Things (*res*)

Can anyone map the these three boxes onto modern law school courses:

acquisition of *res singulae* bk. 2.19–96 (§§ 38–9 tell us that obligations cannot be conveyed singally)	vs. acquisition *per universitatem* bk. 2.97–289 and 3.1–87 (mostly succession, including legacies [§§191–245] and *fideicommissa* (trusts) [§§246–289])	vs. acquisition and extinction of obligations bk. 3.88–225

res corporales vs. res incorporales–§12 §13 §14

38. Obligations however contracted are susceptible of none of these modes of transfer. For if I wish a debt owed by someone to me to be owed to you, I can effect my purpose by none of the methods whereby corporeal things are conveyed, but it is necessary that you should on my instruction take a stipulatory promise from the debtor. The result will be that he will be released from me and become liable to you. This is called a novation of the obligation. **39.** Without such a novation you will not be able to sue for the debt in your own name, but must proceed in my name as my *cognitor* or *procurator*.

res in patrimonio vs. res extra patrimonium–§1

res divini iuris vs. res humani iuris–§2					
res sacrae–§§3–5 (temples)	res religiosae–§§6–7a (tombs)	res sanctae–§§8–9 (city walls and gates)		res publicae	res privatae–§§10–11

7. In the provinces, however, the general opinion is that land does not become *religiosum*, because the ownership of provincial land belongs to the Roman people or to the emperor, and individuals have only possession and enjoyment of it. Still, even if it be not *religiosum*, it is considered as such.

res corporales vs. res incorporales–§12 §13 §14

§ 14 “Incorporeal are things that are intangible, such as exist merely in law, for example an inheritance, a usufruct, obligations however contracted. It matters not that corporeal things are comprised in an inheritance, or that the fruits gathered from land (subject to a usufruct) are corporeal, or that what is due under an obligation is commonly corporeal, for instance land, a slave, money; for the rights themselves, of inheritance, usufruct, and obligation, are incorporeal. Incorporeal also are rights attached to urban and rural lands. Examples of the former are the right to raise one’s building and so obstruct a neighbour’s lights (*ius altius tollendi*), or that of preventing a building from being raised lest neighbouring lights be obstructed (*ne luminibus officiatur*), also the right that a neighbour shall suffer rain-water to pass into his courtyard or into his house in a channel or by dripping (*ut vicinus flumen vel stillicidium recipiat*); also the right to introduce a sewer into a neighbour’s property (*cloacae immitendae*) or to open lights over it (*luminum immittendorum*). Examples of rights attached to rural lands are the various rights of way for vehicles, men, and beasts [*iter* (walk), *actus* (drive), *via* (build a road)]; also that of watering cattle (*pecoris ad aquam adpulsus*) and that of watercourse (*aquaeductus*). Such rights, whether of urban or rural lands, are called servitudes.”

What of our first-year property topics is missing in bk. 2.19–96?

res mancipi–§14a Italic land, beasts of burden, slaves, rustic praedial servitudes conveyed by *mancipatio* or *in iure cessio*	vs. res nec mancipi–§§15–17 all else *traditio* or *in iure cessio* (for those that are incorporeal)

<table>
<tr><td colspan="7">acquisition of res singulae–alienation by those in tutela–GI.2.80–85
–acquisition by others–GI.2.86–96</td></tr>
<tr><td colspan="3">iure civili–usucapio–§§40–61
–capacity–§§62–64</td><td>vs
.</td><td colspan="3">iure naturali</td></tr>
<tr><td>res corporales–§§19–27</td><td colspan="2">res incorporales</td><td></td><td>occupatio–§§66–69</td><td>alluvio accessio–§§70–78</td><td>specificatio–§79</td></tr>
<tr><td></td><td>servitutes usus fructus–§§28–33</td><td>hereditas–§§34–37</td><td>obligationes–§§38–39</td><td></td><td></td><td></td></tr>
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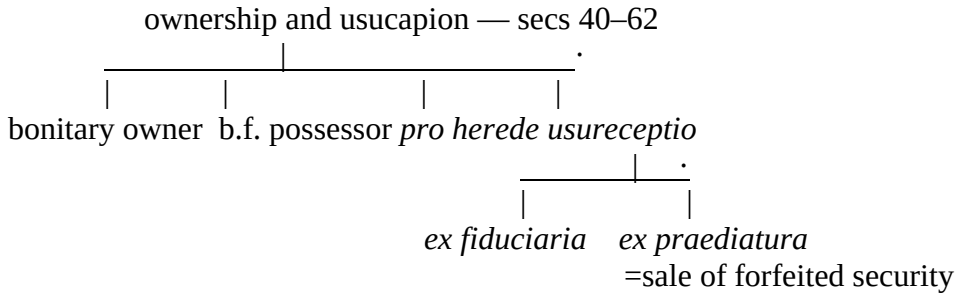

The stages by which the Romans arrived at bonitary ownership are interesting. It would seem that the first step gave the bonitary owner an *exceptio rei venditae et traditae* if he were sued by the true owner. The law of obligations works its way into the law of property. We're going to end up by giving the bonitary owner and an *in rem* right. The next step was to give not only him but all *bona fide* possessors an interdict against someone who took possession away from them. The possessory interdicts would protect him against most third parties and even against the true owner if the latter were the dispossessor, but what if the person dispossessed is not the original possessor (i.e., the original possessor has conveyed or has been dispossessed)? Another action is needed and it is the fictitious *actio Publiciana* of c. 100 B.C. (G.4.36). Here's how it worked: (a) if A.A. had run out the usucapion period, and (b) unless N.N. is the owner, and (c) even then if N.N. sold and delivered the thing to A.A. Note: (1) The bonitary owner now = owner except (a) for manumitting slaves (the best he can do is make them Junian Latins) and (b) in making legacies (not all forms of legacy were available to him). (2) The bonitary owner must convey by *traditio* and in most instances must receive by *traditio*.

Sec. 42–62—Requirements for usucapion. 2 yrs land, 1 yr moveables. Very short. But the requirements of *bona fides* and *iustus titulus* helped. By statute stolen goods and things taken by violence could not be usucaped. This applied not only to the thief but also to the people who took from the thief. Granted the expansive notion of theft, very few things could be usucaped except as a result of defective conveyances. G. offers two examples, the first may be generalized: if I have rightful possession of a thing and sell it without knowing that I have no title, usucapion may arise (the example Gaius gives is the heir's good faith sale of something that he thinks is in the inheritance). Similarly, usucapion is possible of land not taken by violence, since theft of land is impossible.

The materials on *usucapio pro herede* and *usureceptio* are odd. In the case of the first it probably refers to a time in which only the *necessarii* were truly heirs; its continuation to G.'s time is hard to explain. He seems to think that Hadrian had pretty much abolished it. In the case of the 2d it covers many situations that make sense (e.g., I get back mortgaged property in bad faith, but I pay back the debt; I have conveyed property to my friend *cum fiducia* for safekeeping and take it

back in bad faith); where it doesn't (taking mortgaged property back from a creditor without paying), it shows the Roman bias for ownership. *Usureceptio ex praediatura* has to do with getting back your property which has been seized by the state for back taxes and sold. Here we may not understand the institution; cf. redemption period for tax sales in our law.

secs 62–64: Owners who cannot alienate:

(a) dotal Italic land (b) *curatores* vs. those in *cura* (e.g., of a *furiosus*)

natural law vs. civil law

(The natural law methods are mostly involuntary (*occupatio* and *traditio* [which Gaius treats as a natural mode of acquisition at the very beginning] are the major exceptions), the following are aka original vs. derivative modes of acquisition.)

natural law

occupatio ss. 66–9 | *alluvio* *avulsio* islands | fixtures | *accessio* | *specificatio* s.79

ss. 70–8

(Good student stuff here; note how Gaius uses the actions.)

secs 80–85 — alienation by those *in tutela*, goes logically with secs. 62–4. Here we get an explanation of what little difference perpetual tutelage of women makes.

secs 86–96 — acquisition for us by others. The connection with the law of persons is here too very strong.

res in patrimonio vs. res extra patrimonium–JI.2.1pr			
communia omnium naturali iure–§1	publica–§§2–5	universitatis–§6	nullius: sacrae§§7–8 religiosae–§9 sanctae –§10

JI.2.1.11: Singulorum autem hominum multis modis res fiunt: quarundam enim rerum dominium nanciscimur iure naturali, quod, sicut diximus, appellatur ius gentium, quarundam iure civili. commodius est itaque a vetustiore iure incipere. palam est autem, vetustius esse naturale ius, quod cum ipso genere humano rerum natura prodidit: civilia enim iura tunc coeperunt esse, cum et civitates condi et magistratus creari et leges scribi coeperunt.

"natural" modes of acquisition–JI.2.1.11					
occupatio–§§12–19	alluvio avulsio–§§20–24	specificatio confusio accessio–§§25–43	fruits–§§35–38	treasure–§39	traditio–§§40–48