

**The Regulation of the Royal Higher Court of Appeals. The first regulatory instrument of justice in Portugal**

**O Regimento da Casa da Suplicação. O primeiro instrumento regulador da justiça em Portugal**

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**Abstract:** Following Portugal's recognition as an independent State (1143/1179), the first kings imposed the development of a new process that would lead to the effective organization of its institutions on the one hand, and on the other, legitimize the supervision of the State itself. At a time when the administration of justice was the main connection with the people it was normal, as had occurred throughout the rest of the West, for monarchs to be concerned with providing justice. However, in a burgeoning kingdom other areas imposed themselves as regulators of royal power. In this context we recall the administrative institutions; the Curia, the Council, the Courts and the Chancery. All together, with the institutions of justice, they were initially placed in the hands of judges and magistrates. Later the first courts would be organized, out of which the Higher Court of Appeals would emerge as appellate justice. The document presented herein was its first Regulation. The "Royal Higher Court of Appeals", which the king moved to Brazil in 1807, and would become extinct in the nineteenth century (1833) to be replaced by the Court of Appeal of Lisbon.

**Keywords:** Portugal; justice; sentence; royal officials.

**Resumo:** Na sequência do reconhecimento de Portugal como estado independente (1143/1179), impunha-se aos primeiros reis desenvolver um processo conducente à boa organização das instituições que, por um lado legitimariam e por outro seriam fiscalizadoras do próprio Estado. Numa época em que o exercício da justiça era o principal elo de ligação com o povo, é normal que, à semelhança do que ocorria no restante ocidente, os monarcas se preocupassem com o respectivo exercício. Porém, num reino nascente, outras áreas se impunham como entidades reguladoras do poder régio. Nesse âmbito podemos recordar as instituições da administração; a Curia, o Conselho, as Cortes e a Chancelaria. Tudo a par com as instituições, da justiça, inicialmente entregue a juízes e corregedores. Posteriormente organizar-se-iam os primeiros tribunais, de que emerge a Casa da Suplicação, para justiça de recurso. O documento que se apresenta terá sido o seu primeiro regulamento. A "Casa da Suplicação", com o rei transferida para o Brasil a partir de 1807, viria a ser extinta no século XIX (1833), sendo substituída pelo Tribunal da Relação de Lisboa.

**Palavras-chave:** Portugal; Justiça; sentença; oficiais régios.

## **Introduction**

Following Portugal's recognition as an independent State (1143/1179), the first kings imposed the development of a new process that would lead to the effective organization of its institutions on the one hand, and on the other, legitimize the supervision of the State itself. At a time when the administration of justice was the main connection with the people it was normal, as had occurred throughout the rest of the West, for monarchs to be concerned with providing justice. But in a burgeoning kingdom, other areas imposed themselves as regulators of royal power. In this context we recall the administrative institutions; the Curia, the Council, the Courts and the Chancery. All together, with the institutions of justice, they were initially placed in the hands of judges and magistrates.

The Royal Chancery was a key institution to an organized kingdom. With the Chancellor as its main reference – the man guarding the royal seal, necessarily in the monarch's strictest confidence – the Chancery legitimized all administrative acts in the kingdom. The Curia and the Council quickly evolved into a new form of "Royal Council" and council to the courts. If in the first case the presence of men of "law" was stated as essential to the exercise of the monarchy, the second would evolve to represent the three social groups: clergy, nobility and the people. This would happen in 1253 when King Alfonso III included Council representatives (theoretically the people) in these general meetings. This institution's functions gave rise to what we can consider *legislative action*. Indeed, after hearing representations, the king, supported by jurists, edited the necessary responses, which had legal force. However, it should be recalled that the first set of laws was organized in Portugal in 1211 under the reign of Alfonso II. A new set of laws would not be put together until the fifteenth century, and these laws were known as *Alfonsine Ordinances*. They were incorporated, along with a number of new articles, into the old "diverse" legislation, known as "ordinances", albeit with some adjustments resulting from new experiential reality.

But as mentioned above, the institutions of justice would be primarily concerned with governance. Recall that even in the fifteenth century, the good King identified with the righteous King, considered a Holy King who actually practiced the "good" justice. Therefore, in the burgeoning kingdom we observe the royal concern with establishing "bridges" with the people, such that the first regulatory instruments that arose from that connection were the "Letters of Court", that would later be known generically as "charters". These letters consecrated the dependent relationship between the central government and local authorities, regulating the lives of the people, particularly in economic, social and legal terms. Therefore, as of the 12<sup>th</sup> century, we can consider the development of local justice made up by judges, *alvazis*, chosen by the people. However, in the essential relationship between powers the king quickly created positions of control whose

appointment was his responsibility and obviously included people whom he trusted. I am referring to magistrates and judges known as “*juízes de fora*”.

Magistrates were appointed systematically during the reign of King Alfonso IV, *i.e.* in the first half of the fourteenth century with some concern about the choice of “*juízes de fora*” especially in the reign of King Pedro I, son and successor of King Alfonso IV. The action of these judges became crucial in the face of old prerogatives of the manor nobility and the King, who always claimed the last word in justice, that is, as the ultimate “judge of appeals”. Thus, the “Court Tribunal” was organized, chaired by the king, who as a medieval monarch, was itinerant. But this mobility did not fit with the proper administration of justice, and thus its division became imperative. It was not until the fourteenth century that the Civil Court was created, first set up in Santarem and shortly after in the main city of the kingdom: Lisbon. However, the appellate court, or “Court Tribunal”, or even the “Court of Justice” later known as “Higher Court of Appeals” remained itinerant, which is understandable due to the necessary presence of the King who presided, accompanied by doctors, judges, court magistrates, ombudsmen and obviously the chancellor. This court functioned according to *Alfonsine Ordinances* in two sections or “tables”. The main section took on serious cases (regarding grace and mercy, pardon, commutation of sentences and petitions to the king) and the other section was assigned to minor cases, *i.e.* appeals for which the Civil Court did not hold jurisdiction. If any of these “tables” drew an even vote on sentences, the two tables would then meet to reach final decision. In the absence of consensus, the vote of the “Ruler” followed. Not included here were the cases whose final decision was reserved for the monarch.

All this specialization of functions became possible thanks to the increase in “*literates*”, that is, law graduates who obtained their degrees in Portugal, particularly following the founding of the University in Lisbon at the dawn of the fourteenth century, which was later moved to Coimbra. Along with many students who continued to attend Salamanca, Paris and Bologna, many graduates also graduated from Coimbra in civil or canon law or “the two laws”, which were a great help to the monarchs.

The “Higher Court of Appeals”, which moved with the Court to Brazil in 1807, would not become defunct until the 19<sup>th</sup> century (1833), being replaced by the Court of Appeal of Lisbon.

### ***The Document***

The document in question is in the National Archives / Torre do Tombo. It is included in a wider compilation, which is a codex on 150 x 220 mm parchment with a total of 369 pages. It is a Latin text, in a copy produced at the beginning of the 16<sup>th</sup> century, which paleography specialist Prof.

Eduardo Borges Nunes placed somewhere between 1511 and 1517. The letter is characteristic of the time, that is, which Borges Nunes placed as “‘Rotund Gothic’ or ‘Bolognese’, already influenced by homologous block letters”. We may therefore notice that the copy was a product of the same workshops that, during the reign of King Manuel produced the so-called “New Charters” (*Forais Novos*) and also the so-called “New Reading” (*Leitura Nova*), a set of 60 magnificent, illustrated volumes containing copies of the Portuguese monarchy’s principal documents, from its foundation.

The whereabouts of the original of the text at hand are unknown; it is presumed to have suffered the same fate as the vast majority of the collection referred to above: that is, it was destroyed after copies were made. Therefore, its disappearance is not surprising, although it places the investigator in the difficult situation of attempting to date the original. Two publication dates of this Latin copy are known: One in 1793, inserted in the *Collecção de Livros Inéditos de Historia Portuguesa*, in the reigns of King John I, D. Duarte, D. Alfonso V and D. John II, published by José Corrêa da Serra (The Abbot of Serra Corrêa) at the Academy of Sciences; the other, published in 1980 by Dr. Martim de Albuquerque, in the *Arquivos do Centro Cultural Português* (Calouste Gulbenkian Foundation), Paris. This text was reedited in 1982 in a special reprint of the seventeenth volume of the same *Arquivos*, though with its respective translation, completed by Dr. Miguel Pinto de Meneses. It is this translation that provides the basis for the work at hand.

### ***The Time***

The characterization of the time in which the document under analysis was produced makes its respective dating plausible, though as stated above, it cannot be established precisely. However, despite the few studies devoted to the subject, some hypotheses have arisen. For example, the oldest, Duarte Nunes de Leão in his *Crónicas dos Reis de Portugal*, points to the author of that text being King Duarte (1391-1438). The hypothesis is not precluded, considering the concern of the king with issues related to justice and his natural propensity for effective moral order in proceedings, as evidenced by his works, and in particular in *Leal conselheiro* (VENTURA, 2013). The hypothesis has not been formally challenged by later scholars, and since the early twentieth century, António Costa Lobo took it back up, considering the text “[...] clearly prior to the Alfonsine Code”, believing it to have been produced “[...] in the reign of King John I, or in that of Edward or less likely, in the regency of Prince Pedro before 1446, the date of promulgation of the Alfonsine Ordinances” (COSTA LOBO, 1979, p. 638).

Law Historians, and in particular Prof. Martim de Albuquerque, accept this hypothesis based on the text of our inspiration “[...] the imperial law and the doctrine of the great interpreters (Bártolo more than any other) prevail jurisprudentially. And without sharing the empire with national

legislation” (ALBUQUERQUE, 1982, p. 29). Now, since “legislative Bartolism in Portugal” began at the end of the reign of King John I, the historian accepts the possibility that the document was produced under the supervision of King Edward; and from our point of view, this is reasonable, considering that the legislative body that would be designated by Alfonsine ordinations was being brought together. Desiring efficiency in the administration of justice, Duarte would have then determined to make this “regulation” in the light of the most modern legal processes. It is evident that demonstrating this hypothesis still presupposes another element: what type of document is it? It is, in fact, a Regulation? Costa Lobo calls it a Regulation while authors such as Marcello Caetano reject the idea of regulation, arguing that in order to be one, the text should obey “a legislative form and style”; now, “nothing in this text reveals the appearance of a law and, as for the style, it is easy to see that it is more narrative than perceptive”. Therefore it is suggested that it was “[...] written news to be known outside of Portugal or for students of General Study, perhaps included in a wider exposition of the organization of the Kingdom [...]” (CAETANO, 1998, p. 485). Such an explanation is not accepted by Martim de Albuquerque who, while not categorically affirming the nature of the document, underlines its fundamental importance “in the framework of the History of Portuguese law” (ALBUQUERQUE, 1982, p. 31).

With these questions still open, we place the document in the first half of the 15<sup>th</sup> century. In the process of recovery from the crisis that had shaken Europe in the 14<sup>th</sup> century, the courts were reorganized. Portugal, having overcome the general crisis and the political crisis, legitimized the recent dynasty, *i.e.*, the *Avis Dynasty*. A new social order seemed to emerge from the rubble of the struggle that had led several Portuguese nobles to declare themselves in favor of Castile, defending the right of the legitimate heiress of Ferdinand. However, the Master of Avis, in alliance with England, succeeded in facing and overcoming the invader. Such an alliance was sealed with a marital alliance, which had given the hand of the Duke of Lancaster’s daughter, Philippa, to the new king of Portugal. This alliance would bear a number of children that would mark the future Portuguese society, as well as its economy, while its leadership in overseas discoveries, with particular emphasis on the exploration of the African coast, would open new territories up to Portugal and, with them, a number of commercial possibilities. In this dynamic of change, the kingdom would also open itself up to winds blowing out of other sectors, of which it is important to highlight the intellectual milieu. Humanism had already made its appearance and modern currents were flowing. Princes were now carefully trained, acquiring a privileged education, as in the case of Philippa of Lancaster’s children. Italian masters and Flemish artists came to Portugal (SERRÃO, 1972).

This setting explains the development of a whole “literature” in the court of Avis, while also explaining how the Princes allowed themselves to be influenced by the emergence of a “new order”

*The Regulation of the Royal Higher Court of Appeals. The first regulatory instrument of justice in Portugal* which certainly justified several attempts at reform. It is true that not all were achieved, and subsequent reigns, with the flexibility demonstrated by the creation of new large lordships, led to crises and confrontations that originated in 1483, with John II. But this did not change the fact that, at the time of King John I, the general sentiment was to create a different reality. And if this was so in society and the economy, so it was in politics. Thus, once again the kings were concerned with the administration of justice, searching for effective ways perhaps sought in the latest provisions derived from the study and deeper understanding of Roman law. The document that we will comment on herein was drafted in the midst of this dynamic.

### ***Commentary***

For the purpose of analysis, the text of the *Regulation of the Higher Court of Appeals* can be divided into three parts, which we list as follows: 1) The “sacred” character of Justice; 2) Those who serve Justice; 3) Major crimes and their penalties.

#### ***1) The “sacred” character of Justice***

The text introduces us to an unquestionable truth: Justice is from God! Consequently, its respective temporal exercise is delegated. Thus, this knowledge is a greater gift given to only a few – the kings. The content set forth herein lies in the doctrine of the Gregorian Reform that, from the 11<sup>th</sup> century on, the popes sought to put into practice, which is why the temporal power was disciplined as immanence of spiritual power. Royal action was therefore justified, consisting primarily in the practice of peace and the pursuit of justice. However, in doing so, he had to know that he served as the vicar of God. Hence the “just person” is a worshiper of God, and is thus loved by Him. In fairness, he himself receives from his people all the love and veneration. In the 15<sup>th</sup> century, the *Righteous* king is the *Good* king and the *Holy* King.

But because the king alone cannot reply to all requests of justice, he must call upon assistants to join him. His wisdom will manifest itself in the correctness of his choice.

#### ***The Organization of the Court. Material Assumptions***

**Schematic Representation of Crimes and Punishments**

<b>Crimes</b>	<b>Punishments</b>
Deliberately hiding something from the inventory of an inheritance, even if concealed by the wife	Twofold restitution Disinheritance
Late Payment on Lease	Twofold restitution or interests with additional items
Possession of property, otherwise	Simple sentences
Not fulfilling obligations to the previous landlord tenant	Payment in full under the terms of the lease
Unpaid rent during over a three-year period in private things and over a two-year period in sacred things	Voidance of contract Eviction by the Lord without resisting through violence
Debts (denied by the offender)	Twofold restitution
Debts (admitted by the offender)	Debt payment, not twofold, though with interests
Denial of debt after using benefits	Payment of debt in full
Attempted Homicide (intentional)	Death Penalty
Attempted Homicide (unintentional)	Corporal Punishment
Injury or death of aggressor in legitimate self-defense	No punishment
Adultery	Death Penalty (for adulterer and adulteress). In the event that it is the wife, no punishment for the husband
Injury or death resulting from third parties speaking to a woman, without her husband's authorization	Death Penalty after having been warned three times by the husband
Homicide resulting from resisting the authority of the head of family	No consequences
Homicide of thief during the day or night if thief defends himself with weapon	No consequences
Abortion of a live fetus (= homicide)	Death Penalty
Incest	Death Penalty
Prostitution	No punishment

<b>Crimes</b>	<b>Punishments</b>
Sodomy	“Unusual punishment”
Escaped of prisoner once convicted and/on way to gallows	Death Penalty for prison guard
Counterfeiting	Burned by fire, after having goods confiscated
Arson	“Penalties of Arsonists”
Forgery	Death Penalty after having goods confiscated
Use of false measures	Arbitrary punishment
Witchcraft	Death Penalty
Parricide	Sewn into a leather bag with a dog, a rooster, a viper and a monkey and thrown into the sea or the river
Embezzlement (swindling)	Arbitrary Punishment
Theft (not caught in the act)	Payment in double and quadruple manifest
Insults	Punished according to the quality and quantity
Insults to an official	Death Penalty
Slander in the insult	Arbitrary Punishment
Killing livestock as insult (= by slaves)	Payment in double If the crime is confessed, the dead animal is assessed in terms of how much it would be worth if alive
Damage caused by injury to animals and objects	Payment of the greatest value that it could have the previous 30 days
Damage caused by animals without injury and without guile	Replace with another due to prejudice or evaluate the damage the done
Damage caused by animals that is incited by men	Motion of injuries against man

**Notes**

(1) The king is God’s representative (temporal domain) on Earth. He must reign over the people, defend the country, impart Justice and fear God (ALBUQUERQUE, 1982, p. 41).

(2) The Consistory is a college made up of two sessions, in which four kinds of professions are represented: Judges (those who pass sentences); Lawyers (litigators); the Registrars of Facts (who record the case) and Ministers (who execute the sentences and mandates) (ALBUQUERQUE,



1982, p. 43). These officers are appointed by the King and take their places according to the academic degree they hold (ALBUQUERQUE, 1982, p. 45).

(3) *Palatine Men*: they are three in number. They must be eminent, wise and God-fearing; quickly pass judgment on petitions and supplications; take the more complicated issues to the Prince; hear “issues of causes of crimes”, by defining rights along with the Ombudsman. They also take on all complaints that are outside the jurisdiction of the Magistrate’s Court. They take a seat on the Consistory and listen to the explanations of the causes – crimes, defining the rights along with the Ombudsmen. Approval is carried out with the majority of two, although decisions are repealed on agreement by the three (ALBUQUERQUE, 1982, p. 47).

(4) *Duvidores*: they are three in number, one of whom is the Queen. They hear criminal appeals, present them to the Consistory and jointly make the final decision. Nevertheless, they can decide on the “less harmful interlocutory judgment”. They determine civil issues themselves, for themselves (ALBUQUERQUE, 1982, p. 47).

(5) *Royal Prosecutor*: “Judge between the Prince and the people”, that is, the official hierarchical, decision-making power between the monarch and the people. His tasks include hearing tax appeals and “new, arduous cases” (ALBUQUERQUE, 1982, p. 47).

(6) *Judges*: are two in number. Hierarchically, they are under the authority of the Royal Prosecutor, and must “respect him” (ALBUQUERQUE, 1982, p. 47).

(7) *Treasury Lawyer*: the Promoter of Justice, and also seat in another session. Should be “sharp wit, well-versed in the law and enjoy the honors of the Ombudsmen” (ALBUQUERQUE, 1982, p. 47).

(8) *Magistrate of the Court*: among other requirements he, “should be and honest person, mighty in deeds, bold in words and diligent”. In relation to his responsibilities, he hears new criminal and civil cases, those of members of the Court and powerful people from the province where the Royal Court is located, and those of any municipalities or those over which he holds jurisdiction as well as orphans and widows. He hands down judgments alone on civil cases. Regarding criminals, he hears them in the Consistory of the First Session. He alone decides on the less harmful interlocutory and corrects city grievances where the Royal Court rules (ALBUQUERQUE, 1982, p. 47).

(9) *Chancellor*: must be a jurist and a “lover of justice and equity”. He is the Ordinary Judge of all external publications and letters, of writers, stamps, “refusals” and the Foreign Ministry. His duties include examining all sentences and letters, presenting and discussing letters and dubious sentences with Judges until they decide whether they should be sealed. He must prudently store seals in a vault whose key should stay with him. He judges in partnership and presides with everyone, especially in more complex matters (ALBUQUERQUE, 1982, p. 47-49).

(10) **President:** With regard to hierarchy, he is superior to all officials listed above. He is required to be a wise man of great status and lineage, “old or almost, intrepid” and circumspect in every business. He must govern all officers, handing down orders and designating times and places. He can listen to the complaints against the officers, making corrections as needed, as well as deal with the interests and needs of everyone before the Prince. In short, he performs the functions of the Prince, except in cases already defined, as well as giving and taking official letters and granting licenses beyond twenty days (ALBUQUERQUE, 1982, p. 49).

(11) **Clerks of the queen:** the clerks are at the Queen’s expense. They owe obedience to Associate Judges and their Judge. Among their duties, they must swear to faithfully start writing the deeds and mandates in the proceedings; maintain the secrecy of inquiries and the yet unpublished intentions of the judges and charge small amounts of money (ALBUQUERQUE, 1982, p. 49).

(12) **Registrar of the Chancellor:** should be more dignified than the others, and can have another clerk in his place. It is his job to witness the purchase of wax, ink, paper and parchment (ALBUQUERQUE, 1982, p. 49).

(13) **Registrar of the Prosecuting Judge:** his salary is paid by the King because of tax deeds, although he can charge private litigants part of the price of deed (ALBUQUERQUE, 1982, p. 49).

(14) **Generally** any of the **clerks** should be present in announcements and hearings and take all concluded cases to the house of the judges, should show loyalty, obedience and diligence. In performing their functions they must maintain all handed down deeds in their possession until such time as they are delivered to the interested parties, preventing the parties and lawyers from knowing the yet unpublished intents and inquiries. A clerk can accept those deeds made in court and give faith to others, although he should not receive such faith from a third party (ALBUQUERQUE, 1982, p. 49).

(15) **Lawyers:** their main functions include showing the parties’ rights. They take an oath before the judges and should show obedience. They should be men of science and of sound mind, sworn to sponsor justly and faithfully and attend to proceedings and not advise against their conscience. They can write in the proceedings with their own hand, though after having submitted the writing, cannot add, reduce or quote deception. They must pursue the causes of their clients until their completion, and follow the proceeding even at the expense of the dispute, the obstruction of the *res judicata* and its annulment. Lawyers can be replaced by the **Prosecutor’s Advocate**. They may declare only orally on what they want on behalf of their clients or customers themselves may do so after grounds reported by Judge (ALBUQUERQUE, 1982, p. 51-53).

(16) **Hirenarcha or Bailiff of the Court:** He has the responsibility of arresting offenders and bringing them to jail. They must obey all judges indiscriminately, as well as, on their own initiative, arrest all those found to be in the wrong (ALBUQUERQUE, 1982, p. 53).

(17) **Justice of the Peace or Prison Bailiff:** they have the responsibility to arrest offenders and bring them to jail. They must obey all judges indiscriminately to as well as on their own initiative; and hold all the findings in harm. They receive a salary for themselves and twelve partners (ALBUQUERQUE, 1982, p. 53).

(18) **Men:** two men serve in criminal executions and two for driving prisoners (ALBUQUERQUE, 1982, p. 53).

(19) **Court Porter or Doorkeeper:** He summons to court, inquires and executes civil suits. He performs the functions of Court Doorkeeper. The officer of this office shall store and carry the necessary things for the Monarch's expense. He must be an honest man, well seasoned, resolute, well-dressed and above all discreet in discerning when and what things should be taken before the lords and what people he should allow to enter or not (ALBUQUERQUE, 1982, p. 53-55).

(20) **Porters:** must mainly obey their Judges (ALBUQUERQUE, 1982, p. 55).

(21) **Chancery Porter:** Must be more honored than the rest. He seals documents at the Chancellor's, and once signed, take them in a bag to the accustomed place, where before the clerk and the treasurer he delivers them sealed to the parties requesting them. He charges for any outstanding seal the thirtieth part of a gold coin for the Chancellor, who provides the linen and silk threads. He must provide the parchment to write down anything that the Chancery should pay, paper for judges for their studies and ink to all judges and clerks. He is also entrusted with finding animals to transport the ark of the Chancery books (ALBUQUERQUE, 1982, p. 55).

(22) **Town Crier:** Once taking on his duties, he pays guarantors for the present and for the future. Auctions off liens, satisfying the prevailing party through sale or delivery of liens (ALBUQUERQUE, 1982, p. 55).

(23) **Ark of the Chancery:** where sealed letters and sentences are kept, along with the *Book of Chancery*, where the sealed documents are written. Payment is due, if the case is started and finished in court or before the magistrates (ALBUQUERQUE, 1982, p. 55).

(24) **Ark of Punishments:** where the money from those convicted is kept. For this ark there is a treasurer who has a key and a scribe who will register what is deposited in the ark, but who lacks a key (ALBUQUERQUE, 1982, p. 57).

(25) **Ark of the King's money:** an ark containing the money for settling with the injured parties in Court. When the accused are convicted and pledged, they must make monetary retributions in double or triple, at the discretion of the Appeals Court. The Court Porter and the Registrar of Harm must have the keys to this ark (ALBUQUERQUE, 1982, p. 57).

(26) **Ark of Serious Harm:** ark where they keep the inquiries made for the most serious crimes such as high treason, counterfeit currency and murder. The key is kept by the Registrar of Harm (ALBUQUERQUE, 1982, p. 57).

(27) **Registrar of Harm:** he keeps one of the keys of the Ark of the King's Money as well as the keys to the Ark of Serious Harm (ALBUQUERQUE, 1982, p. 57).

(28) **Jail 1:** where the prisoners heard by Magistrate's Court are held for new cases. It is headed by the Warden and two partners. Its function is to hold the prisoners more or less strongly, taking upon itself the King's irons and chains. The jailor receives a salary for himself and his partners (ALBUQUERQUE, 1982, p. 57).

(29) **Jailor 2:** where the defendants in appeals cases are held along with others dispatched by the Ombudsmen. It is chaired by a Warden and a partner receiving a salary for himself and his partner. They have upon themselves irons and chains (ALBUQUERQUE, 1982, p. 57).

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### **Court of Appeals Regulation**

#### ***The following is from the college of justice***

Says the Lord (Isaiah 45, 25): Only in the Lord are righteousness and strength.

From these words it follows perfectly that any other person who has righteousness and power, has them from God, and shall not exercise what is their own, but what is God's. However, God himself, for greater emphasis said (Prov 8, 15): By me Kings reign, and rulers decree justice. Thus, the King is the vicar of God.

#### ***The King of the State***

Now, for the King of the state the service of justice, the government of the people and the defense of the country are necessary. Omitting therefore the latter two, we shall deal with only the first in this book. In fact, the King is the vicar of God, and, being the vicar of God in temporal things, should endeavor with all his strength and with all his effort to be fair to himself and to others in reality and in reputation because, as Cyprian says, *De duodecim abusivis* (read in his beautiful words that the justice of the Prince is) "The Justice of the King is the peace of the people, the protection of the homeland, the immunity of the common people, the defense of the nation, the care

of the weak, the joy of men, the temperance of the Sea, the serenity of the air, the fertility of the land, the consolation of the poor, the inheritance of the children, and to himself, the hope of future bliss”. In fact, the fair king is the king who wishes to pursue justice, first fears God and loves him such that he can also be loved. He thus loves God, but mimics it by wanting to be helpful to everyone and harm no one; then, yes, he will be called fair, will be worshiped and loved. However, to be just, he will not only not commit evil, he will not let others do it because justice is not the avoidance of harm to anyone, but respect for others, Seneca, *De quator Virtulibus*. Also the king gives stability to the land through justice, but a man who takes bribes overthrows it, Proverbs 29:4. But because the king so accustomed to justice cannot, nor should he, examine and address all the particular things on his own, he should always have just, expert, God fearing, haters of evil, honest, and eloquent men, who sometimes, specially in serious business, give account of justice that should be imparted and of injustice that must end, and sometimes judge alone on behalf of the King, Exodus 18, 22. But, because for justice to bear its due effect, it takes many kinds of trades; let’s see [which ones].

### **Judges**

So in the royal house, as for the cult of justice, a college must be incorporated and forever honorably sustained which includes four kinds of trades: First, judges; second, those who plead the laws; third, those who write the deeds and judgments; fourth, those who execute the sentences and mandates. The Prince must judge, not based on affection or requests, but cautious and secret inquiry, caring as a careful pastor proven men, at least proven for this, which he will always find because nature always necessarily produces some such men for this purpose, according to Avicenna, *Metaphysics*, X: “It is necessary for there to be a man who does not let men follow their opinions, defining what is just and what is unjust, and whose being is more necessary for the birth of the eyebrows and eyelids and many other useful things”. There must be a man fit to institute and enforce laws. But because it is perhaps very difficult to choose such men, these are the following rules. He is able to judge the man who praises fair grounds and fights for them until scandal or even risk of death, Ecclesiastes, 4, towards the end. The same goes for the man who seeks justice more than reward, Wisdom, 2 towards the end. The same goes for the man who despises things themselves, and watches over the interests of others and especially by those held in common, Ambrose, *Liber de Paradiso*. The same goes for the man has little or no affection for men, and, so to speak, knows no father or mother, but asks about the virtues of men (Cassio, *super Patres*) also accomplishes this. The same goes for the man in whom lies the truth, Exodus, 18. And with this

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they are always competent in law, and sober in eating and drinking, lest they be like the blind leading the blind over the precipice.

### ***What the Lord King should ensure in his officers***

And after electing such men for such a sacred act, he must grant them riches and honors, for the Lord God promises them the maximum wealth, saying “such is the kingdom of heaven” Matthew 5, 13, 43, and honors by saying “shine like the sun” (Mt 17, 15). And also so that others will pay reverence to justice, and criminal men will fear it.

And all these Consistory judges should, with scientific knowledge according to the degrees of each, go and sit in the Consistory, where they remain like priests ministering worship, according to the *Digesto, De iustitia et iure*, Law 1, “The Law is the art of good and fair, by reason of which they call us priests”. They should they really be great men, totally pure, content with their wages, terrible for offenders, meek and mild for devotees, to whom they render fatherly provisions, and have clean hands before God, the King and the Law, in Authentic *De mandatis Principum*, § Oportet igitur, and § Praecipue, Col. 3.

They should not justify the wicked or condemn the righteous; they shall be an abomination to God and the Prince, Proverbs 17, 15. In fact, woe to those who take bribes to let the guilty go free, and they punish the innocent, that is why the wrath of the Lord burns against his people, and why he raised his fist to crush them. The mountains tremble, and the corpses of his people litter the streets like garbage, Isaiah 5:23 and 25. Know, however, that those who wrongly judge will be judged with justice, Wisdom, 86. And, no matter how much he simulates justice, his righteousness will always be before the Lord as the cloth of the menstruating woman, and their iniquities, like the wind, swept away, Isaiah 64:6-7.

### ***Specifications of officials***

There should therefore be three palatines who are eminent, wise and God-fearing men, etc., who judge briefly on petitions and supplications, approving them with two in agreement, revoking them with three in agreement; who take on the Prince’s arduous and dubious business; and they, taking a seat on the Consistory and listening to the appeals of cause-crimes, define the rights along with the Ombudsmen. And [there will be] two expert Ombudsmen, and the Queen, who will hear criminal appeals, and take them once closed before the Consistory, and then determine them along with the others; however, they can decide for themselves the least harmful interlocutory judgment. They determine civil issues however, for themselves; but it may aggravate them in grievances that

exceed ten *aureos*. However, both must examine each of the appeals. And such is this entire session when necessary, and it is general in order to settle any dubious and difficult business. And the President ordinarily should be in this session. There is also another separate session, private, which the royal prosecutor attends, namely the judge who acts between the Prince and the people, and must be a man of science and subtle wit, with two judges equal to the palatines, with whom they should set up a relationship; the prosecuting attorney must always be present as well. This lawyer is also the promoter of justice, and sometimes sits in another session; and he [should be] of sharp wit, well aware of the law and enjoy the shining honors of the Ombudsmen. The royal prosecutor hears tax appeals and also new, arduous appeals. And so is this entire session as when necessary. But beyond these officers there is a court magistrate, a person who should be honored, jurisprudent, mighty in deeds, bold in words and diligent. He alone hears only new criminal and civil proceedings, and those of members of the Court and powerful people from the province where the Royal Court is located, and those of any municipalities or those over which he holds jurisdiction as well as orphans and widows. He hands down judgments alone on civil cases, but may aggravate them in those surpassing ten *áureos*. Regarding criminal cases, he hears them in the Consistory of the First Session. He still decides on the less harmful interlocutory along and corrects grievances in cities where the Royal Court rules; the palatines rule on other grievances. In addition, there is the Chancellor, who must review all sentences and letters; and present and discuss with judges dubious cases, until it is decided whether they should be sealed. He should also be a jurist, lover of justice and equity, and more honorable than others mentioned above; and he is the ordinary judge of all publications [and] external letters, and of writers and stamps, and recusals, and the Foreign Ministry. He must, however, determine in the Appeals Court, and take the bench with everyone, especially in arduous affairs; and both sessions are common to him. And above all of these is the sole president that should govern all offices, handing down orders and designating times and places. He can hear complaints against the officers, making corrections as needed, as well as deal with the interests and needs of everyone before the Prince. In short, he performs the functions of the Prince, except in cases already defined, as well as giving and taking official letters and granting licenses beyond twenty days, though he can grant those under 20 days. And it should be a prudent man, old or almost, intrepid, circumspect in every business, and of great condition and lineage.

### ***The clerks or scribes***

But, because judges are men, whose memory is weak, the scribes are useful and even necessary to them and to the parties; three among the palatines, three among the Ombudsmen, three among the magistrate; and an accountant and a general distributor. Along with the Ombudsman of

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the Queen there were two [scribes], created by her. All of them had to swear to faithfully start writing the deeds and the decrees of the proceedings, maintain the secrecy of inquiries and the yet unpublished intentions of the judges and charge small amounts of money. They must obey all the judges, and each one obeys mainly his judge. There is also a scribe who works with the Chancellor who more honored than others, and who usually has another in his stead. Item, there is another with the tax judge, and this gets salary of the King because of tax deeds; however, charges of private litigators' part of the price of the scriptures. Any of them should be present at publications and audiences, and take all closed proceedings to the House of Lords judges. However, a clerk can accept the deeds in court, and witness another, in witnessing he must simply write as if he were present, but should not get such faith of a third party. And all should be obedient and diligent to any of the judges and especially to his own; and faithful; and keep in his possession all issued deeds until the parties send for them; and keep from the parties and lawyers intents and inquiries not yet announced.

In fact, the style in Court is that both parties dispute twice about libel, and on any matter disputable, for example, about interrogations and public deeds, etc. and then finish up the proceedings, and once complete, it is immediately displayed, despite the lack of payment to the clerk; however, if a new reason emerges from the oath of the party and seems convincing, this prevents the denunciation of the case; and then it is again disputed by both parties and once completed, is presented again.

However, both parties will dispute only once on account of the costs and on account of the impediments of *res judicata* in the Chancery; however, on account of the principal thing it will be disputed twice. Also, if it happens that the proceedings already started concerning an official under suspicion or otherwise committed against another judge, the clerk will be the same; but if a commencing proceeding is committed, the commissioner himself will grant it to whomever he wants, as long as fraud is not involved and this proceeding is not by nature of his office, because then it must necessarily have the ordinary clerk. All the above, both the deputy judges, as well as scribes, if not sworn on the Holy Scriptures or if deemed suspicious, should withdraw from the proceedings, in presence and in words.

### ***Lawyers***

Having judges and clerks, lawyers are required to show the parties' rights, of which there shall be three along with the palatines, three with the magistrate, three with the ombudsmen and three with the tax judge. They should be men of science and good will, sworn to sponsor justly, and faithfully deal with proceedings and not advise against conscience. They can write in the



proceedings with their own hand, though after having submitting the writing, cannot add to, take away from it or quote without deception. They must pursue the cases of their clients until their completion, and may accompany them even at the expense of the dispute, the obstruction of *res judicata* and its annulment. However, if the case goes silent due to the omission of the litigants for 30 full days, the lawyer can claim that his client should be served; however, if the case ceased by fault of the judge, termination for a year is required to serve the party.

It is also usual to institute attorney prosecutors with the power to replace the minutes [in the case files], and then replace the others; and they must submit a proposal in the Appeal only orally regarding what they want from their clients, or the clients themselves will do so after the case is reported by the judge. And then finally, the parties and their lawyers having left, the case must be read by the rapporteur, who should lead the proceeding by carefully examining and quoting it; and then to decide on the case by majority vote with the accession of the President.

Lawyers must also take an oath to judges, respectfully address and obey them.

### ***The ministers***

Having judges, clerks and lawyers, ministers are required for executing the warrants. First, there must be a person who by law is called the *Hirenarcha* and an ordinary bailiff of the court, receiving a salary for himself and twelve companions, to arrest offenders and lead them to prison. They must obey all judges indistinctly; and on their own initiative can arrest all those found to be committing wrongdoings and then put them in jail; but in no way can they release those arrested. There is also another minor *hirenarcha*, also called the jail bailiff, who receives a salary for himself and four men, two of whom serve in criminal executions, and two who conduct the prisoners. It is mainly this bailiff who commits executions, which he should do through his collaborators, whom he chooses, if not so stated. There is also a doorman along with the palatines who calls and summons to the hearing, and inquires and executes civil deeds, and is the Court Porter. There is another one along with the magistrate, another with the Queen's Ombudsman, another with the Chancellor and another with the tax judge. They must obey their judges mainly. There is also a single court crier, who, when taking on his office, pays guarantors for the present and for the future. At his hand, liens are auctioned off, and it he who from the judgment, pays the prevailing party, through the sale or delivery of liens. But there is also another, sole porter at the Chancery, who is more honored than others, who seals the [documents] at the Chancellor's office that this former signs, and takes them in a bag to the accustomed place, where before the clerk and the treasurer he delivers them sealed [to the parties] requesting them. If, however, the opposing party places embargos, he shall take these written embargos, which were submitted to him, those which were dispatched, and shall open

them himself. If, however, there should remain some seals that the parties have not requested, they are kept in the ark set aside for such purpose for the lords that request them. And this porter also charges for any outstanding seal the thirtieth part of a gold coin for the Chancellor, who provides the linen and silk threads according to the requirement of thing. Also, he usually has in his possession wax, ink, paper and parchment, which must be purchased by the treasurer in the presence of the scribe. He must provide the parchment to write down anything that the Chancery should pay, and also paper for judges for their studies and ink to all judges and clerks. He is also entrusted with finding animals to transport the ark of the Chancery books, and other necessary things, except the seals that the Foreign Minister himself should prudently always hold safely with him in a safe and whose key is with him.

Four arks are also placed in the court, namely: the one already mentioned in the Chancery, in which sealed letters and sentences, are kept along with the book of the King, where those sealed [documents] are written, from which the Chancery is paid, and a tenth if the case is opened and closed in court or before the magistrates; and a tenth, so to say, and sometimes a fortieth, when restitution of ownership or possession is awarded by *Adipiscendae* decree, or *Quorum bonorum* or *Conditione Legis* or *Decreti*; it is different in *Vti possidetis*, because then only a tenth of expenditures is paid. This tenth or fortieth, is never restored even if the sentence is revoked in Appeal; and it is different in the funds that are paid for someone to be admitted to plead, as they are returned once all or most of any sentence has been revoked. These funds are received in less than six months, and the payment should proceed within a year. There are two keys for this ark, one held by the treasurer, and the other held by the clerk. This treasurer keeps the sentences in his power. The other ark is called the ark of penalties, and the money of the convicted is kept in it. For this ark there is a treasurer who has the key, and his Scribe. The scribe writes what is received in the ark, but does not usually have the key. There is another ark where certain funds of the King are deposited to appease the injured parties of the Court; and then once the accused are condemned and encumbered, the funds are restituted in double, triple, and so on, at the discretion of Court. One of the keys of this ark must be held by the magistrate's porter, and the other must be held by the scribe. There is another ark which holds the wanton inquiries of serious crimes, such as *lese majeste*, counterfeit currency and homicides; and this ark and its key are kept by the same scribe, who is also a scribe with the magistrate in addition to the other three. Also, there are two prisons in the Court. In them are the prisoners held by the magistrate of the Court, and who are detained for new cases; this prison is presided over by a jailer with two colleagues; he is free to imprison the prisoners with more or less force, and he is in possession of the irons and chains of the King; he receives a salary for himself and his colleagues. There is also another prison, where defendants stay while on appeal, as well as others that the ombudsmen dispatches; this prison is presided over by a jailer with a

colleague, and receives a salary for himself and his colleague and keeps irons and chains in his possession. However, the keys and other instruments to release prisoners should not remain overnight in the jail, but be stored elsewhere because inmates always escape for this reason.

For the Appeals Court or the Consistory of the Lord King, five things are taken and should be available at all times in all places, namely: the vestments of the ornaments, the inkwell with the case of quills, full mouthpiece, this book or a similar one, and a bell. The guardian or porter of the Court shall submit, retain, and take these things from one place to another for the King's expenses. From the beginning the Scribe of Harm should write in this book, designating the number, quantity and quality of things. Bail is not usually given here, seeing as how this porter must be an honest man, well seasoned, well resolute, and of good appearance; and above all he must be discreet, in order to discern when and what things should be taken to the Lords, and what people should or should not be allowed to enter.

### ***General Appeals to be judged***

The Lord King orders that the Law, or the expression of Bártolo, or his determination or the Law of the Kingdom be written in any sentence, by which such a sentence is given on the understanding that a record of certain rights taken from different places is brought together, which can be applied to the most common and most used cases, so that any judge may easily have authority. However, for each specialty each one must seek provisions of law for which all volumes are necessary.

### ***Claims of Trespassing***

If someone acts as prohibited by *Vnde vi* and this is proven, the thing, with the fruits that the former owner may receive, *Si de possessione* of title *Vnde vi* of the Code is restored by law. Also, if the plunderer that loses the right due to violence is borrowed against, it will be awarded to him by law in *Si quis in tantum* the same title of the Code. Also, if the plunderers have died, the heirs are bound by the things that are handed down to them, by law *Vi pulsus, §Et heredes*, same title of the Code. Also, if the inheritance remains vacant due to the death of the heir, he who takes is summoned by *condictio* [summons] of the law *Cum quaerebatur* of the same title code, like in *Vnde vi*.

### ***In the Petitionary***

If someone asks to keep in their possession and proves to possess *non vi, clam* or *precário* [without violence, without hiding or by way of doubt], he is awarded the protection that the Single law title *Vti possidetis* of the code provides for, and this on the land or in the things of the land; but if it comes to movable property, the *Vtrubi* interdict is invoked, and it is judged by the only law of Title *Vtrubi* of the Digest. If someone acts on claim and proves as to the domain, the claimed property is awarded to him in the harvest attained and expected, if the possessor acts in bad faith; however, if he acts in good faith, he shall only pay the remaining unconsumed harvest; but after the disputed deal he pays all under the *Certum* law of Title *De rei vindicatione* of the Code. Also, the good faith possessor obtains the necessary and useful expenses; but the bad faith possessor shall only receive what is necessary and useful if the thing can be extracted without damage to the property; otherwise he may not, as per the *Domum* law of Title *De rei vindicatione* of the Code. By the petition of inheritance from the beginning of the dispute, the law *Item veniunt*, § 11, of the title *De hereditatis petitione*, of the Digest; a male or female slave is requested, he will be awarded with the works and births, as per Law 1 of the same title [*De rei vindicatione*] of the Code.

### ***In inheritance***

If someone claims an inheritance, he will be awarded with the fruits, by hereditary right, all things possessed and held, as well as things delivered into deposit or commodatum, save the right of anyone against him by the law *Et non tantum* the Title *De hereditatis petitione* of the Digest. However, one can disinherit someone by causes set out in Authentic Vt. *Cum de appellatione cognoscitur* § *Causes*, Col. 8. Also, he who takes inventory and hides something must make double restitution, law *Scimus*, § *Licentia*, of the Title *De iure deliberandi* of the Code, even if it is hidden by a wife after her husband's death, as per law *De furtis* of the Code, with its rescission.

If someone acts by *locato* or *precário* [location or doubter], and the defendant defends the thing as his until the end of the suit and is convinced that he has the thing by way of lease or from being poor, he is ordered to pay double the interest with other things; otherwise, he is ordered to pay the single payment, as per the final law of Title *Locato* of the Code; landlord is obligated to see to the interests of the settler, as per law *Si fundus* of the same Title of the Digest. Also, everything promised under the *Pactum* law of Title *De pactis* of the Code is paid. He and the tenant in fee are mutually obliged to observe the covenants and conventions set forth in the lease, as per law 1 of Title *De iure emphyteutico* of the Code. If someone does not pay the pension for three full years in private matters, and one two-year period in sacred matters, he loses the lease; he may be evicted by the Lord, if he does not resist by violence [?], as per law 2 of the same Title of the Code and Bartolo, *ibi*.

If someone requests payment of a debt by showing a deed, and the defendant says he paid and the author denies this, he shall pay it twofold, if convinced. But if, after the denial and under oath, he confesses, he shall pay the debt without the double payment, covering costs from the beginning of the lawsuit. If someone denies a debt, and then uses its benefits, he is required to pay the entire debt; and if prosecutors do this without the order of the clients, they will be the ones required to do so; the same goes for the trustees and administrators in § *Si vero* [chapter 91], in the Authentic *De triente et semisse*, Col. 3. If someone is summoned on someone else's property, and he denies at all times that the thing belongs to him, that right is returned to the author in full, and the author may also accumulate other rights held by that person whose denial he has suffered, and in any case prevail over the defendant in § *Illud quoque* of the same Authentic.

When a matter is brought to the buyer, he should either call the author or his heir, and if he wins, he will be the desired; otherwise, the seller or one who delivers or his heir will be obliged to pay interests and improvements, law *Si controversia* of Title *De evictionibus* of the Code. The same goes for whoever delivers onerously, such as exchange, or gift, although he was not expressly warned against it, as per law *Non dubitatur* of the same Title of the Code; and he is bound only to the price, beware this, as per law *Cum successores* of the same Title of the Code. But if he does not denounce it, he shall not be bound by any action, as per law *Emptor* the same Title of the Code; however, the twofold payment is not due but by stipulation, as per law *Sed et si stipulatio* of the Title *Evictionibus* of the Digest, law *Hoc iure* of the same Title of the Digest, and law *Si per ipsum*.

Anyone who has the idea of killing and proceeding to do the deed, is put to death, as if he killed; but if he does not have the courage to kill, he shall be liable for injuries, although his punishment shall be lighter, as per law § 1 *Divus*, of Title [*Ad legem Corneliam*] *de sicariis* of the Digest, and Bértolo ibi. But if the aggressor injures or kills while defending himself, he is not obligated, as per law *Si quis percussorem* of the same Title [*Ad legem Corneliam*] *de sicariis* of the code. He is also not obligated if he kills or injures another under unforeseen circumstances without fraud, as per law 1 of Title *De sicariis* of the Code. The same is true of one who kills or injures a man found [in Adultery] with his wife, as per *Gracchus* law of Title [*Ad legem Iuliam*] *de adulteriis*, and who warns someone not to speak with his wife three times, and kills or injures him, the Authentic *Si quis* of the title *De adulteriis* of the code. The same goes for he who kills the resisting force from family authority, Bártolo of law *Si servus* of the Title *De his qui ad ecclesiam [confungiunt]* of the code. Also, one who kills a thief during the night or day, if the thief defends himself with a weapon, as per the law *Itaque* of Title *Ad legem Aquiliam* of the Digest. He who performs an abortion, of the fetus lives, is charged with murder, as per law *Si servus, § Si mulier*, of the same title of the Digest. The adulterer and the adulteress shall be punishable by the Death Penalty, Institutes, *De publicis iudiciis*, § *Item lex Iulia adulteriis*; but the adulterer after a five year

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period [of the practice of Adultery] is not punished, as per the *Adulter* law of Title *De adulteriis* of the Code. The same is said of the raptor of a virgin or another woman by force, Code, *De raptu virginum*, sole law, but this is not extinguished after the five-year period. Incest is punished by the same penalty, law *Si adulter*, § *Incestum* of Title *De adulteriis* of the Digest. Also, the evil woman who lives as a prostitute does not commit Adultery, as per law *Quae adulterium* of Title *De adulteriis* of the Code, also, sodomy is punishable by law *Cum come nubis* of Title *De adulteriis* of the Code, with unusual punishment, as stated therein. Also, the prisoner who escapes on his way to the gallows or sentence is punishable by law *Iulia Maiestatis* even unto death, as per law *Cuiusque* of Title *ad Legem Iuliam Maiestatis* of the Digest; but the guard is punished with the same penalty, as per law *Ad commentariensem* of the title *De custodia et exhibitione* of the Code.

He who counterfeits is burnt by fire after the goods are confiscated as per law *Si quis nummum* of the title *De falsa moneta* of the Code. The same applies to he who purposely sets fire to the city, according to the law *Bártolo 1* Title *De officio praefecti vigilum* of the Digest, wherein the punishments for arsonists are set forth. Likewise, the forger shall be punished with the Death Penalty after his property is confiscated, as per Law 1 of the title *De Falsis* of the Digest, and *Bártolo ibi*. The same applies to others; however, those who use false measures are punished arbitrarily as per Law *In dardanarios* Title *Poenis* of the Digest. Also, sorcerers and astrologers are punished with the Death Penalty, as per law *Nemo* [tit. *De maleficis et mathematicis*] of the code. Also, he who kills his parents is sewn into a leather bag along with a dog, a rooster, a viper and a monkey, sole law of [tit. *De his qui parentes*] of the Code, and cast into the sea or the river.

The crime of swindling, which is performed by con artists, can be punished arbitrarily, as per law *Ignorantia* of Title *De crimine stellionatus* of the Digest.

Theft that is [not discovered in flagrante] is paid in double, and quadruple manifest, *Institutas*, *De obligationibus quae ex delicto*, § *Poena*. Insults are judged according to the quality and quantity of people, as per law *Iniuriarum* and the end of law Title *De iniuriis* of the Digest; and slander caused by the insult is punished arbitrarily, as per law *Iniuriarum* of the same Title of the Digest. An insulter who so requests may be forgiven, but then if [the author] does not hear him, as per law *Non solum* of the same Title of the Digest, in which case the author may proceed to take action against the slander. A father who is reviled by insults to his son and wife, and can forgive, as per law *Sed si unisu*, § *Ait Praetor*, of the same Title of the Digest; this is different with the insult contemplated in the Cornélia law, *Lex Cornelia*, § *Illud*. Also, he who lays his hands on an official, shall be punished with the Death Penalty, as per the law *Omne delictum* of Title *De re military* of the Digest.

There are many crimes on which we confer an extraordinary penalty; and in such cases it is lawful to arbitrate a greater or lighter penalty, as long as we do not exceed that which is reasonable, as per the *Hodie* law of the title *De peonis* of the Digest. However, the punishment is exasperated if

there is the need of an example, as per law *Aut facta*, § *final*, of the title *De poenis* of the Digest; and the slave who is free is punished more severely and their reputation damages their integral reputation as per *Capitalium* law, §*final*, of the title *De poenis* of the Digest. Also, older crimes are punished less severely than more recent ones, as per law *Si diutino* of the title *De poenis* of the Digest. Also, as a rule, crimes expire after twenty years as per law *Querela* of title [*Ad legem Corneliam*] of the code *de falsis*. In general, the defendant is acquitted, unless found guilty as per the law *Qui accusare* of the Title *De edendo* of the Code, and rather, by the final of title *De rei vindication* of the Code, Also. Also, he who proves a special case or his defense, as per law *Negantes* of Title *De obligationibus et actionibus* of the Code, and rather by law *Si quidem* of Title *De exceptionibus* of the Code.

Moreover, sometimes crimes are not clearly proven but the evidence of the crime is proven, and so a sentence cannot be passed, as per law *Sciant cuncti* of Title *De probationibus* of the Code. But if out of dignity or nobility the defendant is exempt from questioning, he is convicted in money, for less than it would cost, as set forth in the law *Sciant*, Baldo; therefore, in the face of evidence it shall proceed to interrogation; and there must be at least two [pieces of evidence], and all of them proved by two witnesses above any exception; however, all these things are arbitrary, and in these certain standard [right] cannot be provide for, Bártolo at the end of the law *De quaestionibus* of the Digest.

Also, it shall proceed to an examination without evidence, namely, partial evidence, for example, when there is an eyewitness beyond any exception or the defendant's confession out of court, as foreseen by the end of the Bártolo law. One should also begin with the weaker as per the *Vnius* law of the same Title. If the respondent denies crimes that are evident, to the point that the body and soul withstand, the *Repeti* law is insisted upon, and further developments by Bártolo of the *Vnius* law of the same Title of the Digest. The same goes for he who once confessed and then retracted his confession in the period referred to above. But though suffering always denies it, he is acquitted as innocent; otherwise, he is condemned as convicted, as per *Quaestionis* law of the same Title of the Digest. It must be noted that this does not refer to interrogation in all crimes, but [only] serious ones, and these should not start with interrogations, law 1, § 1, of the same Title of the Digest, but only after there is no way to learn more about the truth; and the torturer should not interrogate specifically, but generally, namely, *Quem fez*; otherwise, but it seems he who has the trade of who suggests than who investigates, *Qui quaestionem*.

There are other crimes that are committed against animals. For example, if someone kills livestock and other animals by injury, he is obligated to pay twofold, when he denies it, as per law *De pecoribus* of Title *Ad Legem Aquiliam* of the Code, together with Law 2 of the same title of the Digest; but if he confesses, the dead animal is assessed, and when it is discovered that it is not dead, calculating one year back, as per law *Ait lex* of the same title of the Digest. The same goes with

*The Regulation of the Royal Higher Court of Appeals. The first regulatory instrument of justice in Portugal* slaves, as foreseen in law 2. Likewise, all other damage caused by injury, either in animals or inanimate objects, is estimated by the greatest value that it could have over the past 30 days with interest, and is judged as a whole, according to § *Capite* of the same title.

There is, however, damage without injury and without guile to others, and takes place when the animal, lacking in reason, against his nature, by itself and without fault of another man, kicks, gores, bites or drags someone hurting, tearing, fracturing him and the like; and in detriment to another for the injury, or evaluates the damage; and unite for the works and expenses, but not the deformity, law 1 Title *Si quadrupes pauperiem* of the Digest, along with the law *Ex hac lege* applies. However, if the damage is caused by an animal provoked by man, this action will be moved to injury-related proceedings, as per law 1, § *Sed et si canis*, of the same title of the Digest. Also, if by another's fault, in the same law, § *Quod si propter*.

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## Notes

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<sup>1</sup> The Book of Wisdom has only 19 chapters. The idea set forth here seems to correspond to chapter 6 of the book – Translator's note.

<sup>2</sup> i.e., offenses in actions or words (see Law 1 of title *De iniuriis* of the Digest) – Translator's note.

<sup>3</sup> i.e., offenses due to beating, injury or home invasion – Translator's note.

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2003), in addition to the studies: *D. João II. Um percurso Humano e Político nas Origens da Modernidade em Portugal* (Lisbon, Editorial Estampa, 1990, 2ª ed. 2005); *A Guerra Luso-Castelhana no Século XV* (Lisbon, 2006); *A corte dos reis de Portugal. D. João II* (in press).

Received on 01/06/2015

Approved on 02/27/2015