

Goods, Law, and Trade: Material Evidence for Lease and Hire Contracts (*locatio conductio*) and a Grain Sample Recorded in *CIL* 4.9591

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Locatio conductio was one of the commonest contracts used for shipping in which the risks of the trip were distributed among different actors.* It constituted a consensual contract, by means of which one of the parties (the *locator*) undertook, in exchange for a price, to grant to the other party (the *conductor*) the use of something for a certain time (*LC rei*), or to carry out specific tasks (*LC operarum*), or to provide a specific service (*LC operis*). The contract followed a unitary general legal scheme which the parties adapted to their specific needs by agreements that would later have an impact on the preparation of the corresponding procedural defence. Unfortunately, no material example of this contract in Latin (there are some examples preserved in Greek papyri) has survived. It needs to be reconstructed, therefore, through legal and archaeological sources. In this paper, I will focus on the grain sample attested in *CIL* 4.9591, which provides information about freight contracts in commercial practice. This paper first aims to clarify some details of the epigraphic apparatus of this object. Secondly, it will contrast what legal texts establish about the formation and features of lease and hire contracts with the practical sphere of commerce evidenced by this unique document.

1 Letting and Hiring (*locatio conductio*) in the Sources of Justinian's Digest

Essentially, *locatio conductio* (hereafter, *LC*) in Roman law constituted a contract based on the payment of a price for the lease of a thing, a service, or a person's labour.¹ The contract belonged to the sphere of *ius gentium*, rather

* I would like to thank Prof. Koenraad Verboven and David Djaoui for their comments and suggestions, that have improved this piece immeasurably. Any errors that remain are, of course, my own responsibility.

1 R. Fiori, *La definizione della "Locatio conductio". Giurisprudenza romana e tradizione romanist-*

than *ius civile*, meaning that both citizens and non-citizens could make use of it.² It was established by mere consent (*consensus*). Contrary to modern law consent was not an abstract legal concept in the Roman law of obligations.³ In modern law, consent occurs when a person voluntarily agrees to the terms of an agreement. It is a general element in contractual law and provides validity to an agreement formalised between parties regardless of whether it is expressly mentioned or merely implied. Instead, in the Roman case, *consensus* applied only to essential aspects of *some* contracts,⁴ in the case of *LC* the object of the lease (goods, a service, or someone's labour), the price,⁵ and the terms of the contract. The contract was agreed with one of these aims as its objective (*id quod actum est*). Consent on these would be the aspect considered by a judge to evaluate the circumstances of the agreement in case of controversy.⁶ Although Roman law did not require that consensual contracts should be formalised in writing,⁷ recording (some of) the clauses was advisable given the complexity of many commercial transactions. In addition, consensual obligations could

ica (Naples 1999), 286; 'Forme e regole dei contratti di trasporto marittimo nel diritto romano', *RDN* 49–41 (2010), 149–176; 'L'allocation del rischio nei contratti relativi al trasporto' in E. Lo Cascio & D. Mantovani (eds.), *Diritto romano e economia. Due modi di pensare e organizzare il mondo (nei primi tre secoli dell'Impero)* (Pavia 2018), 507–567; 'The allocation of risk in carriage-by-sea contracts', in P. Candy and E. Mataix Ferrándiz (eds.), *Roman Law and Maritime Commerce* (Edinburgh 2022); P. Du Plessis. *Letting and Hiring in Roman Legal Thought: 27 BCE–284 CE* (Leiden 2012), 12–13. For the use of *locatio conductio* for the lease of imperial domains, see Dalla Rosa in this volume.

- 2 *Dig.* 19.2.1.1. (Ulp. 34 *ad Ed.*) . For a bibliography on *ius gentium*, see G. Lombardi, *Ricerche in Tema Di 'Ius Gentium'* (Milano 1946); P. Frezza. *Ius Gentium* (Padua 1995); F. De Martino, 'Variazioni postclassiche del concetto romano di *ius gentium*', in *Diritto economia e societa nel mondo romano. Diritto pubblico* 11 (Naples 1996), 53 ff.; G. Falcone. *Il rapporto ius gentium—ius civile e la societas vitae* (Palermo 2013); R. Fiori, 'La nozione di *ius gentium* nelle fonti di età repubblicana', in *Scritti per Alessandro Corbino* 3 (Tricase 2016), 109–129.
- 3 The Roman concept of obligation implied that when an obligation is established, there is a legal tie by which a person could be considered liable for the unfulfilment of a required duty. On the Roman law of obligations, see also Kay in this volume.
- 4 C. Cascione, *Consensus: problemi di origine, tutela processuale, prospettive sistematiche* (Naples 2003), 16–17.
- 5 *Dig.* 14.2.2pr. (Paul. 34 *ad Ed.*) seems to indicate that, as in the case of the sale contract (*emptio venditio*), the *LC* agreement is complete once the price is established.
- 6 Fiori *op.cit.* (n. 1), 286–290.
- 7 *Dig.* 19.2.14. (Ulp. 71 *ad Ed.*), Qui ad certum tempus conducit, finito quoque tempore colonus est: intellegitur enim dominus, cum patitur colonum in fundo esse, ex integro locare, et huiusmodi contractus neque verba neque scripturam utique desiderant, sed nudo consensu conualescunt. See R. Yaron, 'Remarks on consensual sale'; *RLT* 59 (2004) 61 ff.; P.J. Du Plessis, 'The Roman concept of *Lex Contractus*', *RLT* 3 (2006), 79, 83.

have been formalised by agreement,⁸ but to be solved *re*, by transferring an object.⁹

In the case of lease agreements for shipping, Roman legal sources allow us to reconstruct some of the recurring elements in the lease of ships and cargo space.¹⁰ Among the essential features that we find are the identification of the ship-owner,¹¹ the carrier (or shipper),¹² the customer,¹³ the ship,¹⁴ and its capacity.¹⁵ The contract, furthermore, sometimes indicates the price when the parties had made specific agreements in that respect.¹⁶ None of the features mentioned in literary texts or on material sources (mainly amphorae) relate to maritime insurances, for which it is difficult to find a parallel in Roman law.¹⁷

8 *Dig.* 2.14.1.3–4 (Ulp. 4 *ad Ed.*).

9 *Dig.* 46.3.95.12 (Pap. 28 *Quaest.*); C.A. Cannatta, 'La "distinction" Re-Verbis-Litteris-Consensu et les problèmes de la pratique', in *Sein Und Werden Im Recht. Festgabe Für Ulrich von Lübtow* (Amsterdam 1995), 431–455; R. Fiori, 'Contrahere e solvere obligationem in Q. Mucio Scevola', in C. Cascione, and C. Masi Doria (eds.), *Fides humanitas ius: studi in onore di Luigi Labruna* (Naples 2007), 1974; 'The Roman conception of contract', in T.A.J. McGinn (ed.) *Obligations in Roman Law. Past, Present, and Future* (Ann Arbor 2012), 54; 'Contrahere' in Labeone', in *Carmina Iuris. Mélanges En l'honneur de Michel Humbert* (Paris 2012), 313 n. 7.

10 For another more simplified reconstruction of the elements composing a maritime loan see D. Jones, *The Bankers of Puteoli, Finance, Trade and Industry in the Roman World* (Stroud 2006), 111–113.

11 *Dig.* 14.1.1pr-2 (Ulp. 28 *ad Ed.*); *Dig.* 14.1.1.12 (Ulp. 28 *ad Ed.*).

12 *Dig.* 14.1.1.12 (Ulp. 28 *ad Ed.*); *Dig.* 19.2.13.1 (Ulp. 32 *ad Ed.*). In fact, the *ostraca* from the Îlot de l'Amirauté (Carthage) indicate that these carriers were registered with their name and role, cf. T. Peña, 'The mobilisation of state olive oil in Roman Africa: The evidence of the fourth century ostraka from Carthage' in *Carthage Papers. The Early Colony's Economy, Water Supply, a Public Bath, and the Mobilization of State Olive Oil* (Portsmouth 1998), 123 ff. Some papyri indicate the declarations of the carriers once arrived at their destination (e.g. *P.Oxy.* 49. 3481; *P.Giss.* 285).

13 *Dig.* 14.1.1.12 (Ulp. 28 *ad Ed.*); *FIRA* 3.154–155.

14 *TPSulp.* 106 (*ab Sidon(e) parasem[o ---]*).

15 *Dig.* 14.2.10.2 (Lab. 1 *Pith. a Paulo Epit.*); *Dig.* 14.1.1.12 (Ulp. 28 *ad Ed.*); *Dig.* 19.2.61.1 (Scaev. 7 *Dig.*); *TPSulp.* 106 (*modium xviii pl[u]s minus*).

16 *Dig.* 14.2.10.2 (Lab. 1 *Pith. a Paulo Epit.*); *Dig.* 19.2.15.6 (Ulp. 32 *ad Ed.*).

17 For example, D. Gaurier, *Droit maritime Romain* (Nantes 2004), 129–132; E. Damiani, *Contratto di assicurazione e prestazione di sicurezza* (Milano 2008), 64. Some authors mistakenly confuse maritime loans or provisions in case of jettison with the existence of a concept of insurance in Roman law. See P. Huvelin, *Études d'histoire du droit commercial romain* (Paris 1929), 95 ff.; D.C. Gofas, 'Encore une fois sur la Tabula pompeiana 13. Essai d'une interprétation nouvelle', *Symposion* 93 (1994), 251–260; G. Thür, 'Die Aestimationsabrede im Seefrachtvertrag', *Symposion* 92 (1993), 267–271; E. García Vargas, 'Los *tituli picti* de las ánforas romanas de salazones y salsas de pescado: Estructura, función, protagonistas', *Amphorae ex Hispania* (2016), 121. A maritime insurance consists on a sum of

Some texts from Justinian's Digest refer to elements such as conditions that the shipper had to respect when handling a specific cargo or managing hazardous situations such as transshipping,¹⁸ which are evidently invisible in inscriptions or on archaeological materials (such as amphorae). In the end, these elements depend on the proper management of the ship and choice of crew as precautions that the carrier should have considered in order to assure the safety of the venture.¹⁹ Other elements, such as provisions of what to do in case of jet-tison, are described in some of the Digest texts,²⁰ but were probably implicit in the parties' agreement and also depended on the choice of crew and their technical knowledge.²¹

Fiori's publication on *LC* analyses several texts, concluding with the idea that within the scope of this contract we can differentiate four business models used by Roman jurists to frame contracts. He bases his argument on agreements to lease an entire ship or part of the cargo-space on a ship, and on two varieties of contracts to ship goods, one implying performance of the task without taking the result into account, and another imposing the attainment of a certain result or the performance of certain practices.²² This distinction establishes different types of responsibility assumed by each of the parties to the contract. Among Fiori's models, *conductio navis* implies the lease of an empty ship.²³ *Locatio mercium vehendarum* on the other hand entails the 'lease' of the service to transport a cargo, underlining that the ship and its crew are hired for one or more specific trips. Finally, there is the labour contract between the entrepreneur and the sailors (*locatio operarum*). The contribution of the shipmaster and his crew does not consist merely of the simple provision of a certain number of working days, but comprises a coordinated and jointly conceived activity (*opus*). Nevertheless, while in the case of *locatio mercium vehendarum* the shippers assume the obligation of a result (delivering the cargo to its destination), in the *locatio operarum* they merely assume the obligation to perform

money paid beforehand by a society or an individual in order to prevent suffering the full economic consequence in case of shipwreck. Instead, a maritime loan constitutes a sum of money given to pay for a maritime venture; in addition the dispositions regarding jet-tison are meant to compensate the loss of some for the benefit of others in cases where cargo needed to be thrown overboard to prevent a ship from perishing.

18 *Dig.* 14.1.1.12. (Ulp. 28 *ad Ed.*); *Dig.* 19.2.13.1. (Ulp. 32 *ad Ed.*).

19 As detailed in for example *Dig.* 14.1.1pr. (Ulp. 28 *ad Ed.*).

20 See title 14.2.2 of the Digest.

21 See J.-J. Aubert, 'Commerce', in D. Johnston (ed.), *The Cambridge Companion to Roman Law* (Cambridge 2015) 233–234.

22 Fiori 1999, op.cit. (n. 1), 559–562.

23 The model follows *Dig.* 14.2.10.1 (Lab. 1 *Pith a Paulo Epit.*) and *Dig.* 19.5.1.1 (Pap. 1 *Quaest.*).

the given task in a certain way ('obligation de moyens').²⁴ None of these conditions was required for the *conductio navis*. However, in both the *locatio mercium vehendarum* and the *locatio operarum*, the actors acted with complete autonomy and were not obliged to use a specific ship.

The next section will test the validity and usefulness of Fiori's models by analysing the text on a sample-jar found in a house in Pompeii. I will show that it challenges Fiori's models and offers a more accurate picture of trade practices.

2 The Epigraphic Apparatus of the Sample Registered in *CIL* 4.9591

The object (figs. 7.1–7.4) contained a sample of a cargo of grain destined for Ostia in the second half of the first century CE.²⁵ The small container, which resembles other known types,²⁶ has two handles and a height of 26 cm. It was discovered on May 30, 1941 in the *atrium* of the house of Epidius Primus in Pompeii (I. 8. 14).²⁷ The last part of the inscription (*Rustico ab* [...]) ('to Rusticus from [...]'; fig. 7.4),²⁸ written by a different hand and in different ink, is clearly separated from the rest. This caused some scholars to consider whether the sample

24 The model follows *Dig.* 19.2.13.1 (Ulp. 32 *ad Ed.*) and *Dig.* 19.2.15.6 (Ulp. 32 *ad Ed.*).

25 For the text see J. Andreau et al., '*CIL* IV 9591: un transport de blé entre Ostie et Pompéi', *MEFRA-Antiquité* 129–121 (2017); for a discussion see J. Andreau et al., '*CIL* IV 9591: un transport de blé entre Ostie et Pompéi. II', *MEFRA-Antiquité* 131–131 (2019).

26 Cf. A. Varone, 'Schede di pitture e anforette (deigmata)', in G. Stefani (ed) *Cibi e sapori a Pompeii e dintorni* (Pompeii 2005), 104, who linked this artefact with type IX of Schone-Mau or the Dressel 28. Some of the samples are quite differently shaped than transport amphorae, e.g. D. Djaoui and N. Tran, 'Une cruche du port d'Arles et l'usage d'échantillons dans le commerce de vin Romain', in '*Origines: Percorsi Di Ricerca Sulle Identità Etniche nell'Italia Antica—Identity Problems in Early Italy: A Workshop on Methodology—Varia—Regards Croisés*' (Rome 2014), 2–12; D. Djaoui, 'Découverte d'un pot mentionnant la société des DD Caecilii dans un contexte portuaire situé entre 50–140 av. J-C', in *Colloque International de La SECAH, Ex Officina Hispana* (Braga 2014) 693–710. But others, such as the one identified by M. Poux, 'Du vin Marsellais pour Staius Regillus: Un témoignage du commerce Rhodanien et de la colonisation des campagnes entre Lyon et Vienne', *Archaeologia Mosellana* 9 (2014), 405–420, are identified as an amphora Dressel 2–4, indicating that a sample-recipient could be shaped in various forms, and that it is its epigraphic apparatus and context of distribution that will provide the key to identify it as such.

27 A. Wallace-Hadrill, *Houses and Society in Pompeii and Herculaneum* (Princeton 1994), 191–192.

28 Varone 2005, op.cit. (n. 26), 105; Andreau et al. 2017, op.cit. (n. 25), 3. Another sample-recipient found in Marseille (dating 150–250 CE) refers to *Rubrio*, in this case also referring to the recipient. B. Liou and M. Morel, 'L'orge des Cavares: Une amphorette à inscription peinte trouvée dans le port antique de Marseille', *RAN* 10 (1977), 192.

arrived in Pompeii to be tested by the customer, while the grain cargo itself remained in one of the many warehouses of Ostia²⁹ or whether the sample-jar was found in Pompeii because it had been reused for other purposes.³⁰ Mr. D. Djaoui (Musée Départemental de l'Arles Antique) notes that mentions in the dative case on amphorae normally relate to important subjects (e.g. *Procurator Augusti*).³¹ Rusticus on the contrary is a disarmingly banal name. However, this is not an amphora but a jar or small 'amphoretta'. This type of pot rarely has painted inscriptions but there are exceptions for commercial samples and for product labels (e.g. *oliva fracta*, *sardinae*, or *cepa*).³² Such pots were often sold to seafarers but they were not important enough for their name to be added in the dative case. Accordingly, there is no example with such a name addition attested. More likely, therefore, this part of the inscription on the jar is linked with the rest of the text, indicating a later (re)purchase of the cargo of which the jar contained a sample.

There are still many doubtful points concerning this Rusticus, but, linking the text from the sample-jar with a recently discovered inscription from Pompeii may shed a new light on the role of this grain shipment. The inscription is a funerary *elogium* of a benefactor at Pompeii, found outside the Stabian gate.³³ Among other life events, lines 2–6 describe a gladiatorial spectacle that the deceased held on the occasion of his assumption of the *toga virilis*, which

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- 29 Some contracts mention the destination where the cargo might be stored in a warehouse, since the cargo was often used as a warranty for a pledge. Cf. *Dig.* 19.2.11.3 (Ulp. 32 *ad Ed.*), the *ostraca* of the Îlot de l'Amirauté in Carthage (Peña 1998, *op.cit.* (n. 12) 162), *TPSulp.* 45–46. See in this respect: G. Camodeca, *Tabulae Pompeianae Sulpiciorum (TPSulp.) Ed critica*, (Roma 1999), 121–126; E. Jakob, 'Horrea, sûretés et commerce maritime dans les archives des Sulpicii', in J.P. Coriat et al. (eds.), *Inter Cives Necnon Peregrinos. Essays in Honour of Boudewijn Sirks* (Gottingen 2014), 332 ff.
- 30 Although we cannot be certain in this particular case samples traveling separately from their loads were not rare even in earlier periods, as shown, for instance, in the Ptolemaic Egyptian archive of Zeno (third cent. BCE). See A. Bresson, *L'économie de la Grèce des cités: Les espaces de l'échange* (Paris 2008), 79–82.
- 31 Personal observation by Mr. Djaoui. See for instance the text on a Baetican amphorae at the Musée Départemental de l'Arles Antique (n.inv. RHO.90.00.74).
- 32 D. Djaoui, G. Piques and E. Botte, 'Nouvelles données sur les pots dits "à garum" du Latium, d'après les découvertes subaquatiques du Rhône (Arles)' in E. Botte and V. Leichs (eds.), *Fish & ships. Production et commerce des salsamenta durant l'Antiquité* (Aix-en-Provence 2014), 177, 183; D. Djaoui and C. Capelli, 'Objets d'importation ou objets personnels? La dotation de bord des marins au regard du grand commerce', in *SFECAG, Actes du Congrès de Narbonne* (Marseille 2017), 120.
- 33 M. Ossana, 'Games, banquets, handouts, and the population of Pompeii as deduced from a new tomb inscription', *JRA* 61 (2018), 310–322; J. Bodet et al., 'Notes on the *elogium* of a benefactor at Pompeii', *JRA* 32 (2019), 148–182.

coincided with a shortage of grain. This moved him to buy an unspecified large amount of grain and sell it to the people at a heavily subsidised price. In addition, he also sold bread at similarly low rates. He continued his support and fed the population of Pompeii during four years. Calculations indicate that there was a huge amount of grain needed for this charitable purpose. Possibly our sample-jar was part of one of the cargoes devoted to that aim.³⁴

The sample-jar has been studied in different publications.³⁵ This paper deals mostly with the inscriptions written by hands #1 and #2, because these lines reflect the elements of the *LC* referred to in the previous section.³⁶ The text with a translation runs as follows:³⁷

[Hand #1]

(on the shoulder and upper part of the sample-jar)

<p><i>Ante exemplar/ tr(itici) m(odiorum) xvcc/ in n(ave) cumba amp(horarum) MDC de tutela Iovis et/ Iuno(nis) parasemi Victoria P(ubli) Pompili/ Saturi. Mag(ister) M(arcus) Lartidius (5) Vitalis domo Clupeis</i></p>	<p>Sample sent with the cargo of 15,200 modii of grain/ transported inside a cumba-ship (with a) capacity of 1600 amphorae, under the protection of Jupiter and Juno under the sign of Victory, (owned by) P. Pompilius Saturus, managed by M. Lartidius Vitalis, citizen of Clupea.</p>
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34 J. Bodet et al. 2019, op.cit. (n. 33), 165.

35 M. Della Corte, 'Pompei. Scoperte epigrafiche (Reg. I, ins. VII-VIII e varie)', *NSA* (1946), 84-129; R. Marichal, 'Paléographie latine et française', *Annales de l'École pratique des hautes études* 107-101 (1974), 524-527; R. Marichal and J. Dufour 'Paléographie latine et française', *École pratique des hautes études. 4e Section, Sciences historiques et philologiques* 100-101 (1968) 295-316.; A. Varone, 'L'anforetta del grano', in P. Parisi Presicce and O. Rossini (eds.), *Nutrire l'impero. Storie di alimentazione da Roma e Pompei* (Roma 2015) 21-22; Andreau et al. 2017, op.cit. (n. 25).

36 For a complete study of the inscription, see E. Mataix Ferrándiz, 'CIL.IV.9591: Propuesta reconstructiva de una *locatio conductio* para el transporte de mercancías por mar', in V. Revilla and Aguilera Martin, *A. Estudios homenaje al profesor Jose Remesal Rodriguez* (Barcelona 2019), 787-820.

37 For the critical apparatus, see: 1. *tral vel trav pro translatum vel transvectum xvcc* (Della Corte) 2. *In n(ave) C. Umbr(ici) Amprioc(i)* (Della Corte); *cumbaro Ampriocidmagister nauisin n(ostra) cumba n(ostra) estis amp* (Marichal); 3. *Parasemum* (Marichal); *tutelariri tutela Iouis et* (Marichal); 6. *Vectores* (Varone); [*e*]stis; *sol(ven)do* (Della Corte) 8. *S(ine) F(raude)* (Andreau et al); [*e*]stis (Della Corte)

[Hand #2]

(on the belly, lower part, the same side as Hand #1)

*Vect(ura) Ostis a(ccepta?)³⁸ IIC
sol(ven)do*

Shipping fee agreed (for payment) at
Ostia, two percent payment³⁹ due

[Hand #3]

(on the belly, immediately to the right of line 1 of Hand #2 (*vect(ura) ... sol(ven)do*, added later))

gratis m(odios) CC

200 modii (are) free of charge

[Hand #2]

(under and together with line 1 of the same Hand (*vect(ura) ... sol(vend)o*))

*S(olutio) F(acta) PR(idie) idus
Octobr(es)*

Solutio performed the day before the
ides of October

[Hand #4]

(on the shoulder, on the opposite side of Hand#1)

Rustico ab [...]

to Rustico from [...]

38 I propose *accepta* as a reconstruction, bearing in mind the legal sense of this verb to indicate the acceptance of money (*pecunia*), see. *Dig.* 2.14.47.1 (Scaev. 1 *Dig.*); *Dig.* 4.2.9.7 (Ulp. 11 *ad Ed.*); *Dig.* 4.4.47.1 (Scaev. 1 *Resp.*); *Dig.* 13.7.6 (Pomp. 35 *ad Sab.*); *Dig.* 14.3.5.9 (Ulp. 28 *ad Ed.*); *Dig.* 15.1.35pr. (Iav. 12 *ex Cassio*); *Dig.* 15.3.3.4 (Ulp. 29 *ad Ed.*) *Dig.* 16.1.17.2 (Afr. 4 *Quaest.*); also, *TPSulp.* 63 (= *AE* 1982, 195). Especially referring to *vectura*, *Dig.* 5.3.29pr (Ulp. 15 *ad Ed.*); *Dig.* 19.2.15.6 (32 *ad Ed.*) *De Romanis*, in Andreau et al. 2017, op.cit. (n. 25), 2 proposes *a(ccipienda)*, but this term, when used to indicate that money or *vectura* is taken, appears in the sources written as *accepta*, see also *VIR* (vol.1), 80–97, esp.87. Another possible option would be *a(dsignata)*, but this term just appears in the legal sources to refer to corporal things (*res*), see. *Dig.* 4.9.1.8 (Ulp. 14 *ad Ed.*); *Dig.* 30.33 (Paul 3 *Reg.*); *Dig.* 18.1.62.2 (Mod. 5 *Reg.*).

39 I thank Koenraad Verboven for his note on this: “We are probably dealing here with African grain, since the shipper is from Clupea. A sea voyage from Clupea to Ostia takes only 4 to 5 days. The market price at Ostia would be around 3 to 4 sesterces per *modius* in normal circumstances (much higher in bad years). So, 15,000 *modii* (deducting the 200 *modii* free of charge) would work out as 45,000–60,000 sesterces; two percent of that would be 900–1200 sesterces. Even if we consider a week lost loading and unloading the ship that is a respectable profit.”

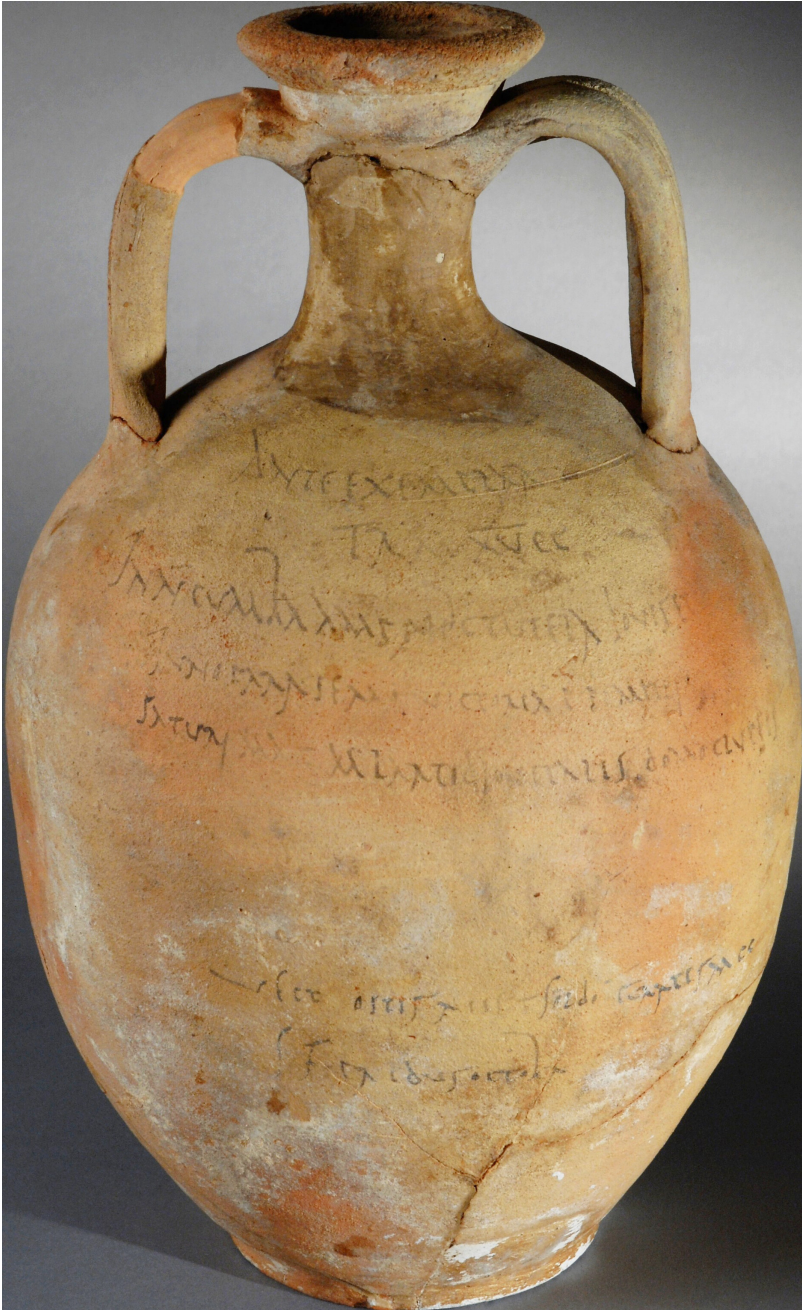


FIGURE 7.1 *CIL* 4.9591. Full image of the grain sample
IMAGE REPRODUCED WITH PERMISSION FROM THE SOVRINTENDENZA ARCHEOLOGICA DI POMPEII (N.INV. 7352)



FIGURE 7.2 Registration detail: front supra

IMAGE REPRODUCED WITH PERMISSION FROM THE SOVRAIN-
TENDENZA ARCHEOLOGICA DI POMPEII (N.INV. 7352)

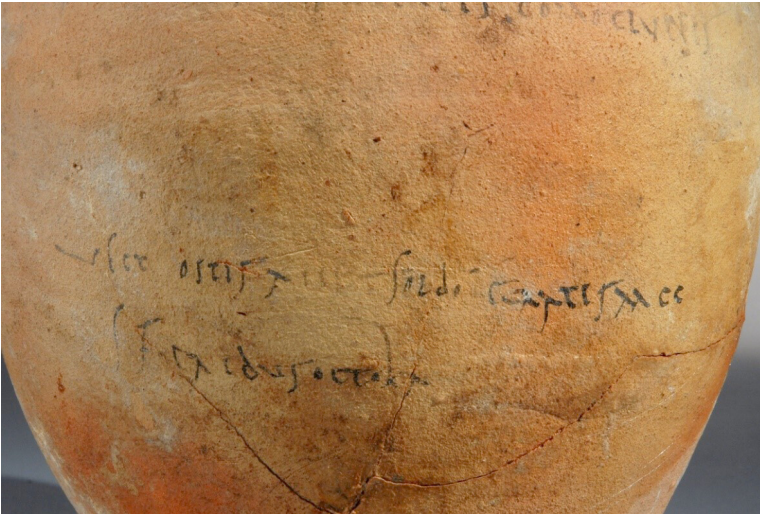


FIGURE 7.3 Registration detail: front infra

IMAGE REPRODUCED WITH PERMISSION FROM THE SOVRAIN-
TENDENZA ARCHEOLOGICA DI POMPEII (N.INV. 7352)



FIGURE 7.4 Registration detail: verso

IMAGE REPRODUCED WITH PERMISSION FROM THE SOVRAIN-TENDENZA ARCHEOLOGICA DI POMPEII (N.INV. 7352)

The first part of the inscription, *ante exemplar*, refers to the sample-jar itself, identifying it as ‘a sample’ (*exemplar*, in Greek, *deigma*).⁴⁰ The word is also found on another jar from Pompeii without the adjective *ante* (fig. 7.5).⁴¹ *Ante* is rarely used as an adjective.⁴² In the case of the sample-jar from the house of Epidius Primus, it could simply be an individual feature of the *amanuensis*. Using samples was a common practice in the transport of large quantities of products, since they allowed those concerned to check the quality of the product once the cargo arrived at the destination and prevent adulteration before delivery to the recipient.⁴³ The practice was common for grain trans-

40 Another meaning of the word is ‘copy’, as mentioned in several classic authors (e.g. Plin. *HN*. 6.62; Fronto, *Ep.* 3.10.2.6), and one inscription of *T.Vind.* 89, see M.A. Speidel, *Die Römischen Schreibtafeln von Vindonissa: Lateinische Texte Des Militärischen Alltags Und Ihre Geschichtliche Bedeutung* (Baden 1996), 237.

41 The ‘s’ interspersed in the word *exemplar* is a mistake of the *amanuensis*, and is not attested in any other epigraphic source; *exemplar* without the adjectival *ante* is also found written on a small sack conserved in a collection from Cairo, published by Guéraud, *AE* 1934, 6; O. Guéraud, ‘Deux documents relatifs au transport des céréales dans l’Égypte Romaine’, *Annales du service des antiquités de l’Égypte* 33 (1933), 62–64, reading: *EXEMPLAR/ HORDEI MISSI PER CHAE/ REMONAM ANUBIONIS GUBERNATOREM. EX NO/MO MEMPHITE A[D] METRO/POLIN.*

42 Sall. *Iug.* 76.5; also in *CIL* 4.5894; see Marichal 1974, op.cit (n. 35) 524; Andreau et al. 2017, op.cit. (n. 25), 4.

43 P. Mayerson, ‘Standardization of wine measures at Oxyrhynchus in the third century CE and its extension to the Fayum’, *BASP* 37 (2002), 105–109.

ports in Egypt, where they are referred to as *deigma*,⁴⁴ thought it also occurred for other types of goods.⁴⁵

The following line (*Tr(itici) m(odiorum)* (15,200)) refers to the cargo of grain that the sample belonged to, using *modii* as a measuring unit.⁴⁶ It is clearly connected with the following line (*In n(ave) cumba amp(horarum) MDC de tutela Iovis et*), in which the ship is identified as a *cumba*,⁴⁷ with its capacity indicated in amphorae, something also described in other texts,⁴⁸ what underlines that the first element considered when loading a ship was volume, even if weight was also important.⁴⁹

The line (*Iuno(nis) parasemi Victoria P(ubli) Pompili*) indicates that the ship is under the tutelage of Jupiter and Juno, its protective deities, and bears the

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- 44 E.g. *P.Cair.Zen.* 2.59190; *BGU* 8.1742; 18.1.2736; 2738; 2737. However, the samples could also be used to invite a potential buyer to try a product and convince him to buy it. This practice is already attested in the Hellenistic period, in the Zenon archive, see E. Campbell Cowan (ed.), *Zénon Papyri, 5 vol, Catalogue général des antiquités égyptiennes du Musée du Caire*, (Cairo 1925–1940), and in the references to Athens' *deigma* by many sources, such as: *Plut. Pomp.* 42.11; *Xen. Hell.* 5.1.21; *Dem.* 35.29; 50.24; and: D.C. Gofas, 'La vente sur échantillon à Athènes d'après un texte d'Hypéride', in *Études de Droit grec des affaires antique, byzantine et post-Byzantine* (Athens 1993), 79–85.; G. Casanova, 'Campione: Testimonianze del vocabolo, con un papiro inedito', *Aegyptus* 75–71 (1995), 28–36.; Bresson 2008, op.cit. (n. 30), 79–82; G. Geraci, 'Sekomata e deigmata nei papiri come strumenti di controllo delle derrate fiscali e commerciali', in V. Chankowski (ed.) *Tout vendre, tout acheter. Structure et équipements des marchés antiques* (Paris/Bordeaux/Athens 2012), 347–363; C.P. Dickenson. *On the Agora: The Evolution of a Public Space in Hellenistic and Roman Greece (c. 323 BC–267 AD)*, (Leiden 2016), 253.
- 45 Guéraud 1933, op.cit. (n. 41); O. Guéraud, 'Un vase ayant contenu un échantillon de blé (*deigma*)', *JJP* 4 (1950), 107–115; Liou and Morel 1977, op.cit. (n. 28), 189–197.; Casanova 1995, op.cit. (n. 44), 30–31; D. Vera, 'Un'iscrizione sulle distribuzioni pubbliche di vino a Roma (*CIL* 6.1785 = 31931)', in M. Silvestrini, T. Spagnuolo Vigorita and G. Volpe (eds.), *Studi in onore di Francesco Grelle* (Bari 2006), 303–317.
- 46 Sources such as the Claudian plebiscite (*Liv.* 21.6) or the Claudian edict (*Gai.* 1.32) mention amphora and *modius* as standard measures, the *lex silia de ponderibus publicis* (*Fest.* 288 L; *FIRA* 1.3.1) from 287–218 BCE mentions the equivalence established for *modius* and amphora. Many sources use *modius* as a measuring unit for grain, see *Tab. Vind.* 180; *Dig.* 19.2.61.1. (*Scaev.* 7 *Dig.*); *Dig.* 18.1.35.5 (*Gai.* 10 *ad Ed. Prov.*); *Dig.* 19.2.31 (*Alf.* 5 *a Paulo Epit.*); *Dig.* 45.1.74 (*Gai.* 8 *ad Ed. Prov.*); *P.Bing.* 77, *inter alia*.
- 47 Andreau 2017, op.cit. (n. 25), 333–334 who surveys the various attestations of the word *cumba* in our sources.
- 48 e.g. *Dig.* 14.2.10.2 (*Lab.* 1 *Pith. a Paulo Epit.*); *Dig.* 19.2.61.1 (*Scaev.* 7 *Dig.*).
- 49 Evidence for this comes from learning that sailors used ingots for ballast to balance ships were aware of issues such as the depth of the waterways or the process of transshipping, and that they considered weight in the case of jettisoning goods, e.g. *Dig.* 14.2.2.2 (*Paul* 34 *ad Ed.*); *Dig.* 14.2.10pr. (*Lab.* 1 *Pith. a Paulo Epit.*); *Dig.* 19.2.19.7 (*Ulp.* 32 *ad Ed.*).



FIGURE 7.5 Detail of a jar fragment: front

IMAGE REPRODUCED WITH PERMISSION FROM THE SOVRAINTENDENZA ARCHEOLOGICA DI POMPEII (N.INV. 12316)

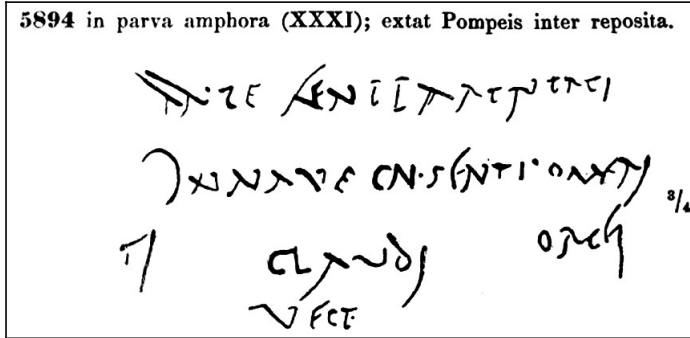


FIGURE 7.6 CIL 4.5894 M.TE XENIARTRITATI/ IN NAVE CN.SENTI (H) OMERI/ TI [BERI?] CLAUDI [++++] ORPH/ VECT(URA)

Note: Or rather perhaps: ante [e]xenplar tritici / in nave Cn(aei) Senti (H)omeri / Ti(beri) Claudi Orp(h)ei / vect(ura); Marichal 1974, op. cit. (n. 35), 524.

name-device of Victory.⁵⁰ The identification of the ship implies that the tasks assigned to the shipper will be performed with this specific vessel.⁵¹ In addition, it allows registering the entrusted cargo to the carrier,⁵² in order to identify the origin of the ship when entering the port, and to recognise the ship and its owner in case of dispute.⁵³ The inscription continues with the identification of the shipowner (*Publi Pompili Saturi*), as is also common in other sources, even though shipowners did not always operate the vessels themselves.⁵⁴ Another small jar from Pompeii (CIL 4.5894) similarly gives the name of the ship and its owner (fig. 7.6).

The capacity of the ship according to the sample-jar was (at least) 15,200 *modii*, about 105 tons. This implies a large ship meant for long-distance trade, which given its size could have docked at Ostia or Puteoli, but not Pompeii since its port at the mouth of the river Sarnus was incapable to host this sort of vessel.⁵⁵

50 The importance of this practice is underlined by L. Casson, *Ships and Seamanship in the Ancient World* (New Jersey 1995), 344, n. 2, with abundant literature.

51 *Dig.* 14.1.1.12. (Ulp. 28 *ad Ed.*).

52 *Dig.* 14.2.10.1 (Lab. 1 *Pith. a Paulo Epit.*).

53 *Dig.* 5.1.19.1–2. (Ulp. 60 *ad Ed.*).

54 Compare *Dig.* 19.2.31 (Alf. 5 *a Paul. Epit.*) *In navem Saufeii cum complures frumentum confuderant*; see also navigation contracts in papyri showing ships being identified by their owner's name (e.g. *P.Oxy.* 45.3250; *P.Oxy. Hels.* 37; and most of all *P.Bing.* 77). The contract preserved in *TPSulp.* 106, describes a ship by its owner, its capacity (18,000 *modii*), and its *parasemon*.

55 G. Stefani and G. Di Maio, 'Considerazioni sulla linea di costa del 79 d.C. e sul porto dell'antica Pompei', *Rivista di Studi Pompeiani* 14 (2003), 141–195; E. Curti, 'Le aree portuali

The next line (*Mag(ister) M(arcus) Lartidius Vitalis domo Clupeis*) indicates the name of the ship's captain (*magister navis*), who had his official address in Clupea (present Tunisia).⁵⁶ The identification of the shipper implies his responsibility to perform the duties for which he was hired.⁵⁷

The next two lines (*Vect(ura) Ostis a[cepta] IIC (duobus centesimis) sol(ven)do/S(olutio) F(acta) PR(idie) idus Octobr(es)*) written by a second hand, constitute the most important part of the text, since they refer to the fulfilment of the obligation through payment. I propose to read *a(cepta)*, referring to the completion of that obligation by payment at Ostia. Andreau et al.⁵⁸ propose 'Prix agréé du transport à partir d'Ostie', but this seems an imaginative reading to justify their later hypothesis of this abbreviation, since it literally refers to a payment made at Ostia. The mention *vectura* also appears in *CIL* 4.5894 (fig. 7.6). The parties could determine the place where an obligation needs to be fulfilled beforehand, but in the case of a lack of consent the jurists proposed some criteria to solve this issue.⁵⁹ For example, goods sold in bulk, such as grain, had to be delivered where they could be claimed.⁶⁰ From this requirement, one can understand the importance of quoting Ostia as a locative, being the place where the payment for the transport of the cargo is to be made.⁶¹ Classical Roman law never came to accept contracts for the transport of goods in bulk, but clearly not because such trade did not take place, since there are many

di Pompei: nuovi dati', in V. Scarano Ussani, *Moregine. Suburbio 'portale di Pompei'* (Napoli 2005), 51–76.

56 The place corresponds to Clupea (Aspis). Cf. <https://pleiades.stoa.org/places/314892>.

57 The business manager's assignment was spelled out in a bill or charter called *lex prae-positionis*, referred to by Ulpian in *Dig.* 14.1.1.12 (Ulp. 28 *ad Ed.*). Unfortunately, we do not have any documents attesting to this sort of contract, see J.-J. Aubert, *Business Managers in Ancient Rome* (Leiden 1994), 10–13.

58 Andreau et al., *op.cit.* (2019) (n. 25), 2.

59 *Dig.* 13.4.7pr (Paul 28 *ad Ed.*); G. Branca, 'Adempimento', in *ED* 1 (Milano 1958), 548–555; other authors, such as W.W. Buckland. *A Textbook of Roman Law from Augustus to Justinian* (Cambridge 1921), 538, quote *Dig.* 13.4.9 (Ulp. 47 *ad Sab.*), but that text refers to a *stipulatio*, which constitutes a verbal and not a consensual obligation as was the case with the *locatio conductio*. Concerning the *locus solutionis*, see F. Amarelli, *Locus solutionis. Contributo alla teoria del luogo dell'adempimento in diritto romano* (Naples 1984), 16–17; B. Gomez Perrián, 'Forum debitoris y locus solutionis', *SDHI* 67 (2001), 317–349; F. Pulitanò, *De eo certo loco. Studi sul luogo convenzionale dell' adempimento nel diritto romano* (Milano 2009), 336–337.

60 *Dig.* 5.1.38 (Lic. 4 *Reg.*) *Praeterea quod pondere aut numero aut mensura continetur, ibi dari debet ubi petitur, nisi si adiectum fuerit 'centum modios ex illo horreo' aut 'vini amphoras ex illo dolio'*.

61 The place of fulfilment of the obligation is also attested in documents such as: *FIRA* 3.475–476 (*P.Grenf.* 2.108); *FIRA* 3.479–480 (*P.Oxy.* 1.44); K.A. Worp, 'Documents on transportation by ship', *ZPE* 20 (1976), 157–165; Id., 'Cair. Preisigke 34: A New Edition', *Bulletin of the Egyptological Seminar* 1 (1979), 95–103.

examples both in the legal texts and documents, and in shipwrecks found in the Mediterranean.⁶² This restrictive approach was probably because *LC* imposed a specificity on the object.⁶³ In practice, large quantities of goods could easily be transported as long as they were identified at least as a mass on board a ship, or where they could be claimed.⁶⁴

Another element to be considered is whether the transport cost was paid in advance in Ostia, as in a case referred to by Ulpian in the Digest, before the grain was transported to Pompeii.⁶⁵ According to this text, the transport fee (*vectura*) was due only if the cargo reached its destination. This implies an obligation of result, a practice previously mentioned also in a text of Labeo⁶⁶ and another of Scaevola.⁶⁷ This could be an argument to indicate that this sample was meant to arrive at Ostia, and it would have got to Pompeii through another contract.⁶⁸

The next element, written by a third hand, is the gerundive *solvendo*, literally ‘to discharge from an obligation’.⁶⁹ Here we are entering the field of the evolution of *solutio* in the sense of ‘to release from an obligation’ to the understanding of the *solutio* as payment.⁷⁰ In general, *solutio* refers to the completion of an obligation,⁷¹ with the implication that what is due⁷² must be fulfilled as

62 On the allocation of risks of this sort of transport, see G. Purpura, ‘On the Roman documentation concerning shipping in bulk’, in E. Mataix Ferrandiz and P. Candy (eds.), *Roman Law and Maritime Commerce* (Edinburgh 2022).

63 E.g. Gai. 3.142; *Dig.* 19.2.2pr (Gaius 2 *Rer. Cott.*); *Iust. Inst.* 3.24.

64 As indicated also by D. Johnston, *Roman Law in Context* (Cambridge 1999), 80.

65 *Dig.* 19.2.15.6 (Ulp. 32 *ad Ed.*).

66 *Dig.* 14.2.10pr (Lab. 1 *Pith. a Paul Epit.*).

67 *Dig.* 19.2.61.1 (Scaev. 7 *Dig.*).

68 If we accept the proposed hypothesis of Andreau et al. 2019, *op.cit.* (n. 25).

69 E. Longo, ‘Pagamento’, in *NNDI XII* (Torino 1965), 316–321.

70 In archaic times, this *solutio* required the performance of a liberating act, as in the case of *nexum*, which bound a debtor in slavery; or as in the *solutio per aes et libram*, which involved performing a complex and formalistic procedure (*solutio imaginaria*). See Gai. 3.169; 3.171; 3.173; *Dig.* 46.3.54 (Paul 56 *ad Ed.*). Initially, these acts had no formalities, but, according to S. Cruz, *Da “solutio”. Terminologia, conceito e características, e análise de varios institutos afins. I Epocas arcaica e classica* (Coimbra 1962), 23 ff., they progressively assumed them. *Solutio* later evolved into payment for the delivery of a quantity or a thing, G. Melillo, *In solutum dare: contenuto e dottrine negoziali nell’adempimento inesatto* (Naples 1970), 57 ff.; M. Sargenti, ‘Pagamento’, in *ED* 31 (Milano 1981), 533; also Branca 1958, *op.cit.* (n. 60), 549, quoting Gai. 3.168; *Dig.* 42.1.4.7 (Ulp. 58 *ad Ed.*); *Dig.* 46.3.54 (Paul 56 *ad Ed.*).

71 *Solutio* may sometimes be equated with the *satisfactio*, which roughly refers to carrying out an obligation of any kind (e.g. *Dig.* 18.1.19 (Pomp. 31 *ad Quint. Muc.*)). However, this term is sometimes also opposed to *solutio*, when it refers to other types of fulfilment of obligations, with a real and effective character. See *Dig.* 46.3.52 (Ulp. 14 *ad Ed.*); *Dig.* 50.16.176 (Ulp. 45 *ad Ed.*); *TPSulp.* 63; *TPsulp.* 79; Cruz 1962, *op.cit.* (n. 71), 110 ff.

72 *Dig.* 50.26.176 (Ulp. 45 *ad Sab.*); *Dig.* 46.3.54 (Paul. 56 *ad Ed.*).

provided by the contract. This is expressed by Pomponius: *Prout quidque contractum est, ita et solvi debet: ut, cum re contraxerimus, re solvi debet.*⁷³ This text, however, also indicates an element of flexibility in discharging obligations since it allows for payment or delivery without specific formalities.⁷⁴ Therefore, in the case of the sample-jar from the house of Epidius Primus, the contract would be deemed perfect (meaning that it is completely valid) by paying the agreed price for the *vectura*, as may be observed also in the fragmentary inscription *CIL* 4.5894 (fig. 7.6), and many other sources.⁷⁵

The next part of this line, reading *Gratis M(odios) CC (duocentos)* seems to have been inscribed by yet another hand, since the stroke of the calamus is thicker, the ink is darker and appears slightly oriented to the right of the rest of the inscription (fig. 7.3, top right). Reading the inscription as *duocentos* would imply a reduction of 1.3% on the indicated price, while if we read 1200 (MCC) it would be a reduction of 7.9%,⁷⁶ which seems a bit too much. Thus, the development of the abbreviation M as *modii* seems logical, as this is the volume unit generally used to measure grain.⁷⁷ The fact that the discount is inscribed on the sample-jar indicates that the parties probably wanted to record this detail together with the manifestation of the payment of the *vectura*, so that the amount paid is clear. Concerning the justification for the discount, if we consider the sailing season following Vegetius, the ides of October indicated in the inscription may seem as quite late in the year for a grain shipment.⁷⁸ Thus, the later date may justify the discount: the shipment was necessary but the grain arrived out of the normal sailing season, therefore a discount was granted on the tax payment.⁷⁹ However, several sources indicate that there was an all-year-round shipping of grain towards Italy.⁸⁰ So, in sum, the reason why there was a discount on these 200 *modii* is unclear and needs further work, that I will develop in future research.

One of the few lines for which I suggest a correction to the critical edition proposed by Andreau, Rossi and Tchernia is *S(olutio) F(acta) PR(idie) idus*

73 *Dig.* 46.3.80 (Pomp. 4 *ad Quint. Muc.*).

74 R. Zimmerman. *The Law of Obligations: Roman Foundations of the Civilian Tradition* (Oxford 1996), 758. See also chapter five in this volume.

75 *Vid. Tab. Vind.* 615; 649 = *AE* 1994, 1134; *Dig.* 14.2.10.pr. (Lab 1 *Pith a Paul Epit.*).

76 Also, Andreau et al. 2019, op.cit. (n. 25), 8.

77 e.g. *Tab. Vind.* 180; *Dig.* 18.1.35.5 (Gai. 10 *ad Ed. Prov.*).

78 *Veg. Mil.* 4.39.

79 By necessity I refer to the different remedies proposed by Roman Emperors to solve famines, as happened in the case of Claudius, see Suet. *Claud.* 18–19.

80 J. Beresford, *The Ancient Sailing Season* (Leiden 2013), 32–36.

Octobr(es).⁸¹ While they propose to expand *SF* as *Sine Fraude*, I prefer Della Corte's interpretation as *Solutio Facta*.⁸² Leaving aside that one of the source-references is mistaken,⁸³ the sources relate to the manumission of slaves⁸⁴ or the criminalisation of adultery.⁸⁵ In addition, other sources that use *Sine Fraude* in the Digest, always refer to proceedings,⁸⁶ manumissions,⁸⁷ inheritances,⁸⁸ or legal transactions⁸⁹ of a non-consensual nature, contrary to the case at hand (a *LC*). On the other hand, the sources mentioning *solutio* always refer to the discharge of an obligation by payment,⁹⁰ which in this case is manifest from the explicit mention of the term *soluendo*.⁹¹ *S(olutio) F(acta)* is in the past tense. That would mean that the *solutio* was already accomplished and therefore the contract had ended when these lines were written, which would make sense and indicate that the obligation was accomplished by this payment.⁹²

The day of the payment (the day before the ides of October) may indicate the actual day when the fee was paid rather than the final date before which payment was due. However, many sources of the Digest refer to *negotia* being concluded before the ides or the kalends of a month, so perhaps it was common to establish these chronological details in legal contexts.⁹³ We find this also in one of the Dacian tablets found in the gold mines near Alburnus Maior. It refers to a contract for the hire of labour.⁹⁴ The mention of the payment date underlines the importance of this act to provide validity to the contract, consid-

81 Varone 2005, op.cit. (n. 26), 105; Andreau et al. 2017, op.cit. (n. 25), 8.

82 Della Corte 1946, op.cit. (n. 35), 111.

83 Andreau et al. 2017, op.cit. (n. 25), 12, n. 31, cites *Dig.* 35.4.32 instead of *Dig.* 35.1.32 (*Afr. 9 Quaest.*).

84 *Dig.* 37.6.1.14 (*Ulp. 40 ad Ed.*).

85 *Dig.* 50.16.131pr (*Ulp. 3 ad. Leg. Iul. et Pap.*).

86 *Dig.* 4.6.26.2 (*Ulp. 12 ad Ed.*); *Dig.* 47.10.32pr (*Ulp. 42 ad Sab.*); *Dig.* 48.2.8pr (*Macer 2 de Publ. Iud.*)

87 *Dig.* 12.6.26.12 (*Ulp. 26 ad Ed.*); *Dig.* 35.2.1pr. (*Paul. l. s. ad L. Falcid.*); *Dig.* 40.9.10pr (*Gai. 1 Rer. Cott.*)

88 *Dig.* 29.4.6.8 (*Ulp. 50 ad Ed.*); *Dig.* 48.5.26pr (*Ulp. 2 ad Leg. Iul. de Adult.*)

89 As in the case of adoption, *Dig.* 37.6.1.14 (*Ulp. 40 ad Ed.*); *Dig.* 40.9.5.2 (*Iul. 64 Dig.*), Refers to a *sponsio*, which constitutes a verbal obligation (formalised by pronouncing some words).

90 E.g. *Dig.* 12.2.6.6 (*Ulp. 26 ad Ed.*); *Dig.* 13.7.11.2 (*Ulp. 28 ad Ed.*); *Dig.* 44.1.11 (*Mod. 13 Resp.*); *Dig.* 46.3.58pr (*Ulp. 80 ad Ed.*); *Dig.* 12.6.59 (*Pap. 2 Defin.*); *Dig.* 18.2.4.6 (*Ulp. 28 ad Sab.*); *Dig.* 46.3.16 (*Pomp. 15 ad Sab.*); *Dig.* 46.3.37 (*Iul. 2 ad Urseium Ferozem*)

91 Branca 1958, op.cit. (n. 60), 551; see also the various Pompeian *apochae* (receipts) from Iucundus' bank compiled by Arangio-Ruiz in *FIRA* 3, 400 ff.

92 The reference of *solutio facta* in relation to the fulfilment of an obligation can be read in sources such as those quoted in n. 85, as well as *Dig.* 13.3.4pr. (*Gai. 9 ad Ed. Prov.*)

93 See e.g. *Dig.* 14.3.20 (*Scaev. 5 Dig.*); *Dig.* 40.3.7 (*Ulp. 27 ad Sab.*); *Dig.* 45.1.113 (*Proc. 2 Epist.*)

94 *CIL* 3-p 0950,13 (p 1058, 2215) = *IDR* 1.44.

ering the consensual nature that characterises lease and hire contracts. Since Roman jurists were more concerned with specific remedies than with abstract rights, they did not consider *consensus* to be the unifying element of the different kinds of contracts. *Consensus* created and formalised specific agreements, but the mandatory scheme of the contract (i.e., the object it attained) was what implied its existence and legal effects.⁹⁵ Therefore, the contract category feeds on and acquires its doctrinal legitimacy not from the voluntary agreement between the parties but from other factors, such as the type of contract, with all the particularities that this entailed.⁹⁶

Although the text inscribed on this sample-jar does not constitute a contract *per se*, it constitutes a document summarising several features of a *LC*, and, therefore, potentially provides proof of an agreement carried out.⁹⁷ However, when comparing the inscription with the models indicated by Fiori, it appears to reflect a contract combining two of his models.⁹⁸ First, bearing in mind the amounts inscribed on the jar and the capacity of the ship, it seems to have been loaded with just a single cargo.⁹⁹ This could indicate that it was a contract to lease an entire ship, but since the navigation was carried out presumably by

95 There has been some debate concerning the relation between obligation and *consensus*, (the acceptance of a contract), in order to assess which of these concepts had a major role in making a contract binding for the parties involved. From the beginning of the twentieth century, some scholars rejected the role of *consensus* in favour of the idea of obligation. See, for example A. Pernice, 'Parerga. III. Zue Vertragslehre der römischen Juristen', *ZSS* 9 (1888), 195–260; S. Perozzi, *Dalle obbligazioni da delitto alle obbligazioni da contratto* (Bologna 1915–1916). Responding to this, S. Riccobono underlines the importance of *consensus* for the contract (*Scritti di diritto romano. Vol. II. Dal diritto romano classico al diritto moderno, a proposito di Dig. 10, 3, 15 (Paul. 3 Ad Plautium)* (Palermo 1964)). At the same time, scholars such as P. Bonfante, *Istituzioni di diritto romano* (Milano 1987); or E. Betti, *Istituzioni di diritto romano* (Padova 1962) established a theory by which they understood the importance of *consensus*, but mostly emphasized the role of obligation. The last few years have seen a growth in consensualist theories, by authors such as: F. Gallo, 'Eredità di giuristi romani in materia contrattuale', *SDHI* 49 (1989), 405 ff.; A. Schiavone, *Giuristi e nobili nella Roma repubblicana* (Roma 1987), 68 ff.; Zimmermann 1996, op.cit. (n. 75), 23–34; Cascione 2003, op.cit. (n. 4), 55 ff., who all highlighted the historical context, the theories of individual jurists, and provided a more developed focus. Lately, Fiori's work (1999, op.cit. (n. 1)), has been demonstrated to be essential because of its nuanced focus on individual jurists, concluding that Romans did not consider *consensus* as the most important element to make the different contracts binding.

96 Fiori 1999, op.cit. (n. 1), 14 ff.; Cascione 2003, op.cit. (n. 4), 21; 292 ff.

97 A similar case is presented by K. Czajkowski and B. Eckhardt, 'Law, status and agency in the Roman Provinces', *P&P* 241 (2018), 27, referring to the writing tablets from Alburnus Maior.

98 Fiori 1999, op.cit. (n. 1), 515–527.

99 As affirmed by Andreau et al. 2019, op.cit. (n. 25), 6.

people unrelated to the merchant owning the cargo, as witnessed by the mention of the ship's owner and the captain, it seems that the text on the sample-jar reflects the elements of a contract for the transport of goods. The identification of the ship referring to many of its specific features, again suggests a *conductio navis*, implying that the transport would be carried out on that specific ship (and no other).¹⁰⁰ The mention of the *vectura*, together with *solvendo* and *solutio* seems to refer to an obligation of result, corresponding to the fulfilment of the obligation of payment implied in the contract. The latter coincides with the *locatio mercium vehendarum*, implying the need of a result but not the use of a specific ship. Therefore, in this inscription we find elements corresponding to two different contractual models according to Fiori. This would not be the first case in which the circumstances of a contract differ from the models.¹⁰¹ Through their texts, the jurists established the principles of how to act in various cases. Developing models through them was useful, but there were several possibilities arising from daily practices.

3 *CIL* 4.9591 and the Procedure of Tasting (*Probatio*)

The sample-jar of the house of Epidius Primus can easily be connected to the *probatio* of products for sale, since the main purpose of such samples was to provide potential buyers with the opportunity to check the quality of the product. However, in this case the connection takes us further. Bearing in mind the different meanings of the term *probatio*,¹⁰² I will focus on the possible role of the recipient as evidence in the case of contract enforcement.

¹⁰⁰ This is also connected with the peculiarities of grain transport, which followed specific distribution routes, probably managed by specialised traders, e.g. P. Erdkamp. *The Grain Market in the Roman Empire* (Cambridge 1995), 326.

¹⁰¹ For example, *TPSulp.* 78 a document that on the one hand includes a mixture of elements identified as typical of a ship lease contract, while on the other it presents details of the maritime loan. See Camodeca 1999, *op.cit.* (n. 29), 177–180.

¹⁰² The paper by E. Santamato, 'Il termine *probatio* tra retorica, storia e diritto', *Talia dixit* 7 (2012), 38 describes all the different meanings of *probatio*, but for our case we shall focus on its meaning in the context of procedure. In that sense, it refers either to the presentation of evidence to support an argument or to the approval by an authority (in this case a magistrate) of the evidence provided. Another related meaning would be the approval from the technician, corresponding to the *probatio operis*, the approval of the work leased by the Roman state. See S.D. Martin, 'A reconsideration of *probatio operis*', *ZRG* 103 (1986), 321.



FIGURE 7.7 Fresco with judicial scene from the Caseggiato d'Ercole, a market building at Ostia, dating to the second century CE. C. PAVOLINI, *OSTIA: GUIDE ARCHEOLOGICHE LATERZA* (ROMA 1983), 197, FIG. 4.1

There were by and large two possible scenarios for conflict resolution: a formal tribunal presided over by official functionaries; or a procedure decided by the contracting parties themselves to solve the case bilaterally or by arbitration.¹⁰³ We do not know very much about arbitration in the Roman period. One fresco from Ostia (fig. 7.7) could depict one of these scenes, since it shows two people discussing matters around an amphora (perhaps a Dressel 20) in front of a figure who may be identified as a judge or an *arbitrator* and who is placed in an upper position from the litigants. This painting comes from a building called the Caseggiato d'Ercole, dating to the second century CE, which may indicate that the person surveying the dispute was not a magistrate but a private citizen in charge of arbitrating the case. The latter ties in with the discussion about the connection between public and private spaces of justice,¹⁰⁴ a perceivable

103 D. Roebuck and B. de Loynes de Fumichon, *Roman Arbitration* (Oxford 2004), 91, 101, 108. T. Terpstra, 'Roman law, transaction costs, and the roman economy: evidence from the Sulpicii archive' in K. Verboven, K. Vandorpe and V. Chankowski (eds.), *Pistoi dia tèn technèn: Bankers, Loans and Archives in the Ancient World* (Leuven 2008), 369 indicating "business partners doubtless avoided lawsuits where they could"; id., *Trade in the Ancient Mediterranean: Private Order and Public Institutions* (Princeton 2018), 128.

104 See the work developed by the ERC project "Law, Governance and Space" (<https://www>

issue in the Ostian fresco, where a dispute appears to be depicted in a private building.

Another issue here is whether there were specific designated spaces for commercial trials in the Roman world;¹⁰⁵ a question not yet answered by the textual and material sources we have. The sources indicate that travelling merchants could be sued where they had their domicile.¹⁰⁶ However, a merchant could also be sued and defend himself in the location where he had his business. This is probably the reason why we find many of them joining provincial associations, or *conventus civium romanorum*.¹⁰⁷

In the period of the sample-jar (first century BCE–first century CE), the *cognitio extra ordinem* would be the only procedure available in the provinces where the judicial role would be in the hand of the provincial magistrates. Indeed, we do not know much about commercial trials, whether they were referred to a market authority like the curule aediles (for Rome), other local magistrates,¹⁰⁸ or the *praefectus annonae* in the case of affairs linked with state distribution.¹⁰⁹ Another element playing a role would be to be known by locals

.helsinki.fi/en/researchgroups/law-governance-and-space), and F. De Angelis, *Spaces of Justice in the Roman World* (Leiden 2010); R. Farber, *Römische Gerichtsorte. Räumliche Dynamiken von Jurisdiktion Im Imperium Romanum* (München 2014) and A. Russell, *The Politics of Public Space in Republican Rome* (Oxford 2016).

- 105 The well-known Hellenistic *dikai emporikai* were specific judicial procedures for commercial cases, as indicated by Bresson 2008, op.cit. (n. 30), 90; E.M. Harris, 'The meaning of symbolaion and maritime cases in Athenian law', *Dike* 18 (2015), 7–36; contrary to what was manifested by E. Cohen, *Ancient Athenian Maritime Courts* (Princeton 2015), who thought that *dikai emporikai* constituted commercial courts that were dedicated to these sort of procedures.
- 106 *Dig.* 5.1.19.2 (Ulp. 60 *ad Ed.*); *Dig.* 5.1.38 (Lic. 4 *Reg.*); *Cod. Theod.* 15.3.2. For the *Codex Theodosianus*, we know that in the fourth and fifth centuries CE, the *navicularii* used to be linked to a *forum*, this being a city and its port (*Cod. Theod.* 13.5.4). Other evidence is that of the mosaics of the *Piazzale delle Corporazioni* in Ostia (*CIL* 14.4549. 3; 10–12; 18–19; 34; 40) or the epigraphic record, confirming that *navicularii* were associated with the province from which they operated (e.g. *AE* 1913, 196; 208; *CIL* 3.14165, 08; *AE* 1955, 183). The same trend appears in Hadrian's Athenian oil law, who indicated that if the fraudster who was trying to export a larger amount of oil than permitted had already left Athens when his fraud was discovered, the people should submit complaints to the city of origin of the shipping agent or the Emperor (*IG* 2².1100, ll. 46–47).
- 107 W.V. Andringa, 'Cités et communautés d'expatriés installées dans l'empire romain: le cas des cives Romani consistentes' in N. Belayche and S.C. Mimouni, *Les communautés religieuses dans le monde gréco-romain. Essais de définition* (Turnhout 2003), 53–54.
- 108 *Lex. Irm.* 19; *Dig.* 21.1pr. (Ulp. 1 *Aed. Cur.*). See also: F. Serrao, 'Impresa, mercato, diritto', in E. Lo Cascio, *Mercati permanenti e mercati periodici nel mondo romano* (Bari 2000) 33, 37–40; E. Kondratieff, 'Aediles', in *Encyclopedia of Ancient History* (New York 2018), 1–2.
- 109 One famous inscription found in Beirut (*CIL* 3.14165 = *ILS* 6987), dating to the Severan

to gain credibility in a trial, as claimed by Ascylos in Petronius' *Satyricon*.¹¹⁰ The presence of local agents in the different Mediterranean ports presumably helped merchants with this issue.¹¹¹

Even though it does not follow the formalities that we might find in other documents witnessing *emptio venditio* (sale contract)¹¹² or *LC*,¹¹³ the summary of the transaction recorded on the sample-jar resembles receipts and other documents attesting accounting practices associated with a transaction.¹¹⁴ Such documents comprised, for instance, lists of goods or acknowledgments of receipts of a cargo, not including elements identifying the ship or its crew.¹¹⁵ This leads me back to the issue of goods sold in bulk, which in the case of legal disputes needed to be unambiguously identified.¹¹⁶ This was made possible by inscribed sample-jars, such as the one from the house of Epidius Primus. They represented the cargo, allowed the identification of the ship, its owner and captain, and proved the transport contract (the *locatio*) between the

period, displayed a complaint from the *navicularii* of Arles to the *praefectus* of the *annona* because their distribution operations were not properly surveyed by the authorities, causing them a loss.

110 Petr. *Sat.* 13.5–7.

111 W. Broekaert, 'Freedmen and agency in Roman business', in A. Wilson and M. Flohr (eds.), *Urban Craftsmen and Traders in the Roman world* (Oxford 2016), 222–253.

112 e.g., *TPSulp.* 42–44, which, however, attests *emptiones cum stipulationes duplae* for the sale of a slave (*res Mancipi*) and differs therefore from our case, which concerns grain (*res nec Mancipi*); see Camodeca 1999, *op.cit.* (n. 29), 115–120.

113 e.g. *TPSulp.* 45–47, Camodeca 1999, *op.cit.* (n. 29), 121–127, which, however, include a pledge to guarantee the contract, implying the inclusion of a real contract, instead of merely the consensual obligation (?) of *locatio*.

114 e.g. *TBloomb.* 87, *cf.* R.S.O. Tomlin, *Roman London's First Voices. Writing tablets from the Bloomberg Excavations, 2010–2014* (London 2016), 152; or *TPSulp.* 80 (= *Tab. Pomp.* 47), *cf.* Camodeca 1999, *op.cit.* (n. 29), 184 and L. Bove, '*TPSulp.* 80 (= *Tab. Pomp.* 47): un *mandatum* per epistulam (con χερπέμβολον: Ulp. *Dig.* 4.9.1.3.)?', in M. Silvestrini, T. Spagnuolo Vigorita & G. Volpe (eds.), *Studi in onore di Francesco Grelle* (Bari 2006), 21–25.

115 In G. Minaud, *La comptabilité à Rome: essai d'histoire économique sur la pensée comptable commerciale et privée dans le monde antique romain* (Lausanne 2005), 349, the author generally refers to *tabulae* as the format used for registering commercial accounts.

116 In this case, grain constitutes a *res fungibilis*, being things identified by their weight, number or measure (Gai. 3.90; *Dig.* 12.1.2.1 (Paul 28 *ad Ed.*); *Dig.* 30.30pr (Ulp. 19 *ad Sab.*)), which leads to a generic obligation, meaning that these goods should be identified in some way, such as by their amount or quality, *cf.* M. Marrone, *Istituzioni di diritto Romano* (Palermo 2006, 3rd ed.), 280, 480. Also, G. Purpura, 'Il χερπέμβολον e il caso di Saufeio: responsabilità e documentazione nel trasporto marittimo romano', *AUPA* 57 (2014), 137–147, highlights the importance of marking the cargo to identify it, in order to prove the *receptum* and the liability of the shipper. I have developed this theory further in, E. Mataix Ferrandiz, *Explaining the Commerce of Roman Mediterranean Ports: The Evidence from scripta commercii and Law* (2 vols) (Southampton-Lyon 2018).

owner of the cargo and the shipper. All this is highly useful information that could have served as evidence in the case of private arbitration or negotiations leading to a bilateral resolution.

Estimating the importance of the sample-jar in a formal lawsuit, however, is more complicated. What sort of evidence was admitted in a formal trial? Quintilian's rigorous list¹¹⁷ includes excerpts from bank accounts for use in a civil trial, implying that these documents were accepted as official, but this is not the case for the inscription on the sample-jar which as we mentioned before does not even resemble an accounting list. However, several fragments in the Digest title 22.4, 'On the credibility of instruments and their loss' (*De fide instrumentorum et amissione eorum*), indicate that informal texts and even objects could nevertheless be considered among the *instrumenta* if relevant to the case.¹¹⁸ A fragment from Gaius explicitly confirms that for consensual contracts, like *locatio* in this case, no formal documents were required.¹¹⁹ Another text of Scaevola, referring to what was probably a dispute in a province since it was brought before a governor, particularly highlights the importance of unsealed documents (*rationes*) as evidence.¹²⁰ It is true that nothing is said explicitly about the use of artefacts such as sample-jars as evidence, and that most of the texts dealing with civil lawsuits are preoccupied with the use of false documents or documents not produced in an officially specified form.¹²¹

117 Quint. *Inst. Orat.* 5.10.2; the list is commented on by G. Pugliese, 'La prova nel processo Romano classico', *Jus* 11 (1960), 418–419.

118 *Dig.* 22.4.1 (Paul 2 *Sent.*): *Instrumentorum nomine ea omnia accipienda sunt, quibus causa instrui potest: et ideo tam testimonia quam personae instrumentorum loco habentur*; see also *Dig.* 22.4.2 and 4–5. The importance of informal documents can vary in each case, depending on what the parties consider important to prove a transaction, especially in cases where we are probably dealing with arbitration or bilateral discussion. Cf. Sen. *Ben.* 3.15.1–3. In this sense, Quint. *Inst. Orat.* 5.9.1–2 argues that indications (*signa*), like *tabulae* or non-technical proofs, differ from arguments, as they are not 'discovered' by the orator but come to him as part of the case itself.

119 *Dig.* 22.4.4 (Gaius *sing. de Form. Hyph.*) *In re hypothecae nomine obligata ad rem non pertinet, quibus fit verbis, sicuti est et in his obligationibus, quae consensu contrahuntur: et ideo et sine scriptura si convenit, ut hypothecae sit, et probari poterit, res obligata erit de qua conveniunt. Fiunt enim de his scripturae, ut quod actum est per eas facilius probari possit: et sine his autem valet quod actum est, si habeat probationem, sicut et nuptiae sunt, licet testatio sine scriptis habita est.*

120 *Dig.* 49.1.28.1. (Scaev. 25 *Dig.*)

121 M. Kaser, *Das Römische Zivilprozessrecht* (Munich 1966), 280; F. Arcaria, 'La prova giudiziaria nel diritto Romano', in *Le prove* 1 (Torino 2007), 45–47, which has plenty of references to the topic of the evolution of proof; S. Schiavo, *Il falso documentale tra prevenzione e repressione: impositio fidei criminaliter agere civiliter agere* (Milano 2007), 33–40; A. Triggiano, *Le prove giudiziarie nel mondo antico Tra retorica e diritto* (Milano 2017) 84, 141.

However, some of the texts do focus on commercial issues. Terpstra argues that the lists of witnesses included in sale documents made these contracts ‘publicly embedded’, and reinforced the official sense of the document provided by their Roman legal framework.¹²² This implies that our sample-jar, even if useful for bilateral disputes or private arbitration, would not have stood up in court, as it did not follow the formal requirements to achieve a degree of trustworthiness provided by these Roman. However, the sale documents quoted by Terpstra refer to sales of slaves or real property, both *res mancipi*, which according to Roman law required a special formal procedure to transfer ownership.¹²³ Arguably, the value and specific features of these ‘goods’ justified that the parties to the contract included the guarantee of the witnesses in the documents. A similar situation may be observed in the case of the sale contract with double *stipulatio* included in the slave sale of *TPSulp.* 42–44. However, there are two contracts of lease of labour among the Dacian tablets from Alburnus Maior.¹²⁴ Two extra names are added under the text, which appear to be witnesses to the agreement but the way they are recorded is formally very different from the long witness lists used in other tablets, such as the Pompeian ones. It seems that these were not ‘closed and sealed’ tablets but merely ‘sealed’. Thus, perhaps in this case the witnesses acted merely to provide that ‘public embeddedness’ needed in case of enforcement.

For an *LC* to transport moveable goods, as it is the case of the sample-jar, it was the mere act of handling these goods after having provided consent for the transportation that constituted the contract (*ex consensu*).¹²⁵ The sample-jar with its inscription could then itself have served to witness the contract. Some Egyptian papyri provide evidence for transport contracts,¹²⁶ but—as

122 Terpstra 2018, op.cit. (n. 103), 125–130.

123 Gai. 1.120–121; 192; 2.14–16.

124 *CIL* 3.p 948,10 (p 1058) = *IDR* 1.41. Terpstra 2018, op.cit. (n. 103), 155.

125 V. Arangio-Ruiz, *La compravendita indiritto Romano. vol 1* (Naples 1987), 86 “il contratto consensuale si può riconoscere solo come la prima fase di una vicenda giuridica, che si compie con l'esecuzione dell'una e dell'altra parte”.

126 E.g. *SB* 14.11552, *FIRA* 3.477–479 and *P.Oxy.* 43.3111. However, these contracts present features of Hellenistic law, such as the fact that they include an execution clause (κύριον) that states, “The *naulotiké* has binding authority”. Greek law lacked a concept of obligation derived from the contract, and a breach of it entailed repercussions corresponding to tort law. Therefore, in many papyri we can find a series of clauses that establish repercussions or conditions for the contracting parties, since these explicit clauses supply the absence of a notion of obligation. *Cfr.* F. Pringsheim, *The Greek Law of Sale* (Weimar 1950), 157; A. Biscardi, *Diritto greco antico* (Milano 1982), 161; H. Dedek and M.J. Schermaier, ‘Obligation, Greek and Roman’, in R.S. Bagnall et al. (eds.), *The Encyclopedia of Ancient History* (New York 2013), 4560.

mentioned previously—not many formal documents, whether a tablet or a similar artefact, have so far been found concerning a *locatio* in Italy or a western province.¹²⁷ As an exception, we can find the Bloomberg tablet 45, documenting an (unfortunately fragmentary) agreement to transport ‘food’ (*penes*) from Verulamium to London.¹²⁸ Bearing in mind that transport contracts were consensual and did not need to be expressed in writing, this tablet provides hard evidence that on some occasions the parties preferred to register their contracts in writing, probably to use them as proof in case something went wrong. Perhaps the fact that this document is a wax tablet and not a simple jar better qualified it to be used as proof in a trial.

In sum, even if the role of the sample-jar from the house of Epidius Primus is still not completely clear, I believe that the imperfect conditions in which long distance trade had to be managed induced merchants to devise their own ways of enforcing contracts and dealing with disputes. As part of a customary practice and a pragmatic activity, trade relied partly on impersonal systems of trust to underpin commercial relations when the institutional framework was inefficient.¹²⁹ Performing certain established procedures (e.g. tasting) and using certain identified material objects (e.g. samples) in trade underpinned impersonal systems of trust. This helped to make trading practices intelligible to people from different sociolegal backgrounds, even in the absence of enforceable contracts.¹³⁰ Therefore, despite the fact that this jar could not qualify as being a formal legal document *per se*, it witnesses the details of a transaction and it could have been helpful for the parties involved in this commercial activity.

127 E. Meyer, *Legitimacy and Law in the Roman World: Tabulae in Roman Belief and Practice* (Cambridge 2004), 294, “to be effective Roman law initially drew its authority from outside government and outside itself, from the wider world of belief in which it was embedded”

128 *Tbloomb. 45* (<https://romaninscriptionsofbritain.org/inscriptions/TabLondBloomberg45>; and Tomlin 2016, *op.cit.* (n. 114), 156–159).

129 S. Johnstone, *A History of Trust in Ancient Greece* (Chicago 2011), uses this focus for the Greek case.

130 This assertion is clearly explained in the case of Chinese merchants in the modern era and their reliance on cultural similitudes, identity, or clan organisation by J. Tai Landa, *Trust, Ethnicity, and Identity* (Michigan 1999), 189–207; *id.*, *Economic Success of Chinese Merchants in Southeast Asia: Identity, Ethnic Cooperation and Conflict* (London 2016), 137; 191.

4 Conclusions

This chapter aimed to improve our conception of *LC*, by contextualising the inscribed sample-jar found in the house of Epidius Primus as material evidence of an agreement that could be used in dispute resolution. The study of its inscription shows that it displayed elements corresponding to two ‘models’ of this contract. Given the flexible nature of *LC*, the remedies provided by Roman law were sometimes insufficient to cover all the circumstances of the different maritime transport events. We must understand that jurists established principles to act in various cases, and that developing models through them is useful, but we must also consider the possibilities that arise from daily business practice.

Concerning the role of merchandise as evidencing transactions, I argued that these artefacts played an important role in documenting commercial transactions and in private dispute resolution between the parties involved. Reading the Digest, we can appreciate that Roman law provided sophisticated solutions for daily commercial issues. However, trade in the Roman Empire developed under conditions of imperfect public enforcement of private contracts. The Roman authorities did not use their policing power to enforce private contracts made under the rules of their own legal system. Thus, a big part of jurisdiction needed to rely on non-imperial institutions, such as custom or impersonal but private systems of trust, which appear to be essential for the resolution of disputes. In that sense, the next question we need to ask ourselves will perhaps be what constitutes law in a specific context, especially in the case of Roman trade, being a context characterized for its pragmatic and customary performances. In that sense, could this sort of artefacts represent law as being practised by the actors in trade? Law cannot be treated purely as an intellectual system, a game to be played by jurists whose aim is to produce a perfectly harmonious structure of rules. It is something that operates on a practical level in society, and has to be understood as such. Then, when we lay down the discourse of the practice of the law, we can realize that at one time there may be a number of possible rules, or formulations of rules, competing with each other.