Transmitting Legal Knowledge:
From Question-and-Answer Format
to Handbook in Gaius’ Institutes

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In one of the sketches of his scholarly occupations, the Latin author Aulus Gellius (13.13) interrupts his studies to catch some fresh air in the forum, where he bumps into a discussion among jurists (quaesitum esse memini in plerisque Romae stationibus ius publice docentium aut respondentium). Surely enough, the discussion focuses around a specific question. In this case, the question (indicated through the technical terms quaesitum esse, quaestio, and quaeri dubitarique) is whether a lower-ranked official can be summoned to appear before another, higher-ranked official, the praetor (i.e. in court). Gellius remarks that this specific question did not arise merely as an “academic exercise” (otiosa) or a hypothetical scenario, but that “an actual situation had prompted it” (usus forte natae rei). The question is discussed by many of those respondentes, some of whom come up with a certain opinion or response (existimabant). But Gellius himself produces his own response, as soon as he has found out about the question. Citing two passages from Varro’s Antiquitates, he suggests the opposite view. When, at the end of the day, these loci in Varro had been “read out” (recitata), everyone apparently “concurred with the opinion” (in sententiam concesserunt). In other words, in addition to responses given on the spot, at least one opinion found in an old book was brought into the discussion as well. And if Gellius can be believed, this opinion based on Varro’s two passages actually carried the day.

This paper will study the transmission of Roman legal knowledge through legal education in the ancient world. Focusing on the legal handbook known as the Institutes written by Gaius, a contemporary of Gellius, I will argue that this work reflects a shift from the mostly oral question-and-answer practice, as Gellius sketches it, to a more literary model reflected by a handbook and

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lecture-style instruction. Gaius’ text is primarily a (written) handbook, but, I will argue, it retains elements of an older, more oral praxis by its ample inclusion of quaestiones that are generally followed by multiple answers. While lecture-style instruction can of course still be oral and face-to-face, I am particularly interested in the orality of the discursive mode that seems characteristic of question-and-answer situations (in contrast to that of a handbook).

As many scholars have pointed out, question-and-answer literature enjoyed substantial popularity in the Early Empire. While the pseudo-Aristotelian Problemata had been in circulation for a while,1 several extant works from the period that employ the question-and-answer format are Plutarch’s Quaestiones Romanae, Quaestiones Graecae, Quaestiones Naturales, Quaestiones Platonicae, and Quaestiones Convivales, the medical questionary in the anonymous P.Mil.Vogl. 15,2 as well as several Quaestiones and Problemata associated with Alexander of Aphrodisias,3 to mention but a few.4 Scholars have started to look at the didactic agendas behind such works, tracing a link with Aristotelian dialectic as found in, for example, Aristotle’s Topica.5 The presentation

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1 The Aristotelian Problemata are in many ways the prototype of the question-and-answer literature. The work consists of 38 books of quasi-discrete naturalistic questions (of the type: διὰ τί ...), generally paired with multiple answers, which are often themselves in question form (of the type: ἤ or ἢ διὰ τι ...; ἢ ...). It has proven very difficult to ascertain much about the history of the work and the authorship of the individual problemata. See Mayhew (2011: xiii–xxii). Oikonomopoulou (2013) discusses the question-and-answer literature in the light of ancient dialogue.

2 Other medical works entitled Quaestiones are those of pseudo-Soranus (whose dating is highly uncertain) and the Quaestiones Medicinales of Rufus of Ephesus (Early Empire). The latter has a slightly different focus in that it forms a checklist of questions that doctors should ask their patients.

3 There are at least the Quaestiones, Προβλήματα, Προβλήματα ξέναϑες, and the Ἡθικὰ Προβλήματα. The authorship of Alexander is generally accepted for the first, but disputed for the other ones. There are also the Aristotelian Supplementa Problematorum, whose authorship the editors Kapetanaki and Sharples (2006) have designated as “pseudo-Aristotle (pseudo-Alexander)”.

4 As for the legal works entitled Quaestiones (e.g. by Africanus, Cervidius Scaevola, Fufidius, Maecianus, Papinian, Paul, and Tertullianus), these appear to be mostly opinion collections rather than question-and-answer works. The general pattern is a (hypothetical) case (often introduced by si) to which a solution is presented. Africanus uses cum quaeritur at a certain point, but it is followed by a single, ‘correct’ answer (Lenel 1889, vol. 1, col. 6, nr. 22).