

Alan Watson Foundation

UNIVERSITY OF BELGRADE
SCHOOL OF LAW

CLINICAL LEGAL HISTORY: ON THE ESTATE OF MENECLIS

Prosecutor's speech and all the testimonies
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In roles of witnesses and synegors
at trial simulation in Sarajevo on May 3, 2005:
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Simulation of Ancient Athenian Court upon Isaeus's Second Speech

The trial took place in Sarajevo on May 3, 2005 as a part of the
 “Imperium und Provinzen” International Seminar.

Court magistrate, *archon* speaks:

Holy *Heliaiea*, fellow citizens of Athens, at present we are all here to establish well-being and equity. As we can all see, gentlemen, the sun is shining, and the weather is serene. Almighty and magnificent gods are observing us. Therefore, today we shall surely see where truth and justice are.

Now, I shall introduce you with the most important aspects of this dispute. Namely, Menecles had married Europa, the daughter of his good friend Eponymus, as his second wife. Unfortunately, they could not have any children and as a result, he separated from her on friendly conditions. Menecles, having no children, did not want his *oikos* to be *eremos*, and for that reason, he decided to adopt Petrikos, the brother of his second spouse. Subsequent to his passing away, 23 years after the adoption, Frontis, Menecles's brother, has challenged the legality of adoption asserting it has been made "under influence of a woman", to be precise - Europa, and argued that he had hereditary rights upon the estate of Menecles. In a *diamartyria*, Philonides, Petrikos's father-in-law supported him as a witness, and consequently the estate was not subject of adjudication, because there was a rightful heir to inherit it, instead of collateral heir.

In a moment, Frontis (the prosecutor) will pass me his *dikepseu-dornartyria* and in this dispute, he is going to contest Philonides (the defendant) for perjury.

Court magistrate, *archon* reads the prosecution:

I, Frontis, son of Polikrates, brother of Menecles, prosecute Philonides with *dike pseudomartyria*, for his terrible crime of perjury. This act took place right here, in this court, during lawsuit for my late brother's heredity. Thanks to Philonides and his perjury, I lost this case against certain Petrikos, and he was given something that doesn't belong to him. This honorable court was deceived by testimony of this pitiful man, Philonides, and the whole truth was distorted. Now, I want to correct this, get what is really mine and punish the responsible for perjury. Only then, truth and gods will be satisfied.

Court magistrate, *archon* speaks:

So, we have heard the prosecution, now let's see what the prosecutor has to say!

Part One – The Prosecutor –

Frontis, the prosecutor speaks:

Almighty gods, holy *Heliaiea*, my fellow Athens citizens, I have come here today to correct the injustice. I did not come here to tell stories that I have learned by heart, because my story comes directly from my heart. I did not have any logographs to

write truth for me as my opponent had, because truth is by my side, and I need no help to prove it to you, honorable citizens. I am a simple L and during this process, I will keep my words and arguments as simple as they can be, because that is the way justice always is.

In the same court some time ago, we had a trial that I lost. It was a trial about legacy of my deceased brother Menecles. My brother had no children, which means that I am his only legal heir, but 23 years before he died, he made one terrible mistake, because of which, I am sure, he suffered for the rest of his life. He made an illegal adoption contract that put this man, Petrikos, in the place of Menecles's son, and his only successor. This act was illegal because of the fact that our law strictly said that adoption was valid only if it was made free willingly, with clear conscience and without any influence of a woman. The third requirement was here broken. Menecles did it because his second wife, Europa, made him to. But, when it all looked absolutely clear in the court, appeared this dreadful man Philonides who made horrible crime of perjury and deceived us all. Now, I want nothing more than I wrote in my prosecution: to undo disastrous consequences of this great injustice, punish the defendant for his horrible crime of perjury and get what really belongs to me.

In order to prove my claims, illegality of that adoption in the first place, I call noble Athens citizen Autolykos to testify. He will show you how Menecles felt about Europa. Autolykos, you may approach the witness stand ...

Autolykos, the witness speaks:

My name is Autolykos, and I am brother of Menecles's first wife, Electra. I have been in their house many, many times. There I witnessed a couple of strange scenes and heard a lot about Menecles from my late sister. I am afraid that I cannot help you a lot about Europa, because I saw that woman only couple of times in my life. You see, when my sister died, I never went to Menecles's house anymore... His disrespect for my sister in her last, dying months offended me too...

Frontis, the prosecutor speaks:

Do not worry about Europa, my friend. I called you here to tell us something about marriage of Menecles and your sister, Electra.

Autolykos, the witness speaks:

Well, Electra and Menecles started their marriage well and first two years they had no serious problems. Indeed, they could not have had children, but they were not sure that it was definite yet. Then Menecles met the daughter of Eponymus, beautiful Europa, and he obviously fell in love with her. Two more years Electra lived with Menecles, but it started to be unbearable. Then Electra got ill. Menecles changed a lot since he met Eponymous's beautiful daughter. It seems he did not care much about Electra's illness, but cared a lot for Europa. She obviously had some sort of magic influence over him, like one of those women you can never resist, only far more expressed. It was as if she controlled him... That is what my sister told me, that is what I saw. Your brother treated my sister poorly, because he was madly in love with another woman... He admitted her once that he loved another woman - it went that far. That bloody Europa...

Frontis, the prosecutor speaks:

Excuse me; let me see if I got this straight... Menecles was obsessed with Europa while Electra was still alive? He was so seduced, that even Electra, his own wife at that time, noticed it?

Autolykos, the witness speaks:

Yes, that is true.

Frontis, the prosecutor speaks:

No more questions. Thank you very much, dear Autolykos. You may go back to your seat.

Now you see, my fellow Athenians. We are not talking here about some little effect that Europa had on my late brother, we are talking about enormous influence, pure obsession. I loved my brother, and respected him, but it was not a secret that he was not a model citizen of our society. He was weak- could not oppose to a woman! In their relation she was the master and he was the woman. She was a puppeteer, while he was a puppet! Brothers, I know that many of you do not like these qualities in man, neither do I, but no matter what we think and how we like or dislike that sort of behavior, we mustn't close our eyes in front of this problem and pretend it doesn't exist! Personally, I am idealist, like most of you here, but now we have to face the painful truth as it is! Once when you see this bitter truth clearly, you will not have any doubts, about irregularity of this so-called adoption. Law of Solon was broken in its third requirement - "... not under influence of a woman".

Now, let us see why all this mess was necessary. Who had the motive to create the intrigue that insults every decent Athenian? The answers are simple, but we are not talking about one person here! There was a sort of conspiracy in the family of Eponymus, conspiracy including three persons, chain of three links, each one having its own motives. First of the shameful three is certainly Petrikos, my late brother's so-called adopted son, the man for whom the defendant committed perjury. His motive is without any doubt - if you let them get away with this, my honorable brothers, he gets the whole Menecles's estate! Therefore, I will not be talking about this pitiless man who would march across the dead for a drachma. Second link in the chain of deceit is the defendant, Philonides. This old man has a daughter that is married for Petrikos. His love for his daughter is really touching, but he should have been told that the law is the limit for everything. There is no excuse for breaking the law and if we start to make exceptions the roots of our society will start to rot. For the sake of his daughter, Philonides committed horrible crime of perjury and showed disrespect for this court. By doing that, he deceived you all, my friends, and his son in law got everything. The reason for that action is the fact that his daughter could enjoy the fruits of my late brother's estate. The third link is the one that made all of this possible, Europa. She did not have any use of this all for herself, that is true, but her favorite baby brother, Petrikos, would have a lot of interest. That was enough for her, because she had very close relation with her youngest brother since they were children. I would call the eldest son of Eponymus, Glaukos, but that would be impossible because he is currently fighting for our precious polis in northern lands.

So, without any further moderation, now when you've seen the pattern of this shameful conspiracy, I proceed with my next witness, slave Medon. Medon works in

the gardens right next to Menecles's house, which gave him an opportunity to witness many very interesting and relevant events for this case. The testimony was taken considering all the procedure requirements for this situation, which includes torture. After treatment that he got, you can be sure that every single word in his testimony was absolutely true. Now, I ask the magistrate to read the testimony...

Court magistrate, *archon reads testimony of slave Medon*:

...okay, okay... I will tell you everything, just stop beating me... okay... please stop beating me... I will tell you all that I saw... Huh... Thank you...

I am working in the garden of my great master Philipides, as you already know. Right next to that garden is the house of the master Menecles... okay, I am speaking, can you stop beating me...? So when I am out in the garden I hear and I see things, many different interesting things, I remember Menecles's second wife, this muck, tricky woman- Europa. Oh, how beautiful Europa was twenty- twenty-five years ago! Aphrodite herself was surely jealous! Beautiful, but so vicious! She was telling Menecles so many bad things about his brother. Menecles resisted, but never had enough strength to oppose this menace-woman radically. I saw him a couple of times in agony because of it. He obviously loved her so much that he did things against his will in order not to oppose his precious wife. I saw and heard their quarrels innumerable times. When they discovered that they could not have children, she was repeating instantly that he should do everything to stop his brother Frontis from taking the estate. After divorce, she kept coming with a few slaves sometimes even two or three times a week! Many times Europa saw me working in the garden while they quarreled. A couple of times she gave me money to keep quiet about this. She also threatened me that she would kill me if I said something... And now I did... Help me! You must help me! They are going to kill me! Save me...

Frontis, *the prosecutor speaks*:

My fellow citizens, you've heard the man's words! I have to remind you that Medon's testimony, by our laws, should be taken like a testimony of any other man, despite his position of being a slave. Condition for this is that the testimony should be taken under torture and that condition was fulfilled.

Until now I am sure all of you already have the picture of this case, but still, I want to bust a myth of Petrikos being "nice, devoted Menecles's son", because I am convinced that's the phrase my opponent will use a lot in his speech. When you hear my last witness, Eryx, you won't have any doubt that both defendant and Petrikos are nothing more than bunch of liars and hypocrites. As you all know, every criminal sooner or later makes a mistake. There is no such thing as a perfect crime! Thanks to heavens and all present justice, we have a witness of defendant's and Petrikos's mistake and negligence.

I call my last witness, respected citizen of Athens, Eryx, to approach!

Is it true that you came to me a couple of days ago very upset?

Eryx, *the witness*:

Yes, that is true.

Frontis, the prosecutor speaks:

What was the reason for your visit? Say it to the court loud and clear!

Eryx, the witness:

Well, fellow citizens, prosecutor Frontis and I are not close friends, but we do know each other. One day, on our city square, I accidentally eye witnessed something that I found bizarre at that time. Now, it seems not just bizarre, but also very relevant for discovering the truth in this case. I felt it was my civilian duty to report this incident to Frontis, because, as I said, it referred to his case.

Frontis, the prosecutor speaks:

Now explain us please, my dear honorable Eryx, what did you see and hear that day on one of our city squares.

Eryx, the witness:

Certainly, this is how it happened: Everything took place on an ordinary, serene and sunny day when I went for a walk. Up until then, I did not know that Menecles died the day before, I have just decided to go back home and then unexpectedly met Philonides and Petrikos. They were laughing loud and seemed to be very cheerful, so I decided to greet them. We shook hands, and then I asked Petrikos how he was doing. Then followed the most surprising answer I could ever imagine. I quote his words: "The stupid old fool has finally died!" Back then, I did not know who that stupid old fool was, but later I found out - Menecles had been on his mind. By observing Petrikos's reaction after saying these dreadful words, I figured out that he did not intend to say that in front of me. This appalling thought came out from his mouth accidentally, and I believe that it is a cruel rage, stored in the heart of Petrikos for decades.

Frontis, the prosecutor speaks:

And what about Philonides? What did he do?

Eryx, the witness:

That was also very weird; maybe even more than Petrikos's words. Philonides laughed; he laughed very loud, almost hysterically. When Petrikos said those dreadful words, Philonides looked at him right away, his face became serious and he seemed a little angry for a couple of seconds, but then he started to laugh carelessly again, maybe even louder. That was the reason why I came to you few days ago. I knew this injustice had to be rectified...

Frontis, the prosecutor speaks:

... Thank you very much, my friend. I think the jury has the point. Now you may go back to your seat. Thank you once again...

"Stupid old fool has finally died". I think there is no need for any comment here. I am very sad that this injustice had to happen to me... All my life I have been trying so hard to do the best for our society. All my life I have been...

Emon, the synegor, interrupts from the audience:

... Frontis, you are a model citizen and everybody here knows that. You are a true example of honest, hard working Athenian. I am Emon, a shipbuilder and most of you

worked with me many times. In spite of the fact that wasn't got much money, Frontis is one of our citizens who still gave most of the equipment to our ships. Doubting about his achievements in our city is rude and pointless. One time, when my neighbor was in financial trouble, Frontis gave him a loan with no interest. Many times he helped my family and me in different ways, and never asked for anything in return. He is often seen in our assemblies and courts as a juryman. He cares for tradition and honesty. I can't imagine him lying or doing anything illegal or immoral. We should follow his example!

Frontis, the prosecutor, speaks:

Thank you very much, my dear friend. It is always a great pleasure to hear something like this... Fellow Athenians, brothers, I really think there is nothing more to be told, except maybe a couple of words about the smooth-faced personality of the defendant. Many of you know him well, because all of us can see him at any time of the day sitting on one of our city squares playing his harp, quarreling and talking gossips...

A man from the audience interrupts:

Frontis, please! Even Aristotle, one of the most beloved of all Greek philosophers, says in his book "Esthetic" that string instruments should be played by noble people! He only disapproves the instruments played by blowing air, such as flute, but string instruments! ... Therefore, my fellow citizens, that thing about this man playing a harp cannot and must not be judged by the prosecutor for that...

Frontis, the prosecutor, speaks:

Yes, my friend, you have noticed it well! Aristotle did write all the best about noble string instruments, but that is not the point here. Philonides, the defendant, does only that and nothing else for a whole day! Besides that he only talks gossips and, I underline that, brothers, he never participates in our city business and assemblies. He has never done anything significant for our society, on the contrary, he is sabotaging the roots of it by breaking the law and challenges our patience again by denying his obvious guilt in this trial. Thank you very much! This is all that I had to say in this first part of the today's trial. Now it is time for the defendant to speak. I am very curious to hear what sort of lies the defendant has prepared to try to deceive you, my brothers. Thank you once again!

Court magistrate, archon speaks:

Now I call the defendant to speak!

– The Defendant –

Philonides, the defendant speaks:

Fellow citizens, hear my words and you will hear the truth. Frontis here claims he had come to rectify what is wrong. The rest of us have come here because Frontis's idea of rectifying injustice is to insult an elderly citizen by preferring charges of nothing less than bearing false witness. The man Frontis had neatly outlined what he views as facts of the case. What he had failed to stress is the fact that this case is actually an attempt by Frontis to undo one of the fundamental acts of will made by his dead brother and acquire his estate. He plans to do it by declaring his brother legally insane,

incriminating me by accusing me of bearing false witness, and, shockingly, incriminating this very court, compelling you to vote in his lost case once again, for he had already failed to obtain Menecles's estate once. On that sad occasion, Frontis had attempted to deprive Menecles's legitimate heir of his legal right to inherit. This man is my first witness and I implore you to listen with great care to what he has to say, for this is his case as much as it is my own. Since he is the legitimate son and heir of late Menecles.

Petrikos *speaks:*

Citizens of Athens! If there ever was an adoption that was in full accordance with the laws and customs, it was my own, and no one could ever say that Menecles adopted me in a moment of insanity or under the influence of a woman. Since my uncle, here present...

Frontis, *the prosecutor, interrupts:*

I am not your uncle because you were never legally adopted!

Petrikos *speaks:*

Do not interrupt me! Frontis, here present, seeks to deprive his dead brother of descendants, of children, even adopted, who would resume the worship of his ancestors and who would take care of his grave, I am compelled, even though I do not want it, to represent my adoptive father, and defend his last will.

I intend to help Philonides assert his innocence by reassuring you that my adoption was appropriate and legal. There can be no question of adjudicating the estate of Menecles, my late adoptive father, to anyone else, since he had a son and legal heir - myself.

My blood father, Eponymus, was a close friend of late Menecles. When Menecles lost his first wife, he buried her, and married my sister. We gave her gladly to Menecles; and certainly not without a dowry that corresponded with our modest abilities. The value of the dowry was the same as what we gave to her older sister's husband. However, the gods decided not to favor Menecles and my sister with that which they had wanted most of all - children of their own. Menecles, then, being unselfish in general and generous in regard with his beloved wife, my sister; and not wanting her to remain childless, offered to marry her to someone else. Still, Menecles felt he was growing old, and he needed someone to take care of him in his days of retirement. Seeing that my opponent only had one son, he wished not to deprive him of his offspring, as Frontis now wishes to do to Menecles, so he decided to adopt me, the son of his close friend. For twenty -three years the family of my opponent objected the adoption not once, for they knew that the people would always believe honest Menecles. Now that he is dead, however, Frontis had decided to claim that Menecles was insane, or under the influence of a woman, who was not his wife and did not live with him at the time, since several years had passed from the moment of my sister's remarriage and my adoption. Thank you for listening to what I had to say. I hope you will be righteous and true, as you were the last time someone decided to oppose my legitimate right as heir, and I trust you to acquit honest old Philonides, and to condemn my opponent.

Philonides, the defendant speaks:

We have heard Petrikos, son of Menecles.

Frontis, the prosecutor, interrupts: He is not his son...

Court magistrate, archon speaks:

If you do not stop interrupting, I will have to impose you a fine!

Philonides, the defendant speaks:

I thank the honorable magistrate!

Frontis, the prosecutor, interrupts:

This is injustice!

Court magistrate, archon speaks:

Fine for the prosecutor: 10 drachmas!

Philonides, the defendant speaks:

I thank again! So, 23 years did it take for Frontis to object? 23 long years, 23 years to perform an act that takes less than an hour. The adoption itself was perfectly legal which can be concluded from the law of Solon, our lawgiver of old. I shall now ask the magistrate to read it out loud for all to hear.

Court magistrate, archon reads the law of Solon:

"A free man of free conscience and will, and not under the influence of a woman, can adopt any man or woman he wants. The adopted person will be treated as his son or daughter and will after the death of the adopter become the owner of all his *oikos* and continue his family cult."

Philonides, the defendant speaks:

That Menecles was neither near to insane nor under the influence of a woman, but in fact full conscious and in his right mind when he adopted Petrikos can be easily concluded if you consider the following facts. First of all, his ex wife had remarried long before the adoption took place. Europa had not lived with him or even near him at the time when he made the decision to adopt, as well as whom to adopt. Secondly, Menecles was certainly aware of the fact that he had no kinsman with more than one son. I would now ask my prosecutor one simple question: whom could the late Menecles have adopted? The well-known fact that Europa has two sons of her own now speaks for itself. If Menecles had been under her magic spell, would she not have enchanted him to adopt one of her children? The fear of loneliness and childlessness in his old days as well as the prediction of *oikos eremos* were Menecles's motives. You must have noticed citizens than more than one person is standing trial now. Me for telling the words of truth Petrikos, for taking care of Menecles in his days of retirement and the late Menecles himself for wanting a son and for fearing that no one would inhabit his *oikos*. And what of his *oikos*? How valuable is it? As my second witness I call Onasis, a close friend of the deceased Menecles.

Onasis, the witness speaks:

As a close friend of Menecles, I was very well informed about the financial problems that my late friend had had in his old days. Menecles owed a large sum of money,

because he was a tenant of a certain lot of land. When the debt was due, Menecles unfortunately had no money. Being an honest man, he decided to sell some parts of the estate in order to pay his debt. But, his greedy brother demanded some parts of the land for himself in order to prevent the sale of the whole estate. The family quarrel that followed affected my friend's heart a lot. After the quarrel, Menecles had to give to his own brother the amount of money equal to the value of the part of the land he had demanded. Eventually, Menecles was led to poverty by his own flesh and blood; his own brother, he, who is now trying to take over the rest of the *oikos* of Menecles, in spite of Petrikos's birthright.

Philonides, the defendant speaks:

Having been driven to poverty by his next of kin, Menecles's estate included only a small house and a pitiful lot of land, and Frontis wants those two things. The price he is willing to pay is staggering: the honor of an elderly citizen, a man's right as heir, and a dead brother's good name. Is that a price, citizens, any one of you would pay? Very unlikely, for this is Athens, and for Athenians, honor has no price in money. But let us return to the injustice Frontis would inflict upon Petrikos. In support of my claims, I would now call my last witness: my prosecutor himself! Not in word, but in deed. After the described tragic family quarrel, members of the *oikos* of Frontis and the *oikos* of Menecles swore oaths of reconciliation with each other. Instead of old Menecles, Petrikos swore an oath to Frontis who accepted it as if it came from the mouth of Menecles. By that solemn act citizens did Frontis clearly and irrevocably admit Petrikos's right as heir. In that moment he showed that he as well as all of you treated Petrikos as the son of Menecles, which, now, he is hopelessly trying to deny.

Part Two
Closing Arguments
– **The prosecutor** –

Frontis, the prosecutor, speaks:

Bravo, bravo! To be honest, I am amazed! Although, the defendant had a logograph, that wrote this rubbish speech for him, it is still more than I expected! We've heard a lot of sweet-sounding words, very sophisticated rhetoric, and dozen of moral lessons. But my opponent seems to be forgetting something: THIS IS COURT! Here we are discussing legal arguments, not some moral norms and grandmothers' tales. In a lack of any legal, valid arguments, like some parrot, defendant iterated: "23 years, 23 years..." What about those so fabulous 23 years? All of us here know that it is never late to report a crime like this one. Why have I been waiting for 23 years? The answer is very simple: unlike the defendant, I respected Menecles. All the time he was quite aware that he had done the terrible thing, but, like I said, he was too weak to oppose that menace-woman Europa. On the other hand, I am not a hypocrite like my opponent to claim that I do not care for material values of my late brother's legacy. I do care for it and 23 years ago there was no need for any kind of action because my brother was still alive. Also, by waiting all those years I avoided to worry my brother with something that he himself considered to be wrong.

Also, the defendant seems to be forgetting what is this trial about. It is about his perjury, but he gave us nothing to deny it. Instead of that, he was perorating with

some story how I tried to rob my own brother, seeking my part of the estate that he sold. This is completely irrelevant for the case, but for the sake of justice, I will tell you couple of words about it. The reason for my action was my desperate effort to stop Menecles and his beloved master Europa in squandering our father's legacy. I am a man, who respects traditional values, but squander of my dead father's hardly earned estate is definitely not one of it. Defendant forgot to say that later Manacles thanked me for it! You have heard Petrikos's testimony. How can anyone trust this man as a witness when he certainly cannot be objective? He is the man trying to get what does not belong to him! About that irrational "fact" that Menecles had to adopt someone, it simply is not true. As I said, he was not a man of tradition, so he never cared about his heir. He was clearly manipulated by a woman and the law strictly did not allow it when the adoption was in question. Lawmakers have strictly said: "... not under influence of a woman". They have not said "under influence of father, friend or war buddy", they said "woman". Why is that? Because it happens, my brothers, it happens no matter how we dislike it. If we let them get away with this horrible injustice, my friends, we are destroying the roots of our society, and that is law! Thank you! Do the right thing for the sake of our sons!

– The defendant –

Philonides, *the defendant speaks*:

Fellow citizens, honorable court, this man has no shame! He has no respect for laws, for gods, for his brother's grave! What is worse, such a man dares challenge the previous decision of this respected court. By that he is trying to deprive the son of Menecles of his legal heirloom and what is even more horrifying of his father's name. The last drop is his effort to make his late brother posthumously insane and sally good name for all eternity. My innocence and the truth of my words are without doubt. Had Frontis not accepted Petrikos as the son of Menecles? It is all in the archives. And he dares not deny it. He is a coward as well as a liar. Did it not take him 23 years and for Menecles to die to oppose the adoption?

What is his proposal? No other thing but for you to vote against the law of our father or should I say the righteous decision of this venerated court. Citizens do not let him deceive you with his perverse perceptions of truth. The gods are watching. Be righteous in your judgment!!!