ROMAN LAW
Moderations since 2007

Sources, History, and Administration of Justice

[2024 TT] **5.** In what sense did the Romans acknowledge ius gentium as their own law?

8. What was the role of responsa prudentium in the development of Roman law?

[2023] **7.** 'It seems true to say that in Roman, and indeed in all systems, after the primitive stage, the two tendencies, to rigidity and to equitable relaxation, will be found existing side by side, whatever be the active legislating force of the time. We think first of the Praetor, as he is a very vivid figure, but the jurists were not less important in the matter. So too of *ius gentium*.' (BUCKLAND)

Consider, with the aid of examples, the methods by which the Roman legal system struck a balance between 'rigidity', on the one hand, and 'equitable relaxation', on the other.

[2022] **9.** Did the use of a jurists' 'private' legal works for Justinian's Digest depend on the award of the *ius respondendi* [right to give authoritative counsel] by an earlier emperor?

[2021/3] **5.** Was legislation an important source of Roman law?

[2020] **5.** Is it accurate to describe Roman law as jurists' law?

[2019] **5.** Did the Roman emperors make law?

[2018] **5.** 'The three or four centuries between about 150 BC and AD 200 mark the mature period of Roman law, characterized most notably by the work of the jurists; it was an age of legal science, when highly able lawyers used their reason to identify ever more complex legal rules. Finally, after the deaths of Papinian, Paul, and Ulpian, the three great jurists of the late second and early third centuries, imperial power came to dominate all aspects of the law; if the second period was an age of science, the third was an age of authority.' [IBBETSON]

Is Ibbetson's distinction between science and authority a useful one in understanding the sources of Roman law?

[2017/HT] **5.** How important was the office of the urban praetor in the development of Roman private law?

[2017/TT] **5.** What do the references to the jurists, collectively or individually, in the Institutes of Gaius and Justinian tell us about the role in development of Roman

private law? How significant was that role?

[2016/HT] **3.** Assess, with the aid of illustrations, the relative roles of the praetors and the jurists in the development of Roman private law.

[2016/TT] **4.** How significant was the role of the Roman Emperor in creating private law?

"Many of the [Fifty Decisions] were to resolve juristic disputes that had been in existence three centuries before and had never been settled. Not even one of the great bureaucratic jurists such as Paul, Ulpian and Papinian, with access to the ear of the emperor, had wished the disputes resolved by imperial diktat. The approach to law reform and legal certainty of the classical jurists was very different from that of Justinian's bureaucrats" (ALAN WATSON). Discuss.

3. Explain the significance of Edicts in Roman law and its development.

3. 'The assembly shouted ... "You have removed the ambiguities of the imperial constitutions!" (repeated 23 times)' (Minutes of the Senate of Rome at the adoption of the Theodosian Code, 438 AD)

If s, w y w s Justinian's codification needed less than a hundred years later?

***1.** Comment on **TWO** of the following:

(a) A decree of the senate is that which the senate orders and establishes, and it has the force of a law, though this has been doubted. (G. 1.4)

(b) '...For no one can acquire or be liable in respect of a servitude over a rural or urban estate, unless he has an estate belonging to him' (I.2.3.2)

3. 'Then we turned our attention to the rolls of the classical law, that boundless ocean of learning, and, passing by heaven's favour as it were through the midst of the deep, we soon completed a task which seemed overwhelming' (CONFIRMATION OF JUSTINIAN'S *INSTITUTES*, 21 NOVEMBER 533).

'We saw it was necessary, therefore, that we should make manifest the same system of law to all men, so that they might perceive how greatly they have been relieved from a state of confusion and uncertainty.... In the future may they have laws that are straightforward as well as brief, and easily available to all, and also such that it is easy to possess the books containing them…' (CONSTITUTION OF JUSTINIAN, 16 DECEMBER 533 (the *Constitutio Tanta*), 13).

What were the purposes of Justinian's codification of the classical law?

Property

[2024 HT] **4.** The year is 230 CE. 80 millie passus (marching paces = 60 miles, 90km) upstream from the civitas (larger town) of Londinium in the province of Britannia, Henricus and Karolus own properties on opposite banks of the river Tamesis. As a result of a minor earthquake, a small island emerges in the middle of the river. Henricus is in Rome and does not take notice. Karolus, however, soon leases the island to Ludovicus, who has found it to be an ideal spot for fly fishing. Ludovicus has been paying generous rent to Karolus for eighteen months and thinks it would be better to acquire the island altogether. He comes to an agreement with Karolus and pays him the price of 5 aurei.

Three months later Henricus visits his property and inspects the island that he sees for the first time. To make sure that Ludovicus does not return, he leaves one of his slaves on the island. He plans to dismantle the fisher hut that has been built by Ludovicus. In the hut Henricus has found a barrel with salted fish of the highest quality, half of which he thinks is his. He further demands half of all the money that Karolus has made so far.

Advise Henricus.

9. Was it justified that Roman law granted the protection of possessory interdicts to possessors of the most questionable standing who could use them to prevail against the owner?

[2023] **8.** What do usucapion *[usucapio]* and the protection of those who are on the pathway to obtaining title by usucapion tell us about the institution of ownership *[dominium]* in the Roman law of property?

[2022] **2.** On a sunny spring afternoon in 535 CE, Livia is playing with her lovely dog Bella in a field. Seeing an old acquaintance, a conversation ensues during which the dog is unattended. Tiberius uses the opportunity to snatch the dog. When Livia looks for the dog again, it is no longer to be seen.

Tiberius sells Bella to Gaius, who realizes that the dog must have been stolen. Having given birth to three puppies (Pl, P2, and P3), Bella is weakened by the pregnancy; as she does not recover, Gaius ends her misery and puts her down. Gaius gifts Pl to his sister Nerilla, sells P2 to Severus, and keeps P3 to himself.

When Tiberius and Gaius are found out, Livia swiftly manages to trace Pl, but it takes her 37 months to find P2 in Severus's hands. When Livia calls Nerilla ‘a crook who handles stolen goods’, Nerilla threatens to sue Livia, because Livia has smeared her reputation as an honourable citizen. Advise Livia and Severus.

3. It is the year 210 CE. Balbus wants to purchase a specific ox from cattle trader Secundus. They agree on a price and in front of 5 witnesses and the holder of scales they perform the act of mancipatio. Since Balbus is momentarily short of cash, by way of stipulatio he promises to pay the price. It had slipped Balbus's mind (and no one else knew) that although he had come to Rome decades ago, he lacked Roman citizenship.

Balbus takes the ox to his farmstead. When Balbus's lack of citizenship comes to the parties' attention, Secundus demands the ox to be returned, as Balbus has not yet paid the sum agreed and solemnly promised.

While Balbus is still considering what to do, the ox wanders off his pasture. After a brief search, Balbus finds him in the large herd of the neighbouring farmer Fufius. Fufius is unwilling to return the ox to Balbus. He maintains the ox has become his by way of commixtio. Fufius also informs Balbus that he has discovered that the ox is suffering from a muscle disease that must have plagued it for months.
Advise Balbus.

6. 'The existence of servitude rights leads to efficient use of property.' (JOHNSTON). Discuss with reference to Roman law.

[2021/3] **8.** In what ways were the personal and praedial servitudes similar? In what ways did they differ?

9. Did Roman law strike an adequate balance between protecting the owner of a thing and protecting the possessor of a thing?

[2021/2] **4.** Answer BOTH parts (a) AND (b):
(a) The year is 230 CE. Vergil owns two pigs, Porcus and Hoggus. He agrees to sell Porcus to Aeneas, and tells Aeneas to send someone to collect the pig later that day. When Aeneas's son turns up, Vergil hands over Hoggus instead of Porcus. Aeneas's son is unaware of the mistake, but Aeneas realises immediately upon seeing the pig because Hoggus, unlike Porcus, is a show-quality pig. He contacts Tertius, a friend who routinely enters pigs into pig beauty contests, who agrees to buy Hoggus from Aeneas. Tertius collects the pig that night. The following morning Vergil realises his mistake and wishes to recover Hoggus.
Advise Vergil.

AND

(b) The year is 535CE. Gnaeus takes grapes from Pompeius's grapevines and turns them into wine. He then mixes the wine with honey taken from Magnus's bee hives to make mead. To ensure ready access to honey in the future, he smokes out one of Magnus's hives causing the bees to flee to the safety of a nearby tree. Gnaeus climbs the tree, catches the bees and installs them in his own hive.
Advise Gnaeus.

6. "The 'standard narrative' of quiritary ownership and 'bonitary ownership' tells us a story of excessive legal conservatism, mitigated by praetorian intervention, but persisting even after this intervention in the Roman jurists' fetishistic refusal to recognise a reality of divided ownership and of informal conveyancing"
Discuss.

[2021/1] **2.** It is the year 255 CE. Aemilius sells Greek vases on the market and Bassus,

looking for a gift for a friend, buys one for the asking price. They agree that the day after next Aemilius will bring it to Bassus's house, who lives upstream, by ship; he is to be paid upon delivery.
Bassus learns that his friend has a collection of wonderful vases already and is afraid the one he has picked will look shabby. When Aemilius arrives, Bassus pretends not to be at home. On Aemilius's journey back, another passenger, Caeso, lights a fire on deck; he had felt like barbecuing. Everyone flees the ship that has caught fire and sinks. Decima, a young girl, had watched the drama on the river from the shore. The next day she dives into the stream to search for valuables. She brings up the undamaged vase. As she has no use for it, she sells it straight to her neighbour Ennius.
After 13 months, Aemilius's wife happens to see the vase in Ennius's home. She is very upset, grabs the vase and rushes home. Aemilius hopes that with the vase he will be able to conclude the transaction with Bassus. He would also like to know whether he can demand that Bassus pay even if he cannot deliver the vase, since Ennius demands that the vase be returned to him. Decima and Caesio wonder whether they need to be worried from a legal point of view.
Advise Aemilius, Caesio, Decima, and Ennius.

6. 'To what extent is it both accurate and helpful to describe a servitude as a 'slice of ownership'?

8. 'By classical law there was no one person who could categorically be described as the owner of a thing.'
Discuss

[2020] **4.** The year is 535 CE. Liz drops a gold necklace while walking across the field of her neighbour Jack. Jack is in the process of tilling the field, and the necklace is soon buried in the course of his farm work. Later that week Liz realises the necklace is missing. When she is unable to find it, she assumes she lent it to a friend. She can't remember to whom she lent it, and so hopes the necklace will be returned to her in due course.
Five years pass. Tracy, a local hunter, has for several years dug pits to catch boars on Jack's land. Jack has observed Tracy doing this but is averse to confrontation and so decided not to object to Tracy's activities. While in the course of digging such a pit, Tracy uncovers the gold necklace. He immediately rushes to a nearby jewellery shop run by Pete and sells it for 10 gold coins. Pete then sells the necklace to Tina, who notices a resemblance to a necklace once worn by her friend Liz which she had always admired.
Tina wears the necklace to a dinner party thrown by Liz who, upon seeing the necklace, remembers its existence and demands its return. When Tina refuses, Liz rips the necklace from her neck, breaking the chain in the process. Scared by the sudden act of violence, Tina runs away from the dinner party. In the darkness of night she cannot find the road, and instead accidentally wanders into Jack's field, where she falls into a pit. Luckily her fall is broken by a deer that had fallen into the pit earlier that day. The deer is less fortunate; having been wounded by its fall into the pit, it is killed when Tina falls on it.
Advise the parties of any claims that arise.

6. 'The praetor developed the Roman law of property by subverting the expectations of the ius civile.'

Do you agree?

[2019] **3.** The scribe Ennius runs a copy shop called "Quiesce!" ("Stay calm!"). He is proud to use an extra fine ink which he produces himself.

On a market day early in 230 CE, Ennius buys a basket of snails, which the seller claims to have collected, but in fact has stolen from a snail-farm, run by a farmer from Gallia, Fulvius. Ennius carefully extracts fluid from a large number of snails which he mixes with some metal to get ink.

Gnaeus, a lover of Augustean poetry, has borrowed a book, titled 'Odes of Horace', from his acquaintance Horatia. He takes the book to Ennius who agrees meticulously to copy it for the princely sum of 100 sesterces. While Gnaeus provides the valuable parchment, Ennius uses the ink and also some of his own gold for the first letter of each poem.

As intended, the copy looks just like the original. This gives Gnaeus the idea to retain the original and hand the copy over to Horatia, who he hopes will not notice the swap. Everything goes to plan.

A few days later, a barbarian gang of robbers break into Gnaeus' home, where they find him reading the treasured original. While others ransack the house, one of the burglars snatches the book, a piece of "establishment sh*t", and throws it into the fireplace, declaring that the time for odes is over.

Due to the publicity that the raid attracts, all these facts come to light.

Advise Ennius, Fulvius, Gnaeus, and Horatia about any actions and defences available.

6. What was the practical significance of the distinction between ownership and possession in Roman law?

[2018] **2.** The following events take place in 230 CE.

Antonius is a farmer of livestock: specifically, sheep, donkeys, and dairy cattle. One night, one of his cows disappears from the shed in which it was kept; the next night, one of his sheep disappears from its field; finally, a donkey goes missing.

Antonius suspects that his sheep has been stolen by Balbus, a neighbouring farmer who is widely rumoured to be a habitual thief; in fact, Balbus did steal the sheep. Antonius wants to search for his sheep on Balbus's farm, but Balbus refuses to grant him access.

While walking past the farm of Callidorus, another neighbour, Antonius spies his donkey grazing peacefully in Callidorus's back garden. It turns out that Balbus transferred the donkey to Callidorus as a gift.

Exactly one year later Antonius comes across his cow in the market; it is being offered for sale by Diogenes. Antonius jumps into the pen when the cow is tethered, punches

on the nose the slave who is guarding it, and leads it home. Diogenes is outraged; in fact, the merchant Ennius had sold and delivered the cow to him seven months previously.

The next day when Antonius is in his field tending to his livestock he is approached by Flavius, a soldier. Flavius claims that he has been away on military campaigns for five years; that he is the true owner of the farm which Antonius regards as his; and that he left the farm in the care of his friend Gaius. It was Gaius who sold and delivered the farm to Antonius eighteen months ago. Flavius claims to be entitled not only to the farm itself and to the buildings erected by Antonius but also to all the livestock raised on the farm by Antonius.

Advise Antonius.

6. What functions were served by the praedial and personal servitudes?

7. How important was form in the transfer of Roman ownership?

[2017/HT] **4.** In 230AD, Marcus sells a plot of land forming part of an estate near Rome to the property developer, Javolenus. Marcus delivers possession of the land to Javolenus without any formal conveyance taking place. In return, Javolenus pays Marcus 10,000 Denarii (coins), as agreed.
Marcus plans to retain the remainder of the estate. As part of the deal, Marcus also agrees to grant Javolenus the right to cross the retained land on horseback to reach an adjacent road, and the right to extract clay from that retained land in order to make bricks for housebuilding.
Marcus had recently inherited the entire estate comprising the sold and retained land from his uncle, Nerva. Although Marcus was unaware of this, Nerva had occupied the whole estate during the absence of its owner, the philosopher Otho, without Otho's knowledge.
When Otho returns after a long time away, he discovers Javolenus building houses, riding on horseback, and digging clay pits on the estate. That evening, after Javolenus has left, Otho seizes Javolenus' supply of bricks. Otho then orders his own slaves to use some of them to build a brick wall around the perimeter in order to prevent Javolenus from accessing the estate from the road.
Advise Javolenus.

6. Assess the following statement:
'[The *servitus* (servitude)] is by no means an empty scholastic term. It is valuable for a systematic arrangement of the law of property and for any sociological, economic or political study. Personal and praedial servitudes form a definite unity' (SCHULZ).

8. Did Roman law have satisfactory rules for dealing with the situations in Part (a) **AND** Part (b) below?
(a) X conjoins a thing belonging to Y with his own thing (*accessio*);
AND
(b) a thing has been made by X from materials belonging, in whole or in part, to Y (*specificatio*).

[2017/TT] **6.** Discuss the following statement.
'Ownership in both classical and Justinianic law ... was the most comprehensive private right to a thing anyone could have; the full power at private law which indeed could be restricted in different ways but was not restricted from the outset. It was opposed to possession as the mere factual power on the one hand, and to restricted real rights (servitudes, usufruct, pledge etc.) on the other hand' (KASER).

[2016/HT] **5.** Does the existence of (i) praedial servitudes and (ii) usufruct call into question the conception of ownership in Roman law as absolute and indivisible?

[2016/TT] **5.** Did Roman law strike a fair balance between the interests of the *dominus* and the interests of those in possession of a thing?

9. Atticus, a Roman citizen and horse breeder, is the proud owner of Fulmen, a beautiful, fleet-footed mare (female horse), and the less than proud owner of Bolus, a lazy slave.
Bolus, aggrieved by his master's frequent beatings, resolves to run away. Before leaving, Bolus opens the gate to Atticus' paddock. Fulmen and 4 other mares belonging to Atticus escape to a nearby forest on land belonging to Cassius. There, they join a group of horses abandoned by their former owners. The distraught Atticus searches frantically for several months, but hope gives way to depression.
More than a year after the slave's act of vengeance, Cassius rounds up the horses in the forest, counting 4 adult males, 6 adult females and 3 newly born foals. He also finds Bolus hiding there, and puts him in chains.
Cassius quickly forms the view that Fulmen and the foals are more valuable than the other members of the herd. He covers Fulmen with his own prize winning stallion. In due course, Fulmen gives birth to a foal. Cassius decides to keep all 4 foals for himself, but sells Fulmen to the charioteer, Domitius, for 10,000 sesterces.
In the meantime, Cassius puts Bolus to work as a carnifex (butcher). Bolus fattens and slaughters the remaining adult horses for their meat, salting the jointed carcasses to preserve them. He uses the offcuts and offal from each carcass in turn to make equine sausages, which Cassius dries and stores in a barrel. He retains the salted meat to feed his household, and sells the sausages to Ennius, a merchant who intends to export them to Gaul.
Some time later, on a visit to the circus games, Atticus identifies Fulmen from her markings. He accuses Domitius of stealing her. Domitius calmly denies this and explains that he bought the horse from Cassius. Atticus quickly discovers the course of events described above. He hires two thugs to recover the foals and the treacherous slave from Cassius.

Advise Atticus in relation to all of these matters.

5. Is the concept of 'personal servitudes' misleading?

6. 'Seeing the use of property is to have a thing in order to enjoy it and to dispose of it, and that it is only by possession that one can exercise this right; possession therefore is naturally linked to the property, and ought not to be separated from it. Thus, possession implies a right and a fact; the right to enjoy annexed to the right of

property, and the fact of the real detention of the thing .,,' (JEAN DOMAT).

How helpful is this statement to understanding the relations of ownership and possession in Roman law?

By a stroke of extraordinary good fortune, a tsunami which hit the coast of Sicily lifted up Antonius' timber-built house off the land it rested on and deposited it, intact, five miles inland on a large island which was formed by a river dividing into two as the floodwaters receded. The owner of this land was killed in the disaster. His heir Balbus did not know the boundaries of the land, and when he took possession a year later he assumed Antonius had a right to the island. Antonius simply used the land to carry on his existing business of papyrus production. Later he sold the business, house and land to Camillus. Some time after this Balbus died and his son Decius inherited. Decius investigated the municipal records in the nearest town and found that Balbus' land had originally included the land which was now the island. He proceeded forcibly to evict Camillus.

Decius has contracted to sell the house to Egnatius, a builder, to be taken down and reassembled elsewhere, but Egnatius has as yet taken no action on this contract. He sold the standing crop of papyrus, the reeds Camillus had harvested, and the material in course of processing, to Fabius, a rival papyrus maker. Decius sold Camillus' stock of completed papyrus to Onaeus, a stationer and book dealer. Onaeus has used part of the stock, which he has in his possession, to produce copies of books. He has sold part of it to Julius, who has used it to produce a stock of satirical cartoons of municipal officials which he pastes up on walls from time to time. The rest is still with Onaeus.

Advise Camillus as to his property rights and remedies.

6. 'Personal servitudes such as usufructs really have little to do with praedial servitudes such as rights of way. The one benefits a particular person and only that person, like a type of obligation; the other attaches to specific land, and can benefit any successive owner.'

Discuss this claim.

5. Gaius in the middle of the second century wrote that in older Roman law 'there is only one kind of ownership [*dominium*]; for a person is either held to be, or not to be, owner … But afterwards ownership became susceptible of division, in such a way that one person could be the owner by the law of the Quirites, while another could hold it as part of his goods.' (G. 2.40).

In what sense does the existence of bonitary ownership in Roman law make ownership 'susceptible of division'?

6. Isolate the distinctive qualities of the personal and praedial servitudes. Why did they attract the classical description of 'incorporeal things' [*res incorporales*], or, in later times, 'rights in the thing of another' [*iure in re aliena*]?

9. Consider and analyse the legal implications arising from the following case:

Pliny plants a cherry tree on the boundary of his land and the land of Quintilian. The two owners never discuss this tree at their occasional meetings, and indeed Quintilian is seldom present at his estate. After a number of years the tree matures, bears ample fruit, and grows to goodly height. Pliny, who has tended to the tree through the years, then cuts it down and uses most of the branches to build a simple summer hut that straddles the boundary line of the two estates. The best branches are reserved to make wooden flutes for the use of Pliny's household.

Pliny stores the fruit from the felled tree inside the newly-made hut in two baskets, mixing into each basket fruit from the rest of his cherry orchard. He plans to serve the fruit at a party at the weekend. One sunny day shortly afterwards Pliny finds a basket of grapes left on the road outside his orchard gate; fearing that the grapes will spoil before the weekend Pliny has them crushed with the fruit from one of his two baskets of cherries and distilled into brandy to serve at the party. Quintilian comes back from holiday to attend the party and asks Pliny where the cherry tree has gone and whether he has seen any grapes that went missing from Quintilian's harvest earlier that week.

At the party Clodia takes a papyrus speech of Cicero's and has Julius Caesar autograph the bottom of the page with the opening sentences of his account of the Civil Wars. She then has her friend the poet Catullus overwrite the page with illustrated verses; Catullus hands the page back to Clodia. In a moment of drunken high spirits Clodia casts the papyrus into the air shouting 'Who can snatch at literary genius?' Her brother Clodius who is very tall catches the papyrus, and immediately offers to sell it 'To whoever offers me one thousand gold pieces'. Crassus, impressed by the idea of collecting the marks of these three famous men in one go, shouts to Clodius 'I do so offer'. At the very next moment, Cicero, who is greatly irritated by Clodius's and Clodia's drunken behaviour, snatches the papyrus from Clodius's hand.

5. 'The next point to mention is that among foreigners there is only one kind of ownership; for a person is either held to be, or not to be, owner, and this rule was formerly in use amongst the Roman people ... But afterwards ownership became susceptible of division, in such a way that one person could be the owner by the law of the Quirites, while another could hold it as part of his goods' (G. 2.40).

Discuss.

10. Gnaeus was the owner of a holiday villa in the resort town of Baiae, which he usually visited every spring. For four years, however, pressure of business kept him in Rome all year; the house at Baiae was looked after by a slave caretaker and skeleton staff. Unknown to Gnaeus, in the spring of the second year the slave caretaker and most of the staff died in an epidemic. The two surviving slaves, Lydus and Milphio, pretending to be the owners, sold the house and its contents to Hortensius, a property speculator who had just started up in business in Baiae, at about two thirds of its market value. They have since disappeared. Hortensius rapidly sold it on to Innocentius, a wealthy tourist visiting Baiae for the first time, at about one and a half times the market value. Innocentius disliked Gnaeus's decor and furnishings. He cleared out the house, and sold the furniture to Julius, a furniture maker, and Gnaeus' library of philosophy books to Plautus, a scribe. He had the walls replastered and repainted with decorative landscapes, and spent large sums of money on new mosaic floors. Since there is no current market for Gnaeus' old-fashioned furniture, Julius has dismantled it and added the pieces to his stock of timber. Plautus has been cutting the books up and using the reverse side of the papyrus to write contracts and conveyances for his clients.

Advise Gnaeus, who has just come to Baiae and discovered these events.

5. What (if anything) does the Roman law of praedial servitudes and of usufruct and related rights tell us about the nature of Roman ownership?

9. Aulus sold and delivered to Balbus a fully equipped farm near Padua, including several slaves, oxen and mules for motive power, a herd of cattle, various farm equipment, and the usual domestic furniture and goods.

While Balbus was visiting Rome nine months later, he was caught up in a riot between supporters of different chariot-racing teams and hit on the head, with the result that he lost his memory and became a casual labourer and racing faction supporter in Rome. His wife Bella kept the farm going for some time after his disappearance, but after their children died in an epidemic, she lost heart and went home to her parents in Ravenna, leaving the farm as it was.

After Bella left, Decius, a migrant from Verona, took possession of the farm, and after holding it for some time in the hope that prices would rise, he sold and delivered the farm, as completely equipped, to Ennius. At this time, Cassius took advantage of Decius' and Ennius' ignorance of the farm boundaries to usurp possession of an orchard, which he later sold and mancipated to Ennius.

After all these events, Balbus has now recovered his memory and come home. He seeks your advice as to what, if any, of his former property he can recover either by self-help (with the support of his fellow faction supporters) or by legal process, and in the latter case what procedure should be used. Advise him.

Turn over

Roman army to Eustace, a slave dealer, who shipped them to Constantinople for sale. The ship in fact survived the storm and was found drifting by Festus. Festus put a crew on board, who sailed the ship to Gortyn in Crete, where Festus sold the ship and cargo to Gregory. Gregory sold the wine to Hypatius, a wine merchant who added it to his stock, the pottery to Isidore, a pottery dealer who had it repainted with scenes more attractive to the Cretan market, and the tin to Justin, a bronzesmith. On his return home 30 months after his original departure, Basil found that he had been reported dead and that his estranged brother had taken possession of his house as heir and sold it to Libanius. At around the same time, Gregory sailed the Maria Caelestis to Constantinople, Alexius claimed the ship, and Festus' and Gregory's dealings were uncovered.

Advise the parties as to their property rights under Roman law.

10. Narcissa is usufructuary for life of two adjoining five-story blocks of flats in Rome and an estate in the nearby countryside, the ownership being in her young son Octavius. When the top three stories of one of the blocks collapsed, she thought it was her duty to rebuild, and hired Petrus, a building contractor, to do the work. Unfortunately a series of problems have arisen.

(a) Petrus has been cutting timber on the country estate for beams, which have now been incorporated in the building. To transport the timber, Petrus has taken a short-cut by dragging felled trees with a team of mules along a right of way attached to the country estate over a

he who made it, or he who was the owner of the materials. (J.2.1.25)

was the French Code civil.... But when it came to legal science...German scholarship reigned supreme' (STEIN).

How was Roman legal science applied in the modern civil codes?

5. Was Ulpian right to say that ownership and possession have nothing in common?

6. Aulus asks, 'Will you give me your bronze statue of Venus?' Balbus replies, 'Absolutely!'
(a) When one man has given a new form to materials belonging to another, it is often asked which, according to natural reason, ought to be considered the proprietor, whether he who gave the form, or he rather who owned the materials (I.2.1.25)

6. In what sense can *dominium* be described as 'absolute' in Roman law, and why was it felt necessary to recognize the rival notion of bonitary ownership?

7. Discuss the legal issues arising in **ALL** of the following cases:

(i) Gaius builds a house overlapping the boundary of his land and Hero's land using beams he found on the boundary.

(ii) Neratius writes a poem in raised golden letters on the surface of a golden statue owned by Marcian.

(iii) Servius dyes a plain and inexpensive robe belonging to Titius with a very expensive Tyrean purple paint.

(iv) Paul takes some of his own money and mixes it with money belonging to Ulpian, and then buys some honey which he mixes with Ulpian's wine.

7. How were the personal and praedial servitudes similar, and how were they different?

8. 'Ownership has nothing in common with possession...' (ULPIAN, 70 ON THE EDICT,

D.41.2.12.1). Is this comment useful in understanding the law of property?

Contract

[2024 TT] **6.** What role had the lapse of time in the Roman Law of property on one hand, in the law of obligations on the other?

7. If an agreement is categorized as 'real' contract, what does this mean and in which respects did real contracts differ from each other?

[2024 HT] **6.** Did Justinian's law provide buyers with sufficient protection against latent defects, and can you think of ways to improve this part of his law?

7. 'In the erosion of Roman formalism, there was only one truly revolutionary act, namely the acknowledgement that a *stipulatio* is taken to have been correctly performed if a document affirms the words as having been spoken.' (L. MITTEIS) Do you see reasons to agree or disagree?

[2023] **3.** The year is 230 CE.
Justin is an uneducated former soldier, who bears the physical and mental scars of war.
He now ekes out an existence as a farm labourer.
On a country road about ten miles outside Rome, Justin encounters Leo. They strike up a conversation. Leo explains that, following the death of his father, Marius, he has inherited a nearby farm. Leo offers to sell one of the farm's fields to Justin in return for Justin' fine leather purse and all of the coins that it contains. Justin is not at all sure whether to trust Leo, but decides to give him the benefit of the doubt. He gives Leo the purse, which contains 5 bronze coins. Leo gestures to an adjacent field, and departs.
While ploughing the field to prepare it for sowing, Justin discovers a pot of ancient gold coins in the ground. After many months of hard work, Justin harvests a bumper crop of wheat. He grinds some of the wheat to make flour. He then puts the flour and the remaining wheat in cloth sacks, and stores the sacks in a small barn which he builds in the corner of the field. He pays for the sacks and building materials with a few of the gold coins, before re-burying the pot and the remaining coins under the barn.
The following year, Marius (who is very much alive and is not Leo's father) returns from overseas and seizes the field, which is once again in harvest, from Justin. Marius demands that Justin deliver to him the bags of flour and wheat, and that he pay for all that he has consumed. Marius also learns about the discovery of the coins, and accuses Justin of stealing them.
Advise Justin.

4. The year is 230 CE.
Otto owns and runs a cheese factory just outside Rome. The factory lies in the middle of a large grassy field, which Otto also owns. A small stream runs along its edge next to the public road. A pathway runs from the road to the front door of the factory, via a gate and a wooden bridge which crosses the stream.
Philip owns a small dairy farm near across the road from Otto's factory. He has over

two hundred cows.
Both Otto and Philip are looking to expand their operations.
Otto would like to gain a secure, long term source of supply of the milk that he needs to make his cheese. He is also worried that the smoke from his factory sometimes blows over the neighbouring parcels of land and believes that it might adversely affect the health of people and animals there.
Philip needs to find new sources of grass and water for his growing herd, especially in the summer months. He is not presently troubled by the smoke from Otto's factory, and is very sceptical of claims by some doctors and veterinarians (which younger farmers widely accept) that factory fumes may have adverse health impacts. He would be very happy to find a single taker for all of his cows' milk, provided that the arrangement could guarantee him a fixed minimum income each year and an additional payment for each amphora of milk delivered.
Otto has no current plans for the land surrounding his factory, but would like to keep open the possibility of adding one or more buildings at a later date.
After meeting at the marketplace, Otto and Philip recognise that it might be in their mutual interests to deal with each other and agree to enter into negotiations. Philip tells Otto that he plans to continue farming for as long as he is physically able, but would then wish to sell his land and herd to another farmer, as he has no close family.
Advise Otto as to the legal aspects of possible future arrangements with Phillip.

> **5.** 'All these developments left unaffected the cardinal principle that the parties must come together for the conclusion of the contract, a feature which throughout its history distinguishes the stipulation from the consensual contracts of modern law.' (LEE)

Discuss, with particular reference to texts in the Institutes of Gaius and the Institutes of Justinian.

[2022] **4.** It is the year 240 CE. Atticus needs a loan and finds Crassus willing to lend him 100 000 sesterces. When Crassus insists on some sort of security, Atticus offers to pledge a valuable quadriga [team of four horses]. They agree and Atticus brings his four horses to Crassus, who leads them into his stable.
The next day, Crassus sends his son with 100 000 sesterces to Atticus's house. Although a time for the delivery of the money had been agreed, Atticus was not at the house and so Crassus's son starts back home. On the way back, robbers hold him up and take the money. Returning home, the son finds his father wretched. A bolt of lightning has hit the stable and all four horses have died.
Crassus now demands that Atticus pay him 100 000 sesterces. Atticus maintains that even if he had received the money from Crassus, the loss of his horses would have released him from the obligation to pay. In the meantime, the police have arrested one of the robbers, Latro. Advise Atticus and Crassus.

7. In one of his court speeches (about 80 BCE), Cicero addressed the plaintiff: 'You say you asked for a solemn promise – where, on what day, in whose presence? Who says I answered with a promise? No one.'
Comment from a Roman law perspective.

[2021/3] **3.** The year is 535CE. Epicurus, a baker, uses only the finest ingredients to

bake his apple pies. He approaches Fabius, the proprietor of a local orchard. Fabius tells Epicurus that his orchard normally produces 10 barrels of apples in a season, and he would typically sell these for 1 solidus per barrel. They agree that Epicurus will buy all the apples produced that season for an upfront payment of 4 solidi, and a further 1 solidus for every two barrels produced. Fabius undertakes to deliver to Epicurus's bakery by September 1.
The harvest is late that year, and the apples are only ready to be delivered by September 3. The harvest has also been exceptionally poor, with only 6 barrels of apples produced. Moreover, approximately half of the apples are blighted and not fit for human consumption, though they would be adequate fodder for animals. As soon as they are ready to be transported, Fabius rushes to deliver the apples to Epicurus and sets out in the middle of the night. As a consequence of his haste and the darkness in which he travels, Fabius rushes straight into an ambush by local brigands who take the entire crop.
Advise the parties of any claims that arise.

6. Would it ever be accurate to describe the stipulatio as a written contract?

4. Answer BOTH parts:
(a) The year is 535 CE. Paulus, a merchant, enters into a contract with Ulpianus for the sale of a silver knife, to be delivered in a week's time. When the day for delivery comes, Paulus mistakenly hands Ulpianus a knife made of tin. The next day Paulus discovers his mistake. Can Paulus vindicate the knife? What other actions are available to the parties?
and
(b) The year is 535 CE. Julian sneaks into Drusus's field one night and steals Buttercup, Drusus's cow. Having milked Buttercup, Julian slaughters and butchers her, thus producing a large quantity of steak and mince. The next day at the local market Julian sells the milk to Xerxes, who mixes it with some of his own milk and makes the whole batch into cheese. Julian sells the mince to Hermes who makes it into meat pies. Julian is unable to sell the steak, so he gives it away to his friends Gaius and Tiberius. What actions are available to Drusus?

[2021/2] **2.** The year is 230 CE. Aulus is a fisherman who supplies fish to Balbus's stall in the marketplace. Typically, Aulus catches 25 fish per voyage and sells all of his catch to Balbus for 10 asses per fish, and makes three voyages per week. To streamline their arrangements, Balbus proposes that he will buy Aulus's catches in bulk for 100 asses per voyage, plus a further 5 asses per fish actually caught. Aulus agrees to operate until further notice on this basis.
On his first voyage in the following week, Aulus catches a record haul of 100 fish. Realising that the new arrangement with Balbus will result in a smaller profit than would ordinarily be the case, upon returning to land Aulus sells 50 of the fish to Crassus for 10 asses per fish and delivers the other 50 to Balbus (who pays him 350 asses).
On the second outing, Aulus's nets become entangled with those of a rival fisherman, Drusus, whose boat has drifted towards Aulus in choppy seas. Drusus cuts the nets loose and both catches escape, save for a paltry three fish snared in Aulus's nets. Aulus hands these over to Balbus upon returning to land. Balbus refuses to pay him. Aulus is unable to repair his nets by the end of the week, and so the third outing does not happen.

During the course of the week Balbus discovers the sale of 50 fish by Aulus to Crassus. As he is also dissatisfied with the yield of the second outing and incensed by the cancellation of the third, Balbus tells Aulus that he is going to buy his fish from Drusus from now on.
Advise Aulus.

7. "It is clear that Justinian in the Corpus Iuris treats the stipulation as being juridically still a verbal contract, and the written document, though in practice the most important element, as being juridically evidentiary. He can, it is true, speak loosely of the stipulation as a written contract, but so could Cicero." (Nicholas)
Do you agree?

8. To what extent did the contracts known to Roman law reflect distinct commercial transactions? What were the advantages and disadvantages of this system?

[2021/1] **2.** It is the year 255 CE. Aemilius sells Greek vases on the market and Bassus, looking for a gift for a friend, buys one for the asking price. They agree that the day after next Aemilius will bring it to Bassus's house, who lives upstream, by ship; he is to be paid upon delivery.
Bassus learns that his friend has a collection of wonderful vases already and is afraid the one he has picked will look shabby. When Aemilius arrives, Bassus pretends not to be at home. On Aemilius's journey back, another passenger, Caesio, lights a fire on deck; he had felt like barbecuing. Everyone flees the ship that has caught fire and sinks.
Decima, a young girl, had watched the drama on the river from the shore. The next day she dives into the stream to search for valuables. She brings up the undamaged vase. As she has no use for it, she sells it straight to her neighbour Ennius.
After 13 months, Aemilius's wife happens to see the vase in Ennius's home. She is very upset, grabs the vase and rushes home. Aemilius hopes that with the vase he will be able to conclude the transaction with Bassus. He would also like to know whether he can demand that Bassus pay even if he cannot deliver the vase, since Ennius demands that the vase be returned to him. Decima and Caesio wonder whether they need to be worried from a legal point of view.
Advise Aemilius, Caesio, Decima, and Ennius.

3. Since the year 235 CE, Atticus has used the large field behind his house to run an annual festival every July. He has now done this for many years, without complaint, although the field in fact belongs to Atticus's neighbour, Drusilla. Over the years he has built a variety of stalls and exhibits on the field, using a combination of timber felled in his own garden and clay extracted from the field itself.
One of the more popular exhibits is a treasure hunt aimed at children. In exchange for a price of one coin, children are given a shovel and sixty seconds to dig up as many 'treasures' (small toys) as they can. Each night Clodius, one of Atticus's workers, buries a new set of "treasures".
Bibulus is a parent who wants to please his child. As soon as the exhibit opens, he bribes Clodius to disclose the locations of the treasures and tells his child where they are buried. Having paid Clodius the one coin, the child proceeds to uncover every buried treasure in the course of sixty seconds. The child also uncovers a ruby, which unbeknownst to anyone else had been dropped there the previous day by Drusilla, an overzealous mother who let it slip from her ring when assisting her own child in a

particularly exuberant display of digging. It was then buried under dirt disturbed by her act of digging. Upon striking the ruby with their shovel, Bibulus's child managed to chip the ruby and snap the blade of the shovel.
The success of Bibulus's child is reported to Atticus, who immediately marches over and seizes the 'treasures' from the child, who cries. Bibulus shouts that the festival is run by conmen, and that any self-respecting Roman should join him in marching out of the grounds. Several onlookers do exactly that.
Advise Atticus.

5. 'The reason [for the periculum emptoris] must be that it is from the moment of being bound to give the thing up that the owner loses his economic interest in it. From then on its value and potential belong to the buyer, whatever the technical location of the contract.' (BIRKS)
Discuss.

[2020] **2.** The year is 535 CE. Charlie is a local baker with political aspirations. To register in the upcoming local elections, he must go in person to the magistrate's office in the forum of Alabum, a town five miles away. He asks his neighbour Frank whether he could borrow Frank's horse for the task. Frank, eager to encourage Charlie's foray into politics, happily agrees. However, Frank misheard Charlie's request, and thinks Charlie wants to borrow the horse to ride to Galabum, a town ten miles away.
Once in Alabum, Charlie heads to the forum. There he finds the magistrate's office unmanned, but sees a box labelled "election information: confidential". As nobody else is around, Charlie opens the box in the hope of discovering information that might give him an advantage over other candidates. He discovers incriminating evidence against Dennis, a prominent citizen of Galabum, suggesting that he has previously embezzled public money while in office. Charlie, hearing someone approaching, puts the box back where he found it. He then registers for the upcoming elections and walks out of the forum with the incriminating document.
Charlie decides to ride on to Galabum in order to find a way to blackmail Dennis. Once there, he goes to a journalist friend, Gail. They agree that if Charlie provides Gail with the document, Gail will publish positive stories about Charlie in the run up to the election. Charlie, happy with this arrangement, hands over the document to Gail. As he is preparing to return home, he is set upon by a gang of local youths who steal Frank's horse. Later that week Gail uses the incriminating document to publish a story about Dennis's embezzlement, which had long been rumoured around Galabum.
Advise the parties of any claims that arise.

7. Did the Romans have a law of contract or a law of contracts? Does it matter?

8. Aulus buys a drinking cup from Balbus while shopping in the forum. Aulus believes the cup is made of silver, when in fact it is made of lead (which, by virtue of its poisonous quality, is unsuitable for use as a drinking vessel).
How would a Roman jurist writing in the classical period deal with this scenario? What additional information would he need to reach a definitive conclusion?

[2019] **7.** Is it possible to generalise about grounds for nullity in the Roman law of contract?

8. How did the concept of good faith *(bona fides)* find expression in the Roman consensual contracts?

[2018] **3.** The following events take place in 535 CE.

On the morning of 15 March, Horatius buys a flock of goats from Iulia in the market for 50 nummi (bronze coins) each. Iulia tells Horatius that the goats are of a specific type, the Pannonian Longhorn, which is known to be a good wool producer, but in fact the goats belong to a different breed which is farmed for its meat rather than its wool; they will probably yield only half the wool typically produced by the Pannonian Longhorn.

Horatius and Iulia agree that Horatius will come to Iulia's farm on 22 March in order to count out the goats in the flock, pay the purchase price, and take delivery of the flock. Unfortunately, sheep blight, a very contagious disease which can spread between species, breaks out on Iulia's farm on 19 March and several of the goats in the flock die. It seems that the sheep blight had been deliberately introduced on to Iulia's farm by Lucius, her competitor, several weeks previously; it is unclear exactly when the goats on Iulia's farm were infected. Because the remaining goats are still at risk of developing blight their value is reduced by half. Moreover, when he visits Iulia's farm on 22 March, Horatius himself is infected with blight and he in turn infects his own livestock; three of his sheep die.

The parties' contract was never reduced to writing; nor did Horatius pay any deposit.

Advise Iulia.

8. How close did Roman law come to developing a general law of contract based on consensus?

[2017/HT] **7.** 'The Roman way was to throw up an archipelago of contractual islands in the sea and then to wonder what do to about people left in the water' (BIRKS). How useful is this statement in understanding the Roman law of contractual obligations?

[2017/TT] **7.** How important was *stipulatio* in the Roman law of contractual obligations?

[2016/HT] **6.** '[A] formal requirement will be one which either adds to what would "naturally" be done or restricts the modes in which it could so be done by excluding some which would seem to work just as well if the law would let them' (BIRKS). How important were formal requirements in the Roman law concerning contractual obligations?

[2016/TT] **6.** Why did *stipulatio* not develop into a general law of contract?

9. What was the significance of writing in the Roman law of contracts, and how did it evolve?

10. What were the strengths and weaknesses of the Roman system of multiple different contracts?

4. 'Even if Roman law had relaxed all formalities in making contracts by *stipulatio*, there would still have been good reason to develop and maintain alternative forms of contract.'

Discuss this claim.

4. What tasks did the nominate contracts perform that were not so easily achieved through the use of *stipulatio*?

10. Cato, the governor of Macedonia, is keen to develop the province. He uses his own money to procure the services of a large group of slaves belonging to Rufus, the governor of nearby Dacia. These slaves work as a skilled team to build aqueducts and public baths, and part of the team are female, who keep house for the rest of the team. Cato and Rufus each dislike lawyers and pointedly avoid discussing the terms under which the slaves will work for Cato, trusting rather to their common sense in order to make the deal work. In particular, no time limit is put on the arrangement. In order to identify the slaves Cato has their plain woollen tunics dyed on the borders of each garment with expensive Tyrian purple.

The work on the aqueducts in the ravines of Macedonia turns out to be far more dangerous than the kind of work the team is used to on the flat plains of Dacia. One month into the work, two slaves in charge of survey work fall to their death from a badly built scaffold, and a later inquest reveals that the dead surveyors, the scaffold builders, and the overseer were each reasonably skilled slaves, but that the terrain they worked in was exceptionally dangerous. It will take at least six months to find similarly skilled survey workers and meanwhile the rest of the team cannot do any further work.

Restless and bored, the slaves fall into poor morale. The overseer and one of the female slaves run away together intending to return to Rufus's household, hoping to seek emancipation and start a family; indeed they are already expecting a child. Cato chases after the slaves and loudly threatens that he will thrash the remaining crew if the fugitives do not return to their posts within three days. Cato finds the overseer and strikes him in the face in the public square, blinding him in one eye. Hoping to avoid confrontation with Cato, Rufus indicates to the fugitives that they should return to Macedonia at Cato's command. Rufus is nonetheless incensed at what has happened, and he looks for ways to end the ill-fated business to his best advantage.

What is the legal position of Rufus and Cato?

6. 'The civil law has very nice and refined distinctions upon this: *commodatum & mutuatum* are there technical terms for a loan. By the first was meant where the things lent were to be restored *in specie*: by the second, where *in genere* only: but in both the things were to be restored in all events, and nothing was to be paid for the use or hire, which when it was so, was *locatum & conductum* by the Roman lawyers; under which perhaps all our loans would strictly come. But these minute distinctions upon loans are not adopted by us; but we mix and confound their *commodatum & mutuatum*; as appears in an action upon a loan, which takes in both. So though interest is to be paid for it, it is with us still a loan' (LORD HARDWICKE C, *Earl of Chesterfield v Janssen* (1750)).

Why did Roman law make more 'minute distinctions' between contracts than English law did or does?

7. Did the evolution of the formalities of stipulation really represent a 'degeneration'?

6. 'Of contracts named or certain, there are only three kinds usual in England, of which some are made with the thing itself, some by writing, some by consent only; for stipulation which is made with a solemn form of questioning and answering, as 'Will you give? I will give', is out of use with us' (WILLIAM WEST (1590)).

Would it have made more sense for Justinian's compilers to have taken this line in laying down the Roman law of their own time rather than, as they did, including the contract *verbis*?

7. Discuss the relative roles of praetorian innovations and juristic interpretation in the development of the Roman law of informal contracts.

Explain the differences between this definition of theft and the several definitions offered by Roman lawyers. Are the Roman definitions less satisfactory?

Does this argument explain the Roman lawyers' lists of specific contracts?

8. '(1) A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it

(a) Let us now pass to obligations. An obligation is a tie of law binding us to the fulfilment of something in accordance with the laws of this empire. (J.3.13.pr.).

in turn bought it from Decius, a merchant, and had kept it in his possession for a whole year before selling it on to Quintus. Quintus now wishes to recover possession of the vase from Octavius.

special sense it means...outrage ("contumelia", which comes from "contemnere", the Greek 'υβρις [*hubris*])....' (JUSTINIAN'S *INSTITUTES* 4.4 pr).

Discuss the essential features of the delict of *iniuria* (outrage) with reference to this passage.

***1.** Comment on **TWO** of the following:

(b) He agrees to transfer his chariot to Ennius, who agrees to transfer to him two togas and one sesterce in return.

(c) He supplies his gladiator, Maximus, to Neratius, who is about to arrange funeral games for his father. The arrangement is that if Maximus dies, Neratius will pay Aulus 10,000 sesterces; if Neratius is unharmed, he will pay Aulus 500 sesterces.

Discuss.

10. Javolenus owns a horse and cart. He instructs his slave, Secundus, to teach Tertius (a free man), to drive the horse and cart. Secundus gives Tertius a short lesson, and then leaves Tertius to drive the horse and cart. The cart contains two heavy millstones, owned by Labeo. Tertius, who

5. Answer **EITHER** (i) **OR** (ii):

(i) Did all written and spoken agreements become contracts in Roman law?

OR

(ii) What are the important differences between the classes of nominate contracts, and why did the various classes remain important alongside *stipulatio*?

4. 'If I take a stipulation from you for something which I thought was gold, when it

was bronze, you will be liable to me in respect of this bronze, since we were agreed upon the essential object; but if you knowingly cheated me, I shall have an action against you as a result ... of fraud' (PAUL, 9 ON SABINUS, D. 45.1.22).

Does Paul's ruling imply that good faith operated within stipulatio as it did in sale or the other Roman consensual contracts?

Delict

[2024 TT] **9.** The ten framers of the XII Tables provided the *actio furti oblati* and the *actio furti concepti,* which Justinian eliminated. Did this open a gap regarding which acts could be punished?

[2024 HT] **3.** The year is 535 CE. Elysius runs a factory producing ceramic vessels known as amphorae, each holding about 26 litres, or 46 pints. On his last day of work, a disgruntled factory worker drills tiny, almost undetectable holes into all amphorae produced in the last month.

Most of these amphorae are bought by Flavia, who owns a small vinery. Flavia fills the amphorae straight from her winepress and hands them over to a transport business that handles a lot of wine transport. The driver takes the amphorae onto his cart, where already amphorae from Glycus, another winemaker, are stored. During the travel, wine from Flavia's amphorae drips into Glycus' amphorae which had been only half-full. When the cart arrives at its destination, Flavia's amphorae are empty, Glycus' are full.

When Flavia learns about these events, all wine in Glycus' amphorae has already been sold to several publicans. Flavia expects Glycus to share half of his profits and threatens to sue Elysius for her loss. Glycus is upset, as his wine is much better than Flavia's which can be sold for no more than half the price.

Advise Flavia.

5. 'It is not possible to find an underlying reason for everything which was settled by our ancestors.' (D.1,3,20; JULIANUS).
Can you give examples that illustrate this observation?

8. 'Personal property would not have been sufficiently protected against damaging acts had not Roman law acknowledged the use of *actio in factum* and *actio utilis*.' Discuss.

[2023] **2.** The year is 535 CE. Adrian runs a grocery delivery business in Rome. Basil is a young man without family to whom Adrian has recently given food and shelter.
One morning, Adrian notices that the wheel on one of his delivery chariots needs fixing. Adrian is busy, so he asks Basil to drive the chariot up one of Rome's steep hills to the repair shop owned by Clemens.
After fixing the wheel, Clemens fails to secure the bolt properly. As Basil, an inexperienced chariot driver, is driving back down the hill, the wheel begins to wobble, making it harder for Basil to steer the chariot. At that very moment, Basil is distracted by Darius (Adrian's business rival) who overtakes him shouting the (false) accusation that Basil is Adrian's illegitimate son.
Panicking, Basil loses concentration and steers the chariot into a nearby ditch. The chariot turns over, covering it in mud. Basil is badly injured, and one of Adrian's horses is killed instantly. At the beginning of the year, the horse had been the fastest and strongest in Adrian's stables, but in recent months it has been troubled by a back injury. Darius witnesses the incident but does not stop to help Basil. Later that day, Darius puts

up a billboard outside his warehouse warning passers-by that Adrian uses incompetent drivers and defective vehicles. In the following weeks, Adrian loses a number of regular customers and his profits fall significantly.
Adrian is very upset at the death of his horse and feels a sense of responsibility to Basil. He pays Basil's medical bills.
Advise Adrian and Basil.

> **6.** 'What then is a stolen thing? A stolen thing is not only a thing that is taken secretly by night or by day, but every movable thing belonging to another person that has been dealt with otherwise than as in accordance with the will of the owner. "To deal with" a thing is to treat it as owner and to do with it what an owner is entitled to do with his property.' (THEOPHILUS, *Paraphrase* (6th Century CE))

Is the author's answer to the question accurate for any period of Roman legal history?

> [2023] **9.** 'A man who had a son and a rich enemy was found killed though not robbed. The youth dressed in mourning began to follow the rich man about. The rich man took him to court and demanded that if he had any suspicions he should accuse him. The poor man said: "I shall accuse when I can", and continued to follow the rich man in mourning clothes just the same. The rich man stood for office, but was rejected; he accuses the poor man of injury [*iniuria*].'

'*[Latro]* Is there an injury in this case? "There is no injury if I am in mourning: how many do it! The law specifies all the types of injury: one cannot strike another, one may not abuse contrary to good morals."
[Scaurus] "A new wording for injuries is being formulated: That he did weep contrary to good morals. ... Even if there is an injury in the case, is he safe from condemnation if he does not act with evil intent? ..."
[Gallio] "It is permitted to weep, to walk where you like, to dress as you like" "But", the reply is, "one is not permitted to act in such a way as to arouse hatred against another."' (SENECA, *Controversiae* (1st Century CE))
Do these texts capture the essential characteristics of the action for outrage *[actio iniuriarum]*?

[2022] **8.** 'The actio iniuriarum afforded a strong and efficient protection against injuries to immaterial interests, particularly against defamation of any kind, but it was not a happy idea to tie together offences against the body with injuries to immaterial interests.' (SCHULZ).
Discuss.

[2021/3] **2.** The year is 535CE. Aulus, an elderly businessman of some local repute, is hunting for grouse in the woods near his home. His eyesight is not what is once was. He encounters Balbus walking his two dogs on chains. Aulus mistakes Balbus for a tree, and the two dogs for plump game birds. Aulus shoots the first dog, killing it instantly. Balbus is startled by the sudden attack, drops the chains and loses control of the remaining dog. That dog bounds towards Aulus and viciously attacks him. Before too much harm comes to Aulus, Balbus regains control of the dog and storms off. Upon returning to town, Balbus tells anyone who will listen in the marketplace that Aulus has gone senile. Meanwhile, upon regaining his composure, Aulus decides to make the best of a bad situation, and takes the dog carcass home. He butchers this, and sells the meat as lamb to Cassius, who falls violently ill upon cooking and eating it.

Advise the parties of any claims that arise.

7. How did the role of intention differ as between furtum, iniuria and damnum iniuria?

10. Was liability under the lex Aquilia more concerned with punishing wrongful behaviour on the part of the defendant or providing redress for the harm suffered by the claimant?

[2021/2] **3.** The year is 535CE. Sonorus and Ignavus are neighbours. Sonorus finds it objectionable that for many years Ignavus has routinely taken a shortcut across Sonorus's land to get to a nearby beauty spot (though those objections have never been aired), and Ignavus dislikes Sonorus's habit of playing the drums in the early hours of the morning. When Ignavus asks Sonorus to play his drums during more civilised hours, Sonorus says he hopes to never see Ignavus on his land again. In reply, Ignavus says that if the drums are ever played after sunset again litigation will follow. Sonorus makes a point of playing the drums throughout the following night.
Angrily, Sonorus builds a 2m high wall at the boundary between their land, ripping up the low hedge that previously demarcated their plots. Although Sonorus believed this hedge (and the fence replacing it) were on his side of the boundary, they were in fact on Ignavus's land. When Ignavus brings this to Sonorus's attention, Sonorus demands payment for the materials and labour that went into his effort. Ignavus refuses, and Sonorus begins to grow climbing plants along the wall.
Further outraged, Sonorus pays Nefarius 10 solidi to break into Ignavus's house to steal a statue of Ignavus's father, which he intends to ransom back to Ignavus to cover his losses. Nefarius successfully infiltrates the house and finds the statue, but alerts Ignavus's dog in the process. Nefarius is fleeing through the window when a groggy Ignavus enters the room, catching sight of the shadow in the window. With Ignavus urging it on, the dog gives chase and pursues Nefarius onto Sonorus's land, where it grabs hold of Nefarius. Nefarius struggles with the dog, killing it, and drops Ignavus's statue in the process, causing it to break.
Advise Ignavus.

9. "The attenuation of the physical element in furtum led inevitably to an increasing sharpness of focus on the mental state of the wrongdoer. It was only by paying attention to the wrongdoer's state of mind that it was possible to distinguish between interferences which were theftuous and interferences which were not." (Ibbetson)
Is this an accurate characterisation of the manner in which the Roman delict of furtum developed?

10. "Every obligation is founded upon a reason or a cause... In obligations arising from delicts the reason consists in the necessary reparation of the damage caused by fault or by fraud" (Ahren)
Would a Roman lawyer have agreed?

[2021/1] **4.** Analyse all THREE of the situations set out below, setting out the actions available to the parties and their likelihood of success. The following events take place in the year 535 CE.
(a) While strolling in the forum one day Aeneas passes a cage full of nightingales belonging to Brutus. Moved by pity, he releases them. Some of the nightingales fly away; most of them perch in a nearby tree. Cassius, who runs a canteen, catches them

and makes them into nightingale pies, which he sells to passing shoppers for twenty bronze coins each.
AND
(b) Despina borrows Elena's silk dress to wear to a party. She likes the dress so much she decides to wear it again to another party ten days later. At the second party she spills wine on the dress, staining it badly. The next day she takes it to a fuller, Fufius, for cleaning. While the dress is drying on Fufius's washing line it is stolen by Gorgias.
AND
(c) Hermogenian, a soldier, is practising his javelin-throwing on a practice ground owned and operated by Julian. He hits Irena, a slave, who walks across the ground just as he is getting ready to make his throw. If Hermogenian had been stronger and more experienced, he would have been able to abort the throw at the last moment, thus avoiding the accident. When Irena's owner threatens to sue Hermogenian, he replies that the fault really lies with Julian, who failed to erect fences or warning signs on the perimeter of the ground.

7. In Justinian's Digest we find the following text: 'If my bees fly away to yours, and you burn them, Celsus says that I have a right of action against you under the Lex Aquilia.' (D. 9.2.27.12, ULPIAN). From another source we learn that the original read: '[...] If my bees fly away to yours, and you burn them, some, Proculus for example, deny the right of action under the lex Aquilia, seeing the bees as not being mine. But this is wrong, Celsus says, because bees have the habit of reverting and their honey is mine. Proculus was moved by the argument, that they are neither tamed nor locked in. Celsus, however, said that one cannot distinguish them from pigeons, which, flying from the hand, nevertheless come home.'
Explain the difference.

9. 'Every contumely is inflicted on the person or relates to one's dignity or involves disgrace: It is to the person when someone is struck; it pertains to dignity when a lady's companion is led astray; and to disgrace when an attempt is made upon a person's chastity.' [ULPIAN]
Discuss the development of the Roman delict of iniuria in light of this statement.

[2020] **3.** The year is 535 CE. Leslie, a magistrate, seeks to increase public approval by throwing a gladiatorial contest pitting the best of Rome's fighters against captured enemies. He approaches a local gladiator school run by Ron, which has a reputation for providing world-class fighters. Ron agrees to provide his seven best fighters, a team known as the Swansons, in exchange for 100 silver coins upon the inevitable annihilation of the enemy team. Ron further agrees to provide low-quality weapons and armour for the enemy combatants for 5 brass coins per person.
The day of the fight arrives. The carriage carrying the Swansons to the arena is involved in a chariot collision with Jerry, an overworked courier rushing to his next delivery. Three of the members of the Swansons are seriously injured in the collision and are unable to take part in the fight. On Leslie's orders, the four remaining members of the Swansons are sent to fight against the enemy combatants. Three of those four are quickly killed in the arena. With the last surviving member of the Swansons badly injured, Leslie decides to end the fight prematurely rather than dishonour Rome by allowing the captured enemies to emerge victorious. The crowd are upset by his decision, and raucously boo him out of the arena.
Advise the parties of any claims that arise.

9. Is furtum best conceptualised as theft or fraud?

[2019] **4.** It is the year 230 CE. Junius and his family have bought some land and begun to operate a farm. Apart from raising sheep, Junius has built a large fish-pond to start fish-farming. All this does not please their neighbour, Lucianus, who considers the new arrivals not 'of good family'. Lucianus tells everyone in the neighbourhood that Junius's father was a freed slave. In fact, this is true. While the family is out one day Lucianus sneaks on to their farm and chalks the word 'rabble' on their front door. Junius and his family are all very upset.

One night Lucianus, supported by his brother Martialis, makes his way onto Junius' farmland to destroy the sluice so that all the pond's water floods out. The fish in the pond die. When the water reaches the area where the sheep sleep, 17 drown and 3 manage to escape.

Lucianus, who has observed the mayhem, manages to catch two of the sheep. He uses one for a feast to celebrate his 'victory' over his neighbours and sells the other to a shepherdess, Nerilla. Nerilla, who normally only buys from reputable sheep-traders, insists on being given a stipulatory promise for double the price as a guarantee against eviction. Before she can properly phrase a question, Lucianus interrupts her, saying "yes, yes, you can get all you want should this innocent creature bring you trouble."

Nerilla also happens to find the third lost sheep straying on the heath. It greatly pleases her when some weeks later this sheep gives birth to a lamb. When she next shears all her flock, as a matter of course she also takes the wool off the sheep bought from Lucianus and off the one found astray.

Nine months and a lot of detective work later, Junius has got all the information together and declares his intention to sue Lucianus, Martialis, and Nerilla. Nerilla also consults a lawyer to determine her rights regarding the two sheep, the lamb, and the wool.

Advise Junius and Nerilla.

9. 'From these provisions the essential elements of the delict emerge. The act must be a direct application of force. (This is plainly implicit in the words "burn, break, or smash" and, perhaps less obviously, in "kill".) It must be done iniuria. It must result in damnum to the plaintiff. And the thing damaged must be the property of the plaintiff. All these elements were, in varying degrees, the subject of juristic or praetorian extension in the centuries which followed the passing of the lex.' (NICHOLAS)

How did the classical delict of *damnum iniuria* evolve from the original text of the *lex Aquilia?*

[2018] **4.** The following events take place in 230 CE.

One afternoon, Marcus, a young aristocrat, throws a party. After drinking several cups of strong wine, he and his friends decide to sneak on to a nearby estate, owned by the

senator Naso, and cause some trouble.

First, Marcus and his friends decide to have a javelin-throwing competition on Naso's javelin range. Naso's slave, Stichus, walks directly across the field while the game is in progress and is pierced by a javelin thrown by Marcus.

Next, they beat up the slave who guards Naso's stables and they take Naso's prize stallion Xerxes for a gallop along a nearby farm road. Xerxes runs into a deer trap dug in the road by Otho, a poacher, thereby breaking his leg and becoming permanently lame. Xerxes is one of a team, along with his brother Darius, which Naso uses to pull his chariot. Their combined value is 300 denarii; individually, they are worth 100 denarii.

Finally, they steal up quietly behind a flock of peacocks belonging to Naso and frighten them by shouting loudly; the peacocks run in all directions; one dies of heart failure; and four jump the fence which encloses the farm.

Of the four peacocks who jump the fence, three disappear completely, but one finds its way into the garden of Porcius. When Porcius spots the peacock the next morning he catches it and takes it to the local market where it is sold to Quintus for 20 denarii.

Advise Naso.

9. 'Iniuria...protects the human personality. That is a generic and abstract way of encompassing the many different aspects of life in which people need respect and consideration from others. Their bodily integrity, their personal freedom, their sexuality, their privacy, their good name. Different cultures have different approaches and emphases. The Roman way was to bring the various interests together in a single right, to an equality of respect; one free man ought not to belittle the individuality of another.' [BIRKS]

How effectively did the Roman delict of iniuria protect human personality interests?

[2017/HT] **3.** In 230AD, Fabius hears rumours that his neighbour, the senator Gaius, is plotting to murder Fabius' entire family. These rumours are not true.

In an effort to expose the supposed assassination plan, Fabius abducts Horace, Gaius' trusted slave, from his bed at knifepoint, and takes him to the forum. There Fabius tortures Horace in front of a horrified crowd of onlookers. Before passing out, Horace reveals the truth that Gaius is planning to keep a gold plate that Fabius had lent him some time ago for a dinner party.

Horace suffers severe and irreversible brain injuries from his ordeal. Due to these injuries, he is unable to recall where he had hidden Gaius' secret money chest. The chest contains gold coins that Horace had used to buy votes at elections. Without access to this money, Gaius fears that he will lose the chance to secure from the senate a highly lucrative post in one of the provinces.

Advise Gaius.

9. 'The Roman law of theft is one of the least commendable parts of the mature Roman law, both because many archaic features were allowed to survive and because the delict was at times given so wide a scope as to defy definition' (NICHOLAS).

[2017/TT] **8.** Is the survival of the *Lex Aquilia* as an instrument of delictual liability in the classical and later Roman law to be castigated or commended?

9. 'The Praetor says: "Nothing shall be done to bring a person into hatred, ridicule or contempt [*ne quid infamandi causa fiat*], and if anyone violates this rule, I will punish him according to the facts of the case." Labeo says this Edict is mere surplusage, for we can anyway bring an action for *iniuria*' (ULPIAN, On the Edict, Book 77).
Is this passage useful in understanding the development and content of the Roman delict of *iniuria*?

[2016/HT] **7.** 'The classical conception of *furtum* was an artificial and unhappy creation of republican and classical jurisprudence, it covers cases so widely different that an accurate and intelligible definition by means of an abstract formula can hardly be given' (SCHULZ)
Is this comment justifiable?

8. 'People are more important than things, and things are more important than money' (VON BAR AND DROBNIG)
Does the Roman law of delicts conform to this ordering of interests?

[2016/TT] **7.** 'The Roman way was to bring the various interests together in a single right, to an equality of respect: one free man ought not to belittle the individuality of another' (BIRKS).
Does this accurately describe the Roman delict of *iniuria*?

8. 'Julian also puts this case: A shoemaker ... struck with a last *[a tool used in shoemaking]* at the neck of a boy (a freeborn youngster) who was learning under him, because [the boy] had done badly what [the shoemaker] had been teaching him with the result that the boy's eye was knocked out' (ULPIAN, *On the Edict*, D.9.2.5.3).
Discuss.

'1. We may suffer injury either in the body or apart from the body; in the body by blows or the infliction of sexual dishonour, apart from the body by shouted abuse or defamatory libels ". 6. The action for injuries is introduced by statute or by custom or by mixed right. By statute, the Twelve Tables, on defamatory songs, bodily members destroyed and broken bones. 7. By custom, wherever a penalty is estimated in accordance with the judge's free appreciation of the fact by its quality. 8. By mixed right, under the *Lex Cornelia* ".' (PSEUDO-PAUL, *Sentences).* Discuss.

Kandidus in 200 BC, in pursuit of a grudge, set fire to Lucius' crops just before they were due to be harvested. A strong wind which was blowing at the time caused the fire to spread to Lucius' farm. The house was burned down and Lucius' wife and daughter were killed and his teenage son Marcus was quite badly burned trying to save them. Marcus also released the field- slaves and the cows from a barn in which they were locked up and which had caught fire. The field-slaves took the opportunity

to run away, and Lucius has had to pay slave-catchers to recapture them. The cows were adversely affected by smoke inhalation, leading to a loss of milk production, but treatment by a vet enabled them to recover fully over the next month.

Advise Lucius as to his remedies in delict against Kandidus. Would it make any difference if the fire had spread unintentionally from Kandidus' land when Kandidus was burning stubble?

What difference would it make to your advice if the facts took place in 200 AD?

7. 'Once the jurists had expanded the meaning of wrongful damage to property under the third head of the lex Aquilia, there remained little need for the first head dealing with the killing of certain types of animate property. Like the second head, the first head could have been declared to be redundant.'

Discuss.

8. How is *furtum* to be distinguished from general fraud on the one hand, or interference with property rights on the other? Explain the key elements of *furtum* in your answer.

7. Explain how far *furtum* went in protecting possession or other rights associated with property from wrongful interference.

8. 'Juristic interpretation is shown at its most far reaching in the extensions of the categories of unlawful damage under chapters 1 and 3 of the *lex Aquilia.*'

Discuss

8. 'Whoever has interfered with [*adtrectavit*] another person's thing, when he ought to judge that he does so without the consent of the owner, is guilty of theft' (SABINUS).

Discuss.

8. How far did liability under the *Lex Aquilia* evolve from a narrow statute towards a simple liability to compensate the claimant for losses caused by the defendant's fault?

10. Gaius has had a very bad day. When he went to market yesterday morning, Herennius deliberately pushed him, with the intention that he should drop his money and Icarus could make off with it. In fact, Gaius managed to hold on to his money. But he mistakenly thought that Julius (a senator who was standing next to Herennius) had pushed him, and shouted abuse at Julius. A group of Julius's father's clients, who were escorting Julius, now beat Gaius up and took his money as 'compensation for the insult.' While Gaius was lying semi-conscious in the street Kandidus, a seven year old slave boy, stole his belt and empty purse. Kandidus was more or less immediately caught, but proves to have absconded from his master Lucius after being punished for an earlier theft.

When Gaius finally got home, his wife Maria treated him to a tirade about their slave maid Nerissa having stolen a vase Gaius had been given by Maria's mother. Gaius in fact thinks that the vase is hideous and has been hoping for some time that it would get lost or broken. On interrogating Nerissa, she said that Octavius, a frequent visitor to the house, had told Nerissa that Gaius had asked him to take the vase to be valued. Under pressure from Maria, Gaius assembled some friends and searched Octavius' house, and the vase was found. Octavius was infuriated at the invasion of his home. He said that he had believed on the basis of Gaius's frequent complaints about the vase that he was being invited to take it, and he is threatening to sue Gaius.

Advise Gaius as to his potential claims and liabilities.

between ownership and possession?

6. What are the basic purposes of formality requirements in contracts? How far did the Roman formal contract known as *stipulatio* illustrate these purposes at different periods of Roman legal history?

(b) Domitian has his freeman servant Plautus follow Berenice around Rome and sing rude songs in Greek and Hebrew drawing attention to her non-Roman background and her colourful personal lifestyle.

(c) Two weeks after these events, Titus in a rage throws his sandal at Domitian in the Forum. It hits a centurion's hand as he was sharpening the tip of his javelin and the javelin transfixes Aesop, a passing slave. Aesop is owned by Seneca, and was due to perform in a series of comic plays for the next two months in a company of actors. Seneca is now forced to cancel those performances, and loses 2000 denarii as a result. It is not clear if Aesop will survive, and in any case his acting days are now over.

Discuss the rights and liabilities of the parties. Would your answer be different if Domitian was still under the tutelage of his father Vespasian?

THE END

of their own day, but, since this meant in practice the conscience of the individual *iudex*, it had the disadvantage of uncertainty and possible caprice.... But in the application of such tests as those of *bona fides* and reasonableness definite rules are apt to be formed....' (ZULUETA).

Discuss with reference to the *bona fide* contracts.

the donkey manages to evade Harpax, runs off into the mountains and is never seen again.

THE END

LAST I

8. Does the Roman law of praedial and personal servitudes present a coherent picture?

9. Aulus engages in the following transactions, in 150 AD:

(a) He agrees to sell to Decius six jars of Falernian wine from his cellar, the wine to be collected in seven days time. The next day, the cellar and all its contents are destroyed.

(b) He agrees to transfer his chariot to Ennius, who agrees to transfer to him two togas and one sesterce in return.

8. Explain how the *Lex Aquilia* distinguished between total destruction (or killing) and partial destruction (or wounding).

7. 'Celsus say it matters a great deal whether one kills directly or brings about a cause of death...' (ULPIAN, 18 ON THE EDICT, D. 9.2.7.6).

Was liability under the lex Aquilia based on inflicting damage, or being responsible for damage – or is this a distinction without a difference?

8. Explain how one can steal property (i) even if the owner consented to you taking it; and (ii) even if you own that property yourself.

Combined Problems

[2024 TT] **2.** The year is 540 CE. The brothers Aemilius and Balbus have always been living together and slave Corinthus, who belongs to Aemilius, has been in their household. When Aemilius realizes that for quite a while he will need to be in Constantinople on political business, he creates a five-year usufructus in Corinthus for Balbus, observing the necessary formalities. To secure his position, Aemilius asks his brother, whether he solemnly promises to pay 5 gold coins, should Corinthus not be restored «safe and sound». Balbus mumbles «as always».
Corinthus had served the brothers mostly as a reader; he had also helped the children of the household with their Greek. Balbus now harbours other plans and has Corinthus retrained as a boxer. He sends Corinthus into fights and wins a handsome sum betting on Corinthus's success. One day, only months before Aemilius's return, Corinthus is carried back to Balbus. Another boxer, owned by Duacus, had ferociously attacked Corinthus after the fight had been declared ended by the umpire. An injury to the head has deprived Corinthus of his speech. When the fainted Corinthus was carried out from the boxing ring, a pitying lady spectator had pressed a valuable golden cross into his hands.
Aemilius returns. He is not pleased. Advise Aemilius.

3. The year is 230 CE. Eucinus has to leave his farm for business in a province and asks Fabius, who has another farm in the valley, to tend to his herd of cows for a small sum. While the herd is on Fabius's land, a cow calves. After Eucinus's return, Fabius drives the herd back to Eucinus's farm but leaves the calf behind, which happens to be fast asleep at the time. The calf at this time was worth 1,500 Sesterces.
Fabius rears the calf over the next two years when it is befallen by a serious illness. As a superstitious man, he consults astrologer Glyko over the fate of the cow. As he has no cash at hand, Fabius promises, by way of stipulatio, to pay the honorarium in three months.
The cow survives and Fabius sells it for 5,000 Sesterces to the butcher Hector, who slaughters the cow. He sells the meaty carcass to Latacus, the cook of a Roman five-star restaurant, not without cutting some beef for himself, which he consumes over the next weeks. Latacus pays 3,000 Sesterces. The cowhide Hector sells for 2,000 Sesterces to Marcellus, who produces books for students of law. With the help of Marcellus's trained slave, the cowhide is turned into parchment. It is just enough so that another of Marcellus's slaves can fill the pages with a full copy of Gaius's Institutes. This Marcellus sells to the young student Narcissus for 3,500 Sesterces. Hector has retained the horns, which during the winter evenings he artfully turns into two stylish drinking horns. These he sells for 500 Sesterces each to Otto, who visits Rome from barbaric Germania.
Three months later Glyko demands to be paid but Fabius refuses, accusing Glyko of being an impostor who does not even know the basics of astrology, as his prediction had been 'crap'.
Advise Eucinus and Glyko.

4. The year is 540 CE. Papirius is getting old and realizes he must reduce his household. He plans to let one of his slaves go, either Stichus, his gardener, or Pamphilus, his cook. While he cannot make up his mind, he finds that Quintus is willing to take either slave and having been paid 2 1⁄4 aurei (gold coins), Papirius formally promises, by way of

stipulatio, to give either Stichus or Pamphilus. Stichus is worth 2 aurei, Pamphilus 1 aureus.
Romulus has just bought a new horse and is trying to see how fast it can go. Riding at breakneck speed through the narrow streets of the city, he loses control, and the horse hits Pamphilus who is deadly wounded and dies shortly afterwards.
Papirius realizes he may need another slave and buys Felix from the slave trader Scodopordunicus. Scodopordunicus had declared that according to an absolutely reliable source, Felix is the best cook in the whole Mediterranean. Apart from this, he cannot give any information, as he got Felix just 'fresh from the boat'.
It turns out that as a result of several back injuries in Felix's childhood, he cannot bend down. Papirius wants to return Felix who he thinks is useless. While Papirius and Scodopordunicus are still negotiating, Felix flees from Papirius's house, taking a valuable silver tablet with him. Papirius wants Scodopordunicus to compensate him for the tablet as well since this would not have been stolen had he not acquired Felix.
As Papirius no longer expects Felix's services, he decides he desperately needs to retain Stichus and informs Quintus that as he chooses to part with Pamphilus who is no more, he will pay Quintus one aureus. Quintus insists on getting Stichus.
Advise Papirius.

[2024 HT] **2.** The year is 230 CE. Alma has offered to sell her cow Luna to Brutus, for a sum of 1,000 Denarii. Brutus agrees and promises, by way of stipulatio, to pay 1,000 Denarii. They perform a mancipatio to make Brutus the new owner. While they comply with all the formal requirements, they do not realize that one of the witnesses, who wears the Roman Toga and is mistakenly assumed to be past puberty, is only 11 years old.

Luna has been on Brutus' pastures for a couple of weeks when at dawn she is stolen by Spurius who takes her straight to the next butcher, Vurstus. Vurstus is happy to buy the cow offered to him for an attractive price. He pays cash and takes the cow in, planning to slaughter her the week after.

Alarmed by the missing cow, Brutus has the good idea to visit all the butchers in the neighbourhood. He meets Vurstus and manages to identify and get hold of Spurius.

As Brutus has not yet paid the amount he has solemnly promised, Alma thinks that it is for her to sue Spurius. Vurstus accepts that he may have to part with Luna, but is unsure whether he has to give her to Alma or Brutus.

Advise Alma, Brutus, and Vurstus.

[2019] **2.** It is the year 230 CE. Aemilius, a horse-breeder on the road to Puteoli, meets a rider on a mare, which Aemilius immediately recognizes as a thoroughbred with considerable potential for breeding. Spontaneously he offers the rider, a man named Bassus, to swap their horses for good. The offer being accepted and the horses quickly exchanged, they part ways without further ado.

Unbeknown to Aemilius, Bassus had caught the free-ranging mare only earlier that day; it had bucked off the owner, Caecilia, during a morning outing.

To raise money, Aemilius goes about trying to sell the mare as soon as possible, without forsaking the chance of using her for breeding business. He finds a willing buyer in Drusus, a wealthy collector of racing horses. Drusus insists on the proper formalities, and soon after a mancipatio takes place, the full procedure being perfectly observed. As both parties had agreed, Drusus hereby declares himself to be owner, while Aemilius declares that he will reserve a usufruct in his own favour for a year. Aemilius receives the agreed price of 4 Aurei.

Aemilius arranges for the mare to mate with one of his stallions, and 11 months later it foals as planned. After four more weeks, a year is over and Aemilius delivers the mare to Drusus. Next, Aemilius employs a top jockey to break in the foal. This sets him back 100 Sesterces.

Caecilia, after a lengthy recovery from the injuries she had suffered when unhorsed 13 months ago, tracks down everyone and now asks her lawyers about her chances of suing Aemilius for the foal and Drusus for the mare.

In turn, Aemilius and Drusus consult their lawyers to learn whether, if they lose in a claim brought by Caecilia, they could claim against anyone. Aemilius is also concerned about the costs for breaking in the foal.

Advise Aemilius, Caecilia, and Drusus.

[2017/HT] **#2.** In 535AD, Atticus agrees to buy from Balbus, a poultry farmer, the first thousand eggs laid by the chickens in Balbus' main barn during the following three months. Balbus, who has assured Atticus that his chickens 'lay the finest eggs in all of Italy', promises that he will gather the eggs each morning and will leave them in his shed in a basket with Atticus' name on it for Atticus to collect whenever he wishes.
The eggs in the first batch are much smaller than Atticus had expected. Balbus offers the excuse that his chickens had not been themselves recently.
After Atticus has collected about half the eggs, Balbus' ten-year-old slave, Cassius, drops a candle in a pile of hay while playing unsupervised in the barn. A fire ignites and spreads, badly damaging the barn and surrounding buildings. Balbus' chickens are all killed, and one hundred eggs awaiting collection by Atticus are spoiled by the heat.
Advise Balbus.

[2017/TT] **#2.** The following events take place in 230AD.
Aulus, who lives in a villa in the countryside near Rome, is very proud of his exotic flower garden, and the birds, bees and butterflies that it attracts. For one week each year, Aulus hosts a flower festival, opening his garden to paying visitors. The proceeds of the festival more than pay for the upkeep of the garden.
The anti-social behaviour of some of the festival goers is a longstanding cause of dissatisfaction to Aulus' neighbour, Balbus. On the first day of the festival, Balbus lights a bonfire on his own land, hoping that the smoke will deter a significant number of them from paying the entrance fee. The fire runs out of control and spreads to Aulus' garden, destroying his prize-winning orchids. Aulus tries in vain to put the fire out, and suffers severe burns in the process.
Taking advantage of the confusion caused by the fire, Cassius (one of the very few visitors to Aulus' garden that day) takes some honey from Aulus' bee hives and eggs

from birds' nests located in his cherry trees. Aulus sees this, but his injuries prevent him from giving chase. Cassius uses some of the honey and eggs to make cakes, which he plans to sell at the local market.
Advise Aulus.

#3. The following events take place in 535AD.
Felix agrees to transfer the slave, Servilius, to Gellius in return for a payment of 100 Nummi (bronze coins) and the continuing occasional services of Servilius as a gardener.
Unbeknown to Felix, Servilius had just been named as the heir to his former master, Hadrian, a wealthy banker. Gellius knows this fact only because he had bribed Hadrian's slave, Tiro. He also learns from Tiro that Hadrian is now gravely ill.
Fearing that Tiro will confess all on his master's deathbed, Gellius arranges for Tiro to be abducted. Gellius plans to release Tiro unharmed after the deal has been completed, but in the process of seizing him, Gellius' hired thugs break Tiro's arm.
After Gellius has made payment to Felix but before the agreed date for delivery of Servilius, Felix overhears Gellius boasting about his behaviour, and confronts him.
Advise Gellius.

#4. The following events take place in 230AD.
Maevius, a Roman politician, decides to boost his popularity by throwing valuable objects into the crowd at one of his political rallies.
First, Maevius throws a small gold statue into the crowd. One of Maevius' supporters, Nonus, is about to catch it, when Otho (who detests Maevius and has been shouting abuse at him) pushes Nonus out of the way. Otho catches the statue himself. His friend Porcius, who has seen everything, offers to give Otho 1 Aureus (gold coin) for the statue. Otho accepts the offer and (after receiving payment) gives Porcius the statue.
Maevius, whom Nonus has asked to intervene, writes immediately to Porcius threatening legal action if Porcius does not hand the statue to Nonus.
Secondly, Maevius throws to the crowd a jewelled brooch, lent to him by his uncle, Quintus. Rufus catches the brooch and pins it to his toga.
The following year, Quintus notices Rufus wearing the brooch and demands its return, angrily accusing Rufus of theft.
Advise Porcius and Quintus.

[2016/HT] **10.** In 200AD, Gaius, a farmer, meets Hortensius in a tavern in central Rome. Hortensius is a market trader, dealing in animals. While they share a flask of wine, Gaius enquires about a donkey that he had seen on Hortensius' stall the previous day. Hortensius indicates that he would be willing to sell the donkey to Gaius for 100 bronze coins.
Believing the price to be a very favourable one, Gaius would like to proceed with the transaction quickly, but he wishes to ensure that he protects his interests in the best way possible. He is particularly concerned to ensure that he has legal protection against Hortensius in the event that the donkey is claimed by someone else, or if it turns out that the donkey has the habit of biting or has bitten someone in the past.
Answer **ALL PARTS** (a), (b) **AND** (c):
(a) Advise Gaius in relation to all aspects of this transaction.
(b) Would your answer differ in the following **TWO** alternative scenarios:
(i) Hortensius wishes to fix the price by reference to the average sale value of Mesopotamian donkeys on the next two market days.

(ii) Hortensius says that he would be willing to accept, in exchange for the donkey, a gold necklace which Gaius has in his possession. Gaius had dug this up while ploughing his neighbour's land the preceding month.
(c) Gaius and Hortensius reach an agreement in the tavern to sell the donkey for a fixed price. On arriving at his stables late the next morning, Hortensius finds the stable door removed from its hinges and the donkey gone. Advise Gaius again.

[2016/TT] **9.** In the year 200AD, Atticus buys twelve bottles of mead from the shopkeeper, Brutus.
Brutus had made the mead himself, combining his own honey with Gallic wine that he had removed from a cart owned by the merchant, Ennius. Unbeknown to Brutus, Ennius had intended to pour this wine away, as he suspected it to be contaminated with the decomposing remains of a large snail. Ennius decided not to investigate the disappearance of the wine, reasoning that it would serve the thief right if he drank the wine and became ill.
Atticus serves one bottle of mead to Camilla, a slave girl belonging to the senator, Decimus. Atticus then persuades her to run away to become his mistress. The previously loyal Camilla soon agrees and resolves not to return to Decimus' household. Camilla is poisoned by the mead, and dies later that night in Atticus' bedroom. Advise Atticus.

10. In the year 535AD, Lucius lends his racing chariot to Metellus to use in the circus games. Unbeknown to Lucius, Metellus is heavily in debt and pledges the chariot to the moneylender, Nerva. Metellus executes a document by which he acknowledges a much larger sum as being due from him than Nerva had originally lent, and agrees that Nerva may sell the chariot if he defaults. In return, Nerva agrees that Metellus may retain the use of the chariot for the duration of the games.
Soon after, when Metellus defaults on his debts, Nerva seizes the chariot (giving Metellus a good beating into the bargain) and sells it to Otho for 5,000 sesterces. This is much less than Lucius had paid for it and not nearly enough to pay off Metellus' debts.
Metellus goes into hiding, and Lucius searches for his chariot fruitlessly. Some time later, however, he spots Otho driving the chariot in the street, and demands its return. Otho refuses, and tells Lucius to take up his gripe with Nerva. Angered, Lucius gathers a crowd of his clients and they set off for Nerva's house where they spend the night shouting threats and insults at members of Nerva's family. Nerva, who is out of town that night, hears of the trouble on his return. He also receives a visit from Otho, who has been threatened with legal action by Lucius. Finally, he hears a rumour that Metellus has come into a large inheritance.
Advise Nerva.

9. Agrippa, a well-educated and responsible slave, suggests to his master Herodias that he is looking a little shaggy and should have a shave and a haircut before Herodias appears next in the Senate house. Herodias goes along with his slave's suggestion, and asks him to book him in for grooming by a skilled barber. Agrippa asks his friend Ioannes, who runs a large downtown barbershop, 'Herodias needs a clean shave. Will you do this for him?', to which Ioannes replies: 'Fine'. Ioannes asks his new apprentice Salome to provide the service at noon the next day. Agrippa brings his master Herodias to the barbershop and, since it is a pleasant day, Agrippa suggests that Salome seat Herodias outside the shop premises in order to enjoy the good

weather and watch a ball game being played on the street. Herodias gladly agrees and takes a seat on the edge of the street facing the game.

Salome is not very proficient with her razor and inflicts a series of small cuts on Herodias that render his face a bloodied mess. Twenty minutes later, Herodias is certainly not presentable in the Senate or indeed anywhere in public. The cuts cause some superficial pain, but Herodias smiles and allows Salome to continue, as he is enjoying the relaxation of being shaved in a comfortable chair in the sun, and is unaware of how he looks after Salome's ministrations. Disaster then strikes when Matthias, a champion player, kicks a ball very hard at the goalkeeper Marcus, who punches the ball away towards Herodias and Salome; the ball rockets into Salome's hand and her razor inflicts a deep wound in Herodias' neck.

Fearing retribution, Agrippa and Salome each flee the city. Herodias recovers after vast expenditure on the best surgeons, and he has to hire four slaves to do the administrative and domestic work that Agrippa did so efficiently. Herodias is left distraught by his disfiguring wounds and disruption to his career and household by these unfortunate events.

Advise Herodias.

9. Consider and analyse the legal implications arising from the following case:

Antoninus, the son of a senator and of ancient patrician stock, makes a living as an advocate in the courts of Rome. He lives in his father Hadrian's villa in Rome, which neighbours the grand house and gardens of Tiberius on the same street. Antoninus is very pious, and hears that in Tiberius' gardens there is an ancient shrine with a small golden statue of the Great Goddess Gaia who will bring blessings to supplicants. Obsessed with this information, he sends a message to Tiberius asking for permission to sacrifice at the shrine. Tiberius lets no-one into his grounds and jealously guards access to the shrine, and sends an abrupt message refusing access. However, Tiberius wishes to go further than offering this blank refusal, since he bears a grudge against Hadrian over some quarrel in the Senate from years past. Tiberius therefore mischievously sends his slave Drusilla on a mission, instructing her to tell Antoninus that she is prepared to help him get what he wants despite her master's refusal. She suggests to Antoninus that if he comes to the garden late that night he will be admitted for a secret visit, and she will be pleased to arrange this without payment.

Antoninus rashly agrees to Drusilla's plan, and that night he is duly admitted to the garden to visit the shrine. On the way through the garden he trips over something which turns out to be a half-buried leather bag full of coins; without considering what he is doing Antoninus takes the bag and places it inside his toga, and then hurries on to find the shrine. On arrival, he takes the statue of Gaia reverently in his hands to marvel at its sanctity and craftsmanship. At that very moment Tiberius leaps forward, tears the statue from Antoninus' hands with some violence, and warns him that he will prosecute Antoninus for what he has done. Antoninus is distressed and worried by the turn of events, and he has also suffered bruises to his face in the scuffle with Tiberius. Ashamed at his marred appearance, and worried about the litigation he now faces, Antoninus cancels all his court appearances for the next month, and his career as an advocate and rising political star in Rome is now at risk.

10. Otho is a fisherman. He has often dealt with Balbus, a merchant who procures fish and other provisions for the best restaurants and caterers in Rome. Balbus sends Otho a message stating that he would like to buy all of next week's catch of fish. Otho sends back a parchment on which he scrawls: 'Thank you for so asking me to deliver next week's catch; I will so deliver'. By the next week Balbus has found a plentiful supply of fish elsewhere, and he sends a new message telling Otho that the deal is off and he should sell his catch at the marketplace in the normal way. Otho intends to hold Balbus to the agreement.

Meanwhile Balbus is hunting down supplies of wholesale wine. He negotiates with Galba, a wholesaler and caterer, for Balbus to purchase five dozen urns of the best Thessalonikan wine to be delivered from Galba's warehouse in the port of Ostia, in return for letting Galba have the shared use of Balbus' expert team of cooks and entertainers for the busy season of parties and festivals over the next eight weeks.

Galba bought his supply of vintage Thessalonikan wine some years ago from a merchant named Lucius. The price for such fine wine was very low and at the time of sale Galba did not ask too many questions about where the wine came from. It turns out that the wine was supplied to Lucius by pirates who had taken the wine forcibly from a ship belonging to a merchant named Marcus. Marcus attends a party organized by Balbus that season and recognizes the wine being served, and he demands to know how the wine came to Balbus and how much of it is left. He then gets into a noisy quarrel with Cato, the head of Balbus' catering team, a talented and renowned cook and Balbus' most prized slave, and as Cato attempts to escape the scene he trips and badly sprains his ankle. Cato is unable to work for the rest of the season, leaving Balbus' catering team leaderless.

What is the legal position of the parties?

9. Under the will of her husband Aemilia was given a usufruct for life over a house. The owner under the same will was her twelve-year old son Brutus. The house had a right of way over a path leading to the main road to the town centre through land belonging to their neighbour Caecus, as well as a less convenient access route. Brutus was in the habit of using the path as a short-cut to take his (very valuable) riding-horse Ferox to exercise him; though Caecus had repeatedly complained to Aemilia that the path was unsuitable for riding, and Aemilia had told Brutus off, he did not stop. Exasperated, Caecus did not bother to tell Aemilia or Brutus about building work he was planning which involved a deep excavation next to the path.

The house was affected by an infestation of cockroaches, and Aemilia hired Eudoxus to deal with the problem. Eudoxus decided to fumigate the house, a procedure advised by a Babylonian text he had recently read. This involved burning on braziers leaves which give off highly toxic smoke. He asked Aemilia to evacuate the household for the day, and while they were gone carried out the procedure. Unfortunately, after the braziers burned out, Eudoxus dumped the remains in the kitchen fireplace, not realising that the leaves were not completely burned. When Aemilia's slave cook re-lit the fire in the evening, he was overcome by fumes, and the fire got out of control and spread to the rest of the house. Brutus took Ferox out of the stable and rode him down the path to fetch help. In the darkness, Brutus and the horse fell into Caecus' excavation. Both suffered broken limbs; Brutus required expensive medical treatment, paid for by Aemilia, and will be lame and no longer be able to pursue his intended military career; Ferox has had to be put down, and Brutus is very distressed by this. The house was burned to the ground; the cook is dead, and several other slaves suffered burns trying to fight the fire.

Advise Aemilia and Brutus on their legal rights and remedies.

9. Alexius hired the ship Maria Caelestis and its slave crew to Basil for a voyage Constantinople - Plymouth - Constantinople. Basil freighted the ship with wine supplied by Cosmas and pottery supplied by Damian, which he bought on credit on a sale or return basis. On arrival at Plymouth Basil was able to barter three quarters of the wine, but only half of the consignment of pottery, for a substantial cargo of tin. On the return voyage the ship ran into a severe storm in the western Mediterranean; thinking it was about to founder, Basil and the crew abandoned it in a small boat, and managed to reach port in Carthage, where the King of the Vandals conscripted them to work on the city's defences. When Carthage fell to the Romans, Basil was freed by the intervention of a Roman officer who knew him, but the crew were sold by the Roman army to Eustace, a slave dealer, who shipped them to Constantinople for sale. The ship in fact survived the storm and was found drifting by Festus. Festus put a crew on board, who sailed the ship to Gortyn in Crete, where Festus sold the ship and cargo to Gregory. Gregory sold the wine to Hypatius, a wine merchant who added it to his stock, the pottery to Isidore, a pottery dealer who had it repainted with scenes more attractive to the Cretan market, and the tin to Justin, a bronzesmith. On his return home 30 months after his original departure, Basil found that he had been reported dead and that his estranged brother had taken possession of his house as heir and sold it to Libanius. At around the same time, Gregory sailed the Maria Caelestis to Constantinople, Alexius claimed the ship, and Festus' and Gregory's dealings were uncovered.

6. 'The emperor used the forms of republican law-making as a cloak for imperial power'.

Discuss this claim.

7. Was the Roman law of theft founded on fraud rather than taking of property?

8. Explain what is meant when praedial and personal servitudes are described as incorporeal things. Were they always so?

9. Strabo, a land owner with a large set of estates, discusses the sale of some sheep to Gellius. The following events occur:

(a) To show he is serious, Gellius pays over a gold coin to Strabo.

(b) Gellius then offers his next harvest of wheat and two further gold coins to Strabo as

9. Julian is *dominus* of a land-locked farm that has no natural water supply, situated on the outskirts of Rome. Julian enjoys a right to drive cattle over the land of his neighbour Scaevola's adjoining land, and to water his cattle from a pond on that land. The right to water cattle on the adjoining land in this fashion has long been enjoyed by Julian and before him by past owners of the farm for many generations.

One hot summer's day Labeo, Scaevola's slave, enters Scaevola's land in order to collect firewood and to mow the grass. Labeo shuts the gate by which Julian has access to Scaevola's land, as he does not want cattle wandering over the land whilst he is busy with his sharp tools cutting the grass. By afternoon Julian is most anxious to get his cattle to water, and readies his cattle to be driven to the water. Labeo wishes to complete his day's work undisturbed, however, and locks the gate securely even though Julian shouts at him that his cattle will die if they do not get water. By late afternoon three prize bulls have fainted. They will be of no value at the monthly cattle market the next day, where one was to be sold for ten gold pieces, and two, which had already been sold for ten gold pieces each, were to be delivered to the purchaser. Four calves worth five gold pieces each have died and more are sickening. The herd of cows have stopped giving milk worth twenty gold pieces per day. Labeo refuses to respond to Julian's urgent pleas for the gate to be unlocked.

Advise Julian as to what he might legally do in these circumstances.

10. Ulysses leaves his wife Penelope and all his property behind in his island kingdom of Ithaca, joining a fleet of warriors who set sail to conquer a far-away city. Penelope is given the custody and care of all of Ulysses' property and household. Nothing is heard of him for nearly twenty years, save many unconfirmed rumours of his death.

Ten years after Ulysses' departure, a swarm of men who surmise that Ulysses is dead descend on Penelope, living unbidden in her palace and seeking her hand in marriage. She neither refuses nor accepts any of the offers of marriage, raising a series of increasingly feeble excuses whilst she plays for time.

One of the suitors, Eurymachus, believes that after ten years' absence Ulysses will never return and that his patrimony is up for grabs. Without permission Eurymachus puts a lock on the doors to an apartment within Penelope's palace and moves in permanently. He tempts two of the household slave women to enter into concubinage with him over the next ten-year period, fathering a child with each.

Another suitor, Antinous, grows tired of waiting and over a three-year period loudly sings songs suggesting that Penelope is only shamming virtue and is really unable to make up her mind which of the suitors she desires most.

Ulysses has now returned in disguise and in his first week back in Ithaca he hears of and sees for himself the suitors' misdeeds.

Describe any civil remedies Ulysses might have in Roman law against Antinous and Eurymachus. Assume that everyone involved is subject to Roman law.

How would it vary your answer if it emerged that Ulysses had made Penelope usufructuary of all his estate at the time when he departed? In this case there is no doubt that Penelope has independent legal status.

It is not necessary to consider whether Ulysses may employ the self-help remedies of forcibly evicting or killing the suitors.

10. Odysseus, a politician of great ambition but questionable principles, offers to commission and erect a magnificent public statue of whichever leading politician attains the consulship of Rome and then grants him high office. In the ensuing

elections there is a dead tie between Agamemnon and Menelaus. Odysseus decides to hedge his bets and makes an elaborate double-headed statue of marble, gold and silver, with Agamemnon's head in gold and Menelaus' head in silver. Odysseus commissions his skilled Assyrian freedman, Telemachus, to fashion the sculpture using materials taken from a warehouse delivered to him by one of his clients as an honorarium, and to erect it on temple land in the Forum near the Tarpeian Rock. Odysseus then suggests that the three politicians form a triumvirate, or three-way coalition to govern the country. Negotiations over power sharing continue for the next year or so, and finally a deal is struck.

Diomedes, a demagogic tribune of the people, resents the new triumvirate and looks for openings to criticize the regime. Searching through city records, he forms the view that he owns the warehouse and its contents as used to make the statue, and that Odysseus should have known of this. He incites the Roman crowd against the triumvirate, arguing that they take from the people and give work and welfare to foreign workers; the inflamed crowd pull the statue down and smash it. Diomedes has the marble materials of the broken statue moved to his villa on the edge of town to adorn his garden as a rockery. However he demonstratively takes the metal heads from the statue and throws them from the Tarpeian Rock to show his contempt for his rival politicians, telling the Roman crowd that they deserve the use of the gold and silver to buy bread.

Odysseus has heard what Diomedes is up to and is secretly present at the Forum; he is quick to recover the statue heads in the confusion of the moment, and entrusts them to Patroclus his deputy. Patroclus, another ambitious man, refuses to surrender the heads when asked; instead he melts down the metal, mingling the gold and silver to mint his own coinage, with which he hopes to launch his own political career through a campaign of generosity to the public.

Advise Odysseus.

Gobbets

[2024 TT] **1.** Comment on **TWO** of the following:
(a) 'And it is through this law of nations that almost all our contracts have been introduced, as purchase and sale, letting and hiring, partnership, deposit, loan in kind [mutuum], and innumerable others.' (J.1.2.2)
(b) 'Commonly, however, indeed almost always, we proceed to effect the transfer by formal conveyance, because we can do this ourselves in the presence of friends, as it is not proper or necessary to make any application (involving considerable difficulty) to perform it in the presence of a praetor or a governor of a province.' (G.2.25)
(c) 'And he who receives a loan in kind, if by any mischance, as, for example, by fire, by the fall of a building, by shipwreck, by the attack of robbers [latrones] or enemies, he should lose what he receives, nevertheless remains bound. (J.3.14.2)
(d) 'If a person has promised that another shall give or do something, he is not bound, as, for example, if he promise that Titius shall give five gold pieces. But if he has promised that he will bring it about that Titius shall give five gold pieces, he is bound.' (J.3.19.3)

(e) ‘But, if the outrage has been done to a free man who is bona fide serving you, no action is given to you, but he can sue in his own name, unless he has been beaten in order to insult you; for, then, an action, based on the outrage [actio iniuriarum], is available to you.’ (J.4.4.6)
(f) ‘Nearly all incorporeal things are things not requiring transfer by a formal conveyance, with the exception of servitudes of rural estates, for it is held that these are things requiring transfer by a formal conveyance, although they are amongst the number of incorporeal things.’ (G 2.17)

[2024 HT] **1.** Comment on **TWO** of the following:
(a) ‘Law consists of two parts: public and private. Public law relates to the constitution of the state; private law is concerned with individual interests.’ (J.1.1.4)
(b) ‘Written characters, although of gold, are an accessory to the papyrus or parchment, just as whatever is built on, or sown in, the ground, is an accessory to the ground. Hence, if Titius has written a poem, a history, or an oration on your papyrus or parchment, you, and not Titius, are to be held the owner of the substance.’ (J.2.1.33)
(c) ‘Amongst things incorporeal are to be included the rights over urban and rural estates, which are also called servitudes. The rights appertaining to urban estates are, the right of raising buildings so as to obstruct the lights of the neighbouring building, or of preventing the raising of buildings that would obstruct the access of light; likewise the rights of receiving rain water in drops, or flowing in the gutter.’ (G.2.14)
(d) ‘It is evident that the dumb can neither stipulate nor promise, and the same restriction applies to the deaf; because he who stipulates ought to be able to hear the words of the promisor, and he who promises, the words of the stipulator.’ (G.3.105)
(e) ‘The purchase, with knowledge of the fact, of a sacred or religious place, or a public place (as, for example, a forum or basilica), is void; but if, deceived by the vendor, he has bought it supposing it to be private property or unconsecrated, he will have an action on the purchase, not for the purpose of getting the property, but for damages for the loss he has sustained by being deceived.’ (J.3.32.5)
(f) ‘But a person who does not assist in the commission of a theft, but only advises and urges its commission, is not liable in an action for theft.’ (J.4.1.12)
[2023] **1.** Comment on **TWO** of the following:

(a) ‘But regarding those quadrupeds which have been habituated to the saddle and the collar, as oxen, mules, horses and asses (the leaders of our school consider that these animals) are things requiring transfer by formal conveyance immediately they are born, whilst Nerva, Proculus, and other leaders of the opposite school, do not hold them to be so until they are broken in.’ (G.2.15)
(b) ‘Things become the property of individuals in many ways; of some we acquire the ownership by natural law, which, as we have said, is called the law of nations; of other things we acquire the ownership by the civil law. It will be more convenient to begin with the more ancient law, and it is manifest that the law of nature is the more ancient, because it arose in the nature of things with mankind themselves.’ (J.2.1.11)

(c) 'Purchase and sale is contracted when the price is agreed upon, although the money may not yet have been paid, nor even any earnest *[arrha]* given, for what is given by way of earnest, is evidence that purchase and sale has been contracted.' (G.3.139)
(d) 'So a mandate is not obligatory which is contrary to good morals; as, for example, if Titius commission you to steal, or do damage, or do him an injury; for although you incurred the penalty arising from the act you have no action against Titius.' (J.3.26.7)
(e) 'Nor is it the mere value of the deceased slave that is estimated in this action, for if the owner of the deceased slave sustains greater damage than the value of the slave, this also is estimated.' (G.3.212)
(f) 'The principal division *[summa divisio]* of all obligations is into two kinds, for they are either civil or praetorian. Civil obligations are those directly established by statute, or at least approved by the civil law. Praetorian obligations are those which the praetor has created by his own authority; they are also called honorary.' (J.3.13.pr)

[2022] **1.** Comment on TWO of the following:
(a) 'A decree of the senate is that which the senate orders and establishes, and it has the force of a statute [lex], although this has been doubted.' (G.1.4)
(b) 'But if a person has the use and enjoyment of a flock, he is bound to replace, by young ones, any of the flock that die; and Julian was of this opinion. So, too, the usufructuary ought to replace dead vines or trees, for he ought to cultivate with fairness and like a good head of a family.' (J.2.1.38)
(c) 'But sometimes, although a person possesses the property of another in perfect good faith, yet no acquisition by use flows from that possession: as, for example [velut], if a person possesses a thing stolen [...]; for the Twelve Tables forbids the acquisition by use of a thing stolen [...].' (G.2.45)
(d) 'As soon, then, when purchase and sale has been contracted (which will be, as we have said, when the parties are agreed about the price, assuming the transaction is carried out without writing), the risk as to the thing sold immediately falls upon the purchaser, although the thing has not yet been delivered to him.' (J.3.23.3)
(e) 'Manifest theft must be further extended to include the case of the thief having been seen or caught, in a public or private place, by the owner or anyone else, whilst still holding the thing, and before he has reached the place to which he intended to carry it.' (J.4.1.3)
(f) 'Therefore, if a person has wounded a slave or a quadruped, included under the class of cattle, or has wounded or killed a quadruped, not included under that class, as a dog, or a wild beast, as a bear, or a lion, an action lies under this head.' (G.3.216)

[2021/3] **1.** Comment on TWO of the following:
a. 'The curile aediles also used to publish an edict relative to certain matters, and this edict forms a portion of the honorary law.' (J.1.2.7)
b. 'Let us now pass to obligations. An obligation is a tie of law binding us to the fulfilment of something in accordance with the laws of this empire.' (J.3.13.pr)
c. 'But not only are those things which becomes ours by delivery, acquired by natural reason [ratio], but also those which we have acquired by occupation,

because previously they were the property of no one.' (G.2.66)
d. 'Again, the price should consist of a sum of money, for it is a point rightly open to question, whether the price can consist of anything else, as, for example, whether a slave, a garment, or a piece of land can be the price of another thing.' (G.3.141)
e. 'The action for theft, whether for double or quadruple the value, is only for the purpose of recovering the penalty.' (J.4.1.19)
f. 'The word "iniuria", in its general acceptation, means anything done contrary to law; in a special sense it means sometimes outrage ("contumelia"), which comes from "to jeer at" ["contemnere"], the Greek '["hubris"]...' (J.4.4.pr)

[2021/2] **1.** Comment on TWO of the following:
(a) 'A decree of the senate is that which the senate orders and establishes, for when the Roman people had increased to such an extent that it was a matter of difficulty to convoke them all for the purpose of sanctioning statutes, it seemed expedient that the senate should be consulted instead of the people.' (J.1.1.5)
(b) 'Commonly, however, indeed almost always, we proceed to effect the transfer by formal conveyance, because we can do this ourselves in the presence of friends, as it is not proper or necessary to make any application (involving considerable difficulty) to perform it in the presence of a praetor or a governor of a province.' (G.2.25)
(c) 'When the usufructuary himself surrenders in court the usufruct to the owner of the property, the effect is that the usufruct departs from him and merges in the ownership; but if he surrenders it in court [in iure cessio] to another person than the owner, he retains his rights, for it is held that such a surrender in court effects nothing.' (G.2.30)
(d) 'Again, if a person stipulate subject to a condition which cannot be fulfilled, as, for example, if he shall touch the sky with his finger, the stipulation is ineffective.' (G.3.98)
(e) 'But these actions, based on the discovery of the stolen thing after search, on the deposit of the stolen thing elsewhere, on the opposition offered to a search, and on the non-production of stolen goods, have fallen into disuse; for, as searching for stolen property is not now conducted according to the ancient practice, therefore these actions have very properly ceased to be in common use, and it is abundantly clear that all who have knowingly received and concealed stolen property are liable to the action for non-manifest theft.' (J.4.1.4)
(f) ''Now, an outrage [iniuria] is not only committed when a person is struck with the fist, or a stick, or even scourged; but, also, if a crowd has been caused to assemble round him, or if a person has advertised for sale, by auction, the property of another, as if he were his debtor, when he knows that the latter does not owe him anything; or if a person has written a libel or verses in defamation of another's character; or if a person has persistently followed a respectable woman or a boy, and, in short, in many other ways.' (G.3.220)

[2021/1] **1.** Comment on TWO of the following:
(a) 'The unanimous decisions and opinions of these persons [to whom the power of expounding the law - ius respondendi - was given by the emperor], had such weight that it was settled by a constitution that the judge should not be at liberty to decide otherwise.' (J 1.1.8)

(b) 'This rule appears to have been adopted to prevent the ownership of things remaining for a longer time in uncertainty than the period of one or two years, which is required to entitle a possessor to acquire by use, this period affording a sufficient interval within which an owner can make inquiries after his property.' (G 2.44)
(c) 'The produce of animals includes their young as well as their milk, hair, and wool; and therefore lambs, kids, calves, colts, and sucking pigs, are immediately, by the law of nature, the property of him who has a right to the produce [...]' (J 2.1.37)
(d) 'Finally, it must be noted that the question has been raised whether a person under the age of puberty, by carrying off another person's property, commits theft. And it is settled that, since theft turns on the intention, a person under the age of puberty can only be liable if he is approaching the age of puberty, and, consequently, understands that he is doing wrong.' (J 4.1.18)
(e) 'So, a stipulation is ineffective if a person's answer is not in accord with the question; as, for example, if I stipulate for ten thousand sesterces to be given by you, and you promise five thousand sesterces; or if I stipulate absolutely, and you promise subject to a condition.' (G 3.102)
(f) 'The effect of the words which are added to this statute, viz., "the highest market value of the thing during the previous year", is, that if the slave, when killed, was, say, lame, or had lost an eye, but had been sound at some time during the year, the value would be so estimated; and thus a person may sometimes obtain compensation beyond the damage he has sustained.'
(G 3.214)

[2020] 1. Comment on TWO of the following:
a. 'Now all our law relates either to persons, things, or actions, and first let us treat of persons.' (G.1.8)
b. 'Nay, more, sometimes the intention of the owner, although directed towards an uncertain person, transfers the ownership of a thing, as, for example, the praetors or consuls throwing largess to the crowd, cannot tell what part of it anyone in the crowd may succeed in getting; yet, as it is their intention that each should have what he gets, they make what each gets to immediately belong to him.' (J.2.1.46)
c. 'When the usufruct is entirely extinguished, it reverts to the ownership; and, the person who had the bare ownership, begins from that moment to have complete power over the thing.' (J.2.4.4)
d. 'If a person has promised that another shall give or do something, he is not bound, as, for example, if he promise that Titius shall give five gold pieces. But if he has promised that he will bring it about that Titius shall give five gold pieces, he is bound.' (J.3.19.3)
e. 'No outrage can be deemed to be committed on a slave himself, as it is held to be done to the master through him; but we are not held to suffer an outrage through them, by the same means as would amount to such in the persons of our children or our wives, but only when such a gross outrage has been committed as makes it a manifest insult to the master, and in which case the formula would run, as, for example, "if a person has scourged another's slave". But, if a person has caused a crowd to assemble round a slave, or struck him with the fist, no formula is provided, and one would not easily be obtained by a claimant.'

(G.3.222)
f. 'The effect of the words which are added to this statute, viz., "the highest market value of the thing during the previous year", is, that if the slave, when killed, was, say, lame, or had lost an eye, but had been sound at some time during the year, the value would be so estimated; and thus a person may sometimes obtain compensation beyond the damage he has sustained.' (G.3.214)

[2019] 1. Comment on **TWO** of the following:
(a) 'A decree of the senate is that which the senate orders and establishes, for when the Roman people had increased to such an extent that it was a matter of difficulty to convoke them all for the purpose of sanctioning statutes, it seemed expedient that the senate should be consulted instead of the people.' (J 1.1.5)

(b) 'Amongst things incorporeal are to be included the rights over urban and rural estates, which are also called servitudes.' (G 2.14)

(c) 'The question has arisen whether, if a wild beast has been so wounded that it could be caught, it is to be deemed to be immediately your property. Some have held that it does so become yours, and that it continues to be yours so long as you continue to pursue it, but that if you cease to pursue it, it then ceases to be yours, and again can become the property of the first occupant.' (J 2.1.13)

(d) 'A verbal obligation results from a question and answer, thus, for example [veluti], Do you bind yourself to give? [dari spondes?] I do bind myself. [spondeo] Will you give? I will give. Do you promise? I promise. Do you become an additional debtor? I do so become. Do you become a surety? I do so become. Will you do? I will do.' (G 3.92)

(e) 'The penalty for manifest theft is quadruple the value, whether the thief be a slave or a free man; that for non-manifest theft is double the value.' (J 4.1.5)

(f) 'An outrage is deemed grave, either from the nature of the act; as, for example, if a person has been wounded, or scourged, or beaten with rods by another; or from the place, as, for example, if the outrage has been committed in the theatre or in the forum; or from the rank of the person, as, if it is a magistrate who has suffered the outrage, or an outrage has been done to a senator by a person of low repute.' (G 3.225)

[2018] 1. Comment on **TWO** of the following:

(a) 'Natural law [*ius naturale*] is that which nature teaches to all animals, for it is not peculiar to the human race, but is common to all animals which are produced in the air, on the earth, or in the sea.' (J.1.2 pr)

(b) 'The next point to mention is that among foreigners there is only one kind of ownership; for a person is either held to be, or not to be, owner, and this rule was formerly in use amongst the Roman people, for a person was either owner, by the law of the Quirites, or was not looked upon as owner at all. But afterwards ownership became susceptible of division, in such a way that one person could be

the owner by the law of the Quirites, while another could hold it as part of his goods.' (G.2.40)

(c) 'When an island is formed in the sea, which rarely happens, it becomes the property of the first occupant, for it is held previously to belong to no-one.' (J.2.1.22)

(d) 'A person may even steal his own property, as, for example, if a debtor deprives his creditor of a thing pledged to him, or if I have secretly withdrawn property belonging to me from a bona fide possessor.' (G.3.200)

(e) 'Again, the price should consist of a sum of money, for it is a point rightly open to question, whether price can consist of anything else, as, for example, whether a slave, a garment, or a piece of land can be the price of another thing.' (G.3.141)

(f) 'A hirer ought to do everything according to the terms of hiring, and, if any condition has been omitted, he ought to supply it, according to what is fair and equitable. He who has given or promised a sum for the hire of clothes or silver, or a beast of burden, must bestow as much care for the preservation of the thing he hires, as the most careful head of a family bestows on the care of his own property; and if he does do so, and yet the thing is lost through some accident [casus], he is not liable for its restoration.' (J.3.24.5)

[2017/HT] ***1.** Comment on **TWO** of the following:

(a) [T]he Romans use partly their own peculiar law, partly that common to all men. (G.1.1).

(b) Bees are also by their nature wild. (J.2.1.14).

(c) A great difference exists between things requiring transfer by a formal conveyance and things not so requiring. (G.2.18).

(d) Moreover, a stipulation, again, is ineffective, if the answer should not agree with the question put. (J.3.19.5).

(e) [I]f the damage was caused in any other way, equitable actions [*actiones utiles*] are given. (G.3.219).

(f) An obligation is contracted by means of the thing itself, for example [*veluti*], in the case of a loan in kind [*mutuum*]. (J.3.14.pr)

[2017/TT] ***1.** Comment on **TWO** of the following:

(a) The will of the emperor has also the force of a statute. (J.1.2.6).

(b) [T]he alluvial deposit which is added to our land becomes ours by the same right. (G.2.70).

(c) Things stolen, or taken by force, cannot be acquired by use, although they have

been bona fide possessed, during the above-mentioned period. (J.2.6.2).

(d) Purchase and sale is contracted when the price is agreed upon, although the money may not yet have been paid, nor even any earnest [*arrha*] given. (G.3.139).

(e) The action for theft, whether for double or quadruple the value, is only for the purpose of recovering the penalty. (J.4.1.19).

(f) An obligation arises by writing, as, for example, in the case of accounts transferred to the ledger. (G.3.128).

[2016/HT] **1.** Comment on **TWO** of the following:

(a) The maxims of the law are: to live honestly, to hurt no one, to render to each his own. (J. 1.1.3).

(b) Incorporeal things are those which are not tangible. (G.2.14).

(c) Letting and hiring closely resembles purchase and sale, and is regulated by the same rules of law. (J.3.24.pr).

(d) Under this head, however, he who has caused the damage is not liable for the value during the previous year, but for the value during the nearest thirty days. (G. 3.218).

2. Comment on **TWO** of the following:

(a) A constitution of the emperor is that which the emperor established by decree, edict or rescript. (G.1.5).

(b) The question has arisen whether, if a wild beast has been so wounded that it could be caught, it is to be deemed to be immediately your property. (J.2.1.13).

(c) Mandate arises whether we commission a person to do something for us or for another. (G.3.155).

(d) For the damages for the outrage increase or diminish according to the rank and character of the individual. (J.4.4.7).

[2016/TT] **1.** Comment on **TWO** of the following:

(a) The curule aediles also used to publish an edict relative to certain matters, and this edict forms a portion of the honorary law. (J.1.1.7).

(b) When the usufructuary himself surrenders in court the usufruct to the owner of the property, the effect is that the usufruct departs from him and merges in the ownership. (G.2.30).

(c) The entries which are called 'arcaria' stand on quite a different footing. (G.3.131).

(d) Sometimes a person is liable to an action for theft [*actio furti*], though he himself has not committed the theft. (J.4.1.11).

2. Comment on **TWO** of the following:

(a) Let us now discuss the subject of private law, which is drawn from three sources, viz.: from the precepts due to natural law, the law of nations and the civil law. (J.1.1.4).

(b) Amongst things incorporeal are to be included the rights over urban and rural estates which are also called servitudes. (G.2.14).

(c) Again, the price should consist of a sum of money. (J.3.23.2).

(d) He who takes, by violence, another's thing, is indeed, also liable to an action for theft; for who handles [*contrectatio*] another's thing more against the owner's will than he who takes it with violence? (G.3.209).

* Comment on **TWO** of the following:

(a) 'A constitution of the emperor is that which the emperor establishes by decree, edict or rescript, and it has never been doubted that this has the force of a statute, since the emperor himself receives his authority by a statute.' (G.l.5)

(b) 'So the offspring of those animals of which you are the owner are acquired for you as a result of the same law.' (J.2.1.19)

(c) 'Again, in contracts of this nature, both parties are under a mutual obligation to do all that is fair and equitable in respect of the subject-matter of the contract ...' (G.3.137)

(d) 'Theft *[furtum]* is a fraudulent handling *[contrectatio]* of a thing, of its use or the possession of it, and this is forbidden by natural law.' (J. 4.1.1)

*Comment on **TWO** of the following:

(a) 'The edicts of the praetors also carry no slight authority. These we are accustomed to include under the term honorary law *[ius honorarium],* because those who bear honours, that is, the magistrates, have given rise to this description of law.' (J. 1.2.7)

(b) 'For things not requiring transfer by a formal conveyance may lawfully become the property of another by mere delivery, if only they are corporeal, and on that account susceptible of delivery.' (G.2.l9)

(c) 'Again, he to whom something is given in order to be used *[commodatum],* that is, lent, is bound by means of the thing itself, and is subject to the action for a specific loan *[actio commodati].* But his position is widely different from him who receives a loan in kind; for the thing is not given to him in order that it may become his property, and therefore he is bound to restore the identical thing itself.' (J. 3.14.2)

(d) 'He who takes, by violence, another's thing, is, indeed, also liable to an action for theft ... but the praetor has introduced a special action for this kind of wrong, which called the action for robbery with violence *[actio vi bonorum raptorum],* and, if brought within the year, it is for fourfold, but, after the year, for the simple value.' (G. 3.209)

***1.** Comment on **TWO** of the following:

(a) 'Things which are subject to human law are either public or private. Those which are public are held not to be the property of any one, for they are looked upon as belonging to the whole community. Private things are those which are the property of individuals.' (G. 2.10.-11)

(b) 'The will of the emperor has also the force of a statute; for by the royal statute which is passed to confer authority on him, the people yield up to him all its authority and power. Whatever, therefore, the emperor directs by rescript, or decrees in a law-suit, or ordains by edict, is admitted to be a statute; and these are called constitutions.' (J. 1.2.6)

(c) 'The word *iniuria*, in its general acceptation, means anything done contrary to law; in a special sense it means ... outrage (*contumelia*, which comes from *contemnere*, the Greek *hubris*)...' (J. 4.4.pr).

(d) 'Again, in contracts of this nature [consensual contracts], both parties are under a mutual obligation to do all that is fair and equitable in respect of the subject-matter of the contract...' (G. 3.137)

***2.** Comment on **TWO** of the following:

(a) 'The right of declaring the law is vested in the magistrates of the Roman people, and this right is exercised to its greatest extent in the edicts of the two praetors…' (G. 1.6)

(b) '… But he who receives a thing for use, is indeed required to employ the utmost diligence in the preservation of it, and it will not be sufficient for him to have given the same amount of care which he has been accustomed to give in respect of his own property, if a more careful person might have preserved it in safety …' (J. 3.14.2)

(c) 'An obligation is contracted by means of the thing itself, as in the case of a loan in kind [*mutuum*]. The contract of loan in kind properly applies to those things which are estimated by weight, number or measure, such as coined money, wine, oil, corn, copper, silver, gold...' (G. 3.90)

(d) 'When a thing has been made by one person out of materials belonging to another, the question is often asked which of the two persons is, according to natural reason, the owner, he who made it, or he who was the owner of the materials.' (J. 2.1.25)

***1.** Comment on **TWO** of the following:

(a) 'And that which is subject to divine law cannot form part of the property of any one; but that which is subject to human law is generally the property of some one.' (G. 2.9)

(b) 'Written law consists of laws, ordinances of the plebeians, decrees of the senate, constitutions of the emperors, edicts of magistrates, and of the answers of the learned in the law.' (J. 1.2.3)

(c) 'But we are held to suffer outrage, not only in our own person, but also in the persons of our children whom we have in our power, and in the persons of our wives, when they are in our marital power.' (G. 3.220)

(d) 'The contract of sale is complete as soon as the price is agreed upon.' (J. 3.23.pr)

***2.** Comment on **TWO** of the following:

(a) 'The edicts of the praetors also carry no slight authority.' (J. 1.2.7)

(b) '[I]t appears that certain things can be alienated by natural law [*ius naturale*], such are those which are alienated by delivery [*traditio*]; other things are alienated through the civil law, for the law relating to formal sales, to surrenders in Court and to acquisition by use, is peculiar to Roman citizens.' (G. 2.65)

(c) 'He, also, who receives a thing which is not owed to him from a person who pays it by mistake, is bound by the thing, for he can be sued by the personal action "if it appear that he ought to give", just as if he had received a loan in kind.' (G. 3.91)

(d) 'But he with whom a thing is deposited is not answerable for its safe custody, and the only liability he incurs, in respect of it, is that arising out of any fraudulent act of his own.' (G. 3.207)

***1.** Comment on **TWO** of the following:

(a) 'Now all our law relates either to persons, things, or actions ...' (G.1.8)

(b) 'But if the force of the current should sweep off a portion from your land, and carry it to that of your neighbour, it clearly still remains yours. If, however, it continues for a long time adhering to your neighbour's land, and the trees which it carried off with it take root in his ground, from that time the land and the trees are deemed to have become acquired by your neighbour's estate.' (J.2.1.21)

(c) 'We, therefore, say that obligations are contracted in these ways by consent, because there is no form of words or writing required, but it is sufficient that those who are transacting the business have come to an agreement.' (G. 3.136)

(d) 'The word "iniuria," in its general acceptation, means anything done contrary to law; in a special sense it means sometimes outrage ["contumelia"], which comes from "contemnere", the Greek ὕβρις [*hubris*] ...' (J.4.4.pr.)

***2.** Comment on **TWO** of the following:

(a) 'The answers of the learned in the law [*responsa prudentium*] are the decisions and opinions of those who were authorised to settle points of law, for it was formerly provided that there should be public interpreters of the law, to whom the power of expounding the law was given by the emperor, and who were called jurisconsults.' (J.1.2.8)

(b) 'Incorporeal things are those which are not tangible, such are those consisting in a right, as an inheritance, a usufruct, or obligations in any way contracted.' (G.2.14)

(c) 'Clearly, if a person has stated in writing that he owes a sum which has not been paid over to him, it has been repeatedly decided that he cannot, after a long period has elapsed, set up a plea of not having received the money [*exceptio non numeratae pecuniae*]; and it thus happens that, even at the present day, as he has no redress, he is bound by the writing ... that is, of course, in the absence of any obligation contracted by words.' (J.3.21)

(d) 'Sometimes a person is liable to an action for theft, though he himself has not committed the theft, as in the case of him by whose help and advice [*ope consilio*] theft has been committed.' (G.3.202)

***1.** Comment on **TWO** of the following:

(a) 'A similar right is exercised if the edicts of the curule aediles ..' (G.1.6)

(b) 'Things sacred, religious, and sacrosanct, belong to no one; for that which is subject to divine law cannot be included in the property of anyone' (J.2.1.7)

(c) 'But whether aliens can be bound by transferred entries is, very properly, open to question, for such an obligation, contracted, belongs to a way to the civil law ..' (G.3.133)

(d) 'The principal division of all obligations is into two kinds, for they are either civil or praetorian.' (J. 3.13. 1)

***2.** Comment on **TWO** of the following:

(a) 'Our law, like that of the Greeks, is written or unwritten' (J. 1.2.3)

(b) 'Moreover, that which a person has built upon our land, although he may have built it for himself, becomes ours by natural law, because the superstructure goes as an accessory to the land.' (G.2.73)

(c) 'Further, he with whom something is deposited is bound by means of the thing itself, and liable to the action of deposit, for he also is liable for the restitution of the identical thing which he received. He is, however, only liable on the ground of having committed fraud, and is not liable under the head of fault, that is, for carelessness or negligence.' (J. 3.14.3)

(d) 'According to Servius Sulpicius and Masurius Sabinus, there are four kinds of thefts, viz. that which is manifest, that which is not manifest, that which arises from the discovery of the thing after a search, and that which arises from the stolen thing being brought elsewhere ..' (G. 3.183)

*1. Comment on **TWO** of the following:

(a) A decree of the senate is that which the senate orders and establishes, and it has the force of a law, though this has been doubted. (G. 1.4)

(b) Delivery [*traditio*] is also, according to natural law, a mode of acquiring things, for nothing is more consonant with natural equity than that the wishes of the owner of property, desirous of transferring it, should be deemed binding; ... (J. 2.1.40)

(c) He, also, who receives a thing which is not owed to him from a person who pays it by mistake, is bound by the thing, for he can be sued by the personal action "if it appear that he ought to give" just as if he had received a loan in kind. ... But this kind of obligation does not seem to arise out of contract, since he who gives with an intention of paying, is rather desirous of dissolving than of forming an obligation. (G. 3.91)

(d) Under this head, he who caused the damage is not liable for the value within the year, but within the thirty nearest days. (J. 4.3.14)

*2. Comment on **TWO** of the following:

(a) Natural law [*ius naturale*] is that which nature teaches to all animals, for it is not peculiar to the human race, but common to all animals which are produced in the air, on the earth, or in the sea. (J. 1.2.pr.)

(b) All things are either things requiring for transfer the formal conveyance by copper and scale [*res mancipi*] or are things not requiring that form of transfer [*res nec mancipi*]. (G. 2.14a)

(c) Hence, also, the contracts of buying and selling, and of letting and hiring, seem to have some resemblance to each other, so that in certain cases, it is a matter of doubt whether a contract of buying and selling, or of letting and hiring, has been made ... (J. 3.24.3)

(d) The penalty for outrages, according to the law of the Twelve Tables, was retaliation for a bodily member destroyed ... (G. 3. 223)

*1. Comment on **TWO** of the following:

(a) Let us now pass to obligations. An obligation is a tie of law binding us to the fulfilment of something in accordance with the laws of this empire. (J.3.13.pr.).

(b) When a thing has been made by one person out of materials belonging to another, the question is often asked which of the two persons is, according to natural reason, the owner, he who made it, or he who was the owner of the materials. (J.2.1.25).

(c) The price, however, should be certain, for there can be no sale without a price. (J.3.23.1).

(d) A law is that which the people order and establish. An ordinance of the plebeians is that which the plebeians order and establish. (G.1.3).

*2. Comment on **TWO** of the following:

(a) Hence, a principal division of things is into two classes, viz., those subject to divine law, those subject to human law. (G.2.2).

(b) An action for theft is available to him whose interest it is that the property should be safe, although he may not be the owner; and, therefore, it is only available to the owner when it is to his interest that the property should not perish. (G.3.203).

(c) To form this contract, such words as the following were formerly used: Do you bind yourself? (*spondes*?) I do bind myself. (*spondeo*) Do you promise? I do promise. (J.3.15.1).

(d) [T]he offspring of a female slave is not reckoned as produce, and therefore belongs to the owner of the property. For it seemed absurd that a man should be reckoned amongst produce when it is for the benefit of man that, in the nature of things, all produce is provided. (J.2.1.37).

*1. Comment on **TWO** of the following:

(a) 'In the preceding book we have dealt with the law of persons; now let us treat of things' (J.2.1 pr).

(b) '...For no one can acquire or be liable in respect of a servitude over a rural or urban estate, unless he has an estate belonging to him' (J.2.3.3).

(c) 'An obligation is contracted by means of the thing itself, as in the case of a loan in kind [*mutuum*]. The contract of loan in kind properly applies to those things which are estimated by weight, number or measure, such as coined money, wine, oil, corn, copper, silver, gold...' (G.3.90).

(d) 'Let us now pass to obligations arising from wrongs (delicts), as, for example, if a person has been guilty of theft [*furtum*], or taken property by violence [*rapina*], or inflicted damage [*damnum iniuria*], or committed an outrage [*iniuria*]; all which misdeeds give rise to one kind of obligation only...' (G.3.182).

*2. Comment on **TWO** of the following:

(a) 'Again, some things are corporeal, others incorporeal' (G.2.12).

(b) 'If anyone has purchased in good faith land from a person not the owner, but whom he believed so to be, or has received it in good faith from such a person, by gift or other lawful title, it is in accordance with natural reason that the produce which he has gathered should be his in return for his care and culture; and, therefore, if the true owner subsequently reappear and claim the land, he cannot sue in respect of the produce consumed...' (J.2.1.35).

(c) 'The contract of sale is complete when the price is agreed upon, although the money may not yet have been paid, nor even any earnest [*arra*] given, for what is given by way of earnest, is only evidence that a contract of sale has been formed' (G.3.139).

(d) 'Hence, if a person, while practising with javelins, or being exercised therein, has transfixed your passing slave, a distinction is made; for, if it was done by a soldier in camp, and in the place where it is usual to exercise, he will be deemed free from culpable negligence, but if it was done by another person he would be guilty. The same rule would hold in the case of the solider, if it had been done in some other place than that set apart for military exercises' (J.4.3.4).

*1. Comment on **TWO** of the following:

(a) When one man has given a new form to materials belonging to another, it is often asked which, according to natural reason, ought to be considered the proprietor, whether he who gave the form, or he rather who owned the materials (J.2.1.25).

(b) Civil law is thus distinguished from the law of nations. (J.1.2.1).

(c) There is a contract of mandate when we give a commission either in our own interest or in that of another. (G.3.155).

(d) A man is deemed to suffer outrage not only in his own person, but also in the persons of his children in *potestas* and his wife. (G.3.221).

*2. Comment on **TWO** of the following:

(a) Let us now pass to obligations. An obligation is a tie of law, by which we are so constrained that of necessity we must render something according to the laws of our state. (J.3.13.pr.).

(b) A partnership is formed either of the whole goods of the contracting parties...or for some particular business, as the sale or purchase of slaves, oil, wine or wheat. (J.3.25.pr.).

(c) The praetor, however, has introduced a peculiar action in the case of this delict, called *vi bonorum raptorum*. (J.4.2.pr.).

(d) On the same principle it has been held that what another has written on my paper or parchment even in letters of gold is mine, because the lettering goes with the paper or parchment...But if, say, someone has painted a picture on my panel the contrary is held, the opinion preferred being that the panel follows the picture. (G.2. 77 – 78).

***1.** Comment on **TWO** of the following:

(a) The whole of the law observed by us relates either to persons or to things or to actions. (G. 1.8)

(b) Very extensive law is contained in the edicts of the two praetors, the urban and the peregrine. (G. 1.6)

(c) Natural reason gives to the first occupant that which had no previous owner. (J. 2.1.12)

(d) But he who has received a thing lent for his own use, is indeed bound to employ the utmost diligence in keeping and preserving it. (J. 3.14.2)

***2.** Comment on **TWO** of the following:

(a) A law (*lex*) is that which was enacted by the Roman people on its being proposed by a senatorian magistrate, as a consul. A *plebiscitum* is that which was enacted by the plebs on its being proposed by a plebeian magistrate, as a tribune. (J. 1.2.4)

(b) But even though one believes that one is handling the thing against its owner's will, still, if in fact he is willing, no theft is held to be committed. (G. 3.198)

(c) Another mode of acquiring things according to natural law is *traditio*; for nothing is more conformable to natural equity than that the wishes of a person, who is desirous to transfer his property to another, should be confirmed. (J. 2.1.40)

(d) Nor is a person made liable by this [Aquilian] law, who has killed by accident, provided there is no fault on his part, for the law punishes fault as well as wilful wrongdoing. (J. 4.3.3)

***1.** Comment on TWO of the following: (a) Now all our law relates either to persons, things, or actions, and first let us treat of persons. (G. 1.8).

(b) The unwritten law is that which usage has approved; for daily customs, approved by those in the habit of using them, resemble statutes. (J. 1.2.9).

(c) The produce of animals includes their young as well as their milk, hair, and wool; and therefore lambs, kids, calves, colts, and sucking pigs, are immediately, by the law of nature, the property of him who has a right to the produce. (J. 2.1.37).

(d) [A]n exchange of things is one thing and purchase and sale quite another, otherwise there would be no means of ascertaining, on an exchange of things, which was to be taken to be the thing sold and which given by way of price. (G. 3.141).

*2. Comment on TWO of the following:

(a) But not only are those things which become ours by delivery, acquired by natural reason [ratio], but also those which we have acquired by occupation, because previously they were the property of no one. (G. 2.66).

(b) If an outrage has been committed on a slave, held in common, it is just that

the outrage should be estimated, not according to the share each owner has in him, but according to their rank, for the outrage is done to them. (J. 4.4.4).

(c) Natural law [ius naturale] is that which nature teaches to all animals, for it is not peculiar to the human race, but is common to all animals which are produced in the air, on the earth, or in the sea. (J. 1.2.pr).

(d) The effect of the words which are added to this statute, viz., “the highest market value of the thing during the previous year”, is, that if the slave, when killed, was, say, lame, or had lost an eye, but had been sound at some time during the year, the value would be so estimated; and thus a person may sometimes obtain compensation beyond the damage he has sustained. (G. 3.214).

The Afterlife of Roman Law

[2024 TT] **10.** For the second life of Roman law, the Institutes were more important than the Codex and the Codex was more important than the Digest.
Discuss.

[2024 HT] **10.** '[The Digest] contains thousands of short fragments which are written in Latin that is easy to read and which offer good material for discussion. A text that was once written in Constantinople as a caricature of a law book turned out to be the ideal book to use in legal education in the high Middle Ages.' (L. WAELKENS)
Discuss.

[2023] **10.** 'Gaius is in a true sense the architect of Justinian's codification' (HONORÉ)
In what sense, or senses, is this statement true?

[2022] **5.** With regard to systematic arrangements of law, BIRKS took the view 'that a classification should, ideally, have validity independent of the accidents of time and place'. Discuss.

10. 'The Digest was the only book in which medieval students could obtain a knowledge of Roman law at its best. The Institutes were a slight text book. The Code is made up of detached ordinances. ... It seems to me that but for the Digest Roman law could never have conquered the world.' (MAITLAND).
Discuss.

[2021/2] **5.** Answer EITHER (a) OR (b)
(a) Why is the classical period of Roman law sometimes described as a period of legal science, and juxtaposed with post-classical law as a period of authority?
OR
(b) Assess the relative influence of the classical and post-classical sources of Roman law on European legal development.

[2021/1] **10.** 'The validity [of the Roman law] was only based on a consensus of the [medieval] lawyers, and this consensus depended, in the last instance, on the fact that the European culture, to which law belongs, was viewed as an integral whole.' (ZVALWE/SIRKS)
Discuss

[2020] **10.** To what extent is the history of law in western Europe the history of scholarly attitudes towards the Corpus Iuris Civilis?

[2019] **10.** 'The codifications of continental Europe very largely brought to an end the "second life" of Roman law, the story of its reception and transformation into a ius commune.' (ZIMMERMANN)

Explain and critically assess this statement.

[2018] **10.** Is it by virtue of its content or its structure that Roman law has made its greatest impact on modern legal systems?

[2017/HT] **10.** What have modern legal systems inherited from Roman private law? How significant are the Institutes of Justinian to that inheritance?

[2017/TT] **10.** 'The Roman Law presents two aspects, each deserving the attention of the student of Jurisprudence. It furnishes the basis of much of the law of Europe, and has long proved an almost inexhaustible storehouse of legal principles' (HUNTER).
Do you agree?

[2016/HT] **4.** How valuable was the work of Gaius in the development of Roman law, and in the development of the modern civil and common law?

[2016/TT] **3.** Examine the following statement:
'The Roman law thus makes this second claim on our attention, that it provides the Common lawyer with a key to the common language of almost every other system of law which traces its origin to Europe' (NICHOLAS).

'[T]his is the reason of the civil law in this case, which though I am loth to quote, yet inasmuch as the laws of all nations are doubtless raised out of the ruins of the civil law, as all Governments are sprung out of the ruins of the Roman Empire, it must be owned that the principles of our law are borrowed from the civil law, therefore grounded upon the same reason in many things' (HOLT CJ, *Lane* v *Cotton (1701)).*

Discuss.

3. Why is the system of classification found in the *Institutes* of Gaius important in the Roman or civil law tradition?

3. Why did Justinian command Tribonian to prepare a new edition of Gaius's Institutes, and how was the result important in European legal history?

4. 'The Roman law forms no rule binding in itself upon the subjects of these realms; but, in deciding a case upon principle, where no direct authority can be cited from our books, it affords no small evidence of the soundness of the conclusion at which we have arrived, if it proves to be supported by that law, the fruit of the researches of the most learned men, the collective wisdom of ages and the groundwork of the municipal law of most of the countries in Europe' (TINDAL CJ, *Acton v Blundell* (1843)).

Discuss.

4. 'If we have need to speak about the civil law of the Romans, I will say no more than that it was never created or composed to serve equity and natural reason, convenient and indifferent between nations, but solely for a particular prerogative invented expressly to maintain the Roman citizens in a higher degree and dignity than the other inhabitants of Italy' (FRANÇOIS HOTMAN, *Anti-Tribonian* (1567)).

Why, in spite of criticisms like this from various authors in different countries, did Roman law nonetheless form the structural basis of the modern Codes?

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(c) The price, however, should be certain, for there can be no sale without a price. (J.3.23.1).

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Turn over

(a) When one man has given a new form to materials belonging to another, it is often asked which, according to natural reason, ought to be considered the proprietor, whether he who gave the form, or he rather who owned the materials (J.2.1.25).

(b) Civil law is thus distinguished from the law of nations. (J.1.2.1).

(c) There is a contract of mandate when we give a commission either in our own interest or

4. Why and how did Justinian's *Institutes* have such an impact on medieval and modern law?

3. What was more important in the perspective of legal history: the content of Roman law, or its organization?