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## Some Legal Questions Concerning Loans and Legal Disputes in the Roman and Medieval Commercial Navigation

### Summary

The paper describes basic financial elements of commercial navigation during the Roman and medieval period. These primarily include the persons who financed the voyage, as well as other partners as determined by law. The legal regulation in question concerns maritime loan, a deposit used as an instrument of security for the return of loan ever since the Ancient times by the Phoenicians, Greeks, Romans, and other maritime nations in the Eastern Mediterranean.

The oldest legal regulations related to maritime loan can be found in the Roman law, the Rhodian Law on Jettison of Cargo, and the Rhodian Sea Law (*Lex Rhodia*).

The paper analyses elements related to maritime litigation as well as other relevant issues such as maritime flags. In addition, the paper explores the extent of the influence that these regulations have had on the resolution of certain legal issues connected with maritime navigation.

**Keywords:** lender, deposit, maritime litigation, navigation

### 1. Introduction

Coastal cities, as a result of being near the sea, were in general economically more developed than the places in the interior, which meant that they had to use more maritime loans and deposits to help them carry out their commercial navigation. The main purpose of these loans was twofold: on the one hand, they were used to enable easier transport of goods produced by the population and intended for sale, and on the other, to import goods that were lacking. History has shown that many important nations had greatly relied on seafaring and that maritime navigation had played an important role in their history. The first legal regulations that govern maritime navigation and other important matters such as maritime loans, deposits and other legal and maritime

matters were found in the Roman law and the Rhodian Law (*Lex Rhodia* or *Nomos Rhodion Nautikos*).

*Lex Rhodia de iactu* (The Rhodian Code of Jettison (of cargo)), supposed to have originated around 800 BC from the Phoenicians, had been applied in the Mediterranean as early as the fourth century BC. It was known as the precedent of today's insurance institute, while in the Byzantine Empire, *Nomos Rhodion Nautikos* (The Rhodian Maritime Code) was created around 8th century AD. It consists of three parts. The first part is the introduction, the second one contains 19 fragments, while the third part contains 47 provisions and annexes D and E. With the rise of feudalism, new production methods and social relations were required. Together with changes in working conditions in the maritime industry, numerous dilemmas were clarified and resolved owing to the above Code. (Đjukic 2008, unpublished doctoral dissertation, n 1).

The Rhodian Law (*Nomos Rhodion Nautikos*), written probably between the seventh and ninth century AD, was the result of everything that the ancient world wanted to regulate in order to legalize commercial navigation. (Ashburner 2001, Benedict 1909: 223-242., n. 2).

The Statutes of Dubrovnik, Hvar, Split and Zadar respectively continued the tradition of maritime and legal documents of the Rhodian Law (*Nomos Rhodion Nautikos*), which served at the time as the origin in the development of the Eastern Mediterranean and the Adriatic Sea maritime law. The Roman law is extremely important for Croatia as an important source of what we now know as the Croatian law, and this is true of the majority of European countries as well. The aforementioned Laws regulate the financing of commercial navigation and other matters discussed in this paper.

The Rhodian Law is the link between medieval legal regulations and the Croatian Eastern Adriatic medieval communal statutes. (Grabovac 1991: 100-101., n. 3).

Commercial navigation depended on maritime litigation as well as on any other relevant issues such as maritime flags, maritime signalling, and anchors.

## 2. Maritime loan

Maritime loan is a contract which provides a cash loan for a ship, freight, cargo or parts thereof, given either for a specific voyage or for a certain time, for which particular interests and special awards for risk are to be paid, under the condition that the money and interests will be repaid if the risk of loss that the loan was taken for do not occur (Špehar 1983: 326, n. 4).

Maritime loan is a contract which provides a cash loan for a ship, freight, cargo or parts thereof, granted for a specific voyage or for a certain time, which object is held in return as a guarantee, under the provision that the money and interests will be repaid if the object for which the loan was agreed arrives safely (Grabovac 1991: 139, n. 5).

## 2.1. Maritime loan

The Roman law contains oldest regulations that regulate maritime loan. *Pecunia traiectica* (Lat. *pecunia* - money and *traiecticius* - designated for sea transport) is a definition for money lent as loan in order to secure a commercial or similar enterprise by sea. (Romac 1973: 258, n. 6).

In the Roman law, there are several regulations that specify the maritime loan. Chapter Pauli, Sent, 2, 14, 3. allows creditors of maritime loan to receive high interest rates without restrictions. Since the navigation in ancient times was exposed to great risks for a number of reasons, be it the quality of ships or the enemy attacks, the lender was not able to expect each time the return of his funds. Because of the aforementioned, the law did not restrict maritime interests that often amounted to 60-70%, until the time of Justinian when they were finally limited to 12%. (Romac 1973: 391. n. 7, Chapter Pauli, Sent, 2, 14, 3: Due to the high risk, the lender is able to receive unlimited high interest for the money he lent as a maritime loan while the ship is at sea).

Chapter D., 22, 2, 1: of the Roman law deals with maritime loan. It clearly states that the money received as the maritime loan must be first transported across the sea, and only then spent, for example, in major commercial centres located by the sea, and away from the place where the loan was obtained. The last part of the regulation differentiates between the transport of cargo at the risk of either the lender or the debtor. The regulation states that we can speak of maritime loan only in situations where the risk of the enterprise lies on the lender (Romac 1973: 391. n. 8, Chapter D., 22, 2, 1: states that maritime loan is the money lent as loan only if it is carried across the sea, because if it is spent at the same place where it was borrowed, one is not talking about maritime loan. It should be determined whether the goods purchased with the maritime loan money should be treated in the same way. If the goods are transported at the risk of the lender, then these goods are considered to be part of the maritime loan).

The last regulation speaks of maritime loan and regulates risk-taking by the lender. According to the same regulation, the risk is passed to the lender from the moment when the parties have agreed on the time of the ship's departure. The time was crucial, because if the ship would sail earlier than agreed, the debtor had to take any possible risk of damage to the ship or the cargo. Should there be a ship departure delay i.e. would the ship not sail at the agreed time, or within the time limit that had been agreed upon, I believe that regardless of the delay, the risk would fall on the lender. (Romac 1973: 391. n. 9, Chapter D., 22, 2, 3: In maritime loan, the risk falls upon the lender from the moment the parties have agreed on the time of the ship's departure).

The subject matter of regulation 17 of the Rhodian Law is providing loan on land or at sea. According to this regulation, it was prohibited to lend money at sea and to repay it out of property on land. In reality, there were a lot of such cases and the legislator decided to put an end to usurers and Shylocks who only used to pretend to give maritime loans in order to get higher interest on their invested funds. The last part of the regulation allowed loans made on land to be repaid out of property on land

in accordance with the Rhodian Law (Ashburner 2001: 65 n. 10, Regulation 17: The law ordains: let them not write moneys lent at sea to be repaid out of property on land without risk. If they do write them, let them be invalid under the Rhodian Law. But where loans are made on fields or on hills to be repaid out of property on land without risk, let them write them down in accordance with the Rhodian Law.).

### 3. Deposit

The deposit or guarantee was paid as a security for the due performance of the contract (to return the cash loan). The amount of maritime loan determined the amount of the deposit. Therefore the ship, freight, cargo or a particular part thereof were used as a deposit. Ever since ancient times, the Phoenicians, Greeks, Romans and other maritime nations in the Eastern Mediterranean used deposit as an instrument of security for the return of loan (Grabovac 1991: 139, n. 11).

It should be noted that the maritime loan was paid back only in case the ship and cargo arrived in safety at the destination, and the same rule was applied to the payment of the agreed profit. The most common deposit was cargo or freight, or as agreed upon. The captain, the ship-owner or merchant were not personally held responsible, unless the destruction or damage of the ship and/or cargo had occurred due to their fault.

The Rhodian Law, regulation 12 stipulates leaving a deposit for the ship. It can be assumed that it deals with a legal matter concerning a purchase or repair of the ship. This regulation requires the provider of the deposit to carry on board at least four people with him: one person of complete trust and three people who would later possibly serve as witnesses in case of court proceedings in the matter of leaving a deposit. The regulation further emphasizes the need for the deposit to be documented, i.e. it requires the written form of the deposit contract. At the very end, the regulation dictates the situation of a deposit disappearance. If a man who agreed to take charge of the deposit says that it is lost, he must take an oath that there was no fraud on his part. Otherwise, he must fully compensate the damage, i.e. pay back the deposit (Ashburner 2001: 93, Cohen 1989: 207-223 n. 12, regulation 12: If a man makes a deposit in a ship or a house, let him make it with a man known to him and worthy of confidence before three witnesses. If the amount is large, let him accompany the deposit with a writing. If the man who agreed to take charge of the deposit says that it is lost, he must show where the wall was broken through or how the theft took place, and take an oath that there was no fraud on his part. If he does not show it, let him restore the goods safe as he received them).

Regulation number 16 stipulates giving the deposit made in a ship, equipment or cargo. The regulation specifically states that the loan cannot be given in the same way as it would be given on land. In the last part, the regulation dictates the repayment out of property on land with maritime interests. As the risk used to be very high, the regulation served to ensure repayment of a loan and therefore included the ownership of

property on land. (Ashburner 2001: 96. n. 13., Regulation 16: Captains and merchants and whoever borrow money on the security of ship and freight and cargo are not to borrow it as if it was land loan... if the ship and money are saved ... lest the plot be laid against the money from the dangers of the sea or from pirates... let them pay back the loan from the property on land with maritime interest).

#### 4. Maritime loan and interest

*Usurae* (Lat., usura - interest) or interests - the amount of money or other replaceable things that the borrower usually periodically pays to the lender in compensation for the use of the required equity (*caput*). (Romac 1994: 376, n. 14).

Interest depended on the liability of a debtor to the lender, i.e. accessoriness, and the main reason was that it would come exclusively as the main obligation. According to the Roman law, interest belonged to a broader concept of profits obtained from legal transactions (*fructus civiles*) while the contractual and statutory interest were known. Contractual interest was the subject of an agreement between the parties under the contract of maritime loan, while the statutory interest was determined in accordance with the laws of the Roman state.

The Roman Law term for interest in maritime loan was *usurae maritimae* (Lat. *usura* - Interest and *maritimus* - maritime).

According to the regulations contained in the Sentences in Chapter 14, entitled "Interest" regulation 3 manages interest in maritime loan. So it says if a ship is at sea, and there is a high risk of it reaching its destination safely, high-interest is allowed i.e. interest without restrictions. A large number of creditors probably made a fortune by providing maritime loans. Had it not been so, the Institute of maritime loan and interest would not have lasted for that many centuries, the Phoenicians having been the first, followed by the Greeks and Romans, and until the Byzantine period. (Perdicas 1939: 33-50, Paulo 1989: 81 n. 15, Regulation 3: the maritime loan establishes: because of (large) risk of the creditors, while the ship is at sea, (profit) interest without restrictions (amount) can be made)).

##### 4.1. Problems with loan repayment

The Rodhian law regulation 18 defines what should be done in case the loan is not properly repaid. Firstly, the law defines the debtor i.e. the borrower of a maritime loan who borrows the money and for 8 years pays legal interest. After 8 years, the ship happens to suffer destruction, fire on board or pirate attacks. If that happens, the interest rate should cease to be payable in accordance with the Rhodian Law. The last part of the regulation defines a situation where the debtor or the borrower of a maritime loan, does not pay legal interest. In that case, the written contract prevails in accordance with the former agreement (Ashburner 2001: 67 n. 16, Regulation 18: A

man borrows money at interest and for eight years pays the legal interest. After eight years it happens that there is a destruction or fire or inroad of barbarians. Let interest cease to be payable in accordance with the Rhodian Law. If the man does not pay legal interest, the written contract prevails in accordance with the former agreement, as the writing bears on its face).

## 5. Legal disputes in maritime affairs and their course

Legal disputes in maritime affairs and their course depend on the evidence in the legal proceedings and in the written contract.

The Law of the Sea has a double meaning: on one hand, it was a set of rules governing legal relations arising from production activities in shipping or from other activities directly related to the sea; and on the other hand it covered the science that examines and interprets legal rules as well. (Brajkovic - Jakaša 1983: 332 .; Djukic 2015: 107, n. 17).

According to the Statute of Dubrovnik, there existed separate bodies that discussed maritime legal disputes on the Eastern Adriatic coast during the time when the Croatian statutes were being created. Book VII, regulation 26 of the Statute of Dubrovnik, discusses a legal dispute in the maritime affairs between a ship-owner and sailors regarding the number of shares. This regulation gives priority to the ship-owner in the event of the occurrence of a legal dispute, when there are no witnesses involved, as he is on the opposite side of the sailors, including the commander of the ship. It could be assumed that the ship-owner has invested most money in the venture, and that was the main reason why the regulation gives priority to the ship-owner. (The Statute of Dubrovnik 1272: 200, n. 18, Book VII, regulation 26. *The dispute between the master of the ship and sailors due to the number of shares*. If the master of the ship or vessel divides that ship or vessel into shares, and the dispute arises between the master, commander and sailors regarding the number of shares, and no witnesses were involved, the master of the ship or vessel is to be trusted).

The Statute of Hvar, book V, chapter 16 suggests how to resolve maritime disputes by clearly defining who shall judge the disputes in maritime affairs, as well as determining working hours of the trial. Rector is the main judge, and he needs to be assisted by his judges. As far as the working hours of the court are concerned, the trial of legal disputes in maritime affairs must proceed no matter what day it is (holidays or work days) (The Statute of Hvar 1331: 167, n. 19, Book 5, regulation 16. *Legal disputes in maritime affairs*. We decide and command to unconditionally apply the following rule that from now Rector, together with his judges, hears each maritime dispute and rules it during the holidays, as well as during workdays).

The Statute of Split, book VI, chapter 71 mentions a legal dispute between the master of the ship and the sailors or merchants, concerning payment of shipping, the cargo, maritime risks, shipwreck or other similar issues. The regulation provides for

the settlement of such disputes without lawsuits and regular court proceedings. The main purpose of the aforementioned regulation was to speed up the proceedings in order to avoid possible high costs arising from the dispute, as well as to allow for more time for navigation and new ventures. (The Statute of Split 1240: 793, n. 20, Book VI, chapter 71. *About the same*. It is determined and ordered, if there is a dispute between the captain, sailors and merchants over shipping charges, goods, accidents, or similar, these disputes should be resolved without complaints and regular court proceedings in a summary procedure, notwithstanding holidays, even if these holidays have been introduced to honour God. This is done to hasten the procedure, and to complete it in the shortest possible period of time. This doesn't exclude everyone's right to their basic legal rights).

Book VI chapter 72 of the Statute of Split deals with the retrial of disputes that arose between the master of the ship, sailors or merchants and were not heard in the Split court. In case anyone involved in a legal dispute was considered to be the injured party, they had the right to seek justice in the Split court. Court proceedings were carried out under the regulations of the Statute of Split, regardless of whether there had already been a ruling for that case. The above regulation led to legal uncertainty because it dealt with the issue where the sentence was already passed. (The Statute of Split 1240: 793, n. 21, Book VI, chapter 72. *About the same*. It is determined and ordered, if the captain, sailors or merchants have some legal disputes and were not heard in Split court, and were considered to be the injured party, contrary to Split statutory regulations, they have the right to seek justice in the Split court. Court proceedings will be carried out under the regulations of the Statute of Split, regardless of whether there has already been a ruling for that case).

The Statute of Zadar, book IV, chapter 35 deals with legal disputes that arise between passengers on board. Regulation requires that each party must submit a specific deposit on account of a dispute that is to be held, within five days after the ship comes ashore and before landing. Furthermore, the ship can start disembarkation after the deposit has been submitted, and after completion of the disembarkation, each party has 15 days to request a trial about the conflict that arose. The regulation prescribes the return of the deposit to each side if the trial does not take place, and considers the dispute finished, i.e. prohibits each party to ever interfere with the opposing party. The regulation foresees the dispute between parties caused by inappropriate deposit. In that case the judge rules in favour of the injured party and allows him to take possession of the goods of the opposing party in order to ensure the regularity of the dispute. The exception make those disputes in which Rector and his judges do the ruling. (The Statute of Zadar 1305: 423, n. 22, Book IV, chapter 35. *How to resolve disputes that arose between passengers on board after the ship has come ashore*. If any quarrels or disputes arise between passengers on board, let this be ordained: after the completion of the journey, after the ship comes ashore and before the ship starts with disembarkation, each party shall, within five days, submit a specific deposit to the judge or the designated judges on account of a dispute that is to be held. After the deposit has been

submitted without anyone's objection, the ship may start to disembark; when the ship has completed the disembarkation, let the trial be set, and if within fifteen days none of the parties requests a trial, let each of the parties be repaid their deposit so that in the future neither party can ever interfere with the opposing party. However, if there is a dispute among parties caused by inappropriate deposit, both parties are obliged to honour whatever a judge or for this purpose elected judges decide. If, however, any of the parties does not honour the agreement by withholding the deposit or by giving inappropriate amount of the deposit, let it be at the discretion of the judge or judges from then on to allow the injured party to repossess the goods found on board so that he may provide himself in the aforementioned disputes and conflicts; if the goods cannot be found on board, the judges will take the goods in the amount that they consider fair from the party that fails to comply. The disputes in which Rector and the judges do the ruling are to be excluded from the aforesaid. Let this apply not only in respect of the ship-*nave*, but also in respect of any vessel with a deck of hundred thousand load capacity).

Book IV, chapter 36 describes unloading of ships by the ship-owner. In case of deadline extension, judges have the right to determine or cancel the penalty which belongs to the Zadar municipality. The last part of the regulation deals with the application of this regulation to all ships, as well as to vessels with deck. (The Statute of Zadar 1305: 425, n. 23, Book 4, chapter 36. *Maritime judges are obliged to define and abolish the penalty to a ship-owner if he does not unload the ship within agreed time limits.* If the ship-owners do not disembark the ship within agreed time limits, let our judges define and abolish the penalty; the penalty has to be payed to Zadar municipality. Let this apply not only in respect of the ship-*nave*, but also in respect of any vessel with a deck).

Book IV, chapter 41 deals with disputes that arise between more partners or more ship-owners. The regulation foresees fast resolution of the dispute between the conflicting parties after sails have been raised, and after the ship has set sail. After the plaintiff, i.e. the claimant takes the oath, delivery of the verdict will not be postponed in case the defendant does not appear in court. In case the defendant does show up, the 'judicial court' has to take testimony from him, and subsequently pass a verdict, either by listening to both parties or in any other way, whatever the court finds more favourable. (The Statute of Zadar 1305: 429, n. 24, Book 4, chapter 41. *With respect to any dispute which may arise between the partners on the same ship, let the dispute be quickly resolved so that the verdict could be pronounced.* If the dispute between partners on the same boat-*nave* or another vessel breaks out, or between multiple masters of the same ship, and whoever of the aforementioned masters or partners hath with him any of the goods or shared revenues of the ship, let this be done: after the sails have been raised let the dispute be resolved quickly, i.e. with the summary procedure, without further ado, without court proceedings, and without delay, so that the verdict be delivered after the plaintiff has sworn in. If, however, the defendant appears in court, let the court listen to what the defendant has to declare; and within the scheduled deadline let the judicial court accept both the plaintiffs and defendants' evidence, and afterward



let the judicial court pass the sentence, either by accepting the evidence or in any other way, whatever the court finds more favourable).

The last regulation refers to the litigation between sailors, found in book IV, chapter 58, which deals with the court's jurisdiction. The case is about a sailor who causes a fight on board or on some other ship. If such a case should occur, the ship-owner, a ship captain and boatswain have the authority to try and punish those sailors who are found guilty to have led to the dispute on board. How high will the penalty be, shall be decided in good conscience of the ship-owner, commander of the ship or deck officer serving as judge, believed to be able to make a fair decision. (The Statute of Zadar 1305: 443, n. 25, Book 4, chapter 58. *Who is responsible to judge the opposing sides on board of a ship*. If a sailor causes a quarrel or dispute on the ship-*nave* or on another vessel: we want the master, commanders and boatswains to judge the opposing sides and to punish them with what they deem righteous punishment).

### 5.1. Evidence in legal proceedings

The Statute of Dubrovnik, book VII, chapter 27 indicates that each person, except the captain of the ship and sailors, can serve as a witness in legal proceedings provided that he/she is accepted by the court. Furthermore, the regulation addresses the condition that must be met by a witness in the maritime dispute, and which occurs between the captain of the ship and sailors on the one hand, and merchants on board on the other hand. According to the Statute, a witness may not serve as one if he is a slave, and the trial chamber that handles the legal proceedings, will decide whether he will be accepted as a witness. (The Statute of Dubrovnik 1272: 201, n 26, book VII, chapter 27. *Hired man can serve as a witness*. Let it be known that every hired person on board of vessel, except for commanders and sailors, is free to serve as a witness; and even in the dispute between the commander and sailors with merchants can a hired man testify, provided that the hired man is not a slave; let those who will try the case decide).

The Statute of Hvar, book V, chapter 15 indicates how to proceed in legal proceedings in the case where no written evidence exists. This regulation foresees the use of witnesses in legal disputes in maritime affairs in order to prove the actual situation. The second part of the regulation advises to give credence to all the witnesses, according to the decision of the Rector and his judges, even if the statutory regulations would stipulate the opposite. (The Statute of Hvar 1331: 167, n 27, Book V, chapter 15. *Giving credence in maritime affairs*. We demand that from now on in issues concerning shipping and sailors, where no written proof exists, and good witnesses can be provided, credence should be given to all witnesses, as it seems appropriate by Rector and his judges, regardless of any statutory regulation that would prescribe the opposite).

## 5.2. Written contract

Regulation 23 of the Rhodian Law prescribes the contract to be binding if a written contract between the captain and the merchant exists. The second part of the regulation regulates the merchant's responsibilities as defined by the written contract; either he has to provide cargo in full or settle the difference in freight. The aforementioned regulation enabled written contracts to be honoured, as they were binding for all parties included in the contract, and once signed, a contract provided legal security for its customers. (Ashburner 2001: 103, n 28, regulation 23. 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).

Regulation 24 regulates sailing with half- freight, in the case when the captain has decided to sail and the merchant wishes to return, and a written contract is signed. The regulation further distinguishes between two offenders of a written contract. On the one hand, if the offender is the merchant, he will lose half of his freight, and on the other hand, if the captain commits a breach, he must return twice the freight that was loaded on board. (Ashburner 2001: 103, n 29, regulation 24. The captain takes the half-freight and sails and a merchant wishes to return. They made and subscribed a contract in writing. The merchant loses his half-freight by reason of hindrance. Where there is a contract in writing and a captain commits a breach, let him return the half-freight and as much again.

Regulation 29 discusses the written contract in which the merchant agrees to ensure the cargo at the place fixed by the contract. In the case the merchant does not abide by the contract, he has to bear all costs caused by the pirates, fire or shipwreck, since he failed to comply with the written contract. (Ashburner 2001: 107, n 30, regulation 29. If the merchant does not provide the cargo at the place fixed by the contract, and the time fixed for loading passes, and a loss happens by reason of piracy or fire or wreck, all the injury to the ship regards the merchant. But if the days of the allowed time have not passed when something of this sort happens, let them come to contribution).

Regulation 32 regulates a written contract in the case when the ship is on its way to be loaded, and a sea storm takes place. In this situation, the merchant cannot ask back the half-freight. What is rescued from the ship and the cargo will make up the assets from which compensation will be carried out. The last part of the regulation describes a situation where the merchant or the partner has paid in advance. In that case the agreement made in writing should prevail. (Ashburner 2001: 108, n 31, regulation 32. 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 given him an advance, let their agreement made in writing prevail).

Regulation 33 deals with the case of the captain who unloads the cargo in the place as stated in the written contract. It regulates the situation when the ship undergoes an accident and the captain recovers the freight in full from the merchant. The regulation

differs between the places where damage has occurred. If damage occurs, it is better to occur at the ship than in the warehouse, as the merchant has a right to compensation if it happens on the ship. The regulation stipulates that all that was saved from the ship, as well as with the ship itself, comes into contribution i.e. assets. (Ashburner 2001: 109, n 32, regulation 33. If the captain unloads the cargo in the place fixed by the contract and the ship comes to a grief, let the captain recover the freight in full from the merchant, but the goods which have been unloaded into warehouse 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).

The Statute of Dubrovnik, book VII, regulation 15 mentions a written contract between the ship-owner, the captain and the sailors. This regulation states that any written agreement signed between ship-owners on the one hand and the captain and the sailors on the other hand, must be considered valid. If it were not so, anyone would be able to interpret the signed contract as one wishes, and the written contract would lose its purpose. (The Statute of Dubrovnik from 1272, : 198, n 33, book VII, regulation 15. *Contracts between the ship-owner, the captain and the sailors*. If the ship-owner of any ship or vessel outside Dubrovnik hands his ship or vessel, whether purchased outside of Dubrovnik or his own, to the captain and sailors let it be known that any contract which the ship-owner has signed with the captain is valid).

The Statute of Split, book VI, regulation 70 specifies the agreement made in writing about the duration of sailors' service. The regulation foresees and regulates the situation which occurs when the service lasts longer than the time stated in the contract, and according to which the captain is obliged to pay a sailor all the extra work done out of hours, in proportion to the amount stated in the written contract. (The Statute of Split 1240: 793, n. 34, book VI, regulation 70. *About the same*. It is determined and ordered, if sailors agree that they will be in service of a vessel until a certain time, but for some reason this service lasts longer than what was agreed, the captain is required to pay them in proportion to the amount for which they previously committed to serve).

Regulation 20 of the Statute of Zadar, book IV, states the obligation of the notary to record all written contracts and agreements signed between ship-owners on the one hand and merchants on the other. In addition, the regulation establishes that written contracts should be concluded in the presence of witnesses to ensure credibility, and to reduce to a minimum the possibility of modification and noncompliance of contract. (The Statute of Zadar 1305: 411, n. 35, Book IV, regulation 20. *Contracts signed between the ship-owner of a vessel lesser than a hundred thousand load capacity and merchants are to be recorded by notary or concluded in front of witnesses*. When a ship-nave or another vessel lesser than a hundred thousand load capacity is commissioned, we want this: all contracts and agreements concluded between ship-owners on the one hand and merchants on the other should be recorded by notary or concluded in front of witnesses; moreover, a ship-owner is required to comply with the regulations of the Statute of Zadar municipality, and which are legally binding for ship-owners of ships larger than two hundred thousand load capacity or more).

Regulation 32 allows the captain to keep sailor on board who does not adhere to the agreement or the written contract. The regulation further regulates the situation when a sailor secretly leaves the ship contrary to the written contract. In that case he needs to pay back double the amount of the salary he has already received, in addition to a certain amount of money as the city governor or the court decide. The purpose of this strict regulation was to achieve compliance with written agreements, as well as to deter those whose intentions and thoughts were contrary to a written contract. (The Statute of Zadar 1305: 421, n. 36, Book IV, regulation 32. *The captain can personally keep a sailor who wishes to leave the ship and does not adhere to the agreement or contract.* We determine the following: if a sailor leaves the ship or vessel contrary to the contract and agreement signed with the captain or ship-owner, let the captain keep sailor on board until he has met all the conditions in the signed contract. The sailor or sailors who would abandon the ship by force or in secret contrary to the contract they have signed are required to pay back double the amount of their salary, as well as the amount of money that city governor or the court deem is necessary. We want this to apply not only for a ship-*nave*, but for any vessel with a deck of hundred thousand load capacity or more).

Regulation 40 commands that all written contracts and agreements made between the ship-owner and the lessee of the vessel, partners, sailors, or any other persons on board, must be respected unless they contradict the regulations of the Statute of Zadar. In case the regulations of a written contract are contrary to what the Statute of Zadar prescribes, the Statute should be obeyed. The regulation specifies the fines for violators of written contracts, i.e. for those who do not abide by the written regulation, stating that half of the fine belongs to the party that has adhered to the written contract, and the other half to the Zadar municipality. (The Statute of Zadar 1305: 427, n. 37, book IV, regulation 40. *The captain shall not expel a partner, nor may partner leave the ship, and let the contracts between them be obeyed.* We determine the following: all contracts or agreements made between the captain and the lessee of the vessel or a partner or sailors, or between any other person who is on board, are to remain solid, permanent and respected, unless these contracts and agreements were against the Statute of Zadar municipality. In that case we want the Statute to be obeyed; moreover, we command that a captain cannot expel a partner or a partner may leave the ship, but are both obliged to respect arrangements and contracts made between them; the party that does not respect the agreement shall pay twenty piasters; half of the fine shall be given to the party that has adhered to the written contract, and the other half shall be transferred to the Zadar municipality).

Regulation 71 resolves the question of power of written contracts. The case in question describes a ship from Zadar that is given as a share in profits to sailors if a written contract between the sailors on the one hand, and ship owners on the other exists. The regulation imposes the parties to adhere to the contract, as it is the only valid document for the parties. ((The Statute of Zadar 1305: 451, n. 38, book IV, regulation 71. *A ship that has been given as a share in profits to sailors under certain*

*conditions; those conditions must be respected if they are in writing.* Some ship from Zadar is to be given as a share in profits to sailors, this is to be done in such a way that the sailors and the captain shall make a contract: we want this contract to be in force, if agreed in writing).

## **6. Other issues related to maritime affairs**

Other issues related to maritime affairs are those that are very important for the safety of sailing, those being: a flag.

### **6.1. Flag on board**

The flag is a colourful textile symbol, normally a parallelogram, flown at the stern or hoisted at mast, which symbolizes a sign or affiliation to a certain country (Brakovic - Pallua 1989: 582, n. 39). Ship belongs to the country which has provided the official registration and as a consequence gets the protection of that country. The external sign of nationality is the flag that the ship hoists (Rudolf 1989: 75, n. 40). The right for hoisting a flag - each country (coastal and landlocked) has the right to have a ship sail under its flag in the open sea. (Rudolf 1989: 312.-313, n. 41).

The oldest flags made of fabric materials were used more than three thousand years ago by Greeks, Romans, Assyrians, Persians, as well as other maritime nations. Additionally, some nations marked the sails on their ships to show state designation. The oldest preserved flag is a Denmark flag of 1218 that contained a red base with white cross (Braković - Pallua 1989: 582, n. 42).

The flag was very important because the ship could be saved or spared from attacks, solely due to the flag. The flag indicated nationality, i.e. the legal relationship between the ship and the State of the flag under which the ship sailed (Grabovac 1991: 41, n. 43). The use of false flag was exceptionally justified during the war times. A merchant vessel may have used a false flag to avoid seizure (control), while a warship may do the same to exercise certain rights. (Rudolf 1989: 447, n. 44). The following situation considers the law on loot, as well as taking of things that had sunken in the sea. Loot - when removing sunken objects from the sea, an important fact is that the object had sunken. This means that the object must be permanently and completely under water. In the case of a ship, its highest deck should be permanently under water. (Grabovac 1991: 239, n. 45).

The third situation is related to the maritime policy under which the competent port authority addressed various issues in the port, including the evaluation of the amounts of fee and the nationality of ships. Hostile or rival ships were charged a much larger sum for certain services than what was customary. It should be noted that by hoisting a flag the ship enjoyed certain immunity. Ever since ancient times, merchant ships were spared from attacks or supervision solely because of their membership, while in time

and with further development of the international maritime law, immunity gained an even greater importance.

As early as in the 13th century, medieval coastal towns put up flags on their, mainly commercial, ships. Flags allowed ships a certain freedom and easier international navigation, so called freedom of navigation.

Throughout the history, the Republic of Ragusa had different flags on their ships. In the beginning, the flag had a white background on which patron saint Blaise was placed together with the letters S B, which stood for *Sanctus Blasius*. The aforementioned flag was existent until the loss of independence. After the French occupation, for a very short time, ships from Dubrovnik sailed under the flag of the Napoleonic Italy. Under the Austrian rule, the flags on the ships of the Ragusan Republic changed several times. The first Austrian flag was a red, white, red tricolour. The second change of the flag occurred during the Austro-Hungarian Empire when merchant ships sailed under the flag that had coats of arms of the Austrian and Hungarian flags, as well as their associated colours.

Ships that hoisted the flag, especially during the voyage, were considered to have fulfilled all legal requirements for navigation, as opposed to the ones that did not have a flag or had two or more flags. If a merchant vessel without a flag was passing through territorial waters of a country that had declared war, its warships were entitled to control and stop such ships. In the case that a ship without a flag tried to escape, warships had the right to use force, and if necessary, sink the ship. Most countries used it as a rule of thumb that the ship-owner has the same nationality as the flag under which the ship was sailing. The main goal of ship-owners in maritime navigation was to gain profit, and in order to achieve that one had to meet certain criteria in navigation, the flag certainly being one of those.

What flag the ship was flying was of utmost importance, because ship's affiliation often spared the ship from being destroyed, even in situations when the crew was oblivious of possible danger.

## 7. Conclusion

Important elements that have helped standardize the regulations concerning navigation can be found in the oldest codes that have originated from the Eastern part of the Mediterranean. Relationships in commercial navigation have depended on several aspects. Some of them are analyzed in this paper and can be divided in two groups. The first group can be classified as legal and administrative aspects, such as maritime loans, deposits, and legal disputes in shipping, while the second group includes material-technical aspects, such as the flag on board, ship's whistle and anchor.

Maritime loan is mainly defined as a loan, signed in emergency, which was returned only in the situation when the ship and cargo reached their final destination. This means that the lender was directly interested in and linked to the outcome of the navi-

gation, as only the positive outcome brought him interest and positive business results.

I believe that the deposit had an important role in navigation, as it indirectly encouraged the appropriate and conscientious behaviour of the participants during the voyage. Therefore, the deposit was regulated by the Rhodian Law, regulation 12 that stipulated leaving a deposit for the ship. Similarly, regulation number 16 stipulated giving the deposit made in a ship, equipment or cargo. The deposit served as a kind of reward or punishment, depending on the outcome of the navigation.

Maritime loan and interests were resolved by regulation 3 of the Rhodian Law where the amount of interest in maritime loan was prescribed. The more uncertain and dangerous the voyage was, and this depended on the route, the state of the ship, the type of the cargo carried on board and the time of the year, the higher the interest rates.

The Rhodian Law regulation 18 defines what should be done in case the loan is not properly repaid. My belief is that the aforementioned regulation is fair, especially when it comes to an incident. Maritime loan at sea is regulated by the Roman law. Regulations Pauli, Sent 2,14,3 and D.22,2,1 and D.22,2,3 of the Roman law regulate maritime loan. The first of these regulations stipulates the lender because it allows interest without restrictions. The second and third provisions of maritime loan of the Roman law indicate transportation by sea and the risk that should be guaranteed by the creditors. My opinion is that these regulations were established in order to prevent fraud or possible fictitious loans. They contained good legal solutions, evident from the rights and obligations of the subjects under the contract. Regulation 17 of the Rhodian Law defines loans on sea and on land. It did not allow maritime loan to be secured by property on land, with the aim of preventing possible misuse of the institute of maritime loan and possible abuse of the law by participants in maritime ventures, as it was known that they would not have a full interest if the ship arrived at its destination.

Maritime loan used to have an important role in the maritime trade, and thanks to it maritime trade and the exchange of goods were quickly developing, having thus led to the strengthening and development of economic relations in the society. Such regulations were made in response to issues that would arise in navigation and at the time of their application they greatly facilitated the conduct of legal disputes.

The scientific contribution of this paper is to determine the history of navigation, as well as the link between the antiquity and medieval laws, based on historical facts, legal regulations and the results obtained from the arguments and facts. It is important to emphasize that this text synthesizes the complexity of maritime issues from the historic and legal standpoint in relation to the above mentioned issues presented in the paper.

It can be concluded that the validity of a certain regulation that regulates the navigation depends on the quality of its content and its effects in practice. I believe that time can best indicate the value of a regulation. Namely, certain regulations of the ancient world were so advanced, that some of them exist, although in a somewhat modified form, even today.

## Sources

1. Ashburner 2001.  
Ashburner, Walter, *The Rhodian Sea-Law*, New Jersey, 2001.
2. Cvitanić 1991.  
Cvitanić, Antun, priredio i preveo tekst, Kruno Prijatelj je urednik, uvodnu studiju napisao Ivo Kasandrić, Hvarski statut, Split, 1991.
3. Cvitanić 1998.  
Cvitanić, Antun, priredio i preveo tekst, Ivo Frangeš je glavni urednik, Statut grada Splita, Split, 1998.
4. Đukić 2008.  
Đukić, Zlatko, Pomorske djelatnosti u zakonicima starog vijeka (Odnos zakonika starog vijeka s elementima plovidbenog prava i Rodskog pomorskog zakonika), Doktorska disertacija, Zadar, 2008.
5. Križman & Kolanović 1990.  
Križman, Mate, & Kolanović, Josip, priredili i preveli tekst, Ante Cvitanić napisao Uvod, Mato Kapović urednik, Statut grada Dubrovnika iz 1272, Dubrovnik, 1990.
6. Križman & Kolanović 1997.  
Križman, Mate, & Kolanović, Josip, priredili i preveli tekst, Šime Batović, Josip Kolanović i Stijepo Obad čine uredništvo, Zadarski statut, Zadar, 1997.
7. Paulo 1989.  
Paulo, Julije, *Sentencije*, Zagreb, 1989.
8. Romac 1994.  
Romac, Ante, *Institucije. Justinijan*, Zagreb, 1994.
9. Romac 1973.  
Romac, Ante, *Izvori rimskog prava. Latinski tekstovi s prijevodom*, Zagreb, 1973.

## References

1. Benedict 1909.  
Benedict, Robert D., "The Historical Position of the Rhodian Law", *The Yale Law Journal*, Vol. 18, No. 4 (1909), str. 223–242.
2. Buljan 1985.  
Buljan, Ivo, Sidra i lanci, Pomorska enciklopedija, sv. 7., Zagreb, 1985., str. 264.
3. Brajković & Jakaša 1983.  
Brajković, Vladislav & Jakaša, Branko, Pomorsko pravo, *Pomorska enciklopedija*, sv. 6., Zagreb, 1983., str. 332.
4. Brajković & Pallua 1989.  
Brajković, Vladislav & Pallua, Emilio, Zastava, Pomorska enciklopedija, sv. 8., Zagreb, 1989., str. 582.
5. Cohen 1989.  
Cohen, Edward E., "Athenian Finance: Maritime and Landed Yields", *Classical Antiquity*, Vol. 8, No. 2 (1989), str. 207–223.
6. Đukić 2015.  
Đukić, Zlatko, Pomorske djelatnosti u zakonicima starog vijeka, Beli Manastir/Mohacs, 2015.
7. Grabovac 1991.  
Grabovac, Ivo, Enciklopedija pojmova pomorskog prava, Split, 1991.
8. Mardešić 1972.  
Mardešić, Petar, Povijesni razvoj trgovačkih brodova, Zagreb, 1972., str. 531.
9. Perdicas 1939.  
Perdicas, Panajotis, "On History and Outlines of Greek Maritime Law", *Transactions of the Grotius Society*, Vol. 25, *Problems of Peace and War, Papers Read before the Society in the Year 1939*, (1939), str. 33–50.



10. Rudolf 1989.  
Rudolf, Davorin, *Enciklopedijski rječnik međunarodnog prava mora*, Split, 1989.
11. Špehar 1983.  
Špehar, Franjo, Pomorski zajam, *Pomorska enciklopedija*, sv. 6., Zagreb, 1983., str. 326.

Zlatko Đukić

## Neka pravna pitanja koja se tiču zajma i pravnih sporova u vrijeme rimske i srednjovjekovne komercijalne plovidbe

### Sažetak

U radu se opisuju osnovni elementi trgovačke navigacije vezani uz financije koji su se koristili u povijesti. To su u prvom redu osobe koje su financirale plovidbu, ali i drugi partneri koje je zakonodavac predvidio i zakonski regulirao. Radi se o pomorskom zajmu, depozitu koji su koristili kao instrument osiguranja povrata zajma još od vremena starog vijeka poznat kod Feničana, Grka, Rimljana i drugih pomorskih naroda istočnog Sredozemlja.

Najstariji pravni spomenici koji reguliraju pomorski zajam vezan uz trgovačku navigaciju sadržani su u Rimskom pravu, Rodskom zakoniku o izbacivanju tereta te Rodskom pomorskom zakoniku.

U radu se analiziraju elementi vezani uz pravne sporove u pomorstvu, te problematiku koja je važna za plovidbu poput zastave na brodu. Postavlja se pitanje vezano uz plovidbeno pravo koje je reguliralo navedene elemente, koliki je utjecaj odredbi koje su ubrzale rješenja pojedinih pravnih pitanja vezanih uz plovidbu, o čemu će više biti u nastavku rada.

**Ključne riječi:** zajmodavac, depozit, pravni spor u pomorstvu, plovidba