GUIDE TO THE TEXTS OF ROMAN LAW

THE TWELVE TABLES

The Twelve Tables (XII Tables) are the first Roman legal code, enacted in approximately 451 BC. The full text does not survive in its original form, but it has been to some extent reconstructed from fragments and quotations which scholars have unearthed. The order of the texts and their interpretation is very much conjectural and is a subject of dispute.

Citation format:

In a bibliography or footnote, first write 'XII Tables', then provide the table number and law number separated by a period. Thus, if I were citing law 5 in table 6 of the Twelve Tables:

XII Tables 6.5.

Try looking up table 6, law 5 in the translations listed below and see what you find.

Translations:

The English translation which should be used for your research assignment and essay is:

The Twelve Tables. In *Ancient Roman Statutes: A Translation with Introduction, Commentary, Glossary, and Index*, 9–18. Translated by Allan C. Johnson, Paul R. Coleman-Norton, and Frank C. Bourne. The Corpus of Roman Law 2. Austin: University of Texas Press, 1961. **PDF posted on Nexus.**

For your own reading purposes, you may print or read the text online at The Latin Library:

The Law of the Twelve Tables.
The Latin Library: http://thelatinlibrary.com/law/12tables.html

However: WARNING! The numbering and order in this version is not identical to the PDF you have on Nexus. If you want to cite the Twelve Tables, *refer to the PDF version from Nexus.*

Summary of contents:

The following summary is adapted from: Andrew Borkoswki and Paul du Plessis, *Borkowski's Textbook on Roman Law*, 5th edn (Oxford: Oxford University Press, 2015), 31.

Tables 1–3 are devoted to 'procedure', i.e. how a trial must be carried out.

Table 1. Proceedings Preliminary to Trial
– deals with starting a lawsuit, i.e. summoning a defendant before a magistrate.

Table 2. Trial
    – specifies the amounts that must be deposited in court by the parties before commencing certain types of action.

Table 3. Execution of Judgment
    – deals with the enforcement of judgments, e.g. a creditor's right to seize a debtor who has not paid 30 days after the judgment.

Table 4. Paternal Power
    – contains fundamental principles of Roman family law, such as the power of the *paterfamilias* over his children.

Table 5. Inheritance and Guardianship

Table 6. Ownership and Possession

Table 7. Real Property
    – concerned with land, and lays down rules governing neighbourly behaviour.

Table 8. Torts or Delicts
    – penalizes various crimes and delicts, such as theft, pasturing cattle on another man's land, charging excessive interest rates, arson.

Table 9. Public Law
    – constitutional provisions, e.g. the rules governing capital punishment (execution) and legislation.

Table 10. Sacred Law
    – deals with 'sacred law', prescribing rules on burials and funerals.

Table 11. Supplementary Laws
    – prohibits marriage between patricians and plebeians (this was repealed by legislation).

Table 12. Supplementary Laws

ROMAN STATUTES

We have the texts of some Roman legislation from the Republic and early Empire, when statutes were enacted by the Assemblies of the People and the Senate. Many of them have been reconstructed by scholars and are in fragmentary form. They can be difficult and technical to make use of, but provide a window into an important stage in the development of Roman law.

Citation format:

Provide the title of the statute, followed by the document number in round brackets, and then paragraph numbers within the statute if applicable. Thus, if I were citing paragraph 4 of the Acilian Law on the Right to Recovery of Property Officially Extorted:

> Acilian Law on the Right to Recovery of Property Officially Extorted (doc. 45) para. 4.

Translations:

The collection of Roman statutes (translated into English) which we will use is:

Ancient Roman Statutes: A Translation with Introduction, Commentary, Glossary, and Index.
Translated by Allan C. Johnson, Paul R. Coleman-Norton, and Frank C. Bourne. The Corpus of Roman Law 2. Austin: University of Texas Press, 1961.
PDF list of documents posted on Nexus.

I have provided the list of documents in PDF form. If you want to read any of the statutes collected here, e-mail me and I will provide you with the text.

Another collection which you are free to look at is:

Roman Statutes. Edited by Michael H. Crawford. 2 vols. London: Institute of Classical Studies, 1996.
Course Reserves: KJA 195 R66 1996 v.1, v.2

In this collection, the Latin text (reconstructed) of each statute is provided first, followed by an *apparatus criticus* ('critical apparatus', a technical tool for advanced study), an English translation, and a commentary.

IUS HONORARIUM

The *Ius Honorarium* "Magisterial Law" encompasses the principles and institutions of Roman law which were developed by the Praetors and Aediles in their administration of justice: principally the Urban and Foreign Praetors and the Curule Aedile. These legal principles were set out in an official form in the Praetor's (or Aedile's) Edict at the beginning of his term of office. The two Edicts were set in permanent form in 129 AD at the order of the Emperor Hadrian. These have been partially reconstructed and we can make use of them in our research.

Citation format:

The individual entries in each Edict are numbered sequentially: there are 292 entries in the Praetor's Edict, and 7 in the Curule Aedile's Edict. In a citation, provide the title of the edict followed by the entry number. Thus if I were citing entry 6 in the Edict of the Curule Aediles:

> Edict of the Curule Aediles 6.

The Edict of the Urban Praetor is also divided into five parts and 45 titles. It is sufficient to cite merely the Edict and the entry number, as given above; however, it can be helpful for the reader if you also indicate the part and the title. Thus if I were citing entry 101 in the Edict of the Urban Praetor, which is in the second part and under title 18 ("Whatever business is transacted with a shipmaster or an agent who is in another person's power"):

> Permanent Edict of the Urban Praetor (part 2 title 18) 101.

Translations:

Permanent Edict of the Urban Praetor. In *Ancient Roman Statutes: A Translation with Introduction, Commentary, Glossary, and Index,* 182–204. Translated by Allan C. Johnson, Paul R. Coleman-Norton, and Frank C. Bourne. The Corpus of Roman Law 2. Austin: University of Texas Press, 1961.
PDF posted on Nexus.

Edict of the Curule Aediles. In *Ancient Roman Statutes: A Translation with Introduction, Commentary, Glossary, and Index,* 204–205. Translated by Allan C. Johnson, Paul R. Coleman-Norton, and Frank C. Bourne. The Corpus of Roman Law 2. Austin: University of Texas Press, 1961.
PDF posted on Nexus.

Summary of the Permanent Edict of the Urban Praetor:

Part 1 regulates procedure to the joinder of issue (when the parties accept a formula for trial).

1. Those persons who have jurisdiction in a municipality, a colony, a market

2. Jurisdiction

3. Declarations

4. Agreed pacts

5. Summons into court

6. Pleading

7. Securities

8. Cognitors and procurators and defenders

9. Malicious accusers

10. Restorations to original status

11. Acceptances

12. Giving security

13. [For what cases a preliminary judgment is not proper]

Part 2 deals with ordinary and summary remedies.

14. Court trials

15. Those goods that are in anyone's property

16. Things consecrated to the dead and the expenses of funerals

17. Things given in credit

18. Whatever business is transacted with a shipmaster or an agent who is in another person's power

19. Actions of good faith

20. A wife's property

21. Children and pregnant women

22. Guardianships

23. Theft

24. Rights of patronship

Part 3 continues with ordinary and summary remedies.

25. Possessions of the estate

26. Wills

27. Legacies

28. [Protest against a new construction]

29. Threatened damage

30. Water and action for diversion of rainwater

31. Lawsuits relative to freedom

32. Tax farmers

33. [Buyers of confiscated real estate]

34. Violence, riot, fire, building-collapse, shipwreck, seizure of boat or of ship

35. Outrages

Part 4 orders execution of judgment.

36. Controversies ended by judicial decision

37. [Persons who neither follow nor are led]

38. Those cases for which a person enters into possession

39. Possession, advertisement, sale of property

40. How an action is brought by a purchaser of property or against him

41. Appointment of administrators of property

42. [Repeal of judicial decisions at the risk of a double penalty]

Part 5 assembles formulas, interdicts (i.e. injunctions), exceptions (i.e. defenses), stipulations.

43. Interdicts (i.e. court-ordered injunctions)

44. Exceptions (i.e. pleas in defense)

45. (Praetorian?) Stipulations

Summary of the Edict of the Curule Aediles

1–4. Sale of slaves, slave dealers, castrators of boys, ornaments of slaves.

5–6. Sale of beasts of burden, wild beasts.

GAIUS

Gaius was a jurist of the classical period of Roman jurisprudence. He wrote an elementary textbook of Roman law, called the *Institutes,* in the mid-2nd century AD. Gaius's *Institutes* is the only piece of 'classical' legal literature which survives in nearly complete form. After being lost for many centuries, a manuscript was discovered in 1816 containing the complete text, minus a few damaged places. The *Institutes,* as a specimen of classical Roman legal literature, is of particular importance for studying the history of Roman law.

Citation format:

Gaius's *Institutes* is divided into four books (sometimes called 'commentaries'), and the paragraphs of each book are numbered sequentially. There are several abbreviated citation formats accepted among scholars. For example, in books and articles you may see Gaius's *Institutes* cited in a form like this: Inst.Gai.IV.71; or just Gaius 4.71. In this class, we will cite it this way: first, place a G. for Gaius; then *Institutes* is abbreviated 'Inst.'; finally, the book number and paragraph number(s), separated by a period. Thus, if I want to cite paragraph 71 of book 4:

G. Inst. 4.71.

To cite a continuous series of paragraphs:

G. Inst. 4.71–72.

Translations:

The English translation which should be used for your research assignment and essay is:

The Institutes of Gaius. Translated by Francis de Zulueta. 2 vols. Oxford–New York: Clarendon Press, 1946–53.
Course Reserves: KJA 882 A2 1953 v.1, v.2

Note that the second volume is a running commentary on the *Institutes* by Francis de Zulueta (an outstanding scholar). It can be a great help in interpreting and understanding the text.

For your own reading purposes, you may print or read the text online at The Latin Library:

The Institutes of Gaius.
The Latin Library: http://thelatinlibrary.com/law/gaius.html

However: WARNING! The version at the Latin Library is cut and pasted from an old translation and it has the translator's commentary interspersed with the text. It may not always be accurate. It is acceptable for casual skimming, but if you want to make any serious use of Gaius, *refer to the translation by Francis de Zulueta.*

Summary of contents:

LAW OF PERSONS
    Free and Slaves. "All men are either free or slaves."
        Freeborn and freed. "Free men are either freeborn or freedmen."
            The classes of freedmen. "Roman citizens, or Latins, or *dediticii*."
    Dependent persons. "Persons are independent or dependent."
        In a master's authority. "Slaves are in the authority of their masters."
        In a father's authority. "Children of civil marriage are in our authority."
        In marital power (hand). "Only females can come under marital power."
        Termination of dependence. "How persons subject to another are freed."
    Independent persons under tutors or guardians.
        Tutors. "Parents appoint by will tutors to their dependent children."
        Curators.

LAW OF THINGS
    Acquiring ownership of individual things.
        By civil methods.
            Corporeal things. "Tangible things: land, a slave, gold, etc."
            Incorporeal things. "Intangible: exist merely in law."
        By natural methods.
    Acquiring ownership of collectivities.
        Succession through a will (testamentary).
        Legacies.
        Succession in the absence of a will (intestate).
    Obligations. "Every obligation arises either from contract or from delict."
        Obligations from contract. "Of such there are four categories."
            Real contract. "Arises by delivery of a thing."
            Verbal contract. "Arises by words."
            Literal contract. "Arises by writing."
            Consensual contract. "Arises by consent."
        Obligations from delict.
            Theft. "There are two kinds of theft: manifest and non-manifest."
            Robberty with violence. "Praetor introduced a special action."
            Property damage. "Action for wrongful damage."
            Personal injury. "Committed not only by striking but also by raising a clamour, or defaming, or stalking a woman."

LAW OF ACTIONS
    Actions.
        Actions on a thing. "We claim that some thing or right is ours."
        Actions on a person. "Against someone under obligation to us."
        The *legis actiones*. "The actions of older times."
        The *formulae*. "Litigation by means of adapted pleadings, i.e. *formula*."
        Actions of various sorts.
    Defenses, Interdicts, Penalties for vexatious litigation, Summons.

THE CORPUS IURIS CIVILIS

The *Corpus iuris civilis* "Body of the Civil (i.e. Roman) Law" is the compilation of Roman law produced under the authority of the Emperor Justinian. The two most important components, the *Digest* and *Institutes,* were enacted as law on 31 December 533 AD. The Code and Novels followed some years after. The *Corpus iuris civilis* is, by far, the largest available source of evidence about Roman law and its development. Hence it shall be our main collection of Roman law texts for this course.

It is composed of four parts:
> *Institutes* : "Elementary Textbook"
> *Digest* : "Systematic Arrangement"
> *Code* : "Book / Law Code"
> *Novels* : "New Constitutions"

Justinian's *Institutes* are an adaptation and update of Gaius's *Institutes.* The *Digest* is a massive collection of extracts (quotations) from the legal literature produced by the greatest jurists of the republican and classical periods of Roman jurisprudence. The *Code* is a compilation of imperial legislation ('constitutions') from the Emperor Hadrian to Justinian. The *Novels* collect legislation enacted by Justinian after the publication of the rest of the *Corpus iuris civilis.*

Complete Latin text: https://droitromain.univ-grenoble-alpes.fr/corpjurciv.htm

We shall deal with each part separately.

Institutes

Justinian's elementary textbook of Roman law, the *Institutes,* is an adaptation and update of Gaius's *Institutes* which was published several centuries earlier.

Citation format:

Justinian's *Institutes* is divided into four books (a book is called in Latin a *liber*, books *libri*, abbreviated *lib.*). Each book is subdivided into 'titles' (*titulus, tituli, tit.*) — a title is like a chapter, and deals with a specific subject. Longer titles are further subdivided into numbered paragraphs.

The standard citation format provides the book number, title number, and paragraph number in that order (largest unit to smallest). In books and articles, you may see Justinian's *Institutes* cited in a form like this: I. 3.15.2; or Inst.Just. 4.3.2. In this class, we will cite it this way: first, place a J. for Justinian; then *Institutes* is abbreviated 'Inst.'; finally, the book, title, and paragraph number(s), separated by periods. Thus, if I want to cite paragraph 4 of title 7 in book 4:

> J. Inst. 4.7.4.

If I wanted to cite the whole title 7 of book 4:

> J. Inst. 4.7.

You should always specify at least a title. Citing a whole book is not specific enough.

Translations:

There are numerous English translations of the *Institutes* easily available. The one by Thomas is my personal favourite; the Latin text and English translation of each title is followed by Thomas's commentary, which is generally helpful for understanding the text, and also provides cross-references.

The Institutes of Justinian: Text, Translation, and Commentary. Translated by J.A.C. Thomas.
> Amsterdam–New York: North-Holland Publishing Company, 1975.
> **Course Reserves: KJA 1088 E6T6 1975**

The more recent translation by Peter Birks and Grant McLeod is the standard one in use among scholars.

Justinian's Institutes. Translated by Peter Birks and Grant McLeod. Ithaca, N.Y.: Cornell
> University Press, 1987.
> **Course Reserves: KJA 1088 E5 1987**

The old translation by Sandars is available for free online, either in plain-text at the Latin Library or in PDF at Archive.org. This translation also has a commentary which follows each title and provides copious cross-references to other relevant texts in the *Corpus iuris civilis.*

The Institutes of Justinian. Translated by Thomas C. Sandars. London: Longmans, 1917.
> **The Latin Library:** http://thelatinlibrary.com/law/institutes.html
> **PDF download:** https://archive.org/details/bub_gb_R2MNAAAAIAAJ

However: WARNING! The version at the Latin Library is cut and pasted and may not always be accurate. It is acceptable for casual skimming, but if you want to make any serious use of the *Institutes*, *refer to the PDF version of Sandars or another English translation.*

The *Companion* edited by Metzger is very useful. The chapters expand upon the subjects dealt with in the *Institutes*, and are an excellent help for understanding the text and for research.

A Companion to Justinian's Institutes. Edited by Ernest Metzger. London: Duckworth, 1998
> **Course Reserves: KJA 1087 C66 1998**

Summary of contents:

As an adaptation of Gaius's *Institutes,* it follows the 'Institutional Scheme': all of law is divided into law of persons, law of things, and law of actions. There is also a title dealing with criminal law at the very end.

Persons are dealt with in book 1:

Book 1.
> Free born.
> Freedmen.
> Independent or dependent.
> Paternal power.
> Marriage.
> Adoptions.
> Becoming independent.
> Tutors and guardians.

Things are dealt with in book 2, 3, and the beginning of book 4:

Book 2.
> Incorporeal things.
> Acquiring ownership.
> Wills, heirs, trusts.

Book 3.
> Succession.
> Obligations.
> Contracts.
> Quasi-contracts.

Book 4.
> Delicts.
> Quasi-delicts (title 5).

Actions are dealt with in titles 6–17 of book 4:

Book 4 (titles 6–17).
> Different types of actions
> Trial procedure

Criminal law is dealt with in book 4 title 18: Public prosecutions.

Digest

The *Digest* is a massive collection of extracts (quotations) from the legal literature produced by the greatest jurists of the republican and classical periods of Roman jurisprudence. Since the extracts are fragments taken from larger works of legal literature, each one is called a 'fragment'. Each fragment is introduced by an 'inscription' which indicates the jurist who is being quoted (e.g. Gaius, Papinian, Paul, Ulpian), the work from which the quotation is taken (e.g. *Sabinus*), and the book number within that work. For our purposes, we are mainly interested in knowing which jurist is being quoted, and need not worry about what work the quotation comes from.

Citation format:

The *Digest* is divided into fifty books (*liber, libri, lib.*). Each book is subdivided into 'titles' (*titulus, tituli, tit.*) — a title is like a chapter, and deals with a specific subject. Each title is made up of a series of numbered 'fragments', i.e. quotations from jurists, which are arranged in a somewhat arbitrary order within the title. A fragment is sometimes called a 'law' (*lex, leges, l.*). Longer fragments are further subdivided into numbered paragraphs. The first paragraph of a fragment is called the *principium*, abbreviated pr. The next paragraph is numbered 1, and they continue from there.

The standard citation format provides the book, title, fragment, and paragraph numbers in that order (largest unit to smallest). In books and articles, you may see the *Digest* cited in a form like this: D. 1.2.2.4. In this class, we will cite it this way: first, *Digest* is abbreviated 'Dig.'; then the book, title, fragment, and paragraph numbers, separated by periods. Thus, if I want to cite the fifth paragraph of fragment 1 in the third title of book 11:

> Dig. 11.3.1.5.

If I want to cite the first part (*principium*) of a fragment which has multiple paragraphs:

> Dig. 14.1.1 pr.

If I want to cite a whole title or several titles:

> Dig. 33.8.

> Dig. 15.1–2.

Translations:

A complete English translation of the *Digest* was published in 1985, under the editorship of Alan Watson. Mommsen and Krueger were the editors of the Latin text from which the English translation was produced. This translation is available in the course reserves. There is also a newer, revised edition available as an e-book through University of Winnipeg.

The Digest of Justinian. Edited by Alan Watson, Theodor Mommsen, and Paul Krueger. 4 vols.
     Philadelphia: University of Pennsylvania Press, 1985.
     Course Reserves: KJA 1118 E6D5 1985 v.1, v.2, v.3, v.4
     E-book (revised edn 1998):   vol. 1: https://uwinnipeg.on.worldcat.org/oclc/748533471
                                        vol. 2: https://uwinnipeg.on.worldcat.org/oclc/833582506
                                        vol. 3: https://uwinnipeg.on.worldcat.org/oclc/833582553
                                        vol. 4: https://uwinnipeg.on.worldcat.org/oclc/794702147

You may use either the 1985 edition (physical book) or the 1998 revised edition (e-book). There
are useful resources in the first volume, including a list of all titles and a glossary of legal terms.

Summary of contents:

The arrangement of subjects follows the Praetor's Edict. For a fuller map see Roby, *An
Introduction to the Study of Justinian's Digest* (1886), appendix A: "Division and Order of Matters
in the Digest" (PDF on Nexus).

Introductory: book 1 titles 1–4.

Jurisdiction, appearance and preliminary objections: 1.5–5.1.

Things: 5.2–book 11.

Obligations (real and consensual): book 12–22.

Family: book 23–28.

Inheritance and bequest: book 29–38.

Danger to neighbours, gifts: book 39.

Manumission: book 40.

Acquisition of ownership: book 41.

Judgment and execution: book 42.

Interdicts (injunctions): book 43.

Pleas: book 44.

Verbal obligations and their extinction: book 45–46.

Delicts (torts): book 47.

Criminal law: book 48.

Appeals, municipal administration, and interpretation of law: book 49–50.

Code

The *Code* is a compilation of imperial legislation ('constitutions') from the Emperor Hadrian to Justinian. The individual legislative acts are called 'laws' (*lex, leges, l.*). Each law is introduced by the names of the Emperors issuing it. Many of the laws are 'rescripts', i.e. written responses to inquiries about points of law; rescripts have, in addition to the names of the issuing Emperors, the name of the recipient. At the end of the law, the place and date of issue is normally provided.

Citation format:

The *Code* is divided into twelve books (*liber, libri, lib.*). Each book is subdivided into 'titles' (*titulus, tituli, tit.*) — a title is like a chapter, and deals with a specific subject. Each title is made up of a series of numbered laws, each one being a rescript or act of legislation of an emperor. The laws are arranged in chronological order within each title. Longer laws are further subdivided into numbered paragraphs. The first paragraph of a law is called the *principium,* abbreviated pr. The next paragraph is numbered 1, and they continue from there.

The standard citation format provides the book, title, law, and paragraph numbers in that order (largest unit to smallest). In books and articles, you may see the *Code* cited in a form like this: C. J. 5.4.23.5; or just C. 5.4.23.5. In this class, we will cite it this way: first, *Code* is abbreviated 'Cod.'; then the book, title, law, and paragraph numbers, separated by periods. Thus, if I want to cite the seventh paragraph of law 32 in the third title of book 1:

Cod. 1.3.32.7

Translations:

The best English translation of the *Code* was produced privately by a judge named Fred H. Blume. It was never properly published, but after his death was typed up and placed online by the University of Wyoming.

Annotated Justinian Code. Translated and annotated by Fred H. Blume. Edited by Timothy
      Kearley. University of Wyoming: http://uwdigital.uwyo.edu/islandora/object/wyu:12399

Each individual title is in its own PDF file, so you have to look things up by book and title, separated by a hyphen. Thus if I want to look up a law within book 1, title 3, I do a word search (*ctrl-f*) for 1-3, and then open the transcription file (PDF).

The texts of the laws are augmented by Blume's own annotations and commentary, which can be useful; just notice where the text of the law ends and Blume begins.

The *Code* is searchable here: http://www.uwyo.edu/lawlib/blume-justinian/search.html

Summary of contents:

The Code loosely follows the order of the Praetorian Edict. The subjects are, roughly, as follows:

Church law: 1.1–1.13.

Sources of law: 1.14–1.25.

Functions of high officials: 1.26–1.57.

Private law: 2.1–8.59.

Criminal law: 9.1–9.51.

Administrative law: 10.1–12.63.

Novels

The *Novels* collect legislation enacted by Justinian after the publication of the rest of the *Corpus iuris civilis.* Many of them were issued in Greek, not Latin. The date of issue is provided at the end of each text; they were compiled near the end of the reign of Justinian in 565 AD. The *Novels* is less important for our purposes than the other components of the *Corpus iuris civilis.*

Citation format:

Unlike the other components of the *Corpus iuris civilis,* the Novels are not divided into books and titles. Each rescript or act of legislation is called a 'novel', i.e. 'new constitution,' and they are simply numbered sequentially. The novels are arranged in chronological order. Longer novels are divided into numbered chapters (*caput, capita, c.*). The first paragraph of a novel is called the *principium,* abbreviated pr. The next chapter is numbered 1, continuing from there.

The standard citation format provides novel and chapter numbers in that order (largest unit to smallest). Citation of the *Novels* in academic books and articles can be complicated. You may see a citation of the Novels accompanied by abbreviations like: Auth. coll. Do not worry about it. In this class, we will cite it this way: first, *Novels* is abbreviated 'Nov.'; then the novel number and chapter number, separated by a period. Thus, if I want to cite the 38th chapter of novel 123:

Nov. 123.38

If I want to cite the whole of novel 90:

Nov. 90.

Translations:

Justice Fred Blume translated the *Novels* as well as the *Code.* His translation is published with each individual novel in a separate PDF file.

Justinian's Novels. Translated and annotated by Fred H. Blume. Edited by Timothy Kearley. University of Wyoming: http://www.uwyo.edu/lawlib/blume-justinian/ajc-edition-2/novels/index.html