

# ROMAN CIVIL PROCEDURE

## IN JURE

- before the **magistrate / praetor**
  - defining the issues in the case
  - appointment of a **judex (judices)**
  - hearing to determine:
    1. if there is a case
    2. if **action** should be allowed to the **plaintiff**
- settlement** possible

## IN JUDICIO

- before the **trier (judex) / triers**
- in the **forum**
- **formula** for the case settled by the **proctor** (containing instructions for the judex → **brief**)
- the trial ended with a **procedural contract** (commitment of the parties to abide by the ruling)

## PROCEDURE

### KINGDOM/REPUBLIC/EARLY EMPIRE

- judex is a private person appointed to hear and try a particular case
- plaintiff presents his case in person
- the trial ends with procedural contract
- cases are tried as a whole

### LATE EMPIRE

- judex is a state official
- plaintiff submits a written statement of his defense (case)
- no formal procedural contract
- some issues in the case could be referred to the **oath** of the party (settlement)
- only the unsettled issues are tried
- **speeches in evidence** are held by **orators** for the **plaintiff** and for the **defendant**; with more orators, their points should be divided
- **evidence** could be introduced:
  1. during the speech
  2. after the speech for each party
  3. following the speeches
- number of orators is not limited; usually there were up to 4 (but not more than 6) for each party
- **closing speeches**
- parties could speak on their own behalf



# The Law of the Twelve Tables

(from E. H. Warmington, *Remains of Old Latin III*, circa 450 B.C.)

The Twelve Tables were written by the Decemviri Consulari Imperio Legibus Scribundis, (the 10 Consuls) who were given unprecedented powers to draft the laws of the young Republic. Originally ten laws were drafted; two later statutes were added prohibiting marriage between the classes and affirming the binding nature of customary law. The new code promoted the organization of public prosecution of crimes and instituted a system whereby injured parties could seek just compensation in civil disputes. The plebeians were protected from the legal abuses of the ruling patricians, especially in the enforcement of debts. Serious punishments were levied for theft and the law gave male heads of families enormous social power (*patria potestas*). The important basic principle of a written legal code for Roman law was established, and justice was no longer based solely on the interpretation of judges. These laws formed an important part of the foundation of all subsequent Western civil and criminal law.

## Table I: Preliminaries to a trial; rules for a trial.

1. If plaintiff summons defendant to court, he shall go. If he does not go, plaintiff shall call witness thereto. Then only shall he take defendant by force.
2. If defendant shirks or takes to heels, plaintiff shall lay hands on him.
3. If disease or age shall be an impediment, he shall grant him a team (for transport); he should not spread with cushions a covered carriage if he shall not so desire.
- 6-9. When the parties compromise the matter, an official shall announce it. If they do not compromise, they shall state the outline of the case in the meeting place or market before noon. They shall plead it out together in person. After noon, the judge shall adjudge the case to the party that is present. If both are present, sunset shall be the time limit (of the proceedings).

## Table II: The trial

3. Whoever is in need of evidence, he shall go on every third day to shout before the witness' doorway.

## Table III: Debt

1-6. When debt has been acknowledged, or judgment about the matter had been pronounced in court, thirty days must be the legitimate time of grace. After that, the arrest of debtor may be made by laying on hands. Bring him into court. If he does not satisfy the judgment, or no one in court offers himself as surety on his behalf, the creditor may take the defaulter with him. He may bind him either in stocks or in chains; he may bind him with weight not less than fifteen pounds or with more if he shall so desire. The debtor, if he shall wish it, may live on his own. If he does not live on his own, the person [who shall hold him in bonds] shall give him one pound of grits for each day. He may give more if he shall so desire. On the third market day, creditors shall cut pieces (divide the debt?). Should they have cut more or less than their due, it shall be with impunity.

## Table IV: Rights of fathers

1. A dreadfully deformed child shall be quickly killed.
2. If a father surrenders his son for sale three times, the son shall be free from his father.
4. A child born after ten months since the father's death will not be admitted into a legal inheritance.

#### Table V: Guardianship

1. Females should remain in guardianship even when they have attained their majority.
- 7a. If a man is raving mad, rightful authority over his person and chattels shall belong to his agnates or to his clansmen.

#### Table VI: Acquisition; possession.

#### Table VII: Rights concerning land

- 9b. Should a tree on a neighbor's farm be bent crooked by the wind and lean over your farm, you may take legal action for removal of that tree.
10. A man might gather up fruit that was falling down onto another man's farm.

#### Table VIII: Torts or delicts

- 1a. If any person had sung or composed against another person a song such as was causing slander or insult to another....he should be clubbed to death.
- 1b. Person who shall have enchanted by singing an evil spell...
2. If a person has maimed another's limb, let there be retaliation in kind unless he makes agreement for composition with him.
3. If he has broken or bruised a freemen's bone with his hand or a club, he shall undergo a penalty of 300 pieces; if a slave's, 150.
- 8a. A person who has enchanted crops away...
- 8b. ...or decoy not another's corn
10. Any person who destroys by burning any building or heap of corn deposited alongside a house shall be bound, scourged, and put to death by burning at the stake provided that he has committed the said misdeed with malice aforethought; but if he shall have committed it by accident, that is, by negligence, it is ordained that he repair the damage or, if he be too poor to be competent for such punishment, he shall receive a lighter punishment.

12. If the theft has been done by night, if the owner kills the thief, the thief shall be held to be lawfully killed.

13. (It is unlawful for a thief to be) killed by day...unless he defends himself with a weapon; even though he has come with a weapon, unless he shall use the weapon and fight back, you shall not kill him. And even if he resists, first call out (so that someone may hear and come up).

23. A person who had been found guilty of giving false witness shall be hurled down from the Tarpeian Rock.

26. No person shall hold meetings by night in the city.

#### Table IX: Public law

5. Treason: he who shall have roused up a public enemy or handed over a citizen to a public enemy must suffer capital punishment.

6. Putting to death of any man, whosoever he might be, unconvicted is forbidden.

#### Table X: Sacred law

1. A dead man shall not be buried or burned within the city.

8-9. A person must not add gold (to the funeral pyre). But him whose teeth shall have been fastened together with gold, if a person shall bury or burn him along with that gold, it shall be with impunity.

#### Table XI: Supplementary laws

1. (Marriages) should not take place between plebeians and patricians.

#### Table XII: Supplementary laws

5. Whatever the people had last ordained should be held as binding by law.