
4. Non se se tamen extendit extra territorium.

5. Non etiam minor major esset, ad omnem juris essetum consibitur esse major.

6. Quando majoris factum curat tempus restitutionis in integrum?

7. An qui major factus posset esse tutor?

8. De moribus quorundam mater vidua, quae minorennis potest esse tutrix.

9. Statutum de bonorum communione inter conjuges est reale.

10. Statutum de successionibus ab intestato reale est.

11. Etiam de successionibus testamentariorum.

12. Ut filius familias faciat testamentum, est statutum reale.

13. An in uno loco inhabilis alibi, ubi jus civile obtinet, testari possit cum esset?

14. Forensis uti non poterit, alterius loci statuto.

15. Legitimatus in uno territorio non censetur esse legitimatus in alio, essetum inspecto.

16. In
4. It does not, however, extend beyond the territory.
5. A minor who has effectively been made of age, will not also be judged to be of age for all legal consequences.
6. When does the period for *restitutio in integrum* lapse for someone who has thus been made of age?
7. Can someone who has been made of age be a guardian?
8. According to the customs of some people a widowed mother who is a minor can be a guardian.
9. A statute on community of property between spouses is a real statute.
10. A statute on intestate succession is a real statute.
11. So, too, one [a statute] dealing with testamentary succession.
12. A statute that a son who is under paternal power may make a will is a real statute.
13. Can someone who cannot make a valid will in one place, do so effectively in another place where the civil law (*jus civile*) is in force?
14. A foreigner will not be able to avail himself of a statute of another place.
15. A person who has been legitimated in one territory will not, when regard is had to the consequences, be deemed to be legitimated in another territory.
S E C T. IV. C A P. III. 145

16. In uno loco nobilitatus, non ubique cenfetur talis.

17. An cui in uno loco bonis interdisitum, 
ad administrandum ubique cen-
fseatur inhabilis?

18. An in uno loco notatus, alibi cenfet-
tur notatus?

19. An si aliqui interdisitum vel arte vel 
notiatione, vel loco, id alibi loc-
cum habeat?

20. An Tabellio extra summ territornim 
recte conscias instrumentum?

1. Verum ut magis de veritate hactenus 
explicatorum constet, superest ut 
in nonnulla inquiratur statuta, cujus illa sint 
genesis, & ad quae, & quousque sese exten-
dant?

Et quidem principio inquiram, Utrum 
statutum de veniae impetracione, ad testan-
dum, quam octrop appellamus, quae in 
Provincia Ultrajectinà, etiam quoad alodia, 
necessaria, statuto realisti annumerandum?

Relpondeo, si quidem de personali & reali 
statuto foret quaelibet, personali magis foret 
annumerandum, licet in ipsis licentiae litter-
is bonorum intra territorium jacentium fiat 
mentio; eo quod agat de licentiâ disponendi 
simpliciter seu testandi, quae est juris per-

G missivi,
16. Someone who has been raised to the nobility in one place is not considered to be a noble everywhere.

17. Would someone who has been interdicted from dealing with his property in one place be considered incapable of administering it everywhere?

18. Would a person censured\(^\text{17}\) in one region be judged to be censured elsewhere?

19. If someone has been interdicted from a craft or trade or place, would such an interdict hold good elsewhere?

20. Would a notary (\textit{tabellio}) have the right to draw up a document outside his own territory?

1. But in order further to confirm the truth of what has been expounded up to this point, it remains for us to enquire into several statutes, to determine their nature, and to determine to what things and how far they are to be applied.

And I shall indeed, to begin with, investigate whether a statute governing those who seek leave to make a will, which we call an “octroy”\(^\text{18}\) (permission which is necessary in the province of Utrecht as far as allodial estates\(^\text{19}\) are concerned), is to be classified as a real statute. I reply: If the question were indeed about a personal and a real statute, it would rather be classified as a personal statute, even if in the very letter of leave mention is made of possessions situated within the territory; this is because what is at issue is whether the leave is for simply (\textit{simpliciter}) disposing, or for making a will, which falls under \textit{jus permissivum}. 

\(^{17}\) Branded with infamy; leading to the curtailment of his civic rights [translator].

\(^{18}\) A charter [translator].

\(^{19}\) An estate that is held in absolute ownership and thus no longer forms part of a feudal regime.
SECT IV. CAP. III.


2. Ulterius utrum flatutum: ne conjux conjugi donet, aut aliquid relinquat, quale est nostrum Traiectinum, sit in rem, an in personam.
as far as the person making the will is concerned. I would, however, rather apply that leave (licentia) to the form of making a will - a necessary requisite - or to formalities. For in terms of civil law that obtaining of permission through the sovereign that is granted to a deaf mute, in like manner is applied to formalities and never to a thing itself. [Arg. I. 2.12 the entire title; I. 2.12.3; D. 28.1.7.] For this reason a soldier who is a deaf mute can make a will without obtaining leave, because his particular will is privileged and he himself is exempted from the formalities of law. [I. 2.13.2.] In addition, the will of a Dutchman which has been made in Holland - where there is, however, no need for leave - extends also to possessions situated in the province of Utrecht: this is a certain indication that the leave does not pertain to the thing, but forms part of the formalities. Consequently the question is not about the things in respect of which one may make a will, but about the manner in which it is done. In other words, leave has been granted, if the authorization has been utilised. Consequently, I myself hesitate in a wavering and vacillating manner, what to decide in this matter. [Extensively Rodenburg Tractatus ch. 3, title 2 p. 113 and ch. 4 n. 8; see, however, that same work p. 57 et seq. and see Zoesius on D. 28.1 n. 53; Sande Gelriae Feudales title 3, n. 74, pp. 149, 150.]

2. Furthermore, is the statute “that one spouse may not donate or bequeath anything to another”, as our statute in Utrecht reads, conceived as in rem (i.e. a real statute) or in personam
S E C T. IV. C A P. III. 147
personam conceptum? Respondeo, licet
forte de jure Romano tale statutum in per-
sonam posset esse conceptum; quod ibidem
alia ratio prohibitionis, arque apud nostrates,
ibidem donatio valebat, ad inflar mortis cau-
sa, adeoque morte confirmabatur, apud no-
stros, non iurem: nihilominus dicendum est,
hoc statutum de moribus esse mere reale.
Inhibet quippe rerum alienationem & transla-
tionem, primario; versatur circa rem, tan-
quam objectum statuti principale; neque eti-
am extenditur, ad immobilia, extra statuen-
tis territorium sita ubi contrarium obinet
statutum. Arg. l. ult. D jurisf. l. 27. §. 1.
D. Tutor & curat, dat. Hancque tentantiam à
multis observatam, usu approbatam, & ma-
gni senatus arrexis confirmatam, reftert Pec-
klius de Testam. conjug. libr. 4. c. 7. 10. 12. 28.
quid si municipum lege. diffentis ex parte Bur-
gund. ad conf. Flandr. tract. 1. n. 41, qui statuit
illud esse mixti generis. Diffentiant alii in to-
tum, qui id ipsum statuto personali annume-
rant. uti Bartolus in l. 32. D. de leg. in fin.
Bald. in consil. 418. in Princ. libr. 4. Socin. libr. 4.
consil. 131. m. 2. alique apud Alderanum Mas-
cardum, dubitantem de interpret. Statutor concl.
4. n. 145. &c. conclus. 6. n. 15. vid. Chrsfin. ad
Mechlin. in pralud. n. 45. &c. tit. 17. artic.
2. n. 11. &c. artic. 3. n. 13. Rodenburg. tract.
de jure conjugum tit. 2. cap. 5. m. 12. Quae causa
G z
est,
(i.e. a personal statute)? I reply: It is conceded that such a statute could perhaps be conceived as real \textit{(in rem)} in terms of Roman law - because there a procedure of prohibition prevailed which was different from that prevailing amongst our natives, and there a donation was valid, similar to a donation by reason of death \textit{(donatio mortis causa)} and was indeed confirmed by death, but not likewise amongst our people. Nonetheless, it must be said that this statute is in terms of custom purely real. For first it restrains the alienation and transfer of things; secondly it revolves around a thing as the chief object of the statute; thirdly it does not extend to immovables situated beyond the territory of the one making the statute, where a contrary statute is in force. [\textit{Arg. D. 2.1.20; D. 26.5.27.1.}] Peckius \textit{Tractatus Conjugum} book 4, ch. 7, 10, 12, 28 and 29] and Gothofredus [on \textit{D. 2.1.20} on the phrase \textit{quid si municipum lege}] report that this opinion has been observed by many people, has been approved in practice, and has been confirmed by the attestations of the “Hooge Raad”. Burgundus partly disagrees \textit{Consuetudines} 1, n. 42] when he maintains that it belongs to a mixed type of statute. Others totally disagree, when they classify this particular statute as personal [like Bartolus on \textit{D. 1.3.32 in fine}; Baldus \textit{Consilia} 418 \textit{in principio}, book 4; Socinus book 4, \textit{Consilia} 132 n. 2. Others are uncertain as in Alderanus Mascardus \textit{Conclusiones} 4, n. 145 and \textit{Conclusiones} 6 n. 15; see Christinaeus in the Prelude to the \textit{Commentaria} n. 45 and title 17, art. 2 n. 11 and art. 3 n. 13. Rodenburg \textit{Tractatus} title 2, ch. 5 n. 12.] And this is the reason why,
S E C T. IV. C A P. III.

148


3. Quale censebitur esse statutum, ut minor fiat major. 18. vel 20. etatis anno, quale antehac nostrum Ultrajectinum, nuperâ it lemn ordinum declaratione ann. 1659. April. 14. immutatum, an reale, an vero personale? Respondeo, si qui per aetatem major est factus, eo ipso liberam res suae consecutur administrationem: quia tamen statuentium scopus est & intentio, personas de jure civilis inhahiles, habilitare, eaque primo & per se afficer aliqua qualitate, personale statutum cret dicendum, videl Berlich. part. i. decis. 6. n. 7. Rodenburg. tract. de jure conjug. tit. 2. c. 1.

4. Verum, utrum eo ipso semet ex tendat extra statuentis territorium, idque ad omnem juris effectum, sic ut illa qualitas personam comitetur ubique locorum, id equidem, admodum dubium est. Et licet id permulti velint, illis tamen, invita jurisprudentia, non potero affirmari, per allegata superius. Quo etiam forte nomine Ordinul Ultrajectini suâ Constit. de ann. 1659. April. 14. art. 16. id reale appellant.

5. Utrum itidem, qui ita statuto major est effectus, quod ad omnem juris effectum pro majore habeatur, sic ut postquam 18. vel
in a recent declaration of our Orders of 14 April 1659, this question was settled beyond contention, and indeed this statute of ours has been classified as real.

3. What type of statute will the one “that a minor becomes of age at eighteen or twenty years of age”, - such as previously our Utrecht statute, likewise amended by the recent declaration of the Orders of 14 April 1659, read - be judged to be: real or personal? I reply: Even if someone who has become of age on account of his time of life, by that in itself acquires the unfettered right to administer his own property (res), nevertheless because it is the aim and intention of the statute-makers to empower persons (personae) who are disempowered in terms of the civil law, and firstly and basically to endow them with some or other capacity (qualitas), the statute will have to be defined as personal. [See Berlichus part 1, decisio 6, n. 7; Rodenburg Tractatus title 2, ch. 1.]

4. But it is in my opinion rather doubtful whether merely for that reason it extends beyond the territory of the statute-maker and, what is more, to every legal consequence, in the same way that capacity follows the person everywhere. And even though a great many would wish it so, I shall not be able to agree with them, if jurisprudence disallows it, by reason of the arguments adduced above. And perhaps for that reason the Orders of Utrecht also call it a real statute in their Ordinance (constitutio) of April 14, 1659, article 16.

5. Can it be investigated whether likewise a person who has thus been made of age by statute would be considered to be of age with respect to every legal consequence, to the extent that after she/he has reached eighteen

---

20 Eighteen for women, twenty for men [translator].
S E C T. IV. C A P. III. 149

6. Verum, an ex quo quis major est effe ctus vi statuti, statim etiam tempus in integrum restitutionis ipsi currere incipient. an demum post ætatem de jure civili perfectam, id est post 25. ætatis annum? Respondo, tempus quidem petendi restitutionis ipsi post annum vel 18. vel 20. prout statutum dispositur, currat, verum tamen durabit usque in illud tempus, quod de jure civilis, minoribus ad restitutionem est concessum. Tum quia is, quae ætatis veniam à Principe impetravit, etiam secundum DD. post tempus veniat impetrata, etiam postquam judicis accedisset cognitio, & examen, post quadriennium restitutioni poterit, modo fit minor.

G 3 ann.
or twenty years of age\(^{21}\) she/he would lose the benefit of reinstatement into a former legal position (\textit{restitutio in integrum}), a benefit due by edict to those younger than twenty five years? In my judgment she/he must be considered to have lost that benefit of minority in all those respects in which she/he is held to be of age. With the reservation, however, that I would not wish that eventuality to extend to the alienation of property (\textit{res}) especially if that right has already been restricted by such a statute. This was formerly the position in terms of the Utrecht-statute \textit{Rubric} 28 article 6. And this view seems to be established. \[\textit{Arg. C. 2.44.3; C. 2.52.5 in initio; Montanus Tractatus ch. 33 nn. 38, 619; Cuyck on Cravetta’s Consilia 722; Antonius Mattheus (II) disputatio 5, De Curatoribus*, n. 22 and various others cited there; Zoesius on D. 4.4 n. 20.}\]

6. But will the period allowed for \textit{restitutio in integrum} start to lapse immediately from the moment when someone effectively becomes of age by force of the statute, or only after the age required in terms of civil law is reached, in other words after her/his twenty fifth year? I reply: The period allowed for seeking restitution will indeed lapse after her/his eighteenth or twentieth year in accordance with what was pre-arranged in the statute, but it will nevertheless last until that time which has been granted to minors for restitution in terms of the civil law. First, because someone who has petitioned the emperor for \textit{venia aetatis}, that is, granting an anticipation of full age, can - according to the legal scholars - be reinstated even after the time when the privilege was accorded, when there has also been a judicial inquiry and examination, after a period of four years, provided she/he is younger than twenty five.

\(^{21}\) See n. 20 on p. 113 above.
Sect. IV. Cap. III.


7. Idem quod dicendum, de statuto, quod
But if it is true in the case of a rescript of the emperor granting an anticipation of full age, it will apply far more in the case of a statute, which does not carry greater effect than anticipation of full age - it will perhaps even bring about a smaller rather than a larger amendment of the civil law than that rescript itself. Secondly, because statutes must be interpreted and qualified in such a way that they do not hold within themselves the chance of a repeated amendment of the civil law, and this would occur if in addition to the amendment of the period of being a minor, the amendment of the period of restitution is also added. Thirdly, because something that has been introduced by statute for the sake of minors, in order that they may sooner be released from the power of a guardian and may acquire full right to administer their own possessions (res), ought not to be twisted to the disadvantage of those very minors. [C. 2.52.5 in fine; D. 28.6.12; C. 6.37.6; Johannes Andreae in an additio to Durandus’ Speculum Juris book 2, part 3 De Restitutione in Integrum n. 4 letter B; De Castro Consilia 106 with the incipit, Incipiendo n. 3; Tuscus tome 7 on the word statutum, conclusio 607 n. 76; Berluchus part 1, decisio 6 and the numerous authorities cited there, who also mention that it was decided thus by the assessors of Leipzig; and see Antonius Matthaeus (II) disputatio 5, De Curatoribus*, n. 22; see Oddus De Restitutione part 1, quaestio 20, art. 1; De Castro on C. 2.52.5; Cravetta Consilia 722 n. 22 concerning a similar Papal statute.]

7. And the same is to be said about a statute
SECT IV. CAP. III. 151


9. Verum quid flaruendum de variarum

G

Proviu-
that because of his marriage releases a minor from guardianship and regards him to be of age. For this must not be interpreted in a way that its effect would be onerous, as if he should, or even could, submit to a guardianship which was imposed upon him before the twenty fifth year of his life. For when one amendment to the civil law has been introduced a second amendment need not be assumed, especially in a matter which is onerous, since we interpret statutes in such a way that they deviate from the civil law as little as possible, and are not twisted to the disadvantage of those very people in whose favour they were introduced. This is supported by the arguments cited in the previous question. [Montanus Tractatus ch. 33 n. 619; Oddus De Restitutione, quaestio 23 nn. 44, 47 and 50; Sande book 2, title 7, definitio 4; Mevius Commentarii in Jus Lubec. 1, rubric (read: title) 7, art. 6 n. 14 et seqq. and others in Antonius Matthaeus (II) De Tutelis, disputatio 1 nn. 7, 8.]

8. And yet (this must be mentioned in passing) in terms of the customs of a number of regions a widowed mother under the age of twenty five is not excluded from the guardianship of her own children, as has been decided (resolved), according to what Christinaeus vol. 3, decisio 149 n. 7 writes. And Faber, commenting on C. 5.35 as well as the scholars in Barbosa on C. 5.35 n. 7 report that no distinction is to be allowed between a mother who is a minor and one who is of age. Even in the dominions of our Belgian confederation that is, the Netherlands, the guardianship of her ward - the most eminent Prince of the people of Orange, William Frederick – was with a certain compromise entrusted to the royal princess when she was a widowed mother.

9. But what conclusion must we come to regarding the custom, or rather statute, of various provinces in the Netherlands
SECT. IV. CAP. III.

Provinciarum in Belgio confuetudine, vel potius statuto, quo inter conjuges, post celebretas nuptias, ut in Hollandia; potissimum, ut apud Ultrafraginos, bonorum indutur communio, nisi pactis sit exclusa dotalibus, reali ne statuto adnunetabitur, an potius personali? Resp. Et si forte de jure civilis tale statutum, ad exemplum societatis ad bona alibi jacentia se se extendingeret, in quae societate, si ea sit omnium bonorum, etiam omnia continuo, per se tantum aliquam traditionem, exceptis nominibus, communicabantur. 1. in fin. l. 2. l. 3. D. Pro socio.

in terms of which community of property between spouses is introduced - after the nuptials have been solemnized, as in Holland, or after intercourse, as among the people of Utrecht - unless it has been excluded by agreements relating to the dowry: will it be classified as a real statute or rather as a personal one? I reply: Such a statute might perhaps in terms of civil law extend to possessions situated elsewhere, following the example of a partnership in which, if it is a partnership embracing the whole property of all partners (societas omnium bonorum), through some fictitious transfer, everything except debts was immediately shared. [D. 12.1.1 in fine; D. 12.1.2; D. 12.1.3.]

But even if an agreement were to intervene, a personal action would arise from it for the sharing or valuation of possessions situated outside the territory in a place where a contrary custom holds sway. [Arg. D. 23.4.7; D. 23.4.12; C. 5.14.6.] Nevertheless, since that statutory joint ownership chiefly has the alienation of things in view, and indeed primarily and principally affects the things themselves, it cannot be denied that this statute of ours is to be classified as a real statute; consequently it does not extend its real (reales) effects to possessions situated elsewhere, where a contrary statute is in force. [Argentraeus Commentarii art. 218 n. 38; Christinaeus vol. 2, decisiō 57 dissenting Burgundus Consuetudines 1, n. 15; see extensively Rodenburg Tractatus title 2, ch. 1; Simon van Leeuwen Paratitula book 4, art. 1, ch. 15.]
S E C T. IV. C A P. III. 153


10. Must the same inference be drawn regarding statutes that have intestate successions in view? I reply in the affirmative: For they affect a thing (*res*), not a person, with the result that they must be governed by the laws of the place where the things are situated or are understood to be: immovables by the statutes of the place where they are situated, movables by the statutes of the place where the testator was domiciled. [Tiraquellus *De Jure Primogeniorum, quaestio* 46; Giurba *Consuetudines (Lucubrations)*? ch. 6, gloss 8, part 1 n. 3 and see Sande book 4, title 6, *definitio* 7; Burgundus *Consuetudines* 1, n. 25; Christinaeus vol. 3 (read vol. 2), *decisto* 59; Christiaan Rodenburg *Tractus* ch. 2, title 2 n. 1.] Salycetus totally disagrees: in five arguments on C. 1.1.1 n. 14 he contends that the statute of the place of origin and the domicile of the deceased must be taken into account. But also in the subject matter on the conflict of statutes there will be ample opportunity to discuss this question.

11. The same inference is to be drawn regarding testamentary succession. For imagine a will being permitted to be made here but not likewise in Gelderland? The consequence of this would be that if anyone makes a will here, it will not have validity with regard to possessions situated in Gelderland. Such a statute is indeed directed at the possessions (*bona*) themselves, and will indeed be real since it does not extend its validity beyond the territory of the statute-maker. [Arg. D. 2.1.20; Gothofredus on the same text; Gabriel *Communes Conclusiones* book 6, *conclusio* 8 and various authors there; Zoesius on D. 28.1 n. 52 and other authors there.]
154 S E C T. IV. C A P. III.

12. Verum ut etiam exempla innotescant statutorum personalium, & corundem effectuum, quo regulae antea allegatae, inducitoribus demonstrantur; Inquiram utrum statutum; ut sius familiis posset facere testamentum, (quod personale esse judico, quia habiles ad testandum declaratur, qui erat de jure communis inhabitus, eique quid permittitur, de jure communis prohibitum); utrum, inquam, tale statutum, etiam locum habeat extra territorium, & dum alibi facit testamentum, & dum dispositit in territorio, de beenis alibi sitis? Resp. quod ad primum quaestitum, non dubium, quin si alibi testatur, valeat dispositio illa, ratione bonorum intra territorium dispositionis jacentium. Quod potestas aliquid disponendi circa suum civem, non precise arquetur territorio. Arg. l. fin. D. de decret. ab ordin. faciend. l. 2. 4. Cod. Comm. & Mercat.


Atque hic videtur esse sensus constuit. novae ordin, Ultraj. de ann. 1659. April, 14. artic.
12. But in order that examples of personal statutes and their effects may also become known - so that thereby the rules previously adduced may be demonstrated by inductions - I shall investigate whether a statute “that a son in paternal power can make a will” is also valid beyond its territory. (This is a statute that I judge to be personal, because somebody who in terms of common law used to be incapable of making a will is declared capable to do so, and he is permitted something that in terms of common law is prohibited.) I say I shall enquire whether such a statute is also valid beyond its territory, both when he makes a will elsewhere and also when he disposes within the territory of property (bona) situated elsewhere. I reply: Regarding the first question there is no doubt that if he makes a will elsewhere, that disposition would be valid with regard to property to be found within the territory of the one who disposes, because the power to dispose of something in respect to a fellow-citizen is not restricted absolutely by territory. [Arg. D. 50.9.6; C. 4.63.2, 4.]

As regards the second question, I would be of the opinion that such a capacity of a person does not extend to property situated elsewhere, on the grounds of the books and authorities cited above. [Add (to these) Gaill 2 Observationes 123 nn. 13 and 124 following Bartolus on C. 1.1.1 n. 40; Baldus n. 80; Gilken nn. 124 and 91; Gomezius Leges Tauri 3, n. 20; see, however, Rodenburg Tractatus 1, ch. 1 throughout after Burgundus, partly refuted in the same place.]

And this appears to be the meaning of section 16 of the new Ordinance of Utrecht dated 14 April 1659,
SECT. IV. CAP. III. 155

16. Ubi statutum, de quo agendum subse-
quenti quaestione, volunt esse reale: quod e-
quidem sic accipiendum existimatem, ut non
esse extendat ad bona alibi sita de quibus for-
ter testari poterit minor, licet nondum 16. aut
18. ætatis annum impleverit. Neque enim
id esse reale hoc sensu probabile, quasi incola
Hollandiae aut loci alterius ratione bonorum
hic jacentium testari non valeat, nisi sit 16.
aetate 18. annis major.

13. Verum an vice versa, qui inhabilitis
est in suo territorio qualis est apud nos secun-
dum declarationem ordinem Ultraject. de
ann. 1659. April. 14. femina 16. annis
minor, & masculus 18. annis minor, alibi
ubi secundum jus civile censebitur habilis,
illa 12. hic 14. ætatis anno, testari poterit
cum effectu? Non videbitur. Quia habilitas
illa, vel qualitas, non potest extra territori-
um addi personæ non subjectæ; Arg. l. fin.
n. 227. quest. 14. Gail. 2. obs. 124. n. 131:
4. e. 35. n. 4. 8. 9. Mer. ad Lubeck. quest.
prelim. 4. n. 32. & seq. Gilben. ad l. 1. Cod.
Summ. Trinit. n. 62. 63.

14. Quid si tamen forensis (qui qualis sit
vid. apud Mascard) dict. tract. conclus. 6. n.
G 6 212.
where they decide that the statute which is dealt with in the second of the above questions is a real statute. And I certainly would think that it is to be understood in this way that it does not extend to property situated elsewhere concerning which a minor can perhaps make a will even though she or he has not yet turned sixteen or eighteen. For it is not probable that it is a real statute in this sense, as if a resident of Holland or another region would not be empowered to make a will concerning property to be found here unless she or he is older than sixteen or eighteen.

13. But, *vice versa*, will someone who is incapable of making a will in his own territory - such as with us a woman under sixteen years of age and a man under eighteen in terms of the declaration of the Orders of Utrecht dated 14 April 1659 - be able effectively to make a will elsewhere, where she at twelve and he at fourteen years of age would be deemed capable of doing so in terms of the civil law? This would not appear to be the case, since that capacity or competence cannot be granted beyond the territory to a person who is not a subject. [Arg. D. 2.1.20; Bartolus on C. 1.1.1 nn. 16, 26; Tiraquellus *Tractatus* gloss 8 n. 227 *quaestio* 14; Gaill 2 *Observationes* 124 n. 13; Alderanus Mascalus *Conclusiones* 6, n. 14; see, however, Gabriel *Communes Conclusiones* 8 *De Statutis*, the final book; Merenda *Controversiae* book 4, ch. 35, nn. 4, 8, 9; Mevius *Commentarii in Jus Lubec. Quaestio Praeliminaria* 4 n. 32 et seq.; Gilken on C. 1.1.1 nn. 62, 63.]

14. But what if a foreigner (for a definition of which see in Mascalus, *Conclusiones* 6 n. 212;
156 "SECT. IV. CAP. II."


Et quemadmodum forensis invitus non sentit incommodii ex statuto loci alterius, ita nec volens sentire poterit talis statuti commodum. Argum. a contrario sensu. Roeland. à Valle consil. 79. n. 35. libri. 3. Tiraqde jure Primog. q 44. n. 4. Marsili singal. 519. incipit. Ille qui non suflinet. Alexand. 7. Consil. Ill.

15, Quis autem statuendum sit de legitimato in uno territorio, consequitur ne ratione honorum alibi jacentium, ubi legitimatus non erat, statutum vires suas exserere; vel an illa qualitas seu habilitas, cum ubique locorum, comitabur, quoad effectum consequendum dignitatis, vel succedendi ab Intato? Respondeo, est per legitimationem habilitetur persona, ut velint DD. qualitatem eam comitari ubique locorum: etiam ex comitate id seryavi posset: quia tamen postillum illa legitimatio fuit ad effectum vel honoris, vel hæreditatis consequendae, in quam nihil juris habet is qui in suo territorio legitimavit; exsequentem iliam legitimationem ad honores subeundos & hæreditatem extra territorium capiendum non susti-
Barbosa on *D. 1.1.19.2*) should wish to make use of a statute of another place? Will he be able to use it in such a way that the judge would have to decide in his favour? Indeed not, for nothing is introduced in that statute to favour a foreigner or an outsider. Consequently, just as he is not able to be unwilling, so also would he not be able to be willing [*D. 50.17.3*].

And just as a foreigner does not against his will suffer inconvenience in terms of a statute of another place, so too he will not, at will, enjoy the advantage of such a statute. [Argued from the opposite point of view: Roland à Valle *Consilia* 79 n. 35 book 3; Tiraquellus *De Jure Primogeniorum, quaestio* 44 n. 4, Marsiliis *Singularia* 519 with the *incipit*: *ille qui non sustinet*; Alexander (de Imola) 7 *Consilia* 3.]

15. But what must the decision be with regard to someone who has been legitimated in one territory: will the statute be held to extend its validity regarding property lying elsewhere, where he was not legitimated? Or will that capacity follow him everywhere as far as the effect of obtaining a position of dignity or of intestate succession is concerned? I reply: Although the person is made capable through legitimation - so that the legal scholars would have that competence follow him everywhere, and it could also be preserved out of comity (*ex comitate*) - nevertheless, since that legitimation is in the first place aimed at the effect of obtaining a position of dignity or an inheritance, for which he who has legitimated him in his own territory has no legal right, I would think that legitimation would not be sufficient with a view to enter into positions of honour and obtaining an inheritance outside the territory.
S E C T. IV. C A P. III. 157

sufficere. Arg. l. ult. D. jurisd. l. communi-

16. Idem quod dicendum, de eo qui alibi extra territorium est nobilitatus, Esti enim illa qualitas ei proficit, ibi locorum, ubi nobilitatur : non tamen proderit extra territorium nobilitantis. Sic enim alteri per alterum fieret praedium, & qui esset ad dignitates hie subeundas inhabilis, per forensem fieret habilis, etiam invito territorii domino. Ne dicam, quod quemadmodum lex non fece extendit ultra territorium legislatoris, sita nec privilegium, aut beneficium in aliquem collatum ; utpote quod nonnisi ab eo tribui solet, qui ferenda legis habet potestatem. Argum l. 1. D. de Consit. Princ.l. 1. § 42. D. de. Aquà quot & aliv. & per not. in seqq.

17. Quid si in uno loco aliquis sit inhabilis ad administrandum declaratus, puta si ei prodige viventi, bonis sit interdictum: an ubique locorum, pro inhabili cenfetur, adeoque interdictum ad bona alibi sita ex-

G 7 tendetur ?
16. The same is to be said about someone who has been raised in rank elsewhere outside the territory. For although that status is to his advantage in that region where he is ennobled, it will nonetheless not be to his advantage beyond the territory of the one who ennobles him. For if it were so, a precedent would be set for the one by means of the other, and he who was not capable of entering into positions of dignity would now become capable of doing so through the offices of a foreigner, even against the wish of the lord of the territory; not to mention the fact that just as a law’s validity does not extend beyond the territory of the legislator, so also a privilege or a benefit bestowed on someone does not extend beyond the territory, inasmuch as it is normally granted only by him who has the power of enacting a law. [Arg. D. 1.4.1; D. 43.20.1.42 et seqq.]

17. What if someone in one place is declared unfit to administer his property, for example if someone who lives prodigally is interdicted from dealing with his property: will he be held to be unfit everywhere, and will the interdict indeed be extended to his property situated elsewhere?
SECT. IV. CAP. III.

132. Tendetur? Ita voluit DD. per l. is cui bonit. D. verb. oblig. l. 10. Curator. furios. Gilken. in i- nit. tit. Cod. de summ. Trinit. n. 59. Forte & ca fententia retinenda, non quod personæ qualitas, eam ubique concitetur, etiam ratione bonorum alibi existentium; verum, quod ubique locorum prodigo sit interdictionem administracione; hic vero tantum agatur de modo probandi, aliquem esse prodigum, vel non esse: qui licet forte variet, pro locorum diversitate non tamen tollit effectum interdictionis; quod sufficiat circa probationes fieri loci solemnnia ubi sunt, Arg. l. 3. in fin. D. de Testibus.

Malim tamen, id ita obtinere, non tam de jure, quam quidem de humanitate, dum populus vicini decreta populi comiter observat, ut multorum evitetur confusio.

The legal scholars think so [D. 45.1.6; D. 27.10.10; Gilken in initio on C. 1.1.1 n. 59]. Perhaps one should also keep in mind the opinion not that a person’s standing (qualitas) follows him everywhere, even with regard to property which is elsewhere, but a prodigal is interdicted from administering everywhere. But here only the method of proving that someone is or is not a prodigal is at issue: and although this method may perhaps vary in accordance with the diversity of the regions, it nevertheless does not cancel the effect of the interdiction, because with respect to proofs it would be sufficient that the formalities of the place where they have effect, are observed. [Arg. D. 22.5.3. in fine.]

I would, however, prefer this to prevail not so much on account of the law as in deference to humanity, when a people out of comity (comiter) respect the decrees of a neighbouring people in order to avoid the confusion of many.22

18. What if someone is branded with infamy in one place: would he also be considered to be of ill fame in another place not subject to the previous one? The legal scholars indeed think so [D. 3.1.9; D. 48.19.29; Bartolus and Baldus in Gilken on C. 1.1 nn. 120, 121]. I rather draw the opposite conclusion, based on the general rule that a judge does not have any authority beyond his territory, nor indeed does the decree of a judge [D. 2.1.20; D. 1.16.1; D. 1.18.3]. Indeed, just as a punishment which is limited in time is not prolonged further contrary to the terms of the sentences, so too the punishment which has been confined by the place and the territory of the judge delivering the sentence, is not extended [D. 3.1.8].

22 See also De Statutis 4.2.17 and its annotation [translator].
SECT. IV. CAP. III. 159
proferentis est conclusa, l. 8. in fin. D. de Postrul. Parvi enim pulvis ambulant tempus & locus, ut tempore ad locum argumentum etiam procedat. l. 4. in medio, D. Condit, Trianar. Ne dicam argumentum ex d. l. 9. peti- tum commodè retorqueri posse. Ibi quippe prohibitus postulare in uno loco, adhuc in alio postulare non cenetur esse prohibitus; eo quod sententia Praesidis, ejus provinciam quoad effectum non egrediatur.

19. Quid si aliqui interdictum arte, vel negotiatione, vel loco &c. an sententia servavitur extra territorium ejus, qui eam tulit aut pronunciavit? Respondeo, id quidem jure Romano obtinerebat, in illo judice aut magistratum superiori, puta in Urbis prae-
fecto, qui vice Principis regebat, ut si sententiam ferat, ea quandoque extra ejus territo-
rium vires habeat, non tamen extra Principis territorium, qui illi id ipsum jure singu-

Verum tamen, ubi alter magistratus alte-
us non subest jurisdictioni, ibi equidem sen-
tentia pronunciantis limites egredi non po-
D. offic. Præf. l. 9. in fin. D. Postrul. l. 7. §.
1. §. interdictum. §. seq. D. Interd. & Rele-
Gilken.
For time and place go hand in hand, so that the argument also proceeds from time to region \([D. 13.3.4 \text{ in medio}]\). Not to mention that the argument drawn from \(D. 3.1.9\) can appropriately be twisted back; for there he who has been forbidden to prosecute in one place is still not considered to have been forbidden to prosecute in another, for the reason that the decision of a governor does not go beyond his province as far as its effect is concerned.

19. But what if someone has been interdicted from a craft or a business or a place et cetera: will the decree be respected beyond the territory of the one who delivered or pronounced it? I reply: This did indeed prevail in Roman law in the case of a judge or superior magistrate, for example in the case of the prefect of Rome who rules in the emperor’s place, that if he were to deliver a decree, then that decree would sometimes be valid beyond his territory, although not beyond the territory of the emperor who had granted him that very right by an extraordinary law \([D. 1.12.13]\).

But nonetheless, where one magistrate is not subject to the jurisdiction of another, there certainly the decree cannot exceed the boundaries of the one who pronounces it. And in this sense the legal scholars decree that the effect of a public edict (\textit{bannum})\(^{23}\) has no force outside the territory. \([\text{Arg. D. } 1.16.1; D. 1.18.3; D. 3.1.9 \text{ in fine;} D. 48.22.7.1 \text{ and } 10 \text{ et seq.}; \text{Bartolus on C. } 1.1.1 \text{ n. } 50;\]

\(^{23}\) \textit{Bannum} has five distinct meanings in Medieval Latin (Migne s.v.). This meaning is preferred in view of the context.
160  S E C T. IV. C A P. III.

Gisle, ad d. iii. in init. n. 120. 121. Marcus Anton. Marisot. in c. ut animarum. de Consta-

tom. 5. Repert. jur. can. p. 111. n. 20.

Consuetudine tamen Germaniae, quoad relegationem, secus obtinere, sic ut & ultra Rhenum & Danubium, adeoque ultra loc-
cum, quam quo relegensis jurisdictione se ut
tit. de offic. Pref. Urti. n. 45. Id quod etiam de moribus nostrarum Provinciarum, vel propter concordata, vel unionem quandoque obtinere, pro comperto est habitum.

20. Quid itaque de Tabellione seu nota-
rario, in uno loco habilitatu ut instrumenta
confribatur, dicendum: an extra locum, ubi erat
habilitatus illud poterit? Non equidem, Ab-
surdum quippe foret plus juris habere tabu-
larium, quam is habet, qui eum constituit:
Aut si tantundem juris habere adeoque Tab-
ularii habilitatio referretur ad aetum juris-
dictionis voluntariae, uti nonnulli censent:
non tamen aetus jurisdictionis illius voluntar-
iae aliqui inferiori concessus, extra te-
teriori exercer potuisse. Arg. l. 2. D. offic.
34. Arg. l. iii. D. juris. junct. nempe potest.
70 D. Reg. l. 4. §. 6. in med. D. offic. Pref.
tit. de fide instrum. conclus. 1. n. 5. Bartol. Bald.
Gilken *in initio* on C. 1.1.1 nn. 120, 121; Marcus Antonius Marscott on the *Clementinae* 1.2.2, in tome 5 *Repetitiones*, p. 111 n. 20.]

But Besold, following Antonius Bernederus, an outstanding legal expert in Germany, writes [*Delibata* on D. 1.12 n. 45] that the position regarding banishment is different in Germany according to their customary law, with the result that criminals are banished even beyond the Rhine and the Danube, indeed further than the place to which the jurisdiction of the banishing authority extends. And it has been regarded as certain that this also at times applies in terms of the customs of our own provinces, either because of agreements or of a union (*unio*).

20. What then is to be said about a “scrivener” or notary who has been empowered in one place to draw up documents: will he be able to do so outside the place where he was empowered? [I say] most certainly not. It would indeed be absurd for a keeper of records to have a greater right than the one who appointed him. Or if he did have as great a right, and the empowerment of a “scrivener” was associated with an act of voluntary jurisdiction, as some people think, then nevertheless the act of that voluntary jurisdiction which has been granted to some inferior could not be exercised outside the territory. [*Arg. D. 1.16.2; Bartolus on C. 1.1.1 n. 34; Arg. D. 2.1.20* read in conjunction with *D. 50.17.70; D. 1.18.4.6 in medio; Boerius Decisiones 242 n. 1; Gabriel 1* *Communes Conclusiones*, title *De Fide Instrumenti, conclusio* 1 n. 5; Bartolus}
SECT. IV. CAP. III. 161
and Baldus in Gilken on C. 1.1.1 towards the
beginning n. 90; Coren Observationes 37 pp. 294,
295, and there also Mascardus et al.]
Sectio Nona

Caput Primum.

1. Quis ordo servandus in effectibus statutorum comparatis?
2. Si contentio de re, aut in rem actione, aut de actione personali, sed in rem scriptâ, quale spectandum statu-tum?
3. Quale in successione ab intestato?
4. Quale in successione testamentaria?
5. Quale si bona sint feudalia?
6. Feudâ per omnia patrimonialisibus non comparantur.

7. Quale,
SECTION NINE

CHAPTER 1

1. What sequence must be followed in dealing with the comparative effects of statutes?
2. If there is a dispute concerning a thing, or a real action, or an action that is personal but drawn up as a real action, what type of statute must be considered?
3. What type of statute in intestate succession?
4. What type of statute in testamentary succession?
5. What type if the property is feudal?
6. Feudal estates are not in all respects comparable with patrimonial estates.
304  SEC. IX. CAP. I.
7. Quale, si de missione in possessione seudi?
8. Quale, si de bonis mobilibus, controversia?
9. Quid statuendum, casu quo duobus in locis quis habet domicilium?
10. Casus deciditur, quo jure Aesdonico & Scabinico, in mobilia succeditur, ratione statuti loci, ubi quis moritur.
11. Quale statutum spectandum, si de nominibus & actionibus contentio?
12. Traditur casus exceptus.
13. Quale spectandum statutum, si de annuis redivibus contentio?
14. Quanum mobilium aut immobiliun veniant nomine?

1. Hæcenus explicuit, & quidem facili negotio statutorum effectus absolutos; sunt eiam difficultates evolvendae, circa effectus statutorum comparatos, dum variorum locorum statuta dissonantia, circa unam eademque rem, vel personam, vel negotia, concurrent; quæ longe prioribus sunt explicatione difficiliores. Quoad tamen fieri poterit, plerisque ex quibus de cæteris facile judicandum, in ordinem redigam, sicque me præstitisse,
7. What type if we are dealing with authorization to enter into possession of feudal property?
8. What type if there is a controversy about movables?
9. What is to be decided in a case in which someone has domicile in two places?
10. A decision is given on a case where in terms of the Aesdonic ("Aasdomsrecht") and Scabinic law ("Schependomsrecht"), there is succession to movables, taking account of the statute of the place where someone dies.
11. What type of statute must be considered if there is a dispute concerning claims and actions?
12. An exceptional case is reported.
13. What type of statute is to be considered if there is a dispute concerning annual revenues?
14. What things are to be classed under movables and immovables?

1. Thus far I have set out the unqualified effects of statutes (and it was an easy task indeed); now the problems regarding the comparative effects of statutes must also be cleared up where the different statutes of various places clash regarding one and the same thing or person or transaction; and these are far more difficult to explain than the previous ones. However, I shall, as far as possible, reduce to a sequence most of these, on the basis of which the rest can then easily be judged.
SECT. IX. CAP. 1. 305
praestissi, quod ante me forte non alius, judicabit ille, qui extra partes constitutus mea legerit, & perlegiret accurate. In quibus ne quid intactum maneât, hanc servabo methodum ut agam. 1. De negotiis realibus. 2. De Solemnibus, negotiorum. 3. De personalibus statutis. 4. De causis judicialibus. 5. De delictis, corumque poenis.


3. Quid si circa successionem ab intellas- to, statutorum sit dissimilitas? Spectabitur loci statutum, ubi immobilia sita, non ubi testator moritur. Unde primogenitus in Anglia, tantum patri succedit, ratione bonorum.
And he who impartially reads my comments, and reads them thoroughly, will conclude that I have in this way offered something that no other person before me has offered. And in order that nothing may remain which has not been touched upon, I shall follow this procedure and deal, first, with real transactions; secondly, with the formalities of transactions; thirdly, with personal statutes; fourthly, with lawsuits; and, finally, with delicts and their penalties.

2. What then if there is a dispute over some real right (\textit{jus in re}), or a right which has been derived from the object itself (\textit{ipsa res}), or one arising from a contract, or from an action that is personal but has been drawn up as a real action? Will the statute of the place where the owner is domiciled be taken into account, or the statute of the place where the thing (\textit{res}) is situated? I reply: The statute of the place where the thing is situated, with the proviso that an action can also be brought where the defendant is domiciled, and that holds true whether that person whose thing is the object of controversy, is a foreigner or an inhabitant of the place where the thing is situated. \cite{D. 2.1.20; D. 25.5.27; D. 8.4.13.1; D. 50.4.6 in fine; C. 8.10.3; C. 3.19; C. 10.1.4; Alderanus Mascardus Conclusiones 6 nn. 101, 102 et seqq.; see Choppin Mores 2, title 5, nn. 21, 22; Barbosa on D. 5.1.65 n. 152 et seqq.]

3. What if there is a divergence in the provisions of statutes relating to intestate succession? The statute of the place where the immovables are situated, and not where the testator dies, will be considered. In fact, in England only a first-born succeeds a father in respect of English property,

\footnote{The \textit{lex} is incorrectly listed as “\textit{Certa summa}” instead of “\textit{Certa forma}”. It is cited correctly in the 1715 ed.: see Guthrie \textit{Private International Law} at p. 479 [translator].}
306 SEC. IX. CAP. I.
mit. n. 18. & sqq. et n. 23. 24. Barbo. ad l. hæres absens. §. proinde, in articul. de foro rati-
oni rei, magist. per totum. D. de Judic. vid. de illa Aegliæ statuto, ejusque exlicationi dislin-
guentem, sed perpetuam, Bertachin. tractat. de Episcop. 2. part. libr. 4. q. 18. n. 50. vol. 5. tractat. Martinum Laudensin. de Primogen. g. 28. vol. 6. tractat. Prolix. Johann. le Cier-
ne. de Primogen. libr. 2. q. 6. 7. 8. fol. 175. vol. 8. tractat. Grav. 2. conclus. 123 Matth. Ste-
phani de jurisd. 33. n. 54. Bacchov. ad Trequ. d. dissect. thes. uti. litter. e. Mascard. d. concl. 6. n. 203. & sqq. Ubi caum exxipit, quo statu-
tum expresse cautum est, ne forensis ira ut municeps succederet, n. 207. diff. Schütz. 1.
quest. praet. 24. n. 5. & sqq. qui domiciliis locum vult spectari, per l. 50. D. Pet. ha-
4. Quid si testamento bona immovebilis relictæ, diversis subjaceant statutis? Idem dicendum: nihil enim intereest, testatus quis an
whereas in respect of property situated in the Netherlands he will compete with his brothers with equal right and will not enjoy a right of superiority, unless the statute specifically confers it on him in respect of some movables, [Arg. the laws cited previously; Covarruvias De Sponsalibus part 2, ch. 7 n. 8; Gabriel Communes Conclusiones book 6 De Statutis, conclusio 9 and various others cited there; Gilken on C. 1.1.1 nn. 78 et seqq., and nn. 83, 84; Barbosa on D. 5.1.19.2 on the art. De Foro Ratione Rei Sitae; throughout]. On the English statute and its explanation, see the discerning but incorrect treatise of Bertachinus [De Episcopis part 2, book 4, quaestio 18, n. 50, vol. 5, Martinus Laudensis De Primogenitura, quaestio 28, vol. 6; extensively Johannes Lecirier Tractatus book 2, quaestiones 6, 7, 8, folio 175, vol. 8; Greven 2 Conclusiones 123; Matthias Stephani Tractatus 33 n. 54; Bachovius Notae on Treutler disputatio 1, the final thesis, letter e; Mascardus Conclusiones 6 n. 203 et seqq.] where the exception is made of a case where it has been stipulated specifically in the statute that a foreigner may not succeed in the same way as a citizen of the municipality, n. 207; Schultes [1 Quaestiones Practicae 24 n. 5 et seqq.] differs in wanting the place of domicile to be considered [D. 5.3.50; C. 1.3.28] because all were subject to one emperor, not to mention the fact that the interest of a charitable cause, too, would have some effect.

4. What if immovable property\textsuperscript{25} bequeathed in a will is subject to different statutes? The same must be said, for it makes no difference whether someone dies testate or

\textsuperscript{25} In the context of both Roman civil law and the \textit{jus commune}, it has been observed by translators that the term “\textit{bona}” has been taken to include “all sorts of property, movable and immovable ...”: Story, J. \textit{Commentaries on the Conflict of Laws} (Boston 1883) p. 533. See also Livermore, S. \textit{Dissertations on the Questions which Arise from the Contrariety of the Positive Laws of Different States and Nations} (New Orleans 1828) sect. 106.
SECT. IX. CAP. I. 307

an intellatus decedat, ut locus sit regulæ: extra territorium jus dicenti, impune non paretur. l. ult. D. jurisf.

Ut immobilia situtis loci regantur, ubi sita, DD. ad l. 1. Cod. de Summ. Trinit. pro-
lixe Johannes le Grier. de Primogenitura. 9.
6. 7. 8. 9. libr. 2. vol. 8. Traut. Corz. de
juris arte. p. 3. c. 13. Gail. 2. obf. 124. My-
ning. cent. 5 obs. 19. Gravett. consil. 30. n. 3.
Argent. ad Britann. art. 218. n. 24. 25.
3. n. 244. Besold. ad l. 9. tit. 1. libr. 1. D.
7. & libr. 2. tit. 5. def. 109. Perez. Cod. Te-
stam. n. 22. Christlin. ad Mechlin. tit. 16. ar-
tic. 35 idem vol. 2. decif. 59. & in Praulid.
Rodemb. trac. de jure conjug. cap. 5. tit. 2. p.
98.

5. Quid si inter immobilia reperiatur feudum, an feudi ratione spectabilitur statutum rei sitæ, an cuivis feodalis, an rei, a quâ de-
pendet feudum? Resp. et si feudi natura respes-
ciat suum principium, ut videatur attenden-
dum rei statutum a quâ tenetur: quia tamen
membra regi deebunt secundù loci commune-
tudinem, ubi sita, nec statutum rem afficiere
potest,
intestate, so that there is room for the rule: he who administers justice can be disobeyed with impunity outside his territory [D. 2.1.20].

Consequently the statutes of the place where they are situated govern immovables. [Scholars on C. 1.1.1; extensively Johannes Lecirier Tractatus, quaestiones 6, 7, 8, 9, book 2, vol. 8; Corasius De Juris Arte part 3, ch. 13; Gaill 2 Observationes 124; Mynsinger 5 Observationes 19; Cravetta Consilia 30, n. 3, part 1; Burgundus Consuetudines 6 and 7; Argentraeus Commentarii art. 218, nn. 24, 25; Hartman Pistoris Observationes 55 n. 1; Bocer Classes I disputatio 3 n. 44; Colerus De Processibus part 1, ch. 3 n. 244; Besold on D. 1.1.9 n. 7; Sande book 4, title 1, definitio 14 and title 8 definitio 7 and book 2, title 5, definitio 109; Perezius on C. 6.23 n. 22; Christinaeus Commentaria title 16 art. 39; the same work vol. 2 decisio 59 and in the prelude n. 53, Coren Observationes 20 p. 77; Perezius on C. 6.23 n. 22; Groenewegen on Grotius Inleydinge part 26, book 2 in fine; Rodenburg Tractatus ch. 5, title 2, p. 98.]

5. What if a feudal property is found among immovables: with regard to that feudal property, will the statute of the place where the thing (res) is situated be considered, or the statute of a feudal court, or the real statute (statutum rei) from which the feudal property is derived? I reply: Although the nature of a feudal property is concerned with its origin, with the result that it seems that the real statute from which it is derived must be attended to, nevertheless, because the parts must be governed according to the custom of the place where they are situated, and a statute cannot affect
Sect. IX. Cap. I.


a thing situated outside the territory of the statute-maker, the statute of the place where the feudal property is found must also be taken into account. For it is a general rule and nowhere is a feudal property exempted. [D. 2.1.20; C. 3.19.3; Clementinae 1.2.1; Angelus de Ubaldis on D. 36.1.76.1 the final gloss; Tiraquellus De Jure Primogeniorum tome 2, quaedestio 50, n. 2 and De Retractu title 1 par. 26 gloss 3 n. 20 et seqq.; Chassenaeus Consuetudines, title De Feudis, rubric 3, par. 7 in textu and according to its nature p. 538; Imbertus in the Enchiridion on the phrase consuetudines regionis; Boerius Consuetudines title 3, par. 2 gloss 2; Neostadius De Feudi ch. 6 bn. 29, 30, 31; see Christinaeus vol. 6, decisio 48.]

6. I do not, however, accept the argument of some people who think that a feudal property is also governed by the statute of the place where it is situated, for the reason that feudal property is customarily classed under patrimonial property. I say this because, although some people would have it that a feudal property is like patrimonial property [e.g. Burgundus Consuetudines 3 nn. 18, 19; Neostadius De Feudi ch. 1 in fine; Zoesius on D. 18.1 n. 17]. This does not, however, apply in all instances, so that the particle “almost” (feri) ought to be added. [Sande Gelriae Feudales 1, ch. 1 n. 3 and 2, title 1, ch. 1 n. 14, p. 271; Goris Adversaria 3, ch. 7 n. 7.]

7. But if there is a controversy about the authorization to take possession of feudal property, people enquire whether the statutes of the home of the deceased or the statutes of the place where the thing is situated must be taken into account. I reply: The Zutphanian reformers
S E C T. IX. C A P. I. 309
8. Verum an quod de bonis immobiliis dictum, idem de mobiliis statuendum crit? Resp. Quod non. Quia illorum bonorum nominem nemo censeatur, ubi legibus subjecisset. Ut quae certum locum non habent, quia facile de loco in locum transferuntur, adeoque secundum loci statuta regularitatem, ubi domicilium habitavit defunctus. Nilam tamen perpetui usus gratia ex designatione patris familias in uno loco manere debeant, quo cafu immobiliis comparabuntur. Vel nisi si recte inclusa, de moribus, ibi censeantur eile, ubi determinatur, non tamen in ratione sucessionis. Vel nisi secundum jus antiquum Hollandicum bona mobilia dirigantur ad successionem statuti locii illius, ubi quispiam supremin diem clausit; licet forte ibi transierit tantum, aut ad animi relaxationem remet co contruans. l. ex facio. 35. verb. 3. 4. D. Haed. instit. 1. 32. D. de Pignor. 4 Hypothec. l. 89. D. de leg. 3. l. 19. §. 2. D. de Judic. l. 1. 43. Cod. de Rev. 4 verbor. sigis. Tirasell. de jure primog. g. 47. 48. 49 Gail. 2. obs. 124. n. 18. Burgund. ad cons. Fland. trac. i. n. 36. 47 tracit. 2. 32. Sand. libr. 4. tit. 8. def. 7. Petrus Wesemb. consil. n. 65.
turned their attention to the place of domicile, and the Transisulanii to the place where the thing is situated, so that in the question which has been raised here, customs vary. [See Sande Gelriae Feudales 3, ch. 1, par. 4 n. 21.]

8. But will the same decision be made concerning movables as has been said concerning immovables? I reply: No, because no one is considered to have subjected himself to the laws of a place on account of those things, as they do not have a fixed place since they are easily transferred from place to place, and are indeed governed according to the statutes of the place where the deceased was domiciled. [This is so] unless they must stay in one place for the sake of uninterrupted use, in terms of a settlement of the head of the household (paterfamilias), in which case they would be comparable to immovables. Or unless, having been confiscated, they are customarily considered to be where they are held, but not, however, where succession is at issue. Or unless, in accordance with an ancient law of Holland, movable possessions are regulated with a view to succession [in terms] of the statute of that place where someone ended his last day, even if he per chance merely crossed over to that place or betook himself there for the sake of easing his mind. [D. 28.5.35.3, 4; D. 20.1.32; D. 32.1.89; D. 5.1.19.2; C. 6.38.1, 2; Tiraquellus De Jure Primogeniorum, quaeestiones 47, 48, 49; Gaill 2 Observationes 124 n. 18; Burgundus Consuetudines 1 n. 36 and 2 n. 32; Sande book 4, title 8, definitio 7; Petrus Wesembeckius Consilia 1 n. 65;}

26 The inhabitants of Overijssel [translator].
27 Illorum here apparently refers to movables [translator].
28 As to the lex ultimi domicili, see further at the appropriate place below.
29 Ibid.