

THE DIGEST OF JUSTINIAN

VOLUME I

ENGLISH-LANGUAGE TRANSLATION EDITED BY

ALAN WATSON

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JUSTINIAN

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VOL. 1

PENN

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PREFACE TO THE PAPERBACK EDITION

This is a corrected edition, minus the Latin text, of the four-volume *The Digest of Justinian*, Latin text edited by Theodor Mommsen with the aid of Paul Krueger, English translation edited by Alan Watson, published by University of Pennsylvania Press in 1985.

This edition incorporates a number of corrected translations. I am grateful to all who called suggested changes to my attention, and in particular to Tony Honoré and Olivia Robinson.

The biggest change has been a new translation by Sebastian and Olivia Robinson of the *Dédoken*, the Greek version of the preface, "The Confirmation of the *Digest*." The previous edition repeated the translation of the rather different Latin preface.

A note about the appearance of the pages. The pagination of the Mommsen edition has been maintained, as was done in the original four-volume hardcover edition. As a result, the pages of the translation vary in length.

ALAN WATSON

PREFACE TO THE ORIGINAL EDITION

The compilation of Roman law which was enacted under the Byzantine emperor, Justinian I (c. 482–565), and which, together with that emperor's later laws, subsequently came to be known as the *Corpus Juris Civilis* has been without doubt the most important and influential collection of secular legal materials that the world has ever known. The compilation preserved Roman law for succeeding generations and nations. All later Western systems borrowed extensively from it. But even more significantly, that strand of the Western tradition encompassing the so-called civil law systems—the law of Western continental Europe, Latin America, the parts of Africa and other continents which were former colonies of continental European powers, and to some extent Scotland, Quebec, Louisiana, Sri Lanka, and South Africa—derives its concepts, approaches, structure, and systematics of private law primarily from the long centuries of theoretical study and putting into practice of the *Corpus Juris Civilis*.

Of the *Corpus Juris Civilis* the most important part is the *Digest*, the others being the *Code*, the *Institutes*, and the *Novels*.

Justinian became co-emperor with his uncle Justin in 527, and sole emperor when Justin died in the following year. At once he began to restate the law. He first appointed a commission to make a collection of imperial rescripts, that is, enactments or statements of the law. The rescripts were to be updated. This resulted in the first *Code* of 530 which has not survived because it was replaced by a revised *Code* in 534. The revised *Code* is in twelve books divided into so-called titles (or chapters), each devoted to a particular subject, in which the rescripts are arranged chronologically. After the first *Code*, Justinian turned his attention to the writings of the classical Roman jurists, primarily from the first century B.C. to the end of the first third of the third century A.D. Discussions of disputed points of law abounded in their works, and Justinian, to resolve some of the most important disputes, promulgated the *Fifty Decisions* which have not survived as an entity, but many of the individual decisions presumably remain as rescripts in the second *Code*. In December 530 he ordered the collection and abridgment of juristic writings which is called the *Digest*. He also ordered the preparation of a new elementary textbook for students, the *Institutes*, which was modeled primarily on the *Institutes* of the second-century jurist, Gaius, and which came into effect as statute on the same day as the *Digest*, December 30, 533. This elementary work is in four books; it is the most systematically arranged part of the *Corpus Juris Civilis*, and, directly and indirectly through the mediation of seventeenth- and eighteenth-century works modeled on it, it has become the basis for the structure of almost all of the modern civil codes. After the completion of the compilation of existing law, Justinian continued to legislate and these later rescripts are known as the *Novellae* or *New Constitutions*. They have had relatively little impact on later Western law.

The classical jurists wrote numerous books of various types: general commentaries on the civil law usually in the form of commentaries on the jurist Sabinus; general

commentaries on the Edict of the Praetor who was the elected official with control over the most important law courts; collections of their replies to legal questions, both hypothetical and real; monographs on particular legal subjects; and elementary textbooks. For the preparation of the *Digest* or *Pandects* Justinian ordered his quaestor, Tribonian, to have all the ancient books of authority read and the substance extracted. All superfluities were to be removed, as were obsolete rules and any that were already recorded in the *Code*. The task which the sixteen compilers completed in three years, although it is said that completion in ten was not thought possible, involved, according to Justinian, the reading of almost two thousand volumes. The compilers retained at the head of each extract the name of the author and the book in which it appeared. Justinian's instructions to his compilers and the prefaces issued on the completion of the undertaking appear at the beginning of this translation.

In the spring of 1978, the President of the Commonwealth Fund, Dr. Carleton B. Chapman, wrote to Alan Watson, Professor of Civil Law in the University of Edinburgh, and raised the question why there was no complete translation of the *Digest* into English, apart from the unsatisfactory one of S. P. Scott. Eventually, Alan Watson produced a proposal for a translation, the two met in New York in September, 1978, the proposal was approved by Carleton Chapman, and funding was generously provided by the Commonwealth Fund. By November 1978, Alan Watson had organized a team of translators who nearly completed their translation by the deadline of December 31, 1979. Each book, once translated, was sent to another scholar for revision; and the complete, revised translation was in the hands of Alan Watson by April 1980. Publication, again made possible through the generosity of the Commonwealth Fund, has taken longer.

From the outset, the director of the project enjoyed the enormous help of Mr. Grant McLeod as assistant director, who also prepared the glossary (with the assistance of Dr. Olivia Robinson). On Alan Watson's appointment to the University of Pennsylvania in September 1979, Professor J.A.C. Thomas of University College, London, assumed the post of assistant director which he retained until his death in June 1981. All who knew him will understand just how much energy and enthusiasm he injected into the project, and how much more difficult the task would have been without his never failing support. He translated and revised more books than anyone else. Another particularly tragic loss was Mr. Peter MacIntyre, assistant secretary of the University of Edinburgh, who was preparing an exceptionally detailed index. Without him, the index has had to be abandoned. The lack is serious, but the reader who is not a specialist in Roman law will easily find the *Digest* titles that are relevant to his studies. Then a reading of the appropriate pages in any of the standard textbooks will enable him to find the important *Digest* texts on the subject which are not cited in the obvious title.

The translators were as follows: preliminary matters, Dr. G. E. M. de Ste Croix; book one, Professor D. N. MacCormick; book two, Professor Geoffrey MacCormack; book three, Mr. Tom Kinsey; book four, Professor Geoffrey MacCormack; book five, Mr. Tom Kinsey; book six, Professor P. G. Stein; book seven, Mr. David Fergus; book eight, Mr. David Fergus; book nine, Dr. Colin Kolbert; book ten, Mr. Harry Hine; book eleven, Mr. Harry Hine; book twelve, Professor Peter Birks; book thirteen, Professor Peter Birks; book fourteen, Mr. Tony Weir; book fifteen, Mr. Tony Weir; book sixteen, Mr. R. Evans Jones; book seventeen, title one, Professor W. M. Gordon, Dr. Olivia Robinson, and Mr. David Fergus; book seventeen, title two, Dr. Peter Garnsey; book eighteen, Professor J. A. C. Thomas; book nineteen, Professor Bruce Frier; book twenty, Professor Tony Honoré; book twenty-one, Professor J. A. C. Thomas; book twenty-two, Professor A. M. Honoré; book twenty-three, Mr. Grant McLeod; book twenty-four, Mr. Grant McLeod; book twenty-five, Mr. Grant McLeod; book twenty-six, Dr. Susan Hart; book twenty-seven, Mr. Andrew Lewis; book twenty-eight, Professor W. M. Gordon; book twenty-nine, Professor W. M. Gordon; book thirty, Mr. Tom Braun; book thirty-one, Mr. Tom Braun; book thirty-two, Mr. Tom Braun; book thirty-

three, Mr. Robin Seager; book thirty-four, titles one through three, Dr. Shelagh Jameson; book thirty-four, titles four through nine, Mr. C. J. Tuplin; book thirty-five, Professor J. A. C. Thomas; book thirty-six, Mr. John L. Barton; book thirty-seven, Dr. Shelagh Jameson; book thirty-eight, Dr. Shelagh Jameson; book thirty-nine, Mr. C. J. Tuplin; book forty, Professor P. A. Brunt; book forty-one, Professor J. A. C. Thomas; book forty-two, Professor J. A. C. Thomas; book forty-three, Mr. Tom Braun; book forty-four, Professor Ben Beinart; book forty-five, Dr. Susan Hart, Mr. Andrew Lewis, and Professor Ben Beinart; book forty-six, Professor Ben Beinart; book forty-seven, Professor J. A. C. Thomas; book forty-eight, Dr. Olivia Robinson; book forty-nine, Dr. Olivia Robinson; book fifty, Dr. Michael Crawford.

With so many translators involved it was not thought possible or necessarily desirable to seek for consistency throughout the work. It was regarded as sufficient to have consistency within an individual book, hence that was the minimum unit ascribed to each translator. In addition some guidelines were produced: some Roman technical terms were to be translated always in the same prescribed way; others, where no English equivalent could be simply expressed, were to be left in Latin. The terms in the latter category are explained in the Glossary.

The facing Latin text is that of the great two volume edition of Theodor Mommsen, published in 1868 by Weidmann, Berlin. That was taken by the translators as the main text, but they could, and occasionally did, adopt any of the readings contained in the apparatus.

ALAN WATSON
Philadelphia,
October 1984

GLOSSARY

Abolitio. See *Accusatio*.

Acceptilatio (Formal Release). The method by which a creditor freed a debtor from his obligation under a verbal contract [*stipulatio* q.v.] producing the same effects as performance. See *D.46.4*.

Accessio (Accession). A general term for the acquisition of ownership by joining property to or merging it with something already owned by the acquirer. See *D.41.1*.

Accusatio (Accusation). The bringing of a criminal charge. Normally (exclusively until the early empire) this was left to the initiative of a private citizen acting as accuser [*delator*]. If a magistrate accepted the charge, he ordered its registration [*inscriptio*] on an official list. It could be removed from the list and so annulled [*absolutio*] during a public amnesty, or where the accuser withdrew the charge with the permission of the court. Unjustified withdrawal was a crime in itself [*tergiversatio*]. See *D.48.2,16*.

Actio Arbitraria. An action in which the judge could order the defendant to restore or produce the property at issue. If he failed to do so, the final judgment penalized him in various ways. See *D.6.1.35.1*; *D.4.2.14.4*.

Actio Civilis. See *Ius Civile*.

Actio Confessoria. See *Servitus*.

Actio Contraria. An action given to certain persons in particular legal situations where the normal direct action lay against them. See tutors [*tutor* q.v.] *D. 27.4*; deposites *D.16.3*; borrowers for use *D.13.6*; creditors in the contract of *pignus* [q.v.] *D.13.7*.

Actio Famosa. See *Infamia*.

Actio in Factum. An action given originally by the *praetor* [q.v.] on the alleged facts of the case alone, where no standard civil law [*ius civile* q.v.] action was directly applicable. The expression *actio utilis* is also found, referring to a praetorian action which extended the scope of an existing civil law action, for example, by means of a fiction. The exact difference, if any, between this and the *actio in factum* is not known. See *D.9.2*.

Actio in Personam (Personal Action). An action based on an obligation of the defendant, whether this arose from a contract, delict, or other legal circumstance. Such an action lay only against the person under the obligation. Cf. *Actio in Rem*.

Actio in Rem (Real Action). An action asserting ownership of property, or other related though more limited rights over it, for example, a servitude [*servitus* q.v.]. Such an action lay against anyone withholding the property. Cf. *Actio in Personam*.

Actio Negatoria. See *Servitus*.

Actio Popularis. A penal action which could be brought by any person to protect the public interest in certain circumstances. The penalty was often paid to the complainant. See *D.47.23*.

Actio Praescriptis Verbis. An action given to a person after he had performed his part of the bargain under a contract which was not one of the standard types recognized by Roman law. See *D.19.5*.

Actio Utilis. See *Actio in Factum*.

Addictio in Diem. An agreement allowing a seller to set the sale aside if he received a better offer within a certain time. See *D.18.2*.

Ademptio (Ademption). The revocation, express or implied, of any disposition, usually a legacy. See *D.34.4*.

Adiudicatio (Adjudication). The order given by a judge [*iudex* q.v.] to settle certain proceedings between claimants over common property or between neighbors over boundaries. See *D.10.2-3*.

Adoptio (Adoption). A type of adoption where a dependent person [*alieni iuris* q.v.] was transferred from one family to another. This involved a change of *paterfamilias* [q.v.]. Adopted children were normally in the same legal position as natural children. Cf. *adrogatio* though the term *adoptio* is sometimes used to cover both. See *D.1.7*.

Adrogatio (Adrogation). A type of adoption where an independent person [*sui iuris* q.v.] joined a family, coming under parental power [*patria potestas* q.v.]. This could only be done to save a family from extinction and many restrictions were placed upon it. See *D.1.7*.

Adulterium (Adultery). This was made a criminal offense for a married woman by statute. Her husband was required to divorce and prosecute her, and her father could kill her and her partner with impunity in certain circumstances. See *D.48.5*.

Aedilis (Aedile). A magistrate of the republic whose duties were connected with the general management of daily life in the city, including some police work and the supervision of streets and markets. One type, the curule aediles, issued an edict [*edictum* q.v.] in connection with the latter which greatly influenced the law on sale and delictal liability for animals. The duties of the aediles were gradually taken over by the various types of prefect [*praefectus* q.v.] during the empire. See *D.1.2.2.26; D.21.1*.

Aestimatum. A transaction in which one person receives property from another on the basis that, within a specified time, he will either return the property or pay an agreed price. See *D.19.3*.

Agnatus (Agnate). A person related through the male line, whether by birth or adoption, to a common male ancestor. This is an important relationship throughout Roman law, especially in connection with the law of succession. Cf. also *paterfamilias*.

Alieni Iuris (Dependent). Subject to the legal power of someone else, either parental power [*patria potestas* q.v.] in the case of a son-in-power [*filiusfamilias* q.v.] and other descendants or the power of a master where slaves were concerned. Various legal disabilities were involved in either case. See *D.1.6*.

Aureus. See *Solidus*.

Bonae Fidei Iudicia (Actions of Good Faith). Certain contractual actions, for example, on sale, and certain quasi-contractual ones where the judge [*iudex* q.v.] had to take

account of what ought to be done or given in good faith (*bona fides*) by the parties. This gave the judge wide discretion as to the amount of damages he could award. He could also take account of any defense [*exceptio* q.v.] even where it had not been expressly stated by the defendant.

Bonorum Possessio. A type of possession granted originally by the *praetor* [q.v.] giving rise to an extended or sometimes alternative system of succession, both testate and intestate, to that provided by the civil law [*ius civile* q.v.]. It was protected by an *interdictum* [q.v.] and an action. See D.37.1.

Calumnia. (a) In private law, vexatious litigation or receiving money for this purpose. (b) In criminal law, the offense of maliciously or recklessly bringing a false criminal charge. See D.3.6.

Capitalis (Capital). A criminal matter where the penalty is death, loss of liberty, or loss of citizenship.

Capitis Deminutio (Change of Civil Status). A loss of or change in one or more of the three basic elements of civil status, that is, freedom, citizenship, and membership of a family. See D.4.5.

Castigatio (Corporal Punishment). This took a number of forms: *flagellatio* was generally a whipping for slaves; *fustigatio* was beating with a rod or club, mainly a military punishment; *verberatio* involved multiple lashes and seems to have been severe.

Cautio. (a) A guarantee, either real or personal, that certain duties will be fulfilled. (b) A written document providing evidence of a contract, usually *stipulatio* [q.v.].

Census (Census). A public register of citizens, which estimated their property holdings and so assigned them to the various social classes. See D.50.15.

Codex. A collection, official or unofficial, of imperial enactments rather than a complete statement of the law as in a modern "code." See preface.

Cognitio. (a) A type of civil procedure, often referred to as *extra ordinem*, signifying its distinctness from the Formulary System [*formula* q.v.] of classical times, which it replaced in the third century A.D. The main difference was that under the *Cognitio* System the whole proceedings took place before an imperial magistrate. (b) The term is also used in a more general way in administrative and criminal proceedings to cover the competent area of a judicial inquiry, or the investigation itself.

Collatio Bonorum. A contribution in respect of prior gifts which was required of emancipated [*emancipatio* q.v.] children who wished to benefit by intestate succession to their father. See D.37.6.

Collegium (Association). Any association, public or private, for religious, professional, or other purposes. Legal restrictions were placed on such associations to prevent subversive activities. See D.47.22.

Compensatio (Set-Off). The reduction of any claim by taking into account the defendant's counterclaim based on another transaction. See D.16.2.

Concubinatus (Concubinage). A legally and socially recognized monogamous relationship short of marriage. See D.25.7.

Condictio. A type of action alleging a civil law [*ius civile* q.v.] debt without mentioning any cause of action, available not only as a contractual remedy, but also on a quasi-contractual basis, where unjustified enrichment could be shown. Although its form was always the same, its name varied according to the situation involved, for example, the *condictio* for money not due [*indebiti*], that is, money paid in error. See D.12.4–13.3.

Constitutio. The general word for imperial legislation of all kinds. See D.1.4.

Constitutum Debiti. A pact [*pactum* q.v.] consisting of an agreement to pay an existing debt, incurred by the party himself or some other person, at an agreed time. It gave rise to an *actio in factum* [q.v.] for half as much again as the original debt. See D.13.5.

Consul (Consul). The title of the two supreme magistrates of the republican constitution, elected annually. Consuls continued to be elected during the empire with various administrative and judicial powers, but the position became increasingly an honorary one until it was abolished by Justinian. See D.1.10.

Conubium. The right to contract a civil law [*ius civile* q.v.] marriage, possessed generally only by Roman citizens.

Crimem (Crime). This term can denote a criminal charge or criminal proceedings as well as the crime itself. See D.47.11.

Cura, Curatio (Care). These terms were applied to various institutions whereby the well-being and/or property of certain persons were legally safeguarded by someone else, a *curator*. The most important forms were care of a lunatic, of a spendthrift, and the guardianship of an independent [*sui iuris* q.v.] person who was a *minor* [q.v.]. See D.27.10; D.4.4.

Curator. See *Cura*.

Decurio (Decurion). A member of a municipal council. This body decided all local matters. During the later empire the office became more burdensome than desirable in many places. See D.50.2.

Defensor (Defender). A person who defends another's interests at a trial, often because of his legal relation to him, for example, as *tutor* [q.v.]. See D.3.3.

Delator. See *Accusatio*.

Delegatio. A form of novation [*novatio* q.v.] in which the alteration consisted of a change of the creditor or the debtor in relation to the other party. See D.46.2.

Deportatio (Deportation). The punishment of perpetual banishment. It was the most severe of kinds of banishment, since it involved confinement to a fixed place, confiscation of property, and loss of citizenship. See D.48.22.

Dies utiles. The days on which legal proceedings could be brought.

Divus (Deified). A title granted to an emperor after death if he had been officially consecrated as a state deity.

Edictum (Edict). A proclamation by a magistrate or the emperor. In the republic, the edicts which had the greatest effect on private law were those of the *praetores* [q.v.; see also *aedilis*]. Each praetor could issue a new edict for his year in office, setting out the actions he was prepared to allow, but in practice he took over much of the material from his predecessors. This led to the development of an almost standard body of rules known as the "Edict," containing the numerous praetorian extensions to the civil law [*ius civile* q.v.]. This process survived the transition to empire, but the Emperor Hadrian ordered the consolidation of the Edict early in the second century A.D.; thereafter it does not appear to have been a source of new law.

Emancipatio (Emancipation). Voluntary release from parental power [*patria potestas* q.v.], conferring independent [*sui iuris* q.v.] status. See D.1.7.

Emphyteusis. A real right over the property of another, consisting in a grant of land by the state or local authority on a long lease or in perpetuity for a groundrent. See D.6.3.

Exceptio (Defense). A defense, inserted originally in the *formula* [q.v.], which did not deny the *prima facie* validity of the claim, but adduced some circumstance which nullified it, for example, duress. There was a number of these defenses, each named after the fact they alleged, for example, the defense of fraud. See D.4.3.

Exhereditatio (Disherison). The exclusion by a testator of his issue or other persons from taking benefit under his will. Many formal and material restrictions were placed upon such exclusion. See D.28.2.

Exilium (Exile). This term was often used to mean voluntary exile as well as involuntary banishment. Voluntary exile after, or to escape from, capital condemnation involved loss of citizenship and property as well as being made an outlaw.

Extraneus Heres. See *Heres*.

Extra Ordinem (Extraordinary). (a) In private law, this refers to the *Cognitio* System [*cognitio* q.v.] (b) In criminal law, it refers to proceedings other than those authorized for the *quaestiones perpetuae* [q.v.]. The criminal jurisdiction of, for example, the urban prefect [*praefectus* q.v.] was thus *extra ordinem*. See D.50.13.

Familia (Family). As well as a family in the modern sense this term sometimes also covers a person's whole household, including freedmen and slaves as well as relations. See D.50.16.195.

Fideicommissum. A charge in a will imposed on an heir or legatee to transfer property to someone else. See D.30–31.

Fideiussio (Verbal Guarantee). A verbal contract of personal guarantee, usually but not necessarily covering a principal debt contracted by *stipulatio* [q.v.], its form being a variant of that contract. See D.46.1.

Filiusfamilias (Son-in-Power). A son subject to the parental power [*patria potestas* q.v.] of the head of the household, the *paterfamilias* [q.v.]. He was subject to various disabilities, especially in the field of property, although his position was improved by the existence of the *peculium* [q.v.]. This subjection only applied in private law; in public law matters a son-in-power was in the same position as the head of the household.

Flagellatio. See *Castigatio*.

Formula. The Formulary System was a type of civil procedure introduced in the republic and continuing to operate until the third century A.D., though it was increasingly superseded and eventually replaced by the *Cognitio* [q.v.] System. However, many traces of it can still be found in the *Digest*. The procedure was controlled by the *praetor* [q.v.] who was required by the parties to frame a formal statement of the legal issues in the case, the *formula*. This was then passed on to a lay judge [*iudex* q.v.] for a hearing on the facts. Details of the various kinds of *formulae* available would be found in the Edict [*edictum* q.v.].

Fustigatio. See *Castigatio*.

Habitatio (Right of Habitation). The right to occupy a house for life. It was a personal servitude [*servitus* q.v.]. See D.7.8.

Heres (Heir). The person who inherits nearly all the rights and duties of the deceased by testate or intestate succession. There was a number of different kinds of heir. A *heres suus* was someone subject to the deceased's parental power [*patria potestas* q.v.] at the time of death; A *heres suus et necessarius* was such a person who became independent [*sui iuris* q.v.] by the death. This type of heir could not refuse the inheritance, as was also the case with the *heres necessarius*, a slave who was

- manumitted [*manumissio* q.v.] for this purpose. An *extraneus heres* was someone not subject to the deceased's parental power at time of death, either being unrelated or, for example, emancipated [*emancipatio* q.v.]. A *heres legitimus* was a person who succeeded in accordance with the civil law [*ius civile* q.v.] rules on intestacy. See D.28.5.
- Honestiores*. See *Humiliores*.
- Humiliores*. Persons of low social status, in contrast to the upper classes, the *honestiores*. The main legal difference was that only the former were liable to certain kinds of punishment, for example, crucifixion, torture, and corporal punishment.
- Hypotheca*. A contract of pledge in which the creditor obtained neither ownership nor possession of the property pledged. See D.13.7.
- Imperium* (Authority). The power of the higher republican magistrates, including the *praetor* [q.v.], and later the emperor to issue orders and enforce them, in particular the right to administer justice and to give military commands.
- Impubes*. A person under the age of puberty, which was eventually fixed at twelve years of age for girls and fourteen for boys. Such persons lacked full legal capacity, and those who were independent [*sui iuris* q.v.] had to be in tutela [*tutela* q.v.] See D.26.
- Incola*. A person domiciled in a city or community other than the one in which he was born. See D.50.1.
- Infamia*. A condition of disgrace resulting from certain types of immoral or wrongful conduct. It followed, for instance, on conviction for a crime, or condemnation in delictal actions and those involving breach of trust called *actiones famosae*. Many legal disabilities resulted from this condition. See D.3.2.
- Infans*. A child under the age at which rational speech was possible, later fixed at seven years old. Such persons were a type of *impubes* [q.v.] with few legal powers.
- Inscriptio*. See *Accusatio*.
- Institutor*. See *Procurator*.
- Interdictum* (Interdict). An order issued originally by the *praetor* [q.v.] or other magistrate in an administrative capacity, giving rise to further proceedings if disregarded. Many interdicts in private law were concerned with the protection of possession against unlawful interference in various circumstances. At times, interdicts were a procedural device for awarding interim possession, the party who acquired this becoming the defendant in a subsequent action. But they were also for many other private law and also public law purposes, for example, the interdict from fire and water was a form of banishment pronounced on a voluntary exile [*exilium* q.v.]. The complicated procedure required under the Formulary System [*formula* q.v.] for the use of interdicts became obsolete under the *Cognitio* [q.v.] System, and they were replaced by ordinary actions, although the issues and much of the terminology of the older system remained. See D.43.
- Iudex* (Judge). In the private law Formulary System [*formula* q.v.], the judge was a private individual chosen by the parties to decide the case on its facts, the legal issues having already been defined by the *praetor* [q.v.]. Under the later *Cognitio* [q.v.] System and in public and criminal matters, the term was used of any imperial official with jurisdiction, for example, a provincial governor [*praeses* q.v.]. See D.2.1.
- Ius Civile* (Civil Law). The original basic rules, principles, and institutions of Roman law, deriving from the various kinds of statute [*lex, senatus consultum, constitutio*

qq.v.] and from juristic interpretation. They were applicable directly only to Roman citizens, but in 212 A.D. the *constitutio Antoniniana* conferred citizenship on most of the inhabitants of the empire. The expression is sometimes used in a more philosophical sense to mean the law peculiar to any community or people, whatever its source. Cf. *ius gentium* and *ius honorarium*. See D.1.1.

Ius Gentium. The original meaning of this term was probably the body of rules, principles, and institutions developed in the late republic to cover commercial dealings with peregrines [*peregrinus* q.v.] and other noncitizens, who could not use the civil law [*ius civile* q.v.]. Its development may be connected with the peregrine praetor [*praetor* q.v.]. Less formalistic and more sophisticated than the civil law, it came to have a more philosophical sense of the law which was common to all peoples and communities, although its detailed provisions were Roman in character and treated as ordinary rules of law. Cf. *ius civile*. See D.1.1.

Ius Honorarium (Praetorian Law). The law introduced by magistrates, especially the praetor [*praetor* q.v.] by means of his Edict [*edictum* q.v.], to aid, supplement, or correct the existing civil law [*ius civile* q.v.]. It provided a large number of remedies which were often preferable to the civil law ones, for example, in the field of succession. See *bonorum possessio*. In juristic writings it was commonly treated as distinct from the civil law, although both were simply parts of Roman law as a whole. Cf. *ius civile*.

Iusiurandum (Oath). Oaths were used in a number of contexts. (a) In general, a party could choose to swear an evidential oath before a judge [*iudex* q.v.]. But certain oaths were compulsory, for example, as to the value of the property claimed and that *calumnia* [q.v.] was absent. See D.12.2, 3. (b) In certain actions, the parties could challenge each other to swear oaths as to the validity of their cases. If the challenge was refused, the person refusing lost his case, bringing the trial to a speedy conclusion. This type of oath was called "necessary." See D.12.2. (c) In any action, a party could offer to swear or challenge the other party to swear to the validity of his case. The challenge need not be accepted, but if it was, an action or defense of oath was allowed in any subsequent proceedings. Here the oath was called "voluntary." See D.12.2. (d) An oath was required of a slave about to be manumitted [*manumissio* q.v.] that he would promise to perform certain services for his former master [*patronus* q.v.]. See D.38.1.7.

Ius Naturale (Natural Law). A vague expression in Roman law. At times it was merely a synonym for the term *ius gentium* [q.v.]. It often means that the rule or principle in question was thought of as based on everyday experience, referred to as "natural reason" [*naturalis ratio*]. Sometimes it refers to the justice or fairness of a rule, but the view of natural law as a universal ideal order in any way contrasted with positive law is almost entirely absent. See D.1.1.

Legatus (Legate). A term with a number of meanings. (a) An ambassador. Such a person on an imperial mission was called a *legatus Augusti* (*Caesaris*). See D.50.7. (b) The deputy of a provincial governor [*proconsul* q.v.] with special delegated jurisdiction. See D.1.16. (c) A type of provincial governor was called a *legatus Augusti* (*Caesaris*) *pro praetore*. See D.1.18.1. (d) The commander of a legion.

Legitimus Heres. See *Heres*.

Lenocinium. See *Stuprum*.

Lex. (a) A statute passed by one of the popular assemblies of republican times. It normally took the gentile (middle) name of the proposer or proposers, the subject matter of the legislation sometimes also being indicated in the title, for example, the *Lex Cornelia* on Guarantors, the *Lex Fufia Caninia*. In the early empire some leg-

islation was passed in this way, but the practice was obsolete by the end of the first century A.D. Thereafter, *lex* is often used of any piece of imperial legislation. See D.1.3.4. (b) The term also occurs in connection with the *Twelve Tables* [*lex duodecim tabularum*], a collection of early rules traditionally dating from c. 450 B.C., and drawn up by ten commissioners, the *decemviri*. It is not extant, but there are many references to its supposed provisions in the *Digest* and other legal and literary sources. See D.1.2.4.–6. (c) A special clause in a contract, for example, the *lex commissoria*, which allowed a seller to call off the sale if the price was not paid by a certain time. See D.18.3.

Libertinus, Libertus (Freedman). A former slave who, on manumission [*manumissio* q.v.], became a freeman and a Roman citizen, though with extensive public law disabilities. He had many duties toward his former master, his patron [*patronus* q.v.]. An imperial freedman [*libertus Caesaris*] manumitted by the emperor, often obtained high governmental office in the early empire. See D.38.1–5.

Lictor (Lictor). An attendant of a higher magistrate with *imperium* [q.v.], whose main duty was to escort him during public appearances.

Maiestas. This term was applied to a number of criminal offenses including treason, sedition, and desertion. In the empire it covered any action which endangered the emperor or his family. The earlier crime of betrayal to an enemy, *perduellio*, was eventually held to be merely a way of committing this offense. See D.48.4.

Manumissio (Manumission). The release of a slave by his master during the latter's lifetime or in his will. See D.40.1–9.

Metallum (Mine). Condemnation to work in a mine was a capital punishment [*capitalis* q.v.] only slightly less serious than the death penalty. There was a milder form known as *opus metalli*. See D.48.19.

Minor. A person over the age of puberty [*impubes* q.v.] but under the age of twenty-five. Such persons who were independent [*sui iuris* q.v.] had in classical times full legal capacity, though they could be protected by a grant of *restitutio in integrum* [q.v.]. In later law, the development of the institution of *cura* [q.v.] gave them more protection but some disabilities. See D.4.4; D.26.7,8.

Missio in Possessionem. A remedy granted originally by the *praetor* [q.v.] allowing a person to take over in whole or in part the property of another with various legal results. It had many uses, for example, to protect a creditor's interest after judgment or where property was threatened by the ruinous state of that of a neighbor. See D.42.4; D.39.2.

Munera. Certain public services which every person was bound to perform on behalf of his community or state. Some services were personal, for example, tutelage [*tutela* q.v.], others were burdens on property. Certain taxes were included under this term, and money payments could often be made in lieu of actual labor, for example, in maintaining public roads. The grounds for exemption [*excusatio*] from most of these services were limited. See D.50.4.

Naturalis Ratio. See *Ius Naturale*.

Negotiorum Gestio (Unauthorized Administration). The performance of some service on behalf of another person, without his request or authorization. If the action was reasonable in the circumstances, there was an action for compensation. See D.3.5.

Novatio (Novation). The extinction of one or more obligations by replacing it or them with a new obligation in the form of a stipulation [*stipulatio* q.v.]. See D.46.2.

Noxae Dare (To Surrender Noxally). To hand over a slave or animal as compensation to the victim of a delict committed by him. This alternative was open to an owner only where there had been no complicity on his part in the delict. See D.9.1,4.

Obsequium. See *Patronus*.

Occupatio (Occupation). The acquisition of ownership by taking possession of a thing not previously owned, such as a wild animal, or a thing which has been abandoned by its owner. See D.41.1.

Opus Metallum. See *Metallum*.

Opus Publicum. Forced labor on public works. This criminal punishment could only be imposed on *humiliores* [q.v.]. Condemnation for life meant loss of citizenship, but lesser terms did not affect status. See D.48.19.

Oratio (Oration). A proposal put forward by the emperor for legislation by means of a *senatus consultum* [q.v.]. The approval of the senate became a mere formality, so that the term came to mean a piece of direct imperial legislation, a type of *constitutio* [q.v.].

Pactum (Pact). Any agreement which did not come within one of the recognized categories of contract. Such an agreement was not generally actionable, but was accepted as a defense [*exceptio* q.v.]. However, pacts added to a recognized contract in order to modify its normal obligations were enforceable, as were certain pacts unconnected with any contract, for example, *constitutum debiti* [q.v.]. See D.2.14.

Paterfamilias (Head of the Household). The oldest ascendant male agnate [*agnatus* q.v.] in any family was its legal head. He exercised considerable powers over his sons, daughters, and other descendants, that is, those dependent [*alieni iuris* q.v.] on him. They were subject to his control in many matters relating to their persons, for example, marriage, and were incapable of owning property. Apart from certain kinds of *peculium* [q.v.] and some special categories of property in later law, all they acquired passed to their *paterfamilias*. The powers of a *paterfamilias* did not cease when the person subject to them reached majority. Often the word "father" [*pater*] is used in this sense.

Patria Potestas (Parental Power). The power of a *paterfamilias* [q.v.] over those dependent [*alieni iuris* q.v.] on him. In private law, the expression "in power" [*in potestate*] refers either to someone subject to this or the power of master over his slave. See D.1.7.

Patronus (Patron). The former master of a slave, who after manumission [*manumissio* q.v.] has become his freedman [*libertus* q.v.]. A patron had many rights over his freedman, particularly with regard to the performance of certain agreed services [*opera*] and in connection with succession. A freedman had to show respect [*obsequium*] to his patron and could not bring criminal proceedings against him or actions involving *infamia* [q.v.]. See D.37.14,15; D.38.1-4.

Pauperies. Damage done by an animal, without fault on the part of its owner. An action was given for the value of the damage done with the alternative of noxal surrender [*noxae dare* q.v.]. See D.9.1.

Peculatus. The misappropriation of public money or property by theft, embezzlement, or any other means. See D.48.13.

Peculium. The sum of money or property granted by the head of the household [*paterfamilias* q.v.] to a slave or son-in-power [*filiusfamilias* q.v.] for his own use. Although considered for some purposes as a separate unit, and so allowing a business run by slaves to be used almost as a limited company, it remained technically the

property of the head of the household. From the early empire onward, special kinds of *peculium* came into existence, the “military” [*castrense*] and the “quasi-military” [*quasi castrense*] *peculium*, which were considered for many legal purposes to be the property of a son-in-power himself. See D.15.1; D.49.17.

Perduellio. See *Maiestas*.

Peregrinus (Peregrine). In classical times this term usually meant a member of a non-Roman community within the empire, who was subject to the law of his own state and had few of the public or private law rights of a Roman citizen, for example, *conubium* [q.v.]. A special *praetor* [q.v.] dealt with peregrines' transactions. After the *constitutio Antoniniana* [see *ius civile*], the expression came to be applied to foreigners living outside of the empire.

Pignus. A contract of pledge under which the creditor obtained possession of the property pledged, but ownership remained with the debtor. The expression was sometimes used as a general one for any form of real security, including *pignus* and *hypotheca* [q.v.]. See D.13.7.

Pollicitatio (Unilateral Promise). A promise made to city or community to make a gift of money or to erect a public building or monument. Such a promise was legally binding in most cases as a matter of public law. See D.50.12.

Postliminium. The regaining of most of a person's private and public law rights on returning from capture by the enemy. The main exception in classical law was that a marriage usually did not automatically revive. See D.49.15.

Potestas. See *Patria Potestas*.

Praefectus (Prefect). The title of various kinds of high officials and military commanders in the empire. The most important of these were the praetorian prefects [*praefecti praetorio*], the chief military and civil advisors of the emperor and governors of the four great prefectures into which the later empire was divided. They also had extensive private law and (from the the third century A.D.) criminal law jurisdiction, the courts over which they presided being the highest in the empire. But the two urban prefects [*praefecti urbi*], one at Rome and later one at Constantinople, exercised independent criminal and civil jurisdiction over their respective territories. Many of the lesser prefects in charge, for example, of the corn supply [*praefectus annonae*] or the city guard [*praefectus vigilum*], served under the urban prefect and their legal decisions could be appealed to him. The prefect of Egypt [*praefectus Augustalis* or *Aegypti*] was in a special position in a number of ways. See D.1.11,12,15,17.

Praelegare. To make a legacy of a specific thing to an heir [*heres* q.v.] in addition to his share of the inheritance.

Praeses (Governor). The general name for any provincial governor, who had judicial as well as administrative powers. See D.1.18.

Praetor (Praetor). In the republic, an important magistrate second only to the *consules* [q.v.], in charge of the administration of private law. As well as the urban praetor [*praetor urbanus*], probably the most important, there was also a peregrine praetor [*praetor peregrinus*] dealing with foreigners [*peregrinus* q.v.] and later there were a number of other judicial praetors dealing with specific issues [for example, *fideicommissum* q.v.]. However, because of the growth of a standard body of praetorian law [*ius honorarium* q.v.] leading to the consolidation of the Edict [*edictum* q.v.], these officials are referred to collectively in the texts as “the praetor.” The praetor greatly extended and modified the civil law [*ius civile* q.v.] by means of his control over the Formulary System [*formula* q.v.] of civil litigation. Praetors continued to be appointed during the empire, but gradually their legal