

A. USATICI BARCHINONE (USATGES DE BARCELONA)

ed. R. D'Abadal i Vinyals and Ferràn Valls Taberner, *Usatges de Barcelona*,
Textes de Dret Català, 1 (Barcelona: Caritat, 1913)¹ [CD trans.]²

[In marked contrast to most of the Spanish *fueros* and French *coutumes*, this work exists in both Catalan and Latin versions, of which the Latin seems to be the older. The earliest ms. dates from the late 13th century. In the early 15th century an "official" version of the *Usatici* was adopted. The *Usatici* purports to have been promulgated by the count of Barcelona, Raymond Berenger I and his wife Almodis, and a 12th century chronicle gives the date as 1068. Most scholars today believe that the version we have dates from the middle of the 12th century (with some later additions), though it may well include older elements. The order of the original manuscripts is somewhat chaotic, and we make no attempt here to make sense of it. There are 174 numbered paragraphs in the official version with no rubrics. Some of the paragraphs are quite short, as can be seen below; the longest (an elaborate form of oath for a Jew to take if he is to testify against a Christian) runs about four printed pages. By and large, the lower-numbered paragraphs seem to be earlier. We give the first few articles, and all of those relevant to marriage, witnesses and wild animals. CD trans. from the Latin, following C. Poumarède, *Les Usages de Barcelone* (Thesis, Toulouse, 1920) [abbreviated below as *P.*] and R. d'Abadal i Vinyals and F. Valls Taberner, above. Where parallel passages are known, they are given in brackets following the paragraph; where there is a strong verbal similarity, the parallel passage is marked with a (*).]

1 [1]. Before the usages were issued, so that all misdeeds might always be emended if they could not be ignored, the judges used to judge by oath and by battle or by cold or hot water, saying thus: "I (name) swear to you (name) by Jesus God and these four holy gospels that the evil that I have done to you I have done by my right and your wrong (*a mon dret et ton tort*); and I would stand to battle about this or to one of the above-said judgments, of cold or hot water."

2. Homicide and adultery which cannot be neglected were adjudged according to the laws and customs and emended or vindicated.

3 [2]. When the lord Raymond Berenguer the old, count and marquis of Barcelona and subjugator of Spain, had the honor, he saw and recognized that the Gothic laws could not be observed in all causes or businesses of this country. He also saw many quarrels and pleas which these laws did not specifically treat or adjudge. With the advice and counsel of his upright men, along with his most prudent and most wise wife, Almodis, he constituted and published usages by which all quarrels and evils inserted in them were controlled,³ pleaded, judged, and also emended and vindicated. The count did this by authority of the *Fuero Juzgo* which says: "Clearly, the prince shall have license to add to the laws if just cause of novelty requires it." "And let it be treated by the discretion of royal power how the new case shall be inserted into the laws."⁴ "Only the royal power shall alone be free in all things whatsoever penalty he commands be put in the pleas."⁵

And the usages that he issued begin thus:

4 [3]. These are the practices (*usualia*) of court usage that the lord Raymond the old, count of Barcelona, and his wife Almodis constituted to be held forever in their country, with the assent and acclaim of the magnates of the land, to wit: [Nineteen names follow, three viscounts and sixteen men described as "judges."]

¹ A more recent edition by J. Bastardas ["JB"], *Usatges de Barcelona: El Codi a mitjan segle XII* (Barcelona, 1984) does not differ greatly in the substance of the items quoted. JB, however, omits a number of items and relegates some items quoted below to appendices. He believes that he has reconstructed the original of the *Usatges*, which he dates to the mid-twelfth century. We give JB's numbering in square brackets below.

² The full translation of JB's text by D. Kagay ["DK"], *The Usatges of Barcelona: The Fundamental Law of Catalonia* (Philadelphia, 1994), should be used with caution.

³ "submitted to judgment." DK.

⁴ *Fuero juzgo* 2.1.13.

⁵ *Fuero juzgo* 2.5.8.

[4]. Whoever kills a viscount or wounds or dishonors him in any way shall make amends to him as for two *comdors*⁶ and a *comdor* like two vavassors.

5. Concerning a vavassor who had five knights, he shall emend for his death with 60 ounces of seared gold⁷ and for a wound with 30 ounces. If he has more knights, the composition shall grow according to the number of knights.

Whoever kills a knight shall give 12 ounces of seared gold in composition. Whoever wounds shall emend to him with 6.

[Marriage]

108 [85]. If anyone violently corrupts a virgin, he shall either marry her if she and her parents wish and give her *exovar* [roughly, “dowry” or “bride-price”], or he shall give her a husband of her worth. If anyone violently commits adultery⁸ with a woman who is not a virgin and impregnates her, likewise. [Parallels: Petrus, c. 54; Exod. 22:16–17 in X 5.16.1 (Ivo, Decret. 5.292–3); JI.4.18.4; Fuero juzgo 3.4.7; P. 284.]⁹

109 [86]. Concerning the things and faculties of peasants who are *exorchs* [one ms. glosses as “sterile”], those who have left this world, their lords shall have that part of their goods that their children [perhaps “sons”] would have had if such had survived.

110 [87]. Similarly, concerning the things and possessions of adulteresses, if the adultery was committed their husbands unwilling, they and their lords shall divide the entire portion of the adulteress equally. If, on the other hand—may it never happen—the adultery was done by the will, order or assistance of their husbands, the lords shall have right and justice entirely. [Parallel: Fuero juzgo 2.4.12; P. 285.]

111 [88]. If women do this not of their own free will but out of fear of and by the order of their husbands, they shall be immune from their husbands and lords and shall not lose any of their own goods, and if it pleases the same women they may separate from their husbands in such a way that they do not lose their dowry [*dos*] nor their spousal gifts [*sponsalicia*]. [Parallel: Fuero juzgo 3.6.5; P. 285.]

⁶ A member of a line of middle-ranking Catalan nobility. DK.

⁷ A Muslim coin of the late 10th century which was minted in Cordova but circulated in all the Christian realms of the Peninsula. DK.

⁸ *adulterium* in the text. DK translates “If anyone violently ravishes a woman who [etc.]” In any case, we may doubt whether “adultery” in either the Roman or the modern sense is meant. DuCange, s.v., reports that the word *adulterium* is frequently used in the early middle ages as the equivalent of Latin *stuprum*, a word that normally often means corruption of a virgin, but that does not seem to be what is involved here. Compare *Fuero juzgo* 3.4.7, where the word *adulterium* is used where we would expect *fornicatio*.

⁹ We offer for this passage the texts of the suggested parallels:

Exceptiones Petri, c. 54 [The work is a handbook of Roman law for practitioners probably compiled in the early 12th century]: “If anyone violates a virgin without using force, or even if she consents, or seduces a widow of respectable character, if he who does this is of reputable condition, the punishment is confiscation of half his fortune; if a mean person, flogging and relegation.” *Exodus* 22:16–17: “When a man seduces a virgin who is not engaged to be married, and lies with her, he shall give the bride-price for her and make her his wife. But if her father refuses to give her to him, he shall pay an amount equal to the bride-price for virgins.” This passage appears in the *Decretals of Gregory IX* (1234) (X 5.16.1); it also appears in a canonical collection of the late 11th century attributed to Ivo of Chartres (*Decretum* 5.292–3).

Justinian, *Institutes* 4.18.4: “The *lex Iulia*, passed for the repression of adultery, punishes with death not only defilers of the marriage-bed, but also men who indulge in criminal intercourse with those of their own sex, and inflicts penalties on anyone who without using violence seduces a virgin or a widow of a respectable character. If the seducer be of reputable condition, the punishment is confiscation of half his fortune; if a mean person, flogging and relegation.”

The Visigothic Code (Forum iudicum, Fuero juzgo), 3.4.7 [the provision is probably derived from the Code of Euric (466 X 484)]: “If a freeborn girl, or a widow, should go to the house of another for the purpose of committing adultery, and the man who is implicated should wish to marry her, and her parents, if she has any, should acquiesce; he shall give to the parents of the girl as large a sum as they may demand, or as much as shall be agreed upon between him and the woman herself. But the woman shall not share with her brothers in the inheritance of her parents, unless the latter desire.”

But this does not exhaust the possible parallels. One might consider, for example, consider cc. 82–4 of Aethelberht’s Code (above, § 4A), or the Burgundian Code, tit. 12 (above, § 4B). The question, then, is what is likely to have been in the mind of the compiler of the *Usatges*: Roman law? Canon law? “Germanic” law? All three? None of the above?

112 [89]. Husbands can accuse their wives of adultery by suspicion, and they ought to purge themselves by an *avagant* [champion]¹⁰ by oath and by battle, if there are manifest *indicia* and competent signs in it: the wives of knights by oath and also by a knight, the wives of citizens and burgesses and noble bailiffs by a foot-soldier, the wives of peasants [*rusticorum*] by their own hands by the cauldron. If the wife wins, her husband shall retain her honorably and shall pay her all the expenses that her friends and relatives made in the plea and in the battle and the damage to the champion. If she loses, she shall come into her husband's hand with all the goods that she has. [Parallel: Ivo, Decret. 4.20.si mulier; P. 319; Fuero juzgo 3.4.3; P. 285–6.]

147 [C4]¹¹. If a widow lives honestly and chastely in her honor after the death of her husband, she shall have her husband's substance so long as she remains without a husband. If she commits adultery and violates the bed of her husband, she shall lose her honor and all the property of her husband, and the honor shall come to the power of her children [perhaps "sons"] if they are of age or of their relatives, in such a way, however, that she shall not forfeit her property (*suum*), if she appears to have a present interest in it (*si in presenti apparuerit avere*), nor shall she lose her spousal gift [*sponsalicium*] so long as she lives; afterwards it shall return to the children or the relatives. [Parallels: Fuero juzgo 3.2.8, 4.2.14, 3.2.1; P. 289–90.]

[Witnesses]

57 [54]. Fees which knights hold, if their lords deny that have given them to them, they shall aver them by oath and by battle and shall have them. Those which they do not hold and claim,¹² they shall either prove by witnesses or by writing that they acquired them from their lords, or they shall abandon them.

85 [B2]. We command in order that perjuries be guarded against [that] witnesses not be admitted to take an oath before they are examined. If they cannot otherwise be examined, they shall be separated from each other and examined singly. The accuser may not chose witnesses in the absence of the accused. In no way shall anyone shall be admitted to the oath and to testimony unless he is entirely fasting.¹³ If a witness is recused, let him who is recusing say or prove why he ought not be received. Witnesses shall be chosen from this territory and not from another, unless the case must be investigated far from the county. If anyone is convicted of perjury, let him lose his hand or redeem it with 100 shillings. [Parallels: C.3.20.14; C.22 q.5 c.6; X 2.20.2; MGH, *Capitularia regum francorum* 1.124 (805); P. 310–12.]

86 [B3]. Before witnesses are interrogated about the case, they shall be constrained by an oath that they will say nothing other than the truth. We also order this, that faith shall be admitted to more honest rather than more vile witnesses.¹⁴ The testimony of one, however, however splendid and suitable a person he might seem, shall never be heard. [Parallels: Petrus 4.36; Brev. Alaric 11.14.2 (interp.); Benedict the Levite 1.283; Ivo, Decret. 16.204; Panorm. 55.21; P. 312–13.]

87 [B4]. If someone is proven to have made an unjust appeal, he ought to be forced to recompense the expenses that he compelled his adversary to bear, not in simple but in four-fold. Two or three suitable witnesses suffice to prove all matters. The testimony of one is disapproved by the laws and the canons. [Parallels: Petrus 4.30 (s. 2–3);* Brev. Alaric 5.39 (s. 1);* Epit. Aegidii (epitome of the Breviary of Alaric);* C.3.20.9; C.2 q.6 c.27; Ivo, Decret. 5.285; Ivo, Pan. 4.131; P. 313–15.]

88 [B5]. No one shall ever presume to be at once accuser, judge and witness, since in every judgment it is necessary that four persons be present, i.e., chosen judges, suitable accusers, appropriate defenders and legitimate witnesses. Judges moreover ought to use equity, accusers claim to amplify the cause, defenders

¹⁰ JB emends to *averamentum*, in which case translate "by their affirmation, by oath and by battle."

¹¹ Chapters that begin with a letter are those that JB regards as later additions.

¹² Neither DK nor I can make much sense of this. Perhaps it means "those they do not hold but claim."

¹³ DK's translation of this is just wrong.

¹⁴ An awkward sentence. Perhaps *fides adhibeatur* ("faith shall be placed on") rather than *fides admittatur* is meant. A meaning of *fides* as "oath" is also possible ("the more honest should be admitted to the oath in preference to the more vile").

extenuation to diminish the cause; witnesses ought to prove the truth. [Parallels: Petrus 4.7, 12; Benedict the Levite 3.339;* C.4 q.4 c.1; Ps. Isid. Epistle of Fabian;* Ivo, Pan. 4.81; Ivo, Decret. 7.321; *P.* 315–17.]

89 [B6]. Accusers and witnesses cannot be those who a day or two before were enemies, lest in their wrath they seek to harm and lest the injured seek to avenge themselves. An unoffended affect [*inoffensus effectus*] is to be sought in accusers and witnesses, not a suspect one. Suitable witnesses are not those who can be ordered to be witnesses. [Parallels: D.22.5.3, .5; *P.* 317.]

143.¹⁵ Because we have frequently received complaint by our subjects that truth is obscured and repressed by the corruption of witnesses, following in this part the imperial laws, we order that if any witness be produced by anyone he shall be bound by oath that no money or anything else was given or promised to him nor, to his knowledge, to anyone subject to him. Further, to put an end to the slipperiness of witnesses by which the contrary to the truth is put forward, we order that anyone litigating before us or anyone delegated by us who knowingly produces a false witness or corrupts a witness shall lose his cause and shall incur the publication [*sic*, probably means a type of forced sale] of all his movable goods, of which one-half shall be assigned to his lord and the other half shall be kept in our treasury. The same penalty of publication of goods shall be incurred by anyone convicted of having borne false testimony, and above that he shall lose his hand and his tongue, and the possessions [does this mean immovables?] of both shall devolve on those who are called to their goods by right of succession. [Parallels: D.22.5.5, .16, .3; *P.* 320–1.]

144.¹⁵ Because we have frequently received complaint by our subjects that frequently in the courts cases are brought and defended calumniously; then appeals are taken from interlocutory [sentences], and as a result the matter at stake is long protracted and long suspended, so that scarcely or never can it finally be concluded; wishing therefore to counter this fraud and malice with a royal antidote and desiring to impose an end to quarrels, and so that the parties not be unjustly exhausted with labors and expenses, with the counsel and approval of the nobles and magnates and also of our citizens who at that time were present in our court we think that it ought to be laid down as follows: that from henceforth in all cases the oath of calumny shall be taken by both the plaintiff and defendant and that there be no appeal from interlocutory sentences, except from manifest harm, or unless it plainly contains error, or unless it is pronounced against right [*jus*]. In which cases, it shall be determined within three days about the aforesaid sentence and corrected as it ought, and so not only litigation but also calumniators shall be diminished.

Item. By foresighted deliberation we lay down that every judge ordinary shall compel the named witness to take an oath to bear testimony to the truth, and that any party for supporting his claim [can compel] the other party to exhibit instruments that he asks for and have them solemnly copied, even though in the case or court in which they are asked it is not customary to use instruments, since frequently the truth is hidden for failure of witnesses.

Item. We order that it be observed in an unbreakable fashion that when it happens that a traveler or stranger has a case with any of our subjects that that case be brought to a fitting end quickly and without delay. For it would be wicked if such persons who expose themselves frequently to the fortune of roads and rivers should be seen to make too long a stay in any place against their wishes. [Parallels: D.49.5.12; D.22.5.21; *P.* 321.]

148 [C8]. If anyone shows in plea a testament or a firm charter about any contention and cannot by witnesses or firm writings overcome [what was contended] on the other side (*de alia parte*),¹⁶ the judge shall decide what seems to him to be right and each of them shall preserve his right.

162.¹⁵ If anyone says or makes false testimony against his neighbor [*proximus*] in any case, he shall lose as much of his property [*avere*] as his neighbor would have lost if he had spoken the truth in testifying against him. [Parallel: Fuero juzgo 2.4.6;* *P.* 271–2.]

¹⁵ JB omits because it is not in his early mss.

¹⁶ DK suggests “and the case of the other party cannot be proven either by witnesses or validated documents.” The text seems corrupt.

163.¹⁵ No man or woman can testify until s/he has finished fourteen years. Two suitable witnesses suffice for proving anything. [This last sentence is not in all mss.] [Parallel: Fuero juzgo 2.4.11; *P.* 272.]

164.¹⁵ Homicides, witches, thieves, poisoners, the sacrilegious, adulterers, those who have committed incest and all criminals shall not be received to give testimony. Those anathematized, excommunicates, heretics, saracens, and jews cannot testify against christians. Blood relatives cannot testify against strangers, but if they wish and agree among themselves they may testify among themselves and not against others. [Parallels (of both 163 and 164): Petrus 4.31–2; D.22.5.3; C.22 q.7 c.16; Ivo, Pan. 4.85; Fuero juzgo 2.4.1, .12, .4; *P.* 272.]

165.¹⁵ It is required that citation having been made a witness be compelled at the mandate of the judge to bear witness to the truth. Whoever conceals the truth, even if he is silent for fear of death or wounding, thereafter shall not be received in testimony. [Parallel: Fuero juzgo 2.4.2; *P.* 273.]

[Other mss. offer this version:] It is required that all men and women testify to the truth that they know, and it is fitting that the judge call them to do this; but if someone, having been warned by the judge to say what he knows refuses to give testimony, or even says that he doesn't know and refuses to swear to it, and by grace or venality suppresses the truth, unless he is silent because of fear of death or wound to his body, his testimony shall not be further received, because he is no less guilty who suppresses the truth than he who makes up falsehoods.

167.¹⁵ Father cannot be witness against son nor son against father even if both consent. Similarly neither can be witness for the other, because domestic testimony is reprovved in its own matter [i.e., in a domestic matter]. In another matter there is no harm if many witnesses from one house testify to another's matter. In his own matter no one can be either witness or judge. In the matter of the son, if both litigants consent, the father can be judge and similarly the son in the matter of the father. If the other does not consent, the trial is not probable [?provable]. [Parallels: Petrus, 40.4;* D.22.5.9; *P.* 323; Fuero juzgo 2.4.12; *P.* 290.]

B. COUTUME DE TOURAINE-ANJOU

ed. P. Viollet, in *Les Établissements de Saint Louis* 3 (Paris: Renouard, 1883) 3–104 [CD trans.]¹

[The editor dates the custom to 1246. It survives in two 14th-century mss., but it also forms the heart of a mid-13th-century treatise known as *Les Établissements de Saint Louis* from which the rubrics are taken. All the rubrics are given, interspersed with chapters that are relevant to our concerns.]

1. Of the gift of a gentleman to his children and how they ought to partition if their father dies without assigning to them.

2. Of making partitions.

3. Of partitions made for *fraresche* among sisters.

4. Of the marriage gift at the door of the church and to keep it for his life since his heir has cried and bawled.

A gentleman keeps for his life that which has been given him at the door of the church in marriage, after the death of his wife, even though he has no heir, because he had one who cried and bawled, so long as his wife was given to him as a maid; for if she were a widow or if she were not a maid, he will keep nothing of it.

5. Of a foolish gentlewoman.

6. Of the partition had as eldest.

If a gentlewoman is heir of land and her ancestors are dead and she has heirs and she wishes to take dower in the land of her husband, that is the third part, her oldest son will thus take the third part of hers.

¹ A full translation by F. Akehurst [FA], *The Etablissements de Saint Louis: Thirteenth-Century Law Texts from Tours, Orléans, and Paris*, (Philadelphia, 1996), has been compared.