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Private Law in the Province of Dacia

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Abstract. Beginning from the late 18th century and until the mid-19th century, several wax tablets were unearthed in the locality of Roşia Montană in what is today Romania. They record, among other things, various contracts drafted during the time of the Roman Empire. They constitute a priceless database which attests to the application of Roman law in the Province of Dacia. This study is dedicated to briefly presenting the significance of the content of these tablets from the perspective of legal history. The major conclusions which can be drawn from the legal operations documented in them are presented regarding the status of persons and various types of contracts. Based on the content of the wax tablets, it can be concluded that the living application of Roman law in the province of Dacia differed in part from the norms indicated in contemporary sources, in local use some institutions being distorted and 'adapted' to local conditions and Hellenistic influence.

Keywords: wax tablets, Roşia Montană, Dacia, Roman law, Hellenistic influence

1. Introduction

The province of Dacia (partially corresponding to the historical space which was later called Transylvania and which is now part of Romania) was ruled by the Roman Empire for a period of roughly 170 years, beginning in AD 106. Beginning from the late 18th century and until the mid-19th century, remarkable archaeological finds were gradually unearthed in the locality of Roşia Montană (Alburnus Maior in Roman times) which to this day constitute a fundamental source material for the study of Roman law as applied in a province of the empire's vast borderlands. This study is dedicated to presenting the significance of these archaeological finds – constituted by a set of Roman wax tablets containing various legal documents – from the perspective of legal history as these documents offer us the earliest glimpses of Roman law applied in the region under examination.

2. Civil Jurisdiction in the Provinces

The question has already been asked whether the judicial forums in the provinces were or were not obliged to apply – in addition to (imperial and provincial) Roman law – the customary law preserved in the provinces. According to a text conceived by Ulpian, most likely a few years after the proclamation of Caracalla's edict, the customary (consuetudinary) law of a city or province could apply in a litigation if this customary law had once before been applied in another litigation, finalized with a sentence.[1] That source clearly referred to disputes between Roman citizens (it is unlikely that the interest of Ulpian was aroused by a legal problem concerning the already negligible number of *peregrini* remaining after the Edict of Caracalla). The question in the legal sense is whether customary law, used so long as the status of *peregrinus* still existed, did or did not retain its normative effects in intra-provincial disputes between Roman citizens. The jurisconsult allowed for the continued use of the *peregrina consuetudo* (local customary law applicable among the peregrini) where it arose before the Antoninian Constitution and manifested itself in judicial sentences which remained demonstrably final. This approach unequivocally contributed to the tightening and rigidity of the *peregrina consuetudo*, previously subject to organic development, conserving its norms in time at their current stage of development.[2]

The question remains: to what extent was the governor obliged to use this customary law in the course of his jurisprudence, rendered at the provincial level? From three other texts attributed to Ulpian, the following conclusion can be drawn: the ancient customary law of the peregrini (*diuturna consuetudo*) was to be used in disputes between peregrini who became Roman citizens as if it were customary Roman law (*pro iure et lege*).[3] If the parties did not agree on a particular problem (*neque in cautione*), and the governor's *decretum* did not regulate that matter (*neque in decreto praesidis*), nor did local customary law (*ne consuetudo*) lead to the settlement of the dispute (in the particular case, the amount of the fine due), the governor was bound to decide according to his own conviction.[4] At the same time, as a rule – according to Ulpian –, the legal provisions adopted at the imperial level are universally applicable (*in omni loco valere*), so they can tacitly and implicitly deprive local customary law of its effects.[5] So, in the absence of a decree of the emperor, the governor had to apply customary provincial law to Roman citizens during intra-provincial disputes as if this customary law were Roman law.[6] Logically, however, the

1 Ulpian: *Digesta* 1, 3, 34.
2 Pólay 1960. 30.
3 Ulpian: *Digesta* 1, 3, 33.
4 Ulpian: *Digesta* 48, 3, 4.
5 Ulpian: *Digesta* 47, 12, 3, 5.
6 Pólay 1960. 31.

local courts, which continued their activity without hindrance and whose material jurisdiction extended exclusively to minor civil disputes, continued to apply the customary law of the former peregrini on condition that it had been included in previous final judgments between subjects of law who had acquired access to civil law in the same province.[7]

Therefore, the *Constitutio Antoniniana* did not bring a radical change in the legal life of the Roman Empire because the extension of civil law to the peregrini did not confer any substantial privileges on them as did the earlier granting of the status of *Latini Iuniani*, which granted to many the right of disposition over their assets by acts between the living (*ius commercii inter vivos*) – the most importantly: provision of civil law –, as is clear from legal instruments drawn up in the province of Dacia.[8]

3. Wax Tablets and Local Use of Roman Private Law

The collation, translation, and systematization of the inscriptions discovered on the so-called *wax tablets from Dacia*, unanimously accepted even today by the historical literature, are contained in volume III of the *Corpus Inscriptionum Latinarum*[9] series, initiated by Theodor Mommsen himself, and process the entire historiographical material consisting of inscriptions from the era of the Roman Empire.

Wax tablets (*tabulae ceratae*) are typical instruments carrying the cursive writing (*cursiva*), which was in everyday use at the time of their creation. The Latin name of the wax tablets is always used in its plural form because each documentary unit consisted of at least two tablets. These were simple wooden boards of medium size (about 15 × 13 cm) with a narrow frame lining a central inset writing surface formed by hollowing out the framed area. The recessed central part of each tablet was filled with wax, of usually black or green colouration, on which the inscription itself was etched using a *stylus* (an ancient writing tool). Usually, two such tablets were connected at their edges by the affixing of metal clamps or by simply tying them together. The frames protected the writing on the two tablets that were closed, their waxed sides being turned to face each other. From the binding of two tablets, a so-called *diptych* (*diptychon*) resulted, while three bound tablets were called a *triptych* (*triptychon*), and the set of tablets resulting from the binding of more than three such plates was called a *polyptych* (*polyptychon*). The units formed this way could be read by turning the tablets

7 Mitteis 1891. 167; Pólay 1960. 31.
8 Pólay 1960. 32 et seq.
9 Mommsen 1873. 924–959.

like the pages of a notebook or a book, and for this reason the units resulting from the binding of several tablets were called a *codex* or *codicil*, *codicillus*.[10]

Wax tablets from the province of Dacia were gradually recovered in the area of today's Roşia Montană (*Alburnus Maior*) between 1786 and 1855.[11] The total number of documents thus published is 25, of which four (tablets XV, XXII, XXIII, and XXIV) do not present any legal content pertinent to civil law, while only a number of nine tablets of the ones preserved are legible in their entirety, another three being largely reconstituted, and the rest are fragmentary, their analysis from a legal standpoint thus being barely possible or entirely impossible.[12] Triptychs which could be read or dated based on the text have been determined to have been drawn up between AD 137 and 165 in the frontier localities of Dacia, such as Alburnus Maior, Deusara, Kartum, or Immenosum Maius (the latter being mining settlements, villages in the area of Alburnus Maior), none of the places of their origin being of urban rank, instead being considered as *vicus* (lower-ranking provincial settlements).[13] The documents (as can be determined from the dating of the last such document) were walled in for the sake of preservation in the passages of the mine at Alburnus Maior after AD 167 by the population in retreat to the south due to an invasion by the Marcomanni Sarmatians.

It is worth noting that University Professor Henrik Finály from Cluj and parish priest Timotei Cipariu, the Director of the College in Blaj, contributed significantly to deciphering, interpreting, and publishing these texts. Professor Elemér Pólay from the University of Szeged dedicated numerous studies to this issue and a standalone monograph (1972) that is still considered a fundamental source material today.

Entries in triptychs – using the terminology of Professor Pólay – are 'dual documents', which means that the first two of the three tablets are bound with three strings inserted and pulled through three holes on these tablets in accordance with the requirements of formal authenticity imposed by the *senatus consultum Neronianum*, thus being closed together; the *verso* (*back side*) of the first tablet is turned towards the *recto* (*front side*) of the second one (the tablets thus sealed can be opened only by cutting the strings during the proceedings for the taking of evidence in a dispute, the closed part containing the text). The verso of the second tablet and the recto of the third tablet remained open, the text from the sealed part being reproduced here so that it can be made known to third parties. The verso of the second tablet was divided into two fields, while on the wooden threshold that separated the two waxed fields strings were affixed with the seals of the parties applied onto them – the integrity of the seals being,

10 Nótári 2014. 27.
11 Pólay 1972. 13.
12 Pólay 1972. 22.
13 Pólay 1972. 24.

in a way logically, a condition of validity, their rupture or damage resulting in the annulment of the deed recorded on the tablets (*nihil momenti habent*).[14] The recto of the first tablet and the verso of the third one did not contain any text, being used only as protective covers.[15] When drawing up the triptych, as a rule, seven witnesses were required to collaborate, as this form of document was derived from the will, drawn up under seven seals (*testamentum septem signis obsignatum*), the requirement of the seven witnesses of the latter documentary form being derived from the operation of *mancipatio* (a ritual-bound verbal deed) with seven participants.[16] The decision of the Senate which provides for the form of these instruments referred predictably to deeds of public law and private law drawn up in accordance with the imperial law (*publici privatique contractus*), but the fact that the triptychs from Dacia correspond to this formal requirement shows that this Roman rule was also received by the peregrini.[17] In the case of documents from Dacia, the number of witnesses fluctuates significantly: for example, although the number of participants in each *mancipatio* was seven, on certain documents the names of six witnesses are recorded along with the seller or even the names of five witnesses along with the seller and the guarantor (surety).[18] In lending operations in which the custom of *mancipatio* did not enter the public's legal consciousness the number of witnesses shown by the documents fluctuates between seven and four;[19] in the case of operations concluded by formal contracts to which civil law did not apply (such as the employment contract, the hire of services) and where imperial law did not contain provisions regarding the number of witnesses, the documents from Dacia show that the number of witnesses was still never any less than two.[20]

4. The Law of Persons in the Text of the Wax Tablets

With regard to the law of persons, the following can be considered as having been influenced by imperial law, interacting with the local law applicable to the *peregrini*: from triptych no VIII, it can be determined that in the case of buying a house the buyer, a woman (a peregrina from the point of view of marital status), could conclude the contract without the consent of her guardian (*auctoritas tutoris*) even though – as apparent from the *Institutions of Gaius*, a work approximately contemporary with the contract in question – women were subject to a form of

14 Paulus: *Sententiarum libri* 5. 25. 6.
15 Pólay 1972. 42 et seq.
16 Mitteis 1891. 295.
17 Pólay 1961. 21.
18 Pólay 1972. 52.
19 Pólay 1972. 54.
20 Pólay 1972. 55.

supervision similar to guardianship (*quasi tutela*), and in the case of peregrini they were able to conclude deeds only with the consent of their guardian.[21]

Until the era of the Dominate, women – if they were not under the authority of their father or husband – were subjected to lifelong guardianship (*tutela mulierum*). Although they could manage their assets themselves, the consent (*auctoritas*) of the guardian was necessary for the conclusion of deeds regulated by civil law. However, this would become a pure formality over time, and the guardianship or tutelage of women disappeared during the 4th century AD. Their non-contractual (extracontractual) liability was identical to that established for men; in this sense, women benefited from a similitude of full legal capacity.[22]

Until the time of the Principate, the authority conferred on the guardian over a woman's patrimony had already been considerably reduced to a limited sphere of deeds because, as Ulpian states: the agreement of the guardian to operations requiring *mancipatio* was necessary only in cases when the woman was the seller; if she was the buyer, such agreement was not required.[23] Thus, in principle and in accordance with the law applicable to peregrini, the peregrina from Dacia, as a buyer, could participate in the operation only with the consent of the guardian (because, theoretically, only the woman who benefits from civil law can participate as a buyer by mancipatio without the consent of the guardian); therefore, it can be accepted that in this respect the imperial norm produced its effects with priority, overwriting the law applicable to the local peregrini, conferring additional legal capacity upon women.[24]

Regarding moral persons (legal persons), from triptych no I we find out about the disbandment of a funerary association (*collegium funeraticium*) with its headquarters in Alburnus Maior, which seems to have been organized according to the requirements of imperial law, but its leaders (the *magister*, responsible for representing the association and those who performed the function of *quaestor*, who were responsible for the economic management of association) were exclusively (and the members predominantly) peregrini.[25] At the time of establishment, the associations organized under Roman law (*universitas*, *corpus*, *collegium*) had to pursue a legally permitted purpose, recorded by their articles of association or bylaw (*lex collegii*), sometimes also called statute (*statutum*). *Lex Iulia de collegiis* from the year 21 BC, attributed to Emperor Augustus, conditioned the establishment of associations on an assent by the Senate. For the establishment and operation of associations, the existence of at least three members was required, so – in the wording of Marcellus (D. 50, 16, 85),[26] similar

21 Gaius: *Institutiones* 1, 193.
22 Nótári 2014. 131.
23 Ulpian: *Liber singularis regularum* 11, 27.
24 Pólay 1961. 14.
25 Pólay 1961. 15.
26 Marcellus: *Digesta* 50, 16, 85.

to an adage – the association consists of three members (*tres faciunt collegium*). In order to fulfil their purpose, representative and administrative bodies were also appointed at the establishment of the association. Associations had a limited legal capacity, and the representatives had to act in place of the association whenever concluding contracts on behalf of the association. The association was disbanded if its purpose ceased, if it was dissolved by the emperor or the Senate, if the number of members fell below three, or if it was disbanded by the members themselves.[27] The close similarity of the associations reflected in the text of the wax tablets to the template set forth by imperial law in what concerns the structure of the association of peregrini also shows the influences of Roman law on the law applicable to the peregrini.

5. Some Contracts Recorded on the Wax Tablets: Stipulatio as a Contractual Form

Stipulatio was a solemn promise in the form of a question and an answer, which gave rise to an obligation. To the verbal question of the creditor, the debtor would answer immediately, and the answer would contain the same promise (*spondeo* – hence 'I promise') and the same object of the legal operation. Its origin can be found in *sponsio*, as shown by the verb used at the oral conclusion of the contract. Due to its sacred origin, only Roman citizens could use this operation in the beginning. During the preclassical period, a custom of recording the *stipulatio* in writing developed, but it was not a condition of its validity, only a measure to facilitate proof (*cautio*) of the obligation, which – as is the case of the deeds listed above – was born by simply uttering the formula. Instead of the verb *spondere*, later the verb *promittere* became available, which – also having the meaning of promise – opened the use of the form of *stipulatio* for peregrini. Later, the formal requirements of the *stipulatio* were significantly relaxed, its conclusion becoming possible in a language other than Latin and even some deviations from the initial formula being allowed for in the content of the question and answer. Post-classical law repealed the requirement of verbal *stipulatio* altogether: if the conclusion of the deed was recorded in a document, the deed had to be considered as validly concluded.[28]

In the classical era, the *stipulatio* was a verbal contract in which the parties, according to their desire to contract, could determine the purpose of the contract, the cause (*causa*), but could also opt not to even declare its purpose, the resulting contract giving rise to an obligation which was causal or, as the case may be,

27 Nótári 2014. 132.
28 Nótári 2014. 216.

abstract.[29] Over time, the verbal form of the conclusion of the contract lost its significance, and the document drawn up only for the purpose of facilitating its proof took over the function of constituting the obligation itself. In other cases, the document (written instrument) that gave rise to the stipulation was associated with the fiction that the stipulation had been concluded.[30] In what concerns the dating of this change of attitudes, the literature is far from unanimous, with some authors indicating the end of the classical era[31] while others pointing to the post-classical era, restricting their conclusion only to the eastern provinces of the empire.[32] According to an opinion which intends to integrate the two positions and which is probably closest to reality, the habit of drawing up a document as a means of proof developed quite early on; this formality, however, did not constitute a condition for the validity of the deed as it was unable to replace the omitted verbal stipulation; at the same time, both in the provinces in the east as well as in the west of the empire, the acceptance of the practice spread, the document drawn up being accepted as full proof of the conclusion of a *stipulatio*, without proving the utterance of the formula, which in daily practice was manifested by the inclusion of the *stipulatio* as a clause of the instrument drawn up.[33] It should be noted, however, that the imperial decrees unequivocally adopt the view of attributing a verbal character to the *stipulatio*;[34] the document prepared for the recording of the deed gave rise only to a relative presumption, which could be overturned,[35] but the jurisprudence in practice – not only in the provinces but also in the imperial jurisprudence – showed that the existence of the document (of paramount importance in Hellenistic law) usually had evidentiary power sufficient to prove the conclusion of a *stipulatio* on its own.[36]

According to this position, over time, in provinces under Hellenistic influence – especially after the adoption of the *Constitutio Antoniniana* –, the written form acquired more and more significance before the Roman forums; in order to constitute proof of the stipulation as a verbal contract for which the existence of witnesses was not required, the document confirming the conclusion of the deed was accepted, the possibility to administer evidence to the contrary being increasingly restricted.[37] Based on all the aspects already mentioned and if we consider that the written instrument gave rise, from the end of the classical era, to a relative presumption even in accordance with imperial law regarding the

29 Kaser 1949. 288.
30 Nótári 2014. 216.
31 Levy 1929. 254.
32 Riccobono 1913. 172.
33 Kaser 1959. 274.
34 *Codex Iustinianus* 4. 31. 6; 3. 38. 7; 4. 2. 6; 12. 4. 64. 3; 4. 65. 27.
35 *Codex Iustinianus* 8. 37. 1.
36 Pólay 1963. 6.
37 Pólay 1963. 7.

conclusion of the stipulatio – in the absence of proof to the contrary: the obligation was considered to have been born even if the contract was not actually concluded in verbal form –, then we must accept that, in all probability, in the legal life of the provinces, especially the ones strongly affected by Hellenistic influences such as the case of the province of Dacia, a *stipulatio* to which the triptychs refer may in fact often not have even taken place in verbal form, and the instrument from which the obligation had arisen simply contained a *stipulatio* clause instead.[38]

The stipulation appears in multiple hypostases and specific functions in the documentary material consisting of triptychs: in the case of two loan agreements, in the case of sales contracts when the seller provides warranty for the eventuality of eviction (*evictio*), in the case of a promise for payment of contractual penalties (*stipulatio poenae*), and in the case of sureties, for the purposes of a guarantee. Therefore, the stipulations recorded in triptychs were used to guarantee or set up various types of obligations born of contracts concluded both between Roman citizens and between peregrini, the documents being meant to facilitate the realization of rights before the Roman judicial forums. In the case of some operations, it can be deduced that *stipulatio*, as a stage of contracting, took place also in reality, the obligation having in fact arisen by concluding a contract verbally, in other cases the obligation resulting from the document, which was preconstituted as a literal contract, there being only a simple reference to the stipulation, which did not take place in reality for the reasons shown above.[39]

6. Sale and Purchase

Among the tablets, there are four documents containing contracts of sale and purchase (*emptio venditio*). Sale and purchase consist in the acquisition of goods in exchange for an amount of money, which arises as a legal relationship at the time when the goods (*merx*) and the sale price (*pretium*) are determined by the parties. The subjects of the contract are the seller (*venditor*) and the buyer (*emptor*). With the advent of the *fides*, the essence of sale and purchase was embodied in the agreement of the parties (*consensus*), and through it, in the last centuries of the Republic, the sale and purchase have become – also in the legal sense of civil law – *a consensual contract*. As a symptom of the crises of the post-classical era, immediate sale (of goods present for a price paid in cash and on the spot) gained ground again, and in the case of the sale of some goods of significant value the written form became a condition of validity (the contract being concluded by drawing it up in a written instrument, thereby losing its consensual character).[40]

38 Pólay 1963. 11.
39 Pólay 1963. 30.
40 Nótári 2014. 221 et seq.

Triptychs no VI, VII, and XV record sales of slaves, and the one with no VIII refers to buying a house, all these contracts being concluded in accordance with the forms provided for by imperial law, yet lacking some conditions of these forms.[41] These shortcomings are the following: 1° the contracting parties were peregrini[42] but the operation was concluded by mancipatio, a legal institution reserved for Roman citizens who benefited from *ius commercii*, and for persons inducted under the regime of Latin law;[43] 2° the object of the purchase of a house was a provincial building even though only slaves, draft animals endemic to Italy, land in Italy, and established ancestral rural easements on such land could be sold and bought by mancipatio.[44]

Mancipatio is an ancient, solemn ritual that results in the conclusion of the civil deed by uttering a predetermined formula, which was used not only to transfer the title to property but also for the transfer and acquisition of any other rights (powers) known under civil law (the power of the spouse, *mancipium*, easements, etc.). At first, it can be assumed that it functioned similarly to sale, within the operation the price having to be paid immediately and at the place the contract was concluded. The participants were the seller, the buyer, five free Roman citizens (the latter could also be people who benefited from Latin law), and the scale-holder (*libripens* – the person who held the scales in his hands, an essential participant of the ritual). The object of the operation could consist only of the so-called *res mancipi*, i.e. slaves, draft animals, the Italian land, and ancestral easements set up on such land.[45]

It should be noted that for the simple conclusion of the purchase (*emptio venditio*) it was not necessary for the parties to benefit from *ius commercii* because the sale and purchase were considered to be a consensual contract in Roman imperial law, so its conclusion was valid – in principle and with certain exceptions – without the fulfilment of any formality, taking place by the simple consent of the parties.

Given the lack of elements of the operations recorded on the wax tablets, we can assume that civil law mancipatio did not occur between the parties, but rather a deed was concluded that contained in erroneous manner the formal elements of mancipatio (in terms of both the subjects and of the object of the operation), which was imbued with the law applicable to the peregrini but which was capable of producing effects if the peregrinus had accepted this operation before the courts.[46] At the same time, the parties were able to comply with certain conditions, formalities of the mancipatio, taking into account that the number of

41 Pólay 1972. 127 et seq.
42 Kerényi 1941. 176, 252 et seq., 271.
43 Ulpian: *Liber singularis regularum* 19, 4.
44 Gaius: *Institutiones* 1, 119.
45 Nótári 2014. 166.
46 Pólay 1972. 133 et seq., 144; 1961. 10.

persons who had affixed their seal on the triptychs they recorded the deeds of sale on was seven in all cases, the number corresponding to the one provided for recording the mancipatio in its typical form.[47]

The sales documents contained primarily the participants – both principal and auxiliary – of the operation (seller, buyer, and guarantor, or surety), its object (and its characteristics: name of the slave, age, origin, nationality, etc.), and the fact of the transfer of the property right (transfer of title); secondly, the warranty against defects and eviction (guarantee stipulations) and the stipulation of the surety (*fideiussio*);[48] thirdly, the fact of receiving the price (it follows that the sale was made in all cases in immediate form, with full and immediate payment of the price, which subsequent literature called *sale for ready money*), and in the case of the sale of the house the contract also established the obligation regarding payment of taxes on the land on which the building was erected.[49] In what concerns the warranty against eviction, the practice of the peregrini corresponds to the provisions of imperial law because in case of eviction the seller had to guarantee the buyer through the guarantee stipulation provided for in the *edictum aedilis*, to the amount of twice the sale price (*stipulatio duplae*).[50] As regards the warranty against defects, the same trend manifests itself because the buyer, in accordance with the *edictum aedilis*, must show the main characteristics of the goods purchased (thus, in the case of the slave, age and nationality), the seller being obliged to guarantee through specific stipulations for certain characteristics (following the example of the slave, for the condition of his/her health) and the lack of certain hidden flaws (for example that the slave is not a *fugitivus*, so s/he has no tendencies to attempt an escape).[51]

7. Loan for Consumption

Four of the tablets record agreements pertaining to loans for consumption (*mutuum*). In Roman law, the loan for consumption (*mutuum*) consisted in handing over some fungible goods to the borrower, with the obligation to return at the expiration of the loan some goods having the type and the amount identical to those of the borrowed ones. By such a loan, the debtor, having acquired ownership of the goods, also acquired the full right of disposal over them, the obligation to repay the loan having a generic character, limiting the object of the operation to fungible goods (*res fungibilis*). The obligation of the creditor is to

47 Pólay 1972. 149.
48 Regarding the surety contracts recorded on the Dacian wax tablets, see: Veress 2015. 7–13.
49 Pólay 1972. 144.
50 Pólay 1961. 18.
51 Pólay 1961. 19.

give (transfer) the title of property over the goods because the loan transfers the right of ownership in the sense of civil law, the handover taking place through the material transfer of the goods to the debtor (*traditio*) because the goods subject to *mancipatio* (*res mancipi*) could not constitute the object of a loan for consumption, not being fungible goods by definition.[52]

Tablets no II, III, and V were drafted in Latin, and (uniquely among the wax tablets) the one with no IV was drawn up in Greek.[53] It should be noted that in the case of Latin-speaking contracts – opposite to the trend that can be detected from the other documents, which manifests itself by the similarity of the formula in the case of operations with similar objects – these cannot be classified into the same category of documents. Triptych no V is a document with Roman characteristics, being only a means of proof of the *stipulatio* but without itself resulting in the conclusion of the operation: the borrower, a Roman citizen, probably knew the judicial practice of the Romans and therefore insisted on concluding the contract in verbal form – a solution which is closer to imperial Roman law – and on using the written instrument only for evidentiary purposes.[54] In triptych no III, we find a unique mix of elements of Roman and Greek origin; so, in all likelihood, it was considered to result in the conclusion of the contract, not being just a simple means of proof preconstituted by the parties.[55] (In connection with the latter contract, we can determine that the text is confusing and inaccurate, namely that it does not record that the amount borrowed was ever handed over to the borrower, and it therefore raises the possibility that the amount was not handed over at all or was only partially handed over, the document possibly disguising a fictitious loan.)[56] In the contract drawn up in Greek, it was logically not the Roman or imperial law but the law applicable to the peregrini the one to which the parties adhered, and based on this fact we can affirm that this document may be considered as recording a Hellenistic contract in the form of a written instrument.[57]

Interest stipulations in the contracts recorded on triptychs correspond to the practice of imperial law, which set the interest rate limit at 1% per month and thus at 12% per annum.[58] Of those four contracts, two mention guarantors (sureties), the parties trying to ensure the fulfilment of the contract through the establishment of a personal guarantee. Another interesting feature of these contracts is that two of them, drawn up in Latin and preserved in their entirety, were concluded for an indefinite period (the third, also written in the Latin language, is fragmentary, and therefore the duration for which it was concluded cannot be determined), so

52 Nótári 2014. 218.
53 Pólay 1972. 156.
54 Pólay 1963. 14.
55 Pólay 1972. 156.
56 Pólay 1963. 18.
57 Pólay 1972. 158.
58 Nótári 2014. 203.

the borrower was obliged to return the goods borrowed on the date on which the restitution was requested by the lender.[59] Setting this moment shows the adoption, the reception – once again – of imperial law by the peregrini.

8. Hire of Works

Among the triptychs, the ones with number IX, X, and XI record employment contracts, or more precisely contracts for the *hire of works* (*locatio conductio operarum*). Unfortunately, none of the documents have been preserved in their entirety (the triptych with number X being the best preserved), but their text can be subject to legal analysis even in fragmentary form.

Roman law knew three forms of lease: the lease of things (*locatio conductio rei*), the lease of labour, or hire of works (*locatio conductio operarum*), and the enterprise contract or hire of services (*locatio conducio operis*). The object of the lease could therefore consist 1° in handing over an object for use, 2° in the provision of labour, and 3° in the realization of specific activities in exchange for a 'rent' (*merces*). Hire of works (*locatio conductio operarum*) consists in the use of the labour power of a free man in exchange for a salary (the 'renting' of labour) paid depending on the time spent doing the work, its object being usually the performance of physical labour. The labourer (because he rents his own force) was subject to a duty of care, being required to comply with the orders of the 'employer' during the performance of the work. Each party was responsible for *culpa levis* (the slightest fault). Risk bearing was regulated on the basis of *the theory of spheres of interest*, the risk being borne by the person in whose sphere of interests the reason for not fulfilling the contractual obligations arose. Thus, the loss due to unfavourable weather conditions that make performance of work impossible was borne by the 'employer', the 'salary' being due during this period as well, but for the duration of the employee's illness (a problem arising in the sphere of interest of the latter) the 'salary' was not due, the disadvantage being borne by the 'employee'.[60]

It is noteworthy that in the Roman Empire, in addition to slave labour – which played an important role in production during the entire existence of the empire –, hired labour of free persons kept its auxiliary character. For some works, this second means of production appeared mainly in cases[61] in which the slave owner considered the work done as inappropriate (as in the case of work in swampy areas, when any deterioration of the slave's health would have caused a loss to its owner)[62] and in the case of seasonal work, when he did not have a sufficient

59 Pólay 1972. 160.
60 Nótári 2014. 224 et seq.; Molnár 2013. 195 et seq.
61 Pólay 1968. 3.
62 Varro: *De re rustica* 1, 17, 2.

number of slaves – which was the case probably often encountered in Dacia, the work carried out by slaves not having too much significance in this province.[63]

Employment contracts, including the ones according to the practice in Dacia Province, were concluded as consensual contracts, recording in writing having the predominant role of preconstituting a means of proof to facilitate evidence gathering in case of dispute, the more so since employment is mentioned in the documents in the past tense – in the case of literal contracts, they could have been concluded only if one of the parties had stipulated in writing the will to work for the other party and the other party that he wants to pay for the work performed, the two documents being handed over to the other party, which did not happen in the case of the tablets.[64] As it appears from the documents, the worker is the one who requested the recording in writing of the contract, also bearing the expenses related to the preparation of the document; this shows the usually precarious situation of the worker under Roman law given that the 'employer' did not provide to him the written proof of the contract, the worker himself being the one who had to take care of constituting the proof of the obligation.[65] From triptychs no IX and X (the relevant part not being preserved on the one with no XI), it can be determined that in the case of hire of works these took place for a specified period, with early termination if the obligational relationship ceases from the employee's initiative (in case the worker quits the work) – as it appears from triptych no X –, which results in a fine owed to the 'employer', in the form of a contractual penalty proportional to the working days left unworked,[66] but if the 'employer' was the one who broke the contractual relationship, then – with the probable application of norms known from other sources[67] – the 'salary' was due for the duration of time remaining from the contract.[68] In all three preserved contracts, the object of the obligation consists in gold mining (*opus aurarium*), so it concerns work performed in the mine. If the worker was hindered in carrying out his activity by any circumstances (such as illness), he could temporarily appoint a replacement because the work does not require extensive professional training.[69] The payment of remuneration (*merces*) was made periodically and after performance of the work (*postnumerando*),[70] and it cannot be ruled out – taking into account the precarious material condition of the workers – that the parties (although it was not a work performed by day labourers) might have stipulated

63 Pólay 1972. 37.
64 Pólay 1968. 14.
65 Pólay 1968. 15.
66 Ciulei 1991. 143.
67 Paulus: *Digesta* 19, 2. 28.
68 Pólay 1968. 16.
69 Pólay 1968. 25.
70 Ciulei 1991. 128.

a daily remuneration.[71] In all likelihood, the bearing of risks was regulated by the already developed principle of the spheres of interest.[72] It is worth noting that the 'employer' was entitled to 'discipline' the worker, a right not defined in detail in the terms of the contracts' content. The existence of this right seems to be confirmed by the stipulation, which is found in all three contracts, according to which the worker submits not only his labour but also his person (*se locasse et locasse operas suas*); hence the hire of works gave rise to a stronger relationship of subordination (*potestas*) when compared to the usual situation of inequality imposed by Roman law onto persons still free in principle but subordinate in certain circumstances.[73]

9. Associations

Of the examined documents, two contain contracts of association (*societas*), both being fragmentary, but the content of tablet no XIII may be reconstituted to an acceptable proportion, while that of the one with no XIV is so poorly preserved that it is not suitable to be subjected to analysis from a legal standpoint; even the question of whether it actually records a contract of association was long disputed.

Associations (*societas*) were nothing but the contractual expression of a desire by several persons to pursue a legal, patrimonial purpose. Associations may be classified into several subcategories according to their purpose. These include the *societas omnium bonorum*, which manages the entirety of assets, present and future, of the members and any future increase in the value of these assets, usually constituted among close relatives. Similar to this is the *societas quaestus*, in which the goods acquired free of charge are not included in the association's assets. In the case of a *societas negotionis*, the members agree to pursue a certain activity jointly, for example to participate together in trade. In the case of *societas unius rei*, the members agree to conclude a single joint deed. In Roman law, associations did not constitute a subject of law or a legal (moral) person, not having their own patrimony; the association as such had no rights or obligations, these being constituted for the benefit or burden of the members individually, in equal proportion or according to their contribution to the establishment of the association.[74]

Triptych no XIII refers to a so-called *societas danistariae* (the name is of Greek origin, from the word *daneion*, meaning loan, or the word *dameismos*, which refers to a loan with interest), so it records the conclusion of a contract in view

71 Pólay 1968. 28.
72 Ciulei 1991. 140.
73 Ciulei 1991. 134; Pólay 1968. 6.
74 Nótári 2014. 227 et seq.

of granting loans on a permanent, professional basis using modern terminology.[75] The small amounts lent as loans, as in the case of the contract recorded on triptych no V, in the amount of only sixty denarius (by comparison, the price of a slave amounts to 420 denarii, a feast organized by an association to around 170 denarii, and a procurator of a constituency in Dacia Province had an annual income of 50,000 denarii), allow us to assume that the loans were not granted for commercial purposes, or, more precisely, that these 'companies' were set up to pursue the purpose of usury, not being true 'credit institutions' and not carrying out complex activities that would be characterized today as banking (exchange of currency, valuation of goods, keeping of deposits, making of transfers), which were in fact carried out[76] in the period studied by the so-called *societas argentariorum*.[77] It is worth noting that neither in the act of incorporation of the associations nor in the loan agreements do we find any reference to the fact that the company would have provided the loan with stipulating a guarantee (in the form of collateral) – although the establishment of collateral is logically very probable, it cannot be demonstrated on the basis of available sources; also, it cannot be ruled out that the document does not mention the establishment of a collateral of which the debtor would be temporarily dispossessed, because it was considered to be an implied element (*naturalia negotii*) of such operations.[78]

Given their characteristics, associations of the type *societas danistariae* can be considered a subcategory of *societas negotiationis*,[79] being based on a long-term collaboration in order to accomplish an industrial or commercial activity. The contract records 1° the nature of the operation and the participation of members in profit and loss, showing the participation quotas, 2° the amount of contributions from each member, 3° the legal consequences of the breach of contract, 4° preparation of the document in two original copies, and 5° the date. (In the particular contract, concluded for a determined period, we may assume – because, among other things, it mentions contributions due in the past and in the future as well as a *stipulatio* previously concluded on penalties for non-compliance with the contract – that the parties concluded a consensual contract in the beginning, not subject to any validity requirements in terms of form, this being sufficient for the company to be established, and later, when the term for the cessation of effects of this first contract approached because of possible issues and since disputes can be settled on the basis of pre-constituted evidence, the parties recorded in writing their legal relationship, which existed from the moment of conclusion of the contract in consensual form.)[80]

75 Pólay 1972. 201.
76 *Digesta* 17, 2, 52, 5.
77 Pólay 1972. 203.
78 Pólay 1972. 218.
79 *Digesta* 17, 2, 5.
80 Pólay 1972. 207.

10. Irregular Deposit

Regarding the classification of triptych no XII, legal literature was long divided, the opinions expressed oscillating between a loan contract, a deposit proper, and an irregular deposit.[81]

The deposit (*depositum*) consists in handing over movable property with a view to the conservation and return of this property free of charge, with the obligation of immediate return of the property whenever and as soon as it is requested. An irregular deposit (*depositum irregulare*) may have as its object the preservation of fungible assets, with the obligation of refund in kind – in this case, the depositary acquiring the property right of the good and the good being able to be used (consumed) by the depositary, with the possibility of stipulating an interest.[82]

Against the interpretation of the contract as being a loan, the absence of a stipulation of interest and the absence of a *stipulatio* clause were invoked since these elements are found in the case of the rest of the tablets included in the documents recording loans – so we have well-founded reasons to consider the operation to be a contract of deposit.[83] The object of the deposit in this contract is the amount of 50 denarii. The following circumstances show the low probability that the document recorded a typical (proper) deposit: 1° the depositary is encumbered with a specific refund obligation in the case of a deposit proper, being obliged to return the very coins received for retention, but in this case only the amount due to be returned is indicated; 2° the amount deposited, indicated only nominally, could usually be used by the depositary, which resulted in the obligation to pay interest determined either by a *stipulatio* separately[84] or (subsequently) even without any separate agreement,[85] as a result of the initial obligation.[86] This contract can therefore be classified as an irregular deposit (*depositum irregulare*).[87] The development of this contract took place – including in imperial law – due to Hellenistic influence and was completed only at the end of the classical period, in the era of jurisconsults, its reception taking place only in the post-classical period (or even in the period close to the reign of Justinian).[88]

81 Riccobono et al. 1940. 391.
82 Nótári 2014. 219.
83 Pólay 1972. 226.
84 *Digesta* 16, 3, 25, 1.
85 *Codex Iustinianus* 4, 34, 4.
86 Pólay 1972. 227.
87 Pólay 1972. 228.
88 Pólay 1972. 229.

11. Conclusions

As we have seen, the wax tablets of what was once Alburnus Maior offer us the possibility to look into the workings of legal relationships based on Roman law in the province of Dacia. Based on what has been presented, we can conclude that Roman law as applied in this province was by no means equal to the rigid, formal norms recorded by contemporary sources but much rather a provincial, locally adapted application of these norms. We may observe that persons in this region engaged in complex contractual relationships by using sometimes atypical contracts, vastly influenced both by local custom and by Hellenistic attitudes to legal relationships and their documentation.

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