

The Principles of Roman Law and the Roman Law of Obligations
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Elements of the Roman law of procedure

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- Formulary procedure

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- The Formula and its parts

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- Divisions of Actions

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- Simple private citizen, appointed by the praetor for each case. Why? Why doesn't the praetor lay judgement?
- Pure practical impossibility: two praetors for the private conflicts in all Italy.

The division of the trial

- The praetor cannot examine the veracity of the alleged facts. Just check if they are apt to justify a trial where they may be proved true or false. If not, he denegates the trial, if so he institutes it (denegare/dare actionem)
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 - - no formula in the archaic period, though the partition of the trial comes at least from the XII Tables.

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- Exceptio pacti: the magistrate, departing from ius civile, decrees the absolution if the pact is proved.

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- Iurisdictio: the power of the magistrate to 'say the law' - ius dicere-, i.e., to decide the law that will be applied in the trial.
- The validity of the judgement depends on the judge's exact following of the formula.

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- He who claims 1000 has already claimed 999 + 1.
- The plaintiff has irrevocably lost the cause.

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Gai. 3.53a: A plaintiff may demand more than he is entitled to in four ways; in the amount, in time, in place, and in the statement of his cause of action. He does so in the amount, if he demands twenty thousand sesterces, instead of ten thousand which are due to him ... He demands more in point of time, if he asks for payment before the debt is due. He demands more in place, for instance, where payment is promised in a certain place, and he demands that it be made somewhere else, which was not mentioned in the contract; for example, if I stipulate with you as follows: "Do you promise to pay ten thousand at Ephesus?" and afterwards bring suit at Rome ... I am understood to claim more than I am entitled to, for the reason that in this way I subject the promisor to more inconvenience than he would suffer if he paid at Ephesus. ...

53b. He demands too much regarding the cause of the action, if he deprives the debtor of a choice which he had by the terms of the contract, for example, if anyone stipulates as follows: "Do you promise to either pay ten thousand sesterces or deliver the slave Stichus?" and then he demands either the one or the other. For although he may demand what is of lesser value, he still is considered to claim too much, because his adversary may sometimes more conveniently deliver what is not demanded. Likewise, if anyone stipulates for a genus, and afterwards claims a species; for instance, if he stipulates for purple, in general terms, and afterwards expressly demands Tyrian purple, even though he may demand that of the least value the same rule will apply, for the reason which we have just mentioned. The same rule also applies where anyone stipulates for a slave in general terms, and afterwards demands a particular slave, for example, Stichus; although he may be almost worthless. Therefore, the wording of the formula designating the claim must exactly coincide with what

The construction of the formula

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- The wording of the formula
 - The formulas identify the claim by its object or by its cause: abstract // causal
 - Why is the formula drafted like this? Why does it leave its object unmentioned? What can one claim thus?
 - Doesn't depend on the parties: preestablished in the edict.
 - Advantage: no possible p. petitio
 - Inconvenient: what if we need the action twice?
 - Let this matter be examined only as far as the bringing of the possessio on the slave is concerned. Let Titius be judge etc.
 - praescriptio

Intentio

```
graph TD; A[Intentio] --- B[in factum // in ius]; A --- C[in rem // in personam]; A --- D[certa // incerta];
```

in factum // in ius

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- Exceptio, praescriptio

Parts of the formula

Ordinary (type of action)

Intentio: legal ground

Demonstratio: cause

Condemnatio

Adiudicatio

Extraordinary (will)

Exceptio

Praescriptio

fiction

fictions

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Actions

Civil

Praetorian

Fiction

Transfer of
subjects

In factum conceptae

In ius
conceptae

Actions

Civil

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