THE COMPOSITION OF THE DIGEST

THE EMPEROR CAESAR FLAVIUS JUSTINIANUS, PIUS, FORTUNATE, RENOWNED, CONQUEROR AND TRIONMPHER, EVER AUGUSTUS, GREETs TRIBONIAN HIS QUAESTOR.

Governing under the authority of God our empire which was delivered to us by the Heavenly Majesty, we both conduct wars successfully and render peace honorable, and we uphold the condition of the state. We so lift up our minds toward the help of the omnipotent God that we do not place our trust in weapons or our soldiers or our military leaders or our own talents, but we rest all our hopes in the providence of the Supreme Trinity alone, from whence the elements of the whole world proceeded and their disposition throughout the universe was derived. 1. Whereas, then, nothing in any sphere is found so worthy of study as the authority of law, which sets in good order affairs both divine and human and casts out all injustice, yet we have found the whole extent of our laws which has come down from the foundation of the city of Rome and the days of Romulus to be so confused that it extends to an inordinate length and is beyond the comprehension of any human nature. It has been our primary endeavor to make a beginning with the most revered emperors of earlier times, to free their constituciones (enactments) from faults and set them out in a clear fashion, so that they might be collected together in one Codex, and that they might afford to all mankind the ready protection of their own integrity, purged of all unnecessary repetition and most harmful disagreement. 2. This work has been accomplished and collected in a single volume under our own glorious name. In our haste to extricate ourselves from minor and trivial affairs and attain to a completely full revision of the law, and to collect and amend the whole set of Roman ordinances and present the diverse books of so many authors in a single volume (a thing which no one has dared to expect or to desire), the task appeared to us most difficult, indeed impossible. Nevertheless, with our hands stretched up to heaven, and imploring eternal aid, we stored up this task too in our mind, relying upon God, who in the magnitude of his goodness is able to sanction and to consummate achievements that are utterly beyond hope. 3. Mindful as we are of the supreme service of your sincerity, we committed this work also to you in the first place, as you have given proofs of your ability in the composition of our

Codex; and we commanded you to select as colleagues in your task those whom you thought fit, both from the most eloquent professors and from the most able of the robed men of the highest lawcourt. These men have now been brought together, introduced into the palace, and accepted by us on your recommendation; and we have entrusted to them the execution of the entire task, on the understanding that the whole enterprise will be carried out under your own most vigilant supervision. 4. We therefore command you to read and work upon the books dealing with Roman law, written by those learned men of old to whom the most revered emperors gave authority to compose and interpret the laws, so that the whole substance may be extracted from them, all repetition and discrepancy being as far as possible removed, and out of them one single work may be compiled, which will suffice in place of them all. Other too have written books dealing with the law whose writings have not been received or used by any later authors; but we do not regard those works as being worthy of intruding upon our ordinance. 5. Since this material will have been composed by the supreme indulgence of the Deity, it is necessary to set it out in a most handsome work, consecrating as it were a fitting and most holy temple of justice, and to distribute the whole law into fifty books and distinct titles, in imitation both of our Codex of constituciones (enactments) and of the Perpetual Edict, in such a way as may seem convenient to you, so that nothing may be capable of being left outside the finished work already mentioned, but that in these fifty books the entire ancient law—in a state of confusion for almost fourteen hundred years, and rectified by us—may be as if defended by a wall and leave nothing outside itself. All legal writers will have equal weight and no superior authority will be preserved for any author, since not all are regarded as either better or worse in all respects, but only some in particular respects.

6. Out of a large number of authors, you must not make a judgment that the work of one is better and more equitable, since it may happen that the opinion of one writer, perhaps of inferior merit, is better at some point than those of many other authors, even superior ones. You ought not to reject out of hand, therefore, opinions recorded in the notes to Aemilius Papinian taken from Ulpian, Paul, and Marcian, which once had no weight on account of the honor given to the most renowned Papinian; but if you perceive that anything taken from them is necessary to supplement or interpret the works of Papinian, that man of supreme ability, you must not hesitate to set this down too as having the force of law, so that all the most gifted authors whose work is contained in this book may have as much authority as if their studies were derived from imperial constituciones (enactments) and had been uttered by our own inspired mouth; for we ascribe everything to ourselves, since it is from us that all their authority is derived; and one who amends something that is not done accurately deserves more praise than the original author. 7. There is something else of which we wish you to take special account: If you find anything in the old books that is not well expressed, or anything superfluous or wanting in finish, you should get rid of unnecessary prolixity, make up what is deficient, and present the whole in proportion and in the most elegant form possible. What is more, if you find anything not correctly ex-
pressed in the old laws or constitutiones (enactments) which the ancient writers quoted in their books, you should also take care to rectify it and put it into proper form, so that what is chosen by you and set down there may be deemed genuine and the best version and be treated as if it were what was originally written; and let no one dare to assert that your version is faulty by comparison with the old text. Since by an ancient ordinance, the so-called lex regia, all legal capacity and all the power of the Roman people were transferred to the imperial authority, and we do not portion out our total sway among such and such partial sources but wish it to be wholly our own, how can ancient times detract from our legislation? We also wish that all the same rules, when they have been set out, are to be so fully in force that even if anything was expressed in one way in the old writers but appears in a contrary sense in our work, no fault should be found with the latter, but it should be ascribed to our own choice. Consequently, in all parts of our aforesaid work there is to be no place for any antinomy (as it is called, from old times, by a Greek word), but there is to be total concord, total consistency, with no one raising any opposition. Repetition, too, as already said, we wish to exclude from a composition such as this. Seeing that the sanction of imperial constitutiones (enactments) is enough to give them their own authority, we do not with those things which have been provided by the most sacred constitutiones (enactments) inserted in our Codex to be set out again from the old law, unless perhaps this should happen by way of logical distinction or supplementation or in an effort toward greater completeness; but even then this must be done very rarely, lest, by extension of this sort of falling, some thorny growth may arise in such a meadow. Again, if any laws included in the old books have by now fallen into disuse, we by no means allow you to set them down, since we wish only those rules to remain valid which have either had effect in the regular course of the judicature or which the long-established custom of this generous city has sanctioned, in accordance with the text by Salvius Julian, pointing out that all civitates (states) ought to follow the custom of Rome, the very head of the world, and not Rome that of other civitates (states). And by Rome we must understand not only the old city but also our royal one, which, with the favor of God, was founded with the best auguries. We therefore command that everything is to be regulated by these two works: the Codex of constitutiones (enactments), and the other of the law clarified and arranged in the book that is to be. There may be added something else promulgated by us, serving the purpose of Institutes, so that the immature mind of the student, nourished on simple things, may be the more easily brought to knowledge of the higher learning. We command that our complete work, which is to be composed by you with God's approval, is to bear the name of the Digest or Encyclopaedia. No skilled lawyers are to presume in the future to supply commentaries thereon and confuse with their own verbosity the brevity of the aforesaid work, in the way that was done in former times, when by the conflicting opinions of expositors the whole of the law was virtually thrown into confusion. Let it suffice to make some reminders by indexes alone and simple headings, in such a way that no offense arises through interpretation. Moreover, lest some ambiguity should arise in future from the writing itself, we command that the text of the same book is not to be written with deceptive coded signs and obscure abridgements, which by themselves and their defects have occasioned many antinomies, even where it is the number of the books or something similar that is signified: we do not allow even such things to be specified by peculiar signs in code; they must be set forth by an ordinary sequence of letters. All this, therefore, your wisdom, with the favor of God, must strive to accomplish, together with the other most able men, and bring it to a satisfactory end as speedily as possible, in order that the complete work, divided into fifty books, may be offered to us in complete and eternal memory of the undertaking, and as a proof of the providence of Almighty God and for the glory of our rule and of your service. Given at Constantinople, on the eighteenth day before the Kalends of January, when Lampadius and Orestes, virtutissimi, were consuls."

1. The Greek word is ἔννοια.
2. Constantinople.

3. The date is 15 December 630.
Our Lord the Most Holy Emperor

Justinian's

Digests or Pandects

Of the Law in a Nutshell

Collected Out of Every Ancient Source

Book One

Justice and Law

1  Ulpian, Institutes, book 1: A law student at the outset of his studies ought first to know the derivation of the word jus. Its derivation is from justitia. For, in terms of Celsus' elegant definition, the law is the art of goodness and fairness. 1. Of that art we [jurists] are deservedly called the priests. For we cultivate the virtue of justice and claim awareness of what is good and fair; discriminating between fair and unfair, distinguishing lawful from unlawful, aiming to make men good not only through fear of penalties but also indeed under allurement of rewards, and affecting a philosophy which, if I am not deceived, is genuine, not a sham. 2. There are two branches of legal study: public and private law. Public law is that which respects the establishment of the Roman commonwealth, private that which respects individuals' interests, some matters being of public and others of private interest. Public law covers religious affairs, the priesthood, and offices of state. Private law is tripartite, being derived from principles of jus naturale, jus gentium, or jus civile. 3. Jus naturale is that which nature has taught to all animals; for it is not a law specific to mankind but is common to all animals—land animals, sea animals, and the birds as well. Out of this comes the union of man and woman which we call marriage, and the procreation of children, and their rearing. So we can see that the other animals, wild beasts included, are rightly understood to be acquainted with this law. 4. Jus gentium, the law of nations, is that which all human peoples observe. That it is not so extensive with natural law can be grasped easily, since this latter is common to all animals whereas jus gentium is common only to human beings among themselves.

2  Pomponius, Manual, sole book: For example, religious duties toward God, or the duty to be obedient to one's parents and fatherland.

3  Florentinus, Institutes, book 1: Or the right to repel violent injuries. You see, it emerges from this law (jus gentium) that whatever a person does for his bodily security he can be held to have done rightfully; and since nature has established among us a relationship of sorts, it follows that it is a grave wrong for one human being to encompass the life of another.

4  Ulpian, Institutes, book 1: Manumissions also belong to the jus gentium. Manumission means sending out of one's hand, that is, granting of freedom. For whereas one who is in slavery is subjected to the hand (manus) and power of another, on being sent out of hand he is freed of that power. All of which originated from the jus gentium, since, of course, everyone would be born free by the natural law, and manumission would not be known when slavery was unknown. But after slavery came in by the jus gentium, there followed the boon (beneficium) of manumission. And thenceforth, we all being called by the one natural name "men," in the jus gentium there came to be three classes: free men, and set against those slaves and the third class, freedmen, that is, those who had stopped being slaves.

5  Hermogenian, Epitome of Law, book 1: As a consequence of this jus gentium, wars were introduced, nations differentiated, kingdoms founded, properties individuated, state boundaries settled, buildings put up, and commerce established, including contracts of buying and selling and letting and hiring (except for certain contractual elements established through jus civile).

6  Ulpian, Institutes, book 1: The jus civile is that which neither wholly diverges from the jus naturale and jus gentium nor follows the same in every particular. And so whenever to the common law we add anything or take anything away from it, we make a law special to ourselves, that is, jus civile, civil law. 1. This law of ours, therefore, exists either in written or unwritten form; as the Greeks put it, "of laws some are written, others unwritten."

7  Papinian, Definitions, book 2: Now the jus civile is that which comes in the form of statutes, plebiscites, senatorial consults, imperial decrees, or humane juristic statements. 1. Prætorian law (jus praetorium) is that which in the public interest the praetors have introduced in aid or supplementation or correction of the jus civile. This is also called honorary law (jus honorarium), being so named for the high office (honos) of the praetors.

8  Marcius, Institutes, book 1: For indeed the jus honorarium itself is the living voice of the jus civile.

9  Gaius, Institutes, book 1: All peoples who are governed under laws and customs observe in part their own special law and in part a law common to all men. Now that law which each nation has set up as a law unto itself is special to that particular civitas and is called jus civile, civil law, as being that which is proper to the particular civil society (civitas). By contrast, that law which natural reason has established among all human beings is among all observed in equal measure and is called jus gentium, as being the law which all nations observe.

10  Ulpian, Rules, book 1: Justice is a steady and enduring will to render unto everyone what is his right. 1. The basic principles of right are: to live honorably, not to harm any other person, to render to each his own. 2. Practical wisdom in matters of right is an awareness of God's and men's affairs, knowledge of justice and injustice.

11  Paul, Sabinus, book 14: The term "law" is used in several senses: in one sense,
when law (jus) is used as meaning what is always fair and good, it is natural law (jus naturalis); in the other, as meaning what is in the interest of everyone, or a majority in each civitas, it is civil law (jus civile). Nor is it the less correct that in our civitas the jus honorarium is called law. The praetor is also said to render legal right (jus) even when he makes a wrongful decree, the reference, of course, being in this case not to what the praetor has done, but to what it is right for a praetor to do. By a quite different usage the term "jus" is applied to the place where the law is administered, the reference being carried over from what is done to the place where it is done. That place we can fix as follows: wherever the praetor has determined to exercise jurisdiction, having due regard to the majesty of his own imperium and to the customs of our ancestors, that place is correctly called jus.

12 MARCIAN, Institutes, book 1: We sometimes use the term "jus" also with a reference to a bond of relationships; for example, I have a jus cognationis (a blood tie) or a jus adfinitatis (a tie by marriage) with someone or other.

3 STATUTES, SENATUS CONSULTA, AND LONG-ESTABLISHED CUSTOM

1 PAPINIAN, Definitions, book 1: A statute is a communal directive, a resolution of wise men, a forcible reaction to offenses committed either voluntarily or in ignorance, a communal covenant of the state.

2 MARCIAN, Institutes, book 1: For Demosthenes the orator also defines it thus: "Law is that which all men ought to obey for many reasons, and chiefly because all law is a discovery and gift of God, and yet at the same time is a resolution of wise men, a correction of misdeeds both voluntary and involuntary, and the common agreement of the polis according to whose terms all who live in the polis ought to live." Chrysippus too, a philosopher of supreme stoic wisdom, begins his book On Law in the following terms: "Law is sovereign over all divine and human affairs. It ought to be the controller, ruler, and guide of good and bad alike, and in this way to be a standard of justice and injustice and, for beings political, by nature a prescription of what ought to be done and a proscription of what ought not to be done."

3 POMPONIUS, Sabinus, book 5: Rules of law should be established, as Theophrastus said, in the matters which happen by way of general occurrence, not for those which happen against the normal run of things.

4 CELSUS, Digest, book 5: Out of those matters whose occurrence in one kind of case is a bare possibility, rules of law do not develop.

5 CELSUS, Digest, book 17: For the law ought rather to be adapted to the kinds of things which happen frequently and easily, than to those which happen very seldom.

6 PAUL, Plautius, book 17: For, as Theophrastus says, a thing that happens once or twice is passed over by the lawgivers.

7 MODESTINUS, Rules, book 1: The force of a law is this: to command, to prohibit, to permit, or to punish.

8 ULPIAN, Sabinus, book 2: Rules of law are set up not as against single individuals, but in generic terms.

9 ULPIAN, Edict, book 16: There is no doubt that the senate has law-making power.

10 JULIAN, Digest, book 58: Neither statutes nor senatus consulta can be written in such a way that all cases which might at any time occur are covered; it is however sufficient that the things which very often happen are embraced.

11 JULIAN, Digest, book 90: And, therefore, as to matters on which decisions of first impression have been made, more exact provision must be made either by [juristic] interpretation or by a legislative act of our most excellent emperor.

12 JULIAN, Digest, book 15: It is not possible for every point to be specifically dealt with either in statutes or in senatus consulta; but whenever in any case their sense is clear, the president of the tribunal ought to proceed by analogical reasoning and declare the law accordingly.

13 ULPIAN, Curule Aediles' Edict, book 1: For, as Pedius says, whenever some particular thing or another has been brought within statute law, there is good ground for other things which further the same interest to be added in supplementation, whether this be done by [juristic] interpretation or a fortiori by judicial decision.

14 PAUL, Edict, book 54: Yet a ruling adopted against the ratio juris (the underlying rationale of the law) ought not to be carried to its logical conclusion.

15 JULIAN, Digest, book 27: We cannot follow a rule of law in instances where there has been a decision against the ratio juris.

16 PAUL, De Jure Singulare, sole book: Jus singulare (particular law) is law brought in by authority of a decision maker against the general tenor of legal reason on account of a specific policy goal.

17 CELSUS, Digest, book 88: Knowing laws is not a matter of sticking to their words, but a matter of grasping their force and tendency.

18 CELSUS, Digest, book 29: Statutes ought to be given the more favorable interpretation, whereby their intention is saved.
BOOK ONE/STATUTES, SENATUS CONSULTA, AND CUSTOM

19 Celsus, Digest, book 23: When there is an ambiguity in a statute, that sense is to be preferred which avoids an absurdity, especially when by this method the intention of the act is also secured.

20 Julian, Digest, book 35: It is not possible to find an underlying reason for everything which was settled by our forebears.

21 Neratius, Parchments, book 6: Accordingly, it is not right to go ferreting after the motives behind the things which are settled as law. To do otherwise is to subvert many present certainties.

22 Ulpian, Edict, book 35: When a law pardons something as to the past, it implicitly forbids it for the future.

23 Paul, Plautius, book 4: We should certainly not change points which have always had a single definite interpretation.

24 Celsus, Digest, book 8: It is not lawyer-like practice to give judgment or to state an opinion on the basis of one particular part of a statute without regard to the whole.

25 Modestinus, Replies, book 6: It is not allowable under any principle of law or generous maxim of equity that measures introduced favorably to men's interests should be extended by us through a sterner mode of interpretation on the side of severity and against those very interests.

26 Paul, Questions, book 4: It is not an innovation to reconcile earlier laws with later ones.

27 Tertullian, Questions, book 1: Accordingly, because the practice is to read earlier laws in the light of later ones, we ought always to deem it already inherent in statutes that they refer also to those persons and those things which may at any time turn out analogous [with persons and things expressly referred to].

28 Paul, Lex Julia et Papia, book 5: But later laws also refer to earlier ones, unless they contradict them; there are many proofs of this.

29 Paul, Lex Cincia, sole book: It is a contravention of the law if someone does what the law forbids, but fraudulently, in that he sticks to the words of the law but evades its sense.

30 Ulpian, Edict, book 4: Fraud on the statute is practiced when one does that which the statute does not wish anyone to do, yet which it has failed expressly to prohibit.

31 Ulpian, Lex Julia et Papia, book 13: The emperor is not bound by statutes. And though the empress is bound by them, nevertheless, emperors give the empress the same privileges as they have themselves.

32 Julian, Digest, book 8: What ought to be held to in those cases where we have no applicable written law is the practice established by customs and usage. And if this is in some way deficient, we should hold to what is most closely analogous and entailed by such a practice. If even this is obscure, then we ought to apply law as it is in use in the City of Rome. 1. Age-encrusted custom is not undeservedly cherished as having almost statutory force, and this is the kind of law which is said to be established by use and wont. For given that statutes themselves are binding upon us for no other reason than that they have been accepted by the judgment of the populace, certainly it is fitting that what the populace has approved without any writing shall be binding upon everyone. What does it matter whether the people declares its will by voting or by the very substance of its actions? Accordingly, it is absolutely right to accept the point that statutes may be repealed not only by vote of the legislature but also by the silent agreement of everyone expressed through desuetude.

BOOK ONE/ENACTMENTS BY EMPERORS

32 Ulpian, Office of Proconsul, book 1: Everyday usage ought to be observed in place of legal right and statute law in relation to those matters which do not come under the written law.

34 Ulpian, Duties of Proconsul, book 4: When it appears that somebody is relying upon a custom either of a civitas or of a province, the very first issue which ought to be explored, according to my opinion, is whether the custom has ever been upheld in contentious proceedings.

35 Hermogenian, Epitome of Law, book 1: But we also keep to those rules which have been sanctioned by long custom and observed over very many years; we keep to them as being a tacit agreement of the citizen, no less than we keep to written rules of law.

36 Paul, Sabina, book 7: This kind of law is held to be of particularly great authority, because approval of it has been so great that it has never been necessary to reduce it to writing.

37 Paul, Questions, book 1: If a question should arise about the interpretation of a statute, what ought to be looked into first is the law that the civitas had previously applied in cases of the same kind. For custom is the best interpreter of statutes.

38 Callistratus, Questions, book 1: In fact, our reigning Emperor Severus has issued a rescript to the effect that in cases of ambiguity arising from statute law, statutory force ought to be ascribed to custom or to the authority of an unbroken line of similar judicial decisions.

39 Celsus, Digest, book 23: A proposition does not hold good in analogous cases if it was not originally brought in on a rational ground, but adhered to in the first place in error and thereafter by custom.

40 Modestinus, Rules, book 1: Accordingly, every rule of jus is either made by agreement or established by necessity or built up by custom.

41 Ulpian, Institutes, book 2: A complete jus (right) is either of acquiring or of keeping or of reducing; for the question is either how something may come to be somebody's or how a person may keep a thing or keep his jus or how he may alienate or lose it.

4 ENACTMENTS BY EMPERORS

1 Ulpian, Institutes, book 1: A decision given by the emperor has the force of a statute. This is because the populace commits to him and in him its own entire authority and power, doing this by the lex regia which is passed upon his authority. 1. Therefore, whatever the emperor has determined by a letter over his signature or has decreed on judicial investigation or has pronounced in an interlocutory matter or has prescribed by an edict is undoubtedly a law. These are what we commonly call constitutions (enactments). 2. Plainly, some of these are purely ad hominem and are not followed as setting precedents. For only the specific individual is covered by an indulgence granted by the emperor to someone according to his deserts or by a penalty specially imposed or by a benefit granted in an unprecedented way.

2 Ulpian, Fideicommissa, book 4: In determining matters anew, there ought to be some clear advantage in view, so as to justify departing from a rule of law which has seemed fair since time immemorial.

3 Javolenus, Letters, book 13: A benefit from the emperor, since it proceeds from his undoubtedly divine generosity, ought to be interpreted as amply as possible.

4 Modestinus, Excuses, book 2: Later enactments are more forceful than earlier ones.
LEX CORNELIA ON MURDERERS AND POISONERS

1. MARCIAN, Institutes, book 14: Under the lex Cornelia on murderers and poisoners, someone is liable who kills any man or by whose malicious intent a fire is set; or who goes about with a weapon for the purpose of homicide or a theft; or who, being a magistrate or preceding over a criminal trial, arranged for someone to give false evidence so that an innocent man may be entrapped and condemned. 1. He also is liable who makes up and administers poison for the purpose of killing a man; or who with malicious intent gives false evidence so that someone may be condemned in criminal proceedings for a capital offense; or who, being a magistrate or judge of a [jury] court in a capital case, takes a bribe so that [the accused] may be found guilty under criminal law. 2. Whoever kills a man is punished without distinction as to the status of the man he killed. 3. The deified Hadrian wrote in a rescript that he who kills a man, if he committed this act without the intention of causing death, could be acquitted; and he who did not kill a man but wounded him with the intention of killing ought to be found guilty of homicide. On this account, it should be laid down that if someone draws his sword or strikes with a weapon, he undoubtedly did so with the intention of causing death, but if he struck someone with a key or a saucepan in the course of a brawl, although he strikes [the blow] with iron, yet it was not with the intention of killing. From this it is deduced that he who has killed a man in a brawl by accident rather than design should suffer a lighter penalty. 4. Again, the deified Hadrian wrote in a rescript that he who kills someone forcibly making a sexual assault on him or a member of his family should be discharged. 5. The deified Pius wrote that a lighter penalty should be imposed on him who killed his wife caught in adultery, and ordered that a person of low rank should be exiled permanently, but that one of any standing should be relegated for a set period.

2. ULPIAN, Adulterers, book 1: A father cannot kill his son without giving him a hearing but must accuse him before the prefect or the provincial governor.

3. MARCIAN, Institutes, book 14: Under chapter five of the same lex Cornelia on murderers and poisoners, someone is punished who makes, sells, or possesses a drug for the purpose of homicide. 1. The person who sells baneful potions or poisons and who uses them for the purpose of homicide is liable to the penalty of the same statute. 2. The addition of the phrase “baneful drugs” indicates that there are certain drugs which are not baneful. The term is therefore neutral, covering as much a drug prepared for the purpose of healing as one for the purpose of killing, as also that which is called an aphrodisiac. However, only that [kind of drug] is mentioned in the statute which is possessed for the purpose of homicide. It is, however, ordered by senatus consultum that no woman, who, not admitted by another, by another, who should not have injured another, who has administered a fertility drug from which the recipient dies shall be relegated. It is laid down by another senatus consultum that dealers in cosmetics are liable to the penalty of this law if they recklessly hand over to anyone hemlock, salamander, monkshood, pinegrubs, or a venomous beetle, mandragnora, or, except for the purpose of purification, Spanish fly. 4. Again, he is liable whose familia, with his knowledge, takes up arms with the intention of acquiring or recovering possession; also he who intrigates a sedition; and he who conceals a shipwreck; and he who produces, or is responsible for the production of, false evidence for the entrapping of an innocent person; again, any-

2. Collatio (1, 6, 2–4) quotes ULPIAN, Duties of Proconsul, book 7, for another version of Hadrian’s rescript: “He who has killed a man is customarily acquitted, that is if he did it without the intention of killing, and he who has not killed but sought to kill is condemned as a murderer. It is therefore to be laid down on this ground—was it with iron that Raphredidas struck the blow? For if he drew a sword or struck with a weapon, what doubt is there that he struck with the intention of killing? If, however, he struck with a key or a saucepan, or [even] struck with iron in the course of a chance brawl, but without design to kill [he should be acquitted]. Therefore, find this out and, if there was an intention to kill, order the slave to be put to the extreme penalty as a murderer, in accordance with the law.”
BOOK FORTY-EIGHT/PARRICIDES

ULPIAN, Edict, book 18: If anyone with malicious intent sets fire to my block of flats, he shall suffer the capital penalty as an arsonist.

MODESTINUS, Rules, book 4: By a rescript of the deified Pius it is allowed only to Jews to circumcise their own sons; a person of that religion who does so suffers the penalty of one carrying out a castration. 1. If a slave be thrown to the beasts without [having been before] a judge, not only he who sold him but also he who bought him shall be liable to punishment. 2. Following the lex Petronia and the senatus consultum relating to it, masters have lost the power of handing over at their own discretion their slaves to fight with the beasts; but after the slave has been produced before a judge, if his master’s complaint is just, he shall in this case be handed over to punishment.

MODESTINUS, Rules, book 8: An infant or a madman who kills a man is not liable under the lex Cornelia, the one being protected by the innocence of his intent, the other excused by the misfortune of his condition.

MODESTINUS, Encyclopaedia, book 12: By senatus consultum the man who performs or organizes evil sacrifices is ordered to be condemned to the penalty of this statute.

CALLISTRATUS, Judicial Examinations, book 6: The deified Hadrian wrote a rescript in the following words: “In crimes it is the intention, not the issue, to which regard is paid.”

ULPIAN, Lex Julia et Papia, book 8: It makes no difference whether someone kills or provides the occasion of death.

MODESTINUS, Punishments, book 2: Those who have committed murder of their own free will and with malicious intent, if they hold office are normally deposed; if they are of inferior station, they suffer the capital penalty. This can more readily be done in the case of decaurions, but in such a way that [capital punishment] takes place only when the emperor has first been consulted and orders it [to be carried out], unless perchance a disorder could not otherwise be quietened down.

PAUL, Viesa, book 6: If a man dies after being struck in a brawl, one must have regard to the blows delivered by each of those who gathered together for the purpose.

LEX POMPEIA ON PARRICIDES

MARCIAN, Institutes, book 14: By the lex Pompeia on parricides it is laid down that anyone who kills his father, mother, grandfather, grandmother, brother, sister, first cousin on the father’s side, first cousin on the mother’s side, paternal or maternal uncle, paternal or maternal aunt, first cousin (male or female) by mother’s sister, wife, husband, father-in-law, son-in-law, mother-in-law, daughter-in-law, stepfather, stepson, stepdaughter, patron or patroness, or with malicious intent brings this about, shall be liable to the same penalty as that of the lex Cornelia on mururers. And a mother who kills her son or daughter suffers the penalty of the same statute, as does a grandfather who kills a grandson; and in addition, a person who buys poison to give to his father, even though he is unable to administer it.

Scaevela, Rules, book 4: The brother [of a parricide], who had knowledge only [not proof] and did not warn his father, was relegated, and the doctor [who supplied the drug] was put to death.

3. Collatio [1, 7, 2] offers a variant: “But if a man dies after being struck in a brawl, because one must also have regard to the blows themselves struck against each man who took part, therefore those of low rank are condemned to the games or the mines, those of high status are fined half their property and relegated.”

VARIUS RULES OF EARLY LAW

1. ULPIAN, PLatorius, book 16: A rule is something which briefly describes how a thing is. The law may not be derived from a rule, but a rule must arise from the law as it is. By means of a rule, therefore, a brief description of things is handed down and, as Sabinus says, is, as it were, the element of a case, which loses its force as soon as it becomes in any way defective.

2. ULPIAN, Sabinus, book 1: Women are debarred from all civil and public functions and therefore cannot be judges or hold a magistracy or bring a lawsuit or intervene on behalf of anyone else or act as procurators. Likewise, someone who is not grown up must abstain from all civil functions.

3. ULPIAN, Sabinus, book 2: The power of refusal belongs to someone who is in a position to be willing.

4. ULPIAN, Sabinus, book 6: Someone is not regarded as being willing if he obeys the command of a father or master.

5. Paul, Sabinus, book 2: In the conduct of affairs, the position of people who are mad is different from the position of those who can speak without understanding the course of the matter; for someone who is mad cannot conduct any affair, but a pupil can do everything with his tutor as author.

6. ULPIAN, Sabinus, book 7: Someone who wished to transfer an inheritance to someone else does not wish to be the heir.

7. POMPONIUS, Sabinus, book 3: Our law does not allow the same person among citizens to die both testament and intestate; for there is a natural conflict between these statutes, “testament” and “intestate.”


9. ULPIAN, Sabinus, book 15: In matters that are obscure we always adopt the least difficult view.

10. Paul, Sabinus, book 1: It is according to nature for the advantages of anything to attach to the person to whom the disadvantages attach.

11. POMPONIUS, Sabinus, book 5: Something which is ours cannot be transferred to another without any action on our part.

12. Paul, Sabinus, book 8: In the case of wills, we interpret in the fullest possible way the wishes of the testators.

13. Ulpius, Sabinus, book 16: Someone whose right to claim has been abolished by the defense is not regarded as having received something.

14. POMPONIUS, Sabinus, book 5: In the case of all obligations in which the day is not named, the debt is owed on the present day.

15. Paul, Sabinus, book 4: Someone who has an action to recover something is regarded as possessing the thing itself.

16. POMPONIUS, Sabinus, book 21: An imaginary sale does not take place if the price is included.

17. POMPONIUS, Sabinus, book 22: When a date is included in a will, it must be supposed that it is included on behalf of the heir unless the intention of the testator was otherwise, as in the case of stipulations a date is included for the sake of the man who promises.

18. POMPONIUS, Sabinus, book 6: In the case of things which go to our heir on our death, having been left to us, we acquire by means of ourselves their benefit for those in whose power we are; the case is different when we have made a stipulation; for even if we stipulate under a condition, we acquire for them in every way even if the condition arises when we have been freed from the power of our master.