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## The Laws of the Twelve Tables

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# ST. LOUIS LAW REVIEW

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## THE LAWS OF THE TWELVE TABLES.

An Introductory Note and Translation.

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The Twelve Tables were the earliest code and the basis of all Roman law. They were called by Livy (3, 34) the *fons omnis publici privatique iuris*. The contest for equality between the patricians and the plebeians reached its climax in the first half of the fifth century B. C. The plebeians were gaining, step by step, recognition of civil rights and participation in the government, oppression becoming less and less prevalent or possible. The complaints by the plebeians of oppression by the patricians, in whom had been lodged all civil rights and the administration of the governmental powers, gave rise to the preparation of the Twelve Tables, which defined rights and fixed penalties and thus prevented oppression under legal forms.

In 451 B. C., a body of ten men, the *Decenvirs*, all patricians, were chosen to draw up a code of laws. All the functions of the government were placed in their hands during the progress of the work. Ten Tables were drawn up, accepted by the people, and set up on bronze or copper plates fastened to pillars in the Forum. In 450 B. C., *Decenvirs* were again appointed, seven patricians and three plebeians, and two more Tables were added. These were henceforth known as the Laws of the Twelve Tables. They were destroyed in 390 B. C. when Rome was taken, sacked, and burned by the Gauls. Some two score fragments and references to some over one hundred provisions come down to us, chiefly in the writings of Cicero, Gaius, and Ulpian.

The Twelve Tables did not constitute a newly enacted code. They were chiefly a restatement of earlier legislation. Some of the provisions may have a resemblance to the Laws of Solon and other Greek models, but the Twelve Tables were essentially Roman. Much of the earlier Roman legislation was copied bodily. Although the tablets were destroyed by the northern invaders, the substance of the Tables was preserved by the commentators, and many of the laws appear intact in the Code of Justinian.

This translation is here published in order to make accessible in English the extant fragments and the allusions in a few legal and classical writers, to students who are not able to read the Latin texts readily. The Latin text here followed is from Bruns, *Fontes Iuris Romani*, 7th ed., 1909, pp. 17-40.

## TABLE I.

## PROCEDURE.

- |  |  |
|--|--|
| 1. SI IN IUS VOCAT, ITO. NI IT, ANTESTAMINO: IGITUR EM CAPITO.   | If one summon another to court, let him go. If he go not, let (the plaintiff) take witnesses and arrest him.   |
| 2. SI CALVITUR PEDE MVE STRUIT, MANUM ENDO IACITO.   | If he attempt evasion or flight, let (the plaintiff) lay hands on him.   |
| 3. SI MORBUS AEVITASVE VI TIUM ESCIT, IUMENTUM DATO. SI NOLET, ARCERAM NE STERNITO.  | If sickness or old age shall be a hindrance, let (the plaintiff) provide a vehicle. He need not provide a covered carriage, unless he choose.  |
| 4. ASSIDUO VINDE X ASSIDUUS ESTO; PROLETARIO IAM CIVI QUIS VOLET VINDE X ESTO.   | A tribute-payer shall give a tribute-payer as surety for his appearance; a proletarian, if a citizen, may give anyone who may be willing to be surety.   |
| 5. NEX . . . FORTI SANATI . . .  | (Untranslatable fragment. Apparently:) Murder . . . to a man sound in body and mind.   |
| 6. REM UBI PACUNT, ORATO.  | When the parties agree to submit the matter to arbiters, let him plead his case.   |
| 7. NI PACUNT, IN COMITIO AUT IN FORO ANTE MERIDIEM CAUSAM COICIUNTO. COM PERORANTO AMBO PRAESENTES.  | If they do not agree to submit the matter to arbiters, let them state the case ( <i>sc.</i> before the praetor) in the comitium or in the forum before mid-day. Both being present let them argue their case together.   |
| 8. POST MERIDIEM PRAESENTI LITEM ADDICITO.   | After mid-day let him decide the matter in dispute in favor of the one present.  |
| 9. SI AMBO PRAESENTES, SOLIS OCCASUS SUPREMA TEMPESTAS ESTO.   | If both are present, let the sunset be the end of the session.   |
| 10. <i>Gellius</i> (16,10,8): cum proletarii et adsidui et sanates et VADES et SUBVADES et XXV asses et taliones — evanuerint, omnisque illa XII tabularum antiquitas — lege Aebutia lata consopita sit —. | When proletarians and tribute-payers and <i>sanates</i> and sureties and subsureties and the twenty-five asses and retaliations in kind . . . became obsolete, and all that antiquity of the Twelve Tables . . . was put at rest by the broad <i>Lex Aebutia</i> . |

## TABLE II.

## PROCEDURE, CONTINUED.

- |  |  |
|--|--|
| 1. <i>Gaius</i> (4,14): de rebus M aeris plurisve D assibus, de minoris vero L | Where property worth a thousand asses or more was involved five hun- |
|--|--|

assibus sacramento contendebatur; nam ita lege XII tabularum cautum erat. (At) si de libertate hominis controversia erat, etiamsi pretiosissimus homo esset, tamen ut L assibus sacramento contenderetur, eadem lege cautum est —.

2. . . . MORBUS SONTICUS  
. . . AUT STATUS DIES CUM  
HOSTE . . . QUID HORUM FUIT  
UNUM IUDICI ARBITROVE RE-  
OVE, EO DIES DIFFISSUS ESTO.

3. CUI TESTIMONIUM DEFUERIT,  
IS TERTIIS DIEBUS OB POR-  
TUM OBVAGULATUM ITO.

dred asses, where a less amount fifty asses, was the sum deposited by each litigant; for so it was provided by a law of the Twelve Tables. But if there was a dispute concerning a man's liberty, even though he were a very rich man, then by the same law it was provided that the sum deposited by each litigant be fifty asses.

. . . serious illness . . . or a day fixed for a suit with an alien . . . if one of these occur to *judex*, arbiter, or party, let it be put off to the following day.

Let him for whom a witness shall have been needed summon him for the third day (thereafter) by calling aloud at his door.

TABLE III.  
RIGHTS OF CREDITORS.

1. AERIS CONFESSI REBUSQUE  
IURE IUDICATIS XXX DIES IUSTI  
SUNTO.

2. POST DEINDE MANUS INIEC-  
TIO ESTO. IN IUS DUCITO.

3. NI IUDICATUM FACIT AUT  
QUIS ENDO EO IN JURE VIN-  
DICIT, SECUM DUCITO, VINCITO  
AUT NERVO AUT COMPEDIBUS  
XV PONDO, NE MAIORE, AUT SI  
VOLET MINORE VINCITO.

4. SI VOLET SUO VIVITO. NI  
SUO VIVIT, QUI EUM VINCTUM  
HABEBIT, LIBRAS FARRIS ENDO  
DIES DATO. SI VOLET, PLUS  
DATO.

5. *Gellius* (20,1,46—7): Erat autem ius interea paciscendi ac nisi pacti forent, habebantur in vinculis dies sexaginta. Inter eos dies trinis nudinis continuis ad praetorem in comitium producebantur, quantaque pecunia e iudicati essent, praedicabatur. Tertius

For the payment of an admitted debt, or an amount adjudicated, let the debtor have thirty days.

Thereafter let there be *manus injectio*. Let (the creditor) bring him before the magistrate.

If he does not make payment or someone go surety for him in court, let (the creditor) take him away and bind him either with sinews or with fetters not exceeding fifteen pounds in weight, or less at the discretion of the creditor.

If he wishes let him live at his own expense. If not let the creditor who holds him bound give him a pound of flour a day, or more if (the creditor) choose.

But there used to be the power in the meantime of compromising the matter and unless such compromise were made by them, (the debtors) were held in chains for sixty days. In the course of those (sixty) days upon every third consecutive market

autem nundinis capite poenas dabant,  
aut trans Tiberim peregre venum ibant.

6. TERTIIS NUNDINIS PARTIS  
SECANTO. SI PLUS MINUSVE  
SECUERUNT, SE FRAUDE ESTO.

7. ADVERSUS HOSTEM AETER-  
NA AUCTORITAS (ESTO).

day they were brought before the Praetor in the comitium, and the amount of the judgment against them was proclaimed. On the third market day however they were put to death, or were sent across the Tiber to be sold abroad.

On the third market-day let them (*sc.* where there were several judgment creditors) divide (*sc.* the body of the debtor) into shares. If they have cut too much or too little, let it be without liability.

Against a foreigner let the right of possession be perpetual.

#### TABLE IV.

##### THE PATERNAL POWER.

1. *Cicero (de leg. 3,8,19)*: cito necatus tamquam ex XII tabulis insignis ad deformitatem puer.

2. SI PATER FILIUM TER VENUM DUUIT, FILIUS A PATRE LIBER ESTO.

3. *Cicero (phil. 2,28,69)*: Illam suam suas res sibi habere iussit ex XII tab., claves ademit, exegit.

4. *Gellius (3,16,12)*: comperi, feminam — in undecimo mense post mariti mortem peperisse, factumque esse negotium — quasi marito mortuo postea concepisset, quoniam Xviri in decem mensibus gigni hominem, non in undecimo scripsissent.

. . . quickly put to death just as according to a law of the Twelve Tables a boy marked by deformity . . .

If a father offer his son for sale three times, let the son be free from the paternal power.

That actress of his (*mimam* omitted by Bruns) he ordered to keep her own property according to the Twelve Tables, he took away her keys, he turned her out (i. e. divorced her).

I have heard, a woman . . . bore a child in the eleventh month after the death of her husband, and because of the occurrence, (*sc.* she was charged) as if she had conceived after the death of her husband, since the *Decemvirs* had written that a child is born in ten months, not in the eleventh.

#### TABLE V.

##### SUCCESSION AND GUARDIANSHIP.

1. *Gaius (1,144-5)*: Veteres — voluerunt feminas, etiamsi perfectae aetatis sint, — in tutela esse; — exceptis virginibus Vestalibus, quas — liberas esse voluerunt: itaque etiam lege XII tab. cautum est.

The ancients wanted women, even if they may be of full age, to be under tutelage; — the Vestal virgins excepted, whom — they wished to be free: therefore it was so provided by a law of the Twelve Tables.

2. *Gaius*. (2,47): *Mulieris, quae in agnatorum tutela erat, res mancipii usucapi non poterant, praeterquam si ab ipsa tutore [auctore] traditae essent: id[que] ita lege XII tab. [cautum erat].*

3. UTI LEGASSIT SUPER PECUNIA TUTELAVE SUAE REI, ITA IUS ESTO.

4. SI INTESTATO MORITUR, CUI SUUS HERES NEC ESCIT, ADGNATUS PROXIMUS FAMILIAM HABETO.

5. SI ADGNATUS NEC ESCIT, GENTILES FAMILIAM HABENTO.

6. *Gaius* (1,155): *Quibus testamento — tutor datus non sit, iis ex lege XII [tabularum] agnati sunt tutores.*

7. a. SI FURIOSUS ESCIT, ADGNATUM GENTILIUMQUE IN EO PECUNIAQUE EIUS POTESTAS ESTO. — b. . . . AST EI CUSTOS NEC ESCIT . . . — c. *Ulpianus ad Sabinum* (D. 27,10,1 *pr.*): *Lege XII tab. prodigo interdicitur bonorum suorum administratio. Ulpianus (fr. 12,2): Lex XII tab. — prodigum, cui bonis interdictum est, in curatione iubet esse agnatorum.*

8. *Ulpianus* (fr. 29,1): *Civis Romani liberti hereditatem lex XII tab. patrono defert, si intestato sine suo herede libertus decesserit. Ulp. ad ed. (D. 50,16,195,1): Cum de patrono et liberto loquitur lex, EX EA FAMILIA, inquit, IN EAM FAMILIAM.*

9. *Gordianus* (C. 3,36,6): *Ea, quae in nominibus sunt, — ipso iure in portiones hereditarias ex lege XII tab. divisa sunt. Dioclet. (C. 2,3,26): ex lege XII tab. aes alienum hereditarium pro portionibus quaesitis singulis ipso iure divisum.*

The *res mancipi* of a woman, who was under the tutelage of her agnates, could not be acquired by prescription, unless they had been handed over by herself with the authority of her guardian: and that was so provided by a law of the Twelve Tables.

As a man shall have provided by will concerning his property or the tutelage of his family, so let it be law.

If a man die intestate, and without *suus heres*, let the nearest agnate have the family property.

And if there be no agnate, let the gentiles have the family property.

Those to whom a tutor may not have been appointed by testament, by a law of the Twelve Tables their agnates are their tutors.

a. If he be a lunatic, control over him and his property shall be in the hands of his agnates and gentiles.

b. . . . but if there be no curator (some provision made for his custody.)

. . . . c. By a law of the Twelve Tables the management of his property is forbidden to a spendthrift. A law of the Twelve Tables directs that a spendthrift who has been prohibited the management of his property be under the charge of his agnates.

A law of the Twelve Tables confers the inheritance of a Roman citizen who is a freedman on his patron, if the freedman has died intestate without a *suus heres*. . . (The term *familia* relates to persons) when the *lex* speaks of the patron and the freedman, 'from that family', . . . 'into this family'.

Those things which are debts, — according to a law of the Twelve Tables, *ipso iure* have been divided into hereditary shares. . . . according to a law of the Twelve Tables an inherited debt (*sc. due to or by the deceased*) was apportioned by that same law according to the ascertained individual shares.

10. *Gaius ad ed. provinciale (D. 10,2,1 pr.)*: Haec actio (familiae erciscundae) proficiscitur e lege XII tabularum.

This action (*familiae erciscundae*, i. e., for dividing the family property) is derived from a law of the Twelve Tables.

## TABLE VI.

## OWNERSHIP AND POSSESSION.

1. CUM NEXUM FACIET MANCIPIUMQUE, UTI LINGUA NUNCUPASSIT, ITA IUS ESTO.

When one effects *nexum* and *mancipium*, as the language has called it, so be the law.

2. *Cicero (de off. 3,16,65)*: cum ex XII tab. satis esset ea praestari quae essent lingua nuncupata, quae qui infitatus esset, dupli poenam subiret, a iuris consultis etiam reticentiae poena est constituta.

While by the Twelve Tables it used to be enough that those things be made good which were expressly declared, and for what had been misrepresented (the vendor) would be subjected to double damages, the penalty was likewise imposed by the juriconsults in case of silence.

3. *Cicero (top. 4,23)*: usus auctoritas fundi biennium est, — ceterarum rerum omnium — annuus est usus.

Right of possession of land was acquired in two years, — of all other property in one year.

4. *Gaius (1,111)*: lege XII tab. cautum est, ut si qua nollet eo modo (usu) in manum mariti convenire, ea quotannis trinocitio abesset atque eo modo [usum] cuiusque anni interrumperet.

By a law of the Twelve Tables it was provided that if a wife did not wish to come under the (legal) power of her husband she should absent herself for three nights each year and thus interrupt the course of each year.

5. a. SI QUI IN IURE MANUM CONSERUNT. . . . — b. *Paul. manual. (Wat. fr. 50)*: et mancipationem et in iure cessionem lex XII tab. confirmat.

a. If any engage in close combat in court ("hand grapple", a fictitious combat) . . . b. A law of the Twelve Tables confirms both a mancipation and a surrender in court.

6. *Livius (3,44,11,12)*: Advocati (Virginiae) — postulant, ut (Ap. Claudius) — lege ab ipso lata vindicias det secundum libertatem.

The advocates (for Virginia) demand that (Ap. Claudius) should allow the claim for her liberty in the meantime according to a law proposed by himself.

7. TIGNUM IUNCTUM AEDIBUS VINEAE ET CONCAPIT NE SOLVITO.

Let no one detach a beam built into a house or vineyard (*et concapit*, corrupt and not translatable).

8. *Ulpianus ad edictum (D. 47,3,1 pr.)*: Lex XII tab. neque solvere permittit tignum furtivum aedibus vel vineis iunctum neque vindicare, — sed in eum, qui convictus est iunxisse, in duplum dat actionem.

The law of the Twelve Tables neither permits one to detach a stolen beam built into a house or vineyard nor to lay claim to it as one's own, — but against him, who has been convicted of having attached it, such law gives an action for double the value.

9. . . . QUANDOQUE SARPTA, Whenever detached, until they shall  
 DONEC DEMPTA ERUNT . . . be replaced . . (their owner may  
 retake them).

## TABLE VII.

## LAND AND THINGS AFFIXED THERETO.

1. *Varro (de l. l. 5,22)*: XII tabularum interpretes ambitum parietis circuitum esse describunt. — *Festus*: Ambitus — dicitur circuitus aedificiorum, patens — pedes duos et semissem. — *Maecianus (assis distr. 46)*: Sestertius duos asses et semissem (valet), — lex — XII tab. argumento est, in qua duo pedes et semis 'sestertius pes' vocatur.

2. *Gaius l. IV ad leg. XII tab. (D. 10,1,13)*: Sciendum est in actione finium regundorum illud observandum esse, quod (in XII tab.) ad exemplum quodammodo eius legis scriptum est, quam Athenis Solonem dicitur tulisse. Nam illic ita est: 'Ἐάν τις ἀμμοσίαν κτλ.

3. a. *Plinius (n. h. 19,4,50)*: In XII tab. — nusquam nominatur villa, semper in significatione ea 'hortus', in horti vero 'heredium'. — b. *Festus (F. 355)*: [Tuguria a tecto appellantur [domicilia rusticorum] sordida, — quo nomine [Messalla in explana]tione XII ait etiam . . . [signifi]cari.

4. *Cicero (de leg. 1,21,55)*: usus capionem XII tab. intra V pedes esse noluerunt.

5. a. SI IURGANT . . . — b. *Cic. (de leg. 1,21,55)*: controversia est nata de finibus, in qua — e XII tres arbitri fines regemus.

6. *Gaius ad ed. provinc. (D. 8,3,8)*: Viae latitudo ex lege XII tab. in por-

The interpreters of the Twelve Tables describe the border extending around the house. — *Festus*: The border extending around the buildings is described as open, two and a half feet. — *Maecianus*: A sestertius is worth two and a half asses. — There is a law of the Twelve Tables by a syllogism in which two and a half feet are called a 'sestertius pes'. (*Sestertium* was used as a measure of dimension, two and a half feet deep.)

It is understood that in an action for determining boundaries that must be observed which was written (in the Twelve Tables) as patterned after, to a certain extent, that law which it is said Solon promulgated at Athens: If anyone a fence etc.

a. In the Twelve Tables 'villa' is nowhere mentioned; 'hortus' is always used with that signification; in truth 'heredium' is used for 'garden'. b. The sordid huts, the homes of the country folk, are called *tuguria* from *tectum* (covered), by which term Messalla in his interpretation of the Twelve Tables also says it is expressed.

The Twelve Tables did not permit usucaption to be exercised inside a space of five feet (so, a neutral zone between neighboring landowners).

a. If they quarrel (adjoining owners, as to boundaries) . . . b. A controversy has arisen concerning boundaries, in relation to which, — in accordance with the Twelve Tables we three as arbiters shall determine the boundaries.

The width of the right of way according to a law of the Twelve Tables



rectum octo pedes habet, in anfractum, id est ubi flexum est, sedecim.

7. VIAM MUNIUNTO: NI SAM DELAPIDASSINT, QUA VOLET IUMENTO AGITO.

8. a. SI AQUA PLUVIA NOCET, . . . — b. *Paulus ad Sab. (D. 43,8,5)*: Si per publicum locum rivus aquae ductus privato nocebit, erit actio privato ex lege XII tab., ut noxa domino sarciat.

9. a. *Ulp. ad ed. (D. 43,27,1,8)*: lex XII tab. efficere voluit, ut XV pedes altius rami arboris circumcidantur. — b. *Pomponius ad Sab. (D. 43,27,2)*: Si arbor ex vicini fundo vento inclinata in tuum fundum sit, ex lege XII tab. de adimenda ea recte agere potes.

10. *Plinius (n.h. 16,5,15)*: Cautum est — lege XII tab., ut glandem in alienum fundum procidentem liceret colligere.

11. *Iustiniani Institutiones (2,1,41)*: Venditae — et traditae (res) non aliter emptori adquiruntur, quam si is venditori pretium solverit vel alio modo satisfecerit, veluti expromissore aut pignore dato; quod cavetur — lege XII tab.

12. *Ulpianus (fr. 2,4)*: Sub hac conditione liber esse iussus 'si decem milia heredi dederit', etsi ab herede abalienatus sit, emptori dando pecuniam ad libertatem perveniet: idque lex XII tab. iubet.

covers eight feet in a straight line, on a turn, i. e. where it is curved, sixteen feet.

They (neighboring owners) shall make the road passable: if they have not cleared their road from stones, let one drive with one's beast of burden where one wishes.

a. If rain water creates injury, . . . — b. If a stream of water passing through a public place shall cause injury to a private person, there will be a private action according to a law of the Twelve Tables, that the injury to the owner may be made good.

a. A law of the Twelve Tables wished to bring it about that the branches of a tree be trimmed fifteen feet higher (than the ground) . . . b. If a tree from the estate of a neighbor be broken down by the wind upon your estate, according to a law of the Twelve Tables concerning taking things away rightly you may carry it off.

By a law of the Twelve Tables it was provided that one should be allowed to gather nuts fallen on land belonging to another.

Goods sold and delivered are not acquired by the purchaser unless he has paid the price to the vendor or given satisfaction in another way, for example either by giving a surety or a pledge; which was provided by a law of the Twelve Tables.

(*Sc.* A slave) ordered to be free under this condition 'if he give ten thousand sesterces to the heir', though he have been alienated by the heir, will attain his freedom on giving the money to the purchaser: and this is ordered by a law of the Twelve Tables.

#### TABLE VIII.

##### WRONGS.

1. a. QUI MALUM CARMEN INCANTASSIT . . . — b. *Cicero (de*

a. Whoever chanted a magic formula (i. e. an incantation) . . . b. While

*rep. 4,10,12 ap. Aug. de civit. dei 2,9*): XII tab. cum perpauca res capite sanxissent, in his hanc quoque sancendam putaverunt: si quis occentavisset sive carmen condidisset, quod infamiam faceret flagitiumve alteri.

2. SI MEMBRUM RUP[S]IT, NI CUM EO PACIT, TALIO ESTO.

3. MANU FUSTIVE SI OS FREGIT LIBERO, CCC, SI SERVO, CL POENAM SUBITO.

4. SI INIURIAM FAXSIT, VIGINTI QUINQUE POENAE SUNTO.

5. . . . RUP[S]IT . . . SARCITO.

6. *Ulpianus l. XVIII ad ed. (D. 9,1,1 pr.)*: Si quadrupes pauperiem fecisse dicetur, — lex (XII tab.) voluit aut dari id quod nocuit — aut aestimationem noxiae offerri.

7. *Ulpianus l. XLI ad Sabinum (D. 19,5,14,3)*: Si glans ex arbore tua in meum fundum cadat, eamque ego immisso pecore depascam, — neque ex lege XII tab. de pastu pecoris, quia non in tuo pascitur, neque de pauperie — agi posse.

8. a. QUI FRUGES EXCANTASIT. — b. . . . NEVE ALIENAM SEGETEM PELLEGERIS. . . .

9. *Plinius (nat. hist. 18,3,12)*: Frugem — aratro quaesitam noctu pavisse ac secuisse puberi XII tabulis capital erat, suspensumque Cereri necari iuebant, — inpubem praetoris arbitrato verberari noxiamve duplionemve decerni.

10. *Gaius l. IV ad XII tab. (D. 47,9,9)*: Qui aedes acervumve frumenti

the Twelve Tables provided for capital punishment in connection with few offences, among these they provided that it be sanctioned in case of anyone who had sung a satirical song or composed a poem which brought infamy or disgrace to another.

If any one break a limb (of another), unless he reach an agreement with him, let there be retaliation in kind.

If with his hand or a club he have struck the face of a freeman, let him suffer a fine of 300 asses, if of a slave, 150 asses.

If he have wronged another, let the penalty be 25 asses.

. . . he has caused injury . . . let him make amends.

If a quadruped shall be alleged to have caused injury, a law of the Twelve Tables required either that which did the harm to be given up or compensation for the injury to be proffered.

If fruit falls from your tree into my field, and my cattle being driven in I cause them to eat it, neither by the law of the Twelve Tables concerning the pasturing of cattle, because they are not pastured in your pasture, nor by that concerning damage, can an action be brought.

a. One who has bewitched the hanging fruits. — b. . . . do not spirit away the growing crop belonging to another. . . . (punished with death.)

It was a capital offence by the Twelve Tables for one of the age of puberty to have trod down (i.e., trespassed upon) and to have reaped a crop gained by the plow, and they ordered him to be hanged, raised in reparation to Ceres, — one under the age of puberty in the discretion of the praetor to be beaten or a penalty in double the amount of the injury to be affixed.

It is provided by the Twelve Tables that one who has burned another's

iuxta domum positum combusserit, vinc-tus verberatus igni necari (XII tab.) iubetur, si modo sciens prudensque id commiserit; si vero casu, id est negligentia, aut noxiam sarcire iubetur, aut, si minus idoneus sit, levius castigatur.

11. *Plinius (nat. hist. 17,1,7)*: cautum — est XII tabulis, ut qui iniuria cecidisset (succidendi *vocabulo lex usa est*) alienas (arbores), lueret in singulas aeris XXV.

12. SI NOX FURTUM FAXSIT, SI IM OCCISIT, IURE CAESUS ESTO.

13. LUCI . . . SI SE TELO DEFENDIT, . . . ENDOQUE FLORATO.

14. *Gellius (11,18,8)*: Ex ceteris — manifestis furibus liberos verberari ad-dicique iusserunt (Xviri) ei, cui furtum factum esset —; servos — verberibus affici et e saxo praecipitari; sed pueros impuberes praetoris arbitratu verberari voluerunt noxiamque — sarciri.

15. a. *Gaius (3,191)*: Concepti et oblati (furti) poena ex lege XII tab. tripli est. — b. . . . LANCE ET LICIO . . .

16. SI ADORAT FURTO, QUOD NEC MANIFESTUM ERIT —, [DUPLIONE DAMNUM DECIDITO.]

17. (*Gai. 2,45*): furtivam (rem) lex XII tab. usucapi prohibet —.

18. a. *Tacit. (ann. 6,16)*: XII tabulis sanctum, ne quis unciario fenore amplius exerceat. — b. *Cato (de agri cult.*

house or heap of grain piled next to a dwelling-house be bound and beaten and burned at the stake, if he did it wilfully and knowingly; if it was in truth by accident, that is by negligence, he must make good the damage, or if he is too poor, be punished moderately.

It was enacted by the Twelve Tables that one who should wrongfully cut down trees belonging to another should pay twenty-five asses for each.

If one commit theft by night and be killed in the act, let such killing be lawful.

In the day-time . . . if he defends himself with a weapon (killing him is lawful, but) let (the person attacked) cry aloud.

Other thieves, taken in the act, if they were freemen, the decemvirs ordered to be scourged and handed over to the one from whom the theft had been committed —; slaves were to be scourged and hurled from the rock (i.e., the Tarpeian Rock); but boys under the age of puberty should be flogged at the discretion of the praetor and the damage which they had done made good.

The penalty for stolen property discovered and brought forth (i.e. by a searcher) is triple the value by a law of the Twelve Tables. — b. . . . with platter and loin-cloth. (Refers to the manner of searching for stolen property, going through the house with no clothing but a cloth around the loins and carrying a platter in both hands.)

If one brings an accusation for theft, which shall be "not manifest" —, (i.e., secret theft) let the damage be assessed in double the amount.

A law of the Twelve Tables prohibits usucaption of stolen goods.

a. It was enacted by the Twelve Tables that no one should exact a rate of interest higher than ten per cent. b.

*praef.*): *Maiores* — in legibus positurum furem dupli condemnari, fenerarent quadrupli.

19. *Paulus* (*coll. 10,7,11*): Ex causa depositi lege XII tab. in duplum actio datur —.

20. a. *Ulpianus l. XXXV ad ed. (D. 26,10,1,2)*: Sciendum est suspecti crimen e lege XII tab. descendere. — b. *Tryphoninus disputat. (D. 26,7,55,1)*: Si — tutores rem pupilli furati sunt, videamus an ea actione, quae proponitur ex lege XII tab. adversus tutorem in duplum, singuli in solidum teneantur.

21. PATRONUS SI CLIENTI FRAUDEM FECERIT, SACER ESTO.

22. QUI SE SIERIT TESTARIER LIBRIPENSVE FUERIT, NI TESTIMONIUM FATIATUR. INPROBUS INTESTABILISQUE ESTO.

23. *Gellius (20,1,53)*: ex XII tab. — si nunc quoque — qui falsum testimonium dixisse convictus esset, e saxo Tarpeio deiceretur.

24. a. SI TELUM MANU FUGIT MAGIS QUAM IECIT, aries subicitur. — b. *Plin. (n. h. 18,3,12)*: Frugem — furtim — pavisse — XII tabulis capital erat (8,9) — gravius quam in homicidio.

25. *Gaius l. IV ad XII tab. (D. 50,16,236.pr.)*: Qui venenum dicit, adicere debet, utrum malum an bonum; nam et medicamenta venena sunt.

26. *Latro (decl. in Cat. 19)*: XII tab.

The ancients set down in the Twelve Tables that a thief be sentenced to a double amount, a usurer quadruple.

Upon the ground of a deposit an action is given by the law of the Twelve Tables for double the amount. (Breach by a depositary.)

a. The accusation of one suspected is known to come down from a law of the Twelve Tables. (If the administration of a tutor was suspicious, action was given to any one to have him removed.) b. If the tutors have stolen property of the ward, let us see whether by the action which is set forth by the Twelve Tables for double damages against a tutor, they may be held, each for the full amount.

If a patron defraud his client let him be accused (i.e. be sacrificed to the infernal gods).

He who shall suffer himself to be called as a witness or shall be a *libripens* (balance-holder), and shall not disclose his testimony, shall be impious and incapable of being a witness or of making a will (i.e. of taking any benefit under a deed requiring witnesses).

According to the Twelve Tables — if it were only true now — one who had been convicted of giving false testimony would be thrown from the Tarpeian rock.

a. If a weapon flies from the hand farther than one hurls (aims) it, a ram is substituted. (Peace offering to the kinsmen.) b. To tread down grain by stealth (i.e., to depasture cattle secretly by night) was a capital offence according to the Twelve Tables — (a punishment) more severe than that in the case of murder.

He who mentions the word drug ought to add whether bad or good; for even medicines are drugs.

We know it to be decreed by the

cautum esse cognoscimus, ne qui in urbe coetus nocturnos agitare.

27. *Gaius l. IV ad XII tab. (D. 47,22,4)*: His (sodalibus) potestatem facit lex (XII tab.), pactionem quam velint sibi ferre, dum ne quid ex publica lege corruptant; sed haec lex videtur ex lege Solonis translata esse.

Twelve Tables that no one hold seditious nocturnal assemblies in the city.

A law of the Twelve Tables gives the power to these guilds to make rules for their government in what manner they wish, provided they do not make rules contrary to the public law; but this law seems to be copied from a law of Solon.

#### TABLE IX.

##### PUBLIC LAW.

1. 2. *Cic. (de leg. 3,4,11; 19,44)*: 'Privilegia ne inroganto; de capite civis nisi per maximum comitiatum — ne ferunto'. — Leges praeclarissimae de XII tabulis tralatae duae, quarum altera privilegia tollit, altera de capite civis rogari nisi maximo comitiatu vetat.

3. *Gellius (20,1,7)*: duram esse legem putas, quae iudicem arbitrumve iure datum, qui ob rem [iu]dic[andam] pecuniam accepisse convictus est, capite poenitur?

4. *Pomponius enchirid. (D. 1,2,2,23)*: quaestores — qui capitalibus rebus praesent, — appellabantur quaestores parricidii, quorum etiam meminit lex XII tab.

5. *Marcianus (D. 48,4,3)*: Lex XII tab. iubet eum, qui hostem concitaverit quive civem hosti tradiderit, capite puniri.

6. *Salvianus (de gubern. dei 8,5,24)*: Interfici — indemnatum quemcunque hominem etiam XII tabularum decreta vetuerunt.

'Let them permit no special privileges; as to capital punishment of a citizen, let them not carry it out unless by order of the *comitia centuriata*'. — Two very excellent laws copied from the Twelve Tables, of which one does away with special privileges, the other prohibits capital punishment of a citizen to be carried out unless by order of the *comitia centuriata*.

Do you think it a harsh law which punishes with death a *judex* or arbiter appointed to a court of justice who has been convicted of accepting money for passing judgment?

*Quaestors* who have charge over capital crimes are called *quaestores parricidii*, of whom even the law of the Twelve Tables makes mention.

A law of the Twelve Tables orders him who stirs up an enemy (*sc.* of the Roman people) or who delivers a citizen to an enemy to be punished by death.

The decrees of the Twelve Tables forbid any uncondemned man whom-ever to be put to death.

#### TABLE X.

##### BURIALS AND FUNERAL RITES.

1. HOMINEM MORTUUM IN URBE NE SEPELITO NEVE URITO.

Let not (anyone) bury or burn a dead person within the city.

2. . . . HOC PLUS NE FACI-  
TO: ROGUM ASCEA NE POLITO.

3. *Cicero (de leg. 2,23,59)*: Extenuato igitur sumptu tribus reciniis et tunicula purpurae et decem tibicinibus tollit etiam lamentationem.

4. MULIERES GENAS NE RADUNTO, NEVE LESSUM FUNERIS ERGO HABENTO.

5. a. HOMINE MORTUO NE OSSA LEGITO, QUO POST FUNUS FACIAT. — b. *Cicero (l. c. 24,60)*: Excipit bellicam peregrinamque mortem.

6. a. *Cicero (de leg. 2,24,60)*: Haec praeterea sunt in legibus —: 'servilis unctura tollitur omnisque circumpotatio'. — 'Ne sumptuosa respersio, ne longae coronae, ne acerrae'. — b. *Fest.*: Murrata potione usos antiquos indicio est, quod — XII tab. cavetur, ne mortuo indatur.

7. QUI CORONAM PARIT IPSE PECUNIAVE EIUS [HONORIS] VIRTUTISVE ERGO ARDUUITUR EI . . .

8. . . . NEVE AURUM AD-  
DITO AT CUI AURO DENTES  
IUNCTI ESCUNT. AST IM CUM  
ILLO SEPELIET URETVE, SE  
FRAUDE ESTO.

9. *Cicero (de leg. 2,24,61)*: rogum bustumve novum vetat propius LX pedes adigi aedes alienas invito domino.

10. *Cicero (de leg. 2,24,61)*: forum — bustumve usucapi vetat.

More than this let no one do: Let no one smooth a funeral pile with an axe.

Expense therefore being reduced to three suits of mourning and small tunic of purple and ten flute players (*sc.* the rule) even does away with (excessive) lamentation.

Let not the women tear their cheeks or make the *lessus* or funeral wailings.

a. When a man has died do not collect the bones in order to have a funeral afterwards. b. Exception is made with regard to those who die in battle or in a foreign land.

a. Besides these there are in the laws (*sc.* other provisions)—: 'servile anointing is prohibited and all drinking around in a funeral meal'. — 'Let there be no expensive respersions, (sprinkling of the funeral pile with wine), no long garlands, no incense boxes'. — b. There is an indication that the ancients used a drink spiced with myrrh, because the Twelve Tables forbade the placing of it on a corpse.

Whoever by himself gains a crown, or (if) money is given to him on account of his merit or virtue, let the honor be accorded to him (i. e., the crown placed on the deceased and buried with him.)

Let no gold be put into the grave with the dead. If the teeth of the deceased are fastened with gold let it be buried or burned with him, and no wrong be done.

(A law of the Twelve Tables) prohibits a new funeral pile or pyre nearer than sixty feet to a neighbor's house without his consent.

Let the sepulchre and its vestibule be not subject to usucaption.

## TABLE XI.

## SUPPLEMENTARY—MARRIAGE; COURT DAYS.

1. *Cicero (de rep. 2,36,61—37,63)*: When (the *Decemvirs*) had drawn

(Decemviri) cum X tabulas summa legum aequitate prudentiaque conscripserunt, in annum posterum Xviros alios subrogaverunt, — qui duabus tabulis iniugarum legum additis — conubia — ut ne plebi cum patribus essent, inhumanissima lege sanxerunt.

2. *Macrobius (sat. 1,13,21)*: Tuditanus refert, — Xviros, qui decem tabulis duas addiderunt, de intercalando populum rogasse. Cassius eosdem scribit auctores.

3. *Cic. (ad. Att. 6,1,8)*: E quibus (libris de rep.) unum *ιστορικόν* requiris de Cn. Flavio Anni f. — Ille vero ante Xviros non fuit. — Quid ergo profecit, quod protulit fastos? Occultatam putant quodam tempore istam tabulam, ut dies agendi peterentur a paucis.

up the ten tables of the laws with the utmost equity and prudence, they appointed to office other *Decemvirs* to succeed them in the following year, — who, having added two tables of unjust laws provided by a most inhumane law that marriage might not exist between plebeians and patricians.

Tuditanus says that the *Decemvirs* who added two to the ten tables asked the people about inserting them. Cassius writes that the same ones were the authors.

From which (books about the state) you ask for a history of Cn. Flavius son of Annius. — Truly he did not live before the *Decemvirs* (i. e. the authors of the Twelve Tables.) What therefore did he accomplish in that he posted the legal court days? They think that at one time that table was concealed so that the days for pleading in court might be known to a few.

## TABLE XII.

### SUPPLEMENTARY—PROCEDURE; LEGISLATION.

1. *Gaius (4,28)*: Lege autem introducta est pignoris capio, veluti lege XII tab. adversus eum, qui hostiam emisset nec pretium redderet; item adversus eum, qui mercedem non redderet pro eo iumento, quod quis ideo locasset, ut inde pecuniam acceptam in dapem, id est in sacrificium, impenderet.

2. a. SI SERVUS FURTUM FAXIT NOXIAMVE NO[X]IT. — b. *Gai. (4,75,76)*: Ex maleficiis filiorum familias servorumque — noxales actiones proditae sunt, uti liceret patri dominove aut litis aestimationem sufferre aut noxae dedere —. Constitutae sunt — aut legibus aut edicto praetoris: legibus velut furti lege XII tabularum *cef.*

But *pignoris capio* was introduced by statute, as for instance by a law of the Twelve Tables against him who had bought a victim for sacrifice and not paid the price; likewise against him who did not return the fee for that beast which someone had hired out so that thereafter he might devote the money received to a sacrificial feast.

If a slave commits a theft or inflicts an injury (the owner was liable, by the *actio noxalis*, to surrender the slave or pay damages). — b. Noxal actions have been brought about by the wrongful acts of sons under power and of slaves, so that it be permitted to the father or owner either to bear the pecuniary damage or surrender the wrongdoer by way of reparation. — (Noxal actions) have

3. SI VINDICIAM FALSAM TULIT, SI VELIT IS . . . TOR ARBITROS TRIS DATO, EORUM ARBITRIO . . . FRUCTUS DUPLIONE DAMNUM DECIDITO.

4. *Gaius l. VI ad XII (D. 44,6,3)*: Rem, de qua controversia est, prohibemur (lege XII tab.) in sacrum dedicare: alioquin dupli poenam patimur, — sed duplum utrum fisco an adversario praestandum sit, nihil exprimitur.

5. *Livius (7,17,12)*: in XII tabulis legem esse, ut quodcumque postremum populus iussisset, id ius ratumque esset.

been created. . . . either by *leges* or by Praetor's edict: by *leges*, for instance, for theft, by a law of the Twelve Tables, etc.

If (the Praetor) has awarded interim possession to the wrong party, if this party wishes it, the Praetor must appoint three arbiters. On their decision (of the value of the object of vindication and its) fruits, the Praetor must award damages at double the amount.

We are forbidden (by a law of the Twelve Tables) to dedicate to sacred uses a thing which is the subject of litigation: otherwise (i. e., if we do) we suffer a double penalty, — but nothing is expressed as to whether the fine goes to the treasury or to the adversary.

There was a law in the Twelve Tables that whatever the people had ordered last, that should be the law and carried out.