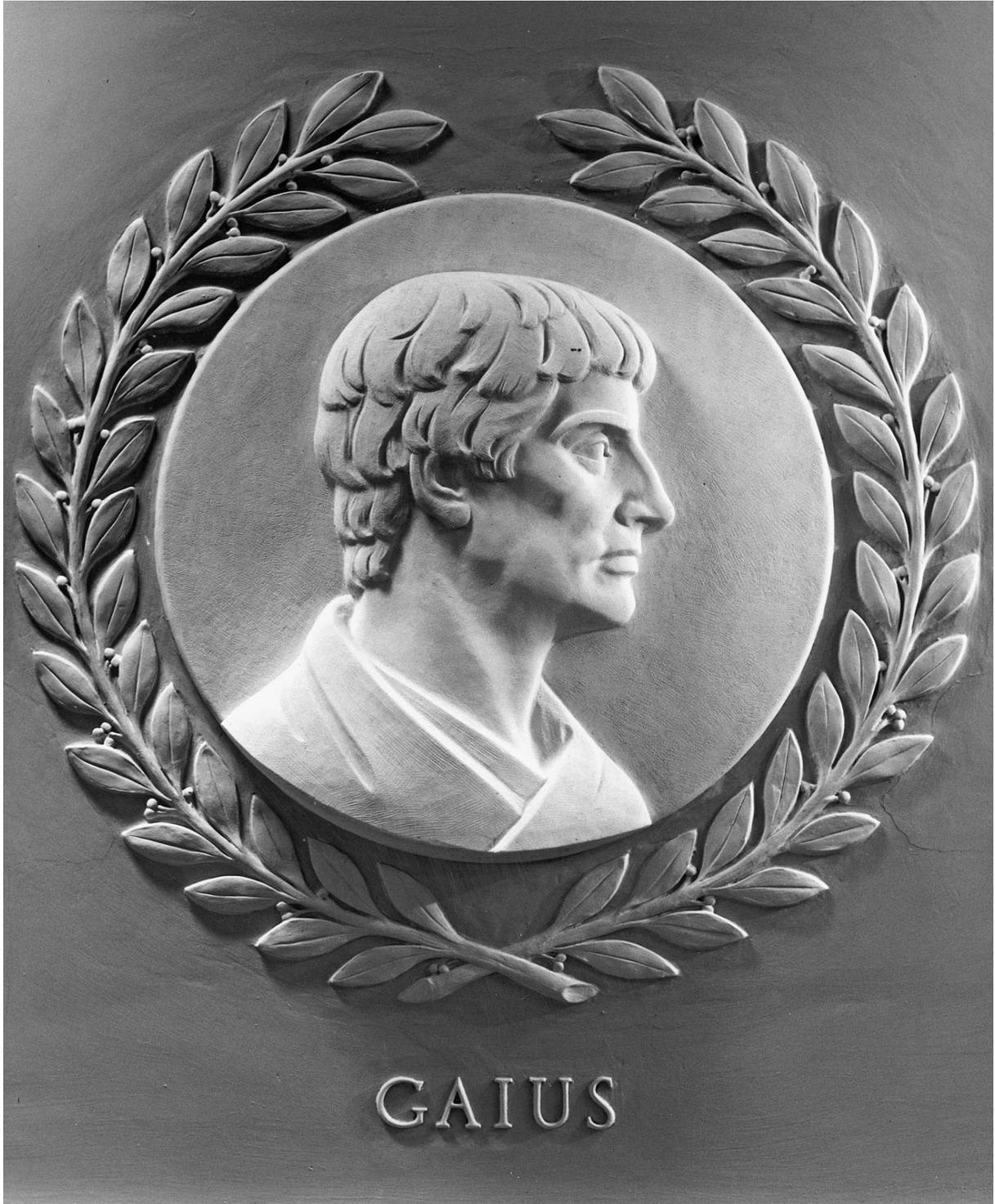


ADDITIONAL MATERIALS
TO ACCOMPANY
PRESENTATION



AGENDA

PART ONE

- I. Welcome**
- II. What is the Study of Roman Law?**
- III. Chronology & Constitutional Orders**
- IV. Justinian's Digest**

~ INTERLUDE ~

PART TWO

- V. The Scenario**
- VI. Roman Family Structure**
- VII. Slaves in Roman Society**
- VIII. *Peculium***
- IX. How to transfer land**
- X. Roman Law of Delicts & the *Lex Aquilia***
- XI. Formulary System**
- XII. *Noxal* Liability & *Noxal* Surrender**
- XIII. Returning to the Scenario**

~ CLOSING ~

SOME FURTHER MATERIALS

Glossary

- **agnatus** – one who shares a common *paterfamilias* (or did, when the *pater* was alive).
- **Corpus Iuris Civiles** – modern name given collectively to Justinian’s Digest, Code, Institutes, and Novels.
- **damnum iniuria datum** – delict founded on the *Lex Aquilia*.
- **delict** – civil wrong.
- **Digest** – a compilation of excerpts from the works of classical jurists, commissioned by the Emperor Justinian in the 6th Century.
- **Edict** – a series of statements of policy issued yearly by the Praetor, setting out how the Praetor intended to exercise his powers to grant remedies during his coming year in office.
- **formula** – a brief statement, composed by the Praetor and passed to the *iudex*, describing the conditions under which the *iudex* should condemn or absolve the defendant at trial.
- **formulary system** – a system of civil procedure in place from around 150 BC to around the 4th Century AD.
- **furtum** – delict akin to theft.
- **iniuria** – delict addressing insult and contumelious disregard for another.
- **Institutes** – teaching tool i.e. an introductory law textbook for students in Ancient Rome. Gaius prepared his Institutes, as did Justinian.
- **iudex** – judge in a civil trial.
- **lex** – statute (law), plural *leges*.
- **Lex Aquilia** – law of the 3rd Century BC establishing liability for certain wrongful damage to property.
- **mancipatio** – formal procedure for transferring ownership of *res mancipi*.
- **manumissio** – formal release of slave from servitude.
- **noxal liability** – the liability for wrongdoing that attaches to a slave and is actionable against the slave’s master.
- **paterfamilias** – head of Roman family (usually the oldest living male).
- **peculium** – property that, in law, is owned by a master or *paterfamilias* but by custom is controlled to some degree by a slave or son-in-power.
- **potestas** – the authority and power a *paterfamilias* had over his children-in-power.
- **Praetor** – highest judicial magistrate who was responsible for administration of civil law.
- **res mancipi** – a particular class of property comprising slaves, beasts of draught or burden, land in Italy, and rustic praedial servitude.

Example formula

- [*nominatio*] Let Titus be the judge.
- [*intentio*] If it appears that that Numerius should pay Julian 100 *denarii* then,
- [*exceptio*] if there is no agreement between Julian & Numerius that the sum not be sued for,
- [*condemnatio*] you, *iudex*, condemn Numerius to Julian for 100 *denarii*, otherwise absolve him.

Chapter I of the *Lex Aquilia*

D.9.2.2.pr states:

Gaius, *Provincial Edict, book 7*: If anyone kills unlawfully a slave or servant-girl belonging to someone else or a four-footed beast of the class of cattle, let him be condemned to pay the owner the highest value that the property had attained in the preceding year.

EXCERPT FROM JUSTINIAN'S DIGEST

slave and whipped him, he would be liable to both actions, that for theft and that for insult; and should he kill him, he would be liable to three actions. 5. Then, if a person abducted another man's female slave and debauched her, he would be liable in both actions, that for making a slave worse and the action for theft. 6. And if someone wounded the slave whom he stole, both the Aquilian action and that for theft would lie.

- 3 ULPIAN, *Duties of Proconsul, book 2*: When someone wishes to proceed with an action arising from delict, if he wants to have a pecuniary award, he must have recourse to the ordinary law and will not need to launch a criminal prosecution; but if he seeks the extraordinary punishment of the miscreant, he must institute a prosecution against him.

2

THEFTS

- 1 PAUL, *Edict, book 39*: Theft, says Labeo, derives its name from the dark, that is, from black; it is what happens furtively and by stealth, most frequently by night; for Sabinus, it comes from fraud; or it comes from taking and carrying away or from the language of the Greeks who style thieves *φῶραι*; indeed, the Greeks derive *φῶραι* from *ἀπό τον φέρειν* (to take away). 1. Hence, mere theftuous intent does not make a thief. 2. Thus, one who denies the existence of a deposit with him does not at once become liable for theft but only if he conceal the thing with a view to appropriating it. 3. Theft is a fraudulent interference with a thing with a view to gain, whether by the thing itself or by the use or possession of it. This natural law proscribes.
- 2 GAIVS, *Edict, book 13*: Theft is of two kinds: either it is manifest or it is not manifest.
- 3 ULPIAN, *Sabinus, book 41*: A thief is manifest whom the Greeks describe as *ἔπ' ἀποφῶρῳ*, that is, one caught in the act of theft. 1. And it makes little difference whether he be caught by the owner of the thing or by someone else. 2. But is a thief manifest only if he be caught in the act or also if he be apprehended elsewhere? The better view is that which appears in the writings of Julian, that is to say, that although he be not taken at the scene of the offense, he will still be a manifest thief if he be taken with the stolen thing, before he has taken it to its intended destination.
- 4 PAUL, *Sabinus, book 9*: "Destination," for this purpose, means "the place where he aimed to remain that day with the stolen thing."
- 5 ULPIAN, *Sabinus, book 41*: Consequently, whether he be apprehended in a public place or in a private one, before he gets the thing to its intended resting place, he is in such a case that he will be a manifest thief, if caught with the stolen goods; so wrote Cassius. 1. But if he should have reached his destination, then, although he later be found with his booty, he will not be a manifest thief.
- 6 PAUL, *Sabinus, book 9*: Although there may be theft where there are frequent interferences, nevertheless, it is to the beginning, that is, the time of the first such interference, that we must look to decide whether the theft be manifest or not.