



**Seventeenth International Roman
Law Moot Court Competition**
Vienna · 3–7 April 2024

LIBELLVS MMXXIV

Monasterium Sanctae Mariae Magdalенаe c. Basilion
Theophilos c. Anastasion

1. Constantinople, in the year of our Lord 553. Our Emperor Justinian's *Digest*, *Institutes* and *Code* have been in force for almost 20 years, as has his reformed law curriculum. However, legal practitioners still face problems grappling with this complex body of law to prepare their cases.
2. The seventeenth edition of the competition known as the *Exercitationes Forenses Iure Novo vel Iudicum Tirocinium* is entering its final stages. Initiated by the attorney Eutolmius at Tribonian's suggestion, the contest has long proved an excellent means of familiarising young lawyers with the practical application of imperial law. Assembled into teams and coached by law firms, advanced students and recently graduated lawyers plead a fictitious case before jurisconsults of recognised competence. The finals of the *Exercitationes* take place before renowned imperial officials, offering finalists contact with experienced practitioners and administrators of justice, along with the chance of attracting the attention of the legal community. Hoping to be on one of the four teams to reach the public finals, participants prepare studiously over the course of many months, in order to respond to all possible questions the judges might ask.
3. The cursory invitation Eutolmius drafted for the first competition provided only that Justinian's law should be applied in the same way as in the courts of the empire. Over time, rules for the *Exercitationes* developed by way of custom, including the following:
 - (a) In case of dispute, teams abide by the decision of a so-called Conclave, consisting of one coach per team. Where a dispute does not concern all teams, only coaches of the unaffected teams deliberate. The Conclave does not resolve disputes by vote but, rather, debates until a proposal consensus is achieved.
 - (b) The winning team's firm has the privilege of organising the finals and drafting the case (*libellus*) for the subsequent year's competition. A draft *libellus* is circulated to all coaches before it is distributed to the teams. Objections to a *libellus* can be raised within a week; the Conclave settles any disputes. Since the ninth edition of the *Exercitationes*, when some saw in the *libellus* hints at an actual cause célèbre, it has been agreed not to base facts or characters on cases actually pending in court.

4. The *Exercitationes* are an established institution of the metropolitan legal community. Since the sons of many well-respected families are involved, the final rounds usually bring all of Constantinople to the hippodrome; and the *Exercitationes* of 553 are no exception. This year's audience favourite is a participant who represents the plaintiff in a *rei vindicatio*, who introduces himself as 'Alex'. When a judge tries to catch him off guard by asking how his client, a convent, can in good conscience claim ownership of a brothel and compensation for its lost profits, Alex answers immediately: 'There is no contradiction, your Lordship, because, in the right hands even a brothel might become a convent, just as the reverse is known to have happened more than once.' Such a quick wit scores Alex points with the audience as well as the judges: the frenzied crowd and the judges' smiles promise that he will secure the *praemium optimi oratoris* or 'Best Oralist Prize'.
5. A traditional highlight of the prize ceremony in the hippodrome is the presentation of a commemorative medal to the best speaker. When Alex is, as everybody expected, called to the podium, the crowd suddenly falls silent, only to erupt a few seconds later into cheers even louder than before. On the podium, facing no less than the *quaestor sacri palatii* himself, who had presided at the Grand Final and was due to award the medal, there stands not a young man wearing the usual gown and cap of the competition but a young woman, with long blond hair and a golden silk dress. She snatches the prize from the hands of the petrified *quaestor* and, after introducing herself as Alexandra, she delivers the customary acceptance speech, ending with the statement: 'The only reason why no female attorneys are admitted in our courts is men's fear that we would put them out of business.' The first prize is also awarded to the team for which Alex competed. The ensuing exuberant celebrations of the crowd require the palace guards to secure an orderly conclusion to the competition.
6. The meeting of the coaches, held immediately in the nearby palace, is as turbulent as the crowd's displays outside. Theophilos, coach of the second-placed team, loudly complains about the 'monstrosity' that just occurred. The appearance of a woman in the *Exercitationes*, he laments, is an affront to the entire legal profession of Constantinople. Honouring a woman as the best orator is an insult not just to the other participants and their coaches but to the entire legal community. This attack, he claims, was calculated by so-called 'feminists' intending to undermine the very pillars of society. Allowing this travesty to go unpunished, he insists, would set a disastrous precedent, possibly even leading to the appearance of women as advocates in court. All the same, Theophilos does not blame Alexandra but, rather, the string-pullers who snuck her into the competition as a puppet. As the coach of the winning team is still visibly shaking from the shock he suffered in Alexandra's outing at the prize ceremony, nobody suspects him to be the mastermind of the affair. Theophilos insists on finding the culprits and, because Alexandra's speech has humiliated all lawyers, he asks the other coaches to second him.

7. This, the others are not willing to do. They may share some of Theophilos's anger but not his desire for a joint enquiry. They leave it to him to file a complaint, because Alexandra's disqualification would primarily benefit his team. They are more concerned that, if the outcome of the *Exercitationes* should become a matter of public discussion, the competition, the participating teams and the organising law firms would all be compromised. Without support from his peers, Theophilos files a formal complaint on behalf of his team and on behalf of the speaker ranked second to Alexandra. He demands the winning team's disqualification, because of the blatant violation of rules by fielding a woman on the team.
8. The Conclave consists of all coaches except Theophilos and the still speechless coach of the winning team. A telling sign of the general mood is the complete lack of volunteers to preside over the unwanted meeting. When Anastasios, coach of the third-placed team, offers to take on this task, with apparent reluctance, the other coaches are more than happy. After a long day and with a gala dinner waiting, none of the attorneys is eager to drag the matter out. They quickly concur that, in the best interests of the competition and the law firms involved, the embarrassing matter should be consigned to oblivion as quickly as possible. Moreover, many of the Conclave's members have heard speeches such as Alexandra's from their daughters and nieces, and all abhor such discussions in their homes.
9. Anastasios proposes to leave this year's results unchanged but to clarify for the future that women are naturally excluded from a lawyers' contest, which is what the *Exercitationes* are. This is agreed without discussion. Anastasios records the conclusions of the Conclave:
 - (a) Women have never explicitly been admitted nor have they explicitly been excluded from the *Exercitationes*. The Conclave, however, restates the obvious that, as in all other legal matters, the participation of women is inappropriate in the *Exercitationes*.
 - (b) The results of the *Exercitationes* remain unchanged, because no formal complaint was raised against a named participant alleging the violation of a specified rule.
10. Not surprisingly, Theophilos disagrees with this outcome. He is not upset because a woman beat his team; in fact, he thinks this will be a healthy corrective for some of his rather overbearing young lawyers. However, the public attention created by Alexandra worries him, and he fears repercussions for his firm more serious than being runner-up in a training competition for apprentice lawyers.
11. In fact, Theophilos had joined his team's preparations only for the final rounds of the competition; and his first reading of the *libellus* had left him in shock: there were more than merely coincidental parallels to a real case in which he had been instructed. It is only later, at the gala dinner, that Theophilos suddenly perceives the deep but subtle ruse of Anastasios, who had presided over the Conclave and proposed the resolution just agreed. Enquiries made by a hurriedly despatched slave quickly reveal that his client's future opponent, Basilios, is a longstanding client of Anastasios's.
12. Theophilos realises that Anastasios had long planned to exploit the competition for his personal interest, because he was in the ideal position to do so. As coach of last year's winning

team, Anastasios had drafted the *libellus*. He had deliberately circulated the draft to the other coaches just at the time the courts resumed their activities after the summer break, so that it arrived at Theophilos's firm during the busiest period of the year. As urgent business had left Theophilos no time to study the *libellus*, a junior lawyer, not familiar with the firm's upcoming cases, had looked over the draft for Theophilos and found no grounds for objection.

13. Theophilos realises that he will not be able to keep his client's case away from public attention. The clamorous ending of the *Exercitationes* only adds to his concerns. It is clear to Theophilos that Anastasios has used the competition for litigation PR on Basilios's behalf. Essential arguments in the case had been ridiculed in the Grand Final, before all of Constantinople's legal elite. No court could now hear a case in which a convent sues for restitution of a brothel plus profits lost on account of the inefficient management of its current possessor without remembering Alexandra and her repost.
14. Theophilos's case, which he now recognises all too clearly in Anastasios's competition *libellus*, has a long backstory. It began when Helena, a lady of old nobility, then aged 16, received the 'Garden of Paradise', an estate on the Golden Horn, as a gift from her maternal grandfather, who wished to secure his favourite granddaughter's economic independence from her unreliable father and brother. The Garden of Paradise is an extended complex that encompasses gardens overlooking the sea, thermal baths and sports facilities—along with several pavilions well hidden from the prying eyes of strangers. The complex is reserved for the exclusive use of members of a private club, also named Garden of Paradise. It admits only rich merchants, civil servants, and senior military officers who can afford the enormous membership fees. It is rumoured that the Garden of Paradise charges such steep fees mainly because it offers its members opportunities to enjoy the secluded pavilions in the company of highly educated young slaves.
15. The manager of the complex is a trustworthy slave, also gifted by Helena's grandfather. Fulfilling the latter's wish that she treat the manager and the others in the Garden of Paradise well, Helena promises manumission to all her slave stewards after a few years of loyal service, provided that, by then, one of their *vicarii* is able to take over their duties. As Helena treats successive stewards and the staff slaves well, the club flourishes and brings in ample revenue. As a rule, all slaves are freed after a few years in the Garden of Paradise. Many save enough from tips and gifts from club members to start a new life; Helena provides funds for the others. All freedmen and freedwomen remain dedicated to Helena and also support their successors in the Garden of Paradise, if needed.
16. Despite Helena's care for the *ancillae* of the Garden of Paradise—who fare much better than those of other such establishments—her confessor constantly reproaches her for her ungodly income. Helena wants to keep the Garden of Paradise, among other reasons, because new ownership would undoubtedly make the enslaved staff suffer. Even her confessor has to agree with this. In order to ease her conscience, and out of concern for her salvation, Helena establishes the 'Convent of Saint Mary of Magdala', which provides for

women who have escaped prostitution. As the most important relic for its church, she endows the convent with an alabaster receptacle containing remains of the oil with which Mary Magdalene anointed the feet of Jesus. In addition, Helena purchases a unique but ‘certainly miraculous’ icon—albeit not of entirely flawless provenance—entitled ‘How Magdalene acquired her bad reputation’. The strict patriarch of Constantinople considers this ‘inappropriate even in such a convent’, and it is banished from the main altar to a side chapel, where he allows it to remain, albeit veiled at all times.

17. At the age of 35, Helena is struck by a mysterious fever. Her brother Demetrios, 10 years her senior, takes her into his home. Because of her poor health, he immediately ‘unburdens’ her from all matters regarding the Garden of Paradise. As soon as the steward is accustomed to reporting and delivering the revenues to him or to his 20-year-old son Basilios, Demetrios sends the already hallucinating Helena to the convent she founded to ‘profit during her last days from her good deeds’.
18. Immediately after assuming control of the Garden of Paradise, Demetrios ceases all contributions to the convent. He tells the convent’s Mother Superior that Helena, moved by the loving care she had received in his home, has decided that the Garden of Paradise should from now on sustain her own immediate family and not ‘some aging pleasure girls’. Demetrios also immediately ceases the practice of early manumissions, destroying the slaves’ willingness to work. As many members reduce their contributions or even leave the club, in light of the worsening service, revenue suffers badly. At almost the same time, thefts start to occur in the club; the loot is never recovered. All in all, with Demetrios’s innovations in place, the Garden of Paradise produces a severely diminished income by comparison to what it earned when run by Helena.
19. Meanwhile, once settled in the convent, Helena keeps out of the public eye. Over the years, she is largely forgotten, as is the fact that the Garden of Paradise belongs to her. The other residents are dedicated to restoring her health. A year or so after taking up residence, Helena recovers after anointment with the holy oil and night-long communal prayers in front of the—unveiled—icon. As soon as it is safe to confront her with bad news, she is informed that Demetrios has cancelled all support for the convent. Immediately, Helena has a notary draw up a deed by which she signs over all of her assets to the convent. Additionally, on advice of the notary, she writes a testament, making the convent her sole heir. The loss of revenues from the Garden of Paradise is a heavy blow to the convent; it continues to function only because sums of money are repeatedly deposited in front of the veiled icon by unknown benefactors.
20. Some 10 years after sending his sister to the convent and seizing the Garden of Paradise, Demetrios dies, leaving Basilios as his sole heir. In his testament, the Garden of Paradise is listed among Demetrios’s assets. After his father’s death, Basilios takes over the Garden of Paradise as the new owner. Having settled her earthly affairs, Helena confines herself to her cell, fasting, or praying for forgiveness of her sins, in front of the icon. Only a few weeks after her brother’s death, she, too, dies.

21. Immediately after Helena's burial in front of the icon, the convent's Mother Superior initiates investigations concerning the Garden of Paradise. Out of respect for Helena, the convent had refrained from taking legal action against members of her family during her lifetime but, with her demise, nothing will keep the convent out of court except a settlement regarding the land and the past earnings. Over the years, the convent had several times demanded from Demetrios that he surrender the property and account for its past earnings but he had deemed none of the requests worthy of a response. Basilios likewise brusquely refuses to do so when asked. Instead, he threatens to sue the convent, should it continue to challenge his ownership of the Garden of Paradise as his father's heir. Over a period of three years, letters are exchanged every now and then between Basilios and the convent's Mother Superior. She finally loses her patience and decides to sue, when she hears that Basilios has been singing drunken 'verses' about a 'nunnery' in taverns, including the line: 'Unfortunately, I don't know a *nun*, the superior I know, she is a *madam*!'
22. Theophilos, as the convent's legal adviser, repeatedly points out the problems of suing without knowing the exact revenues that Demetrios and Basilios have kept for themselves. They, of course, never respond to requests for the books. One day, however, Tyche, a freedwoman of Helena's, presents the Mother Superior with copies of ledgers that fully document all payments. Tyche explains her initiative by reference to her attachment to the pious Helena (and her even greater hatred of Demetrios and his son). Accordingly, she had taken Solon, the current steward of the Garden of Paradise out, plied him with drink and riled him up against his 'master' Basilios—which was easy, given his lack of hope for a free future; wine and bribery did the rest. As a result, Solon not only allowed Tyche to make copies of the account books but also sent a box of cash 'which left no trace in the books'. The *liberta* thoughtfully had a notary attest to the conformity of the copies to the originals. The Mother Superior gladly accepts the box of cash, and uses the money for urgent repairs. The records show that Demetrios's innovations had almost immediately reduced the income from over 1,000 *solidi* per year to an average of barely 200 *solidi*.
23. On behalf of the Convent of Saint Mary of Magdala, Theophilos now files a *rei vindicatio* against Basilios for (i) the Garden of Paradise, (ii) the income collected by Basilios and by his father Demetrios, and (iii) compensation for the income lost caused by the maladministration of Demetrios and Basilios.
24. In his own name, Theophilos brings against Anastasios an *actio iniuriarum* alleging an *iniuria atrox* that, as meticulously planned by Anastasios, he finally suffered during the Grand Final of the *Exercitationes* in the hippodrome. He claims suffering public debasement, both as the deceived team's coach and as the convent's attorney. For the assessment of the *poena*, he demands the judge to take into consideration the consequences of Anastasios's manipulation of public opinion for his client, the convent of Saint Mary of Magdala.