

## LDAS VII

### The Loan contract in Ancient Societies

August 27-29

#### 1. Ancient Near East

Moderator : S. Démare-Lafont (Université Panthéon-Assas – EPHE-SHP)

##### 1.1 – A. Skaist (Bar-Ilan University), « The Legal Status of the Loan Deed »

What is the legal status of the loan deed in the cuneiform world cir. 2500- 300 BCE? There are scholars who understood the scheme of the loan document to be that of a real contract that is to say the receipt of an object created an obligation to return it or something of equal value. The key term is Sum. *šu ba-an-ti*, Akk. *leqû*. (hereafter, receipt type). Is the concept of a real contract applicable to loan documents of other periods and different geographical locations? In order to answer this, I will briefly survey the structure of loan deeds from various regions of the cuneiform world including Old Babylonia from geographical and historical standpoints.

It appears that there are two ways to record a loan obligation. They are 1. A receipt type, 2. Obligation notes (often referred to as promissory notes) whose basic formula was: X commodity *eli PN išū* or some variant. The receipt type document predominates in certain areas such as Old Babylonia whereas the obligation note predominates in contemporary Old Assyria. In the first millennium BCE the obligation note is used to the exclusion of the receipt type in both Assyria and Babylonia.

It has been noted that the two types of documents differ in their distribution and moment of the onset of obligation. In the receipt type (real contract), the obligation to repay the loan is created at the moment that the creditor gives the loan and the debtor receives it. In the obligation note loan the obligation is created at the moment the document was composed. The obligation note could thus be considered to be a dispositive document.

It has been shown that in the cuneiform world legal documents especially contracts, record an oral transaction, which took place in the presence of witnesses. The legal documents, including loan documents, were essentially evidentiary. The witnesses named in the document were the primary source of evidence, the document served as proof mainly if there were no witnesses. There is some evidence at present that, obligation notes were considered evidentiary as were other types of legal documents.

Was the obligation note also dispositive? As in most cases the reason for the transaction recorded in the obligation note is not known, one must consider the possibility that there was an oral agreement between the parties prior to writing the obligation note. Thus if a document was written, its primary purpose was evidentiary.

1.2 – A. Jacquet (Institut du Proche-Orient ancien, Collège de France), « The Old Babylonian loan contract: a reappraisal »

The book by A. Skaist, *The Old Babylonian Loan Contract. Its History and Geography*, published in 1994, represents a major contribution – still unreplaced to date – to the studies on contracts in the Ancient Near East. Based on an already large corpus of Old Babylonian archival documents (the ARCHIBAB data base devoted to this documentation allows to calculate that ca. 25.000 among the 32.000 texts published today were already known in 1994), specifically loan contracts (about 600 references listed in the different tables sprinkled throughout the book), this analytic study was organized into chapters following the order in which the contracts were drawn up : nature of the commodities lent, type of loan, interest clause, the verb, repayment clause in its different components, pledges, joint responsibility of the debtors. The goal of the author was to evaluate whether the presence or absence of each of these clauses may have had a geographical and/or chronological significance.

The present conference is a good opportunity to resume, 20 years later, the study of the various clauses and formulae used in Old Babylonian loan contracts, not to call drastically into question the conclusions of this reference work, but to draw on an updated corpus and benefit from the recent contributions of the informatic tool (namely the ARCHIBAB data base) to check and correct, if needed, the historical and geographical breakdowns generally accepted. The aim of this paper is to get a

synthetic view of the constants and variables in terms of wording, not only according to space and time but also depending on the type of loan. We should then be able to develop a typology of Old Babylonian loan contracts that is not only based on the ancient terminology but on modern criteria of diplomatics.

### 1.3 – P. Villard (Université Blaise Pascal, Clermont-Ferrand), « Uses of the Debt Note's Pattern in Neo-Assyrian Times »

The Neo-Assyrian scribes used the same basic pattern for recording any obligation of one person to another: a sum expressed in silver or copper, or any other property is said to belong to a creditor (*ša* NP1) and be at a debtor's disposal (*ina pān* NP2). It is possible that the clause *ina pūhi našû*, "to take in exchange" may indicate a real loan, that is to say a transaction in which a creditor has actually given silver or other property "in exchange" of the debt tablet, but there are cases where this assumption appears to be malfunctioning. On the other hand, the origin of the debtor's obligation is not always explicit and should, where possible, be inferred from the context.

My contribution will therefore try to determine the specific cases where it could be made use of the debt note's pattern, taking into account elements such as the nature of goods owed by the debtor, the mention or not of a guarantee (*bēl qātāte*) or pledge (*šapartu*), the existence or not of an interest and its nature, the restitution clauses (due date and place), etc.

In the case of interpersonal relationships, it seems that the basic pattern of the debt note can thus be applied to real loans (transfer of property to be returned later with or without interest), but also to all forms of handing-over of a good, involving in return an obligation, *e.g.* the use of a work force or the usufruct of a real estate.

Besides, the debt notes often hide administrative operations: handing-over at the due time of manufactured goods, transport of wine or other products, to be delivered in a specific place, commercialisation of cereal stocks, collection of offerings, etc.

It thus raises the question of the use of the same model to give an account of rather seemingly different situations, especially if one considers that more varied models were used in Mesopotamia at other times. Part of the answer may be due to

the rather rough training of Neo-Assyrian notarial scribes. But it is probably necessary to see the reflection of a very hierarchical and unequal society. In other words, the central issue is not that of the loan but the debt as a means of subjugation.

## 2. Egypt

**Moderator : M. Depauw (Université catholique de Louvain)**

2.1 – S. Lippert (CNRS – UMR 5140 Archéologie des sociétés méditerranéennes), « Bilingual loans with mortgage in Roman Egypt »

At the beginning of the 1st century CE, a new type of loans with mortgage appears in Egypt, uniting a Greek loan document and a demotic sales document for real estate on a single sheet of papyrus. This paper will explore its Demotic predecessor of the Late and Ptolemaic periods, called "Kaufpfandvertrag" by Wilhelm Spiegelberg and Friedrich Preisigke (RecTrav 31, 1909, p. 91-106), and throw light on how this new hybrid instrument worked, legally and practically.

2.2 – B. Kasparian (Université de La Rochelle), « The loan agreement and its variants from the Old Kingdom to the New Kingdom in Ancient Egypt »

Gift or deposit? Deposit or loan? Loan or rent? Rent or credit sale? When considering the hieroglyphic data, clearly it is often quite a task to characterize such legal operations. Though the loan contract was widespread in the social and economic system of Ancient Egypt, where mutual aid, reciprocity and redistribution were the norm, it is unfortunately hardly documented in the written data. In fact, it is extremely difficult to differentiate these contracts, be they loans for use or consumer loans, from other contracts, so as to specifically recognize them, the reason being that the loan contract presents certain similarities with other types of contracts, thus may be confused with these.

Questions concerning loans are numerous, and primarily lexical. The word *tjabet*, usually translated as « cereal credit », is problematic regarding its semantic meaning, as the term seems to refer, more precisely, to a surplus of cereals, though this

meaning does not exclude the idea of loan, considering that help from one community to another, from one person to another or to a group of people, perfectly fits in with the social behaviour idealized in wisdom texts dating back to the end of the Old Kingdom.

However, there is no specific word for the loan for use, therefore the spirit and mechanisms of the operation have to be found in the deeds recorded in texts. These are rare and consist mostly of ostraca from the Ramesside Period found in Deir el-Medina. Of course, recording a deal with provision of service was meaningful when the entrusted item had a certain value, but also when the loan was not granted free of charge. Nonetheless, the analysis of the texts should take into account imprecisions and ambiguities, which are problematic when trying to understand the mechanisms at stake, some of which have to do with the identity of the persons involved and with the circumstances surrounding the conclusion and the execution of the deed. The aim of the present study is to present the loan in its cultural, socio-economical and legal aspects during the Old, the Middle and the New Kingdoms, by reviewing the terminology and the various ways by which it was concluded.

2.3 – K. Vandorpe (Université catholique de Louvain), « Local variations in Ptolemaic loans »

Greek and Demotic loan contracts from Ptolemaic Egypt are quite uniform, but some local variations are attested in the interest clauses, the repayment clauses (e.g. local measures are often mentioned in case of repayment of grain loans), penalty clauses and surety clauses. But do these variations reflect varying practices or is it simply a matter of lexical variation (e.g., the interest is the same everywhere, but the phrasing may differ). And in how far may we assume that a manual was available to the Greek and Egyptian notaries ?

### **3. Papyrology**

**Moderator : J. Méléze-Modrzejewski (Emeritus Université Panthéon-Sorbonne and EPHE-SHP)**

3.1 – B. Legras (Université Panthéon-Sorbonne), « La parakatathèkè dans le droit de l’Égypte ptolémaïque d’après les papyrus grecs »

La *parakatathèkè* ou *parathèkè*, dépôt ou gage, est une forme de sûreté réelle bien attestée en droit grec et hellénistique. Elle est mentionnée dans l'Égypte ptolémaïque dans des lettres, des comptes et des contrats (par ex. *P. Cair. Zen.* 59071=*P. Mich.* I 14, 257 av. n.è.; *P. Grenf.* II 17, 137 av. n.è.). Le catalogue en a été dressé par Klaus Kastner, Dissertation Erlangen (1962), *Die zivilrechtliche Verwahrung des gräko-ägyptischen Obligationsrechts im Lichte der Papyri* (86-89). L'objet de la communication sera d'analyser l'apport de la documentation papyrologique grecque, et de s'interroger sur l'intérêt de ces dépôts pour les acteurs de l'économie et du commerce antique. Le souci de sécurité peut en effet entrer en contradiction avec le désir de profit. On s'interrogera en particulier sur les *Trödelverträge* révélés par les archives des *katokhoi* du Sarapieion de Memphis, *UPZ* I 83 et 84, qui montrent l'existence du "dépôt irrégulier", le *depositum irregulare* du droit romain. Bibliographie: Damien Agut-Labordère, "La parathèkè au Serapeum: les (petites) affaires de Ptolémaïos", *Ägypten zwischen innerem Zwist und äußeren Druck. Die Zeit Ptolemaios' VI bis VIII*, A. Jördens et J. Fr. Quack éd., Heidelberg, 2011, p. 276-287; Gerhard Thür, "Parakatatheke", *Der Neue Pauly. Enzyklopädie der Antike* 9, 2000, 316-317.

3.2 – U. Yiftach (Tel Aviv University), The clauses of the Loan Contract: its broader context.

Loan contracts on papyrus usually follow a very simple scheme: an account of the act of loan is followed by an account of the interest, the terms and dates of return, sanctions for the event that the loan is not returned on time, and means accorded to the creditor for retrieving the debt. Still, loan contracts were also capable of absorbing other clauses, whose origin is in other types of contracts, leases, sales, contracts of labours and others. It is my intention to study the absorption of other clauses into the loan contract as means for the formation, particularly in the Roman period, of major subcategories. The paper will be based on the results of the project Synallagma: Greek Contract in Context.

<http://www.artlid.net/?project=glrt&username=guest&password=guest>.

### 3.3 – E. Buchanan (Oxford University), The Early Byzantine Loan Contract in Transition: From Greek Cheirograph to Coptic Loan Contract.

During the fifth and sixth centuries CE, almost all of the extant loan contracts in Egypt use the Greek cheirograph format. Although regional and scribal wording differences existed, the basic format and many of the standard clauses were the same from Nessana to Syene. These documents generally contained a dating clause, an acknowledgment of receipt, a promise to repay, various lender protection clauses, an acknowledgement that the document was valid (the *kyria* clause), a stipulation clause, and various execution clauses. When Justinian I mandated regnal dating in 537, the scribes writing loan cheirographs adopted regnal dating over a period of about twenty years, with the official scribes, the *nomikoi*, being quicker to adopt it than those writing at monasteries and churches. Then, commencing in the early to mid-sixth century, a simplified Greek loan contract was developed that lacked regnal and consular dating, as well as the *kyria* and stipulation clauses. It also lacked the acknowledgement (ὁμολογῶ) language, and many of the more florid clauses characteristic of the early Byzantine Greek cheirographs. The wording of this simplified contract became more standardised over the sixth century. At the end of the sixth century, the earliest known Coptic loan contracts are attested, using a format which is almost identical to the Greek simplified contract, but with a very specific mix of Greek and Coptic words. After the Arab conquest of 642, the Greek cheirographs, including the simplified contract, fade away, and the Coptic loan contracts predominate. This paper will examine the transition from the standard Greek cheirograph to the Greek simplified contract to the Coptic loan contract, and consider what factors may have led to the development of the simplified contract and the Coptic loan contract.

## 4. Greece

**Moderator : D. Rousset (EPHE-SHP)**

4.1 – M. Faraguna (Università degli Studi di Trieste), Loans in a small island society: the *astynomoi*-inscription from Tenos

*IG XII 5, 872* is a long, and to some extent, unique inscription from Tenos listing 47 transactions involving real estate registered by the *astynomoi* some time during the late fourth century BCE. Although the transactions are formally and terminologically presented as “sales”, it is recognized that a significant number – how many is however a matter of dispute – are in fact credit transactions and must be classified as *praseis epi lysei*, in other words as concealed mortgage contracts. The deeds thus seem to reflect the circulation of money rather than record permanent transfers of real assets. The aim of the paper is to provide a new in-depth analysis of the document and reconsider the legal, economic and social questions it poses, not least the question of the purpose of the loans.

4.2 – A. Maffi (Università di Milano), *Les dikai emporikai* à la lumière du plaidoyer de [Demosthène] contre Zénothémis.

Le but de ma contribution est de proposer une nouvelle reconstruction des événements racontés dans [Demosthène] 32, contre Zénothémis, pour en tirer des considérations concernant les actions de commerce dans l’Athènes du IV<sup>e</sup> siècle av. J.-C.

4.3 – C. Samitz (Universität Wien), *Auslagen und Darlehen von Amtsträgern griechischer Städte*

Besonders in hellenistischer Zeit mehren sich die Belege für das Phänomen, dass Amtsträger griechischer Städte mehr oder weniger freiwillig bestimmte Ausgaben in ihrem Tätigkeitsbereich selbst übernehmen. Abgesehen von der vollständigen und endgültigen Übernahmen bestimmter Kosten durch den Amtsträger erscheint ebenfalls die Möglichkeit, dass dieser der Stadt ein Darlehen zur Verfügung stellt bzw. eine bestimmte Summe vorerst selbst auslegt und später von der Stadt zurückerstattet bekommt. Häufige Liquiditätsengpässe griechischer Städte sind der Grund für diese kurzfristigen Vorschüsse durch die städtischen Eliten. Derartige Regelungen sind vor allem aus Inschriften bekannt. Diese geben üblicherweise keinen förmlichen Darlehensvertrag wieder, sondern einen Volksbeschluss, in dem manchmal wichtige Bedingungen wie Zinsen, Rückzahlungsfristen und Sicherheiten

festgeschrieben sind, manchmal jedoch auch bewusst offen gelassen werden. Der Beitrag hat zum Ziel, die verschiedenen Ausformungen dieser Finanzierungsmodelle zu untersuchen, Unterschiede in der Ausgestaltung und gegebenenfalls auch chronologische Entwicklungen festzustellen.

## 5. Rome

**Moderator : Eva Jakab (University of Szeged)**

5.1 – Ph. Cocatre-Zilgien (Université Panthéon-Assas), Über die Gegenklage des Kommodatars im römischen Recht.

Im 29. Buch *zum Edikt* (= Dig. 13, 6, 17, 3) hat am Ende des 2. / Anfang des 3. Jh. n. Chr. der römische Jurist Iulius Paulus die Leihe behandelt und versuchte bei dieser Gelegenheit die Gegenklage des Entleihers gegen den Verleiher zu rechtfertigen.

In diesem Passus führt er verschiedene Gründe an, weshalb auch bei einem Gefälligkeitsgeschäft der Entleiher juristisch gegen den Verleiher vorgehen könnte, selbst wenn die Überlassung der geliehenen Sache unentgeltlich war.

Die Detailliertheit seiner Ausführungen lässt die Annahme zu, dass diese Frage bereits seit Langem unter den römischen Juristen diskutiert wurde.

Daher ist es nicht uninteressant, den Paragraphen der Digesten zu interpretieren, in denen Iulius Paulus' Ansicht überliefert ist.

5.2 – Th. Rűfner (Universität Trier), Late Roman and Byzantine Lending Practice in the Light of Egyptian Papyri

The paper will survey the evidence for the borrowing and lending of money in Egyptian papyri dating from (roughly) the end of the third to the end of the sixth century CE. The focus will be on contractual provisions regarding the payment of interest and the provision of collateral to secure repayment. To the extent that the evidence permits such an exercise, the author will check if the limits set by Imperial legislation were respected by lenders in Egypt.

### 5.3 – F. Klinck (Ruhr Universität-Bochum), Lending, Lien, and the Rent of Storage Rooms in the Tabulae Pompeianae Sulpiciorum

In 1959, during the construction of the highway Pompeji-Salerno, workers discovered the remnants of a house that had been buried since the eruption of the Vesuvius 79 AD. In this house, archeologists found a wicker basket filled with legal documents that seem to belong to the archive of a banker family from Puteoli, the Caii Sulpicii. These documents have since been edited and published, namely by Giuseppe Camodeca (last edition 1999, cited as “TPSulp.”) and Joseph Georg Wolf (last edition 2010, “TPN”).

Some of these documents regard a loan contract between Euenus Primianus and Gaius Novius Eunos of the year 37 AD (TPSulp 15, 52, 45 = TPN 43, 16, 86), others a loan contract between Gaius Sulpicius Rufus and Lucius Marius Secundus of the year 40 AD (TPSulp 53, 79, 46 = TPN 45, 69, 87). In both cases, the lender received securities in the form of a lien on foodstuffs that were kept in storage rooms; these rooms had previously been rented by the debtor. Remarkably, in connection with these loan agreements the lender entered into new storage contracts with the owner of the storage rooms in which the pawned foodstuffs were stored. It has been argued that these contracts were needed to transfer possession of the foodstuffs to the lender and that this transfer was required in order for the lender to acquire the lien on the foodstuffs. The paper will examine this view critically; it will attempt to provide an alternative explanation for the seemingly peculiar combination of loan, lien, and storage contracts.