



O P V S C V L A

A R C H Æ O L O G I C A

IZDAVAČ / PUBLISHER

ARHEOLOŠKI ZAVOD FILOZOFSKOG FAKULTETA SVEUČILIŠTA U ZAGREBU
DEPARTMENT OF ARCHAEOLOGY, FACULTY OF HUMANITIES AND SOCIAL SCIENCES, UNIVERSITY OF ZAGREB

IZDAVAČKI SAVJET / EDITORIAL ADVISORY BOARD

Rajko BRATOŽ (Ljubljana), Andreas LIPPERT (Wien), Juraj PAVUK (Nitra),
Guido ROSADA (Padova), Elisabeth WALDE (Innsbruck), Nives MAJNARIĆ-PANDŽIĆ (Zagreb),
Petar SELEM (Zagreb), Tihomila TEŽAK-GREGL (Zagreb), Marin ZANINOVIĆ (Zagreb)

GLAVNI I ODGOVORNI UREDNICI / EDITORS

Helena TOMAS i Domagoj TONČINIĆ

UREDNIŠTVO / EDITORIAL BOARD

Helena TOMAS, Domagoj TONČINIĆ, Rajna ŠOŠIĆ, Dino DEMICHELI, Iva KAIĆ
svi iz Zagreba / all from Zagreb

GRAFIČKO OBLIKOVANJE / GRAPHIC DESIGN

Miljenko GREGL

ADRESA IZDAVAČA / ADDRESS OF THE PUBLISHER

Arheološki zavod Filozofskog fakulteta
Department of Archaeology, Faculty of Humanities and Social Sciences
10000 ZAGREB – CROATIA
I. LUČIĆA 3 – P.O. BOX 171

TISAK / PRINTED BY

AKD d.o.o.

RAČUNALNI PRIJELOM / COMPUTER LAYOUT

Ivana SUDAREVIĆ & Boris BUI for FF-press

LEKTOR / LANGUAGE EDITOR

Ivan MARKOVIĆ

(Tekst Zlatka Đukića lektorirala je Tatjana Pišković)

PRIJEVOD NA ENGLISKI / TRANSLATION TO ENGLISH

Edward BOSNAR, Apostrof d.o.o.

GODIŠNJAK / ANNUAL

NAKLADA / ISSUED

600 primjeraka – 600 copies

Izdavanje časopisa novčano podupiru

MINISTARSTVO ZNANOSTI, OBRAZOVANJA I ŠPORTA REPUBLIKE HRVATSKE i MINISTARSTVO KULTURE REPUBLIKE HRVATSKE

Publishing of the journal financially supported by

MINISTRY OF SCIENCE, EDUCATION AND SPORTS OF THE REPUBLIC OF CROATIA and
MINISTRY OF CULTURE OF THE REPUBLIC OF CROATIA

Službena kratica ovoga časopisa je *Opusc.archaeol. (Zagreb)* / Official abbreviation of this journal's title is *Opusc.archaeol. (Zagreb)*

URL: www.ffzg.hr/arheo/opuscula

Dostupno na / Available at Ebsco Publishing (www.ebscohost.com)

Tiskano 2011. / Printed in 2011

O P V S C V L A

ARCHÆOLOGICA

2011

FILOZOFSKI FAKULTET
SVEUČILIŠTA U ZAGREBU
FACULTY OF HUMANITIES
AND SOCIAL SCIENCES,
UNIVERSITY OF ZAGREB

RADOVI ARHEOLOŠKOG ZAVODA
PAPERS OF THE DEPARTMENT
O F A R C H A E O L O G Y

SADRŽAJ

CONTENTS

<i>Zlatko PERHOČ & Rainer ALTHERR</i>	LITIČKI NALAZI S OTOKA SUŠCA LITHIC FINDS FROM THE ISLAND OF SUŠAC <i>Izvorni znanstveni članak / Original scientific paper</i> _____	7
<i>Hrvoje KALAFATIĆ</i>	PRILOG POZNAVANJU ODNOSA GRUPE BARICE-GREĐANI, “BEBRINSKOG TIPA HATVANSKE KULTURE”, “BRODSKE KULTURE” I “POSAVSKE KULTURE” A CONTRIBUTION TO AN UNDERSTANDING OF THE RELATIONSHIP BETWEEN THE BARICE-GREĐANI GROUP, THE “BEBRINA-TYPE HATVAN CULTURE”, THE “BROD CULTURE” AND “POSAVINA CULTURE” <i>Izvorni znanstveni rad / Original scientific paper</i> _____	41
<i>Zoran ČUČKOVIĆ & Lazo ČUČKOVIĆ</i>	ARHEOLOŠKO ISTRAŽIVANJE NA STAROM GRADU DUBOVCU 2001. GODINE ARCHAEOLOGICAL RESEARCH AT THE OLD CASTLE OF DUBOVAC IN 2001 <i>Izvorni znanstveni rad / Original scientific paper</i> _____	65
<i>Ivan MATIJEVIĆ & Anamarija KURILIĆ</i>	DVA NEOBJAVLJENA ŽRTVENIKA IZ SALONE TWO UNPUBLISHED ALTARS FROM SALONA <i>Izvorni znanstveni rad / Original scientific paper</i> _____	133
<i>Branko MATULIĆ</i>	PODNI MOZAIICI IZ TERMI U BLIZINI SALONITANSKE LUKE FLOOR MOSAICS FROM THE BATHS NEAR THE SALONA HARBOUR <i>Izvorni znanstveni rad / Original scientific paper</i> _____	167
<i>Anita RAPAN PAPEŠA</i>	TOPOGRAFIJA CIBALA U KASNOJ ANTICI TOPOGRAPHY OF CIBALAE IN LATE ANTIQUITY <i>Pregledni članak / Review paper</i> _____	189
<i>Anja BERTOL</i>	NALAZI RIMSKOG NOVCA S LOKALITETA VIROVITICA-KIŠKORIJA JUG I OREŠAC ROMAN COINS FROM THE VIROVITICA-KIŠKORIJA SOUTH AND OREŠAC SITES <i>Izvorni znanstveni rad / Original scientific paper</i> _____	225
<i>Ana PAVLOVIĆ</i>	NUMIZMATIČKI NALAZI S LOKALITETA ŠEPKOVČICA NUMISMATIC FINDS FROM THE ŠEPKOVČICA SITE <i>Izvorni znanstveni rad / Original scientific paper</i> _____	263
<i>Zlatko Đukić</i>	ODNOSI SUDIONIKA PLOVIDBENOGA POTHVATA U STAROME VIJEKU LEGAL STATUS OF THE PARTIES TO MARINE VENTURES IN THE ANCIENT WORLD <i>Izvorni znanstveni rad / Original scientific paper</i> _____	297

Tajana PLEŠE

MONASTERIUM DE S. PETRI IN MONTE ZLAT

MONASTERIUM DE S. PETRI IN MONTE ZLAT

Izvorni znanstveni rad / Original scientific paper _____ 319

UREDNICI / EDITORS

UPUTE ZA SURADNIKE ČASOPISA

OPUSCULA ARCHAEOLOGICA

INSTRUCTIONS FOR CONTRIBUTORS TO

THE JOURNAL *OPUSCULA ARCHAEOLOGICA* _____ 351

Zlatko ĐUKIĆ

ODNOSI SUDIONIKA PLOVIDBENOGA POTHVATA U STAROME VIJEKU

LEGAL STATUS OF THE PARTIES TO MARINE VENTURES IN THE ANCIENT WORLD

Izvorni znanstveni rad / Original scientific paper

UDK / UDC 344.6:904]"652"

Primljeno/Received: 1. 10. 2010.

Prihvaćeno/Accepted: 3. 12. 2010.

Zlatko Đukić
Filozofski fakultet u Osijeku
Lorenza Jäger 9
HR-31000 Osijek
zdukic@ffos.hr

U radu se opisuju povijesno-pravni odnosi osoba koje su sudjelovale u plovidbi rijekom, jezerom i morem, što se može pratiti u kontinuitetu od najstarijih civilizacija. Osnovni cilj te aktivnosti bio je povezivanje različitih tržišta radi izvoza vlastitih proizvoda i uvoza trgovačkih artikala koji su nedostajali na domaćemu tržištu.

Najstariji dosad sačuvani i poznati pravni spomenici koji reguliraju plovidbu i odnose vezane uz nju nađeni su u Bilalaminu zakoniku i u babilonskomu zakoniku kralja Hamurabija. Poznate su i pravne zasade istočnih naroda koje su preko Kaldejaca, Egipćana i Feničana dospjele na obale Sredozemnog mora. Zahvaljujući tomu do našega vremena sačuvan pravni slijed propisa pomorskoga prava mediteranske civilizacije. Uloga brodarka mijenjala se kroz povijest i nije se osobito razlikovala od brodovlasničke uloge. U zakonicima koji su regulirali plovidbu i pravne odnose subjekata plovidbenoga pothvata (od Bilalaminu zakonika preko Hamurabijeva zakonika i Rodskog zakonika o izbacivanju (tereta) do Rimskoga prava) može se primijetiti da plovidbom upravlja isključivo brodovlasnik (dominus navis) koji je ujedno zapovjednik broda, ali i trgovac jer obavlja razmjenu dobara. Postavlja se pitanje je li vlasnik broda bio sposoban obavljati najmanje tri različita posla.

U Rimskome se pravu potvrđuje da to nije bilo idealno rješenje jer se već ondje razlikuje zapovjednik broda

This work describes the historical and legal status of the individuals who participated in sailing ventures on rivers, lakes and the sea, which can be followed in continuity since the oldest civilizations. The basic objective of these activities was to link various markets in order to export products and import merchandise absent on a given local market.

The oldest thus far preserved and known legal provisions that regulate such water-borne ventures and the ensuing relations were found in the Laws of Eshnunna and the Babylonian Code of Hammurabi. Also known are the legal tenets of oriental peoples which, via the Chaldeans, Egyptians and Phoenicians, made their way to the shores of the Mediterranean Sea. Thanks to this, the sequence of maritime codes used by the Mediterranean civilizations has been preserved to this day. The role of sailors changed over the course of history, and it did not particularly differ from the role of shipowners. In the codes which governed seafaring and the legal relations between participants in sailing ventures (from the Laws of Eshnunna through the Code of Hammurabi and the Rhodian Sea Law of Jettison to Roman law), it is notable that navigation is managed exclusively by the shipowner (dominus navis) who is also the ship's commander, but also a merchant, for this individual exchanged goods. The question arises as to whether the actual owner of a vessel was capable of dealing with three different jobs.

(magister navis) od osobe koja vodi pomorsku djelatnost, tj. od brodarka (exercitor navis).

Ključne riječi: subjekti plovidbe i trgovine

Roman law confirms that this was not an ideal solution, for already by that point a distinction was drawn between the shipmaster (magister navis) and the person who engaged in maritime activity, i.e. the shipowner (exercitor navis).

Key words: participants in seafaring and trade

UVOD

Bržemu gospodarskom razvoju većih gradova na obali pridonio je lakši transport viška dobara koji su stanovnici posjedovali, kao i lakša dobava onih roba koje su nedostajale na domaćemu tržištu. Vodeći su narodi toga vremena uglavnom bili pomorci. Najstariji dosad sačuvani i poznati pravni spomenici koji reguliraju plovidbu i odnose vezane uz nju nađeni su u Bilalaminu zakoniku (Linfield 1919; Langdon 1920; Jastrow 1921; Goetze 1949; Silver 1983; Višić 1989: 100–104, n. 1) i u babilonskome zakoniku kralja Hamurabija (Johns 1904; Linfield 1919; Langdon 1920; Pfeiffer 1920; Višić 1989: 104–123, n. 2). Poznate su i pravne zasade istočnih naroda koje su preko Kaldejaca, Egipćana i Feničana dospjele na obale Sredozemnog mora. Zahvaljujući tomu do našega je vremena sačuvan pravni slijed propisa pomorskoga prava mediteranske civilizacije. Pomorsko-pravni odnosi robovlasničkoga razdoblja, čiji su temelji postavljeni u pretklasičnim civilizacijama, nastavili su se i u grčkome i rimskome dobu.

U kronološkome slijedu Bilalamin zakonik jedan je od najstarijih “tehničkih okvira” koji je zapovjedniku broda s posadom jamčio sigurnije obavljanje trgovačkih operacija na rijekama, jezerima ili morima. Nastao je već početkom 20. stoljeća prije Krista (Linfield 1919; Langdon 1920; Jastrow 1921; Goetze 1949; Silver 1983; Višić 1989: 100–104, n. 3).

Hamurabijev zakon iz prve polovice 18. stoljeća prije Krista bio je kazuistički kazneni zakon, što znači da se u njemu ne primjenjuju suvremena pravna tehnika i sistematizacija. Ipak, njegove odredbe možemo izdvojiti u određene skupine (npr. stvarno pravo – vlasništvo, posjed, služnosti; obvezno pravo). Obvezno-pravni ugovori sljedeći su: kupoprodaja, zakup, najam i osobni najam (ugovor o radu), zajam, ugovorna pogodba, ostava, nalog i ugovor o društvu (ortakluk). Kao platežno sredstvo koristili su se ulje, žito i kovine (srebro) (Johns 1904; Linfield 1919; Langdon 1920; Pfeiffer 1920; Višić 1989: 104–123, n. 4; Casson 1990).

Spomenuti elementi koji su regulirali plovidbu poznati su iz Rodskoga zakonika o izbacivanju (tereta) – *Lex Rhodia de iactu*, za koji Hribar (1965: 468) drži da “potječe još od Feničana, te je bio u primjeni na

INTRODUCTION

The easier transportation of surplus goods and the easier procurement of goods absent on a given market facilitated the more rapid economic development of coastal cities. The leading peoples of the time were generally involved in seafaring. The oldest thus far preserved and known legal provisions that regulate navigation and the ensuing relations were found in the Laws of Eshnunna (Linfield 1919; Langdon 1920; Jastrow 1921; Goetze 1949; Silver 1983; Višić 1989: 100–104, n. 1) and the Babylonian Code of Hammurabi (Johns 1904; Linfield 1919; Langdon 1920; Pfeiffer 1920; Višić 1989: 104–123, n. 2). Also known are the legal tenets of the oriental peoples which, via the Chaldeans, Egyptians and Phoenicians, made their way to the shores of the Mediterranean Sea. Thanks to this, the sequence of maritime codes of the Mediterranean civilizations has been preserved to this day. The maritime law of the slave-owning era, with its foundations set in the pre-Classical civilizations, continued into the Ancient Greek and Roman eras.

Chronologically, the Laws of Eshnunna constitute among the oldest “technical frameworks” which guaranteed shipmasters the more secure performance of mercantile operations on rivers, lakes or seas. This code already appeared in the early twentieth century BC (Linfield 1919; Langdon 1920; Jastrow 1921; Goetze 1949; Silver 1983; Višić 1989: 100–104, n. 3).

The Code of Hammurabi, from the first half of the eighteenth century BC, was a casuistic penal code, which means that contemporary legal techniques and systemization are not applied therein. Even so, its provisions may be divided into certain groups (e.g. substantive law – title, possession, easement; contract law). The contractual concepts encompassed are: sale, lease, hiring (labour contract), loan, barter, deposit, pledge and partnership. Means of payment included oil, grain and precious metals (silver) (Johns 1904; Linfield 1919; Langdon 1920; Pfeiffer 1920; Višić 1989: 104–123, n. 4; Casson 1990).

These elements regulating navigation were known from the Rhodian Law on Jettison (*Lex Rhodia de iactu*), which according to Hribar (1965: 468)

Sredozemlju još u 4. vijeku prije naše ere". Drugim riječima, Feničani su bili svojevrsan most između mezopotamskih pravnih normi u pomorstvu i onih u Grčkoj. U grčkoj kulturi postoje brojni pokazatelji vezanosti te države za pomorsku trgovačku navigaciju i drugim pravnim rješenjima, najčešće na razini uočljivih tragova očuvanih u nekim od Demostenovih govora, u Aristotelovu *Ustavu atenske* (Majnarić 1948) i sl. Ta će grčka pravna rješenja biti primijenjena u klasičnome rimskom pravu, uključujući i njegovu kodifikaciju u Justinijanovo doba (*Corpus iuris civilis*). Najcjelovitiji je Rodski pomorski zakonik (*Nomos Rhodion nautikos*), koji je, kako se uglavnom drži, kodificiran između 7. i 9. stoljeća po. Krista (Benedict 1909; Hribar 1965: 468, n. 5; Grabovac 1991: 100–101; 1994; Goldstein & Anić 1999).

Rodski pomorski zakonik bit će *summa* svega onoga što se tijekom staroga vijeka željelo kodificirati radi pravnoga osiguranja trgovačke navigacije. To je ujedno spona prema srednjovjekovnim pravnim spomenicima, pa tako i prema hrvatskim primorskim komunalnim statutima.

SUBJEKTI PLOVIDBENOGA POTHVATA

Najvažniji su subjekti plovidbenoga pothvata brodovlasnik, zapovjednik broda, brodska posada i trgovac.

BRODOVLASNIK

Brodovlasnik (*exercitor navis*) fizička je ili pravna osoba kojoj pripada pravo vlasništva nad brodom (Pallua 1972: 617; Bogen 1992: n. 6).

Bilalamin zakonik u Odredbi 6. uređuje vlasništvo na brodu. Iz te je odredbe vidljivo da je vlasništvo nad brodom bilo zaštićena kategorija jer je vlasnik broda imao pravo na novčanu naknadu ako mu je brod bio privremeno oduzet. "Ako čovjek (koji se zatekne u velikoj opasnosti) uzme u posjed (tuđi) brod, platit će deset šekela srebra" (prema Višić 1989: 101, n. 7, Odredba 6).

U Hamurabijevu zakoniku opisana je sanacija štete u Odredbi 238. kojom se određuje odgovornost brodaru u slučaju potapanja drugoga broda. Brodar tada mora osposobiti brod za plovidbu i isplatiti novčani iznos jednak polovici vrijednosti broda. "Ako brodar potopi brod (slobodna) čovjeka, pa ga zatim osposobi za plovidbu, polovicu njegove vrijednosti dat će u srebru" (prema Višić 1989: 121, n. 8, Odredba 238).

"originated with the Phoenicians, and was applied in the Mediterranean since the fourth century BC". In other words, the Phoenicians served as something of a bridge between the Mesopotamian legal norms in seafaring and those applied in Greece. In Greek culture, there were numerous indicators of this country's links with maritime mercantile ventures and other legal solutions, most often at the level of notable traces in the some of the speeches of Demosthenes, in Aristotle's *Constitution of Athens* (Majnarić 1948) and elsewhere. These Greek legal solutions were then applied in classical Roman law, including its codification in the Justinian era (*Corpus iuris civilis*). The most comprehensive is the Rhodian Sea Law (*Nomos Rhodion nautikos*) which – as is generally believed – was codified between the seventh and ninth centuries AD (Benedict 1909; Hribar 1965: 468, n. 5; Grabovac 1991: 100-101; 1994; Goldstein & Anić 1999).

The Rhodian Sea Law served as the *summa* of everything that needed to be codified in the ancient world in order to provide legal insurance for merchant seafaring. It is also a link to medieval legal texts, including the law codes of Croatian coastal communes.

PARTICIPANTS IN MARINE VENTURES

The most important participants in the marine venture were the shipowner, shipmaster, crew and merchant.

SHIPOWNER

The shipowner (*exercitor navis*) was a natural or legal person who held title to the vessel (Pallua 1972: 617; Bogen 1992: n. 6).

The Laws of Eshnunna, in law no. 6, govern ownership of a vessel. This provision makes it clear that ownership of a vessel was a protected category, because the shipowner was entitled to remuneration if the ship was temporarily alienated: "If a man (in great danger) takes possession of (another's) ship, he shall pay ten silver shekels" (according to Višić 1989: 101, n. 7, Law 6).

In the Code of Hammurabi, compensation of damages is stipulated in Law 238, which regulates the responsibility of a shipowner in case of the wreck of another's vessel. The shipowner must then repair the vessel to make it suitable for navigation and pay half the value of said vessel: "If a sailor wreck any one's ship, but saves it, he shall pay the half of its value in money" (based on Višić 1989: 121, n. 8, Law 238).

U Rodskome zakoniku o izbacivanju (tereta), u odredbi koja je sačuvana u Digestama pod brojem Dig. 14.2.2.8, opisuje se brodovlasnik koji se ne obazire na opasnost u kojoj se nalazi brod te zanemaruje izbacivanje tereta i opreme u more. “*Res autem iacta domini manet nec fit adprehendentis, quia pro derelicto non habetur*” (Mommsen & Krüger 1988: 220, n. 9, Odredba Dig. 14.2.2.8).

U Rimskome pravu postojao je institut *Actio exercitoria*. Riječ je o pretorskoj tužbi kojom se štiti vjerovnik (naručitelj posla) koji je zaključio ugovor s osobom suženih osobnih i imovinskih prava (*alieni iuris*), tj. sa zapovjednikom broda ili poslovođom. Pritom nije bilo važno radi li se o osobi u srodstvu, o robovima ili o namještenicima. Ako je vjerovnik smatrao da je zakinut u svojim pravima iz ugovora, imao je pravo na tužbu protiv oca ili brodovlasnika koji je odgovarao za sve obveze iz zaključenoga ugovora, čak i onda kad je te obveze zanemarila podređena mu posada.

ZAPOVJEDNIK

Zapovjednik broda (*magister navis*; engl. *master*, franc. *capitaine*, njem. *Kapitän*) glavni je starješina na brodu, pa njegova naređenja, izdana u okviru zakonskih ovlaštenja, moraju izvršavati svi članovi posade i sve ostale osobe na brodu (Žabkar 1989: 576, n. 10).

Kroz povijest se uloga zapovjednika mijenjala, a zahvaljujući Rimskom pravu on se “osamostalio”, tj. tu zadaću više nije obavljao isključivo vlasnik broda, nego osoba koja se brinula za navigaciju i sigurnost broda.

Prvi zakonic koji su regulirali plovidbu (Bilalamin i Hamurabijev) nisu poznavali pravnu kategoriju zapovjednika broda (Maitland 1903; Johns 1904; Isaacs 1919; Linfield 1919; Langdon 1920; Pfeiffer 1920; Jastrow 1921; Goetze 1949; Jasić 1968; Silver 1983; Višić 1989: 100–123, n. 11).

Tek u Rodskome zakoniku o izbacivanju (tereta) razlikuju se vlasnik broda, trgovci i zapovjednik broda (Marchetti Ferrante 1905; Perdicas 1939; Mommsen & Krüger 1988: 220, n. 12; Cohen 1944; 1944a; 1989).

Tako se u Odredbi broj Dig. 14.2.2. navode kategorije subjekata pomorskoga pothvata, uvodi se razlika između vlasnika broda, trgovca i zapovjednika broda. “*Si laborante nave iactus factus est, amissarum mercium domini, si merces vehendas locaverant, ex locato cum magistro navis agere debent : is deinde cum reliquis, quorum merces salvae sunt, ex conducto, ut detrimentum pro portione communicetur, agere potest. Servius quidem respondit ex locato agere cum magistro navis debere, ut ceterorum*

The Rhodian Law of Jettison, in a provision preserved in the Digest (Pandects) under number Dig. 14.2.2.8, describes a shipowner who ignores the peril to a ship and neglects jettisoning cargo and tackle. “*Res autem iacta domini manet nec fit adprehendentis, quia pro derelicto non habetur*” (Mommsen & Krüger 1988: 220, n. 9, Dig. 14.2.2.8).

The institution of *Actio exercitoria* existed in Roman law. This was a praetorian action which protected a contractual creditor (client) who concluded a contract with a dependent individual – *alieni iuris* (regardless of whether this was a relation, slave or appointee) – i.e., the shipmaster or foreman. The creditor, if he felt his contractual rights had been curtailed, had the right to file suit against his father or shipowner who unlimited liability for all obligations under the concluded contract, incurred by the crew subordinate to him.

SHIPMASTER

The shipmaster (*magister navis*; Fr. *capitaine*, Ger. *Kapitän*) is the chief officer on board, so his orders, issued within the framework of his legal authority, must be obeyed by all crew members and all other individuals on board (Žabkar 1989: 576, n. 10).

Over the course of history, the role of the shipmaster has changed, but thanks to Roman law he became “independent”, i.e., this task was no longer performed exclusively by the shipowner, but rather the person who saw to navigation and vessel safety.

The first codes regulating navigation (Laws of Eshnunna and Hammurabi’s Code) did not recognize the shipmaster (captain/commander) as a legal category (Maitland 1903; Johns 1904; Isaacs 1919; Linfield 1919; Langdon 1920; Pfeiffer 1920; Jastrow 1921; Goetze 1949; Jasić 1968; Silver 1983; Višić 1989: 100–123, n. 11).

It was only the Rhodian Law of Jettison which distinguished between the shipowner, merchant and shipmaster (Marchetti Ferrante 1905; Perdicas 1939; Mommsen & Krüger 1988: 220, n. 12; Cohen 1944; 1944a; 1989).

Thus, Book XIV of the Digest (Dig. 14.2.2.) specifies the categories of participants in a seafaring venture, introducing the differences between shipowner, merchant and shipmaster. “*Si laborante nave iactus factus est, amissarum mercium domini, si merces vehendas locaverant, ex locato cum magistro navis agere debent: is deinde cum reliquis, quorum merces salvae sunt, ex conducto, ut detrimentum pro portione communicetur, agere potest. Servius quidem respondit ex locato agere cum magistro navis debere, ut ceterorum vectorum merces*

vectorum merces retineat, donec portionem damni praestent. Immo etsi 'non' retineat merces magister, ultro ex locato habiturus est actionem cum vectoribus : quid enim si vectores sint, qui nullas sarcinas habeant? Plane commodius est, si sint, retinere eas. At si non totam navem conduxerit, ex conducto aget, sicut vectores, qui loca in navem conduxerunt : aequissimum enim est commune detrimentum fieri eorum, qui propter amissas res aliorum consecuti sunt, ut merces suas salvas haberent" (Mommsen & Krüger 1988: 220, n. 13, *Odredba Dig. 14.2.2*).

U *Odredbi broj 14.2.2.2. regulira se nadoknada štete kad se brod nađe u nevolji, što je povezano s razlikovanjem vlasnika i zapovjednika broda i trgovaca. Kao kategorija posebno se ističe zapovjednik broda i njegova odgovornost vezana za nadoknadu štete. Naglašava se da je tomu tako zato što se zapovjednik broda našao u nevolji, pa je morao izbaciti opremu i teret s broda u more. "Cum in eadem nave varia mercium genera complures mercatores coegissent praeterea que multi vectores servi liberique in ea navigarent, tempestate gravi orta necessario iactura facta erat : quaesita deinde sunt haec : an omnes iacturam praestare oporteat et si qui tales merces imposuissent, quibus navis non oneraretur, velut gemmas margaritas? Et quae portio praestanda est? Et an etiam pro liberis capitibus dari oporteat? Et qua actione ea res expediri possit? Placuit omnes, quorum interfuisset iacturam fieri, conferre oportere, quia id tributum observatae res deberent : itaque dominum etiam navis pro portione obligatum esse. Iacturae summam pro rerum pretio distribui oportet. Corporum liberorum aestimationem nullam fieri posse. Ex conducto dominos rerum amissarum cum nauta, id est cum magistro acturos. Itidem agitatam est, an etiam vestimentorum cuiusque et anulorum aestimationem fieri oporteat : et omnium visum est, nisi si qua consumendi causa imposita forent, quo in numero essent cibaria : eo magis quod, si quando ea defecerint in navigationem, quod quisque haberet in commune conferret."* (Mommsen & Krüger 1988; 220, n. 14, *Odredba 14.2.2.2; Paulo 1989*).

U *Rodskome pomorskom zakoniku u Ulomcima 1-7, 14. i 19. također se razlikuju kategorije osoba koje se nalaze na brodu. "A master's pay two shares; a steersman's one share and a half; a master's mate's one share and a half; a carpenter's one share and a half; a boatswain's one share and a half; a sailor's one share; a cook's (?) half a share"* (Ashburner 2001: 57, 62, 68, n. 15, *Ulomci 1-7*). "If a passenger comes on board and has gold, let him deposit it with the captain. If he does not deposit it and says, 'I have lost gold or silver', no effect is to be given to what he

retineat, donec portionem damni praestent. Immo etsi 'non' retineat merces magister, ultro ex locato habiturus est actionem cum vectoribus : quid enim si vectores sint, qui nullas sarcinas habeant? Plane commodius est, si sint, retinere eas. At si non totam navem conduxerit, ex conducto aget, sicut vectores, qui loca in navem conduxerunt : aequissimum enim est commune detrimentum fieri eorum, qui propter amissas res aliorum consecuti sunt, ut merces suas salvas haberent" (Mommsen & Krüger 1988: 220, n. 13, *Dig. 14.2.2*).

The provision contained in 14.2.2.2. regulates the compensation of damages when a ship is in peril, which is linked to the distinction between the owner and master of a vessel and the merchants. Particular emphasis is placed on the shipmaster and his liability tied to indemnification. This is stipulated for those cases in which a shipmaster was in jeopardy and was compelled to jettison cargo. "Cum in eadem nave varia mercium genera complures mercatores coegissent praeterea que multi vectores servi liberique in ea navigarent, tempestate gravi orta necessario iactura facta erat: quaesita deinde sunt haec: an omnes iacturam praestare oporteat et si qui tales merces imposuissent, quibus navis non oneraretur, velut gemmas margaritas? Et quae portio praestanda est? Et an etiam pro liberis capitibus dari oporteat? Et qua actione ea res expediri possit? Placuit omnes, quorum interfuisset iacturam fieri, conferre oportere, quia id tributum observatae res deberent: itaque dominum etiam navis pro portione obligatum esse. Iacturae summam pro rerum pretio distribui oportet. Corporum liberorum aestimationem nullam fieri posse. Ex conducto dominos rerum amissarum cum nauta, id est cum magistro acturos. Itidem agitatam est, an etiam vestimentorum cuiusque et anulorum aestimationem fieri oporteat: et omnium visum est, nisi si qua consumendi causa imposita forent, quo in numero essent cibaria: eo magis quod, si quando ea defecerint in navigationem, quod quisque haberet in commune conferret" (Mommsen & Krüger 1988; 220, n. 14, *14.2.2.2; Paulo 1989*).

In excerpts 1-7, 14 and 19 from the Rhodian Sea Law, a distinction is also made between the categories of individuals on board a vessel: "A master's pay two shares; a steersman's one share and a half; a master's mate's one share and a half; a carpenter's one share and a half; a boatswain's one share and a half; a sailor's one share; a cook's (?) half a share" (Ashburner 2001: 57, 62, 68, n. 15, excerpts 1-7). "If a passenger comes on board and has gold, let him deposit it with the captain. If he does not deposit it and says, 'I have lost gold or silver', no effect is to be given to what he says, since he did not deposit it

says, since he did not deposit it with the captain” (*ibid.* 57, 62, 68, n. 15, Ulomak 14). “Captains in actual command, where they contribute not less than three-fourths in value of the ship, wherever they are dispatched, may enter into agreements how they are to borrow money and send it on board ship either for the season or for a voyage, and what they have agreed upon is to prevail; and he who lent the money is to send a man to receive payment (?)” (*ibid.* 57, 62, 68, n. 15, Ulomak 19).

Sljedećom skupinom odredaba reguliraju se kaznena djela krađe ili pljačke u kojima sudjeluju subjekti plovidbenoga pothvata.

Tako se u Odredbi 2. zapovjednik broda proglašava odgovornom osobom za nadoknadu štete i na brodu i na teretu. U Odredbi se spominje slučaj kad mornari po nalogu zapovjednika broda ukradu sidra s drugoga broda. Kazna za ukradenu brodsku opremu jednaka je dvostrukoj vrijednosti ukradene opreme. “The sailors of ship A by direction of their captain steal the anchors of ship B, which is lying in harbour or on a beach. Ship B is thereby lost. If this is conclusively proved, let the captain who directed the theft make good all the damage to ship B and its contents. If any one steals the tackle of a ship or any article in use on board, i.e. ropes, cables, sails, skins, boats, and the like, let the thief make them good twice over.” (*ibid.* 79, n. 16, Odredba 2).

Odredbom 3. regulira se pravo opljačkanih da od zapovjednika broda dobiju novčani iznos jednak dvostrukoj vrijednosti ukradene opreme. Za razliku od zapovjednika broda, koji podliježe samo novčanoj kazni, mornar koji je počinio kazneno djelo pljačke kažnjava se i fizički (određenim brojem udaraca) i novčano (mora isplatiti iznos koji je otuđio oštećenoj osobi). “A sailor by the captain’s order robs a merchant or passenger. The sailor is detected and caught. Let the captain make good the damage twofold to those who were robbed, and let the sailor receive a hundred blows. If the sailor commits the theft of his own accord and is caught or convicted by witnesses, let him be well beaten, especially if the thing stolen is money, and let him make good the loss to the person robbed” (*ibid.* 81, n. 17, Odredba 3).

U Odredbi 4. određuje se da zapovjednik broda mora putnicima nadoknaditi štetu ako zbog svoje tvrdoglavosti dovede brod na mjesto puno gusara i lopova. Ako putnici navedu zapovjednika broda na pogrešan put, snose svu nastalu štetu. “The captain brings the ship into a place which is infested by thieves or pirates, although the passengers testify to the captain what is at fault with the place. There is a robbery. Let the captain make the loss good to the sufferers. On the other hand, if the passengers bring

with the captain” (*ibid.* 57, 62, 68, n. 15, excerpt 14). “Captains in actual command, where they contribute not less than three-fourths in value of the ship, wherever they are dispatched, may enter into agreements how they are to borrow money and send it on board ship either for the season or for a voyage, and what they have agreed upon is to prevail; and he who lent the money is to send a man to receive payment (?)” (*ibid.* 57, 62, 68, n. 15, excerpt 19).

The next set of provisions regulate the crimes of theft and plunder in which the participants in a seafaring venture take part.

Thus, in Title 2, the shipmaster is declared liable for compensation of damages to the ship and its cargo. This section mentions a case when sailors steal the anchor from another vessel at the order of the shipmaster. The penalty for stolen vessel gear is double the value of said stolen gear. “The sailors of ship A by direction of their captain steal the anchors of ship B, which is lying in harbour or on a beach. Ship B is thereby lost. If this is conclusively proved, let the captain who directed the theft make good all the damage to ship B and its contents. If any one steals the tackle of a ship or any article in use on board, i.e. ropes, cables, sails, skins, boats, and the like, let the thief make them good twice over” (*ibid.* 79, n. 16, Title 2).

Title 3 regulates the right of the victims of theft to received from the shipmaster a sum double the value of the stolen gear. As opposed to the shipmaster, who is only subject to a monetary fine, the sailor who perpetrates the crime of theft is also subject to corporeal punishment (a set number of blows) and a fine (he must pay the amount taken from the damaged party). “A sailor by the captain’s order robs a merchant or passenger. The sailor is detected and caught. Let the captain make good the damage twofold to those who were robbed, and let the sailor receive a hundred blows. If the sailor commits the theft of his own accord and is caught or convicted by witnesses, let him be well beaten, especially if the thing stolen is money, and let him make good the loss to the person robbed” (*ibid.* 81, n. 17, Title 3).

Title 4 specifies that a shipmaster must compensate damages to passengers if he brings the vessel to the vicinity of pirates or thieves due at his own insistence. If the passengers compel the shipmaster to take such a course, they assume liability for all ensuing damages. “The captain brings the ship into a place which is infested by thieves or pirates, although the passengers testify to the captain what is at fault with the place. There is a robbery. Let the captain make the loss good to the sufferers. On the other hand, if the passengers bring the ship in spite of the captain’s protests and something untoward happens, let the passengers bear the loss” (*ibid.* 83, n. 18, Title 4).

the ship in in spite of the captain's protests and something untoward happens, let the passengers bear the loss." (*ibid.* 83, n. 18, Odredba 4).

U Odredbi 8. propisuje se zapljena imovine zapovjednika broda i mornara ako utaje i pronevjere zlato koje im je povjereno u prijevozu. Pritom se zapljenjuje sva njihova imovina, bez obzira na to radi li se o pokretninama ili nekretninama. "The captain to whom the ship is entrusted sets sail and runs away into another country with gold by will of the sailors. All their possessions, movable, immovable, and self-moving, as many as belong to them, are to be seized. Unless the amounts which these fetch in a sale make up the equivalent of the ship and the profits of the time (during which they were absent), let the sailors with the deputy captain be let out and make up the full amount of the loss" (*ibid.* 85, n. 19, Odredba 8).

U Odredbi 13. određuje se da putnik koji je pristigao na brod mora predati zlato ili novac koji posjeduje zapovjedniku broda na čuvanje. U Odredbi se ističe da putnik nema pravo na nadoknadu štete ako prijavi nestanak imovine koju nije predao zapovjedniku broda. "If a passenger comes on board and has gold or something else, let him deposit it with the captain. If he does not deposit it and says 'I have lost gold or silver,' no effect is to be given to what he says. But the captain and the sailors, all those on board together, are to take an oath." (*ibid.* 94, n. 20, Odredba 13).

U Odredbi 15. Rodskoga pomorskog zakonika određuju se obaveze zapovjednika broda koji primi polog. Opisuje se slučaj napada na brod koji je uplovio u luku, a njegov je zapovjednik primio kao polog novac i druge dragocjenosti. Zapovjednik je naredio da se brod napusti, no brod i sva roba na njemu ipak su ostali sačuvani. Tada se svakomu mora vratiti ono što mu pripada, a onima koji su ranije napustili brod valja poslati njihova dobra. Ako s broda nestane rob koji je zapovjedniku bio predan kao polog, vlasnik roba ima pravo na nadoknadu štete. "A ship carries passengers or merchants or slaves whom the captain has taken in deposit. The captain comes to a city or harbour or shore, and some leave the ship. Robbers give chase or pirates make an attack and the captain gives the signal and gets away. The ship is saved with the property of the passengers and merchants that is on board. Let each receive back his own goods, and let those who went out receive back their respective goods and chattels. If any one is minded to pick a quarrel with the captain for leaving him on shore in a place infested by robbers, no effect is to be given to what he says because it was only when they were pursued that the captain and crew fled. If a merchant or

Title 8 stipulates the seizure of the possessions of a shipmaster and sailor if they defraud or embezzle gold entrusted to them for transport. In this case, all of their possessions, both chattels and real property, are seized. "The captain to whom the ship is entrusted sets sail and runs away into another country with gold by will of the sailors. All their possessions, movable, immovable, and self-moving, as many as belong to them, are to be seized. Unless the amounts which these fetch in a sale make up the equivalent of the ship and the profits of the time (during which they were absent), let the sailors with the deputy captain be let out and make up the full amount of the loss" (*Ibid.* 85, n. 19, Title 8).

Title 13 specifies that a passenger who embarks with gold or money must deposit it with the shipmaster for safekeeping. According to this provision, a passenger who does not deposit such valuables with the shipmaster is not entitled to recompense in case such valuables are lost or stolen. "If a passenger comes on board and has gold or something else, let him deposit it with the captain. If he does not deposit it and says 'I have lost gold or silver,' no effect is to be given to what he says. But the captain and the sailors, all those on board together, are to take an oath" (*Ibid.* 94, n. 20, Title 13).

Title 15 of the Rhodian Sea Law stipulates the duties of the shipmaster who receives deposits. It describes a case in which a vessel sails into harbour and its master receives deposits of money and other valuables. The shipmaster then orders the vessel to be abandoned, but the vessels and all goods thereon are preserved. Then everyone's belongings must be returned to them, while those who left the vessel earlier should have their goods dispatched to them. If a slave turned over to the shipmaster as a deposit disappears, then the slave-owner is entitled to compensation. "A ship carries passengers or merchants or slaves whom the captain has taken in deposit. The captain comes to a city or harbour or shore, and some leave the ship. Robbers give chase or pirates make an attack and the captain gives the signal and gets away. The ship is saved with the property of the passengers and merchants that is on board. Let each receive back his own goods, and let those who went out receive back their respective goods and chattels. If any one is minded to pick a quarrel with the captain for leaving him on shore in a place infested by robbers, no effect is to be given to what he says because it was only when they were pursued that the captain and crew fled. If a merchant or passenger had somebody else's slave in deposit and left him in any place, let him make the loss good to his master." (*Ibid.* 95, n. 21, Title 15).

Title 7 of the Rhodian Sea Law regulates crimes concerning bodily harm. Compensation rates are

passenger had somebody else's slave in deposit and left him in any place, let him make the loss good to his master." (*ibid.* 95, n. 21, Odredba 15).

U Odredbi 7. Rodskoga pomorskog zakonika regulira se kazneno djelo tjelesne ozljede. Određuje se visina naknade prema vrsti ozljede i plaćanje liječničke usluge, a pritom se jasno razlikuje zapovjednik broda od trgovca i trgovac od mornara. "One of the captains or merchants or sailors strikes a man with his fist and blinds him, or gives him a kick and happens to cause a hernia. The assailant is to pay the doctor's bill, and for the eye twelve gold pieces, for the hernia ten. If the man who gets kicked dies, his assailant will be liable to trial for murder." (*ibid.* 84, n. 22, Odredba 7).

Sljedeća skupina odredaba regulira nastanak štete.

U Odredbama 9. i 10. reguliraju su slučajevi kad je brod u nevolji pa treba izbaciti robu s broda, odnosno slučajevi kad nastane šteta ili dođe do brodoloma. U Odredbi 9. zapovjedniku broda nalažu se konzultacije s putnicima, a u Odredbi 10. regulira se nadoknada štete trgovcu zbog nemarnosti zapovjednika broda i njegove posade. "If the captain is deliberating about jettison, let him ask the passengers who have goods on board; and let them take a vote what is to be done. Let there be brought into contribution the goods; the bedclothes and wearing apparel and utensils are all to be valued; and, if jettison takes place, with the captain and passengers the valuation is not to exceed a litra; with the steersman and mate, it is not to exceed half a litra; with a sailor, it is not to exceed three grammata. Slaves and any one else on board who is not being carried for sale are to be valued at three minas; if any one is being carried for sale, he is to be valued at two minas. In the same way if goods are carried away by enemies or by robbers or... together with the belongings of sailors, these too are to come into the calculation and contribute on the same principle. If there is an agreement for sharing in gain, after everything on board ship and the ship itself have been brought into contribution, let every man be liable for the loss which has occurred in proportion to his share of the gain." (*ibid.* 87, 91, n. 23, Odredba 9). "If the captain and crew are negligent and there is an injury or wreck, let the captain and crew be responsible to the merchant for making the damage good. If it is through the merchant's negligence that ship and cargo are lost, let the merchant be responsible for the loss caused by the shipwreck. If there is no default either of the captain or crew or merchant, and a loss or shipwreck occurs, what is saved of the ship and cargo is to come into contribution." (*ibid.* 87, 91, n. 23, Odredba 10).

Za preostale odredbe Rodskoga pomorskog zakonika možemo reći da su uglavnom ekonomske prirode, pa se svrstavaju u financijsko pravo.

set for types of injuries and payment of medical treatment, and in the process a clear distinction is made between the shipmaster and a merchant, and a merchant and sailor. "One of the captains or merchants or sailors strikes a man with his fist and blinds him, or gives him a kick and happens to cause a hernia. The assailant is to pay the doctor's bill, and for the eye twelve gold pieces, for the hernia ten. If the man who gets kicked dies, his assailant will be liable to trial for murder." (*Ibid.* 84, n. 22, Title 7).

The next set of provisions regulates incurrence of damages.

Titles 9 and 10 regulate cases when the ship is in jeopardy and its cargo must be jettisoned, meaning cases when damages are incurred or a shipwreck occurs. Title 9 stipulates that the shipmaster must consult with the passengers, while Title 10 regulates compensation of the merchant due to the negligence of the shipmaster and his crew. "If the captain is deliberating about jettison, let him ask the passengers who have goods on board; and let them take a vote what is to be done. Let there be brought into contribution the goods; the bedclothes and wearing apparel and utensils are all to be valued; and, if jettison takes place, with the captain and passengers the valuation is not to exceed a litra; with the steersman and mate, it is not to exceed half a litra; with a sailor, it is not to exceed three grammata. Slaves and any one else on board who is not being carried for sale are to be valued at three minas; if any one is being carried for sale, he is to be valued at two minas. In the same way if goods are carried away by enemies or by robbers or... together with the belongings of sailors, these too are to come into the calculation and contribute on the same principle. If there is an agreement for sharing in gain, after everything on board ship and the ship itself have been brought into contribution, let every man be liable for the loss which has occurred in proportion to his share of the gain" (*Ibid.* 87, 91, n. 23, Title 9). "If the captain and crew are negligent and there is an injury or wreck, let the captain and crew be responsible to the merchant for making the damage good. If it is through the merchant's negligence that ship and cargo are lost, let the merchant be responsible for the loss caused by the shipwreck. If there is no default either of the captain or crew or merchant, and a loss or shipwreck occurs, what is saved of the ship and cargo is to come into contribution." (*Ibid.* 87, 91, n. 23, Title 10).

The remaining provisions of the Rhodian Sea Law can be characterized as economic in nature, and may be classified as finance law.

Title 16 regulates the manner of borrowing money, for at sea money is borrowed differently than on land. This is because a conspiracy may arise on

U Odredbi 16. reguliran je način posudbe novca. Naime novac se na moru posuđuje drugačije nego na kopnu jer može doći do zavjere na brodu, a prijete i stalne opasnosti od gusara. "Captains and merchants and whosoever borrow money on the security of ship and freight and cargo are not to borrow it as if it was a land loan... if the ship and the money are saved... lest a plot be from pirates... let them pay back the loan from the property on land with maritime interest." (*ibid.* 96, n. 24, Odredba 16).

U Odredbi 20. reguliran je ugovor o najmu koji potpisuju zapovjednik broda i trgovac. Ugovor mora biti u pisanome obliku. Ako zapovjednik broda prekrši ugovor, dužan je trgovcu isplatiti pola vrijednosti trgovačkoga tereta na brodu; ako trgovac ne poštuje ugovor, zapovjedniku broda mora predati pola tereta. Ako trgovac želi iznijeti svoj teret s broda, tada sav teret na brodu pripada zapovjedniku broda. "Where a man hires a ship, the contract to be binding must be in writing and subscribed by the parties, otherwise it is void. Let them also write penalties if they wish. If they do not write penalties, and there is a breach, either by the captain or by the hirer-if the hirer provides the goods... let him give the half of the freight to the captain. If the captain commits a breach, let him give the half-freight to the merchant. If the merchant wishes to take out the cargo, he will give the whole freight to the captain. These penalties shall be exacted as in cases where A brings a suit against B." (*ibid.* 98, n. 25, Odredba 20).

U Odredbama 23. i 24. također se uređuje ugovor sklopljen između zapovjednika broda i trgovca. "If there is a contract in writing between captain and merchant, let it be binding; but if the merchant does not provide the cargo in full, let him provide freight for what is deficient, as they agreed in writing." (*ibid.* 103, n. 26, Odredba 23). "The captain takes the half-freight and sails and the merchant wishes to return. They made and subscribed a contract in writing. The merchant loses his half-freight by reason of his hindrance. Where there is a contract in writing and the captain commits a breach, let him return the half-freight and as much again." (*ibid.* 103, n. 26, Odredba 24).

U nekoliko odredaba, posebice u Odredbama 26, 27, 31, 33, 34, 37. i 38, regulira se naknada štete na brodu i teretu u slučajevima gubitka broda, oštećenja zbog nemara zapovjednika broda i sličnim situacijama. "If one of the crew or captains sleeps off the ship and the ship is lost whether by day or night, all the damage regards the members of the crew or captains who slept off the ship, while those who remained on board go harmless. Those who were negligent must make good to the owner of the ship the damage which was done by reason of their

board a vessel, and there is also the constant threat of pirates. "Captains and merchants and whosoever borrow money on the security of ship and freight and cargo are not to borrow it as if it was a land loan... if the ship and the money are saved... lest a plot be from pirates... let them pay back the loan from the property on land with maritime interest." (*ibid.* 96, n. 24, Title 16).

Title 20 regulates the hiring contract signed by the shipmaster and merchant. The contract must be in written form. If the shipmaster breaches the contract, he is obliged to pay the merchant half the value of the cargo on board; if the merchant fails to observe the contract, he must turn over half of the cargo to the shipmaster. If the merchant wishes to remove the cargo from the ship, then all of it belongs to the shipmaster. "Where a man hires a ship, the contract to be binding must be in writing and subscribed by the parties, otherwise it is void. Let them also write penalties if they wish. If they do not write penalties, and there is a breach, either by the captain or by the hirer-if the hirer provides the goods... let him give the half of the freight to the captain. If the captain commits a breach, let him give the half-freight to the merchant. If the merchant wishes to take out the cargo, he will give the whole freight to the captain. These penalties shall be exacted as in cases where A brings a suit against B" (*ibid.* 98, n. 25, Title 20).

Titles 23 and 24 also govern the contracts concluded between shipmasters and merchants. "If there is a contract in writing between captain and merchant, let it be binding; but if the merchant does not provide the cargo in full, let him provide freight for what is deficient, as they agreed in writing." (*ibid.* 103, n. 26, Title 23). "The captain takes the half-freight and sails and the merchant wishes to return. They made and subscribed a contract in writing. The merchant loses his half-freight by reason of his hindrance. Where there is a contract in writing and the captain commits a breach, let him return the half-freight and as much again" (*ibid.* 103, n. 26, Title 24).

Several titles, particularly 26, 27, 31, 33, 34, 37 and 38, regulate compensation of damages on the ship and cargo in case of loss of the ship, damages due to negligence of the shipmaster and similar situations. "If one of the crew or captains sleeps off the ship and the ship is lost whether by day or night, all the damage regards the members of the crew or captains who slept off the ship, while those who remained on board go harmless. Those who were negligent must make good to the owner of the ship the damage which was done by reason of their negligence" (*ibid.* 105, n. 27, Title 26). "A ship is on its way to

negligence.” (*ibid.* 105, n. 27, Odredba 26). “A ship is on its way to be freighted by a merchant or a partnership. The ship is damaged or lost by the negligence of sailors or of the captain. The cargo which lies in the warehouse is free from claims. If evidence is given that the ship was lost in a storm, what is saved of the ship is to come into contribution together with cargo and the captain is to retain the half-freight. If one of the partners denies the partnership and is convicted by three witnesses, let him pay his share of the contribution and suffer the penalty of his denial.” (*ibid.* 106, n. 27, Odredba 27). “If the merchant loads the ship and something happens to the ship and something happens to the ship, all that is saved is to come into contribution on either side; but the silver, if it is saved, is to pay a fifth; and the captain and the sailors are to give help in salving.” (*ibid.* 108, n. 27, Odredba 31). “If the captain puts the cargo in the place fixed by the contract and the ship comes to grief, let the captain recover the freight in full from the merchant, but the goods which have been unloaded into warehouses are safe from those which are on board the ship with the ship, but let what are found on the ship together with the ship come into contribution.” (*ibid.* 109, n. 27, Odredba 33). “If a ship is carrying linen or silk, let the captain supply good skins, in order that in a storm no harm may be done to the freight by the dashing of the waves. If the water rises in the hold, let the captain say so at once to those who have the cargo on board, in order that it may be brought up. If the passengers make it manifest to the captain and for all that the cargo is injured, the captain is responsible together with the sailors. If the captain declares beforehand together with the sailors that the water is rising in the ship and the goods must come up, but those who loaded the goods neglect to bring them up, let the captain and sailors go harmless.” (*ibid.* 109, n. 27, Odredba 34). “If the ship comes to grief and the property of the merchants or passengers is saved while the ship is lost, let the debentures which are saved provide one-fifteenth, but let not the merchant and the passengers give the ship to the captain.” (*ibid.* 111, n. 27, Odredba 37). “If a ship loaded with corn is caught in a gale, let the captain provide skins and the sailors work the pumps. If they are negligent and the cargo is wetted by the bilge, let the sailors pay the penalty. But if it is from the gale that the cargo is injured, let the captain and the sailors together with the merchant bear the loss; and let the captain together with the ship and the sailors receive the six-hundredths of each thing saved. If goods are to be thrown into the sea, let the merchant be the first to throw and then let the sailors take a hand. Moreover none of the sailors is to steal. If any

be freighted by a merchant or a partnership. The ship is damaged or lost by the negligence of sailors or of the captain. The cargo which lies in the warehouse is free from claims. If evidence is given that the ship was lost in a storm, what is saved of the ship is to come into contribution together with cargo and the captain is to retain the half-freight. If one of the partners denies the partnership and is convicted by three witnesses, let him pay his share of the contribution and suffer the penalty of his denial” (*Ibid.* 106, n. 27, Title 27). “If the merchant loads the ship and something happens to the ship and something happens to the ship, all that is saved is to come into contribution on either side; but the silver, if it is saved, is to pay a fifth; and the captain and the sailors are to give help in salving” (*Ibid.* 108, n. 27, Title 31). “If the captain puts the cargo in the place fixed by the contract and the ship comes to grief, let the captain recover the freight in full from the merchant, but the goods which have been unloaded into warehouses are safe from those which are on board the ship with the ship, but let what are found on the ship together with the ship come into contribution” (*Ibid.* 109, n. 27, Title 33). “If a ship is carrying linen or silk, let the captain supply good skins, in order that in a storm no harm may be done to the freight by the dashing of the waves. If the water rises in the hold, let the captain say so at once to those who have the cargo on board, in order that it may be brought up. If the passengers make it manifest to the captain and for all that the cargo is injured, the captain is responsible together with the sailors. If the captain declares beforehand together with the sailors that the water is rising in the ship and the goods must come up, but those who loaded the goods neglect to bring them up, let the captain and sailors go harmless” (*Ibid.* 109, n. 27, Title 34). “If the ship comes to grief and the property of the merchants or passengers is saved while the ship is lost, let the debentures which are saved provide one-fifteenth, but let not the merchant and the passengers give the ship to the captain” (*Ibid.* 111, n. 27, Title 37). “If a ship loaded with corn is caught in a gale, let the captain provide skins and the sailors work the pumps. If they are negligent and the cargo is wetted by the bilge, let the sailors pay the penalty. But if it is from the gale that the cargo is injured, let the captain and the sailors together with the merchant bear the loss; and let the captain together with the ship and the sailors receive the six-hundredths of each thing saved. If goods are to be thrown into the sea, let the merchant be the first to throw and then let the sailors take a hand. Moreover none of the sailors is to steal. If any one steals, let the robber make it good twofold and lose his whole gain” (*Ibid.* 112, n. 27, Title 38).

one steals, let the robber make it good twofold and lose his whole gain.” (*ibid.* 112, n. 27, Odredba 38).

Posljednja skupina odredaba bavi se isključivo zapovjednikom broda regulirajući situacije u kojima se on može naći.

U Odredbi 22. Rodskoga pomorskog zakonika zapovjedniku se broda zabranjuje unošenje stvari na brod. Naime ako trgovac unajmi cijeli brod, tada zapovjednik može unijeti samo najnužnije stvari, hranu i vodu. U Odredbi se razlikuju dvije situacije. Prvo, kad ima dovoljno mjesta na brodu, zapovjednik broda smije ukrcati svoj teret. Drugo, kad nema mjesta na brodu, trgovac se tomu mora oštro usprotiviti pred svjedocima. To je važno zbog situacija kad treba izbaciti teret s broda jer tada svu štetu snosi zapovjednik broda. Ako trgovac odobri prekomjerno ukrcavanje tereta, izbačen teret ulazi u naknadu štete. “Let the captain take nothing but water and provisions and the ropes which ships have need of, where the merchant loads the whole ship according to their written contract. If the captain is minded to put in other cargo after this, if the ship has room, let him put it in; if the ship has no room, let the merchant before three witnesses resist the captain and sailors; and, if there is jettison, it will rest with the captain; but if the merchant does not prevent it, let him come to contribution.” (*ibid.* 102, n. 28, Odredba 22).

U Odredbi 39. uređuje se slučaj kad zapovjednik broda unatoč protivljenju trgovca uplovi u neko mjesto gdje nastane šteta isključivo na brodu. Tada trgovac ne snosi nikakvu odgovornost. Ako pak zapovjednik broda na nagovor trgovca uplovi u neko mjesto gdje nastane šteta na brodu, zapovjednik mora nadoknadi svu nastalu štetu. “A ship with a cargo of corn or wine or oil is in full sail. By wish of the captain and crew who slacken sail, the ship goes into a place or on a beach against the wish of the merchant. It happens that the ship is lost, but the cargo or goods are saved. The merchant is to suffer no harm from the loss of the ship, since he did not wish to go into that place. If while the ship is in full sail, the merchant says to the captain ‘I want to go into this place’, and the place is not comprised in the charter-party, and it happens that the ship is lost while the goods are saved, let the captain have his ship made good by the merchant. If it is by wish of both parties that the ship is cast away, let everything come to contribution.” (*ibid.* 113, n. 29, Odredba 39).

U pretposljednjoj Odredbi 42. regulira se položaj zapovjednika broda. Ako je brod oštećen i s njega se mora iznijeti teret, sav teret treba povjeriti zapovjedniku broda. “If a ship springs a leak while it is carrying goods and the goods are taken out, let it lie with the captain, whether he wishes to carry the

The final set of provisions deals exclusively with the shipmaster, regulating the various situations in which he may find himself.

Title 22 of the Rhodian Sea Law prohibits the shipmaster from taking goods on board. Namely, if a merchant hires an entire ship, then the shipmaster may only bring on the bare essentials, food and water. Two situations are distinguished herein. First, when there is sufficient space on board, the shipmaster may bring on his own cargo. Second, when there is no space on the ship, the merchant must oppose this strenuously in front of witnesses. This is important when cargo must be jettisoned, for then the shipmaster bears liability for all damages. If the merchant approves excessive loading of the ship, the jettisoned cargo becomes a part of the indemnification. “Let the captain take nothing but water and provisions and the ropes which ships have need of, where the merchant loads the whole ship according to their written contract. If the captain is minded to put in other cargo after this, if the ship has room, let him put it in; if the ship has no room, let the merchant before three witnesses resist the captain and sailors; and, if there is jettison, it will rest with the captain; but if the merchant does not prevent it, let him come to contribution” (*Ibid.* 102, n. 28, Title 22).

Title 39 governs cases when the shipmaster, despite the merchant’s protests, sails into a place where damages are incurred exclusively on board. Then the merchant bears no liability. If the shipmaster sails to a place where damages are incurred on board at the behest of the merchant, then the shipmaster must compensate all damages. “A ship with a cargo of corn or wine or oil is in full sail. By wish of the captain and crew who slacken sail, the ship goes into a place or on a beach against the wish of the merchant. It happens that the ship is lost, but the cargo or goods are saved. The merchant is to suffer no harm from the loss of the ship, since he did not wish to go into that place. If while the ship is in full sail, the merchant says to the captain ‘I want to go into this place’, and the place is not comprised in the charter-party, and it happens that the ship is lost while the goods are saved, let the captain have his ship made good by the merchant. If it is by wish of both parties that the ship is cast away, let everything come to contribution” (*Ibid.* 113, n. 29, Title 39).

The penultimate Title 42 regulates the status of the shipmaster. If a ship is damaged and cargo must be taken from it, all cargo must be entrusted to the shipmaster. “If a ship springs a leak while it is carrying goods and the goods are taken out, let it lie with the captain, whether he wishes to carry the goods in the ship to the trading-place agreed upon,

goods in the ship to the trading-place agreed upon, if the ship is repaired. If the ship is not repaired but the captain takes another ship to the trading-place agreed upon, let him give the whole freight.” (*ibid.* 116, n. 30, Odredba 42).

Posljednja je odredba koja regulira položaj zapovjednika broda Odredba 48. Ako je zapovjednik broda pokraden, počinitelj mora nadoknaditi štetu četverostrukim iznosom. “Let him who robs from captains make it good fourfold.” (*ibid.* 124, n. 31, Odredba 48).

BRODSKA POSADA

Brodsko je posada (engl. *ship's crew*, franc. *équipage du navire*, njem. *Schiffsbesatzung*, tal. *equipaggio d'una nave*) skup osoba zaposlenih na jednome brodu (Čolović 1983: 382, n. 32).

Odredbe o brodskoj posadi u Bilaminu i Hamurabijevu zakoniku fragmentarne su, tj. u njima se navode samo dvije kategorije osoba na brodu: brodar i brodovlasnik. Razlog je tomu to što je vlasnik obavljao sve funkcije na brodu, dakle bio je vlasnik broda, zapovjednik broda i trgovac (Johns 1904; Linfield 1919; Langdon 1920; Pfeiffer 1920; Jastrow 1921; Brajković 1933; Goetze 1949; Silver 1983; Višić 1989: 100–123, n. 33; Kozličić 2006–2007).

Rodski zakon o izbacivanju (tereta), iz kojega su dijelovi odredaba sačuvani u Digestama i Sentencijama, poznaje više kategorija brodske posade razlikujući vlasnika broda od trgovca.

Zahvaljujući Rimskom pravu načinjen je znatan pomak jer se u njemu razlikuje zapovjednik broda od brodarka.

Rimsko je pravo s pomoću tužbe *Actio furti et damni adversus nautas* štitalo putnike od krađe i oštećenja njihovih stvari. Brodovlasnik ili brodar morao bi im dvostrukim iznosom nadoknaditi vrijednost ukradenih ili oštećenih stvari (Horvat 1952–1952; Bogen 1992; Romac 1989: 358, n. 34; 1989a; Pavić 2006; Rudolf 1989).

Locatio conductio operarum u Rimu je regulirao unajmljivanje radne snage. Ugovor se odnosio samo na obavljanje fizičkoga rada, što znači da je intelektualni rad bio isključen iz ugovora (Potter 1902; Jones 1926; Cohen 1944; Polanyi 1963; Romac 1973; 1989: 317, n. 35; 1994; Senc 1981).

Nakon propasti Rimskoga carstva ponovno se ne razlikuju kategorije brodovlasnika, brodarka i zapovjednika broda. Kako je feudalno doba bilo nesigurno za plovidbu, brodovlasnik je mogao svakoga časa ostati bez uloženi sredstava. Zato se u organizaciju i realizaciju pomorskoga prijevoza uključilo više osoba.

if the ship is repaired. If the ship is not repaired but the captain takes another ship to the trading-place agreed upon, let him give the whole freight” (*Ibid.* 116, n. 30, Title 42).

The final provision regulating the status of the shipmaster is Title 48. If the shipmaster is robbed, the perpetrator must compensate four times the amount of damages. “Let him who robs from captains make it good fourfold” (*Ibid.* 124, n. 31, Title 48).

SHIP'S CREW

The ship's crew (Fr. *équipage du navire*, Ger. *Schiffsbesatzung*, Ital. *equipaggio d'una nave*) is a group of persons employed on a vessel (Čolović 1983: 382, n. 32).

The provisions concerning the ship's crew in the Laws of Eshnunna and Hammurabi's Code are fragmentary, i.e., they only specify two categories of persons on a ship: the sailor and shipowner. This is because the owner also performed all other functions on board, meaning he was the ship's owner, its master and also the merchant (Johns 1904; Linfield 1919; Langdon 1920; Pfeiffer 1920; Jastrow 1921; Brajković 1933; Goetze 1949; Silver 1983; Višić 1989: 100–123, n. 33; Kozličić 2006–2007).

The Rhodian Law of Jettison, of which parts have been preserved in the Digest (Pandects) and Sentences, recognizes several categories of ship crews, distinguishing between shipowners and merchants.

Thanks to Roman law, considerable progress was made, for it distinguishes between the shipmaster and sailors.

Roman law, by means of the *Actio furti et damni adversus nautas*, protected passengers from theft and damage to their possessions. The shipowner or sailor would have to pay them double the value of their stolen or damaged property (Horvat 1952–1952; Bogen 1992; Romac 1989: 358, n. 34; 1989a; Pavić 2006; Rudolf 1989).

In Rome, the *locatio conductio operarum* regulated the hiring of labour. The contract only dealt with the performance of physical labour, which means that intellectual services were excluded from its provisions (Potter 1902; Jones 1926; Cohen 1944; Polanyi 1963; Romac 1973; 1989: 317, n. 35; 1994; Senc 1981).

After the collapse of the Roman Empire, the distinction between the categories of shipowner, sailor and shipmaster was again blurred. Since the feudal era was uncertain for navigation, a shipowner could be stripped of his investment at any moment. This is why the organization and execution of maritime transportation involved a number of individuals.

Najviše odredaba o brodskoj posadi sadržava Rodski pomorski zakonik. U Odredbama 6, 7. i 10. reguliraju se slučajevi tučnjave među brodskom posadom i ozljeda koje pritom nastaju te slučajevi brodoloma. "Sailors are fighting and A strikes B with a stone or log; B returns the blow; he did it from necessity. Even if A dies, if it is proved that he gave the first blow whether with a stone or log or axe, B, who struck and killed him, is to go harmless; for A suffered what he wished to inflict." (Ashburner 2001: 84, 91, n. 36, Odredbe 6–7, 10).

U Odredbi 25. utvrđuje se da po isteku ugovora brodska posada ima pravo na osigurano sljedovanje koje traje deset dana. Nakon toga trgovac može otići, ali prije toga mora namiriti cijeli teret. "If the limit of time fixed by the contract passes, let the merchant provide the sailors' rations for ten days. If the second limit also passes, above all things let the merchant make up the full freight and go away. But if the merchant is willing to add so much to the freight, let him give it and sail as he pleases." (*ibid.* 103, n. 37, Odredba 25).

U Odredbama 26. i 27. reguliraju se propusti brodske posade. Odredbom 26. utvrđuje se da brodska posada mora nadoknaditi svu štetu ako se brod izgubio zbog njezina nemara. Ako brodska posada uspije dokazati da je brod izgubljen u oluji, prema Odredbi 27. dio tereta i opreme koji se uspije spasiti postaje ulog zajedno s teretom, a zapovjednik broda zadržava pola tereta (*ibid.* 105, n. 38, Odredba 26. i 27).

U Odredbi 39. regulira se odgovornost posade kad nastane šteta na brodu. S jedne strane brodska posada može uploviti u neko mjesto unatoč protivljenju trgovca. Ako pritom nastane šteta na brodu, a teret i oprema uspiju se spasiti, trgovac je oslobođen odgovornosti. S druge strane trgovac može zahtijevati od zapovjednika broda da uplovi u neko mjesto koje nije obuhvaćeno poveljom o putovanju. Ako tada nastane šteta na brodu, a teret i oprema uspiju se spasiti, trgovac mora nadoknaditi svu štetu koja je nastala na brodu. "A ship with a cargo of corn or wine or oil is in full sail. By wish of the captain and crew who slacken sail, the ship goes into a place or on a beach against the wish of the merchant. It happens that the ship is lost, but the cargo or goods are saved. The merchant is to suffer no harm from the loss of the ship, since he did not wish to go into that place. If while the ship is in full sail, the merchant says to the captain 'I want to go into this place', and the place is not comprised in the charter-party, and it happens that the ship is lost while the goods are saved, let the captain have his ship made good by the merchant. If it is by wish of both parties that the ship is cast away, let everything come to contribution." (*ibid.* 113, n. 39, Odredba 39).

The most provisions on ship crews can be found in the Rhodian Sea Law. Titles 6, 7 and 10 regulate cases of fights among a ship's crew and injuries ensuing therefrom, as well as cases of shipwrecks. "Sailors are fighting and A strikes B with a stone or log; B returns the blow; he did it from necessity. Even if A dies, if it is proved that he gave the first blow whether with a stone or log or axe, B, who struck and killed him, is to go harmless; for A suffered what he wished to inflict" (Ashburner 2001: 84, 91, n. 36, Titles 6-7, 10).

Title 25 stipulates that upon expiry of a contract, a ship's crew was entitled to ten days of rations. Thereafter a merchant was free to go, but he had to settle the entire freight before doing so. "If the limit of time fixed by the contract passes, let the merchant provide the sailors' rations for ten days. If the second limit also passes, above all things let the merchant make up the full freight and go away. But if the merchant is willing to add so much to the freight, let him give it and sail as he pleases" (*Ibid.* 103, n. 37, Title 25).

Titles 26 and 27 regulate oversights by the ship's crew. Title 26 stipulates that the ship's crew must compensate all damages if the ship is lost due to its neglect. If the ship's crew manages to prove that the ship was lost in a storm, according to Title 27 the part of the ship's cargo and tackle that is salvaged goes to contribution together with the cargo, and the shipmaster retains half of the cargo (*Ibid.* 105, n. 38, Titles 26 and 27).

Title 39 regulates the liability of the crew when damages are incurred on board. On the one hand, the ship's crew may sail to a certain location despite the merchant's opposition. If damages to the vessel are incurred, but the cargo and tackle are saved, the merchant bears no liability. On the other hand, the merchant may ask the shipmaster to sail to a location not included in the voyage. If damages are incurred to the vessel, but the cargo and tackle are saved, the merchant must compensate all damages incurred on the ship. "A ship with a cargo of corn or wine or oil is in full sail. By wish of the captain and crew who slacken sail, the ship goes into a place or on a beach against the wish of the merchant. It happens that the ship is lost, but the cargo or goods are saved. The merchant is to suffer no harm from the loss of the ship, since he did not wish to go into that place. If while the ship is in full sail, the merchant says to the captain 'I want to go into this place', and the place is not comprised in the charter-party, and it happens that the ship is lost while the goods are saved, let the captain have his ship made good by the merchant. If it is by wish of both parties that the ship is cast away, let everything come to contribution" (*Ibid.* 113, n. 39, Title 39).

U Dodatku *D* četiri odredbe (1–4) reguliraju odnose među brodskom posadom. “If a sailor sent on business be a shareholder, one who receives a share under contract, he must execute every commission of the ship and may go away when his time is expired. If he wishes to go away before the time is expired, let him receive seventy blows and so he is to sail. If he is found stealing, he is to receive one hundred blows and let him lose his share.” (*ibid.* 121–122, n. 40, Odredba 1). “If a sailor who is sent by the captain for wood or elsewhere goes with comrades and is left behind, let the captain pay him. If he does not go with comrades, if any accident happens to him who is sent, let the captain pay him.” (*ibid.* 121–122, n. 40, Odredba 2). “If a sailor hires himself out, let him know that he is a slave and has sold himself, and that he is to execute every commission. And if he is sent out let him perform his duty faithfully, committing no theft or wrongdoing, but acting with zeal and goodwill worthily, receiving in full his additional salary. If he steals gold or silver, let him lose his freedom and salary and become a slave, having handed himself over to punishment.” (*ibid.* 121–122, n. 40, Odredba 3). “If a slave is let out by his master to a workshop or a business, let his master tell the truth about his trustworthiness. If the master does not tell and the slave commits a theft and runs away, the theft and the flight and the death are to be made up by the master out of his wages.” (*ibid.* 121–122, n. 40, Odredba 4).

TRGOVAC – UNAJMITELJ BRODA ILI DIJELA BRODA

Trgovac je pravna ili fizička osoba koja samostalno trajno obavlja gospodarsku djelatnost radi ostvarenja dobiti proizvodnjom, prometom robe ili pružanjem usluga na tržištu (Zakon 1993: 7, n. 41, Odredba 1).

U Bilalaminu zakoniku ne spominje se kategorija trgovca, ali se u Odredbi 4. istoga zakonika navodi kategorija brodarka i visina zakupnine za brod. Kao što je već spomenuto, u samim počecima plovidbe i razmjene dobara brodovlasnik je obavljao sve poslove od navigacije do trgovine. Na temelju toga možemo posredno zaključiti da se pojam *brodarka* zapravo odnosi na trgovca. “Zakupnina za brod iznosi 2 qa za kur; zakupnina za brodarka iznosi jedan seah i jedan qa. On (zakupljivač) će ih koristiti cijeli dan.” (Višić 1989: 101, n. 42, Odredba 4).

Ni u Hamurabijevu zakoniku ne rabi se pojam *trgovac*, ali se u Odredbama 275–277. spominje *zakupoprmatelj*, koji je uzimao brod u zakup i obavljao poslove trgovca (Johns 1904; Vance 1908; Linfield 1919; Langdon 1920; Pfeiffer 1920; Ziskind 1974; Višić 1989: 123, n. 43, Zaccagnini 1994).

In Addendum *D*, four provisions (1-4) regulate relations among the ship’s crew. “If a sailor sent on business be a shareholder, one who receives a share under contract, he must execute every commission of the ship and may go away when his time is expired. If he wishes to go away before the time is expired, let him receive seventy blows and so he is to sail. If he is found stealing, he is to receive one hundred blows and let him lose his share” (*Ibid.* 121-122, n. 40, Title 1). “If a sailor who is sent by the captain for wood or elsewhere goes with comrades and is left behind, let the captain pay him. If he does not go with comrades, if any accident happens to him who is sent, let the captain pay him” (*Ibid.* 121-122, n. 40, Title 2). “If a sailor hires himself out, let him know that he is a slave and has sold himself, and that he is to execute every commission. And if he is sent out let him perform his duty faithfully, committing no theft or wrongdoing, but acting with zeal and goodwill worthily, receiving in full his additional salary. If he steals gold or silver, let him lose his freedom and salary and become a slave, having handed himself over to punishment” (*Ibid.* 121-122, n. 40, Title 3). “If a slave is let out by his master to a workshop or a business, let his master tell the truth about his trustworthiness. If the master does not tell and the slave commits a theft and runs away, the theft and the flight and the death are to be made up by the master out of his wages” (*Ibid.* 121-122, n. 40, Title 4).

MERCHANT – CHARTERER OF A SHIP OR PART THEREOF

The merchant is a legal or natural person who independently engages in long-term economic activity to earn a profit through production and sale of goods or the rendering of services on the market (Zakon 1993: 7, n. 41, Odredba 1).

The Laws of Eshnunna do not specify the category of merchant, although Law no. 4 mentions sailors and the lease rates for a ship. As already noted, at the very beginnings of seafaring and the exchange of goods, the shipowner performed all tasks, from navigation to trade. Based on this, it may be concluded that the term *sailor* actually means merchant. “The lease for a ship is 2 qa for kurru; the lease for a sailor is one seah and one qa. He (the charterer) will employ them the entire day.” (Višić 1989: 101, n. 42, Title 4).

Even the Code of Hammurabi does contain the term *merchant*, although laws 275-277 allude to a *charterer*, someone who hires a ship and performs the functions of a merchant (Johns 1904; Vance 1908; Linfield 1919; Langdon 1920; Pfeiffer 1920; Ziskind 1974; Višić 1989: 123, n. 43, Zaccagnini 1994).

Najstariji sačuvani zakonik koji u svojim odredbama navodi trgovca kao unajmitelja broda ili dijela broda Rodski je zakonik o izbacivanju (tereta) – *Lex Rhodia de iactu*. Tako se u Odredbi Dig. 14.2.2. izričito spominje trgovac koji uzima jedrenjak u zakup da bi obavio svoj posao, tj. da bi stekao profit (usp. Mommsen & Krüger 1988: 220, n. 44, Odredba Dig. 14.2.2).

Rodski pomorski zakonik sadrži više odredaba u kojima se spominju trgovci te se normiraju odnosi među njima. U Ulomku 8. precizira se broj trgovčevih pomoćnika na brodu, a u drugome dijelu odredbe uređuje se plaćanje njihove prijevoznine. “A merchant may have on board two boys; but he must pay their fare.” (Ashburner 2001: 59, n. 45, Ulomak 8).

U Odredbi 3. uređuje se slučaj kad mornar opljačka trgovca. Zapovjednik broda mora oštećenima nadoknaditi štetu isplatom dvostruke vrijednosti otuđene imovine, a mornar koji je počinio nedjelu mora biti kažnjen točno propisanim brojem udara. Ako je mornar izvršio pljačku na svoju ruku, treba ga pretučiti, a svu počinjenu štetu mora nadoknaditi on sam (*ibid.* 81, n. 46, Odredba 3).

U Odredbi 10. utvrđuju se postupci u slučaju nastanka štete ili brodoloma zbog nepažnje i nemara posade broda. Ona tada mora nadoknaditi trgovcu svu štetu na teretu. Ako pak trgovac skrivi brodolom, dužan je nadoknaditi svu štetu koja je nastala na brodu i brodskoj opremi. Ako za štetu nisu krivi subjekti pomorskoga pothvata, nastala se šteta nadoknađuje tako da ostaci broda ulaze u prilog (*ibid.* 91, n. 47, Odredba 10).

U Odredbi 11. trgovcima se ograničava utovar teškoga i skupocjenoga tereta na stari brod. Ako trgovci prekrše Odredbu i nakrcaju teret na stari brod, a tijekom plovidbe dođe do oštećenja ili uništenja broda, odgovorni su za nastalu štetu. Trgovcima se nalaže da se obavezno raspitaju o brodu koji namjeravaju unajmiti. Za plovidbu je spreman samo onaj brod koji je potpuno opremljen i na kojemu se nalaze spretni mornari. “The merchants and the passengers are not to load heavy and valuable cargoes on an old ship. If they load them, if while the ship is on its voyage it is damaged or destroyed, he who loaded an old ship has himself to thank for what has happened. When merchants are hiring ships, let them make precise inquiry from the other merchants who sailed before them before putting in their cargoes, if the ship is completely prepared, with a strong sailyard, sails, skins, anchors, ropes of hemp of the first quality, boats in perfect order, suitable tillers, sailors fit for their work, good seamen, brisk and smart, the ship’s sides staunch. In a word let the merchants make inquiry into everything and then proceed to load.” (*ibid.* 91, n. 48, Odredba 11).

The oldest preserved code which specifies merchants in its provisions as charterers of ships or parts thereof is the Rhodian Law of Jettison (*Lex Rhodia de iactu*). Thus, the provisions contained in Dig. 14.2.2. explicitly mention the merchant who hires a sailing ship to conduct business, i.e., to earn a profit (cf. Mommsen & Krüger 1988: 220, n. 44, Dig. 14.2.2).

The Rhodian Sea Law contains a number of provisions which mention merchants, and regulate relations between them. Excerpt 8 specifies the number of a merchant’s assistants on board, while in another section regulates payment of their passage. “A merchant may have on board two boys; but he must pay their fare” (Ashburner 2001: 59, n. 45, Excerpt 8).

Title 3 regulates cases when a sailor robs a merchant. The shipmaster must compensate the damages by paying double the value of the alienated property, while the sailor who perpetrated the crime must be punished with a specific number of blows. If the sailor perpetrated the theft on his own, he must be beaten, and he must compensate all of the damages incurred by himself (*Ibid.* 81, n. 46, Title 3).

Title 10 confirms the procedures in case of incurrance of damages or shipwreck due to disregard and negligence on the part of the ship’s crew. The crew must then compensate the merchant for all damages to the cargo. If the merchant is at fault for a shipwreck, he must compensate all damages caused to the ship and its tackle. If the participants in the expedition are not responsible for the damages, the damages are compensated such that the remains of the ship are pledged (*Ibid.* 91, n. 47, Title 10).

Title 11 prohibits merchants from loading heavy and valuable freight onto an old vessel. If merchants violate this stipulation and load an old ship, and said ship is damaged or destroyed during its voyage, they are liable for the ensuing damages. Merchants are required to conduct an inquiry into the vessel they intend to charter. A vessel is only fit for travel when it is fully equipped and staffed by a qualified crew. “The merchants and the passengers are not to load heavy and valuable cargoes on an old ship. If they load them, if while the ship is on its voyage it is damaged or destroyed, he who loaded an old ship has himself to thank for what has happened. When merchants are hiring ships, let them make precise inquiry from the other merchants who sailed before them before putting in their cargoes, if the ship is completely prepared, with a strong sailyard, sails, skins, anchors, ropes of hemp of the first quality, boats in perfect order, suitable tillers, sailors fit for their work, good seamen, brisk and smart, the ship’s sides staunch. In a word let the merchants make inquiry into everything and then proceed to load” (*Ibid.* 91, n. 48, Title 11).

U Odredbi 16. Rodškoga pomorskog zakonika uređuje se način na koji trgovac može posuditi novac na moru. Posudba novca na moru različita je od posudbe na kopnu jer se u obzir uzima mogućnost zavjere na brodu i opasnost od gusara (*ibid.* 96, n. 49, Odredba 16).

Prema Odredbi 19. trgovac ostaje bez pologa ako odustane od najma broda, a kapetan je dužan vratiti dvostruki iznos. Odredba je bila vrlo stroga jer se u praksi pokazalo da su stranke ugovora o najmu često kršile dogovor. "If a man hires a ship and gives earnest-money and afterwards says 'I have no need of it', he loses his earnest-money. But if the captain acts wrongfully, let him give back to the merchant double the earnest-money." (*ibid.* 98, n. 50, Odredba 19).

U Odredbi 20. stoji da se ugovor o najmu broda mora sastaviti u pisanome obliku, a određuju se i obaveze stranaka koje prekrše ugovor. Ako zapovjednik broda prekrši ugovor, dužan je platiti trgovcu pola vrijednosti trgovačkoga tereta na brodu. Ako trgovac ne poštuje ugovor, pola tereta mora dati zapovjedniku broda. Kad trgovac želi iznijeti svoj teret s broda, sav teret pripada zapovjedniku broda.

Prema Odredbi 26. trgovci imaju pravo na naknadu štete koja je nastala zbog nemara posade broda. U tome slučaju posada broda mora trgovcima nadoknaditi svu štetu (*ibid.* 105, n. 51, Odredba 26).

Prema Odredbi 28. trgovac mora nadoknaditi svu štetu koja je nastala na brodu ako je predugo zadržavao brod. Pritom nije važno o kakvoj je šteti riječ (o požaru, gusarima ili brodolomu); trgovac snosi odgovornost za svu štetu. "If a ship is hindered in the loading by a merchant or partner, and the time fixed for loading passes, and it happens that the ship is lost by reason of piracy or fire or wreck, let him who caused the hindrance make good the damage." (*ibid.* 106, n. 52, Odredba 28).

U Odredbi 30. reguliraju se slučajevi oštećenja broda, dakle određuje se što postaje udio i koliki dio štete snosi trgovac. Pritom se razlikuje više situacija s obzirom na to gdje se za vrijeme brodoloma nalazio trgovac. Prema drugome dijelu Odredbe sve što je spašeno od broda i tereta ulazi u udio. Cijena prijevoznine za trgovca ovisi o načinu na koji je spašen: ako se nije držao za križ jarbola, mora platiti samo pola cijene; ako se držao za jedan od križeva jarbola, mora platiti samo petinu prijevoznine. "If the merchant loads the ship and there is gold with him and the ship happens to suffer one of the maritime risks and the cargo is lost and the ship goes to pieces, let what is saved from the ship and the cargo come to contribution, but let the merchant take his gold with him on paying a tenth. If he was saved without clinging to any of the ship's spars, let him

Title 16 of the Rhodian Sea Law regulates the manner in which a merchant may borrow money on board a vessel. Money lending/borrowing at sea differed from the equivalent on land because the possibility of conspiracies and piracy had to be taken into account. (*Ibid.* 96, n. 49, Title 16).

According to Title 19, a merchant may lose his deposit if he withdraws from hiring a vessel, while a shipmaster is obliged to return double the amount. This provision was very strict, for practice had shown that the parties to contracts often reneged on agreements. "If a man hires a ship and gives earnest-money and afterwards says 'I have no need of it', he loses his earnest-money. But if the captain acts wrongfully, let him give back to the merchant double the earnest-money" (*Ibid.* 98, n. 50, Title 19).

Title 20 stipulates that a contract to hire a vessel must be done in writing, and specifies the obligations of the parties which violate the contract. If the shipmaster violates the contract, he is obliged to pay half the value of the cargo on board. If the merchant violates the contract, half of the contract must be relinquished to the shipmaster. When the merchant wishes to remove his cargo from the vessel, all of the cargo goes to the shipmaster.

According to Title 26, merchants are entitled to compensation of damages which emerge due to the crew's negligence. In this case, the ship's crew must compensate all damages to the merchants (*Ibid.* 105, n. 51, Title 26).

According to Title 28, the merchant must compensate all damages which are incurred to the vessel as a result of his loitering on board. Here the type of damage is unimportant (fire, piracy or wreck); the merchant bears liability for all damages. "If a ship is hindered in the loading by a merchant or partner, and the time fixed for loading passes, and it happens that the ship is lost by reason of piracy or fire or wreck, let him who caused the hindrance make good the damage" (*Ibid.* 106, n. 52, Title 28).

Title 30 regulates the case of damages to a vessel, meaning what goes to contribution and how much of the damages are borne by the merchant. Here several situations are distinguished given the whereabouts of the merchant during the time of a shipwreck. Under this provision, everything salvaged from the ship and its cargo enters the contribution. The transport charges for the merchant depend upon the manner in which he was rescued: if he was not holding any of the vessel's spars he only had to pay half the rate; if he was holding spar, then he had to pay only a fifth. "If the merchant loads the ship and there is gold with him and the ship happens to suffer one of the maritime risks and the

pay the half-fare in accordance with the contract; if he had to cling for safety to one of the spars, let him pay one-fifth." (*ibid.* 107, n. 53, Odredba 30).

U Odredbi 31. regulira se slučaj oštećenja broda prilikom utovara. Određuje se što ulazi u udio i razlikuje se vrednija od manje vrijedne robe (za vredniju se robu više plaća). U drugome dijelu Odredbe zapovjedniku broda i brodskoj posadi nalaže se da pomognu u spašavanju tereta (*ibid.* 108, n. 54, Odredba 31).

U Odredbi 32. nalaže se da u udio ulazi sve što se uspije spasiti od broda i tereta ako brod zadesi nevrijeme. S trgovčevim se pologom postupa onako kako stoji u ugovoru. "If a ship is on its way to be loaded, whether it is hired by a merchant or goes in partnership, and a sea-disaster takes place, the merchant is not to ask back the half-freight, but let what remains of the ship and the cargo come to contribution. If the merchant or the partner has also given an advance, let their agreement made in writing prevail." (*ibid.* 108, n. 55, Odredba 32).

Posljednje tri Odredbe (37–39) Rodskoga pomorskog zakonika koje navode trgovca – unajmitelja broda ili dijela broda reguliraju različite slučajeve stradavanja broda i određuju naknadu štete (*ibid.* 111–113, n. 56, Odredbe 37–39).

HRVATSKI APOKSIOMEN

Hrvatski Apoksiomen kip je atleta podignut u čast pobjedniku na poznatome sportskom natjecanju. Takvi su se kipovi nalazili u svetištima i u gradovima. Brončani kip Apoksiomena pronađen je u podmorju Velih Orijula kod otoka Lošinja. Najvažnija plovidbena ruta Jadranom u vrijeme antike odvijala se našom stranom Jadrana, tj. istočnom jadranskom obalom, zbog čega je kip pronađen na dubini od 45 metara, uglavljen između dviju stijena. Pretpostavlja se da je kip ležao ondje gotovo dvije tisuće godina (Kamiš *et al.* 2006: 21, n. 57). Najvjerojatnije je bio dio brodskoga tereta, a u more je slučajno ispao ili ga je netko namjerno izbacio. Ako je namjerno izbačen s broda, vjerojatno je žrtvovan kao teret da bi se spasio brod koji je upao u oluju. Takav tip kipa datira se u razdoblje od oko 360. do 280. g. pr. Krista (*ibid.* 81, n. 58). Za Rodski zakonik o izbacivanju (tereta) – *Lex Rhodia de iactu* Hribar (1965: 468, n. 59) drži da je u primjeni još od 4. st. pr. Krista. Zakonik sadrži načelo o zajedničkoj havariji poznato iz 2. st. po. Krista, a uvršteno je i u Rimsko pravo u zborniku *Corpus iuris civilis* iz 6. st. po. Krista. U Rodskome zakoniku o izbacivanju (tereta) već se u prvoj odredbi nalaže da svi oni čiji se teret nalazi na brodu moraju sudjelovati u nadoknadi izgubljenoga

cargo is lost and the ship goes to pieces, let what is saved from the ship and the cargo come to contribution, but let the merchant take his gold with him on paying a tenth. If he was saved without clinging to any of the ship's spars, let him pay the half-fare in accordance with the contract; if he had to cling for safety to one of the spars, let him pay one-fifth" (*Ibid.* 107, n. 53, Title 30).

Title 31 regulates the matter of damages during loading. It specifies what becomes a part of the contribution and distinguishes between the more and less valuable (more is paid for goods of greater value). In the second section, the shipmaster and ship's crew are required to assist in the salvage of cargo (*Ibid.* 108, n. 54, Title 31).

Title 32 stipulates that the contribution encompasses everything that is salvaged from the ship and its cargo if the vessel is caught in a storm. The merchant's deposit is treated as specified in the contract. "If a ship is on its way to be loaded, whether it is hired by a merchant or goes in partnership, and a sea-disaster takes place, the merchant is not to ask back the half-freight, but let what remains of the ship and the cargo come to contribution. If the merchant or the partner has also given an advance, let their agreement made in writing prevail" (*Ibid.* 108, n. 55, Title 32).

The final three titles (37-39) of the Rhodian Sea Law mentioning merchants/charterers of vessels or a portion thereof regulate the various cases of harm to the vessel and specify the compensation of damages (*Ibid.* 111-113, n. 56, Title 37-39).

THE CROATIAN APOXYOMENOS

The Croatian Apoxyomenos is a type of statue of an athlete that was raised to honour victors in popular sporting competitions. Such statues could be found in shrines, but also in cities. The bronze statue of Apoxyomenos was found on the sea-floor at the islet of Vele Orjule near the island of Lošinj. The most important navigation route on the Adriatic Sea in Antiquity passed along the Croatian side of the Adriatic, i.e., the eastern Adriatic coast, which is why the statue was discovered at a depth of 45 meters, wedged between two large rocks. It is assumed that the statue had lain there for almost two millennia (Kamiš *et al.* 2006: 21, n. 57). It was most likely a component of some ship's cargo, and it may have fallen into the sea by accident or it may have been intentionally jettisoned. If it had indeed been jettisoned, this was probably done so to save a ship that had entered a storm. These types of statues have been dated to the period from roughly 360 to 280 BC

tereta. “Lege Rodia cavetur, ut, si levandae navis gratia iactus mercium factus est, omnium contributione sarciatur quod pro omnibus datum est.” (Mommsen & Krüger 1988: 219, n. 60, Odredba 14.2.1). U Odredbi 14.2.2.2. propisuje se da vrijednost izgubljenoga Apoksiomena nadoknađuju svi oni čiji je teret bio na brodu, kao i sam brodovlasnik, jer se smatra da je nastala zajednička šteta (*ibid.* 220, n. 61). Za razliku od toga u Odredbi 14.2.2.8. ističe se da izbačeni Apoksiomen ostaje vlasniku i ne postaje vlasništvo onoga koji ga je uzeo jer se ne smatra napuštenim (*ibid.* 220, n. 62).

ZAKLJUČAK

Elementi koji su regulirali plovidbu mogu se naći već u vrlo ranim zakonicima nastalima u Mezopotamiji, npr. u Bilalaminu zakoniku s početka 20. st. pr. Krista, u Hamurabijevu zakoniku iz prve polovice 18. st. pr. Krista, u Rodskome zakoniku o izbacivanju (tereta) – *Lex Rhodia de iactu*, za koji se drži da je u primjeni još od 4. st. pr. Krista. Drugim riječima, Feničani su bili svojevrstan most između mezopotamskih pravnih normi u pomorstvu i onih u Grčkoj. U grčkoj kulturi postoje brojni pokazatelji vezanosti te države za pomorsku trgovačku navigaciju i drugim pravnim rješenjima, najčešće na razini uočljivih tragova očuvanih u nekim od Demostenovih govora, u Aristotelovu *Ustavu atenskome* i sl. Ta će grčka pravna rješenja biti primijenjena u klasičnome rimskom pravu, uključujući i njegovu kodifikaciju u Justinijanovo doba (*Corpus iuris civilis*). Zanimljivih se priloga može naći i u Bibliji (npr. u Levitskome zakoniku u *Starom zavjetu* koji je najstariji pravni spomenik o zaraznim bolestima), a još više u Rodskom pomorskom zakoniku (*Nomos Rhodion nautikos*), koji je, kako se uglavnom drži, kodificiran između 7. i 9. stoljeća naše ere.

Subjekti pomorskoga pothvata bili su temelj pomorske plovidbe. Brodovlasnik se spominje već u Bilalaminu zakoniku u Odredbi 6. gdje se uređuje vlasništvo na brodu. U Hamurabijevu zakoniku u Odredbi 238. regulira se odgovornost brodovlasnika u slučaju potapanja drugoga broda. U Rodskome zakoniku o izbacivanju (tereta) u Odredbi 14.2.2.8. govori se o brodovlasniku kojemu prijeti opasnost od uništenja broda. Rimsko je pravo s pomoću pretorske tužbe rješavalo slučajeve u kojima bi brodovlasnik prekršio ugovor. Kako je već spomenuto, u odredbama Rodskoga pomorskog zakonika ne navodi se kategorija brodovlasnika.

Zapovjednik broda spominje se u više odredaba različitih zakona. Rodski zakonik o izbacivanju (tereta) razlikuje vlasnika broda, trgovce i zapovjednika

(*Ibid.* 81, n. 58). As to the Rhodian Law of Jettison (*Lex Rhodia de iactu*), Hribar (1965: 468, n. 59) maintained that it had been applied already since the fourth century BC. This code contains the principle of the general average known since the second century BC, and it was also incorporated into Roman law in the *Corpus iuris civilis* of the sixth century AD. Already in its first provision, the Rhodian Law of Jettison stipulates that all of those whose cargo is on a vessel must participate in indemnification for lost cargo. “Lege Rodia cavetur, ut, si levandae navis gratia iactus mercium factus est, omnium contributione sarciatur quod pro omnibus datum est” (Mommsen & Krüger 1988: 219, n. 60, Title 14.2.1). Title 14.2.2.2. stipulates that the value of the lost Apoxyomenos would have been compensated by all of those with freight on board, and the shipowner himself, because this would have been deemed a common damage (*Ibid.* 220, n. 61). By contrast, Title 14.2.2.8. stresses that the jettisoned Apoxyomenos remains the property of its owner and does not become the property of the one who takes it, because it is not deemed lost (*Ibid.* 220, n. 62).

CONCLUSION

Regulations concerning navigation may already be found in the very early law codes that emerged in Mesopotamia, such as the Laws of Eshnunna from the early twentieth century BC, in the Code of Hammurabi from the first half of the eighteenth century BC, and in the Rhodian Law of Jettison (*Lex Rhodia de iactu*), which is believed to have been in force since the fourth century BC. In other words, the Phoenicians served as something of a bridge between Mesopotamian maritime laws and those of ancient Greece. In Greek culture, there are numerous indicators of this country's links to maritime mercantile navigation and other legal solutions, most often visible in some of the speeches of Demosthenes, in Aristotle's *Constitution of Athens*, etc. These Greek legal solutions would later be applied in classical Roman law, including its codification during Justinian's time (*Corpus iuris civilis*). Interesting provisions can also be found in the Bible, such as the Book of Leviticus in the Old Testament, which is among other things the oldest legal text dealing with infectious diseases. But the most comprehensive is the Rhodian Sea Law (*Nomos Rhodion nautikos*), which is generally believed to have been codified between the seventh and ninth centuries AD.

The participants of a marine venture constituted the foundation of a maritime venture. Shipowners are already mentioned in the Laws of Eshnunna in

broda. U Odredbi 14.2.2. navode se kategorije subjekata pomorskoga pothvata, a u Odredbi 14.2.2.2. spominje se zapovjednik broda i njegova odgovornost vezana za nadoknadu štete. U Rodskome pomorskom zakoniku u ulomcima 1–7, 14. i 19. također postoji razlika između kategorija osoba koje se nalaze na brodu. U Odredbi 2. zapovjednik se broda navodi kao osoba odgovorna za nadoknadu štete, a u Odredbi 3. regulira se način na koji se šteta nadoknađuje. Odredbom 4. uređuje se slučaj kad zapovjednik dovede brod na mjesto puno gusara i lopova. U Odredbi 7. regulira se kazneno djelo tjelesne ozljede na brodu, a Odredbom 8. propisuje se zapljena imovine zapovjednika broda i mornara. U Odredbama 9. i 10. regulirani su slučajevi broda u nevolji i nadoknade štete trgovcu zbog nemarnosti zapovjednika broda i njegove posade. Odredbom 15. uređuje se uloga zapovjednika broda koji primi polog. U Odredbi 16. opisuje se kako zapovjednik broda može posuditi novac, a u Odredbi 20. reguliran je ugovor o najmu koji potpisuju zapovjednik broda i trgovac. U Odredbi 22. zapovjedniku se broda zabranjuje unos stvari na brod. Odredbama 23. i 24. također se uređuje ugovor sklopljen između zapovjednika broda i trgovca. U nekoliko se odredaba regulira saniranje štete na brodu i teretu u različitim situacijama (npr. gubitak broda, oštećenje zbog nemara zapovjednika broda i sl.), posebice u Odredbama 26, 27, 31, 33, 34, 37. i 38. U Odredbi 39. uređuje se slučaj kad zapovjednik broda uplovi u neko mjesto gdje nastane šteta na brodu. U pretposljednjoj odredbi Rodskoga pomorskog zakonika regulira se položaj zapovjednika broda u slučaju oštećenja broda. Posljednja odredba koja regulira položaj zapovjednika broda nalazi se u Dodatku *E* pod brojem 48, a uređuje slučaj pokradenoga zapovjednika broda.

Odredbe o brodskoj posadi u Bilalaminu i Hamurabijevu zakoniku fragmentarne su, tj. u njima se navode samo dvije kategorije osoba na brodu: brodar i brodovlasnik. Rodski zakon o izbacivanju (tereta), iz kojega su dijelovi odredaba sačuvani u Digestama i Sentencijama, poznaje više kategorija brodske posade razlikujući vlasnika broda i trgovca. Zahvaljujući Rimskom pravu načinjen je znatan pomak jer se u njemu razlikuje zapovjednik broda od brodar. Najviše odredaba o brodskoj posadi sadrži Rodski pomorski zakonik. U Odredbama 6, 7. i 10. reguliraju se slučajevi tučnjave među brodskom posadom i ozljeda koje pritom nastaju te slučajevi brodoloma. U Odredbi 25. uređuje se istek ugovora brodske posadi, a u Odredbama 26. i 27. reguliraju se propusti brodske posade. U Odredbi 27. propisuju se postupci u slučaju kad se brod izgubi. Brodska posada normirana je i Odredbom 39. u kojoj se

Law no. 6, which regulates the ownership of a vessel. The Code of Hammurabi, in Law no. 238, regulates the liability of a shipowner in case of sinkage of another vessel. The Rhodian Law of Jettison, in Title 14.2.2.8., deals with the shipowner threatened by destruction of a vessel. Roman law, with the help of the praetorian action, resolved cases in which a shipowner violated a contract. As already noted, the provisions of the Rhodian Sea Law do not specify the category of shipowner.

The shipmaster is mentioned in a number of provisions of various law codes. The Rhodian Law of Jettison distinguishes between the shipowner, merchant and shipmaster. Title 14.2.2. thereof specifies the categories of participants in a maritime venture, while Title 14.2.2.2. mentions the shipmaster and his obligations tied to compensation of damages. The Rhodian Sea Law, in excerpts 1-7, 15 and 19, also distinguishes between the various categories of individuals who are on board a vessel. Title 2 specifies the shipmaster as the person liable for compensation of damages, while Title 3 regulates the manner in which damages are compensated. Title 4 governs the cases when the shipmaster brings the vessel into the vicinity of pirates or bandits. Title 7 regulates crimes involving bodily harm on vessels, while Title 8 regulates the seizure of the possessions of the shipmaster and sailors. Titles 9 and 10 regulate the cases of a ship in jeopardy due to the disregard of the shipmaster and his crew. Title 15 governs the role of the shipmaster who receives a deposit. Title 16 describes how a shipmaster may lend money, while Title 20 regulates the contract on hiring signed between the shipmaster and merchant. Title 22 prohibits the shipmaster from bringing goods aboard. Titles 23 and 24 also regulate the contract concluded between the shipmaster and merchant. Several provisions regulate damages to a vessel and its cargo in various situations (e.g. loss of ship, damage due to shipmaster's negligence, etc.), particularly in Titles 26, 27, 31, 33, 34, 37 and 38. Title 39 governs the cases when the shipmaster sails to a location where the vessel is then damaged. The penultimate provision of the Rhodian Sea Law regulates the status of the shipmaster in case of damage to the vessel. The final provision regulating the status of the shipmaster can be found in Addendum *E* under number 48, and it governs the case of a robbed shipmaster.

The provisions dealing with a ship's crew in both the Laws of Eshnunna and the Code of Hammurabi are fragmentary, i.e. they specify only two categories of individuals on board: the sailor and shipowner. The Rhodian Law of Jettison, parts of which have been preserved in the Digest (Pandects) and Sentences, acknowledge several categories among the ship's crew, distinguishing between the shipowner and

regulira odgovornost posade kad nastane šteta na brodu. U Dodatku *D* četiri odredbe (1–4) reguliraju odnose među brodomskom posadom.

Odgovornost i obaveze trgovca (unajmitelja broda ili dijela broda) regulirane su u više zakonika. U Bilalaminu zakoniku u Odredbi 4. navodi se kategorija trgovca i visina zakupnine za brod, ali na posredan način jer je u počecima plovidbe brodovlasnik obavljao sve poslove od navigacije do trgovine. U Hamurabijevu zakoniku o trgovcu se govori kao o zakupoprimaltelju koji je uzimao brod u zakup i obavljao poslove trgovca (Odredbe 275–277). Rodski zakonik o izbacivanju (tereta) najstariji je zakonik u čijim se odredbama spominje trgovac koji uzima jedrenjak u zakup. Reguliraju se brojni odnosi vezani za trgovce (pljačka trgovca, nastanak štete za trgovca, posudba, polog, najam broda, naknada štete).

Hrvatski Apoksiomen spomenut je u radu kao primjer dragocjenosti bačene u more. Naime u tome se slučaju otvara sljedeće znanstveno pitanje: tko je snosio odgovornost za teret izbačen s broda u more za vrijeme olujnoga nevremena?

merchant. Thanks to Roman law, considerable progress was made, because it differentiated between the shipmaster and sailor. The Rhodian Sea Law contains the most provisions concerning the ship's crew. Titles 6, 7 and 10 regulate cases of fights among crew members and the ensuing injuries, as well as cases of shipwrecks. Title 25 governs the expiry of the contracts of crew members, while Titles 26 and 27 regulate oversights committed by the ship's crew. Title 27 regulates the procedures in case a ship is lost. The ship's crew is also regulated in Title 39, which stipulates the liability of the crew when damages are incurred on the vessel. Addendum *D* contains four provisions (1-4) regulating relations among the crew members.

The responsibilities and liability of the merchant (charterer of a vessel or part thereof) are regulated in several codes. In the Laws of Eshnunna, Title 4 specifies the category of merchants and the lease rate for a vessel, but only indirectly, for in the beginning of such seafaring the shipowner oversaw all operations, from navigation to trade. The Code of Hammurabi speaks of the merchant as the charterer who hired a vessel and engaged in mercantile activities (Titles 275-277). The Rhodian Law of Jettison is the oldest code with provisions mentioning a merchant who hires a sailing vessel. Numerous relations concerning merchants (robbery of the merchant, incurrence of damages to the merchant, borrowing, deposits, hiring of a vessel, compensation of damages) are regulated.

The Croatian Apoxyomenos is mentioned herein as an example of a jettisoned valuable possession. In this case, the following scholarly question arises: who bore liability for the cargo jettisoned from the vessel during inclement weather?

IZVORI

- Ashburner 2001 W. Ashburner, *The Rhodian Sea-Law*, New Jersey, 2001.
- Benedict 1909 R. D. Benedict, "The Historical Position of the Rhodian Law", *The Yale Law Journal* 18/4, 1909, 223–242.
- Bogen 1992 D. S. Bogen, "Ignoring History: The Liability of Ships' Masters, Innkeepers and Stablekeepers under Roman Law", *The American Journal of Legal History* 36/3, 1992, 326–360.
- Casson 1990 L. Casson, "New Light on Maritime Loans: P. Vindob G 40822", *Zeitschrift für Papyrologie und Epigraphik* 84, 1990, 195–206.
- Cohen 1944 B. Cohen, "The Relationship of Jewish to Roman Law", *The Jewish Quarterly Review: New Series* 34/3, 1944, 267–280.
- Cohen 1944a B. Cohen, "The Relationship of Jewish to Roman Law (Continued)", *The Jewish Quarterly Review: New Series* 34/4, 1944, 409–424.
- Cohen 1989 E. E. Cohen, "Athenian Finance: Maritime and Landed Yields", *Classical Antiquity* 8/2, 1989, 207–223.
- Goetze 1949 A. Goetze, "Mesopotamian Laws and the Historian", *Journal of the American Oriental Society* 69/3, 1949, 115–120.
- Isaacs 1915 N. Isaacs, "The Merchant and His Law", *The Journal of Political Economy* 23/6, 1915, 529–561.
- Jasić 1968 S. Jasić, *Zakoni starog i srednjeg vijeka*, Beograd, 1968.
- Jastrow 1921 M. Jastrow, "An Assyrian Law Code", *Journal of the American Oriental Society* 41, 1921, 1–59.
- Johns 1904 C. H. W. Johns, "Review: Three New Books on the Code of Hammurabi, or Babylonian Law", *The Jewish Quarterly Review* 16/2, 1904, 396–402.
- Jones 1926 H. S. Jones, "A Roman Law Concerning Piracy", *The Journal of Roman Studies* 16, 1926, 155–173.
- Langdon 1920 S. Langdon, "The Sumerian Law Code Compared with the Code of Hammurabi", *Journal of the Royal Asiatic Society of Great Britain and Ireland* 4, 1920, 489–515.
- Linfield 1919 H. S. Linfield, "The Relation of Jewish to Babylonian Law", *The American Journal of Semitic Languages and Literatures* 36/1, 1919, 40–66.
- Maitland 1903 E. W. Maitland, "The Oldest Code of Laws", *Journal of the Society of Comparative Legislation: New Series* 5/1, 1903, 11–13.
- Majnarić 1948 N. Majnarić, *Aristotelov Ustav atenski*, Zagreb, 1948.
- Marchetti Ferrante 1905 G. Marchetti Ferrante, "Private Property in Maritime War", *Political Science Quarterly* 20/4, 1905, 696–717.
- Mommsen & Krüger 1988 Th. Mommsen & P. Krüger, *Corpus Iuris Civilis*, Hildesheim, 1988.
- Paulo 1989 J. Paulo, *Sentencije*, Zagreb, 1989.
- Perdiccas 1939 P. Perdiccas, "On History and Outlines of Greek Maritime Law", in: *Problems of Peace and War, Papers Read before the Society in the Year 1939 (Transactions of the Grotius Society 25)*, 1939, 33–50.
- Pfeiffer 1920 R. H. Pfeiffer, "An Analysis of the Hammurabi Code", *The American Journal of Semitic Languages and Literatures* 36/4, 1920, 310–315.
- Polanyi 1963 K. Polanyi, "Ports of Trade in Early Societies", *The Journal of Economic History* 23/1, 1963, 30–45.
- Potter 1902 G. S. Potter, "The Sources, Growth and Development of the Law Maritime", *The Yale Law Journal* 11/3, 1902, 143–152.
- Romac 1973 A. Romac, *Izvori rimskog prava. Latinski tekstovi s prijevodom*, Zagreb, 1973.

- Romac 1994 A. Romac, *Institucije. Justinijan*, Zagreb, 1994.
Senc 1981 S. Senc, *Demostenovi izabrani govori*, Split, 1981.
Silver 1983 M. Silver, "Karl Polanyi and Markets in the Ancient Near East: The Challenge of the Evidence", *The Journal of Economic History* 43/4, 1983, 795–829.
Vance 1908 W. R. Vance, "The Early History of Insurance Law", *Columbia Law Review* 8/1, 1908, 1–17.
Višić 1989 M. Višić, *Zakonici drevne Mesopotamije*, Sarajevo, 1989.
Zaccagnini 1994 C. Zaccagnini, "Sacred and Human Components in Ancient near Eastern Law", *History of Religions* 33/3, 1994, 265–286.
Ziskind 1974 J. R. Ziskind, "Sea Loans at Ugarit", *Journal of the American Oriental Society* 94/1, 1974, 134–137.

LITERATURA

- Brajković 1933 V. Brajković, *Étude Historique sur le Droit Maritime Privé du Littoral Yugoslave*, Marseille, 1933.
Čolović 1983 I. Čolović, "Posada brodska", *Pomorska enciklopedija*, sv. 6, Zagreb, 1983, 382–383.
Goldstein & Anić 1999 I. Goldstein & V. Anić, *Rječnik stranih riječi*, Zagreb, 1999.
Grabovac 1991 I. Grabovac, *Enciklopedija pojmova pomorskog prava*, Split, 1991.
Grabovac 1994 I. Grabovac, *Pomorski zakonik s pojmovnim kazalom*, Zagreb, 1994.
Horvat 1952–1953 M. Horvat, *Rimsko pravo*, 1–2, Zagreb, 1952–1953.
Hribar 1965 A. Hribar, "Pregled razvitka pomorskog prava", *Pomorski zbornik* 3, Rijeka, 1965, 463–538.
Kamiš *et al.* 2006 I. Kamiš, M. Jurišić, M. Orlić, D. Krstić & R. Šoštarić, *Hrvatski Apoksiomen*, Zagreb, 2006, 1–81.
Kozličić 2006–2007 M. Kozličić, "Mornarski vježbenik u starijim izvorima pomorskog prava hrvatskog Jadrana", *Povijesni zbornik Filozofskog fakulteta u Osijeku* 1/1–2, 2006–2007, 9–16.
Pavić 2006 D. Pavić, *Pomorsko imovinsko pravo*, Split, 2006.
Pallua 1972 E. Pallua, "Brodovlasnik", *Pomorska enciklopedija*, sv. 1, Zagreb, 1972, 617–618.
Romac 1989 A. Romac, *Rimsko pravo*, Zagreb, 1989.
Romac 1989a A. Romac, *Rječnik rimskog prava*, Zagreb, 1989.
Rudolf 1989 D. Rudolf, *Enciklopedijski rječnik međunarodnog prava mora*, Split, 1989.
Zakon 1993 *Zakon o trgovačkim društvima*, Zagreb, Narodne novine broj 111/1993, 1994.
Zakon 1994 *Zakon o obveznim odnosima*, Zagreb, 1994.
Žabkar 1989 T. Žabkar, "Zapovjednik broda", *Pomorska enciklopedija*, sv. 8, Zagreb, 1989, 576–577.