration (return) made before an official authority (*apud magistratum, apud acta* = for the records). The *professiones* concerned different matters, primarily personal connotations of a person (such as age, liberty, family status), the birth of children, and the like. The *professiones* could be made personally by the individuals involved, by a representative of an absent person or by a guardian for persons under guardianship.—See the following items.

Cuq, *DS* 4; Elmore, *JRS* 5 (1915) 125; Reid, *ibid.* 207.

Professio. Candidates for a magistracy had to declare their willingness to compete for a certain magistracy before the magistrate who convened the popular assembly and later presided over the particular election (consul, praetor, plebeian tribune). A statute of the late Republic required a personal appearance on the part of the candidate before the competent magistrate, who in case of acceptance, put the candidate's name on the list to be announced in public before the election. The magistrate had the power to refuse a candidate's admission, if the latter seemed to him ineligible for a specific reason.—See CANDIDATUS, MAGISTRATUS.

Brassloff, *RE* 4, 1697.

Professio censualis. A declaration concerning his family and property made by a citizen before the censors during the CENSUS. These *professiones* served military and taxation purposes. Under the Empire a perfected census system was set up by the imperial bureaucratic machinery. Fraudulent returns were severely punished.

Schwahn, *RE* 7A, 55; Cuq, *DS* 4, 674.

Professio frumentaria. A return made by persons who requested the admission to the list of those who received gratuitous distribution of corn.—See FRUMENTATIO.

Mitteis, *ZSS* 33 (1912) 171; Elmore, *JRS* 5 (1915) 125; Gittardy, *Clas Quarterly* 11 (1915) 27; v. Premerstein, *ZSS* 43 (1922) 59.

Professio liberorum (natorum). A declaration made before competent authority by the father (mother or grandfather) concerning a new-born child. These returns served as the basis for entries into an official register of births of legitimate children of Roman citizens. The registration was ordered by Augustus.

Cuq, *DS* 4, 675; *idem*, *Mél Fournier* 1929, 119; F. Lanfranchi, *Ricerche sul valore giuridico delle dichiarazioni di nascita*, 1942; Weiss, *BIDR* 51/52 (1948) 317; Schulz, *JRS* 32–33 (1942, 1943) = *BIDR* 55–56, *Post-Bellum*, 1951, 70); Montevecchi, *Aeg* 28 (1948) 129.

Professor. Syn. *magister, antecessor. Professores iuris civilis* = law teachers. Teaching law (*civilis sapientia*) "should not be estimated nor dishonored by a price in money," since "the wisdom of law is a very sacred thing (*civilis sapientia est res sanctissima*," D. 50.13.1.5).—C. 10.53; 12.15.—See MAGISTER, ANTECESSOR, HONORARIUM.

Proficere. To be useful. *Proficit* is said when a legal transaction or act serves the purpose for which it was done. Ant. *non proficere* = to be of no legal effect (use).

Proficisci (a, ab, ex). To originate, to arise from (e.g., the praetorian edict, praetorian jurisdiction, a testament).

Profiteri. See PROFESSIO.

Profundere bona. To dissipate one's property.—See PRODIGUS.

Progenies. Descendants. The term occurs only in imperial constitutions.

Programma. A proclamation, a manifesto of the emperor or of a provincial governor. When addressed to a private person, the term denotes an edictal (public) summons of an absent person.—C. 7.57.

F. v. Schwind, *Zur Frage der Publikation*, 1940, 114.

Prohibere. To prohibit, to forbid. The term is used of prohibitions issued in certain situations by a private individual (e.g., by a co-owner or a neighbor) and of prohibitive orders of a magistrate or of a statute. See IUS PROHIBENDI, COMMUNIO, ACTIO PROHIBITORIA, INTERDICTUM, OPERIS NOVI NUNTIATIO, IUS AEDIFICANDI. With reference to criminal offenses *prohibere* = to impede, to prevent. Generally no one is bound to intervene in order to prevent a crime except when the crime is directed against the state or in certain specified cases, such as counterfeit of coins, abduction, or murder of a near relative. In such cases one had to prevent the wrongdoer from committing the crime if he could do it (*cum prohibere potuit*); otherwise he risked being treated as the criminal's accessory.—See FURTUM PROHIBITUM.

Honig, *Fschr Heilfron* 1930, 63.

Prohibitorius. See ACTIO PROHIBITORIA, INTERDICTA PROHIBITORIA.

Projectio (projectum). A part of a building projecting over a neighbor's property. The construction of a *projectio* could be prohibited by the neighbor.—See PROTECTUM, OPERIS NOVI NUNTIATIO.

Proinde. See PERINDE.

Proles. Syn. with PROGENIES.

Proletarii. Men without property. Originally the term was applied to persons not registered in the classes of the centuriate organization (see CENTURIA) because they had not even the minimum property required for the lowest class. Their sole possession was their children, *proles*; hence the name. The *proletarii* were the poorest stratum of the population. Ant. *classici* = those registered in the first class according to their property, see CLASSICUS.—See ADSIDUI, CAPITE CENSI.

Lécrivain, *DS* 4; Gabba, *Ath* 27 (1949) 175; *idem*, *Riv. di filologia classica* 1949, 173.

Prolytae. Fifth-year students in the Eastern law schools.—See LYTAE.

Promercium. See COMMERCIUM.

Promiscua condicio. See CONDICIO MIXTA.

Promissio, promissum. (From *promittere*.) A promise which created an obligation on the part of the promissor. It is a general term applied to both contractual and unilaterally assumed obligations, to written and oral, formal and formless promises. But the specific application of the term is to obligations arising from a STIPULATIO, either by the principal debtor or by a surety.—See REUS PROMITTENDI, ADPROMISSIO, CAUTIO. In Justinian's legislative work the terms *promittere* and *promissio* were substituted for obligations which in earlier law had to be contracted through *stipulatio*.

Promissio dotis. The constitution of a dowry by a formless promise. It replaced both the formal DICTIO DOTIS and the *stipulatio dotis* in later times and was substituted therefor in classical texts by Justinian's compilers.—C. 5.11.—See POLLICITATIO DOTIS.

Promissio operarum. See IURATA PROMISSIO LIBERTI.

Promissio post mortem. See OBLIGATIO POST MORTEM.

Promittere. See PROMISSIO.

Promovere (promotio). To confer a higher rank or an honorific title on an imperial official. The term occurs only in imperial constitutions.

Promulgare (promulgatio). To publish, to promulgate a law. In the Republic, the text of a bill submitted to a popular assembly was promulgated in the form of an edict by which the magistrate who proposed the law publicly announced its text. Alterations were not permitted. Between the *promulgatio* and the gathering of the assembly convoked for the purpose a lapse of time called *trinundinum* (presumably twenty-four days) was obligatory.—See PP.

G. Rotondi, *Leges publicae populi Romani*, 1912, 123; v. Schwind, *Zur Frage der Publikation*, 1940.

Pronepos (proneptis). A great-grandson (a great-granddaughter).—See NEPOS.

Pronuntiare (pronuntiatio). General terms for legally important pronouncements (declarations) made by officials, and on rare occasions by private persons. With reference to judicial trials (primarily civil), the terms are used of declarations by both the magistrate and the judge in the bipartite procedure as well as by the jurisdictional magistrate in the *cognitio extra ordinem*. *Pronuntiare secundum actorem* (*reum*) = to pass a judgment in favor of the claimant (the defendant); *pronuntiare adversus* (or *contra*) *actorem* (*reum*) = to pass a judgment against the plaintiff (the defendant). *Pronuntiatio* is often used of a judicial decision concerning the status of a free man or slave, the validity of a testament or marriage, etc. In so-called ACTIONES ARBITRARIAE and in the procedure before the emperor (in either the first or the appellate instance) *pronuntiatio* is used in the sense of an interlocutory decision.—See SENTENTIA, ARBITER EX COMPROMISSO, SENTENTIAM DICERE (PRONUNTIARE).

G. Beseler, *Beiträge zur Kritik* 2 (1911) 139, 3 (1913) 3; E. Betti, *L'antitesi di iudicare (p.) e damnare nello svolgimento del processo rom.*, 1913; M. Wlassak, *Judikationsbefehl*, *SbWien* 197, 4 (1921) 77; Siber, *ZSS* 65 (1947) 3.

Pronuntiatio sententiarum. In the senate the announcement by the presiding magistrate of opinions expressed by individual senators on a topic on which a vote was to be taken.

O'Brien-Moore, *RE* Suppl. 6, 715.

Prope (propius) est. It is proper, adequate, easy to understand. The locution is frequent in the juristic language.

Propinqui (propinquitas). Near relatives, neighbors.—See CONCILIUM PROPINQUORUM.

Proponere. To submit a case (*proposita species*, *quaestio*) to a jurist for an opinion. The respondent jurist gave his view on the basis of the facts as alleged by the questioning party (*propositum*, *in proposito*). Some jurists, therefore, used to give their opinion with the reservation, "according to what has been alleged," or with a clause excluding or restricting a certain decision (*nihil proponi cur . . .* = nothing has been alleged as to why or why not . . .).

Proponere (propositio). (With regard to magisterial edicts and imperial enactments.) To expose to public view. From the time of Hadrian, imperial rescripts could be made public by *propositio*.—See PROSCRIBERE LEGEM, PP.

F. v. Schwind, *Zur Frage der Publikation*, 1940, 167.

Proponere actionem (interdictum). To announce in the praetorian Edict an action and its formula or an interdict to be granted in specific circumstances by the praetor acting in his jurisdictional capacity.

Propositio (propositum). A case presented for a juristic opinion.—See PROPONERE.

Propositum. A poster.—See HORREARIUS, PROPONERE.

Propositum. Intention. The term is used with reference to good or (more frequently) to evil intention (e.g., to commit a crime, to steal).—See IMPETUS.

Propositus. E.g., *proposita causa*, species.—See PROPONERE.

Propraetor (pro praetore). An ex-praetor as a governor of a senatorial province (*provincia praetoria*); a praetor whose term was prolonged for exceptional reasons on advice of the senate.—See PRO, PROROGATIO IMPERII, LEGATI PROCONSULIS, LEGATI PRO PRAETORE, PROCONSUL.

Lécrivain, *DS* 4; W. F. Jashemski, *Origins and history of the proconsular and propraetorian imperium*, Chicago, 1950.

Proprietarius. See DOMINUS PROPRIETATIS.

Proprietas. Ownership. Syn. DOMINIUM.—See NUDA PROPRIETAS, DOMINUS PROPRIETATIS.

Proprio (suo) nomine. (E.g., *agere.*) To act, to sue on one's own behalf. Ant. ALIENO NOMINE.

Proprius. Belonging to a certain person as his own. Ant. *alienus, communis.* With regard to *iurisdictio propria*, the ant. is *iurisdictio mandata, delegata.*

Propter. See DONATIO PROPTER NUPTIAS.

Proquiritare legem. The announcement of the vote on a proposed statute passed by a popular assembly.

Weiss, *Glotta* 12 (1923) 83.

Prorogare (prorogatio). To postpone, to defer, to prorogue (e.g., the date a payment is due, a contractual relation); sometimes *prorogare* = to pay in advance.

Prorogatio imperii. The prolongation of the magisterial *imperium* of a high magistrate (consul, praetor) as a *pro consule* or *pro praetore* beyond the end of his year of office. The *prorogatio* applied either to his last post or to taking a governorship in a province.—See PRO, PROCONSUL, PROPRAETOR.

Proscribere (proscriptio). To announce publicly (*palam*) by a poster, easily accessible to the public, containing information which concerned a larger number of people, for instance, the appointment of an *institor* in a business.

Proscribere bona (proscriptio bonorum). To announce publicly that the property of a person (e.g., of a bankrupt debtor) will be sold by auction. During the period of *proscriptio* (normally thirty days in the case of bankruptcy, fifteen days when an inheritance was involved), creditors had the opportunity to join in the proceedings which led to the sale of the bankrupt estate. See MISSIO IN POSSESSIONEM REI SERVANDAE CAUSA.—*Proscribere bona* is also used of the confiscation of a private person's property by the state. See PUBLICATIO BONORUM. For *proscribere bona* in the praetorian Edict, see MISSIONES IN POSSESSIONEM.—C. 9.49.

S. Solazzi, *Concorso dei creditori* 1 (1937) 171; S. v. Bolla, *Aus röm. und bürgerl. Recht*, 1950, 25.

Proscribere legem. To make a statute public. The text was written on boards publicly displayed in the forum so that "it could be plainly read from level ground" (*de plano*, D. 14.3.11.3).—See PROPONERE.

F. v. Schwind, *Zur Frage der Publikation*, 1940, 26.

Proscriptio. (In public law.) Inscribing the name of a person upon a list of outlaws. Simultaneously, a reward was offered for his head. The ill-famed proscriptions by the dictator Sulla were ordered by the *Lex Cornelia de proscriptione* (82 B.C.). In later imperial constitutions *proscripti* (*proscriptio*) is used of persons sent into exile.—C. 9.49.

Humbert, *DS* 4.

Proscriptio albi. Listing a person in the publicly exposed ALBUM DECURIONUM. Entry in the list without a preceding election is without any legal effect.

Proscriptio bonorum. See PROSCRIBERE BONA.

Proscriptio debitorum. Making public the names of insolvent debtors through an inscription on a wall or on a column in a public place. The publication was by the creditors.

Weiss, *RIDA* 3 (1950) 501.

Proscriptio locationis. An advertisement, through an inscription on a building, of an apartment to rent under conditions specified in the notice.

Arangio-Ruiz, *FIR* 3 (1943) 453; Maiuri, *La parola del passato* 3 (1948) 153.

Prosecutor annonae. An agent appointed for the transportation of food supplies for the army. His duty was a liturgy (*munus*) and entailed responsibility for the safety of the goods convoyed. The term *prosecutor* was also used of escorts conveying (*prosecutio*) arrested persons or gold belonging to the state (*prosecutor auri publici*), C. 10.74.

Prosecutoria. (*Sc. epistula.*) An imperial letter of commendation.

Prospectus. See SERVITUS NE PROSPECTUI OFFICIATUR.

Prospicere. To foresee, to provide beforehand, to take precautions. The term refers both to precautionary measures introduced by the praetor in his edict in order to prevent illegal or harmful acts, and to those taken by private persons through such legal remedies as *cautio* or *satisdatio* in order to be saved from eventual losses that might result from a transaction concluded.

Prostituere. To prostitute. If a female slave (*ancilla*) was sold under the condition that she should not be delivered to prostitution (*ne prostituatur*) by her new master, a clause was usually added that in the case of a breach she would be free. In such an event she became a freedwoman of the vendor. Under the later imperial legislation, a slave became free if her master forced her into prostitution.—C. 4.56.

W. Buckland, *The R. law of slavery*, 1908, 70; 603.

Protectores. In the later Empire an infantry unit for the protection of the emperor, his family and the imperial palace. They accompanied the emperor in public ceremonies. The term *protectores domestici* refers to cavalrymen in the entourage of the emperor.—C. 12.17.—See DOMESTICI.

Besnier, *DS* 4; Braschi, *DE* 2, 1938; Babut, *Recherches sur la garde impériale*, *Rev. Historique* 114, 116 (1913, 1914); B. Grosse, *Röm. Militärgeschichte*, 1920, 13; E. Stein, *Gesch. des spätrömischen Reiches* 1 (1928) 187; Gigli, *RendLinc* 1949, 383.

Protectum. A roof or balcony projecting onto a neighbor's property. The latter could prohibit such a construction unless the builder had a servitude, *servitus protegendi*.—D. 39.2.—See PROICERE.

Protestari. To make an announcement in public (in court or by a placard), for instance, to the effect that a person is not one's representative, agent, or business manager.

Protutela. See PRO TUTORE, ACTIO PROTUTELAE.

Prout quidque contractum est, ita et solvi debet. "In the same way in which an obligation was contracted, it should be discharged" (D. 46.3.80).—See SOLUTIO.

Providere (providentia). To foresee, to procure beforehand, to provide for. The terms refer to statutes, senatusconsults, imperial enactments, and orders of high officials (e.g., provincial governors). The verb *providere* was used by the imperial chancery with great frequency to stress the duty of an official to take specific measures in a given situation.

Charlesworth, *Harvard Theol. Rev.* 29 (1936) 107; Albertario, *Ath* 6 (1928) 165, 325 (= *St di diritto rom.* 6 [1933] 165).

Provincia. The original meaning of the term was that of the sphere of action of a magistrate with *imperium*, distinguished from the sphere of action of his colleague (see COLLEGA). *Provincia* was also used of a district under the ruling of a military commander. Later, territories outside Italy conquered and annexed by Rome were assigned as a *provincia* to a Roman magistrate (a consul or a praetor) or a high pro-magistrate vested with *imperium* and representing there the authority of the Roman state. The first instances in which the term *provincia* was applied to a conquered and incorporated territory were Sicily and Sardinia (241 and 238 B.C.). The organization of a new province was regulated by a *lex provinciae*, but there were no general rules for the administration of provinces. Within the territory organized as a province there were territorial units, cities and municipalities, which were granted a special status of CIVITATES FOEDERATAE or CIVITATES LIBERAE ET IMMUNES. The *Lex Cornelia de provinciis ordinandis* (on the organization of provinces, 81 B.C.) set some rules for the administration of provinces by ex-praetors who, after their year of service in Rome, assumed the governorship of a province as pro-magistrates with a prorogated *imperium* (see PROROGATIO IMPERII). Ex-consuls were admitted to governorship under the same circumstances. Later, however, the *Lex Pompeia* (52 B.C.) fixed a delay of five years between the tenure of a high magistracy in Rome and that of a governorship in a province. From the time of Augustus the governors received a fixed salary. The legal status of the population of a conquered province was that of *peregrini* or of *peregrini dediticii* when the conquest resulted from a victorious war and a surrender of the enemy (see DEDITICII, DEDITIO). See TRIBUTUM. Roman citizenship was granted either to individual provincials or to larger groups, until the CONSTITUTIO ANTONINIANA bestowed citizenship on all inhabitants of the Empire. The investment of the *princeps* with *imperium proconsulare maius* (qualified also as indefinite, *perpetuum*) gave the emperor in theory the highest power over all the provinces. It was granted for the first time to Augustus by the senate in 23 B.C., but very early—already under Augustus—a distinction was made between imperial (*provinciae principis, Caesaris*) and senatorial provinces (*provinciae senatus*). The latter were the pacified, long annexed provinces, while the imperial provinces were those which had been recently acquired and in which revolts still occurred or were to be expected. The shift of a province from one category to the other could be ordered by the emperor. Under Diocletian the provincial administration acquired a different aspect. The division of the Empire into *praefecturae* and *dioeceses* (see DIOECESIS) was connected with the creation of new provinces, smaller in territory than under the Principate. The military command was separated from the civil administration; the governors retained their jurisdictional power, which was subject to an appeal to the VICARII and eventually to the emperor. In imperial legislation, provincial matters were among the topics to which the emperors devoted their greatest attention. The terms *provincia* and *provincialis* are among the most frequent in Justinian's Code. For details concerning the administration, officials, jurisdiction, etc., in the provinces, see the pertinent items, e.g., ARCA PROVINCIALIS, CONVENTUS, CONVENTUS CIVIUM ROMANORUM, CONCILIA PROVINCIARUM, LEGES DATAE, LEGATI DECEM, LEGATI AD CENSUS ACCIPIENDOS, LEGATI IURIDICI, LEGATI LEGIONUM, LEX RUPILIA, LEX POMPEIA, ORNATIO PROVINCIARUM, REPETUNDAE, FUNDUS PROVINCIALIS, PEREGRINI, and the following items.

Chapot, *DS* 4; Severini, *NDI* 10; De Ruggiero, *DE* 2. 847; Stevenson, *OCD*; C. Halgan, *Essai sur l'administration des provinces senatoriales*, 1898; T. Mommsen, *Die Provinzen von Caesar bis Diokletian*, 6th ed. 1909 (Engl. translation, 1909); W. T. Arnold, *The R. system of provincial administration*, 3rd ed. 1914; L. Falletti, *Évolution de la juridiction civile du magistrat provincial sous le Haut Empire*, 1926; Anderson, *The genesis of Diocletian's prov. admin.*, *JRS* 22 (1932); Gitti, *L'ordinamento provinciale dell'Oriente sotto Giustiniano*, *Bull. Comm. Archeol. Comunale di Roma*, *Bull. del Museo* 3 (1932) 47; Pisani, *RendLomb* 74 (1940–41) 148; Duyvendak, *Symb. v. Oven*, 1946, 333; A. Solari, *l'impero rom.*, 4. *Impero provinciale* (1947) 193; G. H. Stevenson, *Rom. provincial administration, till the age of the Antonines*, 2nd ed. 1949; D. Magie, *Rom. rule in Asia Minor to the end of the third cent.* 1–2 (1950).

Provinciae Caesaris (principis). Provinces ruled by the emperor, who administered them through governors appointed by himself (*legati Augusti pro praetore.*). They were assisted by special imperial

PROCURATORES (primarily for the financial administration) who were subordinate not to the governor but directly to the emperor. On occasion, the emperor sent special delegates in a specific mission who, too, were directly responsible to him. The soil of imperial provinces (*praedia tributoria*) was considered property of the emperor and all imposts and revenues from these provinces went to the imperial fisc. See TRIBUTUM. Some provinces annexed to the empire were governed by imperial *procuratores* of equestrian rank. The emperor exercised his power over those territories not by virtue of the *imperium proconsulare* vested in him by the people, but as the successor of their former sovereigns (kings or princes).—See PROVINCIA.

Provinciae consulares. Provinces assigned to ex-consuls by the Senate under the Republic.—See SENATUSCONSULTUM DE PROVINCIIS CONSULARIBUS.

Provinciae populi Romani. See PROVINCIAE SENATUS.

Provinciae praetoriae. Provinces governed by ex-praetors as governors.

Provinciae principis. See PROVINCIAE CAESARIS.

Provinciae procuratoriae. Provinces of the emperor governed by *procuratores*.—See PROVINCIAE CAESARIS.

W. E. Gwatkin, *Cappadocia as a R. procuratorian province, Univ. of Missouri Studies* V, 4 (1930); P. Horowitz, *Le principe de création des provinces procuratoriennes, Rev. Belge de philol. et d'hist.*, 1939.

Provinciae senatus. Provinces under the control of the senate. In the Republic the senate directed the administration of the provinces through governors selected from among former consuls and praetors (hence the distinction between *provinciae consulares* and *praetoriae*). From the time of Augustus there were two categories of provinces, imperial (see PROVINCIAE CAESARIS) and senatorial. Henceforth the senate had full control only over the senatorial provinces. The governors of these provinces were proconsuls appointed by the senate and subject to its orders and instructions. From the second century on it became customary for imperial functionaries (CORRECTORES, CURATORES CIVITATIS) to supervise the financial administration, which in these provinces was confided to special officials, *quaestores*, subordinate to the governor. The soil was considered the property of the Roman people (see PRAEDIA STIPENDIARIA). An impost (see STIPENDIUM) was levied on communities; they in turn assessed it on the inhabitants.

O'Brien-Moore, *RE* Suppl. 6, 793; McFayden, *The principate and the senatorial provinces, CIPhil* 16 (1921); J. M. Cobban, *Senate and provinces (78–49 B.C.)*, Cambridge, 1935.

Provincialis. (Adj.) Refers to different matters (*res provincialis*), both to persons somehow connected with a province and its administration and to provincial soil (*fundus provincialis, praedium provinciale*).—See EDICTUM PROVINCIALE.

Provincialis. (Noun.) An inhabitant of a province "who has his domicile there, not one who is born in a province" (D. 50.16.190).—See DOMICILIUM.

Provisio. In the sense of a legal enactment (provision), the term prevails in the language of the imperial chancery of the later Empire.

Provocare. To challenge, to provoke (a jurisdictional measure in a trial). The term is primarily used of appeals from judgments of a lower instance to a higher one; see PROVOCATIO.

Provocare ad populum. See PROVOCATIO.

Provocare sacramento. To challenge the adversary by a *sacramentum*; see LEGIS ACTIO SACRAMENTO.

Provocare sponsione. To challenge one's adversary in a trial by a *sponsio* in order to make him promise to pay a certain sum in case of defeat, e.g., "Do you promise to pay me . . . if the slave is mine under Quiritary law?"—See AGERE PER SPONSIONEM.

Provocatio (provocare). An appeal by a citizen condemned by a magistrate in a criminal trial, to the popular assemblies (*provocatio ad populum, a magistratu, adversus magistratum*) under the Republic. An appeal from capital punishment went to the *comitia centuriata*, from a pecuniary fine (MULTA) to the *comitia tributa*. Several Republican statutes regulated the procedure of *provocatio: Lex Valeria de provocatione, Lex Valeria Horatia, Lex Duilia. Lex Porcia, Lex Sempronia.* There was no *provocatio* from a decision of a dictator, from a judgment of the DECEMVIRI, or from that of the criminal courts, *quaestiones*. Under the Empire an appeal was addressed to the emperor (*provocatio ad imperatorem, ad Caesarem*). In civil matters *provocatio* is syn. with *appellatio*.—C. 7.64; 70.—See ANQUISITIO.

Lécrivain, *DS* 4; Strachan-Davidson, *Problems of R. criminal law* 1 (1912) 127; Düll, *ZSS* 56 (1936) 1; G. Pugliese, *Appunti sui limiti dell'imperium*, 1939, 62; Brecht, *ZSS* 59 (1939) 261; Siber, *ZSS* 62 (1942) 376; Heuss, *ZSS* 64 (1944) 104.

Provocator. He who appeals through PROVOCATIO.

Proxeneta. A broker, an agent. He could sue his client for compensation for his services in a *cognitio extra ordinem*. *Proxeneticum* = a broker's (factor's) commission.—D. 50.14; C. 5.1.

Siber, *IkJb* 88 (1939–40) 177.

Proximi. (In the administration.) Lower officials, assistants to the head of an office and his substitutes during his absence. Generally they succeeded their superiors when the office became vacant. The various divisions of the imperial chancery each had their *proximi* (*proximi ab epistulis, a libellis, a memoria, a studiis, proximi scrinii*).—C. 12.19.

Proximus agnatus. See AGNATUS PROXIMUS.

Proximus infantiae (infanti), pubertati. See INFANS, IMPUBES.

Prudentes (prudentiores). In the sense of *iuris prudentes*, see IURISCONSULTUS, IURISPERITUS.

Prudentia. Used in imperial constitutions for *iurisprudentia*.

Pubertas. See IMPUBES, MINORES, HABITUS CORPORIS.

Pubertas plena. See MINORES.

Pubertati proximus. See INFANS.

Pubes. See IMPUBES.

A. B. Schwarz, *ZSS* 69 (1952) 345.

Pubescere. To become capable of procreation (*pubes*, see IMPUBES). Ant. *qui pubescere non potest* = impotent; see SPADO.

Publicani. Farmers of public revenues (taxes, salt and metal mines, chalk pits, etc.). They were organized in financial companies (*societates publicanorum*) which at the public auctions arranged by the state for the lease of the pertinent rights acted collectively through their representative (*manceps*). Senators were prohibited from participating in collection of taxes or other imposts. The *publicani* were businessmen of equestrian rank. During the Punic wars they acquired great fortunes and, subsequently, also a great influence in political life. The affairs of the association of *publicani* were managed by a *magister societatis publicanorum*, assisted by a staff of subordinates throughout the territory (province) in which the society had leased the particular revenues involved. The provincials suffered much under that system of tax-collecting. The *societas* was not dissolved by the death of a member; his heir could be accepted in his place. Tax-farming was also practiced in municipalities.—D. 39.4.—See CONDUCTORES VECTIGALIUM, REDEMPTOR VECTIGALIUM, SOCII, EDICTUM DE PUBLICANIS.

Cagnat, *DS* 4: De Villa, *NDI* 10; Stevenson, *OCD*; F. Knieр, *Societates publicanorum*, 1896; M. Rostowzew, *Gesch. der Staatspacht in der röm. Kaiserzeit*, *Philologus*, Suppl. 9, 1903; O. Hirschfeld, *Die kais. Verwaltungsbeamten*, 2nd ed., 1905, 81; L. Mitteis, *Röm. Privatrecht*, 1908, 403; F. Messina-Vitrano, *Sulla responsabilità dei p.*, *Circolo giuridico* (Palermo) 1909; Arangio-Ruiz, *St Perozzi* 1925, 231; Lotz, *Studien über Steuerverpachtung*, *SbMünch* 1935; Reinmuth, *ClPhilol* 31 (1936) 146; B. Eliachevitch, *La personnalité juridique en droit privé rom.*, 1942, 305; E. Schlechter, *Le contrat de société*, 1947, 320; Arias Bonet, *AHDE* 19 (1948–49) 218.

Publicatio bonorum (publicare bona). Confiscation of the property of a person convicted of a crime against the state. The confiscated wealth became the property of the state (*res publica*). See CONFISCATIO, PROSCRIBERE BONA. *Publicatio* is also called the act of expropriation for reasons of public utility (see EMPTIO AB INVITO).—See SECTIO BONORUM.

Humbert and Lécrivain, *DS* 4; U. Brasiello, *Repressione penale*, 1937, 112.

Publicatio legis. The making public of a statute. Under the Republic the publication of a statute passed by the competent *comitia* was not obligatory. The magistrate who proposed a bill could make it public, if he wished, by posting the text in the *forum* or on the walls of a temple (PROSCRIBERE). Some statutes contained clauses concerning their publication. Treaties concluded with other states were engraved on two bronze tablets, one of which was posted on the Capitol in Rome. For the publication of edicts of magistrates (praetors), see ALBUM. *Senatusconsulta* acquired legal force when deposited in the *aerarium*; public exposition was not compulsory. As for imperial legislation, enactments of general import, binding throughout the whole empire or in a larger part of it (all *edicta* and *decreta* of special significance), were sent to the provincial governors who took care of making them public in the cities.—See PP., PRONONERE, PROMULGARE.

Landucci, *Atti Accad. Padova*, 2 (1896); G. Rotondi, *Leges publicae populi Rom.*, 1912, 167; F. v. Schwind, *Zur Frage der Publikation im röm. R.*, 1940.

Publica. In public, in the public interest, in a public place (in court). Syn. *in publico*.—See INTEREST ALICUIUS, UTILIS PUBLICE.

Publice venire. To be sold at a pubiic auction. Ant. *privatim venire*.

Publiciana in rem actio. See ACTIO IN REM PUBLICIANA.

Publicum (publica). Public property (of the Roman people), public treasury (see AERARIUM). *In publico* = *publice*.

Publicus. Connected with, pertinent to, available to, or in the interest of the Roman people. "Public property (*bona publica*) is what belongs to the Roman people" (D. 50.16.15). The adjective *publicus* is applied to various concepts in contrast to *privatus*, such as *ius*, *iudicia*, *res*, *leges*, *causa*, *utilitas*, *crimina*, *officium*, etc.—See also RES PUBLICA, DELICTUM, LOCUS PUBLICUS, INTERDICTA DE LOCIS PUBLICIS, AGER PUBLICUS, ITER, VIA, MUNERA, MONUMENTA, VIS, ABOLITIO, SERVI PUBLICI, PASCUUM, NEGOTIA PRIVATA, OPERA PUBLICA, USUS, DISCIPLINA, SACRA, SUMPTU PUBLICO.

Kaser, *SDHI* 17 (1951) 274.

Pudicitia. Chastity, a crime against chastity. The LEX IULIA DE ADULTERIIS is also called *de pudicitia*. *Pudicitia adtemptata* = an offense against the reputation of an honest woman committed in public (on a street) by pursuing her constantly or making indecent proposals. It was considered an INIURIA and persecuted accordingly.

Puella. See PUER.

Puer. Used in various senses: (*a*) a slave. Some names of slaves were combined with *puer*, as, e.g., *Marcipor* = *Marci puer*; (*b*) a boy, ant. *puella* (= a girl); (*c*) syn. for *puerilis aetas*, *pueritia* = youth. The term *puer* is not technical and does not indicate a specific age.

Pueritia. See PUER. In D. 3.1.1.3 *pueritia* is used of the age of persons under seventeen. They were excluded from acting in court.

Pugnus. A fist. *Pugno percutere* = striking a person with the fist. Such an action was considered a corporal injury (*iniuria*); it was not, however, an out-

rage to the master of a slave when the latter was struck by a third person, although generally an injury to a slave was treated as an outrage to the master himself.—See INIURIA.

Pulsare. To strike a person. That is the typical case of *iniuria*, as in the LEX CORNELIA DE INIURIIS.—See INIURIA.

Pulsari actione (lite). To be persecuted by an action in court, both in civil and criminal cases; the term is used only in the language of the imperial chancery.

Punire. To punish. *Punire* is mentioned as one of the tasks and forces of the laws (statutes, see LEX). The term refers to all kinds of punishment (capital, corporal, and pecuniary) imposed on wrongdoers for crimes and delictual offenses, public and private.—See CAPITE PUNIRI.

Punitio. Syn. POENA.

Pupillaris. Concerning, or belonging to, a ward (*pupillus*) under guardianship (TUTELA).—See RES PUPILLARES, TESTAMENTUM PUPILLARE, SUBSTITUTIO PUPILLARIS, USURAE PUPILLARES.

Pupillus (pupilla). "One below the age of puberty (*impubes*) who ceased to be under the power of his father by the latter's death or through emancipation" (D. 50.16.239 pr.). An *impubes* who became *sui iuris* was under guardianship (*tutela impuberum*). In a broader sense *pupillus* is used of all who are below the age of puberty, hence *aetas pupillaris* = the age below puberty. A *pupillus* could not alienate property or assume an obligation without the consent of his guardian (*auctoritas tutoris*). The opinions of the jurists were divergent as to whether a *pupillus* could acquire possession; some required the guardian's cooperation. Justinian declared the acquisition valid when the *pupillus* was beyond the age of infancy. In Justinian's Law, the property of a *pupillus* was not accessible to usucaption.—D. 26.8; 27.2; C. 5.49; 50.—See TUTELA IMPUBERUM, IMPUBES, FILIUS FAMILIAS, OBLIGATIO NATURALIS, INFANTIA.

Solazzi, *BIDR* 22-25 (1910-1912); Suman, *L'obbligazione naturale del pupillo, Fil* 1914; De Villa, *StSas* 18 (1940) 13.

Purgatio morae. See MORA.

Purpura. Purple. In the later Empire the private fabrication of purple materials and garments was prohibited, the production being reserved as a monopoly of the state. Likewise, wearing purple cloths (*holovera vestimenta*) and even possession were prohibited.—See TOGA PURPUREA, ADORATIO PURPURAE.

Purus. Free from charges, unconditional (ant. *condicionalis, sub condicione*, see CONDICIO), not limited by a fixed date (*sine die*, ant. *in diem, ex die*, see DIES). A similar distinction exists between the adverbs *pure* and *condicionaliter*.—See STIPULATIO PURE FACTA.

Puta. See UTPUTA.

Putare. To believe, to think. The term is also used of persons who erroneously assume something to exist which is not true, e.g., that one is an heir or a guardian (*se heredem, tutorem esse*, see USUCAPIO PRO HERede, FALSUS TUTOR), and act accordingly. Opinions of jurists are introduced in juristic writings with *putare*, e.g., *ego puto, X putat*.

Puteolanus. An unknown Roman jurist, cited once by Ulpian, author of a work *Libri adsessioriorum*.—See ADSESSORIUM.

Q

Qua de re agitur. A clause in the procedural formula by which the object of the controversy, already defined in the foregoing part of the formula, was pointed out once more for better identification (= "that which is the object of the trial").—See FORMULA.

H. Krüger, *ZSS* 29 (1908) 378.

Quadragesima litium. A tax amounting to one-fortieth of the value of the object of litigation ($2\frac{1}{2}$ per cent) imposed in civil trials. It was in force for only a brief period in the first century after Christ.

R. Cagnat, *Etude hist. sur les impôts indirects chez les Romains*, 1882, 235; Bonelli, *StDocSD* 21 (1900) 323.

Quadriga. A team of four horses regarded as a unit. Killing one horse is considered a destruction of the whole, and, according to the LEX AQUILIA, the wrongdoer is liable for the value of all four.

Quadrupes. A four-footed animal.—Inst. 4.9; D. 9.1.—See ANIMAL, ACTIO DE PAUPERIE, LEX AQUILIA.

Quadruplatores. Informers (see DELATORES) who received one-fourth of the property seized from culprits denounced by them, in case of condemnation. *Quadruplatores* also were the accusers of persons who if convicted had to pay a four-fold penalty (such as gamblers, *aleatores*, and usurers).

Quaerere. In the sense of to acquire, to obtain, to earn, syn. with *adquirere*. *Quaerere* in the sense of to investigate, to inquire, to search after, is used in both civil and criminal matters. Syn. *inquirere*.

Quaerere liberos. PROCREARE.—See LIBERORUM QUAERENDORUM CAUSA.

Quaeritur (quaesitum est). The jurists used these locutions to introduce doubtful cases in which "a question arises" ("it has been questioned") about the legal solution of the situation presented. The terms occur not only in collections of so-called QUAESTIONES, but also in other writings of the casuistic type. Similar phrases were: *quaestio* (*quaestionis*) *est, quaestio in eo consistit* (= the question consists in that).

Quaesitor. An investigator in a criminal matter.—See TORTOR.

Quaestio. As a form of criminal proceedings, see QUAESTIONES PERPETUAE.

Quaestio de maiestate. A Sullan statute, LEX CORNELIA DE MAIESTATE (81 B.C.), established a permanent court for criminal offenses qualified as CRIMEN MAIESTATIS.

Cramer, *Sem* 10 (1952) 3.

Quaestio Domitiana. A case presented to the jurist Celsus by a certain Domitius Labeo who inquired

whether a person who wrote a testament for another might be a witness thereto (D. 28.1.27). The case became famous because of the rude answer of the jurist who called the query "very stupid and ridiculous." The name *Quaestio Domitiana* was coined in the literature.—See SCRIPTOR TESTAMENTI, TESTIS AD TESTAMENTUM ADHIBITUS.

C. Appleton, *Mél Girard* 2 (1912) 1; Kretschmar, *ZSS* 57 (1937) 52.

Quaestio facti. See RES FACTI.

Quaestio per tormenta. Inquiry under torture. Slaves were interrogated in criminal trials under torture until they confessed to the crime of which they were accused, in particular when their masters were the accusers. Citizens could not be tortured except those of the lower classes (*humiliores*).—See TORMENTA.

Lécrivain, *DS* 4.

Quaestio status. An examination (investigation) concerning the personal status of a person (citizenship, liberty).—See STATUS, ACTIONES PRAEIUDICIALES, LIBERTINITAS.

Quaestionarius. (Syn. *a quaestionibus.*) A military official attached to a military court for criminal matters.

Cagnat, *DS* 4.

Quaestiones. (As a type of juristic writing.) Collections of cases, true or fictitious, discussed by the jurists. Many of the cases might originate in the jurists' discussions in the classroom with their pupils. Other material for the *Quaestiones* came from cases with which the jurists dealt in their capacity as respondents (*responsa*). *Quaestiones* which arose from real discussions are identified by the introductory term *quaeritur, quaesitum est* (= it is [has been] asked). Several jurists published *Quaestiones* (Celsus, Africanus, Scaevola, Papinian, Paul, Callistratus, and Tertullianus). In the juristic literature the *Quaestiones* are among the most instructive works; they reveal the acumen of juristic thinking of their authors and the strength of their criticism of divergent opinions.

Riccobono, *NDI* 10; Berger, *RE* 10, 1173.

Quaestiones perpetuae. Permanent criminal courts, composed of persons of senatorial and (later) equestrian rank. The first *quaestio* was established by the LEX CALPURNIA (149 B.C.) to try extortions (see REPETUNDAE) committed by provincial governors. Later statutes introduced additional tribunals for other crimes: treason (MAIESTAS), sacrilege (SACRILEGIUM), embezzlement (PECULATUS), forgery of wills, documents, coins, weights, etc. (FALSUM), bribery and other corrupt practices at elections (AMBITUS), and the like. The courts consisted of thirty or more jurors and were normally presided over by a praetor. For the personal qualifications of the jurors (*iudices*) and the proceedings before the *quaestiones*, see LEX SEMPRONIA IUDICIARIA, LEX AURELIA, ALBUM IUDICUM, SORTITIO, REIECTIO. Some of the statutes which instituted the *quaestiones perpetuae* had particular provisions concerning the jurors and the procedure. The trial started with an ACCUSATIO by a citizen. Penalties were fixed in the pertinent statutes. The judgment of a majority of the jurors was final; there was no appeal. There was, in criminal matters, another kind of procedure, *cognitio extra ordinem*, in which bureaucratic officials exercised jurisdiction through the whole process from the investigation to the final judgment.—D. 48.18; C. 9.41; 44.—See AMPLIATIO, IUDICIA PUBLICA, LEX IULIA IUDICIORUM PUBLICORUM, ORDO IUDICIORUM PUBLICORUM.

Berger, *OCD* (*s.v. quaestio*); Belloni, *NDI* 10; A. H. J. Greenidge, *The legal procedure of Cicero's time*, 1901. 415; H. F. Hitzig, *Die Herkunft des Schwurgerichts im röm. Strafprozess*, 1909; Fraccaro, *RendLomb* 52 (1919) 344; Lengle, *ZSS* 53 (1933) 275.

Quaestores. The quaestorship was established at the beginning of the Republic although certain sources place its origin in the period of kingship. Originally two *quaestores* were assistants of the consuls and were appointed by them; later they were elected by the *comitia tributa*. The activity of the *quaestores* was concentrated on the financial affairs of the state. During the Republican period their number constantly increased and reached twenty under Augustus (from 45 B.C. there were forty). The large number is to be explained by the fact that several *quaestores* accompanied the army commanders on expeditions to administer the finances of the military units. The *quaestores* also managed the finances of the provinces. Those *quaestores* who remained in Rome (*quaestores urbani*) supervised the treasury and the financial administration of the state; see QUAESTORES AERARII. The quaestorship was the initial office in the magisterial career. Under the Republic the *quaestores* had no *imperium*, no lictors, no *sella curulis*, but from the time of Sulla they were eligible to a seat in the Senate. In the later Empire the *quaestores* functioned as city officials with less important functions; their principal task was to organize public games.—D. 1.13; C. 1.30; 12.6.—See IURARE IN LEGES, LEX CORNELIA DE VIGINTI QUAESTORIBUS and the following items.

Kübler, *RE* 14, 406; Lécrivain, *DS* 4; Anon., *NDI* 10; Stevenson, *OCD*; Latte, *TAmPhilolAs* 67 (1936) 24.

Quaestores aerarii. Two quaestores in Rome charged with the supervision of the treasury; see AERARIUM, with all its extended tasks. They made agreements with contractors for the construction of public works (*opera publica*) and with the tax-farmers (*publicani*); they executed payments requested by other high magistrates (primarily the consuls). Under the Principate the activity of the *quaestores* suffered considerable restrictions because of the interference of imperial officials, but the nature of the office remained

unchanged. Two *quaestores* were assigned to the emperor for his personal service; see QUAESTORES CANDIDATI PRINCIPIS. One *quaestor* accompanied the emperor on his travels and functioned as a paymaster.

De Ruggiero, *DE* 1, 204.

Quaestores aquarii. Quaestors entrusted with the supervision of the aqueducts.

Quaestores candidati principis. Two quaestors appointed on the proposal of the emperor (*candidati principis*) to act as his private secretaries. They read the addresses of the emperor in the senate.

Quaestores militares. Quaestors assigned to generals in the field for the administration of the legions.—See MANUBIAE.

Quaestores municipales. The quaestorship was also a municipal office in some *municipia*, charged with the financial administration.

Quaestores Ostienses. One quaestor was obliged to live in Ostia, the port of Rome, in order to supervise the grain supply for the capital.

Quaestores parricidii. Mentioned in the Twelve Tables. Possibly they had already been instituted in the regal period for the prosecution of the crime of PARRICIDIUM.

Quaestores pro praetore. Either governors of small provinces or officials assigned to provincial governors (proconsuls) as their assistants and substitutes.—See the following item.

Quaestores provinciales. Only in senatorial provinces; see PROVINCIAE SENATUS. They had the rank of propraetors and a limited jurisdiction corresponding to that of *aediles curules* in Rome. They supervised the financial administration of the provinces. Small provinces had quaestors for governors, but generally the provincial quaestors assisted the governors and acted in their place when one died or left the province.

Quaestores sacri palatii. The *quaestor sacri palatii* was one of the highest civil functionaries in the later Empire, concerned with the preparation of enactments and legal decisions to be issued by the emperor. He was the principal legal adviser of the emperor and he was therefore chosen from among persons with considerable legal training.

Quaestores urbani. Quaestors acting in Rome as *quaestores aerarii*. Ant. *quaestores municipales* and *quaestores provinciales*.

Quaestores urbis. The office of a *quaestor urbis* was created by Justinian for the control of foreigners, beggars, and other suspected elements in Constantinople.

Quaestorius. (Adj.) Connected with, or pertinent to, the office of a quaestor.

Quaestorius. (Noun.) A former quaestor.—See ADLECTIO.

Quaestuaria mulier (mulier quae corpore quaestum facit). A prostitute.—See MERETRIX.

Quaestura. The office, the rank, of a quaestor. In the later Empire = the office of the QUAESTOR SACRI PALATII.

Quaestus. A profit, a gain. With regard to the contract of partnership (SOCIETAS) the term is defined as the profit which is derived from a partner's work (industry).—See LUCRUM, QUAESTUARIA MULIER.

Quamvis. See LICET.

Quanti ea res est. What is the value of the thing. This clause, connected with the object of a pending civil trial, occurred in the part of the procedural formula called CONDEMNATIO. It referred to the evaluation of the object of the controversy. In certain formulae the clause referred to the past (*quanti ea res fuit*), i.e., to the time when the wrong was committed (e.g., in *actio furti* or *actio legis Aquiliae*), in others to the present (*est*), i.e., to the time of the *litis contestatio* (which was the normal case), or to the future (*quanti et res erit*), i.e., when the evaluation was to be made at the time of the judgment.

Steinwenter, *RE* 9, 1707; M. Kaser, *Quanti ea res est*, 1935; P. Voci, *Risarcimento del danno*, 1938, 16.

Quanti minoris. See ACTIO QUANTI MINORIS.—D. 21.1.

Quarta pars. One-fourth of the whole. One-fourth (*quarta*) of an estate (*hereditatis*) refers to the so-called *quarta Falcidia* (see LEX FALCIDIA) unless another meaning, a simple fourth part of the inheritance, is evident.

Quarta Afiniana. See SENATUSCONSULTUM AFINIANUM.

Quarta Antonina. See QUARTA DIVI PII.

Quarta debitae portionis. See QUERELA INOFFICIOSI TESTAMENTI.

Quarta Divi Pii. (Called in literature *quarta Antonina*.) A person below puberty (see IMPUBES) who had been adopted (see ADOPTIO), had the right to a fourth part of the inheritance of his *adrogator*, after being emancipated without just reason or unjustly disinherited by the latter. This rule has been set by an enactment of Antonius Pius.

Beseler, *Subsiciva*, 1931, 2; David, *ZSS* 51 (1931) 528.

Quarta Falcidia. See LEX FALCIDIA.

Quarta legitimae partis. See PARS LEGITIMA.

Quarta Pegasiana. See SENATUSCONSULTUM PEGASIANUM.

Lemercier, *RHD* 14 (1935) 646.

Quarta Trebelliana. The term used in the literature for the quarter of an inheritance analogous to the *Quarta Pegasiana* after the reform of the law of *fideicommissa* by Justinian on the basis of the *Senatusconsultum Trebellianum*.—See FIDEICOMMISSUM, SENATUSCONSULTUM PEGASIANUM.

Quasi. As if, as it were. The word is often used by classical jurists when applying recognized institutions or rules to similar relations and situations (analogy). This type of adaptation is accomplished by such

phrases as: *perinde* (*pro eo*) *est quasi* (*ac si*), and the like. Such locutions allude at times to situations in which an *actio ficticia* (see ACTIONES FICTICIAE) might be given, since the situation was dealt with "as if." On the other hand, however, it cannot be denied that *quasi* is one of those elastic expressions which fit into the mentality of the Byzantine jurists. The adverb occurs frequently in Justinian's constitutions and is therefore suspect in many texts. But its presence cannot be considered a decisive criterion of interpolation.—See LEX AQUILIA, ACTIO QUASI INSTITORIA, PECULIUM QUASI CASTRENSE.

Guarneri-Citati, *Indice*[2] (1927) 73; *idem*, *St Riccobono* 1 (1936) 735; Berger, *ZSS* 36 (1915) 186, 212, 220; Riccobono, *Scr Ferrini* (Univ. Pavia) 1946, 54.

Quasi contractus—quasi delictum. These terms, often used in modern literature, are not Roman. The Roman jurists speak of *quasi ex contractu* (*quasi ex delicto*) *nascitur obligatio, debere, teneri, obligari*, which means an obligation arises, to be obligated, to owe "as if from a contract (as if from a delict)." In these locutions *quasi* is to be connected with the verb, and not with *contractus* or *delictum* (*maleficium*). The Roman idea was that from certain situations or doings obligations arise analogous to those which originate from contracts or wrongdoings; the jurists did not create a category of "almost contracts" or "almost wrongdoings."

Vizioz, *La notion de quasi-contrat*, Thèse Bordeaux, 1912; Radin, *Virginia Law Rev.* 23 (1957) 241.

Quasi possessio. See POSSESSIO IURIS.

Riccobono, *ZSS* 34 (1913) 251; De Sarlo, *StCagl* 29 (1942) 135.

Quasi usufructus. An exceptional form of a usufruct of things which are consumed in use. Such things were generally not susceptible of *ususfructus*. The usufructuary is bound to return the same quantity of things of the same quality. The term *quasi usufructus* was coined in Justinian law. If a usufruct of a complex of things was bequeathed and among them were consumable things (*res quae usu consumuntur*), the usufruct was valid, according to a decree of the senate under Tiberius on the condition that security was given to the heir to the effect that the same quantity of goods would be returned after expiration of the usufruct.—D. 7.5.—See USUSFRUCTUS.

Beauchet and Collinet, *DS* 5, 613; Pampaloni, *BIDR* 19 (1907) 95; P. Bonfante, *Corso* 3 (1933) 86; Grosso, *BIDR* 43 (1935) 237.

Quattuorviri aediles (or **quattuorviri iuri dicundo**). A board of four officials in Italian and provincial cities in colonies and municipalities appointed for administrative and judicial functions.—See DUOVIRI IURI DICUNDO.

Del Prete, *NDI* 10; Rudolph, *Stadt und Staat im röm. Italien*, 1935, 87; E. Manni, *Per la storia dei municipii*, 1947, 171; Degrassi, *Atti Lincei*, Ser. 8, Vol. 2 (1950), 281; Vittinghoff, *Römische Kolonisation und Bürgerrechtspolitik*, *Abh. Akad. Wiss. Mainz* 1951, no. 14, *passim*.

Quattuorviri praefecti Capuam, Cumas. See VIGINTISEXVIRI.

Quattuorviri viis purgandis. See VIGINTISEXVIRI.

Querela inofficiosae donationis (dotis). A complaint made by an heir entitled to a legitimate share of the estate (see PARS LEGITIMA, QUERELA INOFFICIOSI TESTAMENTI), asking the rescission of an excessive donation which the testator made when still alive with the purpose of diminishing the heir's legitimate share. See INOFFICIOSUS. The action for restitution of the gift was permissible against the donee and his heirs provided it was brought within five years. An analogous remedy was the *querela inofficiosae dotis* when the estate was diminished to the disadvantage of such an heir by an excessive dowry constituted by the testator.—C. 3.29; 30.

Donatuti, *St Riccobono* 3 (1936) 427; H. Krüger, *ZSS* 60 (1940) 83.

Querela inofficiosae dotis. See the foregoing item.

Querela inofficiosi testamenti. A complaint of an heir who would be legitimate in intestacy but who was omitted (see PRAETERIRE) or unjustly disinherited in the testator's will (see EXHEREDATIO). The complaint was based on the ground that the testament was *inofficiosum* (= *contra officium pietatis*, see INOFFICIOSUS), the testator having disregarded his natural duties towards his nearest relatives. If the plaintiff succeeded in his *querela*, the whole testament was declared null (*testamentum rescissum*) since it was assumed that the testator was not mentally sound when he made his will (see COLOR INSANIAE), and a succession in intestacy took place. The *querela inofficiosi testamenti* could be brought by the descendants of the testator, or, when there were none, by ascendants; and later (from the time of Constantine) by consanguineous brothers and sisters in the absence of descendants and ascendants. The *querela* was excluded when the heir received through the testator's disposition (a legacy or a *donatio mortis causa*) one-fourth of what he would have received as his share in intestacy (*quarta legitimae partis*). If the testator left less than a quarter of the *legitima pars* to the heir entitled to it, the latter had the right to sue for the completion of the *pars legitima*. Under this action he obtained what was missing up to the legitimate share (*actio ad supplendam legitimam* which probably was available from the fourth century after Christ). Justinian reformed thoroughly the *querela* and the action mentioned to the benefit of the heirs.—Inst. 2.18; D. 5.2; C. 3.28; Nov. 115.—See CENTUMVIRI, SEPTEMVIRALE IUDICIUM, PARS LEGITIMA, BONORUM POSSESSIO CONTRA TABULAS, PERSONA TURPIS, TESTAMENTUM MILITIS.

Düll, *RE* 17, 1062 (*s.v. Noterbrecht*); De Crescenzio, *NDI* 10, 1032; C. Chabrun, *Essai sur la q. i. t.*, Thèse Paris, 1906; Brugi, *Mél Fitting* 1 (1907) 113; Jobbé-Duval, *ibid.* 437; *idem*, *Mél Gérardin* 1907, 355; *idem*, *NRHD* 31 (1907) 755; Naber, *Mn* 34 (1906) 365, 40 (1912) 397; A. Suman, *Saggi romanistici*, 1919, 3; G. La Pira, *Suc-*

cessione testamentaria intestata, 1930. 412; F. v. Woess, *Das röm. Erbrecht und die Erbanwärter*, 1930, 207; E. Racz, *Les restrictions à la liberté de tester en dr. rom.*, Thèse Neufchatel, 1934; Donatuti, *St Riccobono* 3 (1936) 427; H. Krüger, *ZSS* 57 (1937) 94; *idem*, *Fschr Koschaker* 2 (1939) 256; *idem*, *BIDR* 47 (1940) 63; Lavaggi, *SDHI* 5 (1939) 76; Nardi, *ibid.* 450; E. Renier, *Étude sur l'hist. de la q. i. t.*, Liège, 1942; Siber, *ZSS* 65 (1947) 25.

Querela non numeratae pecuniae. The complaint of a debtor who had issued a promissory note in advance and then did not receive the money which he had acknowledged to owe. Through the *querela* he might obtain the annulment of the note, if he sued within a certain time (in Justinian law within two years). The *querela* is a counter-part to the EXCEPTIO NON NUMERATAE PECUNIAE with which the defendant could oppose the plaintiff when the latter sued for payment.—C. 4.30.

Collinet, *Atti del IV. Congr. Intern. di Papirologia*, 1936, 89; Kreller, *St Riccobono* 2 (1936) 285; H. Krüger, *ZSS* 58 (1938) 1; Archi, *Scr Ferrini* (Univ. Pavia) 1946, 702; Lemosse, *St Solazzi* 1948, 470.

Querella. See QUERELA.

Queri. To complain, to make a charge about a person to a magistrate (for instance, when a slave complains about bad treatment by his master, a patron about his freedman, or a ward or his relatives about a guardian). *Queri* is also used of all kinds of *querelae* (see the foregoing items) and of a complaint against an order of a magistrate.

Querimonia. A complaint made to a public official; an appeal from the assignment of a public service (see MUNERA). The term is used by the imperial chancery.

Quid enim (tamen) si? What, however, if? This rhetorical question occurs often in juristic works as an introduction to a case slightly different from the case discussed immediately before. Some of these, and similar, rhetorical questions may be of later origin (interpolations) but certainly not all of them.

Guarneri-Citati, *Indice*[2] (1927) 33, 75; G. Beseler, *Beiträge zur Kritik* 1 (1910) 61; Berger, *KrVj* 14 (1912) 434; Ambrosino, *RISG* 1940, 18.

Quidem. In phrases such as *si quidem . . . si vero* (*sin autem, quod si*), this occurs in juristic writings when two different legal situations are taken into consideration: if . . . ; if, however. . . . Such juxtapositions in classical texts are branded with the suspicion of non-classical origin; but they are not fully reliable as criteria of interpolation.

Guarneri-Citati, *Indice*[2] (1927) 74.

Quiescere. *Actio quiescit* = an action which temporarily cannot be brought. In the language of the imperial chancery *quiescere* frequently means to become void, inefficient.

Quilibet ex populo. Any Roman citizen. In the so-called ACTIONES POPULARES and INTERDICTA POPULARIA any one of the Roman people might act as a plaintiff.

Quincunces usurae. Five per cent interest *per annum* (i.e., five-twelfths of *usura centesima*, 12 per cent). —See USURAE CENTESIMAE.

Quincunx. Five-twelfths of a whole (an AS or an inheritance, hence *heres ex quincunce* = an heir who receives $^5/_{12}$ of the estate).

Quindecimviri sacris faciundis. See DUOVIRI SACRIS FACIUNDIS. They supervised the foreign cults in Rome.

Bloch, *DS* 2, 428; Rose, *OCD*; M. W. Hoffmann, *AmJPhilol* 1932.

Quingenarium sacramentum. A *sacramentum* of 500 asses; *quinquagenarium sacramentum* = a *sacramentum* of fifty asses.—See LEGIS ACTIO SACRAMENTO.

Quinquaginta decisiones. Fifty constitutions issued by Justinian after the publication of the first Code A.D. 529 but before the start of the work on the Digest, i.e., during 529 and 530. No collection of these constitutions, which seemingly were separately published, is preserved.—See CODEX IUSTINIANUS.

Jörs, *RE* 4, 2273; Anon., *NDI* 4, 593; P. Krüger, *Fg Bekker, Aus röm. und bürgerlichem Recht*, 1907; S. Di Marzo, *Le Q. D.*, 1–2 (1899–1900); G. Rotondi, *Scritti giur.* 1 (1922) 227; P. Bonfante, *BIDR* 32 (1922) 278; Pringsheim, *ACDR* Roma 1 (1934) 457.

Quinquefascales. Governors of imperial provinces (*legati Augusti pro praetore*), so-called because they were each assigned five lictors (see LICTORES).—See LEGATI PROCONSULIS.

Quinquennalis (quinquennalicius). A municipal magistrate appointed for five years; he was also called *quinquennalis perpetuus*.—See MAGISTER COLLEGII, DUOVIRI QUINQUENNALES.

R. Magoffen, *The q., Johns Hopkins Univ. Studies*, Baltimore, 1913; Larsen, *ClPhilol* 1931, 322.

Quinqueviralе iudicium. See IUDICIUM QUINQUEVIRALE.

Quinqueviri. A group of five officials who served as the night police in Rome.

Quinqueviri agris dandis assignandis. See TRIUMVIRI COLONIAE DEDUCENDAE.

De Ruggiero, *DE* 2, 430.

Quirites. The earliest name for the Romans. According to an explanation given by Justinian (Inst. 1.2.2), the name originates from Quirinus, a surname of Romulus, the legendary founder of Rome. —See IUS QUIRITIUM, DOMINIUM EX IURE QUIRITIUM, NUDUM IUS QUIRITIUM.

Severini, *NDI* 10; Kretschmer, *Glotta* 10 (1920) 147.

Quivis ex populo. See QUILIBET EX POPULO.

Quodammodo. To some extent, to a certain degree. This vague, elastic term is used by the Byzantines with predilection and is not rare in interpolated texts. It is not unknown, however, in the classical language and is applied by the jurist to underscore an analogy.

Guarneri-Citati, *Indice*[2] (1927) 76.

R

Ramnes. One of the three tribes (see TRIBUS) into which the population of Rome was divided at the time of the foundation of the city. The other two were *Tities* and *Luceres*. The names are probably of Etruscan origin.

Rosenberg, *RE* 1A.

Rapere. See RAPINA, RAPTUS.

Rapina. Robbery. *Rapina* was considered a form of *furtum* (theft) committed with the use of violence (*vis*). Only movables (*vi bona rapta*) could be the object of *rapina*. *Rapina* was a private wrongdoing (*delictum*), prosecuted only at request of the person injured, under a praetorian, penal action, *actio vi bonorum raptorum*, which if brought within one year of the time of the robbery, could lead to the condemnation of the convicted defendant to a four-fold value of the things stolen as a penalty to be paid to the plaintiff. After a year the condemnation was only *in simplum* (see ACTIONES IN SIMPLUM). The condemned robber was branded with infamy.—Inst. 4.2; D. 47.8; C. 9.34.—See INTERDICTUM DE VI, TURBA.

Kleinfeller, *RE* 1A; Lécrivain, *DS* 5; Brasiello, *NDI* 10; E. Levy, *Konkurrenz der Aktionen* 2, 1 (1922) 194.

Raptor. See RAPTUS.

Raptus. The abduction of a woman against the will of her parents. The abductor (*raptor*) was punished with death from the time of Constantine, under whom *raptus* became a *crimen publicum*, and so was the woman (until Justinian) when she had consented. Justinian's enactment (C. 9.13.1) extended the penalties for *raptus* (death and seizure of property) on *raptores* of widows and nuns (*sanctimoniales*).

Eger, *RE* 1A; Lécrivain, *DS* 4.

Ratihabitio. (From *ratum habere*.) Ratification, approval. *Ratihabitio* occurs when a person on whose behalf another had concluded a transaction or accomplished a legally important act (e.g., by appearing for him in court and defending his interests) without authorization, approved of what had been done for him. "*Ratihabitio* is equivalent to a mandate" (D. 46.3.12.4). Hence, by his approval the principal party (*dominus negotii*) assumed any liability which resulted from the act done in his favor.—D. 46.8; C. 5.74.—See NEGOTIORUM GESTIO, MANDATUM.

C. Bertolini, *La ratifica degli atti giuridici*, 1-2 (1889, 1891); G. Bortolucci, *R. mandato comparatur*, 1916; Donatuti, *AnPer* 36 (1922); Arangio-Ruiz, *Il mandato*, 1949, 197.

Ratio. Reason, a ground, a motive, consideration. *Rationem habere alicuius rei* = to take into consideration. See RATIO IURIS. *Ratio* in the writings of the Roman jurists is not a philosophical concept and has no universal value. It is invoked only where it seems opportune for a specific reason. Hence the saying: "It is impossible to give reasons for all that our ancestors laid down" (D. 1.3.20, Julian) and "therefore it should not be inquired into the reasons for what is being ordained (*quae constituuntur*), otherwise much that is secure would be undermined" (D. 1.3.21).—Another group of meanings of *ratio* is connected with *rationes* = an account book. Thus *ratio* may indicate an account, a calculation, a computation. See EXPENDERE (*ratio accepti et expensi*). —*Rationes* refer to the complex of financial matters of the emperor, of a public corporate body or of a private individual, and to its financial management.—See ACTIO DE RATIONIBUS DISTRAHENDIS, A RATIONIBUS, CODEX RATIONUM DOMESTICARUM, REDDERE RATIONES, and the following items.

Lécrivain, *DS* 4.

Ratio accepti et expensi. See EXPENDERE.

Ratio aequitatis. See AEQUITAS.

Ratio Caesaris. Syn. with *res privata Caesaris*, *ratio privata* (*sc. Caesaris*).—See PATRIMONIUM CAESARIS, PROCURATOR REI PRIVATAE.

Ratio castrensis. A part of the administration of the imperial court, particularly concerned with the military treasury of the emperor and his residences in the provinces.

Rostowzew, *DE* 3, 106; Lécrivain, *DS* 4, 812.

Ratio domus Augustae. The management of the financial matters of the imperial palace.—See DOMUS AUGUSTA.

Ratio Falcidiae. The deduction (computation) made with regard to a legacy according to the LEX FALCIDIA.

Ratio (rationes) fisci. The financial administration of the fisc, fiscal funds (property). Syn. *rationes imperii*.—See RATIONES.

Ratio iuris. The reasonableness (rationality) of a legal provision, the logic of the law. The Roman jurists stress the *ratio iuris* as a means of interpretation of the law (*ratio suadet*, *efficit*, and the like).

Ratio legis. The reason (ground) of a written law (a statute), the spirit to be drawn from the law itself (not from external elements), the purpose, the motive which inspired the promulgation of a specific law, as, e.g., *ratio legis Falcidiae*.—See RATIO VOCONIANA.

Biondi, *NDI* 10; Gaudemet, *RHD* 17 (1938) 141.

Ratio naturalis. See NATURALIS RATIO, IUS NATURALE.

Ratio privata Caesaris (principis). See RATIO CAESARIS, RES PRIVATA CAESARIS.

Ratio Voconiana. The motives which led to the issuance of the *Lex Voconia*.—See LEX VOCONIA.

Kübler, *ZSS* 41 (1920) 24.

Ratiocinator. A bookkeeper, an accountant.

Ratiocinia. (In financial administration.) Keeping accounts, concerning the financial management of public institutions, works and buildings (*ratiocinia operum publicorum*).—C. 8.12; 3.21.

Rationalis. (Noun.) The title *rationalis* first appears in the third century after Christ for provincial pro-

curators and for the head of the fisc. Later, it became more frequent, being used in both the fiscal administration and that of the *res privata* of the emperor. *Rationalis* was substituted for the former *magister* and *procurator* (*a rationibus*) and was afterwards replaced by a *comes*. Thus the *rationalis summae rei* (the chief of the fiscal administration) became between A.D. 340 and 345 *comes sacrarum largitionum* and the *rationalis privatae* (*rei*) *comes rei privatae*. Both these high officials had representatives also called *rationales* (*summarum* or *rerum privatarum* respectively) whose competence embraced the territory of a *dioecesis* of a *provincia*. The frequent changes in official titles in the postclassical bureaucracy makes a precise delimitation of their competence extremely difficult.—D. 1.19.—See the following item.

Liebenam, *RE* 1A; Lécrivain, *DS* 4; O. Hirschfeld, *Kais. Verwaltungsbeamte*[2] (1905) 34; E. Stein, *Gesch. des spätröm. Reiches* 1 (1928) 58.

Rationes. Various branches of the imperial financial administration. Some had local divisions (*stationes*) at important places. There were *rationes metallorum* (for mines), *rationes operum publicorum* (for public buildings and enterprises), *rationes bibliothecarum* (for libraries), etc. In all these offices, functionaries called *rationales* fulfilled the tasks of accountants.—See A RATIONIBUS.

Liebenam, *RE* 1A (*s.v. ratio*).

Rationes. Account books of a banker.—See ARGENTARII, RATIO.

Ratum habere. See RATIHABITIO.—C. 5.74.

Ratus. Legally valid (e.g., *ratum testamentum*, *legatum*). Ant. *irritus*.

Raudusculum. A small rod of bronze used during the performance of a MANCIPATIO. The man who held the scale (*libripens*) handed over the *rauduscul*um to the transferee who touched the scale with it, thereby indicating that he acquired the object mancipated.

Reatus. The state of being accused in a criminal trial.—See REUS, ACCUSATIO, NOMEN RECIPERE, INSCRIBERE.

Eger, *RE* 1A.

Recedere. To withdraw, to retreat, to recede. "There is no doubt that with the consent of the persons who assumed reciprocal obligations, one may withdraw from a sale, a lease and other similar obligations provided that everything remained unchanged" (D. 2.14.58).

Receptaculum aquae. See CASTELLUM.

Receptator (receptor). One who hides a thief or who receives stolen goods to be concealed. He is subject to the same penalties as the principal wrongdoer. Only hiding near relatives was punished more mildly. A man who received money or a part of the stolen things and dismissed the robber when he could have apprehended him, was himself treated as a *receptor*.—D. 47.16.

Eger, *RE* 1A; Humbert and Lécrivain, *DS* 4; Saviotti, *AG* 55 (1895) 353; H. Balougditch, *Complicité en droit rom.*, Thèse Montpellier, 1920, 83.

Recepticia actio. See RECEPTUM ARGENTARII.

Recepticia dos. See DOS RECEPTICIA.

Recepticius servus. A term known only in literary (non juristic) sources and already a subject of controversy among the ancient grammarians. It probably indicated a slave who was returned to the seller because of physical or mental defects.—See REDHIBITIO.

De Senarclens, *TR* 12 (1933) 390; Kornhardt, *ZSS* 58 (1938) 162; Solazzi, *SDHI* 5 (1939) 222.

Receptor. See RECEPTATOR.

Receptum. The term covers different transactions (see the following items) which have in common the sole point that they originated in so-called praetorian pacts (see PACTUM PRAETORIUM) recognized by, and enforceable under, praetorian law. It is likely that the pertinent obligations were assumed by the use of the word *recipio* (= "I accept").

Klingmüller, *RE* 1A; Partsch, *ZSS* 29 (1908) 403.

Receptum arbitrii. An agreement by which a person elected as arbitrator by the common consent of the parties involved in a dispute assumed the duty to settle their controversy by an arbitration (*arbitrium*).—D. 4.8; C. 2.55.—See ARBITER EX COMPROMISSO, COMPROMISSUM.

Wenger, *RE* 1A; Lécrivain, *DS* 4; Frezza, *NDI* 11.

Receptum argentarii. A formless promise to pay another's debt (see CONSTITUTUM DEBITI ALIENI) by which a banker (*argentarius*) assumed the obligation to pay a client's debt at a fixed date. The action against the banker to enforce payment = *actio recepticia*. Justinian abolished the action, primarily for the reason that under it the banker was liable even when the original obligation was not valid. In Justinian's law the *receptum argentarii* was subjected to the general (reformed) rules concerning the CONSTITUTUM DEBITI ALIENI.

Wenger, *RE* 1A; Frezza, *NDI* 11; Partsch, *ZSS* 29 (1908) 412; Platon, *RHD* 33 (1909) 157, 289; De Dominicis, *APad* 49 (1933); G. Astuti, *Si intorno alla promessa del pagamento* 2 (*Il constituto*), 1941, 282.

Receptum est. See OBTINUIT, USUS.

Receptum nautae (cauponis, stabularii). An agreement by which a shipowner (the keeper of an inn or of a stable) assumed goods for transportation or custody, with the addition of a specific proviso *salvum fore* (*recipere*), i.e., that the things confided them will be safe. The responsibility of such persons was greater than in a simple LOCATIO CONDUCTIO. They were not liable for *vis maior* (shipwreck or a major assault of robbers which could not be resisted) but they had to make good damages or destruction caused by themselves or their personnel and they were

answerable if the goods were stolen. Inn-keepers were even responsible for any persons living permanently in their inns. The extended responsibility of those persons was established in the praetorian Edict with the justification that the "dishonesty (*improbitas*) of this kind of persons" required such measures (D. 9.4.3.1).

Klingmüller, *RE* 1A; Humbert and Lécrivain, *DS* 4; Severini, *NDI*; L. Lusignani, *Responsabilità per custodia*, 1 (1902); Schulz, *GrZ* 38 (1911) 41; H. Vincent, *Res receptа*, Thèse Montpellier, 1920; P. Huvelin, *Et. d'hist. du droit commercial rom.*, 1929, 138; Partsch, *ZSS* 29 (1928) 403; Bonolis, *Scritti Zorli*, 1929, 477; De Dominicis, *APad* 49 (1933); Carrelli, *RDNav* 4 (1928) 323; De Martino, *ibid.* 201; De Robertis, *AnBari* 12 (1952).

Recidere. To come back, to return into a former legal situation, e.g., to the same paternal power (*in potestatem*) under which one had been previously. *Recidere* sometimes has the sense of *cadere*, e.g., when said of an inheritance = to come, to accrue to a person, to fall to a person's share.

Reciperatio (recuperatio). A treaty between Rome and another state under which reciprocal protection of the citizens of one state in the territory of the other was established, in particular in case of litigation for the recovery of property. The judges in the pertinent procedure were the *reciperatores* (*recuperatores*) who later might also function as judges in trials between Roman citizens.—See RECUPERATORES.

Wenger, *RE* 1A; Lécrivain, *DS* 4; Severini, *NDI* 11.

Recipere. To receive (e.g., an inheritance), to receive back what one has given, lent, or lost. *Recipere* means also to assume an obligation for oneself or for another (as a surety, see RECEPTUM ARGENTARII). When syn. with *excipere*, *recipere* = to reserve a certain right or advantage for oneself on the occasion of the transfer of property (e.g., an easement, a usufruct).

Wenger, *RE* 1A; De Robertis, *AnBari* 12 (1952) 15.

Recipere arbitrium. To assume the function of an arbitrator.—See RECEPTUM ARBITRII.

Recipere nomen. See ACCUSATIO.

Recipere usu. See USURECEPTIO.

Recitare (recitatio). To recite, to read out in court (a written testimony of an absent witness, any document), in the senate (an *oratio principis*) or in public (a proclamation of a magistrate). *Recitatio sententiae* = the reading by the judge of the final judgment in a trial. In postclassical proceedings the judge had to read it from a written draft.

Recitatio testamenti. See APERTURA TESTAMENTI.

Recludere. To shut up (*in carcere* = in a prison).

Recognoscere. (With regard to written documents.) To examine the authenticity, to control the exactness, of a copy by comparison with the original. The clause confirming the fact that a copy was made in an office and its exactness verified was: *descriptum et recognitum factum* (D. 10.2.5; 29.3.7). *Recognoscere* was also used to indicate that the written text of a document agreed with the dictated text. The acknowledgment of the authenticity of a seal on a document = *recognoscere signum* (see SIGNUM). *Recognovi* = I have verified.

Mommsen, *Jur. Schriften* 2 (1905 ex 1892) 179; F. Preisigke, *Die Inschrift von Skaptoparene* (*Schriften der wissensch. Gesellschaft in Strassburg* 30, 1917) 26.

Reconciliare matrimonium. See REDINTEGRARE.

Reconductio. The renewal of a lease (*locationem renovare*). A tacit *reconductio* is assumed when the tenant holds the thing (immovable) rented after the expiration of the first lease. Securities given for the original lease remain pledged for the following one.

Recte (rectius, rectissime). With these terms the jurists used to express their approval of other jurists' opinions (= correctly, rightly). Sometimes Justinian and his compilers manifested their approval of earlier legal norms in the same way.—*Recte*, when referring to the performance of a legal act, indicates that it was accomplished in conformity with the law being in force, in particular, that the prescribed solemn forms were observed.

Guarneri-Citati, *Indice*[2] (1927) 77; Riccobono, *ZSS* 34 (1913) 224.

Rector provinciae. The governor of a province. The title is not used in juristic writings but is frequent in later imperial constitutions.—C. 1.40.

Recuperatio. See RECIPERATIO.

Recuperatores. A court composed of at least three judges for civil trials in various matters (*actio iniuriarum*, *quaestiones status*), acting under a somewhat accelerated procedure. Originally established in international treaties, the court later became competent in disputes between Romans and peregrines and between Roman parties alone. The procedure was *per formulas* (see FORMULA) and the *recuperatores* were private jurors acting as *iudices* in the second stage of the trial (see IN IURE). Apparently there was no precise delimitation of their competence; according to a prevailing opinion the parties to the trial had the right of choice whether to put their dispute before *recuperatores* or before a single judge (*unus iudex*). *Recuperatores* also appears in post-interdictal trials. In postclassical law there is no trace of *recuperatores*. No mention of them occurs in Justinian's legislation.—See ORATIO CLAUDII, VADIMONIUM RECUPERATORIBUS SUPPOSITIS.

P. F. Girard, *Mél* 2 (1923) 391; Wenger, *RE* 1A, 418; Bozza, *DE* 4, 159; Poggi, *Riv. ital. di dir. internazionale privato* 2 (1932) 525; Wlassak, *Judikationsbefehl*, *SbWien* 197, 4 (1921) 51, 131; M. Nicolau, *Causa liberalis*, 1933, 32; M. Lemosse, *Cognitio*, 1944, 175; Y. Bongert, in *Varia. Et. de dr. rom.*, Paris, 1952.

Recuperatorium iudicium. A trial before the court of RECUPERATORES.

Reddere. "Although the term *reddere* means to give back (to return), it has, however, in itself the meaning of giving" (D. 50.16.94). *Reddere* = to pay back

a loan or whatever one owes to another; in a broader sense = *dare*.

Reddere actionem (iudicium). When referring to the judicial activity of a magistrate, syn. with DARE ACTIONEM.

Reddere interdictum. To issue an interdict.—See INTERDICTUM.

Reddere iudicium. See DARE ACTIONEM.

Reddere ius. Indicates the jurisdictional activity of the praetor.

Reddere pignus. To return the pledge to the debtor when the debt was paid. Syn. *restituere* with regard to FIDUCIA.

Kreller, *ZSS* 62 (1942) 170.

Reddere rationes (rationem). To render an account of management of another's affairs, and to pay the remainder to the person entitled to it. It was customary to free a slave in a testament under the condition *"si rationes reddiderit"* (= if he paid what remained over from the administration of the master's business to the latter's heir).

Redemptor. (With references to taxes.) A tax-farmer (*redemptor vectigalium*). Syn. *conductor vectigalium, manceps, publicanus*.

Redemptor litium (causarum). One who buys creditors' claims against third persons. Transactions of this kind were made in the form of CESSIO, chiefly by speculators who acquired the claims at a low price in order to sue later the debtors for the whole. The LEX ANASTASIANA (A.D. 506) made such speculative activity unprofitable.

Severini, *NDI* 11.

Redemptor operis. A contractor. Syn. *conductor operis*.—See LOCATIO CONDUCTIO OPERIS FACIENDI.

Humbert, *DS* 4.

Redemptor vectigalium. See REDEMPTOR.

Redemptus ab hoste. A prisoner of war who was redeemed from the enemy by a ransomer. The redeemed prisoner was bound to repay the ransom and the ransomer had a lien on him until the debt was discharged by payment or by services. During this time the *redemptus* had no *ius postliminii* (see POSTLIMINIUM). In postclassical law the period of service to the ransomer was limited to five years. If a slave was redeemed from the enemy not by his master, the latter might regain him by repayment of the amount to the ransomer.—D. 49.15; C. 8.50.—See CAPTIVUS, VINCULUM PIGNORIS.

Pampaloni, *BIDR* 17 (1905) 125; Albertoni, *Riv. di dir. internazionale* 17 (1925) 358, 500; Romano, *RISG* 5 (1930) 3; H. Krüger, *ZSS* 51 (1930) 203; 52 (1931) 351; W. Felgenträger, *Antikes Lösungsrecht*, 1933, 95; G. Fairvley, *R. a. h.*, Thèse Paris, 1942; Levy, *CIPhilol* 38 (1943) 159 (= *BIDR* 55-56, 1951, Post-Bellum, 70).

Redemptus suis nummis (sc. servus). A slave redeemed from his master by a third person, a fiduciary, through payment of a sum of money. The money either came from the slave's *peculium* or was given to the redeemer by a person who acted in the slave's interest (for instance, one to whom the slave promised services in the future or repayment of the loan after manumission). The redeemer was obliged to free the slave but only a rescript of Marcus Aurelius and Verus entitled the slave to seek a remedy in court (in a *cognitio extra ordinem*) for enforcing the manumission (D. 40.1.5 pr.). Syn. *emptus suis nummis*.

Seuffert, *Loskauf von Sklaven mit ihrem Geld, Fschr Univ. Giessen*, 1907; W. W. Buckland, *Law of slavery*, 1908, 636.

Redhibere. See the following item.

Pezzana, *RISG* 88 (1951) 274.

Redhibitio. The restitution of a purchased thing (e.g., a slave) to the seller because of its essential defects, while the seller returned the price to the buyer. Such rescission of a sale was obtained by the buyer under the *actio redhibitoria*; see EMPTIO. The term *redhibitio* comes from *redhibere* = "to have the seller get back what he had before" (D. 21.1.1 pr.).—D. 21.1.

Redigere. To bring a person (e.g., a slave) or a thing back into its former legal situation.

Redigere pecuniam. To obtain money, to gain a pecuniary profit from a transaction.

Redintegrare. To renew (syn. *renovare*, e.g., a lease), to restore to integrity or to former legal status. *Matrimonium redintegratum* = a second marriage concluded between persons who had been married to each other and divorced. Syn. *reconciliare*. Such a marriage abolished a pending *actio rerum amotarum* of the husband against the wife.

Reditus. Income, proceeds; often syn. with *fructus*. —*Reditus civilis* = revenues of the state from taxes, etc.—C. 11.70.

Redundare. To devolve (e.g., a risk, liability, charges, losses) from one person to another.

Referendarius. See REGERENDARIUS.

Referre. To enter (in public records, in census lists, in account books). In juristic writings *referre* is used to introduce a citation or a literal quotation from another jurist's work (*X refert hoc, apud Labeonem relatum est* [*refertur*] *Sabinum existimasse* = it is related by Labeo that Sabinus' opinion was, and the like). *Referre* is also used when a jurist relates the contents of an imperial rescript or senatusconsult.

Referre. (In judicial matters.) To make a report in postclassical procedure to a higher judge or to the emperor on substantial circumstances of the matter in dispute.—D. 49.1; C. 7.61.

Referre iusiurandum. See IUSIURANDUM NECESSARIUM.

Refert. It is of importance. *Multum* (*maxime*) *refert* = it is of great (greatest) importance. Ant. *nihil* (*parvi*) *refert* = it does not matter. The locutions are used by the jurists to stress (or exclude) the

importance of a factual or legal element in the decision of a case.

Reficere. To restore an injured thing to its former condition. See INTERDICTA DE REFICIENDO. Repairing (*reficere*) a building is considered a kind of *aedificare*; accordingly, it is exposed to a protestation by a neighbor (see OPERIS NOVI NUNTIATIO) in the same way as a new building.

Reficere testamentum. To make a new testament.

Refragari. To be opposed to, to be contrary to, to be a hindrance. The term is applied to legal acts or opinions which are contrary to a law, to *ratio iuris*, to *auctoritas iuris*.

Seckel in Heumann's *Handlexikon*[9], 1907, 499; Berger, *KrVj* 14 (1912) 436; Guarneri-Citati, *Indice*[3] (1927) 77.

Refuga. A runaway, one who escaped from prison or custody.

Refundere. To repay, to reimburse, to refund (expenses, proceeds lost).

Refutatio (refutare). In later civil procedure a written refutation by one party to a trial of the appeal made by the adversary. The *refutatio* was sent to the emperor's court, either in an appeal procedure or together with the lower judge's *consultatio* (*relatio*) by which the emperor was requested for an opinion in a specific case; see CONSULTATIO. In the latter instance both parties could oppose the judge's statement by written presentations *preces refutatoriae*, *libelli refutatorii*.

Regens exercitum. A military commander. "His duty was not only to order military discipline but also to observe it" (D. 49.16.12 pr.). He was forbidden to use a soldier for his private service or for his advantage (hunting or fishing).

Regens provinciam. See RECTOR PROVINCIAE.

Regere fines. To draw the boundaries between two neighboring lands.—See ACTIO FINIUM REGUNDORUM.

Regerendarius (referendarius). An auxiliary official in the office of a PRAEFECTUS PRAETORIO, DUX, or other high official in the provinces. In Justinian's times there were several *referendarii palatii* = officials of the imperial court charged with tasks of a more confidential nature. Their functions were established in Justinian's Nov. 10.

Regesta. A collection (register, list) of imperial enactments or other official documents of lasting importance (*regesta officii*). The institution was introduced in the later Empire.

Regia (*sc.* domus). The king's house. In historical times *regia* was the official building in which the *pontifex maximus* had his office. The pontiffs gathered there for their meetings and solemn religious ceremonies.

Rosenberg, *RE* 1A.

Regia lex. See LEX REGIA.

Regiae leges. See LEGES REGIAE.

Regimen morum. The control and supervision of public morals. The *regimen morum* was a domain of the censors' activity; see CENSORES. They exercised this control when selecting worthy persons for the senate (see LECTIO SENATUS) or when excluding from that body those senators whose moral life was blemished (see SENATU MOVERE). The censors had to qualify certain persons as unfit for public service by the NOTA CENSORIA which branded them with ignominy for the current five-year period (*lustrum*). Syn. *cura morum*.

Regio. A territory of an indefinite extent, a locality.—See CONSUETUDO REGIONIS, TRACTUS.

Regiones Italiae. Eleven administrative districts into which Italy was divided probably by Augustus, simultaneously with the division of Rome into fourteen regions; see REGIONES URBIS ROMAE. There were no changes in this administrative organization until Constantine.

R. Thomsen, *The Italic regions from Augustus to the Lombard invasion*, Copenhagen, 1947; v. Gerkan, *Bonner Jahrbücher* 149 (1949).

Regiones iuridicorum. See IURIDICI, DIOECESIS URBICA.

Regiones urbis Romae. The first division of the city of Rome into four districts (*regiones* or *tribus urbanae*) is attributed to the king Servius Tullius. Augustus divided Rome into fourteen administrative *regiones*, each under the supervision of a magistrate (praetor, tribune, aedil). Under Hadrian each *regio* had two *curatores urbis Romae* who by the end of the second century were called *procuratores regionum*. In the regional organization established by Augustus, the *regiones* were subdivided into *vici*, each of which was under the control of four *magistri vicorum* (*vico-magistri*).—See VIGILES, REGIONES ITALIAE.

Graffunder, *RE* 1A, 480; Thédenat, *DS* 4; Richmond, *OCD*.

Regius. Either connected with the kings of the period of Roman kingship or with the emperors of the Empire. Similarly *regnare* (= to reign) refers both to the kings and the emperors.—See LEX REGIA, LEGES REGIAE.

Regnum. Kingship, government by kings. *Regnum* refers to the earliest period of Rome's history, from the foundation of Rome (753 B.C.) until the constitution of the Republic (the beginning of the sixth century B.C.) See REX. In a broader sense *regnum* = sovereignty. *Regnum* refers also to foreign kingdoms (*regnum alienum*).

Fustel de Coulanges, *DS* 4, 824; Westrup, *Archives d'hist. du droit oriental* 4 (1949) 85; Coli, *SDHI* 17 (1951) 2.

Regradare (regradatio). To regrade an official in rank, in particular one in the emperor's service (*domestici*) for a longer unjustified absence from office.

Regressus. (From *regredi.*) A recourse, making use of a legal remedy (a suit), in particular for recovery

of damages (e.g., *in* [or *ad*] *venditorem* in a case of eviction, *ad mandatorem* = for the reimbursement of expenses).

Regula (iuris). An abstract legal principle of a more general nature whether originating in jurisprudence or in an imperial enactment. "A rule is that which briefly expounds a matter" (*rem breviter enarrat*, D. 50.17.1). The legal rules are concise formulations drawn from the law which is in force; "the law is not derived from rules (*regulae*) but a rule is derived from the existing law" (D. *ibid.*). Therefore the rule itself does not create law. Syn. (in the language of imperial constitutions) *norma* (not used by classical jurists). The legal maxims set up in earlier law were at times criticized by the classical jurists inasmuch as they were no longer applicable to the developed economic relations and necessities of everyday legal life. The final title of the Digest (D. 50.17), entitled "on various rules of the ancient law" contains a collection of legal rules of the *ius antiquum*. Some of them are a repetition of texts inserted in former titles of the Digest; many of them drawn out from the context in which they were expressed in the original juristic writings, were thus made applicable as general rules although originally they referred only to specific situations. Other legal rules of classical origin are to be found in the Digest beyond the title 50.17, but some of them were limited in their general application through words like *plerumque* (= often), *interdum* (= sometimes), inserted by the compilers.—See CANON, NORMA, DEFINITIO, the following items and some legal rules quoted under NEMO, etc.

Riccobono, *NDI* 11; Leonhard, *RE* 1A; Pringsheim, *Fschr Lenel* 1921, 244; Brugi, *St Del Vecchio* 1 (1930) 38; Stella-Maranca, *Rec Gény* 2 (1934) 91; Arangio-Ruiz, *La règle de droit dans l'antiquité classique, Egypte Contemporaine*, 1938; Wenger, *Canon, SbWien* 220, 1 (1942) 47; Riccobono, *Scr Ferrini* (Univ. Pavia, 1946) 22; G. Nocera, *Ius publicum* (D.2.14.38), Rome, 1946; Berger, *ACIVer* 2 (1951) 193 (= Sem 9 [1951] 42).

Regula Catoniana. (Also *sententia Catoniana*.) A rule concerning legacies. "A legacy which would have been void if the testator died at the time of making the testament, is invalid whenever he shall have died" (D. 34.7.1 pr.). This rule, whose author was one of the two Catones (see CATO), was in later classical law not fully valid.—D. 34.7.

Ferrini, *NDI* 2; 1143; Clerici, *AG* 77 (1906) 441; G. Borgna, *Origine e fondamento della r. C.*, 1909; Cicala, *StSen* 31 (1915) 21; J. Lambert, *La règle Catonienne*, Thèse Lyon, 1925; Appleton, *TR* 11 (1931-32) 19; B. Biondi, *Successione testamentaria*, 1943, 416.

Regulae. A type of juristic writing. Under this title collections of rules were written by Neratius, Pomponius, Gaius, Scaevola, Marcian, and Modestinus; Ulpian and Paul wrote even two compilations of *Regulae*. Excerpts from juristic collections of "rules" show, however, a picture different from the title 50.17 of the Digest, *De regulis iuris* (see REGULA). The texts in the collections of *Regulae* are by far not so concisely formulated as generally *regulae* were.

Berger, *RE* 10, 1174.

Regulae Ulpiani. See ULPIANUS, TITULI EX CORPORE ULPIANI.

Regulariter. Regularly, normally. *Regulariter definire* = to establish in the form of a rule.

Rei vindicatio. An action which served for the protection of quiritary ownership. Under this action the owner of a thing sued the possessor of his thing for its recovery. The victorious plaintiff regained possession of the object claimed. If the defendant denied the plaintiff's ownership, the plaintiff had to prove the acquisition of it under the rules of the *ius civile* from its previous quiritary owner. Such proof might be difficult in certain circumstances and, if so, the plaintiff could avoid it by using another action, ACTIO PUBLICIANA IN REM, in which he had only to prove that, before having been deprived of the possession of the thing in dispute, he possessed it under conditions which normally led to usucaption (*in condicione usucapiendi*). The defendant, when defeated, had to return the thing *cum sua causa* (see CAUSA), i.e., with all that the plaintiff would have had if the thing were delivered at the time of the *litis contestatio* (proceeds, *fructus*) and was liable for damages done to the thing after the *litis contestatio*. The liability of the defendant for *fructus* and damages in the period before *litis contestatio* depended upon whether he held the thing in good faith (in the belief to be its owner) or in bad faith; see POSSESSOR BONAE FIDEI. If the defendant refused to deliver the thing claimed, the plaintiff could estimate under oath (*iuramentum in litem*) the value which the actual restitution represented to him (*litis aestimatio*). The defendant was adjudicated to pay the sum but he retained the thing. Only Justinian admitted an execution on the thing itself, which was performed with the assistance of public officials (MANU MILITARI).—D. 6.1; C. 3.32; 7.38.—See ACTIONES IN PERSONAM, ACTIONES ARBITRARIAE, LEGIS ACTIO SACRAMENTO, EXHIBERE, IUS TOLLENDI, IMPENSAE, QUANTI EA RES EST, LITIS AESTIMATIO, AGERE PER SPONSIONEM. FORMULA PETITORIA, LAUDARE AUCTOREM, POSSESSOR FICTUS, DOLO DESINERE POSSIDERE, INTERDICTUM QUEM FUNDUM, DUCI VEL FERRI IUBERE, ADPREHENDERE, LITI SE OFFERRE, HEREDITATIS PETITIO, RESTITUERE, UNUS CASUS.

Leonhard, *RE* 1A; Beauchet, *DS* 4; Cuq, *DS* 5, 902; Sternbeim, *NDI* 11; Berger, *OCD* (*s.v. vindicatio*); H. Siber, *Passivlegitimation bei der r. v.*, 1907; Last, *GrZ* 36 (1909) 433; Lenel, *GrZ* 37 (1910) 515; Maria, *Et Girard* 2 (1913) 223; Betti, *Fil* 1915, 321; *idem*, *Rend Lomb* 48 (1915) 503; E. Abgarowicz, *Essai sur la preuve dans la r. v.*, Thèse Paris, 1916; Herdlitczka, *ZSS* 49 (1929) 274; Kaser, *ZSS* 51 (1931) 92; *idem*, *Restituere als Prozessgegenstand*, 1932; *idem*, *Eigentum und Besitz*, 1943 (*passim*); *idem*, *Das altröm. ius*, 1949 (*passim*);

Lévy-Bruhl, *RHD* 11 (1932) 205 (= *Quelques problèmes*, 1934, 95); Düll, *ZSS* 54 (1934) 101; Senn, *RHD* 15 (1936) 401; F. Thormann, *Der doppelte Ursprung der mancipatio*, 1943, 29.

Rei vindicatio utilis. A *rei vindicatio* extended to cases lying beyond its normal applicability. Some of these cases were introduced by praetorian jurisdiction, some by imperial legislation of a later period. A *rei vindicatio utilis* was granted, for instance, when the action concerned a thing not identical with that which the owner originally possessed, e.g., a garment that had been made by the defendant from the plaintiff's wool, or a picture painted on the plaintiff's tablet.—See SPECIFICATIO.

Cuq, *DS* 5, 904; Mancaleoni, *StSas* 1 (1900) 11; v. Mayr, *ZSS* 26 26 (1906) 83; Bortolucci, *BIDR* 33 (1923) 151; F. Pringsheim, *Kauf mit fremdem Geld*, 1916, 123.

Reicere. See REIECTIO.

Reiectio civitatis. Giving up Roman citizenship through the acquisition of the citizenship of another state.

Reiectio iudicis. Rejection of a judge. A party to a civil trial had the right to reject a judge who was inacceptable to him for personal reasons. See ALBUM IUDICUM. SORTITIO. Rejection was also permitted in criminal trials in the procedure through QUAESTIONES. It was executed by the accuser and the accused, each having the right to reject the same number. In the year 59 B.C., a *Lex Vatinia* settled the rules for the rejection procedure.

Liebenam, *RE* 1A, 514; Steinwenter, *RE* 9, 2467; Mommsen, *Röm. Strafrecht*, 1899, 214; G. Rotondi, *Leges publicae populi R.*, 1912, 391; Sage, *AmJPhilol* 39 (1918) 367; Gelzer, *Hermes* 63 (1928) 113.

Reiectio militia. Dismissal from military service as a punishment for a minor military offense. Syn. *exauctorare*.

Reicere rem. To throw away a thing. Syn. *relinquere*, *derelinquere*.—See DERELICTIO.

Relatio. (From *referre*.) See REFERRE.

Relatio. In civil procedure of the later Empire, see CONSULTATIO.—D. 49.1; C. 7.61.

Lécrivain, *DS* 4.

Relatio. In the senate (*referre ad senatum*), a report made by the magistrate, who convoked the senate, to the gathered senators concerning the subject matter which had to be discussed and voted on.

O'Brien-Moore, *RE* Suppl. 6, 707, 768.

Relatio criminis. The bringing in of a counter-accusation by the accused against the accuser in a criminal trial. Such a manoeuver did not impede the proceedings.

Relatum est. See REFERRE.

Relegare pecuniam. To order one's banker (*argentarius*) to make a payment from one's deposit. Syn. *delegare ab argentario*.

Laum, *RE* Suppl. 4, 77.

Relegatio. The expulsion of a citizen ordered either by an administrative act of a magistrate or by judgment in a criminal trial. In the latter case the *relegatio* was sometimes combined with additional punishments, such as confiscation of the whole or of a part of the property of the condemned person, loss of Roman citizenship, confinement in a certain place. A milder form of *relegatio* was the exclusion of the wrongdoer from residence in a specified territory. Illicit return was punished with death penalty.—D. 48.22.—See EXILIUM, DEPORTATIO.

Kleinfeller, *RE* 1A; Berger, *OCD*; J. L. Strachan Davidson, *Problems of R. criminal law*, 2 (1912) 64; E. Levy, *Röm. Kapitalstrafe*, 1931, 30; U. Brasiello, *Repressione penale*, 1937, 279; Zmigryder-Konopka, *NRH* 18 (1939) 307.

Relegatio dotis. Leaving on the part of the testator the amount of the dowry to the person to whom he had to restore it in the event of a dissolution of his marriage.

Relevare. To relieve a person from his duties, obligations or charges.

Religio. When used with reference to public officials, judges, etc., conscientiousness, scrupulousness in the fulfillment of official duties.

Kobbert, *RE* 1A; idem, *De verborum religio atque religiosus usu*, Königsberg, 1910; W. Fowler, *The Latin history of the word r., Transactions of the third intern. Congress for the History of Religion*, 2 (Oxford, 1908).

Religiosus. See LOCUS RELIGIOSUS, RES RELIGIOSAE. In the constitutions of the Christian emperors *religiosus* (and *religiosissimus*) is used of ecclesiastical persons (bishops) and institutions (churches, cemeteries).

Relinquere (rem). Syn. DERELINQUERE.—See DERELICTIO.

Relinquere. In the law of succession, to leave. Refers either to the person (*relinquere heredem* = to leave an heir) who after the death of another is his heir (either instituted in his testament or by intestacy), or to an inheritance (*relinquere hereditatem*), a legacy (*relinquere legatum*, *fideicommissum*) or freedom (*relinquere libertatem*).

Reliquatio. (From *reliquari*.) An unpaid remnant of a debt.—See RELIQUUM, RESIDUUM.

Reliquator. A person in arrears who owes a part of his debt. A person who owed the fisc or a municipality some money from the management of public matters was excluded from honorific positions until he repaid the rest. This measure did not apply to those who were debtors through private transactions with the fisc or municipalities.

Reliquator vectigalium. A tax-farmer who owed the fisc a part of the rent. He was not admitted to a new lease until he had fully discharged his debt.

Reliquum (reliqua). The balance one owes to a private person or a public body (tax-arrears).

Relocatio (relocare). A renewal of a lease or a hire (see RECONDUCTIO). *Relocatio operis* = hiring another to finish a work which the first contractor failed

to complete by the day fixed.—See LOCATIO CONDUCTIO.

Remancipatio (remancipare). A retransfer of a thing through *mancipatio* to the person from whom one acquired it by *mancipatio*, or to a third person. *Remancipatio* also was the retransfer of a son through *mancipatio* to his father from whom the transferor had acquired him through *mancipatio* and had held him as *persona in mancipio* (see MANCIPIUM).—See EMANCIPATIO, DIVORTIUM, COEMPTIO FIDUCIAE CAUSA.

Kaser, *ZSS* 67 (1950) 492.

Remansor. See EMANSOR.

Remedium. Legal procedural measures introduced by praetorian law, *senatusconsulta* or imperial legislation, such as *actio, interdictum, exceptio, restitutio in integrum, appellatio*, etc.

Guarneri-Citati, *Indice*[2] (1927) 78.

Remissio. See REMITTERE.

Remissio mercedis. A reduction of the rent, granted to the lessee of a land in the case of a lean crop (*sterilitas*). The abatement could be conceded with the condition that it would be made good if next year's crop was abundant.

Remissio operis novi nuntiationis. See OPERIS NOVI NUNTIATIO.

Berger, *RE* 9, 1671; 17, 573; *idem, IURA* 1 (1950) 106; 117.

Remittere. Sometimes syn. with *mittere, permittere*. —See the following items, REMISSIO.

Remittere. With reference to wrongdoings and criminal offenses, to forgive, to condone (*remittere crimen, dolum, iniuriam*).—See REMITTERE POENAM.

Remittere actionem. To renounce an action; also to renounce an exception (*remittere exceptionem*) or a servitude (*remittere servitutem*).

Remittere causam (cognitionem). To assign, to allot a civil or criminal case to a judicial magistrate (a praetor, a provincial governor, a *praefectus*) or to transfer a case to the imperial court.

Remittere condicionem. To release a beneficiary of a testament from the necessity of fulfilling a condition imposed in the will.—See CONDICIO TURPIS, CONDICIO IURISIURANDI.

Remittere debitum (obligationem). To release a person from an obligation.

Remittere pignus. To release a pledge (*pignus*) given to a creditor by the debtor.—*C.* 8.25.

Remittere poenam (multam). To remit a penalty (a fine).

Remotio suspecti tutoris. See TUTOR SUSPECTUS.

Removere. To remove a senator from the senate (see MOVERE SENATU), to remove a guardian from the administration of his ward's property because of negligence or incapacity (see TUTOR SUSPECTUS). *Removere officio* = to remove a public official from office (*propter neglegentiam* = because of negligence in fulfillment of his duties). *Removere* is also applied to the denial of a right of succession (to an inheritance or legacy). In judicial proceedings *removere* = to exclude from acting in court (*postulatio*).

Remunerare. To give a reward to a person for a service gratuitously rendered. To give such a reward is a kind of liberality since it is not a fulfillment of a legal duty and not even of an *obligatio naturalis*, the only motive being to recompense another for a meritorious performance to which he was not obligated to do.

P. Timbal, *Les donations rémunératoires en dr. rom.*, 1925.

Remuneratio. See REMUNERARE. The noun occurs in later imperial constitutions. *Remuneratio sacra* = a remuneration (liberality) by the emperor.

Renovare locationem. See RELOCATIO, RECONDUCTIO. Syn. *locare ex integro*.

Renuntiare. To renounce (a right, a privilege, an inheritance or a legacy, a legal remedy such as an action, a *querela*).—*Renuntiare* is often syn. with *denuntiare*.

Renuntiare mandatum. A unilateral withdrawal of a mandatary from the mandate. It was admissible only at a time when the mandator notified of the withdrawal could manage the matter himself or by another mandatary.

V. Arangio-Ruiz, *Il mandato*, 1949, 136.

Renuntiare societatem. See SOCIETAS.

Solazzi, *Iura* 2 (1951) 152.

Renuntiatio. (In military law.) Treason. A person (a soldier or a civilian) who betrayed to an enemy important military information (*renuntiatio consiliorum*) was punished with death (by *crematio*).—See PRODITOR.

Renuntiatio. (In public law.) The announcement of the names of the magistrates elected by the *comitia*. From that moment the magistrate was considered *designatus*; see MAGISTRATUS DESIGNATI.

Klingmüller, *RE* 1A.

Renuntiatio legis. An official announcement that a statute was decreed by a popular assembly (*comitia*). After the *renuntiatio* an INTERCESSIO (protestation, veto) was no longer admissible.

Klingmüller, *RE* 1A.

Reparatio temporum. In late postclassical procedure. A plaintiff who did not appear in court before the end of a four-months' period after DENUNTIATIO LITIS lost the case. He could, however, obtain a restoration of the term and permission to appear in court at a later date if his non-appearance was excusable.—*C.* 7.63.

Renuntiator. See PRODITOR.

Repellere. In civil trials the verb is used of exceptions entered by the defendant against the plaintiff's claim which, when successful, effected the loss of the case by the plaintiff (see EXCEPTIO). When used of a magisterial decision, *repellere* denotes that a petitioner's claim was denied. Sometimes *repellere* = *renuntiare, repudiare* (= to refuse the acceptance of

an inheritance or legacy).—See VIM VI REPELLERE LICET.

Repertorium. See INVENTARIUM.

Repetere (repetitio). To claim back, to reclaim what one gave to another (e.g., paying an *indebitum*). "What one received as his property, cannot be claimed back" (D. 12.6.44).—See CONDICTIONES.

Repetere accusationem. To renew an accusation against the same person and for the same crime. A renewed accusation by the same accuser occurred when the judicial magistrate concerned with the matter died or retired from office while the trial was still pending. A new accuser could *repetere accusationem* when the first accuser died or withdrew his accusation. Syn. *repetere reum*.

Repetere actionem. To sue a second time for the same claim. Such repetition was generally excluded according to the rule *bis de eadem re ne sit actio*; see BIS IDEM EXIGERE. The defendant could oppose the plaintiff with the *exceptio rei iudicatae*, when the matter had been decided by a judgment, or the *exceptio rei in iudicium deductae*, when the action under which the claim was brought to court, had been conducted until *litis contestatio*. Only when the first trial was interrupted before *litis contestatio*, a *repetere actionem* was admissible.

Repetere reum. See REPETERE ACCUSATIONEM.

Repetita die. To refer a claim to a former date, to antedate, to compute according to an earlier date.

Repetita praelectio. See EDITIO SECUNDA.

Repetitio. See REPETERE.

Repetitio rerum. In international relations. The formal declaration of war by the *fetiales* had to be preceded by *repetitio rerum*, i.e., a demand for redress of the injury inflicted.—See CLARIGATIO.

C. Philippson, *The intern. law and custom of ancient Greece and Rome* 2 (1911) 331.

Repetundae. Literally the term indicates things (*res*) or money (*pecuniae*) which could be claimed back (*repetere*) by the person who gave them to an official person (a magistrate, a provincial governor) under extortion as a bribe. Hence *crimen repetundarum* = the crime of extortion. A series of Republican statutes from the *Lex Calpurnia* (149 B.C.) to the *Lex Iulia* (by Caesar, 59 B.C.) dealt with *repetundae*; the last statute was still in Justinian's legislation the foundation of the penal repression of extortion. Jurisprudence and imperial legislation contributed to the development of the concept of *repetundae* to be punished under the statute. According to later legislation any person who "exercising a magistracy, a power (*potestas*), a curatorship (*curatio*), an embassy, or any other public office, charge or ministry accepted money" (D. 48.11.1 pr.) was liable under the statute. The *Lex Iulia* declared guilty of *repetundae* a judge who took a bribe for rendering (or not rendering) a judgment, a witness for refraining from testimony, even a senator who received money for expressing a certain opinion in the senate. Sons of officials were also guilty of *repetundae* when taking money with the understanding that they would influence the activity of their fathers. Manifold misdemeanors of officials and persons not embraced by the definition quoted above (which in its general formulation may contain non-classical elements) were subject to the penalties for *crimen repetundarum*. Originally the giver could claim the recovery of the sum he paid under extortion; later, he could claim a double or fourfold amount, within a year after retirement of the official from service. In extreme instances, seizure of the whole property of the condemned person took place. Persons who had a share in the bribe money (*ad quos pecunia pervenit*) were liable as well. A person condemned for *repetundae* could not obtain a magistracy or membership in the senate; he would not be a witness or representative of another in court, or function as a judge. More drastic infractions were punished with exile. Penalties became more and more severe in the course of time. The *Lex Acilia* (of 123 B.C.) contained detailed provisions concerning the procedure in trial for extortion.—D. 48.11; C. 9.27.—For the statutes on *repetundae:* see LEX ACILIA, CALPURNIA, CORNELIA, IULIA, SERVILIA; see also SENATUSCONSULTUM CLAUDIANUM, CONCUSSIO.

Kleinfeller, *RE* 1A; Lécrivain, *DS* 4; Berger, *OCD*; *idem*, *RE* 12, 2390; R. O. Jolliffe, *Phases of corruption in Roman administration in the last half century of the R. Republic*, Chicago, 1919; Blum, *Revue gén. de droit* 46 (1922) 197; v. Premerstein, *ZSS* 48 (1928) 505; J. P. Balsdon, *History of the extortion court at Rome*, *PBritSR* 14 (1938); F. De Visscher, *Les édits d'Auguste découverts à Cyrène*, 1940, 138; Sherwin-White, *PBritSR* 17 (1949) 5; *idem*, *JRS* 42 (1952) 43; Henderson, *JRS* 41 (1951) 71.

Repignerare. To redeem a thing given as a pledge (*pignus*) to a creditor by paying the debt.

Replicatio. An exception (see EXCEPTIO) opposed by the plaintiff to an exception of the defendant. Through *replicatio* the plaintiff rejects what the defendant's exception asserted. To a *replicatio* the defendant may again reply by an exception called *duplicatio* by Gaius, once *triplicatio* by Ulpian. An example of a *replicatio* is as follows: if the defendant opposed to the claim of the plaintiff the *exceptio pacti de non petendo*, i.e., that the plaintiff had agreed not to sue the defendant in court, the plaintiff might oppose a *replicatio* to the effect that by a later agreement (*pactum*) the first had been annulled or limited to a certain time.—Inst. 4.14.

Leonhard, *RE* 1A.

Replicatio legis Cinciae. See REPLICATIO, LEX CINCIA. If a donor claimed back the thing he had given as a gift, as contrary to the provisions of the *Lex Cincia*, and the donee opposed an exception that the thing had been donated and delivered (*exceptio rei donatae et traditae*) and therefore could not be claimed back, the donor might reply by *replicatio legis Cinciae*, to

the effect that the ownership of the thing donated was not acquired by the donee, e.g., because the thing, a *res mancipi*, was conveyed through *traditio*, and not by MANCIPATIO, which was necessary for the transfer of ownership of the thing donated.

Reposcere. To claim a thing which had to be returned to the claimant, e.g., a deposit or a thing given as a PRECARIUM or COMMODATUM.

Repraesentare. To pay, to perform an obligation, which is owed on a condition or at a fixed date, before the condition is materialized or before the due time. *Commodum repraesentationis* = the profit a creditor has in such a case, when the debtor pays the debt in advance before it is due.—In a more general sense *repraesentare* = *praestare, solvere, reddere* (post-classical use).

Schnorr v. Carolsfeld, *Fschr Koschaker* 1 (1939) 103.

Reprehendere (reprehensio). To blame, to reprove, to find fault with a person.

Reprehensa Mucii capita. (Also entitled *Notata Mucii.*) A collection of critical notes written by the jurist SERVIUS SULPICIUS RUFUS on the work of his predecessor Quintus Mucius Scaevola. see MUCIUS.

Reprobare. To disapprove, to reject (another's opinion). Ant. PROBARE.

Reprobus. False, forged. *Reproba pecunia* (*reprobi nummi*) = false money (coins). Syn. *adulterinus.* "Payment made with bad money does not discharge the payer" (D. 13.7.24.1).

Repromissio. (From *repromittere.*) A kind of CAUTIO by which a debtor promises through *stipulatio* the performance of an already existing obligation or of an obligation not suable under the law.

Repromissio secundum mancipium. A stipulation by which the seller of a thing guarantees the buyer against eviction.—See EVICTIO, SATISDATIO SECUNDUM MANCIPIUM.

Repudiare. To refuse to accept, to reject. The most frequent use of the verb is with reference to acquisitions to be made under a testamentary disposition (an inheritance, a legacy) or under the law (on intestacy) from another's estate.—C. 6.19; 31.—For *repudiare matrimonium, uxorem,* see REPUDIUM.—In procedural language *repudiare* = to reject (an appeal).

Repudiatio hereditatis (bonorum possessionis). See REPUDIARE.

H. Krüger, *ZSS* 64 (1944) 394.

Repudium. A unilateral breaking up of a betrothal; see SPONSALIA. The term refers also to the dissolution of a marriage existing made by one of the spouses either by an oral declaration before witnesses, by a letter, or through the intermediary of a messenger (*per nuntium*) who transmitted to the other party the wish that the marriage be solved (*mittere, remittere repudium,* or *nuntium*). The actual interruption of common living as husband and wife had to accompany such declarations. The written form (*libellus repudii*) became mandatory in the later Empire. A *repudium ex iusta causa* caused pecuniary losses (the loss of the dowry or nuptial denations) to the party whose bad behavior justified the divorce. The term *repudium* occurs also in cases of a divorce of the spouses.—D. 24.2; C. 5.17.—See DIVORTIUM.

Klingmüller, *RE* 1A; E. Levy, *Hergang der röm. Ehescheidung,* 1925, 55; Solazzi, *BIDR* 34 (1925) 312; Basanoff, *St Riccobono* 3 (1936) 175.

Reputare (reputatio). To calculate, to compute. in particular to take into account the counterclaims of the debtor. Syn. *computare, imputare.*—C. 2.47.

Requirere. To inquire after, to search for somebody (e.g., a runaway slave) or anything (e.g., a stolen thing), to investigate. A particular application of the term occurs with reference to persons absent (fugitives) against whom a criminal trial was to be instituted, the so-called *requirendi* (the searched for ones). Their names were publicly announced in posters and their property was seized unless they appeared in court within a year from the public summons.—D. 48.17; C. 9.40.

Res. Used in the juristic language in various senses; it applies to both corporeal things and incorporeal, abstract conceptions. See RES CORPORALES. For the division of things, see the items below.—D. 1.8; Inst. 2.1.—*Res* (in sing.) also refers to the entire property of a person (see EX RE ALICUIUS ADQUIRERE, IN REM VERSIO) and in this sense it is syn. with BONA, PATRIMONIUM. *Res* is often syn. with HEREDITAS. The use of the term *res* by the jurists ranges from the most general meaning of "everything that exists" (*in rerum natura, in rebus humanis esse*) to specific objects. An interpretative rule by Ulpian says: "the term *res* comprises both *causae* (legal relations, judicial matters, see CAUSA) and *iura* (rights)," D. 50.16.23. The inclusion of the vague term *causae* renders this saying likewise indefinite. With reference to judicial trials, *res* means both the object of the controversy (see QUANTI EA RES EST, QUA DE RE AGITUR) and the litigation itself; see RES IUDICATA. RES IN IUDICIUM DEDUCTA, ACTUS RERUM. In the law of contracts *res* indicates the physical delivery of a thing to another person which was the decisive element in the so-called real contracts (*contractus re factus, obligatio re contracta, re contrahere,* see CONTRACTUS).—See OBLIGARE REM.

Leonhard, *RE* 1A; Beauchet, *DS* 4; S. Di Marzo, *Le cose e i diritti sulle cose,* 1922; Grosso, *St Besta* 1 (1939) 33; G. Scherillo, *Lezioni. Le cose* 1, 1945; Kreller, *ZSS* 66 (1948) 572.

Res amotae. See ACTIO RERUM AMOTARUM, RETENTIONES DOTALES.

Res capitalis. See CAUSA CAPITALIS.

Res castrenses. Things belonging to a PECULIUM CASTRENSE; also things used by a soldier during his military service.

Res communes. Things belonging to two or more owners (co-owners, co-heirs) as a common property. —See COMMUNIO, ACTIO COMMUNI DIVIDUNDO.—C. 4.52; 8.20.

Res communes omnium. Things which "by natural law are the common property of all men" (D. 1.8.2 pr., 1), such as air, flowing water, the sea and its shores, etc. They could not be appropriated by a private individual.—See RES PUBLICAE, AËR, AQUA PROFLUENS, MARE, LITUS.

Pernice. *Fg Dernburg*, 1900; Debray. *Rev. générale de droit* 45 (1921) 1; Branca, *AnTr* 12 (1941); G. Lombardi, *Ricerche in tema di ius gentium*, 1946, 90.

Res corporales. Physical things which "by their nature can be touched" (D. 1.8.1.1). Ant. *res incorporales*.

Naber, *RS:DIt* 13 (1940) 379; Villey, *RHD* 25 (1946–47) 209; Pflüger, *ZSS* 65 (1947) 339; Monier, *RHD* 26 (1948) 374; *idem*, *St Solazzi* 1948, 360; Albanese, *AnPal* 20 (1949) 232.

Res cottidianae. The title of a work (in seven books) ascribed to the jurist Gaius, "the everyday legal matters." It is of a rather elementary nature. The authenticity of the work which appears in the sources also under the title "*Aurea*" (= Golden words, rules) is not beyond doubt.

Arangio-Ruiz, *St Bonfante* 1 (1929) 495; Albertario, *Studi* 3 (1936) 95; Felgentträger, *Symb Frib Lenel*, 1931, 365 (Bibl.); Di Marzo, *BIDR* 51–52 (1948) 1.

Res creditae. Things (money) given as a loan.—D. 12.1; C. 4.1.—See CREDERE, MUTUUM.

Res cuius (quarum) commercium non est. Generally in literature called by the non-Roman term *res extra commercium* = things which cannot be the object of exchange or of any legal commercial transaction between private individuals, such as RES DIVINI IURIS, RES COMMUNES OMNIUM.—See COMMERCIUM.

Scherillo, *loc. cit.* 29; G. Longo, *St Bonfante* 3, 1930; Biondi. *St Riccobono* 4, 1936; W. G. Vegting, *Domaine public et res extra c.* (Alphen a. d. Rijn, 1950); Kaser. *St Arangio-Ruiz* 2 (1952) 161.

Res derelictae. See DERELICTIO.

Res divini iuris. Things under divine law, as RES RELIGIOSAE, SACRAE, SANCTAE. They are not negotiable and excluded from any legal transaction. Ant. RES HUMANI IURIS.

Scherillo, *loc. cit.* 40; Archi. *SDHI* 3 (1937) 5.

Res dominica. The private property of the emperor. C. 7.38; 11.67.—See RES PRIVATA CAESARIS.

Res dubiae. Doubtful legal questions arising from ambiguous expressions used, e.g., by a testator in his last will. In such cases, broadly discussed in D. 34.5, "always preference should be given to the more benevolent (benign, liberal, *benigniora*) interpretation" (D. 50.17.56). The solution should be in favor of the act and avoid its annulment.

Berger, *ACIVer* 2 (1951) 187 (= *Sem* 9 [1951] 36).

Res extra commercium. See RES CUIUS COMMERCIUM NON EST.

Res extra patrimonium (nostrum). Things which cannot be in private ownership (see RES PUBLICAE, RES COMMUNES OMNIUM), nor the object of any legal transaction between private individuals; see RES CUIUS COMMERCIUM NON EST. Ant. *res in patrimonio nostro* = all things not expressly excluded from private ownership.

Scherillo, *loc. cit.* 29; Branca, *AnTr* 12 (1941).

Res facti. A matter of fact, a factual situation. Syn. *quaestio facti, est facti.* Ant. *res iuris* = a matter of law.

Res familiaris. Private property, patrimony.

Res fiscales. Things belonging to the fisc (FISCUS). "They are in some way private property of the emperor" (D. 43.8.2.9).—C. 10.4.

Vassalli, *StSen* XXV (1908) 232 (= *St giuridici* 2 [1939] 5).

Res furtivae. Things taken by theft (FURTUM) from the owner or from whoever holds them in his name. They could not be acquired by USUCAPIO either by the thief himself or by any one who got them from him, according to a rule of the Twelve Tables, and a later statute, the LEX ATINIA. Syn. *res subreptae*; in earlier times the stolen thing was called also *furtum*.—See USUCAPIO.

Berger, *RE* 12, 2331; v. Lübtow, *Fschr Schulz* 1 (1951) 263.

Res gestae divi Augusti. An autobiography of the emperor Augustus, written in the last months of his life (finished probably in A.D. 13). It contains a record of the emperor's achievements, political and military. The original, written in Latin was read after his death in a solemn session of the senate; Greek translations were made and sent to Greek-speaking provinces where they were engraved on bronze tablets and set up publicly. Extensive fragments in both languages are known (see MONUMENTUM ANCYRANUM). Augustus presents himself in this "*Index rerum a se gestarum*" (= a register of things achieved by himself) as a head of the state who governed it, authorized and supported by the confidence of the senate and of the people.—See AUCTORITAS PRINCIPIS.

Momigliano, *OCD*; J. Gagé, *R. g. d. A.*, Paris. 1935; Arangio-Ruiz, *SDHI* 5 (1939) 570; Volkmann, *Bursians Jahresberichte über die Fortschritte der klass. Altertumswissenschaft*, Suppl. 276 (1942, Bibl.); Städler, *ZSS* 62 (1942) 120 (Bibl.); *Acta Divi Augusti* 1 (*Regia Academia Italico*, Rome, 1945); P. De Francisci, *Arcana imperii* 3, 1 (1948) 220; E. Schönbauer, *SbWien* 224, 2 (1946); Levi, *Rivista di filologia*, 1947, 209; A. Guarino, *R. g. d. A., Testo, traduzione e commento*, 1947; Pugliese Carratelli, *Imp. Caesar Augustus, Index rerum o se gestarum*, 1947; Chilver, *Augustus and the Roman Constitution, Historia* 1 (Baden-Baden, 1951) 408.

Res hereditariae. Things belonging to an inheritance HEREDITAS. Syn. *corpora hereditaria*. Together, all *res hereditariae* of one estate are also called UNIVERSITAS (*bonorum*). *Res hereditariae* are consid-

ered as belonging to no one until someone qualifies as heir (HERES).

Res hominum. See RES PRIVATAE.

Res hostiles. Things belonging to an enemy of the Roman state, see HOSTIS. If at the outbreak of war they are on Roman soil, they become property of the occupants, and not public property (RES PUBLICAE). —See OCCUPATIO RERUM HOSTILIUM.

Res humani iuris. All things which are not *res divini iuris*. They are governed by human law. The distinction between *res humani iuris* and RES DIVINI IURIS is the main division of things (*summa divisio rerum*). *Res humani iuris* are either public (RES PUBLICAE) or private property (RES PRIVATAE).

Branca, *AnTr* 12, 1941.

Res immobiles. Immovables: land (FUNDUS) and buildings (AEDES, AEDIFICIA). Syn. *res soli*, or *res quae solo continentur* (= which consist in land). Ant. RES MOBILES. As early as the Twelve Tables, a differentiation was introduced with regard to the acquisition through USUCAPIO, and the interdictal protection was built up on the distinction between *res immobiles* and *res mobiles*. The distinction acquired particular importance in Justinian's law when the division of things into RES MANCIPI and RES NEC MANCIPI became insignificant.

Schiller, *ACDR*, Rome 2, 1935; Kübler, *St Bonfante* 3, 1930; Naber, *RStDIt* 14, 1941; Di Marzo, *BIDR* 49–50 (1948) 236.

Res in iudicium deducta. A judicial controversy which after the joinder of issue (LITIS CONTESTATIO) passed to the second stage of the trial, before the private judge (*iudex*). The defendant is protected against a reiterated claim in the same matter by an exception that the claim has already been the object of a trial (*exceptio rei in iudicium deductae*). This exception is similar to the EXCEPTIO REI IUDICATAE. The difference is that the latter could be applied when a judgment has already been rendered.—See LITIS CONTESTATIO.

M. Kaser, *Restituere als Prozessgegenstand*, 1932.

Res in publico usu. Things belonging to the state, the use of which is allowed to all people, as streets, theatres.

W. G. Vegting, *Domaine public et res extra commercium* (Alphen a. d. Rijn, 1950) 52; H. Vogt, *Das Erbbaurecht*, 1950, 22.

Res in patrimonio nostro. See RES EXTRA PATRIMONIUM.

Res incorporales. Things "which cannot be touched, such as those consisting in rights, e.g., an inheritance, a usufruct, obligations" (D. 1.8.1.1), immaterial things. Ant. RES CORPORALES.—Inst. 2.2.

Res integra. See INTEGER.

Res iudicata. "A controversy which was concluded by the judgment of a judge" (D. 42.1.1). *Res iudicata* creates a new legal situation between the parties to the trial thus finished and "is considered as truth" (*pro veritate accipitur*, D. 1.5.25). The sources speak of an *auctoritas* (authority, validity, legal power) *rei iudicatae*, whereas *auctoritas rerum similiter iudicatarum* (= authority of identical judgments) is referred to as reflecting the judicial practice of courts constantly (*perpetuo*) manifested through identical judgments in similar legal controversies (D. 1.3.38). Justinian ordered (C. 7.45.13) that "judgments should be rendered not according to precedents (*exempla*) but in conformity with the laws."—D. 42.1; C. 7.52.—See IUDICATUM.

Esmein, *Mél Gerardin* 1907, 229; Weiss, *Fschr Wach* 2 (1913); E. Betti, *Limiti soggettivi della cosa indicata*, 1922; Guarneri-Citati, *BIDR* 33 (1924) 204; Dauvillier, *Iniuria indicis*, *Recueil Acad. Législ. Toulouse* 13 (1937) 147; Jolowicz, *BIDR* 46 (1939) 394; Vazny, *BIDR* 47 (1940) 108; Siber, *ZSS* 65 (1947) 1.

Res iuris. See RES FACTI.

Res litigiosa. The object of a pending suit after *litis contestatio*. Its alienation was void and so was its dedication to a god in order to make it a RES SACRA. The defendant holding the thing was protected against any claim by a third person through an exception (*exceptio rei litigiosae*).—D. 44.6; C. 8.36.

Gradenwitz, *ZSS* 53 (1933) 409.

Res lucrativae. Things which one acquired without any compensation, EX CAUSA LUCRATIVA (e.g., an inheritance, a legacy, a donation). Such things were in later law charged with a special tax, *descriptio*.—C. 10.36.

Res mancipi. Things the ownership of which is transferable only by the solemn act of MANCIPATIO (hence the name) or by IN IURE CESSIO. *Res mancipi* included buildings and land on Italian soil, rustic (not urban) servitudes connected with such land, slaves, and farm animals of draft and burden, such as "oxen, horses, mules, asses" (Gaius, Inst. 1.120). All these things and rights (servitudes) represented the highest value in a primitive rural economy, and the wealth of a Roman peasant consisted primarily in them. The distinction lost its importance in the later Empire; officially it was not abolished until Justinian who destroyed its basic idea by abrogating the requirements of solemn formalities in the transfer of ownership of *res mancipi*. Ant. RES NEC MANCIPI.—See MANCIPATIO.

Marchi, *AG* 85 (1921); Bonfante, *Scr giuridici* 3 (1918); De Visscher, *SDHI* 2 (1936) 253 (= *Nouvelles Études*, 1949, 236); Ferrabino, *SDHI* 3 (1937); Corsil, *RH* 1937, 555; Clerici, *Economia e finanza di Roma* 1 (1943) 311; Hernandez Tejero, *AHDE* 16 (1945) 290.

Res militaris. Military matters, legal rules concerning soldiers and their legal situation, military discipline, and organization, and particularly military penal law. Several jurists (Tarruntenus, Arrius Menander, Macer, and Paul) wrote monographs on military law.—D. 49.16; C.12.35(36).

Res mobiles. Movables. Syn. *mobilia*. Ant. RES IMMOBILES, *res soli*. The distinction is of importance

in various institutions of Roman private law and procedure (POSSESSIO, USUCAPIO, MANCIPATIO, DOS, INTERDICTA, etc.). A special category of *res mobiles* (syn. *res moventes, moventia*) consists of RES SE MOVENTES.

Res nec mancipi. See RES MANCIPI.
G. Segrè, *ATor* 1936; Solazzi, *ACNSR* (2. Congr.) 1931; Tejero, *AHDE* 16 (1945) 290.

Res nullius. Things belonging to nobody. He who takes possession of them (OCCUPATIO) acquires ownership by this very act provided that they are accessible to private ownership since some *res nullius*, such as RES DIVINI IURIS, are excluded from it.—See HEREDITAS IACENS, FURTUM, SERVUS SINE DOMINO.
Riccobono, *NDI* 11.

Res nummariae. See NUMMARIUS.

Res peculiares. Things belonging to the *peculium* of a slave or a *filius familias*, or affairs connected with the management of a *peculium*.—See PECULIUM.

Res praesentes. See HYPOTHECA OMNIUM BONORUM.

Res principalis. See PRINCIPALIS.

Res privata Caesaris (principis). The purely private property of the emperor. From the time of Septimius Severus it was neatly separately from the PATRIMONIUM CAESARIS. Syn. RATIO PRIVATA.
Liebenam, *RE* 1A; Lécrivain, *DS* 3, 961; L. Mitteis, *Röm. Privatrecht* 1 (1908) 358; Haijje, *Histoire de la justice seigneuriale 1. Les domaines des Empereurs*, 1927.

Res privatae. Private property, things "belonging to individuals" (D. 1.8.1 pr.). Syn. RES HOMINUM, ant. RES PUBLICAE.

Res propria. See RES SUA.

Res publica (respublica). The term corresponds in a certain measure to the modern conception of the State, but is not synonymous with it. It comprises the sum of the rights and interests of the Roman people, *populus Romanus*, understood as a whole. Therefore it often means simply the Roman people and is separate from the emperor, the Roman empire, the fisc as well as from other public bodies, such as *municipia*, or *coloniae* which are sometimes also called *res publicae*, but different from the Roman one. The meaning of *res publica* is particularly manifest when the sources speak of services rendered to the *res publica*, of holding a high office in the *res publica* or of a man's being absent in the interest or for the benefit of the *res publica* (*rei publicae causa abesse*) which saved him from detrimental consequences his absence might otherwise bring him.—See ABSENTIA, SENATUSCONSULTUM ULTIMUM, INTEREST ALICUIUS.
Rolenberg, *RE* 1A; R. Stark, *R. p.*, Diss. Tübingen, 1937; Lombardi, *AG* 126 (1941) 200; *idem, Ricerche in tema di ius gentium*, 1946, 49; De Francisci, *SDHI* 10 (1944) 150; Guarino, *RIDA* 1 (1948) 95; Nocera, *AnPer* 58 (1948) 5.

Res publicae. Public property, such as theatres, market places, rivers, harbors, etc. *Publicum* is all that "belongs to the Roman people" (D. 50.16.15). Therefore the *res publicae* may be used by every one, e.g., fishing in public rivers; see FLUMINA. On the contrary RES COMMUNES OMNIUM were not considered property of the Roman people although their use was accessible to all citizens.—D. 50.8; C. 11.31.
Vassalli, *StSen* 25 (1908) = *St giuridici* 2 (1939); G. Scherillo, *Lezioni. Le cose* 1 (1945) 89; G. Lombardi, *Ricerche in tema di ius gentium*, 1946, 49; Branca, *AnTr* 12 (1941) 78; *idem, St Redenti* 1 (1951) 179.

Res pupillares. The property (the affairs) of a ward (*pupillus*).—D. 27.9; C. 5.37.

Res quae pondere numero mensurave constant. Things which are weighed, counted or measured, such as wine, oil, grain, coined money, etc. When given in loan, the debtor returns things of the same kind, and not the same things *in specie*.—See MUTUUM.
Brassloff, *Wiener Studien* 36 (1919) 348; Savagnone, *BIDR* 55-56 (1952) 18.

Res quae usu consumuntur. Things the normal use of which consists in full or partial consumption. Such things, as e.g., articles of food, cannot be the object of transactions in which the restitution of the things given in use is involved, as USUS, USUSFRUCTUS, COMMODATUM.—D. 7.5.—See QUASI USUSFRUCTUS.

Res religiosae. Things "dedicated to the gods of lower regions" (*diis Manibus*, Gaius Inst. 2.4), such as tombs or burial grounds. They belong to the category of RES DIVINI IURIS. A piece of land being in private ownership became LOCUS RELIGIOSUS when the owner or another person acting with his permission, buried a human body in it. A burial by an unauthorized person did not render the soil *religiosus*. With the permission of the pontiffs, the owner could remove the corpse, and had a praetorian action against the wrongdoer for damages. *Res religiosae* could not be the object of a legal transaction. The owner who legally made a *res religiosa* of his land, especially when the funeral of the deceased person was his duty, had no ownership on the place, but he acquired a special right on the grave, IUS SEPULCRI, which implied various duties, such as taking care of the tomb, observing sepulcral cult, sacrifices, and the right to bury other dead there (*ius mortuum inferendi*).—D. 11.7; C. 3.44.—See SACRILEGIUM.
Leonhard, *RE* 1A (*s.v. religiosa*); Toutain, *DS* 4; C. Fadda, *St. e questioni di dir.* 1 (1910); Cuq, *RHD* 9 (1930) 383; G. Scherillo, *Lezioni. Le cose* 1 (1945) 48.

Res sacrae. Sacred things, i.e., consecrated to the gods in heaven by virtue of a statute "through the authority of the Roman people, by a decree of the Senate" (Gaius, Inst. 2.4; 5), or by the Emperor. They belong to the RES DIVINI IURIS. In Justinian's law *res sacrae* were also gifts "duly dedicated to the service of God" (Inst. 2.1.8).—See SACRILEGIUM.
A. Galante, *Condizione giuridica delle cose sacre*, 1903; G. Hertling, *Konsekration und r. s.*, Diss. München, 1911; Brassloff, *Studien zur röm. Rechtsgesch.*, 1925; G. Scherillo, *Lezioni. Le cose* 1 (1945) 40.

Res sanctae. Hallowed things, such as city walls and gates. Any wrong done to them was punished by death.—See RES DIVINI IURIS.

Res se (sese, per se) moventes (or moventia). Things moving by themselves, such as slaves and animals. This type of things (mentioned first in the fifth century) was added to the twofold classification: RES IMMOBILES and RES MOBILES.

Res singulae (singulares). Single, individual things, not composed of several things, but made up as a whole from one substance (*corpus quod uno spiritu continetur*). Ant. CORPUS EX COHAERENTIBUS, a complex of things, such as an inheritance (HEREDITAS), the whole property of a person (BONA).

Bianco, *NDI* 4, 371 (*s.v. cose semplici*).

Res soli. See RES MOBILES.

Res sua (propria). One was excluded from certain activities in affairs of one's own, e.g., from being judge (see IUDEX IN RE PROPRIA) or witness (see TESTIS IN RE PROPRIA), or from giving consent as a guardian to his ward's transaction when his own interests were involved. The affairs of one's father, wife, children, and freedmen were also considered *res sua*. Syn. *causa propria*.—See COGNITOR IN REM SUAM. PROCURATOR IN REM SUAM.

Gonnet, *RHD* 16 (1937) 196.

Res subreptae. See RES FURTIVAE, LEX ATINIA.

Berger, *RE* 12, 2331.

Res turpis. Syn. *turpis causa*.—See CONDICTIO OB TURPEM CAUSAM.

F. Schwarz, *Die Grundlage der condictio*, 1952, 169.

Res universitatis. Things belonging to a corporate body, primarily of public law as *civitates*, *municipia*. *Res universitatis* include, e.g., theatres and stadia.

Res uxoria. Dowry.—See DOS.

Res vi possessae. Things taken by force from the owner or from whoever possessed them for him. They were barred from USUCAPIO to the same extent as stolen things (RES FURTIVAE).—See LEX IULIA ET PLAUTIA, VIS LEX ATINIA.

Berger, *RE* Suppl. 7, 405.

Resarcire. To restore, to make good (losses, damages). Syn. *sarcire*.

Rescindere (rescissio). To annul, to make void, to repeal. The verb applies to judicial judgments (*sententiae*), agreements between private persons, legal effects resulting from certain situations (e.g., *usucapio*), wills, etc., annulled either by law, a magisterial order, a judicial judgment or another remedy (e.g., *in integrum restitutio*) at request of a person interested in the rescission.—D. 49.8; C. 7.50.

Hellmann, *ZSS* 24 (1903) 94.

Rescindere venditionem. To annul a sale.—D. 18.5; C. 4.44.—See EMPTIO VENDITIO, REDHIBITIO.

Rescindere usucapionem. See ACTIO RESCISSORIA, USUCAPIO.

Rescissio. See RESCINDERE.

Rescissoria actio. See ACTIO RESCISSORIA.

Rescribere. To answer by writing. The verb is used both of written answers given by jurists to questions on which they were asked for an opinion (see RESPONSA PRUDENTIUM) and of written answers (decisions) of the emperors (see RESCRIPTA PRINCIPUM).

Rescripta principum. Written answers given by the emperor to queries of officials (*relatio*, *consultatio*, *suggestio*) or to petitions of private persons (*preces*, *libellus*, *supplicatio*). The rescripts were issued either on the petition itself in the form of a SUBSCRIPTIO or in a separate letter (EPISTULAE PRINCIPUM). A rescript expressed the emperor's opinion upon a legal question or a decision in a specific case. It often gave rise to a legal innovation when the emperor's view introduced a new legal rule which, although in principle binding only in the case for which it was issued, nevertheless, because it emanated from the emperor's authority, easily could acquire a general binding force. In particular, when a specific rule was repeatedly expressed by various emperors (phrases like *imperatores saepe rescripserunt*, *saepe* [*saepissime*] *rescriptum est*, and the like, occur frequently in juristic writings), it became law in fact. For the development of a special proceeding in civil matters by imperial rescript, see CONSULTATIO.—C. 1.23.—See CONSTITUTIONES PRINCIPUM, LEGITIMATIO PER RESCRIPTUM PRINCIPIS, LIBER LIBELLORUM RESCRIPTORUM.

Klingmüller, *RE* 1A, 1668; Cuq, *DS* 4, 952; Lécrivain, *DS* 4; Berger, *OCD*; Wilcken, *Hermes* 55 (1920) 1; Sickle, *ClPhilol* 23 (1928) 270; W. Felgenträger, *Antikes Lösungsrecht*, 1933, 3; F. v. Schwind, *Zur Frage der Publikation*, 1940, 167; De Robertis, *AnBari* 4 (1941) 281; L. Vinci, *AnCat* 1 (1947) 320; De Dominicis, *I destinatari dei rescritti imperiali*, *Ann. Univ. Ferrara* 8, parte 3 (1950); Wolff, *ZSS* 69 (1952) 128.

Rescriptio. RESCRIPTUM. See the foregoing item.

Rescriptum Domitiani de medicis. (On physicians.) See EDICTUM VESPASIANI.

Residua (residuae pecuniae). Sums embezzled by public officials. The LEX IULIA PECULATUS contained some specific provisions concerning *residua*, hence the statute was named also *Lex Iulia de residuis*.—D. 48.13.—See PECULATUS.

Acta Divi Augusti 1 (Rome, 1945) 165.

Residuum. A remainder. The noun refers in particular to the sum which remained due because the amount obtained by a creditor from the sale of his debtor's pledge (*pignus*, *hypotheca*) did not cover the whole sum owed.—See HYPEROCHA.

Manigk, *RE* 20, 1257.

Resignare. To unseal a document, primarily a sealed testament either for the official opening (see APERTURA TESTAMENTI) or by a private person for purposes of a forgery. Illegal removing the seals from a testament was punished under the *Lex Cornelia de falsis*.—See FALSUM.

Resistere. To oppose, to resist. The term is primarily used of physical resistance to another's force (*vis*) in self-defense.

Resolvere. To annul, to rescind a transaction either by mutual consent of both contracting parties (*contrario consensu*) or, in specific circumstances, by a unilateral act of one of the persons involved. *Resolvi* to be rescinded, to become void (e.g., a mandate, *mandatum*, by the death of one party).

Resolvi sub condicione. A conditional transaction or testamentary disposition became null through the fulfillment of the condition if the act had contained a clause providing for its rescission in the event of fulfillment.

Respicere. To take into consideration, to have regard to. The jurists used the verb in calling attention to specific points which were decisive for the juristic evaluation of the case under discussion.

Respondere. See RESPONSA PRUDENTIUM, IUS RESPONDENDI, PROPONERE.

Responsa. A type of juristic writing. The jurists used to publish their answers (see RESPONSA PRUDENTIUM) in collections entitled *Responsa*. We know of *responsa* of Labeo, Sabinus, Neratius, Marcellus. Scaevola, Papinian, Paul, Ulpian, and some other jurists. The adaptation of the original *responsa* for publication required sometimes the addition of specific argumentation, particularly when opinions of other jurists were being rejected. Some jurists dealt with the cases, on which they had given opinions (*responsa*) as respondent lawyers, in other works, such as *Quaestiones*, or *Digesta* (Celsus, Julian, Marcellus) and *vice versa*, they inserted some real or fictitious cases they discussed as teachers in the works published as *Responsa*.

Berger, *RE* 10, 1173.

Responsa pontificum. Opinions of the pontiffs on questions concerning sacral law, in particular, whether an intended sacral act was admissible or an act already performed was legal. *Responsa pontificum* were given also at the request of magistrates.

F. Schulz, *History of R. legal science*, 1946, 16.

Responsa prudentium. Oral or written answers (opinions) given by the jurists when they were queried by persons involved in a legal controversy or in litigation. *Responsa* were given also to magistrates or judges if they addressed themselves to a jurist for opinion on a legal problem. The giving of *responsa* was an old Roman custom, going back to the times when the pontiffs were the exclusive experts in law (see RESPONSA PONTIFICUM). *Responsa* are given in writing when they had to be presented in court. "The answers of the jurists are the views and opinions of those to whom it was permitted to lay down the laws (*iura condere*). If the opinions of all of them agree, that which they so hold stands in the place of a statute. However, if they disagree, the judge is free to follow the opinion he pleases." These rules are attributed by Gaius (Inst. 1.7) to a reform by the emperor Hadrian. See CONDERE IURA, IUS RESPONDENDI, OPTINERE LEGIS VICEM. The term *responsa* does not cover opinions of the jurists expressed in theoretical discussions or in their literary products. The importance of the responding activity of the jurists suffered somewhat after the codification of the praetorian Edict under Hadrian (see EDICTUM PERPETUUM) and the granting of *ius respondendi* became certainly rarer (if practiced at all), while on the other hand, the authority of those jurists who participated in the emperor's council (CONSILIUM PRINCIPIS) became predominant. Some problems in the field of the *ius respondendi* have remained still controversial despite the copious recent literature. As a matter of fact, collections of *responsa* (see RESPONSA), reflecting the responding activity of the jurists, appear through the century after Hadrian. For the influence of the *responsa prudentium* on the development of the law, see IURISPRUDENTIA.

Berger, *RE* 10, 1167; Wenger, *RE* 2A, 2427; Cuq, *DS* 4 (*s.v. prudentium r.*); Anon., *NDI* 10 (*s.v. prudentium r.*); Pringsheim, *JRS* 24 (1934) 146; Wieacker, in *Romanistische Studien, Freiburger rechtsgesch. Abhandlungen* 5 (1935) 43; Arangio-Ruiz, *StSas* 16 (1938) 17; De Zulueta, *TulLR* 22 (1947) 173; for earlier literature, see Massei, *Scr Ferrini* (Univ. Pavia, 1946) 430; for further recent literature, see IUS RESPONDENDI.

Responsio (responsum). As a part of the STIPULATIO, the answer of the debtor assuming an obligation to the question (*interrogatio*) of the creditor.

Responsio (respondere). In a trial the reply of the defendant or his representative to the presentation of the case by the plaintiff; see NARRATIO. *Responsio* comprises all means of defense (*defensio*) used by the defendant for the denial of the plaintiff's claim.

Responsio in iure. The answer given by a party to a trial questioned *in iure* by the magistrate; see INTERROGATIO IN IURE.

Betti, *ATor* 50 (1914–15) 389.

Responsitare. A rare term indicating the responding activity (*respondere*) of the jurists.—See RESPONSA PRUDENTIUM.

Restipulatio. (In interdictal procedure.) See AGERE PER SPONSIONEM, INTERDICTUM.

Restipulatio tertiae partis. See SPONSIO TERTIAE PARTIS.

Restituere. To reinstate (a building, a construction, a road, and the like) to its former condition (*in pristinum statum*). *Restituere* = "to take away what one did (constructed on another's property) or to restore on its place what was taken away" (D. 43.8.2.43). In this sense *restituere* is used in the formulae of INTERDICTA RESTITUTORIA ("*restituas*"), i.e., restoration into such condition as to enable the plaintiff to regain the full utility (*omnis utilitas*) he had before the destruction or damage caused by the

defendant. *Restituere* also involved the compensation for all losses and irreparable damages.

Restituere (rem, hereditatem, bona). To return, to restore (a thing, an inheritance) with all fruits and proceeds derived therefrom. "When the words 'you are to restore (*restituas*)' are used in a law, the proceeds also are to be restored although nothing expressly has been said thereof" (D. 50.7.173.1). *Restituere* with reference to guardianship or curatorship (*restituere tutelam, curam*) = to render accounts concerning the management of the ward's property and affairs by the guardian (curator) when the guardianship (curatorship) came to an end.

Levy, *ZSS* 36 (1915) 30; G. Maier, *Prätorische Berichterungsklagen*, 1931, 160; M. Kaser, *R. als Prozessgegenstand*, 1932.

Restitutio in integrum. A reinstatement into the former legal position. This was an extraordinary praetorian remedy (*auxilium*) granted at the request of a person who had suffered an inequitable loss or was threatened by such a loss. A thorough investigation of the case (*causae cognitio*) preceded the *in integrum restitutio* as a result of which the praetor could annul through a decree (*decretum*) a transaction, valid according to the *ius civile*. He passed such a decree when reasons of equity appeared to him sufficient enough to treat legally important events or transactions as non-existing and thereby to deprive them of the consequences which were prejudicial to the person involved. Granting a *restitutio in integrum* was rather an act of the praetor's IMPERIUM than of his *iurisdictio*. The reasons and situations in which this remedy could be applied, were manifold; the most typical are dealt with in the items below. The praetor could also save a party from unjust losses in another way; he might grant him an action, as if nothing had happened before and the legal situation had remained unchanged, or, in the case of a person who was sued under a transaction deserving annulment, grant him an exception. The reforms in the civil procedure and the regime of bureaucratic jurisdiction gave the *restitutio in integrum* a different aspect: from the extraordinary procedural remedy depending on the discretion of the praetor, it became in the later Principate and the Empire a *"beneficium"* (a legal benefit) and other measures made it in certain cases superfluous. —D. 4.1; C. 2.21–41; 43; 46; 47; 49; 52; 53.—See USUCAPIO, ALIENATIO IUDICII MUTANDI CAUSA.

Klingmüller, *RE* 1A; Lécrivain, *DS* 4; Sciascia, *NDI* 11; L. Charvet, *Évolution de la restitution des majeurs*, Diss. Strassbourg, 1920; Lauria, *St Bonfante* 2 (1930) 513; Jobbé-Duval, *St Bonfante* 3 (1930) 183; W. Felgenträger, *Antikes Lösungsrecht*, 1933, 101; Gallet, *RHD* 16 (1937) 407; Carrelli, *SDHI* 4 (1938) 5, 195; *idem*, *AnBari* 1 (1938) 129; Beretta, *RISG* 85 (1948) 357; Archi, *St Solazzi* 1948, 740; Levy, *ZSS* 68 (1951) 360.

Restitutio in integrum militum. Granted to soldiers; see the following item.—C. 2.50.

Restitutio in integrum propter absentiam. Granted to persons who because of their absence had incurred damages, as, for instance, the loss of an action through *praescriptio*, usucaption of the absent person's property by a third person. Absence in the interests of the state, captivity, or absence enforced by duress, was considered absence which justified a *restitutio in integrum*. A request for *restitutio* had to be brought within a year from the end of the period of absence. —C. 2.50.—See ABSENTES.

Gallet, *RHD* 16 (1937) 407.

Restitutio in integrum propter aetatem. Granted to minors (see MINORES) who had concluded a prejudicial transaction. In the praetorian Edict there was a section which concerned this kind of *restitutio:* "If a transaction will be said to have been concluded with a minor below twenty-five years of age, I shall give attention to the case according to its particular circumstances" (D. 4.4.1.1). Therefore this *restitutio in integrum* was not conceded in just any case; the injured minor had to prove that it was only because of lack of experience due to his age that he had concluded the transaction, since the minor's right to be protected by *restitutio* was considered a privilege of age (*beneficium aetatis*). There were several cases in which a *restitutio* was refused. The request for annulment of the harmful transaction had to be made within a year after the minor attained the age of majority.

Solazzi, *BIDR* 27 (1914) 296.

Restitutio in integrum propter capitis deminutionem. A creditor who lost his claim against a debtor because of the latter's CAPITIS DEMINUTIO (when, e.g., he was adopted by *arrogatio*, or when a female debtor concluded a marriage with *conventio in manum*) might request *restitutio in integrum* from the praetor.

Carrelli, *SDHI* 2 (1936) 141.

Restitutio in integrum propter dolum. See DOLUS.

Duquesne, *Mél Fournier* 1929, 185.

Restitutio in integrum propter metum. Reestablished the legal situation which existed before a transaction was concluded (or an act was done, e.g., the refusal of the acceptance of an inheritance) under duress. The annulment of the pertinent transaction or act was decreed at the request of the person who had acted under duress. In his Edict the praetor proclaimed: "I shall not approve of what has been done because of fear" (D. 4.2.1).—See METUS.

Restitutio in ordinem. See MOTIO EX ORDINE.

Restitutio indulgentia principis. The restoration of a person, who had been condemned to deportation for a crime, into his former rights through an act of grace by the emperor. Such *restitutio* is also called *restitutio in integrum*. The result was that the one so restored (*restitutus*) was regarded as if he never had been condemned. Some restrictive clauses might be

added to the emperor's decree and the return of confiscated property had to be expressly granted. The imperial *restitutio* was also applied in cases when a person was condemned to forced labor in mines (see METALLUM).—See ABOLITIO, INDULGENTIA.

Carrelli, *AnBari* 2 (1937) 55; Dessertaux, *TR* 7 (1927) 281.

Restitutio natalium. See NATALIUM RESTITUTIO.

Restitutorius. See ACTIO QUAE RESTITUTIT OBLIGATIONEM, INTERDICTA RESTITUTORIA.

Retentio. (From *retinere.*) The retaining of a thing by a person who normally is obligated to return it to its owner. This kind of seli-help could occur in various situations, especially when a person had to bear expenses on another's thing (see IMPENSAE), which he was temporarily holding. When sued by the owner for recovery he might oppose an *exceptio doli* which, when proved justified, liberated him from the restoration of the thing until his claims were satisfied. *Retentio* was admitted also when an heir claimed the *quarta Falcidia* (see LEX FALCIDIA) before paying a *legatum* or a *fideicommissum* to the beneficiary. It seems that the *retentio* was applicable in classical law in various legal situations which because of alterations made by the compilers on the pertinent texts are no longer recognizable. The *ius retentionis* (= the right to retain another's thing) was, however, not admitted in any instance in which one who claimed a payment from another person, was holding the latter's property under a specific title (for instance, as deposit or a gratuitous loan). Generally, there had to be a relationship between the thing retained and the claim.—The more important cases of *retentio* are dealt with in the following items.

Leonhard, *RE* 1A; Cuq, *DS* 4; D'Avanzo, *NDI* 11, 834; Last, *GrZ* 36 (1909) 505; Riccobono, *AnPal* 3-4 (1917) 178; E. Nardi, *Ritenzione e pegno Gordiano*, 1939; *idem*, *AG* 124 (1940) 74, 139; *idem*, *Scr Ferrini* 1 (Univ. Cattolica Sacro Cuore, Milan, 1947) 354; *idem*, *Si sulla ritenzione, I. Fonti e casi*, 1947; E. Protetti, *Contributo allo studio dell'efficacia dell'exc. doli a fine di ritenzione*, 1948.

Retentio pignoris. See PIGNUS GORDIANUM.

Retentio propter res donatas. See RETENTIONES DOTALES.

Siber, *St Riccobono* 3 (1936) 241.

Retentiones dotales (ex dote). In certain cases a husband had the right to retain a portion of the dowry when the restitution thereof was to be performed. *Retentiones propter liberos* (= retention in favor of children): in the event of the wife's death, the husband could retain one-fifth of the dowry for each child, in the case of divorce by fault of the wife one-sixth, but in neither case more than a half altogether. *Retentiones propter mores* = retention in case of divorce arising from a misconduct of the wife: one-sixth when she was guilty of adultery (*mores graviores*), one-eighth when her improper conduct was less grave (*mores leviores*). *Retentiones propter res donatas* = retention because of donations which the husband had made to the wife under violation of the prohibition of such donations (see DONATIO INTER VIRUM ET UXOREM). *Retentiones propter impensas* = retention because of expenditure made on the objects constituted as dowry. *Retentiones propter res amotas* = retention because of the husband's things which were taken away by the wife (see ACTIO RERUM AMOTARUM). In the last three instances the heirs of the husband also had the *ius retentionis*. The *retentiones* was materialized through an *exceptio doli* opposed by the husband (or his heir) when he was sued for the restitution of the dowry under the ACTIO REI UXORIAE. Justinian's reform of the dowry law abolished the *retentiones*. The claims of the husband were partly suppressed, partly (as those for *impensae*) made suable under specific actions or allowed to compensate for the reciprocal claim for the restoration of the dowry. The compilers replaced the term *retentio* with the terms *exactio* and *compensatio*.—See RETENTIO.

E. Nardi, *St sulla ritenzione* 1 (1947) 146.

Retinere. See RETENTIO.

Retractare (retractatio). To revoke, to rescind a juristic act, to deny the validity (e.g., of a testament).

Leonhard, *RE* 1A.

Retractare causam. To try in court anew (*ex integro*) a case which had already been decided in a previous trial. This was possible only inasmuch as the rule *bis de eadem re ne sit actio* (see BIS IDEM EXIGERE) was not applicable and an EXCEPTIO REI IUDICATAE could not be opposed. *Retractare causam* was admissible only in exceptional cases, for instance, if it could be proved that the former judge had been bribed or new documents were found (*nova instrumenta*) which reversed the evidence presented in the first trial. Imperial constitutions were particularly innovating in this respect. The fisc was especially privileged in *retractare causam* if it could offer new evidence on its behalf, but only within three years from the first decision.—C. 10.9.

Biondi, *St Bonfante* 4 (1930) 96.

Retractare sententiam. To change a judgment from which a party had appealed.—See RETRACTARE CAUSAM, ERROR CALCULI.

Hellman, *ZSS* 24 (1903) 87.

Retro agere. To rescind a transaction (a sale, a donation).

Retro dare. To return, to repay a debt. Syn. *solvere*.

Reus. A defendant in a civil trial. Syn. *is cum quo agitur*. Ant. *actor*. There was a rule on behalf of the defendant: "Defendants are regarded as deserving more favorable treatment than plaintiffs" (D. 50.17.125). Another rule defined: "That which is not permitted to the defendant should not be allowed to the plaintiff" (D. 50.17.41 pr.). By opposing an exception to the plaintiff's claim the defendant assumed the role of a plaintiff; see EXCIPERE, EXCEPTIO.

In the so-called divisory actions (*actio familiae erciscundae, actio communi dividundo, actio finium regundorum*) each party to the trial is both plaintiff and defendant.—See IUDICIA DUPLICIA.—*Reus* is also the accused in a criminal trial. In connection with a specific crime (*reus homicidii, falsi, maiestatis*) = guilty. The death of the accused produced the discontinuance of the trial.—C. 9.6.

Eger, *RE* 1A; Lécrivain, *DS* 4.

Reus. (In obligatory relations.) Refers both to the debtor (primarily) and to the creditor. See REUS CREDENDI, REUS PROMITTENDI, REUS STIPULANDI, DUO REI. With reference to suretyship *reus* is applied both to the principal debtor (see REUS PRINCIPALIS) and to the surety (*fideiussor*).

Reus credendi. A creditor.. Ant. *reus debendi* = a debtor.—See CREDITOR.

Reus culpae. Guilty of negligence. Syn. *reus ex culpa*.—See CULPA.

Berger, *KrVj* 14 (1912) 436.

Reus debendi. See REUS CREDENDI, DEBITOR.

Reus excipiendo actor est. The rule applies to the defendant in a civil trial: by opposing an exception to the plaintiff's claim the defendant acts as a plaintiff.—See EXCIPERE, EXCEPTIO, REUS.

Reus principalis. The principal debtor as opposed to a surety (*fideiussor, adpromissor*). Syn. *principalis debitor*.

Reus promittendi. One who becomes a debtor by assuming an obligation through *stipulatio* (*qui promittit, promissor*). Ant. *reus stipulandi*.

Reus stipulandi. One who becomes a creditor through *stipulatio* (*qui stipulatur*). Syn. *stipulator*. Ant. *reus promittendi*.

Revendere. To sell back. The term is applied to the sale of a freedman's services (*operae liberti*) to the freedman himself by the patron. Through such a transaction the freedman was released from the obligation of performing further work for the patron. Passive *revenire* (*re-veneo*) = to be sold back.

Reverentia. Respect due by children to their parents or by a freedman to his patron.—See OBSEQUIUM.

Kaser, *ZSS* 58 (1938) 117; C. Cosentini, *St sui liberti* 1 (1948) 251.

Reverentissimus. A title given to high ecclesiastical dignitaries (archbishops, bishops, *oeconomus ecclesiae*).

Reverti. To return. See ANIMUS REVERTENDI. *Reverti* is used of persons (slaves) who reverted under the power of the same person under whom they had been before, and of things which returned to the same owner to whom they had belonged.

Revocare (revocatio). To revoke unilaterally a legal act (a donation, a testamentary disposition), to annul it by a manifestation of will to the effect that the previous legal situation be restored.—See REVOCARE ALIENATIONEM, REVOCARE DONATIONEM.

Leonhard, *RE* 1A; Cuq, *DS* 4.

Revocare alienationem. To rescind an alienation. Used of a creditor who called into question an alienation made by his debtor with the purpose of defrauding the creditors.—C. 7.75.—See FRAUS.

Revocare domum. See IUS REVOCANDI DOMUM.

Revocare donationem. In classical law a donation already accomplished (see DONATIO PERFECTA) was irrevocable. In certain specific cases, however, the postclassical law admitted the revocability of a donation, as in the case of a flagrant ingratitude of the donee or of donations made to villainous or irreverent children. A donation could also be revoked (from the third century after Christ on) if the donee did not fulfill the duty (see MODUS) imposed on him by the donor. The revocation was allowed to the donor alone, not to his successors. A patron might revoke a donation made to his freedman if the latter proved ungrateful, see INGRATUS LIBERTUS. In the later law (from the time of Constantine) a gift made to a freedman by a childless patron could be revoked if the donor begot a child afterwards. A DONATIO MORTIS CAUSA was always revocable according to Justinian's law.—C. 8.55.—See PAENITENTIA.

B. Biondi, *Successione testamentaria*, 1943, 695; C. Cosentini, *St sui liberti* 1 (1948) 223; S. Di Paola, *Donatio mortis causa*, 1950, 66.

Revocare in patriam potestatem. From the time of Constantine a father could recall an emancipated son under his paternal power because of the latter's ingratitude.

Revocare in servitutem. To revoke a manumission. A patron might *revocare in servitutem* an ungrateful freedman (see INGRATUS LIBERTUS) in a case of particular gravity.

De Francisci, *Mél Cornil* 1 (1926) 295.

Revocare legatum. See ADEMPTIO LEGATI.

Revocare mandatum. See MANDATUM.

Revocare Romam. To call a judicial matter into a Roman court. Already in the later Republic the senate or the consuls could order important judicial matters transferred from a province to Rome.

Revocare testamentum. To revoke a testament by making another valid one or by annulment or destruction (e.g., by removing the seals, see LINUM). This was a fundamental principle of the Roman law on testaments: "the will of a testator is changeable until the very end of his life" (D. 34.4.4). This was in conformity with the conception of the testament as the "last will" (*suprema, ultima voluntas*) of the deceased. A testator could not relinquish that right by inserting in his testament a clause invalidating any future testament. Such a clause was not binding; Justinian, however, required that the testator when making a new testament should expressly declare that he was acting against his previous decision.

R. Bozzoni, *Il testamento r. primitivo e la sua revocabilità*, 1904; De Francisci, *BIDR* 27 (1915) 7; Bohacek, *St Bonfante* 4 (1930) 307; B. Biondi, *Successione testamentaria*, 1943, 591.

Revocari per legem. To be declared ineffective by a legal enactment (a statute, the praetorian edict, an imperial constitution).

Hellmann, *ZSS* 24 (1903) 104.

Revocatio. See REVOCARE.

Revocatio in duplum. A defendant condemned in a trial could without awaiting the plaintiff's action for execution (ACTIO IUDICATI) challenge the judgment as invalid. Such a complaint was called *revocatio in duplum* since in the case of failure he had to pay double the amount of the previous judgment.

Biondi, *St Bonfante* 4 (1930) 92.

Rex. During the period of kingship, which lasted about 250 years from the foundation of Rome, a king (*rex*) was at the head of the Roman people as the holder of the highest military and judicial power. The king was also the highest priest and presided over the sacred ceremonies; his religious duties were the most important in peace time. Tradition preserved the names of seven kings from the legendary founder of Rome, Romulus, to the last king, Tarquinius Superbus, whose expulsion (in 509 B.C.) marked the end of the regal regime. The constitutional structure of the state and the legal institutions of this period are obscure in many details. Later historical sources are not fully reliable because of their tendency to retroject the origin of certain Republican institutions back to the times of the kings. The power of the *rex* was not hereditary; he was elected by the people for life, the election being confirmed by the senate. The composition, election (nomination by the king?) and activity of the senate are also obscure. Its principal role might have been that of an advisory council of the king. The number of the senators (*patres*), originally one hundred, was increased to three hundred. Popular assemblies (*comitia curiata*) also existed already in the regal period.—See REGNUM, CURIA, LEGES REGIAE, IUS PAPIRIANUM.

Treves, *OCD*; Fusiel de Coulanges, *DS* 4, 824; De Robertis, *NDI* 11; F. Bernhöft, *Staat und Recht der röm. Königszeit*, 1882; F. Leifer, *Die Einheit der Gewaltgedankens*, 1914, 147; *idem*, *Klio, Beiheft* 23 (1931) 77; Gioffredi, *Bull. Commissione Comunale archeal. di Roma*, 1943–1945; Nocera, *AnPer* 57 (1946) 171; S. Mazzarino, *Dalla monarchia allo stato repubblicano*, 1947; P. Noailles, *Du droit sacré au dr. civil*, 1950, 32; Westrup, *Archives d'hist. du dr. oriental* 4 (1950) 85; Coli, *SDHI* 17 (1951) 54.

Rex sacrorum (sacrificulus). A priest who officiated at certain religious observances. The office was created at the beginning of the Republic; the *rex sacrorum* first assumed the sacral functions of the king, hence the title of *rex* was conferred on him. He was, however, lower in rank than the PONTIFEX MAXIMUS, who was his superior. The *rex sacrorum* existed still in the Empire.

Rosenberg, *RE* 1A.

Rex socius. The king of a foreign country with whom Rome had a treaty of alliance.—See SOCII.

Rhetor. A rhetorician. See ORATOR. A *rhetor* giving instruction in rhetoric was reckoned among teachers (*magistri*), and his discipline among the *artes liberales*. A rhetorician was at his request exempt from the duties of a judge in a civil trial. For the privileges granted to the rhetoricians, see MAGISTRI. The problem of the influence of rhetoric on Roman jurisprudence is the subject of controversy. Attempts to deny any influence are futile; but it is hardly possible to delimit this influence with any certainty. There is also in the literature a tendency to exclude certain words and phrases from the juristic language although they occur frequently in the language of the rhetoricians. Such a method applied in the search for interpolations is erroneous. After all, the jurists studied rhetoric in their youth like all well educated Romans, and it would be quite natural for them to use words and locutions they heard from their teachers.

Ziebarth, *RE* 2A, 765; Pasquali, *Riv. di filologia e d'istruzione classica* 10 (1927) 228; F. Lanfranchi, *Il diritto nei retori rom.*, 1938; Kübler, *SDHI* 5 (1939) 285; Steinwenter, *Rhetorik und röm. Zivilprozess*, *ZSS* 65 (1947) 69; S. F. Bonner, *Rom. declamation in the late Republic and early Empire*, 1949; J. Stroux, *Röm. Rechtswissenschaft und Rhetorik* (Potsdam, 1949; contains a new ed. of the author's *Summum ius summa iniuria*, 1926; Italian translation of the first ed. by Riccobono, *AnPal* 12, 1928).

Rhopai. A Byzantine juristic writing of the seventh century composed in Greek by an unknown author and published under the title "On spaces of time from one moment (rhope = a moment) to one hundred years." It is an exact collection of the various extents of time which occur in Justinian's legislation, the Novels included.

Edition: K. E. Zachariae, *Rh. oder die Schrift über Zeitabschnitte*, 1836; J. and P. Zepos, *Ius Graeco-Romanum* 3 (Athens, 1931) 273.—J. A. B. Mortreuil, *Hist. du droit byzantin* 1 (1843) 40; Tamassia, *AG* 54 (1895) 175; Scheltema, *TR* 17 (1941) 415.

Rigor iuris. The severity, inflexibility, rigidity of the law. A rule defined by the late classical jurist, Modestinus (D. 49.1.19) recommended: "If a judgment is rendered clearly against the *rigor iuris*, it shall not be valid, and therefore the matter should be brought again into court even without an appeal."

Ripa. The bank of a river. If the bank of a public river was in private ownership, its use was accessible to all for navigation, transportation, fishing, etc. The owner's right to repair or strengthen the bank (*munire ripam*) was protected by a special interdict, *interdictum de ripa muniendo*, against any interference with the necessary repairs or improvements provided they did not impair navigation. On the other hand the demolition of constructions which impeded navigation (*quo navigatio deterior fit*) could be enforced by another interdict.—D. 43.12; 15.—See INTERDICTA DE FLUMINIBUS PUBLICIS, INTERDICTA DE REFICIENDO.

Berger, *RE* 9, 1634 (no. 5 a), 1637 (no. 5 f); D'Amario, *AG* 77 (1906) 3; Lenel, *Edictum perpetuum*[3], 1927, 461; G. Lombardi, *Ricerche in tema di ius gentium*, 1947, 81; Branca, *AnTr* 12 (1941) 76.

Rite. In due, solemn form, prescribed by law.
Riccobono, *ZSS* 34 (1913) 224.

Rivales. Persons using water from the same stream. —See RIVUS.

Rivus. A brook, a stream, a minor flowing of water. *Rivus* is also a ditch (a channel) through which water runs from one man's property to another's in the case of a *servitus aquaeductus*.—D. 43.21.—See INTERDICTUM DE RIVIS, INTERDICTA DE REFICIENDO.
Berger, *RE* 9, 1674; Longo, *RISG* 3 (1928) 243.

Rixa. An affray, a brawl, a tumultuous quarrel. A man who died as a result of a *rixa* was presumed to have been killed by accident rather than by intent, and a milder penalty was accordingly inflicted on the culprit.
F. M. De Robertis, *Si di dir. rom. penale*, 1943, 145; 205.

Rogare. To request, to ask another for a service, as, e.g., to be a witness (see TESTIS ROGATUS) or surety, or for the permission to use his property (see COMMODATUM, PRECARIUM).—See ROGO.

Rogatio legis. Proposal of a statute to the people gathered in a popular assembly (*comitia*). Literally *rogatio* means a question; here it refers to the formulaic request for approval by which the proposer addressed to the voters: *"Velitis, iubeatis haec ita, ut dixi, ita vos, Quirites, rogo"* (= will and order as I proposed, I beg you, *Quirites*). See VELITIS, IUBEATIS, U.R., A.—Sometimes the term *rogatio* (*lex rogata*) indicates a statute approved by vote. The right of the highest magistrates (consuls, praetors) to propose a statute to the *comitia* = *ius rogationis*. —See LEGES ROGATAE.
Liebenam, *RE* 1A; Lengle, *RE* 6A, 2463; 2479; G. Rotondi, *Leges publicae populi Rom.*, 1912, 14.

Rogator legis. One who proposed a statute to a popular assembly.—See ROGATIO LEGIS.

Rogatores. Tellers who collected and counted the votes in a popular assembly. Syn. *diribitores* since their activity was called *diribitio*.
Liebenam, *RE* 1A, 5 (*s.v. diribitio*); G. Rotondi, *Leges publicae populi Rom.*, 1912, 142.

Rogatu. At request.—See ROGO.

Rogerius. A glossator of the second half of the twelfth century.—See GLOSSATORES.
Kuttner, *NDI* 11, 906; H. Kantorowicz and W. W. Buckland, *Studies in the Glossators of the R. Law*, 1938, 122.

Rogo. Used in the formula of a FIDEICOMMISSUM.

Rogus. A funeral pile.—See BUSTUM, USTRINA.
Ziegler, *RE* 1A; Cuq, *DS* 2, 1394.

Roma. Rome. *"Roma* is our common fatherland" (D. 50.1.33). Syn. *urbs*. After Constantinople became the capital of the Empire, Rome was denoted in imperial constitutions as the "ancient Rome" (*vetus Roma*) while the new capital was termed *nova Roma*. Both cities were designated as *utraque Roma*.—See URBS, CONTINENTIA, MILIARIUM, MURUS, REVOCARE ROMAN, REGIONES URBIS ROMAE.

Rubrica. The superscription of a section in the praetorian Edict. In the literature, *rubrica* indicates the superscription of titles in the various parts of Justinian's codification. The classical jurists who commented on the praetorian Edict accepted in their commentaries the rubrics of the Edict, as did the compilers of the Digest, following the juristic commentaries. The rubrics of the titles of the Code of Justinian are concordant in part with those of the Digest, in part with those of the Theodosian Code, but many of them were composed by the compilers of the Code themselves, primarily where new topics were involved.
Solazzi, *SDHI* 2 (1936) 325.

Rufinus. See LICINNIUS RUFINUS.

Ruina. The collapse of a building. Appropriation of things belonging to a person struck by such an accident was severely punished; for a deposit given on the occasion of a *ruina*, see DEPOSITUM MISERABILE. Looting in the case of *ruina* was punished severely in the same manner as in the case of shipwreck.—See NAUFRAGIUM.—D. 47.9.

Rumpere. To damage, to injure, to deteriorate. The term is among the kinds of damages inflicted on another's property enumerated in the LEX AQUILIA. For *membrum ruptum*, see OS FRACTUM.

Rumpere testamentum. See TESTAMENTUM RUPTUM.

Rustici. Peasants, simple men lacking experience, particularly in legal matters. *Rustici* might be excused for ignorance of the law and errors, a privilege which citizens normally could not claim.—See IGNORANTIA IURIS.

Rusticitas. Simplicity, quality of being rustic, inexperienced.—See RUSTICI.

Rusticus. (Adj.) Rural, connected with, or pertaining to, life and work in the country.—See PRAEDIA RUSTICA, SERVITUTES PRAEDIORUM RUSTICORUM, FAMILIA RUSTICA, VILLA.

Ruta et caesa. Things taken out of the soil (= *eruta*, such as sand, clay, quarry-stones) or cut down (such as trees). If separated from the soil, they could be reserved for the seller (*excepta*) on the occasion of selling the land. According to another opinion, they always remained in the ownership of the seller unless they were expressly sold together with the land.

Rutiliana actio, constitutio. See ACTIO RUTILIANA, CONSTITUTIO, RUTILIUS RUFUS, USUCAPIO EX RUTILIANA CONSTITUTIONE.

Rutilius Maximus. A jurist of the third post-Christian century, author of a one-book-dissertation on the LEX FALCIDIA.

Rutilius Rufus (Publius). A jurist of the first half of the first century B.C., a disciple of the famous republican jurists, Manilius, Brutus, and P. Mucius Scaevola. He was in great demand for juristic

opinions (*responsa*). He was the creator of the ACTIO RUTILIANA, and perhaps also of the actions granted the patron for services due by his freedmen (see IUDICIUM OPERARUM) which are attributed to a praetor Rutilius.—See CONSTITUTIO.

Münzer, *RE* 1A. 1269 (no. 34); Orestano, *NDI* 11, 948.

S

Sabiniani. The name of a school (*schola, secta*) of legal thought in the first and the early second centuries after Christ. The name refers to the famous jurist Massurius Sabinus (see SABINUS), a prominent leader of the group. The "school" is called also *Cassiani* after the name of the jurist C. Cassius Longinus, Sabinus' successor. The origin of the *Sabiniani* as well as that of the rival school of Proculians (*Proculiani, Proculciani*), so-called after the name of their leader PROCULUS, goes back to the time of Augustus. The founders may have been Labeo and Capito (the latter was predecessor of Sabinus). A considerable number of controversial questions, on which the opinions of the leading representatives of the two groups differed, is known but it is difficult to find a common basis—a political, philosophical, or economic background—that will explain the differences in their opinions. According to a recent view the distinction between the two schools is based on the real existence of two legal educational institutions. Among the prominent Sabinians after Sabinus and Cassius were Iavolenus, Gaius, and Julian, among the Proculians Pegasus, Celsus the Younger, and Neratius.—See SCHOLA.

Kübler, *RE* 1A (*s.v. Rechtsschulen*); Berger. *OCD* (*s.v. Sabinus*); G. Baviera. *Le due scuole dei giureconsulti rom.*, 1898; Di Marzo, *RISG* 63 (1919) 109; Ebrard, *ZSS* 45 (1925) 134; P. Frezza, *Metodi ed attività delle scuole rom. di diritto*, 1938; F. Schulz, *History of R. legal science*, 1946, 119; 338.

Sabinus, Caelius. See CAELIUS SABINUS.

Sabinus, Massurius. A famous jurist of the early first century after Christ, head of the school of Sabinians (see SABINIANI), author of an extensive, systematic treatise on *ius civile* which was commented on by later jurists until the third century in works entitled "*Ad Sabinum.*" The system adopted by Sabinus in his fundamental work followed this scheme: law of successions (testamentary and on intestacy), law of persons, law of obligations and law of things. Sabinus wrote also a commentary to the praetorian Edict, a collection of *responsa*, and a monograph on theft.

Steinwenter, *RE* 1A. 1600; Berger, *OCD*; O. Lenel. *Das Sabinussystem* (*Fg Ihering*, Strassburg, 1896); F. Schulz, *Sabinusfragmente in Ulpians Sabinuskommentar*, 1906; P. Frezza, *Osservazioni sopra il sistema di Sabino*, *RISG* 8 (1933) 412.

Saccularius. One who steals money from another's purse, a pick-pocket. A *saccularius* was more severely punished than an average thief.

Saccus (sacculum). A sack, a money-purse. A deposit of a sealed purse containing money was treated as a normal deposit (*depositum*).—See DEPOSITUM IRREGULARE.

Sacer. (In sacral law.) Sacred, consecrated to gods. —See LOCUS SACER, RES SACRAE, CONSECRATIO, DEDICATIO, PECUNIA SACRA. IUS SACRUM.

Ganschinietz, *RE* 1A. 1626.

Sacer. (In earlier penal law.) Some of the oldest provisions of the Roman criminal law established as a punishment for certain crimes the *sacratio* of the wrongdoer by proclaiming "*sacer esto*" (= that he be consecrated to gods, be outlawed). This involved exclusion from the community, from divine and human protection. The death penalty was not inflicted directly, but killing a *sacer homo* was not considered murder. *Sacratio* was decreed for crimes against institutions which were under divine protection, for removing boundary stones (see TERMINUM MOVERE), for fraud committed by a patron against his client, and from the middle of the fifth century B.C. for an injury done to a plebeian tribune. In addition to the *sacratio capitis* the property of the *sacer* was forfeited to gods (*consecratio* or *sacratio bonorum*).—See INTERDICERE AQUA ET IGNI, LEGES SACRATAE, SACROSANCTUS, SACRAMENTUM, TERMINI MOTIO.

Ganschinietz, *RE* 1A, 1627; Lécrivain, *DS* 4 (*s.v. sacratio capitis*); J. L. Strachan-Davidson. *Problems of the R. criminal law* 1 (1912) 3; W. W. Fowler, *Roman essays*, 1920, 115; Groh, *St Riccobono* 2 (1936) 5; M. Kaser, *Das altröm. Ius*, 1949, 45.

Sacer. (With reference to the emperor.) Sacred, imperial. Imperial enactments are termed *sacrae constitutiones*. The term *sacer* is very frequent in later imperial constitutions and is applied to everything connected with the emperor (*sacrae sententiae, sacra oratio, sacrum auditorium*, etc.)—See PRAEPOSITUS SACRI CUBICULI, LARGITIONES SACRAE, COMES SACRARUM LARGITIONUM, COGNITIO SACRA, IUDICANS VICE SACRA.

Sacerdotes. A general term for priests. See PONTIFICES, FLAMINES, AUGURES. FETIALES. FRATRES ARVALES, DUOVIRI (DECEMVIRI, QUINDECIMVIRI) SACRIS FACIUNDIS, COLLEGIA SACERDOTUM. Under the Christian emperors *sacerdotes* = ministers of the Church; sometimes *sacerdos* indicates a bishop (*episcopus*). In Justinian's legislative work the term *sacerdotes* as well as *sacerdotium* (= priesthood, the office of a priest), even when quoted from the work of a pagan jurist, is to be understood in the new sense.

Riewald, *RE* 1A; Chapot, *DS* 4; Rose, *OCD* (*s.v. priests*); E. Pais, *Ricerche sulla storia* 1 (1915) 27; Carter, *The organization of the Roman priesthoods at the beginning of the Republic*, *Mem. Amer. Academy in Rome* 1 (1916).

Sacerdotes municipales. Priests in municipalities. The *municipia* had their *pontifices, augures. flamines. Vestales*, and also priests whose sacral service was connected with a specific municipal deity. The ap-

pointment of *sacerdotes municipales* was made by the *ordo decurionum* (= the municipal council).
Riewald, *RE* 1A, 1651.

Sacerdotes provinciales. Priests in provinces. Their service was dedicated not only to gods, but also to the worship of the emperor.

Sacerdotium. Priesthood.—See SACERDOTES.

Sacra. All kinds of relations between men and gods. The most important domain of the *sacra* were the sacrifices performed by bodies of public character (including communities) and by private persons. Hence the division into *sacra publica* and *sacra privata*. The former were carried out at the expense of the state or other public body (*sumptu publico*) and on behalf of the people (*pro populo*) by priests and high magistrates without active participation of the people; the latter were a private affair which concerned an individual or a group of individuals (*familia, gens*). Within the family group the *sacra familiaria* included worship of a special deity, protector of the family (see LARES, PENATES), as well as of the ancestors of the family. These religious rites were celebrated by the heirs, not only the descendants of the last head of the family, but also by heirs appointed in a testament even when they were strangers to the family. Thus the continuity of the *sacra familiaria* was intimately connected with the succession to the family property. Of an analogous nature but on a larger scale were the *sacra* of a *gens* (*sacra gentilicia*), i.e., the common worship and religious rites celebrated by the members of a *gens*. This community of *sacra* (*communio sacrorum*) of the members of a *gens* was a strong tie uniting them (the *gentiles*). The pontiffs assisted private persons with advice as to rites and forms to be applied in the performance of sacred ceremonies and exercised a certain supervision of the pertinent activities.—See IUS SACRUM, IUS PONTIFICIUM, REX SACRORUM, DETESTATIO SACRORUM, MANUMISSIO SACRORUM CAUSA.
Geiger. *RE* 1A; Toutain, *DS* 4; Severini, *NDI* 11; G. Wissowa, *Religion und Kultus der Römer*, 2nd ed. 1912; Bruck, *Sem* 3 (1945) 4; *idem, Scr Ferrini* 4 (Univ. Sacro Cuore, Milan, 1949) 6; Biondi, *Iura* 1 (1950) 155.

Sacra familiaria (familiae). *Sacra* performed on behalf of a family (*sacra pro familiis*).—See SACRA FAMILIA, SACRA PRIVATA.

Sacra gentilicia. See SACRA, GENS. Syn. *sacra pro gentibus*. Some of the more influential *gentes* were assigned the performance of sacred rites on behalf of specific gods usually honored by *sacra publica*.
G. Castello, *St sul diritto familiare e gentilizio*, 1942. 25.

Sacra nocturna. Sacrifices and religious ceremonies performed at night. They were not prohibited, but were generally regarded as undertaken for evil purposes (*sacra impia*). The use of magical arts (see MAGIA) on such occasions was punished by death.

Sacra popularia. Religious festivals arranged for the whole people.

Sacra privata. Sacrifices and religious rites performed "on behalf of individuals, families, and *gentes*" (Festus 245).—See SACRA.
A. De Marchi, *Il culto privato di Roma antica*, 1896; R. Lefèvre, *Des s. p. en droit romain*, 1928; Bruck, *Scr Ferrini* 4 (Univ. Sacro Cuore, Milan, 1949) 6; 35.

Sacra publica. See SACRA, IUS SACRUM, IUS PONTIFICIUM, SACRA GENTILICIA.

Sacrae largitiones. See LARGITIONES SACRAE.

Sacramentum. An oath. For oaths in civil trials, see IUSIURANDUM, IURAMENTUM, IURARE.
P. Noailles, *Du droit sacré au dr. civil*, 1950, 275.

Sacramentum. In the procedure through *legis actiones*; see LEGIS ACTIO SACRAMENTO, INIUSTUM SACRAMENTUM.
Lévy-Bruhl, *Revue des Études latines* 30 (1952).

Sacramentum. In military and civil service, *sacramentum* = the soldier's oath of allegiance to the standards. In the Empire the soldiers were sworn in by an oath to the emperor. The violation of the *sacramentum* rendered the offender an outlaw; see SACER. Magistrates and imperial officials (*militia civilis*) took a similar oath to observe the laws.—In later imperial constitutions, *sacramentum* = an official post.—C. 10.55.
Klingmüller, *RE* 1A; Parker, *OCD*; Cuq, *DS* 4, 951; A. v. Premerstein, *Wesen und Werden des Prinzipats*, *ABayAW* 15 (1937) 73.

Sacrarium. In Justinian's language, a court-hall.

Sacratio. See SACER, CONSECRATIO, RES SACRAE, LEGES SACRATAE.

Sacratissimus. Most sacred. This epithet was applied to the emperors and institutions connected with them (see PALATIUM, AERARIUM) already during the Principate. *Sacratissima constitutio* = an imperial enactment. In the later Empire churches and ecclesiastical institutions were termed *sacratissimae*.

Sacrificium. A sacrifice. See SACRA. *Malum sacrificium* = a sacrifice in which a human being was the victim (*hominem immolare*). The offender was punished by death. Heathen sacrifices were forbidden by the emperor Constantius (A.D. 354, C. 1.11.1). Imperial legislation of the fourth and fifth centuries concerning pagan religious institutions and customs (temples, sacrifices) is found in Justinian's Code, 1.11.—See SACRA, SUPPLICATIONES.
Latte, *RE* 9 (*s.v. immolatio*); Toutain, *DS* 4, 972; G. Wissowa, *Religion und Kultus der Römer*², 1912; Eitrem, *OCD*.

Sacrilegium. Theft of sacred things (*furtum sacrorum*) or of RES RELIGIOSAE. Stealing things used for divine service from a temple was punished with death. See QUAESTIONES PERPETUAE. The offender who committed such a crime = *sacrilegus* (*fur sacrorum*). In the later Empire the conception of *sacrilegium* was somewhat distorted and those "who through ignorance or negligence confound, violate and offend the sanctity of a divine law" (C. 9.29.1) were con-

sidered guilty of *sacrilegium*. "Divine" is here used in the sense of imperial, issued by the emperor; see DIVINUS. Thus *sacrilegium* and *sacrilegus* became rather general terms applied to the neglect or violation of imperial orders or enactments.—D. 48.13; C. 9.29.—See LEX IULIA PECULATUS.

Pfaff, *RE* 1A; Cuq, *DS* 4.

Sacrilegus. See SACRILEGIUM.

Sacrorum detestatio. See DETESTATIO SACRORUM.

Sacrosanctus. The term was applied to plebeian tribunes (see TRIBUNI PLEBIS) in indication of their inviolability and sanctity of person. This distinct quality was proclaimed by the plebeians at the very creation of the office and sanctioned solemnly by their oath to the effect that any one who attacked a tribune and hindered him in the performance of his official duties would be considered an outlaw (see SACER) and might be killed by anyone at will. The patrician statute, *Lex Valeria Horatia* (449 B.C.) confirmed the inviolability of the tribunes. The *potestas sacrosancta* of the tribunes was opposed to the *imperium* of the magistrates. In the later Empire and by Justinian *sacrosanctus* is applied to the Christian Church and its institutions.—C. 1.2.—See LEX IULIA, SCRIPTURAE SACROSANCTAE.

Kübler, *RE* 1A; Lengle, *RE* 6A, 2460; Ronzeaud, *Rev. des Et latines*, 1926, 218; Groh, *St Riccobono* 2 (1936) 3; Gioffredi, *SDHI* (1945) 37.

Saeculares ludi. See LUDI SAECULARES.

Saepta. See OVILE.

Rosenberg, *RE* 1A.

Sagittarii. Archers, light-armed troops recruited primarily among soldiers who came from countries where archery was in use. They were organized in *cohortes* and *alae*.

Fiebiger, *RE* 1A.

Salariarius. A person who received pay for his services (*salarium*).—See the following item.

Fiebiger, *RE* 1A.

Salarium. An honorarium given to persons exercising a liberal profession (*ars liberalis*), such as physicians, teachers, and the like, who enjoyed high esteem in society. In municipalities the municipal council could grant such persons a yearly salary. Augustus introduced a fixed salary for public officials serving in Italy and overseas. The sum was understood to be an allowance for covering living expenses (*salarium* = money for salt). See CIBARIA. A similar allowance, called *vasarium* = furniture money, could be assigned by a provincial governor to members of his staff. In the army *salarium* was paid to so-called EVOCATI; the regular soldier's pay = *stipendium*.—C. 10.37.—See VASARIUM, HONORARIUM, MAGISTER, STUDIA LIBERALIA.

Rosenberg, *RE* 1A; Lécrivain, *DS* 4; Marchi, *AG* 76 (1906) 303; Siber, *JhJb* 88 (1939–40) 179.

Salarius. See SALINAE.

Salinae. Salt-works. They were property of the state and were exploited through lease to private persons (*conductores salinarum, salarii*). The condemnation of a criminal to compulsory work in salt-mines was equal to *damnatio in metalla*.—See METALLUM.

Blümmer, *RE* 1A, 2097; L. Clerici, *Economia e finanza dei Romani* 1 (1943) 463; 472.

Saltuarius. A person charged with the service as guard of a SALTUS, being in either private or public ownership.—See the following item.

Saltus. Woodland-pasture, mountainous place, unconducive to agricultural exploitation. Later (in the early Principate) the term was used of large estates, public and private (primarily in Africa). Large landed property belonging to the emperor or the imperial family was also called *saltus* (*saltus divinae domus, saltus dominici*). Syn. *fundus saltuensis*.—C. 11.62–64; 66; 67.

Kübler, *RE* 18, 3, 2053 (*s.v. pascua*); Kornemann, *RE* Suppl. 4, 255; Lécrivain, *DS* 3, 958; Cicogna, *AG* 74 (1905) 273, 382; 75 (1905) 59.

Saltus aestivi (hiberni). Pasture lands used only during a part of the year (in winter = *saltus hiberni*, in summer = *saltus aestivi*). The lands were considered to be in the continuous possession of the person who used them only during the appropriate season.

Salva rerum substantia. See USUSFRUCTUS.

Salvianum interdictum. See INTERDICTUM SALVIANUM.

Salvum fore recipere. See RECEPTUM NAUTARUM.

Salvus. Safe, uninjured. *Salvo iure* = without prejudice, without detriment to one's right (e.g., *salva Falcidia*).

Sancire. To ordain (by a statute = *lege*, by an edict = *edicto*, by custom = *moribus*), to enact (e.g., *principes sanxerunt*). *Sanciri* = to be established, sanctioned (by law, etc.).

Sanctimonialis. A nun.—C. 9.13.—See RAPTUS.

Sanctio (legis). A clause in a statute which strengthens its efficacity by fixing a penalty for its violation, by forbidding its derogation through a later enactment, or by releasing from responsibility any one who by acting in accordance with the statute violated another law. The purpose of the sanction clause was to settle the relation between the new statute and former and future legislation. Thus the *sanctio* could also state that a previous statute remained fully or partially in force without being changed by the new one.—See LEX, LEGES PERFECTAE, SANCTUS.

Kübler, *RE* 1A; Rotondi, *Leges publicae populi Rom.*, 1912, 151; Gioffredi, *Archivio penale* 2 (1946) 166.

Sanctio pragmatica. See PRAGMATICA SANCTIO.

Sanctio pragmatica pro petitione Vigilii. An enactment by Justinian, issued in 554 at request of Pope Vigilius, on the legal order in Italy (after the libera-

tion of Rome from the Goths). By this enactment Justinian ordered that his existing legislative work (the Institutes, the Digest and the Code) and all his later enactments should be in force in Italy.

Edition: App. VII in the edition of Justinian's Novels (*Corpus iuris civilis*, 3) by Schöll and Kroll (fifth ed. 1928); M. Conrat (Cohn), *Gesch. der Quellen und Literatur des röm. R. im Mittelalter*, 1891, 131.

Sanctus. "What is defended and protected against injury by men" (D. 1.8.8) and "what is neither sacred (*sacrum*) nor profane, but is confirmed by a kind of sanction (*sanctio*) without being consecrated to a god" (D. 1.8.9.3). See RES SANCTAE. Laws are called *sanctae* since they are supported by a *sanctio*.

Sane. Certainly, of course, to be sure. The word occurs in texts suspected of interpolation.

Guarneri-Citati, *Indice*[2] (1927) 79.

Sanguis. Blood. *Poena sanguinis* = the death penalty, hence *in sanguine* = in a criminal matter in which the accused is threatened by the death penalty.—See COGNATIO, IUS SANGUINIS, CONSANGUINEUS.

Sapiens. See SEMPRONIUS.

Sarcinator. A mender of clothes. He was liable for CUSTODIA of the clothes which had been given him for repair.

Sarcire. To repair. See *damnum* (*noxiam*) = to make good damages, losses, to indemnify.

Satio. Sowing seed. The product belongs to the owner of the land even when another's seed was used.—See PLANTA, SUPERFICIES CEDIT SOLO.

Satis. Enough, sufficient, satisfactory. When connected with a verb (see the following items), *satis* refers primarily to security given by the debtor and accepted by the creditor. In connection with *dare* (*datio*) and *facere* (*factio*) *satis* is written either separately (*satis dare, satis facere*) or joined with the pertinent verbs or nouns (*satisdare, satisfacere, satisdatio, satisfactio*).

Satis accipere. Used of a creditor who is satisfied with a debtor's performance, with his formal promise (*stipulatio*) or with the securities or sureties offered by him (*satisdationem accipere*). The corresponding term for the debtor is *satisfacere*.

Satis desiderare. To demand a security from a debtor; syn. *satis exigere, postulare, petere.*

Satis facere (satisfacere). See SATIS ACCIPERE, SATISFACTIO.

Satis offerre. To offer sufficient security to one's creditor.

Satisdatio (satisdare). Security given to the creditor by a debtor through a personal guaranty assumed by a surety (*sponsor, fideiussor*). *Satisdatio* is opposed to a simple promise (*nuda promissio, repromissio*) by the principal debtor and to a security given in the form of a pledge. The usual *satisdationes* which were a form of a *cautio*, are dealt with under CAUTIO; see also the following items.—Inst. 4.11; 1.24; C. 2.56.

Steinwenter, *RE* 2A; Severini, *NDI*; R. De Ruggiero, *Satisdatio e pignoratio nelle stipulazioni pretorie*, *St Fadda* 2 (1906) 101.

Satisdatio de opere restituendo. See OPERIS NOVI NUNTIATIO.

Berger, *Iura* 1 (1950) 117.

Satisdatio legatorum. See CAUTIO LEGATORUM CAUSA.

Satisdatio pro praede litis et vindiciarum. See CAUTIO PRO PRAEDE LITIS ET VINDICIARUM.

Satisdatio rem pupilli salvam fore. See CAUTIO REM PUPILLI SALVAM FORE.

Satisdatio secundum mancipium. A guarantee connected with MANCIPATIO, probably a formal promise (*stipulatio*) by the seller to deliver the immovable alienated with all proceeds and profits he had derived therefrom in the time between the *mancipatio* and the effective delivery.

Meylan, *RHD* 26 (1948) 1 (Bibl.).

Satisdatio suspecti heredis. A security by sureties, required by the creditors of an heir who was thought to be unable to pay the debts of the deceased. In case of refusal the creditors might obtain possession (*missio in possessionem*) of the heir's whole property.—See HERES SUSPECTUS.

S. Solazzi, *Concorso dei creditori* 1 (1937) 98.

Satisdatio usufructuaria. See CAUTIO USUFRUCTUARIA.

Satisdationem accipere. See SATIS ACCIPERE.

Satisdato cavere (defendere, promittere). SATISDARE (= to give a surety).

Satisdator. A surety.—See SATISDATIO, FIDEIUSSOR.

Satisfacere (satisfactio). Generally to fulfill another's wish, to gratify the desire of a person; when used of a debtor = to carry out an obligation whatever is its origin (a contract, a testament, a statute). At times *satisfacere* is opposed to the effective fulfillment (payment, *solutio*) of an obligation and refers to other kinds of extinction of an obligation, in particular to giving security (in any form). Hence the saying: *"satisfactio pro solutione est"* (*satisfactio* takes the place of *solutio*, D. 46.3.52) and: "under the term *solutio* any kind of satisfaction (of the creditor) is to be understood" (D. 50.16.176).—See SOLUTIO, SATISDATIO.

Grosso, *Remissione del pegno e s., ATor* 65 (1930); Brasiello, *StSen* 52 (1938) 41.

Saturninus, Claudius. A jurist of the second half of the second century after Christ, author of a monograph on penalties of which a long excerpt is preserved in the Digest (48.19.16). His identification in the INDEX FLORENTINUS with Venuleius Saturninus is not reliable.

Jörs, *RE* 3, 2865 (n. 333).

Saturninus, Quintus. A jurist mentioned twice by Ulpian, once as the author of a commentary on the

Edict. He is perhaps to be identified with Venuleius Saturninus.

H. Krüger, *GrZ* 41 (1915) 318.

Saturninus, Venuleius. See VENULEIUS.

Saxum Tarpeium. See DEICERE.

Scaenicus. An actor; *scaenica* = an actress. Syn. *histrio*. See ARS LUDICRA, MINUS, PANTOMIMUS. *Ludi scaenici* (= theatrical performances) played an important part among the LUDI PUBLICI under the Republic.

Habel, *RE* Suppl. 5, 610.

Scaevola, Quintus Cervidius. A famous and most original jurist of the second half of the second post-Christian century. He was a legal adviser of Marcus Aurelius and teacher of the jurist Paul and perhaps of Papinian. His works (*Quaestiones* in 20 books, *Responsa* in 6 books, and *Digesta* in 40 books) are predominantly of casuistic nature. Many of his *responsa* deal with provincial cases. A sagacious and independent mind, Scaevola wrote his opinions in a very concise and dogmatic manner, often without any argumentation. He wrote also *Notae* to the *Digesta* of Julian and Marcellus.—See QUAESTIO DOMITIANA.

Jörs, *RE* 3 (*s.v. Cervidius*, no. 1); Orestano, *NDI* 11, 1158; Berger, *OCD* 798 (no. 5); Samter, *ZSS* 27 (1906) 151; Schulz, *Überlieferungsgesch. der Responsen des C. S., Symb Lenel*, 1931, 143; Sciascia, *Le annotazioni ai Digesta e Resp. di S., AnCom* 16 (1942–44) 87.

Scaevolae. For Scaevolae of the *gens Mucia*, see MUCIUS.

Scheda. A written draft of a document to be copied for the original document. It was binding when written by a notary (see TABELLIO).

Schola. Used with reference to the schools of Sabinians and Proculians; see SABINIANI. Syn. *secta*. It is only Gaius who frequently speaks of the Sabinians as his school (*nostrae scholae auctores*) and of the Proculians as *diversae scholae auctores*. The two schools of legal thought are mentioned as *scholae* only by one other jurist (Venuleius), and Justinian follows Gaius' terminology sporadically in his Institutes.

Scholae. (In the later Empire.) From the fourth century on the term *scholae* is applied to larger groups of persons in military service or officials organized in military fashion (see MILITIA) under the command of a *tribunus* or a *praepositus*. In particular, officials of the imperial palace or attached to the person of the emperor as his bodyguards and the AGENTES IN REBUS were united in *scholae* (see SCHOLAE PALATINAE). *Scholares* = members of such *scholae*.—*C.* 12.29.—See SCHOLAE PALATINAE.

Cagnat, *DS* 4, 1122; E. Stein, *ZSS* 41 (1920) 194.

Scholae palatinae. Military units or militarily organized groups in the service of the emperor, stationed either in the imperial palace or in its neighborhood. They stood under the supervision of the MAGISTER OFFICIORUM and were commanded by a *tribunus* or a *comes*. The members of the *scholae palatinae* received a higher stipend than ordinary soldiers did, and they enjoyed special privileges. They replaced the earlier *praetoriani* as bodyguards of the Emperor.

Seeck, *RE* 2A; Babut, *Rev. historique* 114 (1913) 230.

Scholares. See SCHOLAE.

Babut, *Rev. historique* 114 (1913) 258; P. Collinet, *La procédure par libelle*, 1932, 415.

Scholasticus. (In the later Empire.) An advocate, a lawyer who assisted a party during a trial or served as a legal counselor of a high officer. Sometimes he assumed an official function, such as of a *defensor civitatis* or judge.

Preisigke, *RE* 2A, 624.

Scholia Sinaitica. A collection of brief comments on some parts of Ulpian's work *Ad Sabinum*. A manuscript thereof was discovered on the Mount Sinai. It is a pre-Justinian work, containing quotations from the latest classical jurists (Ulpian, Paul, Modestinus, and others) and from the three Codes (Gregorianus, Hermogenianus, Theodosianus). The unknown author might have been a teacher in one of the law schools in the Eastern Empire. Some additions were perhaps inserted after the publication of the Digest.

Editions: Kübler in Huschke's *Iurisprudentia anteiustiniana* 2, 2 (sixth ed., 1927, 461); Baviera, *FIR* 2 (second ed. 1940) 461; Girard, *Textes de droit rom.* (sixth ed. by Senn. 1937) 609.—Winstedt, *ClPhilol* 2 (1907) 201; Riccobono, *BIDR* 9 (1896) 217; *idem*, *AnPal* 12 (1929) 550; Peters, *Die oström. Digestenkommentare, BerSächsGW* 65 (1913) 90.

Scholia. To the Basilica, see BASILICA.

Sciendum est. It should be understood. This is a favorite locution of many jurists to introduce an important, general legal rule. The locution is frequently strengthened by *in summa* (= generally speaking on the whole), *generaliter*, and the like.

Sciens. One who has knowledge, one who does something knowingly (that it is forbidden or invalid). At times, *sciens* is syn. with *conscius* (see CONSCIENTIA).—See SCIENTIA.

Sciens dolo malo. See DOLUS MALUS.

Scientia. Knowledge. The term refers both to a professional knowledge (as, e.g., *scientia iuris, scientia artis*) and to the knowledge of a fact, of another's doing, of a specific legal provision, etc. Ant. *ignorantia*.

Scientia domini. The master's knowledge of a wrongdoing about to be committed by his slave. In certain circumstances *scientia domini* could be considered as complicity and the master could not free himself from responsibility by delivering the slave (*noxae deditio*).

H. Lévy-Bruhl, *Nouvelles études sur le très ancien dr. rom.*, 1947, 128.

Scientia iuris (civilis). Knowledge of the law. *Scientiam iuris profiteri* = to exercise the profession of a jurist. For the lack of knowledge of legal norms involved in a specific case, see IGNORANTIA IURIS.

In order to avoid the harmful consequences of the ignorance of the law, one had to consult a professional lawyer, since "*scientia iuris* is the knowledge one has by himself or may acquire by consulting persons more learned in law (*prudentiores*)," D. 37.1.10.

Scientia iusti et iniusti. The knowledge of what is just and what unjust. Appears in the definition of IURISPRUDENTIA by Ulpian (D. 1.1.10.2).

Scientia legitima. See SCIENTIA IURIS.

Scilicet. Of course, certainly, evidently, to be sure. See ID EST. Some phrases introduced by *scilicet* may have originated in marginal, explanatory glosses which later copyists inserted in the text of a juristic writing, and which subsequently were copied by the compilers of the Digest.

Guarneri-Citati, *Indice*[2] (1927) 80.

Scipio Nasica (Gaius). A highly estimated jurist of the second century B.C. According to a (not fully reliable) remark by Pomponius he was offered a house at public expense in order to make him readily accessible for consultation.

Münzer, *RE* 4, 1501 (no. 353).

Scire. See SCIENTIA, SCIENS, SCIENDUM EST.

Scire leges. See INTERPRETATIO.

Scitum. A decree, an ordinance, a generally recognized legal rule.—See PLEBISCITUM.

Scriba. A clerk in a court or in an office, a secretary (in an association, *collegium*). The *scribae* in a magisterial office (*scribae aedilicii, tribunicii, quaestorii*) belonged to the subordinate personnel, the *apparitores*. Municipal magistrates had also their *scribae*. A *scriba* is to be distinguished from a *librarius* who was simply a copyist. When a *scriba* performed the tasks of a *librarius*, his title was *scriba librarius*.—C. 10.71.—See APPARITORES.—See PONTIFICES MINORES.

Kornemann, *RE* 4, 423; 4A; Lécrivain, *DS* 4; Jones, *JRS* 39 (1949) 38.

Scriba quaestorius (or ab aerario). A clerk in the office of a quaestor. Among the magisterial clerks the *scribae quaestorii* were the most important; they were the bookkeepers of the treasury (see AERARIUM) and, in view of the many tasks they had to fulfill in connection with the financial administration, the most numerous (6).

Kornemann, *RE* 2A, 850.

Scribendo adesse. When a record of the passing of a *senatusconsultum* was written, several senators were present ("*scribendo adfuerunt*") to assure the accuracy of the written text.

Scribere. To write. Used of all kinds of public and private announcements or declarations made in writing. *Scribere* refers both to what the praetor promulgated in his edict or a provincial governor in his ordinances and letters, and to what the emperor ordained in his enactments. *Scribere* is used of all written legal documents (*testamentum, instrumentum, chirographum*, etc.). Quotations from juristic writings are also introduced by *scribere* ("*Labeo scribit*") with or without indication of the work from which the quotation was taken.—See the following item, SCRIPTURA.

Klingmüller, *RE* 1A.

Scribere heredem (tutorem, exheredem). To institute an heir (to appoint a guardian, disinherit a person) in a testament. Hence *heres scriptus* = an heir instituted in a testament. Ant. *heres legitimus*.

Scrinia. Subdivisions of the bureaus of the imperial chancery in the later Empire. Literally the term indicates the buckets in which the official papers were stored. The chiefs of those offices, which were called also *sacra scrinia*, the *magistri, proximi, comites*, were subject to the MAGISTER OFFICIORUM. The various *scrinia* were indicated by an additional term as to their specific functions, e.g., *scrinia epistularum, libellorum*.—See the following items.—C. 12.9.

Seeck, *RE* 2A; Lécrivain, *DS* 4.

Scriniarii. Officials employed in the SCRINIA.—C. 12.49.

Seeck, *RE* 2A, 894; Jones, *JRS* 39 (1949) 54.

Scrinium a memoria (memoriae). A bureau in the imperial chancery which, under the direction of the *magister (sacrae) memoriae*, performed the secretarial work on all decisions in writing, letters, appointments, and orders issued by the emperor.

Seeck, *RE* 2A, 897.

Scrinium dispositionum. See COMES DISPOSITIONUM.

Seeck, *RE* 2A, 909.

Scrinium epistularum. Under the direction of a *magister epistularum*, in the later Empire this replaced the former office AB EPISTULIS.

Seeck, *RE* 2A, 898; Rostowzew, *RE* 6, 210.

Scrinium libellorum. An office in the imperial chancery in the later Empire concerned with all kinds of petitions (*libelli*) addressed to the emperor. *Libellensis* = an official in this bureau.

Seeck, *RE* 2A, 899.

Scrinium memoriae. See SCRINIUM A MEMORIA.

Scripta. Things written (e.g., a testament, document, juristic writing). A legal transaction (act) is termed *sine scriptis* when concluded only orally, without a written instrument.—See SCRIPTURA, INSTRUMENTUM.

Scriptor testamenti. The person who wrote a testament for a testator. He might also serve as a witness to the will.—C. 9.23.—See QUAESTIO DOMITIANA, TESTIS AD TESTAMENTUM ADHIBITUS.

Scriptura. A written document (a receipt, an acknowledgment of a debt, a testament, a contract, etc.). Syn. *in scriptis*, INSTRUMENTUM. Ant. *sine scriptura, sine scriptis*. Generally a *scriptura* was made for the purpose of evidence. In postclassical times written acts became more and more usual. In Justinian's law certain transactions had to be concluded in writing to be valid. *Scriptura* is also used

of a single disposition of a written last will. For *scriptura* in Justinian's language, see LITTERARUM OBLIGATIO.

M. Kroel, *Du rôle de l'écrit dans la preuve des contrats*, Thèse Nancy, 1906; L. De Sarlo, *Il documento come oggetto di rapporti*, 1935, 63; Archi, *Scr Ferrini* 1 (Univ. Sacro Cuore. Milan, 1947) 19.

Scriptura. (With reference to a jurist.) An opinion expressed by a jurist (*scriptura Sabini, Iuliani*) in a published work.

Scriptura. (In administrative law.) A fee paid for the use of public pasture land.

Kübler, *RE* 2A; Rostowzew, *DE* 2, 582; L. Clerici, *Economia e finanza dei Romani*, 1 (1943) 453.

Scriptura exterior—interior. See DIPTYCHUM.

Scriptura legis (senatusconsulti). The written text, or a single proviso of a legal enactment (a *senatusconsultum*).

Scripturae Sacrosanctae. Holy Writ. Justinian ordered (C. 3.1.14.1) that in all kinds of courts the judges (*omnes omnino iudices Romani iuris disceptatores* = all judges who decided according to Roman law) should not start the proceedings until a copy of the Scriptures was deposited in court, where it had to remain until the end of the proceedings.

Scripturarius ager. See AGER SCRIPTURARIUS.

Burdese, *St sull'ager publicus*, *MemTor Ser. II*, 76 (1952) 36, 90.

Scutarii. Heavily armed bodyguards of the emperor in the later Empire. They were among the *scholares* of the SCHOLAE PALATINAE.

Seeck, *RE* 3A, 621.

Secare partes. This expression occurred in the Twelve Tables in connection with the creditors' right of execution on the person of a debtor in default. The pertinent provision as related by Gellius (*Noctes Att.* 20.1.52) ordained: "on the third market day they (*scil.* the creditors) might cut [the debtor] to pieces; cutting more or less [of the body of the debtor] would not be a fraud." The meaning of the phrase is not beyond any doubt; it seems to allude to an old custom of bringing an insolvent debtor to the market on three consecutive market days and pronouncing publicly what he owed, in order to give his relatives and friends an opportunity to pay for him. If they did not, the creditors were authorized to kill him. Whatever the meaning of this provision, literary sources note that no instance of such a cruelty on the part of creditors was known.

Riccobono, *FIR* 1² (1941) 33 (ad Table 4.6; Bibl.); F. Kleineidam, *Die Personalexecution der Zwölf Tafeln*, 1904, 224; J. Kohler, *Shakespeare vor dem Forum der Jurisprudenz* (1919) 50; Radin, *AmJPhilol* 43 (1922) 32; H. Lévy-Bruhl, *Quelques problèmes du très ancien dr. rom.*, 1934, 152; Dáll, *ZSS* 56 (1936) 289; G. I. Luzzatto, *Procedura civile rom.*, 2 (1948) 36; Georgescu, *RIDA* 2 (1949) 367; Kaser, *Das altröm. Ius*, 1949, 187.

Secretarium. A closed court-hall (in the later Empire) in which trials were held and judgments rendered. Syn. *secretum*. These terms allude to a time when proceedings were held in secret and the public was separated from the court by a curtain (*velum*) which was lifted only in specific cases. Constantine ordered that proceedings be public.

Seeck, *RE* 2A, 279; Mommsen, *Röm. Strafrecht*, 1899, 362.

Secretum. See SECRETARIUM.

Secta. A group of followers of a school of thought (*secta studiorum*). Syn. SCHOLA. See SABINIANI.—*Secta* means also a religious sect, primarily with reference to heretics. See HAERETICI. The followers of a sectarian religious doctrine = *sectatores*.

Sectatores. In religious matters, see SECTA.

Sectatores. Adherents of a candidate to a magistracy who used to accompany him in public during the campaign period in order to impress the voters. The custom was condemned by some statutes against AMBITUS, as an unfair practice.

Fluss, *RE* 2A.

Sectio bonorum. The purchase of confiscated property sold by the fisc at public auction in a lump. The purchaser = *sector bonorum*. The institution is not well known; in Justinian's time it no longer existed. If some items among the confiscated property were still held by a private individual, the *sector* was granted a special interdict, the so-called *interdictum sectorium* under which he obtained possession of the things in question.

Leonhard, *RE* 3 (*s.v. bonorum s.*); Berger, *RE* 9, 1669 (no. 50); Humbert, *DS* 1 (*s.v. bonorum s.*); Klingmüller, *RE* 2A, 892; O. Lenel, *Edictum perpetuum*³ (1927) 456; Rotondi, *CentCodPav.* 1934, 103; Solazzi, *Concorso dei creditori* 1 (1937) 242.

Sector. See SECTIO BONORUM, AUCTIO.

Secundae nuptiae. A second marriage. The conclusion of a second marriage after the dissolution of the previous marriage through death or divorce, was generally permitted—to men without restrictions, to women (originally only widows, and later also divorced women) after ten months (later one year). See LUCTUS, TURBATIO SANGUINIS. Augustus' legislation (see LEX IULIA DE MARITANDIS ORDINIBUS) fostered even second marriages by inflicting financial disadvantages to unmarried and childless persons. Under the influence of Christianity the later imperial legislation became unfavorable to second marriages. From the fourth century on, it imposed upon men and women married a second time various restrictions of a financial nature in favor of children born of the first marriage.—C. 5.9; Nov. 22.—See UNIVIRA.

Secundae tabulae. See TESTAMENTUM PUPILLARE.

Secundarium interdictum. See INTERDICTUM SECUNDARIUM.

Secundocerius. See PRIMICERIUS.—C. 12.7.

Secundum. In favor of, according to, e.g., to render a judgment in favor of the plaintiff (*secundum actorem*), to decide according to the testament (*secundum tabulas*) in favor of the heir. Ant. *contra*.

Secundum tabulas (*sc.* testamenti). According to the testament. Ant. *contra tabulas*.—See BONORUM POSSESSIO SECUNDUM TABULAS.

Securitas. Security, guaranty. *Securitas rei publicae* (*publica*) = the security of the state, public safety.

Securitates. In the meaning of receipts, syn. with *apochae*. They attested the debtor's discharge of his debts. Official *securitates* were issued for the discharge of compulsory public services (*munera*).

Securus. Irresponsible, free from responsibility, not exposed to an action or exception. Juristic decisions to the effect that a person is *securus* (= secure) meant that he need not fear a suit or judicial prosecution. *Securus* was also used of a creditor who received sufficient securities (pledge, sureties) from his debtor.

Secutores. Soldiers, attendants (orderlies) assigned to the personal service of high military commanders, military tribunes, etc. Naval commander had also their *secutores*.

Fiebiger, *RE* 2A.

Sedes. With reference to private persons, residence. Syn. *domicilium*. With reference to imperial offices (in the language of the imperial chancery), the office itself. *Sedes urbana* (or *urbicaria*) = the office of the *praefectus urbi*. *Sedes praetoriana* = the office of the *praefectus praetorio*. The emperors, in addressing high government officials, used to call their office "*sedes vestra*."—See EXCELSA SEDES.

Seditio. Open resistance, an uprising of a rather large group of persons with the use of—armed or unarmed —force against magistrates; a violent disturbance of a popular assembly or of a meeting of the senate. Leaders and instigators (*auctores*) were punished by death. The participants (*seditiosi*) were tried under the *Lex Iulia de vi*, or for *crimen maiestatis*. A sedition in the army (mutiny) was treated with particular severity. Vociferous demonstrations or complaints of soldiers, although called also *seditio*, were milder punished.

Pfaff, *RE* 2A; Humbert and Lécrivain, *DS* 3, 1558.

Seditiosi. Those who participated in a sedition (see SEDITIO) and, according to imperial constitutions, those who incited the lower class of the people (*plebs*) against "the public order" (C. 9.30.1).—C. 9.30.

Seius. See NOMEN.

Sella curulis. See MAGISTRATUS CURULES, SUBSELLIUM.

Semel heres semper heres. "Once an heir always an heir." One who at law or by entry into an inheritance (see ADITIO HEREDITATIS) became an heir of a deceased person, remained his heir (see HERES) forever. Therefore an heir could not be appointed for a limited period.

C. Sanfilippo, *Evoluzione storica dell'hereditas*, 1946, 93; Ambrosino, *SDHI* 17 (1951) 222.

Semenstria. See COMMENTARII PRINCIPUM.

Semenstria pensio. Payments (e.g., rents) in six-month-installments.

Semis. See EX ASSE, USURAE SEMISSES.

Sempronius. See NOMEN.

Sempronius. An unknown jurist of the third century B.C. (consul 305 B.C.?), popularly known by the Greek epithet *Sophos* (= *Sapiens*) because of his profound knowledge of the law.—A similar case is that of the also unknown jurist, Publius Atilius (he appears in Cicero as Lucius Acilius), of the second century B.C., who was honored with the title of *Sapiens*.

Münzer, *RE* 2, 1437 (no. 85); Kleb, *RE* 1, 252; W. Kunkel, *Herkunft und soziale Stellung der röm. Juristen*, 1952, 6, 10.

Semuncia. One twenty-fourth part of a whole (e.g., of an inheritance).—See AS, EX ASSE.

Senaculum. The place where the senate gathered. Originally, it was an open place in the forum, later a building (a *curia* or temple).

Klotz, *RE* 2A.

Senatores. Members of the senate. See PATRES. After the admission of plebeians to the senate (the time cannot be exactly fixed, probably at the beginning of the Republic), a distinction between the patrician and plebeian members of the senate was reflected in the expression *patres* (*et*) *conscripti* by which the senators were addressed, the term *conscripti* seemingly referring to the plebeian senators (*conscripti* = enrolled in the list of senators, see PATRES CONSCRIPTI). The LEX PUBLILIA PHILONIS (339 B.C.) abolished the differentiation between patrician and plebeian senators. In the later Republic a kind of hierarchy among the senators came into existence, based on the magistracies the senators (ex-magistrates) had held before. Those who had been MAGISTRATUS CURULES (ex-consuls, ex-praetors, ex-aedils) preceded those who had held other offices (ex-tribunes, ex-aedils of the *plebs*) or none at all. Before the LEX OVINIA (318–312 B.C.) senators were nominated by the consuls or by the extraordinary magistrates (dictators) temporarily replacing the consuls. According to an early custom, ex-magistrates of high rank became automatically members of the senate; after the *Lex Ovinia*, by which the censors were entrusted with the selection of the senators, that custom became a fixed rule. Eligible for membership in the senate were only Roman citizens who were free-born or sons of free-born fathers. Excluded were women, persons condemned in an *actio famosa* and branded with infamy, persons who practiced an ignominious profession, and bankrupts. The age of a newly-appointed senator varied according to the magistracy he had held; see MAGISTRATUS. The youngest were the ex-quaestors (over thirty-one). Under Augustus the minimum age was lowered to twenty-five. The financial independence of the senators who generally came from the wealthiest families, was guaranteed by the requirement of a minimum property which was fixed by Augustus at one million sesterces. Senators were forbidden to partici-

pate in a business enterprise; see LEX CLAUDIA.—D. 1.9; C. 3.24.—See SENATUS (Bibl.), ORDO SENATORIUS, SENATUM COGERE.

Senatores. (In municipalities.) Members of the municipal council (*ordo decurionum*). Syn. *decuriones*.
Kübler, *RE* 14. 2321.

Senatores ab actis senatus. Senators entrusted by the emperor with the edition and custody of the ACTA SENATUS.

Senatores nondum lecti. Ex-magistrates not yet selected by the censors for the senate.

Senatores pedarii. The term is not quite clear; its origin was obscure to ancient writers, as related by Gellius (*Noct. Att.* 3.18). *Senatores pedarii* were either senators who had held a lower, non-curule magistracy or ex-magistrates who had not yet been enrolled into the list of senators by the censors. The term *pedarii* was perhaps connected somehow with the senate's way of voting by a division of the voters (*pedibus in sententiam ire*, see DISCESSIO). The *senatores pedarii* could participate only in this form of voting and were excluded from taking part in discussion.—See MAGISTRATUS CURULES, LECTIO SENATUS.
O'Brien-Moore, *RE* Suppl. 6, 680; M. A. De Dominicis, *Il ius sententiae nel senato rom.*, 1932.

Senatorius. Connected with, or pertaining to, senatorial rank (e.g., *nuptiae, ornamenta, dignitas, ordo*, etc.).—See ORDO SENATORIUS.

Senatu movere. See MOVERE (DE) SENATU, NOTA CENSORIA, LECTIO SENATUS. The censors could refuse the admission of an ex-magistrate who according to his rank was eligible to the senate, by omitting his name (*praeterire*) from the list of senators.
O'Brien-Moore, *RE* Suppl. 6, 763.

Senatum cogere (convocare, vocare). To convoke the senate. See SENATUM HABERE. Senators were required to reside in Rome and to attend the meetings. They were subject to fines for unjustified absence.

Senatum consulere. See SENATUSCONSULTUM.

Senatum dare. To give persons (e.g., foreign embassies, delegations from provinces, provincial governors) the opportunity of being heard by the senate by convoking it for this purpose.

Senatum habere. To convoke the senate in order to present an important matter to the senators (e.g., to propose a law, to ask for an opinion). The convoking magistrate presided over the meeting.—See SENATUM DARE.

Senatum mittere (dimittere). To declare a meeting of the senate adjourned.

Senatus. The senate was one of the earliest Roman constitutional institutions; it remained in existence throughout the entire history of the Roman state, not, of course, without fundamental changes in its structure and its legal and political importance. For the *senatus* in the regal period, see REX. In the Republic, the senate became the most important organ of foreign and internal policy. Its activity was not fixed by a written law; in particular, its rights with respect to the popular assemblies (*comitia*) on the one hand, and to the magistrates on the other, were not defined by statutes. The pertinent rules were customary law. In the field of foreign relations the senate received foreign ambassadors and appointed embassies for missions abroad. Decision concerning war and peace lay with the people (see LEGES DE BELLO INDICENDO), but a previous opinion of the senate was binding. In case of war the senate appointed the commanders for the various fronts and designated the armed and naval forces therefor. Incompetent generals were removed by the senate. Treaties with foreign countries were concluded by the Senate but had to be ratified by a popular assembly. In financial matters the senate decided about taxes, the sale of public land (*ager publicus*), expenses for conducting a war, for sacred institutions, and the like; it supervised the administration of public funds (see AERARIUM POPULI ROMANI). The senate also had the control of the religious life, and could institute the cult of new deities. In matters of internal policy the senate functioned as an advisory body (*sententiam dicere*) to the high magistrates (consuls, praetors). The magistrates who had the right of convoking the senate (*ius agendi cum patribus*, in the Republic consuls, praetors, dictators, and later the plebeian tribunes) submitted to the senators for their opinion proposals for new laws, administrative measures of major importance, problems concerning the political life of the state, and the like, but such consultation was only customary, not mandatory. Nor was the advice of the senate binding upon the magistrates. A clause "*si magistratibus videbitur*" (= if the magistrates deem it right) made compliance with the senate's advice officially optional. Normally, however, the advice was followed, since it was not in the interest of the magistrate to provoke a conflict with the senate. For the administration of provinces, see PROVINCIAE SENATUS. Only members of the senate (originally 300, later 600, under Caesar 900, in the Empire 600 again) were admitted to the meetings of the senate, which took place with the doors of the meeting house open but with the public excluded. In the Principate the senate obtained legislative functions (see SENATUSCONSULTA) and jurisdiction in criminal matters, primarily in crimes involving the state. Formally the senate elected the emperor (see PRINCEPS, LEX DE IMPERIO). It also obtained the right to appoint the magistrates, but this right in the course of time lost its importance since the emperors used to nominate candidates (see CANDIDATI CAESARIS) and the senate's approval became a mere formality. Gradually the senate was compelled to

give up much of its independence, and its powers and activity depended, in fact, upon the attitude of the reigning emperor. In the late Empire the importance of the senate declined continuously with the increase in the autocratic power of the emperor. Its functions, as far as they were exercised at all, became a pure formality, as did also the election of the emperor, which was performed to carry out the wishes of the army leaders. The supreme authority being vested in the emperor, the senate with its exorbitant number of members (2.000) was nothing more than a municipal council of Rome (and Constantinople, since Constantine created a second senate there), with a specific competence in conferring honorific titles and distinctions.—See SENATORES, SENATUSCONSULTA, AMPLISSIMUS ORDO, ORDO SENATORIUS, PATRES, AUCTORITAS PATRUM, INTERREGNUM, PRONUNTIARE SENTENTIAM, PLEBISCITA, LECTIO SENATUS, SENTENTIAM ROGARE, CLARISSIMUS, ACTA SENATUS, ACCLAMATIO, ALBUM SENATORUM, ADLECTIO, MOVERE DE SENATU, COMMENDARE, IUSTITIUM, IUS ANULI AUREI, LEX MAENIA, LEX PUPIA, PRODITIO, SOLUTIO LEGIBUS, SOLIS OCCASUS, DISCESSIO, INTERROGATIO, RELATIO, LEGATI DECEM, VERBA FACERE, DECURIA, and the foregoing and following items.

O'Brien-Moore, *RE* Suppl. 6; Lécrivain, *DS* 4; Volterra, *NDI* 12; Momigliano, *OCD*; P. Willems, *Le sénat de la Rép. rom.* 1–3 (1883–1885); Th. A. Abele, *Der Senat unter Augustus*, 1907; Homo, *Rev. Historique* 137 (1921) 161, 138 (1922) 1; P. Lambrechts, *La composition du Sénat rom. II.–192 de l'accession au trône d'Hadrien*, 1936; *idem*, *La composition du Sénat rom. de Septime Sévère à Dioclétien*, 1937; *idem*, *Studien over Romeinsche instellingen, I. De Senaat*, 1937; S. J. De Laet, *La composition du Sénat rom. 193–284 A.D.*, Budapest, 1937 (*Dissert. Pannonicae* I, 8); *idem*, *La composition du Sénat rom. 28 B.C.–68 A.D.* (*Travaux Fac. Philos. Gand*, no. 92), 1941; E. Stein, *Disparition du Sénat à la fin du xixième siècle*, *Bull. Acad. Belg.* 25 (1939) 308; G. Nocera, *Il potere dei comizi*, 1940, 243; De Francisci, *Rend. Accad. Pontificia di Archeologia*, 1946–47, 275.

Senatus legitimi. Regular meetings of the senate, normally twice in a month. Extraordinary sessions were frequently convoked, especially by the emperors.

Senatus municipalis (municipii). See ORDO DECURIONUM.

Kübler, *RE* 4, 2319; Lécrivain, *DS* 4; H. U. Instinsky, *S. im Gemeinwesen peregrinen Rechts*, *Philol* 96 (1944).

Senatus populusque Romanus (abbr. S.P.Q.R.). A traditional formula, applied in official acts to indicate the government of the Roman state (in the Republic and even in the early Principate). It stresses the part of the Roman people in the organization of the government as a constitutional organ equal to the role of the senate. The abbreviation is preserved in many inscriptions.

Mommsen, *Röm. Staatsrecht* 3, 2 (1888) 1257; H. Dessau, *Inscriptiones Latinae Selectae*, 3, 1 (1914) 589; G. Nocera, *Il potere dei comizi*, 1940, 244.

Senatusconsulta. Decisions, decrees of the senate issued in response to requests for advice (*senatum consulere*) from one of the high magistrates (consul, praetor, *tribunus plebis*, under the Principate the *praefectus urbi*) who after presenting the matter (*verba facere*) asked the senators for their individual opinions. From the very beginning a *senatusconsultum* was what the name expresses: an advice to the magistrate requesting it. The magistrate normally followed the advice in exercising his functions or incorporated it into his edict giving a more binding character thereto. Some of the republican *senatusconsulta* made reference to previous statutes and plebiscites. For the indirect influence of the senate on the legislative activity of the popular assemblies, see AUCTORITAS SENATUS. As to the legislative force of the *senatusconsulta*, there is no doubt that about the middle of the second century after Christ the *senatusconsulta* acquired the legal force of statutes, as attested by Gaius (Inst. 1.4): "*Senatusconsultum* is what the senate orders and decrees; it has the force equal to that of a statute (*legis vicem optinet*) although this has been questioned." This remark suggests that under the Republic and the early Principate the senate had no legislative power. Accordingly, one century later, Ulpian stated (D. 1.3.9): "it is beyond doubt that the senate can make the law." From the third century B.C. it became customary to write the decrees of the senate and to deposit a copy in the AERARIUM SATURNI where they were preserved under the supervision of the aedils. More important *senatusconsulta* were inscribed on bronze tablets posted in public. Under the early Principate the *senatusconsulta* superseded the comitial legislation, but were later in turn superseded by imperial enactments. The *senatusconsulta* were usually named after the proposer (a magistrate or imperial official). The *senatusconsulta* concerned various matters; a considerable number of them dealt with private law. —D. 1.3.—See ORATIO PRINCIPIS, SENATUS, LEX VALERIA HORATIA, IMMUNITAS, CENSERE, SCRIBENDO ADESSE, PUBLICATIO LEGIS, and the following items.

O'Brien-Moore, *RE* Suppl. 6 (1935); Lécrivain, *DS* 4; Volterra, *NDI* 12; Momigliano, *OCD*; Lorri-Lorini, *St Bonfante* 4 (1930) 377.

Senatusconsultum Acilianum. Forbade legacies of things which were joined to buildings as their ornaments (e.g., statues, sculptures, vases). The purpose of the *senatusconsultum* was to protect buildings from loss of their embellishment. In practice the *senatusconsultum* was also applied to sales of such things. The name Acilianum is not preserved in the sources; it was coined in the literature from the name of one of the consuls, Acilius Aviola, under whose consulship the *senatusconsultum* was passed (A.D. 122).

Bachofen, *Ausgewählte Lehren*, 1848, 209; Voigt, *Die röm. Baugesetze*, *BerSächsGW* 1903, 195; Bonfante, *Corso* 2, 1 (1926) 266; M. Pampaloni, *AG* 30 (1883) 260 = *Scr. giur.* 1 (1941) 225.

Senatusconsultum Afinianum. (Of unknown date.) Dealt with the rights of succession of a child who being one of three brothers was adopted by a third person. He had a right to a quarter of the adoptive father's estate, even after his emancipation by the latter.

G. Bergman, *Beiträge zum röm. Adoptionsrecht* (Lund, 1912) 76.

Senatusconsultum Apronianum. (Under Hadrian.) Permitted awarding *fideicommissa hereditatis* to cities (*civitates*).

Senatusconsultum Articuleianum. (A.D. 123.) Concerned fideicommissary manumissions in provinces.

Senatusconsultum Calvisianum. (4 B.C.) Dealt with penal procedure in trials for *crimen repetundarum* held in provinces.

Riccobono, *FIR* 1² (1941) p. 409; Stroux and Wenger, *ABayAW* 34. 2 (1928) 112; Arangio-Ruiz, *Riv. di filologia*, N.S. 6 (1928) 321; v. Premerstein, *ZSS* 48 (1928) 428; 478 and 51 (1931) 446; La Pira, *St ital. di filol. clas.* 8 (1929) 59; I. G. Luzzatto, *Epigrafia giuridica* (1942) 239 (Bibl.), 278; J. H. Oliver, *Mem. Amer. Acad. Rome*, 1949, 105.

Senatusconsultum Calvisianum. (A.D. 61.) Ordained that a marriage of a man over sixty with a woman over fifty did not exempt them from the sanctions of the LEX IULIA DE MARITANDIS ORDINIBUS.

Senatusconsultum Claudianum. 1. (A.D. 47.) Forbade advocates to claim more than 10,000 sesterces as an honorarium on pain of being prosecuted for *crimen repetundarum*; see SENATUSCONSULTUM DE ADVOCATIONIBUS. 2. (A.D. 49.) Permitted marriage with a niece (to make possible the marriage of the emperor Claudius with his niece). 3. (A.D. 52.) Contained among other things the provision that a free woman living in a conjugal union with a slave (*contubernium*) became a slave (and her children as well) if after three warnings by the slave's master she continued her relation with the slave. She was then attributed to the slave's master as his slave. Later legislation gradually modified the penalties of this *senatusconsultum*.—There were still some other *senatusconsulta* in the times of Claudius.—Inst. 3.12; D. 29.5; C. 7.24; 9.11.

Brecht, *RE* 18, 4, 2049; (Volterra) *NDI* 12, 36; Rossello, *StSer* 11–12 (1894, 1896); Albanese, *Il Circolo giuridico* 22 (Palermo, 1951) 86; Biondi, *Iura* 3 (1932) 142.

Senatusconsultum Dasumianum. (*Ca.* A.D. 119.) Provided remedies for fideicommissary manumissions when through absence or impuberty of the beneficiary the manumission ordered by the testator could not be performed.

H. Krüger, *ZSS* 48 (1928) 178; Besnier, *RHD* 19 (1930) 836.

Senatusconsultum de advocationibus. (A.D. 55.) Prohibited the payment or promise of an honorarium to advocates before the trial. "All who have a lawsuit will be ordered before proceeding to take an oath that they have not given, promised, or guaranteed by a *cautio* any sum to anybody with regard to his activity as an advocate (*advocatio*) in the trial" (Pliny, *Ep.* 9.4). They could, however, after the conclusion of the trial pay an honorarium not exceeding the amount of 10,000 sesterces; see SENATUSCONSULTUM CLAUDIANUM (under no. 1).

Senatusconsulta de aedificiis non diruendis. (A.D. 44 and 56.) Prohibited the acquisition of buildings with the intention of destroying them for profit (*diruendo plus adquirere*). Such a transaction was void and the buyer had to pay double the price to the fisc as a penalty. The two *senatusconsulta* are called Hosidianum and Volusianum after their proposers.

Riccobono, *FIR* 1² (1941) no. 45 (Bibl.); Grupe, *ZSS* 48 (1928) 572; May, *RHD* 14 (1935) 1.

Senatusconsultum de agnoscendis liberis. See AGNOSCERE LIBEROS, SENATUSCONSULTUM PLANCIANUM.

Senatusconsultum de aquaeductibus. (11 B.C.) See AQUAEDUCTUS.

Riccobono, *FIR* 1² (1941) no. 41; Kornemann, *RE* 4, 1784; De Robertis, *La espropriazione per pubblica utilità*, 1936, 95; *idem*, *AnBari* 7–8 (1947) 177.

Senatusconsultum de Asclepiade. (78 B.C.) Granted various privileges (e.g., exemption from all taxes and requisitions) to the captains of three Greek ships for the help given Rome in the Social War time. It is preserved completely in Greek, partly in Latin.

Riccobono, *FIR* 1² (1941) no. 35; Gallet, *RHD* 1937, 242; 387; E. H. Warmington, *Remains of ancient Latin* 4 (1940) 444; Pietrangeli, *BIDR* 51–52 (1948) 281.

Senatusconsultum de Bacchanalibus. (186 B.C.) Instituted proceedings against the participants in the so-called Bacchanalian conspiracy who committed various crimes. In order to suppress the orgiastic outrages performed under the cover of Dionysiac festivities the consuls were authorized to conduct the trials in an extraordinary procedure (*quaestio extra ordinem*) without regard to the rules of appeal, and beyond the walls of the city of Rome. The text of the *senatusconsultum* is preserved.

Riccobono, *FIR* 1² (1941) no. 30 (Bibl.); E. H. Warmington, *Remains of old Latin* 4 (1940) 254; Volterra, *NDI* 12, 31; De Ruggiero, *DE* 1 (*s.v. Bacchus*); Wissowa, *RE* 1; E. Massonneau, *La magie dans l'antiquité rom.*, 1934, 151; F. M. De Robertis, *Diritto associativo*, 1937, 52; Arangio-Ruiz, *SDHI* 5 (1939) 109; Bequignon, *Rev. archeologique*, 1941, 184; Frezza, *AnTr* 17 (1946–47) 205.

Senatusconsultum de collegiis. A decree of the senate of unknown date (Augustus?) concerning the foundation of *collegia* (associations) and ordering their dissolution in the case of an activity against the state. The relation of the *senatusconsultum* to the *Lex Iulia de collegiis* is not quite clear. Doubtful also is the question of whether a portion of a *senatusconsultum* preserved epigraphically belongs to this *senatusconsultum*.—See COLLEGIA.

Riccobono, *FIR* 1² (1941) 291; Arangio-Ruiz, *FIR* 3 (1943) 101; Volterra, *NDI* 12, 34; F. M. De Robertis, *Diritto associativo romano*, 1938, 244; 292; *Acta Divi Augusti* 1 (1945) 266; Berger, *Epigraphica* 9 (1947) 44.

Senatusconsultum de collusione detegenda. See SENATUSCONSULTUM NINNIANUM.

Senatusconsultum de Iudaeis. (132 B.C.) An answer to the Jewish state concerning its complaints against Antiochus, king of Syria. The knowledge of this *senatusconsultum* as of several others dealing with Jewish matters, comes from Flavius Josephus.
J. Juster, *Les Juifs dans l'Empire Rom.* 1 (1914) 135.

Senatusconsulta de ludis saecularibus. (17 B.C. and A.D. 47.) Partly preserved, concern the national games called LUDI SAECULARES, in the arrangement of which the *quindecim viri sacris faciundis* played an important role.
Riccobono, *FIR* 1² (1941) no. 40; *Acta Divi Augusti* 1 (1945) 240; Nilsson, *RE* 1A, 1696; Pighi, *De ludis saecularibus*, 1941.

Senatusconsultum de nundinis saltus Beguensis. (A.D. 138.) Granted market privileges to a locality in the province of Africa.
Riccobono, *FIR* 1² (1941) no. 47.

Senatusconsultum de pago Montano. (Of the first century B.C.?) Prohibited the dumping of refuse in certain zones outside of Rome.
Riccobono, *FIR* 1² (1941) no. 39; Philipp, *RE* 16, 204.

Senatusconsultum de philosophis et rhetoribus. (161 B.C.) Forbade Greek philosophers and rhetoricians to reside in Rome.

Senatusconsultum de provinciis consularibus. (51 B.C.) Settled the rules for the relations between the senate and the magistrates of consular provinces.

Senatusconsultum de sumptibus ludorum gladiatoriorum minuendis. (A.D. 176.) Issued provisions in order to diminish the expenses connected with gladiatorial games.—See LUDI GLADIATORII.
Riccobono, *FIR* 1² (1941) no. 49; L. Robert, *Les gladiateurs dans l'Orient grec*, 1940, 284.

Senatusconsultum de Thisbensibus. (170 B.C.) Concerned the relations with the city of Thisbae in Boeotia.
Riccobono, *FIR* 1² (1941) no. 31.

Senatusconsultum de Tiburtinis. (159 B.C.) Granted a general amnesty to the city of Tibur.
Riccobono, *FIR* 1² (1941) no. 33.

Senatusconsultum Geminianum. Extended the penalties of the *Lex Cornelia de falsis* on persons who accepted money for a false testimony.—See FALSUM.

Senatusconsultum Hosidianum. (A.D. 44.) Directed against speculation in house property.—See SENATUSCONSULTA DE AEDIFICIIS NON DIRUENDIS.
De Pachtère, *Mél Cagnat* 1912; May, *RHD* 14 (1935) 1.

Senatusconsultum Iuncianum. (A.D. 127.) Established again (see SENATUSCONSULTUM DASUMIANUM) some rules concerning a fideicommissary manumission of slaves in the case of absence of the person who for any reason (*ex quacumque causa*) had to free them.

Senatusconsultum Iuventianum. (Decreed under Hadrian on the proposal of the jurist Iuventius Celsus.) Dealt with claims of the *aerarium populi Romani* against private individuals for the recovery of vacant inheritances. The rules of the *senatusconsultum* appear extended to *hereditatis petitiones* among private persons, but apparently a good part of this extension belongs to later development, if not to postclassical and Justinian's law. The *senatusconsultum* established the liability of an illegal holder of an estate who fraudulently sold objects belonging to the inheritance or gave up possession thereof (*dolo desiit possidere*) as well as the duty of restitution of products and profits (interest) which the unlawful possessor of the estate derived therefrom. Distinction was made between possessors in good faith and such in bad faith.—See HEREDITATIS PETITIO.
Beseler, *Beiträge* 4 (1920) 13; Flimiaux, *RHD* 2 (1923) 82; J. Denoyez, *Le S. I.*, 1926; Lewald, *ZSS* 48 (1928) 638; C. Appleton, *RHD* 9 (1930) 1, 621; Flimiaux, *ibid.* 110; Huber, *Die Ausdehnung der Normen des sc. I.*, Diss. Erlangen, 1933; Carcaterra, *AnBari* 3 (1940) 104; A. Guarino, *Salv. Iulianus*, 1946, 82; B. Biondi, *Istituti fondamentali del dir. ereditario* 2 (1948) 193; Santi Di Paola, *AnCat* 2 (1948) 275; A. Carcaterra, *L'azione hereditaria* 2 (1948) 37.

Senatusconsultum Largianum. (A.D. 42.) Established the order of succession for inheritances of LATINI IUNIANI.

Senatusconsultum Libonianum. (A.D. 16.) Declared testamentary dispositions in favor of the writer of the testament to be void. By an enactment of the Emperor Claudius the writer was in such a case subject to the penalties of the *Lex Cornelia de falsis*.—D. 48.10.—See FALSUM.
De Martino, *Scr in memoria di E. Massari*, 1938, 331.

Senatusconsultum Licinianum. (A.D. 27? 45?) Dealt with conspiracy to forge a testament and false testimony concerning a testament.

Senatusconsultum Macedonianum. (Under Vespasian.) Forbade loans to sons under paternal power (*filii familias*). The transaction was not void, but the son was protected by an *exceptio* (*exceptio senatusconsulti Macedoniani*) against the claim of the lender even after the father's death.—D. 14.6; C. 4.28.—See STUDIUM.
Volterra, *NDI* 12, 38; Devilla, *StSas* 18 (1941) 255; Daube, *ZSS* 65 (1947) 261.

Senatusconsultum Memmianum. (A.D. 63.) Contained the provision that childless persons (*orbi*) could not evade the disadvantages introduced by the LEX IULIA DE MARITANDIS ORDINIBUS by a fictitious adoption of children.

Senatusconsultum Neronianum. (A.D. 57?) Extended the provisions of the *senatusconsultum Silanianum* on the slaves of the widow of an assassinated master.

Senatusconsultum Neronianum de legatis. (Between A.D. 60 and 64.) Abolished the distinction among the various forms of legacies (*legata*). It decreed that a legacy expressed in less appropriate terms should be as valid as if it had been made in

the most favorable form (*optimo iure*, i.e., *per damnationem*).—See LEGATUM, LEGATUM PER DAMNATIONEM.—There were several other *senatusconsulta* decreed under Nero.

Volterra, *NDI* 12, 37; Ciapessoni, *St Bonfante* 3 (1930) 649; Piaget, *Le S. N.* (Lausanne, 1936); C. A. Maschi, *St sull'interpretazione dei legati*, 1938. 104; B. Biondi, *Successione testamentaria* (1943) 282.

Senatusconsultum Ninnianum de collusione detegenda. (Under Domitian.) Contained provisions against collusion between patron and freedman with a view to having the latter declared free-born.—See COLLUSIO.

Senatusconsultum Orfitianum. (A.D. 178.) Gave a woman's children preference as to her inheritance over her brothers, sisters, and other agnates.—Another *senatusconsultum* (of the same year) declared testamentary manumissions of slaves valid when their identity could be established beyond doubt, even if they were not indicated in the testament by name, as the LEX FUFIA CANINIA required.—Inst. 3.4; D. 37.17; C. 6.57.

G. La Pira, *La successione ereditaria intestata*, 1930, 293; Lavagni, *SDHI* 12 (1946) 174; Sanfilippo, *Fschr Schulz* 1 (1951) 364.

Senatusconsultum Pegasianum. (About A.D. 73.) Granted an heir the right to keep a fourth part of the *fideicommissa* he had to deliver according to the testator's will. This provision is analogous to that of the LEX FALCIDIA with regard to legacies. The initiative for the *senatusconsultum* was apparently taken by the jurist Pegasus. In Justinian's legislation the *senatusconsultum Pegasianum* does not appear, references to it having been replaced by those to the SENATUSCONSULTUM TREBELLIANUM.—Another *senatusconsultum Pegasianum* (A.D. 72) extended the privilege of *anniculi causae probatio* to LATINI IUNIANI over thirty years of age; see CAUSAE PROBATIO.

Solazzi, *RISG* 86 (1949) 30.

Senatusconsultum Pisonianum. (A.D. 57.) Concerned the sale of a slave who might be subject to torture and the penalties provided in the SENATUSCONSULTUM SILANIANUM because his master was found assassinated. The sale was null and the seller had to return the purchase price to the buyer.

Senatusconsultum Plancianum. (Before the reign of Hadrian.) Ordered that a pregnant woman had to notify (*denuntiare*) her divorced husband of her condition within thirty days after divorce. The husband had either to send attendants (*custodes*) to watch the woman until the child was born or to deny (*contra denuntiare*) his paternity.—D. 25.3.—See AGNOSCERE LIBERUM.

Weiss, *RE* 3A. 1889; P. Tisset, *Présomption de paternité* (Montpellier, 1921) 180.

Senatusconsultum Rubrianum. (After A.D. 100.) Ordered the praetor to declare a slave free when the person who had to perform the manumission according to the testator's will refused to do so.

Senatusconsultum Silanianum. (A.D. 10.) When a master of slaves was assassinated and the murderer could not be found, all slaves who lived with him "under the same roof" were subjected to torture and eventually condemned to death. A slave who revealed the murderer was declared free by the praetor's decree.—See SENATUSCONSULTUM NERONIANUM, PISONIANUM, ORATIO MARCI, TECTUM, VINDICARE NECEM.

Luzzatto, *St Ratti* (1934) 545; Aru, *ibid.* 211; *Acta Divi Augusti* 1 (1945) 258; Herrmann, *ADO-RIDA* 1 (1952) 495.

Senatusconsultum Tertullianum. (Of the time of Hadrian.) Granted a mother who had the IUS LIBERORUM a right of succession on intestacy to her children's inheritance, but it gave priority to the children's children, their father and some agnates. Later imperial legislation improved the rights of succession of the mother. Justinian abolished the requirement of *ius liberorum*.—Inst. 3.3; D. 38.17; C. 6.56.

G. La Pira, *La successione ereditaria intestata*, 1930, 277; G. Goutelle, *De la lutte entre agnation et cognation à propos du S. T.*, 1934; Sanfilippo, *Fschr Schulz* 1 (1951) 364.

Senatusconsultum Trebellianum. (A.D. 56.) Ordered that "if an inheritance was delivered over to anyone on account of a *fideicommissum*, the actions which would lie at *ius civile* for, or against, the heir, should also be given in favor of, or against, him to whom the inheritance has been made over" (Gaius, Inst. 2.253). The pertinent actions were proposed in the praetorian edict as *actiones utiles*.—D. 36.1; C. 6.49.—See EXCEPTIO RESTITUTAE HEREDITATIS, HEREDITATIS PETITIO FIDEICOMMISSARIA.

Lemercier, *RHD* 14 (1935) 623; B. Biondi, *Successione testamentaria* (1943) 477; Bartošek, *Scr Ferrini* 3 (Milan, 1948) 308.

Senatusconsultum Turpillianum. (A.D. 61.) Contained provisions against TERGIVERSATIO.—D. 48.16; C. 9.45.

Volterra, *StCagl* 17 (1929) 114; Levy, *ZSS* 53 (1933) 213; Bohaček, *St Riccobono* 1 (1936) 361.

Senatusconsultum ultimum. A decree of the senate in times of extreme emergency (*ultima necessitas*) ordering "that the consuls see to it that the state (*res publica*) suffered no harm" (*Cic. pro Mil.* 26.70) or, in other words, to defend the *res publica*. By virtue of such a decision the consuls (or the highest magistrate available) were authorized to apply any extraordinary measures required by the situation (*tumultus*, war), even a temporary suspension of certain constitutional institutions (see IUSTITIUM). The first application of this exceptional remedy was during the Gracchan movement (121 B.C.; it was proposed for the first time in 133 B.C., but was rejected owing to resistance of the then consul, the jurist P. M. Scaevola).

O'Brien-Moore, *RE* Suppl. 6, 756; Momigliano, *OCD*; C. Barbagallo, *Una misura eccezionale dei Romani, il S. U.*,

1900; *idem*, *RendLomb* 35 (1902) 450; De Marchi, *ibid.* 224, 464; Plaumann, *KI* 13 (1913) 321; Antonini, *S. U.*, 1914; Last, *JRS* 33 (1943) 94; Wirszubski, *Libertas* (Cambridge, 1950) 55.

Senatusconsultum Velleianum (or **Vellaeanum**). (About A.D. 46.) Forbade women to assume liability for other persons (*intercedere*, *intercessio*). The transaction was not void, but lost its efficacy if the woman when sued by the creditor opposed the *exceptio senatusconsulti Velleiani*. She could also claim the return of what she had paid in fulfillment of her obligation. In certain instances the exception was inadmissible (e.g., against a minor, or when the transaction was in the interest of the woman). Sureties and heirs of the woman might use the exception too. Justinian reformed the whole institution of women's intercession by requiring a public act before witnesses, and excluding the benefits of the *senatusconsultum Velleianum* if the woman renewed the intercession after two years and in certain other specific cases.—See INTERCESSIO, ACTIO QUAE RESTITUIT (INSTITUIT) OBLIGATIONEM.—D. 16.1; C. 4.29.

Leonhard, *RE* 9 (*s.v. intercessio*); Cuq, *DS* 3 (*s.v. intercessio*); Volterra, *NDI* 12, 35; Carrelli, *RISG* 12 (1937) 63; *idem*, *SDHI* 3 (1937) 305; P. Pierret, *Le s. Velléien*, 1947; Vogt, *Studien zum s.V.*, Bonn, 1952.

Senatusconsultum Vitrasianum. (Before or during the reign of Hadrian). Concerned the case of the fideicommissary manumission of a slave when one of the co-heirs was a child.

Senatusconsultum Volusianum. (A.D. 56.) See SENATUSCONSULTA DE AEDIFICIIS NON DIRUENDIS.

May, *RHD* 14 (1935) 1.

Senectus (senex). Old age (an old man). There was no legal definition as to when a person had to be considered old. Senility, however, was taken into consideration as an excuse from guardianship, for exemption from *munera personalia*, and the like, as well as in certain agreements, for instance, concerning alimony. A guardian who could not fulfill his duties because of old age might ask for the assignment of a curator for the administration of the ward's property.

Seniores. In military centuriae, see IUNIORES.

Sensus. In the legal field the capacity of understanding the significance of one's doings, in particular, whether they are wrong or right. Children in infancy (see INFANTES) have no *sensus*; likewise lunatics, except during INTERVALLA DILUCIDA. *Sensus* also means the intention, the desire of a testator; syn. *voluntas*.

Sententia. (With reference to a jurist.) The opinion of a jurist expressed either in his writing or in a RESPONSUM.

Sententia. (In judicial proceedings.) The final judgment in a civil trial, rendered by a judge (*iudex*) in the bipartite procedure or by a judicial official in the *cognitio extra ordinem*. The *sententia* put an end to the controversy between the parties and the matter in dispute became now a *res iudicata*. The judgment was either condemnatory (*condemnatio*, *damnatio*) or absolutory (*absolutio*). In the formulary procedure the condemnatory judgment was always for a sum of money (see CONDEMNATIO PECUNIARIA) without regard to the object of the controversy. In the procedure through *cognitio* a *condemnatio pecuniaria* was no longer exclusive. A judgment once pronounced could not be changed or revoked by the judge who passed it. See ERROR CALCULI. The execution of a judgment was achieved by a second action; see ACTIO IUDICATI. The judgment was pronounced orally, without indication of motives; in the later law a written judgment was required in addition to the oral pronouncement; see SENTENTIAM DICERE. *Sententia* is also the judgment of an arbitrator; see ARBITER, COMPROMISSUM.—The terminology in criminal trials was also *condemnatio* (*damnatio*) for condemnatory sentences, *absolutio* for an acquittal.—D. 42.1; C. 7.43–47; 55; 10.9; 50.—See RES IUDICATA, IUDICATUM, RETRACTARE CAUSAM, APPELLATIO, PROVOCATIO, PERICULUM, SENTENTIAM PROFERRE, LITIS AESTIMATIO.

Wenger, *RE* 2A; Leonhard, *RE* 2A, 1503; Kleinfeller, *RE* 2A, 1505; Delaunay, *Mél Boissier* (Paris, 1903) 161; G. Kuttner, *Fschr Moritz* 1911, 235; Biondi, *St Bonfante* 4 (1930) 29; H. Appelt, *Die Urteilmächtigkeit im röm. Prozess*, 1937; F. Vassalli, *Studi* 1 (1939) 405; Vazny, *BIDR* 47 (1940) 108.

Sententia adversus fiscum. A sentence rendered against the fisc.—C. 10.9.—See RETRACTARE CAUSAM.

Sententia contra constitutiones. A judgment rendered contrary to imperial constitutions. The judge who rendered such a judgment was guilty of *crimen falsi*.—See FALSUM.

Biondi, *St Bonfante* 4 (1930) 69; Levy, *BIDR* 45 (1938) 138; De Robertis, *ZSS* 62 (1942) 255.

Sententia definitiva. See DEFINITIVA SENTENTIA, INTERLOCUTIONES.

Sententia iudicis. See SENTENTIA.

Sententia legis (edicti, senatusconsulti). The intention, the purpose, the spirit of a legal enactment (a statute, an edict, a *senatusconsultum*).—See EX LEGE.

Wenger, *RE* 2A, 1502.

Sententia Minuciorum. See TERMINARE.

Sententia senatus. See SENTENTIAM ROGARE, PRONUNTIARE SENTENTIAM.

Wenger, *RE* 2A, 1496.

Sententiae Pauli. A work by the jurist Paul in five books, entitled *Sententiarum ad filium libri quinque*. Excerpts of this work are to be found in the Digest, *Fragmenta Vaticana*, *Collatio*, and *Consultatio*, and probably one-sixth of the whole work in an Epitome appended to the *Lex Romana Visigothorum*. It is assumed (not without opposition) that the work was not written by Paul himself, but was an anthology compiled about A.D. 300 from various works of Paul's by an unknown hand. The work as is preserved

undoubtedly contains postclassical additions, and the more important problem is to determine what in the work is classical and what not. As a matter of fact, Constantine, less than a century after Paul's death (*C. Theod.* 1.4.2, A.D. 327 or 328), extolled the value of the work in glowing terms and ordered that it should have full authority when produced in court. The Law of Citations (see IURISPRUDENTIA) of A.D. 426 reiterated the validity of Paul's Sentences.

Editions in all collections of *Fontes Iuris Rom.* (see General Bibl., Ch. XII), the most recent by Baviera, *FIR* 2ª (1940).—Berger, *RE* 10, 731; M. Conrat, *Der westgothische Paulus*, Amsterdam, 1907; G. Beseler, *Beiträge zur Kritik* 1 (1910) 99; 3 (1913) 6; 4 (1920) 336; B. Kübler, *Gesch. des röm. R.*, 1925, 284; Schulz, *ZSS* 47 (1927) 39; Levy, *ZSS* 50 (1930) 272; Lauria, *AnMoc* 6 (1930) 33; Volterra, *ACDR* 1 (Roma, 1934) 35; *idem*, *Riv. Storia dir. ital.* 8 (1935) 110 (Bibl.); Scherillo, *St Riccobono* 1 (1936) 39; E. Levy, *Medievalia et Humanistica* 1 (1943) 14; *idem*, *Pauli S., a Palingenesia of the opening titles* (Ithaca, 1945); *idem*, *BIDR* 55/56 (1951) 226; F. Schulz, *History of R. legal science*, 1946, 176.

Sententiam dare. See SENTENTIAM DICERE.

Sententiam dicere. (In judicial proceedings.) To pronounce judgment. The judge had to do it orally, in later law reading the decision from a written draft. Syn. *sententiam dare*, *pronuntiare*, *proferre*.—See PERICULUM.

Sententiam dicere. (In the senate.) See SENTENTIAM ROGARE.

Sententiam rogare. To ask the senators for their opinions. It was the presiding magistrate who requested the senators to express their opinion by vote (*sententiam dicere*). Hence *sententia* often means the result of the vote, the final decision (*ex sententia senatus*).—See VERBA FACERE.

Sentire aliquid (or de aliqua re). To have in mind, to wish, to intend, to understand. The term occurs frequently in texts dealing with the intention of a testator when the expressions he used in his will were not fully clear.—See SENSUS, VOLUNTAS.

Sentire damnum. To suffer damage (loss). Ant. *sentire commodum*, *lucrum* = to gain a profit.

Separare. To divide, to separate, to disjoin. See FRUCTUS SEPARATI. With reference to a marriage = to divorce; hence *separatio* = *divortium*.

Separatio bonorum. The separation of the heir's property from the estate he inherited. The *separatio bonorum* served to protect the creditors of the deceased by reserving the estate for them and excluding the creditors of the heir, who might be insolvent. The institution, called *beneficium separationis*, was extended to the benefit of the legatees, but not of the creditors of the heir when the inheritance was insolvent. See BENEFICIUM INVENTARII. The *separatio bonorum* comprised the estate at the time of death, together with subsequent products and accretions which occurred afterwards.—D. 42.6; C. 7.72.

Ferrini, *Opere* 4 (1930, ex 1899–1901) 167; 175; 183; G. Baviera, *Il commodum separationis*, 1901; Solazzi, *BIDR* (1901) 247; Milani, *StDocSD* 25 (1904) 5; C. Tumedei, *La s. dei beni ereditari*, 1927; Guarino, *ZSS* 60 (1940) 185; *idem*, *SDHI* 10 (1944) 240; Solazzi, *Il concorso dei creditori* 4 (1943) 1.

Separatio fructuum. Separation of fruits from the thing which produced them.—See FRUCTUS, FRUCTUS SEPARATI.

Separatim. See CONIUNCTIM. Syn. *disiunctim*.

Septemvirale iudicium. A court composed of seven persons competent (presumably) to judge complaints concerning undutiful testaments; see QUERELA INOFFICIOSI TESTAMENTI.

Leonhard, *RE* 2A (*s.v. septemviri*); Eisele, *ZSS* 35 (1914) 320.

Sepulcri violatio. See VIOLATIO SEPULCRI.

Sepulcrum (sepulchrum). A grave, a burial place "where a corpse or bones are laid down" (D. 11.7.2.5). A *sepulcrum* is a *locus religiosus*, also when a slave has been buried, but not the grave of an enemy. A monument (*monumentum*) erected "in order to preserve the memory of a dead person" (D. 11.7.2.6) is not a *locus religiosus* if the person is not buried there.—D. 11.8; 47.12; C. 9.19.—See ITER AS SEPULCRUM, IUS SEPULCRI, ILLATIO MORTUI.

C. Fadda, *Si e questioni di diritto* 1 (1910) 147; Taubenschlag, *ZSS* 38 (1917) 244; M. Morel, *Le s.* (*Annales Univ. Grenoble*) 1928; E. Albertario, *Studi di dir. rom* 2 (1941) 1, 29, 39; Arangio-Ruiz, *FIR* 3 (1943) no. 80; F. De Visscher, *AntCl* 15 (1946) 123; *idem*, *SDHI* 13–14 (1947–48) 278; *idem*, *RIDA* 1 (1948) 199; *idem*, *Le régime jurid. des plus anciens cimetières chrétiens*, *Analecta Bollandiana* 69 (1951) 39; Crichton, *JurR* 60 (1948) 138; Biondi, *Iura* 1 (1950) 160; Düll, *Fschr Schulz* 1 (1951) 191.

Sepulcrum familiare (hereditarium). See IUS SEPULCRI.

Sequela. (With reference to an obligation.) A secondary obligation, as distinguished from the principal obligation of a debtor.

Sequester. "One with whom the parties to a controversy deposit the object of the dispute" (D. 50.16.110). The *sequester* was a depositee and his liability was the same as in the case of a normal deposit; see DEPOSITUM. The recovery of the thing deposited could be claimed by an action, called *actio* (*depositi*) *sequestraria*. Unlike the normal depositee, the *sequester* was considered possessor of the thing and was protected by possessory interdicts.

Weiss, *RE* 2A; Beauchet, *DS* 4; Arangio-Ruiz, *AG* 76 (1906) 471; 78 (1907) 233; Albertario, *St Solmi* 1 (1941) 349; Düll, *Fschr Schulz* 1 (1951) 203.

Sequestrare (sequestratio). To deposit a controversial thing with a third person as a *sequester*. Syn. *in sequestre deponere*.—C. 4.4.—See SEQUESTER.

Sequestre. *In sequestre*, see SEQUESTRARE.

Sequi. Used of rights and obligations which are devolved, after the death of a person, on his heir, as well as of rights connected with an immovable (such as servitudes) which in the case of its transfer pass to the acquirer.

Sequi caput alicuius. See NOXA CAPUT SEQUITUR.

Sequi condicionem alicuius. To follow a person in his personal status (freedom, citizenship). Legitimate children share the status of the father; children born out of wedlock follow that of the mother.—See VULGO CONCEPTI.

Sequi fidem alicuius. To put one's trust, to have confidence (faith) in another's promise or good faith, to confide.

Serenissimus (serenitas). An honorific title of the emperor in the later Empire (from the fourth century on). The emperors used to speak of themselves in their enactments *serenitas nostra* ("our serenity").

Serva. A female slave. Syn. *ancilla*.

Servare. To take care of, to protect. The praetor used the term in his edict when he promised to protect certain transactions or agreements (e.g., *"pacta conventa servabo"*).—See MISSIO IN POSSESSIONEM DOTIS (REI) SERVANDAE CAUSA, MISSIO IN POSSESSIONEM LEGATORUM SERVANDORUM CAUSA.

Servare (ab aliquo). To obtain by a suit what is due, to recover (e.g., expenses made for another, indemnification).

Servari. In locutions such as *servandum est, servabitur*, syn. with *observari* (= to be observed, to be acted according to the law).

Servi. Slaves.—See SERVUS.

Servile supplicium. See CRUX.

Servilis. Connected with slavery or pertaining to slaves. *Servilis condicio* = the legal and social condition of a slave. *Servilis cognatio*, see SERVUS.

Servire. Refers to the legal situation of a slave (see SERVUS) or to that of an immovable encumbered by a servitude (*praedium quod servit*). The terms *praedium serviens* and *praedium dominans*, used in the literature, are unknown in Roman sources.

Servitium. Comprised all persons who were in the service of another. They constituted his *familia* (see FAMILIA). In the language of imperial constitutions *servitium* was used in the sense of any kind of service.

Servitus. Slavery. "We compare slavery almost with death" (D. 50.17.209). "Slavery is an institution of the law of all nations (*ius gentium*) under which one is subject to the mastership (*dominium*) of another, contrary to nature" (D. 1.5.4.1).—See SERVUS (Bibl.), SERVITUTEM SERVIRE, REVOCATIO IN SERVITUTEM, VINDICATIO IN LIBERTATEM.

Servitus (servitutes). A servitude, an easement. *Servitutes* were classified among *iura in re aliena* (= rights over another's property) since their substance consisted in a right of a person, other than the owner, primarily the proprietor of a neighborly immovable, to make a certain use of another's land. This right was vested in the beneficiary not as a personal one, but as a right attached to the immovable (land or building) itself, regardless of the person who actually happened to own it. These servitudes are *servitutes praediorum* (also *servitutes rerum, iura praediorum*). Among them there is a distinction between *servitutes praediorum rusticorum* and *servitutes praediorum urbanorum* according to the economic exploitation of the benefiting immovable, i.e., either for agricultural production or for urban utilization (housing, commercial or industrial buildings) regardless of the location of the immovable in a city or in the country. Later (postclassical or Justinian's) law added to the servitudes a new category, the personal servitudes (*servitutes personarum, hominum*), in which the beneficiary was a specific person. But only the term, *servitutes personarum*, was a later creation, the pertinent rights to use another's property (*iura in re aliena*) were known in the classical law and discussed and developed by the classical jurisprudence. At the death of the beneficiary a personal servitude was extinguished, whereas in predial (rustic or urban) servitudes the death of the actual beneficiary was without any effect on the existence of the servitude which as connected with the immovable passed to the successor of the owner. Predial servitudes were of a very different nature. Some of them were more typical and the extension of the pertinent rights vested in the owner of the dominant land were determined by law or custom. Modifications were, however, admitted in specific cases; see MODUS SERVITUTIS. There was a legal rule: *"Nemini (nulli) res sua servit"* (D. 8.2.26, no one can have a servitude on a property of his own), since ownership as such implied all kinds of utilization of the thing. Another rule was that a predial servitude could not impose on the owner of the servient immovable the duty of doing something. His liability went only so far as to abstain from doing something to the deriment of the beneficiary of the servitude or to tolerate the latter using his property in some way. A predial servitude, being strictly connected with the dominant immovable, could not be transferred to another person unless the immovable itself was alienated. By the alienation the new owner became the beneficiary of the servitude. A servitude was constituted through MANCIPATIO or IN IURE CESSIO when it was reckoned among RES MANCIPI, as the rustic servitudes were, or on the occasion of the division of a common landed property in favor of the owners of the shares. In a last will a servitude could be granted only in the form of a LEGATUM PER VINDICATIONEM. Praetorian law introduced the establishment of a servitude by an agreement; see PACTIONES ET STIPULATIONES. In Justinian's law the stipulation became usual for this purpose. A predial servitude was extinguished when one of the two immovables, the servient or the dominant, was destroyed, or when the owner of one acquired the other; see CONFUSIO. —*Servitus* in the language of Justinian indicates at times restrictions imposed by the law on owners of

immovables, as, for instance, in the buildings regulations set in a constitution of the Emperor Zeno. See ZENONIANAE CONSTITUTIONES. The following items deal with typical predial servitudes, both rural and urban. Some of them appear in the sources as *ius* (*iura*). For the so-called personal servitudes, see USUS, USUSFRUCTUS, HABITATIO, OPERAE SERVORUM. —Inst. 2.3; D. 8.1–3; C. 3.34.—See USUCAPIO SERVITUTIS, USUCAPIO LIBERTATIS, NON USUS, PATI, VINDICATIO SERVITUTIS, PERPETUA CAUSA SERVITUTIS, INTERDICTUM QUAM HEREDITATEM.

Leonhard, *RE* 2A; Beauchet, *DS* 4; Ciccaglione, *NDI* 12; Berger, *OCD*; Longo, *BIDR* 11 (1899) 281; Buckland, *LQR* 42 (1928); *idem*, *St Riccobono* 1 (1936) 27; Bonfante, *St Arcali* (1931) 179; Arangio-Ruiz, *Foro Ital.*, 59 (1932); Frezza, *StCagl* 22 (1934); Grosso, *In tema di castituzione tacita di servitù*, *BIDR* 42 (1934) 326; *idem*, *SDHI* 3 (1937) 274; *idem*, *Riv. di dir agrario* 17 (1938) 174; *idem*, *Problemi di diritti reali* (1944) 26; Guarneri-Citati, *BIDR* 43 (1935) 19; Ciapessoni, *StPav* 22 (1937) 107; B. Biondi, *La categoria ram. delle servitutes*, 1938; *idem*, *Le servitù prediali (Corso)* 1946; E. Albertario, *Studi* 2 (1941) 339; S. Solazzi, *Requisiti e modi di costituzione delle servitù prediali*, 1947; *idem*, *Specie e estinzione delle servitù prediali*, 1948; *idem*, *La tutela e il possesso delle servitu prediali*, 1949; E. Levy, *West Roman vulgar law*, 1951, 55.

Servitus actus (ius agendi). See ACTUS, INTERDICTUM DE ITINERE ACTUQUE.

Servitus altius non tollendi (*sc.* aedes). An urban servitude which imposed on the owner of a building the duty not to build higher over a certain limit. A counterpart was a servitude *ius altius tollendi* which gave the beneficiary the right to build higher.

Buonamici, *Annali Univ. Toscane*, 32 (1913); A. Perret, *Ius a. tollendi*, Thèse Paris, 1924; Grosso, *St Albertoni* 1 (1935) 453; Branca, *St A. Ciccu* 1 (1951) 105.

Servitus aquaeductus (aquae ducendae). A rural servitude consisting in the right of the owner of the dominant land to conduct water from, or across, another's land through pipe or canals. The *servitus* was protected by interdicts granted against any one who prevented the beneficiary from exercising his right or who tried to render the water or the necessary constructions useless.—See INTERDICTUM DE AQUA, CASTELLUM.

Manigk, *RE* 10; Berger, *RE* 9, 1630; Gianziano, *NDI* 1 (*s.v. acque private*); Orestano, *BIDR* 43 (1935) 217; De Roberris, *AnBari* 1 (1938) 61; Maschi, *BIDR* 46 (1939) 313; Solazzi, *Fschr Schulz* 1 (1951) 380.

Servitus aquae haustus. The right to take water from a fountain, a pond, or a spring located on another's property. This easement implied free access (*iter*) to the place. Syn. *servitus aquae hauriendae*.—See FONS, INTERDICTA DE FONTE.

Leonhard, *RE* 2; Grosso, *BIDR* 40 (1932) 401.

Servitus arenae fodiendae. The right to dig for sand in a land belonging to another.

Servitus calcis coquendae. The right to burn lime on another's land.

Servitus cloacae immittendae. The right to have a drain through a neighbor's land.—See CLOACA.

Servitus cretae eximendae. A rural servitude which entitled one to take chalk from another's soil.

Servitus eundi. See ITER.

Servitus fumi immittendi. See FUMUS.

Servitus itineris. See ITER.

Servitus itineris ad sepulcrum. See ITER AD SEPULCRUM.

Servitus lapidis eximendi. A rural servitude to take stones from a quarry belonging to another.

Servitus luminis. The right to profit by the light from a neighbor's land.

Servitus ne luminibus officiatur. An urban servitude which entitled the beneficiary to prevent his neighbor from building a house which might shut him off from the light. A counterpart to this servitude was the right *ius officiendi luminibus vicini* which gave the beneficiary the right to build on his land as he pleased, regardless of the neighbor's suffering a limitation or loss of light.—See SERVITUS ALTIUS NON TOLLENDI.

Servitus ne prospectui officiatur. This servitude gave the owner of an immovable the right to prevent his neighbor from building a house or planting trees which might impede the beneficiary's pleasant view. —See SERVITUS NE LUMINIBUS OFFICIATUR.

Servitus oneris ferendi. An urban servitude involving the right of the beneficiary to have his building supported by the neighbor's wall. The latter was bound to keep his wall in good condition.

Ciccaglione, *NDI* 12, 1, 165; Riccobono, *ibid.* 218; Scialoja, *St giur.* 1 (1933, ex 1881) 84; G. Segrè, *BIDR* 41 (1932) 52; *idem*, *St Ascoli* (1931) 681.

Servitus pascui (pecoris pascendi). See IUS PASCENDI.

Servitus praetoria. A servitude constituted in a form introduced by praetorian law.—See SERVITUS, PACTIONES ET STIPULATIONES.

H. Krüger, *Die prätorische Servitut*, 1911; Rabel, *Mél Girard* 2 (1912) 387; Berger, *GrZ* 40 (1913) 299; Maschi, *BIDR* 46 (1939) 274; B. Biondi, *Le servitù prediali* (1946) 213.

Servitus proiciendi. See the following item.

Servitus protegendi. An urban servitude which entitled the beneficiary to project a roof on the neighbor's property. A similar servitude was *servitus proiciendi* concerning a balcony projected over the neighbor's land.—See PROTECTUM.

Servitus servitutis esse non potest. A servitude cannot be imposed on a servitude. There was no possibility to transfer the exercise of a servitude wholly or in part to another.

Perugi, *BIDR* 29 (1916) 181.

Servitus silvae caeduae. The right to cut wood on another's property.

Servitus stillicidii. There were different servitudes connected with the use of dropping rain-water: (*a*) *servitus stillicidii immittendi* = the right to discharge

the dropping rain-water from the eaves or spouts of one's building on the property of a neighbor; the latter was obliged to receive it; (*b*) *servitus stillicidii avertendi* = the right to divert the rain-water from the roof of a neighbor's building to make it run on the beneficiary's land; (*c*) *servitus stillicidii recipiendi* = the right to receive the rain drip from a neighbor's property.

Anon., *NDI* 12. 1. 905; Grosso, *St Albertoni* 1 (1935) 465; Guarneri-Citati, *RendLomb* 59 (1926); B. Biondi, *La categoria rom. delle servitutes* (1938) 129.

Servitus tigni immittendi. An urban servitude which entitled the beneficiary to introduce a beam serving for his building into the wall of a neighbor's building. —See TIGNUM IUNCTUM.

Servitus viae. See VIA.

Servitutem debere. Used of a land which is encumbered with a predial servitude. *Fundo servitus debetur* is used of a land the owner of which is the beneficiary of a predial servitude.

S. Solazzi, *Tutela della servitù prediali*, 1949, 163.

Servitutem servire. Denotes a factual (not legal) condition of a person who although being free performed services of a slave.—See LIBER HOMO BONA FIDE SERVIENS.

J. Ellul, *Évolution et nature jurid. du mancipium* (1936) 282.

Servitutes personarum. See SERVITUS.

C. Sanfilippo, *S. p.* (*Corso*), 1944; Ciapessoni, *CentCod Pav* (1934) 879; B. Biondi, *La servitù prediali*, 1946, 50.

Servitutes praediorum (rusticorum, urbanorum). See SERVITUS.

Servius Sulpicius Rufus. A prominent jurist of the second half of the first century of the Republic, consul in 51 B.C., orator and a famous legal teacher. His writings amounted to 180 books; among them was the first commentary on the praetorian Edict. According to Cicero, he furthered the application of equity (see AEQUITAS) in settling legal disputes.

Münzer, *RE* 4A, 851 (no. 95); E. Vernay, *Servius et son école*, 1909; Peters, *ZSS* 32 (1911) 463; Kübler, *ACDR* Roma 1 (1934) 96; Stroux, *ibid.* 130; Di Marzo, *BIDR* 45 (1938) 261; P. Meloni, *S. S. R. e i suoi tempi, Annali Fac. Lettere e Filosofia Univ. Cagliari*, 13 (1946).

Servus. A slave. Syn. terms: *homo, mancipium, ancilla* (a female slave), *puer*. Although a human being, legally a slave was considered a thing (*res*) without any legal personality. He belonged to his master as a RES MANCIPI, and therefore the transfer of ownership of a slave was to be performed through *mancipatio*. All that the slave acquired belonged to his master and he could not assume an obligation for his master. Hence there was no action against the latter from transactions concluded by the slave. Exceptions from this rule were introduced by the praetorian law; see PECULIUM, ACTIO TRIBUTORIA, INSTITOR. Aside from these specific cases a general rule was that the legal situation of a master might be improved by a contractual activity of his slave, but could not be made worse. The master was, however, liable for delictual offenses of the slave (see DELICTUM), but when sued with an *actio noxalis* for the slave's wrongdoing (see NOXA), he might free himself from liability by handing over (surrendering) the slave to the person injured (*noxae deditio*). A slave could not be sued nor could he be plaintiff in a trial. In the earlier law the master had IUS VITAE NECISQUE over the slave, and even during the period of the Republic a slave had no protection against his master's cruelty. See LEX PETRONIA. The law of the Empire brought several restrictions to the master's power. A master who killed his slave without just grounds was punished, and in the case of ill-treatment of a slave he could be compelled to sell him. The pertinent provisions were frequently changed in the later Empire in favor of the slaves under the influence of Christianity. A slave had no family; his marriage-like union was not considered a *matrimonium*; see CONTUBERNIUM. Blood tie created through a servile union (*cognatio servilis*) was later regarded as an impediment to a marriage between persons thus related, after their manumission. Specific rules were in force in criminal law and procedure as far as slaves were concerned. Penalties inflicted on slaves were generally severer than those to which free men were exposed. A slave was not allowed to testify in a criminal trial against his master, except in the case of *crimen maiestatis*. A testimony contrary to this rule was capitally punished. Usually, a slave as a witness in criminal matters was subject to torture; see QUAESTIO PER TORMENTA. Slavery arose by birth from a slave mother. A foreigner of an enemy country became a slave in the Roman state when taken as a prisoner of war. The same happened to a stranger belonging to a country, not allied with Rome with a treaty of friendship, even when he was caught not in time of war. Other causes of enslavement were: *venditio trans Tiberim* (= the sale of a free man beyond the Tiber, i.e., abroad, see ADDICTUS), the case sanctioned by the SENATUSCONSULTUM CLAUDIANUM, the case of an INGRATUS LIBERTUS (= a freedman ungrateful towards his patron), and the case of a fraudulent sale of a free man (over twenty) as a slave who gave his consent to such a transaction in order to participate in the price. For enslavement as a result of a condemnation for a crime, see SERVUS POENAE. For the specific rules governing the sale of a slave and the liability of the master for physical and mental defects of the slave sold, see EDICTUM AEDILIUM CURULIUM, DICTA, REDHIBITIO. —D. 11.3; 18.7; C. 6.1; 2; 7.7–9; 13.—See moreover, ACTIO SERVI CORRUPTI, OPERAE SERVORUM, ANCILLA, PARTUS ANCILLAE, HOMO, NOMEN, EVINCERE, MANUMISSIO, DEDITICII EX AELIA SENTIA, PECULIUM, LIBER HOMO BONA FIDE SERVIENS, EXPONERE SERVUM, CAPTIVITAS, SENATUSCONSULTUM SILANIANUM, FAMILIA,

STATULIBER, FACTIO LIBERTATIS, INTURIA, and the following items.

Westermann, *RE* Suppl. 6 (*s.v. Sklaverei*); Weiss, *RE* 3A (*s.v. Sklaverei*); Beauchet and Chapot, *DS* 4; W. W. Buckland, *The Roman law of slavery*, 1908; Berger, *Streifzige durch das röm. Sklavenrecht*, *I. Philologus* 73 (1914) 61; II. *ZSS* 43 (1922) 398; Tumedei, *RISG* 64 (1920) 55; B. W. Barrow, *Slaves in the R. Empire*, 1928; H. Lévy-Bruhl, *Quelques problèmes du très ancien dr. rom.*, 1934. 15; Jonkers, *De l'influence du Christianisme*, *Mn* 1934. 241; Juret, *Rev. des études Latines*, 1937. 30; Del Prete, *Responsabilità penale dello schiavo*, 1937; De Manaricua. *El matrimonio de los esclavos*, *Analecta Gregoriana*. 23 (1940); E. Ciccotti, *Il tramonto della schiavitù nel mondo antico*, 2nd ed. Udine, 1940; Kaser, *SDHI* 6 (1940) 357, 16 (1950) 59; L. Clerici, *Economia e finanza dei Romani* 1 (1943) 128; Solazzi, *SDHI* 15 (1949) 187; Imbert, *Christianisme et esclavage*, *RIDA* 2 (1949) 445; G. E. Longo, *SDHI* 16 (1950) 86.

Servus actor. See ACTOR.

Servus alienus. A slave belonging to another. If another's slave was instituted as an heir in a testament, his master acquired the inheritance. Freedom given to another's slave in a will was without any effect unless the testator ordered his heir to buy the slave from his master and to manumit him, or the testator rewarded the slave's master on condition that he would free the slave.—See SUPPRIMERE SERVUM ALIENUM.

Desserteaux. *RHD* 12 (1933) 35; G. Dulckeit, *Erblasserwille und Erwerbswille* (1934) 94.

Servus Caesaris. A slave belonging to the emperor either as *servus patrimonialis* (see PATRIMONIUM CAESARIS) or a *servus rei privatae Caesaris* (see RES PRIVATA CAESARIS).

Servus communis. A slave who belongs to more than one master as a common property.—C. 7.7.—See MANUMISSIO SERVI COMMUNIS.

Servus corruptus. See ACTIO SERVI CORRUPTI.

Servus derelictus. A slave whom his master abandoned (*servus quem dominus pro derelicto habet*). Such a slave was a *servus sine domino* (= a slave without a master, a *res nullius*). His former master had no claim for his recovery. In Justinian's law a *servus derelictus* was considered free.—See DERELICTIO (Bibl.), EXPOSITIO SERVI.

Fasciato, *RHD* 27 (1949) 458; Philipsborn, *RHD* 28 (1950) 402.

Servus dotalis. A slave among things constituted as a dowry. The husband was permitted to manumit the slave, even without the consent of the wife, and he became patron of the slave freed. He had to account, however, for the loss which through the manumission resulted to the *dos*, unless his wife assented to the manumission with the intention to make a gift to her husband. Such a gift *manumittendi causa* (= with the purpose of manumission) was not banned by the prohibition of donations between husband and wife.—See DONATIO INTER VIRUM ET UXOREM.

Berger, *Philologus* 73 (1914) 96; Cosentini, *SDHI* 9 (1943) 291.

Servus fiscalis (fisci). A slave employed in the business of the fisc. Slaves came under the mastership of the fisc when the master died without an heir, or when the heir instituted in a testament refused to enter the inheritance (see CADUCA), or when the fisc seized the property of a person condemned for a crime (see CONFISCATIO, PUBLICATIO).—See FISCUS.

Servus fructuarius. A slave on whom a person other than the owner had a usufruct (see USUSFRUCTUS). All that such a slave acquired *ex re* of the usufructuary (i.e., from his money or other property, or from the *peculium* granted by him to the slave), or *ex operis suis* (= from the slave's labor), belonged to the usufructuary; other acquisitions, such as an inheritance or legacies went to the profit of the slave's master. A *servus fructuarius* freed by his master without the fructuary's consent, became a *servus sine domino* (= a slave without a master); under the law of Justinian he became free.—See EX RE ALICUIUS.

Berger, *Philologus* 73 (1914) 61, 91; *idem*, *ZSS* 43 (1922) 398; Pringsheim, *ZSS* 50 (1930) 408; G. Dulckeit, *Erblasserwille und Erwerbswille* (1934) 26, 101; Solazzi, *BIDR* 49–50 (1947) 373.

Servus fugitivus. A slave who ran away from his master with the intention not to return to him. A *servus fugitivus* also was a slave who ran away from his master's creditor, to whom he had been given as pledge (*creditor pigneraticius*), or from a teacher, and did not return to his master. When caught by a public organ or a private individual, a *servus fugitivus* had to be delivered to the master. Concealing a fugitive slave or helping a slave to escape from his master was considered a theft; see LEX FABIA DE PLAGIO. Syn. *in fuga esse*, *fugitivus* (noun). A fugitive could be usucapted if the man who held him was in good faith (e.g., he believed to hold a masterless slave).—See CAUTIO DE SERVO PERSEQUENDO.—D. 11.4; C. 6.1.

Arnò, *St Perozzi* 1925, 259; Carcaterra, *AG* 120 (1938) 158; M. Roberti, *La lettera di San Paolo a Filemone e la condizione del servo fugitivo*, 1933; E. Albertario, *St di dir rom.* 2 (1941) 273; Pringsheim, *St Solazzi* 1948, 602; *idem*, *Fschr Schulz* 1 (1951) 279; Coleman-Norton, *St in honor of A. C. Johnson* (Princeton, 1951) 172.

Servus hereditarius. A slave belonging to an inheritance. Such a slave was interrogated under torture when the authenticity of the testament was questioned, without regard to whether he was freed therein or not.

Servus ordinarius. A slave who had in his *peculium* a slave (see SERVUS VICARIUS).

Servus peculiaris. A slave who was a part of a PECULIUM. A slave in a soldier's *peculium* (PECULIUM CASTRENSE) was the soldier's slave. A *filius familias* endowed with a *peculium* could not manumit a slave belonging to the *peculium* without his father's authorization.

Servus poenae. A free man who became a slave through condemnation with capital punishment (death penalty, fight with wild beasts, forced labor in mines).

He was considered a slave *sine domino* (not belonging to anybody). If a slave was condemned to capital punishment, the ownership of his master was destroyed and did not revive any more. A *servus poenae* could not be freed. In certain cases, a sentence, even when not involving capital punishment, could impose on the condemned slave the additional penalty *"ne manumittatur"* which meant that he could not be manumitted and remained slave for life.

Pfaff, *RE* 2A; Lécrivain, *DS* 4, 1284; Donatuti, *BIDR* 42 (1934) 219; U. Brasiello. *St Virgilii* (1935) 41; *idem, Repressione penale* (1937) 416.

Servus publicus (servus populi Romani). A slave owned by the state (the Roman people). Public slaves were employed in the offices of magistrates, in Rome and municipalities, in temples, pontifical offices and the like, for minor auxiliary work and servant duties. They were granted some personal privileges and, if they had a *peculium*, they might dispose thereof in part. Better qualified slaves were employed in accounting and secretarial service; they obtained at times influential positions and were soon rewarded by their masters with liberty. In the later Empire there was a tendency to exclude slaves from civil service. The manumission of a *servus publicus* was performed by a pertinent declaration of a magistrate with the previous authorization of the senate; in the Empire the emperor granted liberty to a *servus publicus*. In municipalities the manumission was decreed by the municipal council.—C. 7.9.

De Ruggiero, *DE* 2, 750; L. Halkin, *Les esclaves publics chez les Rom.*, 1897.

Servus recepticius. See RECEPTICIUS SERVUS.

Servus redemptus. See REDEMPTUS AB HOSTE.

Servus redemptus suis nummis. See REDEMPTUS SUIS NUMMIS.

Servus sine domino. A slave without a master, not owned by anybody. His legal situation was that of a RES NULLIUS.—See SERVUS POENAE, SERVUS DERELICTUS, SERVUS FRUCTUARIUS.

F. X. Affolter, *Die Persönlichkeit des herrenlosen Sklaven*, 1913.

Servus usuarius. See USUARIUS (adj.), USUS.

Servus vicarius. The slave of a slave, a slave in another slave's *peculium*. He is *servus peculiaris* while his superior is *servus ordinarius*. A *servus vicarius* could have a *peculium* for himself, *peculium vicarii*. The manumission of a *servus vicarius* could be performed by the master of the *servus ordinarius*.

Lécrivain, *DS* 5, 823; H. Erman, *S.v.* (*Recueil publié par la Faculté de droit de l'Univ. de Lausanne*, 1896) 391; Däll, *ZSS* 67 (1950) 173.

Servus. (Adj.) Used both of persons (slaves) and of immovables encumbered with a servitude (see SERVITUS), as *servus fundus, servum praedium*. Syn. *praedium quod servit*.

Sessio. (From *sedere*). A praetor's sitting in court (*praetor sedit*) whether he is acting PRO TRIBUNALI or DE PLANO.

Sestertium. One thousand sesterces (*sestertii*).—See SESTERTIUS, SOLIDUS.

Lenormant, *DS* 2, 95.

Sestertius (*scil.* nummus). A silver coin in the Republic, a brass coin in the Principate. It was first equivalent to two and a half asses, later to four asses (see AS). Abbreviation: HS. *Sestertio nummo uno* occurs in inscriptions for *nummo uno*; see NUMMUS UNUS.—See SOLIDUS.

Regling, *RE* 2A; Babelon, *DS* 4; Lenormant, *DS* 2, 94; Mattingly, *OCD* (*s.v. coinage*).

Sestertius pes. See AMBITUS.

Severus Valerius. See VALERIUS SEVERUS.

Seviri (sexviri) Augustales. See AUGUSTALES.

Sexagenarius. See PROCURATORES in public law.

Sexprimi. The "first six." They were the chairmen of the association of subordinate officials (see APPARITORES).

Si paret. See INTENTIO (a part of the procedural formula).

Si quidem . . . , si vero. . . . If . . . , if, however. Sentences in which two or more contrasting legal situations are taken into consideration occur in interpolated passages. This and similar constructions are, however, not an absolutely reliable criterion of interpolation.

Guarneri-Citati, *Indice*[2] (1927) 81; *idem, Fschr Koschaker* 1 (1937) 152.

Si quis. See SIGNIFICATIO VERBORUM.

Sicarius. A murderer. Sulla's *Lex Cornelia de sicariis* introduced a *quaestio perpetua* (a permanent court) for murderers (*sicarii*) and poisoners (*venefici*). In classical law a *sicarius* was also one who was going around armed with the intention to assassinate someone or to commit a theft, furthermore one who in his capacity as a magistrate or chairman of a criminal court induced a witness to make false testimony in order to prosecute and convict an innocent person of a crime, and a magistrate or judge who received a bribe to accuse a person of a capital crime. "It makes no difference whether one killed a man or caused his death" (D. 48.8.15). Under the influence of jurisprudence and imperial legislation the mentioned *Lex Cornelia*, which remained in force still under Justinian, was applied to various kinds of offenses which resulted in the death of a man. Death penalty was inflicted on the criminal and his property was seized. In many cases the accuser was rewarded.—D. 48.8; C. 9.16.—See LEX CORNELIA DE SICARIIS, HOMICIDIUM, PARRICIDIUM.

Pfaff, *RE* 8, 2249; Cuq, *DS* 3, 1140; Hitzig, *Schweizerische Ztschr. für Strafrecht* 9 (1896) 28; Condanari-Michler, *Scr Ferrini* 3 (1948, Univ. Sacro Cuore, Milan) 70.

Sigillum. A seal affixed to a written document. Syn. SIGNUM.

Siglae. Abbreviations. Justinian forbade the use of *sigtae* in manuscripts of the Digest and the Code.

Bilabel, *RE* 2A; Berger, *BIDR* 55–56 Post-Bellum (1951) 158; 166.

Signare. To subscribe a document (a last will); syn. *subscribere*. *Signare* denotes also to seal with a *signum* (with a seal ring = *anulus signatorius*), e.g., wax-tablets on which a testament was written. In a wider sense *signare* = to provide a thing with a sign or a mark to indicate the owner.—See SIGNUM, ANULUS.

Signare pecuniam. To seal a little bag (*sacculum*) containing money to be deposited with a banker or a friend. The depositary was obliged to restore the bag untouched. If the depositor died special precautions were prescribed when one of the heirs demanded the delivery of his share.

Wenger, *RE* 2A, 2377.

Signatores testamenti. Those who signed and sealed a testament as witnesses. When a testament had to be opened after the death of the testator (see APERTURA TESTAMENTI), the *signatores* had to be convoked to acknowledge their seals.

Archi, *StPav* 26 (1941) 84; Macqueron, *RHD* 24 (1945) 164.

Signifer. A standard-bearer in a legion.

Kubitschek, *RE* 2A.

Significatio verborum. The meaning of words. The title 50.16 of the Digest (*De significatione verborum*) gives explanations of several hundreds of terms, both juristic and non-juristic. The definitions were collected from various juristic works in which almost all classical jurists were represented. The collection was prepared for furthering a better understanding of terms and locutions used in the Digest. The title starts with the explanation of the phrase *"si quis"* (= if anybody . . .) which is interpreted to the effect that it "comprises both men and women" (D. 50.16.1).—C. 6.38.

Signum. (With reference to military units.) A standard, a banner.

Kubitschek, *RE* 2A, 2349.

Signum. (On written documents.) A seal (a stamp) put on to close a document in order to make its contents inaccessible to unauthorized persons and protect it against forgery, or at the end of it after the written text. In the latter case the seal (without or with a signature) indicated that the sealer recognized the written declaration as his (*subscriptio, subsignatio*). *Signum* is also the seal of a witness who was present at the making of a document. In certain specific instances sealing a document was legally required. See TESTAMENTUM SEPTEM SIGNIS (SIGILLIS) SIGNATUM. Sealing a forged testament or an illicit removing of a seal from a testament was punished under the *Lex Cornelia de falsis*.—See OBSIGNATIO, SIGNARE, ANULUS.

Wenger, *RE* 2A; Chapot, *DS* 4; Erman, *ZSS* 20 (1899) 181; Wenger, *ZSS* 42 (1921) 611.

Signum agnoscere. To acknowledge a seal as one's own. Syn. *recognoscere*.

Silentiarii. A body of thirty officials in the later Empire, to maintain order in the imperial palace and at court-meetings in the imperial *consistorium*. They also had their assignment in the court ceremonial. Created in the fourth century, they acquired later some military functions. Their commanders (*decuriones*) were considered among the highest functionaries of the imperial palace.—C. 12.16.

Seeck, *RE* 3A; Lécrivain, *DS* 4; J. E. Dunlap, *Univ. of Michigan Studies, Humanistic Ser.* 14 (1924) 220.

Silentium. Silence. Generally, *silentium* is not considered a manifestation of will. Sometimes, however, the silence of a person who in a given situation had to speak, was regarded as non-opposition (*non contradicere, non dissentire*) and as such as a tacit consent, e.g., the silence of a father with regard to a marriage of his son (*filius familias*).—*Silentium* was used also of the inaction on the part of a person who was entitled to act as a plaintiff. *Longum silentium* = such inaction during a longer time; it might produce the loss of an action; see LONGI TEMPORIS PRAESCRIPTIO. For *silentium* of a party during a trial, see TACERE, INTERROGATIO in criminal trials.

G. Borgna, *Del silenzio nei negozi giuridici*, 1901; P. Bonfante, *Scr giur* 3 (1926) 150; Donatuti, *St Bonfante* 4 (1930) 459; Perozzi, *Scr* 2 (1948, ex 1906) 599.

Siliqua. A small silver coin equal to one twenty-fourth of a *solidus aureus*.

Regling, *RE* 3A; Seeck, *ibid.* 65.

Siliquaticum. A sales tax in the later Empire, reckoned in *siliquae*.

Ferrari, *AVen* 99, 2 (1939–40) 202.

Silva. A wood, a woodland. There was a distinction between a *silva caedua* (exploited by cutting trees for timber) and *silva pascua* (used as pasture for cattle). The usufructuary of another's woodland should use it in an economically reasonable way ("as a father of a family," D. 7.1.9.7) and not abuse it to the detriment of the owner.

Burdese, *St sull'ager publicus, MemTor ser. II*, 76 (1952) 117.

Similitudo. Resemblance, analogy. *Ad similitudinem* is syn. with *ad instar, ad exemplum*.—See INSTAR, EXEMPLUM.

Steinwenter, *St Arangio-Ruiz* 2 (1952) 172.

Simplaria venditio. A sale in which the seller did not specify any particular quality or defect of the thing sold (for instance, a slave sold as "no good, no bad"). Such sales which normally concerned ordinary things of no great value, could not be rescinded by REDHIBITIO.

Brunn and Sachau, *Syrisch-röm. Rechtsbuch*, 1880, 207.

Simplicia interdicta. See INTERDICTA SIMPLICIA.

Simplicitas. Simplicity, clearness. "Simplicity (clarity) in laws seems to us more desirable than intricacy" (Justinian, Inst. 2.23.7).

Simpliciter. Simply, plainly. The adverb is used in different meanings, depending on with what it is

contrasted. Thus, for instance, to promise (to give a donation, to bequeath a legacy) *simpliciter* = unconditionally (when opposed to *sub conditione*); to assume an obligation *simpliciter* = without giving security (when opposed to *cum satisdatione*); to stipulate *simpliciter* = without a penalty (when opposed to a *stipulatio* under penalty). With reference to judicial measures to be granted by a magistrate *simpliciter* is opposed to *causa cognita* (after investigation of the case, see CAUSAE COGNITIO).

Simplum. See ACTIONES IN SIMPLUM.

Simulare (simulatio). To feign, to simulate, to pretend. In contractual relations a *simulatio* occurred when the parties with mutual understanding concluded a transaction while their intention was to conclude another or none at all. The purpose of such fictitious transactions was either to give thereto the appearance of a legal act, while in fact the transaction was illicit (e.g., the parties covered a prohibited donation with a fictitious sale) or to feign that a legal situation existed which in fact did not exist (e.g., an imaginary marriage, *nuptiae simulatae*, to avoid the disadvantages imposed on unmarried persons by the Augustan legislation on marriages, see LEX IULIA ET PAPIA POPPAEA). Acts concluded *simulate* (simulated acts) were not valid since they were not intended by the parties; nor was the act which the parties wanted to conclude valid if it was contrary to the law. The rubric of the title 4.22. of the Code, defines: "More valid is what is being done than what is being expressed in simulated terms." The rule lay stress in particular on the "truth of the matter" (*veritas rei*) and not on what had been feigned in a written deed.—C. 4.22.—See IMAGINARIUS, DICIS CAUSA.

Berger, *RE* 9, 1094 (*s.v. imaginarius*); Rabel, *ZSS* 27 (1906) 290; Partsch, *ZSS* 42 (1921) 122; *idem*, *Aus nachgelassenen Schriften*, 1931, 122; G. Longo, *St Riccobono* 3 (1936) 113; *idem*, *AG* 115 (1936) 117; 116 (1937) 35; Betti, *BIDR* 42 (1934) 299; *idem*, *Fschr Koschaker* 1 (1939) 297; *idem*, *ACSR*, IV Congr., 1938; G. Pugliese, *La simulazione nei negozi giuridici*, 1938.

Sinceritas. A complimentary title used by the emperors in official letters (rescripts) addressed to higher officials of the Empire (*"sinceritas tua"* = your sincerity).

Sine die. Refers to obligations for the fulfillment of which a term was not fixed. "What is due without a date being fixed, has to be paid immediately" (D. 45.1.41.1).

Sine die et consule. Without indication of the day and the consul, i.e., without a date. Constantine ordained that undated imperial constitutions were not valid.

Niedermeyer, *ACDR* Roma 1 (1934) 366.

Sine domino. See SERVUS SINE DOMINO.

Sine re. See BONORUM POSSESSIO SINE RE.

Sine suffragio. When a juror did not indicate on his voting tablet whether he was for the acquittal or condemnation of the defendant, the tablet was *sine suffragio* (= without any vote).—See CIVITATES SINE SUFFRAGIO.

Sinere. See LEGATUM SINENDI MODO.

Singulare ius. See IUS SINGULARE.

Singuli. Individual citizens (as opposed to the whole people, *populus Romanus*); members of an association (as opposed to the whole body, *universitas*).

Sistere aliquem. To assume the obligation by giving security (to guarantee) that a certain person engaged in a lawsuit (primarily the defendant) will appear in court (*iudicio sistere*) at a fixed date.—See CAUTIO IUDICIO SISTI, VADIMONIUM, VINDEX.

Sisti (se) iudicio. To appear in court.—D. 2.10.

Societas. A contract of partnership concluded between two or more persons with the purpose to share profits and losses. The contractual relationship among the partners (*socii*) arose through simple consent (consensus) of the partners. The intention to conclude a *societas* is termed *affectio societatis*; it certainly makes no difference whether the term is a classical or later creation since, in fact, it does not denote more than *consensus*. The partners contributed to the common business money, goods, rights, claims against third persons, or their personal professional skill and labor. Funds and things collected became joint ownership of all partners, normally in equal shares unless different shares were established at the conclusion of the *societas*, when the contributions of the partners were not equal or when their parts in labor or personal services were of a different value. Accordingly, the share of each partner in profits and losses was fixed by agreement. The *societas* had no legal personality; the partners were liable for the debts of the *societas*, without regard to its funds, on the other hand the claims of the *societas* against its debtors were claims of the partners. A *societas* was dissolved by a mutual agreement of the partners (*dissensus*), by the death of one partner, his *capitis deminutio* or bankruptcy, or by *renuntiatio* of one partner, i.e., his unilateral withdrawal from the *societas*. Controversies among the partners were settled in an action, *actio pro socio*, brought by one partner against the other. The action was an *actio bonae fidei*; the defendant could be condemned only *in id quod facere potest* (see BENEFICIUM COMPETENTIAE), but the condemnation involved infamy. The division of the common property of the partners was achieved through ACTIO COMMUNI DIVIDUNDO. The origin of *societas* goes back to the community of property (see CONSORTIUM) among *filii familias*, heirs of their father, which served as a model for common ownership and common management of affairs among persons not tied by the origin from a common ancestor.—The term *societas* occurs at times in the sense of an association (= *collegium*, *corpus*).—Inst. 3.25; D. 17.2; C. 4.37.—See COMMUNIO, CONSORTIUM

ERCTO NON CITO, ACTIO COMMUNI DIVIDUNDO, COMMUNICATIO LUCRI ET DAMNI, ACTIO PRO SOCIO, QUAESTUS, VIATICUM.

Manigk, *RE* 3A; Lécrivain, *DS* 4; Rodino, *NDI* 12, 1 (*s.v. società civile*); C. H. Monro, *Digest 17.2. Pro socio* (Cambridge, 1902); E. Levy, *Konkurrenz der Aktionen* 2. 1 (1922) 139; E. Del Chiaro, *Le contrat de société en dr. privé rom.*, 1928; A. Poggi, *Il contratto di società*, 1–2 (1930, 1934); Guarneri-Citati, *BIDR* 42 (1934) 166; F. Wieacker, *ZSS* 54 (1934) 35; *idem, Societas, Hausgemeinschaft und Erwerbsgesellschaft*, 1936; Arangio-Ruiz, *St Riccobono* 4 (1936) 357; Daube, *CambLJ* 6 (1937) 381; C. Arnò, *Il contratto di società* (*Lezioni*) 1938; Di Marzo, *BIDR* 45 (1938) 261; Condanari-Michler, *St Besta* 3 (1939) 510; Pflüger, *ZSS* 65 (1947) 188; E. Schlechter, *Le contrat de société en Babylon, en Grèce et à Rome*, 1947; Frezza, *St Solazzi* (1948) 529; V. Arangio-Ruiz. *La società in dir. rom.* (*Corso*), 1950; Weiss, *Fschr Schulz* 2 (1951) 86; Solazzi, *Iura* 2 (1951) 132; Van Oven, *TR* 19 (1951) 448; *idem, St Arangio-Ruiz* 2 (1952) 453; Wieacker, *ZSS* 69 (1952) 302.

Societas leonina. A *societas* in which one partner participates only in the losses and is excluded from sharing the profits. Such a contract was not valid.

V. Arangio-Ruiz, *La società in dir. rom.*, 1950, 110.

Societas maleficii. A group of persons intent to commit a crime together.

Societas negotiationis. See SOCIETAS UNIUS NEGOTII.

Societas omnium bonorum. A partnership embracing the whole property of all partners. Such a kind of *societas* was the earliest form of joint ownership of an estate among the heirs; see CONSORTIUM.

V. Arangio-Ruiz. *La società in dir. rom.*, 1950, 16; Van Oven, *TR* 19 (1951) 448.

Societas publicanorum. See PUBLICANI.

Societas quaestus. A partnership which comprises gains obtained from the economic activity and legal transactions (sales, leases) of the partners. Excluded from the community are donations, legacies and inheritances.

Societas re contracta. A *societas* existing independently from the consent of the parties. This occurred when one or more things came into common ownership of several persons. The notion of *societas re contracta* is a postclassical creation.

Arangio-Ruiz, *St Riccobono* 4 (1936) 357; *idem, La società in dir. rom.*, 1950, 35.

Societas unius negotii (societas negotiationis). A partnership concerning a commercial or industrial business. All juristic and economic operations connected with it are covered by the partnership.

Arangio-Ruiz, *La società in dir. rom.*, 1950, 141.

Societas unius rei. A partnership concerning one, commercial or non-commercial, transaction (a sale, a lease, etc.)—See POLITOR.

Societas vectigalium. See SOCIETAS PUBLICANORUM. —See PUBLICANI.

Socius. (In private law.) A partner in a company (see SOCIETAS), a co-owner, a member of an association (*collegium*).

Socius. (In penal law.) An accomplice, an accessory, an abettor, one who gives assistance (*iuvat, adiuvat, adiutorium praebet*) to a criminal before, during, or after the crime. Syn. *conscius, consors, particeps*. As a matter of rule, the *socius* was punished by the same punishment as the principal wrongdoer; exceptions from this rule were introduced later in favor of the accessory.—See OPE CONSILIO, LEX FABIA.

Pfaff, *RE* 3A; R. Balougdtich, *Etude sur la complicité* (Thèse Montpellier, 1920); K. Poetzsch, *Begriff und Bedeutung des s. im röm. Strafrecht* (Diss. Göttingen, 1934).

Socius. (In public law and international relations.) An allied state with which Rome had a treaty of alliance (*foedus*) delimiting the ally's rights and duties towards Rome. In internal administration an allied state was autonomous in retaining its constitution, its government, its control of finances and its legal system. Among its duties that of furnishing a contingent of troops under Roman command (*praefecti sociorum*) was the most burdensome. The privileges granted an ally were not uniform; their extension depended upon the closeness of his attachment to the Roman state. An ally had no right to conclude a treaty with another state or to make war independently of Rome. During the third and second centuries B.C. restrictions were gradually imposed on the autonomy of the allies. The situation of the allies in Italy (*socii Italici*) turned to the worse; after the Social War (91–88 B.C.) Roman citizenship was granted to all cities in Italy which brought the expansion of Roman law and jurisdiction over the whole peninsula. There were also *socii* beyond Italy, more or less dependent on Rome. Their number increased after the Roman victory over Carthage. After various modifications the provincialization of the former allies was achieved and the Roman rule expanded over territories in which the autonomous institutions fell soon into oblivion giving place to Roman power and governors.—See FOEDUS, CIVITATES FOEDERATAE, FOEDUS, AMICUS POPULI ROMANI.

Lécrivain, *DS* 4, 1367; Sherwin-White, *OCD*; Matthaei, *Class. Quarterly Rev.*, 1907, 182.

Sodales. Members of an association (*collegium, sodalitas*). In a more specific sense the term refers to colleges of a religious character, primarily to minor priesthoods.

Bailey, *OCD*.

Sodales Augustales. A college of priests instituted by the emperor Tiberius after the death of Augustus and charged with the cult of the late emperor. Later, similar groups of priests were entrusted with the cult of the emperors Titus, Hadrian, and Antoninus Pius (*sodales Flaviales, Hadrianales, Antoniniani*).

Cagnat, *DS* 4.

Sodalicia. See the following item.

Sodalitates (sodalicia). Groups of persons organized under the chairmanship of a *magister* as a body for

specific purposes. In the political life the *sodalitates* were a union of individuals who illegally worked for a candidate during the electoral campaign; see LEX LICINIA DE SODALICIIS.

Pfaff, *RE* 3A; Ziebarth, *RE* 3A; Riewald, *RE* 1A, 1640; U. Coli, *Collegia e sodalitates*, 1913.

Solacium. An indemnification, a compensation for damages. In imperial constitutions the term is used in the meaning of a stipend or a salary.

Solarium. See SUPERFICIES.

Solere. To use to do something. Used of customs and usages, practiced in legal and commercial life as well as in courts.

Solidare. In imperial constitutions to confirm, to strengthen (a legal transaction).

Solidum. (Noun.) A thing in its entirety, a whole, a sum due as a whole. *Solidum* occurs primarily in locutions *in solidum* and *pro solido*, e.g., to acquire or to sell a thing as a whole, to sue one of more debtors for the whole debt. See DUO REI PROMITTENDI. For *solidum* in the law of successions, see CAPACITAS, CAPAX, LEGES CADUCARIAE.—See PERVENIRE AD ALIQUEM.

Solidus. (Adj.) *Actiones solidae* = lawsuits for the whole debt. *Solida successio* = the whole inheritance.

Solidus. (Noun.) AUREUS (syn. *aureus solidus*, *solidus aureus*), a gold coin containing from the time of Constantine 1/72 of a Roman pound (*libra*) of gold. Justinian's compilers interpolated the *solidus* in juristic writings for the former one thousand sesterces (see SESTERTIUM); thus both *sestertium* and *sestertius* disappeared in Justinian's codification.

Regling, *RE* 3A; Babelon, *DS* 4; S. Bolin, *Der S., Acta Instituti Rom. Regni Sueciae*, 2 ser. 1 (1939) 144; Cesano, *Bull. Comm. Archeol. di Roma*, 58 (1930), *Bull. del Museo*, p. 42.

Solis occasus. Sunset. According to the Twelve Tables a trial in court had to be closed before sunset by the pronouncement of a judgment by the judge. Meetings of the senate, which normally started early in the morning, were to be ended at sunset.

Solitarius. See PATER SOLITARIUS.

Solitus. Customary, usual.—See SOLERE.

Sollemne ius. Opposed to the law created by the praetor (*ius praetorium*, *ius honorarium*). *Sollemne ius* is syn. with IUS CIVILE and refers primarily to the solemn formalities prescribed by that law.

Sollemnia (iuris). Legal formalities prescribed by the law for certain acts, such as the acts *per aes et libram*, testaments, *legis actiones*, *stipulatio*, etc. Syn. *sollemnitates iuris*. Praetorian law and imperial legislation gradually alleviated and partly abolished the formalities of the earlier law. In a rescript issued in a particular case Emperor Marcus Aurelius stated: "Although in solemn legal formalities changes should not easily be made, yet where obvious equity (*aequitas*) requires help must be granted" (D. 4.1.7 pr.). This rule was accepted by Justinian as a general one through its repetition in the final title of the Digest, *De diversis regulis iuris antiqui* (D. 50.17.183). In the language of the imperial chancery the *sollemnia* found a wide application, being connected with any act for which certain formalities were prescribed (e.g., *sollemnia accusationis*, *adoptionis*, *appellationis*, *iurisiurandi*, etc.).

Riccobono, *L'importanza e il decadimento delle forme sollenni*, *Miscellaneous Vermeersch* 2 (1935).

Sollemnia testamenti. Formalities required for the validity of a testament.

Sollemnia verba. See VERBA CERTA ET SOLLEMNIA.

Sollemnis. Prescribed by law, human or sacral, or observed through tradition. See SOLLEMNIA (IURIS). Hence *sollemniter* indicates any act performed under observance of the prescribed formalities.

Sollemnitas, sollemniter. See SOLLEMNIA (IURIS), SOLLEMNIS.

Sollicitator. A seducer.—See ACTIO SERVI CORRUPTI.

Solum. See SUPERFICIES, RES MOBILES.

Solutio. In a broader sense *solutio* indicates any kind of liberation of the debtor from his debt. Obligations contracted in a specific form (*litteris*, *verbis*) had to be extinguished in a similar form; see PROUT QUISQUE. Thus a literal obligation (*litterarum obligatio*) was extinguished by EXPENSILATIO, a *stipulatio* by a parallel oral form, the ACCEPTILATIO. In a narrower sense *solutio* denotes the payment, the fulfillment of an obligation. Payment could be made by anyone, not only by the debtor himself, but even without his knowledge and against his will. The creditor was not obliged to accept a part of the debt nor another thing in lieu of that which was actually due (*aliud pro alio*). Failure to pay at the term fixed produced for the debtor the disadvantages of a default (see MORA DEBITORIS). A creditor who refused the acceptance of the payment could also be in default (*in mora*); see MORA CREDITORIS.—D. 46.3; C. 8.42; 11.40.—See OBLIGATIO, SATISFACTIO, ADIECTUS SOLUTIONIS CAUSA, BENEFICIUM COMPETENTIAE, DATIO IN SOLUTUM, APOCHA, USUCAPIO PRO SOLUTO.

Huvelin, *DS* 4; Leonhard, *RE* 3A; P. Kretschmar, *Die Erfüllung*, 1906; P. Thermes, *Le paiement* (Thèse Toulouse, 1934); S. Solazzi, *L'estinzione dell'obbligazione*, 2nd ed. (1935) 9.

Solutio imaginaria. The solemn acts of liberation of the debtor, the ACCEPTILATIO, and the SOLUTIO PER AES ET LIBRAM, are qualified as *solutio imaginaria*, see IMAGINARIUS. Through these acts the debtor was liberated from his obligation whether or not he effectively paid the debt.

Solutio indebiti. The payment of a debt which in fact did not exist.—See INDEBITUM, CONDICTIO INDEBITI.

P. Voci, *La dottrina rom. del contratto* (1946) 98.

Solutio legibus. In the Republic the senate could decree in exceptional cases that a law being in force

should not be applied in a specific case. Normally such a decree of the senate had to be followed by a confirming vote of a popular assembly. Such dispensations of magistrates from a strict application of a law, or of an individual person from a legal requirement, were issued as an exceptional measure in case of urgency. This rule was not always observed and abuses were not rare. See LEX CORNELIA DE LEGIBUS SOLVENDO (of 67 B.C.). The right of the senate to grant a *solutio legibus* was still exercised in the early Principate.

O'Brien-Moore, *RE* Suppl. 6, 746; Mommsen, *Röm. Staatsrecht* 3, 2 (1888) 1229; G. Rotondi, *Leges publicae populi Rom.* (1912) 165; 520.

Solutio per aes et libram. The payment of a debt which arose from a transaction concluded in the solemn form PER AES ET LIBRAM. The liberation of the debtor had to be performed in the same form, with the assistance of five witnesses and a balanceholder (*libripens*). This form of *solutio* was applied also with regard to judgment-debts (see IUDICATUM) and legacies bequeathed in the form of LEGATUM PER DAMNATIONEM.—See SOLUTIO IMAGINARIA.

Michon, *Recueil Gény* 1 (1934) 42.

Solutionis causa adiectus. See ADIECTUS SOLUTIONIS CAUSA.

Solutum. See DATIO IN SOLUTUM.

Solutus. See VINCTUS.

Solvendo esse. To be solvent. "No one is considered solvent unless he is able to pay the whole debt" (D. 50.17.95). The term is applied both to persons and estates. Ant. *solvendo non esse*. An insolvent person was exempt from the duty to assume a guardianship. Insolvency of a debtor which was effected by fraudulent acts of his own (donations, manumissions) performed *in fraudem creditorum*, could be rescinded by the creditors; see FRAUS, INTERDICTUM FRAUDATORIUM, IDONEUS, FACERE POSSE.

Pringsheim, *ZSS* 41 (1920) 252; Schulz, *ZSS* 48 (1928) 214; Kübler, *St Albertoni* 1 (1935) 493; G. Nocera, *Insolvenza e responsabilità suxsidiaria* (1942) 19.

Solvere. To pay a debt. "We say *solvere* when somebody did what he had promised to do" (D. 50.16.176). See SOLUTIO. In a broader sense *solvere* means to dissolve a legal (contractual) relationship by mutual agreement of the parties involved. For the rule that an obligation assumed by a contract should be discharged (*solvi*) in the same way, see PROUT QUISQUE, etc. Hence verbal contracts had to be dissolved orally, through the use of prescribed words, and literal contracts (see OBLIGATIO LITTERARUM) by written forms (*litterae*). *Solvi* = to be liberated from an obligation or any legal binding, to be dissolved (e.g., *matrimonium*).

Solvere legibus. See SOLUTIO LEGIBUS.—See LEX CORNELIA DE LEGIBUS SOLVENDO.

Sonticus morbus. A serious disease which prevented a person from the fulfillment of his duties. It was a justified excuse for non-appearance in court.

Sordida munera. See MUNERA SORDIDA.

Soror. A sister. *Soror* was also a mother or stepmother who acquired in the family the legal situation of a daughter through marriage with the father of the family combined with CONVENTIO IN MANUM and thus became a sister of the latter's children.—See FILIA FAMILIAS, MANUS.

Sors. A lot. When two co-owners or co-heirs applied to a court for the division of the common property (inheritance) under *actio communi dividundo* or *actio familiae erciscundae*, it used to be determined by lot which of the parties had to institute the trial as the plaintiff.—See SORTITIO.

Sors. A sum lent at interest, the principal.—See USURAE.

Sors. A plot of AGER PUBLICUS assigned to a member of a colony.

Sortitio. Determination by lot.—See ALBUM IUDICUM. SUBSORTITIO.

Ehrenberg, *RE* 13, 1495 (*s.v. Losung*); Lécrivain, *DS* 4, 1417.

Sortitio. (In public law.) In centuriate assemblies (*comitia centuriata*) the *centuria* which had to vote first (*centuria praerogativa*) was determined by lot (*sortiri*). If in an election of magistrates two candidates received an equal number of votes, it was decided by lot which of the two was to obtain the magistracy. In some other instances (of minor importance) designation by lot was alternative with the decision by a superior magistrate.

Ehrenberg, *RE* 13, 1493 (*s.v. Losung*).

Sortitio. Among colleagues in office, see the following item.

Sortitio provinciarum. Drawing by lot for the assignment of the various spheres of activity (*provinciae*) to colleagues in office (see COLLEGA), as consuls, praetors, municipal magistrates, etc. The division of functions concerned primarily military command and jurisdiction. It could be settled by common agreement which made the drawing of lots superfluous (*sine sorte*). *Sortitio* was mandatory with regard to the functions of praetors.

Spado. Incapable of procreation, either by nature or through castration. A *spado* was permitted to marry and adopt.—See PUBESCERE, CASTRATI, EUNUCHI.

Pfaff, *RE* 2A.

Spatium. Indicates both space in room (e.g., an interval between two buildings, see AMBITUS) and in time (a period of time within which a legal act had to be accomplished).

Spatium deliberandi. See DELIBERARE, TEMPUS AD DELIBERANDUM.

Specialis. Special; *specialiter* = especially, expressly, in particular. The words occur frequently in Jus-

tinian's constitutions and, together with ant. *generalis* and *generaliter*, are among his favorite expressions. They are generally considered as criteria of interpolations; their occurrence, however, in works of rhetoricians does not permit their definite exclusion from the language of the jurists. In particular, the adverb *specialiter* often occurs in connection with specific clauses inserted in an agreement.—See GENERALIS, IUDICIA GENERALIA, IURISDICTIO MANDATA, NISI.

Guarneri-Citati, *Indice*[2] (1927) 83; Peters, *ZSS* 32 (1911) 183; E. Albertario, *Studi* 4 (1946) 79.

Species. An individual thing, to be distinguished from *genus* = a kind, sort of things, with common qualities. The distinction is of importance in obligatory relations; see GENUS. *Species* is also used of a specific legal problem submitted for a decision or discussion. When connected with a legal institution (e.g., *species legati, fideicommissi*) *species* means the legal form in which an act was performed (a legacy). *Speciem novam facere* = to make a new thing from a raw material; see SPECIFICATIO. In later imperial constitutions *species* (in plur.) indicates natural, agricultural products; hence *in speciebus* = in kind, *in natura*. *Sub specie* = under the pretext of.

Scarpello, *NDI* 12, 2; S. Perozzi, *Scritti* 1 (1948, ex 1890) 241; Ferrini, *Opere* 4 (1930, ex 1891) 103; A. Hägerström, *Der röm. Obligationsbegriff* 1 (1927) 256; Savagnone, *BIDR* 55–56 (1952) 241.

Specificatio. Making one thing from another (raw material). The term is not of Roman coinage; its origin is to be traced to the locution *novam speciem facere;* see SPECIES. Juristically *specificatio* becomes important if a person makes a thing from another's material without the latter's authorization; the problem as to who is the owner of the *nova species*, the owner of the material or the worker (the maker), was largely discussed by the jurists and not always decided according to the same principle. The opinions of the two schools, the Sabinians and Proculians, differed in this respect. Justinian solved the problem from the point of view of the reducibility of the new thing (*nova species*) to its former shape. If the new thing was made partly from the maker's material, it became property of the maker. For the various types of *specificatio*, see COMMIXTIO, CONFUSIO, CONIUNCTIO, TEXTURA, TABULA PICTA, ACCESSIO, PLANTA, SATIO.

Weiss, *RE* 3A; Lécrivain, *DS* 4; R. Piccard, *Recherches sur l'hist. de la s.* (Thèse Lausanne, 1926); De Martino, *RDNov* 3 (1937) 179; Kaser, *ZSS* 65 (1947) 242.

Speciosa persona. A person (man or woman), primarily of senatorial rank, who was entitled to be distinguished by the appellative CLARISSIMUS. Syn. *spectabilis*.

Spectabilis. An honorific title of higher officials in the later Empire. The *spectabiles* formed the second rank after the ILLUSTRES. They enjoyed various personal privileges similar to those of the *clarissimi*; exemption from the decurionate (see ORDO DECURIONUM) was their most important right. After a period of nearly two centuries, during which the honorific titles were fluctuating, from the beginning of the fifth post-Christian century a strict distinction was made among the three high-ranking groups, *illustres, spectabiles* and *clarissimi*.

Enslin, *RE* 3A; Chapot, *DS* 4; P. Koch, *Byzantinische Beamtentitel* (1903) 22; O. Hirschfeld, *Kleine Schriften* (1913) 664; 670.

Spectaculum. A show. See LUDI. It is characteristic that the title 11.41 of Justinian's Code deals with *spectacula* together with actors and *lenones* (matchmakers).

Spectare. Through *spectandum est* the jurists used to call attention to specific circumstances which should be taken into consideration at the examination of a case. *Spectare aliquem* = to concern a person (for instance, a debt, a risk).

Spectator. A mint official who tested coins. Syn. *nummularius*.—See TESSERAE NUMMULARIAE.

Regling, *RE* 13.

Spectio. The activity and the right to observe celestial or other signs during the AUSPICIA. They were a prerogative of the highest magistrates.

Marbach, *RE* 3A.

Speculatores. Soldiers or cavalrymen in the intelligence service of the army (normally ten in a legion). *Speculatores* were also particularly qualified soldiers who served as bodyguards of the emperor. They were also employed as military couriers. At times *speculator* indicates an executioner.

Lammert, *RE* 3A; Cagnat, *DS* 4, 637; Jones, *JRS* 39 (1949) 44; O. Hirschfeld, *Kleine Schriften* (1913) 585; 598.

Spes. See EMPTIO SPEI, EMPTIO REI SPERATAE.

Bartošek, *RIDA* 2 (1949) 20.

Splendidiores personae. See HONESTIORES.

Spernere. To repudiate (e.g., an inheritance, a legacy), to reject, to condemn (the decision of an arbitrator in order to sue one's adversary before an ordinary court).

Spolia. Weapons and armor taken from an enemy in time of war. They became the property of the victorious soldier who killed him. *Spolia* was also used of what a person condemned to death had on himself before his execution. He was stripped of them and the executioner had the right to claim them.—See SPECULATORES.

Lammert, *RE* 3A; Cagnat, *DS* 4; Vogel, *ZSS* 66 (1948) 394.

Spoliatio cadaveris. Larceny of property committed on a dead body.—See CADAVER.

Spondere. The decisive expression in the formula of *stipulatio* by which a person promised to pay a sum of money or assumed any obligation (*spondesne? spondeo*). In lieu of *spondere*, later other words

were admitted. See STIPULATIO. The term *spondere* also indicates the obligation assumed by a surety; see SPONSIO, FIDEIUSSIO.

Sponsa. A fiancée.—See SPONSALIA.

Sponsalia. A betrothal. "*Sponsalia* are the promise (*mentio*) and the counterpromise for a future marriage" (D. 23.1.1). In ancient law the father of the fiancée promised his daughter to the future husband or to his father in the solemn form a *sponsio* (question and answer). Later, a simple consent sufficed for a betrothal. *Sponsalia* were not binding and even a penalty clause attached to the pertinent agreement was void since "it was considered dishonest that marriage be enforced by the tie of a penalty" (D. 45.1.134 pr.). *Sponsalia* had nevertheless some legal effects, though of minor importance. Thus the conclusion of a new betrothal before the former was dissolved, involved infamy. A personal offense (*iniuria*) of the fiancée could be prosecuted by her fiancé. A fiancé could not be compelled to testify against his future father-in-law and *vice versa*. A fiancé could accuse his fiancée of adultery. In the fourth century after Christ earnest money (*arra sponsalicia*) served as a guarantee for the fulfillment of *sponsalia* since the party which broke off the betrothal without any just ground lost the *arra* given or had to return double the amount received. *Sponsalia* could be dissolved by mutual consent or by a simple declaration of one party; see REPUDIUM. Gifts between betrothed persons are termed *sponsalia* in imperial constitutions. —D. 23.1; C. 5.1.—See MATRIMONIUM, ARRA SPONSALICIA (Bibl.), DONATIO ANTE NUPTIAS, FILIA FAMILIAS, PATRIA POTESTAS, OSCULUM, REPUDIUM.

Weiss, *RE* 3A; Lécrivain, *DS* 3, 1654; Koschaker, *ZSS* 33 (1912) 392; Solazzi, *ATor* 51 (1916) 749; *idem*, *St Albertoni* 1 (1935) 42; Volterra, *BIDR* 40 (1932) 87; *idem*, *RISG* 10 (1935) 3; *idem*, *SDHI* 3 (1937) 135; E. Herman, *Die Schliessung des Verlöbnisses im Rechte Just., Anaiecta Gregoriana* 8 (1935); Massei, *BIDR* 47 (1940) 148; Beseler, *ComfCarr* 1940, 38; L. Anné, *Les rites des fiançailles* (Diss. Louvain, 1941); A. Magdelain, *Les origines de la sponsio* (1943) 98; Gaudemet, *RIDA* 1 (1948) 79; R. Orestano, *La struttura giuridica del matrimonio rom.*, 1952, 339 (= *BIDR* 55-56, 1952, 221).

Sponsalicia largitas. Gifts given to a fiancée by her fiancé. Syn. *donatio sponsalicia*.—See DONATIO ANTE NUPTIAS.

L. Caes, *Le statut juridique de la s. l. echue à la mère veuve*, 1949.

Sponsio. (From *spondere*.) The earliest form of an obligation under *ius civile* assumed through an oral answer ("*spondeo*") to the future creditor's question ("*spondesne?*"). The *sponsio*, conceived in this broader sense, was in the course of time absorbed by the STIPULATIO. In a narrower sense *sponsio* denoted the obligation of a surety who equally through exchange of question and answer obligated himself to pay what another had promised; see ADPROMISSIO. This function of the *sponsio* was probably the earlier one.—See LEX APULEIA, LEX FURIA DE SPONSU, PROVOCARE SPONSIONE, ACTIO DEPENSI, AGERE PER SPONSIONEM, SPONDERE, and the following items.

Weiss, *RE* 3A; Anon., *NDI* 12; Mitteis, *Fg Bekker* (1907) 109; E. Levy, *Sponsio, fidepromissio, fideiussio*, 1907; *idem*, *ZSS* 54 (1934) 298; Wenger, *ZSS* 30 (1909) 410; Partsch, *ASächGW* 32 (1920) 659; W. Flume, *Studien zur Akzessorietät der röm. Bürgschaftsstipulationen*, 1932; G. Segrè, *BIDR* 42 (1934) 497; Ph. Meylan, *Acceptilation et paiement* (Lausanne, 1934) 69; Leifer, *BIDR* 44 (1936-37) 160; F. De Martino, *Studi sulle garenzie personali*, 1-2 (1937, 1938); *idem*, *SDHI* 6 (1940) 132; A. Magdelain, *Essai sur les origines de la s.* (Thèse Paris, 1943); J. Maillet, *La Théorie de Schuld et Haftung* (1944) 144; Westrup, *Note sur sponsio, Kgl. Danske Videnskab, Hist.-Filol. Meddedelser* 31, 2 (1947); Pastor, *SDHI* 13-14 (1948) 217; Seidl, *Scr Ferrini* 4 (Univ. Sacro Cuore, Milan, 1949) 168; M. Kaser, *Das altröm. Ius* (1949) 256; Düll, *ZSS* 68 (1951) 209.

Sponsio. (In interdictal procedure.) See AGERE PER SPONSIONEM, INTERDICTUM.

Sponsio. (In international relations.) An arrangement concluded by the commanding Roman general with the enemy concerning an armistice. The commander acted on his own responsibility. The reciprocal duties were established through the exchange of questions and answers.—See PAX.

Neumann, *RE* 6, 2821; De Visscher, *St Riccobono* 2 (1936) 11; H. Lévy-Bruhl, *RHD* 17 (1938) 533 (= *Nouvelles Études*, 1947, 116); Frezza, *SDHI* 5 (1939) 191; F. La Rosa, *Iura* 1 (1950) 283.

Sponsio. (In trials concerning ownership.) See AGERE PER SPONSIONEM (under 2).

Sponsio dimidiae partis. See SPONSIO TERTIAE PARTIS.

Sponsio poenalis. A promise in the form of a *sponsio* (*stipulatio*) to pay a sum of money as a penalty in the case of non-fulfillment of an obligation or of a magisterial command (*interdictum*).—See POENA (in the law of obligations).

Sponsio praeiudicialis. See AGERE PER SPONSIONEM (under 2), LEX CREPEREIA.

Sponsio tertiae (or dimidiae) partis. In certain specific trials any party could demand that his adversary promised through *sponsio* (*stipulatio*) to pay one-third (*tertia pars*) or one-half (*dimidia pars*) of the amount claimed as a penalty in the case of defeat. In return the party who made such a promise could demand a similar counterpromise (*restipulatio dimidiae* or *tertiae partis*) from the other party. The reciprocal promises were given in the first stage of the lawsuit before the praetor (*in iure*) and under his supervision. The purpose of these procedural *sponsiones* was to restrain inconsiderate litigation.—See CONSTITUTUM, ACTIO CERTAE CREDITAE PECUNIAE.

A. Palermo, *Il procedimento cautionale* (1942) 13.

Sponsor. One who assumed an obligation as a surety. The term was in earlier times probably applied to any person who through *sponsio* assumed an obligation as a principal debtor.—See SPONSIO.

Daube, *LQR* 62 (1946) 266.

Sponsus. (Noun.) SPONSIO.—See LEX APULEIA, LEX fiancé (fiancée).—See SPONSALIA. FURIA DE SPONSU.

Sponsus (sponsa). A betrothed man (woman), a

Sponte. (With or without sua.) Spontaneously, freely, of one's free will. The expression refers to the opposite of situations in which one is bound to do something by law, agreement, order of a magistrate or of the person under whose power he is, or by necessity (*necessario, necessitate cogente*).

Sportellarius (sportellaria). An exposed child.—See EXPONERE FILIUM.

Sportulae. In the later Empire fees to be paid to subaltern officials for their activity in judicial matters. —C. 3.2.—See EXSECUTOR NEGOTII.
Wlassak, *RE* 4, 217; Hug, *RE* 3A; Lécrivain, *DS* 4; Jones, *JRS* 39 (1949) 51.

Sportulae decurionum. See HONORARIUM.
Hug, *RE* 3A, 1886 (under 2).

Spurius. A child whose father is unknown ("a child without a father, as it were," Inst. 1.10.12). See VULGO CONCEPTUS. If the mother was a Roman citizen, the *spurius* was also a Roman citizen. A *spurius* became immediately *sui iuris* (free from *patria potestas*) and *proximus agnatus* of his mother. He was reckoned in favor of her IUS LIBERORUM.—C. 5.12.—See FILIUS NATURALIS.
Weiss, *RE* 3A, 1889; *idem, ZSS* 49 (1929) 260; Kubitschek, *Wiener Studien* 47 (1929) 130; Lanfranchi, *StCagl* 30 (1946) 33.

Stabularius. A stable-keeper. The liability of a *stabularius* for the custody of horses assumed by agreement with the owner (*receptum stabularii*) was settled in the praetorian Edict, in the section concerning similar agreements with shipowners and innkeepers (*receptum nautarum, cauponum*).—D. 4.9; 47.5.—See RECEPTUM NAUTARUM.
De Robertis, *AnBari* 12 (1952) 125.

Stagnum. A pond.—See LACUS, FLUMINA PUBLICA.

Stare (alicui rei). To cling to, to hold on firmly to (e.g., to an agreement), to fulfill exactly (e.g., a testator's will).

Stat per aliquem. It is one's fault, one is the cause of.—See MORA.

Statim. Immediately. In certain situations the jurists admitted a rather liberal interpretation of the term if a payment had to be made *statim*. "It is understood, of course, with a moderate extension of the time if something is to be paid immediately" (D. 46.3.105).—See SINE DIE.

Statio. A public place (at a forum or market) or an office where a TABELLIO exercised his notarial activity.

Statio. See NAVIGIUM. *Statio* is also a station of the state postal service: syn. MANSIO, STATIVA.
Humbert, *DS* 1, 1655.

Statio. In military service. A station of military guards.—See STATIONARII.
Lammert, *RE* 3A, 2211, 2213.

Statio vicesimae hereditatium. A fiscal office concerned with the inheritance taxes.—See APERTURA TESTAMENTI. VICESIMA HEREDITATIUM.

Stationarii. Military police officers assigned to posts throughout the country for the purpose of public security.—See LATRUNCULATOR.
Lammert, *RE* 3A; Lécrivain, *DS* 4.

Stationes fisci. Divisions of the fisc for the administration of revenue in fixed districts.
Weiss, *RE* 3A, 2212.

Stationes iuris docentium et respondentium. Public places (state buildings?) where jurists taught law and gave opinions (*responsa*) in legal matters.
Hug, *RE* 3A, 2210; S. Riccobono, *Lineamenti della storia delle fonti*, 1949, 65.

Stativa. A station of the state post. Syn. *mansio, statio*.—C. 12.52(52).

Statores. Subordinate officials in the service of the emperor (*statores Augusti*) or high officials (provincial governors). They exercised police functions and were authorized to arrest private persons. They were in part successors of the VIGILES.
Kübler, *RE* 3A, 2228; Lammert, *ibid.* nd. 2.

Statua. A statue erected in public for the embellishment of a place. It was withheld from the disposal of the person who offered it. A person who was honored by a public statue might act through the *interdictum quod vi aut clam* against anyone who removed it by force or stealth.—D. 34.2; C. 1.2.4.
Brassloff, *St Riccobono* 1 (1936) 323.

Statua Caesaris. See CONFUGERE AD STATUAM CAESARIS.

Statuere. To ordain, to enact (e.g., *lex, imperator statuit*), to settle by an agreement.—See TEMPUS STATUTUM.

Statuliber. A slave manumitted in a testament by his master upon a suspensive condition. He remained a slave as long as the condition was not fulfilled. If the condition consisted in an act of the slave himself (e.g., he had to pay a certain sum to the heir, or to render accounts of his administration of the master's property), it was considered satisfied if the heir or another person prevented the fulfilling of the condition, and the slave became free despite the nonfulfillment of the testator's wish.—D. 40.7.—See MANUMISSIO SUB CONDICIONE.
Weiss, *RE* 3A; G. Donatuti, *Lo s.*, 1940; Bartošek, *RIDA* 2 (1949) 32.

Status. Generally indicates a legal situation or condition. With regard to an individual, the term refers either to his official rank or to his position as a free Roman citizen and head of a family. In the latter sense it is syn. with CAPUT. In the distinction *status libertatis, status civitatis*, and *status familiae* only the first occurs in the sources. A change in one of these three fundamental elements of the legal *status* of an individual, liberty, citizenship, and headship of a family (*mutatio, permutatio status*), could either im-

prove his legal condition (when a slave became free, a foreigner became a Roman citizen, a person *alieni iuris* became *sui iuris*) or make it worse (loss of freedom, of citizenship or of the position as head of a family). When the *status* of a person was doubtful (*quaestio, controversia status*), in particular when it was uncertain whether he was free, free-born or a slave, his condition was examined in a trial; see CAUSA LIBERALIS.—D. 1.5; C. 3.22.—See CAPUT, CAPITIS DEMINUTIO.

Weiss, *RE* 3A, 2433; Lécrivain, *DS* 4; Orestano, *NDI* 12; Cicu, *St Simoncelli* 1917, 61; Allen, *LQR* 46 (1930) 277.

Status civitatis. The legal status of a person as a Roman citizen. Ant. the *status* of a stranger (PEREGRINUS).—See CIVES, CIVITAS ROMANA.

Status controversia (quaestio). See STATUS.

Status defuncti. The legal status of a person before his death, primarily the question of whether he was free or a slave. It could not be the object of a trial if five years elapsed after his death.—D. 40.15; C. 7.21.

Status familiae. The legal connection of a person with a family either as its head (*pater familias*) or member.—See SUI IURIS.

Status legitimus. The age of majority.

Status libertatis. The legal status of a person of being free, and not a slave. With regard to a free person the question might arise as to whether he was free-born or a freedman.—See LIBERTAS, MANUMISSIO, CAPITIS DEMINUTIO, STATULIBER, CAUSA LIBERALIS, LIBERTINITAS, INGENUITAS.

Status pristinus. The former factual or legal state (condition, situation) of a thing or a person.—See RESTITUERE, RESTITUTIO IN INTEGRUM.

Status rei publicae. The existence, organization, welfare of the state. The expression occurs in the definition of *ius publicum* by Ulpian (D. 1.1.1.2).—See IUS PUBLICUM.

E. Kostermann. *S. als politischer terminus in der Antike, Rheinisches Museum* 86 (1937) 225; Lombardi, *AG* 126 (1941) 206; Berger, *Iura* 1 (1950) 109.

Statuti. See MINISTRI CASTRENSES.

Statutum. A law, an enactment. *Statuta imperialia* = imperial constitutions.

Statutum tempus. A term fixed either by an agreement of the parties involved concerning the date on which a certain act (a payment) was to be performed, or by law (a statute, the praetorian Edict, an imperial constitution) for certain legal achievements, such as *usucapio*, for actions or exceptions, *cretio, longi temporis praescriptio*, etc. In Justinian's legislation, in many classical texts the general, indefinite term, *statutum tempus* (*statuta tempora*) replaced the former exact indications of periods of time if the latter had been changed by postclassical or Justinian's legislation.

Seckel, in Heumann's *Handlexikon*[9] (1909), *s.v. statuere*, p. 533; Stella-Maranca, *AnBari* 1929/II, 76.

Stellionatus. A crime committed by fraud, trickery, deception, or cheating, if such a wrongdoing in specific circumstances is not qualified as another crime (*si alium crimen non sit*), for instance, a theft (*furtum*) or forgery (*falsum*). There is no definition of *stellionatus* in the sources. The formula defining that "what in private controversies gives origin to an *actio* is in criminal matters prosecuted as *stellionatus*" (D. 47.20.3.1), is not precise enough to permit an exact delimitation of the elements of *stellionatus*. Evil intention, deceit, shrewdness (*calliditas*), imposture (*impostura*) are mentioned in the various cases of *stellionatus*, which seemingly primarily applied to fraud in commercial relations. Perjury could also be punished as *stellionatus*. *Stellionatus* was not a *crimen publicum*. If an accusation of *stellionatus* was brought before the competent magistrate (*praefectus urbi*, a provincial governor), it depended upon his decision whether or not a criminal proceeding (*extra ordinem*) would be started against the accused. The penalty was differentiated according to the social status of the culprit, temporary banishment for HONESTIORES, forced labor for HUMILIORES.—D. 47.20; C. 9.34.

Pfaff, *RE* 3A; Beauchet, *DS* 4; Brasiello, *NDI* 12; Volterra, *StSas* 7 (1929) 107.

Stemma cognationum. A genealogical tree. A picture containing the names of relatives (ascendants in six generations and descendants) of a person was found in some manuscripts of the LEX ROMANA VISIGOTHORUM.

Editions: in all collections of pre-Justinian legal sources, see General Bibl. Ch. XII; the most recent one in *FIR* 1 (1940) 633.—Ferrini, *Opere* 1 (1926, ex 1900) 224; Poland, *RE* 3A.

Stephanus. A Byzantine jurist, law professor in Constantinople (or Beirut?) under Justinian. He was, however, not the emperor's collaborator in the compilation of the Digest, nor is he mentioned among the compilers of the Code. He wrote an annotated summary (see INDEX) of the Digest and was highly thought of by later Byzantine jurists. His work was extensively exploited for scholia to the Basilica.

Kübler, *RE* 3A, 2401; Heimbach. *Basilica* 6 (1870) 13, 49, 78; J. A. B. Mortreuil. *Histoire du droit byzantin* 1 (1843) 132, 148; Zachariae v. Lingenthal, *ZSS* 10 (1889) 270.

Sterilis pecunia. Money not loaned at interest. Syn. *nummi steriles*. The adj. *sterilis* is used also of a dowry (*dos*) from which the husband had no profit.

Stillicidium. See SERVITUS STILLICIDII.

Adren, *Eranos* (*Acta Philol. Suecana*) 43 (1945) 1.

Stipendiarius. See CIVITATES STIPENDIARIAE, PRAEDIA STIPENDIARIA, STIPENDIUM (in public law).

Stipendium. The soldier's pay. From the fourth post-Christian century on the soldiers received the *stipendium* in kind (see ANNONA) which in times of shortage was replaced by money.—See ADAERATIO, DONATIVUM.

Lammert, *RE* 3A, 2537; v. Domaszewski, *Neue Heidelberger Jahrbücher*, 1900, 218 ff.; Schlossmann, *Archiv für lat. Lexikographie* 14 (1906) 211.

Stipendium. (In public law.) A contribution imposed on the defeated enemy; it served to cover the expenses of war. During the armistice the enemy had to pay the Roman soldiers' salary (*stipendium*). This may explain how the term came to mean contribution. In later times *stipendium* was the term for land-taxes paid by provincials. The rate of the *stipendium* was fixed whereas the so-called TRIBUTUM depended upon the value of the proceeds from the soil.—See PRAEDIA STIPENDIARIA.

Lammert, *RE* 3A, 2538 (under no. 2); Cagnat, *DS* 4, 1515; Schlossmann, *Arch. für lat. Lexikographie* 14 (1906) 211; Ciapessoni, *Studi su Gaio*, 1943, 52.

Stips menstrua. A monthly fee paid by members of an association (*collegium*) for common purposes (e.g., banquets, celebrations of religious nature).

Kornemann, *RE* 4, 437; Hug, *RE* 3A, 2540.

Stipulari. To accept a promise made in the form of *stipulatio*. It is the creditor who *stipulatur* (*reus stipulandi*), i.e., who pronounced the question to be answered accordingly by the debtor (*reus promittendi*). Only in exceptional cases *stipulari* is used of the debtor (= to promise).—See STIPULATIO.

Stipulatio. An oral, solemn contract concluded in the form of a question (*interrogatio* by the creditor: *"spondesne centum dare?"* = "do you promise to pay one hundred?") and an affirming answer (*responsio*) of the debtor (*"spondeo"* = "I promise"). The answer had to agree perfectly with the question; any difference or restriction (addition of a condition) made the *stipulatio* void. Presence of both parties was required, and any interruption between question and answer was inadmissible. *Stipulatio* was used for any kind of obligation, from the payment of a sum of money to the most complicated performances. It was employed for the promise of marriage (see SPONSALIA), the constitution of a dowry (see DOS), the various kinds of promises in the course of a civil trial (*cautiones, stipulationes praetoriae*), a NOVATIO and DELEGATIO, the assumption of a guaranty for another's debt (sureties), the constitution of certain rights on another's property (see PACTIONES ET STIPULATIONES), etc. The *stipulatio* was abstract in content, to wit, the cause (*causa*) for which the debtor assumed an obligation was not indicated in the *stipulatio* (e.g., whether it was for a loan or an unpaid price of a thing purchased). A promise made through *stipulatio* was suable if the oral exchange of question and answer was performed, without regard as to whether there was a ground for the obligation or not. Any obligation, contracted otherwise, could be transferred into a *stipulatio* (*stipulatio Aquiliana*, see ACCEPTILATIO). This brought the creditor the advantage in case of a controversy that he had to prove only the fact that a *stipulatio* had taken place. In the course of time, however, the praetorian law granted an *exceptio doli* to the debtor if the obligation he had assumed was not based on a just cause. Witnesses at the conclusion of a *stipulatio* were not necessary. The elasticity of the *stipulatio* together with its simple formality made it the most common instrument for providing any promise with legal efficacy. Originally accessible only to Roman citizens (see SPONSIO), the *stipulatio* was later made available to foreigners, and not only the realm of permissible Latin words was extended (in lieu of *spondeo* the use of *dare* [*facere*] *promittere*, and, for sureties: *fidicipromittere, fideiubere*) but also Greek, and perhaps other languages, were admitted in order to respond to the needs of commercial relations with other nations. In further development, written "stipulations" came into use under the influence of the practice observed by other peoples. Provisions of the agreement were written and the oral promise embraced in one phrase the promise "to give all that had been written down above" (*ea omnia quae supra scripta sunt dari*), which in the opinion of the Roman jurists contained in fact as many stipulations as there were provisions. The written document was in origin only a piece of evidence, but later the importance of the written agreement prevailed so that in postclassical times it could be stated: "if it was written in a document (*instrumentum*) that one made a promise, it is considered as if an answer were given to a preceding question" (Paul. *Sent.* 5.7.2; Inst. 3.19.17). Thus, through a fiction, which normally excluded a counter-proof, it was held that a *stipulatio* had taken place (STIPULATIO INTER ABSENTES). In Justinian law the *stipulatio* appears as a written act, without any formal requirements. For an oral stipulation *certa verba* were no longer a condition of its validity; the debtor's answer could be expressed by signs and after a brief interval, even some slight discrepancies between question and answer were not harmful. The intervention of an interpreter was permitted if one party did not understand the language used by the other. The actions from a *stipulatio* available to the creditor in the classical law were: *actio certae creditae pecuniae* (*condictio certae pecuniae*), when the *stipulatio* concerned the payment of a fixed sum of money, *condictio certae rei* when the object was a *certa res* (an individual thing), *condictio triticaria* when things were indicated generically (as a GENUS), and, finally, *actio ex stipulatu*, when the object was not precisely defined in a way mentioned above and the stipulatory obligation concerned a certain performance by the debtor. The classical origin of some denominations of these actions is not beyond doubt. —Inst. 3.17–19; D. 45.3; 46.5; C. 8.37; 38.—See besides the following items, ACCEPTILATIO, CAUTIO, SPONSIO, NOVATIO, NEMO ALTERI STIPULATUR, FAVOR

DEBITORIS, EXPROMISSIO, DONATIO, DIES MORTIS, TRANSACTIO.

Weiss, *RE* 3A; Cuq, *DS* 4; Riccobono, *NDI* 12; Carrelli, *ibid.* 904; Berger, *OCD*; Mitteis, *Aus röm. und bürgerl. Recht, Fg Bekker* (1907) 107; Collinet, *Mél Gérardin* 1907, 75; Riccobono, *ZSS* 35 (1914) 214, 43 (1922) 262; *idem, BIDR* 31 (1921) 28; *idem, AnPal* 12 (1929) 540; *idem, Stipulationes, contractus, pacta. Corso*, 1935; *idem, ACDR Roma* 1 (1934) 338; G. Segrè, *St Simoncelli* 1917, 331; Scherillo, *BIDR* 36 (1928) 9; *idem, St Bonfante* 4 (1930) 203; H. Steinacker, *Die antiken Grundlagen der frühmittelalterlichen Privaturkunde* (1927) 83; V. De Gautard, *Les rapports entre la stipulatio et l'écrit stipulatoire* (Thèse Lausanne, 1931); F. Brandileone, *Scritti* 2 (1931) 419 (= *RStDIt* 1, 1928); A. Segrè, *AG* 108 (1932) 179; *idem, Annuaire de l'Inst. de Philol. et d'Hist. orientales et slaves* 7 (1944) 243; D. Ochsenbein, *La transmissibilité héréditaire de l'obligation conditionnelle ex stipulatu* (Thèse Lausanne, 1935); Leifer, *BIDR* 44 (1936–37) 160; A. Hägerström, *Der röm. Obligationsbegriff* 2 (1941); Archi, *Scr Ferrini* (Univ. Pavia, 1946) 688; G. Lombardi, *Ricerche in tema di ius gentium*, 1946, 175; M. Kaser, *Das altröm. Ius*, 1949, 267; Dekkers, *RIDA* 4 (= *Mél De Visscher* 3, 1950) 361; Düll, *ZSS* 68 (1951) 191; Nicolas, *LQR* 69 (1953) 63.

Stipulatio aedilicia. A *stipulatio* imposed by an aedile to a party in a trial which took place under his jurisdiction.—See, for analogy, STIPULATIO PRAETORIA.

Stipulatio aliquem sisti. The promise of a person who assumed the guaranty that a defendant in a trial would appear in court on a fixed date.—See VINDEX, VADIMONIUM, SISTERE ALIQUEM.

Stipulatio amplius non agi. See CAUTIO AMPLIUS NON AGI.

Stipulatio Aquiliana. See ACCEPTILATIO.

Stipulatio argentaria. A promise made by a banker, in charge of a public auction, to the owner of the object to be sold, to the effect that the latter would receive the full proceeds from the sale, after deduction of the banker's fees and expenses.

F. Kniep, *S. a., Fg. der jur. Fakultät Jena*, 1911; Platon, *NRHD* 33 (1909) 142, 314.

Stipulatio certa. A stipulation in which the thing promised (*quid* = what), its quality (*quale*) and quantity (*quantum*) were precisely fixed. Ant. *stipulatio incerta*.

Stipulatio communis. A stipulation which could be imposed during a civil trial either by the jurisdictional magistrate (praetor, aedile) *in iure* or by the judge in the second stage of a civil trial (*apud iudicem*).—See STIPULATIO PRAETORIA, STIPULATIO IUDICIALIS. In a different sense the phrase *communiter stipulari* is used. It refers to a stipulation on behalf of two or more creditors.

Stipulatio condicionalis (or sub condicione). A promise whereby one assumes an obligation depending on whether a certain event will happen or not.—See CONDICIO.

Stipulatio conventionalis. A *stipulatio* based on an agreement of the parties, as opposed to a *stipulatio* ordered by a magistrate (*stipulatio praetoria, aedilicia*) or a judge (*stipulatio iudicialis*).

Stipulatio cum moriar. A *stipulatio* for payment at death ("when I shall be dying") of either party was valid since it was held that a man was alive at the moment of his death. However, a *stipulatio* concerning a payment "*pridie quam moriar*" (= a day before my death) or several days before the death either of the debtor or the creditor was void since until the actual death it could not be told when the obligation was due. Justinian declared such a *stipulatio* valid.

Stipulatio de dolo (or cautio de dolo). A *stipulatio* imposed by the judge on the defendant in specific circumstances, particularly in suits concerning claims for a thing (*actiones in rem*). Under such a *stipulatio* the defendant stipulated that he had not committed, nor would commit fraud in the matter under controversy. This *stipulatio* was a form of a *stipulatio iudicialis*. Such a *stipulatio* could take place extrajudicially as when a creditor demanded a promise from the debtor to abstain from any fraud in the fulfillment of the obligation.—See DOLUS.

Stipulatio donationis. A promise of a donation made in the form of a *stipulatio*. The *stipulatio* created an obligation of the donor to transfer the promised thing (to pay the promised sum) to the donee.—See DONATIO.

Stipulatio dotis. A promise of a dowry made in the form of a *stipulatio*.—See DOS, PROMISSIO DOTIS.

Stipulatio duplae (*sc.* pecuniae). A stipulation by the seller to pay the buyer double the price of the thing sold in the event of eviction of the thing by a third person.—D. 21.2.—See EMPTIO VENDITIO, EVICTIO.

P. F. Girard, *Mél de droit rom.* 2 (1923) 78, 113; H. Vincent, *Le droit des édiles*, 1922, 154; Kamphuisen, *RHD* 16 (1927) 610; Coing, *Seminar* 8 (1950) 9.

Stipulatio emptae et venditae hereditatis. See FIDEICOMMISSUM HEREDITATIS.

Stipulatio evictionis (or de evictione). See EVICTIO.

Stipulatio habere licere. A guaranty made in the form of a *stipulatio* by the seller to the buyer, to the effect that the latter would peacefully possess and use the thing sold and take proceeds from it (*habere, uti frui licere*).—See EMPTIO, EVICTIO.

Stipulatio in diem. A *stipulatio* in which payment on a fixed date is promised.

Stipulatio in faciendo. A promise through *stipulatio* to do something, to render certain services to the creditor. *Stipulatio operis faciendi* = a *stipulatio* concerning the construction (accomplishment) of a work. Ant. *stipulatio in non faciendo* = a *stipulatio* to abstain from doing something.

Stipulatio incerta. See STIPULATIO CERTA.

Stipulatio inter absentes. A *stipulatio* between persons who were not together. Such a *stipulatio* was void in classical law since the stipulatory question and answer were to be exchanged without interruption (*inter praesentes*, see STIPULATIO). Justinian

modified the rule in that if a written document stated that the parties were present, a counterproof was permitted only when both parties were in different localities on the day when the *stipulatio* allegedly took place.

Stipulatio iudicialis. A compulsory *stipulatio* imposed by the judge in a civil trial on one or both parties during the second stage (*apud iudicem*), in order to assure the normal continuation of the trial.

Stipulatio operarum. See OPERAE LIBERTI.

Stipulatio partis et pro parte. See PARTITIO LEGATA.

Stipulatio poenae. A *stipulatio* concerning the payment of a penalty by a debtor if he failed to perform his obligation as agreed upon. The penalty settled in the *stipulatio* might serve either as a substitute for the losses suffered by the creditor (in such a case he might sue the debtor for the payment of the penalty without proving the amount of his actual losses) or as a mere penalty (*poenae nomine*) to be paid beside the indemnification for effective losses.—See POENA (in the law of obligations), SPONSIO POENALIS.

Debray, *Revue générale du droit* 32 (1908) 97, 217, 289; Donatuti, *SDHI* 1 (1935) 299; Biscardi, *StSen* 60 (1948) 589.

Stipulatio post mortem. A *stipulatio* under which one promised the payment of a debt after the death of the creditor ("*post mortem meam dari spondes?*") or after his own death by his heir ("*post mortem tuam dari spondes?*"). Such stipulations were null since neither could an heir be obligated before entering the inheritance nor could an obligation arise in his behalf. Consequently, a *stipulatio* by which the debtor assumed an obligation to the benefit of the heir of the creditor ("do you promise to pay my heir?") was without any legal effect. Justinian permitted such stipulations.—See OBLIGATIO POST MORTEM, MANDATUM POST MORTEM, ADSIGNATIO LIBERTI, ADSTIPULATIO, DIES MORTIS.

Rouxel, *Annales Faculté droit Bordeaux, Sér. jurid.* 3 (1952) 7.

Stipulatio praepostera (or praepostere concepta). A *stipulatio* under which one assumed an immediate obligation but made it depend upon the fulfillment of a condition in the future (e.g., a promise to give today when a certain event will happen afterwards). In the classical law such a *stipulatio* was null, but Justinian recognized its validity; payment could be demanded after the fulfillment of the condition.

L. Mitteis, *Röm. Privatrecht*, 1908, 180; Archi, *RISG* 88 (1951) 225.

Stipulatio praetoria. A *stipulatio* ordered by the praetor in his capacity as a jurisdictional magistrate. Such a compulsory *stipulatio* could be imposed on one or both parties to a trial in order to ascertain the normal continuation of the trial and to prevent an interruption as well as to assure a certain behavior of the parties by making them assume the duty of doing or refraining from doing something. If the promise embodied in the *stipulatio* was not fulfilled, an ordinary action lay against the contravening party. A refusal of the praetor's order or the absence of the party on whom the *stipulatio* was to be imposed led to a MISSIO IN POSSESSIONEM in favor of his adversary. If the plaintiff refused to make the stipulatory promise ordered by the praetor, he lost the case through DENEGATIO ACTIONIS by the praetor. The praetorian stipulations were primarily applied for procedural purposes (see CAUTIO). They could, however, be ordered beyond a judicial trial at the request (*postulatio*) of the interested party. In such a case the adversary was summoned before the praetor.—D. 46.5.—See CAUTIO AMPLIUS NON AGI, CAUTIO DE RATO, CAUTIO IUDICATUM SOLVI, CAUTIO PRO PRAEDE LITIS ET VINDICIARUM.

Cuq, *DS* 4, 1520; Anon., *NDI* 12; Jobbé-Duval, *St Bonfante* 3 (1930) 178; v. Woess, *ZSS* 53 (1933) 407; A. Palermo, *Il procedimento canzionale*, 1942; Guarino, *SDHI* 8 (1942) 316.

Stipulatio pridie quam moriar. See STIPULATIO CUM MORIAR.

Stipulatio pro praede litis et vindiciarum. See CAUTIO PRO PRAEDE LITIS ET VINDICIARUM.

Stipulatio pure facta. A *stipulatio* not limited by a fixed date or a condition. Ant. *stipulatio in diem, stipulatio sub condicione* (*condicionalis*).

Stipulatio rei uxoriae. See CAUTIO REI UXORIAE.

Stipulatio sortis et usurarum. A *stipulatio* in which the payment of both principal and interest is promised. Normally the promise of interest was made in a separate *stipulatio* (*stipulatio usurarum*).

Stipulatio sub condicione. See STIPULATIO CONDICIONALIS.

Stipulatio turpis. See TURPIS STIPULATIO.

Stipulatio usurarum. See STIPULATIO SORTIS ET USURARUM.

Stipulator. The creditor in a *stipulatio*. Syn. *reus stipulandi*. "Ambiguous stipulations should be interpreted against the creditor" (D. 34.5.26; 45.1.38.18).

Stella-Maranca, *AnBari* 3 (1929/II) 20.

Stipulatum. (Noun.) See STIPULATIO.

Stirps. Descendants in a straight line from a common ancestor. When an inheritance is divided in *stirpes*, each son of the same father receives an equal part. All descendants of a son who died before his father receive together as much as any other son alive; if they are all of the same degree of relationship with the deceased, e.g., all are grandchildren. The share of a *stirps* (i.e., the descendants of one son) is divided in *capita* (in the example mentioned among the grandchildren) in equal portions.

Stola. A garment of an honorable, married woman. —See MATRONA, TOGA.

Bieber, *RE* 4A; Leroux, *DS* 4.

Strangulare (strangulatio). To strangle a person with a rope (*laqueus*) to death. This form of execution was forbidden under the Principate.

Pfaff, *RE* 4.

Stratores. In the late Empire, subaltern officers in the imperial palace who took care of the emperor's horses. The *stratores* were subordinates of the *comes stabuli* (the equerry). There also were *stratores* in the service of the *praefectus urbi* and provincial governors in imperial provinces. Superintendents of prisons were also called *stratores*.—C. 12.24.—See CUSTOS.

Lammert, *RE* 4A.

Strena. A gift donated on the occasion of a festivity, in particular on New Year's Day (*quod Kalendis Januariis dari solet* = what is used to be given on Kalends of January), e.g., to physicians.

Strepitus. A noise, a din. In the language of the later imperial constitutions the term refers to voices of the audience in a court-room during a criminal trial. Hence it denotes sometimes a criminal proceeding.

Strictus. Rigorous, governed by precise rules.—See IUS STRICTUM, IUDICIA BONAE FIDEI.

Pringsheim, *ZSS* 42 (1921) 65.

Structores. Workers (such as masons, carpenters, etc.) active in building a house or a ship. Primarily freedmen and slaves, they were organized in associations (*collegia*).

Hug, *RE* 4A; Saglio, *DS* 5.

Studium (studia). Study, learning. *Studiorum causa* = for the purpose of learning. Absence for such a reason was taken into consideration as an excuse when a person was obliged to appear before a public authority (*iustissima causa* = the most just cause). In a trial against a person absent for studies the praetor had to protect his interests. A stay in Rome for studies was not decisive for establishing a domicile (*domicilium*) since a sojourn there was considered temporary. A loan given to a *filius familias* for studies was not subject to the provisions of the SENATUSCONSULTUM MACEDONIANUM.

Studium liberale. Studies (occupations) befitting a free man, "worthy of a noble-minded man" (as Cicero, *Acad.* 2.1.1, defined it) were reckoned among *studia liberalia*. Among such professions were those of rhetorician (*rhetor*), grammarian (*grammaticus*) land-surveyor (*geometra*), physician (*medicus*), and the like. Teachers of *studium liberale* (*praeceptores*) could demand an honorarium only in a trial through *cognitio extra ordinem*.—D. 50.13; C. 11.19.—See PRAECEPTORES, MAGISTRI, PROFESSORES, HONORARIUM, OPERAE LIBERALES, EDICTUM VESPASIANI.

Studiosus iuris. A person devoted to the study of law, a practicing lawyer (not a *iurisconsultus* endowed with *ius respondendi*), a juristic writer.

Stuprare. To commit a STUPRUM. The term refers only to men (= *stuprator*).—See the next item.

Stuprum. Illicit intercourse with an unmarried woman or a widow of honorable social conditions. *Stuprum* is distinguished from adultery (*adulterium*) where a married woman is involved. Both parties were punished by seizure of half of their property; the woman was acquitted if the man had used violence.—C. 9.9. —See MERETRIX.

Pfaff, *RE* 4A; Lécrivain, *DS* 4; Guarino, *ZSS* 63 (1943) 184.

Stuprum cum masculo (puero). Pederasty. Originally it was punished by death, later only with a fine of money. In the later Empire the death penalty was inflicted again.—See LEX SCANTINIA.

Pfaff, *RE* 4A, 424; Lécrivain, *DS* 4, 1547.

Suadere. To give advice. The term is used of the activity of lawyer's when consulted by clients for legal advice.—See CONSILIUM.

Suae aetatis fieri. Not a precise technical term. It may mean to become either *maior* (over twenty-five years of age) or *pubes* (over fourteen, see IMPUBES).

Berger, *RE* 15, 1862.

Suae mentis esse (fieri). To be (become) mentally sound. Ant. *suae mentis* (or *suus*) *non esse* = to be insane.

Suae potestatis esse. See SUI IURIS.

Suarii. Swine dealers. In the later Empire they were compulsorily organized in associations, as other food merchants.—C. 1.17.

Hug, *RE* 4A, 469; 12, 689; Baudrillart, *DS* 4, 923.

Sub. (When prefixed to the title of an official.) An assistant official, subordinate to the head of an office (e.g., *subcurator operum publicorum*, *subcurator aedium sacrarum*, *subpraefectus*, *subprocurator*).

Sub modo. See DONATIO SUB MODO, LEGATUM SUB MODO.

Sub potestate esse. To be under paternal power; see PATRIA POTESTAS.

Subcurator. An official of equestrian rank acting as an assistant (*adiutor*) of a *curator*, e.g., *subcurator aedium sacrarum* (see AEDES), *subcurator operum publicorum* (for the administration of public buildings), *subcurator aquarum* (for the water administration), and others.—See CURATORES AEDIUM SACRARUM, CURATORES OPERUM PUBLICORUM, CURATORES AQUARUM.

Kubitschek, *RE* 4A.

Subditicius filius. A fraudulently substituted (suppositious) son. Syn. *partus suppositus*, *subiectus*. If a person instituted as his heir one whom he falsely believed to be his son and who in fact was suppositious, the institution was null if it could be proved that the testator would not have appointed him, had he known the truth.

Subdole. Deceitfully, deceptively. Syn. *dolose*.—See DOLUS.

Subducere. To take away by stealth, to hide. In another sense *subducere* = to take into account, to deduct (e.g., the proceeds one had from a thing, the *quarta Falcidia*).

Subhastarius. Sold at a public auction.

Subhastatio (subhastare). A public auction.—See HASTA, AUCTIO. Syn. *venditio sub hasta.*
Voigt, *BerSächsGW* 1903, 13.

Subicere. To add to an agreement, a clause, e.g., concerning the liability of a party for fraud (*clausula doli*), or a penalty clause. In another meaning *subicere* = to substitute one thing or person for another (*persona subiecta*, see SUBDITICIUS). *Subicere* is used of a forged testament being substituted for the real one; see FALSUM.

Subicere falsum partum. See PARTUS SUPPOSITUS, SUBDITICIUS.

Subici. To be subject (*subiectus*) to one's jurisdiction (*iurisdictioni*); to be exposed to a penalty (*poenae*); to be liable for taxes or public charges (*vectigalibus, muneribus*).

Subiectum nomen. A false name, the name of another person assumed for fraudulent purposes (e.g., when one buys or takes a lease under another's name).

Subiectus partus. See SUBICERE PARTUM, PARTUS SUPPOSITUS.

Subiectus iuri alieno (or alicuius). Subject to paternal power; see PATRIA POTESTAS, ALIENI IURIS.

Subire. To undergo, to assume, to risk (condemnation in a civil trial, duties, charges [= *onera*], a guaranty). *Subire poenam* = to suffer, to endure a penalty.

Sublimissimus (vir). An honorific epithet of the highest officials in the late Empire (e.g., *praefectus praetorio, magister officiorum*). They were addressed by the emperor under the title *"sublimitas tua"* ("your excellency"). Syn. *magnificentia, eminentia.*

Sublimitas. See the foregoing item.

Sublugere. Refers to a lower degree of mourning (e.g., after the death of a child below three years).—See LUCTUS, TEMPUS LUGENDI.

Submittere. To substitute one thing for another. With reference to an usufruct of a herd = to replace a dead head of cattle by a new one when the herd was to be returned to the owner.—See GREX.
Kübler, *RE* 4A, 483.

Subnotare (subnotatio). To sign (a signature).—See SUBSCRIBERE.

Subornare. To bribe a witness to bear false testimony, to suborn, to instigate a person by bribery to commit a crime.

Subpignus. (Non-Roman term.) See PIGNUS PIGNORI DATUM.

Subpraefectus annonae. An assistant (*adiutor*) of the *praefectus annonae.*
O. Hirschfeld, *Kais. Verwaltungsbeamte*[2] (1905) 246.

Subpraefectus classis. A deputy commander of a fleet, subordinate to the PRAEFECTUS CLASSIS.
O. Hirschfeld, *Kais. Verwaltungsbeamte*[2] (1905) 228.

Subpraefectus vigilum. A deputy commander of the VIGILES, subordinate to the *praefectus vigilum.*
O. Hirschfeld, *Kais. Verwaltungsbeamte*[2] (1905) 256.

Subprocurator. An assistant *procurator* in an imperial province designated by the emperor for a special branch of administration (e.g., for the management of mines).
O. Hirschfeld, *Kais. Verwaltungsbeamte*[2] (1905) 400.

Subreptio (subrepere). See OBREPTIO.

Subripere. To take away secretly, to steal.—See LEX ATINIA. *Res subreptae = res furtivae.*
Berger, *RE* 12, 2331.

Subripere instrumentum. To remove fraudulently a document (a testament) in order to make it impossible to produce it in court or to put a forged one in its place.

Subrogare legem. To add a supplementary provision to an earlier law.

Subscribendarius. A lower ranking official in the later Empire charged with the preparation of the draft of a decision to be made by his superior.
Ensslin, *RE* 4A; Humbert, *DS* 4; Henne, *Conflnst* 1947 (1950) 117.

Subscribere. To sign.—See TESTAMENTUM TRIPERTITUM, SUBSCRIPTIO.

Subscriptio. (From *subscribere.*) A signature. With regard to private documents (*subscriptio instrumenti, subscriptio chirographi*) there were signatures of both parties who concluded an agreement, or only of the party who assumed an obligation, and eventually of his surety. The *subscriptio* consisted of the name of the subscriber and a brief summary of the content of the document or of the nature of the obligation the subscriber assumed. The signatures of witnesses (TESTIS) contained the indication that they acted as witnesses. With the increase of the use of written documents the imperial legislation issued detailed provisions concerning the signatures of the parties, the notary involved, and the witnesses. The subscription of the party became an important element in a document when its body was written by another person. —See SUBSCRIPTIO TESTAMENTI, SUPERSCRIPTIO.
Kübler, *RE* 4A; Lécrivain, *DS* 4.

Subscriptio. (In a criminal trial.) A written accusation (see INSCRIPTIO) or an oral accusation written down in the records of the competent office and signed by the accuser. The accuser and those who signed the accusation together with him to support the accusation = *subscriptores.*—*C.* 7.57.
Kübler, *RE* 4A, 490; Kleinfeller, *ibid.* (*s.v. subscriptores*); Riccobono, *ZSS* 34 (1913) 246; Wlassak, *Anklage und Streitbefestigung, SbWien* 184, 1 (1917) 89.

Subscriptio. (In military administration.) The signing of documents concerning the distribution of food among soldiers by the officer involved.—See SUBSCRIBENDARIUS.

Subscriptio censoria. See NOTA CENSORIA.
Kübler, *RE* 4A, 490.

Subscriptio principis. A signature of the emperor. When written at the foot of a petition addressed to him, it was a kind of an imperial rescript (*rescriptum*

principis) since it was the emperor's answer to the petition (*preces, libellus*). The petition provided with the answer and the emperor's signature was publicly exposed. The petitioner received a copy at request.

Premerstein, *RE* 13, 39; Kübler, *RE* 4A, 399; De Dominicis, *RendLomb* 83 (1950).

Subscriptio testamenti. The signature of the testator on a written testament, which was valid under praetorian law, was not necessary when the will was sealed by seven witnesses. However, when the testator rewarded the writer of the testament, he had to confirm the pertinent disposition with his own hand. See SENATUSCONSULTUM LIBONIANUM. Forgery of a signature in a testament or another document was under pain of the penalties of the LEX CORNELIA DE FALSIS.—See SUPERSCRIPTIO.

Kübler, *RE* 4A, 493; Macqueron, *RHD* 24 (1945) 160.

Subscriptor. One who subscribed (a document, a testament).—See SUBSCRIPTIO, in a criminal trial.

Kleinfeller, *RE* 4A.

Subsellium. A bench used in court or in certain offices. It was lower than the SELLA CURULIS, which was the privilege of higher magistrates only. Judges in criminal trials (*quaestiones*) were seated on *subsellia* and so were also the accuser and the lawyers. Hence *subsellium* is used sometimes to mean a court. Plebeian tribunes and aediles had no right to a *sella curulis* and could use only a *subsellium*.

Heg, *RE* 4A; Chapot, *DS* 4.

Subsidere. To remain. Used of legacies which the legatee refused to accept and which therefore remained with the heir.

Subsidiarius. See ACTIO SUBSIDIARIA.

Subsidium. Help, assistance. The term is used of legal remedies granted to a person in order to save him from a loss (e.g., an action, an exception, an interdict, a *restitutio in integrum*).

Subsignare. To sign, to subscribe (syn. *subscribere*), to seal (syn. *signare*).—In another meaning *subsignare* = to give a landed property to the state or a municipality as security for obligations owed them (e.g., to collect taxes, to construct a building). In constitutions of the later Empire, *subsignare* is used for setting up real securities in general.—See PRAEDIA SUBSIGNATA.

Hardy, *Three Spanish charters*, 1912, 78.

Subsistere. To defend oneself or another in a trial against an adversary. See LAUDARE AUCTOREM. When used of a legal act (e.g., a testament, a judicial judgment) = to be valid.

Subsortitio. A supplementary selection of a juror in a criminal trial if after the selection (SORTITIO) of jurors for a specific trial a seat became vacant by death or election of a juror to a magistracy).—See ALBUM IUDICUM.

Kübler, *RE* 4A; Ehrenberg, *RE* 13, 1495.

Substantia. The substance, the essential nature or function, social or economic, of a thing (*substantia rei*) or of a legal transaction (*substantia emptionis, obligationis*). In several constitutions by Diocletian the word is strengthened by the addition of *veritatis* (= the true nature of a legal transaction). *Substantia* also refers to the entire property of a person (e.g., *substantia paterna* = the father's property) or to an inheritance as a whole (*substantia hereditatis, substantia defuncti*). *Substantia* was a favorite term of the imperial chancery and occurs in interpolated passages.—See ERROR IN SUBSTANTIA, USUSFRUCTUS.

Guarneri-Citati, *Indice*[2] (1927) 84; *idem, Fschr Koschaker* 1 (1939) 153; Scheltema, *Rechtsgeleerd Magazijn* 55 (1936) 60.

Substituere. To appoint, to substitute one person in the place of another (e.g., a representative in a trial, a guardian, a curator). The term was of particular importance in the law of successions.—See the following items.

Substitutio. The appointment of another heir by a testator in the event that the heir first instituted did not take the inheritance either because he would not or could not do so. The heir instituted in the second place = *heres substitutus, heres secundus*. Several heirs could be substituted to the heir first appointed, and one person to two or more heirs. Likewise the heirs first instituted could be reciprocally substituted one to the other (*substitutio mutua, reciproca*) and a *heres tertius* (a third heir) to the *heres secundus*. Through a *substitutio* the testator saved the validity of the testament which would have become void if the heir first appointed did not accept the inheritance. Syn. *substitutio vulgaris* (= ordinary *substitutio*), to be distinguished from *substitutio pupillaris*.—Inst. 2.15; D. 28.6; C. 6.25; 26.

Weiss, *RE* 4A; Beauchet, *DS* 4; G. Segrè, *Scritti giur.* 2 (1938) 348; B. Biondi, *Successione testamentaria* (1943) 245; Solazzi, *SDHI* 16 (1950) 1.

Substitutio duplex. A *substitutio vulgaris* (see SUBSTITUTIO) combined with a SUBSTITUTIO PUPILLARIS. It occurred when a testator appointed a third person as a substitute to a child in his power and below the age of puberty (*impubes*) for the event that the child might die before him (i.e., the testator) or before puberty after becoming heir. In the later development (still in classical law) it was held that a pupillary *substitutio* implied automatically an ordinary *substitutio* (*substitutio vulgaris*) unless the testator disposed otherwise. Ant. *substitutio simplex* = a *substitutio* limited by the testator to one of the two basic forms of *substitutio*.—See SUBSTITUTIO, SUBSTITUTIO PUPILLARIS.

Substitutio mutua. See SUBSTITUTIO.

Substitutio pupillaris. The appointment of a substitute by the father for his child instituted as an heir in his testament. The substitute became heir if the child, after the acceptance of the inheritance, died

before reaching puberty, i.e., before being able to make a testament. Through *substitutio pupillaris* the father provided in his testament for a successor to his child. *Substitutio pupillaris* was permitted only in the father's testament, and then only along with the institution of the child as heir in the first place. See, however, TESTAMENTUM PUPILLARE. Justinian introduced a new form of *substitutio*, modeled on the *substitutio pupillaris* (*ad exemplum pupillaris substitutionis*, C. 6.26.9) for use with insane descendants. The father could appoint an heir for his insane descendant to succeed in the event that the latter did not recover sanity. This form of *substitutio* is called in the literature *substitutio quasi pupillaris*. The testator (father or mother) had, however, to appoint first a nearest relative of the insane, and only in the absence of relatives could he appoint an heir of his own choice.—Inst. 2.16; D. 28.6; C. 6.26.—See CURIANA CAUSA.

La Pira, *St Bonfante* 3 (1930) 271; Wolff, *St Riccobono* 3 (1936) 437; Vazny, *BIDR* 46 (1939) 68, 47 (1940) 31; B. Biondi, *Successione testamentaria* (1943) 252; Cosentini, *Ann. di dir. comp. e di st. legislativi* 22 (1946) 152; Perrin, *RHD* 47 (1949) 335, 518; *idem*, *in Varia, Et de droit rom.* (*Publications de l'Institut de droit rom. de l'Univ. de Paris*, 9, 1952) 267.

Substitutio quasi pupillaris. See SUBSTITUTIO PUPILLARIS.

Substitutio reciproca. See SUBSTITUTIO.

Substitutio simplex. See SUBSTITUTIO DUPLEX.

Substitutio vulgaris. See SUBSTITUTIO.

Subtilitas legum. In the language of Justinian's constitutions, severity, rigorous formalities of the earlier law. The expressions *subtilis*, *subtilitas*, and *subtiliter* when used with regard to ancient law to stress its rigidity, are frequently interpolated.

Seckel, in *Heumann's Handlexikon*⁹ (1907), *s.v. subtilis*; Guarneri-Citati, *Indice*² (1927) 84.

Subtrahere. To take away, to remove. The term is used in connection with theft. *Se subtrahere* = to withdraw illegally from public services (*munera*, military service).

Suburbanum praedium. A plot of land located in the vicinity of a city. Its possibilities for economic exploitation decided whether it qualified as urban (*praedium urbanum*) or rustic land (*praedium rusticum*). *Praedia suburbana* were among the landed properties the sale of which by a guardian was prohibited by the ORATIO SEVERI.

Suburbicariae regiones. Territories bordering on Rome. They are mentioned in a few constitutions of the Theodosian Code. They are not specific administrative units.—See VICARIUS IN URBE.

Subvas. See VAS.

Subvenire. To come to the aid. Used of judicial remedies granted primarily to persons who in particular situations or for specific reasons deserve such help. The term refers to *restitutiones in integrum* and exceptions.

Succedere (successio). To succeed, to take the place of a person either as his successor in office or as his heir. In the latter case a person (*successor*) enters into the legal situation of a defunct person (*succedere in ius, in locum, in ius et locum defuncti*) both as creditor and debtor in all his legal relations except those which are extinguished by death (as, e.g., *mandatum, societas*) or are merely factual, as *possessio*. In postclassical and Justinian's law the terms *succedere* and *successio* were extended to cases in which one succeeded in one specific relationship of the deceased (*succedere in rem, in singulas res, in rei dominium* = in the ownership of one thing) which is opposed to *successio in universum ius* (*in universum dominium, in universa bona* = in the whole property). It is generally accepted that the definition of successors, preserved in the Digest (39.2.24.1a): "successors are not only those who succeed to a whole property, but also those who succeeded in the ownership of one thing are covered by this term," is an interpolation by Justinian's compilers. *Succedere hereditario iure* = to succeed as an heir. *Successio* indicates at times the right of succession, and it is used as a collective term embracing all heirs (descendants) of a person.—Inst. 3.2.; 5; 7; C. 6.59. —See UNIVERSITAS, SUCCESSOR, HEREDITAS, BONORUM POSSESSIO, HERES, SUCCESSIO IN UNIVERSUM IUS.

Beauchet, *DS* 4; Longo, *BIDR* 14 (1902) 127, 224; 15 (1903) 283; Bonfante, *Scr giuridici* 1 (1926) 250; Ambrosino, *SDHI* 11 (1945) 65; 94; B. Biondi, *Istituti fondamentali* 1 (1946) 9; B. Albanese, *La successione ereditaria in dir. rom. antico*, *AnPal* 20 (1949).

Successio graduum. See BONORUM POSSESSIO INTESTATI, EDICTUM SUCCESSORIUM.

De Crescenzio, *NDI* 12, 960.

Successio in locum prioris creditoris. Succession into the place of a prior creditor. It happened when the same thing was hypothecated successively to several creditors; see HYPOTHECA. A creditor earlier in date had priority over creditors to whom the thing was hypothecated later. Renunciation by one creditor or extinction of his claim (e.g., by payment) caused the creditor next in order to enter in his place. Such a succession could also be agreed upon between two creditors.—D. 20.4; C. 8.18.—See IUS OFFERENDI PECUNIAM, POTIOR IN PIGNORE.

Successio in possessionem (possessionis). Succession into the possession of a thing. In the case of succession through inheritance an heir did not automatically succeed in possession through the acceptance of the inheritance (see ADITIO HEREDITATIS). He had to take physical possession of all things belonging to the estate (*res hereditariae*). This gave him the opportunity to continue and complete the usucaption of individual things if their possession by the defunct person satisfied the conditions of *usucapio*. —See ACCESSIO POSSESSIONIS, USUCAPIO.

Successio in universum ius. See SUCCEDERE, UNIVERSITAS.—For universal succession in the property of a living person, see ADROGATIO, BONORUM VENDITIO, CONVENTIO IN MANUM.

Catalano, *AnCat* 1 (1947) 314.

Successio ordinum. See BONORUM POSSESSIO INTESTATI, EDICTUM SUCCESSORIUM.—D. 38.15.

De Crescenzio, *NDI* 12, 960.

Successio in usucapionem. See SUCCESSIO IN POSSESSIONEM, USUCAPIO.

Successor. One who succeeded another in office or as his heir.—See SUCCEDERE.—C. 10.63.

Successor honorarius. A person who inherited another's property according to praetorian law, either under a testament valid according to praetorian law or according to the order of succession on intestacy established in the praetorian edict.—See BONORUM POSSESSIO. EDICTUM SUCCESSORIUM.

Successor legitimus. An heir inheriting under *ius civile*. Ant. *successor honorarius, praetorius*.

Successor praetorius. See HONORARIUS.

Successores ceteri. All other successors who inherit beside *heredes* and *bonorum possessores*. Wherever the *successores ceteri* appear along with *heredes* or with *heredes* and *bonorum possessores* the expression *successores ceteri* is interpolated. Through this addition the compilers wished to extend certain legal rules applicable to heirs, to other persons who under any title acquired another's property.

Longo, *BIDR* 14 (1902) 150; Guarneri-Citati, *Indice*[2] (1927) 17.

Successorium edictum. See EDICTUM SUCCESSORIUM.

Succidere. See ACTIO ARBORUM FURTIM CAESARUM.

Succurrere. To help. The term is used of procedural measures (exceptions, *restitutio in integrum*) by which the praetor saved persons who for special reasons (e.g., minor age) deserved protection from losses. Syn. *subvenire*.

Suffectus. A magistrate (e.g., a consul) elected to fill a vacancy which occurred during the service year.

Kübler, *RE* 4A.

Sufferre. To bear, to undergo, to suffer (losses or penalties) either a pecuniary fine through a decision of a magistrate (see MULTA) or a penalty to be paid in accordance with an agreement for default in fulfillment of an obligation (see POENA) or, in a civil trial, the disadvantage of a LITIS AESTIMATIO.

Sufficere. To suffice. Often used of an action or another procedural remedy available to a person for putting forward his claim.

Suffragator. One who used his influence to support another in an electoral campaign for a magistracy, or one who intervened with the emperor in favor of another person. Any such action = *suffragatio*.—See SUFFRAGIUM.

Kübler, *RE* 4A.

Suffragium. A vote, the right to vote. *Suffragium* refers to both the vote in popular assemblies (*comitia*) and in criminal courts (*quaestiones*). For abbreviations used see A, C, U.R. To start voting = *suffragium inire, ferre*.—C. 4.3.—See CIVITATES SINE SUFFRAGIO, TABELLAE, IUS SUFFRAGII, LEGES TABELLARIAE, ROGATOR, DIRIBITIO.

Kübler, *RE* 4A; Saglio, *DS* 4; De Marchi, *La sincerità del voto nei comizi rom., RendLomb* 1912, 653; G. Rotondi, *Leges publicae populi Rom.* (1912) 19; Fraccaro, *La procedura del voto nei comizi, ATor* 49 (1913/14) 600.

Suffragium. (In the later Empire.) Recommendation of a person to the emperor or a high official for an official position or a special privilege. The person on behalf of whom the *suffragator* intervened usually promised an honorarium for the service rendered; the pertinent agreement = *contractus suffragii*. An imperial constitution of A.D. 394 ordered that such a promise had to be made in the solemn form of a *sponsio* (C. 4.3.1). *Suffragium* is also used of gratuitous recommendations or interventions on behalf of another.—C. 4.3.—See SUFFRAGATOR.

Kübler, *RE* 4A, 657.

Suggerere. To advise, to prompt, to suggest. The verb occurs in texts suspected of interpolation. It is rare in classical language, but frequent in imperial constitutions.

Guarneri-Citati, *Indice*[2] (1927) 84.

Suggestio. A query or a report presented by a lower official to a higher one or to the emperor. The term is used primarily in imperial constitutions.

Sui. (In a general meaning.) The next relatives of a person; persons living in the same household under the one head of the family.—See SUUS.

Sui iuris (esse). To be legally independent, not under the paternal power (*patria potestas*) of another. Syn. *suae potestatis esse*. Ant. ALIENI IURIS.—See SUUS.

Suicidium. A suicide. See CONSCISCERE SIBI MORTEM, LIBERAE MORTIS FACULTAS. "A soldier who attempted to commit suicide and did not succeed, is to be punished by death unless he wanted to die because of unbearable pains, sickness, affliction (mourning), or for another reason; in such cases he is to be dishonorably discharged" (D. 48.19.38.12).

Sumere arbitrum (iudicem). To take an arbitrator or judge by common agreement of the parties involved in a controversy.—See COMPROMISSUM, IUDEX.

J. Mazeaud, *La nomination du iudex unus*, 1933, 121.

Sumere poenam (supplicium). To exact punishment (e.g., the death penalty).

Summa. An enactment by Justinian through which the first Code (see CODEX IUSTINIANUS) was promulgated (April 16, 529). The constitution starts with the words *Summa rei publicae*.

Summa. See IN SUMMA.

Summa (pecuniae). A sum of money; the term is frequently connected with a noun indicating the origin or nature of the obligation (*summa debiti, sacramenti, sponsionis, dotis, condemnationis*, etc.).

Summa honoraria. See HONORARIUM.
Kübler, *RE* 4A.

Summa Perusina. A summary of imperial constitutions from the first eight books of Justinian's Code, entitled *Adnotationes Codicum Domini Iustiniani*. The author of the *Summa* which was written in the seventh or eighth century and is preserved in one manuscript (now in Perugia), is unknown.
Editions: Heimbach, *Anecdota* 2 (1840); Patetta, *BIDR* 12 (1900).—Monti, *NDI* 12, 1; M. Conrat, *Gesch. der Quellen und Literatur des röm. R. im frühen Mittelalter* (1891) 182; Besta, *Atti Accad. Palermo* 1908.

Summa res. See SUMMAE RATIONES.

Summae. Called in the literature brief abstracts (summaries) of Justinian's Digest and the Code which were written in Greek by Byzantine jurists soon after the publication of Justinian's codification to make the large legislative works more easily accessible to practitioners.—See INDEX.

Summae rationes. The general fiscal administration of the Roman state. The officials charged with the pertinent duties = *tabularii summarum rationum*. Syn. *summa res*.
O. Hirschfeld, *Kais. Verwaltungsbeamte*[2] (1905) 32.

Summatim cognoscere. A summary, simplified procedure applied in the COGNITIO EXTRA ORDINEM in specific civil cases when a speedy investigation of the matter (e.g., when alimony was sought) was desirable. With the cooperation of the parties the course of the proceedings was hastened. *Summatim rem exponere* is used of lawyers who briefly summarized the case in court.
Wlassak, *RE* 4, 213; Biondi, *BIDR* 30 (1921) 220; H. Krüger, *ZSS* 45 (1925) 39; Wenger, *Institutes of the R. civil procedure* (1940) 324.

Summovere. To exclude (e.g., from an inheritance or guardianship). The principal application of the term is with reference to procedural exceptions (see EXCEPTIO) when the plaintiff's claim is successfully opposed by the defendant's *exceptio*.

Summum supplicium. The death penalty. Syn. *ultimum supplicium*.—See SUPPLICIUM.

Summus. The highest. The superlative is primarily used of institutions and things that pertained to, or were connected with, the emperor.

Sumptu publico. At the expense of the state or a municipality.—See SUMPTUS.

Sumptuariae leges. See the following item.

Sumptus. Generally all kinds of expenses (syn. IMPENSAE), also those which one incurs for another in contractual relations or other legal situations. See NEGOTIORUM GESTIO, POSSESSOR BONAE FIDEI. In a specific sense *sumptus* = expenses connected with a luxurious life. In the Republic a series of statutes were issued in order to suppress the increasing luxury in Roman life (*leges sumptuariae*). They prohibited luxurious clothes for women, the excessive use of jewelry, and prodigality in banquets and feasts. The legislation apparently was not successful since the prohibitions, combined with high taxes, were frequently repeated. See LEX AEMILIA, FANNIA, OPPIA, ORCHIA. Luxurious funerals were also repeatedly prohibited, first by the Twelve Tables. Later on, the censors frequently intervened with prohibitions. The last *lex sumptuaria* was LEX IULIA SUMPTUARIA by Augustus.
Kübler, *RE* 4A; Lécrivain, *DS* 4; G. Longo, *NDI* 7 (*s.v. leges sumptuariae*); Richter, *NDI* 12, 1 (*s.v. sumptuariae leges*); E. Giraudias, *Etudes historiques sur les lois sumptuaires* (Thèse Poitiers, 1910); G. Rotondi, *Leges publicae populi Rom.* (1912) 98.

Sumptus funeris (in funus). See SUMPTUS, ACTIO FUNERARIA, IMPENSAE FUNERIS.—D. 11.7; C. 3.44.
Cuq, *DS* 2, 1408.

Sumptus litis (in litem). The emperor Zenon (C. 7.51.5, A.D. 487) introduced a general rule that any one who was defeated in a trial, plaintiff or defendant, whether he was in good or bad faith, had to pay the victorious adversary the expenses connected with the trial. Syn. *expensae litis*.—C. 7.51.—See CALUMNIA, POENA TEMERE LITIGANTIUM.
Chiovenda, *BIDR* 7 (1894) 275; *idem*, *RISG* 259 (1898) 3, 161; H. Erman, *Restitution des frais de procès en dr. rom.*, Lausanne, 1892.

Sumptum ludorum. Expenses connected with the arrangement of public games.—See LUDI, SENATUSCONSULTUM DE SUMPTIBUS LUDORUM MINUENDIS.

Sumptus muneris. Expenses connected with the fulfillment of public charges (MUNERA). If a person was assigned a certain public service together with others, but he alone fulfilled the duties imposed, the others who failed to cooperate had to reimburse him for the expenses he incurred on their behalf.—C. 11.38; 10.69.

Suo nomine. See NOMINE.

Supellex (suppellex). Household goods.—See LEGATUM SUPELLECTILIS.—D. 33.10.

Super. When followed by an ablative it is syn. with *de*. A Grecism frequently occurring in the language of the imperial chancery and in interpolated passages.
Guarneri-Citati, *Indice*[2] (1927) 85.

Superare aliquem. (When referring to a civil trial.) To be victorious over one's adversary, to win the case. With reference to a criminal trial = to establish the guilt of the accused, to convict.

Superexactio (superexigere). See EXACTIO.—C. 10.20.
Flore, *St Bonfante* 4 (1930) 345.

Superficiariae aedes. A building built on leased land. It belongs to the owner of the land.

Superficiarius. (Noun.) One who has the right of SUPERFICIES on another's land.

Superficiarius. (Adj.) An immovable, land or building, encumbered with the right of *superficies* on behalf of a person other than the owner.—See SUPERFICIES.

Superficies. All that is connected with the soil whether it comes out from it (trees, plants, etc.) or is built upon it. All this "goes with the soil" (*superficies cedit solo*, Gaius, Inst. 2.73, D. 43.17.3.7), i.e., it becomes property of the owner (see INAEDIFICATIO, PLANTATIO, SATIO) even if the material used for constructions, plants, seed, etc., belongs to another person.—*Superficies* as a right over another's property = the right to use all that is on the surface of another's land. The origin of *superficies* as far as buildings are concerned, arose from arrangements made between the owner of a given piece of land and the constructor of the building thereon (first on public land, later on private property). Under such agreements the builder acquired a right similar to that of a lessee (see LOCATIO CONDUCTIO REI), but perpetual and hereditary. The *superficiarius* (= the person entitled to *superficies*) had a specific legal situation not only with regard to the owner of the land (to whom he paid an annual rent, *solarium*) but also to third persons against whom he was protected by a special interdict (*interdictum de superficiebus*). In later development certain other actions were granted the *superficiarius*, actions which normally were available to owners only. In Justinian's law the *superficies* appears as a fully developed institution, as a strong right on another's property, protected by legal means analogous to those which were granted to the owner. The development of the *superficies*, though doubtful in details, shows the transformation of the institution from a merely obligatory relationship to a real right (*ius in re aliena*) over another's property endowed with nearly all advantages which resulted from ownership.—D. 43.18.

—See AEDES, USUSFRUCTUS, POSSESSIO AD INTERDICTA. Kübler, *RE* 4A; Lécrivain, *DS* 4; Simoncelli, *NDI* 12; Berger, *RE* 9, 1647; *idem*, *Teilmoskiagen*, 1912. 32; Beseler, *Beiträge zur Kritik* 1 (1911) 100. 3 (1913) 169; G. Baviera, *Scritti giur.* 1 (1909) 177; Arangio-Ruiz, *AG* 81 (1908) 436; Rabel, *Mél Girard* 2 (1912) 307; Buckland, *RHD* 17 (1938) 666; B. Biondi, *La categoria romana delle servitutes* (1938) 443; *idem*, *Le servitù prediali* (1946) 70; E. Albertario, *Studi* 2 (1941, ex 1911, 1912) 409. 459; Pugliese, *Temi Emiliana* 20, 4 (1943) 119; Solazzi, *SDHI* 3-14 (1947/8) 307; *idem*, *RISG* 86 (1949) 23; Branca, *RIDA* 4 (1950) 189; M. Vogt, *Das Erbbaurecht des klas. röm. R.*, 1950; E. Levy, *West Roman Vulgar Law*, 1951, 49, 80.

Superficies cedit solo. See SUPERFICIES, INAEDIFICATIO. ACCESSIO.

Riccobono, *AnPal* 3-4 (1917) 508; Wenger, *Philologus* 42 (1933) 254; C. A. Maschi, *La concezione naturalistica* (1937) 284; *idem*, *St Arangio-Ruiz* 4 (1953) 135.

Superficium. See SUPERFICIES.

Superflua non nocent. See SUPERFLUUS.

Superfluum. What remains from a sum of money after deductions have been made, e.g., from the price of a pledge sold if the price exceeded the debt for which the pledge had been given.—See PACTUM DE DISTRAHENDO, HYPEROCHA.

Superfluus. Unnecessary, superfluous. An imperial constitution (C. 6.23.17) pointed out the distinction between necessary and unnecessary clauses in a contract or testament. The omission of necessary clauses which are required for the validity of the act invalidated it whereas the addition of superfluous details because of exaggerated cautiousness did not since "*superflua non nocent*" (= superfluous additions do no harm).

Superindictio (superindictum). In the later Empire an extraordinary additional charge or tax levied when the normal taxes or public charges (*munera*) did not suffice. A *superindictio* was primarily decreed in war time. The owners of large estates (*possessores*) were the first to be charged with *superindictio*.—C. 10.18.—See INDICTIO.

Ensslin, *RE* 4A; Lécrivain, *DS* 4; Thibault, *Rev. générale du droit, de la législation* 24 (1900) 112.

Superior. In the official hierarchy higher in rank. *Superius imperium* = the power of a magistrate higher in rank; see IMPERIUM. Ant. *inferior*.

Superiores. Relatives in ascendant line.—See GRADUS.

Supernumerarii. In the later Empire, see MINISTRI CASTRENSES.

Superscriptio. The signature of a person placed on a document alongside its seal (*nomen adscribere*). Such an additional signature was required in testaments.—See SUBSCRIPTIO.

Supersedere. To neglect, to omit. The term is used of failure in fulfilling one's duties and of omission of certain required procedural measures in due course.

Honig, *Fg R. Schmidt* 1 (1932) 21.

Superstitio. Used of religions other than the Roman. Thus the emperors Severus and Caracalla spoke of *superstitio Iudaica* (D. 50.2.3.3). To Christian emperors any non-Christian religion was *superstitio* (*haeretica, paganorum, Iudaica*, etc.).—In the later Principate the profession of new religious doctrines "by which human minds are perturbed" (Paul. *Sent.* 5.21.2) was treated as a capital crime for which persons of higher social classes (HONESTIORES) were punished with deportation.—*Superstitio* also occurs in the meaning of an excessive, superstitious fear of a divinity in a rescript of the emperor Marcus Aurelius (D. 48.19.30) by which a person who "made weak-minded individuals terrified by a superstitious fear of a deity" was to be punished with deportation to an island.—See APOSTATA, CHRISTIANI, HAERETICI, IUDAEI.

Pfaff, *RE* 4A; Mommsen, *Religionsfrevel, Juristische Schriften* 3 (1907, ex 1890) 389; Marrtroye, *RHD* 9 (1930) 669.

Superveniens. See MALA FIDES.

Supervivere. To survive.—See COMMORIENTES.

Supplere. To complete, to make full (e.g., *usucapionem, fideicommissum, aetatem, tempus, numerum*).

Guarneri-Citati, *SDHI* 1 (1935) 153.

Supplere ius civile. See IUS HONORARIUM.

Guarneri-Citati, *SDHI* 1 (1935) 157.

Supplicatio. A petition directly addressed to the emperor with a request for his decision in a judicial matter. Syn. *libellus, preces.* The *supplicatio* developed in later times into an appeal when a petitioner asked the emperor for a renewed examination in a matter in which normally no appeal was permitted (e.g., from judgments passed by praetorian prefects). —C. 1.19.

Arangio-Ruiz, *BIDR* 49/50 (1947) 55.

Supplicationes. Bloodless sacrifices performed by private persons at home. *Supplicationes* also were sacrifices celebrated by the whole nation and arranged by public authorities in order to ask aid of the gods in times of national calamity or to thank them in the case of a happy event.

Wissowa, *RE* 4A; Toutain, *DS* 4; Rose. *OCD.*

Supplicium. Death, death penalty, penalty in general. For the kinds of execution, see POENA.

Pfaff, *RE* 4A; Lécrivain, *DS* 4; Heinze, *Archiv für lat. Lexikographie* 15 (1908) 98; V. Brasiello, *La repressione penale*, 1937, 246; Vergote, *Les principaux modes de supplice, Bull. Inst. Hist. Belge de Rome* 10 (1939) 141.

Supplicium fustuarium. See FUSTUARIUM SUPPLICIUM.

Supplicium servile. See SERVILE SUPPLICIUM, CRUX.

Supplicium summum. See SUMMUM SUPPLICIUM.

Supplicium supremum. See SUPREMUM SUPPLICIUM.

Supplicium ultimum. The death penalty. Syn. *summum supplicium, supremum supplicium.*

Supponere. In later imperial constitutions to give a creditor a thing as a pledge.

Supponere partum. See PARTUS SUPPOSITUS. Syn. *subicere partum.*—See SUBDITICIUS.

Supposita persona. See INTERPOSITA PERSONA.

Suppressio. See SUPPRIMERE.

Suppressor. See SUPPRIMERE SERVUM ALIENUM.

Supprimere (suppressio). To conceal, to hide a thing in order to defraud another (a creditor, the fisc), to embezzle.

Supprimere servum alienum. To conceal another's slave. The wrongdoer was guilty of PLAGIUM and was punished under the LEX FABIA.

Supprimere tabulas (testamentum). To conceal a testament (or a codicil) to the detriment of the heir instituted therein (or a legatee). See INTERDICTUM DE TABULIS EXHIBENDIS. A slave who believed himself to have been manumitted in a testament concealed by the heir in order to frustrate the manumission, was permitted to accuse the latter on that charge (*accusatio suppressi testamenti*).

Supremum supplicium. The death penalty.

Supremus. Last, final. When connected with a noun referring to the will of a person (*suprema voluntas, supremum iudicium, supremae tabulae, supremae preces*) or simply *suprema* (plur. neut.) = a testament.—See IUDICIUM SUPREMUM, VOLUNTAS SUPREMA.

Surdus. Deaf. A deaf person could not promise by *stipulatio* nor accept a stipulatory promise because he was unable to hear the question or the answer. He was excluded from personal participation in oral transactions and from being a witness thereto. A person hard of hearing (*tarde exaudire*) is not considered *surdus.*—See CURATOR MUTI, TUTOR.—D. 37.3.

Susceptor (susceptio). (From SUSCIPERE.) In the financial administration of the later Empire = a collector of taxes in money or in kind (grain, wine = *susceptor vini*, clothes = *susceptor vestium*).—C. 10.72; 11.17.

Lammert, *RE* 4A.

Suscipere. In financial administration of the later Empire, see SUSCEPTOR.

Suscipere. In contractual and obligatory relations, to assume a unilateral obligation (e.g., *mandatum, depositum, commodatum*), to incur a debt (*suscipere mutuum, suscipere aes alienum*). *Suscipere obligationem* = to assume an obligation as one's own or for another (*suscipere obligationem alienam*) by releasing the principal debtor or as his surety (*fideiussor*).

Suscipere actionem (iudicium, litem). In civil trials, when referring to the formulary procedure, this is synonymous with *accipere iudicium* (see LITIS CONTESTATIO). With reference to the procedure through *cognitio extra ordinem* the term indicates that the defendant assumed the role of the plaintiff's adversary in the trial. *Suscipere defensionem* = to assume the defense of a defendant.

Suscipere filium (liberum). To beget a child. *Suscipi* = to be born (*susceptus*). *Suscipere filium alienum* = to adopt another's child.

Berger, *Jour. of juristic papyrology* 1 (1945) 30 (= *BIDR* 55–56, Post-Bellum [1951] 113).

Suscipere servum alienum. To give harbor to a slave who had left his master. Keeping the slave secretly (*celare, supprimere*) against the will of his master was considered a crime (see PLAGIUM) and punished under LEX FABIA.—See SUPPRIMERE SERVUM ALIENUM.

Suspectus. See HERES SUSPECTUS, SATISDATIO SUSPECTI HEREDIS, TUTOR SUSPECTUS, IUDEX SUSPECTUS, SUSPECTUS REUS.

Suspectus reus. A person suspected of having committed a crime. A slave suspected of a crime could be submitted to torture in order to obtain his confession if other evidence was not available.—See TORMENTA, SUSPICIO.

Suspendere (laqueo). To hang a person with a rope. See LAQUEUS, FURCA. This kind of punishment was practiced on slaves by some masters. The death of the slave was treated as homicide (*homicidium*).—C. 9.14.

Suspensa. Syn. *res suspensae.* See ACTIO DE DEIECTIS.

Suspensus sub condicione. See CONDICIO, IN SUSPENSO ESSE.

Suspicio. Suspicion. The emperor Trajan ordered that "no one should be condemned on the ground of suspicion alone" (D. 48.19.5).

Sustinere. To undergo (an accusation or a punishment), to suffer (losses), to be liable (for a debt, expenses, etc.).

Sustinere actionem (iudicium). To suspend proceedings and judgment in a trial until a preliminary (prejudicial) question was cleared up. If, e.g., a noxal action (see ACTIO NOXALIS, NOXA) was brought against a master for a wrongdoing committed by his slave while a proceeding concerning the slave's liberty was pending, the noxal trial was to be suspended until the status of the slave was established.—See DILATIO.

Sustinere partem actoris (rei). To assume the role of the plaintiff (or defendant) in a trial. *Sustinere personam alicuius* = to represent a person. Thus, a *tutor* or a *curator* represents the ward; an inheritance represents the personality of the defunct (*personam defuncti sustinet*).

Suum. All that belongs to a person, his whole property. The plural *sua* is also used in the same sense. *Suum* sometimes means only what is due to a person (*suum petere*). *Suum facere aliquid* = to acquire ownership of a thing.

Suum aes. See AES ALIENUM.

Suum cuique tribuere. See IUS.

Suus. See SUI, SUI IURIS, SUAE POTESTATIS, SUAE AETATIS, SUAE MENTIS. *Suus* is often used for HERES SUUS.

Suus et necessarius heres. See HERES SUUS ET NECESSARIUS.

Suus heres. See HERES SUUS.

Suus iudex. In the language of the imperial chancery a judge designated by law to decide upon a specific case.

Symbolum. A sign of recognition (e.g., a ring = *anulus*), a proof of authorization (a document, provided with a seal). A messenger of a creditor had to prove by a *symbolum* to the debtor that he was authorized to receive payment.

Bickermann, *RE* 4A, 1088.

Synallagma. Indicated in Greek law any agreement from which an obligation arose. In Roman sources it acquired a somewhat different meaning, referring only to agreements from which reciprocal (bilateral) obligations of both parties originated (D. 2.14.7.2; 50.16.19); the authenticity of the two texts is, however, controversial. In postclassical and Justinian's law *synallagma* is synonymous with *contractus*.

Seidl, *RE* 4A; P. De Francisci, *Synallagma. Storia e dottrina dei cosidetti contratti innominati*, 1-2 (1913, 1916); J. Partsch, *Aus nachgelassenen Schriften* (1931) 16.

Syndicus. A representative of a public or private corporate body (*civitas, municipium, collegium*). The term is of Greek origin. Syn. *actor*.

Seidl, *RE* 4A, 1333; Chapot, *DS* 4; Albertario, *Studi* 1 (1933) 121.

Syngraphe. In classical law a form of literal obligation (see LITTERARUM OBLIGATIO) contracted between peregrines (Greeks) or between a Roman and a peregrine. The term and the institution came into Roman legal life early through the commercial relations between Rome and Greece. A *syngraphe* was written in two copies and signed by both parties; each kept one copy. It is doubtful whether a *syngraphe* was valid if the obligation assumed therein by a party was not based on a real transaction.

Kunkel, *RE* 4A, 1384; Beauchet, *DS* 4; Moschella, *NDI* 12, 1, 1240.

Synopsis Basilicorum. A collection of brief abstracts from the BASILICA, composed in alphabetical order by an unknown author in the tenth century. The text is preserved in several manuscripts which suggests that the collection was widely used. The *Synopsis* is important for the knowledge of the missing parts of the Basilica. The title of the collection is "Ecloge and Synopsis of the sixty books of the Basilica with references thereto, arranged alphabetically." From this *Synopsis*, termed in the literature *Synopsis Maior*, a lesser abstract, also in alphabetical topical order was composed about the beginning of the thirteenth century under the title *Nomimon kata stoicheion* (= a legal book in alphabetical order). The latter is called *Synopsis Basilicorum Minor*.

Editions: *S. B. Maior:* Zachariae, *Jus Graeco-Romanum* 5 (1869); J. and P. Zepos, *Jus Graeco-Romanum* 5 (Athens, 1931).—*S. B. Minor:* Zachariae, *op. cit.* 2 (1851); Zepos, *op. cit.* 6 (Athens, 1931).—J. A. B. Mortreuil, *Histoire du droit byzantin* 2 (1844) 435, 3 (1846) 315.

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Tabellae. Wax covered wooden tablets on which the voters in a popular assembly recorded their vote in legislative and jurisdictional matters through appropriate abbreviations, such as A. C, U.R. In elections of magistrates votes also were made on tablets on which the names of the candidates were inscribed. The pertinent rules concerning the use of tablets in voting = *leges tabellariae*.

Liebenam, *RE* 4, 692; Lafaye, *DS* 5, 5.

Tabellariae leges. See TABELLAE, LEGES TABELLARIAE.

Tabellarius. A messenger (courier) charged with the delivery of private letters (*tabellae*). The term seems to have been applied also to officials of the CURSUS PUBLICUS (post service) concerned with the movement of the official correspondence.—See STATIO.

Schroff, *RE* 4A; Lafaye, *DS* 5.

Tabellio. A private, professional person who drew up written documents for private individuals. The jurists and lawyers advised their clients about legal problems; the *tabelliones* assisted them in writing legal documents (testaments, transactions) and applications (*libelli, preces*) to be addressed to the emperor or higher officials. The *tabelliones* exercised their profession on public places (*fora*, markets) or in offices

(*stationes*) assisted by clerks and secretaries (*scribae, notarii*). Their activity was controlled by governmental officials who were authorized to inflict penalties for fraud or negligence or for cooperation in illicit transactions. Justinian required every *tabellio* to obtain official permission (*auctoritas*), and settled rules about the formalities to be observed by a *tabellio* in his work (C. 4.21.17, A.D. 528, Nov. 44). In the case of a dispute between the parties, the *tabellio* was obliged to testify about the conformity of the document with the transaction concluded with his cooperation.—The ceiling-price schedule issued by Diocletian (see EDICTUM DIOCLETIANI DE PRETIIS) fixed the fees to be paid to a *tabellio*, by the lines of the written document.—See INSTRUMENTUM, TABULARIUS.

Sachers, *RE* 4A; Lécrivain, *DS* 5; Rota, *NDI* 12; M. Tardy, *Les tabelliones romains* (Thèse Bordeaux, 1901); T. Pfaff, *Tabellio und Tabularius*, 1905; H. Steinacker, *Die antiken Grundlagen der frühmittelalterlichen Privaturkunde* (1927) 79; A. Segrè, *BIDR* 35 (1927) 87; J. C. Brown, *Origin and early history of the office of notary* (Edinburgh, 1936) 17; Berger, *Jour. of Juristic Papyrology* 1 (1945) 37 (= *BIDR* 55–56, Post-Bellum [1951] 120).

Taberna. A shop used for the sale of merchandise or for an industrial or commercial activity. *Taberna argentaria* = a banker's shop. Usually, *tabernae* were built by private individuals on public ground along streets and roads or in the vicinity of marketplaces, with the permission of local authorities. The builder was permitted to transfer the use of the *taberna* to another person.

Schneider, *RE* 4A, 1864; Kübler, *ibid.* 929; Chapot, *DS* 5.

Tabernarius. The owner of a TABERNA. *Tabernarius* (or *tabernaria*) was also the keeper of an inn-tavern.

Schneider, *RE* 4A.

Tabula (tabulae). A tablet used for writing, in both public and private life. See TABULAE CERATAE. The administration used *tabulae* of bronze or of wood covered with white paint (see ALBUM) for public announcements, such as publication of laws, the praetorian Edict, and imperial enactments (see PROMULGATIO) and in public offices for records, registration, accounting books, documents, etc. See TABULAE PUBLICAE. In private life the use of *tabulae* (in the plural, since normally two tablets were joined together, see DIPTYCHUM) was widespread: in the household for notes on income and expenses (see CODEX ACCEPTI ET EXPENSI), for records of the family history, in banking for account books, and generally for all kinds of transactions and legal acts. Thus the term *tabula* occurs in connection with the pertinent contractual relation (*tabula emptionis, tabula cautionis, tabula contractus, tabula chirographi*, and the like). The most frequent use is *tabulae testamenti* = a testament.—See TESTIMONIUM PER TABULAS.

Sachers, *RE* 4A; Lafaye, *DS* 5; H. Steinacker, *Die antiken Grundlagen der frühmittelalterlichen Urkunde* (1927) 82.

Tabula Bantina. See LEX LATINA TABULAE BANTINAE.

Tabula Hebana. See DESTINATIO.

Coli, *Parola del Passato* 6 (1951) 433; *idem, Iura* 3 (1952) 90; Staveley, *Am/Philol* 74 (1953) 1.

Tabula Heracleensis. See LEX IULIA MUNICIPALIS.

Tabula picta. See PICTURA.

Tabulae censoriae. Registers made by the censors during the registration of the population (see CENSUS). The *tabulae censoriae*, also called *libri censorii*, were first preserved in the censors' office, but were later transferred to the state archive (see AERARIUM). *Tabulae censoriae* actually comprised all documents connected with the activity of the censors, in particular the contracts concluded by them with private persons (contractors) concerning professional services rendered to the state.—See CENSORES, TABULAE IUNIORUM.

Tabulae ceratae. Wooden tablets covered with wax on which writing was done with a stylus. Syn. *tabulae ceraeque*. On the use of such tablets for documents, see TABULA, DIPTYCHUM, TRIPTYCHUM. Many such tablets have been preserved in the mines of Transylvania Pompei, and in Herculaneum.

Lafaye, *DS* 5, 12; Editions: in the *Corpus Inscriptionum Latinarum* and in the collections of pre-Justinian sources (*Fontes*, see General Bibliography, Ch. XII), the most recent one by Arangio-Ruiz, *FIR* 3 (1943). For the wax tablets of Herculanum: Maiuri, *La parola del passato* 1 (1946/7) 373, 8 (1948) 165; Pugliese-Carratelli, *ibid.* 1, 379; Arangio-Ruiz, *ibid.* 8 (1948) 129; *idem, RIDA* 1 (1948) 9.—P. Krüger, *Gesch. der Quellen*[2] (1912) 267.

Tabulae communes municipii. Account books concerning the administration of municipalities. They also contained records of contracts concluded with private persons.

Tabulae dotales (dotis). See INSTRUMENTUM DOTALE, TABULAE NUPTIALES.

Tabulae duodecim. See LEX DUODECIM TABULARUM.

Tabulae honestae missionis. See MISSIO, DIPLOMA MILITARE.

Lammert, *RE* 4A.

Tabulae iuniorum. Registers of young men to be called to military service. The *tabulae* were a part of the TABULAE CENSORIAE.—See IUNIORES.

Tabulae nuptiales. A written marriage contract. Its usage appears as early as the beginning of the Principate. The contract was not a requisite for the validity of the marriage. It contained among other things provisions concerning the dowry, its constitution, and restitution when the marriage would be dissolved. The *tabulae nuptiales* acquired particular importance in Justinian's law (C. 5.27.10, A.D. 529) inasmuch as children born of a non-marital union of two persons who later made an *instrumentum dotale* (generally considered a proof of the existence of a marriage), were regarded as legitimate. Justinian also made a written marriage contract mandatory for some marriages (e.g., with a slave [Nov. 22.11; 78.3], with actresses or their daughters). Syn. *tabulae*

matrimoniales, instrumentum nuptiale.—See INSTRUMENTUM DOTALE.

Kübler, *RE* 4A, 1949; Castelli, *SDHI* 4 (1938) 208; J. P. P. Levy, *RDH* 30 (1952) 468.

Tabulae patronatus. See PATRONUS MUNICIPII.

Tabulae primae. See TESTAMENTUM PUPILLARE.

Tabulae publicae. Tablets used in public administration, in particular records of the official activities of the magistrates. When the year of service of a magistrate was over, his official *tabulae* were transferred to the AERARIUM POPULI ROMANI which served as a general state archive under the supervision (*cura tabularum publicarum*) of the quaestors. In the Principate the archive was under the control of *curatores tabularum publicarum* who later were replaced by *praefecti*.

Kornemann, *RE* 4A.

Tabulae quaestoriae. The account books of the quaestores, concerning financial administration.

Tabulae secundae. See TESTAMENTUM PUPILIARE.

Tabulae signatae (septem sigillis). A written testimony signed and sealed by (seven) witnesses to serve as evidence that a transaction was concluded or that a legally important event happened.—See TESTIMONIUM PER TABULAS, TESTATIO.

Sachers, *RE* 4A, 1885; Kaser, *RE* 5A, 1027; Lécrivain, *DS* 5, 155; Brassloff, *ZSS* 27 (1906) 217.

Tabulae testamenti. (Or simply *tabulae*.) A written testament.—D. 37.2; 38.6.—See TESTAMENTUM, BONORUM POSSESSIO SECUNDUM TABULAS, BONORUM POSSESSIO CONTRA TABULAS.

Archi, *St Per* 26 (1941) 63.

Tabulae triumphales. See TRIUMPHUS.

Tabularium. An archive in which documents (*tabulae*) were kept. The central archive was the AERARIUM POPULI ROMANI. See TABULAE PUBLICAE. In addition, there were several special *tabularia*, as, e.g., one in the temple of Ceres for *plebiscita* and *senatusconsulta*. *Tabularium Caesaris* = a general archive for the imperial administration, the emperor's correspondence, reports from provincial governors, and the like. In the provinces there were a special *tabularium* for the records of the provincial administration and a *tabularium principis* (*Caesaris*) chiefly concerned with the financial administration the imperial domains included. The latter was called also *tabularium publicum*. The municipalities had a *tabularium civitatis*.

Sachers, *RE* 4A; Lafaye, *DS* 5; Del Prete, *NDI* 12, 1; Richmond, *OCD*.

Tabularium castrense. A special archive for military administration. In the Empire it was a part of the imperial archive. *Tabularium legionis* = the archive of a legion.

Tabularius. A subordinate official in the fiscal administration, chiefly concerned with taxes. Originally slaves (*servi publici*), later freedmen, occupied the posts of *tabularii* who were active in the various branches of the general and financial administration (*rationes*) and subject to a chief, *praepositus tabulariorum*. They were organized as a *collegium*. *Tabularii* were also found in provincial and municipal administration as well as in the army. Their connection with the archives and public records in the various offices (hence their official title), their collaboration in drawing up public documents in the different domains of public administration, and their experience in such work led in the later Empire to their being permitted to assist private persons in writing documents. The activity of *tabularii* in the private field became similar to that of private notaries (TABELLIONES). In post-Justinian times there was no difference between *tabelliones* and *tabularii*.—C. 10.71.

Sachers, *RE* 4A; Lafaye, *DS* 5; L. Piaff, *Tabellio und tabularius*, 1905; H. Steinacker, *Die antiken Grundlagen der frühmittelalterlichen Privaturkunde*, 1927, 78.

Tacere. To be silent, to give no answer. In classical law there were no strict rules about the significance of the silence of a person who gave no answer in court when questioned by a magistrate or judge. With regard to CONFESSIO IN IURE the jurists assumed that "he who is silent does not confess at all, but it is true that he does not deny" (D. 11.1.11.4). In Justinian's Digest the compilers promoted this opinion to a general rule by placing it in the final title "On legal rules" (D. 50.17.142). Only with reference to INTERROGATIO IN IURE was silence on the part of a person interrogated by the magistrate considered a contempt of court and interpreted in his disfavor.—In certain contractual relations the silence of a party could be regarded as consent in particular when the renewal of an agreement was at issue; see SILENTIUM, TACITE.

Tacite. Secretly, not expressly stated, self-understood. Some clauses are assumed to be agreed upon (*tacite inesse*) if the parties do not exclude them. Thus, e.g., in a pledge of rustic lands it is self-understood that the proceeds (*fructus*) are also pledged.—See TACERE, SILENTIUM, and the following items.

Tacitum fideicommissum. A *fideicommissum* based on a secret agreement between the testator and the heir to the effect that after the testator's death the heir was to deliver the legacy to an incapable person. Such an agreement, concluded in order to defraud the law, was void, the thing involved was seized by the fisc, and the heir became INDIGNUS and was excluded from any benefit under the testament.

Tacitum pignus (or tacite contractum). See HYPOTHECA TACITA.—C. 8.14.

Taciturnitas. See SILENTIUM.

Tacitus. See HYPOTHECA TACITA. RECONDUCTIO, CONSENSUS, and the foregoing items.

Tacitus consensus omnium (or populi). Alleged as the foundation of customary law.—See CONSUETUDO, MORES.

Talio. Retaliation, infliction of the same injury on the delinquent as that done by him. *Talio* was a kind of private vengeance which was permitted under the earliest law. The institution is already established in the Twelve Tables (VIII 2) as a sanction in the case of MEMBRUM RUPTUM. Retaliation was carried out by the injured person himself or in the case of his inability by his nearest relative. The parties might, however, agree on a pecuniary compensation to be paid by the offender (*pacisci de talione redimenda*), according to the Twelve Tables; in this case the application of *talio* was excluded. In the penal law of the later Empire penalties for certain crimes are somewhat reminiscent of the ancient idea of retaliation, e.g., in case of arson the culprit was punished by death through burning; see CREMATIO.

Herdlitzka, *RE* 4A; Jolowicz, *The assessment of penalties in primitive law*, in *Cambridge Legal Essays* (1926) 203; Genzmer, *ZSS* 62 (1942) 122.

Talis. When used with reference to someone or something (*tale*) mentioned before, instead of *is* (*id*), this is not classical Latin. It occurs frequently in interpolated passages.

Guarneri-Citati, *Indice*[2] (1927) 86.

Tangere. To touch. The verb appears in the definition of corporeal things: *quae tangi possunt* (= which can be touched upon).—See RES CORPORALES.

Tanta. Justinian's enactment of December 16, 533, by which the Digest was promulgated. The Greek version (not a literal translation) of this constitution is called DEDOKEN (from the initial word). Both constitutions are very instructive for the understanding of the emperor's intentions and the nature of his legislative work, made up of excerpts taken from the writings of the classical jurists.—See DIGESTA IUSTINIANI, DEDOKEN.

Ebrard, *ZSS* 40 (1919) 113.

Tarruntenus Paternus. A Roman jurist of the second half of the second century after Christ. He wrote a treatise *De re militari* (= on military matters) which dealt with tactics and with legal problems connected with the military service. From one excerpt of the work (D. 50.6.7) we know of a long list of professionals who worked for the army and were therefore exempt from public services (*munera*).

Berger, *RE* 4A, 2405; W. Kunkel, *Herkunft und soziale Stellung der röm. Juristen*, 1952, 219.

Taxatio. The establishment of a maximum to which the defendant in a civil trial could be condemned. The limit was expressed in the part of the procedural formula called CONDEMNATIO through a clause starting with the word *dumtaxat* (= not exceeding, only) followed by the indication of the amount which the condemnation could not exceed. The limit could be determined otherwise, by a specification of the fund from which the plaintiff was to be satisfied, e.g., the defendant's *peculium* (*dumtaxat de peculio*). See BENEFICIUM COMPETENTIAE.—Another kind of *taxatio* was in the case of IUSIURANDUM IN LITEM. The judge could impose on the plaintiff as the utmost limit his estimation of the value of the object in litigation.

Kaser, *RE* 5A; Levy, *ZSS* 36 (1915) 64.

Tectum. A roof. *Tectum praestare* (*exhibere*) *alicui* = to grant someone a dwelling. *Sub eodem tecto* = under the same roof, in the same household. The last expression was broadly interpreted by the jurists in connection with the SENATUSCONSULTUM SILANIANUM which submitted to investigation and torture all slaves living *sub eodem tecto* when their master was assassinated and the murdered not discovered.—*Tecta sarta* (from *sarcire*) = roofs well repaired. buildings in good condition. The question as to who is obliged to repair the roof of a house is discussed by the jurists with regard to a usufruct and use (*usus*) (agreed upon or bequeathed) of the house.

O. Karlowa, *Röm. Rechtsgeschichte* 1 (1885) 247.

Telum. A missile, a weapon of any kind. The meaning of the term is discussed by the jurists in connection with the LEX IULIA DE VI PUBLICA, under which an aggressor who used a *telum* against the victim or an armed thief was guilty of violence of a higher degree. There the term was interpreted in the broadest sense; *telum* was anything by which a man could hurt another, "a stone, a piece of wood or iron thrown by hand" (D. 50.16.233.2).—See VIS ARMATA. TURBA.

Temere litigare. See POENAE TEMERE LITIGANTIUM, TEMERITAS.

Temeritas. Rashness, lack of caution, of reflection, in starting a lawsuit or accusing a person of a crime. —See CALUMNIA, POENAE TEMERE LITIGANTIUM.

Chiovenda, *RISG* 26 (1898) 26.

Temo. A recruit-tax, levied primarily on landowners to be used for wages for mercenary soldiers and for payments to be made as commutation for actual service in the army.—See AURUM TIRONUM. *Temonarii* = collectors of the tax.

Kubitschek, *RE* 5A; Humbert, *DS* 1, 579.

Temperare. To moderate, to apply moderation. In the language of the imperial chancery the term is frequently used of the activity of jurisdictional officials in moderating the consequences of a strict application of the law.

Tempestas. A storm. A *tempestas* is among those unforeseen accidents (*casus fortuiti*), like inundation (*vis fluminis* = flood) which were accepted as an excuse for non-appearance in court.

Templa. Places (edifices) in which solemn sacrifices (e.g., *auspicia*) were celebrated. The establishment and surveyance of *templa* were duties of the AUGURES. —See SACRIFICIUM.—*Templa* in the later Empire = churches.—C. 11.70; 71; 79; 7.38.

Wissowa, *RE* 2, 2337; Dorigny, *DS* 5; Blumenthal, *Klio* 27 (1934) 1.

Templa pagana. Pagan temples. They were ordered closed by Constantine (C. 1.11.1. A.D. 354).

Tempora. When referring to certain procedural institutions, terms fixed by law, within which certain remedies are available to parties involved in a legal controversy (e.g., for an action, an appeal, an interdict, a *restitutio in integram*).—C. 2.52; 7.63.

Temporalis (temporarius). Limited in time (*quod tempore finitur*), continuing for a limited time. Ant. PERPETUUS.—See ACTIONES TEMPORALES, EXCEPTIONES DILATORIAE.

Tempus. Time, a period. *Certum tempus* = a fixed day (*dies*) or a fixed interval of time within which (*intra certum tempus*) certain legal acts were to be performed in order to avoid loss. *Ad (certum) tempus* = for a fixed time. Ant. *in perpetuum* = forever. Justinian's compilers in many instances replaced the terms established for certain legal acts in earlier law by colorless expressions, such as *tempus legitimum, statutum, constitutum* (= legal, established time) thereby adopting the older texts to later legislation by which the pertinent terms were changed.—See PRIOR TEMPORE POTIOR IURE, ACCESSIO TEMPORIS, STATUTUM TEMPUS, TEMPORALIS, PLUSPETITIO. and the following items.

Pagge. *NDI* 12. 258 (*s.v. termini*); Milone. *Dottrina romana del computo del tempo, ANap* 1912; Guarneri-Citati, *Indice*[2] (1927) 87.

Tempus ad deliberandum (deliberationis). At the request of the creditors of an inheritance, the praetor could impose on the heir (*heres voluntarius*) a fixed term, normally one hundred days in which to decide whether or not to accept the inheritance.—See DELIBERARE.—D. 28.8; C. 6.30.

Tempus continuum. A period of time computed according to the calendar without the omission of any days. Ant. *tempus utile*.—See DIES CONTINUI, ANNUS CONTINUUS.

Tempus iudicati. The period of time granted to a defendant to comply with the judgment-debt (*iudicatum*). The Twelve Tables fixed the term at thirty days (*triginta dies*); see DIES IUSTI. In the *cognitio extra ordinem* the official who rendered the judgment could settle another period. In Justinian law the *tempus iudicati* was extended to four months.—See IUDICATUM.

Tempus legitimum. See LEGITIMUS, TEMPUS.

Tempus lugendi. See LUCTUS, SUBLUGERE.

Tempus statutum (tempora statuta). See STATUTUM TEMPUS, TEMPUS.

Tempus utile. An interval of time in which certain days are not computed, to wit, days in which the action which had to be accomplished during a fixed time could not be taken. The reasons were either personal (captivity of the person who had to perform the action, his absence in the interest of the state, sickness, and the like) or official when judicial activity of the courts were suspended (see DIES NEFASTI) or the magistrate before whom the action was to be performed could not be reached. Ant. *tempus continuum*.—See ANNUS UTILIS, DIES UTILES, IUSTITIUM.

Kübler, *RE* 5A; *NDI* 12, 1; Ubbelohde, *Berechnung des t. u. bei honorarischen Temporalklagen*, 1891.

Temulatio. Drunkenness.—See IMPETUS.

Tenere (aliquid). To hold a thing, to have physical power over a thing.—See DETENTIO.

Tenere. (Intransitive.) To be legally valid (e.g., *obligatio, stipulatio tenet*).

Teneri. To be liable (under a statute = *lege*, under a *senatusconsultum* = *senatusconsulto*), to be suable (*actione, interdicto*).

Frese, *ACDR* Roma 2 (1935) 241.

Tenor. The content, text of a statute or a senatusconsultum, a legal rule.

Tenuiores. See HUMILIORES. Ant. HONESTIORES.—See COLLEGIA FUNERATICIA.

Cardascia, *RHD* 28 (1950) 308.

Terentius Clemens. A little known jurist of the second century after Christ, author of an extensive treatise on the LEX IULIA ET PAPIA (in 20 books). He is not cited by later jurists, but his work was used by Justinian's compilers.

Berger, *RE* 5A, 650.

Tergiversatio. (From *tergiversari*.) The withdrawal of the accuser from a criminal trial. The accused could demand that the trial be brought to an end so that he could sue the accuser for *calumnia*. The *Senatusconsultum Turpillianum* (A.D. 61) fixed a fine and declared the accuser who deserted the accusation (*tergiversator*) to be iniamous. The accuser's withdrawal could be declared expressly during the trial or maniiested by his non-appearance in court. He might, however, justify his withdrawal by a reasonable excuse. Syn. *deserere, desistere, destituere accusationem*.—D. 48.16.—See CALUMNIA.

Taubenschlag. *RE* 5A; Lécrivain, *DS* 5; M. Wlassak, *Anklage und Streitbefestigung im Kriminalrecht der Römer, SbWien* 184. 1 (1917) 199; Levy, *ZSS* 53 (1933) 211; Lauria, *St Ratti* 1934, 124; Bohacek, *St Riccobono* 1 (1936) 361.

Terminare. To fix the boundaries of a municipality or of landed property belonging to a public corporate body or a private person through boundary stones (*terminus, cippus, lapis*). The judgment of arbitrators in a boundary dispute between two communities in the district of Liguria is preserved in an inscription, called *Sententia Minuciorum*.

Fabricius. *RE* 5A; Toutain, *DS* 5; for *Sent. Minuciorum:* Arangio-Ruiz, *FIR* 3 (1943) no. 163 (Bibl.).

Terminare litem. To end a controversy by judgment in a trial or by arbitration.

Termini. Boundary stones indicating the borders of a landed property. Syn. *cippus, lapis*.—D. 47.21.—See TERMINARE, ACTIO FINIUM REGUNDORUM, TERMINARE.

Toutain. *DS* 5, 121; Holland, *Amer. Jour. of Archeology* 37 (1933) 549.

Terminum movere (termini motio). To remove a boundary stone in order to change the existing ownership situation of landed property. According to an ancient provision (attributed to King Numa Pompilius), destruction or disarrangement of such stones which were considered as being under religious sanction, made the wrongdoer an outlaw (see SACER). An agrarian law by Caesar and enactments by the emperors Nerva and Hadrian ordered severe penalties for *terminum movere*. Syn. *terminum avellere, auferre*.—D. 47.21.—See ACTIO DE TERMINO MOTO.

Taubenschlag, *RE* 5A; Lécrivain, *DS* 5.

Terrae motus. An earthquake. It is reckoned among the cases of *vis maior;* see CASUS FORTUITUS.

Terrenus. See IUGATIO TERRENA.

Terribiles libri. The "terrible books." Justinian's term for books 47 and 48 of the Digest (*Tanta*, 8c) which contain rules on crimes and penalties.

Territorium. The territory of a community or the whole land assigned to a colony; see UNIVERSITAS AGRORUM. *Territorium* is also the territory in which a magistrate exercised his jurisdictional activity. "A magistrate who exercises jurisdiction beyond his territory may be disobeyed with impunity" (D. 2.1.20).

Toutain, *DS* 5.

Terror. See METUS.

Tertullianus. A little known jurist represented in Justinian's Digest by five texts, author of *Quaestiones* and a monograph on *Peculium castrense*. His identification with the contemporaneous Church Father, Tertullianus (middle of the third century), often assumed, is very doubtful.

Steinwenter, *RE* 5A, 844; Koch, *ibid.* 822; Kübler, *Lehrbuch der Gesch.*, 1925, 278 (Bibl.); De Labriolle, *Tertullien jurisconsulte*, *NRHD* 30 (1906) 5; W. Kunkel, *Herkunft und soziale Stellung der röm. Juristen*, 1952, 236.

Tessera. A square tablet, a token used as a proof of identity, a ticket. *Tesserae* for public spectacles (*ludi*) were distributed to poor people by the *curatores ludorum*.—See the following items.

Lafaye, *DS* 5, 134; Rostowzew, *Röm. Bleitesserae*, 1905.

Tessera frumentaria. A token for a certain quantity of grain (five *modii* monthly) which gratuitously was distributed to needy people by the government.—See FRUMENTATIO.

Rostowzew, *RE* 7, 179; Regling, *RE* 5A, 852; Cardinali, *DE* 3, 271; Lafaye, *DS* 5, 133; Rota, *NDI* 12, 2; Van Berchem, *Distributions de blé à la plèbe romaine* (1939) 85.

Tessera hospitalis. A token of identity which permitted recognition of a stranger (*hospes*) to whom as an individual or to whose nation Rome granted HOSPITIUM.

Tessera militaris. A token of identity given to soldiers of a military unit through which they could be distinguished from the enemy and recognized as members of the Roman army. The *tessera* were provided with a catchword. An officer of lower rank charged with the distribution of the *tessera* = *tesserarius*.

Lafaye, *DS* 5, 135; Lammert, *RE* 5A.

Tessera nummaria. Similar to the TESSERA FRUMENTARIA. It gave the right to a sum of money which some emperors used to distribute to the people as a gift.—See MISSILIA.

Cardinali, *DE* 3, 271.

Tessera nummularia. A tablet, attached to a sealed bag with coins, certifying that the coins are genuine. The statement was issued by a mint officer; see NUMMULARIUS, SPECTATOR.

Regling, *RE* 13; Laum, *RE* Suppl. 4, 78; Herzog. *Abhandlungen der Giessener Hochschulgesellschaft* 1 (1919); Cary, *JRS* 13 (1923) 110.

Tesserarius. See TESSERA MILITARIS.

Testamentarius. (Adj.) Pertaining to, connected with, or established in, a testament (e.g., *hereditas, libertas, manumissio, tutor, tutela*). *Lex testamentaria* = a statute which was concerned with the making of a testament; see LEX FURIA, FALSUM (for *Lex Cornelia*).

Testamentarius. (Noun.) One who wrote a testament for another. Syn. *scriptor testamenti*.—See SENATUSCONSULTUM LIBONIANUM, QUAESTIO DOMITIANA.

Testamenti apertura. See APERTURA TESTAMENTI.

Testamenti factio. The legal capacity of a person to make a testament (*ius testamenti faciendi*). This *testamenti factio* (called in the literature by the non-Roman term, *testamenti factio activa*) is to be distinguished from the capacity to be instituted heir in a testament or to be rewarded with a legacy (*testamenti factio passiva*). For active *testamenti factio* the Roman juristic language used the expression *testator habet testamenti factionem cum aliquo* (*cum herede, cum legatario*) for the so-called *testamenti factio passiva: heres* (*legatarius*) *habet testamenti factionem cum testatore. Testamenti factio* also refers to the ability to witness a testament of a specific person. *Testamenti factio* was required on the part of the testator both when the testament was being made and at the time of his death. A testament made by a person without capacity did not become valid if he later acquired it. See FICTIO LEGIS CORNELIAE. Those unable to make a testament were slaves (except public slaves, *servi publici*, who could dispose of half their *peculium* by a last will), persons *alieni iuris* as long as they were under paternal power, persons below the age of puberty, lunatics (see FURIOSUS), spendthrifts (see PRODIGUS) and women (see COËMPTIO FIDUCIAE CAUSA). From the time of Hadrian women were permitted to make a testament with the consent of their guardians (see TUTELA MULIERUM). In later postclassical law apostates and heretics were excluded from making a testament (see APOSTATA, HAERETICI) and from taking under one. Only Roman citizens could be instituted heirs in the testament of

a Roman citizen. For restrictions concerning women, see LEX VOCONIA. Persons *alieni iuris* could be heirs and legatees, but whatever they acquired went to their *pater familias*. A testator's slave could be instituted as an heir only *cum libertate*, i.e., if he was freed in the same testament. Another man's slave acquired all that he received from a testament for his master, provided that the latter had *testamenti factio passiva*. The institution of "uncertain persons" (see PERSONAE INCERTAE) was not permitted. Exceptions in favor of the state, municipalities, charitable institutions (see PIAE CAUSAE) and *collegia*, were gradually admitted. See also POSTUMI, DII, ECCLESIA. For the ability to witness a will, see TESTIS AD TESTAMENTUM ADHIBITUS.—Inst. 2.12; D. 28.1.

De Crescenzio, *NDI* 12. 1. 964; Schulz, *ZSS* 35 (1914) 112; H. Krüger, *ZSS* 53 (1933) 505; Volterra, *BIDR* 48 (1941) 74; B. Biondi, *Istituti fondamentali* 2 (1948) 6.

Testamentum. A solemn act by which a testator instituted one or more heirs to succeed to his property after his death. The appointment of an heir was the fundamental element of a testament (see INSTITUTIO HEREDIS); a last will in which an heir was not appointed was not valid. A testament could contain other dispositions, such as legacies (*legata, fidcicommissa*), manumission of slaves, appointment of a guardian. Since a testament "derived its efficiency from the institution of an heir" (Gaius, Inst. 2.229), all dispositions made in the testament prior to the institution of the heir were null under the classical law. This principle was abolished by Justinian. For the various forms and types of testaments, see the following items. A will could be revoked by a later one; see REVOCARE TESTAMENTUM. The later *testamentum* invalidated the first since nobody could leave two testaments. See CODICILLI. The existence of a valid testament excluded the admission of heirs on intestacy. Syn. *tabulae testamenti, tabulae*.—Inst. 2.10; 17; D. 28.1; 29.3; 35.1; C. 6.23. —See TESTAMENTI FACTIO, CONTEXTUS, SUPPRIMERE TABULAS, SENATUSCONSULTUM LIBONIANUM, QUERELA INOFFICIOSI TESTAMENTI, LEX VOCONIA, BONORUM POSSESSIO SECUNDUM TABULAS, NUNCUPATIO, MANCIPATIO FAMILIAE, FAVOR TESTAMENTI, VOLUNTAS DEFUNCTI, LINUM, MANUMISSIO TESTAMENTO.

Kübler, *RE* 5A; Cuq, *DS* 5; Arangio-Ruiz, *FIR* 3 (1943) no. 47 ff.; C. Appleton, *Le testament romain*, 1903 (= *Rev. gén. de droit* 27, 1902/3); Liebenthal, *Ursprung und Entwicklung des röm. Testaments*, 1914; A. Suman, *Favor testamenti e voluntas testantium*, 1916; Lévy-Bruhl, *NRH* 44 (1920) 618; 45 (1920) 634; Goldmann, *ZSS* 51 (1931) 223; David, *ZSS* 52 (1932) 314; F. Wieacker, *Hausgenossenschaft und Erbeinsetzung. Über die Anfänge des röm Testaments, Festschr Siber* 1940; Volterra, *BIDR* 48 (1941) 74; B. Biondi, *Successione testamentaria*, 1943; Van Oven, in the collective work *Het testament* (Arnhem, 1951) 9.

Testamentum apud acta conditum. A *testamentum* made before a judicial or municipal authority. An official record was made and entered in the archives of the office.

Testamentum calatis comitiis. See COMITIA CALATA. The solemn performance before the popular assembly was a kind of adoption to have an heir in the event of the testator's death; its primary purpose was to secure his own and his ancestors' worship.

B. Biondi, *Successione testamentaria*, 1943, 47; C. Cosentini, *St sui liberti* 1 (1948) 17; M. Kaser, *Das altröm. Ius* (1949) 148 (Bibl.).

Testamentum caeci. The testament of a blind man. Under the classical law he could make a testament *per aes at libram*. In later law a written *testamentum* was permitted in the presence of an additional eighth witness (or a city official, *tabularius*) who wrote down the testament as dictated by the testator before seven witnesses.

Testamentum desertum. See TESTAMENTUM DESTITUTUM.

Testamentum destitutum. A testament, all the heirs of which died before the testator or before the acceptance of the inheritance, or refused to accept it. Syn. *testamentum desertum* (= an abandoned testament). In such a case succession on intestacy took place.—See LEX VOCONIA.

Testamentum duplex. See TESTAMENTUM PUPILLARE.

Testamentum falsum. A forged testament. It is null since it does not express the will of the testator.—See FALSUM, SENATUSCONSULTUM LIBONIANUM.

B. Biondi, *Successione testamentaria* (1943) 590.

Testamentum holographum. A testament written by the testator in his own hand. In classical law such a testament was subject to all the requirements of a written testament. Only an imperial constitution (Nov. 21.2 of Theodosius II and Valentinian III of A.D. 446) recognized the validity of such a testament without witnesses. The constitution was, however, not accepted into Justinian's Code.—See TESTAMENTUM PARENTIS INTER LIBEROS, TESTAMENTUM MUTI.

Testamentum imperfectum. A testament in which the rules of form were not fully satisfied, in particular when the witnesses did not sign or seal it. It was void.

Testamentum in procinctu. A testament made by a soldier when a battle was imminent or, at least, when the army was in a permanent camp.

Zocco-Rosa, *RISG* 35 (1903) 302; *idem, Il t. i. p.*, 1910; C. Cosentini, *St sui liberti* 1 (1948) 21.

Testamentum iniustum. A testament made by a person who backed TESTAMENTI FACTIO or one in which an heir (*heres*) was not appointed. Ant. *testamentum iustum*.—D. 28.3.

Testamentum inofficiosum. See QUERELA INOFFICIOSI TESTAMENTI, TESTAMENTUM RESCISSUM.

Testamentum inutile. An invalid testament.—See TESTAMENTUM RUPTUM, TESTAMENTUM NULLUM.

Testamentum irritum. A testament which was valid when the testator made it, but which became void

because he lost his capacity (TESTAMENTI FACTIO) later (e.g., through *capitis deminutio* when he lost liberty or citizenship).—D. 28.3.

Testamentum iure factum. A testament made by a testator able to make a will (see TESTAMENTI FACTIO) with all the formalities prescribed for its validity observed.

Testamentum iure praetorio factum. See TESTAMENTUM PRAETORIUM.

Testamentum iustum. See TESTAMENTUM INIUSTUM.

Testamentum militis. A soldier's testament. It was exempt from all formalities. Soldiers might make a testament "in any way they want and can" (D. 29.1.1 pr.). Even a will written by a soldier, dying in battle, with his blood on the scabbard of his sword or with the point of the sword on the sand, was valid. Several legal rules which were binding with regard to all other testaments were not applicable to a *testamentum militis*. A soldier could make two testaments, and he could dispose of a part of his property while the remainder went to his heirs on intestacy. Neither *querela inofficiosi testamenti* nor *Lex Falcidia* were applicable to a soldier's testament. A *testamentum militis* was the testament the soldier made during his service. It was valid for one year after his discharge. Justinian made, however, an important change, restricting the privileges to soldiers engaged in a battle with the enemy. Syn. *testamentum iure militari factum*.—Inst. 2.11; D. 29.1; 37.13; C. 6.21.
—See TESTAMENTUM IN PROCINCTU.
Cuq, *DS* 5, 140; Kübler, *RE* 5, 1000; Arangio-Ruiz, *BIDR* 18 (1906) 157; Calderini, *Atene e Roma*, 1915, 259; Tamassia, *AVen* 85 (1927); Weiss, *ZSS* 45 (1934) 567; Guarino, *RendLomb* 72, 2 (1938/9) 355; A. Haegerstroem, *Der röm. Obligationsbegriff* 2 (1943) Beil. 52; B. Biondi, *Successione testamentaria* (1943) 73; S. v. Bolla, *Aus röm. und bürgerlichem Erbrecht* (1950) 1.

Testamentum muti (surdi). A testament of a dumb (or deaf) man. It should be written in his own hand according to an enactment by Justinian.

Testamentum nullum. A testament which is void from the beginning, e.g., when the testator lacked TESTAMENTI FACTIO, when the prescribed forms were not observed, or when there was no appointment of an heir (see HEREDIS INSTITUTIO).

Testamentum parentis inter liberos. A testament by which a father (*pater familias*) disposed of his property in favor of his children alone. Such a testament could be made without witnesses if the testator wrote it in his own hand and gave the exact names of the heirs and their shares. It was a different act when a father ordered the way in which his property was to be divided among his children on intestacy (*divisio inter liberos*). This was no testament at all and the document had to be signed by the father and the children.
Rabel, *Elterliche Teilung. Festschr zur 49. Versammlung deutscher Philologen*, Basel, 1907; B. Biondi, *Successione testamentaria* (1943) 70; Solazzi, *SDHI* 10 (1944) 356.

Testamentum per aes et libram. See MANCIPATIO FAMILIAE, FAMILIAE EMPTOR, NUNCUPATIO, PER AES ET LIBRAM, TESTIMONIUM DOMESTICUM.
Kamps, *RHD* 15 (1936) 142; Amelotti, *SDHI* 15 (1949) 34.

Testamentum per nuncupationem. See NUNCUPATIO. According to the civil law (*ius civile*) the oral declaration made before seven witnesses should be pronounced in a prescribed formula (Gaius, Inst. 2.104) in which the testator referred to his detailed written dispositions. The praetor, however, granted BONORUM POSSESSIO SECUNDUM TABULAS even when the prescribed formula was not pronounced. Later imperial legislation recognized a merely oral testament (*testamentum per nuncupationem*), without any written document, when the testator announced his will and appointed heirs in the presence of witnesses. An heir thus appointed = *heres nuncupatus*.—See TESTAMENTUM PER AES ET LIBRAM.
Solazzi, *SDHI* 17 (1951) 262, 18 (1952) 212.

Testamentum (iure, rite) perfectum. See PERFECTUS, TESTAMENTUM IMPERFECTUM.

Testamentum pestis tempore. A testament made in time of pestilence. The witnesses were not bound to be present simultaneously.

Testamentum posterius. A later testament made by a testator in order to revoke an earlier one. See REVOCARE TESTAMENTUM. The first testament was "broken" (TESTAMENTUM RUPTUM).
Kübler, *RE* 5A, 1008.

Testamentum praetorium. A testament valid according to the praetorian law (but invalid under civil law). The praetorian Edict granted BONORUM POSSESSIO SECUNDUM TABULAS if some of the formalities required by *ius civile* (*mancipatio familiae, nuncupatio*) had not been observed and a written will was made in the presence of seven witnesses and sealed by them.
—See TESTAMENTUM PER NUNCUPATIONEM.
B. Biondi, *Successione testamentaria* (1943) 49.

Testamentum principi oblatum. A testament consigned to the emperor. Later, deposition in a public archive sufficed.

Testamentum pupillare. That part of a father's testament in which he made a testament for a child then under his paternal power and below the age of puberty for the event that the child died before reaching puberty. See SUBSTITUTIO PUPILLARIS. Later, it became customary to write down the child's testament (*testamentum filii, testamentum pupillare*) in a second, separate document (*tabulae secundae*) in order to avoid the child's heir becoming known when the father's testament was opened upon his death. The prospective heir of the child who would inherit only if the child died before reaching puberty, might be interested in the child's premature death and therefore it was advisable to keep secret the content of the *testamentum pupillare*. In the case of a separate document for the *substitutio pupillaris* the

father's testament is called *testamentum duplex*, the *tabulae secundae* being only a supplement to the real testament which dealt with the succession to the father's property (*tabulae primae*).

B. Biondi, *Successione testamentaria* (1943) 254.

Testamentum rescissum. A testament rescinded as *inofficiosum* as a result of a QUERELA INOFFICIOSI TESTAMENTI.—See RESCINDERE.

Testamentum ruptum. A testament which was "broken" by a later event (e.g., by the birth of a posthumous child who was omitted in the father's testament. see POSTUMUS SUUS) or was revoked by the testator through a later testament; see TESTAMENTUM POSTERIUS.—D. 28.3.

Kübler, *RE* 5A, 1008; Sanfilippo, *AnPal* 17 (1937) 75; De Sarlo, *AG* 142 (1952) 69.

Testamentum ruri conditum. A testament made in the country by a rustic person. In Justinian law such a testament was valid if only five persons were present. If some of the witnesses were illiterate others might sign for them.

Testamentum surdi. See TESTAMENTUM MUTI.

Testamentum tripertitum. A particular type of testament the requirements for which were fixed in a late imperial constitution (C. 6.23.11, A.D. 429): it had to be made without interruption (*uno contextu*, see CONTEXTUS), in the presence of seven witnesses (who had to subscribe and seal it), and, in addition, the testator had to sign it ("*subscripsi*" = "I signed"). If he was illiterate, another could sign for him. The term *tripertitum* (= tripartite), used by Iust., Inst. 2.10.3, derives from the fact that in the formalities mentioned three sources of law are combined: *ius civile*, *ius praetorium* and imperial legislation.

Riccobono, *Archiv für Rechtsphilosophie* 16 (1922) 503.

Testari. To be a witness to a legal act or transaction, to testify, to make a legally important declaration before a witness. Hence *testari* also means to invite another person to be a witness, and consequently to let the witness sign a written document to be used as evidence (*in testatum redigere*). In some texts *testari* is syn. with *testamentum facere*.—See TESTATIO, TESTIS, TESTIMONIUM.—D. 29.6; C. 6.34.

Wenger, *RE* 2A, 2427; Schulz, *JRS* 33 (1943) 61; Kunkel, *ZSS* 66 (1948) 425.

Testatio. A document containing a declaration made in presence of, and signed by, witnesses for the purpose of evidence. *Testatio* is also the oral or written testimony of a witness.—See TESTIS, CONTESTATIO.

Kaser, *RE* 5A, 1030; Vazny, *AnPal* 8 (1921) 481; Taubenschlag, *ZSS* 38 (1917) 255; Weiss, *BIDR* 51/52 (1948) 316; Arangio-Ruiz, *RIDA* 1 (1948) 18; J. P. P. Levy, *RHD* 30 (1952) 433.

Testato. (Adv.) In the presence of a witness or witnesses (e.g., to notify someone of something legally important to another, to summon, to make a declaration). *Testato decedere* (*mori*) = to die after having made a testament. Ant. *intestato*.

Testator (testatrix). One who has made a testament. The wishes of a testator are referred to by expressions like *velle*, *nolle*, *scribere*, *iubere*, *mandare*.

Testificari (testificatio). To testify, to prove through witnesses.—See TESTATIO.

Testimoniales. (*Sc. litterae.*) A written official certificate (in later imperial constitutions).

Testimonium. In a broader sense, any kind of evidence; in a narrower sense, the testimony of a witness; see TESTIS. *Testimonium* of a witness was given in person, normally under oath.—See TESTIMONIUM PER TABULAS.

Kaser, *RE* 5A; Lécrivain, *DS* 5; Berger, *OCD*.

Testimonium domesticum. The testimony of a witness who lived in the household of the person on whose behalf he was testifying. In a *testamentum per aes et libram* persons subject to the paternal power of the testator were excluded from acting as witnesses. In general a *testimonium domesticum* was not considered a probatory evidence.

Testimonium falsum. False testimony. A witness who knowingly gave false testimony in a capital trial was considered a murderer and punished under the *lex Cornelia de sicariis*. The Twelve Tables fixed the death penalty for *testimonium falsum*; the accused was executed by being thrown from the Tarpeian rock (see DEICERE DE SAXO TARPEIO). Under the later law the penalty was exile.—See FALSUM.

Kaser, *RE* 5A, 1053; Taubenschlag, *RE* 5A; Lécrivain, *DS* 5; Pringsheim, *RIDA* 6 (1951) 161.

Testimonium unius. (*Sc. testis.*) The testimony of a single witness. It is without any probatory value. An imperial constitution of A.D. 334 (C. 4.20.9) ordered that the testimony of a sole witness should not be heard at all.

Testimonium per tabulas. A voluntary testimony given extrajudicially in writing. Normally it had little authority except if the witness could not appear in court personally because of age, absence, or bad health.

Testis. A witness. There were witnesses whose presence was necessary for the validity of an act or transaction (e.g., a testament, *mancipatio*, acts *per aes et libram*, etc.) and witnesses in a trial, civil or criminal, who testified about facts. Only Roman citizens above the age of fourteen could witness solemn legal acts. Excluded were persons with certain physical defects which made it impossible for them to perceive actions or words, lunatics, and individuals convicted of crime. The Twelve Tables already contained the rule that a witness to a legal transaction could not afterwards refuse to testify if his testimony was required in a trial. Should he do so, he became unable to serve as a witness in the future and could not ask others to witness his acts (*improbus et intestabilis*). Thus, he lost the ability to make a testament. For solemn acts the number of witnesses was prescribed (usually seven), for other

acts, in which their presence was not required by law but was requested by a party for the purpose of evidence, two witnesses were sufficient. Near kinship with a person involved in the transaction, living with him in the same household (see TESTIMONIUM DOMESTICUM), close friendship or open enmity barred a witness from giving testimony. Descendants were not admitted to testimony in matters concerning their ascendants and *vice versa*; similarly freedmen and their descendants with regard to their manumitters. There were no strict rules for the evaluation of the testimony of witnesses and of other means of evidence. The judges were advised to "explore exactly whether a witness was worthy of confidence" (D. 22.5.3 pr.) through examination of his social situation, his financial condition, his moral reliability (e.g., whether he would do anything for profit) and the like. The directive given by the emperor Hadrian to a high official is characteristic: "you should estimate through the judgment of your mind (*ex sententia animi tui*) what you should assume to be true and what to be no more than barely proved" (D. 22.5.3.3).—D. 22.5; C. 4.20).—See TESTIMONIUM, TESTATIO, SUBSCRIPTIO, INTESTABILIS, VACILLARE, SENATUSCONSULTUM SILANIANUM (concerning testimony of slaves), TORMENTA, ANTESTATUS, LITIS CONTESTATIO. and the following items.

Kaser, *RE* 5A; Lécrivain, *DS* 5, 152; Berger, *OCD* (*s.v. testimonium*); Messina, *Riv. penale* 73 (1911) 278.

Testis ad testamentum adhibitus. A witness present at the making of a testament. The capacity of a person to be a witness to a specific testament is also termed TESTAMENTI FACTIO. The witness had to be invited (see TESTIS ROGATUS)—not forced—to serve and to be present near the testator during the entire act. He should know that it was a will which he witnessed, but the contents could remain unknown to him. At the opening of the testament (see APERTURA TESTAMENTI) he had to recognize the authenticity of his seal. Specific restrictions were imposed with regard to witnesses belonging to the immediate family of the testator. See TESTAMENTUM DOMESTICUM. Women and slaves were excluded. The rules concerning the admission of a person (or persons subject to his paternal power) to witness a testament in which he was instituted as an heir were finally settled by Justinian who excluded them all. Legatees, however, were admitted.—See TESTAMENTUM, QUAESTIO DOMITIANA, SCRIPTOR TESTAMENTI.

Kaser, *RE* 5A, 1041; B. Biondi, *Successione testamentaria* (1943) 59.

Testis idoneus. A person legally able to be a witness. There were general reasons for excluding a person from being a witness in all cases (see TESTIS) and specific reasons which applied only in particular cases, the hindrance being a special relationship between the proposed witness and the acting person or the act itself. See TESTIS, TESTIMONIUM DOMESTICUM, TESTIS AD TESTAMENTUM ADHIBITUS. No one could be a witness if forced or ordered to do so by the acting person.—See TESTIS ROGATUS.

Testis in re propria (sua). "No one is a proper witness in his own matter" (D. 22.5.10).

Testis rogatus. A witness who was requested (not forced or ordered) to be a witness. He had to be informed only about the nature of the act he was to witness.

Texere (textura). For weaving one's wool or another material into another man's cloth, see INTEXERE.

Thalelaeus. A law teacher (probably in Beirut), contemporary with Justinian, author of an extensive commentary on Justinian's Code. His work was abundantly excerpted for the BASILICA, their schoiia and for later Byzantine legal works.

Kübler, *RE* 5A (*s.v.* Thalelaios, no. 4); Berger, *BIDR* 55–56 (1952) 124.

Theatrum. Theatres were public property (*res publicae, res universitatis*) and could not be in private ownership. Admission was free. A person who was prevented from entering a theatre could sue the opponent by *actio iniuriarum* (see INIURIA). An outrage inflicted on a person in a theatre was treated as *iniuria atrox*. But a creditor could summon his debtor to court in a theatre (IN IUS VOCATIO).—See LEX ROSCIA, LEX IULIA THEATRALIS.

Navarre, *DS* 5, 204; A. Guichard, *De la législation du théâtre à Rome* (Thèse Douai, 1880).

Theodorus Scholasticus. Born in Hermoupolis in Egypt (hence he is called *Hermopolitanus* or *Thebanus*), a juristic writer of the second half of the sixth century. He wrote a summary (*index*) of Justinian's Code and an abridged edition of the emperor's Novels (*Epitome, Symtomos Nearon*).

Kübler, *RE* 5A, 1863 (no. 43); Zachariae, *Anecdota* (1843) p. XXII and 7 (edition of the *Symtomos ton nearon diataxeon*); Heimbach, *Basilica* 6 (1870) 80, 88; J. A. B. Mortreuil, *Histoire du droit byzantin* 1 (1843) 306.

Theophilus. A law teacher in Constantinople, one of the most active collaborators of Justinian in the codification of the laws. He was a member of the commission which compiled the first Code and the Digest, and together with Dorotheus he composed the Institutes (INSTITUTIONES IUSTINIANI). He wrote a summary of the initial part of the Digest and a paraphrase of Justinian's Institutes, a work which despite some occasional errors is instructive from different points of view.—See PARAPHRASIS INSTITUTIONUM.

Kübler, *RE* 5A, 2138 (no. 14).

Thesaurensis. An official of the later Empire charged with the administration of public (imperial) storehouses.—See THESAURUS.

Dorigny, *DS* 5, 224; O. Hirschfeld, *Kaiserliche Verwaltungsbeamte*[2] (1905) 308.

Thesauri. (In the Empire.) The treasury of the emperor. It was administered by the *procurator thesaurorum*, in the later Empire by the *comes thesauro-*

rum who was among the high officials in charge of the imperial household.

O. Hirschfeld, *Kaiserliche Verwaltungsbeamte*² (1905) 307.

Thesaurus. A treasure-trove, a valuable movable (primarily money) which had been hidden for so long a time so that its actual owner was unknown and his identity could no longer be established. The finder of a *thesaurus* (*inventor thesauri*) could keep it for himself if he found it on his own land or in a sacred place (*locus sacer* or *religiosus*). If he found it in another's land by accident, only one-half belonged to him and the other half to the landowner. If the *thesaurus* was found in ground which was a *locus publicus*, the finder shared the *thesaurus* with the fisc. A finder who did not report his find to the fisc when the latter was entitled to a half, lost his share and had to pay the entire amount of the *thesaurus* to the fisc. Finding a *thesaurus* in another's land through deliberate search gave the finder no right at all.—C. 10.15.

Kübler, *RE* 6A; Dorigny, *DS* 5; Raverta, *L'acquisto di tesoro*, 1910; Bonfante, *Mél Girard* 1 (1912) 123 (= *Scritti* 2 [1926] 904); Schulz, *ZSS* 35 (1914) 94; Appleton, *St Bonfante* 3 (1930) 1; G. Hill, *Treasure-trove in law and practice* (1936) 5; Biscardi, *StSen* 54 (1940) 297; Düll, *ZSS* 61 (1941) 19; Hubaux and Hicter, *RIDA* 2 (1949) 425.

Thesaurus. (In administrative law.) A storehouse. —See HORREUM, THESAURI.

Tiberis. The river Tiber. For *venditio trans Tiberim* (= selling a free person beyond the Tiber), see SERVUS, ADDICTUS, TRANS TIBERIM.

Tignum iunctum. A beam used for the construction of a house; in a broader sense, any material used for that purpose. According to the rule, *superficies cedit solo* (see SUPERFICIES) the owner of the building became owner of the material used even if it originally belonged to another. The latter could not sue the owner for the recovery of the material as long as the house stood firm; if it collapsed or if the material was separated in some other way, he might then claim his property. He had an action, however, the *actio de tigno iuncto*, against the owner for double the value of the material if the latter was used in bad faith (e.g., if it was stolen). A claim for separation of the material was not permissible. Justinian introduced the IUS TOLLENDI in favor of the owner of the material.—D. 47.3.—See SERVITUS TIGNI IMMITTENDI.

Chapot, *DS* 5; Ehrhardt, *RE* 6A; E. Heilborn, *T. i., plantatio und accessio* (Diss. Breslau, 1907); Riccobono, *AnPal* 3-4 (1917) 445; E. Levy, *Konkurrenz der Aktionen* 1 (1918) 420; R. Monier, *Le t. i.*, 1922; Berger, *St Riccobono* 1 (1936) 623; Pampaloni, *Scritti giur.* 1 (1941, ex 1883, 1885) 217, 485; *idem*, *BIDR* 21 (1909) 205.

Timor. Fear, anxiety. "A groundless fear is no just excuse" (D. 50.17.184).—See METUS.

Tingere. To dye. If one dyed another person's fabric (wool) by applying a product (e.g., purple) of his own, the owner of the material remained owner of the colored stuff.—See FULLO.

Tipoukeitos. A peculiar Byzantine juristic product of the late eleventh century, a repertory, or kind of "table of contents," indicating all the topics dealt with in the BASILICA, in the order of their titles and sections. The origin of the name is the Greek phrase "*ti pou keitai*" (= what is where, *sc.* in the Basilica).

The author was a judge, Patzes.

Recent edition: *M. Kritou tou Patze Tipoukeitos sive Librorum 60 Basilicorum Summarium* 1 (books 1–12, 1914) by Ferrini and Mercati, 2 (books 13–23, 1929) by Doelger, 3 (books 24–38, 1944) by Seidl and Hoermann, in *Studi e Testi*, vol. 25, 51, 107 (Città del Vaticano).—Noailles, *Mél Cornil* 2 (1926) 177; Seidl, *Die Basiliken des Patzes, Fschr Koschaker* 3 (1939) 294; H. Müller, *Der letzte Titel des XX. Buches der Basiliken des Patzes* (Diss. Greifswald, 1940); Berger, *Trad* 3 (1945) 394 (= *BIDR* 55–56 [1951] 277); Wenger, *ibid.* 10 (Bibl.); Seidl, *Byzantinische Ztschr.* 44 (1951) 534.

Tiro. In military service a recruit, a soldier newly enlisted, without sufficient training. The *tirones* were mostly 17 to 20 years of age.—C. 12.43.—DELICTA MILITUM.

Lammert, *RE* 6A; Cagnat, *DS* 5.

Tiro. A beginner in a profession, also in that of a lawyer. *Tiro* was also a young man solemnly introduced in the *forum* by his parents for the first time. On this occasion he wore the TOGA PRAETEXTA (*toga civilis*).

Tirocinium. The state of being a TIRO (a beginner in military service, in a profession or in political life). Hence *tirocinium* is used in the sense of lack of experience.

Regner, *RE* 6A, 1450; S. Cugia, *Profili del tirocinio industriale*, 1922.

Tironatus. See TIROCINIUM.

Tities. See RAMNES.

Schachermeyr, *RE* 6A.

Titii sodales. A college of priests charged with special religious duties (sacrifices), the nature of which is not quite clear.

Weinstock, *RE* 6A; Cagnat, *DS* 5.

Titius (Lucius Titius). A fictitious name frequently used in juristic writings to indicate a party involved in the case under discussion.—See NOMEN.

Tituli ex corpore Ulpiani. (Also called *Epitome Ulpiani* or *Regulae Ulpiani* in the literature.) An apocryphal collection of legal rules, attributed until recent times to Ulpian. It was perhaps written by a later unknown jurist about the end of the third century or shortly thereafter. Many rules of the collection remind one of the Institutes of Gaius.

Edition: F. Schulz, *Die Epitome Ulpiani des Cod. Vat. Reg.* 1128 (1926).—E. Albertario, *Studi* 5 (1937) 491; Volterra, *RSDIt* 8 (1935) 390 (Bibl.); F. Schulz, *History of R. legal science*, 1946, 180.

Titulus. A dedicatory or honorary inscription on a temple, gravestone, or building; a placard placed on a house to indicate that there is an apartment for

rent; a tablet hung on a slave offered for sale in the market. *Titulus* is also the title of a book, of a chapter in a juristic work, or of a section in the praetorian Edict (e.g., *titulus de in ius vocando*).—The word has a specific meaning in connection with the acquisition of ownership, predominantly in the field of USUCAPIO.

Schulz, *ZSS* 68 (1951) 21.

Toga. The outer garment (robe, cloak) of a Roman citizen when he appeared in public (at the *forum*); hence it was called *vestis forensis* (garment for the *forum*). The use of a *toga* was prohibited to soldiers, foreigners, and persons condemned to exile. Originally women also wore a *toga*, but it was soon replaced by the *stola*, the *toga* being reserved for women of ill fame condemned in a criminal trial (*iudicium publicum*) or for adultery, and for prostitutes. The normal *toga* of a Roman citizen (of white wool) was also called *toga pura* or *libera*.—See TRABEA, CLAVUS.

Courby, *DS* 5; Wright, *OCD*; L. Wilson, *The R. toga* (1924).

Toga candida. See CANDIDATUS.

Toga picta. A purple robe embroidered with gold. It was one of the insignia of higher Republican officials, worn only on the occasion of a triumph (see TRIUMPHUS) or other solemn celebration. The custom was adopted by the emperors. Syn. *toga palmata*.—See TOGA PURPUREA.

Ehlers, *RE* 7A, 505; Courby, *DS* 5, 349.

Toga praetexta. A white robe with a purple border stripe. It was one of the insignia of consuls, praetors, and priests. In the Principate the emperor wore a *toga praetexta* when he appeared within the walls of Rome in public. Young men over fourteen wore the *toga praetexta* as a sign of manhood before they put on the *toga virilis*. Hence *togatus* (*praetextatus*) = a youth in the age of manhood.—See IMPUBES.

Goethert, *RE* 6A, 1659; Regner, *ibid.* 1451.

Toga pura. See TOGA.

Toga purpurea. A *toga* of purple color. It was the *toga* of the kings. Later it was used by a triumphant army commander when he entered Rome after a victorious war; see TRIUMPHUS.—See TOGA PICTA.

Toga sordida. A dark grey *toga* worn when one was mourning or appeared in court as an accused.

Toga virilis. The normal white toga of a Roman citizen. There was no fixed age for wearing the *toga virilis*; normally young men between sixteen and eighteen put on the *toga virilis*. After a solemn ceremony which usually took place at a religious feast, dedicated to Bacchus, the youth wearing the white toga was introduced to the forum accompanied by his parents and relatives, after which he ceased to wear the *toga praetexta*.—See IMPUBES.

Regner, *RE* 6A, 1451; Hunziker, *DS* 5.

Togatus. A Roman citizen wearing (or having the right to wear) the *toga virilis*. In later juristic language *togatus* was any state official wearing the *toga* as his official robe. The term was also applied to lawyers pleading in court (*togatus fori*).

Steinwenter, *RE* 6A, 1666; Philipp, *ibid.* 1662; Ehlers, *RE* 7A, 505.

Tollere. See IUS TOLLENDI.

Tollere altius. See SERVITUS ALTIUS NON TOLLENDI.

Tollere legem. To abolish a statute by promulgating a new one.

Tollere liberum. To lift a child. According to an ancient custom when a married woman bore a son, the father (*pater familias*) lifted him up from the earth, thus denoting symbolically that he was accepting him in the family as his son. The act had no legal significance; the omission of this gesture was without legal effects.

Declareuil, *Mél Girard* 1 (1912) 326; Perozzi, *St Simoncelli* (1917) 213 (= *Scritti* 3 [1948] 93; Berger, *Jour. of Juristic Papyrology* 1 (1945) 30 (= *BIDR* 55-56 [1951] 114); Volterra, *Fschr Schulz* 1 (1951) 388; *idem*, *Iura* 3 (1952) 216.

Tolli. With reference to legal acts and transactions, to be annulled, to become void (e.g., a testament, an agreement, an obligation, a stipulation). *Actio tollitur* = the right to sue a person is abolished.

Tormentum. Torture. It was applied in Roman criminal procedure as a means to extort (*torquere*) from a person suspected of a crime a confession or a testimony from a witness. On the other hand, *tormentum* was applied as a penalty, in particular as an aggravation of the death penalty, in the Republic only to slaves, in the Empire also to free citizens, as, e.g., in the case of *crimen maiestatis* or murder through poisoning. From the late second century on, distinction was made between *honestiores* and *humiliores* inasmuch as with regard to the former torture was applied only in the case of heinous crimes (*maiestas, magia*). In the later Empire torturing became more frequent.—The use of torture in questioning witnesses (*tormentum* became almost synonymous with *quaestio*) was severely criticized by jurists and by some emperors. "Many persons undergo torture through endurance so that by no means can the truth be extorted from them; others instead are so unable to suffer pains that they prefer to lie than to be tormented. It so happens that they confess in different ways incriminating not only themselves but also others" (D. 48.18.1 pr.). A slave could not be compelled by torture to testify against his master. Torture as a penalty for crimes committed by slaves was practiced in a large measure. Masters were permitted to torture their slaves if the crime was directed against the masters themselves (until the third century). In other cases permission to torture had to be secured from the authorities. For the torture of slaves suspected as murderers of their master, see SENATUSCONSULTUM SILANIANUM. Torture was applied as a penalty against an accuser who initiated a

criminal trial against another for treason (*crimen maiestatis*) and was not able to prove his accusation. —*Tormentum* is also the instrument used for torturing.—D. 48.18; C. 9.41.—See QUAESTIO PER TORMENTA, TALIO, FUSTIS, SUPPLICIUM FUSTUARIUM, FLAGELLUM, VERBERA, MALA MANSIO.

Ehrhardt, *RE* 6A; Lafaye, *DS* 5; Berger, *OCD*.

Torquere. See TORMENTUM.

Torrentia flumina. See FLUMINA TORRENTIA.

Tortor. One who executed the torture, the torturer. He is to be distinguished from the *quaesitor*, the official who questioned the accused or a witness.—See TORMENTUM, CARNIFEX.

Trabea. A toga with purple and scarlet worn by the kings and in the Republic by consuls on specific solemn occasions. Hence *trabea* is used in the meaning of consulship, and the adj. *trabeatus* is syn. with CONSULARIS. Certain high priests, as the *flamen Dialis*, and persons of equestrian rank also wore the *trabea*.

Schuppe. *RE* 6A; Courby, *DS* 5.

Tractare. To treat. The term refers to the treatment to be applied to certain categories of criminals. The verb is also used of the administration of property or the management of one's own or another's affairs (*tractare bona, negotia, pecuniam*). With reference to juristic discussions (oral or written) *tractare* = to deal with, to discuss a problem (*quaestionem, materiam*). Hence *tractatus* = a juristic dissertation.

Tractatores. Officials in the financial administration (in the later Empire) subordinate to the *praefectus praetorio*.

Tractatus. See TRACTARE.

Tractatus de gradibus cognationum. See DE GRADIBUS COGNATIONUM.

Tractatus de peculiis. See DE PECULIIS.

Tractoria. A written official permission for the use of the state post. The *tractoria* implied also board and lodging at the expense of the state for travelers in official mission. From the second half of the fourth century on the *tractoria* were signed by the emperor.—C. 12.51(52).

Ensslin, *RE* 6A; Humbert, *DS* 5: Ganshof, *TR* 8 (1928) 69.

Tractus. A larger tract of land (a district) in the emperor's domain, administered by a *procurator* who also exercised certain jurisdictional functions in the name of the emperor in disputes between the principal lessee of the domain (*conductor*) and the sublessee (*colonus*). Syn. *regio*.

Tractus temporis. A lapse (a period) of time. A legal rule (D. 50.17.29) stated: "what is invalid at the beginning cannot become valid through lapse of time (*tractu temporis*)."—See INITIUM.

Tradere. To teach. Justinian used frequently the term in his constitution OMNEM as syn. with *docere*, when he dealt with the courses which the teachers of law had to offer in the law schools.—See TRADITUR, TRADITIO.

Traditio. (From *tradere*.) The transfer of ownership over a *res nec mancipi* (see RES MANCIPI) through the handing over of it to the transferee by the owner. A simple delivery of *res mancipi* did not transfer ownership (see MANCIPATIO), the transferee acquired only the so-called bonitary ownership (see IN BONIS ESSE) which could be converted in quiritary ownership (under *ius civile*) through USUCAPIO. The classical *traditio* required a just cause (*iusta causa*) since, being only a transfer of possession of a thing from one person to another, it had, in order to transfer ownership, to be based on a special legal relationship of an obligatory or another nature between transferor and transferee. "A simple delivery of a thing never transfers ownership, unless a sale or another just cause preceded the delivery" (D. 41.1.31 pr.). A *iusta causa* also was a donation. There was, however, no just cause if the transaction, which was followed by *traditio*, was prohibited by law, as, e.g., a gift between husband and wife (see DONATIO INTER VIRUM ET UXOREM). Transfer of ownership could be performed only by the owner of the thing or by a person authorized by him or by the law (see ALIENATIO). Normally *traditio* was a material act: the effective delivery of the thing to be transferred from hand to hand which, when movables (money) were concerned, was very simple. The delivery of an immovable (a piece of land) was executed through introduction of the acquirer on the land and his walking around the boundaries of the property. In later development the acquirer's entering on the premises or even a more simplified formality sufficed; see TRADITIO LONGA MANU, TRADITIO FICTA, CLAVES, CUSTOS. *Traditio* was an institution *iuris gentium* which arose from relations with foreigners. It was therefore available to peregrines. With regard to provincial land (*fundus provincialis*) it was the only mode of acquisition of ownership. In Justinian's law the distinction between *res mancipi* and *res nec mancipi* having been abolished, the *traditio* served as a general means for the transfer of ownership. The compilers substituted in many texts *traditio* for *mancipatio* which was no longer actual, and *tradere* for *mancipio dare* (or *accipere*).—D. 21.3; 41.1; 41.2; C. 7.32.—See EXCEPTIO REI VENDITAE ET TRADITAE.

Ehrhardt, *RE* 6A; Beauchet and Collinet, *DS* 5; Aru, *NDI* 12; P. De Francisci, *Il trasferimento della proprietà* (1924); Betti, *St Bonfante* 1 (1930) 305; *idem*, *BIDR* 41 (1933) 143; H. Lange, *Das kausale Element im Tatbestand der klass. Eigentumstradition*, 1930; Monier, *St Bonfante* 3 (1930) 219; A. Ehrhardt, *Iusta causa traditionis*, 1931; D. Hazewinkel-Suringa, *Mancipatio en t.* (Amsterdam, 1932); G. G. Archi, *Il trasferimento della proprietà*, 1934; H. H. Pflüger, *Zur Lehre vom Erwerb des Eigentums*, 1937; Thayer, *BIDR* 44 (1937) 439; S. Romano, *Nuovi studi sul trasferimento della proprietà*, 1937;

C. A. Funaioli, *La tradizione*, 1942, 5; M. Kaser, *Eigentum und Besitz* (1943) 195; Voci, *SDHI* 15 (1949) 141; J. G. Fuchs, *Iusta causa traditionis und romanist. Wissenschaft* (Diss. Basel, 1949); Levy, *West Roman vulgar law*, 1952, *passim*; van Oven, *TR* 20 (1952) 441.

Traditio brevi manu. Occurred when the transferee held already the thing, the ownership of which had to be transferred, but not as its owner, as, e.g., when a depositee or *commodatarius* of a thing acquired the ownership of it through sale or donation. A handing over of the thing in such a case was superfluous.—See CONSTITUTUM POSSESSORIUM.

Stella-Maranca, *NDI* 2, 544; Schulz, *Einführung in das Studium der Digesten* (1916) 62; Arnò, *StPav* 16 (1931).

Traditio chartae (per chartam). The delivery of an immovable through the handing over of a written deed of conveyance of property to the transferee. This form of *traditio* was practiced in the later Empire. The document was termed also *epistula traditionis*. Syn. TRADITIO INSTRUMENTI.

Brandileone, *St Scialoja* 1 (1905) 3; Riccobono, *ZSS* 33 (1912) 277; H. Steinacker, *Die antiken Grundlagen der frühmittelalterlichen Urkunde* (1927) 88.

Traditio clavium. See CLAVES.

Traditio ficta. (A non-Roman term.) A symbolic handing over of a thing which was to be delivered to the transferee. There was no physical delivery thereof but other acts, performed instead, manifested the transfer of the thing beyond any doubt. The typical case of such a *traditio* was the delivery of keys of a shop, or of a house, to the transferee.

Biermann, *T. f.*, 1891; Riccobono, *ZSS* 33 (1912) 259, 34 (1913) 159; C. A. Funaioli, *Traditio*, 1942, 29.

Traditio in incertam personam. Called in the literature a form of *traditio* in which the transferee was not a certain individual but any one of the people. Such a case was the so-called *iactus missilium*; see MISSILIA.

Berger, *RE* 9, 553; *idem*, *BIDR* 32 (1922) 154; F. Pringsheim, *Kauf mit fremdem Geld* (1916) 66; Kaden, *ZSS* 53 (1933) 613.

Traditio instrumenti. See TRADITIO CHARTAE.

Traditio longa manu. A form of *traditio* in which the thing to be transferred to the acquirer was placed with his knowledge and consent in his sight (*in conspectu*) so that he might take possession thereof whenever he pleased. The handing over of a thing to a person other than the real acquirer with the consent of the latter or in his presence, had the same legal effect.

F. Schulz, *Einführung in das Studium der Digesten* (1916) 66.

Traditio nuda. See NUDA TRADITIO.

Traditio possessionis (tradere possessionem). Handing over possession. The expression correctly stresses the external aspect of *traditio*.—See TRADITIO, VACUA POSSESSIO.

Traditio servitutis. The "delivery" of a servitude could hardly be an institution of the classical law since *traditio* was applicable only to corporeal things and not to rights. The meaning of the expression was to put the beneficiary of the servitude in the position of being able to exercise his right (e.g., an usuiruct = *traditio ususfructus*).

Riccobono, *ZSS* 34 (1913) 208.

Traditur (traditum est). It is taught, held, handed down. The expression is used of doctrines which have been prevailing among jurists for a long period of time (through tradition).

Tragoedus. See MIMUS.

Traiecticia pecunia. See FENUS NAUTICUM. *Traiecticius contractus*, an agreement concerning a maritime loan (FENUS NAUTICUM).

Trans Tiberim. Beyond the river Tiber, i.e., beyond the boundaries of the city of Rome (*urbs*), abroad.—See ADDICTUS, SERVUS, TIBERIS.

Sautel, in *Varia, Études de droit romain* (*Publications de l'Inst. de dr. rom. de l'Univ. de Paris*, 9) 1952, 86.

Transactio. (From *transigere*.) An extrajudicial agreement between two parties involved in a controversy in order to settle it in a friendly way and avoid a trial in court. *Transigere* = "to settle a doubtful matter, an uncertain and unfinished controversy" (D. 2.15.1). Usually the parties made reciprocal concessions, the claimant renouncing his action, the debtor recognizing his liability and either paying immediately his debt or promising to do so in the future, normally through *stipulatio* to make the claim easily suable. From the juristic point of view the *transactio* was a pact (*pactum*). A *transactio* over a controversy already decided by a judgment was not permissible unless (under later law) an appeal from it was brought. Postclassical and Justinian's legislation favored the *transactio* as a friendly settlement of controversies. The *transactio* became an autonomous legal institution similar in type and effect to innominate contracts (see CONTRACTUS INNOMINATI).—D. 2.15; C. 2.4.

Kaser, *RE* 6A; C. Bertolini, *Transazione*, 1900; M. E. Peterlongo, *La transazione*, 1936; G. Boyer, *Pacte extinctif d'action en dr. civil rom., Recueil de l'Acad. de législation de Toulouse*, 13 (1937); Riccobono, *Miscellanea G. Mercati*, 5 (1946) 24.

Transcripticia nomina. See NOMINA TRANSCRIPTICIA.

Transcriptio. See NOMINA TRANSCRIPTICIA.

Transferre. To transfer to another (a right, a thing, possession, etc.). There was a fundamental rule concerning the transfer of property or rights to another: "No one can transfer to another more rights (*plus iuris*) than he has himself" (D. 50.17.54). Another rule stated: "What belongs to us cannot be transferred to another without an action of ours (*sine facto nostro*)." D. 50.17.11.

Transferre. (When referred to a legal norm.) To apply a legal principle to an analogous case.

Transferre actionem (translatio actionis). See CESSIO.

Transferre domicilium. To transfer the domicile. The transfer was to be real and factual (*re et facto*, D. 50.1.20), not simply by a declaration before witnesses.

Transferre possessionem. See TRADITIO.

Transfuga. (From *transfugere*.) A soldier who runs over to the enemy (*ad hostem transit, transfugit*). In war time he was punished by flogging to death. *Transfuga* also was a soldier who when taken by the enemy as a prisoner did not escape although he had the opportunity to do so. A *transfuga* was regarded as an enemy and had no *ius postliminii*. Syn. *perfuga*.

Schnorr v. Carolsfeld. *RE* 6A.

Transfusio. See the definition of NOVATIO.

Transigere. See TRANSACTIO.

Transire. To pass over, to devolve to, to be transferred to another (e.g., an inheritance, a right or an obligation. ownership, a legal remedy such as an *actio*, *exceptio* or *querela*).

Transire ad hostem. To desert to the enemy. Syn. *transfugere*.—See TRANSFUGA.

Transitio ad plebem. Transition from the patrician order to the plebeian. This brought the new plebeian the advantage of his eligibility to the plebeian tribunate. The transition was achieved through adoption by a plebeian performed in an assembly of the plebeians (CONCILIUM PLEBIS).

Kübler, *RE* 6A; Siber, *RE* 21, 125; Humbert, *DS* 2, 1509.

Transitus. See IN TRANSITU.

Translatio dominii. See TRANSLATIO IURIS.

Translatio iudicii. An alteration in the procedural formula in a specific trial after the issue was framed (LITIS CONTESTATIO). Such alteration became necessary when a change of a person involved in the trial occurred, e.g., the death of the judge. appointed in the procedural formula, or of one of the parties or his representative (death of a COGNITOR, withdrawal of, or loss of citizenship by. the *cognitor*). Minor complications were caused if the change concerned other representatives of a party. a *procurator* (see PROCURATOR in a civil trial), a guardian or a curator. The technical side of the *translatio iudicii* in the events mentioned is not quite clear. in particular, whether a new *litis contestatio*, a *restitutio in integrum*, or a specific agreement between the parties. confirmed by the competent magistrate, was necessary. It is likely that all instances of *translatio iudicii* were technically not treated in the same way.

Kaser, *RE* 6A, 2160; P. Koschaker, *T. i.* (1905); J. Duquesne, *T. i.* (Paris, 1910); Wlassak, *Judikationsbefehl, SbWien* 197, 4 (1921) 234.

Translatio iuris. The transfer of a right from one person to another either by an act *inter vivos* (an agreement, a donation) or *mortis causa*, through succession. See TRANSFERRE. *Translatio rei* (*dominii*) = the transfer of ownership.—See CESSIO, DOMINIUM.

Kaser, *RE* 6A, 2158.

Translatio legati. See ADEMPTIO LEGATI.—Inst. 2.21; 34.4.

Kaser, *RE* 6A, 2168; Sanfilippo, *AnPal* 17 (1937) 120.

Translatio rei. See TRADITIO, TRANSLATIO IURIS.

Kaser, *RE* 6A, 2159 (Bibl.).

Transmittere (transmissio). Primarily used of the transfer of a right from one person to another through inheritance or legacy (*mortis causa*). In a specific, technical sense, *transmitti* (pass.) refers to a transfer of the right to accept an inheritance by the appointed heir to his successors. Under the classical law, when an heir upon whom an inheritance was conferred (*delata*, see DEFERRE HEREDITATEM) died before the acceptance of the inheritance (see ADITIO HEREDITATIS), the latter was not "transmitted" to another. Some exceptions from this rule, however. were admitted in the later law. Two cases of *transmissio* are particularly important. First, the so-called *transmissio Theodosiana* (C. 6.52.1), which occurred when a testator appointed his descendant as an heir and the latter died before the testament was opened (see APERTURA TESTAMENTI). In such an event the heir's nearest descendant had the right to accept the inheritance. In a much larger measure the classical rule was superseded by the so-called *transmissio Iustiniana* (C. 6.30.19): if an heir (a testamentary one or on intestacy) died before a year elapsed from the time he had notice of the *delatio* or before the time for deliberation (see DELIBERARE. TEMPUS AD DELIBERANDUM) expired, his heirs could accept the inheritance during the rest of the time. If an heir died without having knowledge of the inheritance conferred upon him, the pertinent terms (one year or the *tempus ad deliberandum*. respectively) ran fully in favor of his heirs.—C. 6.50; 52.

P. Bonfante, *Corso di dir. rom.*, 6 (1930) 243; B. Biondi, *Successione testamentaria* (1943) 251.

Transversus. See LINEA, LATUS.

Trebatius, Caius T. Testa. One of the last Republican jurists, contemporary with, and friend of, Cicero, teacher of Labeo. No direct excerpt from his works is preserved in the Digest. nor is a title of a writing of his cited. Literary sources make it clear that he wrote a treatise on civil law (*de iure civili*) and an extensive work on divine law. He enjoyed high esteem with the classical jurists.

Sonnet, *RE* 6A, 2251; Berger, *RE* Suppl. 7, 1619; *idem*, *OCD*.

Trecenarii. Imperial officials receiving the highest annual salary of 300,000 sesterces. Lower groups were *ducenarii* (with a salary of 200,000 sesterces), *centenarii* (100,000) and *sexagenarii* (60,000).—See PROCURATORES (IN PUBLIC LAW).

Kubitschek, *RE* 3; Seeck, *RE* 5 (*s.v. ducenarii*); A. Segrè, *TAmPhilolAs* 74 (1943) 102.

Trecenarius. In the army, the highest officer (*centurio*) in the PRAETORIUM.

Lammert, *RE* 6A.

Tres faciunt collegium. The minimum number of members of an association was three (D. 50.16.85). —See COLLEGIUM.

Tres partes. In some manuscripts of the Digest a part of the second (middle) portion (see INFORTIATUM), to wit, from D. 35.2.82 until the end of book 38, appears as a separate volume starting with the words *"tres partes."* The division has no essential significance at all; it might be a jest of the scribe who saw in these two words an allusion to the division of the Digest into three volumes.—See VULGATA.

Kantorowicz, *TR* 15 (1937) 40.

Tresviri (triumviri). A body of three officials associated in the same official functions. Additional words indicate the office and functions for which they were appointed. They acted in common or separately if they agreed upon the division of their functions among themselves.—See the following items.

Strasburger, *RE* 7A (*s.v. triumviri*); Lécrivain, *DS* 5.

Tresviri aediles. (In municipalities.) In some MUNICIPIA there were three *aediles* instead of two (DUOVIRI AEDILES).

E. Manni, *Per la storia dei municipi* (1947) 159.

Tresviri (triumviri) agris dandis (or dividundis). See TRESVIRI COLONIAE DEDUCENDAE.

Tresviri aere argento auro flando feriundo. See TRESVIRI MONETALES.

Tresviri capitales. Magistrates of a lower rank (*magistratus minores*) belonging to the group of VIGINTISEXVIRI. They exercised police functions in Rome and fulfilled certain tasks in criminal and civil jurisdiction (arresting suspect persons, castigating thieves and slaves, supervising executions of persons condemned to death). They also collected pecuniary fines (*multae*), the sum of *sacramentum* from the party defeated (see LEGIS ACTIO SACRAMENTI), if the sum was not deposited before. A *Lex Papiria* of an unknown date (between 242 and 122 B.C.) ordered their election by *comitia tributa*, presided over by the *praetor urbanus*. The *tresviri capitales* still existed in the third century after Christ but most of their functions were performed under the Principate by the VIGILES.

Strasburger, *RE* 7A, 518; Lécrivain, *DS* 5, 413; G. Rotondi, *Leges publicae populi Romani* (1912) 312.

Tresviri (triumviri) coloniae deducendae. Three commissioners appointed for the foundation of a colony and the distribution of plots of land among the colonists. Their number increased in the course of time (*quinqueviri, septemviri, decemviri*) and their official title was enlarged through the addition of words such as *agris dandis, assignandis, iudicandis*.

Strasburger, *RE* 7A, 511; Schulten, *DE* 2, 429; Bayet, *Rev. des Etudes Latines* 6 (1928) Z70.

Tresviri monetales. Masters of the mint. They were magistrates of lower rank (*magistratus minores*) and belonged to the group of officials called by the collective name VIGINTISEXVIRI. Under the Republic their names were impressed on the coins. From the time of Augustus their official title was *tresviri aere argento auro flando feriundo* (= the officials to blow and coin bronze, silver and gold). From the third century the masters of the mint bore the title *procuratores monetae*; from the time of Diocletian they were appointed for each dioecesis.

Strasburger, *RE* 7A, 513.

Tresviri nocturni. See VIGINTISEXVIRI. They were probably predecessors of the TRESVIRI CAPITALES.

Strasburger, *RE* 7A, 518.

Tria verba. See DO DICO ADDICO.

Paoli, *NRH* 30 (1952) 297.

Triarii. See CENTURIO.

Lammert, *RE* 7A; H. M. D. Parker, *The Roman legions* (1928) 10.

Tribonianus. Justinian's principal collaborator and adviser in his legislative work. He was a member of the commission appointed by the emperor for the compilation of the first Code and presided over the commissions which composed the Institutes, the Digest, and the second Code. Hence the changes made by the compilers on the texts of classical juristic writings and imperial constitutions, collected for Justinian's codification, are termed in the literature *emblemata Triboniani* ("Tribonianisms"). During the work on the codification he was—with a brief interruption—QUAESTOR SACRI PALATII and temporarily MAGISTER OFFICIORUM. He probably also was the author of Justinian's earlier Novels. He died about A.D. 545. In spite of some critical remarks about his character by a contemporary writer (Procopius of Caesarea) the reliability of which are not beyond doubt, Tribonianus was the most prominent personality of Justinian's epoch. The emperor speaks of him with the highest praise. His collection of rare juristic works which served the compilers in the preparation of the Digest, is particularly emphasized by Justinian (*Tanta* c. 17).

Kübler, *RE* 6A; Berger, *OCD*; E. Stein, *Bull. de la Classe des Lettres, Acad. Royale de Belgique*, 23 (1937) 365.

Tribu moveri. See NOTA CENSORIA.

Tribuere. To grant, to concede. The term refers to legal remedies granted both by law (a statute) and a jurisdictional magistrate. *Tribuere* appears in the classical definition of justice (see IUSTITIA): *ius suum cuique tribuere* (= to render everyone his due).—See TRIBUTIO, ACTIO TRIBUTORIA, ULTRO TRIBUTA.

Tribunal. A platform for a court, in the open air or (under the Principate) in a basilica. The jurisdictional magistrate, his secretary, and his council (*consilium*) were seated on the *tribunal*. The seat of the presiding magistrate was in the middle on the front of the tribunal (*pro tribunali*). The magistrate acted *pro tribunali* when he decided about *bonorum possessio, missiones, restitutio in integrum*, appointment of guardians, adoptions, manumissions, and the like.

Ant. DE PLANO. *Tribunal* was later used in the sense of a court.—See IN TRANSITU, CENTUMVIRI.

Weiss. *RE* 6A; Chapot, *DS* 5; Severini, *NDI* 12. 2; Pernice, *ZSS* 14 (1893) 135; Kübler, *Festschrift für O. Hirschfeld* (1903) 58; H. D. Johnson, *The R. tribunal*, Baltimore, 1927; Düll, *ZSS* 52 (1932) 174; Wenger, *ZSS* 59 (1939) 376.

Tribunal. (In a military camp.) A higher platform on which a military commander and his retinue were seated.

Lammert, *RE* 6A, 2430.

Tribunatus. The office of a tribune in military service (in the army or in the imperial guard).

Tribuni. The following items deal with the more important officials bearing the title of *tribunus*. There were some more functionaries called *tribuni*, during the whole period of Roman history, for some specific functions of subordinate nature. Several of them were involved in the administration of military supplies.

Lengle, *RE* 6A.

Tribuni aerarii. Originally they were officials of the TRIBUS charged with the payment of stipend to soldiers, collection of the necessary means for this purpose (*tributum*) imposed on the members of the TRIBUS, and the management of contributions and booty taken from the enemy. Since these functions were assigned to financially reliable persons, the term *tribuni aerarii* was later applied to persons classified in higher classes of the *census*. A *lex Aurelia* (70 B.C.) ordered that one-third (300) of the jurors in criminal courts (*quaestiones*) be selected among the *tribuni aerarii*, but a statute issued under the dictator Caesar abolished that privilege. Although the census of *tribuni aerarii* was lower than that of persons of equestrian rank (see EQUITES), they belonged to the well-to-do group of the society.—See LEX AURELIA IUDICIARIA, TRIBUS.

Lengle, *RE* 6A, 2432; Treves, *OCD*; Hill, *AmJPhilol* 67 (1946) 61.

Tribuni celerum. See CELERES.

Tribuni civitatis. Military commanders and high officials of the civil administration in larger cities in the later Empire (particularly in Egypt).

Lengle, *RE* 6A, 2435.

Tribuni classis. Commanders of navy units, probably of a lower rank than the *praefectus classis*.

Lengle, *RE* 6A, 2436.

Tribuni cohortis. Military commanders of *cohortes praetoriae*, subordinate to the *praefectus praetorio*. Later the title was given to specific (voluntary) units of the military forces in the field.

Lengle, *RE* 6A, 2436.

Tribuni laticlavii. Among all military tribunes who normally were of equestrian rank, they ranked highest since they belonged to the senatorial class.

Tribuni militum. The highest officers in the legions, normally of equestrian rank (see TRIBUNI LATICLAVII). There were six *tribuni militum* in a legion; one of them assumed in times of war the command of the whole legion. In peace time their activity was manifold, as described by the jurist Macer, in his work "On military matters" (*de re militari*): "to hold the soldiers in the camps, to make them exercise for training, to keep the keys of the gates, to make sometimes the rounds of the watch, to supervise the distribution of the food, to examine the grain, to restrain frauds attempted by the furnishers of food, to punish offenses, to be frequently present in the headquarters, to hear the complaints of the legionnaires, to inspect their healthy conditions," etc. (D. 49.16.12.2). Under the Principate the title *tribuni militum* was conferred on commanders of other units of a more or less military character and on officials of the imperial administration.—See LEX LICINIA CASSIA.

Liebenam, *RE* 6. 1639; Parker, *OCD*.

Tribuni militum consulari potestate. Military tribunes with consular power. The *tribuni militum consulari potestate* were created first in 444 B.C. in the place of consuls. Their number varied from three to six, and they were appointed as extraordinary magistrates by a decree of the senate. They disappeared as a constitutional institution in 367 B.C. when the praetorship was established.

Lengle, *RE* 6A, 2446; Bernardi, *RendLomb* 79 (1945–46) 3.

Tribuni numerorum. See NUMERUS.

Tribuni plebis. Plebeian tribunes. The office was created in 494 B.C. after the first secession of the plebeians to the Sacred Mount (*Mons Sacer*). The *tribuni plebis* were originally not magistrates of the state but officials of the plebeian order (see PLEBS). Their number increased gradually from two to ten. The development of the plebeian tribunate reflects the development of the rights and social situation of the plebs. The primary function of the *tribuni* was the defense of the plebeians against illegal acts and abuses of the patrician magistrates (*ius auxilii*, see AUXILIUM, INTERCESSIO TRIBUNICIA). The house of the *tribuni* had to be accessible even during the night; a *tribunus* could not be absent from Rome longer than one day. Originally the tribunes were elected by the plebeian assemblies (see CONCILIA PLEBIS), later by *comitia tributa*. The office and the person of a *tribunus* were sacrosanct (see SACROSANCTITAS); one who violated the sacrosanctity of a *tribunus* became an outlaw (see SACER, LEGES SACRATAE). For the right of the tribunes to protest against the administrative acts and legislative proposals of the magistrates (*ius intercedendi*), see INTERCESSIO IN PUBLIC LAW. A *tribunus* had the right to convoke a gathering of the plebs (CONCILIA PLEBIS), to preside over it, and to make proposals of bills to the plebeian assembly on which the plebs voted (see PLEBISCITA). The tribunes

obtained the greatest success in the field of legislation when they were admitted to the meetings of the senate and were granted the right to make legislative proposals which after approval by the senate were transmitted to the *comitia tributa* for a vote. Later, the *tribuni* were authorized to convoke the senate and under the *Lex Atinia* (149 B.C.) they obtained a seat in the senate after their term of service. Tribunes had *ius coërcendi* (see COËRCITIO) over persons who offended their dignity or opposed their orders. They could order the arrest of the wrongdoer which was made by the *aediles plebis* or the subordinates of the *tribuni*, the *viatores*. In the field of jurisdiction the tribunes assumed the competence of the former DUOVIRI PERDUELLIONIS in cases qualified as PERDUELLIO and decided upon offenses against their person. Generally they inflicted fines (*multae*), but they had the power to pronounce even the death penalty. The latter and higher fines (over 3020 sesterces), however, had to be confirmed by the *comitia centuriata* or *tributa* (for fines). Only a plebeian could be a tribune (see TRANSITIO AD PLEBEM). The *tribuni* had no IMPERIUM, but their legal position became in the later Republic very similar to that of magistrates. The great importance of the plebeian tribunate is evidenced by the fact that Augustus based his sovereign power primarily on *tribunicia potestas*, against which no *ius intercedendi* (either by tribunes or by magistrates) could be applied. Consequently, the tribunes lost much of their prestige although their *ius intercedendi* against the orders of magistrates, the *ius auxilii*, and some minor rights as well as their honorific privileges remained undiminished. Mention of *tribuni plebis* still occurs in the fifth century, but only as an honorary title.—See moreover, IUS AGENDI CUM PLEBE, LEX AURELIA, LEX CORNELIA (on tribunes), LEX HORTENSIA, LEX PUBLILIA PHILONIS, LEX POMPEIA LICINIA, LEX ICILIA, LEX PUBLILIA VOLERONIS, LEX VALERIA HORATIA, TRIBUNICIA POTESTAS.

Lengle, *RE* 6A, 2454 (Bibl.); Lécrivain, *DS* 5: Anon., *NDI* 12, 2 (*s.v. tribunato*); Momigliano, *OCD*: *idem*, *Bull. Comm. archeol. communale di Roma*, 59 (1932) 157; F. Stella-Maranca, *Il tribunato della plebe dalla Lex Hortensia alla lex Cornelia* (1901); B. Kübler, *Privatrechtliche Kompetenz der Volkstribunen in der Kaiserzeit* (*Fschr O. Hirschfeld*, 1903); E. Meyer, *Kleine Schriften*, 1910, 351; E. Cocchia, *Tribunato della plebe* (1917); E. Pais, *Ricerche sulla storia* 3 (1918) 3 (on *Fasti tribunicii*), 227; G. Niccolini, *I tribuni e il processo capitale*, *Atti della Soc. Linguistica Ligure di Scienze e Lett.* 3 (1924); *idem*, *Historia* 3 (1929) 181; *idem*, *I fasti dei trib. della plebe*, 1934; H. Siber, *Die plebisciten Magistraturen bis zur lex Hortensia*, 1936; Brecht, *ZSS* 59 (1939) 271; G. De Sanctis, *Miscellanea G. Mercati*, 5 (1946); C. W. Westrup, *Introduction to early R. law*, 4, 1 (1950) 91; Siber, *RE* 21, 169.

Tribuni scholarum. See SCHOLAE.

Tribuni vigilum. See VIGILES.

Tribuni voluptatum. Police officers in the later Empire who had the supervision of public games and theatrical spectacles, and the control of public morals.

Tribunicia potestas. The fullness of power conferred on plebeian tribunes. Caesar and Augustus had the title *tribunicia potestate* conferred on them in order to be inviolable (*sacrosanctus*).—See TRIBUNI PLEBIS.

Mattingly, *JRS* 20 (1930) 78; Strack, *Klio, Neue Folge* 14 (1939); De Visscher, *SDHI* 5 (1939) 101 (= *Nouvelles Études*, 1949, 27); Gioffredi, *SDHI* 11 (1945) 37; M. Grant, *From imperium to auctoritas*, 1946, 446.

Tribunicius. (Adj.) Connected with the office of a *tribunus plebis*.

Tribunicius. (Noun.) A retired tribune.—See ADLECTIO.

Tribunus et notarius. See NOTARIUS.

Tribus. A tribe. The original three tribes, Ramnes, Tities, and Luceres (see RAMNES) were of ethnic character. The later division of the territory of Rome into four *tribus* (ascribed to King Servius Tullius) was a local one and superseded the ethnic division. In 495 B.C., sixteen country *tribus* were added to the former urban ones and after 241 B.C. there were thirty-five *tribus* altogether, the original four urban *tribus* (*tribus urbanae*) and thirty-one "rustic" (*tribus rusticae*) covering the whole country. In the *tribus rusticae* the landowners were concentrated, whereas the city-*tribus* embraced (since 304 B.C.) the non-owners of land. The *tribus rusticae* became thus more distinguished and the assignment to an urban *tribus* was implied in a *tribu moveri* (expulsion from a *tribus rustica*) through a NOTA CENSORIA. Each Roman citizen had to be registered in a *tribus* during the CENSUS. The registration gave him the right to vote in the popular assembly of the *tribus* (*comitia tributa*). The division in *tribus* served for calling to military service and taxation within the *tribus* (*tributim*). The TRIBUNI AERARII functioned as chairmen of the *tribus*. Their principal duty was to pay off the soldiers of the *tribus* (*aes militare*) and to collaborate in the assessment of the landed property for taxation purposes. In the later Republic the territorial basis for the enrollment into a *tribus* was not strictly observed. Under the Principate the *tribus* became an organization for relief of its poor members who were entitled to some help in grain and food from the state. See TESSERAE FRUMENTARIAE.—See CURIAE MUNICIPIORUM.

Kubitschek, *RE* 6A; Chapot, *DS* 5; Momigliano, *OCD*; O. Hirschfeld, *Kleine Schriften* (1913) 248; Niccolini, *St Bonfante* 2 (1930) 235; E. Täubler, *SbHeid* 1929/30, Heft 4; Last, *JRS* 35 (1945) 30; Gintowt, *Eos* 43 (1948/9) 198.

Tribus municipiorum. See CURIAE MUNICIPIORUM.

Tributarius. (Noun.) A taxpayer. The term refers to payers of taxes of any kind. *Tributarius* (adj.) = connected with, or pertinent to, the payment of TRIBUTUM.—See PRAEDIA TRIBUTARIA.

A. Segrè, *Trod* 5 (1947) 103.

Tributim. By *tribus*, e.g., voting *tributim* in the *comitia tributa*.—See TRIBUS, LEX VALERIA HORATIA.

Tributio. (From *tribuere*.) Distribution of an insolvent commercial *peculium* belonging to a slave or *filius familias* among its creditors (see ACTIO TRIBUTORIA).—See TRIBUTUM.

Tributoria actio. See ACTIO TRIBUTORIA.

Tributum. In earlier times an extraordinary charge in kind imposed (*indicere*) on citizens, non-soldiers, in war time in order to secure equipment and nourishment for the army. After a victorious war the *tributum* was sometimes reimbursed to the payers if the booty and contribution taken from the enemy was large enough to cover the expenses of the war. Syn. *tributio*. Later, *tributum* became a general term for taxes; see the following items. For *tributum* in the provinces, see TRIBUTUM SOLI, STIPENDIUM, PRAEDIA TRIBUTARIA.—C. 10.16; 21.

Schwahn, *RE* 7A; Lécrivain, *DS* 5; Schlossmann, *Arch. für lateinische Lexicographie* 14 (1906) 25; Ciapessoni, *St su Gaio* (1943) 32; L. Clerici, *Economie e finanza dei Romani*, 1 (1943) 440; Van Oven, in *Tractatus tributarii, offered to P. J. A. Adriani* (Haarlem, 1949) 29.

Tributum capitis. A tax imposed on the population of certain provinces. The tax was not uniform. It was either a tax from property other than land or a poll-tax levied as a *capitatio plebeia* (*humana*) which was paid by certain groups of the population subjugated.—See CAPITATIO in the provinces.

Schwahn, *RE* 7A, 68; E. H. Stevenson, *Roman provincial administration*, 2nd ed. 1949, 151; Tcherikover, *Jour. of Juristic Papyrology* 4 (Warsaw, 1950) 193.

Tributum soli. A land tax, the most important impost in the provinces paid either in kind or in money. It was based on a survey of the land and an evaluation by experts. Originally there was no difference between *stipendium* and *tributum*; under the Principate distinction was made depending upon the circumstance whether the province was imperial or senatorial: *tributum* was paid in imperial provinces, *stipendium* in senatorial.—See PRAEDIA STIPENDIARIA, PRAEDIA TRIBUTARIA.

Schwahn, *RE* 7A, 10; 62; 70; Anon., *NDI* 12, 2.

Tributum temerarium. A general extraordinary tax paid voluntarily in times of urgent necessity (emergency) by well-to-do persons in order to save the state from financial calamity. The money given was considered a loan to be repaid by the state when its financial situation would improve. The *tributum temerarium* was practiced only in the Republic.

Schwahn, *RE* 7A, 58.

Triginta dies. A period of thirty days. It was applied in both criminal and civil procedure on various occasions. Its origin was perhaps in sacral law (armistice) from which it was by statute or custom transferred into legal procedural practice.—See DIES IUSTI, TEMPUS IUDICATI, LEX PINARIA, LEX CICEREIA.

F. Kleineidam, *Personalexecution der Zwölf Tafeln* (1904) 130; Düll, *Festschr. Koschaker* 1 (1939) 27.

Trinoctium. Three consecutive nights. Through a wife's intentional absence for three nights from the common dwelling with her husband, the acquisition of *manus* (power) over her through USUS was interrupted. The marriage concluded through cohabitation remained valid and could be continued when the wife returned to the common home.—See USURPARE.

Lévy-Bruhl, *TR* 14 (1936) 452 (= *Nouv. Etudes* [1947] 72); Wolff, *TR* 16 (1938) 145; Kaser, *Iura* 1 (1950) 72.

Trinundinum. See NUNDINAE, PROMULGARE, LEX CAECILIA DIDIA. Syn. *trinum nundinum*.

Kroll, *RE* 17, 1471; Treves, *OCD*; G. Rotondi, *Leges publicae pop. Rom.* (1912) 125.

Tripertita. The title of the earliest Roman juristic treatise, written by the jurist Sextus Aelius Petus Catus; see AELIUS.

Tripertitum ius. See TESTAMENTUM TRIPERTITUM.

Triplicatio. See DUPLICATIO, REPLICATIO.

Triptychum. Three wooden, wax covered, square tablets bound together like a booklet with six pages. Pages one and six were left blank, pages from two to five contained the text of the document (*scriptura interior* on pages two and three was sealed by the witnesses on page four, *scriptura exterior* was written on pages four and five).—See TABULAE. TABULAE CERATAE, DIPTYCHUM.

P. Krüger, *Gesch. der Quellen*[2] (1912) 267.

Triticaria condictio. See CONDICTIO TRITICARIA.

Triumphator. A military commander (an emperor or a high magistrate entering Rome under an imposing ceremonial (see TRIUMPHUS) after a victorious war. As an honorific title the term was applied to emperors in the later Empire.

Triumphus. The solemn entrance of a military commander in Rome after a victorious war. Under the Republic it was only a dictator, a consul, or a praetor (magistrates with *imperium*) who had the right to celebrate the victory of his troops (or the navy, *triumphus navalis, maritimus*) in this way, if they were still in office (*in magistratu*) and a previous decision of the senate granting the *triumphus* was passed before they returned to the city of Rome (*pomerium*). Only a victory over the enemy obtained by bloodshed (at least five thousand enemies killed) gave the right to a *triumphus*, according to a *lex Maria Porcia* of 62 B.C., which fixed penalties for commanders who gave false information about the number of enemies killed in war. In the Empire, the *triumphus* was a prerogative of the emperor. The triumphator had the right to certain special insignia (*ornamenta triumphalia*) such as a chariot richly ornamented with gold, ivory, and laurels (*currus triumphalis*), a TOGA PICTA (*vestis triumphalis*), a laurel crown (*corona triumphalis*) on his head, while another crown (made of gold) was held over his head by a public slave, etc. A lesser *triumphus* (*minor triumphus*), called *ovatio*, was also granted

by the senate in cases in which the military success did not justify a full triumph or when the campaign was of lesser importance.—See ACCLAMATIO.

Ehlers, *RE* 7A; Borzsák, *RE* 18, 1122; Rohde, *RE* 18, 1890 (*s.v. ovatio*); Cagnat, *DS* 5; Cuq, *DS* 3, 1155; G. Rotondi, *Leges publicae populi Rom.* (1912) 382.

Triumvirale iudicium. In postclassical times three arbitrators chosen by the parties to settle a controversy between them.

Triumviri. See TRESVIRI.

Triumviri rei publicae constituendae causa. See LEX TITIA.

Tryphoninus, Claudius. A jurist of the first half of the third century, member of the council of the emperor Septimius Severus, a disciple of the famous jurist Cervidius Scaevola. He wrote notes (*notae*) to his teacher's work and an extensive casuistic collection, *Disputationes* (in 21 books).—See CLAUDIUS.

Jörs, *RE* 3, 2882; W. Kunkel, *Herkunft und soziale Stellung der röm. Juristen*, 1952, 231.

Tubero, Quintus Aelius. A jurist of the second half of the last century of the Republic. He wrote on constitutional law (on the senate) and on the duties of a judge. Of another jurist of the same name, who was consul in 118 B.C., very little is known. He was highly praised by Cicero.

Klebs, *RE* 1, 535 (no. 155), 537 (no. 156); Grosso, *ATor* 78 (1942/3) 180.

Tuditanus, Caius Sempronius. Consul 129 B.C., the first jurist who wrote on public law, author of a treatise on magistracies (at least in 13 books).

Münzer, *RE* 2A, 1441.

Tueri. To defend, to protect, to take care, to administer carefully (one's property, affairs). The term is frequently applied to legal institutions and procedural remedies (actions, exceptions, interdicts) by which a person could defend his rights and interests in court or be granted protection by the praetor; see TUITIO PRAETORIS.

Tuitio praetoris. Protection, defense, granted by the praetor in specific cases in which, under *ius civile*, such a protection was not available.—See IPSO IURE, MANUMISSIO PRAETORIA, SERVITUTES PRAETORIAE, IUS HONORARIUM.

S. Solazzi, *Requisiti e modi di costituzione delle servitù prediali* (1947) 137.

Tumultus. A riot, an uproar, a violent agitation (revolt) of the people against public authorities (*adversus rem publicam*) when an internal critical situation was threatening. In such circumstances exceptional measures were taken, as, e.g., calling all citizens to arms and suspension of exemptions from military service. The state of *tumultus* was publicly proclaimed by the senate. With regard to contractual obligations the impossibility of their fulfillment caused by accidents during a *tumultus* were considered a *vis maior*.—See IUSTITIUM, SENATUSCONSULTUM ULTIMUM, DEPOSITUM MISERABILE, TURBA, SEDITIO.

Sachers, *RE* 7A, 1345.

Tunc enim (or autem, etenim, certe, deinde). Occurs in interpolated texts, in particular when the locutions follow a negative conditional phrase (*nisi . . .*) and serve to define precisely the exceptional case (*tunc* = in that case). The locutions, however, are not an absolutely reliable criterion of interpolation, as often has been assumed.

E. Albertario, *Fil* 36 (1911) 801; Berger, *KrVj* 14 (1912) 419; Guarneri-Citati, *Indice*[2] 1927, *s.vv. enim, tunc.*

Turba. A riot, a turmoil. Robbery committed during a riot in which many persons ("not three or four," D. 47.8.4.3) were engaged was more severely punished than a simple RAPINA. *Turba* also refers to a multitude of persons whom a man gathered in order to enter with violence another's house for the purpose of plundering. If the accomplices were armed (*turba cum telis*), the culprit was punished by death.—D. 47.8.—See TUMULTUS.

Esmein, *Mél Girard* 1 (1912) 458.

Turbatio. A tumultuous disturbance of public order and peace.—See TURBA.

Turbatio sanguinis. See LUCTUS.

Turma. A small cavalry unit, normally of thirty cavalrymen, one-tenth of all horsemen attached to a legion. See EQUITES LEGIONIS. Commander of a *turma* was the *decurio* commanding the first *decuria* (= ten cavalrymen) of the *turma*. The *decuria* was the smallest cavalry unit. In the Empire a larger unit was the ALA which consisted of sixteen or more *turmae*.

Lammert, *RE* 7A; Cagnat, *DS* 5.

Turmarii. Imperial officers in the later Empire concerned with the enlistment of recruits for the cavalry.

Turpis. See CONDICIO TURPIS, CONDICTIO OB TURPEM CAUSAM, ACTIONES FAMOSAE, RES TURPIS, and the following items.

Turpis persona. A person whose occupation or conduct was disreputable. Among *personae turpes* were actors (see SCAENICUS), gladiators (see HARENARII), prostitutes (see MERETRIX), owners of houses of lewdness (see LENA, LENO). A *turpis persona* was excluded from guardianship and could not contest a testament through QUERELA INOFFICIOSI TESTAMENTI.—See TURPITUDO.

Sachers, *RE* 7A, 1435.

Turpis stipulatio. A *stipulatio* under which a person assumed an obligation to commit a crime. The promise was null. *Stipulatio ex turpi causa* = a *stipulatio* in which the ground of the promise was immoral although the object was not (e.g., a promise made to prevent a crime intended by another). In such a case the promisor when sued for payment, could oppose the *exceptio doli*; on the other hand the magistrate could refuse the plaintiff the *actio* (*denegatio actionis*) against the *promisor*.—See CONDICTIO OB TURPEM CAUSAM.

Siber, *St Bonfante* 4 (1930) 105.

Turpitudo. The quality of a person to be of bad repute (TURPIS PERSONA) because of his profession,

immoral or improper conduct. Such persons were condemned by public opinion and branded factually with infamy although legally they were not infamous (*infamis*). In the literature this kind of infamy is called *infamia facti*, to be distinguished from *infamia iuris*, i.e., infamy inflicted by law.—See INFAMIA, EXISTIMATIO, TURPIS PERSONA, ACTIONES FAMOSAE, NOTA CENSORIA, IGNOMINIA.

Sachers, *RE* 7A.

Tuscianus. A jurist of the second century after Christ, successor of Iavolenus in the leadership of the Sabinian school (see SABINIANI). No excerpt of his works is known.

Berger, *RE* 7A, 1462; Guarino, *AnCat* 1 (1947) 331; Kunkel, *Herkunft und soziale Stellung der röm. Juristen*, 1952, 153.

Tutela. See TUTELA IMPUBERUM, the primary type of guardianship.

Tutela agnatorum. See TUTELA LEGITIMA AGNATORUM.

Tutela dativa. See TUTELA TESTAMENTARIA, TUTOR DATIVUS.

Tutela fiduciaria. Fiduciary guardianship. One instance of *tutela fiduciaria* occurs in connection with the COËMPTIO FIDUCIAE CAUSA. Another instance was connected with EMANCIPATIO, when the person who purchased a son from his father for the third time did not remancipate him to the father but manumitted him himself (*manumissor extraneus*); this gave the manumitter fiduciary guardianship over the emancipated.—Inst. 1.19.

Sachers, *RE* 7A, 1595; W. W. Buckland, *Textbook*[3] (1932) 147.

Tutela impuberum. Guardianship over persons *sui iuris* (not under paternal power) who were below the age of puberty (see IMPUBES). The definition of *tutela*, given by the Republican jurist Servius Sulpicius Rufus (and quoted by Justinian in his Inst. 1.13.1), runs: "a right and power over a free person, granted and allowed under *ius civile*, to protect him who, because of his age, is not able to defend himself" (D. 26.1.1. pr.). The guardian (*tutor* = *tuitor*) had to protect the person and the property of the ward (*pupillus*) and his functions are qualified as a power (*potestas*) although it was not so extensive as the paternal power (*patria potestas*). "A *tutor* does not only administer the property of the ward (*res pupilli*) but he also has to take care of his moral behavior" (*mores*, D. 26.7.12.3). *Tutela* is not only a right; it created on the part of the *tutor* duties for the fulfillment of which he was responsible. Consequently guardianship was considered a *munus* (a charge); under the later Principate it was designated as a *munus publicum* (= a public service) inasmuch as the protection of young people unable to manage their affairs was also in the public interest. The further development of the institution was dominated by the tendency to extend the liability of the guardians and to submit them more and more to the control of the public authorities. The original independence of the *tutor* in the administration of the ward's affairs—he was then considered *domini loco* (taking the place of the owner)—was in the course of time restricted in many ways, although, as a matter of principle, he was authorized to manage all matters connected with the ward's property (*negotia pupilli gerere*). Certain acts of the tutor were prohibited, such as donations (except small ones, usual in family events and in social relations), transactions in which the guardian himself was interested (*in re propria*), and what was most important, the alienation and hypothecation of the ward's landed property; see ORATIO SEVERI. For specific purposes, however, when the interests of the ward required it, permission to alienate could be given by a magistrate. The principal function of the *tutor* was his cooperation in legal acts periormed by the ward himself who as a person *sui iuris* could, if he was beyond the age of infancy (*infantia maior*) validly conclude but only with the authorization (approval, *auctoritas*) of the guardian (see AUCTORITATEM INTERPONERE, AUCTORITAS TUTORIS). The *auctoritas* was unnecessary when the act concluded by the *pupillus* was exclusively to his advantage. In civil lawsuits the *tutor* was authorized to represent the ward but not without certain restrictions depending either on the form of procedure (under the regime of *legis actiones* he could represent only an *infans*, under the formulary procedure there were no restrictions) or on the age of the *impubes* (e.g., a mature *impubes* could sue his adversary *sine tutore auctore*). The earliest form of the appointment of a *tutor* was the testamentary one (*tutela testamentaria*) which occurred when a father or the person who had paternal power (*patria potestas*) over the *impubes* nominated a *tutor* in his testament (by which the *impubes* normally was instituted as an heir, *heres*). In the absence of a testamentary appointment, the tutor was designated by the law (*tutela legitima*). There was also an appointment by a magistrate; see TUTELA DATIVA. For the requirements concerning the personal ability to be a guardian, see TUTOR. Originally not responsible at all, the guardian was later made liable for damages caused by fraudulent (*dolus*, *fraus*) or negligent (*culpa*) administration of the ward's property. He could be removed under an accusation to be suspect (see TUTOR SUSPECTUS), sued by the *actio* (*de*) *rationibus distrahendis* in the case of fraud committed in the management of the guardianship, and by the *actio tutelae* (*arbitrium tutelae*) for rendering an account of what he had done for the ward, for the restitution of the ward's property and for indemnifying the ward for losses which resulted from fraudulent and (later) negligent administration. The latter action was a *bonae fidei actio* and involved infamy to the guardian if he was con-

demned. For security given by the guardian, see CAUTIO REM PUPILLI SALVAM FORE. From the time of Constantine the ward had a general hypothec (*hypotheca omnium bonorum*) on the guardian's property. The guardian could seek a reimbursement of his expenses made in the interest of ward through *actio tutelae contraria*.—In Justinian's codification the law of guardianship was thoroughly reformed. Alterations of classical texts obscured many details in the development of the institution and in the field of the guardian's duties and responsibilities. Moreover, the tendency towards equalization of the different types of *tutela* with respect to the forms of appointments contributed considerably to the confusion of the picture.—Inst. 1.13–15, 17–22, 24–26; D. 26.2.1–10, 27.1–9; C. 5.28–68, 71–75; 9.10.—See moreover, EXCUSATIO, POTIORIS NOMINATIO, PRAETOR TUTELARIS, ACTIO SUBSIDIARIA, INVENTARIUM, PERICULUM TUTELAE, ABDICATIO, IN IURE CESSIO TUTELAE, ACTIO RATIONIBUS DISTRAHENDIS, CONTUTORES, USURAE PUPILLARES, and the following items.

Sachers, *RE* 7A; Beauchet and Collinet, *DS* 5; Solazzi, *NDI* 12.2; Berger, *OCD* 400 (*s.v.* guardianship); Renard, *NRH* (1901) 634; Peters, *ZSS* 32 (1911) 188; R. Taubenschlag, *Studien* (1913); Solazzi, *Tutele e curatele, RISG* 53 (1913) 263, 54 (1914) 17, 273; *idem*, *RendLomb* 49 (1916) 638, 53 (1920) 121; *idem*, *Istituti tutelari* (1929); *idem*, *StPav* 6 (1921) 115; *idem*, *St sulla tutela, Pubbl. Univ. Modena* 9 (1925), 13 (1926); E. Levy, *Die Konkurrens der Aktionen* 1 (1918) 143; La Pira, *BIDR* 38 (1929) 53; Vazny, *ACDR Roma* 2 (1935) 529; Lauria, *St Riccobono* 3 (1936) 283; Kübler, *St Besta* 1 (1939) 75; V. Arangio-Ruiz, *Rariora* (1946) 149; Siber, *ZSS* 65 (1947) 162; Lévy-Bruhl, *St Solazzi* (1948) 318; Guarino, *ibid.* 31; Biondi, *Fschr Schulz* 1 (1951) 52; Provera, *Iudicia contraria, MemTor Ser. II*, 75 (1952) 45.

Tutela legitima. Guardianship in which the choice of the guardian was fixed by law (*lex*). Under "law" the Twelve Tables are meant (see LEGITIMUS). If a testator failed to appoint a *tutor* to his son or descendant who was below the age of puberty (*impubes*) and was to become *sui iuris* at the death of the testator, the nearest agnates, the same who succeeded *ab intestato*, had to be the guardians of the persons mentioned. If such relatives were lacking, the Twelve Tables called members of the testator's *gens* (*gentiles*) nearest in relationship. Justinian's reform of the succession on intestacy (Nov. 118) devolved guardianship to the cognates of the deceased.—Inst. 1.15; 17; 18; D. 26.4; C. 5.30.

Tutela legitima parentis. A father who emancipated his son (*parens manumissor*) before the latter became *pubes* was under the law (see LEGITIMUS) the guardian of the son.—Inst. 1.18.—See PARENS MANUMISSOR, EMANCIPATIO.

Tutela legitima patroni. A patron (and after his death his son) became guardian of his freedman whom he manumitted from slavery when the slave was below the age of puberty.—Inst. 1.17.

Tutela mulierum. Guardianship over women *sui iuris*, i.e., who were neither under paternal power (*patria potestas*) nor under that of her husband (*manus*). In the developed stage of the institution the principal function of the *tutor mulieris* was to give his authorization (*auctoritas*) to more important transactions or acts performed by the woman, such as manumission of slaves, acceptance of an inheritance, making a testament, assuming an obligation, alienations, constitution of a dowry, and the like. The women's weakness of sex (see INFIRMITAS SEXUS), lightmindedness, and ignorance of business and court-affairs are given as grounds for their protection through tutelage. The appointment of a woman's guardian was made in the same way as the TUTELA IMPUBERUM: by testament of the person in whose power (paternal or marital) she was, by law (*tutela legitima* of the agnates and of members of the *gens*, *gentiles*, in earlier times) or by a magistrate (*tutela dativa*). The woman could enforce the *auctoritas* of the guardian in the case of an unjustified refusal of approval by applying to a magistrate. The *tutela mulierum* was still in force under Diocletian. In the Theodosian Code there is no mention thereof.—See COËMPTIO FIDUCIAE CAUSA, OPTIO TUTORIS, IUS LIBERORUM, VESTALES, TUTOR AD CERTAM REM, LEX CLAUDIA DE TUTELA MULIERUM, USUCAPIO EX RUTILIANA CONSTITUTIONE.

Sachers, *RE* 7A, 1588; Solazzi, *Aeg* 2 (1921) 155.

Tutela testamentaria. Appointment of a tutor by a testator in his last will for his son or a descendant in his paternal power below the age of puberty who at his death would become *sui iuris* (independent of paternal power). If there was no guardian appointed by testament or if the appointed guardian was excused, legitimate guardianship (*tutela legitima*) entered into account. The appointment had to be made by name (*nominatim*). Guardians appointed by testament were treated by legislation with favorable regard as deserving particular confidence inasmuch as they had been selected by the testator.—Inst. 1.14; D. 26.2; C. 5.28.—See CAUTIO REM PUPILLI SALVAM FORE, CONFIRMARE TUTOREM, TUTOR DATIVUS.

Tutelaris (tutelarius). See PRAETOR TUTELARIUS.

Schneider, *RE* 7A, 1608.

Tutor. A guardian. Only Roman citizens could be guardians (some exceptions were admitted in favor of Latins, see LATINI). Minority was a ground for exemption from assuming a guardianship; Justinian set the age of twenty-five as the minimum age for tutors. Persons with physical defects (dumbness, deafness) were excluded whereas mental defects were only a ground for excuse. Soldiers could not be appointed as guardians. Women were not admitted to guardianship, since it was considered a man's work (*munus masculorum, munus virile*). From A.D. 390 grandmothers and mothers were permitted to assume

the tutorship of their grandchildren or children if they were widows and solemnly declared not to marry again, and if there was no testamentary or legitimate tutor (C. 5.35.2).—For the rights and duties of a *tutor*, see TUTELA.—D. 26.5; C. 5.34; 35.—See NOMINATIO POTIORIS.

Solazzi, *RISG* 64 (1920) 2; Frezza, *StCagl* 22 (1934).

Tutor ad augmentum datus. An additional guardian appointed to assist the primary guardian when the ward's property substantially increased (e.g., through an inheritance).

Tutor ad certam rem. A guardian could not be appointed for one specific affair. An exception was the *tutor praetorius*, appointed for a woman under guardianship, for the constitution of dowry if the guardian under law (*tutor legitimus*) was unable to exercise his functions. In the case of larger estates consisting of distant properties the appointment of a tutor for certain locally delimited affairs was admissible; see TUTOR AD AUGMENTUM DATUS, TUTOR ADIUNCTUS.

Tutor adiunctus. An additional *tutor* appointed by a magistrate when the principal *tutor* was temporarily unable to fulfill his duties (e.g., he became a prisoner of war).—C. 5.36.

Sachers, *RE* 7A, 1524.

Tutor Atilianus. See LEX ATILIA.

Tutor cessans. One of two or more guardians (see CONTUTORES) who did not participate in the management of the ward's affairs at all. Originally he was not liable but later he could be compelled by the praetor to fulfill his duties, and from the time of Marcus Aurelius he could be sued by an *actio tutelae utilis* for damages if he did not excuse himself within fifty days.—See TUTOR GERENS.

Sachers, *RE* 7A, 1577; Solazzi, *RISG* 54 (1914) 35.

Tutor cessicius. See IN IURE CESSIO TUTELAE.

Tutor dativus (datus). A guardian appointed by a magistrate: in Rome by the *praetor urbanus* (see LEX ATILIA), in the provinces by the governor under the *Lex Iulia et Titia*. Under the Principate consuls and praetors appointed guardians, and from the time of Marcus Aurelius a special praetor was concerned with tutelary matters; see PRAETOR TUTELARIUS. The term *tutor dativus* refers sometimes to a *tutor* appointed in a testament.—D. 26.5; C. 5.47.

Sachers, *RE* 7A, 1512; Solazzi, *RISG* 54 (1914) 17, 273.

Tutor ex lege Iulia et Titia. See LEX IULIA ET TITIA.—Inst. 1.20.

Tutor falsus. See FALSUS TUTOR, PRO TUTORE GERERE, ACTIO PROTUTELAE.

Tutor fiduciarius. See TUTELA FIDUCIARIA.

Tutor gerens. A guardian who factually administered the ward's property (*gerere*), alone or together with another tutor (see CONTUTORES) and performed acts connected with the guardianship as a whole (*administratio tutelae*). Ant. *tutor cessans*.—D. 26.7.

Sachers, *RE* 7A, 1523; Solazzi, *RISG* 54 (1914) 35.

Tutor honorarius (honoris causa datus). An honorary tutor. He was free from any responsibility since he actually did not participate in the management of the ward's affairs.

Sachers, *RE* 7A, 1522, 1578; Levy, *ZSS* 37 (1916) 71.

Tutor in litem. A tutor especially appointed for the defense of the ward's interest in a trial against his guardian. In Justinian's law a *curator* accomplished such a task.—See TUTOR PRAETORIUS.—C. 5.44.

Tutor legitimus. See TUTELA LEGITIMA.

Tutor mulieris. See TUTELA MULIERUM.

Tutor notitiae causa datus. A guardian appointed in a testament, in addition to the principal guardian, who had to assist and instruct the latter (*ad instruendos contutores*) in the administration of the ward's affairs. Normally he was the testator's freedman who was acquainted with the ward's affairs.

Sachers, *RE* 7A, 1552; Levy, *ZSS* 37 (1916) 49.

Tutor optivus. See OPTIO TUTORIS.

Tutor praetorius. In the case of a controversy between the guardian and the ward during the guardianship the praetor appointed a special *tutor* who protected the ward's interests in the trial. Under Justinian's law a *curator* was appointed for this purpose.—See TUTOR IN LITEM.

Peters, *ZSS* 32 (1911) 221.

Tutor suspectus. A person who for various reasons (primarily of moral or financial nature) was not suitable for a specific guardianship. A guardian could be considered *suspectus* not only before he started the administration of the ward's property, but also when he later performed an act or concluded a transaction from which by his fraud or negligence a considerable loss resulted for the ward, or when through his inexcusable absence he proved that he did not care for the ward's interest. There were also other cases which rendered the tutor suspect, among them his open enmity against the *pupillus* and his family or his moral conduct (*mores*) which clearly indicated that he did not deserve confidence. A *tutor suspectus* could be denounced to the tutelary authority (*postulare, accusare tutorem suspectum*) by any one, but not by the ward himself; when the allegations of the accuser proved true in a special proceeding (*de suspecto tutore cognoscere*), he could be removed (*removere, remotio*) from the guardianship. The removed *tutor* was branded with infamy only when his actions were fraudulent. The *accusatio suspecti tutoris* (called also *crimen suspecti tutoris*) known already in the Twelve Tables, was in postclassical law extended to curators.—Inst. 1.26; D. 26.10; C. 5.43.

Sachers, *RE* 7A, 1556; Solazzi, *La minore età* (1912) 259; R. Taubenschlag, *Vormundschaftliche Studien* (1913) 27; Berger, *ZSS* 35 (1914) 39; Solazzi, *BIDR* 28 (1915) 131; *idem*, *Istituti tutelari* (1929) 207; R. Laprat, *Crimen suspecti tutoris* (1926); Kaden, *ZSS* 48 (1928) 699; Cardascia, *RHD* 28 (1950) 312.

Tutor temporarius. A guardian temporarily appointed when the *tutor testamentarius* or *legitimus* was absent (e.g., in the interest of the state) or temporarily unable to fulfill his duties (e.g., because of sickness).
Sachers, *RE* 7A, 1521.

Tutore auctore. Refers to acts of the ward which could be performed only with the authorization of his guardian; see AUCTORITAS TUTORIS, TUTELA, TUTELA MULIERUM.

Tutorio nomine agere. To act in court as a guardian in the interest of the ward.

Tutrix. A woman appointed as guardian. In classical law women were excluded from guardianship. Exceptions were introduced in postclassical law.—C. 3.27.—See TUTOR.

U

U.R. Abbreviation for *uti rogas*. See A.

Ugo (Ugolino dei Presbiteri). A glossator of the first half of the twelfth century.
Kuttner, *NDI* 12, 2, 680.

Ulpianus, Domitius. A jurist whose works were excerpted in a large measure by the compilers of the Digest; nearly one-third thereof originates from Ulpian's pen. He was born in Tyre (Phoenicia). He held various high imperial offices, was prefect of the praetorians from A.D. 222, and died in 228, assassinated by his subordinates. Contemporary with Paul (see PAULUS) and like Paul a very productive author, he had a perfect knowledge of the juristic literature; opinions of other jurists are amply quoted by him, but no quotation from Paul occurs in his works. He was an elegant writer, more of a compiler than an original thinker, but far from being a slavish copyist. He wrote many treatises, monographs (some of which are quite extensive) on topics, such as particular statutes, public law, imperial offices (e.g., proconsuls, consuls, *praefectus urbi, praetor tutelarius*), on procedural problems, etc. In addition, elementary works (*Institutiones*) and collections of legal rules (REGULAE), definitions (see DEFINITIONES) and opinions (see OPINIONES) are among his writings. Two collections of *Regulae* appear under the name of Ulpian, one (in 7 books) represented in the Digest by a few texts only, and another, *Liber singularis Regularum*, preserved in a manuscript under the title "Selections from Ulpian's works"; see TITULI EX CORPORE ULPIANI. On Ulpian's Notes to the writings of Papinian, whose younger contemporary he was, see NOTAE. Ulpian's standard works were a commentary on the praetorian Edict (*Libri ad edictum*, in 81 books) and an incomplete treatise on the *ius civile* (*Libri ad Sabinum*, in 51 books).
Jörs, *RE* 5, 1435 (no. 88); Berger, *OCD*; Orestano, *NDI* 12, 2; Pernice, *Ulpian als Schriftsteller*, *SbBerl* (1885) 443; H. Fitting, *Alter und Folge der Schriften röm. Juristen*² (1908) 99; F. Schulz, *Sabinusfragmente in Ulpians Sabinuskommentar* (1906); H. Krüger, *St Bonfante* 2 (1930) 303; Buckland, *LQR* 38 (1922) 38; 53 (1937) 508; Volterra, *SDHI* 3 (1937) 158; F. De Zulueta, *St Besta* 1 (1939) 137; Schulz, *History of R. legal science* (1946) *passim*; Solazzi, *AG* 133 (1948) 3 (on *Libri Disputationum*); Wolff, *Zur Überlieferungsgesch. Ulp. Libri ad Sab.*, *Fschr Schulz* 2 (1951) 145; W. Kunkel, *Herkunft und soziale Stellung der röm. Juristen*, 1952, 245.

Ultimum supplicium. The death penalty. Syn. *summum supplicium*.

Ultimus. See DISPOSITIO ULTIMA, VOLUNTAS ULTIMA.

Ultro. Voluntarily, spontaneously, i.e., without any obligation, authorization or mandate. The term is applied to acts accomplished for another by a *negotiorum gestor*.

Ultro citroque. Reciprocal, on both sides. The expression is used of reciprocal obligations arising from a bilateral agreement and of the pertinent actions which are available to each party against the other.

Ultro tributa. Public works (constructions and buildings) assigned at a public auction to contractors who offered to build them at the lowest price.—See REDEMPTORES, OPERA PUBLICA.
Kübler, *Gesch. des röm. Rechts* (1925) 92; *idem*, *RE* 4A, 484; Mommsen, *Staatsrecht* 2, 1³ (1887) 432, 443.

Uncia. One-twelfth of an AS. Hence the twelfth part of a whole, in particular of an inheritance. *Heres unciarius* or *heres ex uncia* = an heir whose share in the inheritance was one-twelfth.
Babelon, *DS* 5, 590.

Unciae usurae. One-twelfth of *usurae centesimae* (= 12 per cent), i.e., one per cent per annum.

Unciarium fenus. See FENUS UNCIARIUM.

Unciarius heres. See UNCIA.

Unde cognati (legitimi, liberti, vir et uxor). The sections of the praetorian Edict which fixed the four groups of successors under praetorian law (see BONORUM POSSESSIO INTESTATI).—D. 38.6–8; C. 6.14; 15; 18.

Unde vi. Three interdicts against dispossession through violence were proposed under this title in the praetorian Edict; see INTERDICTUM DE VI.—D. 43.16; C. 8.4.
Berger, *RE* 9, 1677.

Universaliter venire. To be sold at a lump sum.

Universi cives. See POPULUS ROMANUS.

Universitas. A union of persons or a complex of things, treated as a unit (a whole). As far as a *universitas* of persons is concerned, the term is applied by the jurists in the field of both public (persons associated in a community, *civitas, municipia, collegia* of a public character) and private law (private *collegia, societates*). *Universitas* of persons is distinguished from its members (*singuli*). As a *universitas* of things are treated things which economically (e.g., a herd = *grex*, a building = *universitas aedificii, aedium*) or socially are considered a whole. In the last instance *universitas* comprises the complex of things and rights connected with an individual, such as an inheritance (*hereditas, universitas bonorum*),

or in a more restricted sense, a *peculium*, a dowry. In this sense *universitas* is opposed to *singulae res*. *singula corpora* which refer to the individual things embraced by the term *universitas* as a whole. In later imperial constitutions *universitas* occurs in connections such as *fideicommissum universitatis*, *donatio universitatis*. The term *universitas* has been suspected as non-classical for various (not always convincing) reasons.—D. 3.4; 38.3; 403.—See ACTOR UNIVERSITATIS, INTERDICTA DE UNIVERSITATE, RES HEREDITARIAE, FIAE CAUSAE.

Cuq, *DS* 5; Bortolucci, *NDI* 12, 2; Guarneri-Citati, *Indice* (1927) 88. *St Riccobono* 1 (1936) 742. *Fschr Koschaker* 1 (1939) 135 (for interpolations); F. Milone, *Le universitates rerum* (1894); C. Longo, *St Fadda* 1 (1906) 123; Boniante, *Ser giuridici* 1 (1926) 250, 277; Bortolucci, *BIDR* 42 (1934) 130, 43 (1935) 128; Schnorr v. Carolsfeld, *Zur Gesch. der juristischen Person* 1 (1933) 59; Albertario, *St* 5 (1937) 323, 4 (1946) 65; P. W. Duff, *Personality in R. private law* (1938) 35; Carcaterra, *Rend. Lomb* 73 (1939–40) 701; B. Biondi, *Istituti fondamentali di dir. ereditario* 1 (1946) 42; V. Olivecrona, *Three essays in R. law*, 1949, 3; *Volterra, CambLJ* 10 (1949) 202.

Universitas agrorum. All plots of land within the limits of one city (*civitas*). They are the territory (*territorium*) of the *civitas* (D. 50.16.239.8).

Universitas facti—Universitas iuris. These non-Roman terms were coined in the literature to distinguish a group of things which though physically separated are treated as a whole, their single components not being taken in consideration. *universitas facti* (e.g., a library, a collection of pictures), from a group of persons or things which as a whole has a legal existence, distinct from that of its members or parts (*universitas iuris*).

Universitas hominum. A rather vague term indicating a larger group of persons organized along social lines.

Universitas Iudaeorum. Occurs only in a rescript of the emperor Caracalla (C. 1.9.1) in connection with a legacy bequeathed to it. The emperor declared the legacy not suable. In the case in question the term was used by a *testatrix* with reference to the Jews living in Antioch, and evidently not as a legal technical term, but in the meaning *universi Iudaei*.

Schnorr v. Carolsfeld, *Zur Gesch. der Juristischen Person* 1 (1933) 69.

Universitas iuris. See UNIVERSITAS FACTI.

Bortolucci, *NDI* 12, 2.

Universum ius. See SUCCESSIO IN UNIVERSUM IUS, HEREDITAS, UNIVERSITAS.

Univira (univiria). A woman who after the death of her husband remained unmarried. Women twice married were socially less esteemed. Augustus' legislation (LEX IULIA DE MARITANDIS ORDINIBUS), however, compelled widows and divorced women to marry a second time by inflicting on them considerable material disadvantages.—See LUCTUS, SECUNDAE NUPTIAE.

Frey, *Recherches de science religieuse* 20 (1930) 48.

Unus casus. A unique case. Contrary to the basic rule concerning the REI VINDICATIO in one case only (*unus casus*)—according to Justinian's Institutes, 4.6.2.—a plaintiff could sue his adversary although he himself had possession of the thing vindicated. The case has remained unknown despite the various attempts on the part of scholars to find it in the Digest where it should be found according to Justinian's assertion.

R. Henle, *U. c.* (1915); Berger, *GrZ* 42 (1916) 725; Scialoja, *St Simoncelli* (1917) 511 (= *St 2* [1934] 273); Nicolau, *RHD* 13 (1934) 597, 14 (1935) 184.

Unus iudex. See IUDEX UNUS, IUDICIUM LEGITIMUM.

Unus testis. See TESTIMONIUM UNIUS.

Urbana familia. See FAMILIA RUSTICA.

Urbana (urbicaria) praefectura. *Praefectura urbis*, see PRAEFECTUS URBI.

Urbanus. See PRAEDIA URBANA, SEDES, PRAETOR, VILLA.

Urbicarius. Connected with, or pertinent to, the capital (Rome, and later Constantinople). The adjective occurs only in imperial constitutions.

Urbicum edictum. The edict of the *praetor urbanus*. —See EDICTUM PRAETORIS.

Urbicus. Refers only to Rome (see URBS); the term does not occur in Justinian's Code.

Urbs. In the Digest this refers to Rome, in later imperial constitutions to Constantinople. Distinction is made between *urbs* = the city surrounded by walls, and *Roma* as a topographical concept: it is the complex of buildings (*continentia aedificia*) regardless of the walls (*muri*, D. 50.16.2 pr.; 87).—See REGIONES URBIS, MURUS, CONTINENTIA, VICARIUS IN URBE, VICARIUS URBIS.

Urbs Constantinopolitana. See CONSTANTINOPOLITANA URBS.

Urere. To burn.—See CADAVER.

Urgere (urguere). To press, to urge. The term is very rare in the Digest, but frequent in imperial constitutions, particularly in those of Diocletian. It is used in the sense of suing an adversary (debtor) in court in order to obtain satisfaction.

Urseius Ferox. A jurist of the late first century after Christ. He is primarily known through a commentary by Julian (*Ad Urseium Ferocem*, in four books); the title of Urseius' work itself—apparently of a casuistic nature—is unknown.

Ferrini, *Opere* 2 (1929) 505; Baviera, *Ser giur.* 1 (1909) 99; Guarino, *Salvius Iulianus* (1946) 48.

Usitatum (usitatius, usitatissimum) est. It is usual, customary, it is generally held. The adjective is used of both legal customs and common juristic opinions.

Ustrina (ustrinum). A place for burning the dead. The establishment of such places was subject to various restrictions (not within the boundaries of a city). With regard to Rome, according to Augustus' order, they had to be located at least two thousand steps beyond the city.

Usuarius. (Adj.) A thing (*res usuaria*) or a slave (*servus usuarius*) of whom a person other than the owner had the right of USUS.

Usuarius. (Noun.) A person who has the right of USUS on another's thing or slave.

Usucapere (usu capere). To acquire ownership over another's thing through USUCAPIO.—See the following items.

Usucapio. Acquisition of ownership of a thing belonging to another through possession of it (*possessio*) for a period fixed by law. Further requirements of *usucapio* under *ius civile* were (*a*) *bona fides* (good faith), i.e., the possessor's honest belief that he acquired the thing from the owner (while, in fact, he acquired it from a non-owner, *a non domino*), and through a transaction which legally was suitable for the transfer of ownership (while, in fact, it was not, if, e.g., the thing which was a *res mancipi* was conveyed by *traditio*). Good faith was required on the part of the possessor only at the beginning of his possession. If he lost later his good faith by getting knowledge of the true situation, the completion of the *usucapio* was not impaired; (*b*) a just cause (*iusta causa*, also called *iustus titulus*); see PRO in connection with possession. Such a just cause was either an act of liberality (*donatio*) of the owner or an agreement with him (a purchase) which would justify the acquisition of ownership if there were not a defect in the transaction itself (e.g., *traditio* of a *res mancipi* instead of *mancipatio*) or in the person of the transferor (a non-owner). An erroneous belief of the usucaptor that there was a just cause (e.g., a valid sale or donation) did not suffice for *usucapio*. Possession of the usucaptor had to be continuous and uninterrupted. If he lost possession during the period required for *usucapio* (according to the Twelve Tables two years for immovables, one year for other things) the previous time during which he possessed under conditions sufficient for *usucapio* did not count any longer. *Usucapio* was accessible only to Roman citizens and on things on which Quiritary ownership was admissible. Things belonging to the fisc and *res publicae* were excluded from usucaption. For provincial land and the later development, see PRAESCRIPTIO LONGI TEMPORIS. In Justinian's law the term *usucapio* refers only to usucaption of movables for which possession for three years was required. Excluded from *usucapio* were stolen things (*res furtivae*, see LEX ATINIA) and things taken by violence (*res vi possessae*, see LEX IULIA ET TITIA) even when possessed by a person who acquired them *bona fide* from the wrongdoers. —D. 41.3; Inst. 2.6; C. 7.30; 31.—See POSSESSIO, MANCIPATIO, ACTIO AUCTORITATIS, INTERPELLATIO, EXPLERE, ACCESSIO POSSESSIONIS, SUCCESSIO IN POSSESSIONEM, BONA FIDES, MALA FIDES, USURPATIO, ACTIO PUBLICIANA, PRAESCRIPTIO LONGI TEMPORIS, and the subsequent items.

Cuq, *DS* 5; Bortolucci, *NDI* 12. 2; Zanzucchi, *AG* 72 (1904) 177; see Galgano, *I limiti subbiettivi dell'antica usucapio* (1913); Suman, *RISG* 59 (1917) 225; Bonfante, *Scr. giur.* 2 (1926) 469–758; Collinet, *Mél Fournier* (1929) 71; Voci, *St Ratti* (1934) 367; *idem*, *SDHI* 15 (1949) 159; *idem*, *St Carnelutti* 4 (1950) 155; J. Faure, *Iusta causa et bonne foi* (Lausanne, 1936); M. Kaser, *Eigentum und Besitz* (1943) 293; Meyers, *Scr Ferrini* 4 (Univ. Sacro Cuore, Milan, 1949) 203.

Usucapio ex Rutiliana constitutione. If a man bought a *res mancipi* from a woman who acted without the *auctoritas* of her guardian (see TUTELA MULIERUM), he did not acquire ownership, but he could usucapt the thing. The woman could, however, interrupt the *usucapio* if she paid back the buyer the price.—See CONSTITUTIO.

Usucapio libertatis. Refers to landed property encumbered by a predial servitude. The owner of a land on which another had a servitude could free his land from the servitude if through a construction or a definite action he prevented the person entitled from exercising his right and the latter tolerated it for a certain time (two years in classical law, ten or twenty under Justinian law), D. 41.3.4.28.—See NON USUS.

Grosso, *Foro Italiano* 62 (1937) part 4, 266; B. Biondi, *Servitù prediali* (1946) 267.

Usucapio pro derelicto. Usucaption of a thing abandoned by a non-owner and possessed by the usucaptor *pro derelicto* (as if abandoned by the owner).—D. 41.7.—See PRO (in connection with possession).

H. Krüger, *Mnem. Pappulia* (1934) 163; A. Cuénod, *U. p. d.* (Thèse Lausanne, 1943).

Usucapio pro donato. Usucaption of a thing received as a gift from a person who was not the owner of it and possessed by the usucaptor *pro donato* (as if donated by the owner).—D. 41.6; C. 7.27.

Bonfante, *Scr giur.* 2 (1926) 563; Levet, *RHD* 11 (1932) 387, 12 (1933) 1.

Usucapio pro dote. Usucaption of a thing which a husband received among the things constituted as a dowry and which was not owned by the person who constituted the dowry. This *usucapio* starts from the time of the conclusion of the marriage.—D. 41.4; C. 7.28.—See DOS, PRO (in connection with possession).

Bonfante, *Scr giuridici* 2 (1926) 569.

Usucapio pro emptore. Usucaption of a thing by the buyer to whom it was sold and delivered and who, however, did not acquire ownership thereof because of a legal defect in the act of transfer or because the seller was not the owner. The possession of the thing by the buyer is *pro emptore* (as if the purchase were valid).—See D. 41.4; C. 7.26.—See EMPTIO, PRO (in connection with possession).

P. Bonfante, *Scr giuridici* 2 (1926) 575.

Usucapio pro herede. If a person possessed a thing which was a part of an inheritance and of which the

heir did not yet obtain possession, he acquired ownership thereof by *usucapio*, called *pro herede* (= as if an heir). For this kind of *usucapio* possession for a year sufficed even for immovables. Knowledge on the part of the usucaptor that the thing belonged to an heir, was not a hindrance since neither *bona fides* nor *iusta causa* were required. The reason for this unfair form of acquisition of ownership on another's thing—it was considered by the jurists *"lucrativa"* (= profitable, gratuitous)—was, according to Gaius (Inst. 2.55), that the ancient Romans wanted inheritances to be accepted by the heir as soon as possible in order that the familiar religious rites (see SACRA FAMILIARIA) be continued soon after the death of a head of a family, and that the creditors be satisfied without delay. Under Hadrian a *senatusconsultum* abolished the *usucapio pro herede*.—D. 41.5; C. 7.29.—See HERES, CAUSA LUCRATIVA.

H. Krüger, *ZSS* 54 (1934) 80; Collinet, *St Riccobono* 4 (1931) 131; Kamps, *Arch. d'histoire du droit oriental* 3 (1948) 264; Biondi, *Istituti fondamentali di dir. ereditario* 2 (1948) 114; Albanese, *AnPal* 20 (1949) 276.

Usucapio pro legato. A *usucapio* based on possession of a thing, bequeathed in a valid testament: in the form of a *legatum per vindicationem*, of which, however, the legatee could not acquire ownership because the testator had no ownership of it. The possession of the usucaptor is *pro legato* (as if the legacy were valid).—D. 41.8.—See LEGATUM PER VINDICATIONEM, PRO (in connection with possession).

P. Bonfante, *Scr. giuridici* 2 (1926) 611; Bammate, *RIDA* 1 (1948) 27.

Usucapio pro soluto. Usucaption of a thing which one received from his debtor in repayment of a debt and of which the creditor did not acquire ownership because of a legal defect in the transfer of the thing to him.

P. Bonfante, *Scr giuridici* 2 (1926) 535.

Usucapio pro suo. *Usucapio* of a thing which one possessed "as his own" on the ground of any just cause. The term *pro suo* is a general one and was applied whenever there was not a specific title indicated by an appropriate term (see the foregoing items).—D. 41.10.

P. Bonfante, *Scr giur.* 2 (1926) 631; Albertario, *Studi* 2 (1941) 185; H. H. Pflüger, *Erwerb des Eigentums* (1937) 42.

Usucapio servitutis. The acquisition of a servitude (see SERVITUS) through the exercise (*usus*) of the rights connected with it for a certain period of time. *Usucapio servitutis* was admitted in earlier law probably only with regard to rustic servitudes, namely *iter, actus, via,* and *aqueductus;* it was later forbidden by the LEX SCRIBONIA.

Ascoli, *AG* 38 (1887) 51, 198; B. Biondi, *Le servitù prediali* (1946) 233.

Usucapionem rescindere. See ACTIO RESCISSORIA.

Usufructuarius. See USUSFRUCTUS.

Usurae. Interest generally paid periodically in money (or in fungibles) by the debtor to the creditor as long as the principal (*sors, caput*) was not repaid. *Usurae* are regarded to be proceeds (see FRUCTUS) of the capital. Interest was due when agreed upon by the parties (normally through *stipulatio*), a simple informal pact (*usurae ex pacto*) did not suffice, but could be taken into consideration in trials governed by good faith (see IUDICIA BONAE FIDEI). An agreement was superfluous when the obligation to pay interest was imposed by the law (USURAE LEGITIMAE). Interest paid in an amount higher than permitted by law or though prohibited by law (see LEX GENUCIA) could be claimed back by the debtor who had paid them, through CONDICTIO OB INIUSTAM CAUSAM (see LEX MARCIA).—D. 22.1; C. 4.32.—See FENUS, FENUS NAUTICUM, FENUS UNCIARIUM, MUTUUM, INTERUSURIUM, VERSURA.

Cuq, *DS* 5: De Villa, *NDI* 7, 51; Butera, *NDI* 12, 2, 801; Heichelheim, *OCD* 455; G. Billeter, *Gesch. des Zinsfusses im Altertum* (1898); Garofalo, *AG* 66 (1901) 157; V. A. Cottino, *Usura* (1908); Rotondi, *Scr* 3 (1922 ex 1911) 389; G. Cassimatis, *Les intérêts dans la législation de Justinien* (1931); De Villa, *Usurae ex pacto* (1937).

Usurae centesimae. Monthly interest of one-hundredth of the sum due, i.e., twelve per cent per annum. The Romans counted interest by a fraction of the principal and monthly. *Usurae dimidiae centesimae* = six per cent per annum (syn. *usurae semisses*).

Usurae ex mora (usurae morae). Interest to be paid by the debtor on account of his default. In contracts based on good faith (*contractus bonae fidei*) interest for default could be claimed by the creditor. The judge decided upon it in the judgment about the principal debt. *Usurae ex mora* were due under the law in case of default in fulfillment of a *fideicommissum*, but not when a *legatum* under *ius civile* was concerned. Justinian abolished the distinction.—C. 6.47.—See MORA DEBITORIS.

G. Billeter, *Gesch. des Zinsfusses* (1898) 284; E. Balogh, *Zur Frage der Verzugszinsen,* in *Acta Academiae universalis iurisprud. comparatae* 1 (1928).

Usurae ex pacto. Interest promised by a simple pact. Generally such *usurae* were not enforceable. "If interest was agreed upon by a mere pact (*pactum nudum*), the pact is invalid" (Paul. *Sent.* 2.14.1). If the interest agreement was connected with a contract governed by good faith (*contractus bonae fidei*) the judge could take into consideration the question of interest and condemn the defendant to pay it according to the agreement, especially if such payment was customary. In certain specific cases, as in loans given by cities, in loans of fungibles other than money (in later classical law), or in loans made with bankers (under Justinian), a pact concerning interest was considered valid.

De Villa, *Le u. ex pacto,* 1937.

Usurae fiscales. The fisc could claim interest from his debtors (e.g., from tax farmers) who failed to pay

in due time. The fisc, however, did not pay interest at all except when it inherited a debt from which interest was due.—C. 10.8.—See FISCUS.

Usurae legitimae. The rate of interest which was imposed or fixed by law. In the late Republic the highest admissible rate was twelve per cent (USURAE CENTESIMAE). Higher interest was granted in a FENUS NAUTICUM until Justinian limited it to twelve per cent. Under his law the normal rate was six per cent (C. 4.32.26.2); merchants could demand eight per cent, persons of higher social rank (*personae illustres*) only four per cent.—See LEGITIMUS.

G. Billeter, *Gesch. des Zinsfusses* (1898) 267.

Usurae maritimae. See FENUS NAUTICUM.

Usurae morae. See USURAE EX MORA.

Usurae pupillares. Interest which a guardian was liable to pay to his ward if he negligently failed to place the ward's money at interest, if he lent it to insolvent debtors, or used it for his own profit (D. 26.7.7.10).—C. 5.56.—See TUTELA IMPUBERUM.

Usurae quae in obligatione consistunt. Interest which was promised in a separate *stipulatio* and was enforceable independently from the principal obligation. Ant. *usurae, quae officio iudicis praestantur*, actionable only together with the principal obligation and as far as the latter was enforceable, but the decision as to whether they are due or not, and to what extent, lay with the judge (*officium iudicis*). To the latter category belonged USURAE EX MORA; interest to be paid by a manager of another's property (a guardian, a mandatary) when he used money entrusted to him for his own profit or when, through negligence, he failed to place the administered funds at interest; interest due to minors, to the fisc or to charitable institutions.

Usurae quae officio iudicis praestantur. See the foregoing item.

C. Fadda, *St e questioni di diritto*, 1 (1910) 229.

Usurae quincunces. Five-twelfths of USURAE CENTESIMAE, i.e., five per cent per annum.

Usurae rei iudicatae. Justinian ordered that a debtor who did not pay a judgment debt within four months after the judgment was rendered or confirmed on appeal, had to pay twelve per cent interest from the judgment sum.—C. 7.54.

P. De Francisci, *Saggi romanistici*, 1913, 61.

Usurae semisses. See USURAE CENTESIMAE.

Usurae ultra duplum. Interest exceeding the principal. Syn. *usurae ultra alterum tantum*. The accumulation of interest due and not paid could not exceed the amount of the debt; a debtor never had to pay in overdue interest more than the amount of the debt. Justinian extended the rule to interest already paid, to wit, no interest could be demanded by the creditor once the interest paid equaled the sum due.

Usurae usurarum. Compound interest.—See ANATOCISMUS.

Usurarius. (Adj.) A debtor who had to pay interest on the sum he owed. *Usuraria pecunia* = money lent at interest.

Usureceptio. Regaining ownership through USUCAPIO (*usu recipere*) of a thing of which one was previously the owner, as, e.g., if one had transferred the ownership of a thing legally (through *mancipatio* or *in iure cessio*) to another (a relative or a friend) to look after it as a trustee (*fiduciae causa*) and later regained possession of the thing without the ownership being retransferred to him. A *usureceptio* also took place when a thing was given to the creditor as a pledge in the form of FIDUCIA (i.e., ownership thereof was transferred to him) and later, after the debt was paid, possession of the thing (but not ownership) was returned to the debtor, its former owner (Gaius, Inst. 2.59–61). The *usureceptio* disappeared when *fiducia* as a form of pledge and the transfer of ownership as a trust (*fiduciae causa*) went out of use. There is no mention of *usureceptio* in Justinian's legislation.

Manigk, *RE* 6. 2305; Cuq, *DS* 5. 607; Grosso, *RISG* 4 (1929) 260; Bortolucci, *NDI* 12. 2; W. Erbe, *Fiducia* (1940) 64; Levy, *St Albertario* 2 (1950) 221.

Usureceptio ex praediatura. *Usucapio* of a thing by its former owner who had given it to the fisc as a pledge. If the latter sold it afterwards at auction and the former owner regained possession, no matter how, he could acquire ownership through *usucapio* (Gaius, Inst. 2.61).—See PRAEDIATOR.

Bortolucci, *NDI* 12. 2, 806; Cuq, *DS* 5, 607.

Usurpare. To usurp, to take unlawfully (physical power over a thing). In a quite different meaning (= to interrupt) the term is used with regard to USUS (a form of acquisition of marital power, *manus* over the wife) as a result of the so-called TRINOCTIUM (*abesse a viro usurpandi causa* = to leave the husband in order to interrupt *sc.* the *usus*, Gellius, *Noct. Att.* 3.2.12–13). Similarly *usurpare* is used of the interruption of USUCAPIO.—See USURPATIO (USUCAPIONIS).

Lévy-Bruhl, *Revue de philologie* 62 (1936).

Usurpatio (usucapionis). An interruption of an *usucapio*. It occurred when the usucaptor lost possession of the thing to be usucapted.—D. 41.3.—See USUCAPIO, INTERPELLATIO.

Cuq, *DS* 5.

Usus. (From *uti*.) In a general sense, the act of using a thing. See FURTUM USUS, RES QUAE USU CONSUMUNTUR. *In usu esse* = to be used by an individual or by all (*in usu publico*). The locution *in usu* is applied to legal institutions that are in general use (e.g., a testament), primarily those connected with civil procedure (*actiones, legis actiones, exceptiones*). In a more specific sense *usus* and the locution *in usu esse* refer to customs and customary rules in legal relations. *Usu receptum est* is said of a rule which has been established by custom.—See CONSUETUDO, IUS SCRIPTUM, LONGAEVUS USUS, USUS LOCI.

Usus. As a personal servitude, the right to use (*ius utendi*) another's property, without a right to the produce (*fructus*) of the thing (contrary to usufruct). *Usus* was strictly personal. When it was granted for dwelling in another's house, the beneficiary (*usuarius*) could reside therein together with his family, household, slaves and guests, but he could not leave the house and let it as a whole to others. Normally *usus* was left as a legacy. If no other use of the thing was possible than by taking the fruits (e.g., a vegetable garden or an orchard), the *usuarius* could use the fruits for himself and his household but not sell them to others.—See OPERAE ANIMALIUM. —Inst. 2.5; D. 7.4; 6; 8; 33.2.

Cuq, *DS* 5. 611; Ricci, *NDI* 1. 36 (*s.v. abitazione e uso*); Riccobono, *St Scialoja* 1 (1905) 579; Pampaloni, *RISG* 49 (1911) Ch. III e V; Meylan, *St Albertoni* 1 (1933) 95; G. Grosso, *Uso, abitazione (Corso* 1939) 139; *idem, SDHI* 5 (1939) 139; Solazzi, *SDHI* 7 (1941) 373; Villers, *RHD* 28 (1950) 538; Lauria, *St Arangio-Ruiz* 4 (1953) 225.

Usus. In the law of marriage, a formless acquisition of marital power (*manus*) over the wife through an uninterrupted cohabitation of a man and a woman for one year with the intention of living as husband and wife (*affectio maritalis*). However, a deliberate absence of the woman from the common household for three consecutive nights produced the interruption of the *usus* which was considered as a kind of *usucapio* of the *manus*. The marriage based on living together as husband and wife remained valid but without the husband's power over the wife (*sine manu*) if the latter repeated the practice of three-night absence every year.—See TRINOCTIUM.

Kunkel, *RE* 14, 2261; C. W. Westrup, *Quelques observations sur les origines du mariage par usus*, 1926; E. Volterra, *La conception du mariage* (Padova, 1940) 5; H. Lévy-Bruhl, *Nouvelles Études* (1947) 64; Köstler, *ZSS* 65 (1947) 50; Villers, *RHD* 28 (1950) 538; M. Kaser, *Das altröm. Ius* (1949) 316; *idem, Iura* 1 (1950) 70.

Usus auctoritas. According to Cicero (Top. 4.23) the expression was used in the Twelve Tables in reference to the earliest USUCAPIO. The exact meaning of the term is not quite clear. *Usus* seemingly alludes to the uninterrupted possession (use) and physical control over the thing which was to be acquired by *usucapio*.—See ACTIO AUCTORITATIS.

Leifer, *ZSS* 57 (1937) 124; M. Kaser, *Eigentum und Besitz* (1943) 86; F. De Visscher, *Nouvelles Études* (1949) 179; P. Noailles, *Du droit sacré au droit civil* (1950) 256; Kaser, *ZSS* 68 (1951) 155.

Usus iudiciorum. See CONSUETUDO FORI.

Usus iumenti, ovium, pecoris. See OPERAE SERVORUM.

Usus iuris. The exercise of a right, e.g., of a servitude.—See POSSESSIO IURIS, USUCAPIO SERVITUTIS.

Usus loci. A local custom, see USUS.

Usus longaevus. See LONGAEVUS USUS.

Ususfructus. The right to use (*uti, ius utendi*) another's property and to take produce (*fructus*) therefrom (*ius fruendi*), without impairing (i.e., destroying, diminishing, or deteriorating) its substance (*salva rerum substantia*, D. 7.1.1). The usufruct is reckoned by Justinian among personal servitudes (see SERVITUS). As a strictly personal right the *ususfructus* is neither transierable nor alienable. A transfer of a *ususfructus* through IN IURE CESSIO was possible only from the beneficiary of the *ususfructus* (*usufructuarius, fructuarius*) to the owner of the thing. A usufruct was usually constituted in the last will of the owner through a legacy, but it could arise from a transaction between the owner and the usufructuary through *in iure cessio* and, later, under praetorian law, by formal or formless agreement; see PACTIONES ET STIPULATIONES. A *ususfructus* was extinguished by the death or by *capitis deminutio, maxima* or *media*, of the usufructuary. Perishable things and those used by consumption (see RES QUAE USU CONSUMUNTUR) could not be the object of *ususfructus*; see, however, QUASI USUSFRUCTUS. *Ususfructus* is characterized by the jurists as a part of ownership (*pars dominii*), since practically it comprised all the benefits connected with ownership. The owner retained mere ownership (*nuda proprietas*) and he might dispose of the thing without violating the rights of the *fructuarius*. The limitation *salva rerum substantia* imposed certain duties on the usufructuary: he could not change the economic function or destiny of the property, construct a building thereon, or encumber the property with a servitude or acquire one on behalf of it. But his *ius fruendi* was extended to all kinds of proceeds (see FRUCTUS), hence he could let the property or a part of it to another person.—Inst. 2.4; D. 7.1; 2; 4–6; 9; 33.2; C. 3.33.—See CAUTIO USUFRUCTUARIA, DEDUCTIO USUSFRUCTUS, FRUCTUARIUS, SILVA, INTERDICTUM QUAM HEREDITATEM, MUTATIO REI, VENATIO.

Beauchet and Collinet, *DS* 5; De Dominicis, *NDI* 12. 2; Pampaloni, *BIDR* 22 (1910) 109; *idem, RISG* 49 (1911) ch. IV–VI; Albertario, *BIDR* 25 (1912) 5 (= *Studi* 2. 1941, 309); W. W. Buckland, *LQR* 43 (1927) 326; De Francisci, *St Ascoli* (1931) 55; P. E. Cavin, *L'extinction de l'usufruit rei mutatione* (Lausanne, 1933); P. Frezza, *Appunti esegetici in tema di modi pretorii di costituzione dell'usufrutto, StCapl* 22 (1935) 92; Masson, *RHD* 13 (1934) 1, 161; Meylan, *St Albertoni* 1 (1933) 122; Bohacek, *BIDR* 44 (1936–37) 19; G. Grosso, *L'usufrutto (Corso*, 1938); *idem*, 5 (1939) 483, 9 (1943) 157; Kaser, *Fschr Koschaker* 1 (1939) 458; R. F. Vaucher, *Usufruit et pars dominii* (Thèse Lausanne, 1940); P. Ramelet, *L'acquisition des fruits par l'usufruitier* (Thèse Lausanne, 1945); Kagan, *CambLJ* 9 (1946) 159; *idem, TulLR* 22 (1947) 94; Riccobono, *BIDR* 49–50 (1948) 33; Sanfilippo, *ibid.* 58; Kaser, *ZSS* 65 (1947) 363; Solazzi, *SDHI* 6 (1940) 162; *idem, La tutela delle servitù prediali* (1949) 93; *idem, SDHI* 16 (1950) 277; 18 (1952) 229; Ambrosino, *ibid.* 183; Albanese, *AnPal* 21 (1951) 21; Levy, *West Roman vulgar law*, 1951, *passim*; Reggi, *AG* 142 (1952) 229; Biondi, *St Arangio-Ruiz* 2 (1952) 86.

Ut. (Conj.) When followed by an indicative or an accusative with an infinitive in lieu of a subjunctive, this occurs in interpolated phrases. But as a criterion of an interpolation it is not fully reliable

because in corrupt texts the erroneous construction may have originated from a copyist's error or negligence. It can hardly be assumed that the compilers did not know that *ut* had to be followed by a subjunctive.

Guarneri-Citati, *Indice*[2] (1927) 80 and *Fschr Koschaker* 1 (1939) 155.

Ut puta. See UTPUTA.

Uterini. Brothers (*uterinus frater*) and sisters (*uterina soror*) born of the same mother.—See FRATER.

Uterus. *In utero* = in the womb. Syn. *venter*.—See NASCITURUS.

Usani, *Bollettino di filol. classica* 16 (1910) 85.

Uti. To use.—See USUS, USUSFRUCTUS.

Uti. Technical term for the use of procedural remedies (e.g., *uti actione, interdicto, formula, exceptione, defensione*) or of benefits granted by specific laws (e.g., *uti lega Falcidia* = to claim the *quarta Falcidia* according to LEX FALCIDIA).—See UTIMUR HOC IURE.

Uti frui habere possidere. To use, to take proceeds, to hold, to possess. The four words (sometimes with omissions) are used in leases of public land and in treaties with autonomous cities (*civitates liberae*) to indicate the most important functions of ownership of landed property which are granted to a lessee to be exercised by him without the right of ownership.

Kaser, *ZSS* 62 (1942) 22.

Uti optimus maximus. See OPTIMUS MAXIMUS.

Uti possidetis. See INTERDICTUM UTI POSSIDETIS.

Uti rogas. (Abbreviation U.R.) See A.

Uti iure suo. To make use of (to exercise) one's right. Several legal rules empower a person to make use of his right regardless of whether or not another person suffers a loss thereby. "No one is considered to act fraudulently (*dolo facere*), to commit a wrong (*damnum facere*), or to use violence (*vim facere*) who avails himself of his right (*qui iure suo utitur*)" (D. 50.17.55 and 155.1).—See AEMULATIO, NEMO DAMNUM FACIT, NEMO VIDETUR DOLO, etc.

Riccobono, *BIDR* 46 (1939) 3.

Utilis. Used of legal acts, transactions, and procedural steps which have been, or can be, successfully accomplished in a given situation. In a technical sense the adjective is used in the following connections: ANNUS UTILIS, DIES UTILES, TEMPUS UTILE, IMPENSAE UTILES, ACTIONES UTILES, INTERDICTA UTILIA.—See UTILITER.

Seckel, in Heumann's *Handlexikon*[9] (1907) 608.

Utilis (utile, utilia) publice. In the public interest. Syn. *utilis in commune* (= in the interest of the community), *publice interest*. Ant. *privatim utilis* in the interest of private persons.—See UTILITAS PUBLICA, INTEREST ALICUIUS.

Utilitas. With regard to an individual, his interest, benefit (see INTEREST ALICUIUS). *Utilitas privatorum* = the interest of private persons. Ant. *utilitas publica* (*communis*). Some legal rules are qualified as having been established *utilitatis causa* (*propter utilitatem*), i.e., either for public utility (welfare), or on behalf of certain categories of individuals (such as minors, lunatics, absent persons) or for general expediency and suitableness for practical purposes. "When new rules are introduced, their utility must be evident as to whether a law which has been considered just for a long time is to be changed" (D. 1.4.2).

Orestano, *AnMac* 11 (1937) 56; Biondi, *Scr Ferrini* (Univ. Pavia, 1946) 219.

Utilitas communis. See UTILITAS PUBLICA. "It can be proved by innumerable instances that many rules have been introduced by the *ius civile* in the public interest against the principles of reasoning" (D. 9.2.51.2).

Utilitas contrahentium. The benefit of the contracting parties.—See CULPA.

Utilitas publica. The welfare (interest) of the state. "Consideration of the public interest is preferable to the convenience of private individuals (*commodis privatorum*)," Paul, *Sent.* 2.19.2. "Public welfare is to be preferred to private agreements (*privatorum contractibus*)," Diocl., C. 12.62.3.—*Utilitates publicae* (in the later Empire) = public services (contributions in money or labor, so-called liturgies) rendered by the citizens or certain groups of them for the benefit of the state or municipalities.—C. 1.22.—See MUNERA.

F. M. De Robertis, *L'espropriazione per pubblica utilità*, 1936; v. Premerstein, *Vom Wesen und Werden des Prinzipats* (1937) 194; Steinwenter, *Fschr Koschaker* 1 (1939) 84; v. Lübtow, *ZSS* 66 (1948) 486; Berger, *Iura* 1 (1950) 110; Gaudemet, *RHD* 29 (1951) 466; Levy, *West Roman vulgar law*, 1951, 100.

Utiliter. See UTILIS. *Utiliter agere* = either to sue successfully (syn. *utiliter experiri, petere, intendere*) or to sue with an *actio utilis*; see ACTIONES UTILES, INTERDICTA UTILIA. *Utiliter* in connection with other verbs, indicates the validity of an act performed or to be performed (e.g., *utiliter testari, instituere heredem, dare legata, legare, relinquere fideicommissum*, all in the law of succession; *utiliter obligari, gerere negotium, stipulari*, in the law of obligations).

Utimur hoc (eo) iure. This is the law we apply. It is a typical phrase in juristic writings indicating a legal rule which is generally observed. Ant. *alio iure utimur*. The locution is frequent in Gaius' Institutes. At times the compilers of the Digest applied the phrase, which they learned from the classical jurists, especially when they wished to shorten the discussion in a classical text. By no means, however, can the phrase be considered a criterion of an interpolation.

Guarneri-Citati, *Indice*[2] (1927) 51, *s.v. ius*; Berger, *KrVj* 14 (1912) 440.

Utputa (ut puta). As, for instance; suppose that; as in the case. The adverbial phrase was used by both classical jurists and Justinian's compilers to introduce illustrative material.

Guarneri-Citati, *Indice*[2] (1927) 72 (*s.v. puta*, Bibl.).

Utraque Roma. See ROMA.

Utrubi. See INTERDICTUM UTRUBI.

Uxor. A wife, a married woman. Strictly speaking *uxor* refers only to a woman married to a Roman citizen. The term is also used, however, with reference to a Latin or to a wife living with a husband in a marriage without CONUBIUM (*uxor iniusta*, as opposed to an *uxor iusta*, i.e., a woman living with a husband in a MATRIMONIUM IUSTUM). Even a female slave living with a slave in a marriage-like union (see CONTUBERNIUM) is occasionally called *uxor*. *Uxorem ducere* = to marry a woman.—C. 4.12.—See MATER FAMILIAS, MATRONA, MARITUS, BONORUM POSSESSIO INTESTATI (for the right of a wife to the intestate succession of her husband, *unde vir et uxor*), INTERDICTUM DE LIBERIS EXHIBENDIS.

V

Vacans possessio. See VACUA POSSESSIO.

Vacantes. With reference to public officials in the later Empire, see HONORARII.

Kübler, *RE* 7A.

Vacantia (vacua) bona. See BONA VACANTIA.

Vacare. To be accesible to all. See RES COMMUNES OMNIUM. *Vacare a(muneribus)* = to be exempt from (certain charges or duties); see VACATIO.

Vacarius. A professor at the law school of Bologna in the twelfth century, founder of the school of law at Oxford, author of summaries of Justinian's Institutes and Digest.

F. Liebermann, *Engl. Historical Rev.* 11 (1896) 305; F. De Zulueta, *The liber pauperum of V.* (1927); Ferrari, *RStDIt* 3 (1930) 468; P. Koschaker, *Europa und das röm. Recht* (1947) 74; Ambrosino, *RISG* 57 (1950) 414.

Vacatio. The period of time granted a widow or a divorced woman to remain unmarried after the husband's death or the divorce, according to the *Lex Iulia et Papia Poppaea* (two years or one year and a half, respectively).—See SECUNDAE NUPTIAE, UNIVIRA.

Vacatio. Exemption from public charges, services, or taxes, exemption from the duty to assume a guardianship.—C. 10.45.—See VACATIO MUNERUM, EXCUSATIONES A TUTELA.

Lammert, *RE* 7A.

Vacatio a forensibus negotiis. See FERIAE.

Vacatio bonorum. See BONA VACANTIA.

Vacatio militiae. See IMMUNIS.

Vacatio munerum (a muneribus). Exemption from compulsory public services and charges (see MUNERA). It expired when the reason therefor (sickness, old age, absence in the interest of the state) disappeared.—D. 50.5; C. 10.46.

Kübler, *RE* 16, 648.

Vacatio tutelae (a tutela). See EXCUSATIONES A TUTELA.

Vacillare. To hesitate, to be unsteady in bearing testimony. A witness who is unsettled in his testimony does not deserve belief and "should not be heard" (D. 22.5.2).

Vacua pecunia. Money not placed at interest.—See USURAE.

Vacua possessio. Free and unimpeded possession of an immovable, which the buyer might enter without being disturbed by the seller or by a third person. Delivery of such possession (*vacuam possessionem tradere*) by putting the immovable under the purchaser's control was the primary duty of the seller. With reference to the buyer, the sources speak of *in vacuam possessionem ire* (or *intrare* = to enter).—See EMPTIO VENDITIO, TRADITIO.

V. Scialoja, *Scr giur.* 2 (1934, ex 1907) 247; Seckel and Levy, *ZSS* 47 (1927) 226; M. Bussmann, *L'obligation de délivrance du vendeur* (Lausanne, 1933) 98; J. De Malafosse, *L'interdit momentariae possessionis* (Thèse Toulouse, 1949) 90.

Vacuus. Syn. VACANS.

Vades. See VAS.

Vadimonium. A promise in the form of a *stipulatio* made by a defendant in a trial already under way, or by a debtor summoned by his creditor, concerning due appearance in court. In the case of summons by the plaintiff (see IN IUS VOCATIO) to go with him immediately to court, when the defendant was not able or willing to do so and did not offer a personal surety (see VINDEX), the *vadimonium* took place extrajudicially. The *vadimonium*-promise was made in court if the proceedings before the magistrate were not concluded on the first day and the defendant had to guarantee his reappearance on another day. In certain cases the *vadimonium* was a *vadimonium purum* (i.e., without security), in others it was strengthened by an oath or a real security. The *vadimonium* could not exceed half the value of the object in dispute, and in no case one hundred thousand sesterces. If the defendant failed to appear, the plaintiff could sue him for payment of the *vadimonium* on the ground of his stipulatory promise, unless the defendant could justify his absence. The changes in civil procedure in the later law rendered the *vadimonium* obsolete. It does not appear in Justinian's legislative work, where it was replaced by the *cautio* (*satisdatio*) *iudicio sisti*.—See VAS and the following items.

Steinwenter, *RE* 7A; Fliniaux, *DS* 5; Aru, *NDI* 12. 2; R. Jacquemier, *Le v.* (Thèse Paris, 1900); A. Fliniaux, *Le v.* (Thèse Paris, 1908); Debray, *NRHD* 34 (1910) 521; G. Cicogna, *Vindex e v.*, 1911; Lenel, *Edictum perpetuum*[3] (1927) 80; A. Palermo, *Il procedimento cautionale* (1942) 17.

Vadimonium desertum. (From *deserere*.) Occurred when the defendant did not appear in court on the date fixed, contrary to his *vadimonium* promise.—See VADIMONIUM.

Steinwenter, *RE* 7A, 2059; Herzen, *NRHD* 35 (1911) 145.

Vadimonium facere adversario. An extrajudicial declaration (*"vadimonium tibi facio"*) made by a

creditor to his debtor on the occasion of IN IUS VOCATIO, by which he imposed on the latter, who did not follow him immediately to court, the duty to appear on a certain day and hour "*ante tribunal praetoris urbani*" (= before the tribunal of the urban praetor). The declaration was followed by a *stipulatio* under which the summoned debtor assumed the pertinent obligation.

Arangio-Ruiz, *La parola del passato*, fasc. 8 (1948) 138.

Vadimonium iureiurando. In provincial practice (only in Egypt?) the stipulatory promise of a *vadimonium* was strengthened by an oath.

La Pira, *St Albertoni* 1 (1935) 443.

Vadimonium Romam faciendum. A promise of a *vadimonium* made in a municipal court, before which the plaintiff's claim was brought, to appear on a fixed day before the praetor in Rome in the same matter.

Fliniaux, *DS* 5, 621; Lenel, *Edictum perpetuum*[3] (1927) 55; La Pira, *St Albertoni* 1 (1935) 443.

Vadimonium recuperatoribus suppositis. A promise of a *vadimonium* in which it was stipulated that, in the case of the defendant's non-appearance in court, the matter was to be presented immediately to the tribunal of RECUPERATORES who could condemn him to the sum of the *vadimonium* without delay.

Yvonne Bongert, in *Varia* (*Publications de l'Institut de droit rom. de l'Univ. de Paris*, 9) 1952, 165.

Vagari. To stroll from place to place. A vagrant slave = ERRO.

Valens. See ABURNIUS.

Valere. With regard to legal transactions and acts, to be legally valid (effective). Syn. *effectum, vires habere* (*tenere*), *iure consistere, ratum esse*. Ant. *non valere, nullius esse momenti*. With regard to things *valere* = to have a certain value.

Hellman, *ZSS* 23 (1902) 423.

Valerius Probus. See NOTAE IURIS.

Valerius Severus. (Also mentioned as Severus Valerius.) An unknown jurist of the first century of the Principate. He is cited by Julian and Ulpian.

Kunkel, *Herkunft und soziale Stellung der röm. Juristen*, 1952, 134.

Valetudo. Health. The term is generally used for bad health, physical or mental disease. In specific circumstances sickness was recognized as an excuse for non-appearance in court or for exemption from assuming a guardianship.—See MORBUS.

Validus. Strong, important, legally valid. Ant. *invalidus, nullus, nullius momenti*.—See VALERE.

Vallare. To strengthen the efficiency or validity of a legal transaction or act by a *stipulatio*, or by some better means of evidence. The term occurs in the language of the imperial chancery.

Vanus. Legally worthless, useless. For *vanus homo, timor vanus*, see METUS.

Variae causarum figurae. Various types of causes. This general expression includes all sources of obligations (D. 44.7.1 pr.) beyond the typical ones (*consensus, res, verba, litterae*).—See OBLIGATIO.

Variare. See IUS VARIANDI.

Varius Lucullus. An unknown jurist of the first century of the Principate (?), mentioned but once in the Digest.

Kunkel, *Herkunft und soziale Stellung der röm. Juristen*, 1952, 140.

Varro, Marcus Terentius. (Died 27 B.C.) The famous author of *Le lingua Latina* (On the Latin Language) and *Res rusticae* (Country-life), cited as the author of a treatise (in fifteen books), *De iure civili*, which is not preserved. Valuable juristic material is to be found in the works just mentioned above.

Dahlmann, *RE* Suppl. 6, 1254; Sanio, *Varroniana in den Schriften röm. Juristen* (1867); Conrat, *ZSS* 30 (1907) 412; Boniante, *BIDR* 20 (1908) 254; idem, *RendLomb* 42 (1909) 318; Stella-Maranca, *ACSR* 1935, 4 (1938) 45; F. Schulz, *History of R. legal science* (1946) 41, 169; Weiss, *ZSS* 67 (1950) 501.

Varus. See ALFENUS VARUS.

Vas. (Pl. *vades*.) A surety which guaranteed the appearance of the defendant before the magistrate in the earliest law, in the procedure by LEGIS ACTIO. Origin and details are obscure but a connection with VADIMONIUM is beyond any doubt. According to Varro, *de l. Lat.* 6.74, *vas* = *qui pro altero vadimonium promittebat* (he who promised a *vadimonium* for another). A *vas* could himself offer security through a surety, *subvas*. *Vades* were also acceptable in criminal matters in the earlier procedure.

Steinwenter, *RE* 7A, 2054 (*s.v. vadimonium*); Fliniaux, *DS* 12, 2, 615; Lenel, *ZSS* 23 (1902) 97; Schlossmann, *ZSS* 26 (1905) 255; E. Levy, *Sponsio, fideiussio* (1906) 26; Mitteis, *Festschr Bekker* (*Ztsz röm. und burgerl. Recht*, 1912) 285; De Martino, *SDHI* (1940) 141; L. Maillet, *La théorie de Schuld et Haftung en droit rom.* (1944) 91; M. Kaser, *Das altröm. Ius* (1949) 270.

Vasa. Vessels. In a legacy of wine, the testator's vessels in which the wine was kept were understood to be included.

Vasaria publica. Public archives in which the records concerning the census of the population were preserved (from the fifth century after Christ on).

Vasarium. Allowance of money given to the provincial governor for food, transportation, clothing, domestic establishment, and salary of his staff.—See SALARIUM, CIBARIA.

Vates. See VATICINATOR.

Vaticana fragmenta. See FRAGMENTA VATICANA.

Vaticinatio. Fortune-telling, prophecy; see VATICINATOR, DIVINATIO.

Vaticinator. A fortune-teller, a soothsayer. The profession of a *vaticinator* was reckoned among *artes magicae* which endangered the public order since "through human credulity public morals were corrupted and the minds of the people confused" (Paul, Sent. 5.21.1). A *vaticinator* was punished in the later Empire by exile, after castigation, and by death

if he prophesied about the health of the emperor or the welfare of the state. The same penalty was inflicted on anyone who asked about such matters.—See MAGIA, MATHEMATICI.

Bouché-Leclercq, DS 3, 317; Pease, OCD 320 (s.v. mathematici, no. 4).

Vectigal. The rent paid by the lessee of an *ager publicus*.—See AGER VECTIGALIS, ACTIO VECTIGALIS, IUS VECTIGALE.

Vectigal (vectigalia). A general term denoting all sorts of public revenues, such as rents and periodic payments made by lessees of public land (*ager publicus*, see the foregoing item), pastures, woods, salt mines, lakes, rivers, etc., as well as all kinds of taxes, imposts, and custom duties, collected by tax-farmers (see PUBLICANI), whether they were paid in kind (originally) or in money.—D. 39.4; C. 4.61; 62.—See AURUM VICESIMARIUM, VICESIMA MANUMISSIONUM, VICESIMA HEREDITATIUM, PORTORIUM, CENTESIMA RERUM VENALIUM, FRAUDARE VECTIGAL, CRIMEN FRAUDATI VECTIGALIS, RELIQUATOR VECTIGALIUM, CONDUCTORES VECTIGALIUM.

Schwahn, RE 8A, 2; Cagnat, DS 5; Anon., NDI 12, 2; Stevenson, OCD; Bonelli, *Le imposte indirette in R. antica*, StDocSD 21 (1900) 27, 257; R. Cagnat, *Les impôts indirects chez les Romains*, 1882; Pugliese, CentCodPav 1934, 237; Tibiletti, *Ath* 26 (1948) 182.

Vectigal frumentarium. A tax levied in kind (grain) in certain provinces, primarily Egypt in order to supply Rome.

Rostowzew, RE 7, 157.

Vectigal rerum venalium. A sales tax. See CENTESIMA RERUM VENALIUM. Under the later Principate the sales-tax, originally introduced for auctions, became more general (Ulpian, D. 50.16.17.1).—See SILIQUATICUM.

Vectigalis. Connected with, or pertinent to, any kind of VECTIGALIA.—See ACTIO VECTIGALIS.

Vectigalis ager (fundus, vectigale praedium). See AGER VECTIGALIS.

Vector. A ship passenger or an owner of merchandise being shipped.

Solazzi, *RDNav* 6 (1940) 248.

Vectura. Goods to be transported or the sum paid (or charged) for their transportation. The term is primarily used with regard to transportation by sea. If the ship was lost, restoration of any freight charges paid in advance could be claimed.

Vel. Or, also, even. The conjunction, which frequently occurs in Justinian's constitutions and in doubtless interpolated passages in various combinations and structures (*vel etiam, vel maxime, vel . . . aut . . . , vel . . . sive . . .* , and the like), is nevertheless not a reliable criterion of alterations made by Justinian's compilers on classical texts accepted into the Digest.

Guarneri-Citati, *Indice*[2] (1927) 90; De Martino, *ANap* 58 (1937) 292 (on *vel etiam*).

Velamentum. A pretext, an excuse (real or false). *Velamento* = under the pretext (syn. *sub praetextu*). The term which occurs only in imperial constitutions, particularly of Diocletian, was used when a person under a true or false excuse tried to rescind the consequences of his former acts (e.g., on the excuse his lawyer's absence or of lack of experience). In all cases the decision was against him.—See EXCUSATIONES.

Velati. See ACCENSI.

Velites. Light armed troops (1200, later 1500 men in the four earliest legions of the Roman army) recruited from poor citizens. They disappeared about the end of the second century B.C.

Cagnat, DS 5.

Velitis iubeatis. A request addressed to the gathered people by a magistrate presiding over a popular assembly for approval of a proposed statute ("please, approve and order").—See ROGATIO LEGIS.

Velle (volo). Refers to the wish (will) of a person, to the expression of his will, and more narrowly to the declaration of will by a person who had a right to choose (*eligere, optare*, see ELECTIO, LEGATUM OPTIONIS, OPTIO SERVI) between two or more things. The expression of will was taken into consideration only when it was free from compulsion or fear. "He who obeys his father's or master's command is not held to express his own will" (D. 50.17.4). "*Volo*" (= I wish) was the expression a testator used in his testament when he ordered a manumission, designated a guardian, or bequeathed a legacy ("*dari volo*").—See VOLUNTAS, NOLLE.

Venaliciarius. A dealer in slaves.

V. Arangio-Ruiz, *La società* (1950) 141.

Venalicium. See VECTIGAL RERUM VENALIUM.

Venalis (venalicius). Offered for sale at a market or public auction. In another sense = venal, capable of being bought for money (bribed), e.g., *venalis sententia* (a judgment which could be obtained by bribing the judge).

Venatio. Hunting. A hunter acquired ownership of a wild animal (see FERAE), not domesticated by another, even when he killed or caught it on another's property. If the animal was only wounded, it was held to belong to the hunter as long as he had chased it. Justinian decided that only the capture of an animal made it the property of the hunter. Among other controversial questions was whether game was among the proceeds (*fructus*) of the landed property and consequently belonged to the usufructuary or not (see USUSFRUCTUS). The prevailing opinion was in the affirmative, if hunting was the only source of profit of the usufructuary who had no other proceeds from the land. The owner of a land could prohibit hunting on his property, but even then a hunter acquired ownership of an animal he caught or killed. He could, however, be repelled by the owner acting

in self-defense. Weapons used for hunting were considered part of the INSTRUMENTUM FUNDI when the chief gain from the land came from hunting.—C. 11.45.—See INGREDI IN FUNDUM ALIENUM, OCCUPATIO.

Kaser, *RE* Suppl. 7, 684 (*s.v. occupatio*); Reinach, *DS* 5; Landucci, *NDI* 2. 588 (*s.v. caccia*); Schirmer, *ZSS* 3 (1882) 23; B. Kayser, *Jagd und Jagdrecht in Rom* (1895); V. Ragusa, *Brevi appunti sulla v.*, 1929; P. Bonfante, *Corso* 2, 2 (1928) 57; Lombardi, *BIDR* 53-54 (1948) 273.

Vendere, venditio. See EMPTIO.—See EXCEPTIO REI VENDITAE ET TRADITAE, LEX VENDITIONIS.

Vendere actionem. To sell a claim against someone to a third person. Syn. *venditio nominis*. Such a transaction was possible either as part of the sale of one's whole property (see BONORUM VENDITIO. VENDITIO HEREDITATIS) or as the cession of a single claim (see CESSIO).—D. 18.4; C. 4.39.

Vendere hereditatem. See EMPTIO HEREDITATIS.—D. 18.4; C. 4.39.

Venditio bonorum. See BONORUM VENDITIO.

Venditio nominis. See VENDERE ACTIONEM.

Venditio sub corona. Sale of a war prisoner into slavery. He was crowned with a chaplet.

Ehrhardt, *RE* Suppl. 7, 96.

Venditio sub hasta. See HASTA, AUCTIO.—Syn. SUBHASTATIO.

Venditio trans Tiberim. See SERVUS, ADDICTUS, TIBERIS.

Venefici. Poisoners. According to the LEX CORNELIA DE SICARIIS ET VENEFICIS (under Sulla's dictatorship) a *veneficus* was "one who killed a man by the hateful means of poison or magic practices, or one who publicly sold poisonous drugs" (Inst. 4.18.5). *Venefici* were also those who prepared or kept poison for killing men.—D. 48.8; C. 9.16.—See VENEFICIUM, VENENUM.

Veneficium. A murder by poison. Capital punishment was inflicted on the poisoner. Persons of lower social status (*humiliores*) were crucified or condemned to fight wild animals.—See VENENUM, VENEFICI.

Lécrivain, *DS* 5.

Venenum. Poison. A poison to be used for criminal purposes, *venenum malum*, was distinguished from *venenum bonum*, a drug which, although poisonous, was used for treatment in certain diseases. *Venenum amatorium* = a love potion. Severe penalties (deportation, forced labor in the mines) were inflicted for giving a woman such a drink to cause an abortion (syn. *poculum*, *venenum amatorium*), the death penalty if she died.

Venerabilis. Worthy of veneration. In the later Empire the adj. is applied to the emperor and his family, to the senate, and to the Church (also *veneranda Ecclesia*). Similar was the use of *venerari* and *veneratio*.

Venia. In criminal matters, remission of a penalty by way of indulgence and forbearance for particular personal reasons (mental deficiency, error, or juvenile imprudence of the culprit) or because of circumstances which recommended forgiveness. *Venia* was granted by the senate, later by the emperor (see INDULGENTIA PRINCIPIS). *Venia* might also be granted in civil wrongdoings with regard to the liability of the defendant if his act, though of a delictual nature, was excusable for specific reasons.—See RESTITUTIO INDULGENTIA PRINCIPIS.

Gatti, *AG* 115 (1936) 44.

Venia aetatis. A privilege granted by the emperor to a minor whereby he was considered to have attained his majority before the age of twenty-five; the honesty of his life and his sagacity could recommend such a benefit. *Venia aetatis* gave the minor full capacity to conclude legal transactions (except alienation and hypothecation of immovables); in addition, he was freed from curatorship. In the later Empire, *venia aetatis* was granted only to men over twenty and to women over eighteen. *Venia aetatis* is also used as syn. with *beneficium aetatis* = the advantage of being a minor and enjoying protection through *restitutio in integrum*.—C. 2.44.

Berger, *RE* 15. 1888 (*s.v. minores*); R. C. Fischer, *Entwicklung der v. ae.* (1908).

Venire. (From *veneo*.) To be sold. to be offered for sale.—See VENUM DARE.

Venire. For *dies venit*, see CEDERE.

Venire ad aliquem. To come (fall) to a person (by inheritance or legacy). In another sense. the expression means to sue a person in court, to hold one responsible.—*Venire ad aliquid* = to obtain (e.g., possession, inheritance, ownership, freedom).

Venire contra aliquem. To sue a person, to go to court as a plaintiff against another person. *Venire contra* (*adversus*) *aliquid* = to act against the law or contrary to an agreement.

Venire ex. To originate from; hence *venientes ex aliquo* = one's descendants.

Venire in aliquid. To be taken into consideration (e.g., in *actionem*, *iudicium*, *compromissum*, *stipulationem*, *collationem*), to be computed (*in hereditatem* = in an inheritance). The phrase *venit in iudicium* is used of the object of a judicial trial to be considered by the judge.

Venter. The womb. Syn. *uterus*. *Qui in ventre est* = NASCITURUS.—D. 37.9.—See BONORUM POSSESSIO VENTRIS NOMINE, MISSIO IN POSSESSIONEM VENTRIS NOMINE, INSPICERE VENTREM, SENATUSCONSULTUM PLANCIANUM.

Venuleius Saturninus. A jurist of the second half of the second century after Christ, author of extensive treatises on actions, on interdicts, and on stipulations. Minor works of his deal with the proconsulship and with criminal procedure (*iudicia publica*). No details about his official career are known. He has fre-

quently been identified with two other jurists by the name of Saturninus, Claudius S., and Quintus S.—See SATURNINUS.

H. Krüger, *GrZ* 41 (1915) 318; W. Kunkel, *Herkunft und soziale Stellung der röm. Juristen*, 1952, 181.

Venum dare (venumdare). *Vendere* (to sell); *venum ire, venire* (from *veneo*) = to be sold privately or at a public auction.

Verba. Words. When referring to an oral declaration of a person, the *verba* are distinguished from either his intention (VOLUNTAS, MENS, ANIMUS, SENSUS) or a written document (see SCRIPTURA). Another distinction is *verba—consensus*, as sources creating a contract: on the one hand contracts concluded through the use of prescribed oral formulae, on the other hand contracts arising from a simple formless consent of the parties.—See CONCEPTA VERBA, CONCEPTIO VERBORUM, ACTIO PRAESCRIPTIS VERBIS, OBLIGATIO VERBORUM, INTERPRETATIO, and the following items.

Verba certa ac (et) sollemnia. Words the use of which is prescribed for the validity of an act concluded (e.g., *stipulatio, acceptilatio, dictio dotis, confarreatio*, appointment of a *cognitor* in a trial, etc.). In the earlier law, the use of words other than the *certa ac sollemnia*, rendered the whole transaction void. Gradually, minor changes became permissible. For the development of the *stipulatio*, the most typical act performed by the use of *certa et sollemnia verba*, see STIPULATIO.—See OBLIGATIO VERBORUM.

Verba facere. In the senate, to make a report, as the presiding magistrate or as the proponent of a law, on the topic submitted to the senate for discussion or vote. The report was followed either by an immediate vote or by an exchange of opinion among the senators upon request of the chairman (*sententias rogare*). Senators who were functioning magistrates could participate in the discussion but could not vote.—See DISCESSIO.

O'Brien-Moore, *RE* Suppl. 6, 709.

Verba facere ad populum. See CONTIO.

Verba formulae. The text of the procedural FORMULA. —See CONCEPTA VERBA, ACTIO PRAESCRIPTIS VERBIS.

Verba legis (edicti, senatusconsulti). The text of a statute (an edict of a magistrate or a *senatusconsultum*). Sometimes the reference to the *verba legis* is followed by a literal quotation. From the text of a legal enactment is distinguished its spirit, its intention (*ratio, mens, sententia*).

Verberare (verberatio). See CASTIGARE, FUSTIS, FLAGELLUM.

Lécrivain, *DS* 5.

Verbi gratia. For example. The locution is frequent in Gaius.

Verborum obligatio. See OBLIGATIO VERBORUM.

Verecundia. Respect, reverence for another person (a parent or a patron), conscientiousness, honesty.

Lécrivain, *NRHD* 14 (1890) 487; Cicogna, *StSen* 54 (1940) 53.

Veredi. See ANGARIA.

Verginia. The tragic story of Verginia, as related by Livy (book 44) and Dionysios of Halicarnassus (11.28–37), is connected with the history of the Twelve Tables (see LEX DUODECIM TABULARUM) and the downfall of the decemvirs (see DECEMVIRI LEGIBUS SCRIBUNDIS). It gives an interesting picture of a *causa liberalis*, a trial over the personal status of a girl Verginia, whom the tyrannical decemvir Appius Claudius (450 B.C.) wanted to have declared a slave in court (*vindicatio in servitutem*). The presentation of the case by the historians touches upon a series of problems connected with the earliest procedure in a CAUSA LIBERALIS, no matter whether the story is true or legendary.

C. Appleton, *RHD* 24 (1924) 592; M. Nicolau, *Cause libérales* (Thèse Paris, 1933) 98; P. Noailles, *Ius et Fas* (1949) 187; v. Oven, *TR* 18 (1950) 159.

Veritas. Truth. The search for truth (*veritatem quaerere, exquirere, perquirere, inquirere, requirere, spectare*) is frequently stressed in both criminal and civil trials. For the rule *res iudicata pro veritate accipitur*, see RES IUDICATA. *In veritate esse* = to be real, true. The phrase occurs in discussions about the real value of a thing which is the object of a judicial trial, as opposed to the value (interest) it represents to the plaintiff. Hence, *ex veritate aestimationem facere* = to estimate a thing according to its real value (*vera aestimatio rei*).

Verna. A slave born in the house of his parents' master. Such slaves generally received better treatment.

Starr, *ClPhilol* 1942, 314.

Versari. To act. The term is used primarily of persons who administer the affairs of others (guardians, curators, *negotiorum gestores*) when their management is incorrect or to the disadvantage of the beneficiaries because of fraud, negligence, or lack of experience on the part of the managers. *Versari* (in passive voice) = to be taken into account, to be examined (e.g., the factual and legal elements of a case by a judge or by a magistrate when he was requested to grant an action or in the course of a *cognitio*). Syn. *verti*.

Versum in rem. (*Sc. patris*, or *domini*.) What turned to the advantage of a father (or master of a slave) from a transaction concluded by a son (*filius familias*) or slave. Under the *actio de in rem verso* (see PECULIUM) the father was liable only to the extent of the enrichment he obtained through the transaction (even when he had given his consent thereto), if the son (or slave) did not fulfill the obligation assumed in the transaction. The term *versio in rem*, used in the literature, is not Roman. —C. 4.26.

Solazzi, *St Brugi* (1910) 205.

Versura. The conversion of a loan at interest into another loan at a different rate of interest.

G. Billeter, *Gesch. des Zinsfusses* (1898) 138.

Verti. See VERSARI.

Verum est. It is true, it is correct. Through this expression which occurs very frequently in juristic writings, the jurists either underscored indisputable opinions or limited a previous rule by referring it solely to a specific situation: "this holds true only when . . ." (*quod ita demum verum est, si . . . .* or *totiens quotiens* = in any case whenever . . .). The jurists also used a negative formula with *verum est* (*quod non*, or *minime verum est*) to express their disagreement with another opinion. Sometimes an approval expressed in the form of *verum est* may originate from the pen of Justinian's compilers, especially when two divergent opinions are cited. The same is true of the locution *quod verum* (*verius, verissimum*) *est*, when a discussion is closed by such a statement (or *quae sententia vera est*). The decision as to whether such a clause in a specific text is interpolated or not is a very difficult one, since, after all, the jurists must have had and used certain expressions to stress their agreement with another author's opinion.—See VERUS.

Guarneri-Citati. *Indice*[2] (1927) 91 and *St Riccobono* 1 (1936) 719 (*s.v. esse*).

Verus. Real, true, authentic. It is opposed to *falsus* (e.g., *verus tutor, verum testamentum, veri codicilli, verum testimonium*). For *vera rei aestimatio*, see VERITAS. The adjective is also used to indicate the real (not simulated or fictitious) legal quality of a transaction or personal situation (e.g., *verus emptor, debitor, heres, dominus, vera donatio, verum divortium*). *Sententia vera* = a just, correct legal opinion; see VERUM EST.

Vestales virgines. Priestesses (originally five or even fewer, later six) of the goddess Vesta, the symbol of chastity. Their legal situation was similar to that of the *pontifices* and *flamines*. They were not subject to *patria potestas* nor bound by any family ties. Nor were they under TUTELA MULIERUM. They were subject to the jurisdiction of the pontiffs for negligence in the fulfillment of their religious duties; there was no appeal from the judgment of the *pontifices*. For unchastity they were scourged to death. The *Vestales* were selected among girls of six to ten years of age, born of patrician parents whose marriage had been concluded through *confarreatio*. Normally their service lasted thirty years, thereafter they were permitted to leave and to marry.—See LEX PAPIA, LEX VOCONIA.

Hild, *DS* 5; Rose, *OCD*; G. Wissowa, *Religion und Kultus der Römer*[2] (1902) 433; Aron, *NRHD* 28 (1904) 5; Brassloff, *Zeitschr. für vergleichende Rechtswissenschaft* 22 (1909); T. C. Worsfold, *The history of the Vestal Virgins of Rome*, London (1934); Münzer, *Philologus* 92 (1937) 47, 199; Solazzi, *SDHI* 9 (1943) 113.

Vestis collatio (vestis militaris). A tax for military equipment.

Cagnat, *DS* 5, 773.

Vestis forensis. See TOGA.

Vestis militaris. Clothes for soldiers; they were to be furnished by the provincial population (in the Empire) in the same way as food (see ANNONA MILITARIS).—C. 12.39.

Cagnat, *DS* 5; A. W. Persson, *Staat und Manufaktur im röm. Reiche* (Lund, 1923) 97.

Vetare. To forbid, to prohibit. The term is used of legal enactments (statutes, imperial constitutions) which forbade a transaction or act (*lex vetat*), of magistrates who issued a prohibitive order, or of private persons (a principal, a master, a father) who within the framework of their authority forbade persons depending upon them to do something. For the formula *vim fieri veto* (or a simple *veto*), see INTERDICTA PROHIBITORIA, VIM FIERI VETO.—See IUDICARE VETARE.

Veteranum mancipium. See NOVICIUS.

Veteranus. A soldier who completed his years of service and was honorably discharged. According to an enactment of Augustus, a legionnaire was discharged after twenty years of service. The *veterani* were united in an elite detachment which had its own standard, *vexillum*; hence the unit was called *vexillatio veteranorum*. It could be called to service in the event of emergency; see EVOCATI. The veterans enjoyed various privileges among which the most important was exemption from compulsory personal services to the state (*munera*); they were, however, not exempt from charges which were imposed on real property (*munera patrimonii*) and they paid taxes. In penal law certain more humiliating penalties (such as flogging, *castigatio fustibus*, forced labor in mines or public works) were not applicable to veterans. Generally they were not compelled to assume a guardianship or curatorship except when the ward was a child of a soldier or of a veteran. Veterans were permitted to have their own associations, *collegia veteranorum*. Syn. *vetus miles*.—D. 38.12; 49.18; C. 5.65; 12.46.—See PECULIUM CASTRENSE, MISSIO, EMERITUS, EXCUSATIONES A MUNERIBUS.

Mispoulet, *DS* 5; Waltzing, *DE* 2, 350, 368; Schehl, *Das Edict Diocletians über die Immunitäten der Veteranen*, *Aeg* 13 (1933) 137.

Veterator. See NOVICIUS.

Veteres. The ancestors. With regard to earlier jurists, the term is used of jurists who lived in more or less remote times. In postclassical and Justinian sources the term refers to the classical jurists without distinction as to whether they lived in the Republic or the early or late Principate.—See ANTIQUI.

Vetus consuetudo. See CONSUETUDO. Syn. *veteribus moris fuit* (= the ancients used to).

Vetus ius. Ancient law, the law of past times, an old legal principle. The term may refer to a legal norm

which originating in earlier times was still in force or to an earlier legal norm which was amended by later law. *Imitatio veteris iuris* = a new law which followed the pattern of former law.—See IUS ANTIQUUM.

Vetustas. Ancient times in Justinian's constitutions, e.g., *iura vetustatis*. Syn. *antiquitas*. In the language of the jurists *vetustas* is used of situations of very long duration which were considered as legal if there was no evidence to the contrary. The rule that "*vetustas* is considered as a law" (*pro lege habetur*, D. 39.3.2 pr.) was of particular importance in relations between neighbors when the owner of land from time immemorial had certain profits from a neighbor's property (e.g., use of water). In another sense, *vetustas* indicates the bad state of a building (e.g., dilapidation) which required repair because of its "old age." The owner was bound to repair the defects for the benefit of the tenants.

Vetustiores. Ancestors.

Vetustus. Ancient, old. *Vetustum* (*vetustissimum*) *ius*, *vetustae leges* = the ancient law (laws).

Vexare. To molest, to harass (*vexare adversarium litibus* = to harass one's adversary with lawsuits). —See CALUMNIA.

Vexillarius. The soldier who bore the standard or a soldier of a military detachment (see VEXILLATIO).

Vexillatio. (From *vexillum* = a military banner.) A military detachment. The term applies to infantry units, cavalry squadrons, auxiliary troops and marines, even to smaller units to which a special military task was assigned. Sometimes *vexillum* is used in the sense of *vexillatio*. For *vexillatio veteranorum*, see VETERANUS. In the later Empire, military units serving in the imperial palace (*vexillationes palatinae*.

Cagnat, *DS* 5; Liebenam, *RE* 6, 1606; M. Mayer, *Vexillum and vexillarius* (Diss. Strassburg, 1910).

Vi bona rapta. Goods taken away from the owner (or possessor) by force.—See RAPINA.

Via. A rustic servitude (see SERVITUTES PRAEDIORUM RUSTICORUM) which entitled the owner of a land to use a road on his neighbor's land for driving in a carriage or riding on horseback. The *servitus viae* automatically implied the right to walk and pass through (see ITER) as well as to drive draught animals and vehicles (see ACTUS) through the other's property.

Severini, *NDI* 12, 2; Arangio-Ruiz, *St Brugi* (1910) 247; Aru, *StCagl* 24 (1936) 405; Biondi, *St Besta* 1 (1939) 267; Solazzi, *SDHI* 17 (1951) 257.

Viae. Roads. A distinction was made between private and public roads. Private roads (*viae privatae*, called also *agrariae*) were the roads which led through private land. Use could be granted by the owner to private individuals or to groups of neighbors, in an unlimited or limited measure (see VIA, ITER, ACTUS). Public roads (*viae publicae*) were open to the use of the people. They are also called *viae consulares* or *viae praetoriae* when their construction was ordered by a consul or praetor. Several Republican statutes dealt with the construction and maintenance of public roads. Construction was in the hands of the higher magistrates and the censors, the administration and supervision was assigned to the *aediles*, later (under the Principate) to special CURATORES VIARUM. In the later Empire, the owners of bordering property were generally bound to maintain the roads running along their property (Cod. Theod. 15.3). Erection of monuments on public roads was prohibited. The use of *viae publicae* by the population was under interdictal protection; see INTERDICTUM DE VIIS PUBLICIS. —D. 43.8; 10; 11.—See QUATTUORVIRI VIIS IN URBE PURGANDIS, DUOVIRI VIIS EXTRA URBEM PURGANDIS.

Chapot, *DS* 5; Voigt, *Röm. System der Wege*, *BerSächsGW* 1872.

Viae consulares, praetoriae. See VIAE.

Viae militares. Roads built for military purposes.

Viae vicinales. Roads which are in, or lead to, villages. They were generally public if they served for traffic to, and from, the village even when maintained by the owners of the adjacent lands.

Viasii vicani. Beneficiaries of public land (AGER PUBLICUS) to whom plots situated alongside a public road were assigned. They were bound to maintain the corresponding sections of the road.

Grenier, *DS* 5, 857.

Viaticum. Travel expenses. A plaintiff who inconsiderately (*temere*) summoned another to court had to reimburse him for the expenses connected with his appearance before the magistrate. Expenses also had to be paid to a partner in a *societas* who made a journey in its interest. A small amount of money which exiled persons were permitted to take with them when going into exile, was also called *viaticum*. Finally, *viaticum* was the travel money given to ambassadors sent on an official mission abroad.

Lécrivain, *DS* 5.

Viatores. Subordinate officials, assigned to the office of a high magistrate or of a plebeian tribune, who carried out orders of their superiors, summoned or arrested persons and brought them to court, transmitted messages to senators or other magistrates, intervened in the convocation of the senate, and the like. They belonged to the lower official personnel (see APPARITORES).—See LEX CORNELIA DE VIGINTI QUAESTORIBUS.

Lengle, *RE* 6A, 2488; Lécrivain, *DS* 5.

Vicanus. An inhabitant of a village (VICUS).—C. 11.57.—See VIASII.

Vicarianus. (Or VICARIUS, adj.) Connected with, or pertinent to, a *vicarius*, the governor of a *dioecesis* (in the later Empire).

Vicarius. One who acts in another's place as his substitute. Syn. *vice agens*.—See VICE.

Vicarius. In public law, the chief of the administration (governor) of a DIOECESIS in the later Empire.

They were purely civil officials also charged with the administration of justice.—C. 1.38.

Lécrivain, *DS* 5; De Villa, *NDI* 12, 2.

Vicarius in urbe (Roma). Following Diocletian's reform of the administration, the *vicarius* residing in Rome was the head of the administration of the southern part of the *dioecesis Italia* (the so-called *suburbicariae regiones* and the islands) except for the district subject to the *praefectus urbi*. Under Constantine he assumed the functions of the former *vicarius praefecturae urbis* and had from that time the title of *vicarius urbis Romae*.

Kornemann, *RE* 5, 731; F. M. De Robertis, *La repressione penale nella circoscrizione dell'urbe* (1937) 43; *idem, Studi di diritto penale rom.* (1943) 43.

Vicarius Italiae. The chief of the administration of the northern part of the *dioecesis Italia* (the districts north of the Apennines) after Diocletian's reform of the administration. His residence was in Milan. —See VICARIUS IN URBE.

Kornemann, *RE* 5, 731.

Vicarius iudex. In the later Empire, a judge (jurisdictional official) acting in the place of the *iudex ordinarius*. Since the latter title was used for provincial governors, the *vicarius* was in fact the substitute of the governor. In the first two centuries of the Principate the title *vicarius* was already being used for officials who substituted for provincial governors in their absence or upon their death.

Vicarius praefecti praetorio. A permanent deputy of the *praefectus praetorio* after Diocletian's reform of administration. One was appointed by the emperor in each *dioecesis* of the Empire.

Lécrivain, *DS* 5, 821; Cuq, *NRHD* 23 (1899) 393.

Vicarius praefecturae urbis. A deputy of the *praefectus urbi*. The office was abolished by Constantine and its functions transferred to the VICARIUS IN URBE.

Ensslin, *Byzantinische Zeitschrift* 36 (1936) 320.

Vicarius servus. See SERVUS VICARIUS.

Vicarius urbis Romae. See VICARIUS IN URBE.

Vice. Added to the title of a high administrative official (e.g., *vice praesidis, legati, proconsulis*) this indicates an official (a *procurator*) in the provinces who temporarily assumed the functions of an absent or dead governor. Syn. *agens vices (partes) praesidis, partibus praesidis fungi. Vice alicuius fungi* = to act in place of another. *Vice alicuius rei* (e.g., *testamenti, legati, pignoris*) = to be considered as being in the place of (a testament, a legacy, a pledge). —See the following items.

Vice (or vices agens) praefecti praetorio. The deputy *praefectus praetorio* appointed (from the time of Diocletian) by the emperor. Appeals from his judicial decisions went directly to the emperor and not to the *praefectus praetorio*.—See VICARIUS PRAEFECTI PRAETORIO.

De Ruggiero, *DE* 1, 354; Cantarelli, *Bull. Comm. Archeol. Comunale di Roma*, 1890, 28; Cuq, *NRHD* 23 (1899) 393; A. Stein, *Hermes* 60 (1925) 97.

Vice sacra. (Acting) in place of the emperor. The *praefecti praetorio* in the *praefecturae* of the Empire and the *praefectus urbi* in Rome (after Diocletian's reform of the administration) were considered as acting *vice sacra*.—See IUDICANS VICE SACRA.

Vicem legis obtinere. See LEGIS VICEM OBTINERE.

Vices (vicem, vice) agens. A deputy official in provincial and military administration.

De Ruggiero, *DE* 1, 353.

Vicesima hereditatium. A five per cent inheritance tax paid by Roman citizens on testamentary and intestate successions worth 200,000(?) sesterces or more. It was introduced by Augustus. Responsibility for collecting the *vicesima hereditatium* was in the hands of special officers, *procuratores hereditatium*.—C. 6.33. —See APERTURA TESTAMENTI, LEX IULIA (?) DE VICESIMA HEREDITATIUM, STATIO VICESIMAE, MISSIO IN POSSESSIONEM EX EDICTIO HADRIANI, EDICTUM HADRIANI.

Cagnat, *DS* 5; Severini, *NDI* 12, 2 (*s.v. vigesima*); De Ruggiero, *DE* 3, 726; Catinelli, *StDocSD* 6 (1885) 273, 7 (1886) 33; Bonelli, *ibid.* 21 (1900) 288; E. Guillaud, *Etude sur la v. h.* (Thèse Paris, 1895); Stella-Maranca, *RendLinc* 33 (1924) 263; *Acta Divi Augusti* 1 (Rome, 1945) 219; De Laet, *AntCl* 16 (1947) 29; Gilliam, *AmJPhilol* 73 (1952) 397.

Vicesima libertatis. See VICESIMA MANUMISSIONUM.

Vicesima manumissionum. A manumission tax of five per cent of the slave's value, paid by the master if freedom was granted by him, but paid by the slave if he redeemed himself by his own money; see REDEMPTUS SUIS NUMMIS. Syn. *vicesima libertatis, aurum vicesimarium*.

Lécrivain, *DS* 3, 1220; Humbert, *DS* 1 (*s.v. aurum vicesimarium*); Bonelli, *StDocSD* 21 (1900) 52; Wlassak, *ZSS* 28 (1907) 89; L. Cierici, *Economia e finanza dei Romani* 1 (1943) 505.

Vicinus. A neighbor. In relations between neighbors, owners of land, praedial servitudes were of great importance (see SERVITUTES PRAEDIORUM RUSTICORUM, SERVITUTES PRAEDIORUM URBANORUM) inasmuch as they determined the extent to which one neighbor might use the property of the other. Controversies between neighbors arose for various reasons involving actual or threatened violation of the rights of one by the other.—See CAUTIO DAMNI INFECTI, OPERIS NOVI NUNTIATIO, ACTIO AQUAE PLUVIAE ARCENDAE, PARIES COMMUNIS, TIGNUM IUNCTUM, ACTIO FINIUM REGUNDORUM, CONTROVERSIA DE FINE, IMMISSIO, INTERDICTA.

P. Bonfante, *Scr giuridici* 2 (1926) 783; S. Solazzi, *Requisiti e modi di costituzione delle servitù prediali* (1947) 29.

Vicomagistri. See REGIONES URBIS ROMAE.

Grenier, *DS* 5.

Victor. Used of the successful party in a lawsuit. Syn. *victrix pars*. Similarly, *victoria* may refer to a victory in court.

Victus. Nourishment, all that is necessary for living (*ad victum necessaria, ad vivendum homini necessaria*), hence not only the necessary food, drink, and clothing, but also "anything else which we use for the protection and the care of our body" (D. 50.16.44). This interpretation of the term was important in cases when one was obligated to take care of a person (e.g., a father, a guardian) or to furnish *victus* to another (e.g., as a legacy or under another title).

Vicus. A settlement, a village, a territorial unit, smaller than a *municipium* or an *oppidum*, occupied by a group of families forming a rural community. In larger cities *vicus* indicated a street, a block of buildings.—See PAGUS, REGIONES URBIS ROMAE.

Schulten, *RE* 4, 799; Grenier, *DS* 5; Anon, *NDI* 12, 2; F. De Zulueta. *De patrociniis vicorum* (Oxford, 1909).

Videbimus. We shall examine. The jurists used this word to stress a point to which they wanted to devote particular attention or an important problem that arose from a case under discussion. Similar locutions are *videamus* (= let us see whether). *videndum est* (= it is to be examined).

Videtur (alicui). A favorite term of the jurists to introduce their own (*"mihi videtur"* = it seems to me) or another jurist's (e.g., *"Iuliano videtur"*) opinion. In reporting a judge's decision expressions like *videbatur, visum est*, are used.

Vidua. A widow or a woman who has never been married. *Viduitas* = widowhood.—C. 3.14; 6.40; 9.13.—See LUCTUS, SECUNDAE NUPTIAE, TUTELA MULIERUM, RAPTUS.

L. Caes, *Le statut juridique de la sponsalicia largitas échue à la mère veuve, Courtrai*, 1949.

Vigiles. The fire brigade of Rome. Augustus created seven divisions (*cohortes*) of firemen, totaling seven thousand men. Each *cohors* had seven *centuriae* under the command of tribunes. The commander of all the *vigiles* was the PRAEFECTUS VIGILUM. One *cohors* was assigned to two districts of Rome (see REGIONES URBIS ROMAE. The *vigiles* also exercised police functions, chiefly at night time.—D. 1.15; C. 1.45.—See LEX VISELLIA.

Cagnat, *DS* 5; Balsdon, *OCD*; De Magistris, *La militia vigilum nella Roma imperiale* (1898); P. K. Baillie Reynolds, *The v. of imperial Rome* (1926); G. Mancini, *I vigili dell'antica Roma* (1939).

Vigintiviri. See VIGINTISEXVIRI.

Lécrivain, *DS* 5.

Vigintisexviri. A collective term embracing 26 minor magistrates in the Republic with different functions. Among them were: the DECEMVIRI STLITIBUS IUDICANDIS, TRESVIRI CAPITALES, (previously called *tresviri nocturni*), the TRESVIRI MONETALES, the *quattuorviri viis in urbe purgandis*) (four officials who had to keep the streets of Rome clean), the DUOVIRI VIIS EXTRA URBEM PURGANDIS (who had similar duties with regard to the roads around the capital), and the *quattuorviri praefecti Capuam, Cumas* (who acted as representatives of the praetorian jurisdiction in the region of Campania). The latter six magistracies (the *duoviri* and the *quattuorviri praefecti*) were abolished by Augustus, henceforth the remaining twenty magistrates were collectively called *vigintiviri*.

Vilicus (villicus). The administrator of a country estate (*villa*), normally a slave who supervised all the personnel (slaves, see FAMILIA RUSTICA).

Lafaye, *DS* 5.

Villa. A country estate, a country house. *Villa urbana* = the residential part of a country establishment; *villa rustica* = farm buildings, quarters for slaves working in the agricultural part of the estate.—See AGER.

Villicus. See VILICUS.

Vim fieri veto. "I forbid force to be used." The so-called prohibitory interdicts (see INTERDICTA PROHIBITORIA) were provided with this clause by which the praetor forbade the defendant to hinder the plaintiff in the exercise of his right. *Vis* does not mean violence (physical force) here; it indicates any activity of the defendant which might prevent the plaintiff from making use of a right to which he was entitled.

Berger, *RE* 9, 1613.

Vim vi repellere licet. Force may be repelled by force. "All statutes and all laws allow this" (D. 9.2.45.4). The principle admits self-defense by force against an aggressor. A well-known instance was self-defense against a thief (see FUR. FURTUM): the victim could kill a burglar at night, but in the daytime only if the thief defended himself with a weapon (*telum*).—See VINDICATIO.

Aru, *NDI* 12, 2, 1041; *idem, La difesa privata, AnPal* 15 (1936) 128; 381.

Vincire. To fetter.—See VINCTUS, VINCULA.

Vinctus. Fettered. Ant. *solutus* = liberated from fetters.—See VINCULA.

Wenger, *ZSS* 61 (1941) 655.

Vincula. Fetters. Fettering (*vincire*) was applied as a punishment of slaves by their masters. Fettering a free citizen was considered a *crimen plagii* (see PLAGIUM) and punished according to the LEX FABIA. It was permitted, however, as a means of coercion (see COERCITIO) or as an additional punishment in prison. *Vincula* are mentioned in the Twelve Tables (see LEX DUODECIM TABULARUM) as a coercive measure applied by a creditor against a debtor who did not fulfill a judgment debt. The law permitted shackling the debtor *nervo aut compedibus* (with fetters of iron or wood) but limited their weight to fifteen pounds.—See NEXUM.

Vollgraff, *DS* 5; Wenger, *ZSS* 61 (1941) 655.

Vincula publica. A public prison. Syn. CARCER. Persons suspected of a crime were held in prison until the matter was cleared up. Incarceration was,

however, not a punishment for a culprit condemned. Ant. *vincula privata* = fetters applied by private persons, see VINCULA.—See CUSTODIA REORUM.

Vinculum iuris. A legal tie (bond). The expression is used in the definition of OBLIGATIO.

Vinculum pignoris. The tie by which a pledge (*pignus*) is bound on behalf of the creditor. *Vinculum pignoris* is also the right of a ransomer over the prisoner of war whom he redeemed from the enemy; see REDEMPTUS AB HOSTE.

G. Faiveley, *Redemptus ab hoste* (Thèse Paris, 1942) 112.

Vindemia. The vintage season (*tempus vindemiae, vindemiarum*). It was taken into consideration by the law in the same way as the harvest period (*tempus messis vindemiaeve*). During these seasons jurisdictional activity was exercised only in cases which might be lost to the plaintiff because of lapse of time (*praescriptio*, or *usucapio* on the part of the defendant) or when perishable things were involved. —See ORATIO MARCI ON IN IUS VOCATIO.

Vindex. For the *vindex* intervening for a person summoned to court, see IN IUS VOCATIO. The *vindex* guaranteed the appearance of the defendant at a fixed later date. Should the defendant fail to do so, the *vindex* was liable to the plaintiff and could be sued under the formulary procedure by a praetorian *actio in factum*. A *vindex* was acceptable to the magistrate only if he was wealthy enough to guarantee the eventual payment.—A *vindex* (guarantor) was also permissible in the LEGIS ACTIO PER MANUS INIECTIONEM to save the defendant, who had been condemned in a previous trial and did not pay the judgment debt, from being led off to the plaintiff's house and put in fetters. The *vindex* had either to pay the judgment debt of the principal debtor at once or to defend him by denying that the *manus iniectio* was justified. When defeated in the trial, the *vindex* had to pay the plaintiff double. Both kinds of *vindices* disappeared in later law. In Justinian's legislation they were replaced by the *fideiussor iudicio sistendi causa* (*qui aliquem iudicio sisti promiserit* = one who promised to bring another to court).—D. 2.10.—See VADIMONIUM, IUDICATUM, MANUS INIECTIO.

Cuq, *DS* 5; Severini, *NDI* 12. 2; F. Kleineidam, *Die Personalexekution der Zwölf Tafeln* (1904) 146; Lenel, *ZSS* 26 (1905) 232; Schlossmann, *ibid.* 308; G. Cicogna, *V. e vadimonium* (1911); N. Corodeanu, *Sur la fonction du v.* (Bucharest, 1919); Lenel, *Edictum perpetuum*[3] (1927) 65; Düll, *ZSS* 54 (1934) 112; Leifer, *Ztschr. für vergl. Rechtswiss.* 50 (1935) 5; L. Maillet, *La théorie de Schuld et Haftung* (Thèse Aix-en-Provence, 1944) 84; Pugliese, *RIDA* 2 (1949) 251; Kaser, *Das altröm. Ius* (1949) 194; P. Noailles, *Du droit sacré au droit civil* (1950) 143.

Vindex civitatis. See DEFENSOR CIVITATIS.

Vindicare (vindicatio). Eventually assumed a general meaning—beyond the domain of REI VINDICATIO —of laying claim to, asserting one's right to.—See the following items.

Juncker, *Gedächtnisschrift für E. Seckel* (1927) 209; Düll, *ZSS* 54 (1934) 98; P. Noailles, *Du droit sacré au droit civil* (1950) 52.

Vindicare necem (mortem). To avenge the assassination of a man by an unknown murderer by prosecuting all the slaves who lived with him in the same household.—See SENATUSCONSULTUM SILANIANUM, QUAESTIO PER TORMENTA, TECTUM.

Vindicatio (vindicare). In earlier times, the act of avenging an offense, self-defense against the violence of an aggressor. Later, the term was applied to the defense of one's property by seeking its recovery in court. Gaius (Inst. 4.5) called all *actiones in rem* (see ACTIONES IN PERSONAM) *vindicationes* and Justinian accepted his terminology (Inst. 4.6.15). See REI VINDICATIO. *Vindicatio* is also used for the prosecution of certain wrongdoings, such as ADULTERIUM, or *corruptio albi* (see ACTIO DE ALBO CORRUPTO). For other applications of the term, see the following items.—See LEGATUM PER VINDICATIONEM.

Vindicatio coloni (or in colonatum). In the later Empire, the claim of a landowner asserting that a certain person was his COLONUS.

Vindicatio familiae pecuniaeque. The earliest form of HEREDITATIS PETITIO.

Vindicatio filii. The claim of the head of a family for the delivery of his son held by another. Analogous was the *vindicatio* of a wife being under the marital power (*in manu*) of her husband, by the latter since her legal situation was that of a daughter (*filiae loco*).—See INTERDICTUM DE LIBERIS EXHIBENDIS.

Vindicatio gregis. See GREX.

Vindicatio hereditatis. See HEREDITATIS PETITIO. VINDICATIO FAMILIAE PECUNIAEQUE.

Vindicatio in ingenuitatem. See the following item.

Vindicatio in libertatem. An action in favor of a free person held by another as a slave. See ADSERTIO, CAUSA LIBERALIS. A similar case was the *vindicatio in ingenuitatem* whereby one defended the status of another man as free-born; see INGENUITAS. Ant. *vindicatio in servitutem* whereby the claimant asserted that another man was his slave though generally considered free.

Vindicatio in servitutem. See VINDICATIO IN LIBERTATEM, VERGINIA.

Vindicatio pignoris. Often applied to the action of a creditor who claimed the recovery of a pledge from the debtor on the ground that his obligation had been discharged.—See HYPOTHECA, ACTIO QUASI SERVIANA.

Vindicatio servitutis. The action of a person against the owner of land on which the plaintiff claims a servitude. The action is also called *actio confessoria*. On the other hand, the landowner was protected against any one to whom he denied a servitude on his property by an action called *actio negatoria* or *actio negativa*. Similar was the use of an action termed *actio prohibitoria* (its origin is controversial)

by which the landowner asserted his right to prevent another from exercising a servitude on his land.

Leonhard, *RE* 4, 871 (*s.v. confessoria actio*); V. Arangio-Ruiz, *Rariora* (1946, ex 1908) 1; G. Segrè, *Mél Girard* 2 (1912) 511; Biondi, *AnMes* 3 (1929) 93; Buckland, *LQR* 46 (1930) 447; Boháček, *BIDR* 44 (1937) 19, 46 (1939) 142; Solazzi, *Tutela delle servitù prediali* (1949) 1; Albanese, *AnPal* 21 (1950) 24; Grosso, *St Albertario* 1 (1951) 593.

Vindicatio tutelae. The claim for guardianship of a person who was entitled by law to be the guardian (*tutor legitimus*) of a near relative.—See TUTELA LEGITIMA.

Vindicatio usufructus. Analogous to *vindicatio servitutis* when a usufruct on another's man property is claimed.—See VINDICATIO SERVITUTIS.

G. Grosso, *I problemi dei diritti reali* (1944) 132; Sciascia, *BIDR* 49–50 (1948) 471.

Vindicatio uxoris. See VINDICATIO FILII.

Vindiciae. Possession of a thing which was the object of a judicial trial under the procedure of LEGIS ACTIO SACRAMENTO and which was assigned for possession (*vindicias dicere*) to one of the parties, normally to the actual possessor, by the jurisdictional magistrate. If this party lost the case (VINDICIAE FALSAE), he had to hand over the thing together with double the proceeds he may have received from it in the meantime. In earlier Latin *vindiciae* (or *vindicia*) was the thing itself about which there was a controversy.—See PRAEDES LITIS ET VINDICIARUM, CAUTIO PRO PRAEDE LITIS ET VINDICIARUM.

Cuq, *DS* 5; E. Weiss, *Fschr Peterka* (Prague, 1929) 69.

Vindiciae falsae. Occurred if the party to a trial who received temporary possession of the thing in dispute from the praetor (see VINDICIAE) lost the case under the judgment. According to the Twelve Tables he had to restore to the adversary the thing itself and double the proceeds (*fructus duplio*). The assignment of possession by the praetor to the wrong party was termed *vindicias falsas dicere*.

E. Petot, *Etudes Girard* (1912) 229; Weiss, *Fschr Peterka* (Prague, 1929) 72; Ratti, *St Riccobono* 2 (1936) 421; Levy, *ZSS* 54 (1934) 306; M. Kaser, *Restituere als Prozessgegenstand* (1932) 16; *idem, Eigentum und Besitz* (1943) 72.

Vindicias dicere. See VINDICIAE, VINDICIAE FALSAE. M. Kaser, *Eigentum und Besitz*, 1943, 76.

Vindicias dicere secundum libertatem. Occurred in a trial over the status of liberty (*status libertatis*) of a person, the praetor ordering that he be considered a free man until the final decision.—See CAUSA LIBERALIS, VINDICATIO IN LIBERTATEM, VINDICATIO IN SERVITUTEM, VERGINIA.

P. Noailles, *Du droit sacré au droit civil* (1950) 192; Van Oven, *TR* 18 (1950) 172.

Vindicta. A rod used for symbolic gestures in the enfranchisement, called MANUMISSIO VINDICTA, and in the LEGIS ACTIO SACRAMENTO *in rem* in which the question of Quiritary ownership of a thing was examined. The controversial object was touched with a rod by the person asserting his ownership. Gaius (Inst. 4.16) identifies *vindicta* with FESTUCA. According to a recent opinion, the term is derived from *vim dicere* (*vis dicta*), indicating the act by which the parties emphasized their power over the thing in dispute.—D. 40.2; C. 7.1.

Cuq, *DS* 5; Beseler, *Hermes* 77 (1942) 79; M. Kaser, *Das altröm. Ius* (1949) 327; P. Noailles, *Ius et Fas* (1948) 46 (= *RHD* 19–20 [1940–41] 1); P. Meylan, *Mél F. Guisan* (Lausanne, 1950) 29.

Vindicta. With regard to criminal offenses, vengeance, retribution, a penalty inflicted in return for an offense, criminal prosecution.

Vindius Verus. A little known jurist of the second century, member of the council of the emperor Antoninus Pius.

Kunkel, *Herkunft und soziale Stellung der röm. Juristen*, 1952, 167.

Vinum. For crimes committed by intoxicated persons (*per vinum*), see IMPETUS. Drunkenness = *ebrietas, temulatio*.

Violatio sepulcri. Violation, desecration, of a grave. Different offenses were punished as a *crimen violati sepulcri*, in the first place burglarizing a grave belonging to another or opening one in order to bury a dead body therein. The wrongdoer could be sued for damages by the person who had the IUS SEPULCRI over the grave under the ACTIO SEPULCRI VIOLATI. This was an *actio popularis* so that if the person interested in the first place did not accuse the culprit, any Roman citizen could do so. Penalty for minor infractions was a fine of 100.000 sesterces and infamy. Major violations, such as taking away a corpse or robbery committed with the help of armed accomplices, were punished by death.

Pfaff, *RE* 2A, 1625; Gerner, *RE* 7A, 1742; Lécrivain, *DS* 4, 1208; Cuq, *RHD* 11 (1932) 109; E. Wesenberg, *Der strafrechtliche Schutz der geheiligten Gegenstände* (Diss. Göttingen, 1912) 95; A. Parrot, *Malédiction et violation des tombes* (1939); Arangio-Ruiz, *FIR* 3 (1943) no. 83.

Violentia. Violence, use of physical force.—See VIS. Niedermeyer, *St Bonfante* 2 (1930) 281.

Vir bonus. An honest, upright man (a Roman citizen). In certain contractual relations, particularly in those governed by good faith (*bona fides*), the judgment (*arbitrium*) of a third impartial and honest person was decisive whether a party had fulfilled his obligation or not, e.g., the approval of a work done by a contractor or an artisan (*locatio conductio operis*). The moral qualifications of a *vir bonus* were honesty and righteousness.—See BONUS PATER FAMILIAS, ARBITRIUM BONI VIRI.

T. Sinko, *De Romanorum viro bono, Transactions (Rozprawy) of the Academy of Sciences in Cracow* 36 (1903) 251; v. Lübtow, *ZSS* 66 (1948) 520.

Vires. (Pl. of *vis*.) The financial strength (means) of a person, an inheritance, or of a separate complex of goods (a dowry, a *peculium*).—See FACULTATES.

Virga. A rod, a whip used for flogging.—See CASTIGARE.

Virgo Vestalis. See VESTALES VIRGINES.

Virilis. Befitting a man (not a woman); see OFFICIUM VIRILE; a share in an intestate inheritance pertaining to one heir and equal to the shares of other heirs = *pars virilis*.—See PORTIO HEREDITARIA.

Viripotens. A marriageable woman.—See IMPUBES.

Viritim. Personally, individually. *Viritim donatus civitate Romana* (in inscriptions) = a foreigner who was personally granted Roman citizenship. *Viritim distribuere* = to divide (e.g., an inheritance) among several persons in equal shares.—See VIRILIS.

Virtus. Bravery, courage. Competition in athletic games was considered a contest in bravery (*certamen in virtute*).—See LEX CORNELIA DE ALEATORIBUS.

Vis. The power one has over a free person (*vis ac potestas*). With reference to legal enactments (*vis legis*), to contractual relations (*vis stipulationis*), or unilateral acts (*vis testamenti*) = validity, effectiveness. Hence *vim* (*vires*) *habere* = to be valid; *vim* (*vires*) *accipere, optinere* = to become legally valid. Ant. *nullas vires habere*.

Vis. Violence, force. The term occurs in both private and penal law, but it is defined differently for the two provinces. Whereas in the first the concept of *vis* is taken in a broader sense and even in different implications, for the penal law it is understood as a major infraction and qualified as *crimen vis* (crime of violence). In the law of obligations, *vis* (the use of physical force or moral compulsion by one person against another) might provoke fear (*metus*) in the latter. Hence the two elements "force and fear" (*vis ac metus*) are mentioned together in discussions of the influence of METUS on legal transactions. The praetorian Edict dealt with *vis* not only in the section concerning duress (*metus*) but also with regard to possession when a person was dispossessed by force. In several provisions the praetor forbade the use of force to disturb existing possessory situations (see VIM FIERI VETO), or he protected public works and institutions against any hindrance ("*ne vis fiat*") which might impair their public use. Such actions were considered as *vis*, no matter whether real force was actually applied or not. See INTERDICTA PROHIBITORIA, INTERDICTUM QUOD VI AUT CLAM, INTERDICTUM DE VI. Thus arose the rule: "All that one has done when he was prohibited (from doing it) is considered to have been done with violence" (D. 50.17.73.2). *Vis* appears among the so-called *vitia possessionis* (legal defects of possession) inasmuch as possession acquired by force was qualified as *possessio vitiosa* (*iniusta*). See EXCEPTIO VITIOSAE POSSESSIONIS, INTERDICTUM UTI POSSIDETIS, RES VI POSSESSAE. He who uses force to defend and retain his possession, when illegally attacked by another, is not regarded as possessing by force (*vi*). In the field of penal law, the distinction between *vis privata* and *vis publica* is fundamental: "whatever is done by violence is either a crime of *vis publica* or of *vis privata*" (D. 50.17.152 pr.). The *vis privata*, force used against a private individual in order to commit robbery, was considered a private delict, like theft (*furtum*), and was prosecuted by a penal action (*actio poenalis*) of the person injured, the *actio vi bonorum raptorum*; see RAPINA. The concept of *vis publica*, a crime committed with violence and prosecuted by the state in a criminal trial (*iudicium publicum*), was first established in the LEX PLAUTIA DE VI (78–63 B.C.?) and, later, by the comprehensive legislation of Augustus, LEX IULIA DE VI PUBLICA and LEX IULIA DE VI PRIVATA. The distinction which was neatly defined in this legislation was later distorted through imperial enactments and in Justinian's compilation. The sources are frequently contradictory in the qualification of certain outrageous acts as *vis publica* or *privata*. The original distinction may have been based on whether the crime violated direct interests of the state (*vis publica*) or those of a private person (*vis privata*). "Many criminal offenses are covered by the term of violence" (C. 9.12.6); among the instances of *vis publica* are mentioned acts of violence committed in public with the assistance of armed bands in order to provoke a riot or sedition, disturbing a trial in court, a popular assembly during a vote or election, or the senate, exercising pressure on a judge, appearance in public with arms or armed bands to prepare an attack against temples or city gates, disturbing a funeral, etc. Various kinds of abuses committed by officials and major breaches of official duty were also punished as *vis publica*. Even in certain cases of *vis privata* (more atrocious assaults, the use of arms) public prosecution of the crime was possible in addition to the private penal action of the individual injured. Together with the extension of the instances of *vis publica* more severe punishment was inflicted in the later imperial legislation (deportation combined with confiscation of property became the normal penalty, and from the time of Constantine the death penalty was very frequent).—D. 4.2; 43.16; C. 2.19; 8.4; 5. For *vis publica* Inst. 4.2; D. 47.8; C. 9.33.—See UTI SUO IURE, INTROIRE DOMUM, VIS ARMATA, VI BONA RAPTA, LEX POMPEIA DE VI, TUMULTUM, TURBA, and the following items.

Lécrivain, *DS* 5; Berger, *RE* 9, 1614, 1663, 1677; Niedermeyer, *St Bonfante* 2 (1930) 400; U. v. Lübtow, *Der Edictstitel quod metus causa* (1932) 101; C. Longo, *BIDR* 42 (1934) 99; Nardi, *SDHI* 2 (1936) 120; Castello, *RISG* 14 (1939) 279; M. David, *Interdit quod vi aut clam* (1947) 25. For *vis publica*: Mommsen, *Röm. Strafrecht*, 1899, 653; J. Coroi, *La violence en droit crim. rom.* (1915); Berger, *Göttingische Gelehrte Anzeigen*, 1917, 344; Costa, *RendBol* 2 (1917/18) 23; Flore, *St Bonfante* 4 (1930) 335; Aru, *AnPal* 15 (1936) 163.

Vis armata. Violence committed with the use of arms (*arma*). By arms are understood not only all kinds of weapons (see TELUM) but also stones and clubs (*fustis*). The term *vis armata* occurs in connection with the dispossession of another from his property. If the aggressor was armed but did not make use of the arms, his assault was nevertheless considered as *vis armata* since his having arms alone produced fear (*terror armorum*) in the person attacked.—D. 43.16. See INTERDICTUM DE VI.

Berger, *RE* 9, 1680.

Vis atrox. Violence committed in a particularly atrocious manner.—See INIURIA ATROX.

Vis divina. See VIS MAIOR.

Vis ex conventu. Violence under agreement, a simulated violence used by one of the parties to a controversy about possession of an immovable after the pertinent interdict (e.g., *uti possidetis*) was issued. The interdict being only a provisory settlement of the case, it was necessary, in order to bring the controversy to an end, that one of the parties act against the order of the praetor *vim fieri veto* by dispossessing the actual possessor. Instead of using real force, this was accomplished by agreement of the parties through a violenceless, peaceful dispossession which made the post-interdictal procedure possible. See INTERDICTUM SECUNDARIUM. The connection of the *vis ex conventu* (to which only Gaius, Inst. 4.170, alludes, without using the term itself) with an institution mentioned solely by Cicero (*pro Caec.* 7.20; 10.27; 11.32; 32.95; *pro Tullio* 8.20; *vis ex conventu:* Cic. *pro Caec.* 8.22), *deductio quae moribus fit* (putting one out [of possession] according to the customs), is not quite clear.

Berger, *RE* 9, 1696; Saleilles, *NRHD* 16 (1892) 32; Mitteis, *ZSS* 23 (1902) 298; Chabrun, *NRHD* 32 (1908) 5; Costa, *Cicerone giureconsulto*[2] 1 (1927) 125.

Vis fluminis. A great flow of water in a river, a flood. It is considered equal to an earthquake or storm as a FORTUITUS CASUS which excused a person from appearance in court at a fixed date.—See VIS MAIOR, CASUS.

Vis maior. Superior force, an accident which cannot be foreseen or averted because of "human infirmity" (D. 44.7.1.4), such as an earthquake (see TERRAE MOTUS), a flood (see VIS FLUMINIS), a storm (see TEMPESTAS), incursion of an enemy, violent attack by robbers or pirates (not a simple theft) which cannot be repulsed, and the like.—See RECEPTUM NAUTARUM, CASUS, TUMULTUS.

De Medio, *BIDR* 20 (1908) 157; D. Behrens, *Die vis m. und das klassische Haftungssystem*, Giessen (1936); G. I. Luzzatto, *Caso fortuito e forza maggiore* 1 (1938); Condanari-Michler, *Festschr Wenger* 1 (1944) 236.

Vis privata, vis publica. See VIS.

Vita. See IUS VITAE NECISQUE.

Vitellius. A little known jurist of the time of Augustus, contemporary with Labeo. The jurist Paul wrote a commentary on the work of Vitellius (*ad Vitellium*); it seems, however, that he did not use Vitellius' writings directly, but Sabinus' commentary *ad Vitellium*.

Berger, *RE* 10, 713; Kunkel, *Herkunft und soziale Stellung der röm. Juristen*, 1952, 117.

Vites. Vines. Gaius used vines as an example to illustrate the necessity imposed by the Twelve Tables of applying the precise words of that legislation in the *legis actiones*. "If one sued another for having cut down his vines and used the word *vites*, he lost the claim because the Twelve Tables, on which his claim was based, spoke of 'trees' and therefore he had to refer to trees cut down in his claim" (Inst. 4.11).

Vitiari. To be legally defective, to have no legal effectiveness.

Hellmann, *ZSS* 23 (1902) 413.

Vitiose. Used of acts, transactions, possession, securities, etc., which suffer from a legal defect (see VITIUM) and, consequently, are invalid. Ant. *sine vitio*.

Vitiosus. See VITIOSE. "What is defective (*vitiosum*) from the very beginning cannot become valid by a lapse of time" (D. 50.17.29).—See TRACTUS TEMPORIS, POSSESSIO INIUSTA, VITIUM POSSESSIONIS.

Vitium. When referring to a legal act or transaction, a legal defect resulting from non-observance of the prescribed formalities or the legal inability of the acting person. Hence *sine vitio* = blameless, without any defect. *Vitium* is also used in the sense of a loss, damage (*damnum*), as, e.g., *vitium facere*, or of a fault (*culpa*).—See the following items.

Cuq, *DS* 5.

Vitium aedium. A defective and dangerous condition of a building or other construction (of a work done *vitium operis*). Syn. *aedes vitiosae*.—See DAMNUM INFECTUM.

G. Branca, *Danno temuto* (1937) 105 and *passim*.

Vitium animi. A mental (psychical) defect or disease. Ant. *vitium corporis* (*corporale*) = a chronic physical defect (e.g., blindness, deafness). The distinction is discussed in connection with the sale of slaves and the remedies granted by the aedilician Edict in the case of unvisible defects of slaves sold. —See ACTIONES AEDILICIAE, MORBUS, ERRO, SERVUS FUGITIVUS, REDHIBITIO, ACTIO QUANTI MINORIS.

H. Vincent, *Le droit des édiles* (1922) 43; R. Monier, *La garantie contre les vices cachés dans la vente romaine* (1930).

Vitium corporis (corporale). See VITIUM ANIMI.

Vitium operis. See VITIUM AEDIUM. *Vitium operis*, when referring to a construction of a building, is distinguished from *vitium soli* = the bad condition of the soil on which the construction was built. If the building (construction, *opus*) collapsed because of a defect in the construction, the contractor was liable; if, however, this happened because of the bad state of the soil, the owner had to bear the loss.

Vitium possessionis. See POSSESSIO INIUSTA, EXCEPTIO VITIOSAE POSSESSIONIS, CLAM.

Vitium rei. A legal "defect" in a thing which renders its acquisition through *usucapio* impossible (e.g., stolen things = *res furtivae*, things taken by violence = *res vi possessae*, things belonging to the fisc).

Vitium soli. See VITIUM OPERIS.

Vitium verborum. A defect in a written or oral declaration, resulting from the use of words other than those prescribed by law.

Vivianus. A little known jurist of the first century after Christ, author of a commentary on the praetorian and aedilician Edicts.

Vocare (vocatio). To summon a person to appear in court. A magistrate could summon a witness to testify, a guardian to render an account of his administration of a ward's property, an accused in a criminal matter (*vocare in crimen*).

Cuq, *DS* 5.

Vocare ad hereditatem. To designate an heir. The term is used both of an intestate inheritance (*lex vocat*) and of the appointment of an heir by a testator in his will.

Vocari ad munus. To be called by an official order to render compulsory personal service or to assume a certain charge (*munus*) in the interest of the state.

Vocatio. See EVOCATIO.

Vocatio in ius. See IN IUS VOCATIO.

Vociferatio. See CONVICIUM.

Voconiana ratio. See LEX VOCONIA, RATIO VOCONIANA.

Volcatius. An unknown jurist of the early first century B.C., a disciple of the renowned jurist Quintus Mucius Scaevola.

Kunkel, *Herkunft und soziale Stellung der röm. Juristen*, 1952, 20.

Volens. One who agrees, who gives his consent. "There is no injury done to a person who consents (*in volentem*)" (D. 47.10.1.5).—See FRAUDARE.

Severino, *NDI* 12, 2, 1135.

Volgo. See VULGO.

Volo. See VELLE.

Voluntaria iurisdictio. See IURISDICTIO CONTENTIOSA.

Voluntarii. Voluntary soldiers organized in special units, *cohortes voluntariorum*.

Voluntarius heres. See HERES VOLUNTARIUS.

Voluntas. A wish, a desire, a will, an intention. *Voluntas* as an element of one's action in the legal field acquires importance in the legal life of a social group and of an individual when it is expressed orally or in writing or is manifested in some other manner in a clear, unambiguous way, either in a unilateral act (a testament) or in a contract. The manifestation of will is taken into consideration as valid only if the person involved is able to express his will. Infants and lunatics (see FURIOSUS) were considered not to have a will at all. The will of a person, appropriately expressed, produced legal effects only if it was free, i.e., not produced by error (see ERROR), fraud (see DOLUS) or by violence (see VIS, METUS). Except for cases for which the law prescribed a specific form (words, witnesses, writing) the formless manifestation of will could be expressed orally (*verbis*), in writing (*in scriptis, scriptura*), by signs (see NUTUS) or by acting in a way which did not admit of any doubt about the person's will (*tacite*, see SILENTIUM). Hence the distinction between a *voluntas* factually expressed in one way or another and the *voluntas* the person really had. "There is a difference between a will which was expressed (*voluntas expressa*) and one which really exists" (D. 45.1.138.1). "If there is no ambiguity in the words used, a query about the will (*voluntas*) should not be admitted" (D. 32.25.1). Doubts arise when one's *voluntas* was expressed in obscure, ambiguous words, written or spoken. "In an ambiguous (equivocal) saying we do not say both one and another thing, but only that one we want to say; but he who says anything other than what he wished, neither says what the words (*vox*) signify because he does not want it, nor what he wants because he did not say it" (D. 34.5.3). In the earlier law a contrast between *voluntas* and its expression through *verba* or *scripta* was not taken into consideration. In a formalistic legal system, only what had been expressly said had legal value. But already at the end of the Republic a contradiction between *voluntas* and *verba* became a problem which did not escape the jurists' interest. The remark in Quintilian (*Inst. orat.* 7.6.1) "the jurists very frequently raise the question of written words and intention (*voluntas*) and a major part of controversial law (*ius controversum*) depends upon it," was not a fantasy of the famous rhetorician, who expressly states (7.5.6) that his saying refers not only to statutes but "also to testaments, agreements, stipulations and any written documents, and to oral declarations as well." The once widely diffused doctrine in the Romanistic literature to the effect that expressions like *animus, affectio, mens, voluntas*, concerned with the individual will of a person, as well as decisions based on taking it into consideration, are suspect in the writings of classical jurists, may now be considered exaggerated and misleading. The rules set by Papinian, "It has been held that in agreements between contracting parties the will should be rather taken into consideration than the words" (D. 50.16.219), and with regard to testaments, "in conditions settled in a testament the will (*sc.* of the testator) should be considered (*considerari*) rather than the words" (D. 35.1.101 pr.) doubtless reflect the opinion prevailing in his time in favor of the element of volition. In Justinian's law *voluntas* reached its climax in the whole legal system as a decisive element in the evaluation of the validity, and in the interpretation, of manifestations of will.—*Voluntas* sometimes

means consent, approval (*voluntatem dare*). For *voluntas* of persons committing crimes or illicit acts (= evil intention), see DOLUS MALUS, ANIMUS, CONATUS, CONSILIUM, INTENTIO.—See, moreover, VERBA, NUDA VOLUNTAS, ANIMUS, MENS, AFFECTIO, SILENTIUM, SIMULATIO, IOCUS, INTERPRETATIO, and the following items.

Guarneri-Citati. *Indice*[2] (1927) 91; *idem*, *St Riccobono* 1 (1936) 743; *idem*, *Fschr Koschaker* 1 (1939) 156 (for interpolations).—Donatuti. *BIDR* 34 (1925) 185; Sokolowski. *Mél Cornil* 2 (1926) 425; Brasiello, *StUrb* 3 (1929) 103; Levy, *ZSS* 48 (1928) 74; Jolowicz, *LQR* 48 (1932) 180; Albertario, *St Bonfante* 1 (1930) 645 (= *Studi* 5. 1937. 112); Himmelschein, *Symb Frib Lenel* (1931) 373; Pringsheim, *LQR* 49 (1933) 43, 379; Grosso, *St Riccobono* 3 (1936) 163; Riccobono, *Mél Cornil* 2 (1926) 357; *idem*, *ACDR* Roma 1 (1934) 177; *idem*, *BIDR* 53/4 (1948) 356; *idem*, *Scr Ferrini* 4 (Univ. Sacro Cuore, Milan. 1949) 55; *idem*, *Fschr Schulz* 1 (1951) 302; Dulckeit, *ibid.* 158; Flume, *ibid.* 210.

Voluntas contrahentium. See VOLUNTAS.

E. Costa, *Popiniano* 4 (1898).

Voluntas defuncti. The wish of the deceased expressed in his testament.—See VOLUNTAS, VOLUNTAS TESTANTIS, MENS TESTANTIS.

Voluntas legis. The intention of a statute.—See MENS LEGIS, RATIO LEGIS, SENTENTIA LEGIS.

Voluntas postrema. A testament. Syn. *voluntas suprema, ultima.*

Voluntas sceleris. The intention to commit a crime. Syn. *voluntas maleficii*.—See VOLUNTAS, COGITATIO, CONATUS.

Voluntas testantis. The wish of a testator expressed in his last will. Syn. *voluntas defuncti.* See VOLUNTAS. Very frequently the jurists stress that the decision in a specific case concerned with a testamentary disposition depends upon the inquiry into the testator's wish (*quaestio voluntatis*).

E. Costa, *Popiniano* 3 (1896); A. Suman, *Favor testamenti e v. testantium*, 1916; *idem*, *La ricerca della v. t.*, Fil 1917; Donatuti. *BIDR* 34 (1925) 185; G. Dulckeit, *Erblasserwille und Erwerbswille*, 1934; *idem*, *Fschr Koschaker* 2 (1939) 316; Grosso, *St Riccobono* 3 (1936) 155; C. A. Maschi, *St sull'interpretazione dei legati. Verba e voluntas* (1938); *idem*, *Scr Ferrini* 1 (Univ. Sacro Cuore, Milan, 1947) 317; Koschaker, *ConfCast* (1940) 106.

Voluptariae impensae. See IMPENSAE VOLUPTARIAE.

Volusius. See MAECIANUS.

Vota. (In the later Empire.) Gifts offered to the emperor on New Year's Day. *Vota pro salute imperatoris* (from the time of Augustus) = vows on the occasion of prayers for the health of the emperor and his family.

Vota matrimonii (nuptiarum). In later imperial constitutions, syn. with NUPTIAE.

Votum. (From *vovere*.) A solemn vow (promise) made in favor of a divinity. A *votum* was not suable under the law, but the promisor (and after his death, his heir) was obligated to the divinity (*numini obligatus*) under sacral law. It is doubtful whether the priests of the divinity had any action against the promisor.

Toutain, *DS* 5; Ferrini, *NDI* 12. 2, 932; Eitrem, *OCD*; Brini, *RendBol* 1908; Wissowa, *Religion und Kultus der Römer*[2] (1912) 380.

Vox. A spoken word, an oral declaration.—See VOLUNTAS.

Vulgare. To make public officially (e.g., an imperial rescript). The term is found in the language of the imperial chancery.

Vulgaris. Common, commonly used. The term also refers to actions (*vulgaris formula, actio, vulgare iudicium*) but has no technical meaning. It indicates an ordinary action as opposed to those granted exceptionally in specific circumstances (as *actiones utiles, actiones in factum*).

Vulgaris cretio. See CRETIO.

Vulgaris mulier. See MERETRIX.

Vulgaris substitutio. See SUBSTITUTIO.

Vulgata. (*Sc. littera.*) Manuscripts of the Digest of the eleventh and following centuries. They are also called *Littera Bononiensis* because they were used in the University of Bologna.

Kantorowicz, *Die Entstehung der Digesten-Vulgata*, *ZSS* 30 (1909) 183, 31 (1910) 14; P. Kretschmar. *ZSS* 48 (1928) 88; *idem*, *Mittelalterliche Zahlensymbolik und die Entstehung der Digesten-Vulgata* (1930); *idem*, *ZSS* 58 (1938) 202; Mor, *CentCodPar* (1924) 559.

Vulgo. Generally, commonly. It is used of legal rules and sayings generally recognized (*vulgo dicitur, receptum est, respondetur*).

Vulgo conceptus (or quaesitus). A child born out of wedlock, neither in a legitimate marriage nor in a concubinage (see CONCUBINATUS) or CONTUBERNIUM, the offspring of a promiscuous intercourse. Such a child had no father, since the latter was unknown. The mother was bound to maintain the child who was admitted to her intestate inheritance.

X

Xenia. Small gifts (also called *xeniola*) made to a provincial governor; they were originally permitted. Later imperial legislation, however, forbade, donations to governors and higher officials of the provincial administration, except on the occasion of their leaving the post.

Brillant, *DS* 5.

Xenodochium. A hospital. *Xenodochia* were reckoned among PIAE CAUSAE. Legacies and donations to them were favored by the later imperial legislation.—C. 1.3.

Z

Zenonianae constitutiones. Enactments of the emperor Zeno (A.D. 474–491). Some of them are mentioned by Justinian in his Institutes; they are inserted in full in his Code. The most renowned among this

emperor's enactments is C. 8.10.12 (the exact date is unknown). It was concerned with the construction of buildings in Constantinople and contained provisions about the height of buildings, the distance between neighboring houses, staircases, etc. There were also procedural rules concerning controversies among neighbors. Penalties for contravention were set not only against the owner of the ground but also the architects and workmen. A contractor who refused to finish the construction he was obligated to build was punished by a fine; in the case of insolvency and consequent impossibility of continuing the work, he was castigated and expelled from the city. Jurisdiction in all these matters was vested in the *praefectus urbi*.—See AEDIFICATIO.

H. E. Dirksen, *Hinterlassene Schriften* 2 (1871) 229; Brugi, *RISG* 4 (1887) 395; Voigt, *BerSächsGW* 1903, 190; Biondi, *BIDR* 44 (1937) 362.

Abandon a child. *Exponere filium*
Abandonment. *Derelictio*
Abduction of a woman. *Raptus*
Abettor. See Accomplice
Abolish a statute. *Tollere legem*
Abortion. *Partus abactus*
Absence in a trial. *Contumacia, eremodicium*
Absent without leave. *Emansor*
Abuse of rights. *Aemulatio*
Accept a stipulatory promise. *Stipulari*
Acceptance of an inheritance. *Aditio hereditatis*
Access to a grave. *Iter ad sepulcrum*
Accident. *Casus*
Accomplice. *Socius, conscius, particeps, minister*, see OPE ET CONSILIO
Account-book. *Rationes, codex accepti et expensi*
Accrual. See IUS ADCRESCENDI
Accusation, malicious. *Calumnia*
Accusation, written. *Libellus inscriptionis, subscriptio*
Acknowledge a seal. *Agnoscere (recognoscere) signum*
Acknowledge paternity. *Agnoscere liberum*
Acquittal. *Absolutio*
Act in court. *Postulare*
Actor. *Scaenicus, mimus, qui artem ludicram exercet*
Adjournment of a trial. *Dilatio*
Administrator. *Procurator, curator*; administrator of another's property = *procurator omnium bonorum*
Adoption. *Adoptio, adrogatio*
Advantage. *Commodum, emolumentum*
Adversary in a trial. *Pars diversa*
Advice. *Consilium*
Adviser, legal (of magistrates, judges). *Adsessor*
Adviser of the emperor. *Consiliarius*
Advocate. *Advocatus, patronus causae, orator, causidicus, scholasticus*
Against good customs. *Contra bonos mores*
Against one's will. *Invito (aliquo)*
Age. *Aetas*
Age below puberty. *Aetas pupillaris*
Agent. *Actor, procurator*
Agreement not to sue in court. *Pactum de non petendo*
Agreement. *Pactum, contractus, placitum, conventio*
Agreement, extrajudicial about a controversy. *Transactio*
Agreement with reciprocal obligations. *Synallagma*
Air, airspace. *Aër, coelum*
Alliance. *Foedus*
Ally. *Socius populi Romani*
Ambassador. *Legatus*
Amnesty. *Indulgentia principis*
Ancestors. *Maiores*
Animal, domestic. *Pecus, quadrupes, animal*
Animal, wild. *Fera (bestia)*
Announce (publicly). *Proscribere (palam)*
Annul a statute. *Abrogare, tollere legem*, see DEROGARE
Anonymous. *Sine nomine*, see LIBELLUS FAMOSUS
Answer (decision) of the emperor. *Rescriptum*
Answers (opinions) of the jurists. *Responsa prudentium*
Appeal. *Appellatio, provocatio*
Appeal, written. *Libelli appellatorii*, see APPELLO
Application (written) to court. *Libellus conventionis*
Appointment of an heir. *Institutio heredis*
Appointment of a substitute heir. *Substitutio*
Approval. *Approbatio, probatio, auctoritas*
Approval by a principal. *Ratihabitio*
Appurtenance of a land. *Instrumentum, instructum fundi*
Arbitration, agreement on. *Compromissum*
Arbitrator. *Arbiter, iudex compromissarius*
Archive. *Tabularium, tabulae publicae*
Armistice. *Indutiae*
Army. *Exercitus*
Arrest. *Prensio*
Arson. *Incendium*
Ascendants. *Maiores, superiores*
Assemblies of the people. *Comitia*
Assembly, plebeian. *Concilium plebis*
Assessment of taxes. *Descriptio*
Assistance. *Auxilium*, see IUS AUXILII
Association. *Collegium, sodalicium*
Assume an obligation. *Suscipere obligationem*
Astrologus. *Astrologer, mathematicus*
Asylum. See CONFUGA
Attempt, criminal. *Conatus*
Auction. *Subhastatio*
Authentic. *Verus*
Authority. *Auctoritas*
Authorization. *Iussum, mandatum*
Avenge an offense. *Vindicare*

Bad faith. *Mala fides*
Bad (forged) money. *Adulterina, reproba, falsa pecunia*
Bakers. *Pistores*
Bandit. *Latro*
Banishment. *Deportatio, relegatio, exilium*
Bank of a river. *Ripa*
Banker. *Argentarius, nummularius, mensularius*
Bankrupt. *Decoctor*
Barter. *Permutatio*

Beam. *Tignum*, see TIGNUM IUNCTUM
Beginner in a (lawyer's) profession. *Tiro*
Below puberty. *Impubes*
Betrothal. *Sponsalia*
Beyond the normal order. *Extra ordinem*
Birthplace. *Origo*
Bishop. *Episcopus*
Bishop's court. *Episcopalis audientia*
Blame by the censors. *Nota censoria*
Blind. *Caecus*, see TESTIMONIUM CAECI
Board, advisory, of magistrates. *Consilium magistratuum*
Board, white, for official announcements. *Album*
Body-guard of the emperor. *Protectores*
Bookkeeper. *Ratiocinator*
Booty. *Praeda*
Borrow. *Mutuari*
Bottomry loan. *Fenus nauticum, pecunia traiecticia*
Boundary of a land. *Fines, confinium, modus agri*
Boundary stone. *Terminus, cippus*
Bribe. *Corrumpere*
Bribery at elections. *Ambitus*
Bribery in office. *Repetundae*
Brother. *Frater*
Building. *Aedes, aedificium*
Building materials. *Tignum*, see TIGNUM IUNCTUM
Building regulations. See ZENONIANAE CONSTITUTIONES
Buildings, public. *Opera publica*
Burdens (expenses) of a marriage. *Onera matrimonii*
Burden of the proof. *Onus probandi*
Bureau of the imperial chancery. *Scrinium*
Burglar. *Effractor*
By-laws of an association. *Pactio collegii*

Captain of a ship. *Magister navis*
Case. *Causa, res iudicialis*
Cash-book. *Codex accepti et expensi, rationes*
Cash payment. *Numeratio pecuniae, pecunia numerata*
Cast horoscopes. *Ars mathematica*
Census declaration (return), oral. *Professio censualis*
Chair used by high magistrates. *Sella curulis*, see SUBSELLIUM
Chairman of a criminal jury. *Iudex quaestionis*
Chancery, imperial. See A COGNITIONIBUS and the following entries
Change a testament. *Mutare testamentum*
Change in the family status. *Mutatio familiae*
Charitable institutions. *Piae causae*
Charter of a colony (province). *Lex coloniae* (*provinciae*)
Chastity, crimes against chastity. *Pudicitia*
Chicanery. *Calumnia*
Chief of the palace offices. *Magister officiorum*
Child. *Infans, liber*
Child, unborn (in the womb). *Nasciturus, in utero*
Child of an unknown father. *Spurius, vulgo conceptus*
Childless. *Orbus*
Children. *Liberi*, see IUS LIBERORUM
Choice. *Optio*
Church. *Ecclesia*
Citizen. *Civis*
Citizens of a municipality. *Municipes*
Citizenship. *Civitas*
Civilian. *Paganus*
Claim. *Petitio*
Claim back. *Repetere, reposcere*
Claim for the recovery of a pledge. *Vindicatio pignoris*
Claim of a servitude. *Vindicatio servitutis*
Claim of an inheritance. *Hereditatis petitio*
Class, equestrian (senatorial). *Ordo equester* (*senatorius*)
Classes, social higher. *Potentiores, honestiores*
Classes, social lower. *Humiliores, tenuiores*
Clerk, in a court. *Scriba, exsecutor*
Coercive measures. *Coërcitio*
Co-heirs. *Coheredes*
Coins. *Nummi*
Collapse of a building. *Ruina*
Collusion between accuser and accused. *Praevaricatio*
Command. *Iussum*
Commander. *Praepositus, praefectus*
Commander, military. *Imperator, regens exercitum*
Commander of a fleet unit. *Nauarchus* (*classis*)
Commander of a ship. *Magister navis*
Commander of the cavalry. *Magister equitum*
Commander of the infantry. *Magister peditum*
Commissioner. *Procurator, curator*
Common ownership. *Communio*
Common thing. *Res communis*
Complain. *Queri*
Complaint. *Querela, querimonia*
Complex of things as a unit. *Universitas* (*rerum*), *corpus ex distantibus*
Conceal another's slave. *Celare, suscipere, supprimere servum alienum*
Concealer. *Occultator*
Conceived. *Conceptus, in utero*
Conclude a fictitious transaction. *Simulare*
Concurrent crimes. *Delicta concurrentia*
Confer a higher rank. *Promovere*
Confiscation. *Ademptio, publicatio, proscriptio* (*bonorum*)
Construction of a house. *Aedificatio*. See SUPERFICIES
Contempt of court. *Contumacia*, see OBTEMPERARE
Contractor. *Redemptor, conductor* (*operis*)

Control of public morals. *Regimen morum*
Controversy in court. *Lis*, see IURGIUM
Conveyance of a *res mancipi*. *Mancipatio, in iure cessio*
Conveyance of property. *Translatio dominii*
Copper and scales. See PER AES ET LIBRAM
Copy. make a copy. *Describere*
Copy of a document. *Exemplum*
Corporal punishment. *Castigatio, verberatio, fustigatio*
Corporate body. *Universitas, corpus, collegium*
Corpse. *Cadaver*
Correality. See DUO REI PROMITTENDI
Corruption of a slave. See ACTIO SERVI CORRUPTI
Council. *Consilium*
Council, municipal. *Ordo* (*consilium*) *decurionum, curia*
Counterfeit money. *Moneta* (*pecunia*) *adulterina, falsa*
Court days. *Actus rerum*, see FERIAE, DIES FASTI
Court hall. *Secretarium*
Court practice. *Consuetudo fori*
Creditor by stipulatio. *Reus stipulandi, stipulator*
Crime. *Crimen, delictum, maleficium*
Crime through cheating, fraud, deceit. *Stellionatus*
Crimes prosecuted by the person injured. *Delicta* (*privata*)
Crimes prosecuted by the state. *Crimina publica*
Criminal courts. *Quaestiones*
Criminal offense. *Admissum, flagitium*
Crown property of the emperor. *Patrimonium Caesaris*
Customary law. *Consuetudo, mos, mores maiorum, ius moribus constitutum*
Custom duties. *Portoria*
Customs (good). *Mores* (*boni*)
Customs, local. *Usus loci, mores civitatis* (*regionis*)

Damage done by domestic animals. *Pauperies*
Damage done to property. *Damnum iniuria datum*, see LEX AQUILIA
Damage, threatened. *Damnum infectum*
Danger. *Periculum*, see DAMNUM INFECTUM
Daughter. *Filia*
Deaf. *Surdus*
Death. *Mors*
Death penalty. *Supplicium* (*ultimum*), *poena capitis* (*capitalis*)
Death, upon (because of). *Mortis causa*
Debt. *Debitum*
Debt, non existing. *Indebitum*
Debt-book. *Kalendarium*
Debtor. *Reus* (*debendi*), *debitor*
Debtor through stipulation. *Reus promittendi, promissor*
Debtors, joint. *Correi, duo rei.*
Decapitation. *Decollatio, capitis amputatio*
Deceased. *Defunctus*
Deceipt. *Dolus, fraus*
Deceitfully. *Dolo, dolosc, subdole*
Deceive creditors. *Fraudare creditores*
Decemviral legislation. *Lex duodecim tabularum*
Decision of a magistrate (emperor). *Decretum*
Decision of an arbitrator. *Arbitrium, sententia arbitri*
Decision of the senate. *Sententia senatus*
Declaration before censors. *Professio censualis*
Declaration before officials. *Professio*
Declaration before witnesses. *Testatio*
Declarations concerning the birth of children. *Professiones liberorum natorum*
Decree. *Decretum*
Defamation. *Iniuria, convicium*
Defamatory letter (poem). *Libellus famosus* (*carmen famosum*)
Default. *Mora, contumacia, absentia*
Defect, legal. *Vitium*
Defect mental. *Vitium animi*
Defective condition of a building (construction). *Vitium aedium* (*operis*)
Defective, legally. *Vitiosus*
Defects concealed (latent) in a sale. See ACTIO REDHIBITORIA
Defendant. *Reus, is cum quo agitur*
Defenseless in trial. *Indefensus*
Defraud. *Fraudare*
Defrauding young men. *Circumscriptio adulescentium*
Degree of relationship. *Gradus*
Denial of a claim. *Infitiatio, negatio*
Denouncer. *Delator, nuntiator*
Dependant upon another's paternal power. *Alieni iuris, in potestate*
Deputy official. *Vices* (*vicc*) *agens, vicarius, proximus*
Descendants. *Descendentes, posteri, progenies*
Desecration of a grave. *Violatio sepulcri*
Deserter. *Perfuga, transfuga*, see DESERERE
Designation of an heir. *Institutio heredis*
Destruction. *Demolitio*
Determination by lot. *Sortitio*
Disapprove. *Reprobare*
Discharge, honorable, from military service. *Missio honesta*
Disease. *Morbus*; chronic disease. *Morbus perpetuus*
Disherison. *Exheredatio*
Dishonest. *Improbus, contra bonam fidem*
Disinherit. *Exheredare*
Dismissal from military service. *Reiectio militia*
Disobedience to a magisterial order. See OBTEMPERARE
Dispossess. *Deicere de possessione*
Dissolve a legal tie. *Solvere*
Distinctive insignia (titles). *Ornamenta*

Distribution of money among people. *Missilia, iactus missilium*
Districts, administrative in Rome (Italy). *Regiones*
Disuse of a law. *Desuetudo*
Divine law. *Ius divinum, ius sacrum, fas*
Division of common inheritance. See ACTIO FAMILIAE ERCISCUNDAE
Division of common property. See ACTIO COMMUNI DIVIDUNDO
Division of process (bipartition). See IN IURE, APUD IUDICEM
Divorce. *Divortium, repudium, separatio*
Document. *Instrumentum, charta, scriptura*
Door. *Ostia*
Dowry. *Dos, res uxoria*
Draft by lot. *Sortitio*
Draft, written of a judgment. *Pariculum*
Drunkenness. *Ebrietas, temulatio*, see VINUM
Dumb. *Mutus*
Duress. See METUS
Duties, public, for the state or city. *Munera*

Earnest (money). *Arra*
Earthquake. *Terrae motus*
Easement. *Servitus*
Ecclesiastical jurisdiction. See EPISCOPALIS AUDIENTIA
Elected magistrate (for the next term). *Designatus*
Election between alternative obligations. *Optio*, see IUS VARIANDI
Elections, dishonest practices in. *Ambitus*
Embezzler. *Decoctor*
Embezzlement in office. *Peculatus*
Emergency. *Necessitas*
Emergency tax. *Tributum temerarium*
Emperor. *Princeps, imperator*
Enactment, imperial, of particular importance. *Sanctio pragmatica*
Enactment of a plebeian assembly. *Plebiscitum*
Enactments of the emperors. *Constitutiones principum, statuta imperialia*
Endow with a dowry. *Dotare*
Enemy. *Hostis*
Enforce payment. *Exigere*
Enfranchisement of a slave. *Manumissio*
Enriched. *Locupletior factus*
Enrichment. *Id quod pervenit, versum in rem alicuius*
Enrichment, unjustified. See CONDICTIO
Enslavement by penalty. See SERVUS POENAE
Entry in a cash-book. *Nomen*, see NOMINA TRANSCRIPTICIA
Equal legal situation. *Par causa*
Equipment of a house (land). *Instrumentum, instructum domus (fundi)*
Equity. *Aequitas*
Error concerning law. *Ignorantia (error) iuris*
Estate (inheritance). *Hereditas, res hereditariae*
Estate tax. *Vicesima hereditatium*
Esteem. *Existimatio*
Estimation. *Taxatio, aestimatio*
Evade law. *Circumvenire, fraudare legem, in fraudem legis agere*
Evade summons in court by hiding. *Latitare*
Evidence. *Probatio*
Evidence, circumstantial. *Indicium*
Examination of a case in court. *Causae cognitio*
Examine (confirm) the correctness of a copy. *Recognoscere*
Excessive claim. *Pluspetitio*
Exchange. *Permutatio*
Exclude from the senate. *Senatu movere*
Excuse. *Excusatio, velamentum*
Execution of a judgment. See ACTIO IUDICATI, MANUS INIECTIO
Execution through taking a pledge. See PIGNUS IN CAUSAM IUDICATI
Execution of a criminal. See POENA CAPITALIS, POENA
Executioner. *Speculator*
Exemption, excuse, from guardianship or public charges. *Excusatio*
Exemption from law. *Solutio legibus*
Exemption from taxes. *Immunitas, vacatio*
Exercise of a right. *Usus iuris, uti suo iure.*
Exile, voluntary. See INTERDICERE AQUA ET IGNI
Ex-master of a slave. *Patronus*
Expenses. *Impensae, impendium, sumptus*
Expenses connected with a lawsuit. *Sumptus litis*
Explanation of laws (or last wills). *Interpretatio*
Expose to public view. *Proponere, publicare, proscribere, promulgare*
Expropriation. *Emptio ab invito*
Expulsion. *Relegatio*
Extinction of obligations. See SOLUTIO, LIBERATIO, ACCEPTILATIO, DATIO IN SOLUTUM, CONFUSIO
Extrajudicial oath. *Iusiurandum voluntarium*
Extort. *Torquere, extorquere*
Extortion. *Concussio, crimen repetundarum*

Factual situation. *Res facti*
Fair and just. *Bonum et aequum*
Faith (good, bad). *Fides (bona, mala)*
False judgment. See Unjust judgment
Family council. *Consilium propinquorum, domesticum*
Farmers of public revenues. *Publicani*

Father. *Pater (familias)*, *parens*
Fear. *Metus, timor*
Fees, judicial. *Sportulae*
Female slave. *Ancilla*
Festivities, public. *Ludi publici*
Fetters. *Vincula*
Fiancé (fiancée). *Sponsus (sponsa)*
Fiduciary agreement. *Pactum fiduciae*
Financial matters. *Rationes*
Financial means of a person. *Facultates, modus facultatum*
Fine. *Multa, poena nummaria (pecuniaria)*
Fire. *Incendium*
Fire brigade. *Vigiles*
First name. *Praenomen*
Fishing. *Piscari*
Fleet. *Classis*
Flock of animals. *Grex*
Flowing water. *Aqua profluens*
Food administration. *Annona*
Forbid. *Prohibere, vetare*
Force (physical). *Vis, violentia*
Foreclosure of pledge. See LEX COMMISSORIA, IMPETRATIO DOMINII
Foreigner. *Peregrinus*
Forgery. *Falsum*
Formalities, legal. *Sollemnitates iuris*
Formless agreement. *Pactum (nudum)*, *placitum*
Formless promise of a dowry. *Pollicitatio dotis*
Formularies for documents. *Formulae*
Formulary procedure. See FORMULA
Fortune-teller. *Vaticinator*
Foster parent. *Nutritor*
Foundations, charitable. *Piae causae*
Four-footed animal. *Quadrupes*
Fracture of a bone. *Os fractum*
Fraud. *Dolus*
Fraudulently. *Subdole, dolose*
Free. *Liber*
Free a slave. *Manumittere*
Free from charges. *Immunis*, see OPTIMO IURE
Free man enslaved through condemnation. *Servus poenae*
Free will. *Libera voluntas*
Freeborn. *Ingenuus*
Freedman. *Libertus, libertinus*
Freedman's services. *Operae liberti*
Fruits. *Fructus*
Funeral. *Funus*
Funeral association. *Collegium funeraticium*
Funeral oration. *Oratio funebris*
Furlough. *Commeatus*

Gain. *Lucrum*
Gain in a transaction. *Lucrari, lucrifacere*
Gambler. *Aleator*, see ALEA
Games (public). *Ludi (publici)*
Gates of a city. *Portae*
General authorization. *Mandatum generale*
Gift. *Donatio, donum, munus*
Gifts between spouses. *Donationes inter virum et uxorem*
Give a dowry. *Dotare*
Give notice. *Denuntiare*
Give security. *Cavere*
Good customs (manners). *Boni mores*
Good faith. *Bona fides*
Goods transported by sea. *Vectura*
Governor of a diocese. *Vicarius*
Governor of a province. *Praeses (rector) provinciae*
Grace of the emperor. *Indulgentia principis*
Gratuitous loan of things for use. *Commodatum*
Grant an action. *Dare actionem*
Grant of majority rights to a minor. *Venia aetatis*
Grave. *Sepulcrum*
Gross negligence. *Magna (lata) culpa, magna neglegentia*
Group of persons as a unit. *Universitas*
Guaranties in process. See VADIMONIUM, CAUTIO IUDICIO SISTI
Guaranty for eviction. See ACTIO AUCTORITATIS, STIPULATIO DUPLAE
Guardian. *Tutor*
Guardianship. *Tutela*
Guild. *Collegium, ordo*
Guilty. *Reus*

Harbor. *Portus*
Harvest. *Messis*
Head of an office. *Praefectus, praepositus, magister, curator*
Head of the fiscal administration. *Rationalis*
Health (bad). *Valetudo*
Heir. *Heres*
Heirless estate. *Bona vacantia*
Help through procedural measures. *Succurrere, subvenire*
Herald. *Praeco*
Herd. *Grex*
Hesitate in testimony. *Vacillare*
High treason. *Crimen maiestatis, perduellio, proditio*
Higher in rank. *Superior*
Highway robber. *Latro, grassator*
Hire another's labor. *Locatio conductio operarum (operis)*

Hold a thing. *Detinere, naturaliter possidere*
Holidays. *Feriae*
Honest man. *Vir bonus*
Honesty. *Bona fides, probitas*
Honorarium for intellectual services. *Salarium*
Hospital. *Xenodochium*
Hostage. *Obses*
House. *Domus, aedes*
Hunting. *Venatio*
Husband. *Maritus*

Ignorance of a fact (law). *Error, ignorantia facti (iuris)*
Illegal. *Illicitus*
Illegitimate child (father). *Filius (pater) naturalis*
Illiterate. *Ignarus litterarum* (see LITTERAE)
Imaginary marriage. *Nuptiae simulatae*
Immovables. *Res immobiles*
Imperial council. *Consilium principis, consistorium*
Imperial enactments. *Constitutiones principum*
Impulse. *Impetus*
In court. *Pro tribunali*
Inaction. *Silentium*
Incapable to be a witness. *Intestabilis*
Income. *Reditus*
Independent of another (legally). *Sui iuris*
Individual thing. *Species*
Ineffective, legally. *Inutilis*
Infamous. *Qui notatur infamia*
Infantrymen. *Pedites*
Informal proceedings, out of court. *De piano*
Informer. *Denuntiator, index, delator*
Inhabitant. *Incola*
Inheritance. *Hereditas*
Inheritance tax. *Vicesima hereditatium*
Innkeeper. *Caupo*, see RECEPTUM NAUTAE
Inquire. *Quaerere*
Insane. *Demens, furiosus, mente captus*
Insubordination. *Contumacia*
Insult. *Contumelia, iniuria, convicium*
Intellectual profession (services). *Artes (operae) liberales*
Intent to commit a crime. *Consilium, voluntas sceleris*
Intention. *Animus, affectio, mens, cogitatio, voluntas, propositum*
Intention of a statute. *Mens, sententia legis*
Intentionally (with evil intention). *Dolo malo, dolose*
Intercourse with an unmarried woman. *Stuprum*
Interest. *Usurae, fenus*
Interest for default. *Usurae morae*
Interest from interest. *Usurae usurarum, anatocismus*
Interest of twelve per cent. *Usurae centesimae*

Interest, public. *Utilitas publica*, see INTERESTE UTILIS
Intermediary. *Interposita persona*
Interruption (of usucaption). *Interpellatio, usurpatio*
Intestate succession. *Hereditas legitima (ab intestato), bonorum possessio intestati*
Intoxication. *Ebrietas, temulatio.* See VINUM
Inundation. *Vis fluminis*
Invade another's property. *Introire, ingredi*
Invalid, legally. *Irritus, invalidus, nullus, nullius momenti*
Invest money. *Collocare pecuniam*
Investigator. *Quaesitor*
Inviolable. *Sacrosanctus*
Island. *Insula*
Issue a decree. *Decernere*
Issue an interdict. *Reddere interdictum*

Jail. *Carcer*
Jettison. *Iactus mercium*
Joinder of issue. *Litis contestatio*
Joinder of possessions. *Accessio possessionis*
Joint debtors. *Correi, duo rei promittendi*
Joint creditors. *Duo rei stipulandi*
Judge. *Iudex*
Judgment. *Sententia*
Judgment debt. *Iudicatum*
Judicial matter. *Causa*
Jurist. *Iurisprudens, prudens, iurisconsultus, iuris peritus*
Just title. *Iusta causa*

Keeper of stables. *Stabularius*, see RECEPTUM NAUTAE
Keys. *Claves*
Kidnapper. *Plagiarius, plagiator*
Kidnapping. *Plagium*
Kind of things. *Genus*
King. *Rex*
Kingship. *Regnum*
Kiss. *Osculum*
Knowledge. *Scientia*
Knowledge of law. *Iuris scientia, iurisprudentia*

Labor (manual and intellectual). *Operae*
Lack of knowledge of the law. *Ignorantia iuris*
Lack of professional skill. *Imperitia*
Lampoon. *Carmen famosum, libellus famosus*
Land (plot of land). *Ager, fundus, praedium*
Land dedicated to the gods. *Locus sacer*
Land for agricultural production. *Praedium rusticum*
Land for urban utilization. *Praedium urbanum*
Land in Italy (provinces). *Fundus Italicus (provincialis), solum, praedium Italicum (provinciale)*

Land-register. *Libri censuales*
Land-tax (in provinces). *Tributum soli, stipendium*
Large estate. *Latifundium*
Last will. *Postrema, ultima voluntas, testamentum*
Law. *Ius, lex*
Law, customary. See Customary law
Law originating in edicts of magistrates (praetors). *Ius honorarium (praetorium)*
Lawsuit. *Actio, petitio, persecutio*
Lawfully. *Iure, recte, rite, licite*
Lawyer. See Advocate
Lawyer pleading in court. *Togatus fori*
Lease. *Locatio conductio*
Lease in perpetuity. See EMPHYTEUSIS
Leave (inheritance, legacy). *Relinquere*
Leave of absence. *Commeatus*
Legacy. *Legatum*, see FIDEICOMMISSUM
Legacy of a fraction of the estate. *Partitio legata*
Legacy, additional, to an heir. *Praelegatum*
Legal rule. *Regula iuris, norma, canon*
Legally. See Lawfully
Legitimate son. *Filius legitimus*
Lend money. *Credere pecuniam*
Lessee. *Conductor*
Lessor. *Locator*
Letter. *Epistula, litterae*
Letter of commendation. *Prosecutoria*
Liable, to be. *Teneri*
Liberation from an obligation. *Solutio*
List of property. *Inventarium*
Litigation. *Lis, controversia*
Litigation tax. *Quadragesima litium*
Loan for consumption. *Mutuum, creditum*
Loan of a thing for use. *Commodatum*
Long-term lease. *Emphyteusis, ius in agro vectigali*
Loss. *Damnum*
Loss of profit. *Lucrum cessans*
Lower imperial officials. *Proximi*
Lunatic. *Furiosus, demens, mente captus*
Luxury, laws against. *Leges sumptuariae*

Majority in a corporation. *Maior pars*
Make a copy. *Describere*
Make a gift. *Donare*
Make a testament. *Testari, testamentum facere*
Make good losses. *Resarcire, sarcire*
Malicious trial. *Calumnia*
Manage another's affairs. *Negotia (aliena) gerere, administrare*
Management of another's affairs without authorization. *Negotiorum gestio*
Manager of a commercial enterprise. *Institor*
Manager of another's affairs. *Procurator;* without authorization = *negotiorum gestor*
Manslaughter. *Homicidium*
Manumission tax. *Vicesima manumissionum*
Maritime loan. *Fenus nauticum, pecunia traiecticia*
Market. *Nundinae*
Market place. *Forum*
Marriage. *Matrimonium, nuptiae*
Marriage contract, written. *Tabulae nuptiales (dotales)*
Marriage, incestuous. *Nuptiae incestae*, see INCESTUS
Marriage-like union of slaves. *Contubernium*
Master of a slave. *Dominus*
Master of ceremonies. *Magister admissionum*
Matter of fact. *Res (quaestio) facti*
Matter of law. *Res (quaestio) iuris*
Meeting, informal, of the people. *Contio*
Members of a corporation (association). *Socii, sodales, corporati, collegiati*
Merchandise. *Merx*
Merchants. *Negotiatores, mercatores*
Messenger. *Nuntius*
Messengers in office. *Viatores*
Milestone. *Milliarium*
Military court. *Iudices militares*
Military delicts. *Delicta militum*
Military law. *Ius militare (militum)*
Military service. *Militia*
Mines. *Metalla*
Minor magistrates. See VIGINTISEXVIRI
Minority. *Minor aetas*
Mint. *Moneta*
Mistake. *Error*
Money. *Pecunia, nummi*
Money lent. *Pecunia credita*
Monk. *Monachus*
Moral duty. *Officium pietatis*
Motive of a statute. *Ratio legis*
Mourning. *Luctus*
Movables. *Res mobiles*
Move to another place. *Migrare*, see INTERDICTUM DE MIGRANDO
Municipal senate (council). *Consilium (ordo) decurionum*
Municipality. *Municipium*
Murder. *Homicidium*, see PARRICIDIUM
Murder by poison. *Veneficium*
Murderer. *Sicarius*

Name. *Nomen*
Natural law. *Ius naturale (naturae)*
Navy. *Classis*
Negligence. *Culpa*

Neighbor. *Vicinus*
Newborn child. *Partus*
Norm, legal. *Praeceptum (regula) iuris, praescriptum*
Non-appearance in court. *Contumacia*
Non-use of a right. *Non usus*
Notary. *Tabellio, tabularius*
Notification of action to the defendant. *Editio actionis*
Notify. *Denuntiare*
Nourishment. *Victus*
Null. *Nullus, nullius momenti, invalidus*

Oath. *Iuramentum, iusiurandum*
Oath in a civil trial. See IURAMENTUM NECESSARIUM
Oath of a magistrate. See IURARE IN LEGES, EIURATIO
Oath of soldiers. *Sacramentum*
Object of a lawsuit. *Res de qua agitur, lis*
Object of a pending trial. *Res litigiosa*
Objection in trial. *Exceptio*
Obsolescence. *Desuetudo*
Offense against the state. *Maiestas, perduellio*
Offense, personal. *Iniuria*
Offenses, military. *Delicta militum*
Offer. *Oblatio*
Office, public. *Ministerium*
Officers, highest, in the legion. *Tribuni militum*
Offices, regional, of the fisc. *Stationes fisci*
Official duties. *Officium*
Official, highest, in an imperial office. *Primicerus, princeps*
Officials in the fiscal administration. *Rationales*
Officials in the imperial palace. *Palatini*
Omission, negligent. *Neglegentia, culpa in non faciendo*
Omit a person in a will. *Praeterire, omittere*
Opening of a will. *Apertura testamenti*
Opposing an exception. *Excipere*
Oral solemn declaration. *Nuncupatio*
Oral will. *Testamentum per nuncupationem*
Orator. *Rhetor*
Ordain. *Statuere*
Order (authorization). *Iussum*
Order of a magistrate. *Decretum, iussum*
Order of payment from a bank deposit. *Relegare pecuniam, delegare ab argentario*
Order, public. *Disciplina*
Order to lend money. *Mandatum pecuniae credendae*
Order to take possession, issued by a praetor. *Missio in possessionem*
Ordinary civil procedure. *Ordo iudiciorum privatorum*
Ordinary criminal procedure. *Ordo iudiciorum publicorum*
Original of a document. *Exemplar, authenticum*
Outlawed. *Proscriptus, interdictus aqua et igni, sacer*
Outside the court. *Extra iudicium*
Owner. *Dominus, proprietarius*
Ownerless estate (inheritance). *Bona vacantia*
Ownerless things. *Res nullius*
Ownership. *Dominium, proprietas*
Ownership protected by praetorian law. See IN BONIS

Pace. *Passus*
Painting. *Pictura*
Panel of judges. *Album iudicum*
Parcel of public land. *Locus publicus*
Partition. *Divisio*
Partner. *Socius*
Partnership. *Societas*
Party to a trial. *Pars, litigator*
Party wall. *Paries communis*
Pasquil. *Libellus famosus*
Pass a judgment. *Sententiam ferre, iudicare*
Pasture land. *Pascuum*
Pasture servitude. *Ius pascendi*
Paternal power. *Patria potestas*
Patronage. *Patrocinium*
Pay a debt. *Solvere, retro dare*
Payment by installment. *Pensio*
Payment of a debt. *Solutio*
Peace. *Pax*
Pederasty. *Stuprum cum masculo*
Penalty. *Poena*
Period of time. *Tempus, intervallum*
Periods, lucid (in an insane person). *Dilucida (lucida) intervalla*
Perjury. *Periurium*
Person not belonging to a family. *Extraneus*
Personal offense. *Iniuria, contumelia*
Personnel, auxiliary, in an office. *Apparitores*
Petition. *Preces, libellus, supplicatio*
Physical things. *Res corporales*
Physician. *Medicus*
Plaintiff. *Actor, petitor, is qui agit*
Platform for the court. *Tribunal*
Plead in court a case. *Causam dicere, perorare*
Plebeian assembly. *Concilium plebis*
Plot of land. *Ager, fundus, praedium*
Plurality of creditors. *Duo rei stipulandi*
Plurality of debtors. *Duo rei promittendi*
Plurality of guardians. *Contutores*
Plurality of heirs. *Coheredes*
Poison. *Venenum*
Poisoner. *Veneficus*
Police officials. *Curiosi*
Poll-tax. *Tributum capitis*
Popular assembly. *Comitia*

Possession of a right. *Possessio iuris, quasi possessio*
Possessor in good (bad) faith. *Possessor bonae fidei*
Possessory remedies. See INTERDICTA
Postal service. *Cursus publicus*
Poster. *Propositum*
Posthumous child. *Postumus*
Postpone. *Prorogare*
Poverty. *Egestas*
Power. *Potestas*
Power of higher magistrates. *Imperium*
Praetorian Edict, commentaries on. *Libri ad edictum*
Precedent. *Exempium*, see RES IUDICATA
Predecessor in title *Auctor*
Preliminary decision in litigation. *Interlocutio*
Prescription, acquisitive. *Usucapio*
Prescription, extinctive. *Longi temporis praescriptio*
Presentation of the case by plaintiff. *Narratio*
Pretext. *Obtentus, velamentum*, see SPECIES
Price. *Pretium*
Priests. *Sacerdotes, flamines, augures, haruspices*
Principal. *Dominus negotii*
Principal (sum). *Sors, caput*
Prison. *Carcer, vincula publica*
Prisoner of war. *Captivus*
Privy purse of the emperor. *Res privata principis*
Procedural stipulations. *Stipulationes praetoriae*, see IUDICIALES
Proceeds. *Fructus*
Proclamation. *Programma*
Products. *Fructus*
Professional association. *Collegium, ordo*
Professional services. *Operae*
Profit. *Commodum, lucrum*
Prohibit. *Vetare, prohibere*
Prohibited by law or custom. *Illicitus*
Prolongation of magisterial power. *Prorogatio imperii*
Promise. *Promissio, promissum, pollicitatio*
Promise of a dowry. *Dictio, promissio, pollicitatio dotis*
Promissory note. *Chirographum*
Proof. *Probatio*
Proof, burden of. *Onus probandi*
Property of a person. *Bona, patrimonium*
Proposal of a statute. *Rogatio legis (ferre legem)*
Propose a candidate. *Nominare*
Proposer of a statute. *Rogator, auctor legis*
Prosecutor in a criminal trial. *Denuntiator, accusator*
Prostitute. *Meretrix, mulier quae corpore quaestum facit*
Protest against a new construction. *Operis novi nuntiatio*
Prove. *Probare*
Provincial land. *Praedium (solum) provinciale*
Public constructions. *Opera publica*
Public interest (welfare). *Utilitas publica*
Public law. *Ius publicum*
Publicly. *Palam, publice*
Punishment. *Poena*
Punishment, capital. *Poena capitalis, supplicium*
Purchase. *Emptio*
Purpose of a statute. *Ratio legis*
Pursue a claim. *Experiri actione*

Question. *Interrogatio*
Quinquennal period. *Lustrum*

Rain drip. *Stillicidium*
Rate of interest fixed by law. *Usurae legitimae*
Ratification. *Ratihabitio, ratum habere*
Ratification by the senate. *Auctoritas senatus (patrum)*
Read in court. *Recitare*
Real. *Verus*
Real right. *Ius in re (aliena)*
Real security. See FIDUCIA, PIGNUS, HYPOTHECA
Reason, natural. *Naturalis ratio*
Receipt, written. *Apocha, securitates*
Reciprocal claims. *Mutuae petitiones*
Reciprocally. *Invicem*
Recompense. *Remunerare*
Records, official. *Acta, commentarii, tabulae publicae, gesta, monumenta*
Recourse. *Regressus*
Recovery of property, action for. *Rei vindicatio*
Recovery of unjustified enrichment, action for. *Condictio*
Recruit. *Tiro*
Redeem a pledge. *Emere pignus*
Redeemed from the enemy. *Redemptus ab hoste*
Reduction of rent. *Remissio mercedis*
Refusal of action by the praetor. *Denegatio actionis*
Refuse an inheritance. *Abstinere (se) hereditate*
Registered as taxpayer. *Censitus*
Reimburse. *Refundere*
Reinstatement to the former (legal) condition. *Restitutio in integrum*
Reiteration of evidence. *Ampliatio*
Relationship (kinship). *Necessitudo*, see AGNATIO, COGNATIO
Relationship among slaves. *Cognatio servilis*
Release of debt. *Acceptilatio*
Release from an obligation. *Remissio debiti*
Remitting a penalty. *Remissio poenae*
Remnant, unpaid of a debt. *Residuum, reliquatio, reliquum*
Removal of a boundary stone. *Termini motio*

Render judgment. *Iudicare, sententiam ferre.*
Renew. *Renovare redintegrare*
Renewal of an accusation. *Repetere accusationem*
Renewal of a lease. *Reconductio, relocatio*
Rent. *Merces*
Rent in a long-term lease. *Canon, pensio*
Renunciation. *Abdicatio*
Repair. *Reficere*
Replacement of a judge. *Mutatio iudicis,* see TRANSLATIO IUDICII
Reply of the defendant. *Contradictio, responsio, libellus contradictionis*
Report to a higher judge. *Referre*
Represent a person. *Sustinere personam alicuius*
Representative of a corporate body. *Syndicus, actor*
Representative of a party in a trial. *Cognitor, procurator*
Request a magistrate. *Postulare*
Request for opinion. *Consultatio*
Rescind. *Rescindere, resolvere, revocare*
Rescission of a sale. *Redhibitio*
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Residence. *Domicilium, sedes*
Responsibility (risk) of a guardian. *Periculum tutoris*
Responsible for damages. *Obnoxius*
Restore. *Restituere*
Retaliation. *Talio*
Retention of a dowry. *Retentiones dotales*
Return (give back). *Reddere*
Revenues of the state. *Vectigalia*
Revocation of a legacy. *Ademptio legati*
Revolt. *Tumultus, seditio*
Rhetorician. *Rhetor, orator*
Right. *Ius*
Right and just. *Bonum et aequum*
Right of life and death. *Ius vitae necisque*
Right on another's property. *Ius in re aliena*
Right to promulgate edicts. *Ius edicendi*
Right to take produce of another's property. *Ius fruendi,* see USUSFRUCTUS
Right to use another's property. *Ius utendi,* see USUS
Right to vote. *Ius suffragii*
Rights of way on another's property. See ITER, VIA, ACTUS
Riot. *Tumultus, seditio*
Risk. *Periculum*
Risk in a sale. *Periculum rei venditae*
River. *Flumen, rivus*
River bed. *Alveus*
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Robber. *Praedo*
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Roman people. *Populus Romanus*
Rome, city of. *Urbs*
Rule, legal. *Regula iuris*
Runaway (slave). *Servus fugitivus*

Salary. *Merces*
Sale. (*Emptio*) *venditio, distractio*
Sale of a free man. *Plagium*
Sale (purchase) of a future thing. *Emptio spei, emptio rei speratae*
Sale of a pledge. *Distractio pignoris,* see IUS DISTRAHENDI
Sale of a war prisoner. *Venditio sub corona*
Sale of the property of an insolvent debtor. *Bonorum venditio*
Sale, public, by auction. *Auctio*
Sales tax. *Centesima* (*vectigal*) *rerum venalium*
Schedule (inventory) of an estate. *Inventarium, repertorium*
Sea. *Mare*
Seal. *Signum, sigillum*
Seal a document. *Signare, obsignare, consignare*
Search for stolen things. *Perquisitio,* see LANCE ET LICIO
Seashore. *Litus*
Second marriage. *Secundae nuptiae*
Second marriage between the same persons. *Matrimonium redintegratum*
Security. *Cautio, satisdatio*
Security for appearance in court. *Cautio iudicio sisti, vadimonium*
Seizure by the fisc. *Confiscatio, occupatio a fisco*
Selection. *Electio, optio*
Selection by lot. *Sortitio*
Selection of jurors. *Editio iudicum*
Selection of senators. *Lectio senatus*
Self-defense. See VIM VI REPELLERE, VINDICARE
Sell at a public auction. *Publice vendere;* to be sold = *publice venire*
Senators. *Patres* ("fathers"), *senatores*
Senility. *Senectus*
Sequence in magisterial career. *Cursus honorum*
Serfdom. See COLONATUS
Servitude of dwelling in another's house. *Habitatio*
Servitudes, rustic. *Servitutes praediorum rusticorum*
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Share of an inheritance. *Portio* (*pars*) *hereditatis*
Ship. *Navis*
Shipowner. *Navicularius, nauta,* see RECEPTUM NAUTAE
Shipper. *Exercitor navis, nauclerus*

Shipwreck. *Naufragium*
Shorthand writing. *Notae*
Shrewdness. *Dolus bonus*
Sign. *Subscribere, subnotare*
Signature. *Subscriptio*
Silence. *Silentium*, see TACERE
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Slanderous poem. *Carmen famosum, libellus famosus*, see OCCENTARE
Slave. *Servus, homo, mancipium, puer*
Slave, female. *Ancilla*
Slave manumitted on condition. *Statuliber*
Slave of a slave. *Servus vicarius*
Slave of the state. *Servus publicus*
Slavery. *Servitus*
Social classes, higher. *Potentiores, honestiores, altiores*
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Soil. *Solum*
Soldier. *Miles*
Soldier's pay. *Stipendium*
Soldier's will. *Testamentum militis*
Solidarity in obligations. See Correality
Solvent. *Solvendo esse, facere posse*
Son under paternal power. *Filius familias*
Sorcery. *Magia*, see EXCANTARE
Space between neighboring houses. *Ambitus*
Speech of the emperor. *Oratio principis*
Spendthrift. *Prodigus*
Sphere of competence. *Provincia*
Spy. *Explorator, proditor*
State. See RES PUBLICA
State land. *Ager publicus*
Status of a freeborn. *Ingenuitas*
Statute. *Lex*
Statute of a collegium (association). *Lex collegii*
Statute of limitations. *Praescriptio longi temporis*
Statutes against luxury. *Leges sumptuariae*
Statutes on voting. *Leges tabellariae*
Statutory norm. *Placitum legis*
Steal. *Furari, subripere*
Stepson. *Privignus*
Stipulatory promise. *Stipulatio*
Storehouse. *Horreum, thesaurus*
Storm. *Tempestas*
Straw man. *Interposita (supposita) persona*
Subject to another's power. *Alieni iuris, in potestate*
Submission to arbitration. *Compromissum*
Subordinate personnel in offices. *Apparitores*
Subscribe. *Signare*
Substitute heir. *Heres substitutus, heres secundus*
Substitute of an official. *Vice agens, vicarius*
Substitute of a provincial governor. See IUDEX
Succeed as an heir. *Succedere hereditario iure*
Succession according to praetorian law. *Bonorum possessio*
Sue in court. *Venire contra aliquem, convenire*
Suicide. *Suicidium, consciscere sibi mortem, libera facultas mortis*
Suit, written. *Libellus conventionis*
Sum lent at interest. *Sors, caput*
Summary. *Index*
Summary civil proceeding. *Summatim cognoscere*
Summons to court. *In ius vocatio, denuntiatio, evocatio*
Suppositious child. *Partus subditicius, subiectus, suppositus*
Superior force. *Vis maior*
Supervision. *Cura, curatio*
Surety. *Sponsor, fideiussor, fidepromissor*, see ADPROMISSIO, PRAEDES
Surety in process. *Vindex, vas, praes*
Surname. *Cognomen*
Surrender of a son or slave for damages. *In noxam dedere*
Surrender of an enemy. *Deditio*
Survive. *Supervivere*, see COMMORIENTES
Suspension of judicial activity. *Iustitium*
Sustenance. *Alimenta*

Taking possession of an ownerless thing. *Occupatio*
Taking upon death of a person. *Mortis causa capio*
Tax. *Vectigal*
Tax assessment officials. *Censuales*
Tax collector. *Susceptor*
Tax evasion. *Fraudare vectigal*
Tax farmer. *Publicanus redemptor, conductor*
Tax farmers' association. *Societas publicanorum*
Tax office, regional. *Statio*
Tax officials. *Tabularii*
Tax on inheritance. *Vicesima hereditatium*
Tax on manumissions. *Vicesima manumissionum*
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Tax payer. *Tributarius*
Taxes in provinces. See TRIBUTUM, CAPITATIO, STIPENDIUM
Teachers. *Magistri, praeceptores, professores, antecessores*
Ten-men group. *Decuria*
Tenant. *Habitator, inquilinus, conductor*
Tenement house. *Insula*
Territory of Rome. See POMERIUM
Testament, capacity to make one or to take under one. *Testamenti factio*
Testify. *Testari*
Testimony. *Testimonium, testatio, attestatio*
Testimony, written. *Testimonium per tabulas, tabulae signatae*

Theatrical art. *Ars ludicra*
Theft. *Furtum*
Theft of sacred things. *Sacrilegium*
Things stolen. *Res furtivae, subreptae*
Things of the husband, stolen by his wife. *Res amotae*
Things without an owner. *Res nullius*
Time, fixed. *Tempus certum, statutum*
Time for the payment of a judgment debt. *Tempus iudicati*
Tomb. *Sepulcrum*
Torture. *Tormentum*
Token (ticket). *Tessera*
Touch the debtor's shoulder. *Manum inicere*
Trade. *Commercium*
Tradesman. *Mercator, negotiator*
Traitor. *Proditor*
Transaction. *Negotium, transactio*
Transfer of a claim. *Cessio*
Transfer of jurisdiction. *Iurisdictio mandata, delegata*
Transfer of ownership. *Translatio dominii*
Transfer of ownership, formless. *Traditio*
Transfer of the right to an inheritance. *Transmissio*
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Travel expenses. *Viaticum*
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Treasure-trove. *Thesaurus*
Treasury. *Aerarium, arca*
Treasury, imperial. *Fiscus, largitiones*
Treaty, international, for protection of citizens. *Reciperatio*
Treaty of alliance. *Foedus*
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Trial, civil, bipartition of. See IN IURE, APUD IUDICEM
Trial concerning freedom. *Causa liberalis*
Truth. *Veritas*
Try a case in court anew. *Retractare causam*
Turmoil. *Turba, rixa*
Twelve Tables. *Lex duodecim tabularum*

Unborn child. *Nasciturus*
Undutiful will, gift. *Inofficiosus*, see QUERELA INOFFICIOSI TESTAMENTI (INOFFICIOSAE DONATIONIS)
Ungrateful. *Ingratus*
Unjust. *Iniquus, iniustus*
Unjust judgment intentionally rendered by a judge. See IUDEX QUI LITEM SUAM FACIT
Unlawful. *Illegitimus, illicitus*
Unlawfully. *Iniuria, non iure, illicite*
Unlimited in time. *Perpetuus*
Unnamed contracts. *Contractus innominati*
Unseal. *Resignare*
Unworthy heir. *Indignus heres*
Uprising. *Seditio*
Uproar. *Tumultus*
Urge a debtor to pay. *Interpellare*
Usage, use. *Usus*
Usage, legal. *Consuetudo, mos*
Usufructuary. *Fructuarius, usufructuarius*

Vacant inheritance (legacy). *Caducum*
Vagrant slave. *Erro*
Valid, to be legally. *Valere, vim* (*vires*) *habere*
Valid marriage. *Iustae nuptiae*
Valuation in money. *Aestimatio*
Vessel. *Navis*
Veteran. *Vetus miles, veteranus*
Veto. *Intercessio*
Vexation with a suit, malicious. *Calumnia*
Village. *Vicus*
Vintage. *Vindemiae*
Violence. *Vis*
Void. *Nullus, irritus, inefficax, nullius momenti, nullas vires habere*
Vote. *Suffragium*
Voting. *Ferre suffragium*
Voting place. *Saeptum, ovile*
Vow. *Votum*

Wages. *Merces*
Walls of a city. *Muri*
War. *Bellum*
War booty. *Praeda*
War, to declare. *Denuntiare, indicere bellum*
Warranty against latent defects in a sale. See EDICTUM AEDILIUM CURULIUM, ACTIO REDHIBITORIA
Warranty against eviction. See ACTIO AUCTORITATIS, STIPULATIO DUPLAE
Water conduits. *Aquaeductus*
Wax-covered tablets. *Cerae, tabulae ceratae, tabellae*
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Wealthy. *Locuples, assiduus*
Weapon. *Telum, arma*
Welfare, public. *Utilitas publica*
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Widow. *Vidua*
Wife. *Uxor*
Wild animals. *Ferae* (*bestiae*)
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Will (last). *Testamentum, ultima* (*postrema*) *voluntas*
Wink. *Nutus*
Withdraw from a transaction. *Recedere*

Withdrawal of a peculium. *Ademptio peculii*
Withdrawal of an action. *Cedere actione, resistere, deserere actionem*
Without (against) one's will. *Invito*
Witness. *Testis*
Witness to a will who signed and sealed it. *Signator testamenti*
Words, solemn and prescribed by law. *Certa et sollemnia verba*
Words, spoken or written. *Verba*
Woman. *Femina, mulier*
Wooden tablet. *Lignum, tabula, tabella*
Work (construction). *Opus*
Workman. *Operarius, mercennarius, opifex*
Writer of a testament. *Scriptor testamenti*, see QUAESTIO DOMITIANA
Written law. *Ius scriptum*
Written stipulation. *Cautio stipulatoria*
Written unilateral divorce. *Libellus repudii*
Wrongful damage to another's property. *Damnum iniuria datum*
Wrongful possession. *Possessio iniusta*

Youth. *Pueritia, iuvenis*

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