II. HELLENISTIC AND GRECO-ROMAN LAW

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SALE WITH EARNEST MONEY IN THE PAPYRI*

I. Gaius describes the contract of sale (*emptio venditio*) in his popular "manual" of Roman law (*institutiones)* as an agreement (*consensus*) between seller and purchaser about the purchase price (Gai. 3.139)[1]: "A contract of sale is concluded when the price has been agreed, although it has not yet been paid and not even an earnest [*arra*] has been given." This excellent jurist of classical Roman law was delighted with the idea of the consensual contract and made its main features clear to his students: no form, no witnesses, no *rei interventio*, not even the handing over of a price or of an *arra* was required to make a contract binding[2]. Gaius' formulation suggests the common usage of giving an *arra*. *Arra* (in Greek terminology *arrabôn*) is usually a sum of money – or else on occasion a ring, especially in Rome – given as an earnest[3]. However, if consent had already obliged the parties and secured for them the legal actions for mutual performance, an *arra* would seem unnecessary, according to the broadly accepted view[4]. In this sense, Gaius emphasizes, if an *arra* was given it could only be evidence of consent[5].

What was the function of *arra* in Greek sale in the papyri? In Greece and in Ptolemaic and Roman Egypt, the concept of consensual sale was unknown. The lack of any legal action from an agreement alone must explain why the parties used the

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1 Gai. 3.139: *Emptio et venditio contrahitur, cum de pretio convenerit, quamvis nondum pretium numeratum sit, ac ne arra quidem data fuerit*. Cf. F. de Zulueta, *The Institutes of Gaius*, Oxford 1946, p. 197.

2 Cf. H. L. W. Nelson, U. Manthe, *Studia Gaiana VIII. Gai Institutiones III 88-181*, Berlin 1999, pp. 249sqq.; R. Zimmermann, *The Law of Obligations. Roman Foundations of the Civilian Tradition*[2], Oxford 1996, pp. 230sqq.

3 Cf. Zimmermann, *Law* pp. 230sqq.; A. Watson, *The Law of Obligations in the Later Roman Republic*, Oxford 1965, pp. 47sqq.

4 See F. Pringsheim, *The Greek Law of Sale*, Weimar 1950, pp. 343, 376; M. Talamanca, *L'arra della compravendita in diritto greco e in diritto romano*, Milano 1953, p. 73sqq; F. Peters, *Die Rücktrittsvorbehalte des römischen Kaufrechts*, Köln 1973, pp. 62sqq.; Nelson, Manthe, *Studia Gaiana* pp. 253sqq.; M. Kaser, *Das Römische Privatrecht* I[2], München 1975, 179.

5 For this subject cf. É. Jakab, Ein *fundus cum instrumento legatus und der* '*verbliebene Wein*'. *Scaevola D. 33.7.27.3 zum Kauf mit Angeld*, (2002) 119 ZSS pp. 177-178.

earnest money to create an otherwise non-existent liability[6]. Already in 1920, Schwarz saw the function of *arra* as follows: "Der Verkäufer erklärt in betreff der Kaufsache die Arrha empfangen zu haben und verspricht für den Fall, daß der Käufer den Rest des Kaufpreises bezahlt, ihm eine Übereignungsurkunde zu entrichten...; widrigenfalls er dem Käufer das Doppelte der empfangenen Arrha zurückzuerstatten verpflichtet sein sollte; bezahlt der Käufer den Rest des Kaufpreises nicht, so soll die Arrha dem Verkäufer verbleiben"[7]. Pringsheim also saw the main task of *arra* as imposing liability on both parties: the giver loses the *arra* if he does not fulfil the promise which it had been given for; the receiver of an *arra* has to pay the amount of the price or double the amount of the *arra* if he does not fulfil his promise[8].

Without affecting Pringsheim's main theory about cash sale (sale for ready money with the immediate exchange of money for goods), there is another way to interpret sales with *arra* in the papyri, if we abandon dogmatic reconstructions and read the documents as reflecting the everyday legal life of contractual practice. We are not looking for an exact definition of *arra* in the Greek law of sale (Pringsheim has already given a systematic treatment of this subject), but for the practical function of *arra* in its social and economic contexts. What consequences did the parties intend to attain by giving and receiving an *arra*?

The following survey adopts this point of view and deals with three subjects: a) νόμος τῶν ἀρραβόνων, b) ἀρραβών ἀναπόριφος c) the often underestimated importance of the time limit. Pringsheim already knows 22 deeds about *arra*-transactions[9]. Since Pringsheim, other documents from the Roman period have been published. From this rich material regarding *arra* transactions I have chosen three

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[6] See Pringsheim, *Sale* pp. 334sqq., 346. Pringsheim's theory was founded on J. Partsch, *Aus nachgelassenen und kleineren verstreuten Schriften*, Berlin 1931, nr. 8 (= Gött. Gel. Anz. 1911) p. 267. Pringsheim, *Sale* p. 346 summarizes his thesis as follows: "Greek agreement created duties only, not liabilities, and [that] the arra added an independent liability, remote from any obligation to deliver the goods and to pay the price". A. Schwarz, *Die öffentliche und private Urkunde im römischen Ägypten*, Leipzig 1920, p. 188 goes on to state that the parties could very well secure an agreement by which they "dem bereits entrichteten Teil des Kaufpreises den Charakter der Arrha gegeben und über den Vorgang eine Arrhalurkunde entrichtet haben".

[7] Schwarz, *Urkunde* pp. 188sqq.

[8] Pringsheim, *Sale* pp. 376, 408.

[9] BGU 240; BGU 446; BGU 601; BGU 947; BGU 1624; P.Col. inv. 551; CPR I 19; P.Flor. I 24; P.Flor. 303; P.Lond. II 143; P.Lond. II 239; P.Lond. II 334; P.Lond. III 1229; P.Marmarica V 7; P.Mich. II 121 recto IX; P.Oxy. 920; P.Oxy. 1673; P.Ryl. II 224; SB I 5315; PSI 1153; P.Stras. 34; SPP XXII 42. But there are also some new published papyri after Pringsheim: BGU 2111; BGU 2161; BGU 2343; P.Col. VIII 222; P.Mich.inv. 3318 (?); P.Mil.Vogl. 52; P.Mil.Vogl. 154; P.Münch. 119; P.Stras. 894 (P.Stras. 34 + 1153a); P.Vindob. Sal. 4; SB V 8262; SB XI 10211; SB XII 11155; SB XIII 11490 (= P.Yale I 82); SB XIV 12176.

contracts of sale as representative of the main types. Perhaps it is useful to have a look at our texts before turning to the theories:

1) BGU 446 (= M.Chr. 257, Faijum, 158/9 A.D.)

῾Ομολογεῖ ... [Στοτοήτι][4] ... ἀπέχειν αὐτὴν παραχρῆμα] [5]διὰ χ[ειρὸς ἐξ οἴκου δραχμὰς π]εντακοσίας ἀραβῶνα ἀναπόριφον ἀπὸ τῆς [τιμῆς ἀργυρίου δραχμῶν ὀκτακοσί][6]ων τῶ[ν ὑπαρχόντων αὐτῇ] ... [14]ἃ καὶ καταγράψει ἡ Σωτηρία τῷ Στοτοήτι, ὁπότε ἐὰ[ν αἱρῆται ... ἐὰν δὲ μὴ καταγράφῃ, καθὰ γέγραφε, ἐκτείσ[ειν αὐτὴν τὸν ἀρραβῶνα διπλοῦν τῷ τῶν] [17]ἀραβώνων ν[ό]μῳ. ἐὰν δὲ καὶ ἡ Σωτηρία ἑτοίμως ἔχουσα καταγράψαι μὴ [λάβῃ ὁ Στοτοῆτις τὴν καταγραφὴν (?)] [18]στερί‹σ›κεθαι αὐτὸν τοῦ ἀραβῶνος, ἔτι δὲ καὶ βεβαιώσιν αὐτὴν Σωτηρίαν τὰ κατὰ τ[αύτην τὴν ὁμολογίαν πάσῃ βεβαιώσει.]

Soteria ... acknowledges to Stotoetis that she has received at once 500 drachmas cash as *arrabon anaporiphos* of a sum of 800 drachmas of ... Soteria shall cede it to Stotoetis ... if she receives the remainder of the price ... If she doesn't cede it as above written she shall pay him the double *arrabôn* according to the laws about *arrabôn*. If Soteria is ready to cede it but Stotoetis doesn't ... he shall forfeit the *arrabôn* ...

2) P.Mich. II 121 recto IX (Tebt. 42 A.D.):

[1]῾Ομολογ(εῖ) Χαρωνίων ... Πάτρ(ωνι) ... ἔχ(ειν) παρ‘ (αὐτοῦ) παραχρῆ(μα) ἀργ(υρίου) (δραχμὰς) υ ἀραβῶνα ἀναπόριφο(ν) ἀπὸ ἀργ(υρίου) (δραχμῶν) ᾽Αφμ τῆς ἐσταμένης τιμῆ(ς) τοῦ ὑπάρχο(ντος) τῶι Χαρωνίωνι περὶ Κερκουσῖρι(ν) τῆς (Πολέμωνος) κλήρο(υ) κατοι(κικοῦ) (ἀρουρῶν) ι ... [2]ἐφ ᾧι προσκομιζόμενος ὁ Χαρονίων παρὰ τοῦ Πάτρωνο(ς) τὰς λ(οιπὰς) ὑπὲρ τῆς τιμῆ(ς) ἀργ(υρίου) (δραχμῶν) ᾽Αφμ ἕως τῆς ιη τοῦ Δρουσιλλήου μηνὸς τοῦ ἐνεστῶτος ἔτους παραχωρήσειν τῶι Πάτρωνι ...

Charonion ... acknowledges to Patron ... that he has received from him at once 400 silver drachmas as *arrabon anaporiphos* a sum of 1540 silver drachmas, the price fixed for the catoecic allatment land belonging to Charonion near Kerkousiris in the division of Polemon, consisting of ten arouras ... upon condition that Charonion, if he receives from Patron the remainder of the price of 1540 silver drachmas by the 18th of the month Drousilleios (Epeiph/June-August) of the present year, shall cede it to Patron ...

3) P.Vindob.Sal. 4 (Soknopaoiou Nesos, 11 A.D.):

[1]Χαιρήμων ... Σαταβοῦτι ... χαίρειν. | ῎Εχωι παρὰ σοῦ ἀραβῶνα τῆς | ὑπαρχούσης μοι [ο]ἰκίας καὶ τῶν ταύτης φειλῶν τόlπων ἐν τῇ Νήσῳ Σοκνοπαίου Θεοῦ μεγάλου | [5]ἀργυρίου Πτολεμαικοῦ νομίσματος δραχμὰς τριαlκοσ[ί]ας ἀπὸ ἀργυρίου δραχμῶν ἑπτακοσίων | τεσσ[αρ]άκοντα καὶ καταγράψω σοι ἕως | Χοιὰκ δευτέρας τοῦ ἐνεστῶτος ἐνὸς τεσlσαρακοστοῦ

ἔτους Καίσαρος ἐμοῦ προσλαμβάιν]οντος τὰς λοιπὰς δραχμὰς τετρακοσίας τεσιςαράκοντα τοῦ ἀργυρίου, ἐὰν δὲ μὴ δῶς ἐν τῇ προικειμένῃ προθεσμία ἀπολεῖς τὸν προκείμενον | ἀραβῶνα ἐὰν δὲ καὶ ἐγὼ λαμβάνων μὴ καταγράιφωι ἀποδώ[σω σ]οι τὸν ἀραβῶνα διπλοῦν, ἐὰν δὲ | λαμβάνω, καταγράψω καὶ βεβαιώσω ...

Chairemon ... to Satabus ... greetings. I have received from you as *arrabon* for my house, which belongs to me and for the uncultivated land belonging to it in Soknopaiou Nesos ... 300 silver drachmas ... a sum of 740 silver drachmas and I shall cede it by the 2nd of the month of Choiak (November-December) of the present 41st year of Caesar if I receive the remainding 440 silver drachmas. If you shall not render by the above said deadline you shall forfeit the above said *arrabôn*. If I receive it but shall not cede it I shall pay you the double *arrabôn*. But if I receive it I shall complete the documents and I shall guarantee ...

II. All scholars derive the consequences resulting from the payment of an *arrabôn* (forfeiture of the sum paid or repayment of a double amount) from a certain νόμος τῶν ἀρραβόνων. In their view, there must have been a statute on *arra* which regulated the legal consequences irrespective of specific agreements[10]: the documents must only have repeated "die Bestimmung der bestehenden Gesetze"[11]. Mitteis quotes especially BGU 446 in which the promised stipulations comply with the hypothesized legislation on *arra*[12]. Pringsheim, too, supported the existence of a "Hellenistic νόμος τῶν ἀρραβόνων", although he acknowledges that this statute on *arra* "is mentioned only once and there in connection with the payment by the vendor of double the amount of the *arra* if he refuses to accept the price". Taubenschlag supposes a historical development. In his view, while there were different and contradictory provisions in the Ptolemaic epoch[13], in Roman times *arra* were regulated by a *nomos*, there were at last uniform rules: "this provides that the receiver of the *arra* has the choice of either fulfilling the contract or of returning to the giver a double *arra*; the giver, however, forfeits his *arra* if he fails to perform the contract"[14].

Scholars hesitate only about the exact date of this law. BGU 446, the main source, is dated to the middle of the 2nd century A.D., and hence the statute must

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[10] Schwarz, *Urkunde* p. 192; R. Taubenschlag, *The Law of Greco-Roman Egypt in the Light of the Papyri*[2], Warszawa 1955, p. 410; Pringsheim, *Sale* p. 380; Talamanca, *Arra* pp. 35sqq.

[11] L. Mitteis, *Grundzüge und Chrestomathie der Papyruskunde*, Leipzig 1912, p. 185.

[12] See Mitteis *op. cit.* above; similarly D. Pappulias, *Die Geschichte des Arrabon*, Leipzig 1910, pp. 68sqq.; G. Caligorou, *Die Arrha im Vermögensrecht*, Leipzig 1911, p. 200.

[13] Cf. P.L.Bat. XX 58 (= P.Iand. 91) and UPZ 67.

[14] Taubenschlag, *Law* p. 410. Pringsheim also argues for a change over time, *Sale* p. 381: "The Ptolemaic arra at first imposed a liability on the giver only", only the Roman epoch knew the double-sided liability, the equal liability of the receiver.

have been well known by this time. P.Mich. II 121 recto IX is one hundred years earlier and knows nothing of the repayment of the *duplum*. Must the νόμος τῶν ἀρραβόνων have been enacted in the meantime[15]? Talamanca agrees that this *nomos* must have existed, but he considers an alternative dating: the absence of the *nomos* in P.Mich. II 121 recto IX need not prove a later origin[16]. Does P.Vindob.Sal. 4, recording a sale with *arrabôn* and showing the repayment of the *duplum* from 11 A.D., confirm Talamanca's theory?

Before answering that question let us reconsider the whole thesis. Is it an accident that the often quoted νόμος τῶν ἀρραβόνων is mentioned only once in the sources, in BGU 446? Pringsheim restores BGU 240 following the same model; but small deviations in wording exclude a wholly identical scheme[17]. BGU 446 is the only extant evidence for this mysterious *nomos*, especially lines 16-17[18]: ἐὰν δὲ μὴ καταγράφῃ, καθὰ γέγραφε, ἐκτείσ[ειν αὐτὴν τὸν ἀρραβῶνα διπλοῦν τῷ τῶν] ἀραβώνων ν[ό]μῳ.

What can we say about this document? The text is very fragmentary; even the liability of the receiver for the double *arrabôn* is restored. Compared with the wording of P.Vindob.Sal. 4, a striking feature is the peculiar structure of the document. The notary seems to have improvised: he tried to record the facts of the agreement but it probably was asking too much of him. He starts with the *katagraphe* promised by the vendor[19] although other documents regulate first the forfeiting of *arra* by the buyer. He doesn't mention any date for the payment of the

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[15] Thus Taubenschlag, *Law* p. 410 n. 7. Cautiously, but already against it Pringsheim, *Sale* p. 381 n. 2; followed by Talamanca, *Arra* p. 36.

[16] Talamanca, *Arra* p. 36sqq.; he saw further evidence in contracts for hire with *arrabon*; cf. also J. A. C. Thomas, (1956) 24 TR p. 256; A. Biscardi, *Profilo di diritto greco antico*, Siena 1961, pp. 152sqq.; K. Visky, *Spuren der Wirtschaftskrise der Kaiserzeit in den römischen Quellen*, Budapest 1983, p. 124.

[17] Already Talamanca, *Arra* p. 35 pointed out that SPP XX 42 and BGU 240 cannot be reconstructed according to this model.

[18] Pringsheim, *Sale* pp. 409sqq. For further suggestions on restoring this text see W. Clarysse, Anmerkungen zu BGU XIII (*Greek Papyri from Roman Egypt*, ed. W. M. Brashear, Berlin 1976) 2343; A. Schwarz, Abh. Sächs. Akad. phil.-hist. Kl. 31 (1920) p. 217 n. 1.

[19] The technical expression καταγραφή or καταγράφειν is connected with acquiring ownership of "immovables" (land, house, or part of a house) and slaves, cf. H. J. Wolff, *Das Recht der Griechischen Papyri Ägyptens in der Zeit der Ptolemäer und des Prinzipats*, München 1978, pp. 184sqq., although the precise meaning is controversial. Wolff, *Papyri* 188ff. proved that the *katagraphe* of the Ptolemaic epoch was a registration as an official act. In Roman Egypt the terminology changed and *katagraphe* became a technical term for public documents, involving sales of immovables and slaves; see Wolff, *Papyri* pp. 197sqq.; H. J. Wolff, *Vorlesungen über Juristische Papyruskunde*, Berlin 1998, p. 110. For passing of ownership cf. H.-A. Rupprecht, Rechtsübertragung in den Papyri, in: Gedächtnisschrift Kunkel, München 1984, pp. 365sqq.

remaining price, although a deadline is a common feature of all other documents[20]. Finally, he mentions *katagraphe* for the second time and afterwards he quotes the supposed νόμος τῶν ἀρραβόνων. This single reference to the *nomos* – and as part of an irregular deed – cannot be a satisfying proof for the existence of a binding law on *arra*.

How then to explain the technical word *nomos* in our text? In order to solve this problem we need to find parallel usages in the papyri. Let us look first at the dictionaries. The word νόμος certainly often has the technical meanings "Gesetz, Kaiserkonstitution, Finanzbetriebsvorschrift" (thus also by Preisigke). Other meanings are less technical: "usage, custom, habitual practice" (see Liddell-Scott-Jones). In the dative νόμῳ, it is often used in the sense "conventionally, by custom".

The second step leads us to our sources. In the papyri of the Roman period the word νόμος almost never describes a normative legislative act. In some documents we find the expressions κατὰ τὸν νόμον or κατὰ τοὺς νόμους, but they never refer to a specific legal rule. The formula "according to the laws" appears in texts originating from different provinces, not only Egypt, but it never denotes a concrete law or edict[21].

We can find νόμος in the sense of "Anordnung, Rechtsnorm" in edicts of the prefects. SB XIV 11707 (= P.Yale inv. 1569)[22] uses *nomos* in a juridical technical sense as law: Dionysios, an assistent of the department of the strategus of the Oxyrhynchite nome, suffered *hybris* (*iniuria atrox*) by performing his duty in delivering a summons. In this document he reports on his petition to the prefect and informs the scribe who administered the affairs of the department of the strategus about the progress he has made. Probably he quotes exactly the wording of the prefect as he begins "The laws on these matters and the prefectorial decisions expressly declare that services of summons are not open to objection"[23]. Neither the prefect nor Dionysios finds it necessary to recite the laws, which are not even named. The formulation περὶ τῶν τοιούτον νόμων refers to some legal standards which generally forbid such an *iniuria*. SB XIV 11346, a prefectorial edict from the 1st century A.D., uses *nomos* probably in the same sense[24]. SB XIV 11220, a petition from 332 A.D.[25], refers to the *nomoi* also in a very general way: some young people entered a house and damaged the door or some furniture. The petitioner

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[20] See below part c).

[21] Cf. W. Selb, *Zur Bedeutung des Syrisch-Römischen Rechtsbuches*, Wien 1964, pp. 221 and 228sqq.; for sale context see É. Jakab, *Praedicere und cavere beim Marktkauf. Sachmängel im griechischen und römischen Recht,* München 1997, pp. 212sqq.

[22] For the reconstruction of the text see N. Lewis, (1975) 12 BASP pp. 159-164; J. R. Rea, (1977) 14 BASP pp. 17-23.

[23] Line 12, see Rea, *op. cit.* p. 20.

[24] For this text G. M. Parássoglou, (1974) 49 Chr. d'Ég. pp. 332sqq.

[25] L. C. Youtie, D. Hagedorn, H. C. Youtie, (1973) 10 ZPE pp. 126sqq.

complains that they believe themselves stronger than the *nomoi*, but he hopes for the help of laws – which are not more precisely named[26]. Only one document – at least at first glance – uses the term νόμοι to refer to a specific constitutional provision. SB XII 10797 from the middle of the 3rd century is a petition to the prefect of Egypt protesting against being assigned to liturgies in uninterrupted succession[27]. However, the wording παρὰ πάντας τοὺς νόμους (line 11) shows that the petitioner doesn't quote a specific provision but rather refers to all statutes and provisions about liturgies, to the laws generally. We must conclude that all of these documents refer generally to legal rules and none to contractual, private laws.

Nevertheless some contracts refer expressly to particular *nomoi*. A loan with hypotheca mentions the νόμοι τῶν ὑποθηκῶν (SB I 4434); a number of loans mention certain νόμιμα (τῆς ὑποθήκης)[28]. However, these terms don't refer to a concrete legislative act or any substantive law but to the usual way of execution provided by the contract. Already Wolff has given a systematic treatment of the *praxis* clause and emphasizes that there must have been some facts "auf kontraktlicher Grundlage..., aus denen das Recht, eine *praxis* zu betreiben, automatisch, d.h. aufgrund eines unmittelbar in der Rechtsordnung erhaltenen Prinzips folgte"[29].

Mélèze-Modrzejewski dealt some years ago with the subject of "Law and Justice in Ptolemaic Egypt"[30]. His work refers to an earlier period than the one we are interested in, but we can nonetheless learn something of how laws were understood in the everyday life of business and justice. This esteemed scholar points out that Pharaonic Egypt doesn't belong to the countries with written laws[31], but there were some attempts to collect and write down "the law of Egypt" which had been valid even under Persian domination[32]. A group of recently published documents shows that similar collections existed also in Ptolemaic and Roman times[33]. These "manuals" offer practical information: advice on drawing up documents such as

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[26] Probably similar in SB XII 10989, cf. A. E. Hanson, (1971) 8 ZPE pp. 18sqq.

[27] See N. Lewis, (1972) 9 BASP pp. 33-36.

[28] BGU 741 (143/4 A.D.); BGU 301 (157 A.D.); M.Chr. 88 (2nd cent.); P.Oxy. 653 (2nd cent.).

[29] Wolff, *Vorlesungen* p. 113; H. J. Wolff, (1941) 72 TAPA pp. 429sqq.; H. J. Wolff, Praxis**k**lausel und Kyriaklausel, (1956) 48,1 EOS p. 363; H. J. Wolff, (1953) 70 ZSS p. 37 n. 48.

[30] J. Mélèze-Modrzejewski, *Law and Justice in Ptolemaic Egypt*, in: Legal Documents of the Hellenistic World, ed. M. J. Geller, H. Maehler, A. D. E. Lewis, London 1995, pp. 7sqq.

[31] Mélèze-Modrzejewski, *Law and Justice* p. 1.

[32] Mélèze-Modrzejewski, *Law and Justice* p. 3.

[33] Cf. P.Cairo dem. J. E. inv. 89127-89130 and 89137-89143, the so-called "legal manual" of Hermopolis from the 3rd century B.C. For further bibliographical remarks see Mélèze-Modrzejewski, *Law and Justice* p. 5 n. 16; for another Case-Book found in Tebtunis and originating from 100-50 B.C., see E. Bresciani, EVO 4 (1981) pp. 201-215; cf. Mélèze-Modrzejewski, *Law and Justice* p. 6 n. 25.

contracts and receipts, and models of judicial decisions. Such collections were very useful for businessmen in formulating agreements and official letters. On the other hand they were also suited for guiding judges in the performance of their tasks[34]. Mélèze-Modrzejewski proposed to understand general references to *nomoi* (*politikoi nomoi* and *nomos tes choras*) in trials of the Ptolemaic period, as customary law, lawsuits used by the *laocritai* or by the Greek *dikasteria*.

We see a further parallel to νόμοι in a contractual context in P.Yadin 18[35], a marriage contract from the Babatha archive from 128 A.D. Line 7 establishes the position of the wife κατὰ τοὺς νόμους, and lines 16 and 51 describe the husband's rights and duties regarding the dowry ἑλλενικῷ νόμῳ, in accordance with "Hellenic law". The editors translate and interpret the expression as "customary, custom"[36].

Finally the closest argument by analogy is provided by some documents about contracts of deposit, *para(kata)theke* which often refer to a certain νόμος παραθηκῶν. SB XIV 12105 provides detailed wording: ἐὰν δὲ μὴ ἀποδῶι καθὰ γέγραπται ἀποτεισάτω παραχρῆμα τὴν παραθήκην διπλῆν καὶ τὸ βλάβος ἀκολούθως τῶι τῶν παραθηκῶν νόμωι: "if he doesn't repay the capital according to the deed he should pay the double amount of the *paratheke* and the damages, according to the *nomos* of the *parathekai*" (lines 19-23). Many similar documents use the term κατὰ τὸν τῶν παραθηκῶν νόμον in connection with conditions of repayment[37]. One can find quite different opinions about this term, whether it refers to an imperial statute[38] or a particular substantive law[39]. However it looks very likely that these documents also are only quoting a "manual" or "Case-Book" with the usual, recommended wording of contracts[40].

There is a further argument for this interpretation. Of the deeds with the term κατὰ τὸν τῶν παραθηκῶν νόμον, we can differentiate between two main groups:

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[34] Cf. Mélèze-Modrzejewski, *Law and Justice* p. 6sqq. For the system of justice in the Ptolemaic period see H. J. Wolff, *Das Justizwesen der Ptolemäer*, München 1970, pp. 30sqq.

[35] I thank my collegue Uri Yiftah for this reference.

[36] Cf. The Documents from the Bar Kokhba Period in the Cave of the Letters, ed. N. Lewis, R. Katzoff, J. C. Greenfeld, Jerusalem 1989, pp. 81sqq.

[37] Cf. for example SB XIV 12180 (Herakl., 180-8); P.Athens 28 (86); P.Oxy. XXXIII 2677 with a draft. K. Kastner, *Die zivilrechtliche Verwahrung des gräko-ägyptischen Obligationenrechts im Lichte der Papyri*, Diss. Nürnberg 1962, pp. 86sqq. gives a good overview of the documents; cf. also W.-D. Roth, *Untersuchungen zur Kredit-Paratheke im römischen Ägypten*, Diss. Marburg 1970, pp. 57sqq.

[38] R. Taubenschlag, (1948) 2 JJP pp. 67sqq.

[39] Kastner, *Verwahrung* pp. 52sqq., K. Geiger, *Das depositum irregulare als Kreditgeschäft*, Diss. Freiburg 1962, p. 18; H. Kühnert, *Zum Kreditgeschäft in den hellenistischen Papyri Ägyptens bis Diokletian*, Diss. Freiburg 1965, pp. 135sqq. and probably P. Drewes, (1974) 18 JJP 137; with some doubts also D. Simon, (1965) 82 ZSS p. 61 n. 93.

[40] H. T. Klami, *Depositum und Parakatatheke*, in: Festgabe für Max Kaser, Wien, Köln, Graz 1986, p. 90.

papyri that use the long form that we have seen above, and those which use a short form. This short form doesn't contain the detailed sanction with double liability, but mentions simply the νόμος παραθηκῶν: so for example SB XIV 12180, "otherwise it will be necessary for me to pay a penalty to you in accordance with the law of deposits, and you will have the right of execution". This is a striking feature. There is some reason to believe that a simple reference to the *nomos* already sufficiently defines the contents of the agreement. The parties intend to take as part of their obligation liability for the double repayment.

But this is not the place to explore the obscurities of the *nomoi* regarding *paratheke*; we must return to our νόμος τῶν ἀρραβόνων. All of the sources listed above refer to νόμοι in contexts which are very close to ours in BGU 446. Already Wolff pointed out "den losen und niemals technischen Gebrauch des Wortes *nomos* in den Papyri"[41]. It is very likely that the term νόμος τῶν ἀρραβόνων should be understood as contractual practice or as a standard term of notarial practice in drawing up a deed.

Let us look once more at the exact wording of BGU 446. There are additional indications that the νόμος ἀρραβόνων cannot refer to a substantive law. Lines 16-17 note: "If she doesn't transfer the ownership (*katagraphe*) as above written … according to the νόμος τῶν ἀρραβόνων" – the sanction unfortunately is no longer readable. However, we can draw a parallel with the words in lines 26-27 of BGU 240: "If Ammonios does not transfer the ownership (*katagraphe*) he has to pay … silver drachmas ..." We find a closely related version of the term in P.Vindob. Sal. 4, lines 13-14: "If I receive (the remaining purchase price) but shall not transfer the ownership, I must pay you the double *arrabôn*".

It is perhaps no accident that the terms referring to a certain *nomos* are closely related in the *paratheke* and the *arrabôn* transactions. Their wording reflects an almost identical formula. Could BGU 446 – our only evidence for the νόμος τῶν ἀρραβόνων – be a spurious product of a local notary who changed the drafts by mistake and combined the repayment of the double amount with the *nomos* clause of the *paratheke* deeds[42]?

But no more conjectures! Staying with the texts, we can establish that in every document the vendor promises the *katagraphe* on condition that the buyer had paid the full price[43]; the vendor's performance is secured by a penalty of the double *arrabôn*. It seems to be no accident that especially the duty to enforce the *katagraphe* has that sanction. All documents which contain the liability of the vendor for the double *arra* deal with sales of "immovables" (land, house or part of a house)[44].

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[41] H. J. Wolff, (1953) 70 ZSS p. 42.

[42] Cf. Roth, *Paratheke* p. 73; already he saw the possibility of an analogy, but without concrete arguments.

[43] For the *katagraphe* of the Roman period cf. Wolff, *Papyri* pp. 197sqq.

[44] Cf. BGU 446, BGU 240, and P.Vindob.Sal. 4 (cited above); also P.Lond. II 334 (= M.Chr. 258). Pringsheim, *Sale* pp. 395sqq. sees that all his *arrabon* documents

Almost all *arra* transactions of immovables contain the double-clause; I know of only one exception where this clause is missing, P.Mich. II 121 recto IX.

In sum, we can say that Pringsheim considers the vendor's liability for the double *arra* as an automatic effect of every *arra* transaction. If the receiver of an *arra* doesn't accept the remaining price and refuses to transfer ownership, he must pay the *duplum*[45]. The principal difficulty with this theory is that it doesn't take any notice of the concrete agreement between the parties, of "Privatautonomie". On the contrary, it posits a substantive law on *arra* in the background.

The documents show that there is almost no sign of a statute on *arra* in the sources. On the contrary, the vendor's liability for the double *arrabôn* seems to be a special feature of sales of immovables[46] in the 1st and 2nd centuries A.D. The vendor promises repayment of the double *arra* only if he refuses to accept full payment and to carry out the *katagraphe* (transfer of ownership). This very special case cannot be the basis for hypothesizing a general binding rule[47].

The usual terms of contracts (loans, deposits) sometimes do refer to concrete legislative acts but their existence cannot be assumed for every case[48]. Substantive legislative acts related to commercial law are rare in the ancient world. Therefore it can be supposed that the νόμος τῶν ἀρραβόνων in BGU 446 doesn't refer to a "Hellenistic statute on *arra*" but rather to a contractual custom: not a customary law, but a customary usage of a contractual clause in the notarial practice.

III. Now we can turn to the next problematic term, ἀρραβὼν ἀναπόριφος. In P.Vindob.Sal. 4, Chairemon the vendor writes, "If you don't pay within the above mentioned period you shall forfeit the named *arrabôn*"[49]. The specific arrangement between Chairemon and Satabous expresses the essential element of every *arrabôn*

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deal with immovables but he explains this fact purely by the higher market value of these items. On this subject cf. below part c). On p. 393 he describes the structure of *arrabon* documents concerning immovables without mentioning that the repayment of *duplum* is represented only in these sales.

[45] Pringsheim, *Sale* p. 412sqq.

[46] The *duplum* clause seems to be widely used in contracts of hire, cf. P.Oxy. I 140, P.Fay. 91. Pringsheim also cites the documents listed above in his *Sale*, pp. 372sqq. However, *arrabon* cannot have the same function in different types of contracts.

[47] We can look at P.Ryl. II 164 (Herm., 171) as an alternative form of concluding a contract. It deals with the sale of catoecic land: 3000 drachmas of the purchase price were paid in advance without mentioning the term *arrabon*. Payment of the remaining price within a specified time and the *katagraphe* are promised without any sanction (neither forfeiture of the sum already paid nor paying the double amount).

[48] Already H. J. Wolff, (1974) 91 ZSS p. 80 stated in another context that almost no deeds refer to concrete statutes, provisions, decrees etc.

[49] BGU 240 may have contained a similar clause.

transaction: if the purchaser fails to pay the remaining price he forfeits to the vendor the sum already paid[50].

But notaries use different drafts and sometimes don't explicitly insert this condition into the deed. Let us look at P.Mich. II 121 recto IX. In this very well preserved document Chaironion acknowledges having received 400 drachmas as ἀρραβὼν ἀναπόριφος (line 1); afterwards follow the price, the subject, the date for the payment, and the vendor's duty to carry out the *katagraphe*. But the clause we observed in P.Vindob.Sal. 4 is missing.

How is the expression ἀρραβὼν ἀναπόριφος to be explained? We find the adjective ἀναπόριφος in plenty of sales of slaves and animals as part of the term τοῦτον τοιοῦτον ἀναπόριφον. Τοῦτον τοιοῦτον (*talis qualis, tel quel*) means that the slave is sold "as is; with all faults", ἀναπόριφος means that the object cannot be rejected[51] – a *redhibitio* for latent defects is excluded. In such a "simple sale" the buyer renounces all warranties, hoping for a better price[52]. Already Gradenwitz (1900) posited this special meaning for material defects[53]. Later (1912) Mitteis extended it to *arra* transactions: "Zunächst wird die Arrha öfter als ἀρραβὼν ἀναπόριφος bezeichnet. Das kann nur bedeuten, daß der Empfänger sie nicht 'abstoßen', d.h. nicht durch einfache Rückgabe sich von jeder Verbindlichkeit befreien kann"[54]. Taubenschlag and Pringsheim[55] are of the same opinion: as in sales of slaves and animals, ἀναπόριφος means "not subject to rejection", the *arra* cannot be returned, the receiver cannot free himself of liability simply by giving back the *arra*. It leads to the curious conclusion: "Therefore the vendor, withdrawing from the contract, must pay back the double amount." Talamanca and Thomas also accept this thesis[56].

There is reason to doubt whether this extension of the meaning of ἀναπόριφος can hold. I find it methodologically questionable to extend the meaning of one part of the warranty clause for hidden defects to another legal institution, without any bridging evidence. Rejecting a defective slave or animal was well known in the market regulations of Greek poleis and Rome. With the τοῦτον τοιοῦτον ἀναπόριφον clause the parties intended to exclude *redhibere* (a special *restituere*)[57]: the sale is not to be cancelled, the goods cannot be rejected.

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[50] Most *arrabon* transactions require completion of the transaction within a strict time limit, cf. below part c).

[51] Pringsheim, *Sale* p. 481.

[52] Cf. Jakab, *Praedicere und cavere* pp. 197sqq.

[53] F. Gradenwitz, *Einführung in die Papyruskunde*, Leipzig 1900, p. 60.

[54] Mitteis, *Grundzüge* p. 185, firmly against Pappulias, *Arrha* p. 74.

[55] Taubenschlag, *Law* p. 410 n. 9; Pringsheim, *Sale* p. 390.

[56] Talamanca, *Arra* pp. 28sqq. and J. A. C. Thomas, *Arra in Sale in Justinian's Law*, (1956) 24 TR p. 256.

[57] Against supposing a strong influence of Roman legal rules in Egyptian daily life cf. Jakab, *Praedicere und cavere* pp. 199sqq.

If – parallel to latent defects – ἀναπόριφος means the exclusion of a special *restituere*, it can only refer to the contractual exclusion of the *restituere* of the already paid sum. The receiver should not reject the *arrabôn*. The step from "einfach unrückgebbar" to "weil doppelt zurückgezahlt werden muß" is unsupported in the sources.

Lines 11-13 of P.Vindob.Sal. 4 provide explicit regulations for the buyer: "If you don't pay (the full price) within the above mentioned period you should forfeit the named *arrabôn*". In documents with *arrabôn* arrangements, a similar term about losing the *arrabôn* is missing in texts which refer to the earnest money as ἀρραβὼν ἀναπόριφος. So it can be argued that the technical term ἀναπόριφος in connection with ἀρραβών doesn't refer to the liability of the receiver but to the liability of the giver. This thesis may be confirmed by the word itself. Already Preisigke proposed the interpretation "was dem Empfänger nicht wieder entzogen werden darf" and listed sources for this meaning[58]. Liddell and Scott retain the narrow legal meaning for ἀναπόριφος, but ἀπορρίπτω has a broader sense: "throw away, put away, reject" and "being cast out".

Finally the proposed new meaning may be strengthened by comparing all *arrabôn* arrangements. The second example I quoted, P.Mich. II 121 recto IX, allows a free interpretation of the expression ἀρραβὼν ἀναπόριφος because there is no explicit sanction in case of non performance. But this text is the only evidence with such a structure. The vast majority of the documents differ from it and contain an exact regulation for the case of not complying with contractual duties. However, in P.Lond. II 334, Thases declares that he has received 14 drachmas as ἀρραβὼν ἀναπόριφος (line 14); afterwards he settles the price and his duty to enforce the *katagraphe*[59]; but there is no mention about the possibility of not rejecting the earnest. The lack of a forfeiture clause is especially strange because lines 23-24 explicitly regulate the liability of the receiver for the double amount[60].

The expression ἀρραβὼν ἀναπόριφος is usually combined with the separately regulated liability of the receiver for the *duplum*. However, these terms have different locations in *arrabôn* arrangements. Just after the names of the parties the sum paid is listed, called ἀρραβὼν ἀναπόριφος for the agreed price; then the object and the date for paying the remaining price are mentioned; only afterwards does the vendor promise the *katagraphe*. It seems clear from the structure of these deeds that the

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[58] This meaning would better fit the structure of this deed: by latent defects the vendor acknowledges that he sold a slave who (according to the will of the parties, τ. τ. ἀ.-clause) cannot be rejected. By an *arrabon* transaction the vendor acknowledges that he has received a sum of money which (according to the will of the parties, ἀναπόριφος-clause) cannot be rejected.

[59] For the structure of *arrabon* documents generally, cf. Pringsheim, *Sale* pp. 389sqq., 395sqq.

[60] Similarly in BGU 446 (= M.Chr. 257); probably also in BGU XI 2111, BGU XIII 2343, and SPP XXII 42.

expression ἀρραβὼν ἀναπόριφος pertains to the buyer whereas the double clause to the vendor[61]. Therefore the technical term ἀρραβὼν ἀναπόριφος cannot be connected with non-performance by its receiver but only by its giver. It can only refer to the forfeiture clause, the essential part of every *arrabôn* payment[62]. The paid amount "kann ihrem Empfänger nicht mehr entzogen werden" (thus already Preisigke), because once cash is paid the *arrabôn* in every case will remain with its receiver: as part of the payment (if the giver pays in due time) or as lost earnest money (if the full price is not paid).

Pringsheim says that the term ἀναπόριφος is "never missing from texts containing the transaction itself"[63]. But already Salomons notes in his commentary to P.Vindob.Sal. 4 that this statement doesn't hold[64]. Checking all documents with *arrabôn* we get the following: seven deeds include the expression ἀρραβὼν ἀναπόριφος[65]; however, almost thirty texts mention simply an ἀρραβών (without ἀναπόριφος)[66]. All of these documents are from the 1st and 2nd centuries A.D., and there are no special topographical factors: the papyri come from Tebtunis, Faijum, Soknopaiou Nesos, and Arsinoites. So it cannot be argued that the expression is a local notarial usage.

From a juridical aspect the contents of the cited texts are very different. All seven texts with the technical phrase ἀρραβὼν ἀναπόριφος are detailed arrangements about giving an earnest. However, nine texts in good condition don't use the term *anaporiphos*, but mention simply *arrabon*. There are four arrangements about giving

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[61] The term ἀρραβών ἀναπόριφος has the same function in contracts for hire: by defaulting the giver forfeits the paid sum, whereas a separate clause sometimes regulates the liability of the receiver for the double amount, cf. P.Fay. 91 (Faijum, 99); P.Oxy. I 140 (Ox., 550). For a good survey of *arrabon* in contracts for hire see Pringsheim, *Sale* pp. 373sqq.

[62] Even the *grapheion register* P.Flor. I 24 makes a note of an *arrabon* transaction as ἀρραβών ἀναπόριφος (lines 24-25).

[63] Pringsheim, *Sale* p. 390; Talamanca, *Arra* p. 28 is very similar (and probably therefore in p. 28 n. 25 he supplements ἀρραβῶνα ἀναπόριφον in BGU I 240, l. 6).

[64] R. P. Salomons, *Einige Wiener Papyri*, Amsterdam 1976, p. 40: "So 'indispensable', wie Pringsheim es will, war diese Hinzufügung anscheinend auch wieder nicht".

[65] BGU 446 (= M.Chr. 257); P.Mich. II 121 recto IX; P.Lond. II 334, p. 211; BGU XI 2111; BGU XIII 2343; SPP XXII 42; P.Flor. I 24.

[66] BGU XII 2161; P.Lond. III 1229 p. 142; P.Vindob. Sal. 4; BGU I 240; P.Col. VIII 222; P.L.Bat. XX 58 (= P.Iand. 91); P.Lond. II 143 p. 204; UPZ 67; P.Strass. 894; P.Lond. II 239 p. 297; P.Marm. V 7; PSI X 1153; P.Cair. Zen. 59250; BGU III 947; SB XIV 1149; P.Cair.Zen. III 59446; SB XIV 12176; SB X 10211; P.Ent. 34; P.Heid. VI 376; BGU II 601; CPR I 19; P.Ent. 2; P.Lill.Magd. 17; PSI 382; P.Flor. III 303; SPP XXI 86; SB V 8262; P.Lond. III 965, col. III, p. 196; SB I 5315; and all auction texts.

an earnest[67] and five petitions to public authorities[68] among them. The usage of the technical phrase *arrabon anaporiphos* is therefore not homogeneous.

As I have observed, the term ἀρραβὼν ἀναπόριφος refers to the most important part of every *arrabôn* arrangement, that of losing the *arrabôn* if full payment is not made. In fact, this effect is the common feature of every arrangement which calls the paid sum ἀρραβὼν[69]. If the parties use this technical term, they want to include the forfeiting effect. It is most likely that the special term ἀρραβὼν ἀναπόριφος merely strengthens this choice. The notaries also try to specify the obvious effects as well. For example ἀρραβὼν ἀναπόριφος is not mentioned in P.Vindob.Sal. 4, but we read ἐὰν δὲ μὴ δῶς ἐν τῇ προκειμένῃ προθεσμίᾳ ἀπολεῖς τὸν προκείμενον ἀρραβῶνα: if you don't pay within the above-mentioned period you shall lose the above-mentioned *arrabôn* (lines 11-13).

Finally we can conclude that the effects of every *arrabôn* payment depend on the intention of the parties. If they designate partial pre-payment as ἀρραβὼν ἀναπόριφος, they want to have the forfeiting effect in their arrangement: If the giver fails to make the final payment he will lose the sum already paid and his chance to get the goods. The *arrabôn* can never be returned (unrückgebbar); the *arra* transaction cannot be re-executed. Both terms, ἀρραβὼν and ἀρραβὼν ἀναπόριφος, relate to the position of the giver (the buyer); both express the primary and essential effect of every *arrabôn* payment: the forfeiting of the *arrabôn* in favor of the receiver (the seller) if the sale is not completed. From that one has to distinguish the liability of the receiver. There are reasons to suppose that the existence of such a liability cannot be assumed automatically for every *arrabôn* arrangement. It seems likely that the absence of the double clause reflects the will of the parties. They wanted to avoid a double-sided arrangement and hence any pressure against the receiver[70].

In this sense UPZ 67 (mid 2nd cent. B.C.) speaks against any dogmatic conception of or binding legal regulations regarding *arrabôn*. In a business letter to his brother Hippalos, Ptolemaios reports negotiations about a cow: "You have estimated the cow at three and a half talents. She [the vendor] received one thousand drachmas. Pay her the full three and a half talents. If she doesn't want [to sell at that price] she shall give back the *arrabôn* and you come to me at the Sarapeum"[71]. Obviously Hippalos is negotiating on behalf of Ptolemaios. He found a suitable cow and bargained with the vendor over the price. It seems likely that the vendor was

[67] P.Vindob. Sal. 4; BGU XII 2161; P.Lond. III 1229 p. 142; PSI X 1153.

[68] P.Ent. 2 and 34; P.Heid. VI 376; CPR I 19; P.Lill.Magd. 17.

[69] H. Maehler considers BGU XI 2111 (2nd cent.) a sale of a female slave with ἀρραβών ἀναπόριφος, as part payment instead of an *arra* transaction, but I am not convinced. He quotes P.Ryl. II 164 as a parallel formula, but that text doesn't mention *arrabon*.

[70] Already H. J. Wolff, *Die Grundlagen des griechischen Vertragsrechts*, in: Zur Griechischen Rechtsgeschichte, ed. E. Berneker, Darmstadt 1968, pp. 511-512 gave a hint for this meaning of the phrase.

[71] See the commentary of U. Wilcken, *Urkunden der Ptolemäerzeit* I, Berlin-Leipzig 1927, p. 324.

asking for more; Hippalos paid her one thousand drachmas as *arrabôn* and asks his brother Ptolemaios for approval before finishing the business. He must have given the *arrabôn* on condition that they agree on a price[72]. In our letter Ptolemaios assents to his brother's proposal, but takes no notice of the seller's offer[73]. It seems clear that he had the stronger economic position and so could specify the terms of the business.

There is reason to assume that Hippalos's *arrabôn* was not typical. In this case, accepting the *arrabôn* didn't oblige the parties to sell or buy the cow at the price offered by the brothers Hippalos & Ptolemaios[74]. It's quite conceivable that the parties set a time limit for the last offer of Hippalos (& Ptolemaios). Furthermore there is some reason to believe that Hippalos was to lose the *arrabôn* if he didn't finish the bargaining within this period; otherwise the vendor was not to sell the cow to another purchaser within this period. But our document doesn't deal with this case. It makes clear that an *arrabôn* can be claimed back if the parties don't agree on the price[75].

The editor of UPZ 67 complains that jurists have disregarded this text[76]. Mitteis doesn't mention it in his "Grundzügen", Pappulias only very briefly[77]. Presumably the atypical function of *arrabôn* caused its disregard. If one supposes that there must have been a statute or imperial rule on *arra,* even slight deviations from a standard model would be hard to understand. But if we regard *arra* as evidence of a contractual and notarial practice, expressing the free will of the parties, atypical functions pose no more problems.

IV. As we have observed, many *arrabôn* arrangements set a strict time limit for the buyer to pay the remaining price[78]. There are other documents without any deadline,

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[72] Pringsheim, *Sale* p. 405 reconstructed the circumstances as follows: "The non-completion of the transaction and the restoration of the arra could be provided for in advance, in cases where the original agreement empowered the receiver to reject an offer by the giver to complete the sale".

[73] P. Meyer, (1926) 46 ZSS p. 325 speaks about "unverbindlichen Kaufangebot des Vertreters des Kauflustigen". However, the wording of the letter shows that at first the vendor asked for a specific purchase price which Hippalos found unacceptable.

[74] In this sense already P. Meyer, (1925) 46 ZSS p. 305. Taubenschlag, *Law* p. 409 saw in it a general rule: "in addition, there are indications of a third rule imposing on the seller the obligation to return the arra if the purchaser refuses to pay the fixed price". However the price may not have been fixed in this particular transaction; an untypical situation is not a good basis for generalisations.

[75] For a different interpretation see F. Wieacker, *Lex commissoria. Erfüllungszwang und Widerruf im römischen Recht*, Berlin 1932, p. 101; against his theory cf. already Pringsheim, *Sale* p. 401 n. 2.

[76] Cf. Wilcken, in his commentary on p. 324.

[77] Pappulias, *Arrha* p. 6 n. 16.

[78] See for example P.Vindob. Sal. 4; BGU XII 2161; P.Lond. III 1229 p. 142; P.Mich. II 121 recto IX; BGU XI 2111. Pringsheim doesn't think the time limit very important;

for example transactions with ἀρραβὼν ἀναπόριφος which allow full payment apparently for an unlimited period[79]. Without a specified time limit the vendor cannot simply point to the expiration date and declare the business failed. However, in these texts the duty of the vendor to carry out the *katagraphe* is formulated as well as a condition: he has to transfer ownership once the final payment is made. Nevertheless this uncertain situation can make trouble for the parties.

Some letters and petitions report the reasonable settlement of similar situations. Let us look at P.L.Bat. XX 58 from the 3rd century B.C. In Faijum an unknown businessman has written a nearly impolite letter: "to Pyron, greetings. [Since] you have not yet bought the poppy(-seed), although you have given the earnest money, you will risk losing your money, if (you do) not (complete the purchase) within three days. For the fellow will take witnesses[80]. Farewell".

This short text comes from the Zenon Archive. Pyron, the addressee, was a scribe and an accountant in Zenon's service. Two further letters relate to the same business[81]: Pyron writes more than once to Zenon to arrange the money for his purchase. He must have taken the first step and given an *arrabôn*[82]. In his letter the vendor reminds Pyron of the transaction and asks him to complete the purchase within three days.

There are several opinions about the meaning of this time limit. Taubenschlag supposed that the three days must have been a general date for paying in every *arra* transaction: "he (the giver) is deprived of his *arra* if he does not accomplish the sale in the fixed term of three days"[83]. This is the only evidence from Egypt but Taubenschlag identifies this term with the three day "legal period" mentioned by Theophrastos[84]. Rosenberger sets the three days likewise between *arrabôn* payment and cash sale: "Der Verkäufer habe den Mohn nach Annahme des *arrabôn* während der

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he doesn't differentiate from this point of view between documents with *arrabon* and those with partial pre-payment, cf. Pringsheim, *Sale* p. 401 n. 3.

[79] BGU 446 (= M.Chr. 257); P.Lond. II 334 p. 211 (= M.Chr. 258); on these texts see Pringsheim, *Sale* p. 401.

[80] In his commentary, P. W. Pestman, Papyrologica Lugduno-Batava XX. *Greek and Demotic Texts from the Zenon Archive*, p. 213, suggests the meaning "deklarieren". However it seems much more likely that the witnesses were chosen for testifying about the unwritten concluded *arrabon* transaction. Witnesses are often used when entering into a contract in Greek law, cf. Jones, *Law and Legal Theory* p. 217; in unwritten contracts they are the only way to secure some evidence. It seems very likely that the vendor speaks about such a situation in our letter.

[81] PSI VI 571; P. Mich.Zen. 46, 251 B.C.

[82] The business letter is formulated in general terms. Already Pestman, P.L.Bat. XX 58, p. 214, considers another possible meaning for line 4: "You have not made sure of the purchase by giving the earnest money". However the context seems to speak for the first version.

[83] Taubenschlag, *Law* p. 409.

[84] Taubenschlag, *Law* p. 409.

verabredeten Frist von drei Tagen für Pyron reserviert"[85]. However, already Pestman calls our attention to the fact that the time limit must have begun with our letter: "the text is referring to three days that still remain for the completion of the sale"[86].

I see two reasonable interpretations of this time limit. a) Presumably Pyron and his business partner overlooked in their bargaining the setting of a strict date for payment of the remaining price. After waiting some time the vendor wrote to Pyron, setting a short time limit for payment. He must have been interested in finishing the business. b) Nevertheless it seems more likely that there was a time limit in the original arrangement and it expired. The vendor is now reminding Pyron once more of his *arrabôn,* and sets an additional, short time limit before declaring the *arrabôn* forfeited[87] and selling the poppy-seed to a third person.

Probably a similar problem provides the background for a plaint reported in CPR I 19. Two ladies from Hermupolis, Demetria and Eus, agreed upon the price for some real estate[88]. Eus, the buyer, paid some gold coins as *arrabôn* to Demetria (lines 9-10); in order to fulfill the price she had to pay the public contributions for this real estate. There is some reason to assume that they overlooked setting a time limit for completing the sale. If there were any limit, Demetria, the petitioner, would have mentioned it because that was in her favor. Now, however, she tries to get a time limit from the local judge and to press Eus within this period for paying. In her first petition she asked for ten days; now she wants five[89]. It is very likely that the parties failed to draw up a deed about the *arra* transaction. For that reason the terms of the arrangement seem so uncertain.

The case of Demetria brings us to our last question: What can a vendor do if the buyer fails to pay the remaining price? Demetria has chosen a trial and hoped that a local judge would settle the case[90]. It looks very much as if she wanted to complete the sale[91]. Probably she wanted to get rid of this piece of land and its troublesome contributions – simply keeping the *arrabôn* might not satisfy her economic interests. The damage increased every day because nobody cultivated the land.

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[85] G. Rosenberger, *Papyri Jandanae* (P.Jand) VI, Leipzig 1934, p. 221; in this sense also Pringsheim, *Sale* p. 412.

[86] Pestman, comm. to P.L.Bat. XX 58, p. 214.

[87] Generally there is no need for a claim against the giver of an *arrabon* because the paid sum is forfeited automatically, cf. Pringsheim, *Sale* p. 353.

[88] Talamanca, *Arra* p. 31, suggests that Eus "aveva stipulato un contratto arrale". However I see here no evidence for the existence of a liability based on a *stipulatio*.

[89] See already Pringsheim, *Sale* p. 402 with a similar view.

[90] Cf. the commentary of C. Wessely, *Corpus Papyrorum Raineri I*, Wien 1906, p. 61.

[91] However, Talamanca, *Arra* p. 32 declares that Eus can be condemned only to forfeiting her *arra*.

Presumably P.Lond. II 143 deals with a similar case[92]. Tapontos the buyer paid 40 drachmas *arrabôn* for an agreed price of 200 drachmas, but without a written agreement (line 11). It seems very likely that the parties set no time limit for full payment. Therefore it took a long time before the vendor compelled Tapontos – in a trial? – to pay the remaining price. Obviously also here the vendor wanted first of all to complete the sale instead of keeping the 40 drachmas paid as *arrabôn*.

To sum up, we can say that there are plenty of indications that the parties of *arra* transactions took care to set a strict time limit for paying the full price. Mostly, setting a time limit is in favour of the vendor: if the buyer fails to pay within this period the forfeit is automatic. The vendor may keep the sum already paid and offer the goods to others. P.L.Bat. XX 58 shows that a brief reminder of the time expired might have been usual. Several documents report complicated trials because of missing time limits.

V. Results. Without doubting Pringsheim's main theory about the function of *arrabôn* in the sophisticated conceptual construction of his "Greek sale", we looked at three points where his thesis can be completed or else replaced. I have presented some new ideas about the meaning of the word *nomos* in legal texts or contracts. It seems very likely that the strict interpretation "gesetztes Recht", legal statute or substantive law, has been supplemented by more recent research, especially in contractual contexts. There is only one attestation of the expression νόμος τῶν ἀρραβόνων in the papyri; so it cannot be stated without doubt that there was a "Hellenistic statute on *arra*". On the contrary, our documents show that *arrabôn* arrangements – in their several versions – express the free will of the parties[93].

Our next topic was the meaning of the adjective ἀναπόριφος. All scholars relate the expression ἀρραβὼν ἀναπόριφος to the position of the receiver: by defaulting he cannot reject it "simply" because he must give back the doubled amount. There is no foundation for this thesis in the sources. The documents about *arra* transactions show that ἀναπόριφος is related to the position of the giver, the person who wanted to buy. With this expression is meant the essential element of every *arrabôn* transaction: the forfeit of the paid sum.

Finally we looked at the setting of a time limit. If the parties intended to use *arrabôn* as indirect pressure against the buyer (and in favor of the vendor), the forfeiting effect has a central function: If the buyer doesn't complete the sale within a certain period he loses the sum already paid and never gets the object.

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[92] See the commentary of E. G. Kenyon, *Greek Papyri in the British Museum II*, London 1898, p. 204; cf. also Pappulias, *Arrha* pp. 54sqq.; Mitteis, *Grundzüge* p. 185 n. 1.; Schwarz, *Urkunde* pp. 121sqq. on this text.

[93] For a similar function of a contractual clause, for example by eviction (dispossession by process of law, Black's Law Dictionary), cf. D. Nörr, Iurisprudentia universalis von Schreiberhand: zur *katharopoiesis*-Klausel, in: Fschr. Mayer-Maly, Köln/Weimar/Wien 2002, 529-547.

Functionally the *arrabôn* can be defined by a combination of earnest money and time limit with forfeiting effect. The liability of the receiver for returning the double *arra* can – but need not – be connected with these contractual terms. It seems very likely that instead of an entailed liability on both parties the *arrabôn* arrangements remained mostly a one-sided duty, in the sense of "Zweckverfügung" by H. J. Wolff[94].

[94] Already H. J. Wolff pointed in this direction, cf. SZ 74 (1957) 51f.: "Die verschärfte Haftung verstand sich also nicht von selbst, war jedenfalls kein Wesenszug, ohne den man sich eine Arrha nicht vorstellen konnte. Die Annahme, daß beim Fehlen einer anderslautenden Gesetzbestimmung oder Parteiabrede dem Empfänger der Arrha sich auch im griechischen Bereich, wie anderswo, durch einfache Rückzahlung lösen konnte, wird daher kaum in Irre gehen".