

THE
THEODOSIAN CODE
AND NOVELS
AND THE SIRMUNDIAN
CONSTITUTIONS

A TRANSLATION

WITH COMMENTARY, GLOSSARY, AND BIBLIOGRAPHY

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No Person Shall Be Judge in His Own Cause

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of the peace. But a criminal case shall be under the jurisdiction of the governor⁸ of the province when it concerns an inscription²⁷ against persons, or when it is a major case which must not be decided except by a legal sentence that is pronounced by the judge ordinary.⁸ If this present ordinance should be evaded, the apparitors²¹ who admit such cases shall know that they will be condemned to the payment of a fine of five pounds of gold.

9.²² The same Augustuses to Archelaus, Augustal Prefect.

If any person should disregard the judges ordinary⁸ without the consent of Our celestial oracle²⁸ and should suppose that a civil case should be lodged before a military court, he shall understand that he must suffer the lot of deportation in addition to the penalties previously promulgated. Furthermore, a penalty of ten pounds of gold shall be inflicted on his advocate.

Given on the eighth day before the kalends of December at Constantinople in the year of the consulship of Caesarius and Atticus.—November 24, 397.

INTERPRETATION: If any person should scorn the judge⁸ of the province and should suppose that his case should be transferred to those persons who are known to command soldiers, he shall know that he will be sentenced to exile and that the advocate who undertook the exposition of the suit shall be condemned to the payment of a fine of ten pounds of gold.

10.²⁴ The same Augustuses to Eutychianus, Praetorian Prefect.

Jews who live under the Roman and common law shall approach the courts in the customary manner in those cases which concern not so much their superstition as the forum, the statutes, and the law; and they shall bring and defend all actions according to the Roman law; in fine, they shall be subject to Our laws. 1. Certainly, in the case of civil suits only, if any Jews should suppose that, by a mutual promise to abide by the decision²⁶ in accordance with the agreement of both parties, they should litigate before Jews or patriarchs as though before arbitrators, they shall not be prohibited by public law from choosing the judgment of such men. The judges⁸ of the provinces shall execute their sentences as if such arbitrators had been assigned by the decision of a judge.

Given on the third day before the nones of February at Constantinople in the year of the fourth consulship of Honorius Augustus and the consulship of the Most Noble Eutychianus.—February 3, 398.

INTERPRETATION: All Jews who are known to be Romans shall conduct before the elders of their religion only those actions that pertain to the discipline of their religion, so that among themselves they shall observe those ordinances established by Hebrew law. But all other cases which are embraced in Our laws and pertain to the forum, they must contest before the judge⁸ of the province, in accordance with the law under which all other persons litigate. Of course, if both parties by mutual consent should wish to be heard before the elders of their own law in a civil case only, that which shall be settled by the arbitral judgment following the agreement of a mutual promise to abide by the decision²³ shall be of the same effect as if

it had been decided in accordance with the sentence of a judge.⁴

11.²⁶ The same Augustuses to Theodorus, Praetorian Prefect.

(After other matters.) The governor⁸ of a province shall by no means await the overseer of the imperial estates²⁷ in cases of persons accused of crime,²⁸ but he shall have the power to produce the guilty persons in court. He shall enforce the law without the interposition of the fiscal representative. By the power of the judge ordinary⁸ the accused person²⁹ shall be dragged out from his hiding place, lest through collusion of the overseers the trial may be delayed.

Given on the ninth day before the kalends of June at Milan in the year of the fourth consulship of Honorius Augustus and the consulship of the Most Noble Eutychianus.—May 24, 398.

INTERPRETATION: If any person on the estates of the imperial household should be found guilty of crime, the judge⁸ of the province shall not await the presence of the overseer, but he shall order the criminal³⁰ to be arrested immediately and to be subjected to public discipline, lest by any collusion the criminal might escape.

12.²⁹ Emperors Honorius and Theodosius Augustuses to the Consuls, Praetors, Tribunes of the Plebs, and Their Own Senate, Greetings.

(After other matters.) In criminal cases involving Senators the previously established general rule of the quinquennial court shall be observed. In respect to this court, although We believe it to be very easy to choose the best men from the highest ranking men, nevertheless, they shall be called by lot to act in this court in order that men selected by design³⁰ may not judge concerning the status⁴¹ and innocence of another. (Etc.)

Given on the eighth day before the ides of August at Ravenna in the year of the consulship of Asclepiadotus and Maricianus.—August 6, 423.³²

INTERPRETATION: When any person is to be heard for a crime of which he has been accused, five of the noblest men shall be chosen as judges, by the casting of lots, from the others like themselves, so that they may not appear to have been selected by partisanship and it may not appear that a decision is too easily reached about the capital offense or the innocence of another.

TITLE 2: NO PERSON SHALL BE JUDGE IN HIS OWN CAUSE¹ (NE IN SUA CAUSA QUIS JUDICET)

1.² Emperors Valens, Gratian, and Valentinian Augustuses to Gracchus, Prefect of the City.

We decree with sweeping generalization that no person shall act as judge for himself. For since the law has deprived all persons of the right to testify in their own case,

²² 1, 11, 2; Brev. 2, 1, 11; CJ 10, 19, 6; 11, 24.

²⁷ actor dominicus.

²⁸ rei criminosi, either criminals or persons accused of crime.

²⁹ 9, 1, 13; Brev. 2, 1, 12.

³⁰ iudicium, judgment, design, collusion.

⁴¹ caput, status, life.

⁴² 9, 1, 19; 9, 6, 4; 4, 10, 2; 1, 6, 11.

¹ Brev. 2, 2; CJ 3, 5; Burg. Rom. 42.

² Brev. 2, 2, 1; CJ 3, 5, 1; 4, 20, 10; Burg. Rom. 42.

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it is entirely unfair to grant to them the license to pronounce sentences.

Read^a on the kalends of December in the year of the fifth consulship of Valens Augustus and the consulship of Valentinian Augustus.—December 1, 370.

INTERPRETATION: Our regulation shall constrain all men that no man may be judge of his own case, because just as no man can testify for himself, so he cannot act as judge for himself.

TITLE 3: OMISSION OF IMPETRATION OF ACTION¹ (DE OMISSA ACTIONIS IMPETRATIONE)

1.¹ Emperors Theodosius and Valentinian Augustuses to Hierius, Praetorian Prefect.

(After other matters.) The plea² that there was no impetration of an action may not be opposed to the suit that is instituted by any person in either a higher or a lower court, if it should appear that such action is suitable for the subject matter of the case and is proper for the proposed suit. (Etc.)

Given on the tenth day before the kalends of March at Constantinople in the year of the consulship of Felix and Taurus.—February 21, 428.⁴

INTERPRETATION: No person shall appear as incurring a prejudice to his litigation because the right to bring action on his cause was not effected at a hearing before anyone. It is necessary only that his claim be approved as a reasonable one whenever he proposes it.

TITLE 4: NOTIFICATION OF SUIT AND PUBLICATION OF RESCRIPTS¹ (DE DENUNTIATIONE VEL EDITIONE RESCRIPTI)

1.² Emperor Constantine Augustus³ to Symmachus.

If at any time a suit is to be brought by any person against minors or adults⁴ or an action is to be instituted by the minors or adults themselves against any person, the statutory period of time⁵ shall not begin to run unless, with the customary formality, notification of the proposed action has been given by all those persons and to all those persons whom the responsibility of their office constrains, that is, the tutors or curators appointed either by testament or official decree, by whom minors are defended. 1. But if the risk of administration of the estate of a minor is distributed throughout several provinces, it is necessary that notification of the action shall be given

^a To the Senate, or into the official records.

¹ Brev. 2, 3; CJ 2, 57. It had once been necessary for a claimant to impetrate from the judge the right to an action before he could bring suit. This requirement is abolished by this constitution.

² Brev. 2, 3, 1; CJ 6, 61, 2; 2, 57, 2.

³ *exceptio*, an exception, a defense that would bar the action, a demurrer.

⁴ 3, 5, 13; 3, 7, 3; 3, 13, 4; 4, 6, 8; 5, 1, 9.

⁵ Brev. 2, 4. Before a suit could be tried, a formal notification of the action must be given to the defendant.

⁶ Brev. 2, 4, 1; CJ 5, 40, 2. Symmachus was probably Vicar.

⁷ Some manuscripts and CJ add: and Licinius Caesar.

⁸ Minors were persons under the age of puberty who had tutors as guardians. Adults were persons above the age of puberty but under the age of twenty-five years; they had curators as guardians.

⁹ *cursus temporis*, the prescribed period of time within which the suit must be tried.

only to all those persons, or that the suit shall be only by those persons, who sustain the burden of curator in the province, in order that the defensor minors⁶ may not be dragged into court from other places.

Given on the day before the nones of February at Sirmium 4. Received on the eighth day before the ides of Corinth in the year of the fifth consulship of Constantine and the consulship of Licinius Caesar.—March 8, 319; 2.

INTERPRETATION: If any person perhaps should institute a suit against minors, or if on the part of any person as defendant should be accused, the time limits⁷ shall be computed from that date either the tutor or the curator of the minor shall or defend the action through the judge⁸ or the council; provided, however, that if men in different places should hold this office, that is, as curators who defend the cases of minors, those who are in the same province where it is proved that the suit or shall themselves institute or defend the aforesaid because it is Our will that the defenders of minors not be dragged to another province for the necessary hearing. (This is added from the law.)¹⁰

2.¹¹ The same Augustus to Maximus, Prefect of

We decree that notification must be issued either to the court of the governors¹² of the provinces or in the case of those who have the right to compose official records, at least any private attestation¹³ written in the name of the persons or of those absent in diverse lands or of those who are nowhere in this world should create a false record in transactions that have not occurred.

Given on the tenth day before the kalends of June at Constantinople in the year of the consulship of Probianus and Julianus.—June 10, 336.

INTERPRETATION: We order that suits shall be brought in the court of the governors of the provinces or before the defenders¹⁴ or before any of those persons whose office records are composed, so that no one may evade the attestation¹⁵ of a suit the name of an absent person or of one who cannot be found, and so that occasion for falsification may thus be devised.

3.¹⁶ Emperors Valentinian, Valens, and Gratian to Ampelius, Prefect of the City.

There is no occasion for demanding notification of any person is sued for the payment of debt on the basis of an undeniable written instrument.

Given on the fourth day before the kalends of August in the year of the second consulship of Gratian Augustus and the consulship of Probus.—July 29, 371.

INTERPRETATION: Attestation¹⁷ of a suit can be placed when any person is held responsible for the payment of a debt on the basis of a definite written instrument.

⁶ Both minors and adults are included in this term.

⁷ Seeck, *Regesten* 57.

⁸ *tempora: cursus temporis*, n. 5.

⁹ The governor of the province, the judge ordinary.

¹⁰ A notation added by the author or authors of the text.

¹¹ 2, 18, 2; Brev. 2, 4, 2. ¹² *rectores*, the judges.

¹³ *actorum conficiendorum jus*, the right to administer proceedings, 1, 12, 1, n. 2.

¹⁴ *testatio: contestatio*, attestation, litiscontestatio.

¹⁵ *contestari*, attest, contest; *contestatio*, attestation, 1, 2, 10, n. 26.

¹⁶ Of the municipalities. ¹⁷ Brev. 2, 4, 3.