The Journal of Juristic Papyrology
vol. LV (2025), pp. 311–338

Marzena Wojtczak
Jakub Urbanik

TO SELL OR TO HAVE SOLD? *HYPOTHEKE-PRASIS* AND *DIKAIA TIME* IN *P. BUDGE**

Dis manibus
Cosmae Cascione, sapienti, perspicaci ludentique amico,
magistro desideratissimo, magistro omnibus flebili

1. INTRODUCTION: THE ARCHIVE OF PHILEMON AND THEKLA

A TINY ARCHIVE COMPOSED OF the famous Coptic document *P. Budge* containing a protocol of arbitration and three Greek documents

* This article was written while preparing the legal commentary to the new edition of Philemon and Thekla's archive, a joint project with Sebastian Richter and Lajos Berkes. Marzena Wojtczak worked on the matter during her 2024/5 stay at Berlin-Brandenburg Academy of Sciences and Humanities and the Free University of Berlin under a research grant *'In' and 'Out' of Court: Dispute Resolution in Late Antique Egypt – the Case of P. Budge (New Edition and Legal Commentary)*, funded by NAWA–Bekker [BPN/BEK/2023/1/00381].
The Coptic text used in this essay has been re-established by Sebastian Richter; its English translation is a joint effort of Richter and Wojtczak. Other translations, unless otherwise indicated, are ours. If not marked else, the dates refer to the common era.
We are grateful to Derek Scally (Berlin) for having rendered our English more readable.
We would like to dedicate this essay to the memory of Cosimo Cascione who left us on the 14th of December 2024. While with us, he took pleasure in solving scientific riddles and joyfully shared his ideas and himself with the community. We are eternally grateful to have been graced with his presence, wisdom, friendship, and humour.

https://doi.org/10.36389/uw.jjurp.55.2025.pp.311-338

associated with it, a settlement of claims, a sale, and a loosely connected marriage document, bring forward a fascinating controversy of the tormented times between the Persian and the Arab conquests of Egypt.[1] Its settlement testifies to the operative force of law, legal awareness of its users, and dispute-resolution strategies in an environment of intrinsic legal plurality. A new text edition, providing an in-depth study of this material, delving into the dispute resolution method, rhetorics, and proper reconstruction of events, is presently in the works.[2] Before it is published, we would like to present here an aspect of this matter, closely connected to the very origin of the dispute, namely our hypothesis on the nature of the security provided by the borrower, the widow Thekla, to her creditors, the consorts Philemon and Thekla.

Before we proceed, it will be useful to recall the basic facts of this complex case. The dispute between a certain Iohannes, a deacon, pressing claims along with Tsoker, on the one side, and Philemon acting together with his wife Thekla,[3] on the other (*P. Budge*, ll. 1–3), originated some twenty years before, 'in the time of the Persians'. Back then, Iohannes' aunt, also named Thekla (to avoid confusion we will refer to her as Thekla-the-Widow hereinafter), borrowed a solidus from Philemon and his wife (*P. Budge*, ll. 3–5). She secured the loan with a pledge of her share of a house.

[1] *P. Budge* (Apollonopolis Magna, 646/7), first published by Schiller 1968, and *SB* VI 8988 (Apollonopolis Magna, 647), *SB* VI 8987 (Oxyrhynchos, 644/5), as well as *SB* VI 8986 (Apollonopolis Magna, 641), published by Zilliacus 1940. The connection between the pieces was first noticed by Schiller 1964a and Schiller 1964b; he, however, ignored the possible link with the marriage papyrus, most likely evidencing the union of the creditors' daughter. She may have inherited the disputed house and thus was interested in keeping proofs of the title to it. The archive then would be composed due to her efforts.

[2] For the broader context of 'alternative dispute resolution' in late Roman Egypt, see meanwhile, most recently, Wojtczak & Urbanik 2023; earlier, more generally, e.g., Urbanik 2007, with Palme 2007; Kreuzsaler 2010, all with references to the earlier literature and critical discussion of, purportedly controversial, Schiller 1971.

[3] The scribe used singular throughout the text of *P. Budge* and then corrected it to plural. The possible implications of the amendment are not vital for our argument here, so we shall refer the readership to the commentary in the new edition. What counts here is that the settlement respects the alternation and is made between the couple and the deacon.

The document seems to have contained a cession clause (*apotage*),[4] granting Philemon the right to claim the property outright upon default. Thekla the debtor later departed 'to the north', and Philemon moved into the property taking possession of the pledged house share. This may have been justified by an *antichresis* arrangement between the parties, which granted the creditors the right to its rent-free use. Years later, the deacon Iohannes emerged on the scene. He came armed with letters from Thekla and her son, Mena, allegedly empowering him to repay the debt owed to Philemon and to act on her behalf to reclaim the pledged house. A possible will or a bequest is also mentioned, implying that Thekla-the-Widow may have intended Iohannes to inherit her interest in the property (*P. Budge*, ll. 20–52). From this point the course of events becomes more obscure. What remains clear is that Iohannes attempted either to reclaim possession of the house or, at least, to contest Philemon's right to it, along with its furnishings and Thekla-the-Widow's other private belongings. At some stage, Philemon sought to obtain a deed of sale directly from her, to regularise his standing, but met with refusal (*P. Budge*, ll. 14–16). Then both Thekla-the-Widow and her son Mena died, and the conflict escalated.

The dispute was eventually referred to a certain *kyrios* Paul, who issued a ruling in Iohannes' favour and ordered Philemon to restore the property (*P. Budge*, ll. 220–225). Iohannes offered repayment of the debt, but Philemon declined it. Meanwhile, he seems to have lost effective control of the house – perhaps due to the intervention of tax-collector Menas, who acted at the instigation of Iohannes (*SB* VI 8988, ll. 16–27). Philemon then travelled to Oxyrhynchos, where, upon payment of two solidi added to the one originally lent, he obtained a deed of sale of house from Thekla-the-Widow's heirs: her daughter Elisabeth, her widowed daughter-in-law Iustina, who also acted

[4] If this was really the case, it would be quite untypical for the late antique Greek loan contracts, which never contain an *apotage*-clause surrendering the rights over the pledge to the creditor. Unsurprisingly, it only appears in deeds settling the debt by selling the pledge to the creditor against additional payment over the original sum lent; see *P. Cair. Masp.* II 67167 (Antinoopolis, 566–573), ll. 27–28; *P. Lond.* V 1720 v° = *P. Eleph. Eng.* D24 (Thebes, 549–564), l. 1; *P. Lond.* V 1730 = *P. Eleph. Eng.* D41 (Syene, 585), l. 26 (interestingly added above the line); *SB* XVIII 13777 (Ta Memnoneia, 556), ll. 11, 22, & 25; as well as our *SB* VI 8988, l. 12: τελεία ἀποταγή (see further, pp. 328–335, and n. 40 & 54).

on behalf of debtor's minor grandson (*SB* VI 8987, ll. 21–25), as well as Elisabeth's younger brother Hierakianos, represented by both women.[5]

This move did not settle the matter. Even with a deed in hand from the heirs, which may have helped him to re-obtain possession of the house, Philemon could not ward off his opponent's claim. Iohannes persisted in suing him (and his wife).[6] Eventually, the parties agreed to arbitration, documented in *P. Budge* proper. The dispute was finally resolved only with the conclusion of a final settlement of claims – drawn up some time after the arbitration proceedings – wherein Iohannes formally renounced all his claims towards his aunt's house (*dialysis*; *SB* VI 8988).

2. RECONSTRUCTING THE SECURITY IN *P. BUDGE*

In this part we shall focus on the reconstruction of the particulars of the security arrangement for Thekla-the-Widow's loan, which likely became the bone of contention for the ensuing lengthy dispute. Philemon's dossier lacks the original loan document. This absence, while frustrating, is comprehensible. When the debt had settled with Thekla's heirs, its deed must have been simply returned to the (former) debtors, as was the normal practice for such cases.[7] And yet, Philemon's opponents accuse him of the deliberate destruction of the original *hypotheke-prasis*.[8]

[5] On legal agency of widows in late antiquity, see, e.g., Beaucamp 2010a: 417–420; Beaucamp 1992: 33–35 & 45–49 (with further reference to sources); Bagnall 2004: 57–60; as well as review of Beaucamp 1992 by Bagnall 1995. See also Beaucamp 2010b and Wojtczak & Urbanik 2024: 253–256.

[6] See *P. Budge*, ll. 1–5, informing that Iohannes' formal petition (*aitesis*) was the starting point of the proceeding. This fact likely shaped the presentation of evidence by the parties, since – as it is well known – the party advancing the claim is burdened with the proof. Seizing the mortgaged house share was likely facilitated by Philemon and his wife's residence in the other part of the same building (see the indication in the *dialysis*, *SB* VI 8988, ll. 13–16).

[7] Just to mention one, illustrative example, in *P. Cair. Masp.* II 67167 the lender declares the original deed invalid: the document was lost and could not be restored to the borrower.

[8] Iohannes' argument is that the destruction was due to Philemon's scheme to demand more than was originally due to him. Despite Iohannes' rhetorical fervour, we need not to

Its nature must be thus retrieved from *P. Budge* and the quit-claim deed, which are not uniform in their reference to this document. They denote it as *hypotheke-prasis* or *hypothekimaia asphaleia*, respectively. Circumstantial evidence could also be gathered from the deed of sale, even if it does not expressively mention the original loan.

2.1. *Pignus* or *hypotheca*?

Let us start with the general form of the security. Late antique Roman law offered two types of real securities: possessory pledge (*pignus*, *Besitzpfand* or *Faustpfand*),[9] whereby the pledged object was physically conveyed to the creditor (pledgee), and conventional pledge, mortgage (*hypotheca*), whereby the debtor (pledger) kept the possession of the pledge.

In his first speech recorded in *P. Budge*, Iohannes refers to house-share-security as *enechyron*, a term known to correspond to the Latin *pignus*.[10] In

take this at face-value. The obliteration or surrender of the deed evidencing the debt is a standard practice when the due sum was paid. See *P. Budge*, ll. 227–230: ⲁⲩⲱ ⲟⲛ ⲡⲉⲛⲧⲁϊϫⲟⲟϥ ϫⲓⲛ ⲛ̄ϣⲟⲣⲡ ⲉⲧⲃⲉ ⲑⲩⲡⲟⲑⲏⲕⲏ` ϫⲉ ⲡⲏϊ ⲟⲩⲏϩ` ⲛ̄ⲉⲩⲱ` ⲛ̄ⲧⲟⲟⲧϥ̄ ⲁⲩⲱ ⲥⲭⲣⲉϣ̣ⲥ`ⲧ̣ⲉⲓ´ ⲛ̄ⲟⲩϩⲟⲗⲟⲕ/ ⲛⲁϥ ⲉⲓⲥ ϩⲏⲏⲧⲉ ⲟⲛ ⲁϥⲧⲁⲕⲟⲥ̣ ϫⲉ ⲟⲩⲙⲉⲣⲟⲥ ⲙⲉⲛ ⲁϥⲉⲙⲫⲁⲛⲓⲍⲉ ⲙ̄ⲙⲟϥ · ⲕⲉⲙⲉⲣⲟⲥ ⲇⲉ ⲙ̄ⲡⲉϥⲉⲙⲫⲁⲛⲓⲍⲉ ⲙ̄ⲙⲟ̣[ϥ] ⲧⲁⲣⲉⲧⲉⲧⲛ̄ⲉⲓⲙⲉ ϫⲉ ⲉⲡⲛⲟⲩⲧⲉ ⲟⲩⲱϣ ⲉⲡⲁⲣⲁⲇⲉⲓⲅⲙⲁⲧⲓⲍⲉ ⲙ̄ⲙⲟϥ ϫⲉ ⲉϥⲡⲏⲧ` ⲛ̄ⲥⲁ ⲟⲩϩⲟⲩⲟ` · ⲉϣⲱⲡⲉ ⲧⲉⲧⲛ̄ⲕⲉ̣ⲗ̣ⲉ̣ⲩⲉ ⲛⲁ ϫⲟⲉⲓⲥ ⲉⲧⲧⲁⲉ̈ⲓ̣ⲏⲩ ϫⲓⲧⲥ` ⲟⲛ ⲉⲅⲅⲣⲁⲫⲱⲥ ϩⲓ̣ⲧⲛ̄ ⲙ̄ⲙ̣ⲁ̣ⲣⲧⲩⲣⲟⲥ ⲛ̄ⲧⲁ̣ⲧⲉⲧⲛ ϫⲓⲧⲟⲩ, 'Further, (as for) what I said from the beginning about the mortgage (*hypotheke*), that the house is put under pledge in his possession (i.e. Ph.'s), and she (i.e. Th.) is indebted for a solidus (*holokotinos*) to him (i.e. Ph.): Look, he destroyed it (i.e. the mortgage deed), because he mentioned (*emphanizein*; lit. presented) one part (of the house?), another part however, he did not mention, so that you (i.e. the arbiters) may recognise that God wants to put him to shame for his (i.e. Ph.'s) seeking for more (than he is entitled to). If you order it, my honoured lords, then also take it in writing from the witnesses whom you have heard'.

[9] See Kaser 1975: 226–228 (§ 250 I–III); on the same issue, see also Harris 2012.

[10] *P. Budge*, ll. 3–5: ⲁⲩⲱ ϫⲉ ⲡⲉ̈ⲓ[[.]]ⲏ̈ⲓ ⲛ̄ϯⲙⲓⲛⲉ` ⲉⲧⲉⲟⲩⲣⲓ` ⲧⲉ [[ⲙⲛ̄]] ⲙⲛ̄ ⲟⲩⲥⲩⲙⲡⲟ`ⲥⲓⲟⲛ ⲙⲛ̄ ⲟⲩⲕⲟⲓⲧⲱⲛ ⲙⲛ̄ ⲟⲩⲕⲟⲩⲗⲱⲗ` [[ⲙⲛ̄]] ⲁⲥϫⲓ` ⲟⲩϩⲟⲗⲟⲕ ⲛ̄ⲧⲟⲟⲧ[[ϥ̄]]ⲟⲩ ϩⲁⲣⲟϥ [[ⲁⲥⲕ̣ⲁ]] ϩⲓ ⲙ̄ⲡⲉⲣⲥ̣ⲟ̣[ⲥ] ⲁⲥⲕⲁⲁϥ` ⲛ̄ⲉⲛⲉⲭⲩⲣⲟⲛ ⲛ̄ⲧⲟⲟⲧ[[ϥ̄]]ⲟⲩ ⲙ̄ⲙⲟϥ · ⲉⲁⲥϯ ⲧⲉϥⲙⲏⲥⲉ` ⲟⲛ ⲛⲁ[[ϥ]]ⲩ ⲙ̄ⲡⲁⲧⲥ ⲃⲱⲕ ⲛⲁⲥ, 'And for this aforesaid house, which consists of a room and a dining-room (*symposion*) and a bedroom (*koiton*) and a storage-room ~~and~~ – she (i.e. Thekla-the-Widow) received a solidus (*holokotinos*) from ~~him~~ them (i.e. Ph. & Th.) for it, ~~she left~~ in the time of the Persians. She left it to ~~him~~ them in exchange as a pledge (*enechyron*), still paying its interest to them before she went away'.

the first rebuttal Philemon confirms such designation but subsequently speaks of a deed of *hypotheke* issued by Thekla-the-Widow.[11] This seeming confusion is typical for the late antique Byzantine papyri, which tend to interchangeably use the terms *enechyron* (possessory pledge) and *hypotheke* (mortgage),[12] and this blurring is already present in the classical juristic literature.[13] Thus, in each case, the nature of the pledge needs to be

[11] *P. Budge*, ll. 53–57: ϫⲉ ⲟⲧⲓ ⲙⲉⲛ ϩⲁⲑⲏ ⲛ̄ⲛⲉϊⲟⲩⲟⲉⲓϣ ⲛⲁϊ ⲡⲁ ⲑⲉⲕⲗⲁ ⲡⲉ ⲡⲏϊ ⲁⲩⲱ ⲛ̄ⲧⲟⲥ ⲁ<ⲥ>ⲧⲁⲁ<ϥ> ⲛⲁ[[ϊ]]ⲛ ⲛ̄ⲉⲛⲉⲭⲩ̅ⲣ̅ⲟ̣̅ ⲉⲡⲓⲡⲣⲟⲑⲉⲥⲙⲓⲁ ⲉⲁⲥⲥⲙⲛ̄ ⲟⲩϩⲩⲡⲟⲑⲏⲕⲏ ⲡⲣⲁⲥⲓⲥ ⲉⲣⲟϥ ⲛⲁ[[ϊ]]ⲛ ϫⲓⲛ ⲥⲟⲩ̣ ⲙⲛⲧⲥⲛⲟⲟⲩⲥ ⲙ̄ⲫⲁⲱⲫⲓ ⲓ̅ⲁ̅ ⲓⲛⲇ ⲉⲁⲥϩⲟⲙⲟⲗⲟⲅⲉⲓ̣ ⲛⲁⲛ ϩⲛ̄ ⲧⲉϊϩⲩⲡⲟⲑⲏⲕⲏ ⲛ̄ⲧⲉϊⲙⲓⲛⲉ ϫⲉ ⲡⲁϊ ⲉϥⲛⲁϭⲱ` ⲛ̄ⲧⲟⲟⲧⲛ̄ ⲛ̄ⲉⲛⲉⲭⲩⲣⲟⲛ ⲧⲁⲣⲉⲛⲟⲩⲱϩ` ⲛ̄ϩⲏⲧϥ ⲛ̄ⲁⲧϣϭⲟⲣ` ⲛ̄ⲧⲙⲟⲧⲛⲉⲥ ⲙ̄ⲡϩⲟⲗⲟⲕ ⲛ̄ⲧⲁⲛⲧⲁⲁ[[ⲥ]]ϥ ⲛⲁ[[ϥ]]ⲥ ⲁⲩⲱ ϫⲉ ⲉⲥϣⲁⲛ`ⲧⲙ´ⲁⲡⲟⲗⲟⲅⲓⲍⲉ ⲛⲁⲛ ϣⲁ ⲧⲉⲡⲣⲟⲑⲉⲥⲙⲓⲁ ⲉⲧⲙ̄ⲙⲁⲩ ⲉϥⲛⲁϣ[[.]]ⲱⲡⲉ ⲛⲁⲛ ϣⲁⲃⲟⲗ ⲁⲛϭⲱ` ⲟⲩⲛ ⲉⲛⲟⲩⲏϩ` ⲛ̄ϩⲏⲧϥ̄ ϣⲁ ⲧⲉⲡⲣⲟⲑⲉⲥⲙⲓⲁ` · ⲁⲩⲱ ⲟⲛ ⲙⲛ̄ⲛ̄ⲥⲁ ⲧⲉⲡⲣⲟⲑⲉⲥⲙⲓⲁ ⲁϥⲣ̄ ⲡⲱⲛ [[ϣⲁ ⲧⲉⲛⲟⲩ]] `ϣⲁⲃⲟⲗ´, 'Although this house was Thekla's before these times, she herself gave it to us as a pledge (*enechyron*) for (the instance of expiration of) repayment date (*epi prothesmia*) – having drawn up for us a mortgage-sale (*hypotheke-prasis*) document on it – from (the day) twelfth of (the month) Phaophi, eleventh (year) of the indiction (= 9 October 622), since she declared to us in the aforesaid mortgage deed (*hypotheke*) that this (house) should stay in our possession for pledge (*enechyron*), so that we would live in it without rent as equivalent of the solidus which we gave to her, and that if she did not repay us at (the end of) the repayment date (*prothesmia*) aforesaid, it would become ours henceforth. We remained, then, living in it up to (the end of) the repayment date; and further, after the repayment date, it became ours henceforth'.

[12] For synonymous use of *pignus* and *hypotheca* in papyri, see, e.g., *P. Cair. Masp.* III 67309, ll. 21–22; *P. Lond.* V 1711, ll. 64–65; *P. Lond.* V 1717, ll. 47–50.

[13] See, e.g., D. 20.1.5.1 (Marcian, 1 *ad form. hypothec.*): ***inter pignus autem et hypothecam tantum nominis sonus differt***, 'Between *pignus* (pledge) and *hypotheca* (mortgage) there is only a difference in the sound of the name'; as well as D. 13.7.1 (Ulp. 40 *Sab.*): ***pignus contrahitur non sola traditione, sed etiam nuda conventione, etsi non traditum est***, 'A pledge (*pignus*) is constituted not only by delivery, but also by a bare agreement, even if it has not been delivered'. The Greek paraphrase of the latter fragment follows this identification (Bas. 25.1.1: *ύ μόνον παραδόσει, άλλα καί ψιλω συμφώνω συνίσταται τὸ ένέχυρον*, 'pledge [*enechyron*] is established not only by delivery, but also by bare consent'). It is worth noticing, contrariwise, the attempt of the Byzantine scholars to bring back the classical distinction, as the *scholion* to this text manifests: *οὐ μόνον παραδόσει τὸ ἐνέχυρον λέγεται καταχρηστικῶς ἡ ὑποθήκη. καὶ διὰ μὲν τοῦ εἰπεῖν, παραδόσει, ἐδήλωσε τὸ κυρίως ἐνέχυρον· διὰ δὲ τοῦ, ψιλῷ συμφώνῳ, τὴν ὑποθήκην*, '*Enechyron* – pledge – is misused being called *hypotheke* – hypothec. And when it is said by delivery, it correctly means 'pledge', instead (if it is contracted through) bare consent, (it signifies) hypothec'. Similar scholarly attempt to delimit the two could be seen in D. 13.7.9.2 (Ulp. 18 *ed.*): ***proprie pignus dicimus, quod ad creditorem transit, hypothecam cum non transit nec possessio ad creditorem***, 'strictly speaking, we call *pignus* that

confirmed by the context. In our case this matter may be easily settled: the house-share was in fact conveyed to the married couple, and it was to remain in their possession until the debtor repaid the loan, so it may be safely classed as *pignus*. Philemon's initial speech suggests that the transfer only occurred upon Thekla-the-Widow's departure. So perhaps what earlier was a conventional pledge, became a possessory one in time.

2.2. Use of the house

Pignus in its standard form does not entail the right to use the pledged object. Philemon and Thekla, though, did occupy the house rent-free. Their narrative explains the right to do so as 'the equivalent of the (lent) solidus', apparently stipulated in the loan agreement (see *P. Budge*, l. 56). This could point to one of the typical arrangements modifying the standard loan contract, *viz. antichresis*.[14] It allows the pledgee to benefit from the pledged property, defining the limits of such employment. As the name *anti-chresis* suggests, this use could be meant as substitute performance of the usual debtor's duty. It could be thus (i) intended as a substitute for capital repayment, whereby the debtor's use of the property would gradually be offset against the outstanding debt; or (ii) established in lieu of part of or the entire interest.

Either could be the case here. The former could be hinted at not only by the statement of Philemon, but also by Thekla's asking in her letters to Iohannes whether the rent collected by Philemon had already covered

which passes over to the creditor; whereas we call it *hypotheca* when neither the thing itself nor possession passes to the creditor'. This emphatic drawing of the theoretical line between them shows that the synonymous use was well established in the legal practice. See also Kaser 1975: 463 (§ 110 I), with nn. 5–6.

[14] *Antichresis* – as evidenced in the papyri – can, but does not necessarily, coexist with real securities, thereby emerging as a legal figure in its own right. This is a different approach from the typical Roman one, which regards *antichresis* as a *pactum adiectum* modifying a pledge. See Manigk 1910. For earlier antichretic practices in Roman Egypt, see Kreuzsaler 2014: 265–266. See also, on antichretic agreements: Jördens 1990: 272–295; Rupprecht 1992.

the amount of the loan (*P. Budge*, ll. 30–35).[15] One might imagine that the creditor(s) overstepped their faculties. Philemon informs that he obtained the right to reside, together with his wife, in the pledged house rent-free; it is uncertain, though, whether they were also entitled to lease it further – which he/they certainly did.[16] If that was the case, Thekla-the-Widow's argumentation might transmit her idea, not legally precise, that the profits of the unduly rented house should be calculated to offset her debt, too. Such a claim is, however, never directly made – and in a litigation like this one, one could expect the opponents to use any kind of argument, no matter how weak its basis would be. It would be therefore safer, perhaps, to disregard it.

The use in lieu of interest, at least from some point onwards, results contrariwise, from Iohannes' testimony that Thekla-the-Widow had paid it prior to her departure northwards; she later is said to have delivered possession of the house to Philemon – perhaps in lieu of further interest payments (*P. Budge*, ll. 5–7).

One solution does not preclude the other. Thekla-the-Widow's precarious situation may also have pressed her into accepting this arrangement with no clear advantage to herself.

2.3. *Hypotheke-prasis / hypothekimaia asphaleia*: preliminaries

Time to consider the real crux of our text, that is the ambiguous denomination of the security. The proceedings refer to it as *mortgage-sale*, a *hapax* in papyri, a term replaced in the *dialysis*-deed by a more generic, and seemingly more compatible with Roman law, *written deed of hypothecation*.[17]

[15] Should it not be the case, she offered to repay whatever balance remained.

[16] At least four times during the arbitration proceedings, the parties make pointed references to individuals paying rent, or to persons from whom Philemon is said to have received money (see, e.g., *P. Budge*, ll. 20–25 & 30–35).

[17] The designation is still quite rare, but its understanding presents no problems: *P. Cair. Masp.* I 67096 (Aphroditė, 573), l. 15; III 67309, (Antinoopolis, 569), l. 12; *P. Apoll.* 58

The very designation *hypotheke-prasis* suggests the legal construct in the background involves a transfer of ownership of the pledged asset. The question is when it became effective.

It could have an immediate effect. This form of arrangement would offer maximal protection for the creditor, who is relieved of any concern regarding repayment, having received full title to the asset outright (which value may exceed the loan amount). The structure closely parallels the early Roman *fiducia cum creditore contracta*, fiduciary transfer of ownership established to secure obligations. *Fiducia*, though, cannot have been the direct inspiration for Thekla and her partners. Over time, it was progressively marginalised within the evolving framework of real securities. It led to its functional mirroring of a regular pledge, and eventual abolishment as obsolete with Justinian's codification.[18]

Late antique legal practice demonstrates notwithstanding cases of transfer of ownership as security. They are isolated and hidden under the semblance of real sales of property. They could only be thus securely identified in a broader documentary context which reveals the 'mock' nature of such transfers.[19] The agreement in *P. Budge* is outright presented as a 'mortgage (-sale)', hence this cannot have be the form of security in our case.

Some documentary conventions still present in the Roman and Byzantine periods are commonly interpreted to convey the ownership of the security.[20] They may thus offer a similar way to explain our phenomenon. This comparison is hindered because we now know that immediate transfers as a security were way less frequent than it was once imagined. José

(unknown provenance, 2nd half of 7th cent.), l. 2; see also *P. Warr.* 10 v° (Oxyrhynchos, 591–592), l. 1: ὑποθη]κ(ιμαῖον) γρα(μματῖον).

[18] On Roman *fiducia*, see Noordraven 1999: esp. 17–41 and ch. 4 (with further bibliography). On the disappearance from the *Corpus iuris civilis* of earlier Roman legal institutions such as *fiducia* and *mancipatio* (also in the context of securities), see Alonso 2016: esp. 181.

[19] See Urbanik 2013; as well as – for the non-Egyptian material – Wojtczak 2012.

[20] This is the way Schiller wanted to interpret *hypotheke-prasis* (Schiller 1964: 115). For the earlier 'types' to which Schiller there refers as the point of comparison, see already Mitteis & Wilcken 1912: 133; Taubenschlag 1955: 207; Wenger 1953: 758–759; Steinwenter 1955: 29–30; Rupprecht 1995. Recently Alonso 2016, as well as Alonso forthcoming. For the securities in late-antique papyri, see Wojtczak forthcoming.

Luis Alonso has demonstrated convincingly that most available parallels combining sale and loan for purposes of security in the legal panorama of Greek and Roman Egypt hinge on a *suspensive condition*. The ownership typically is not transferred outright – these are 'conditional' or 'suspended' sales.[21] Moreover, even with the condition being fulfilled, the transfer does not necessarily happen automatically. It rather provides the creditor with a legal ground to request ownership transfer, or formal registration (upon the payment of the due tax). This, in turn, creates a degree of flexibility: the creditor may still choose between claiming the sum or executing security.

This is the case of the so-called *menein*-contracts. This much earlier Egyptian-rooted figure may offer the most valuable analogy to our case, as they embody a sale reference (ὡς ἂν πράσεως γενομένης). It becomes effective only upon default,[22] and the creditor still has to follow the same execution procedure they would use to enforce an ordinary hypothec (Alonso 2016: 139–146). The peculiarity of these agreements lies in the fact that the creditor retains full rights of execution over the debtor's person and entire estate. They thereby allow the creditor to choose at will between ordinary execution and enforcement against the pledged property.

This logic extends also to the documents described simultaneously as *hypothec* and sale *en pistei*.[23] As Alonso has argued, these instances are not

[21] As, for example, in the case of Demotic suspended-sales, which became effective only upon the debtor's default (and thus did not constitute title-transfer securities); or in the bilingual sale-loan deeds from the Fayum, earlier misinterpreted as unconditional sales that immediately conveyed ownership to the creditor (see Markiewicz 2005: 156–157; see Alonso 2016: 130–134, for a different view); or again in the so-called Pathyrite interrupted sales, where the deliberate incompleteness of the document served to suspend the transfer of ownership until the expiry of the repayment period (see also Alonso 2016: 134–139).

[22] Although the terminology seems to imply that, in case of default, the creditor 'remained in possession' of an asset already transferred under a security arrangement, the reality is more complex. All *menein*-contracts prohibit the debtor to sell, pledge, or otherwise alienate the encumbered property. This underscores that the ownership is considered to remain with the debtor.

[23] Accordingly, πρᾶσις ἐπὶ λύσει is not to be regarded as a separate from hypothec, which has been manifestly shown by Harris 2012: 433–441; Harris 2013.

The theory regarding the ὠνὴ ἐν πίστει advanced by Gradenwitz 1906: 336–340 (see also Gerhard & Gradenwitz 1904) viewed such agreements as redeemable sales, while 'sales with right of redemption,' but rather typical suspended guarantee sales.[24] From the Roman legal perspective, these 'suspended' sales function in much the same way as hypothec.

The reservations highlight a key point: we cannot assume the existence of a well-established repertoire of title-transfer mechanisms that Philemon, Thekla, or their notary could have readily – even indirectly – drawn upon. Moreover, even if it existed, we would have to assume that these traditions of title-transfer would have somehow organically survived not only the earlier gradual homogenisation, but also the Justinianic codification. It is not impossible, given the inherent Egyptian legal plurality, where the fusion of multiple traditions clearly shaped documentary formulas (Alonso 2016: 145), but quite difficult to prove. The apparent similarity with the possible parallels should not induce us to believe in any direct inspiration, but rather serve as an illustration, helping to understand the case of Philemon and Theklas. Their form of security may be completely independent, but that does not preclude its resembling functionally the earlier patterns.

All that rather dissuades one from the interpretation of *hypotheke-prasis* as an immediate sale and transfer with a potential right of redemption. Stronger objections come, however, from our own material. Had it been the case, there would not be an issue of rent collection (Philemon as the

Pestman 1985 preferred to see them as suspended. Alonso has re-examined the issue by stressing the remarkable semantic elasticity of the word πίστις, whose significance shifts depending on the context. Rather than serving as a technical designation for fiduciary title-transfer security, πίστις carries the broader sense of 'trust', which in papyrological sources may cover a wide variety of legal and extra-legal phenomena, often unrelated to real security. Within this spectrum, so-called 'sales on trust' are best explained as straightforward suspended sales. In Alonso's view, they do not represent a specifically Greek legal development – still less a later transformation of πρᾶσις ἐπὶ λύσει – but instead constitute manifestation of the long-standing Egyptian practice of guarantee sales (Alonso 2016: 158–166; see also 166–181 for other papyrological uses of ἐν πίστει and κατὰ πίστιν).

[24] Alonso 2016: 146–148 identifies at least one papyrus, *BGU* IV 1158 (Alexandria, 9 bce), from early Roman Egypt that, in his assessment, comes 'the closest that the papyri come to a true title-transfer'. The structure of this contract strikingly parallels the logic of the Roman *fiducia cum creditore*, a resemblance that makes it stand out within the papyrological record. What lends the document an added layer of historical interest is the clear Roman identity of the parties involved, suggesting a probable reference to – or at least an echo of – Roman legal institutions in provincial practice.

– even 'temporary' – owner would have an undisputed right to it) or any necessity of the 'second' sale of the property documented in *SB* VI 8987. This interpretation is further reinforced by multiple indications that Thekla continued to be regarded as the legal owner of the house, even though the documentation concurrently refers to a cession (*apotage*) made in favour of Philemon.[25]

What was then the meaning of '*prasis*' attached to a *hypotheke*? We have seen so far that the latter seems to indicate a relatively standard hypothetic security, turned into a possessory pledge combined with *antichresis*.

The Coptic document *P. KRU* 58 (8th cent.) offers a compelling comparison. This loan agreement, which also contains elements of a sale, terms itself as *asphalesteron*. As Sebastian Richter has shown, this Coptic word derives from the Greek comparative ἀσφαλέστερον, 'securer'.[26] The standard Coptic term for loan deeds is *asphaleia*, 'security', so, *asphalesteron* clearly conveys the same legal function. Richter claims that the comparative degree implies a stronger or superior security. This consideration we hesitate to accept. Despite appearances, *P. KRU* 58 does not in fact offer any greater guarantee than those already present in earlier Egyptian 'suspended guarantee sales'.

The deed opens with a loan-acknowledgment and its repayment date. As its collateral a house is pledged. The parties state that the creditor is to become the 'master' of the house along with its furnishings until the repayment term (*prothesmia*). Upon default, the creditor shall obtain full control over the house: he 'may live in it, rent it out, sell it, or use it in any way he sees fit, in accordance with every right of possession, property, and perpetual hold' (*P. KRU* 58, ll. 15–19).[27] The contract closes with a statement from the debtor that the price (*time*) 'has come to me from you', implying that the loan funds are to be viewed as a purchase price for the house.

[25] See, e.g., *P. Budge*, ll. 50–55 & 70–75.

[26] Personal communication to the authors based on Richter's paper '"...und fand es für sich selbst vorteilhafter, einen Vergleich mit ihnen zu machen": Das koptische Anhörungsprotokoll des Papyrus Budge aus Apollonopolis Magna und sein Kontext'.

[27] See esp. l. 19, where Coptic transliterates the Greek sacramental rendering of the full ownership rights: ⲕⲁⲧⲁ ⲡⲁⲥⲁⲛ ⲛⲟⲙⲏⲛ (ⲕⲁⲓ) ⲇⲉⲥⲡⲟⲧⲉⲓⲁⲛ ϩⲓⲕⲁⲧⲟⲭⲏ ⲛⲁⲓⲱⲛⲓⲟⲛ.

This final clause is slightly confusing. It suggests a sale agreement under resolutory clause has been concluded because the price is declared to have already been paid. The loan repayment would trigger sale rescission revoking the rights granted to the creditor.[28] However, the document states that the creditor obtains owners' rights only in the event of the debtor's default. This, in turn, would rather point to a *sale under suspensive condition* (and not a title-transfer security as Schiller read it). It is not a perfected sale awaiting revocation, but a security agreement in which the transfer of ownership hinges on non-repayment. In practical terms, then, *P. KRU* 58 operates as a hypothec armed with a forfeiture clause. It serves thus as a parallel to our dossier, but certainly not the way Schiller wanted to construe it.

2.4. Forfeit: a circumvented ban?

The difficulty of interpretation, in line with *P. KRU* 58, of the understanding between the couple and Thekla-the-Widow as a forfeit is compounded by the theoretical illegality of such in late antiquity. Such arrangements greatly disadvantaged debtors: if they defaulted, they lost outright the pledged property, often worth far more than the original loan. Thus, Constantine the Great banned them.[29] As always, one may ask how effective

[28] See Schiller 1964: 115 and n. 53, who interprets this document in this way. By analogy, he extends such reading to our dossier (*ibidem*, and n. 54).

[29] C. 8.34.3: (*Imp. Constantinus A. ad populum*): *pr. Quoniam inter alias captiones praecipue commissoriae pignorum legis crescit asperitas, placet infirmari eam et in posterum omnem eius memoriam aboleri. 1. Si quis igitur tali contractu laborat, hac sanctione respiret, quae cum praeteritis presentia quoque depellit et futura prohibet. creditores enim re amissa iubemus recuperare quod dederunt* [*D. II k. Febr. Serdicae Constantino A. vil et Constantio C. conss.*], '(Emperor Constantine Augustus to the people): pr. As, apart from other traps, the harshness of the forfeit of pledges has noticeably grown, it is held to be voided and for the future that its recollection shall be abolished. 1. And thus, should anyone toll with such an agreement, they will be relieved with this sanction, which voids the past (arrangements), and the present ones, and forbids the future ones. We order that the creditors having lost the thing (pledged), recover that they have given [Given January 31, at Serdica, in the consulship of Constantine Augustus, for the seventh time, and Constantius Caesar (326)]'.

this prohibition was in practice, and whether the debtors under pressure would not agree to functionally similar conventions aimed at circumvention of the norm. Framing the transaction as a conditional sale in favour of the creditor, or simply by granting the creditor the right to keep the pledged items in lieu of debt, would have that exact role. Some Coptic documents preserve even clauses which would be straightforwardly interpreted as the forbidden forfeit agreements.[30]

The underlying association between loan agreements and sales contracts within the native Egyptian legal tradition, modified or adapted through successive layers of Greek and Roman influence, may have played a role here. Yet, such devices may have surfaced congenially to the earlier ones to circumvent the prohibition of the *lex commissoria*. This ban changed the interpretation of the legal consequences of such securities. Since forfeit was invalid, such guarantees could solely function as collateral, and not as substitutive securities of the earlier Egyptian legal practice. In the case of substitutive securities, the security itself stands in for the debtor's obligation (albeit usually not unconditionally). It constitutes – one could say – the very core of the resulting liability, which, unless the standard agreement is modified, does not extend beyond it. In the realm of Roman law, a real security exists as collateral in parallel to the debtor's personal liability resulting from the secured obligation. To explain it in practical terms: the pledged object may be sold to satisfy the creditor (with any surplus returned to the debtor), but if needed, the creditor always has the right to exact repayment from the debtor's estate, either before execution of the pledge or in addition to it. In this theoretical framework, securities are always an 'addition' to a debt, not its replacement.[31]

[30] See, e.g., *P. Moscow Copt.* 42 (Thebes, 6th–8th cent.?), with translation in Till 1958: 201, where perhaps its appearance is somehow mitigated by an alternative 'you may sell the pledges or keep them'; see also n. 42.

[31] See, e.g., the classical explanation by Paul: D. 20.5.9 (Paul., 3 *quaest.*). We do not claim that there are no instances of collaterals in the strict sense in the earlier Egyptian practice. They could be in theory created by ad hoc arrangements of the parties, but they also existed in more standard forms. One of such characteristic figures was *hypallagma*. It did not, though, constitute a real right over debtor's property but only an obligation not to alienate a specific object designated for the creditor's satisfaction in the event of the debtor's

These theoretical clarifications do not prevent the parties to the original loan of our case from establishing a forfeit clause of sorts on Thekla-the-Widow's share of the house. They could either do it completely ignoring the Constantine prohibition, or, being conscious of it, by dressing their understanding up as a suspended sale in an attempt to circumvent it. There is, *prima facie*, a tempting hint for such interpretation in Iohannes' last allocution. He refers there several times to the ⲗⲉⲝ ⲛ̄ⲗⲁⲁⲩ, 'vain *lex*' (ll. 208, 212, 215). Schiller (1968: 113 n. 21), while suggesting that this otherwise unattested term could come from the Greek *λέξις*, 'text, speech', admits it would extend the usual significance of the word, leaving this text portion still obscure. It is possible though that ⲗⲉⲝ transliterates the Latin *lex*.[32] If so, this void *lex* could refer to *lex commissoria*. Iohannes' argument would make sense in the larger picture of the controversy: by putting it forward, he would have undermined Philemon and Thekla's appropriation of the house in virtue of an illegal arrangement. Yet, the context of his speech makes clear that he rather disdains the deed of sale obtained from Elisabeth and Iustina,[33] so this seductive interpretation must be abandoned.

For the above reasons, the straightforward reading of *hypotheke-prasis* as a forfeit does not fully convince. It is certain that neither is there an immediate transfer of ownership serving as security. *Hypotheke-prasis* could only be thus understood as a mark-up of a structure akin to the earlier loans combined, for security purposes, with conditional, that is suspended,

insolvency. Its enforcement procedure manifests that the creditor could choose between executing their dues of the charged item and from debtor's other assets (on this see most recently various studies by José Luis Alonso: Alonso 2012; Alonso 2010; Alonso 2008). Another instance could be provided by the already discussed (pp. 320–321) *menein*-contracts, a combination of a forfeit clause (the ownership of the pledge passed to the creditor, upon default and at the creditor's discretion) with the debtor's unconditional general liability; see also further, pp. 326–333.

[32] In the lexical context of both *P. Budge* and the *dialysis*, abundant in correct technical vocabulary taken from Greek and Latin legal idiom, this conjecture is way less absurd than it could seem at the first glance, see, e.g., ⲇⲏⲫⲉⲛⲧⲉⲩⲉ, ⲉⲛⲧⲟⲗⲓⲕⲟⲛ, ⲕⲟⲙⲡⲗⲉⲩⲥⲓⲥ, ⲗⲉⲝ, ⲩ̈ⲓⲟⲑⲉⲥⲓⲁ, ϩⲩⲡⲟⲅⲣⲁⲫⲏ, ⲛⲟⲙⲏ; in the *dialysis*: *Ἀκυλιανὴ διαλυτική*, *στοιχεῖν*, ***pribiligium***.

[33] In the sources *lex venditionis* simply means 'a term of the contract of sale', and it is thus extended to signify the contract of sale in its entirety. See, e.g., D. 2.4.10.1 (Ulp., 5 *ed.*); 4.4.38 (Paul., 1 *decr.*): 8.4.13 (Ulp., 6 *opin.*).

sales. Akin to them the debtor's default did not trigger the effectiveness of the cession clause (*apotage*). If it had been the case, there would be little reason for Philemon to negotiate later a separate deed of sale of the house not only with Thekla herself, but also with her heirs – and even to pay an additional two solidi to round out what was described as a *fair price* (*dikaia time*) to consolidate his title (*P. Budge*, ll. 200–203 & 276–277). In this case, neither would there have been any legal ground for Thekla-the-Widow's apparent bequeath of the share to Iohannes (though it is possible that her will had no firm legal ground at all). Unlike the Egyptian suspended sales, though, the lack of automatism of the cession cannot have depended on employment of a necessary procedure. Such a mode of execution had long fallen out of use, so in our case the reason must have been different. We think it could be found in the later sale between Philemon and the apparent heirs of Thekla-the-Widow.

2.5. *Dikaia time*

In the last statement, Philemon and Thekla reaffirm the validity of their purchase-title, stressing that they paid the 'just price'. Apparently – the sale deed never refers to the prior loan – they added to the original one solidus lent two more to make the value of the property up.[34] It shows that the loan-amount was an inadequate compensation for the property's real value.

Sebastian Richter has ingeniously linked the *dikaia time* with an imperial law allowing one to challenge land-sales if a 'just price' (*iustum pretium*) was not paid. The regulation, establishing 'just price' as the half of the 'true (i.e. probably market) price' of the estate, was introduced by Diocletian.[35]

[34] *P. Budge*, ll. 276–277: ⲁⲩⲱ ϫⲉ ⲁⲧⲉⲧⲛ̄ⲡⲗⲏⲣⲟⲫⲟⲣⲉⲓⲥⲑⲁⲓ ϫⲉ ⲁⲛϯ ⲧⲇⲓⲕ[ⲁⲓⲁ] ⲧⲓⲙⲏ ⲕⲉⲗⲉⲩⲉ̀ ⲛ̄ⲧⲉⲧⲛ̄-ⲣⲟⲉⲓⲥ ⲛⲁⲛ ⲉⲧⲉⲥϭⲟⲙ̄ ϫⲉ ⲙ̄ⲡⲉⲛⲉⲩϣⲁϫⲉ ϣⲃⲱ̀ ⲉϣⲃⲗⲁⲡⲧⲉⲓ̀ ⲛ̄ⲛⲉ[ⲛ]ⲇⲓⲕⲁ̣ⲓ̣`ⲱ̣[ⲙⲁ]´, 'And since you are fully convinced that we have paid the fair price (*dikaia time*), you shall order and uphold for us its (i.e. the document's) validity, for their fable words could not damage (*blaptein*) our legal evidence'. See also ll. 200–205 with the summary of the deed of sale, and *SB* VI 8987, ll. 20–22.

[35] C. 4.44.2: (*Impp. Diocletianus et Maximianus AA. Aurelio Lupo*): *Rem maioris pretii si tu vel pater tuus minoris pretii distraxit, humanum est, ut vel pretium te restituente emptoribus fundum*

The couple's assertion may thus be read as an indication to this Diocletianic provision altering the regime of price of the classical Roman law.[36] Philemon may have pre-emptively defended himself against that risk of undermining their purchase of the house-share upon the pretext of non-compliance with the requirements of *pretium iustum*. Such an interpretation is succoured by the legal awareness of the parties to the settlement (or their councillors) and the clearly tangible Romanistic flair of its legalese (see above p. 325 and n. 32).

This interpretation calls, however, for some caution. It hangs, namely, on the assumption that the Diocletianic regulation acquired general application already in late antiquity, embodying the concept of *laesio enormis* – excessive harm (of the seller). There is some well-founded scepticism about it, which favours a much later creation of this figure.[37] It is nourished by the terminological inconsequence of the imperial rescripts, and their initial context.[38]

venditum recipias auctoritate intercedente iudicis, vel, si emptor elegerit, quod deest iusto pretio recipies. minus autem pretium esse videtur, si nec dimidia pars veri pretii soluta sit. [*PP. v k. Nov. Diocletiano A. II et Aristobulo conss.*], '(Emperors Diocletian and Maximian Augusti to Aurelius Lupus): If you or your father alienated a thing worth more for a smaller price, it is humane that either, after you restore the price to the buyers, you receive back the sold land, under the authority of a judge, or, if the buyer chooses, you will receive what was lacking from a just price. The price is seen as too little if half of the true price has not been paid [Posted October 28, in the consulship of Diocletian Augustus, for the second time, and Aristobulus (285)]' (trans. Blume, Frier, *et alii*, slightly modified). See also C. 4.44.8 (Diocletian and Maximian to Aurelia Eudia, 293), which stresses that only duress or fraud could a be reason to rescind the contract. It cannot be the discrepancy of price and the property value, unless only less than half of the 'fair price', that is the price that would have been obtained at the time of sale, has been paid (*nisi minus dimidia iusti pretii, quod fuerat tempore venditionis, datum est*).

[36] It established a certain price (*pretium certum*), but its fairness or adequacy was irrelevant to the validity of the contract (see, e.g., D. 18.1.38 [Ulp. 7 *disp.*]; D. 19.2.22.3 [Paul. 34 *ed.*] for classical view on the issue).

[37] Zimmermann 1996: 259–267 and, more specifically, Sirks 1985: 304–305 and Sirks 2007. See there for the doubts on the original tenor of the regulation, the possible Justinianic changes (and interpolations) in it, and the medieval invention of *laesio enormis*.

[38] C. 4.44.2 defines *pretium iustum* as at least half of the *pretium verum*, 4.44.8 instead uses this term as the adequate market price. The former rescript may have been given to a *minor*, the latter contemplates a request from a woman: so, in both cases they represent particularly protected groups.

The *dikaia time* could also be an expression of natural and not necessarily legal language. Stressing the fairness of price fits well in a speech which aims at convincing the arbiters about the appropriateness of the sale agreement. A parallel to such use is provided by a roughly contemporary *SB* XVIII 13173 (Hermopolis, 629 or 644). The purchase price in this slave sale is also characterised as *dikaia time*.[39] This cannot, however, be a reference to – let us assume – a pre-existing general application of the Diocletianic provision, since it was only pertinent to sales of estates. All in all, in our case it may denote the Diocletianic *iustum pretium*, but it does not have to.

The notion of the 'just price' contributes, however, to the interpretation of the security contracted between the couple and Thekla-the-Widow.

First, it could fit with the idea that the parties were aware of the ban on forfeiture clauses and the associated legal risks (see above, pp. 323–326). The original contract allowed for possession and use of the house on which a pledge was established. It may also have included the eventual right of the creditors to buy out the share, to satisfy their claim – the *apotage* clause may be thus justified (and conditioned) by such a future sale. There is no exact parallel in the documentation stipulating such a right straight ahead. Yet, we know plenty of such settlements of debts arranged *ex-post*, where the creditor expressively states to cover by the payment the difference between the sum lent and the value of the pledge.[40] One can thus easily imagine its

[39] *SB* XVIII 13173, ll. 131–134: *ἔχειν] παρὰ σοῦ τῶν τοῦ χρ̣[υσίου νο(μισμάτων) δ εὐστ(άθμων) ζυγῷ̣] Ἀλεξανδρείας τὴν* (l. *τῆς*) *τε[.] ἀξίας δικαίας τιμ̣ῆ̣ς [τῆς] διαπραθείσης σοι[-c. 9-] δούλης Μα[ύρας Ἀταλοῦ]*, 'to have from you 4 gold solidi of full weight of the standard of Alexandria (in virtue of) due just price of the acquired Moorish slave Atalous (…)'.

[40] See *P. Lond.* V 1720 = *Pap. Eleph. Eng.* D24; *P. Cair. Masp.* II 67167, where the son of the original debtor, now deceased, surrenders to the creditor the ownership of the previously pledged objects of precious metal in lieu of repayment of 33 coins and the interest due (ll. 20–27: *παρακλήσεις προσήγεγές μοι τὰ εἰρημένα ἐνέχυρα ἀντὶ τοῦ προσημανθέντος χρέους καὶ τ̣ῆς αὐτοῦ παραμυθείας ἔχειν καὶ κατέχειν καὶ οἰκειοῦσθαι ἐμαυτῷ δεσποτικῷ δικαίῳ, ἀπὸ τοῦ νῦν ἐπὶ τὸν ἀεὶ ἑξῆς ἅπαντα καὶ προσελαύνοντα χρόνον, καὶ τούτων ἐξουσιάζειν καὶ δύνασθαί με παντὶ τρόπῳ χρήσασθαι τὰ προειρημένα ἐνέχυρα δεσποτικῷ δικαίῳ ᾧ ἂν βουληθείην, ἀκωλύτως καὶ ἀνεμποδίστως καὶ ἀνεγκλήτως ἐπάναγκ̣ε̣ς* …, 'you brought me a request so that I keep the aforementioned objects of pledge for the aforesaid debt and its interest, to have and possess and appropriate them with the rights of ownership, from now on and forever and for the time to come, and so that I have the power and be

being included in the loan-contract. Such a convention armed with *apotage* was not – let us reiterate – a simple conditional sale for the price equalling to the lent sum, to be activated upon default. Such automatism would still contravene the prohibition on forfeiture in the event of default. Thus, it was meant rather as a distinct and subsequently concluded contract, explicitly agreed upon by the parties beforehand. Stressing, thus, that a 'just price' was paid for the house share would underline that the understanding was not meant to circumvent the forbidden forfeiture.

Secondly, it could refer us to the standard pledge execution by conferring the creditor-pledgee the right to sell the asset (*pactum de vendendo*). Having satisfied their claim, they are to return the surplus sale proceeds (*hyperocha*, *superfluum*) to the debtor-pledger. Probably under high classical law, and certainly in postclassical times, each contract of pledge tacitly included such a provision.[41] Was this right also included automatically in each pledge agreement in the late antique practice? To our knowledge only one Greek document expressively grants the pledgee the right to sell the objects pledged to satisfy their claims.[42] *P. Lond.* V 1716 (Antinoopolis, 570) vests the creditor with the power to sell the pledged wine-jars to cover what is due to them (ll. 5–11).[43] Such an explicit singular mention of the right

able to use the aforesaid objects of pledge with the rights of ownership, in any manner I may wish, without hindrance or impediment or question indisputably' [trans. Law in Social Networks Project, Warsaw]). Such an arrangement becomes increasingly popular in the legal practice of Coptic documents, see, e.g., *O. Medinet Habu. Copt.* 70, 72–73.

[41] Two third-century constitutions scorn any attempt of the debtor to prevent such sales to satisfy the creditor, C. 8.28.1 (Severus and Antoninus to Marcellus, 207), and 8.28.2 (Gordianus to Nepos, 239). See Kaser 1975: 319 (§ 252 I 2a), but also Kaser 1971: § 111 III (*in fine*).

[42] *Pactum de vendendo* coupled with *lex commissoria* becomes the only standard with Coptic deeds. See, e.g., *P. Moscow Copt.* 42, ll. 12–18: ⲉⲣϣⲁⲛⲧⲉⲡⲣⲟⲑⲉⲥⲙⲓⲁ ⲟⲩⲉⲓⲛⲉ ⲙⲡⲓ† ⲡⲓⲥⲟⲟⲩ ⲛⲉⲣⲧⲁⲃ ⲛⲥⲟⲩⲟ ⲛⲁⲕ ⲙⲛ ⲟⲩⲙⲛⲧ ⲛⲉⲛⲉⲭⲉⲣⲟⲛ ⲉⲧⲛⲧⲟⲟⲧⲕ ⲕⲣ ⲉⲕⲥⲟⲩⲥⲓⲁ ⲙⲙⲟⲟⲩ ⲉⲧⲁⲁⲩ ⲉⲃⲟⲗ ⲉⲕⲁⲁⲩ ⲛⲁⲕ ϫⲉ ⲛⲛⲉⲣⲱⲙⲉ ϣ ⲉⲓ ⲉⲃⲟⲗ ⲉⲣⲟⲕ, 'wenn der Termin versreicht, ohne daß ich dir die 6 Artaben und 1 Mnt Weizen (zurück)gegeben habe, hast du das Recht (ἐξουσία), die Pfänder die in deiner Hand sind, zu verkaufen (oder) dir zu behalten. Niemand wird gegen dich vorgehen können' (transl. Till 1958: 201); see as well Steinwenter 1955: 29–30.

[43] Taubenschlag 1955: 280 and n. 42, therefore, extremely exaggerates, when he states on the basis of this papyrus 'that simultaneously *pacta de vendendo* are also applied which replace the still prevailing hypothec on forfeit'.

might suggest it to be not the standard practice. In the case of *P. Lond.* V 1716 it might be, however, justified, but the fact that it also seems (the document is poorly preserved) to have vested the creditor with the power of distraint, should the sale of the vessels bring less than the original loan. To protect the rights of the pledger, the creditor had to sell the pledge acting with good faith and in a due process,[44] having first notified the debtor at least three times – if possible, by a *testatio* – their will to proceed with distraint.[45]

And so, the original agreement between Thekla-the-Widow and the couple either silently contemplated the right to sell the house-share upon the debtor's default or expressively included it. The cession clause – *apotage* – would mean the complete renouncement of the widow's rights in case of such a future (from the perspective of the moment of credit) event. *P. Budge* does not explicitly recall the necessary *denuntiationes*, but one could imagine their happening during the negotiations with Thekla-the-Widow. The statement on *dikaia time* could be then understood to underline that the duty of the pledgee to act properly in selling the pledge was complied with.

Thirdly, it is plausible that the creditor was granted the right of first refusal on the mortgaged house-share. In terms of Roman law, this could work as a separate provision of their original contract, or – more plausibly – as the modification of the standard *pactum de vendendo* described above. Philemon may have thus secured his right to bid preferentially to acquire the pledged property to satisfy his claim. This would plausibly explain his persistent determination to execute a subsequent sale contract and to pay

[44] See, to that extent Kaser 1971: 537 (§ 127 III), stressing that the sale must have happened 'ordnungsmäßig' (he made his view milder since the first edition, see Kaser 1955: § 111 III, where he is much more direct on the viability of contractual *actio pigneraticia* when the sale occurred improperly). This is a plausible view, which could be induced from the good faith nature of the claim on pledge attested for the late-classical times (C. 4.24.7 [Alexander Severus to Trophima, 225]); see also Kaser 1971: § 127 I with n. 13. An explicit reference to such duty of the pledgee could be found in C. 6.27.9, another rescript by Diocletian and Maximian, to Cyrillus (287).

[45] Kaser 1975: 319 (§ 251 I 2a & n. 5), citing C. 4.27.4 (Alexander Severus to Crescens, 225) with *PSent.* 2.5.1 and its *Interpretatio*.

the *dikaia time*. This price might have been agreed upon in advance (although in this case we would expect some direct reference to such an arrangement).[46] Such a reconstruction is further supported by Thekla-the-Widow's rendering of Philemon's words in her second letter to Iohannes. Upon his arrival in the north, Philemon seemingly promised his debtor to return to her the loan-deed and the 'remaining money'.[47] The 'remaining money', two gold-pieces (three in total, together with the amount of the loan),[48] later paid to the debtor's heir, would be thus considered the fair price for the share.

To sum up, the original arrangement would have afforded Philemon and his wife several ways to satisfy their claim:

1. they could seek repayment of the loan directly from Thekla (which appears to align with her own intentions, hence her desire to redeem the house);

2. they could sell the mortgaged property and return any surplus proceeds to the debtor; or

[46] Perhaps such agreement may be alluded to by Iohannes' stating that the original one solidus was a 'third' of the house-share value.

[47] *P. Budge*, ll. 35–40: ⲁⲛⲟⲕ ⲑⲉⲕⲗⲁ ⲙⲛ̄ ⲙⲏⲛⲁ ⲡⲉⲥϣⲏⲣⲉ ⲉⲧⲥϩⲁⲓ̈ ⲉⲧϣⲓⲛⲉ ⲉⲡⲁⲙⲉⲣⲓⲧ ⲛ̄ⲥⲟⲛ ⲡⲇⲓⲁⲕ̸ ⲓ̈ⲱⲁⲛⲛⲏ[ⲥ] ⲙⲛ̄ ⲙⲁⲕⲣ̅ⲓ̅ⲛ̅ⲁ̅ ⲧⲉϥⲥϩⲓⲙⲉ ⲙⲛ̄ [[̣]]ⲥⲁⲣⲣⲁ ⲙⲛ̄ ⲡⲁⲉⲓⲱⲧʼ ⲧⲥⲱ̅ⲕ̅ⲉ̅ⲣ̅ ⲙⲛ̄ ⲁⲛ̅ⲛ̅ⲁ̅ · ⲛ̄ⲧⲟⲕ ⲇⲉ ⲡⲁⲥⲟⲛ ⲡⲇⲓⲁⲕ̸ ⲉⲡⲉⲓⲇⲏ ⲁⲡⲕⲁ̣ⲗ̣ⲕⲁⲕⲉʼ ⲉⲓʼ ⲉϩⲏⲧʼ ⲛⲁⲓ̈ ⲉϥϫⲱ ⲙ̄ⲙⲟⲥ ϫⲉ ⲉⲧⲁⲥⲙ̄ⲛ̄ ⲡⲣⲁⲥⲓⲥ ⲉⲡⲏⲓ̈ ⲛⲁⲓ̈ ⲛ̄ⲧⲁϯ ⲧⲁⲥⲫⲁⲗⲉⲓⲁʼ ⲛⲉ ⲙⲛ̄ ⲧⲗⲟⲓⲡⲁⲥ ⲛ̄ⲛⲟⲩⲃ ⲙ̄ⲡⲉⲓ̈ ⲁⲛⲉⲭⲉʼ ⲉⲓ̈ϫⲱ ⲙ̄ⲙⲟⲥ ϫⲉ ⲙⲁⲓ̈ⲧⲁⲁϥ ⲛⲁⲕ ⲉⲛⲉϩʼ · ⲁⲗⲗⲁ ϣⲁⲓ̈ⲧⲁⲁϥ ⲙ̄ⲡⲁⲥⲟⲛ ⲛ̄ϥ̄ϥⲓʼ ⲡⲣⲟⲟⲩϣ ⲛ̄ⲧⲁⲡⲣⲟⲥⲫⲟⲣⲁ · ⲛ̄ⲧⲉⲣⲓϭⲱʼ ⲟⲩⲛ ⲉⲓ̈ϫⲱ ⲙ̄ⲙⲟⲥ ⲛⲁϥ ϫⲉ ⲁⲙⲟⲩ ⲉⲡϩⲁⲡʼ ⲛ̄ⲙ̄ⲙⲁⲓ̈ ⲡⲉⲧⲛⲏⲩ ⲉⲃⲟⲗ ⲛ̄ⲧⲁⲧⲁⲁϥ ⲛⲁⲕ ⲛⲅ̄ϯ ⲧⲁⲥⲫⲁⲗⲉⲓⲁ ⲛⲁⲓ̈ ⲛ̄ⲧⲁϫⲟⲟⲩⲥ ⲙ̄ⲡⲁⲥⲟⲛ ⲙ̄ⲡⲉϥⲁⲛⲉⲭⲉʼ, 'It is I, Thekla, with Mena, her son, who is writing and asking after my beloved nephew (lit. brother), the deacon Iohannes, and Makrina, his wife, and Sarra and my father Tsoker and Anna. You, my brother, the deacon: Pkalkake (lit. the sinister man?) came north to me and said: "As soon as you (i.e. Th.) draw up a deed of sale of the house for me, I (i.e. Ph.) shall give you (i.e. Th.) the debt certificate (*asphaleia*) and the remaining money". I (i.e. Th.) did not accept (*anechein*) and said: "I shall never give it (i.e. the house) to you, but I will give it to my brother (i.e. Io.), so that he looks after my (funerary) offering". Now when I persistently said to him: "Come to court with me, and whatever will be the outcome, I will give it to you and you give me the debt certificate and I will send it to my brother", he did not agree'.

[48] We base this assumption on Iohannes' statement mentioning the 'third' (see above, n. 46). One could also imagine, given that the *prasis* does not refer in any way to already paid part of the price, that Thekla-the-Widow's heirs actually received three solidi over the original loan.

3. they could conclude a separate contract of sale with the debtor, offering an additional payment for the pledged house-share.

In the light of this last scenario, Thekla-the-Widow's actions appear entirely rational and legally coherent. The house-share ownership did not automatically pass to Philemon, since the *apotage*-conditions remained unfulfilled (the mere default, as explained above, was insufficient). Thekla-the-Widow may have obliged herself to conclude a future sale, but eventually she did not accept the additional payment. This allowed her to retain the legal right to dispose of her share of the house, including assigning it to Iohannes, and to encourage her nephew to arrange repayment of the debt on her behalf. Such an arrangement clarifies Thekla-the-Widow's statement in her first letter that Philemon should not find an opportunity to pay 'compensation' to her. It also illuminates Thekla-the-Widow's remark as cited by Iohannes during the arbitration: the one solidus loan represented in fact only part of what was due for the house.[49] Her willingness to tender the payment before the property could be sold seems also to echo the imperial regulations.[50]

[49] *P. Budge*, ll. 29–34: ⲕⲁⲧⲁⲣⲟⲓ̈ ⲙⲁϥϩⲉ̀ ⲉⲩⲧⲱⲱⲃⲉ ⲁⲛⲟⲕ ⲇⲉ ϩⲱ̀ ϣⲁⲓ̈ϯⲙⲟⲉⲓⲧ̀ ϫⲉ ⲡⲉ̣ⲧⲣⲓⲧⲟⲛ ⲡⲉⲧⲟⲩϫⲓ̀ ⲙ̄ⲙⲟϥ ⲁⲓ̈ϫⲟⲟⲥ ⲉⲣⲟϥ ϫⲓⲛ ⲛⲉϥϩⲁϩⲧⲏⲓ̈ ϫⲉ ⲁⲙⲟⲩ ⲉⲡϩⲁⲡ̀ ⲛⲙ̄ⲙⲁⲓ̈ ⲙⲉⲓ̈ϣⲉⲓ̀ ⲛⲙ̄ⲙⲁⲕ ⲡⲁⲭⲁⲣⲧⲏⲥ ⲛ̄ⲧⲟⲟⲧ̄ ⲁⲛ ⲁⲩⲱ ϣⲓⲛⲉ ϩⲓⲧⲛ̄ ⲛ̄ⲣⲱⲙⲉ ⲉⲧϯ ϣϭⲟⲣ ⲛⲁϥ · ⲉϣⲱⲡⲉ ⲙ̄ⲡⲉⲧⲉϥϩⲟⲗⲟⲕ[/] ⲙⲟⲩϩ̀ ϣⲁ̣ⲓ̈ϯ ⲛⲁϥ ⲟⲛ ⲉϣⲱⲡⲉ ϣⲁⲕϣⲉⲓ̣̀ (ⲉ)ⲡϩⲁⲡ̀ ⲛⲙ̄ⲙⲁϥ ⲛ̄ⲧⲉⲡϩⲁⲡ̀ϯ ⲡⲉⲧⲛⲧ̣ⲁ̣ϥ ⲛⲁϥ · ⲉⲓ̈ⲉ ⲧⲁⲣⲕⲟϥ ⲙ̄ⲡϩⲱⲃ ⲙ̄ⲡⲁ̣ⲏ̣ⲓ̈ ϫⲉ ⲙ̄ⲡⲉ⟦ϥ⟧ⲓ̈ⲃⲓ̀ ⲗⲁⲁⲩ ⲛ̄ϩⲏⲧϥ ⲙ̄ⲙⲟⲛ ⲁⲓ̈ⲃⲱⲕ ⲁⲓ̈ⲕⲁⲁϥ ⲛ̄ⲑⲉ ⲉⲛⲉϥⲟ̀ ⲙ̄ⲙⲟⲥ ⲁⲩⲱ ϯⲟ̀ ⲛ̄ϣⲡⲏⲣⲉ ⲙ̄ⲙⲟⲕ ϫⲉ ⲁⲕⲕⲁⲁ[ϥ] ⲛ̄ⲧⲟⲟⲧϥ̄ ϣⲁ ⲡⲟⲟⲩ ⲟⲩϫⲁⲓ̈ ϩⲙ̄ ⲡϫⲟⲉⲓⲥ, 'For, as to my mind, he shall not find (opportunity to pay) a compensation. I, for my part, will take occasion (to redeem it), because it is the third part (of the real value of the house) which was received (i.e. by Th.). I said to him while he (i.e. Ph.) was still with me: "Come to court with me!" (Ph. replying) "I cannot go with you, (since) my deed is not with me". And ask the men who pay him rent: If his solidus was not (paid in) full, I shall restore (it). If you (i.e. Ts.) can go to court with him (i.e. Ph.) so that the law gives him what belongs to him, let him swear in the case of my house: "~~He~~ I (i.e. Ph.) have not taken away anything therefrom"; for I (i.e. Th.) have gone and left it as it was. And I am truly astonished at you that you left it (i.e. the house) in his (i.e. Ph.'s) possession until today. Farewell in the Lord'.

[50] See C. 8.27.8 (*Gord. A. Maximo*): *Si prius, quam distraheretur pignorata possessio, pecuniam creditori obtulisti, eoque non accipiente contestatione facta eam deposuisti et hodieque in eadem causa permanet, pignoris distractio non valet. quod si prius, quam offerres, legem venditionis exercuit, quod iure subsistit revocari non debet.* [*a. 239 pp. III non. April. Gordiano A. et Aviola conss.*], '(The same Augustus to Maximus): If you tendered the money to the creditor before the pledged

Finally, the last scenario finds correspondence in one high-classical jurisprudential text. In the monograph on the hypothecary action Marcian contemplates an agreement between the creditor-pledgee and the debtor-pledger which allows the former to acquire by purchase the pledged asset upon the payment of the just price. The jurist qualifies such understanding as a conditional sale. The requirement for its perfection would be establishment of the just price (and naturally, a debtor's default). He concludes that this idea has been confirmed by an imperial rescript.[51] The 'just price' as the condition for recognition of such an arrangement is striking. Is it not what Philemon refers to as *dikaia time* which he has paid and delivered to Thekla-the-Widow's successors?

3. CONCLUSIONS

In this essay we have attempted elucidating a particular security guaranteeing what Thekla-the-Widow owed to Philemon and Thekla. We suggest that its self-designation, *hypotheke-prasis*, a unicum in our documen-

possession was sold, and when he refused (to take it) you, deposited it, with an attestation, and it also remains today in the same condition, the sale of the pledge is invalid. But if he exercised the (right of) sale of the pledge before you tendered (repayment), what took place legally should not be rescinded. [Posted April 3, in the consulship of Gordian Augustus and Aviola (239)]' (trans. Blume, Frier *et alii*).

[51] D. 20.1.16.9 (Marcian. *l. s. ad form. hypoth.*): *Potest ita fieri pignoris datio hypothecaeve, ut, si intra certum tempus non sit soluta pecunia, iure emptoris possideat rem iusto pretio tunc aestimandam: hoc enim casu videtur quodammodo condicionalis esse venditio. et ita divus Severus et Antoninus rescripserunt*, 'One can establish transfer of pledge or a hypothec in this way, that if the money should not be paid back in the established time, (the creditor) may possess thing by the right of a buyer for a just price which then should be assessed. In this case it is a conditional sale. And so have decided divine Severus and Antoninus in a rescript'. See the Greek paraphrase, *Bas.* 25.2.15, which renders *iustum pretium* as δικαία τίμημα. There is no practical difficulty in making such a transaction, since the debtor obviously remained the owner of the pledge – see D. 20.5.12 pr. (Tryph. 8 *disp.*): *Rescriptum est ab imperatore libellos agente Papiniano creditorem a debitore pignus emere posse, quia in dominio manet debitoris*, 'it was rescripted by the emperor, while Papinianus was the head of the office of petitions, that the creditor may buy pledge from the debtor, since the pledge remains in the debtor's ownership'.

tation, be taken literarily: *sellable mortgage*.[52] The right of the creditors to purchase the pledged object in the case of default, uncontroversial in the legal literature, had to be accorded either in the original loan contract or later.[53] The former solution was adopted between the lender-couple and Thekla-the-Widow. One could interpret such a prerogative of the creditor as a modified standard *pactum de vendendo*, which either contemplates only the creditor as the possible purchaser of the pledge or grants them the right of first refusal. In either case, it is the creditors' choice how they would like to satisfy their credit, so the conditionality of the sale depended on their determination and fixing the *just* purchase price. What remains open is whether our protagonists established the purchase price from the beginning, or it was only to be assessed later. The drawing-up of the final purchase deed (*prasis*) is thus explained. It confirms the payment of the

[52] We are thankful to the reviewer of our article, who, following Schiller 1926: 72 (Part II 1, NB the entry in Preisigke, *Fachwörter*, which Schiller cites to fortify his view, does not list this meaning), has pointed out that the term *prasis* in some later Coptic documents seems to have departed from its strict meaning of 'sale' to denote generically a 'legal transaction' (see, e.g., the will *P. KRU* 71 = *SB* I 5592 [Thebes, 764], l. 16: ⲉⲧⲓⲧⲓⲁⲑⲏⲕⲏ ⲙⲛ ⲡⲣⲁⲥⲓⲥ, 'will and sale', or several settlements, as *P. KRU* 44 = *SB* I 5577 [Thebes, 728], l. 122, or the quit-claim over an inheritance *P. KRU* 39 = *SB* I 5574 [Thebes, 749–750], l. 75). Given the context, and since it appears often in the signatures, *prasis* in these deeds seems rather to signify a 'cession', that is the confirmation of the definite alienation of the asset by the subscribing party. It could thus still be considered rather technical (with sale being a metaphor for the final relinquishment). It may be indeed also the case of P. *Budge*. It would still fit our interpretation: a 'mortage-alienation' could well denote the exact same legal device we have reconstructed. We are more inclined, however, to take *prasis* in the compound *hypotheke-prasis* in its strict sense: not only because *P. Budge* is almost a century ealier than the instances of the broad use of *prasis*, but chiefly because of the expert legalese of the parties (on which see above, pp. 325–327).

[53] *FVat.* 9 (Papin., 3 *respon.*): *Creditor a debitore pignus recte emit, sive in exordio contractus ita convenit sive postea; nec incerti pretii venditio videbitur, si convenerit, ut pecunia fenoris non soluta creditor iure empti dominium retineat, cum sortis et usurarum quantitas ad diem solvendae pecuniae praestitutam certa sit*, 'The creditor rightly buys the pledge from the debtor, if so has been agreed either in the terms of the contract or later. The sale is not considered to (have been made) upon uncertain price, since the capital and the interest amount to be paid on the due date is certain, if it should have been agreed that the creditor should retain the ownership by the right of purchase upon non repayment of the loan'.

dikaia time and thereby perfection of the sale contemplated in the loan agreement.[54]

This central matter of the *P. Budge* controversy bears witness to the profound legal awareness of its parties. Operating within the legal framework provided by Roman law, and without attempts to transgress it, the law-users of seventh-century Edfu managed to bend and form it to best serve their needs, creating a flexible form of security, fitting the circumstances of Thekla-the-Widow and the creditors couple. It is amazing to see how, even at the dusk of its domination of Egypt, the Roman legal *forma mentis* was so strongly present in this inherently plural society.

Marzena Wojtczak
Jakub Urbanik

University of Warsaw
Faculty of Law and Administration
Chair of Roman Law and the Law of Antiquity
Krakowskie Przedmieście 26/28
00-927 Warsaw
Poland

e-mails: *m.e.wojtczak@wpia.uw.edu.pl*
kuba@adm.uw.edu.pl

BIBLIOGRAPHY

Alonso, J. L. (2008), 'The *alpha* and *omega* of *hypallagma*', *Journal of Juristic Papyrology* 38, pp. 19–51.

Alonso, J. L. (2010), 'The *bibliotheke enkteseon* and the alienation of real securities in Roman Egypt', *Journal of Juristic Papyrology* 40, pp. 11–54.

Alonso, J. L. (2012), '*Hypallagma* or the dangers of Romanistic thinking', [in:] P. Schubert (ed.), *Actes du 26e Congrès international de papyrology, Genève 16–21 août 2010*, Geneva, pp. 11–18.

[54] See the telling designation of the sale in the *dialysis* as 'perfect', τελεία πρᾶσις (*SB* VI 8988, l. 26) and 'unconditional', καθαρά (l. 39), as well as the recurring statement that Philemon and Thekla have come into the ownership and possession of the house-share.

Alonso, J. L. (2016), 'One *en pistei*, guarantee sales, and title-transfer security in the papyri', [in:] *Symposion 2015. Vorträge zur griechischen und hellenistischen Rechtsgeschichte (Coimbra 2015)*, Vienna, pp. 121–192.

Alonso, J. L. (forthcoming), 'The multiplicity of real securities in the papyri: A hypothesis', [in:] *Symposion 2025*.

Bagnall, R. S. (1995), 'Women, law, and social realities in late antiquity: A review article [of Beaucamp 1992]', *Bulletin of the American Society of Papyrologists* 32, pp. 65–86.

Bagnall, R. S. (2004), 'Women's petition in late antique Egypt', [in:] D. Feissel & J. Gascou (eds.), *La pétition à Byzance. xx^e^ Congrès international des études byzantines, 19–25 août 2001. Table ronde*, Paris, pp. 53–60.

Beaucamp, J. (1992), *Le statut de la femme à Byzance (4^e^–7^e^ siècle)*, II: *Les pratiques sociales* [= *Travaux et mémoires du Centre de recherche d'histoire et civilisation de Byzance* 6], Paris.

Beaucamp, J. (2010a), 'La référence au veuvage dans les papyrus byzantins' [in:] eadem, *Femmes, patrimoines, normes à Byzance*, Paris, pp. 65–70.

Beaucamp, J. (2010b), 'Assistance judiciaire aux femmes et rôle du mari d'après les papyrus byzantins', [in:] eadem, *Femmes, patrimoines, normes à Byzance*, Paris, pp. 409–421.

Gerhard G. A., & Gradenwitz, O. (1904), ''Ωνὴ ἐν πίστει', *Philologus* 63, pp. 498–583.

Gradenwitz, G. (1906), '*Alius mutuam dedit alius stipulatus est*', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung* 27, pp. 336–340.

Harris, E. M. (2012), '*Hypotheca* in Roman law and ὑποθήκη in Greek law', [in:] B. Legras (ed.), *Transferts de droit dans le monde antique*, Paris, pp. 433–441.

Harris, E. M. (2013), 'Finley's studies in land and credit sixty years later', *Dike* 16, pp. 123–146.

Jördens, A. (1990), *Vertragliche Regelungen von Arbeiten im späten griechischsprachigen Ägypten, mit Editionen von Texten der Heidelberger Papyrus-Sammlung, des Istituto Papirologico G. Vitelli, des Ägyptischen Museums zu Kairo und des British Museum, London (P. Heid. V)*, Heidelberg.

Kaser, M. (1955), *Das römische Privatrecht*, I: *Das altrömische, das vorklassische und das klassische Recht*, Munich.

Kaser, M. (1971), *Das römische Privatrecht*, I: *Das altrömische, das vorklassische und das klassische Recht*, Munich (2nd edition).

Kaser, M. (1975), *Das Römische Privatrecht*, II: *Die nachklassischen Entwicklungen*, Munich (2nd edition).

Kreuzsaler, C. (2010), 'Die Beurkundung außergerichtlicher Streitbeilegung in den ägyptischen Papyri', [in:] Ch. Gastgeber (ed.), *Quellen zur byzantinischen Rechtspraxis. Aspekte der Textüberlieferung, Paläographie und Diplomatik. Akten des internationalen Symposiums, Wien 5.–7.11.2007*, Vienna, pp. 17–26.

Kreuzsaler, C. (2014), 'Loan contracts serving other purposes', [in:] J. G. Keenan, J. G. Manning, & U. Yiftach-Firanko (eds.), *Law & Legal Practice in Egypt from Alexander to the Arab Conquest. A Selection of Papyrological Sources in Translation, with Introductions and Commentary*, Cambridge, pp. 265–266.

Manigk, A. (1910), *Gläubigerbefriedigung durch Nutzung: Ein Institut der antiken Rechte*, Berlin.

Markiewicz, T. (2005), 'Security for debt in the demotic papyri', *Journal Juristic Papyrology* 35, pp. 141–167.

Mitteis, L. & Wilcken, U. (1912), *Grundzüge und Chrestomathie der Papyruskunde* II, Leipzig – Berlin.

Noordraven, B. (1999), *Die Fiduzia im römischen Recht* [= *Studia Amstelodamensia* 37], Amsterdam.

Palme, P. (2007), 'Antwort auf Jakub Urbanik', [in:] *Symposion 2005. Vorträge zur griechischen und hellenistischen Rechtsgeschichte (Salerno, 14.–18. September 2005)*, Vienna, pp. 401–410.

Pestman, P. W. (1985), 'Ventes provisoires de biens pour sûreté des dettes: *ὠναὶ ἐν πίστει* à Pathyris et à Krokodilopolis', [in:] idem (ed.), *Textes et études de papyrologie grecque, démotique et copte* [= *Papyrologica Lugduno-Batava* 23], Leiden, pp. 45–59.

Rupprecht, H.-A. (1992), 'Zur Antichrese in den griechischen Papyri bis Diokletian', [in:] A. H. S. El-Mosallamy (ed.), *Proceedings of the XIX International Congress of Papyrology, Cairo 2–9 September 1989* II, Cairo, pp. 271–289 [= idem, *Beiträge zur juristischen Papyrologie. Kleine Schriften*, Stuttgart 2017, pp. 127–136].

Rupprecht, H.-A. (1995), 'Die dinglichen Sicherungsrechte nach der Praxis der Papyri: eine Übersicht über den urkundlichen Befund', [in:] R. Feenstra *et alii*, *Collatio iuris Romani. Études dédiées à Hans Ankum à l'occasion de son 65e anniversaire*, Amsterdam, pp. 425–436 [= idem, *Beiträge zur Juristischen Papyrologie. Kleine Schriften*, Stuttgart 2017, pp. 137–149].

Schiller, A. A. (1926), *Coptic Wills, Translation and Commentary: The Egyptian Law of Wills in the Eighth Century A.D.*, unpublished PhD dissertation, University of California.

Schiller, A. A. (1964), 'The interrelation of Coptic and Greek Papyri: *P. Bu.* and P. BM Inv. Nos. 2017 and 2018', [in:] H. Braunert, *Studien zur Papyrologie und antiker Wirtschaftsgeschichte Friedrich Oertel zur 80. Geburstag gewidmet*, Bonn, pp. 107–117 [= 'The Budge Coptic papyrus of Columbia University and related Greek papyri of the British Museum', [in:] J. Wolski, *Actes du xe Congrès international de papyrologues, Varsovie–Cracovie, 3–9 septembre 1961*, Wrocław – Warsaw – Cracow 1964, pp. 193–200].

Schiller, A. A. (1968), 'The Budge papyrus of Columbia University', *Journal of the American Research Center in Egypt* 7, pp. 79–118.

Schiller, A. A. (1971), 'The courts are no more', [in:] L. Aru *et alii* (eds.), *Studi in onore di Edoardo Volterra* I, Milan, pp. 469–502.

Sirks, B. (1985), 'La *laesio enormis* en droit romain et byzantin', *Tijdschrift voor Rechtsgeschiedenis* 53, pp. 291–307.

Sirks, B. (2007), '*Laesio enormis* again', *Revue internationale des droits de l'antiquité* 54, pp. 461–469.

Steinwenter, A. (1955), *Das Recht der koptischen Urkunden* [= *Handbuch der Altertumswissenschaften* 10/4.2], Munich.

Taubenschlag, R. (1955), *The law of Greco-Roman Egypt in the light of the Papyri, 332 B.C. – 640 A.D.*, Warsaw.

Till, W. C. (1958), *Die koptischen Rechtsurkunden der Papyrussammlung der Österreichischen Nationalbibliothek* [= *Corpus Papyrorum Raineri* 4], Vienna.

Urbanik, J. (2007), 'Compromesso o processo? Alternativa risoluzione di conflitti e tutela dei diritti nella prassi della tarda antichità', [in:] *Symposion 2005. Vorträge zur griechischen und hellenistischen Rechtsgeschichte (Salerno, 14.–18. September 2005)*, Vienna, pp. 377–400.

Urbanik, J. (2013), 'Tapia's banquet hall and Eulogios' cell: Transfer of ownership as security for debt in late antiquity', [in:] P. Du Plessis (ed.), *New Frontiers: Law and Society in the Roman World*, Edinburgh, pp. 151–174.

Wenger, L. (1953), *Die Quellen des römischen Rechts*, Vienna.

Wojtczak, M. (2012), 'Settlement of claims as a way of dispute resolution in the light of *P. Petra* IV 39. A legal commentary', *Journal Juristic Papyrology* 42, pp. 353–380.

Wojtczak, M. (forthcoming), '*καὶ ὑπὲρ πίστεως καὶ ἀσφαλείας τοῦ αὐτοῦ παρόντος χρέους*: Legal devices securing debts in Aphrodite archives', [in:] M. Nowak, M. Wojtczak, & C. Balamoshev, *Law in Late Antique Aphrodite*.

Wojtczak, W., & Urbanik, J. (2023), 'Weaker "sex" and "weaker" dispute resolution? Women and arbitration in late-antique papyri', *Journal of Juristic Papyrology* 53, pp. 231–279.

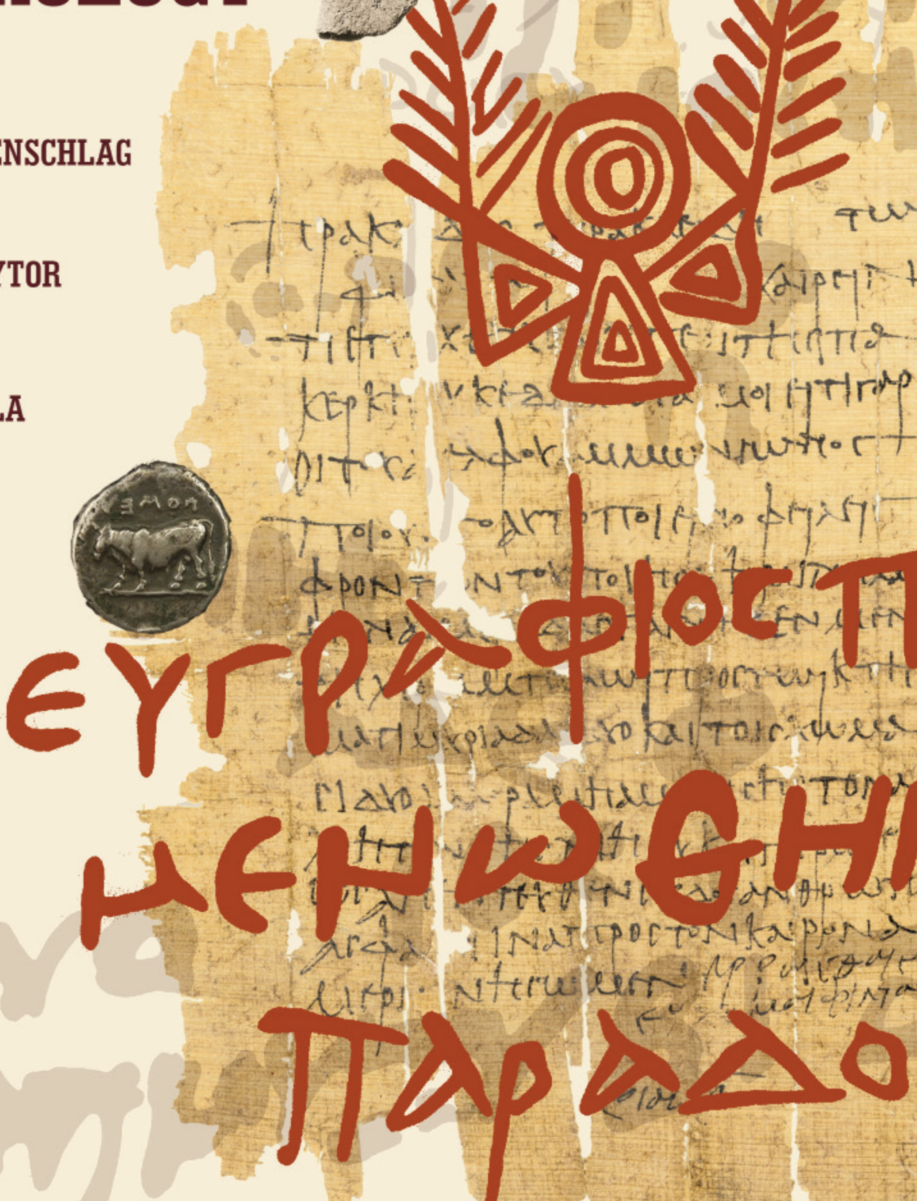
Zilliacus, H. (1940), 'Griechische Papyrusurkunden des VII. Jahrh. n.Chr.', *Eranos* 38, pp. 79–107.

Zimmermann, R. (1996), *The Law of Obligations: Roman Foundations of the Civilian Tradition*, Oxford.

The Journal of Juristic Papyrology

FOUNDED BY
RAPHAEL TAUBENSCHLAG

EDITED BY
W. GRAHAM CLAYTOR
TOMASZ DERDA
ADAM ŁAJTAR
GRZEGORZ OCHAŁA
JAKUB URBANIK



VOL. LV (2025)

WARSAW 2025

UNIVERSITY OF WARSAW
FACULTY OF ARCHAEOLOGY
CHAIR OF EPIGRAPHY AND PAPYROLOGY

UNIVERSITY OF WARSAW
FACULTY OF LAW AND ADMINISTRATION
CHAIR OF ROMAN LAW AND THE LAW OF ANTIQUITY

THE RAPHAEL TAUBENSCHLAG
FOUNDATION

THE JOURNAL OF JURISTIC PAPYROLOGY

FOUNDED BY
RAPHAEL TAUBENSCHLAG

EDITED BY
W. GRAHAM CLAYTOR
TOMASZ DERDA
ADAM ŁAJTAR
GRZEGORZ OCHAŁA
JAKUB URBANIK

VOL. LV (2025)

Computer design and DTP by
Piotr Berezowski, Tomasz Derda, Grzegorz Ochała, and Jakub Urbanik

Cover design by
Maryna Wiśniewska

Warszawa 2025

ISSN 0075–4277

The journal is published with financial support from the University of Warsaw

Wydanie I (wersja pierwotna)
Nakład: 100 egz.
Druk i oprawa: Sowa Sp. z o.o., ul. Raszyńska 13, 05-500 Piaseczno

The Journal of Juristic Papyrology
vol. LV (2025)

CONTENTS

From the Editors XI

Constantinos Balamoshev
P. Mert. II 81: On oracular inquiry and shady business.
A re-edition with a new translation 1

Abstract: The article presents a new edition and translation of *P. Mert.* II 81, offering textual corrections based on available high-resolution images. The palimpsest document is a letter from Epoeris to Demetrios (whom she calls 'son', most likely in an affectionate, non-literal sense) discussing a dispute involving a priest. Epoeris relates she has been engaging in persistent oracular consultations seeking divine guidance for Demetrios, which demonstrates how oracles were used in everyday decision-making in Roman Egypt. The letter provides insights into kinship terminology, social relationships, and ritual practices. The newly restored text clarifies episodes of family negotiation, possibly personal debt, and the handling of sensitive affairs through temple oracles.

Keywords: oracular inquiry, Roman Egypt, private letters, kinship terminology, documentary papyri, palimpsest, family relationships.

Lajos Berkes & Anton Kistol
Jesus's reply to Abgar and a tax receipt:
Two Coptic ostraca in the Dnipro Museum 17

Abstract: The article presents the first edition of two Coptic ostraca held in the collection of the Dnipro Museum: one contains a fragmentary copy of Jesus' apocryphal letter to Abgar and the other is a tax receipt from Djeme, dated to 717 AD.

Keywords: Dnipro Museum, Coptic ostraca, Egypt, apocrypha, tax receipt.

Jelle Bruning
Seven Arabic slave sale contracts on papyrus 29

Abstract: Annotated editions and translations of seven Arabic slave sale contracts on papyrus dating from the late ninth and early tenth centuries CE. Six of these documents belong to the Arabic Papyrus, Parchment and Paper Collection of the University of Utah's J. Willard Marriott Library; one document is kept in the Egyptian National Library (its *editio princeps* has been published as *P. Cair. Arab.* II 124).

Keywords: slavery, slave trade, sale contracts, Egypt, Arabic papyri.

Katarzyna de Lellis-Danys, Grzegorz Ochała,
& Aleksandra Pawlikowska-Gwiazda
Coptic and Copto-Greek ostraca in Warsaw (O. Vars. Copt.) 65

Abstract: First editions and re-editions of six Coptic and Copto-Greek ostraca from the collections of the Warsaw National Museum and the University of Warsaw. Five objects come from the Polish-French excavations at Edfu (Egypt) in 1930s, one from the Polish works at Faras (Nubia), and one is most likely of Middle-Egyptian provenance. The pieces from Edfu represent the well-known types of texts on potsherds known from other publications of the material from this site. They include receipts and accounts connected with deliveries of wine and crops. The text from Middle Egypt is an addition to the collection some 170 ostraca of the so-called *etmoulon* type. The ostracon from Faras is the only literary text in the lot, preserving the beginning of Psalm 1. The edited ostraca are also studied from the perspective of their materiality, presenting the characteristics of vessel forms and fabrics used for their production.

Keywords: Coptic and Copto-Greek ostraca, Edfu, Faras, Middle Egypt, *etmoulon* ostraca, wine, literary ostraca, Psalms, materiality.

Giulio Iovine
Fragmentary legal document(s?) from the archive of Ammon scholasticus (P. Duke inv. 190–193 and 195) 111

Abstract: Edition, translation and commentary to some scattered fragments from the Duke University papyri collection (P. Duke inv. 190–193 and 195), which are part of the so-called archive of Ammon *scholasticus* (1st half of 4th

cent. CE) and may cover a single occurrence, a petition or records of court proceedings, referring an individual pretending to be a priest to escape his liturgies.

Keywords: archive of Ammon, late antique Egypt, Egyptian priesthood, petition, court proceedings.

Adam Łukaszewicz
An inscription from Hermopolis 145

Abstract: Hermopolis was an important cultic and administrative centre of Graeco-Roman Egypt. During three seasons (1987–1990) a Polish-Egyptian archaeological expedition directed by Marek Barański carried out excavations in the citiy's Great Basilica. The inscription under discussion is one of the results of these excavations.

Keywords: Hermopolis, archaeological works, Greek inscription, Hermes.

Gabriella Messeri
Conto di vino (SB XII 10892 verso) 155

Abstract: First edition of a wine account extending over six columns. Columns i–iv (iv is lost) record the sale of vintage wine and columns v–vi payments to the parties involved (intermediaries, administrators, camel drivers, and donkey drivers) made with the profits from the sale of wine. The vineyards are located in the area of Karanis. The account was most likely written in 194 CE using the back of the land administration register *SB* XII 10892 edited by Anna Świderek in *JJP* 16/17 (1971) and republished by the author *JJP* LIV (2024).

Keywords: wine account, wine production, wine prices, land transport, Karanis (Arsinoites).

Radosław Miśkiewicz
Diocles' Law (Dem. 24.42) and the problem of the validity of laws in Athens in the late fifth century BCE 179

Abstract: The article examines the significance of Diocles' Law (Dem. 24.42) for the growing problem of (in)validity of laws in the Athenian legal order in the late fifth century BCE. Diocles' Law should be understood as part of the broader set of vital principles that constituted an 'evolving law reform' aimed at consolidating laws and strengthening the rule of law and democracy after deep constitutional crises. This study reconstructs the factual and legal background to which specific clauses of Diocles' Law refer (sections 2.1–2.4; ἐν δημοκρατίᾳ, κυρίους εἶναι, the archonship of Eucleides, ἀναγεγραμμένοι).

More broadly, it outlines the challenges the Athenians faced at that time, and the measures they took to address them, arising not only from the two oligarchic coups d'état, but also from mounting problems in their legal, constitutional, and judicial order. The article also argues that an analysis of Greek legal language – and its manoeuvrings as seen in Andocides' *On the Mysteries* – confirms that issues of the validity (κυρίους εἶναι) of laws must be distinguished from those concerning their application (χρῆσθαι). Even though the latter also played a role at the time, especially due to the *caesura* marked by the archonship of Eucleides (403/2), the central argument is that Diocles' Law was enacted to impose order specifically on the validity of laws at a very particular historical moment. This law was relevant retrospectively to 'the scrutiny of the laws', with the vital involvement of ἀναγραφεῖς τῶν νόμων from the beginning of their work in 410, and, more broadly, to future law-making. In addition (section 3), the article eventually identifies the principle of 'legal certainty', which underpinned the introduction of Diocles' Law, and formed a key part of Athenian legal culture at the end of the fifth century BCE.

Keywords: Diocles' Law, validity of law, application of law, classical Athens, law reform, law-making, the scrutiny of the laws, legal certainty, law consolidation.

Anna Plisecka
The stick and the carrot: Notes on P. Col. VI 123, ll. 6–8 237

Abstract: The article formulates a hypothesis that the penalties referred to in lines 6–8 of *P. Col.* VI 123 (Alexandria, 200 CE) are related to two edicts copied in *P. Oxy.* XLVII 3364 (Oxyrhynchos, 209 CE), ll. 1–9, in which Septimius Severus and Caracalla ordered the population to return to their homeland. In these edicts, penalties were imposed both on the fugitives and on their protectors, but additionally, as an incentive to follow the imperial order, a period of amnesty was announced. Similar amnesty is mentioned also in the Columbia papyrus.

Keywords: ἀπόκριμα, ἰδία, imperial edict, amnesty, petition.

Jakub Urbanik
The purpose of P. Dionysia (P. Oxy. II 237) and its mysterious beginning 251

Abstract: This article presents a new hypothesis regarding the function the so-called *Petition of Dionysia* (*P. Oxy.* II 237 = *P. Dionysia*). The study re-examines the papyrus' structure and its procedural context, focusing on its newly deciphered mysterious beginning (col. i) by Constantinos Balamoshev. The findings suggest that *P. Dionysia* be not the original petition but rather a copy, possibly official, produced during its administrative processing. I conjecture that the document represents a late procedural stage, possibly including the governor's final decision and subsequent requests for execution.

Keywords: Dionysia, juristic papyrology, Roman administration of justice, court/judicial procedure, Roman Egypt, local law, Reichsrecht, Volksrecht.

Joanna Wegner
Clerical authority in late antique Egypt: A papyrological perspective 283

Abstract: Papyrological sources from late antique Egypt attest to a variety of non-religious contexts in which clergy below the episcopal level – mainly presbyters and deacons – exercised authority in rural settlements. These contexts include formal and informal representation of village communities, mediation in conflict, and policing of the morals. While these phenomena have already drawn the attention of scholars, they were often viewed strictly as an outcrop of the religious authority wielded by the clergy. The present contribution is an attempt to nuance this perspective by taking into consideration the diverse socio-economic factors which contributed to the social standing of the clergy. It uses Pierre Bourdieu's field theory, with its subsequent reiterations, as the main theoretical framework and builds on the concepts of capital accumulation and convertibility between social fields in order to arrive at a multifaceted analysis of the clerics' position as fully integrated members of rural societies.

Keywords: late antiquity, Greek and Coptic papyri, clergy, institutional church, authority, field theory, forms of capital.

Marzena Wojtczak & Jakub Urbanik
To sell or to have sold? Hypotheke-prasis and dikaia time in P. Budge 311

Abstract: A tiny archive composed of the famous Coptic arbitration protocol *P. Budge* and three associated Greek documents, a settlement of claims, a sale, and a loosely connected marriage document, bring forward a fascinating controversy of the tormented times between the Persian and the Arab conquests of Egypt. Its settlement testifies to the operative force of law, legal awareness of its users, and dispute-resolution strategies in an environment of intrinsic legal plurality. A new text edition, providing an in-depth study of this material, delving into the dispute resolution method, rhetorics, and proper reconstruction of the events, is presently in the works. Before it is published, we would like to present here an aspect of this matter, closely connected to the very origin of the dispute, viz. our hypothesis on the nature of the security provided by the borrower, the widow Thekla, to her creditors, the consorts Philemon and Thekla. This central matter of the *P. Budge* controversy witnesses the profound legal awareness of its parties. Operating within the legal framework provided by Roman law, and without attempts to transgress it, the law-users of seventh-century Edfu managed to bend and form it to serve best their needs, creating a flexible form of security,

fitting the circumstances of Thekla-the-Widow and the creditors couple. It is amazing to see how, even at the dusk of its domination of Egypt, the Roman legal *forma mentis* was so strongly present in this inherently plural society.

Keywords: Edfu, arbitration, late antique Egypt, securities, *hypotheke-prasis*, *dikaia time*, legal practice, *apotage*, *hypothekimaia asphaleia*.

Book review 339