

# Sale and Community from the Roman World

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Exchange of goods with transferring property rights is an essential part of every organised human society and economy. All over the ancient world, traders and consumers negotiated a great deal of sales on local market places. The legal framework of sale is an indispensable institutional environment of a functioning economy. Considering the economic approach, sale seems the most important contract of every private law. Nevertheless the famous Roman jurist Gaius gave in his *Institutiones* (a manual of elements of Roman private law) only a brief summary about sale (Gai. Inst. 3.139-41):

Emptio et uenditio contrahitur, cum de pretio conuenerit, quamuis nondum pretium numeratum sit ac ne arra quidem data fuerit. nam quod arrae nomine datur, argumentum est emptionis et uenditionis contractae. (140) Pretium autem certum esse debet. nam alioquin si ita inter nos conuenerit, ut quanti Titius rem aestimauerit, tanti sit empti, Labeo negauit ullam uim hoc negotium habere; cuius opinionem Cassius probat. Ofilius et eam emptionem et uenditionem esse putauit; cuius opinionem Proculus secutus est. (141) Item pretium in numerata pecunia consistere debet. nam in ceteris rebus an pretium esse possit, ueluti homo aut toga aut fundus alterius rei pretium esse possit, ualde quaeritur...<sup>1</sup>

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<sup>1</sup> Gai. 3.139-41: "Purchase and sale are contracted as soon as the price is agreed upon, although the price may not have been paid,<sup>[1]</sup> or any earnest money given; for what is given by way of earnest money is only a proof of the conclusion of a contract of purchase and a sale. (140) Moreover, the

Gaius underlines merely the main requirements of a legally enforceable obligation arising from a sale business. He maintains the relevant points of a valid obligation, suitable for the Roman authorities – the turning point if a claim can be raised before a Roman court (*actio nata est*). In classical Roman law it was sufficient to produce proof about a mutual agreement (*consensus*) between the parties. The consensus should include the basic elements of the agreement: the thing sold and the price to be paid for it. Here, Gaius is anxious to emphasize that widely spread phenomena in local legal cultures like paying an earnest money do not have any impact on the exact theoretical definition of having a valid sale obligation. Overhanding an earnest money should be considered as a strong argument for the existence of a mutual agreement. Any further theoretical setting is merely stressed for the price: What are the main requirements for a valid price setting? Where are the limits of its specification? His plausible examples might have been chosen from every day market practice. In the following, Gaius gives also a short introduction to the history of sale transactions. His main aim is to indicate the every now and then narrow borders between the legal conception of exchange (*permutatio*) and sale (*emptio venditio*).

For first sight it is rather astonishing that a really important contract like sale is treated with such leisure in an elementary survey. Centuries later, in the Digest of Justinian (*Corpus Iuris Civilis*) sale transactions are dealt with in a more detailed manner. In the 6<sup>th</sup> century, the *compilatores* collected and grouped the rich material of decisions and opinions of former Roman jurists in eight chapters. Of these, three chapters are designed from a rather theoretical point of view (D. 18.1, 18.2 and D. 19.1<sup>2</sup>) while six mirror decidedly contractual practice (see D. 18.2-7<sup>3</sup>). It indicates that the Roman law of sale was a matter of routine and experience. The rules of concluding a contract, specifying the liability of the parties and allocating special risks seem deeply rooted in every day legal practice (law in action). Regarding these characteristics, it

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price must be certain; for, otherwise, if we agree that property shall be purchased for the amount at which Titius may estimate its value, Labeo denies that a transaction of this kind has any force or effect; and Cassius agrees with him. Ofilius holds that it is a purchase and sale, and Proculus adopts his opinion. (141) Moreover, the price must consist of money, for it is seriously questioned whether it can consist of any other property, as for instance, a slave, a robe, or a tract of land.” (Translation by Francis de Zulueta.)

<sup>2</sup> D. 18.1 *De contrahenda emptione et de pactis inter emptorem et venditorem compositis et quae res venire non possunt*; and D. 19.1 *De actionibus empti et venditi*.

<sup>3</sup> D. 18.2 *De in diem addictione*, D. 18.3 *De lege commissoria*, D. 18.4 *De hereditate vel actione vendita*, D. 18.5 *De rescindenda venditione et quando licet ab emptione discedere*, 18.6 *De periculo et commodo rei venditae*, 18.7 *De servis exportandis: vel si ita mancipium venierit ut manumittatur vel contra*.

is of utmost interest to investigate sale documents, also for better understanding the legal thinking of Roman jurists.

## 1. THE DOCUMENTS

Documents written in Latin are preserved from several regions all over the Roman Empire.<sup>4</sup> The Romans used mostly small wooden tablets as writing material for depicting contracts and wills. Such *tabulae* seem to have been a special Roman kind for preserving evidence. Insisting upon this special (and not very practical) writing material might have had some sacral roots, too.<sup>5</sup>

The usual measure of *tabulae* excavated in Italy or in the provinces is approximately 10 x 15 cm. Commonly two or three thin wooden tablets were used for documenting a legal transaction. One side of each piece was slightly deepened and covered with wax and the scribe wrote on this surface with a metallic switch called *stylus*.<sup>6</sup> It is obvious that the technology was rather imperfect and could not be trusted to offer infallible proof before court: the wax might have been warmed up and the letters could easily have been erased or “corrected” by unauthorised hand. To avoid forgery tricks, the notary practice developed two main types of documents: *diptych* and *triptych*. As the names show the *diptych* consists of two tablets, a *triptych* of three. In both, the legally relevant text was written on the inside faces (*scriptura interior*), then closed by a string and sealed by witnesses. The seals must not have been broken or cut unless before court.

Wood and wax are an extremely sensible material. It is really astonishing that such tablets should survive to be read today. Indeed, the originals are mostly broken and it is a great challenge for modern scholars to read them; recent editions are basically improved by sophisticated digitalised techniques.

My present contribution is restricted to such wooden *tabulae* including sale contracts. In ancient times, the choice of a certain writing material and language meant mostly also a choice of legal culture. Waxed *tabulae* are written almost entirely in Latin and the text follows the rules of Roman law as practiced in every day business.

All together there are only a few sale documents that survived: we possess three documents in the archive of the Sulpicii (TPSulp. 42, 43 and 44) and fur-

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<sup>4</sup> Documents in other languages should be excluded from the present overview. Choosing a language and a writing material meant often choosing a certain legal culture.

<sup>5</sup> See MEYER 2004, 44-63; GRÖSCHLER 1997, 18-9 and WOLF 2010, 17-8.

<sup>6</sup> Cf. WOLF 2010, 19-20; CROOK – WOLF 1989, 10-4 and JAKAB 2011, 283-4.

ther four documents from Herculaneum (TH 59, 60, 61 and 62). It means all together seven sales from Roman Italy, all of them excavated in the Vesuvius area. However, there are some further *tabulae* explored in far provinces: hollows saved a surprisingly rich collection in the gold mines of Dacia (known as FIRA III 87, 88, 89, 90<sup>7</sup>) and single finds came down – unfortunately without the context of an archive – from other provinces. There are also further documents composed on papyrus but with a strong influence of Roman law.<sup>8</sup> A unique example is FIRA III 137, a receipt of price with guarantee for eviction (however missing all other usual clauses of a sale). Recently some tablets were found in Britannia, using slightly different terms but recording obviously a sale context.<sup>9</sup> This mixed group of Latin documents with provincial provenance counts further seven to eight documents.

Checking the contents it can be stated that the majority of sale documents reports of the sale of slaves. Therefore I focus my present contribution on this topic. For first sight it is astonishing that the sale of movables gives the majority of written documents in the material excavated yet. In our modern world, contracts are drawn up in a written form mostly if they concern an immovable (real estate). Although ancient societies were based on agriculture selling and buying land among individuals was not really common in every day business. In the Roman Empire the acquisition of land was mostly connected with state interference. A piece of land was measured and signed to a private individual by state authorities.<sup>10</sup> Nevertheless, fruitful cultivation required “moving instruments” like slaves and animals and these articles became the most important ones on ancient markets.<sup>11</sup>

Indeed, rules of acquiring slaves were the most elaborated part of the law of sale in ancient Rome. The sale of slaves and that of livestock, the two movable items that really mattered, may have occurred the most sensible economic interests in ancient rural societies. The sale of slaves indicated a serious market regulation all over the ancient world, a decided state interference in exchange of goods.<sup>12</sup> Considering such a central role of contract models for

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<sup>7</sup> These tablets are called *mancipationes* by Vincenzo Arangio-Ruiz while other sale contracts has the title *emptiones venditiones*; for a critical view see KUNKEL 1972, 218 ff.

<sup>8</sup> For instance FIRA III 132 and 136 are written in Latin and designed according to Roman patterns. On the other hand FIRA III 133, 134, 135 used papyrus and Greek therefore I do not treat these documents closer. FIRA III 138 is in Greek as well. To papyri with slave sales see STRAUS 2004, 1-8.

<sup>9</sup> PAUL DU PLESSIS delivers a detailed treatment about it in this volume.

<sup>10</sup> JAKAB 2015, 115-9 (forthcoming).

<sup>11</sup> D. 21.1.1pr. Ulp. 1 ed. aed. cur.

<sup>12</sup> Cf. for example TEMIN 2001, 173-9; JAKAB 1997, 61-3 and 73-80.

selling slaves, the contract terms established for this topic can be considered as a pattern really fit for generalization.

## 2. CASE STUDIES

In the following I shortly present three sale contracts about slaves coming from the main archaeological sites mentioned above (Puteoli, Herculaneum and Roman Dacia). The main aim is to shape the characteristic features of these documents, their typical formula and legal terms.

### 2.1 *Campanian tablets*

The earliest documents, dated in the first century AD, were excavated in the Vesuvius area.<sup>13</sup> Unfortunately there are only a few *tabulae* with sale contracts in these collections and almost all of them in a rather poor condition. All together three *tabulae* record sales in the archive of the Sulpicii, concerning business conducted in Puteoli. In the 1<sup>st</sup> century, Puteoli (today Pozzuoli) was a major port for Rome and Italy, located in the Bay of Naples. TPSulp. 43 seems to be the best illustration for local sale practice on this busy market (TPSulp. 43, dated August 21, in 38 AD):<sup>14</sup>

Tab. II. pag. 3 (*graphio, scriptura interior*)

... [solutum e]sse fugit[i]vom, | [err]onem [non] esse [et] cetera | in edicto aed[ilium] cur[ulium], [q]uae huiusque | an[n]i scripta comprehensaque | <sup>13</sup>sun[t], recte praestar[i et d] uplam | [p]ecuniam ex form[ula], ita | [u]ti [ad]solet, recte [dar]i stipul[atus] | [e]st T[itus] Vestorius Arpocra mi[n]or | [spo]ndit T[itus] Vestorius Phoenix.<sup>10</sup> Actum Puteol[is] XII k[alendas] Se[p]t[embres], | Se[r]vio A[sinio] Sex[to] Nonio co[n]s[ulibus].<sup>15</sup>

Tab. II, pag. 4 *pars dextra (atramento, signatores)*

C[aii] Iulii C[aii] f[ilii] Fal[erna] Senecionis | C[aii] Munni C[aii] f[ilii] Rufi | A[uli] Fufici Donati | L[ucii] Ponti Philadelphi | <sup>15</sup>T[iti] Vestori Pho[enicis?] | C[aii] Pacci Felicis | C[aii] Claudii +++I | C[aii] Matei Primogeni | C[aii] Suetti Damae

<sup>13</sup> The tablets TH 59, 60, 61 follow the same pattern, see JAKAB 1997, 165-6.

<sup>14</sup> Cf. CAMODECA 1999, 117-9.

<sup>15</sup> TPSulp. 43: „...to be fulfilled ... not to be a fugitive or a loiterer and so on as written and included in the edict of the curule aediles for this year, Titus Vestorius Arpocra minor stipulated that the terms be duly met and that he be duly paid double the sum in keeping with the formula, as is customary, Titus Vestorius Phoenix solemnly promised. Transacted at Puteoli on the 12th day before the Kalends of September under the consuls Servius Asinius and Sextus Nonius. Gaius Iulius Senecion, son of Gaius, of the tribe Falerna, Gaius Munnius Rufus, son of Gaius, Aulus Fuficus Donatus, Lucius Pontus Philadelphus, Titus Vestorius Phoenix, Gaius Paccus Felix, Gaius Claudius ..., Gaius Mateius Primogenus, Gaius Suettius Dama.“ (Translation after Rowe.)

The first lines of the document are lost: the names of vendor, purchaser and the slave sold are missing. From the Syntax it is very likely that a male slave of unknown age was the object of the business.<sup>16</sup> The text as preserved begins with a guarantee for latent defects, physical and mental as well. The vendor promised that the slave is of good quality<sup>17</sup> – he is not a runaway (fugitive), not a loiterer on errands or still subject to noxal liability (it means he is free from liability for unlawful damages).<sup>18</sup> In addition, the scribe used a special term generalizing the liability for latent defects with a hint to the edict of the *aediles curules*, the magistrates in charge of market regulations (line 3-5). From line 5 the main body of stipulation follows: the vendor promised to take responsibility (*praestari*) for all possible defects ordered by the *aediles* and to pay the double sum in a case of a condemnation.<sup>19</sup> From this very *stipulatio* we do learn the names of the parties involved: Titus Vestorius Phoenix the vendor and Titus Vestorius Arpocra the purchaser. As usual in Roman documents the dating is placed at the end, the years recorded with the consuls. The agreement was set up in Puteoli and signed by nine seals: the vendor (Tab. II pag. 4 line 5) and eight further persons witnessed the business. The high number of *signatores* is a clear link that the acquisition of ownership (carried out upon the sale) may have been recorded as a formal *mancipatio*.<sup>20</sup>

Closely related is the formula of a sale document from a neighbour city, Herculaneum, as represented in TH 61 (Triptychon, May 8, 63 AD):

Tab. II, pag. 4 pars laeva – Tab. I, pag. 1 (*atramento, tertia scriptura*)

l [- - - ] quem l [- - - ] L. Comini

[Primi - - - vendit]oris P. Corneli Pop[p]aei l [Erasti - - -] Ofilli Eleupori emisse <sup>15</sup> [m] an[cipioque accepisse se dixit L.] Cominius Primus HS ∞ CCCC l [hominem - - - de] P. Cornelio Poppaeo Erasto l [libri]pende L. M[ario] Chrys[e]rote

pag. 1

[hunc hominem sa]num furtis noxisque solutum esse l [praestari et, si qui]s eum hominem partemve quam eius evicerit, quo l [minus L. Comi]nium Primum heredemve eius habere l [uti frui] possidere recte liceat, simplam pecuniam r[ect]e l<sup>5</sup> [dari, haec,] ita uti adsolet, recte praestari stipu[latu]s l [est L. Comin]ius Primus, spondit P. Cornelius Popp[a]eu[s] l [Erastus] l (Vac.) l A[ct]um in Pompeiano in figlinis Arrianis Poppaeae Aug(ustae) l VIII idus Maias l<sup>10</sup> C. Memmio Regulo L. Verginio Rufo cos.

<sup>16</sup> However, scribes may have ignored grammar and sex by drafting a document, see e.g. CROOK – WOLF 1989, 1-4.

<sup>17</sup> Although GAMAUF 2014, 268 ff. argues for a mental defect I consider it an objective fact – if the slave already committed a *fuga*, see for it JAKAB 1997, 127-9.

<sup>18</sup> It is likely that line 1 can be completed with *noxam solutum esse*; see more to it soon.

<sup>19</sup> D. 21.1.1.1 Ulp. – the double of the price paid or the double of the market value. The liability for eviction investigated ANKUM 1981, 739-92 and HONSELL 1969, 25-6.

<sup>20</sup> See for it JAKAB 2014, 221-4 and CROOK 1967, 141.

Tab. II, pag. 4 *pars dextra* (*atramento, signatores*)

[-----] | [-----] | L. Comini? Primi | Q. Grani Abascanti |<sup>5</sup> Q. Iuni Peregrini | M. Cerrini Aucti | P. Corneli Abascanti | C. Vibi Fabati | P. Corneli Erasti

The small sized (11,8 x 14,8 cm) wooden tablet is heavily damaged,<sup>21</sup> the first lines almost entirely missing. Nevertheless we do learn the names of the contracting parties: L. Cominius Primus (line 5) acquired from P. Cornelius Poppaeus Erastus (line 6) an adult male slave of undefined age. According to the wording, the parties styled the delivery legally as a traditional *mancipatio* – line 7 calls the name of the *libripens*, L. Marius Chryserotus who is supposed to hold the scale.<sup>22</sup> Further research is required to clear if the archaic formal act has been really effected even at that period of Roman law. The phrase *mancipioque accepisse se dixit*, especially the use of the verb *dicere* (maintain) seems to be a hint that the formal act of *mancipatio* was not really carried out. The document may record the mere declaration of the purchaser regarding the *mancipatio* formula. In this case the role of the *libripens* may have been restricted to that of a witness. In legal life, the *mancipatio* clause may have functioned as an alternative to a mere *traditio* – it could be applied if both parties were present and the vendor was actually the owner of the thing sold (and not a mediatory, an agent).

The document was depicted in an objective style, recording the business in third person singular. It is remarkable that the performance already took place before the deed was drawn up: the slave was given away and the full price was paid (or at least the vendor acknowledged that he has received full payment). The only future obligation stated in the document is the warranty of the vendor for latent defects and for the case of eviction.<sup>23</sup> As to the possible physical or mental defects, the vendor promised in form of a *stipulatio* (formal contract by verbal promise, the purchaser questioning and the vendor promising) that the slave was handed over in a healthy condition, there is no disease in the slave, and he is not under noxal liability because of a theft or any other *delictum*...

A comparison with TPSulp. 43 shows that the wordings differ: the Puteoli tablet declares that the slave is not under noxal liability and not a runaway or loiterer (*erro*) – closing with a general link to be free of all possible defects listed in the edict of the *aediles curules*. In the Herculaneum tablet this link is

<sup>21</sup> Here I follow the *cura secunda* of CAMODECA 2000, 66-7.

<sup>22</sup> The Sales in the archive of the Sulpicii are very fragmented; the first lines couldn't be reconstructed – therefore it can't be stated if the parties used a *mancipatio* or not.

<sup>23</sup> L. Cominius Primus, the vendor and his successors are liable if the slave should be evicted from the purchaser (page I, lines 2-5). Nevertheless, the eviction is not subject to this contribution.

missing and the liability of the vendor is restricted to two major defects: *noxa* and disease. In my view, the obvious difference is a strong argument for an individual designing of such contractual terms. It shows that the warranty clause was commonly negotiated among the parties. Furthermore we can assume that giving or denying a warranty had a strong impact on the price.<sup>24</sup> Drawing up a sale document was an interactive action between purchaser, vendor and scribe, shaped strongly by local custom.<sup>25</sup>

## 2.2 Tablets from the provinces

Traders and purchasers were aware of the proper legal framework of sales not only in Campania but even in small humbles in far provinces. Negotiating on a slave market, they shaped their legal act according to local trading experiences and basic expectations of Roman law. There are a few examples of wooden *tabulae* set up and preserved in Dacia with the main impact that the actors were astonishingly well informed of the main rules of Roman law as practiced in Italy. A document from a small humble called *Kartum* preserved a slave sale in a rather good condition<sup>26</sup> (FIRA III Nr. 87, Triptychon, 139 AD, *scriptura interior*):

Maximus Batonis puellam nomine | Passiam, sive ea quo alio nomine est, anlnorum circiter p(lus) m(inus) sex, empta sportellaria, emit mancipioque accepit l<sup>5</sup> de Dasio Verzonis Pirusta ex Kavieretio, l (denariis) ducentis quinque. | Eam puellam sanam esse <<a>> furtis noxisque | solutam, fugitivam errone non esse | praestari: quot si quis eam puellam | partemve quam ex eo quis evicerit l<sup>10</sup> quo minus Maximum Batonis, quove ea res pertinebit, habere possidereque recte liceat, tum quanti | ea puella empta est, <tan>tam pecuniam l<sup>15</sup> et alterum tantum dari fide rogavit | Maximus Batonis, fide promisit Dasius | Verzonis Pirusta ex Kavieretio. Proque ea puella, quae s(upra) s(cripta) est, (denarios) ducentos quinque accepisse et habere | se dixit Dasius Verzonis a Maximo Batonis...<sup>27</sup>

<sup>24</sup> See for it JAKAB 1997, 195-6.

<sup>25</sup> Here I disagree with GARDNER 2011, 416.

<sup>26</sup> *Kartum* may have been a small village in the neighbourhood of *Alburnus maior*, a gold mine in the Dacian mountains.

<sup>27</sup> FIRA III 87: “Maximus son of Bato has bought and accepted as a *mancipium* a girl by name Passia, or if she is (known) by any other name, m(ore or) l(ess) around six years old, having been bought as a foundling, for 205 (denarii), from Dasius son of Verzo, a Pirustian from Kavieretium. It is vouched for that she is a physically sound girl, not charged with theft and damage, is not a runaway (fugitive) or loiterer to errand; but if anyone shall have claimed back this girl or any portion of her, as a result of which it is not legal for Maximus son of Bato or him to whom the affair will be relevant to hold and possess her rightfully, in that case Maximus son of Bato demanded in faith that the exact sum and an equivalent amount be paid. Maximus the son of Bato asked to be given in faith, Dasius son of Verzo a Pirustian from Kavieretium promised in faith. Dasius son of Verzo said that he received and has for this girl, w(ho) i(s) w(ritten) a(bove), 250 denarii from Maximus son of Bato.” (Translation by Meyer.)

The document was designed in an objective style, in third person narrative. The first part of the text summarizes the facts, the most important terms of the agreement: the name of the parties and the thing sold. A certain Maximus, son of Bato purchased a slave girl called Passia, who was approximately six years old.<sup>28</sup> The phrase *empta sportellaria* seems to be a hint that the girl may have been turned out as a baby then found by someone and brought up, probably with the intention for selling her later with a considerable profit. The vendor is Dasius, son of Verzo, from the tribe of the Pirustanians originating from the village of Kavieretium. The price, agreed and already paid before setting up the present document, counted 205 drachmas.<sup>29</sup> The contracting parties, Maximus Batonis and Dasius Verzonis, are obviously peregrines living in Dacia.<sup>30</sup> There is no trace of any of them possessing a Roman citizenship.<sup>31</sup>

The second part includes the guarantee of the vendor, a *stricti iuris stipulatio* for undisturbed enjoyment and quality of the slave girl – with a closely related wording as we have seen it in Puteoli.<sup>32</sup> Nevertheless, here we can observe a more extended warranty: the vendor promises that Passia is healthy (free from diseases), she is not under noxal liability and not a runaway or loiterer (*erro*). In lines 8-17 follows an elaborated guarantee for the case of eviction designed as a *stricti iuris stipulatio duplae* – as usual in Latin sale documents. Afterwards Dasius states that he has already received the full price, the 205 denarii for the slave girl.

The similarity of the wording of all three sale documents treated above is really striking although their geographical, legal and cultural environment rather differ.<sup>33</sup> The first comes from the rich harbour of Puteoli, from the very heart of Campanian business life and was set up at the beginning of the first century AD while the last was drawn up almost hundred years later in a far province, Dacia, in a just established Roman economy and population, in rather poor circumstances. Depicting their business, obviously the parties and the scribes convulsively hold on classical Roman patterns but cared not even of basic legal capacities like citizenship. The documents follow almost in every

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<sup>28</sup> Commonly slaves acquired by sale were re-named by their new proprietor; therefore the uncertainty; cf. Varro ling. 8.21.

<sup>29</sup> KUNKEL 1972, 218 ff.

<sup>30</sup> Bato may have an Illyric affiliation and Dasius Verzonis belonged to a tribe that was settled by the emperor Traian to Dacia, see PÓLAY 1972, 128.

<sup>31</sup> PÓLAY 1972, 130.

<sup>32</sup> To the problem of using a Roman formula by *peregrini* see JAKAB 1997, 168 with further literature.

<sup>33</sup> TH 60 represents a slightly different formula, see JAKAB 1997, 281-5.

detail truly the main expectations of classical Roman law. The texts focus merely on the main legal consequences derived from the business. They record the transfer of ownership, the mutual past fulfilment of contractual duties and the only future obligation, the guarantee of the vendor for latent defects and eviction.

On a market place controlled by Roman authorities a seller was expected to disclose any disease or defect in the slave and to protect the vendor against eviction. The proper contract terms as expected by Roman authorities were commonly summarized in manuals (*leges venditionum*<sup>34</sup>) and copied all over the Roman Empire. Local custom may have shaped the general patterns that were carefully applied for the concrete negotiation: the vendor took over the liability for some defects but he may have let out others.

Selling and buying, participating in a flourishing exchange of goods required talent and experience. *Circumscribere*, cheating was allowed up to a certain level notwithstanding the rules of the market. Negotiating the price and the concrete terms of the sale (*lex contractus*) belonged mainly to private autonomy and it meant also a considerable amount of personal risk. Cunning fellows like slave traders knew the ropes. Especially ancient literary texts give a plausible hint at usual trading habitude and vendor's tricks in every day business. A rather convincing example is a sophisticated *epistula* of Horace quoting phrases commonly cried out by slave merchants on the market (Hor. epist. 2.2.4):

My Florus, loyal friend of great and good Nero, suppose someone by chance should wish to sell you a slave, born at Tibur or Gabii, and should deal with you thus: "Here's a handsome boy, comely from top to toe; you may take him, to have and to hold, for eight thousand sesterces; home-bred he is, apt for service at his owner's beck, knows a bit of Greek learning, and can master any art; the clay is soft – you will mould it to what you will; moreover, he will sing for you over your cups in a sweet of artless fashion. Too many promises lessen confidence, when a seller who wants to shove off his wares praises them unduly. I am under no constraint; I have slender means, but am not in debt. None of the slave-dealers would give you such a bargain; not everyone would easily get the like from me. Once he played truant, and hid himself, as boys will do, under the stairs, fearing the hanging strap. Give me the sum asked, if his running off, duly noted, does not trouble you": the seller, I take it, would get his price without fear of penalty. You bought him with your eyes open – fault and all; the condition was told you; do you still pursue the seller and annoy him with an unjust suit?<sup>35</sup>

<sup>34</sup> See for it JAKAB 1997, 157-61.

<sup>35</sup> Hor. epist. 2.2.4: *Flore, bono claroque fidelis amice Neroni, / si quis forte velit puerum tibi venere natum / Tibure vel Gabiis et tecum sic agat: 'hic et / candidus et talos a vertice pulcher ad imos / fiet eritque tuus nummorum milibus octo, / verna ministeriis ad nutus aptus erilis, / litterulis Graecis imbutus, idoneus arti / cuilibet: argilla quidvis imitaberis uda; / quin etiam canet indoctum sed dulce bibenti. / multa fidem promissa levant, ubi plenius aequo / laudat venalis qui volt extrudere merces:*

In his elegant letter addressed to his friend Florus, Horace developed a delicate description of the typical trading convention on the market laces of Rome. He quotes truly the common wording of sale offers as announced by sellers or by auctioneers. The poet creates an impressing set of fictitious *leges venditionis* copying real trading practice: a slave merchant just recommends his goods praising a young male slave rather cunningly: telling long tales about his benefits he tries to hide a basic failure, that of his being an *erro* (or perhaps *fugitivus*), a loiterer on errands or a runaway slave.<sup>36</sup> Here, Horace sought just for excuse for his laziness in writing. He argues that he can't be blamed because he warned Florus of his being a bad correspondent. A previous warning is a real exculpation as it is commonly accepted in trading with slaves. Horace built the metaphor with uncommonly great artfulness and accuracy borrowing phrases as cried out by merchants.

Facing hidden tricks of professionals as depicted by Horace the consumers of Rome seem to have been rather defenceless. Roman authorities recognized soon the high risks connected with the acquisition of slaves and sought to introduce some types of state control. A certain level of state interference seemed indispensable for the protection of private individuals participating in the exchange of goods.

### 3. INVESTMENTS AND STATE INTERFERENCE ON SLAVE MARKETS

Sale contracts represent the legal framework for exchanging goods; they can be considered as the most important obligation in every economy. Notwithstanding, the famous jurists of ancient Rome did not care too much of theoretical rules regarding sale. As we have seen above, the law of sale was ruled mostly through trading conventions and contract formulas.<sup>37</sup> Despite of seemingly negligent legal theory, Roman communities showed a serious interest in slave markets – whereas slavery was an integrative and important part of ancient cultures. It really mattered where and how the many slaves were traded.<sup>38</sup>

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*l res urget me nulla; meo sum pauper in aere. l nemo hoc mangonum faceret tibi; non temere a me l quis ferret idem. semel hic cessavit et, ut fit, l in scalis altuit metuens pendentis habenae' - l des nummos, excepta nihil te si fuga laedat l ille ferat pretium poenae securus, opinor. l prudens emisti vitiosum, dicta tibi est lex: l insequeris tamen hunc et lite moraris iniqua?* (Translation by H. Rushton Fairclough.)

<sup>36</sup> Cf. KUDLIEN 1986, 250 ff.; JAKAB 1997, 162-164. On the contrary, ARZT-GRABNER 2010, 24 stressed his being a *fugitivus* – in my view both meanings are possible.

<sup>37</sup> Cf. CROOK 1967, 214-221.

<sup>38</sup> To the sources of ancient slavery cf. SCHUMACHER 2001, 25-33.

There can be observed strong community contributions and state interferences in slave markets all over the Roman Empire: market halls were built as architectural environment and market regulations were issued as part of a state control. From archaeological evidence it is obvious that there was a serious effort of investments – public or private – for creating better architectural conditions for slave markets. Trading with slaves was of utmost interest for maintaining a reasonable supply on working power in the whole Roman economy.

Retail and wholesale trade took place mostly on market places or in market halls in frequented ports or big cities. It can be assumed that not only private investors but also public authorities mobilized some capital for creating a proper infrastructure.<sup>39</sup> Buildings with a great amount of small closed rooms (in its architectural structure similar to a jail), with closed entrance, separated ways for slaves and buyers, with water supply and latrines, including probably also a selling platform are commonly identified as slave markets in archaeological studies.<sup>40</sup> Buildings of this type were found for instance in the excavations of Delos, Pompeji, Rome, Ostia, Herculaneum, Leptis Magna, Magnesia on Maeander and Ephesos. Especially good examples are the Agora of the Italiens in Delos, the Basilica in Herculaneum or the House of Eumachia in Pompeii.<sup>41</sup>

There is also a great amount of written evidence of Roman slave markets since Plautus' age including inscriptions and literary texts.<sup>42</sup> Selling halls are often named *chalcidicum* and the special selling platform, used especially at auctions, called *catasta* in the sources.<sup>43</sup> There are also epigraphic sources providing us with further information. In the archive of the Sulpicii (*Tabulae Pompeianae Sulpiciorum*) three buildings are mentioned in a market context: the *chalcidicum Caesonianum*, *chalcidicum Octavianum* and the *chalcidicum Hordionianum*. In three of the tablets the auctions of slaves took place *in foro ante chalcidicum*, it means on the forum in front of a certain *chalcidicum*.<sup>44</sup> A *chalcidium* seems to have been a special building for public use that served (among others) also for selling slaves.

The Basilica of Herculaneum was discovered in underground excavations in in the 18<sup>th</sup> century and fully excavated in the 1960s. It is a *porticus*-building

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<sup>39</sup> See for it COARELLI 1982, 120-2 and COARELLI 2005, 210 ff.

<sup>40</sup> With some critics see TRÜMPER 2009, 31-3.

<sup>41</sup> To the slave markets see SCHUMACHER 2001, 44-64, especially 51-5.

<sup>42</sup> Cf. JAKAB 1997, 35-7.

<sup>43</sup> Vgl. etwa Suet. Tib. 2.3.60; Liv. 28.21.2; Plaut. Pers. 6.77; Plin. nat. 35.200 etc.

<sup>44</sup> Vgl. etwa TPSulp. 85, 87, 90, 92.

with colonnades and an open, paved court including two large platforms.<sup>45</sup> Archaeologist identified it as a *chalcidicum* although it is quite richly decorated for a slave market.<sup>46</sup> Nevertheless it is likely that auctions of slaves might have arranged in this luxury vestibule. It is unknown who financed the building but the public interest (that of the community of Herculaneum) is obvious.<sup>47</sup>

The Agora of the Italiens in Delos is located in the vicinity of the main port, close to the sanctuary of Apollo. It is a big complex of double-stored porticoes, courtyards and of an open unpaved place of 3.440 m<sup>2</sup> dimension, gathered with bath, latrines and shops. The combination of two narrow side entrances with a nice Doric *propylon* entrance seems to offer an ideal infrastructure for slave trade.<sup>48</sup> The Agora was built and financed by the Italiens community, from donations of private individuals (presumably by Roman *negotiatores*).<sup>49</sup>

Archaeological evidence underlines that slaves up for sale were commonly stored in great public buildings designed for this particular purpose. Nevertheless, one can find also texts testifying private storage of slaves as merchandise: Ulpian reports of a slave dealer who preferred to store his human ware in his own house: *Nam quos quis ideo comparavit, ut ilico distraheret, mercis magis loco quam suorum habuisse credenda est.*<sup>50</sup> The case is about a legacy: the testator, a *venaliciarius* left his own slaves (*sui servi*) and the merchandise slaves (*mercis loco*) to different persons.

Summing up it is to underline that slave trade – especially large-scale trade – needed a reasonable infrastructure. In flourishing ancient trading centres this infrastructure was provided mostly by a local community.<sup>51</sup> The cities and their population were interested in the maintenance of a vivid local and long distance trade.

Recently, Walter Scheidel underlined the importance of slave supply in the Roman world: “Considering the huge scale of the Roman slave trade, substantial amounts of capital must have been committed to the procurement and distribution of slaves, and large numbers of middlemen had to be involved in this business”.<sup>52</sup> The significance of trading slaves and the special risks of the

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<sup>45</sup> TRÜMPER 2009, 59-62.

<sup>46</sup> Ibid.

<sup>47</sup> TRÜMPER 2009, 82.

<sup>48</sup> TRÜMPER 2009, 34-5; COARELLI 2005, 210-2.

<sup>49</sup> TRÜMPER 2009, 82.

<sup>50</sup> Ulpian D. 32.73.4.

<sup>51</sup> TRÜMPER 2009, 81-2.

<sup>52</sup> SCHEIDEL 2011, 300.

business required some sort of state interference. In fact, there are two sides involved in the business: a colourful group of merchants, mostly of peregrine origin, and wealthy Roman citizens equipping their household or estate.<sup>53</sup> Wholesale dealers were experts of their profession, with extended knowledge about possible defects and wily tricks to hide them. On the opposite, individual purchasers may have been naive and clumsy in bargaining. Basically, Roman legal culture cultivated a “universe in which individuals control their own destinies consistent with the principle of individual autonomy and self-determination”.<sup>54</sup> Commonly, the willingness of the law to establish liabilities in contractual relations was rather weak. However, a substantial approach was needed, an approach of an “impartial observer”<sup>55</sup> to re-design the rules of the game and to find an optimal balance between state control and free market. In some sense, the commonly accepted legal framework of sale – as statutes of authorities, trading customs and legal interpretations are part of an imaginary “social contract”, of a “real honest-to-goodness consent contract”.<sup>56</sup>

Here the question rose whether it is better to condemn one side (the merchants) as “mischievous grabbers” and to grant some type of privilege to the other side (the purchasers) through implied terms and protective market regulations. Wisely, the Roman state authorities interfered rather carefully and issued a limited set of special rules for “consumer protection”. In such cases it is necessary to look at the overall situation and to think over how the rule plays out in a wider context.

In Republican Rome, the *aediles curules* were in charge of the control over public places and among them also of that of public markets. The aediles issued edicts for inflicting duties and liabilities upon merchants, “The edict of the aedile, rescission, and the action for diminution” (D. 21.1.1.1 Ulp. 1 ed. aed. cur.):

The aediles say: “Those who sell slaves are to apprise purchasers of any diseases or defects in their wares and whether a given slave is a run away, a loiterer on errands, or still subject to noxal liability. All of these matters they must proclaim in due manner publicly when the slaves are sold. If a slave be sold without compliance with this regulation or contrary to what has been said of or promised in respect of him at the time of his sale, it is for us to declare what is due in respect of him; we will grant to the purchaser and to all other interested parties an action for rescission in respect of the slave [...].<sup>57</sup>

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<sup>53</sup> To the role of Status in contractual relations see MASI DORIA 2012, 102-30.

<sup>54</sup> EPSTEIN 1997, 261.

<sup>55</sup> EPSTEIN 1997, 248.

<sup>56</sup> EPSTEIN 1997, 249.

<sup>57</sup> D. 21.1.1.1 Ulp. 1 ed. aed. cur.: *Aiunt aediles: „qui mancipia vendunt certiores faciant emptores,*

On market places under public control, merchants were obliged to provide a minimum standard of fair business. The *aediles curules* ordered that certain basic information should be announced about every slave to be sold.<sup>58</sup> It happened to disclose any disease, defect and some dangerous facts in the past that may have prevent the slave from a reasonable service. It mattered especially whether the slave has some incurable disease or physical defect, whether he is a runaway or a loiterer or under noxal liability.<sup>59</sup> Roman jurists dwelt on the interpretation of the basic defects and of their relevance as delivered in long theoretical discussions in the Digest.<sup>60</sup>

Just to give an example Ulpian dwells on the correct definition of disease and defect and how to distinguish between them if it may have legal relevance: “It is to be noted that a definition of disease as an unnatural physical condition whereby the usefulness of the body is impaired for the purpose for which nature endowed us with health of body appears in Sabinus. Such condition may effect the whole body or only part thereof. (Tuberculosis and fever exemplify the former; blindness, even from birth, the latter.) Defect, he says, is very different from disease; stammering, for instance, is a defect rather than a disease.”<sup>61</sup> For the jurists it seemed of utmost interest how to explain every word of the edict, how to argue and how to understand and apply the issues. *Morbus* (disease) and *vitium* (defect) are technical words in the edict of the aediles, each a *causa*, a legal basis for a peculiar claim (*actio redhibitoria* or *actio quanti minoris*).<sup>62</sup> A concrete complaint was only enforceable in court if the claimant chose the correct legal phrases.

For an effective protection of consumers’ interests the edict declared an objective (*stricti iuris*) liability: “It must, though, be recognized that the vendor is still liable, even though he be unaware of the defects which the aediles require to be declared. There is nothing inequitable about this; the vendor could have made himself conversant with these matters; and in any case, it is no concern of the purchaser whether his deception derives from ignorance or

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*quid morbi vitii cuique sit, quis fugitivus errove sit noxave solutus non sit: eademque erti, cum ea mancipia venibunt, palam recte pronuntianto. Quodsi mancipium adversus ea venisset, sive adversus quod dictum promissumve fuerit cum ertin, fuisset, quod eius praestari oportere dicitur: emptori omnibusque ad quos ea res ertinent iudicium dabimus, ut id mancipium redhibeatur.* (Translation by A. Watson.)

<sup>58</sup> For Greek patterns see JAKAB 1997, 70-84.

<sup>59</sup> Cf. WATSON 1987, 49-52; KASER 1951, 21 ff.; DONADIO 2004, 83-6; KUPISCH 2002, 21-5 and BELLEN 1999, 30-1.

<sup>60</sup> Cf. also GARDNER 2011, 416-7.

<sup>61</sup> D. 21.1.1.7 Ulp. 1 ed. aed. cur. Cf. GAMAUF 2014, 272-5.

<sup>62</sup> Cf. GAROFALO 2000, 77-9 and MANNA 1994, 44-7 and 67.

the sharp practice of his vendor.”<sup>63</sup> Although the aediles declared that “this edict was promulgated to check the wiles of vendors and to give relief to purchasers circumvented by their vendors”<sup>64</sup> Roman law did not condemn slave dealers as “mischievous grabbers”. In fact the rather summary aedilician procedure took aim at a balanced risk allocation between the participants of exchange. Vendors were burdened with a strict objective liability for failing to provide the basic information about possible defects but it was a liability also within strict limits. It came about merely in the explicit cases issued in the edict (*morbis, vitium, fugitivus, erro, noxa*); the catalogue of the relevant defects was a enclosed one. Besides the condemnation never exceed the price paid (restitution or reduction, *redhibitio* or *quanti minoris*).

Furthermore, Roman authorities were careful with consumer protection: too much protection can obstruct free negotiation and private autonomy. Therefore the strict liability of the vendor was conditionally: “If a defect in or disease of the slave be perceptible (and defects reveal themselves generally through symptoms), it may be said that the edict has no place; its concern is simply to ensure that a purchaser is not deceived.”<sup>65</sup> Carefulness and negligence of purchasers should not be protected by the edict.

Completing the picture it should be mentioned that the aedilician liability was not absolutely cogent: it was free for the contracting parties to exclude it.<sup>66</sup> “*Pacisci contra edictum aedilium omnimodo licet, sive in ipso negotio venditionis gerendo convenisset sive postea.*”<sup>67</sup> Later on Pomponius stressed simply that “*Simpliarium venditionum causa ne sit redhibitio, in usu est.*”<sup>68</sup> With mutual agreement the enforcement of market regulations issued by the *aediles* could be excluded any time. The opposite of a *simplaria venditio* or *pure vendere* is a sale *sub conditione*; the technical word condition (*conditio*, special contract term agreed upon by the parties) was mostly understood as *lex contractus* in Roman jurisprudence.<sup>69</sup>

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<sup>63</sup> D. 21.1.1.2 Ulp. 1 ed. aed. cur.

<sup>64</sup> D. 21.1.1.2 Ulp. 1 ed. aed. cur.

<sup>65</sup> D. 21.1.1.6 Ulp. 1 ed. aed. cur.

<sup>66</sup> JAKAB 1997, 186-7.

<sup>67</sup> D. 2.14.31 *Ulpianus libro primo ad edictum aedilium curulium*: “It is quite lawful to make a pact contrary to the edict of the aediles, whether the agreement is made in the course of arranging the sale or afterward.” (Translation by Watson.)

<sup>68</sup> D. 21.1.48.8 *Pomponius libro vicesimo tertio ad Sabinum*: “It is not our practice to allow rescission in the case of sales where undertakings have been specifically excluded.” (Translation by Watson.) Cf. CHORUS 1976, 157.

<sup>69</sup> Cato agr. 146-9.

Summing up it can be stated that the legal framework of the exchange of goods on public markets was a sophisticated one in ancient Rome. Roman authorities started rather early state investments for creating a motivating infrastructure for trading, especially for the trade with slaves. Assisting market economy in a permanent and sufficient supply on slaves meant building market halls, ports and establishing a market control. The market control of the aediles tried to channel honest and faith-based contracting and introduced some kind of a limited consumer protection. Besides, every day legal practice elaborated detailed contract formulas according to dominating trade usage. Both set of norms formed together the legal framework of selling and buying: legal norms (of what kind ever) and market customs, the law of sale in notary practice (*leges venditionis*) and the edicts of the urban praetors and *aediles curules*. The *aediles* ordered *praedicere*, to give certain information in advance – vendors of slaves were obliged to disclose every relevant disease or defect, if orally or in a written form.<sup>70</sup> The notary practice offered useful patterns how to style a fair sale contract.

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<sup>70</sup> Cf. Jakab 1997: 40-43, 127-9.

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