Pragmatics in Roman Law Texts: Application of Speech Act Theory to the Verb Quaero in Justinianus's Digesta

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Abstract

In our daily lives, we make various utterances. Some can be evaluated as true or false, such as the statement, 'The earth is round', while others are intended to perform an action, such as issuing an order. Since John L. Austin's 1955 lecture at Harvard University, the latter type of speech act has been known as a 'performative' and has been widely discussed across various fields. This paper applies insights from Austin's speech act theory to the study of Roman law, particularly through an analysis of the Latin verb *quaero* in Justinianus's *Digesta*. This verb is not a specialized term limited to a specific period or group but reflects the common question-and-answer style used by multiple jurists from the Julio–Claudian dynasty to the Crisis of the Third Century. By analysing the co-occurrence of *quaero* with other words, this paper presents evidence that most of the 353 *quaero*-fragments in Justinianus's *Digesta* are of the prompting consideration type in terms of illocutionary force. In most cases, the jurist or the editor of the jurist's works who used the verb *quaero* was not seeking advice or posing a question to themselves. Instead, they often attempted to convey a legal point to the reader or audience and document how the jurist had addressed the issue in the past. Additionally, 13 instances of consulting have been identified, eight of which involve a letter from a client in which the client explicitly states, 'I ask'. These eight fragments likely provide a relatively accurate reflection of the interactions between jurists and their clients. This study serves as a pilot example of how pragmatics can offer educated insights into the contexts and situations of the time.

1 Introduction

In our everyday lives, we engage in a range of linguistic acts. These include offering greetings, giving commands, providing instructions, asking questions, and making suggestions, all of which form a part of our routine

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communication. These examples have one thing in common; they do not concern some truth or falsehood. For example, the greeting 'Good morning' does not mean 'the statement that today's morning is good is true', just as the instruction, 'Please do this task' does not mean 'the statement that you will do this task is true'. The fact that not all utterances and sentences are related to truth values has been widely known since John L. Austin's lecture at Harvard University in 1955 where he defined such a speech act as 'performative'.[1] His theory has been applied in linguistics, pragmatics and gender studies.[2] However, it has not been fully applied in comparative law. Past and foreign laws are types of speech or sentences, most of which Austin calls performatives. This paper considers the role of performativity in this field, focusing on Austin's speech act theory and the Latin verb *quaero* in fragments of Justinianus's *Digesta* (hereinafter, it is called J's *Digesta*). Section 2 provides a basic introduction to the speech act theory. Section 3 examines the use of *quaero* in J's *Digesta* and presents a preliminary analysis of the pragmatics of the Roman jurists. Finally, Section 4 summarises the results of this analysis.

2 Speech Act Theory
(1) Constative and Performative
The speech act theory was first proposed in a lecture given by Austin at Harvard University in 1955. One of the aims of the lecture was to distinguish between the constative and performative in English. Austin defines a performative utterance or sentence as satisfying the following two conditions:[3]

A) A performative does not 'describe' or 'report' or constate anything at all and is not 'true' or 'false'.
B) The uttering of a sentence is or is a part of the doing of an action, which again would not normally be described as, or as 'just', saying something.

   As Austin exemplifies, the utterance 'I name this ship *Queen Elizabeth*'

1) Michael Morris, *An Introduction to the Philosophy of Language*, Cambridge: Cambridge University Press, 2006, p. 231.
2) The following literature provides a survey of each field. Savas L. Tsohatzidis (ed.), *Foundations of Speech Act Theory: Philosophical and Linguistic Perspectives*, London and New York: Routledge, 1994; John R. Searle, Ferenc Kiefer and Manfred Bierwisch (eds.), *Speech Act Theory and Pragmatics*, Dordrecht, Boston and London: D. Reidel, 1980; Judith Butler, 'Performativity, Precarity and Sexual Politics', *Revista de Antropología Iberoamericana* 4(3) 1–13 (2009).
3) Jhon L. Austin, *How to Do Things with Words*, 2nd ed., edited by J. O. Urmson and Marina Sbisà, Cambridge: Harvard University Press, 1975, p. 5.

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meets these requirements when smashing a bottle against the stem.[4] The person who named the ship does not intend merely to describe that they are naming it *Queen Elizabeth*. In other words, they do not want to state, 'The sentence "I name this ship *Queen Elizabeth*" is true'. Rather, they perform the act of naming.

(2) Conditions for the Adequacy of Performatives

If we follow Austin's analysis, performatives do not have truth values. Instead of the true table in logic, he brings up the criterion of appropriateness: performatives should be distinguished from inappropriate utterances or sentences. He requires the following as conditions for appropriate speech:[5]

> (A.1) There must exist an accepted conventional procedure having a certain conventional effect, that procedure to include the uttering of certain words by certain persons in certain circumstances and further,
> (A.2) the particular persons and circumstances in a given case must be appropriate for the invocation of the particular procedure invoked.
> (B.1) The procedure must be executed by all participants both correctly and
> (B.2) completely.
> (Γ.1) Where, as often, the procedure is designed for use by persons having certain thoughts or feelings, or for the inauguration of certain consequential conduct on the part of any participant, then a person participating in and so invoking the procedure must in fact have those thoughts or feelings, and the participants must intend so to conduct themselves, and further
> (Γ.2) must actually so conduct themselves subsequently.

The conditions are divided into those with the Roman characters (A and B) and those with the Greek character Γ. This difference is significant; the four conditions with Roman characters must be satisfied to perform something successfully. For example, in a society where polygamy is not allowed, the second declaration of 'I am getting married' is not accepted, so the condition of A.1 is not met, therefore, the act fails and is void or without effect.[6] Austin calls such a case a 'misfire'.[7] In contrast, a statement that

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4) *Ibid.*, at 5.
5) *Ibid.*, at 14f.
6) *Ibid.*, at 15f.
7) *Ibid.*, at 16.

does not satisfy the condition of Γ is called 'abuse'.[8] Austin acknowledges that there is no clear boundary between the two.[9]

(3) Locution, Illocution and Perlocution

Austin divides the process by which a performative influences reality into locution, illocution, and perlocution (or consequential effects).[10] Locution is an utterance expressed in speech or text, as in 'Shoot her!'[11] Illocution is the act within the locution: the illocutionary force of 'Shoot her!' is the urging, advising or ordering of someone to shoot a woman.[12] Perlocution is the act of the speaker indirectly performed by someone through an utterance.[13] This third part can be subdivided into two sorts: the act referring to the performance of a locutionary or illocutionary act (e.g. a person persuaded someone to shoot a woman through the utterance, 'Shoot her!'), and the act without such a reference (e.g. a person actually caused someone to shoot a woman through the utterance, 'Shoot her!').[14] Austin paraphrased the classification of perlocution as an act that achieves a perlocutionary object (e.g. a person stopped someone from doing something by saying, 'Don't!'), and an act that merely produces a perlocutionary sequel (e.g. a person strengthened someone's conviction to commit an act despite their cautioning, 'Don't!').[15] This paper calls the former referential perlocution and the latter nonreferential perlocution. Austin gives another example as follows:[16]

> Locution: He said to me, 'You can't do that.'
> Illocution: He protested against my doing it.
> Perlocution (referential): He pulled me up or checked me.
> Perlocution (nonreferential): He stopped me, brought me to my senses, annoyed me, etc.

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8) *Ibid.*, at 16.
9) *Ibid.*, at 16.
10) *Ibid.*, at 101f. The validity of the distinction is often called into question. *See* Jhon R. Searle, 'Austin on Locutionary and Illocutionary Acts', *Philosophical Review* 77(4) 405–424 (1968); Ted Cohen, 'Illocutions and Perlocutions', *Foundations of Language* 9(4) 492–503 (1973). This paper maintains Austin's distinction, but does not go into its philosophical interpretation.
11) Austin, *supra* note 3, at 101.
12) *Ibid.*, at 101f.
13) *Ibid.*, at 101.
14) *Ibid.*, at 101f.
15) *Ibid.*, at 118.
16) *Ibid.*, at 102.

(4) Five Types of Performatives

Austin classified performatives into five categories: verdictives, exercitives, commissives, behabitives and expositives.[17] A verdictive utterance or sentence is 'essentially giving a finding as to something—fact, or value—which is for different reasons hard to be certain about'.[18] For example, 'interpret as', 'read it as', 'calculate', 'estimate' and 'grade'.[19] An exercitive is 'the exercising of powers, rights, or influence. Examples are appointing, voting, ordering, urging, advising, warning &c.'[20] A commissive is 'typified by promising or otherwise undertaking', e.g. 'promise', 'plan' and 'agree'.[21] A behabitive is 'a very miscellaneous group, and ha[s] to do with attitudes and social behaviour. Examples are apologizing, congratulating, commending, condoling, cursing, and challenging.'[22] Finally, expositives 'make plain how our utterances fit into the course of an argument or conversation, how we are using words, or, in general, are expository. Examples are "I reply", "I argue", "I concede", "I illustrate", "I assume", "I postulate".'[23]

As Austin recognised, these categories are not sharply delineated but overlap each other. For example, if a person verdicts or estimates something, this speech act can commit others to certain future conduct.[24] Austin does not exemplify it by a concrete case but it is possibly such a case that a judge condemned a suspect as a thief. In the sentence, the judge <u>interprets</u> the act of the suspect <u>as</u> theft (verdictive) and at the same time, <u>orders</u> public officers to dispense the appropriate punishment to the thief (exercitive). In this paper, we are not seeking a strict classification of verbs in pragmatics, so in the following sections, it will be assumed that the activities of Roman jurists in the classical period consisted of a combination of these five categories. In the following example, Ulpianus[25] <u>assessed</u> the amount of compensation (verdictive) and indirectly <u>advised</u> the *iudex* to have the seller pay it (exercitive).

> D 19.1.1 pr (Ulpianus, *Ad Sabinum*, 28)

If something is sold and not then delivered, an action lies for the interest, that is, the buyer's interest in having the thing. Sometimes this amount ex-

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17) *Ibid*., at 151.
18) *Ibid*., at 151.
19) *Ibid*., at 153.
20) *Ibid*., at 151.
21) *Ibid*., at 151 and 157f.
22) *Ibid*., at 152.
23) *Ibid*., at 152.
24) *Ibid*., at 154.
25) In this paper, all personal names have been retained in their original Latin form to respect the linguistic identity associated with them.

ceeds the price, as when his interest is greater than the object's value or the price paid for it.[26]

3 Pragmatics in Roman Law Texts
(1) *Quaero*

This paper focuses on the Latin verb *quaero* as a starting point. According to the author's research, 353 fragments contain *quaero* in J's *Digesta* of *Corpus Iuris Civilis*. When analysed grammatically, *quaero* is an indicative verb in the first-person singular present tense of *quaerere*. If translated directly into English, the following would be synonymous ways of saying it: I seek, I ask, I question, I strive for, I miss, I lack, I desire, I require, I want, I aim at, etc.[27] In J's *Digesta*, however, it only appears in the sense 'I ask'[28] or 'I question' and often in the form, 'I ask whether A or B (including whether A or not).' Furthermore, *quaero* usually co-occurs with '*respondi*' (I have answered) or '*respondit*' (he has answered). The following fragment is typical:

> D 2.8.14 (Paulus, *Responsa*, 2)

A son-in-power defends an action brought against his absent father. <u>I ask whether</u> he ought to give security that the judgment will be satisfied. <u>Paulus has replied</u> that one who defends an absent person, whether he is a son or father, ought to give security to the plaintiff in accordance with the provision of the edict.[29]

Schulz (1961) states that we cannot determine the Roman jurists' intend-

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26) Alan Watson (ed.), *The Digest of Justinian*, revised ed., vol. 1–4, Philadelphia: University of Pennsylvania Press, 1998, vol. 2, p. 86. The original Latin text: 'Si res vendita non tradatur, in id quod interest agitur, hoc est quod rem habere interest emptoris: hoc autem interdum pretium egreditur, si pluris interest, quam res valet vel empta est.' In this paper, all English translations of Roman law fragments are sourced from Watson (1998), although the author has partially modified the texts.

27) *See* Charlton T. Lewis and Charles Short, *A Latin Dictionary*, Oxford: Clarendon Press, 1879.

28) There are various arguments about to analyse simple verbs like 'say' and 'ask'. For the latest survey, *see* Indrek Reiland, 'Austin vs. Searle on locutionary and illocutionary acts', *Inquiry* (2024) 1–26. <https://doi.org/10.1080/0020174X.2024.2380322>. The author does not engage in the philosophical debate but assumes that the verb 'ask' is not necessarily constative. Given the social roles of jurists during the classical period of the Roman Empire, a question to a jurist was likely not merely constative but also performative.

29) Watson (ed.), *supra* note 26, vol. 1, at 51. The original Latin text: 'Filius familias defendit absentem patrem: quaero an iudicatum solvi satisdare debeat. paulus respondit eum qui absentem defendit, etiam si filius vel pater sit, satisdare petituro ex forma edicti debere.'

ed meaning of this word,[30] however, his argument is not based on pragmatic analysis. He suggests: (a) various abbreviations were used in their manuscripts—Schulz does not explain in what forms but possibly *q.* with special marks[31]—and later generations restored them at their discretion so that the distinction between '*quaero*' (I ask) and '*quaesitum est*' (it has been asked) is insignificant, and (b) the fact that *quaero* is grammatically in the first person does not necessarily mean it reflects the writer's question.[32] His pointing out the indeterminate meanings is somewhat plausible, especially regarding the challenge of identifying the utterer, but leave room for reconsideration from the point of view of pragmatics.

(2) Basic Data about *Quaero*

Here is a list of basic information about *quaero* in J's *Digesta*.

- The total number of fragments containing the verb *quaero* in J's *Digesta* is 353 (*See* Appendix at the end of this paper).
- Of the 38 Roman jurists cited as the authors of the fragments in J's *Digesta*,[33] 11 used *quaero*: Cervidius Scaevola (in this paper, the name of Scaevola always refers only to him, not to Quintus Mucius Scaevola), Paulus, Modestinus, Marcellus, Iavolenus, Iulianus, Proculus, Papinianus, Ulpianus, Celsus and Pomponius.
- The number of fragments in which *quaero* appears: 133 attributed to Scaevola, 82 to Paulus, 49 to Modestinus, 30 to Marcellus, 22 to Iavolenus, 16 to Iulianus, seven to Proculus, five to Papinianus, five to Ulpianus, three to Celsus and one to Pomponius.
- These 11 jurists did not use the word *quaero* in all their writings, only in the ones that follow: Scaevola's *Digesta* and *Responsa*, Paulus's *Quaestiones* and *Responsa*, Modestinus's *Responsa*, Marcellus's *Digesta* and *Responsa*, Iavolenus's *Epistulae*, Iulianus's *Digesta* and *Ex minicio* (or *Ad minicium*), Proculus's *Epistulae*, Papinianus's *De adulteriis* and *Quaestiones*, Ulpianus's *Ad edictum* and *Ad Sabinum*, Celsus's *Digesta* and Pomponius's *Epistulae et variae lectiones*.
- The frequency of *quaero* varies among jurists. To be precise, the quotations from a particular jurist in J's *Digesta* are not proportional to the

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30) Fritz Schulz, *Geschichte der römischen Rechtswissenschaft*, Weimar: H. Böhlaus, 1961, S. 283.

31) Adriano Cappelli, *Dizionario di abbreviature latine ed italiane usate nelle carte e codici specialmente nel medio−evo*, Milano: Ulrico Hoepli, 1899, p. 279.

32) Schulz, *supra* note 30, S. 283.

33) The author referred to *Index auctorum*, in: Okko Behrends et al. (Hrsg.), *Corpus Iuris Civilis: Text und Übersetzung: Digesten 1−10*, Heidelberg: C.F. Müller, 1995, SS. 19−26.

number of times the jurist used this verb.[34]

Table 1: Data about *quaero* in Justinianus's *Digesta*

Author	Counts[35]	Frequency[36]	Book title	Co-occurrence
Scaevola	133	1.69	*Digesta* (49) *Responsa* (84)	respondi (40) respondit (92) (no verb) (1)
Paulus	82	0.28	*Quaestiones* (26) *Responsa* (56)	respondi (30) respondit (52)
Modestinus	49	1.18	*Responsa* (49)	respondit (49)
Marcellus	30	0.92	*Digesta* (10) *Responsa* (20)	respondi (5) respondit (25)
Iavolenus	22	0.94	*Epistulae* (22)	respondi (4) respondit (18)
Iulianus	16	0.18	*Digesta* (12) *Ex minicio* (4)	respondi (9) respoindit (5) Paulus notat (1) negavit (1)
Proculus	7	1.17	*Epistulae* (7)	respondit (6) salutem (1)
Papinianus	5	0.05	*De adulteriis* (3) *Quaestiones* (2)	respondi (2) respondit (3)
Ulpianus	5	0.01	*Ad edictum* (4) *Ad Sabinum* (1)	dico (1) constat (1) puto (2) Iulianus diceret (1)
Celsus	3	0.13	*Digesta* (3)	respondit (1) salutem (2)
Pomponius	1	0.01	*Epistulae et variae lectiones* (1)	dubitari non potest (1)

From this table, several significant observations are evinced. First, the top five most quoted jurists in J's *Digesta*, namely Ulpianus, Paulus, Papinianus, Iulianus and Pomponius, do not often use *quaero*. Although Paulus

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34) It should be noted that Ulpianus, whose works are quoted most frequently in J's *Digesta*, rarely used '*quaero*' (I ask) and preferred '*quaeritur*' (it is asked) instead. This preference suggests that Ulpianus objectified the legal debate and freed jurisprudence from the framework of resolving individual cases. Ulpianus was likely one of the early figures to have raised jurisprudence to an academic level. This assumption can be supported because he clearly stated the sources of other jurists' theories and did not use the verb *respondere* when expressing his opinions.

35) Fragments were counted. Therefore, even if *quaero* occurs multiple times in a fragment (e.g. D 4.4.47.1), it is counted only once.

36) The author calculated the frequency using the following formula: the number of fragments containing *quaero* / the contribution pages estimated in *Palingenesia* of Hommelius. About the denominator part, *see* William Smith, *A Dictionary of Greek and Roman Antiquities*, London: John Murray, 1875, pp. 858–861.

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is second in terms of the number of times he used the term, the frequency is not so high.

The titles of the books also reveal their characteristics. Books that contain the word *quaero* are more likely to have titles such as *Responsa* (*Replies*), *Digesta* (*Digest*) or *Epistulae* (*Letters*). Also, the title *Quaestiones* (*Questions*) evokes the word *quaero*. However, this does not mean that if a book has one of these titles, *quaero* is more likely to appear in it. For example, Papinianus also wrote the book *Responsa*, which includes over 300 fragments,[37] but he did not use *quaero* there.[38] This means that *quaero* tends to be associated with specific titles, yet those titles do not tend to be linked with this verb, creating a unidirectional relationship.

In addition, it is also important to consider what phrase follows *quaero*. Table 1 and Appendix demonstrate that it co-occurs most frequently with '*respondi*' (I have answered, 90 fragments) or '*respondit*' (he has answered, 251 fragments). These are far more than in the other examples. The exceptions of '*Paulus notat*' (Paulus notes),[39] '*negavit*' (he has negated), '*dico*' (I say), '*constat*' (it is certain), '*Iulianus diceret*' (Iulianus said) and '*dubitari*

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37) *See* Otto Lenel, *Palingenesia Iuris Civilis*, vol. 1, Leipzig: Bernhard Tauchnitz, 1889, col. 881–946.

38) Of the jurists who are cited in J's *Digesta*, eight wrote a book with the title *Responsa*, that is, Papinianus, Neratius, Marcellus, Cervidius Scaevola, Ulpianus, Paulus, Gallus Aquilius and Modestinus. *See* Behrends et al. (Hrsg.), *supra* note 33, at 19–26.

39) This expression is not directly related to the analysis of *quaero*, but it is worth noting from a pragmatic perspective. Since Paulus was a jurist of a later generation than Iulianus, it seems odd that Iulianus mentioned Paulus. Could this be an interpolation? The author's view is as follows. The phrase 'Paulus notat' appears several times in *Digesta* of Iulianus (D 5.1.75, 37.6.3.1, 39.6.15 and 40.2.4.2), *Responsa* of Scaevola (D 5.2.13), *Quaestiones* and *Responsa* of Papinianus (*Quaestiones*: D 1.21.1.1, 18.1.72 pr, 22.1.1.2, 38.2.42 pr, 45.1.116 and 46.5.8 pr, *Responsa*: D 28.4.4 and 33.1.9) and *Ad Neratium* of Paulus himself (D 24.1.63). In addition, the expression 'Marcellus notat' is added just before Paulus's note in D 5.1.75. 'Marcellus notat' can be found in Iulianus's *Digesta* (D 4.6.41, 5.1.75, 15.1.16, 15.3.14, 19.1.23, 26.8.12, 30.92 pr, 39.6.13.1 and 39.6.15), Pomponius's *Regulae* (D 28.1.16.1) and Ulpianus's *Ad Sabinum* (D 4.2.9.8, 7.4.29.2, 26.4.1.3 and 34.3.3.5). The compilers of J's *Digesta* sometimes regarded Paulus's and Marcellus's notes as independent documents left on Iulianus's *Digesta* (Paulus: D 4.2.11 and 18.5.4, Marcellus: D 28.5.5, 30.80, 35.1.20 and 35.2.34) and Papinianus's *Quaestiones* (Paulus: D 6.2.16 and 8.1.18). Justinianus mentioned such notes in Constitutio 'Deo Auctore' 6: '[…] quae antea in notis Aemilii Papiniani ex Ulpiano et Paulo nec non Marciano adscripta sunt […]'. *See* Behrends et al. (Hrsg.), *supra* note 33, S. 57. From the discussion so far—namely, Paulus and other jurists wrote *Notae* to *Digesta* of Iulianus and *Quaestiones* of Papinianus, and that parts of their notes can be found in these books themselves—we can suggest that the actual books of Iulianus's *Digesta* and Papinianus's *Quaestiones*, which the compilers of J's *Digesta* quoted, were likely not their original versions but later editions bound together with Paulus's and Marcellus's notes, such as *Iuliani Digesta cum notis Pauli et Marcelli* and *Papiniani Quaestiones cum notis Pauli*. If so, both new editions were likely published later, possibly after Iulianus and Papinianus had died, however, this insertion is not interpolation in the strict sense, because it was made before the compilation of *Corpus Iuris Civilis*.

non potest' (it cannot be doubted) are used only once, '*puto*' (I think) is found twice and '*salutem*' (greetings) occurs three times. As a special fragment, Scaevola or his editor missed a corresponding verb in D 24.1.66 pr.[40]

Using either *respondi* or *respondit* differs depending on the source. Hayashi (2021) clarified that Scaevola's *Digesta* contains only three fragments in which the combination of *quaero* and *respondi* is used and assumed that the objectification (i.e. the tendency to employ *respondit*) originates in the edition by Tryphoninus.[41] In Modestinus's *Responsa*, only *respondit* can be found. This implies that this book was not his own work but edited or compiled by others.

The case of Paulus is more complicated. In Paulus's *Quaestiones*, there is a tendency to use *respondi* (*respondi* in 23 fragments, *respondit* in three fragments). By contrast, in his *Responsa*, *respondit* is preferred (*respondi* in seven fragments, *respondit* in 49 fragments). It is not easy to interpret this trend, but the author speculates that Paulus wrote *Quaestiones*, but an anonymous compiled *Responsa*. The three exceptions of *respondit* found in *Quaestiones* (D 26.2.30, D 40.13.4 and 48.10.14 pr) were likely inserted when transcribed later; in D 26.2.30, '*respondit: is datus est* […]' (He has replied: The man who is appointed […]), in D 40.13.4, '*respondit: venditio* […] *contrahi potest* […]' (He has replied: There can be a contract of sale […]), and in D 48.10.14 pr, '*respondit: plures quaestiones coniunxisti*' (He has replied: You have joined several questions together).[42] In these cases, we can delete '*respondit*' (he has replied) without affecting the grammar of the other words. Moreover, the utterance 'You have joined several questions together' appears to be his own. If someone edited the text, they would have separated the confusing questions for readability. Regarding the seven exceptions of *respondi* in Paulus's *Responsa* (D 27.1.36.1, 28.6.45 pr, 28.6.46, 29.1.40 pr, 29.1.40.2, 31.86 pr and 32.92 pr), an editor possibly transcribed the original texts of Paulus verbatim. If the discussion so far is correct, it would mean that *Quaestiones* was written before *Responsa* and could more faithfully reflect the original ideas of Paulus. This analysis can be supported by an interesting fragment, D 31.86 pr, in which the phrase *Paulus respondi* appears. This conjugation is grammatically incorrect because *respondi* is in the first person, hence, the Mommsen edition suggests a

40) Cf. Okko Behrends et al. (Hrsg.), *Corpus Iuris Civilis: Text und Übersetzung: Digesten 21–27*, Heidelberg: C.F. Müller, 2005, SS. 266f.

41) Tomoyoshi Hayashi, 'An Analysis on the Styles of Questions and Answers in the Digesta of Cervidius Scaevola', *Osaka Law Review* 71(3–4) 7–27 (2021) 11f (written in Japanese).

42) Watson (ed.), *supra* note 26, vol. 2, at 293, vol., 3, at 484, and vol. 4, at 339.

misprint in *respondit*.[43] That such a grammatical error exists in *Responsa* reinforces the assumption that this book may have had a compiler who transcribed Paulus's original texts.[44]

Curiously enough, *Quaestiones* and *Responsa* of Papinianus are also published in that order, i.e. *Quaestiones* comes first, followed by *Responsa*. This order can be proven by the fact that Papinianus mentioned Septimius Severus (reign: 193–211) as the sole emperor in the former but added Caracalla (reign: 198–217) as Severus's co-emperor in the latter.[45] While it is necessary to consider other jurists, it is permissible to assume that the title *Quaestiones* was preferred by several—relatively philosophical—Roman jurists when writing works with high originality. Ancient Greek philosophy probably influenced this style, because the book Προβλήματα by a pseudo-Aristotle was well-known and was translated into Latin as *Quaestiones*.[46]

From the observations, the phrase *quaero* is not a quirk of a particular Roman jurist or editor, but a common style that was accepted by a part of the 38 jurists, especially Scaevola, Paulus, Modestinus, Marcellus and Iavolenus.[47] What kind of style is it? This will be examined below supported by speech act theory.

(3) Classification of the Meanings of *Quaero*

Although Austin did not subdivide the five categories mentioned above in more detail, the following subdivisions are more useful when analysing *quaero*: consulting, prompting consideration[48] and asking oneself questions. The type of consulting that likely comes to mind first when we hear the word 'ask' is when someone lacks knowledge about a particular matter and seeks information from someone who knows it. For example, if some-

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43) Theodor Mommsen, Paul Krüger and Alan Watson (eds.), *The Digest of Justinian*, vol. 3, Philadelphia: University of Pennsylvania Press, 1985, p. 64.

44) The person referred to here as an editor or compiler does not mean someone who made a pirated version without the permission of a jurist. Therefore, the author's argument in this paragraph is not that *Responsa* is like *Pauli sententiae*.

45) Hans Ankum, 'Papinian, ein dunkler Jurist?', translated into Japanese by Kozo Ogawa, *The Hokkaido Law Review* 44(2) 221–265 (1993) 226.

46) Schulz, *supra* note 30, SS. 282f.

47) Importantly, this style was not in fashion at a particular time, nor did factions determine it. These jurists include those who flourished in the Julio–Claudian dynasty (Proculus), the Nerva–Antonine dynasty (Iavolenus, Celsus, Iulianus, Marcellus, Pomponius and Scaevola), the Severan dynasty (Papinianus, Paulus and Ulpianus) and the Crisis of the Third Century (Modestinus). Even among those who appear to have had a master–disciple relationship, there is no evidence of influence, for example, Modestinus was a student of Ulpianus, but the frequency of *quaero* was 1.18 for the former while 0.01 for the latter.

48) Also, Hayashi (2021), while limited to Cervidius Scaevola, bases the hypothesis that the verb *quaero* has the characteristic of prompting consideration. *See* Hayashi, *An Analysis*, *supra* note 41, at 12.

one does not know the way to a station, they ask a police officer for directions. The prompting consideration type occurs when we question someone about something we already know the answer to, such as when an instructor queries a student. This type often appears to be didactic in Roman law texts, resembling a dialogue between a jurist and his pupils. The last type is self-questioning and is not a form of communication, but rather a way of thinking to oneself. This is the case where we ponder something, as in when we wonder whether we should cancel our plan to go to a party. Thus, as far as relying on Austin's analysis of speech acts, the verb *quaero* theoretically can follow one of three patterns:[49]

<Consulting Type>
- Locution: A client wrote 'I ask whether A or B.'
- Illocution: The client requested a jurist to answer it (expositive[50]).
- Perlocution (referential): The client had the jurist feel professionally responsible.
- Perlocution (nonreferential): The client frustrated the jurist by burdening him with additional work, delighted him by getting in touch after a long time, etc.

<Prompting Consideration Type>
- Locution: A jurist or an editor wrote 'I ask whether A or B.'
- Illocution: The jurist or editor required readers[51] to notice the legal issue (expositive).
- Perlocution (referential): The jurist or editor prompted the readers to understand it.
- Perlocution (nonreferential): The jurist or editor got the readers to feel at a loss due to its difficulty, bored them because the question was too easy, etc.

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49)   Hayashi (2016) classifies the verb *quaero* into three categories, not based on illocution, but on the assumption that the speaker is either a client, a pupil, or a jurist himself. Namely, the categories are legal consultation from a client, legal education to a pupil and self-questioning. *See* Tomoyoshi Hayashi, 'I ask and he gave his opinion (*quaero, respondit*) – Some Reflections on the Forms of Legal Questions and Responses in D. 17,1,59 and on their Background', in U. Manthe, S. Nishimura und M. Igimi (Hers.), *Aus der Werkstatt römischer Juristen*, Berlin: Duncker & Humblot, 2016, pp. 137f.
50)   *See* Austin, *supra* note 3, at 162.
51)   The intended audience was possibly pupils who studied under the jurist because some legal books seem to be written for education. *See* Heinrich Honsell, Theo Mayer-Maly und Walter Selb, *Römisches Recht*, 4. Aufl., aufgrund des Werkes von Paul Jörs, Wolfgang Kunkel und Leopold Wenger (Enzyklopädie der Rechts- und Staatswissenschaft: Abteilung Rechtswissenschaft) Berlin, Heidelberg, New York, London, Paris und Tokyo: Springer-Verlag, 1987, SS. 28f.

\<Self-questioning Type\>
- Locution: A jurist wrote 'I ask whether A or B.'
- Illocution: The jurist wondered whether A or B (expositive?).
- Perlocution (referential): The jurist felt the need to consider it.
- Perlocution (nonreferential): The jurist realised a third possibility, chose to stop dwelling on the problem and let it go, etc.

As this analysis shows, pragmatics partially[52] contributes to dispelling Schulz's uncertainties regarding (a) and (b) (*See* Section 3(1)). The analysis identifies the writer's intended meaning of the word *quaero*, temporally setting aside the question of whether a jurist wrote it, an editor inserted it, or someone arbitrarily reverted an abbreviation, e.g. *q.* into *quaero*. In J's *Digesta*, of the three characteristics of *quaero* (consulting, prompting consideration and self-questioning), as far as can be clearly classified, only 13 fragments are of the consulting type (D 3.5.33, 8.2.10, 23.4.17, 24.1.49, 27.1.32, 28.1.27, 29.7.18, 31.48 pr, 34.9.13, 35.2.22 pr, 37.5.6, 40.13.4 and 46.3.94.3) and three of them do not co-occur with the phrase *respondi* or *respondit* (D 28.1.7, 29.7.18 and 31.48 pr). Furthermore, within the scope of what can be objectively identified, there are only three self-questioning texts,[53] i.e. D 3.5.9.1, 15.4.1.2 and 33.4.1.12 written by Ulpianus.[54] Most of the remaining 337 fragments seem to be of the prompting consideration type.[55]

The following inference can explain the frequency of the prompting consideration type in J's *Digesta*. The verb '*respondere*' (answer, reply,

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52) Pragmatics does not resolve Schulz's doubt completely because it cannot answer his question of who asked whom. *See* Schulz, *supra* note 30, at 283. However, we have managed to counter his argument that 'whether the question in our texts is introduced with *quaero* or *quaesitum est* is insignificant' (S. 283, translated into English by the author); the illocution of '*quaesitum est*' (it has been asked) is: a jurist or an editor required the reader to notice a legal issue (expositive) and at the same time they reported that it had been asked in the past (verdictive).

53) Hayashi (2021) classifies the combination of '*quaero*' (I ask) and '*respondi*' (I have answered) itself as a self-questioning type. *See* Hayashi, *An Analysis*, *supra* note 41, at 12f. However, the prompting consideration and self-questioning types can be distinguished when the illocution of *quaero* is analysed based on speech act theory.

54) The fact that Ulpianus used the self-questioning type of *quaero* holds important significance in the history of law because he objectified legal issues here. He concentrated, even if not always, not on providing advice but on organising and evaluating previous opinions. In this case, he suggested rather than explicitly stated the answer, and this approach aligns with his tendency to use understated expressions such as '*puto*' (I think). This characteristic is also shared, in part, by Paulus. D 12.3.4.2 might also belong to the self-questioning type; however, the Latin word *constat* used there may not reflect Ulpianus's opinion but rather introduce the prevailing view of the time.

55) Some hard cases are difficult to classify, e.g. D 17.1.62.1, 19.2.51 pr, 21.1.58.2, 31.41.1, 33.5.15, 33.9.7, 34.3.25, 36.1.46.1, 39.5.2.7, 45.1.107, 47.2.75 and 48.5.12.10.

respond), which frequently co-occurs with '*quaero*' (I ask), is conjugated with either '*respondi*' (I have answered) or '*respondit*' (he has answered), and both are in the present perfect tense, whilst '*quaero*' (I ask) is in the first-person present tense. Thus, what is important is that the answer comes first, and the question follows, which is the reverse chronological order from the usual sequence. This suggests that the Q&A style involving the combination of *quaero* and *respondi*/*respondit* is not asking oneself questions, but prompting consideration based on recollection and takes one of the following forms:

● The author, a Roman jurist, raised a question for auditors/readers and explained how he had answered it in the past.
● The editor who compiled the texts of a Roman jurist raised a question for auditors/readers and explained how the jurist had answered it in the past.

For example, in D 2.14.44, Scaevola raised a legal issue for readers and reviewed how he had solved it. In contrast, in D 2.8.14, an anonymous editor provided a question for readers and reported how Paulus had answered it. This structure is appropriate for legal texts because one of the main purposes of such writing is to impart legal knowledge to the reader. Therefore, it is unsurprising that most fragments containing *quaero* are of the prompting consideration type.

(4) Client's Letter
Why do we find the consulting type in legal texts written by experts? The reason is that the 13 fragments mentioned above take the form of direct communication with their clients, in other words, the verb *quaero* appears in the style of a dialogue, and eight of them (D 3.5.33, 23.4.17, 28.1.27, 29.7.18, 31.48 pr, 34.9.13, 37.5.6 and 46.3.94.3) are letters from the clients.[56]

D 3.5.33 (Paulus, *Quaestiones*, 1)
'Nesennius Apollinaris to Julius Paulus, greetings. A grandmother managed the affairs of her grandson. Both died and the heirs of the grandmother brought an action for unauthorised administration against the heirs

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56) The remaining five texts (D 8.2.10, 24.1.49, 27.1.32, 35.2.22 pr and 40.13.4) are unclear as to whether they are letters. For example, in the case of D 8.2.10, it begins with the Latin phrase *Gaurus Marcello* but there is no definitive evidence to determine whether this is the pairing of the sender and the recipient of a letter (i.e. Gaurus to Marcellus) or a shortened form indicating that '*Gaurus consuluit Marcello*' (Gaurus has consulted Marcellus).

of the grandson. The heirs of the grandmother were trying to take into account the maintenance provided for the grandson. The rejoinder was that the grandmother had provided it at her own expense as an obligation to a member of her family; he had not asked for a maintenance order nor had such an order been made (*or* nor would such an order have been made). Moreover, it was said that it had been laid down that if a mother provided maintenance, she was not able to claim for what she had provided at her own expense from a sense of obligation to her family. On the other side, it was said that it was only correct to say this if there was proof that the mother had provided maintenance at her own expense; but in the case under discussion, it was probable that the grandmother, who acted as manager, provided maintenance from the grandson's own resources. The point at issue is: Does maintenance appear to have been paid for from both estates? <u>I ask</u> which appears to you to be the juster view.' <u>I have replied</u> that the question was one of fact; for I do not think that the decision in the mother's case should be so generally applicable either. For what would be the position if she went so far as to state publicly that in providing maintenance for her son, she had it in mind to take either her son himself or his tutors to court? Suppose his father died abroad and the mother supported the son together with the rest of the entourage on the return journey. In a case of this sort, the deified Antoninus Pius laid down that an action should be granted even against the *pupillus* himself. So, my opinion will be that it is easier to listen to the grandmother or her heirs on the question of fact if they want to take maintenance into account, particularly if it is also shown that the grandmother had even entered it in her expenditure account. The view that it was paid for from both estates should, I think, be completely rejected.[57]

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57) Watson (ed.), *supra* note 26, vol. 1, at 106f. The original Latin text: 'Nesennius Apollinaris Iulio Paulo salutem. Avia nepotis sui negotia gessit: defunctis utrisque aviae heredes conveniebantur a nepotis heredibus negotiorum gestorum actione: reputabant heredes aviae alimenta praestita nepoti. respondebatur aviam iure pietatis de suo praestitisse: nec enim aut desiderasse, ut decernerentur alimenta, aut decreta essent. praeterea constitutum esse dicebatur, ut si mater aluisset, non posset alimenta, quae pietate cogente de suo praestitisset, repetere. ex contrario dicebatur tunc hoc recte dici, ut de suo aluisse mater probaretur: at in proposito aviam, quae negotia administrabat, verisimile esse de re ipsius nepotis eum aluisse. tractatum est, numquid utroque patrimonio erogata videantur. quaero quid tibi iustius videatur. respondi: haec disceptatio in factum constitit: nam et illud, quod in matre constitutum est, non puto ita perpetuo observandum. quid enim si etiam protestata est se filium ideo alere, ut aut ipsum aut tutores eius conveniret? pone peregre patrem eius obisse et matrem, dum in patriam revertitur, tam filium quam familiam eius exhibuisse: in qua specie etiam in ipsum pupillum negotiorum gestorum dandam actionem divus pius antoninus constituit. igitur in re facti facilius putabo aviam vel heredes eius audiendos, si reputare velint alimenta, maxime si etiam in ratione impensarum ea rettulisse aviam apparebit. illud nequaquam admittendum puto, ut de utroque patrimonio erogata videantur.'

D 23.4.17 (Proculus, *Epistulae*, 11)

'Atillicinus to his friend Proculus, greetings: A pact was entered into between a man and his wife before marriage that, on divorce, the same period should be allowed for returning the dowry as was given for providing it. The woman gave her husband the dowry five years after the marriage took place. On divorce, I ask whether the husband should return the dowry to his wife within five years or within the period prescribed by law?' Proculus has replied: As regards the time for returning the dowry, I think that a pact can only improve a woman's position and not adversely affect it. So, if the pact provides for the return of the dowry within a shorter period than the law prescribes, it ought to be upheld; but if it involves a longer period, the pact is invalid. It is proper to mention in connection with this opinion that if the pact provides for the same delay in returning the dowry on divorce as there was in delivering it after the marriage, and if the delay in returning it was shorter than the prescribed one, the pact will be valid. If the delay is longer, the pact will not be valid.[58]

D 28.1.27 (Celsus, *Digesta*, 15)

'Domitius Labeo to Celsus, his friend, greetings. I ask you whether a person who, when he had been asked to write a will, also sealed the will when he had written it, is to be regarded as one of the witnesses.' 'Juventius Celsus to Labeo, his friend, greetings. I do not understand what it is that you have consulted me about, or else your consultation is really stupid; for it is more than ridiculous to doubt whether someone has been lawfully used as a witness when he also wrote the will.'[59]

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58) *Ibid*., vol. 2, at 231. The original Latin text: 'Atilicinus Proculo suo salutem. Cum inter virum et uxorem pactum conventum ante nuptias factum sit, ut quibus diebus dos data esset, isdem divortio facto redderetur, post quinquennium quam nuptiae factae sunt uxor viro dotem dedit: divortio facto quaero, utrum quinquennii die vir uxori dotem redderet an statuto legibus tempore. Proculus respondit: quod ad diem reddendae dotis attinet, pacto existimo meliorem condicionem mulieris fieri posse, deteriorem non posse: itaque si cautum est, ut propiore tempore, quam legibus constitutum est, reddatur, stari eo debere, si ut longiore, nec valere id pactum conventum. cuius sententiae conveniens est dicere, si pacto convento cautum est, ut quanto serius quaeque et post nuptias data fuerit, tanto post divortium reddatur, si propiore, quam in reddenda dote constitutum est, data sit, valere pactum conventum, si longiore, non valere.'

59) *Ibid*., vol. 2, at 360. The original Latin text: 'Domitius Labeo Celso suo salutem. Quaero, an testimonium numero habendus sit is, qui, cum rogatus est ad testamentum scribendum, idem quoque cum tabulas scripsisset, signaverit. Iuventius Celsus Labeoni suo salutem. Non intellego quid sit, de quo me consuleris, aut valide stulta est consultatio tua: plus enim quam ridiculum est dubitare, an aliquis iure testis adhibitus sit, quoniam idem et tabulas testamenti scripserit.'

D 29.7.18 (Celsus, *Digesta*, 20)

'Plotiana to her friend Celsus, greetings. Lucius Titius drew a document in the following terms, thus: "If I have left anything in tablets or any other form relating to this will, I wish it to take effect thus." I ask whether a codicil which was written before this will ought to be regarded as ratified.' 'Juventius Celsus to his friend Plotiana, greetings. The words, "If I have left anything relating to this will, I wish it to take effect" cover also what was written before the will.'[60]

D 31.48 pr (Proculus, *Epistulae*, 8)

'Licinnius Lucusta to Proculus, greetings. When a husband makes a condition in repaying a dowry by a legacy that his wife should, if she prefers, receive the slaves she had given him as dowry instead of a sum of money, I ask: Will those slaves who have been subsequently born from the slaves given as dowry also be due to the wife?' 'Proculus to Lucusta, greetings. If the wife prefers to take slaves rather than dowry money, then the slaves themselves that she gave, valued for the purpose of dowry, shall be due to her, but not also the offspring of the slaves.'[61]

D 34.9.13 (Papinianus, *Quaestiones*, 32)

'Claudius Selencus to his friend Papinianus, greetings. Maevius was condemned for adultery with Sempronia and later married the said Sempronia who had not been condemned. At his death, he left her as his heir. I ask: Was the marriage legal and should the woman be permitted to receive the inheritance?' I have replied that such a marriage could not stand, that the woman should not profit by receipt of the inheritance and that what was left should go to the imperial treasury. We also hold that if such a woman appoints her husband as heir, he should be deprived of the inheritance on

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60) *Ibid*., vol. 2, at 448. The original Latin text: 'Plotiana Celso suo salutem. Lucius Titius his verbis ita cavit: "si quid tabulis aliove quo genere ad hoc testamentum pertinens reliquero, ita valere volo". quaero, an codicilli, qui ante hoc testamentum scripti sunt, debeant rati esse. Iuventius Celsus Plotianae salutem. Haec verba: "si quid ad hoc testamentum pertinens reliquero, valere volo", etiam ea, quae ante testamentum scripta sunt, comprehendere.'

61) *Ibid*., vol. 3, at 48. The original Latin text: 'Licinnius Lucusta Proculo suo salutem. Cum faciat condicionem in releganda dote, ut, si mallet uxor mancipia quae in dotem dederit quam pecuniam numeratam, recipere, si ea mancipia uxor malit, numquid etiam ea mancipia, quae postea ex his mancipiis nata sunt, uxori debeantur, quaero. Proculus Lucustae suo salutem. Si uxor mallet mancipia quam dotem accipere, ipsa mancipia, quae aestimata in dotem dedit, non etiam partus mancipiorum ei debebuntur.'

grounds of unfitness.[62]

| D 37.5.6 (Iulianus, *Digesta*, 23) |

'Salvius Aristo to Iulianus, greetings. A man who had an emancipated son passed him over in his will, and instituted his father heir, together with a stranger to the family and gave a legacy to his father; the son applies for *bonorum possessio* contrary to the terms of a will. I ask if both, or either, or neither, of them, had accepted the inheritance, whether, and how much of, the legacy is to be due to the father.' He [= Iulianus] has replied: I have often observed that this part of the Edict, whereby an emancipated son, who has received *bonorum possessio* contrary to the terms of a will, is bidden to pay legacies to ascendants and descendants, has some defects; for if three-quarters of the estate has been left as a legacy, the legatee is in a position to receive more than the emancipated son. And so the position will have to be modified by decree, so that both the emancipated son pays out a share of the inheritance in such a way that the appointed heir does not receive more than the emancipated son, and the amount of the legacies is modified so that no one receives more from the legacies than will remain with the emancipated son in virtue if *bonorum possessio*.[63]

| D 46.3.94.3 (Papinianus, *Quaestiones*, 8) |

'Fabius Januarius to Papinianus, greetings. When Titius owed Gaius Seius a certain sum under a *fideicommissum* and the same amount on a ground on which there could be no action and which did not present a claim on the payment, the slave agent of Titius, in his master's absence, paid a sum equivalent to one of the debts, and it was noted that it was paid out of the total due; I ask: On which ground is the payment to be seen as made?'

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62) *Ibid.*, vol. 3, at 179f. The original Latin text: 'Claudius Seleucus Papiniano suo salutem. Maevius in adulterio Semproniae damnatus eandem Semproniam non damnatam duxit uxorem: qui moriens heredem eam reliquit: quaero, an iustum matrimonium fuerit et an mulier ad hereditatem admittatur. respondi neque tale matrimonium stare neque hereditatis lucrum ad mulierem pertinere, sed quod relictum est ad fiscum pervenire. sed et si talis mulier virum heredem instituerit, et ab eo quasi ab indigno hereditatem auferri dicimus.'
63) *Ibid.*, vol. 3, at 287. The original Latin text: 'Salvius Aristo Iuliano salutem. Qui filium emancipatum habebat, praeterito eo patrem suum et extraneum heredem instituit et patri legatum dedit: filius contra tabulas bonorum possessionem petit: quaero, si aut uterque hereditatem adisset aut alter ex his aut neuter, an et quantum legatorum nomine patri debeatur. respondit: saepe animadverti hanc partem edicti, qua emancipatus accepta contra tabulas bonorum possessione liberis et parentibus legata praestare iubetur, habere nonnullas reprehensiones: nam si dodrans legatus fuerit, plus habiturus est cui legatum erit quam emancipatus. decreto itaque ista temperari debebunt, ut et hereditatis partem emancipatus praestet ita, ne scriptus heres amplius habeat quam emancipatus, et legatorum modus temperaretur, ut nihil plus ex legatis ad aliquem perveniat, quam apud emancipatum bonorum possessionis nomine remansurum est.'

<u>I have replied</u>: If, indeed, Seius so provided with Titius that the payment to him should be as from the total due, the term "credit" should be seen as referring only to the money due on the *fideicommissum* not to that for which no action lay, but, the money having been paid, it could not be reclaimed. But when Titius's slave agent, in his master's absence, paid the money, ownership of the coins would not be transferred in respect of that head of obligation for which the relief of a defense was available, although the payment was said to be under that head. For it is hardly likely that his master appointed the slave to pay money which did not have to be paid, any more than he should pay money from his *peculium* on a suretyship which the slave had not accepted for the good of the *peculium*.[64]

The greeting characterises the letters. The style 'X to Y, greetings' is found in 24 fragments of J's *Digesta* (*See* Table 2). These texts include the eight consulting-type fragments and can be divided into four groups.

- Group A (client ↔ jurist): A client sent a letter to a jurist asking a legal question and the jurist answered in a letter. Both the letters were recorded.
- Group B (client → jurist): A client sent a letter to a jurist asking a legal question, but the letter in reply was not recorded. The fragment merely reported how the jurist had responded to the client's letter.
- Group C (client ← jurist): A client likely sent a letter to a jurist asking a legal question. However, this letter was not recorded but only a letter in reply from the jurist was transcribed. Note: it is possible that the jurist unilaterally sent a letter in which he touched on a legal issue.
- Group D (someone → someone): A person wrote a letter to someone who was not a jurist, and the letter gave rise to a legal problem. A jurist expressed his opinion on this issue.

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64) *Ibid.*, vol. 4, at 230. The original Latin text: 'Fabius Ianuarius Papiniano salutem. Cum Titius Gaio Seio deberet ex causa fideicommissi certam quantitatem et tantundem eidem ex alia causa, quae peti quidem non poterat, ex solutione autem petitionem non praestat, Titii servus actor absente domino solvit eam summam, quae efficeret ad quantitatem unius debiti, cautumque est ei solutum ex universo credito: quaero, id quod solutum est in quam causam acceptum videtur. respondi, si quidem Titio Seius ita cavisset, ut sibi solutum ex universo credito significaret, crediti appellatio solam fideicommissi pecuniam demonstrare videtur, non eam, quae petitionem quidem non habet, solutione autem facta repeti pecunia non potest. cum vero servus Titii actor absente domino pecuniam solverit, ne dominium quidem nummorum in eam speciem obligationis, quae habuit auxilium exceptionis, translatum foret, si ex ea causa solutio facta proponeretur, quia non est vero simile dominum ad eam speciem solvendis pecuniis servum praeposuisse, quae solvi non debuerunt, non magis quam ut nummos peculiares ex causa fideiussionis, quam servus non ex utilitate peculii suscepit, solveret.'

Table 2: Fragments including greetings in Justinianus's *Digesta*

Fragment	Jurist's name	Book title	Sender	Addressee	Style	Group
3.5.33	Paulus	*Quaestiones 1*	Nesennius Apollinaris	Paulus	quaero respondi	B
4.4.50	Pomponius	*Epistulae et variae lectiones 9*	Iunius Diophantus	Pomponius	Tu quid de eo putas? respondit	B
16.3.24	Papinianus	*Quaestiones 9*	Lucius Titius	Sempronius	quaeritur respondi	D
17.1.59.5	Paulus	*Responsa 4*	(anonym)	(anonym)	quaero respondit	D
17.1.60.1	Scaevola	*Responsa 1*	Titius	Seius	quaero respondi	D
17.1.62.1	Scaevola	*Digesta 6*	Lucius Titius	Gaius	quaero respondit	D
23.3.67	Proculus	*Epistulae 7*	Proculus	grandson	-	C
23.4.17	Proculus	*Epistulae 11*	Atilicinus	Proculus	quaero respondit	B
28.1.27	Celsus	*Digesta 15*	Domitius Labeo	Celsus	quaero salutem	A
29.7.18	Celsus	*Digesta 20*	Plotiana	Celsus	quaero salutem	A
31.47	Proculus	*Epistulae 6*	Proculus	grandson	quaeris respondit	C
31.48 pr	Proculus	*Epistulae 8*	Licinnius Lucusta	Proculus	quaero salutem	A
32.37.2	Scaevola	*Digesta 18*	Lucius Titius	Seia (heir)	quaesitum est respondit	D
32.37.3	Scaevola	*Digesta 18*	Lucius Titius	son	quaesitum est respondit	D
34.9.13	Papinianus	*Quaestiones 32*	Claudius Seleucus	Papinianus	quaero respondi	B
36.1.77 pr	Scaevola	*Digesta 18*	Titius	Cornelius (heir)	quaesitum est respondit	D
37.5.6	Iulianus	*Digesta 23*	Salvius Aristo	Iulianus	quaero respondit	B
38.2.47.2	Paulus	*Responsa 11*	Sempronius	Zolius (freedman)	quaero respondit	D
39.5.32	Scaevola	*Responsa 5*	Lucius Titius	(anonym)	quaero respondit	D
39.5.35 pr	Scaevola	*Digesta 31*	Titius	Stichus (freedman)	quaesitum est respondit	D
40.5.56	Marcellus	*Responsa*	Lucius Titius	heirs	quaero respondit	D
44.7.61.1	Scaevola	*Digesta 28*	Seia	Lucius Titius	quaero respondit	D

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| 46.3.94.3 | Papinianus | *Quaestiones 8* | Fabius Ianuarius | Papinianus | quaero respondi | B |
| 50.16.125 | Proculus | *Epistulae 5* | grandson | Proculus | Quomodo interpretaris? existimo | B |

An example of each group is shown below.

<Group A>
D 28.1.27 (Celsus, *Digesta*, 15)
See above.

<Group B>
D 4.4.50 (Pomponius, *Epistulae et variae lectiones*, 9)
'Junius Diophantus to his friend Pomponius, greetings. Someone under twenty-five, with the intention of novating, intervened on behalf of a person who was liable under an action which had to be brought within a certain period of time, when ten days of the period still remained and afterwards obtained *restitutio in integrum*. Is the *restitutio* [of the action] that is given to the creditor against the first debtor for ten days or a more extended period? I have expressed the opinion that from the moment of *restitutio in integrum* as much time is to be offered as remained [of the original period]. I would like you to reply in writing what you think about that.' He [= Pomponius] has replied: Without doubt, I think that what you thought about the action to be brought within a certain period of time with respect to which the *minor* intervened is correct. Therefore, the property which the first debtor gave as a pledge also remains bound.[65]

<Group C>
D 23.3.67 (Proculus, *Epistulae*, 7)
'Proculus to his grandson, greetings. When a female slave marries and gives her husband money as a dowry, whether she knows she is a slave or not, she cannot make him the owner of this money; it will still belong to whoever

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65) *Ibid.*, vol. 1, at 138. The original Latin text: 'Iunius Diophantus Pomponio suo salutem. Minor viginti quinque annis novandi animo intercessit pro eo, qui temporali actione tenebatur, tunc cum adhuc supererant decem dies, et postea in integrum restitutus est: utrum restitutio, quae creditori adversus priorem debitorem datur, decem dierum sit an plenior? ego didici ex tempore in integrum restitutionis tantundem temporis praestandum, quantum supererat: tu quid de eo putas velim rescribas. respondit: sine dubio, quod de temporali actione, in qua intercessit minor, sensisti, puto verius esse: ideoque et pignus quod dederat prior debitor, manet obligatum.'

owned it before it was given as a dowry to the husband unless he acquired it by usucapion. She will not be able to change the situation with regard to this money even after she becomes free while living with this man. So, she cannot legally bring an action based on her right of dowry or a *condictio* to recover the money even after a divorce; but the person who owns the money can legally claim it. But if the husband usucapted the money by having it in his possession, because, of course, he thought she was free, I am inclined to think that he has made a profit here, provided he began to usucapt before the marriage. I take the same view where he bought something with the money before it became the dowry so that he was not in possession of it and had not committed fraud in order to avoid possession of it.'[66]

<Group D>

D 36.1.77 pr (Scaevola, *Digesta*, 18)

A testator wrote a letter to his heir in these words: 'Titius to his heir Cornelius, greetings. I request of you, Cornelius, since my mother's share has devolved upon you, as also the share of the unfortunate Sempronius lately my curator, and thus my whole estate is likely to come to you, that you render and restore one third to Gaius Seius.' Sempronius had been granted *restitutio in integrum* by the emperor, who had deported him, and had accepted the inheritance. It has been asked whether he was also asked to restore the inheritance from his portion. He [= Scaevola] has replied that it was not stated that Sempronius had been asked, but that the heir Cornelius should make restitution to Seius in proportion to the value of the maternal goods of the deceased.[67]

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66) *Ibid.*, vol. 2, at 224. The original Latin text: 'Proculus nepoti suo salutem. Ancilla quae nupsit dotisque nomine pecuniam viro tradidit, sive sciat se ancillam esse sive ignoret, non poterit eam pecuniam viri facere eaque nihilo minus mansit eius cuius fuerat antequam eo nomine viro traderetur, nisi forte usucapta est. nec postea quam apud eundem virum libera facta est, eius pecuniae causam mutare potuit. itaque nec facto quidem divortio aut dotis iure aut per condictionem repetere recte potest, sed is cuius pecunia est recte vindicat eam. quod si vir eam pecuniam pro suo possidendo usucepit, scilicet quia existimavit mulierem liberam esse, propius est, ut existimem eum lucrifecisse, utique si, antequam matrimonium esse inciperet, usucepit. et in eadem opinione sum, si quid ex ea pecunia paravit, antequam ea dos fieret, ita, ut nec possideat eam nec dolo fecerit, quo minus eam possideret.'
67) *Ibid.*, vol. 3, at 254. The original Latin text: 'Epistulam ad heredem suum in haec verba scripsit: "Titius Cornelio heredi suo salutem. a te peto, Corneli, quoniam ad te devoluta est pars matris meae, item pars Sempronii curatoris quondam mei contraria fortuna usi et per hoc totus as meus apud te esse speratur, uti reddas restituas Gaio Seio uncias quattuor". quaesitum est, cum sempronius in integrum restitutus sit ab imperatore, a quo fuerat deportatus et adierit hereditatem, an is quoque rogatus sit, ut ex sua portione restituat hereditatem. respondit Sempronium quidem non proponi rogatum, Cornelium autem heredem debere pro rata portione maternarum defuncti rerum restitutionem seio facere.'

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From Table 2 and the grouping, three points can be observed. First, the titles of the books that appear in Table 2 have few variations, i.e. *Digesta*, *Epistulae*, *Quaestiones*, *Responsa* and *Epistulae et variae lectiones*, and they are mentioned in Table 1. Additionally, the eight jurists in Table 2, Celsus, Iulianus, Marcellus, Papinianus, Paulus, Pomponius, Proculus and Scaevola, are exhaustively named in Table 1. This means that Table 1 includes Table 2 in terms of the jurist's name and book title even though the selection criteria differ in each one. Table 1 shows whether the verb *quaero* appears, whereas Table 2 presents whether a fragment contains a letter with greetings. It is not easy to interpret this inclusion, however, regarding Celsus, the relationship is because he has only one reference as paragraphs in J's *Digesta*, i.e. his *Digesta*, a book of the same name. There are other books attributed to Celsus than his *Digesta*, e.g. *Quaestiones* and *Epistulae*,[68] however, they are only mentioned in other jurists' fragments, as in Ulpianus's fragment D 4.4.3.1: 'On this Celsus has a not inappropriate discussion in the eleventh book of his *Epistulae* and the second book of his *Digesta* about a case on which he was consulted by the praetor Flavius Respectus'.[69] This sentence implies that Celsus introduced the same case in his two different books; it is not plausible to assume that Flavius Respectus would have consulted him on the same case twice. Supposing that the title of *Epistulae* signifies a collection of letters, and the title of *Digesta* denotes a compilation of material, it can be assumed that Celsus, or an editor, initially published several books, such as *Epistulae*, and these books were later compiled into a *digest*.

Second, Scaevola, whose fragments most frequently contain *quaero*, has neither given nor received greetings in J's *Digesta*. He or his editor used letters only to introduce what happened in a case (Group D). However, it is highly improbable that Scaevola would have neither received a letter from a client nor sent one. This missing information becomes more thought-provoking when compared with the other seven jurists, as he and Marcellus are the only ones assigned exclusively to Group D, in other words, letters from or to Celsus, Iulianus, Papinianus, Paulus, Pomponius and Proculus are found in J's *Digesta*. Concerning the following three facts, i.e. the Latin title *Digesta* means a compilation, the phrases '*respondi*' (I have answered)' and '*respondit*' (he has answered) appear to be randomly distributed in Scaevola's *Responsa*, and no letter from or to him is cited in his *Digesta*

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68) *See* Lenel, *supra* note 37, vol. 1, col. 169.
69) Watson (ed.), *supra* note 26, vol. 1, at 125. The original Latin text: '[…] unde illud non ineleganter Celsus epistularum libro undecimo et digestorum secundo tractat, ex facto a Flavio Respecto praetore consultus. […]'

and *Responsa* directly, we can support the thesis that the two books are edited by someone other than Scaevola in a way that conceals his direct interactions with clients. Moreover, if speculation is allowed without further evidence, they are possibly lecture transcriptions. This interpretation may resolve the question of why the first- and third-person perspectives mixed in Scaevola's *Responsa*; the choice of the first or third person depends on whether a participant noted Scaevola's firsthand voices—'I have replied' (or someone copied a lecture note exactly as it was)—or arranged them as 'he has replied' (or someone rephrased a lecture note).

Third, when we add a consideration based on the theory of speech acts, we can see how close each historical document is to the original. Types A and B are likely closer to the original questions of the clients than Types C and D; in the latter two, the issues have possibly been revised by the author or editor, and there is no guarantee that they are the same as the questions in the client's letters. This interpretation can be especially supported by D 28.1.27 (Type A). Celsus responded to the client's question, saying, 'Your consultation is really stupid'. It is more plausible to assume that the client raised such a question than that Celsus invented it. Furthermore, there is a gap between the client's question and the jurist's answer in D 3.5.33 (Type B). Here, Paulus said, 'I have replied that the question was one of fact; for I do not think that the decision in the mother's case should be so generally applicable either'. He advised the client 'to listen to the grandmother or her heirs on the question of fact if they want to take maintenance into account'. This means that even the prominent jurist could not accurately respond to the question raised by the client because of a lack of information. If this letter were a work of fiction, Paulus would have freely modified its contents to explain it more comfortably. In addition, although the word *quaero* is not used in D 4.4.50 (Type B), there may be some indirect evidence supporting the originality of the letters. In that text, Diophantus expressed his own opinion. This learned person appears to have relayed his view to someone and then, worried, sought advice from Pomponius. Therefore, unlike the client in D 28.1.27, the sender had some legal knowledge and was possibly a jurist. There was no need to create such a letter in detail, therefore, it could be interpreted that Pomponius quoted the letter as it was written. The reasoning so far is partially compatible with the inference by Hayashi (2021) that, for D 4.4.39.1, 32.37.6 and 32.42, in which letters do not appear, *quaero* is not the utterance of a client and hence the questions are modified by Scaevola.[70]

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70) Hayashi, *An Analysis*, *supra* note 41, at 13f.

Thus, pragmatics and historical records support the assumption that the consulting type of *quaero* retains authentic situations that occurred in the classical period. If this is the case, Roman jurists engaged with diverse people, from simple layperson questions to consultations with people in the same profession.

4 Conclusion

This paper applies John L. Austin's speech act theory to Roman law texts, aiming to focus on Roman jurists' wording and style and to clarify how they employed language to achieve specific purposes. The Latin word *quaero* was analysed to provide a simple example. This word, the first-person singular present tense of the verb *quaerere*, translates into English as 'I ask'. Although Fritz Schulz regarded it as a minor phrase, this paper demonstrates its potential to yield rich insights when viewed from a pragmatic perspective.

First, *quaero* is frequently paired with '*respondi*' (I have answered) or '*respondit*' (he has answered), forming a question-and-answer structure that was a preferred writing style among several jurists of the classical period. This style was employed by 11 jurists from the Julio–Claudian dynasty through the Crisis of the Third Century, including Proculus, Iavolenus, Celsus, Iulianus, Marcellus, Pomponius, Scaevola, Papinianus, Paulus, Ulpianus and Modestinus. However, the frequency of *quaero*'s usage does not necessarily correspond to the volume of each jurist's work quoted in J's *Digesta*. Notably, Scaevola stands out for the number of fragments containing *quaero* and for its frequency, whereas Ulpianus, Papinianus and Pomponius, despite being extensively cited in J's *Digesta*, rarely used the term.

Second, the performativity of *quaero* can be classified into three theoretical categories: (1) when a speaker asks a question to seek information (consulting), (2) when someone who knows the answer prompts another person to consider it (prompting consideration), and (3) when an individual poses a question to themselves (self-questioning). Most *quaero*-fragments in J's *Digesta* belong to the second category, where *quaero* is employed by jurists or editors to draw the reader's attention to legal issues. In such cases, the locution 'I ask' functions as the illocution 'I request you to consider this'.

Third, some fragments belong to the first category because they contain quotations from letters in which clients explicitly stated, 'I ask'. These letters, received by jurists, reflect direct requests for legal guidance. Therefore, in such cases, the locution 'I ask' connects the illocution 'A client requests a jurist to answer a legal question'. Eight fragments in J's *Digesta* clearly quote such letters, three of which also include the jurists' reply letters (D 28.1.27, 29.7.18 and 31.48 pr), whilst the other five indirectly report

the jurists' responses with *respondi* or *respondit* (D 3.5.33, 23.4.17, 34.9.13, 37.5.6 and 46.3.94.3). The former three fragments appear to directly document exchanges between jurists and clients in real disputes, while the latter five seem to preserve at least the original questions. D 28.1.27 supports this supposition, as Celsus replied to his client, 'Your consultation is really stupid'. His teasing tone suggests a direct and authentic interaction rather than fiction or interpolation. Furthermore, D 4.4.50 indicates that even learned individuals with sufficient knowledge sought consultation with jurists to confirm their own understanding. This demonstrates that Roman jurists addressed a wide range of legal needs, from simple layperson inquiries to advanced discussions with legal experts.

Finally, as a secondary conclusion, the application of speech act theory may help infer the chronological order of Roman legal texts. For instance, as discussed in Section 3(2), Paulus's *Quaestiones* likely preceded his *Responsa*, as the latter exhibits a tone suggesting the influence of a subsequent editor. Similarly, this method can be used to infer the sequence between Celsus's *Digesta* and his *Epistulae*, as elaborated in Section 3(4).

As a pilot study applying pragmatics to Roman law texts, this paper's scope is intentionally limited. Not all fragments containing *quaero* were analysed, nor were all 24 texts containing the term '*salutem*' (greetings), a keyword critical for interpreting the eight letters. These limitations highlight avenues for further research in subsequent studies.

Appendix: List of *quaero* in Justinianus's *Digesta*

No	Fragment	Author's name	Book title	Co-occurrence
1	2.8.14	Paulus	*Responsa 2*	Paulus respondit
2	2.14.35	Modestinus	*Responsa 2*	Modestinus respondit
3	2.14.44	Scaevola	*Responsa 5*	respondi
4	2.15.3.1	Scaevola	*Digesta 1*	respondit
5	2.15.14	Scaevola	*Responsa 2*	respondit
6	3.2.21	Paulus	*Responsa 2*	Paulus respondit
7	3.3.70	Scaevola	*Responsa 1*	respondi
8	3.3.76	Iulianus	*Ad minicium 5*	Iulianus respondit
9	3.5.9.1	Ulpianus	*Ad edictum 10*	dico
10	3.5.25	Modestinus	*Responsa 1*	Modestinus respondit
11	3.5.33	Paulus	*Quaestiones 1*	respondi
12	4.4.32	Paulus	*Quaestiones 1*	respondi
13	4.4.39.1	Scaevola	*Digesta 2*	respondi
14	4.4.47 pr	Scaevola	*Responsa 1*	respondi
15	4.4.47.1	Scaevola	*Responsa 1*	respondi

16	5.2.19	Paulus	*Quaestiones 2*	respondi
17	5.3.47	Modestinus	*Responsa 8*	respondit
18	6.1.59	Iulianus	*Ex minicio 6*	respondit
19	7.1.54	Iavolenus	*Epistulae 3*	respondit
20	8.2.10	Marcellus	*Digesta 4*	Marcellus respondit
21	8.2.41.1	Scaevola	*Responsa 1*	respondi
22	8.3.37	Paulus	*Responsa 3*	Paulus respondit
23	8.5.16	Iulianus	*Digesta 7*	respondi
24	8.5.20.1	Scaevola	*Digesta 4*	respondit
25	9.2.51 pr	Iulianus	*Digesta 86*	respondit
26	10.2.30	Modestinus	*Responsa 6*	Modestinus respondit
27	10.2.36	Paulus	*Quaestiones 2*	respondi
28	10.2.38	Paulus	*Responsa 3*	Paulus respondit
29	10.2.39.5	Scaevola	*Responsa 1*	respondi
30	11.1.20.1	Paulus	*Quaestiones 2*	respondi
31	12.3.4.2	Ulpianus	*Ad edictum 36*	constat
32	12.3.8	Marcellus	*Digesta 8*	respondi
33	12.6.67.1	Scaevola	*Digesta 5*	respondit
34	12.6.67.4	Scaevola	*Digesta 5*	respondit
35	13.5.24	Marcellus	*Responsa*	Marcellus respondit
36	13.7.34	Marcellus	*Responsa*	Marcellus respondit
37	13.7.39	Modestinus	*Responsa 4*	Modestinus respondit
38	13.7.43.1	Scaevola	*Digesta 5*	respondit
39	15.3.21	Scaevola	*Digesta 5*	respondit
40	15.4.1.2	Ulpianus	*Ad edictum 29*	puto
41	16.1.29 pr	Paulus	*Responsa 16*	Paulus respondit
42	16.2.15	Iavolenus	*Epistulae 2*	respondit
43	16.3.26.1	Paulus	*Responsa 4*	Paulus respondit
44	16.3.26.2	Paulus	*Responsa 4*	respondit
45	16.3.27	Paulus	*Responsa 7*	Paulus respondit
46	17.1.38 pr	Marcellus	*Responsa*	Marcellus respondit
47	17.1.58.1	Paulus	*Quaestiones 4*	respondi
48	17.1.59.4	Paulus	*Responsa 4*	Paulus respondit
49	17.1.59.5	Paulus	*Responsa 4*	Paulus respondit
50	17.1.60.1	Scaevola	*Responsa 1*	respondi
51	17.1.60.4	Scaevola	*Responsa 1*	respondi
52	17.1.62.1	Scaevola	*Digesta 6*	respondit
53	18.1.64	Iavolenus	*Epistulae 2*	respondi
54	18.1.69	Proculus	*Epistulae 11*	Proculus respondit
55	18.1.81 pr	Scaevola	*Digesta 7*	respondit

56	18.1.81.1	Scaevola	*Digesta 7*	respondit
57	18.7.9	Paulus	*Quaestiones 5*	respondi
58	19.1.11.6	Ulpianus	*Ad edictum 32*	Iulianus diceret
59	19.1.39	Modestinus	*Responsa 5*	Modestinus respondit
60	19.1.43.	Paulus	*Quaestiones 5*	respondi
61	19.1.52.3	Scaevola	*Digesta 7*	respondit
62	19.2.51 pr	Iavolenus	*Epistulae 11*	respondit
63	19.2.54 pr	Paulus	*Responsa 5*	Paulus respondit
64	19.2.54.1	Paulus	*Responsa 5*	Paulus respondit
65	19.5.10	Iavolenus	*Epistulae 13*	respondi
66	20.1.26 pr	Modestinus	*Responsa 4*	Modestinus respondit
67	20.4.18	Scaevola	*Responsa 1*	respondit
68	20.4.19	Scaevola	*Responsa 5*	respondi
69	20.6.9 pr	Modestinus	*Responsa 4*	Modestinus respondit
70	20.6.9.1	Modestinus	*Responsa 4*	Modestinus respondit
71	20.6.11.1	Paulus	*Responsa 4*	Paulus respondit
72	21.1.56	Paulus	*Quaestiones 1*	respondi
73	21.1.58 pr	Paulus	*Responsa 5*	Paulus respondit
74	21.1.58.1	Paulus	*Responsa 5*	Paulus respondit
75	21.1.58.2	Paulus	*Responsa 5*	Paulus respondit
76	21.2.11 pr	Paulus	*Responsa 6*	Paulus respondit
77	21.2.12	Scaevola	*Responsa 2*	respondi
78	21.2.73	Paulus	*Responsa 7*	Paulus respondit
79	22.1.12	Paulus	*Responsa 4*	Paulus respondit
80	22.1.13 pr	Scaevola	*Responsa 1*	respondi
81	22.1.41.1	Modestinus	*Responsa 3*	Modestinus respondit
82	22.1.41.2	Modestinus	*Responsa 3*	Modestinus respondit
83	22.3.27	Scaevola	*Digesta 33*	respondit
84	23.3.60	Celsus	*Digesta 11*	respondit
85	23.3.62	Modestinus	*Responsa 5*	Modestinus respondit
86	23.3.72 pr	Paulus	*Responsa 8*	Paulus respondit
87	23.3.85	Scaevola	*Digesta 8*	respondit
88	23.4.17	Proculus	*Epistulae 11*	Proculus respondit
89	24.1.39	Iulianus	*Ex minicio 5*	respondi
90	24.1.49	Marcellus	*Digesta 7*	respondit
91	24.1.55	Paulus	*Quaestiones 6*	respondi
92	24.1.57	Paulus	*Responsa 7*	Paulus respondit
93	24.1.66 pr	Scaevola	*Digesta 9*	(no verb)
94	24.3.38	Marcellus	*Responsa*	Marcellus respondit
95	24.3.44.1	Paulus	*Quaestiones 5*	respondi

96	24.3.45	Paulus	*Quaestiones 6*	respondi
97	26.2.30	Paulus	*Quaestiones 6*	respondit
98	26.2.32 pr	Paulus	*Responsa 9*	Paulus respondit
99	26.2.32.2	Paulus	*Responsa 9*	Paulus respondit
100	26.5.26	Scaevola	*Responsa 2*	respondi
101	26.7.21	Marcellus	*Responsa*	Marcellus respondit
102	26.7.32 pr	Modestinus	*Responsa 6*	Modestinus respondit
103	26.7.32.4	Modestinus	*Responsa 6*	Modestinus respondit
104	26.7.32.6	Modestinus	*Responsa 6*	Modestinus respondit
105	26.7.43.1	Paulus	*Quaestiones 7*	respondi
106	26.7.46 pr	Paulus	*Responsa 9*	Paulus respondit
107	26.7.46.1	Paulus	*Responsa 9*	Paulus respondit
108	26.7.47.1	Scaevola	*Responsa 2*	respondi
109	26.7.47.2	Scaevola	*Responsa 2*	respondi
110	26.7.47.4	Scaevola	*Responsa 2*	respondi
111	27.1.16	Modestinus	*Responsa 2*	Modestinus respondit
112	27.1.32	Paulus	*Quaestiones 7*	respondi
113	27.1.36.1	Paulus	*Responsa 9*	respondi
114	27.1.37 pr	Scaevola	*Responsa 2*	respondi
115	27.1.37.1	Scaevola	*Responsa 2*	respondi
116	27.5.3	Iavolenus	*Epistulae 5*	respondit
117	27.8.8	Modestinus	*Responsa 6*	Modestinus respondit
118	28.1.27	Celsus	*Digesta 15*	salutem
119	28.2.25.1	Paulus	*Responsa 12*	Paulus respondit
120	28.3.15	Iavolenus	*Epistulae 4*	respondi
121	28.3.20	Scaevola	*Digesta 13*	respondit
122	28.5.54	Marcellus	*Responsa*	Marcellus respondit
123	28.5.62	Modestinus	*Responsa 8*	Modestinus respondit
124	28.5.86	Scaevola	*Responsa 2*	respondit
125	28.6.43 pr	Paulus	*Quaestiones 9*	respondi
126	28.6.43.1	Paulus	*Quaestiones 9*	respondi
127	28.6.45 pr	Paulus	*Responsa 12*	respondi
128	28.6.46	Paulus	*Responsa 13*	respondi
129	28.6.47	Scaevola	*Responsa 2*	respondi
130	28.7.27.1	Modestinus	*Responsa 8*	Modestinus respondit
131	29.1.25	Marcellus	*Responsa*	Marcellus respondit
132	29.1.40 pr	Paulus	*Responsa 11*	respondi
133	29.1.40.2	Paulus	*Responsa 11*	respondi
134	29.2.75	Marcellus	*Digesta 9*	respondit
135	29.2.76 pr	Iavolenus	*Epistulae 4*	respondit

136	29.2.92	Paulus	*Responsa 17*	Paulus respondit
137	29.2.98	Scaevola	*Digesta 26*	respondit
138	29.5.22	Paulus	*Responsa 16*	Paulus respondit
139	29.7.18	Celsus	*Digesta 20*	salutem
140	30.84.19	Iulianus	*Digesta 33*	respondi
141	30.96 pr	Iulianus	*Digesta 39*	respondi
142	30.123 pr	Marcellus	*Responsa*	Marcellus respondit
143	30.123.1	Marcellus	*Responsa*	Marcellus respondit
144	31.33.1	Modestinus	*Responsa 9*	Modestinus respondit
145	31.34 pr	Modestinus	*Responsa 10*	Modestinus respondit
146	31.34.1	Modestinus	*Responsa 10*	Modestinus respondit
147	31.34.2	Modestinus	*Responsa 10*	Modestinus respondit
148	31.34.3	Modestinus	*Responsa 10*	Modestinus respondit
149	31.34.5	Modestinus	*Responsa 10*	Modestinus respondit
150	31.34.6	Modestinus	*Responsa 10*	Modestinus respondit
151	31.34.7	Modestinus	*Responsa 10*	Modestinus respondit
152	31.41.1	Iavolenus	*Epistulae 7*	respondit
153	31.48 pr	Proculus	*Epistulae 8*	salutem
154	31.86 pr	Paulus	*Responsa 13*	Paulus respondi[71]
155	31.86.1	Paulus	*Responsa 13*	Paulus respondit
156	31.87 pr	Paulus	*Responsa 14*	Paulus respondit
157	31.87.2	Paulus	*Responsa 14*	Paulus respondit
158	31.87.4	Paulus	*Responsa 14*	Paulus respondit
159	31.88 pr	Scaevola	*Responsa 3*	respondi
160	31.88.1	Scaevola	*Responsa 3*	respondi
161	31.88.2	Scaevola	*Responsa 3*	respondi
162	31.88.3	Scaevola	*Responsa 3*	respondi
163	31.88.4	Scaevola	*Responsa 3*	respondi
164	31.88.6	Scaevola	*Responsa 3*	respondi
165	31.88.7	Scaevola	*Responsa 3*	respondi
166	31.88.12	Scaevola	*Responsa 3*	respondi
167	31.88.13	Scaevola	*Responsa 3*	respondi
168	31.88.14	Scaevola	*Responsa 3*	respondi
169	31.88.16	Scaevola	*Responsa 3*	respondi
170	31.89 pr	Scaevola	*Responsa 4*	respondi
171	31.89.2	Scaevola	*Responsa 4*	respondi
172	32.33.1	Scaevola	*Digesta 15*	respondit

71)   About this grammatical error, *see* Section 3(2).

173	32.34 pr	Scaevola	*Digesta 16*	respondit
174	32.37.6	Scaevola	*Digesta 18*	respondi
175	32.38.1	Scaevola	*Digesta 19*	respondit
176	32.39 pr	Scaevola	*Digesta 20*	respondit
177	32.42	Scaevola	*Digesta 33*	respondi
178	32.69.1	Marcellus	*Responsa*	Marcellus respondit
179	32.83.1	Modestinus	*Responsa 10*	respondit
180	32.92 pr	Paulus	*Responsa 13*	respondi
181	32.93.4	Scaevola	*Responsa 3*	respondit
182	32.93.5	Scaevola	*Responsa 3*	respondit
183	33.1.5	Modestinus	*Responsa 10*	Modestinus respondit
184	33.1.6	Modestinus	*Responsa 11*	Modestinus respondit
185	33.1.12	Paulus	*Responsa 13*	Paulus respondit
186	33.1.13 pr	Scaevola	*Responsa 4*	respondi
187	33.1.13.1	Scaevola	*Responsa 4*	respondi
188	33.1.19.2	Scaevola	*Digesta 17*	respondit
189	33.1.20.1	Scaevola	*Digesta 18*	respondit
190	33.2.15.1	Marcellus	*Digesta 13*	respondit
191	33.2.16	Modestinus	*Responsa 9*	respondit
192	33.2.17	Scaevola	*Responsa 3*	respondit
193	33.2.18	Modestinus	*Responsa 9*	respondit
194	33.2.26 pr	Paulus	*Quaestiones 10*	respondi
195	33.2.28	Paulus	*Responsa 13*	Paulus respondit
196	33.2.32.5	Scaevola	*Digesta 15*	respondit
197	33.2.33.2	Scaevola	*Digesta 17*	respondit
198	33.2.38	Scaevola	*Responsa 3*	respondit
199	33.4.1.12	Ulpianus	*Ad Sabinum 19*	puto
200	33.4.11	Paulus	*Responsa 7*	respondit
201	33.4.14	Scaevola	*Digesta 15*	respondit
202	33.4.17 pr	Scaevola	*Responsa 3*	respondit
203	33.5.15	Iavolenus	*Epistulae 2*	respondit
204	33.7.20.8	Scaevola	*Responsa 3*	respondit
205	33.9.7	Scaevola	*Responsa 3*	respondit
206	34.1.4 pr	Modestinus	*Responsa 10*	Modestinus respondit
207	34.1.4.1	Modestinus	*Responsa 10*	Modestinus respondit
208	34.1.5	Modestinus	*Responsa 11*	Modestinus respondit
209	34.1.13 pr	Scaevola	*Responsa 4*	respondi
210	34.1.13.2	Scaevola	*Responsa 4*	respondit
211	34.1.20 pr	Scaevola	*Responsa 3*	respondit
212	34.1.20.1	Scaevola	*Responsa 3*	respondit

213	34.1.20.2	Scaevola	*Responsa 3*	respondit
214	34.1.20.3	Scaevola	*Responsa 3*	respondit
215	34.2.6 pr	Marcellus	*Responsa*	Marcellus respondit
216	34.2.6.1	Marcellus	*Responsa*	Marcellus respondit
217	34.2.6.2	Marcellus	*Responsa*	Marcellus respondit
218	34.2.35 pr	Paulus	*Responsa 14*	Paulus respondit
219	34.2.35.1	Paulus	*Responsa 14*	Paulus respondit
220	34.2.36	Scaevola	*Responsa 3*	respondit
221	34.2.38 pr	Scaevola	*Responsa 3*	respondit
222	34.2.38.1	Scaevola	*Responsa 3*	respondit
223	34.3.12	Iulianus	*Digesta 39*	respondi
224	34.3.20.1	Modestinus	*Responsa 10*	Modestinus respondit
225	34.3.25	Paulus	*Quaestiones 10*	respondi
226	34.3.26	Scaevola	*Responsa 4*	respondit
227	34.3.28.2	Scaevola	*Digesta 16*	respondit
228	34.3.28.3	Scaevola	*Digesta 16*	respondit
229	34.3.28.4	Scaevola	*Digesta 16*	respondit
230	34.3.28.6	Scaevola	*Digesta 16*	respondit
231	34.3.31 pr	Scaevola	*Responsa 3*	respondit
232	34.3.31.4	Scaevola	*Responsa 3*	respondit
233	34.4.31.2	Scaevola	*Digesta 14*	respondit
234	34.4.31.3	Scaevola	*Digesta 14*	respondit
235	34.9.13	Papinianus	*Quaestiones 32*	respondi
236	35.1.36 pr	Marcellus	*Responsa*	Marcellus respondit
237	35.1.36.1	Marcellus	*Responsa*	Marcellus respondit
238	35.1.66	Modestinus	*Responsa 10*	Modestinus respondit
239	35.1.67	Iavolenus	*Epistulae 11*	respondit
240	35.1.85	Scaevola	*Responsa 3*	respondit
241	35.2.22 pr	Paulus	*Quaestiones 17*	respondi
242	35.2.26 pr	Scaevola	*Responsa 5*	respondit
243	35.2.61	Iavolenus	*Epistulae 4*	respondit
244	35.2.86	Iulianus	*Digesta 40*	respondi
245	36.1.28.16	Iulianus	*Digesta 40*	respondi
246	36.1.46 pr	Marcellus	*Digesta 15*	respondi
247	36.1.46.1	Marcellus	*Digesta 15*	respondi
248	36.1.48	Iavolenus	*Epistulae 11*	respondi
249	37.5.6	Iulianus	*Digesta 23*	respondit

250	37.6.3.1	Iulianus	*Digesta 23*	Paulus notat[72]
251	37.8.3	Marcellus	*Digesta 9*	respondi
252	37.10.13	Paulus	*Responsa 11*	Paulus respondit
253	37.14.12	Modestinus	*Responsa 1*	Modestinus respondit
254	37.14.18	Scaevola	*Responsa 4*	Scaevola respondit
255	37.15.3	Marcellus	*Responsa*	respondit
256	38.2.20.4	Iulianus	*Digesta 25*	respondi
257	38.2.35	Iavolenus	*Epistulae 3*	respondit
258	38.2.36	Iavolenus	*Epistulae 8*	respondit
259	38.2.47.1	Paulus	*Responsa 11*	Paulus respondit
260	38.2.47.2	Paulus	*Responsa 11*	Paulus respondit
261	38.2.48	Scaevola	*Responsa 2*	respondit
262	38.5.12	Iavolenus	*Epistulae 3*	respondit
263	38.8.10	Scaevola	*Responsa 2*	respondit
264	39.5.2.7	Iulianus	*Digesta 60*	respondit
265	39.5.32	Scaevola	*Responsa 5*	respondit
266	39.5.35.1	Scaevola	*Digesta 31*	respondit
267	39.5.35.2	Scaevola	*Digesta 31*	respondit
268	39.6.28	Marcellus	*Responsa*	Marcellus respondit
269	40.1.23	Paulus	*Responsa 15*	Paulus respondit
270	40.2.22	Paulus	*Quaestiones 12*	respondi
271	40.4.44	Modestinus	*Responsa 10*	Modestinus respondit
272	40.4.53	Paulus	*Responsa 15*	Paulus respondit
273	40.4.54 pr	Scaevola	*Responsa 4*	respondit
274	40.4.54.1	Scaevola	*Responsa 4*	respondit
275	40.4.59.2	Scaevola	*Digesta 23*	respondit
276	40.4.60	Scaevola	*Digesta 24*	respondit
277	40.5.14	Modestinus	*Responsa 10*	Modestinus respondit
278	40.5.19.1	Scaevola	*Digesta 24*	respondit
279	40.5.40 pr	Paulus	*Responsa 15*	Paulus respondit
280	40.5.41.1	Scaevola	*Responsa 4*	respondit
281	40.5.41.2	Scaevola	*Responsa 4*	respondit
282	40.5.41.4	Scaevola	*Responsa 4*	respondit
283	40.5.41.5	Scaevola	*Responsa 4*	respondit
284	40.5.41.6	Scaevola	*Responsa 4*	respondit
285	40.5.41.7	Scaevola	*Responsa 4*	respondit
286	40.5.41.8	Scaevola	*Responsa 4*	respondit

72) About the interpretation of this phrase, *see* footnote 39.

287	40.5.41.9	Scaevola	*Responsa 4*	respondit
288	40.5.41.13	Scaevola	*Responsa 4*	respondit
289	40.5.41.15	Scaevola	*Responsa 4*	respondit
290	40.5.41.16	Scaevola	*Responsa 4*	respondit
291	40.5.41.17	Scaevola	*Responsa 4*	respondit
292	40.5.47.4	Iulianus	*Digesta 42*	respondi
293	40.5.56	Marcellus	*Responsa*	Marcellus respondit
294	40.7.40.4	Scaevola	*Digesta 24*	respondit
295	40.7.40.5	Scaevola	*Digesta 24*	respondit
296	40.7.40.6	Scaevola	*Digesta 24*	respondit
297	40.7.40.7	Scaevola	*Digesta 24*	respondit
298	40.8.9	Paulus	*Quaestiones 5*	respondi
299	40.12.38.3	Paulus	*Responsa 15*	Paulus respondit
300	40.13.3	Pomponius	*Epistulae et variae lectiones 11*	dubitari non potest
301	40.13.4	Paulus	*Quaestiones 12*	respondit
302	41.1.55	Proculus	*Epistulae 2*	respondit
303	41.1.56 pr	Proculus	*Epistulae 8*	Proculus respondit
304	41.1.56.1	Proculus	*Epistulae 8*	Proculus respondit
305	41.2.19 pr	Marcellus	*Digesta 17*	respondi
306	41.2.23.2	Iavolenus	*Epistulae 1*	respondit
307	41.3.21	Iavolenus	*Epistulae 6*	respondit
308	41.4.13	Scaevola	*Responsa 5*	respondit
309	41.7.8	Paulus	*Responsa 18*	Paulus respondit
310	42.1.27	Modestinus	*Responsa 1*	Modestinus respondit
311	42.5.28	Iavolenus	*Epistulae 1*	respondit
312	42.8.22	Scaevola	*Responsa 5*	respondit
313	43.20.5.1	Iulianus	*Ex minicio 4*	negavit
314	44.1.11	Modestinus	*Responsa 13*	Modestinus respondit
315	44.2.30.1	Paulus	*Quaestiones 14*	respondi
316	44.3.12	Paulus	*Responsa 16*	Paulus respondit
317	44.4.15	Scaevola	*Responsa 5*	respondit
318	44.7.29	Paulus	*Responsa 4*	Paulus respondit
319	44.7.61 pr	Scaevola	*Digesta 28*	respondit
320	44.7.61.1	Scaevola	*Digesta 28*	respondit
321	45.1.107	Iavolenus	*Epistulae 8*	respondit
322	45.1.113.1	Proculus	*Epistulae 2*	Proculus respondit
323	45.1.122.1	Scaevola	*Digesta 28*	respondit
324	45.1.122.2	Scaevola	*Digesta 28*	respondit
325	45.1.122.3	Scaevola	*Digesta 28*	respondit
326	45.1.132 pr	Paulus	*Quaestiones 15*	respondi

327	45.1.134 pr	Paulus	*Responsa 15*	respondit
328	45.1.135 pr	Scaevola	*Responsa 5*	respondit
329	45.1.135.4	Scaevola	*Responsa 5*	respondi
330	46.1.24	Marcellus	*Responsa*	Marcellus respondit
331	46.1.38.1	Marcellus	*Digesta 20*	respondit
332	46.1.44	Iavolenus	*Epistulae 11*	respondit
333	46.3.48	Marcellus	*Responsa*	Marcellus respondit
334	46.3.89.1	Scaevola	*Digesta 29*	respondit
335	46.3.89.2	Scaevola	*Digesta 29*	respondit
336	46.3.94.3	Papinianus	*Quaestiones 8*	respondi
337	46.3.100	Paulus	*Responsa 10*	Paulus respondit
338	46.3.102.1	Scaevola	*Responsa 5*	respondi
339	46.3.102.2	Scaevola	*Responsa 5*	respondi
340	46.3.102.3	Scaevola	*Responsa 5*	respondit
341	47.2.73	Modestinus	*Responsa 7*	Modestinus respondit
342	47.2.75	Iavolenus	*Epistulae 4*	respondit
343	48.2.18	Modestinus	*Responsa 17*	respondit
344	48.5.12.10	Papinianus	*De adulteriis*	respondit
345	48.5.12.12	Papinianus	*De adulteriis*	respondit
346	48.4.12.13	Papinianus	*De adulteriis*	respondit
347	48.10.14 pr	Paulus	*Quaestiones 22*	respondit
348	48.16.17	Modestinus	*Responsa 17*	Modestinus respondit
349	49.1.18	Modestinus	*Responsa 17*	Modestinus respondit
350	49.1.24.1	Scaevola	*Responsa 5*	respondit
351	49.14.9	Modestinus	*Responsa 17*	Modestinus respondit
352	50.1.36 pr	Modestinus	*Responsa 1*	Modestinus respondit
353	50.12.10	Modestinus	*Responsa 1*	Modestinus respondit