

CIVIL LAW I SUPERVISION 4

Property II: Original acquisition of ownership

Reading

Du Plessis, *Borkowski's Textbook on Roman Law* (4th ed (2010) 190-202 **and**
Buckland, *Textbook of Roman Law* (2nd ed, 1932), 204-227; **and**
Thomas, *Textbook on Roman Law* (1976) 166-179

Institutes of Gaius G.2.65-79
Institutes of Justinian J.2.1.11-39

Further reading

For a (highly recommended) more chatty approach, see Nicholas, *An Introduction to Roman Law* (1975)
130-140.

Please write an answer to the following question

Discuss questions of ownership and the claims that arise from the following:

- (a) A's hen laid an egg on B's land
- (b) C shot a partridge on D's land; the wounded bird landed on E's land and E's dog retrieved it.
- (c) A candidate at an examination caricatured the invigilator on a sheet of paper supplied by the university.
- (d) D's flock of sheep become mixed with E's.
- (e) H took K's brandy, mixed it with his own cherries and made cherry brandy.
- (f) L's sister took X's silk and used it to embroider a scarf which she gave to L.
- (g) A built a house on B's land with his own materials but incorporated into it a door, stolen from C. A lived in the house, took the crops and cut down several trees. He sold the house to X. B now claims the house and all the materials included in it.

Supervision Questions

1. What constitutes capture for *occupatio*? When does a wild animal become *res nullius*?
2. *Accessio*:
 - (a) Whether or not the good faith builder on another's land has a right to compensation depends on whether he has possession of the land. Why should so much rest on whether or not he has possession?
 - (b) Why should writing but not painting accede to the material upon which it is written/painted?
3. What happens in terms of ownership in the following circumstances? What actions are available?
 - (a) B sews a button belonging to A onto his coat.
 - (b) B uses metal belonging to A to weld an arm onto his statue.
 - (c) B uses thread belonging to A to sew into his garment.
 - (d) A builds a house out of his own bricks on land which he possesses but which in fact belongs to B.
 - (e) C on his own land builds a house out of bricks which he thinks he owns but which in fact belong to D.
 - (f) E with his own paint paints a boat belonging to F, who now claims the boat.
 - (g) G writes an illuminated manuscript on H's paper; H now claims the document.
 - (h) J makes a chair out of wood belonging to himself and cane belonging to K.
 - (i) L takes a silver vase belonging to M, melts it down, and makes forks out of the silver.
 - (j) N finds a bag of gold on O's land while having a picnic there.
4. B steals A's juniper berries and makes gin. C steals the gin from B and mixes it with tonic belonging to D. E steals the gin and tonic from C and adds a slice of lemon that he has just stolen from F. F's slave G steals the gin and tonic and lemon. G is seen by E who gives chase. G spills the gin and tonic onto H's land. Shortly after, the lemon seeds germinate and a lemon tree grows. Discuss.
5. A thief raids an orchard, owned by D. He steals apples that have fallen to the ground.
 - (a) A is in possession of the orchard, believing he owns it. Who owns the stolen apples?
 - (b) A has a usufruct over the land. Who owns the stolen apples? What if A had picked the apples herself and then the thief had stolen them?
6. Why is there a special rule regarding fruits when a slave woman gives birth?