

Glossary of legal terms

This glossary is not exhaustive: it contains only a few terms of Roman law which are used on several occasions in this book and which it is convenient to define here rather than each time they occur. Further details and references can be found in A. Berger, *Encyclopedic Dictionary of Roman Law* (1953); here reference is made (in brackets) only to relevant passages, if any, in the Institutes of Gaius.

actio: a legal action, a claim or suit brought by a plaintiff (4.1–4); an action *in personam* asserted a claim against a person, for example under a contract; an action *in rem* a claim for a thing

bonae fidei iudicia: a legal action in which the judge was given discretion to determine the case according to the standard of good faith; the converse was the action *stricti iuris*, in which the judge enjoyed no such discretion (4.61–2)

cautio: a promise or undertaking, made by *stipulatio*; the term also denotes a written document which was evidence of the promise

cognitio: a late form of civil procedure in which an official was responsible for the conduct of the entire procedure; by contrast, in formulary procedure the phase of proceedings during which evidence was led was held before a private individual (*iudex*)

condictio: an action *in personam* asserting that the defendant was under an obligation to give something to, or do something for, the plaintiff; in classical law this was available only for claims for specific sums or objects (4.5)

damnum infectum: damage ‘not done’ but threatened by the ruinous state of a neighbour’s property; the praetor provided various remedies to encourage repair and against the event that the damage materialized

dominium: ownership

emptio venditio: contract of sale (3.139–41)

exceptio: a defence to the plaintiff’s legal action, introducing a ground on which the defendant should not be condemned in the action (4.115–29)

fiducia: an agreement made in connexion with a conveyance of property; in particular, a type of security by which the debtor conveyed property in security

to his creditor, the *fiducia* being the creditor's undertaking to convey it back again on satisfaction of the debt (2.60)

formula: in formulary procedure a statement issued by the praetor which appointed a judge, set out the legal issues raised by each of the parties, and gave the judge authority, having considered them, to determine whether the defendant should be absolved or condemned

institor: a person appointed by the owner of a business as its manager; the praetor made an action available directly against the owner of the business to those who dealt with the *institor* in the course of the business (4.71)

iudex: a judge in civil proceedings, responsible in formulary procedure for hearing evidence and deciding whether the defendant should be absolved or condemned in terms of the formula

locatio conductio: the contract of hire or letting, whether of a thing, of services or of a task to be done (3.142–7)

mancipatio: a formal conveyance in which, before five witnesses and a person holding a scale, ownership was conveyed 'by bronze and scale' to the acquirer; one of two possible methods for transferring ownership in *res Mancipi*, the other being *in iure cessio* (1.119–22)

mutuum: loan of money or other consumables, concluded by delivery to the borrower (3.90)

peculium: a fund of property entrusted to a slave or to a child in the power of a paterfamilias, but which none the less remained the property of the paterfamilias; the praetor granted actions directly against the paterfamilias to those who had dealt with the slave or child, but such actions were limited in quantum to the value of the *peculium* (4.72a–74a)

pignus: a type of pledge which gave the pledge-creditor possession of the object pledged

possessio: physical control of, rather than entitlement to, an object, and so to be clearly distinguished from ownership; the possessor was protected by interdict

res Mancipi: a thing the ownership of which required to be transferred by formal conveyance, *mancipatio* or *in iure cessio*, namely land, slaves, certain animals – such as oxen, horses, mules and asses, but not elephants or camels; all other items were *res nec Mancipi* (1.120, 2.14a–23)

stipulatio: a contract entered into orally by formal exchange of corresponding question and answer (3.92)

sui heredes: heirs who were in the power of the paterfamilias at his death (2.156–7)

sui iuris: independent, not subject to paternal power

traditio: a means of conveyance by delivery, sufficient to transfer ownership in things which were not *res Mancipi* (2.19)

usucapio: acquisition of ownership of a thing by possessing it for two years (for land) or one year (for anything else), provided the possession was begun in good faith, for a good cause and was of an object which had not been stolen (2.42–58)

ususfructus: a right to make use of and enjoy the fruits of the property of another person without impairing its substance

vindicatio: a legal action seeking recovery of property (4.5)