LAW IN PLAUTUS

- Legal historians love Plautus! ♥
  - Lots of legal references and actions, lots of information about law and legal procedures
  - Up to the minute references dating from a time where big changes were occurring
  - The entire Roman legal system was undergoing an extended period leading to complete overhaul; a “pervasive dualism” while a new system was gradually adopted

- Dates to remember:
  - Plautus’ writing career: ~200-184 BCE
  - Pseudolus performed: 191 BCE

- OLD SUBSTANTIVE LAW—ius civile
- + OLD PROCEDURE – legis actio

  - Religious roots, pontiffs in charge – since 5th Century BCE, lasted until 17 BCE
  - Laws based on Twelve Tables – for citizens only
  - Procedures were unwritten
    - Earlier, only pontiffs could interpret law and rules; they controlled the courts
    - 254 BCE – first plebian pontifex maximus
      - offered public legal instruction
      - non-pontiffs started drafting pleadings and giving legal advice
    - ~200 BCE – Tripertita published by Sextus Aelius Paetus Catus (consul 198 BCE)
      - Text of Twelve Tables
      - Interpretations of rules by pontiffs and secular jurists
      - List of legal forms
      - Now anyone could know the law (even playwrights)!
  - Law and procedures were rigid, highly ritualistic
    - For lawsuit, plaintiff must choose correct law to sue under
    - In court, must say exact correct words and perform exact correct gestures
    - If any mistake, lose case! ↓ (if the law says “trees,” must say “trees” not “vines”)
    - (Parties to lawsuits must be actors!)

  - Stipulatio/sponsio form of formal unilateral contract conceptis verbis (in formal words; cf. Ps. 353, 1056, 1077)
    - Ritualistic question (Dabin?) + ritualistic response (Dabo) = binding obligation
    - No excuses, even for fraud!
      - except fraud defense if promisor under 25 – Lex Laetoria (Plaetoria): 193-1 BCE
      - general fraud defense not until 1st Century BCE

| Calidorus: | Perii! annorum lex me perdit quinavicensaria: / metuont credere omnes. |
| Ballio: | Eadem est mihi lex: metuo credere. |
| C: | I’m ruined! The law of 25-year-olds destroyed me. Everybody is afraid to give me a loan. |
| B: | I have the same law: I’m afraid to give you a loan. |

(303-4)
• THE NEW WAVE
• NEW BODY OF LAW – *ius gentium*
• + NEW “FORMULARY” SYSTEM OF PROCEDURE – *per formulam*
  
  o 3rd Century development to allow foreigners access to laws and commerce
  
  o 242 BCE – first *praetor peregrinus* – overseer of new form of law
  
  o Law based on edicts of *praetor peregrinus*, successor *praetors* built on former edicts
    ▪ Beginnings of *aequitas* (equity) ↔
    ▪ Emphasis on common sense, fairness, substance over form, good faith (*bona fides*)
    ▪ “*bonum et aequum*” (that which is good and fair) + ad hoc solutions
    ▪ New remedies for wrongs added to meet needs of each new situation
  
  o Contract for sale, service, loans, etc., based on intentions of parties
    ▪ No “magic words”
  
  o Gradually came into general use for citizens and foreigners alike
    ▪ Received formal legislative recognition by *Lex Aebutia* late 2nd Century BCE
    ▪ Both *legis actio* and formulary actions used together until 17 BCE
  
  o Procedural form of lawsuit flexible, but made to fit Twelve Tables
    ▪ Praetor helps parties select correct law
    ▪ Praetor instructs judge on factual assumptions to make
    ▪ Legal fictions invented by praetor
      • “as if parties were Roman citizens”
      • “as if” – vines were trees?
      • creates an illusion or fictional reality – *like drama!*
    ▪ “Such a system seemed to satisfy the people’s desire to believe that things remained the same as long as they were ascribed the same labels. It created the comfortable illusion that nothing had really changed” (Mousourakis 1997 56).

• Three *Stipulatio* Situations in *Pseudolus*:
1. Calidorus (citizen) and Pseudolus (slave):

<table>
<thead>
<tr>
<th>Calidorus: Dabisne argenti mi hodie viginti minas?</th>
<th>Pseudolus: Dabo.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enforceable?</td>
<td></td>
</tr>
<tr>
<td>Who cares?! Pseudolus is a slave, and anyway he pulls it off.</td>
<td></td>
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</tbody>
</table>

2. Simo (citizen) and Ballio (citizen):

<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Enforceable?</td>
<td></td>
</tr>
<tr>
<td>You bet! No excuses, even though Simo obtained the promise through fraud!</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Ballio: Auferen tu id praemium a me quod promisi per iocum?</th>
<th>Ballio: Will you snatch away that reward from me, which I promised as a joke?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Simo: De improbis viris auferri praemium et praeadam decet. (1224-5)</td>
<td>Simo: It’s only right for reward and booty to be snatched away from dishonest men.</td>
</tr>
</tbody>
</table>

3. Pseudolus (slave) and Simo (citizen):

<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>Callipho:</td>
<td></td>
</tr>
<tr>
<td>Simo: At enim scin quid mihi in mentem venit? / quid si hisce inter se consenserunt, Callipho, / aut de compecto faciunt consulis dolis, / qui me argento intervortant?</td>
<td></td>
</tr>
<tr>
<td>Pseudolus: Quis me audacior / sit si istuc facinus audeam? immo sic, Simo: / si sumus compecti seu consilium unquam iniimus, / aut si de ea re unquam inter nos convenimus, / quasi in libro cúm scribuntur calamo litterae, / stilis me totum usque ulmeis conscribito.</td>
<td></td>
</tr>
<tr>
<td>Simo: Indice ludos nunciam, quando lubet.</td>
<td></td>
</tr>
<tr>
<td>Pseudolus: Da in hunc diem operam, Callipho, quaeso mihi, / ne quo te ad aliud occupes negotium.</td>
<td></td>
</tr>
<tr>
<td>Callipho: Quin rus ut irem iám heri constitueram.</td>
<td></td>
</tr>
<tr>
<td>Pseudolus: At nunc disturba quas statuisti machinas.</td>
<td></td>
</tr>
<tr>
<td>Callipho: Nunc non abire certum est istac gratia. / lubidost ludos tuos spectare, Pseudole. / et si hunc videbo non dare argentum tibi / quod dixit, potius quam id non fiat, ego dabo.</td>
<td></td>
</tr>
<tr>
<td>Simo: Non demutabo.</td>
<td></td>
</tr>
<tr>
<td>(534-55)</td>
<td></td>
</tr>
</tbody>
</table>

Enforceable?

NO! Simo never says the ritual words, only Callipho does. Plus, Pseudolus is a slave, remember?
But Simo pays, although he doesn’t have to under *legis actio* – is it a gift or only fair?

**Simo:** ego iam intus promam viginti minas / quas promisi si effecisset; obviam ei ultro deferam. (1241-2)

**S:** I will now take out the 20 minas inside, which I promised if he accomplished it. Meeting him, I will give it voluntarily.

**Simo:** Iúș petis, fateó. tene. (1313)

**S:** You ask for justice, I acknowledge it. Possess it!

**Is Simo the new wave of equity?**

Ballio loses both to the soldier, under *ius gentium*, and to Simo, under *ius civile*:

**Ballio:** Peregrinos absolvam, cras agam cum civibus (1231).

**Or is he predicting the development of the new wave of equity?**

**Bibliography**


