



**Fifteenth International Roman
Law Moot Court Competition**
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LIBELLVS MMXXII

Epicrates contra Athenogenes

1. It is 541 CE. While the invasions of the Heruli and the Visigoths in recent centuries took their toll on the city, Athens is still a buzzing centre of intellectual and artistic life. Though the Emperor Justinian has forbidden pagans from teaching in the city's schools, theatrical performances of the plays of the great tragic and comic poets are still highly sought after by Athenians and visitors alike.
2. In August, a ship from Alexandria arrives at the port of Piraeus carrying a cargo of slaves, purchased by Athenogenes, a third-generation slave-trader who operates a stand in front of the Stoa of Attalos in the Agora of Athens. The voyage was long, and the vessel narrowly escaped shipwreck in the strong winds around Cape Sounion. After days at sea, throwing up and overcome by terror, the slaves are not in the best shape. Still, Athenogenes is glad his cargo arrived intact. He had promised to offer to the theatre producer Epicrates a group of slaves with some acting experience from the Lageion, the hippodrome of Alexandria, after the leading actress of the producer's troupe eloped with the cook, taking her child actors with her and leaving the production in jeopardy. Athenogenes orders his slaves to refresh and tidy up the new arrivals before Epicrates sees them. They help to wash the new slaves and, to liven up their worn-out complexion, discreetly tint their cheeks with rouge.
3. One slave, Adonis, appears especially run down and feverish. Athenogenes forces him to stand, which he does with great difficulty; Athenogenes notes that he is slightly warm to the touch and is having difficulty breathing. However, Adonis is well-built and handsome; Athenogenes thinks Adonis would make an excellent leading man and it would be a great pity to forgo a good sale for a trivial fever.
4. When Epicrates arrives at the stand, Athenogenes shows him the merchandise: a slave *familia* of comedians, consisting of a couple with three sons, plus, to sweeten the deal, a man who used to cook at the Dux's kitchen in Alexandria. Epicrates examines them closely one by one, counting their teeth and checking their bone structure. One (Adonis) does seem warm to the touch but the sun is very hot in the blue sky over Athens. He is initially unsure about their stamina but is reassured by their lively complexion.
5. Hearing that the slaves have Greek and Roman stage names, he asks about their provenance; however, Athenogenes turns the discussion to praising the slaves' qualities. "Don't worry if they seem a little tired," he says; "They went through a long voyage at sea—you know how the winds blow at this time of the year. Look at this Adonis: with his good looks, he will be

a great hit on stage! The father, Menander—you have never seen such an actor before; he can move the audience to tears with his performance! The other son, Orestes, is an expert dancer and acrobat! Their mother Lysistrata is fit and strong as a cow! The youngest boy, Fortunatus, is hardworking and passionate about art. They have never committed any crime; they do not suffer from epilepsy; and they have never tried to run away. As for the cook, Apicius, I have heard his stuffed peacock was once praised by the Empress Theodora herself during one of her trips to Alexandria!”

6. So as not to appear too eager to conclude the sale, Epicrates promises to sleep on it and return the next day. In the morning, on his way to the Agora, he hears a rumour brought by sailors newly arrived at the port of Piraeus, that a mysterious new disease has broken out in Alexandria. No one knows exactly how it started: perhaps it was brought back by Nestorian monks smuggling silkworm eggs from far-away China. Some patients experience only mild symptoms but others die suffocating. The Athenian authorities close the port and forbid all exports and imports, to avoid the spread of the disease. “This,” Epicrates confides to his son Dionysius, “is my only chance to replace my missing actors. Unless I purchase new actors today, I will not be able to put on the play I promised to the Odeon of Herodes Atticus, for which we have already taken advance payment.” Epicrates goes straight to Athenogenes and agrees to buy all six slaves, for a total price of 6,000 *solidi*, paying cash out of the advance received from the Odeon.
7. Back home, he entrusts the slaves to Dionysius, instructing him to start rehearsals for the play *Philoctetes* by Sophocles. Epicrates heads north to Thessaloniki in search of a good arrow, as well as textiles for the costumes and scenery. While he is away, things fall apart.
8. Menander, whom Dionysius tries to train as Odysseus, has a strong stammer, and baas on stage like a lamb. Adonis has a slight fever and can barely stand but, since he is to play the wounded hero Philoctetes, Dionysius decides that this will add drama to his performance, and forces Adonis into long hours of rehearsal. Some days later, Adonis collapses on stage in the middle of a scene, and dies.
9. News reaches Athens that the disease detected in Alexandria has spread to Constantinople, and people have started dying by the dozen. The symptoms include a slight but persistent fever, coughing, shortness of breath, great fatigue and a loss of smell and taste. Some people recover quickly, while many others struggle to breathe, and die in agony a few days later. Slanderous mouths say that the disease is a punishment inflicted by Our Lord God for the Emperor’s harshness during the Nika riot some years ago, and for the Empress Theodora’s past sins. Procopius, a courtier of poisonous tongue, names it the “corona disease”, after the Greek word for crown, a name that sticks with the populace. The Athenian authorities place strict controls on entry into the city—by land as well as by sea.
10. In the public hospitals that have served the people of Athens since the time of Hippocrates, all sorts of medicaments are tried, to no avail. However, the scholar Pfizerius, who spent long years studying diseases on the island of Cos and now works at the Academy in Athens, notices that, if you take saliva from a sick person, mix it with a special herbal extract, and apply the mixture via a small incision to the upper arm of a healthy person, he develops some symptoms but then more often than not fights off the disease. The city authorities, after a long litany and a public prayer to the Virgin Mary delivered on the steps of what had been

the pagan goddess Athena's temple on the Acropolis, urge the populace to try this new preventive measure, and many do so.

11. Dionysius is sceptical, and dismisses such experimentation as magic. He openly accuses those promoting it of secretly following the Hellenic pagan tradition connected to the Academy, which has been banned by the emperor, and of trying to inject poison into people's veins. Deliberately making yourself sick to avoid the disease is crazy, he argues in the Agora. He refuses to administer the treatment to the slaves of his father's household. One by one, sharing close quarters as they do with Adonis, all of the actors develop the same symptoms.
12. The leading lady Lysistrata dies, confessing to Dionysius on her deathbed that, when they were sold, Adonis was already sick with fever, and their faces had all been painted with rouge to display a healthy glow. Orestes becomes delusional in his fever and, thinking himself pursued by the Erinyes, throws himself off the Aeropagus, breaking his leg. Dionysius pays a doctor to treat the fracture but Orestes is left with a limp.
13. Young Fortunatus experiences nothing more than swollen tonsils. When he is not taking good care of the sick of the household, he proves to be less interested in rehearsing his part as Neoptolemus in the play than in wandering around Athens, admiring the display of works of art in the Kerameikos. He is obsessed with the famous Parthenon marbles, spending hours examining their every detail.
14. The cook Apicius recovers his health but not his sense of taste and smell. As a result, the food he cooks is tasteless. Moreover, since he cannot smell the food cooking on the stove, he often burns the pans, and ruins an entire collection of antique Attic cooking pots that Epicrates had painstakingly collected over the years.
15. To complete the disaster, all theatres are closed by order of the emperor until further notice, leaving Thespians and comedians out of work. The Odeon asks producers to repay the moneys it had advanced for performances now cancelled.
16. With the city under lockdown, Epicrates finally manages to return to Athens seven months later, to find his play cancelled and the Odeon demanding its advance back, his slaves dead or damaged, and his kitchen paraphernalia destroyed. Furious upon learning the full story, he immediately confronts Athenogenes in the Agora, shouting that Athenogenes defrauded him, by knowingly selling him a sick slave who spread the disease among his household, a stammering so-called actor, an idle boy, and a useless cook. He demands that Athenogenes take back the surviving slaves, return Epicrates' money, and compensate his losses.
17. Athenogenes refuses. "Adonis had only a slight fever," he claims. "You could have seen it for yourself; no-one prevented you from examining the slaves. All the others were in good health when delivered. In any case, your son Dionysius refused to administer to the slaves the miraculous preventive measure invented by Pfizerius, instead pretending it was poison. As for Menander, you have only yourself to blame: if you had enquired about his theatrical experience, you would have learned that he was famous for pantomime, which requires no speaking. I remember telling you that Fortunatus was passionate about art but the error in understanding which art lies with you. Stop threatening me and go away, or I will have my slaves throw you from the Philopappos Monument!"

18. Epicrates immediately summons his legal counsel, two young *scholastikoi* fresh out of the Law School of Berytus, whom he instructs to bring suit against Athenogenes before the court of Athens, which is now applying the great legal codification the emperor had sent to the city.
19. Accordingly, they bring on behalf of Epicrates two actions against Athenogenes:
 - (i) an *actio redhibitoria* in respect of Adonis, Lysistrata, Orestes and Apicius, seeking to recover 9,030 *solidi*—twice the purchase price paid for them, plus 30 *solidi* for Orestes' medical expenses, plus 1,000 *solidi* for the value of the antique pots destroyed by Apicius; and
 - (ii) an *actio quanti minoris* in respect of Menander and Fortunatus, seeking to recover 800 *solidi*—the difference between their actual value and the price paid.