

HENRIK-RIKO HELD
University of Zagreb, Faculty of Law
henrik.riko.held@pravo.unizg.hr

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THE CONTRACT OF COLLEGANTIA IN THE LATE MEDIEVAL LAW OF DUBROVNIK (RAGUSA)

HENRIK-RIKO HELD

Abstract: *Collegantia* is a type of *commenda*, a widespread contract in the late medieval Mediterranean between an investing partner, and a travelling, on occasion also investing partner, who usually traded overseas. Local variant from Dubrovnik is here examined, with special attention given to various social aspects, and particularly to the division of risks and allocation of profits.

Keywords: *collegantia*, *commenda*, Dubrovnik (*Ragusa*), maritime contracts, risk allocation

Introduction

Collegantia is a contract from the late medieval law of Dubrovnik (*Ragusa*), associated principally with maritime trade, in which an investing party provides the capital and a travelling party conducts the business venture, while the risks and eventual profits are distributed between them. The contract is terminologically and conceptually linked with its Venetian namesake (known also as *colleganza*), as well as with the contract of *commenda*, embedded throughout the Mediterranean at the time. The modern scholarship usually makes a basic distinction between a bilateral and unilateral *commenda*, and then subsumes local variants of the contract with different names under the one or the other.¹ In a bilateral *commenda* both parties to a contract invest while only one party travels in order to trade for profit, while in a unilateral *commenda* only one party invests (*socius stans* or commendator), while the other travels and trades (*tractator*).²

¹ See, for example, Walter Ashburner, *The Rhodian Sea Law*, Oxford: Clarendon Press, 1909, 237-245, 237; J. H. Pryor, "The Origins of the Commenda Contract", *Speculum* 52/1 (1977), 10.

² W. Ashburner, *The Rhodian Sea Law*, 237-240; Vladislav Brajković, *Étude Historique sur le Droit Maritime Privé du Littoral Yugoslave*, Marseille: Société anonyme du Sémaphore du Marseille, 1933, 197-200; John H. Pryor, "Mediterranean Commerce in the Middle Ages: A Voyage under Contract of Commenda", *Viator* 14 (1983), 135-140; Yadira González

The contracts of this kind in the late medieval Mediterranean trade have been extensively analysed in literature.³ More recently, the scholarship has focused on certain specific issues and local variants.⁴ The contract of *collegantia* in the late medieval law of Dubrovnik also received some attention. However, various studies were either confined to statutory regulation, dealt with the matter peripherally or examined the sources fragmentarily.⁵

de Lara, "The Impact of Formal Monitoring on Financial Innovation: from Debt to Equity in Late Medieval Venice": https://www.unige.ch/sciences-societe/dehes/files/8615/0713/5354/sar_fall_2017_gonzalez_monitoring_financial_innovation_venice.pdf (accessed on 21 March 2025), 10-13.

³ A relatively recent account, with comprehensive references to contemporary and older literature, may be found in J. H. Pryor, "Mediterranean Commerce in the Middle Ages", 133-194; J. H. Pryor, "The Origins of the Commenda Contract", 5-37. See also Abraham Udovitch, "At the Origins of the Western Commenda: Islam, Israel, Byzantium?", *Speculum* 37 (1962), 198-207; John H. Pryor, "Commenda: The Operation of the Contract in Long Distance Commerce at Marseilles During the Thirteenth Century", *Journal of European Economic History* 13/2 (1984), 397-440. There is an abundance of literature on the Venetian *collegantia*, for example Adolfo Sacerdoti, "Le colleganze nella pratica degli affari e nella legislazione veneta", *Atti del Reale Istituto Veneto di Scienze, Lettere ed Arti* 49/2 (1899), 1-45; Ageo Arcangeli, "La commenda a Venezia specialmente nel secolo XIV", *Rivista italiana per le scienze giuridiche* 33 (1902), 107-164; Guido Astuti, "Note sulla collegantia veneta", *Rivista del diritto della navigazione* 7/1 (1941), 71-138; Gino Luzzatto, "La commenda nella vita economica dei secoli XIII e XIV con particolare riguardo a Venezia", in: Gino Luzzatto, *Studi di storia economica veneziana*, Padova: CEDAM, 1954, 59-79; Guido Astuti, *Origini e svolgimento storico della commenda fino al secolo XIII*, Torino: Bottega d'Erasmus, 1970. The issue was dealt with in the classics of the genre as well, such as Levin Goldschmidt's *Universalgeschichte des Handelsrechts* (for the present text, only Italian translation was available and thus consulted: Levin Goldschmidt, *Storia universale del diritto commerciale*, Torino: Unione tipografico-editrice Torinese, 1913, especially 201-213), Max Weber's *Zur Geschichte der Handelsgesellschaften im Mittelalter* (for the present text, only English translation was available and thus consulted: Max Weber, *The History of Commercial Partnerships in the Middle Ages*, Oxford: Rowman & Littlefield Publishers, Inc., 2003, especially 63-75) and more specifically in Wilhelm Silberschmidt, *Die commenda in ihrer frühesten Entwicklung bis zum XIII. Jahrhundert*, Würzburg: Adalbert Stuber's Verlagshandlung, 1884.

⁴ For example, regarding local variants of the contract (Jeff Fynn-Paul, "The Land Commenda in the Late Medieval Crown of Aragon and the Rise of a 'Democratic' Investment Culture", *Tijdschrift voor Sociale en Economische Geschiedenis* 14/3 (2018), 85-107; Quentin van Doosselaere, *Commercial Agreements and Social Dynamics in Medieval Genoa*, Cambridge: CUP, 2009, 63-78) or pertinent gender demographics (Mark Angelos, "Women in Genoese commenda contracts, 1155-1216", *Journal of Medieval History* 20 (1994), 299-312). The problem of the allocation of risks as a particularly important aspect in the development of commenda contracts in Venice and their consequent widespread use was addressed in Y. González de Lara, "The Impact of Formal Monitoring on Financial Innovation" and same, "The Secret of Venetian Success: A Public-Order, Reputation-Based Institution", *European Review of Economic History* 12/3 (2008), 247-285. These issues are extensively analysed in the same author's PhD dissertation (same, "Enforceability and Risk-sharing in Financial Contracts: from the Sea Loan to the Commenda in Late Medieval Venice", Florence: European University Institute, 2000, available in open access: <https://cadmus.eui.eu/handle/1814/4938> (accessed on 21 March 2025)). Summary of this dissertation is available in *Journal of Economic History* 61/2 (2001), 500-504).

⁵ W. Ashburner, *The Rhodian Sea Law*, 237-245; Marko Kostrenčić, "Pomorsko pravo u statutima primorskih naših gradova i otoka (Svršetak)", *Mjesečnik pravničkoga društva u Zagrebu* 1/5 (1915), 287-289; Gregor Čremošnik, "Naša trgovačka društva u srednjem veku", *Glasnik Zemaljskog muzeja u Bosni i Hercegovini* 36 (1924), 74-78; V. Brajković, *Étude Historique sur le Droit Maritime Privé du Littoral Yugoslave*, 197-200; Jelena Danilović, "O ugovoru 'collegantia' u dubrovačkom pravu u periodu mletačke vlasti", *Zbornik Filozofskog fakulteta u Beogradu* 11/1 (1970), 289-306; Antun Cvitanić, "Naše srednjovjekovno pomorsko pravo", *Zbornik radova Pravnog fakulteta u Splitu* 16 (1979), 221-222; Lujo Margetić, *Srednjovjekovno hrvatsko pravo. Obvezno pravo*, Zagreb: HAZU, 1997, 269-282; Ante Marinović, *Dubrovačko pomorsko pravo*, I, Split: Književni krug, 1998, 147-149; Ignacij Voje, *Poslovna uspešnost trgovcev v srednjeveškem Dubrovniku*, Ljubljana: Filozofska fakulteta, 2003, 106-112; Vilma Pezelj, Ljuba Barun, "Ugovori o iskorištavanju pomorskih brodova u dalmatinskom statutarnom pravu", *Zbornik radova Pravnog fakulteta u Splitu* 44 (2007), 223-226; Nikol Žiha, *Rimski pomorski zajam (fenus nauticum) kao preteča prava osiguranja*, Osijek: Sveučilište J. J. Strossmayera, 2009, 241-244.

Based on a comprehensive analysis of all the published sources, this paper thus seeks to investigate *collegantia* and other *commenda*-type contracts within the legal framework and practice of thirteenth-century Dubrovnik as a local variant of a contract described as "a medieval innovation of the highest importance" which "contributed greatly to faster growth of maritime trade" that facilitated the so-called commercial revolution of the Middle Ages.⁶

In order to outline the basic characteristics of this contract in Dubrovnik, the terminological and conceptual framework is elucidated first. Special emphasis is placed on the rules regulating the contract in the Statute of 1272.⁷ Afterwards, instances of the relevant contracts in practice are particularly addressed.⁸

Terminological and conceptual framework

The Venetian statutes of Jacopo Tiepolo from 1242 contain several references to *collegantia*, in its bilateral or unilateral form.⁹ However, in the Venetian documents from the period the term *collegantia* is used exclusively for the contract of bilateral *commenda*, while unilateral *commenda* does not have a particular designation at all.¹⁰ The term *collegantia* in late medieval Dubrovnik is found in the Statute of 1272, as well as in late medieval notary documents, although sometimes with minor textual variations (such as *collogancia*, *colligancia*, *conlegancia*, *colegancia*, etc.). Therefore, there is an obvious terminological connection with the *collegantia* in Venice (as well as with the other trading centres of the eastern Adriatic coast, such as Zadar and Split).¹¹

Notwithstanding some minor differences that will be discussed later on, it is probably correct to assume that *collegantia* in Dubrovnik was principally modelled after its

⁶ Robert S. Lopez, *The Commercial Revolution of the Middle Ages*, Cambridge: CUP, 1976, 76.

⁷ *The Statute of Dubrovnik of 1272*, ed. Vesna Rimac, Vesna Baće, Nella Lonza, Dubrovnik: Državni arhiv u Dubrovniku, 2012).

⁸ Documents from the period 1278-1301 are published in the following editions: *Monumenta historica Ragusina*, I, ed. Gregor Čremošnik, Zagreb: JAZU, 1951 (MHR 1); *Monumenta historica ragusina*, II, ed. Josip Lučić, Zagreb: JAZU, 1984 (MHR 2); *Monumenta historica Ragusina*, III, ed. Josip Lučić, Zagreb: JAZU, 1988 (MHR 3); *Monumenta historica ragusina*, IV, ed. Josip Lučić, Zagreb: JAZU, 1993 (MHR 4).

⁹ *Gli statuti veneziani di Jacopo Tiepolo del 1242 e le loro glosse*, ed. Roberto Cessi, Venezia: Officine grafiche Carlo Ferrari, 1938, 122-123 (III, I-III). Unilateral *collegantia* is referenced in cap. III (this was noticed already in M. Weber, *The History of Commercial Partnerships in the Middle Ages*, 73, n. 29; see also J. H. Pryor, "The Origins of the Commenda Contract", 10, n. 12; Y. González de Lara, "The Impact of Formal Monitoring on Financial Innovation", 10, n. 14). In the Venetian maritime statutes from 1255, *collegantia* is mentioned only regarding the remuneration of expenses for the travelling merchants (*Gli statuti marittimi veneziani fino al 1255*, ed. Riccardo Predelli, Adolfo Sacerdoti, Venezia: Prem. stab. tip.-lit. Visentini cav. Federico, 1903, 163 (III, CXII)).

¹⁰ J. H. Pryor, "The Origins of the Commenda Contract", 10, with references to the sources in n. 19.

¹¹ *Statuta iadertina*, ed. Josip Kolanović, Mate Križman, Zadar: Matica hrvatska, 1997, 250-251 (lib. III, 7); *Statut grada Splita*, ed. Antun Cvitanić, Split: Književni krug, 1987, 101 (lib. III, 73).

Venetian namesake. Dubrovnik was under the rule of Venice in this period,¹² and the city had intensive commercial relations with the *Serenissima*.¹³ In the Venetian *commenda* contracts throughout the thirteenth century there is evidence of the involvement of the partners associated with Dubrovnik, or the mention of Dubrovnik as a destination.¹⁴ Thus trade networks and the hands-on experience with the contract created opportunity enough to introduce and spread it in the practice of Dubrovnik.

Actually, in Venice the unilateral form of the contract prevailed over the bilateral, and was predominantly used already by the third decade of the thirteenth century.¹⁵ It would be perfectly reasonable, then, to expect that at the time of the composition of the Statute in 1272,¹⁶ as well as in the accompanying documents in practice, unilateral *commenda* of Dubrovnik would generally be shaped in accordance with the most widely used Venetian model deemed to be optimal in practice. However, sources from the period reveal a rather complicated picture, in which terminology is sometimes used inadequately and elements of various essentially different contracts applied interchangeably. It is therefore hard, if not impossible, to systematise the data according to clear-cut juridical and scholarly categories. Contracts were sometimes

¹² More, with further references, in Robin Harris, *Dubrovnik. A History*. London: Saqui, 46-61. Details regarding the Venetian rule at the beginning of the thirteenth century are discussed in Nella Lonza, "Venetian Rule over Dubrovnik in the Early Thirteenth Century and the 'Leased Countship' of Giovanni Dandolo (c. 1209-1235)", *Dubrovnik Annals* 25 (2021), 7-52.

¹³ More in Bariša Krekić, *Unequal Rivals*, Zagreb: HAZU, 2007, 9-46; see also Josip Lučić, "Pomorsko-trgovačke veze Dubrovnika i Venecije u XIII stoljeću", *Pomorski zbornik* 8 (1970), 569-595.

¹⁴ Thus one *Fuscari Raguseo* was a tractator in a *collegancia* (a bilateral *commenda*) from 1206 concluded with *Çacharia Stagnario* (*Documenti del commercio Veneziano*, II, ed. Raimondo Morozzo della Rocca, Antonino Lombardo, Roma: Nella sede dell'Istituto, 1940 (hereafter as: Documenti II), doc. 519). *Çacharia* (*Zaccaria*) *Stagnario* was a grandson of a servant, a Croat from Dalmatia, who was freed from his service by his lord in a testament (his life is outlined, alongside references to sources, in: Diego Puga, Daniel Trefler, "International Trade and Institutional Change", *The Quarterly Journal of Economics* 129/2 (2014), 773. See also: Vinko Foretić, "Hrvat Dobramir i još neki naši ljudi kao pomorski privrednici u Mlecima u 12. i 13. st.", *Pomorski zbornik* 1 (1963), 404-410; Neven Budak, "Kako je hrvatski rob mogao postati mletački patricij ili neke vijesti o ranim hrvatsko-mletačkim trgovačkim i drugim vezama (11.-13. st.)", in: *Spomenica Ljube Bobana*, ed. Mira Kolar Dimitrijević, Zagreb: Zavod za hrvatsku povijest, 1996, 79-81; Lovorka Čoralić, "Venecija", in: *Nova zraka u europskom svjetlu. Hrvatske zemlje u ranome srednjem vijeku*, ed. Zrinka Nikolić Jakus, Zagreb: Matica hrvatska, 2015, 560-561). *Sebastiano Raguseo* was a tractator in a unilateral *commenda* from 1238 (Documenti II, doc. 711). In one *collegancia* dated as early as 1182 two Venetians agreed that the tractator would travel to Dubrovnik and elsewhere (*usque Ragusim et inde ubicumque compagnia eiusdem navis concordaverit*, in: *Documenti del commercio Veneziano* I, ed. Raimondo Morozzo della Rocca, Antonino Lombardo, Roma: Nella sede dell'Istituto, 1940, doc. 334). There is evidence from 1225 about an earlier unilateral *commenda* that included travel to Rab, Split, and Dubrovnik (Documenti II, doc. 624). It is possible that the anthroponym *Raguseus* and the toponym *Ragusa* used in the documents refer to the eponymous city on Sicily, but it is most likely that they actually refer to Dubrovnik, since it was a port alongside Venice's main trade routes towards Constantinople (more about those routes in: D. Puga, D. Trefler, "International trade and institutional change", 760-762).

¹⁵ Y. González de Lara, "The impact of formal monitoring on financial innovation", 9, 42; Frederic C. Lane, *Venice and History*, Baltimore: John Hopkins University Press, 2019, 59.

¹⁶ Details regarding this process are analysed in Nella Lonza, "The Statute of Dubrovnik of 1272: between legal code and political symbol", in: *The Statute of Dubrovnik of 1272*, ed. Vesna Rimac, Vesna Baće, Nella Lonza, 9-12.

tailored in accordance with the immediate needs and interests of the parties, even to the detriment of the complete legal coherence.¹⁷

In order to make the best of the situation, in this paper I tried to assume the widest possible definition of a unilateral *commenda* and investigate its application in the sources. In so doing, unilateral *commenda* is conceived as a contract in which the commendator provides capital and the tractator pursues profit from it with his activities overseas or otherwise, while the rules for division of profits and allocation of risks may vary significantly. This approach may provide as adequate framework as possible, taking the current situation with the sources in account, for the understanding of the *collegantia* contract and its variants in the late medieval law of Dubrovnik.

Collegantia in the *Liber statutorum civitatis Ragusii* (1272)

Generally, statutory regulation has a limited value for the understanding of medieval law. It is often fragmentary and incomplete, derived from local custom, indeed intended to be used alongside custom, or sometimes even superseded by custom in practice. Additionally, private contracts of merchants were often shaped according to their own widespread customs, *lex mercatoria*, regardless of the statutes.¹⁸ Still, regulation regarding *collegantia* in the Statute, such as it is, should be outlined as a context for further analysis.

The *sedes materiae* regarding *collegantia* contracts may be found in Book Seven of the Statute, which is dedicated to maritime law.¹⁹ Rules for the allocation of risks and division of profits are detailed in the Statute, lib. VII, 50. According to these rules, regarding profits, when the money or merchandise is given over in *collegantia*, commendator receives 2/3 of the profits while the tractator receives the remaining 1/3 (if the parties do not agree otherwise).²⁰ Maritime risks (*fortuna*) are in principle borne

¹⁷ This typically medieval phenomenon is in the context of Dubrovnik law very aptly described in N. Lonza, "The Statute of Dubrovnik of 1272", 17.

¹⁸ This is excellently explained, with further references, in N. Lonza, "The Statute of Dubrovnik of 1272", 16-17.

¹⁹ Statute VII, 28, 50 and 51. See also J. Danilović, "O ugovoru 'collegantia' u dubrovačkom pravu u periodu mletačke vlasti", 291; I. Voje, *Poslovna uspešnost trgovcev v srednjeveškem Dubrovniku*, 106.

²⁰ Thus, division of profits in the Statute is at odds with the Venetian regulation, which, unless parties agree otherwise, awards 1/4 or 1/5 of the profits to the tractator (*Gli statuti veneziani di Jacopo Tiepolo del 1242 e le loro glosse*, 123-124 (III, III)). In the practice regarding the unilateral *commenda*, 1/4 of profits for the tractator and 3/4 for the commendator is a vastly prevailing model throughout the first half of the thirteenth century in Venice (Documenti II, doc.: 467-469, 475, 478-479, 483, 488-489, 495-497, 501, 512, 522-523, 525, 532, 545, 573, 587-588, 596, 601-605, 613, 618-620, 644, 656-657, 662, 664, 668, 671, 673, 675-676, 694-695, 700-701, 707, 709, 711, 716-717, 723, 726, 735, 741, 745-746, 749-751, 753, 759, 761, 764, 767, 769, 771-772, 780, 785, 792-794, 801, 806, 809, 811-812, 824-825, 828-829, 831, 835, 839-843, 858-859). Each party received a half of the profits in 4 instances from the period (doc. 472, 477, 715 and 808). Tractator received 1/3 of the profits only in one document from 1205 (doc. 471). In 6 instances the tractator decided how much of the profits would be given to the commendator (doc. 772, 791, 810, 821, 846 and 849).

by the commendator.²¹ However, if the tractator leaves the Adriatic (*Culfum*) without permission from the commendator, all the risks (*totum periculum*) are borne by him.²² If a part of the capital is lost, the commendator may choose to accept what remains and then the tractator will not have to reimburse the amount that was lost.²³ Division of profits associated with a ship on a business venture while the ship is outside Dubrovnik is detailed in the Statute, lib. VII, 28. Although *collegantia* is not explicitly mentioned, the rules obviously apply to this contract as well.²⁴

Other provisions in the Statute that mention *collegantia* are comprised in Book Three, which deals with civil procedure and jurisdiction of the courts.²⁵ According to the provision of the Statute, lib. III, 13, the debtors from *collegantia* contracts (alongside those from other maritime contracts) may request a postponement of the proceedings when summoned to court if they have an imminent business trip. The framers of this provision clearly take into consideration the fact that the persons involved in maritime trade often travel overseas on business, on account of which they deserve a preferential treatment as opposed to other debtors.²⁶ *Collegantia* is finally mentioned in the provision of the Statute, lib. VII, 46, which deals with *aptagi*, a sort of enforceable deed in debt proceedings.²⁷ In the present context the provision is important, since it confirms that the tractator was only responsible for the

²¹ In earlier literature there was a discussion regarding the interpretation of the expression *ipsos denarios seu merces debent habere ad fortunam eius cuius sunt clare facte*, associated with various possible interpretations about the ownership of the capital or risk allocation. More recently, these problems were convincingly put aside in favour of the meaning assumed in this text (L. Margetić, *Srednjovjekovno hrvatsko pravo. Obvezno pravo*, 270-274, with references to previous literature).

²² This is obviously a statutory guard against more risky and problematic voyage outside the Adriatic, but also a reference to the basic frame of the tractator's responsibility, in which instructions from the commendator were of importance (V. Brajković, *Étude Historique sur le Droit Maritime Privé du Littoral Yugoslave*, 198 and n. 4; Y. González de Lara, "The impact of formal monitoring on financial innovation", 15).

²³ If the commendator chooses to leave the remaining part of the sum originally given away with the tractator, he ought to keep it and try to compensate for the losses, on the same ship or otherwise, according to the parties' agreement (Statute, lib. VII, 51).

²⁴ According to this provision of the Statute, the ship's scribe is obliged to register every profit achieved separately. Profits also ought to be used to repair the damages suffered by the ship, and the provision details the rules for the return of profits already divided, or a part thereof, for this purpose.

²⁵ Statute III, 13, 20, 46.

²⁶ Of course, there are measures in place that do not allow this postponement to be used for the evasion of the proceedings altogether. There is a possibility that after the postponement the debtor does not appear before the court, or that even without the postponement a debtor extends his trip associated with a *collegantia* (or another similar contract) while the creditor wishes to settle the debt before the court. In those situations, the property of the debtor is mortgaged in his absence according to the same procedure usually reserved for present debtors who ritually prostrate themselves before the court in a plea for mercy (this intriguing procedure is analysed in Nella Lonza, "Ritual padanja ničice i sudsko založno pravo srednjovjekovnog Dubrovnika", in: *Liber amicorum. Zbornik radova posvećen Antunu Cvitaniću*, ed. Željko Radić, Split: Splitski književni krug, 2016, 283-304).

²⁷ More about *aptagi* in N. Lonza, "Ritual padanja ničice", 299-301. An earlier, divergent interpretation of *aptagi* was given by Jelena Danilović, "O pravnoj prirodi i razvoju ustanove 'aptagi' dubrovačkog prava", *Istorijski časopis* 12-13 (1963), 31-90.

losses for which he might be considered culpable (those done *malo modo et in sua culpa*), while he is not liable for other losses (those that occurred *iudicio Dei et non in sua culpa*).

Relevant contracts in the notarial documents from Dubrovnik (1278-1301)

Methodological remarks

The extant sample of the evidence from the notarial documents covers little more than 20 years. Three different notaries composed the documents: Thomasinus de Savere, from 1278 to 1286, Aço de Titullo, from 1295 to 1297, and Andrea Benessa, from 1295 to 1301. While Thomasinus de Savere has been acclaimed as an excellent and conscientious notary, trained in *ars notariae*,²⁸ Andrea Benessa, for example, was a local priest whose knowledge and expertise was not on a high professional level.²⁹ Expectedly, the notaries had distinctive styles, which must have impacted the content of the documents, *collegantia* included. Additionally, although in this period Dubrovnik experienced a rise of the written legal culture,³⁰ it was not required by law for *collegantia* contracts to be composed in written form,³¹ and therefore it is possible that many of them will remain unknown.

However, the fact that some of them were written down may also be revealing in a certain sense. It is perhaps reasonable to assume that written contracts contained provisions that differed in some aspects from the customs or statutory regulation, or that in such cases the parties wished to have assurance and certainty that only a written form could provide. At any rate, the number of the contracts analysed may also be indicative. As previously stated, the widest definition of a unilateral *commenda* is assumed as a starting point of this analysis (commendator provides capital with which tractator makes profit, division of profits and allocation of risks vary, the term *collegantia* is not always used). In the analysed period, a total of 53 relevant contracts fall into this category. This might be compared with the number of other written contracts involving maritime trade in Dubrovnik of the period, such as *entega* or *rogancia*.³²

²⁸ Francesco Bettarini, "Notaries-Chancellors in Late Medieval Dubrovnik", *Italian Review of Legal History* 7/21 (2021), 695-697, with further references.

²⁹ See MHR 4, p. 5.

³⁰ More about this in Nella Lonza, "Pravna kultura srednjovjekovne Dalmacije između usmenosti i pismenosti", *Zbornik Pravnog fakulteta u Zagrebu*, 63/5-6 (2013), 1203-1232.

³¹ J. Danilović, "O ugovoru 'collegantia' u dubrovačkom pravu u periodu mletačke vlasti", 289, 295. This phenomenon was also noticed generally in the context of *commenda* contracts in the Mediterranean (J. H. Pryor, "Mediterranean Commerce in the Middle Ages", 137-139).

³² *Entega* was a contract that involved three parties: an investor, a ship-owner and mariners, all of whom divided profits three-way between themselves. *Rogancia* is basically a mandate of one person towards another to assume a business voyage involving transport or sale of merchandise. More about these contracts in W. Ashburner, *The Rhodian Sea Law*, 248-251; V. Brajković, *Étude Historique sur le Droit Maritime Privé du Littoral Yugoslave*, 200-205; and more recently L. Margetić, *Srednjovjekovno hrvatsko pravo. Obvezno pravo*, 263-269, 282-284.

Entega is mentioned only in several instances in the sources,³³ and only four contracts are explicitly named as such.³⁴ *Rogancia* is found only in one instance in the sources.^{35,36} Therefore, for some reason *collegantia* (or unilateral *commenda* generally) has a much larger presence, which might indicate either a prevalently larger number of those contracts in practice, or a practical need to compose a written document that is for some reason particular to that contract.³⁷

It is possible that various preferences of the parties regarding the division of profits or allocation of risks manifested themselves most potently in the context of *collegantia* (and unilateral *commenda*), otherwise a generally prevailing type of maritime contract. At any rate, all of the abovementioned suggests caution when dealing with the contracts in the documents and drawing conclusions therefrom.

General data

Relevant contracts in the period under consideration almost exclusively involved an amount of money given over and not merchandise.³⁸ The amounts involved vary, but certain patterns can be discerned alongside general field of the application of contracts. In this regard, the contracts are here grouped in three categories: maritime contracts (involving a voyage by ship), local contracts (capital purposed to stay in Dubrovnik) and undefined contracts (use or destination not specified, but most likely involving travel on land).³⁹

³³ MHR 1, doc. 305, 336, 784

³⁴ MHR 2, doc. 177, 178, 1024; MHR 3, doc. 309.

³⁵ MHR 2, doc. 521.

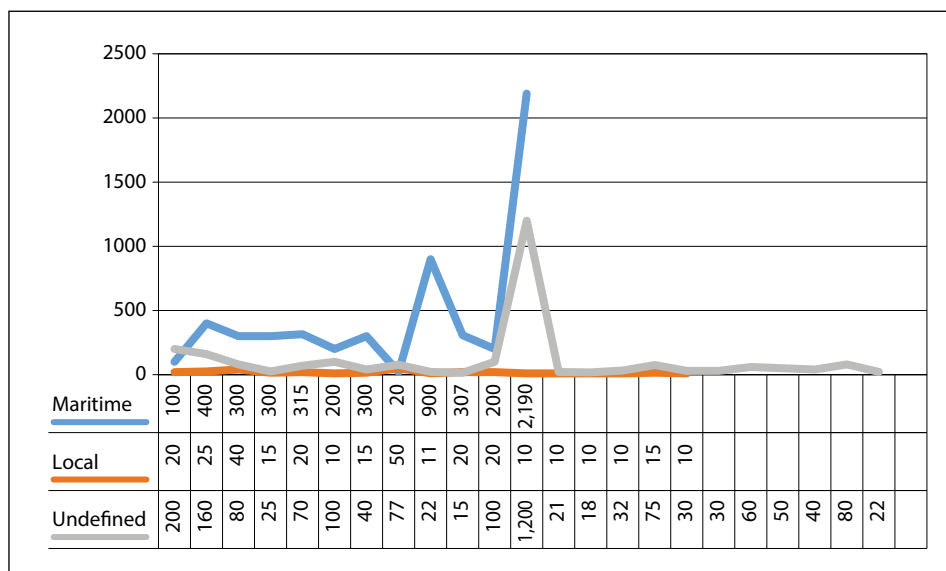
³⁶ In addition, sources reveal only one example of another maritime contract from this period, the so-called *cambium maritimum*, in which one party gave over an amount of money in one currency to be exchanged to another overseas at a profit (MHR 3, doc. 1100). More about this contract, specifically in Genoa at the time, in Raymond de Roover, "The *Cambium Maritimum* Contract According to the Genoese Notarial Records of the Twelfth and Thirteenth Centuries", *Explorations in Economic History* 7/1-2 (1969), 15-33.

³⁷ Admittedly, the contract of *entega* was to be recorded by the scribe on board the ship (Statute, lib. VII, 45), which might have been sufficient for the parties in terms of written evidence.

³⁸ Indeed, only in one instance was merchandise given over in this contract (lambskins in MHR 2, doc. 665). In another example, money was given over but with an explicit purpose to be used for the specific merchandise (MHR 2, doc. 715). In one example, shares in the ship were the object of the contract, but their value was explicitly declared (MHR 4, doc. 537).

³⁹ Although maritime travel and trading was generally a crucial source of income and wealth of Dubrovnik (this is in the present analysis demonstrated with the amounts involved in maritime *collegantia* contracts), in this period the city also had lively trading relations with its eastern and northern inland area (A. Marinović, *Dubrovačko pomorsko pravo*, 27-29. For a general survey of the economic dynamics of Dubrovnik in the period, see various essays in Bariša Krekić, *Dubrovnik, Italy and the Balkans in the Late Middle Ages*, London: Variorum Reprints, 1980).

Figure 1. Amounts involved.



This division is best presented in a graph (numbers below indicate the amount in the currency used, *solidi denariorum grossorum* or *yperperi*).⁴⁰

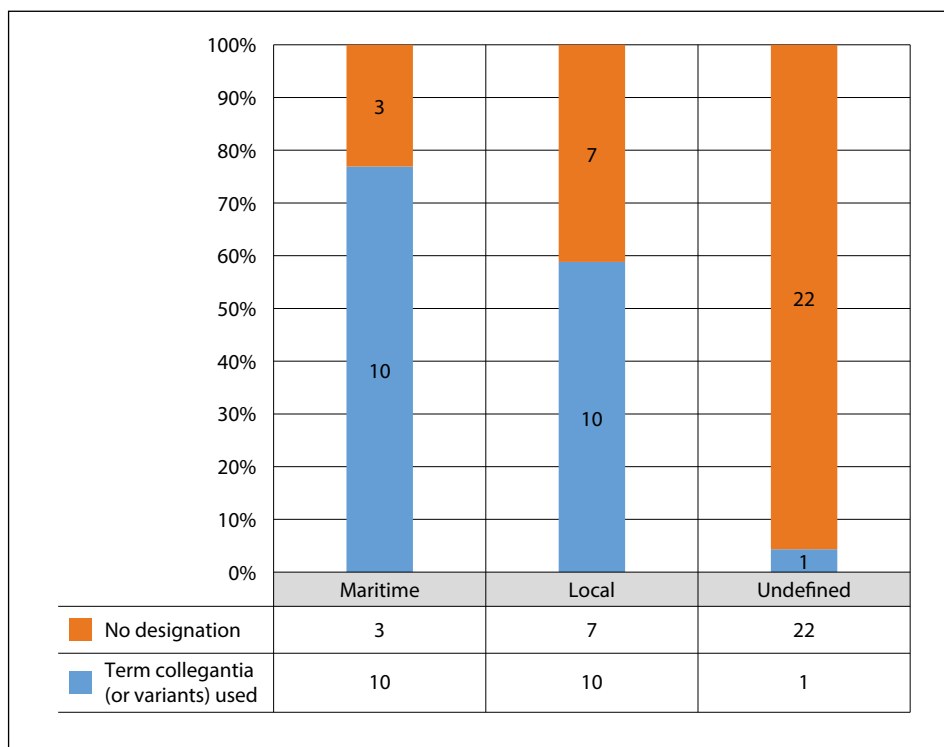
As it can be seen, with only one exception of a lower amount,⁴¹ maritime contracts attracted generally more conspicuous investments than the rest of the contracts, reaching even 900 *solidi* in one example,⁴² and a dizzying value of 2190 *yperperi* in another, although this is admittedly a somewhat atypical contract.⁴³ Peculiar example of a contract in the 'undefined' category reaching the value of 1200 *yperperi* possibly

⁴⁰ For more on the currency in Dubrovnik, see Milan Rešetar, *Dubrovačka numizmatika*, I, Sremski Karlovci: Srpska manastirska štamparija, 1924; II, Beograd: Grafički zavod Makarije a. d., 1925. Coins in circulation in Dubrovnik were described by Philippus de Diversis in the fifteenth century (Zdenka Janeković Römer, *Filip de Diversis. Opis slavnoga grada Dubrovnika*, Zagreb: Dom i svijet, 2004, 199-201). For perspective as to the value, with 160 *solidi* one could buy a house (MHR 1, doc. 417), with 238 a prime vineyard (MHR 1, doc. 722), while one fully equipped ship was in 1283 sold for 120 *yperperi* (MHR 2, doc. 1018).

⁴¹ The lowest amount of 20 *solidi* in MHR 2, doc. 475.

⁴² MHR 2, 585.

⁴³ This contract (MHR 4, doc. 537) actually involves a rare example of *collegantia* consisting neither of money nor of merchandise, but rather of shares in the ship.

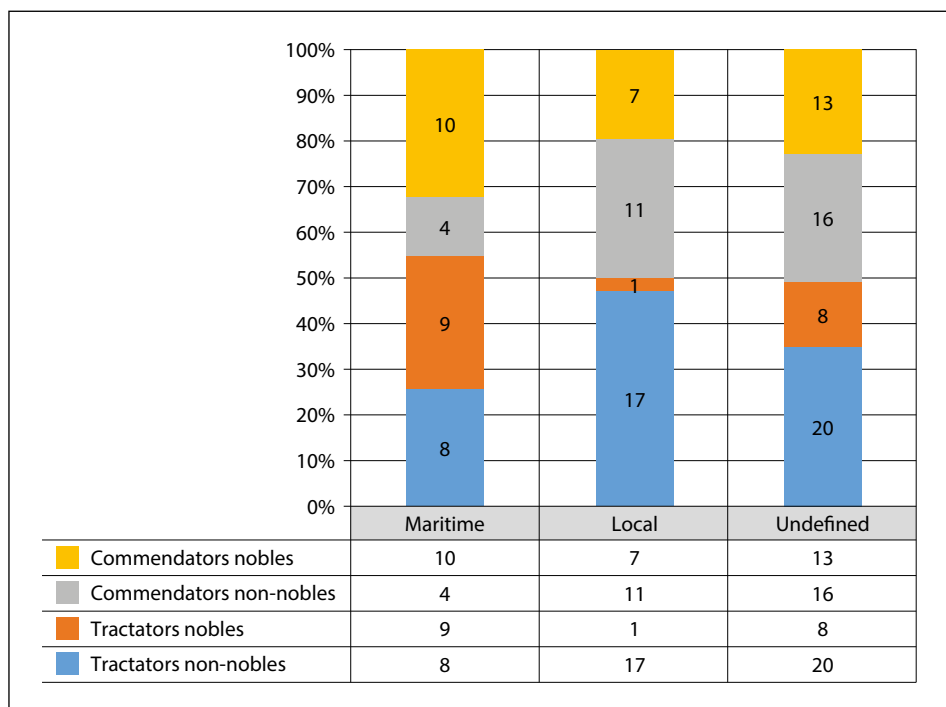
Figure 2. Use of term *collegantia* (or variants).

involved a maritime voyage as well, but a particular designation was, perhaps accidentally, left out by the notary.⁴⁴

At any rate, the 'maritime' category consists of typical *collegantia* contracts, which usually contain names of the parties, amount involved, explicit mention of the term *collegantia*, formulas indicating the purpose of the contract and the manner in which it should be carried out (*ad negotiandum per mare et per terram, ut mihi videbitur*), division of profits, allocation of risks (*ad periculum maris et gentis clarefactum*), and finally a time limit for the return of money. Contracts in the 'local' category are similar to a degree, as they sometimes contain the term *collegantia*, divisions of profit, time limits, etc. However, they significantly differ in containing a clear reference to the purpose of the given amount (to be used in Dubrovnik in a particular trade: *negotiarum de arte mea in Ragusio*) and an explicit prohibition for the money to be taken outside the city (*non*

⁴⁴ MHR 4, doc. 675. The document structurally resembles the usual *collegantia* contracts and uses the term explicitly (*colegancia*), which is otherwise completely absent in the 'undefined' category (this is discussed in further text).

Figure 3. Participation of (non-)nobility in the contracts.



debeo dictos solidos extrahere de Ragusio aliquo modo). Finally, the 'undefined' category consists of contracts principally similar to *collegantia* contracts, inasmuch as there is an indication of the tractor's obligation to trade and achieve profits in the way he sees fit (*debeo negotiari ut mihi videbitur*), a particular division of profits and allocation of risks but without a designation of where the profits should be achieved.

In the division of the relevant contracts into three mentioned categories another detail might be of importance, and that is the use of the term *collegantia*. It is almost always used in the 'maritime' category, in a majority of contracts in the 'local' category, but practically never in the 'undefined' category.⁴⁵

This actually makes it problematic to always refer to the contract of unilateral *commenda* in Dubrovnik as a *collegantia*, as one group of contracts (otherwise having the relevant characteristics of the *commenda*) is never designated as *collegantia* in

⁴⁵ The sole example of a contract in the 'undefined' category with the use of the term *collegantia* is an already previously mentioned instance of a likely maritime contract, lacking designation due to an error of the notary (MHR 4, doc. 675).

the sources. This might have something to do with the particular allocation of risks in *collegantia* contracts, which will be addressed further in the text.

Finally, some social features of the partners might also be of importance. At the time, local nobility was only establishing and consolidating its power.⁴⁶ However, certain patterns indicating their rising power can still be discerned, such as the fact that they apparently dominated the more lucrative maritime *collegantia* contracts (also generally involving higher amounts), at least as commendators or providers of the capital, and that they were generally present throughout all the categories. However, of note is also the fact that non-noble population participated in the contracts as well, almost indiscriminately.

Women participated in the contracts sporadically, and (perhaps logically) only as commendators.⁴⁷ Sometimes tutors invested money belonging to a woman in their care,⁴⁸ and it was also possible for testament executors to invest property entrusted to them.⁴⁹ This suggests that this species of contracts was not seen as particularly risky on the capital market. Foreigners also appeared in the contracts, and they were, unsurprisingly, mostly Venetians.⁵⁰

Division of profits

As earlier remarked, a provision in the Statute (lib. VII, 50) established that the commendator should receive 2/3 of the profits and the tractator 1/3, unless parties agree otherwise. The parties indeed often agreed so, at least in the available written contracts, and the divisions vary significantly in practice. This may lead to certain tentative conclusions, that in maritime contracts the parties rather preferred the division into

⁴⁶ More about this in Zdenka Janeković Römer, "Zatvaranje dubrovačkog plemstva i Vijeća u političkom i društvenom kontekstu 13. i 14. stoljeća", *Anali Zavoda za povijesne znanosti HAZU u Dubrovniku* 56/1 (2018), 87-116. The seminal work on nobility in Dubrovnik is Nenad Vekarić, *The Nobility of Dubrovnik*, Zagreb-Dubrovnik: Zavod za povijesne znanosti HAZU u Dubrovniku, 2019. Data regarding particular noble families was taken from *same*, *Vlastela grada Dubrovnika*, vols. 2, 3, Zagreb-Dubrovnik, Zavod za povijesne znanosti HAZU u Dubrovniku, 2012.

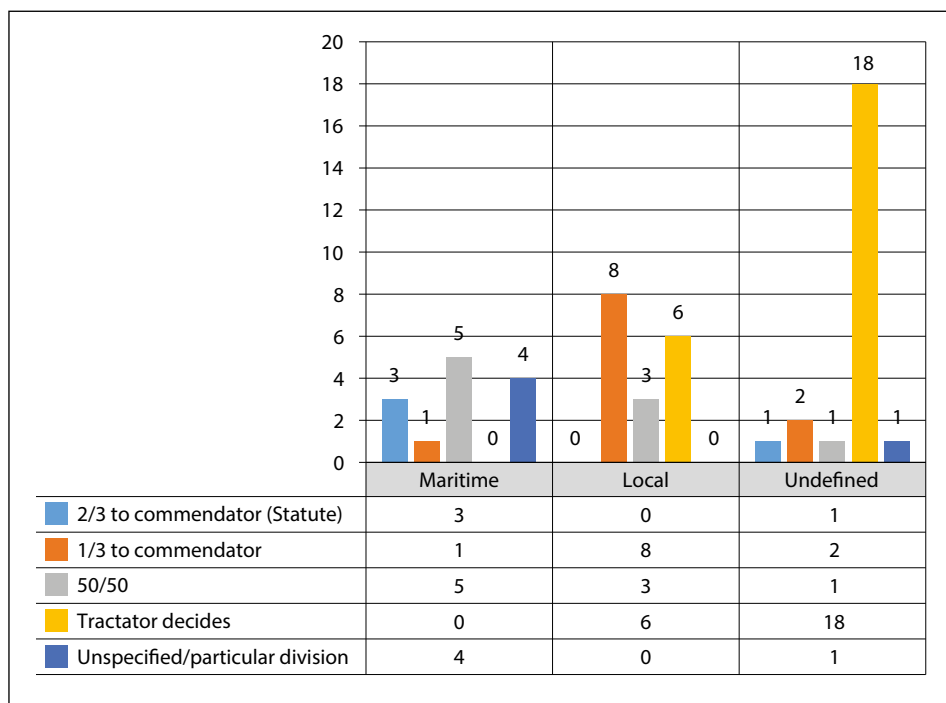
⁴⁷ Of those, 7 were noble (MHR 1, doc. 832, 923; MHR 2, doc. 75, 272, 277, 399, 771), and 5 non-noble women (MHR 1, doc. 880; MHR 2, doc. 239, 242; MHR 4, doc. 765, 1002). Women participated in maritime contracts in two instances (MHR 2, doc. 75, 239), in the 'local' category women appeared in 4 contracts (MHR 1, doc. 832, 880, 923; MHR 2, 242), and finally in the 'undefined' category there were 6 women commendators (MHR 2, 272, 277, 399, 771 (this last contract was subsequently cancelled by the parties); MHR 4, doc. 765, 1002 (interestingly, in this instance with a female non-noble commendator, tractator was a male noble).

⁴⁸ MHR 2, doc. 98. Similarly, in one example a commendator invested money belonging to his niece (MHR 1, doc. 581).

⁴⁹ MHR 4, doc. 764, 810.

⁵⁰ MHR 1, doc. 880 (Venetian tractator, 'local' variant of the contract); MHR 2, doc. 98 (Venetian tractator, 'local' variant of the contract), 369 (Venetian tractator, 'local' variant of the contract), 665 (both sides to the contract Venetian, maritime contract); MHR 3, doc. 1048 (a tractator from Kotor, maritime contract); MHR 4, doc. 1018 (both parties from Tarragona, maritime contract).

Figure 4. Division of profits.



equal shares,⁵¹ and that in the 'local' variant of the contract the majority of the parties chose a division in which commendator receives 1/3 (therefore, in complete contrast to the Statute). Of note is a predominant division of profits as the tractator sees fit (*pars lucri que mihi videbitur* or *placuerit*) in the 'undefined' category, although the same formula is sometimes used in the 'local' contracts as well. Generally, such diversity of profit division (largely in contrast with that in the Statute) might indicate at least one of the reasons why those contracts were put in writing.

⁵¹ In this context, the category of 'unspecified/particular division' in the following graph somewhat distorts the image about the general principles of division of profits in the maritime contracts. This category contains atypical divisions that could not be subsumed under any other category, such as the division according to the shares in the ship (MHR 4, doc. 537) or a division according to which all profits from the first part of the journey belong to commendator, and profits achieved on the return journey belong to the tractators (MHR 2, doc. 665). It was obviously possible for parties to come up with any sort of a particular division suited to their immediate needs. Still, a majority of one type of division likely indicates preference of the parties in practice.

Other from purely individual and particular reasons for a specific division of profits from case to case, rules for division of profits might be generally associated with certain macroeconomic factors. Larger shares of profits for the commendators might thus indicate their initial advantageous position in the market, when demand for capital was stronger than its supply. The same logic is applicable the other way around: larger shares for the tractators indicate their advantageous position, achieved as time passed and the number of wealthy people seeking to invest as commendators increased.⁵² If data from the sources are analysed from that perspective, it would seem that in the period there was actually an overabundance of capital, and that the commendators were eager to invest, even at a smaller share of profits (which was likely more than satisfactory in absolute numbers).

In all three categories, the majority of the contracts exhibit a division of profits different from the one specified in the Statute (2/3 to the commendator). Division of profits according to the discretion of the tractator, prevalently dominant in the 'undefined' category, is an example of an extremely privileged position of the tractator. It is possible that in those contracts sufficient profits in absolute numbers were expected, and that commendators were generally confident in the tractators to provide them with a satisfactory share. Either that, or an oral agreement as to the specifics of the division existed in parallel.

Allocation of risks

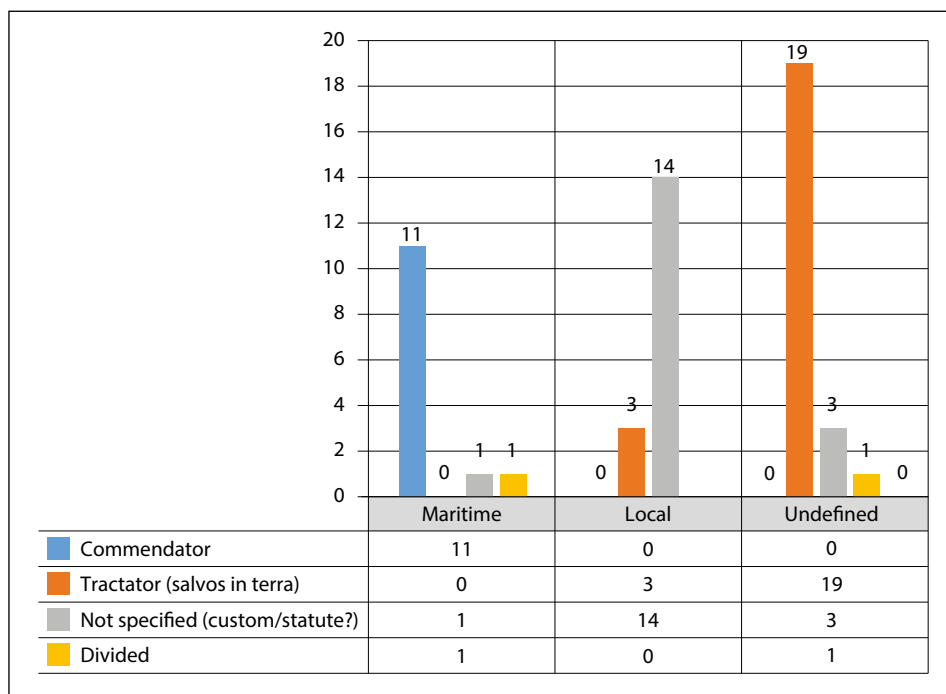
Allocation of risks is in a sense a central issue in the context of *collegantia* and *commenda* contracts. As was remarked earlier, commendator's undertaking of the maritime risks proved to be a turning point in the development of *commenda* in general, it became its key feature and a crucial element of its sudden expansion and popularity. In contrast to the division of profits, allocation of risks is much less diverse, and every category has a principal scheme with only sporadic exceptions.

In maritime contracts, almost exclusively, the commendator bears risks associated with travels at sea. This is usually expressed with the formula *dicti solidi sunt ad periculum dicti* [name of the commendator] *maris et gentis clarefactum*. The formula is common in Venetian documents of the time, and denotes perils associated with the sea generally (shipwreck due to storms etc.) and piracy or confiscation by foreign rulers.⁵³

⁵² This phenomenon, exactly in the context of the medieval Venetian *commenda* contracts, is very aptly explained in: D. Puga, D. Trefler, "International Trade and Institutional Change", 809-810.

⁵³ Y. González de Lara, "The Secret of Venetian Success", 252.

Figure 5. Allocation of risks.



The term *clarefactum* refers to the need that the occurrence of such extraordinary events which led to a loss of commendator's capital had to be sufficiently clarified.⁵⁴

When the tractator was obliged to return the given capital without any reference to such perils, this was usually expressed with the formula *salvos in terra*, sometimes with the addition *sine aliquo periculo dicti* [name of the commendator]. This means that the tractator was obliged to pay back what was given to him even if it was lost due to the mentioned extraordinary, unforeseen events. Such an allocation of risks, obviously to the detriment of the tractator, was not documented in maritime contracts. It exists in the 'local' variant, and is prevalent in the 'undefined' category. In those situations, apparently, commendators were not ready to accept responsibility for a possible extraordinary

⁵⁴ L. Margetić, *Srednjovjekovno hrvatsko pravo. Obvezno pravo*, 270-271. Indeed, there is evidence of court proceedings already in 1253 in which culpability of the travelling merchant regarding a seizure of a ship by pirates was being determined (*Codex diplomaticus Regni Croatiae, Dalmatiae et Slavoniae*, IV, ed. Tadija Smičiklas, Zagreb: Tisak dioničke tiskare, 1906, 542 (doc. 472)), and it is possible that this had something to do with an otherwise undocumented *collegantia*.

event on land, such as theft, fire, robbery etc.⁵⁵ It is possible that those events were less common than the perils at sea, and that there was no need for commendators to assume risks in order to encourage tractators to travel and trade for profit. On the other hand, the perils might have been common enough, making commendators reluctant to invest while assuming risks, especially if the expected profits were lower in comparison with maritime trade (which is likely).

Cases in which there is no explicit mention of the risk allocation might be somewhat problematic. In earlier literature it was argued that in those cases the risk was allocated along the same lines as the division of profits, so that the agreed share of the profits was applied to the allocation of risks as well.⁵⁶ There are indeed a few examples in which it is explicitly stated that the parties share both profits and losses (*lucrum* and *damnum*) in the contract in the same shares.⁵⁷ However, in those rare examples the contracts were obviously conceptually nearing the medieval *societas*, in which two or more parties invested while profits and losses were shared between them in accordance with their agreement.⁵⁸ In other words, those were essentially more *societas* than *commenda* contracts, or a transitional in-between variant, or even better, an *ad hoc* invention in accordance with the wishes of the parties, in which a legal systematisation was not of importance.

The assertion that in the contracts in which no allocation of risks is specified the same rules apply as regarding the division of profits has been criticised in more recent literature.⁵⁹ In this analysis, another observation may be added. The 'local' category is the only one which contains both *salvos in terra* formulas in some contracts and the term *collegantia* in other contracts, which are mutually exclusive. In other words, a contract may contain either a *salvos in terra* clause or it can explicitly mention the

⁵⁵ It was remarked in literature that such an allocation of risks conceptually turns these contracts basically into loans (L. Margetić, *Srednjovjekovno hrvatsko pravo. Obvezno pravo*, 276). Indeed, loans and *commenda* contracts are obviously linked, as was noted earlier. However, loan (*mutuum*) as a separate contract existed in the documents (for example, MHR 2, doc. 219, 254, 366, 468, 535, 841, 1203, 1313). Other than that, the sources are overflowing with the examples of simple debt instruments (indeed, they are the most common documents from the period (Henrik-Riko Held, "Cessio in the documents of Thomasinus de Savere, *notarius iuratus* and *scriba communis* in Dubrovnik 1277-1286", *Rivista dell'Istituto di Storia dell'Europa Mediterranea* 9/1 (2021), 125-126)), and they were dealing with an obligation to return a sum of money (possibly often in the context of an otherwise undocumented loan). Conceptually, various *commenda* contracts might have shared a certain degree of resemblance with other contracts, loans included, but if their basic structure was maintained, it might be best to consider them as having retained their distinct legal nature.

⁵⁶ J. Danilović, "O ugovoru 'collegantia' u dubrovačkom pravu u periodu mletačke vlasti", 302-305.

⁵⁷ For example, MHR 2, doc. 665; MHR 4, doc. 857.

⁵⁸ For example, MHR 1, doc. 788; MHR 2, doc. 1025. The fact that more than one party invests, after which there is a particular division of profits, led Margetić to conclude that those are essentially bilateral *commenda* contracts (L. Margetić, *Srednjovjekovno hrvatsko pravo. Obvezno pravo*, 275).

⁵⁹ L. Margetić, *Srednjovjekovno hrvatsko pravo. Obvezno pravo*, 277-279.

term *collegantia*, and this never occurs concurrently. In addition, both designations in respective contracts follow immediately after the specification of the amount of money given over.⁶⁰ All of that might indicate that the expression which is immediately following the amount serves as indication of the risk allocation scheme. Designation of a contract as *collegantia* would thus necessarily imply a particular allocation of risks, namely, that the commendator bears the extraordinary risks similar to those that occur at sea. This might be the reason why the term *collegantia* is practically never mentioned in the 'undefined' category of contracts, since *salvos in terra* clause seems to be their essential element.

It has already been noticed in literature that it is likely that the contract of *collegantia* conceptually inspired similar contracts occurring on land.⁶¹ This analysis might be a proof that this occurred not only regarding the general structure of the contract, but sometimes in the context of specifics (such as the allocation of risks) as well. Taking into account the particular geopolitical position of Dubrovnik and its orientation both towards the sea and to its hinterland, this is not surprising. For example, maritime rules about general average from the Statute, lib. VII, 7 (dealing with the division of losses on ship that occurred due to corsair attack or by jettison) were by analogy applied in the context of similar losses occurring in trade convoys on land.⁶² Therefore, influence of the *collegantia* contracts, both conceptually and in certain details, may be another example of maritime law, obviously a crucial component of the legal order in Dubrovnik, significantly inspiring and shaping other legal areas.

Conclusion

The contract of *collegantia* in the late medieval law of Dubrovnik is a local variant of the unilateral *commenda*, a contract widespread in the Mediterranean at the time, which was essential for an enormous economic expansion of many communities.

Analysis of the specifics offers an insight into the legal, economic and general particularities of the Ragusan trade of this period. Not only was the local nobility already establishing its wealth through trade and shipping, but other strata of the Ragusan society showed equal interest in business through their commercial pursuits

⁶⁰ For example, in MHR 2, doc. 742: *confiteor quod accepi a Nichola de Crossio solidos denariorum grossorum quindecim saluos in terra sine aliquo periculo ipsius Nichole* (emphasis added); MHR 2, doc. 754: *confiteor quod accepi a Blasio de Putigna solidos denariorum grossorum decem in collegantia cum usu Ragusii* (emphasis added).

⁶¹ J. Danilović, "O ugovoru 'collegantia' u dubrovačkom pravu u periodu mletačke vlasti", 297-298.

⁶² *Liber statutorum civitatis Ragusii*, ed. Valtazar Bogišić, Constantin Jireček, Zagrabiae: JAZU, 1904, 413-414; N. Lonza, "The Statute of Dubrovnik of 1272", 20.

on land and sea. Women are also present in the contracts, though scarcely and only as commendators.

The contract of *collegantia* in Dubrovnik was mainly modelled after its Venetian namesake, with certain variances associated with local specifics. Division of profits in written documents differs from the Statute, as the statutory solution is designed only to serve as a model, which can be rejected by the agreement of the parties. There was apparently more than enough capital seeking investment, as commendators were in the majority of cases willing to agree to a smaller share of profits than the one prescribed in the Statute. This might also indicate that the returns on investment were large enough in absolute numbers.

Risk was allocated according to the widely accepted model, in which the commendator bore the risk of the maritime perils, such as storms, attack of pirates or enemy seizure. This seems to be a characteristic conjoined inseparably with the term *collegantia*. Apparently, maritime *collegantia* was used in Dubrovnik as a model for contracts applied to trade and business on land. In this transition, the term *collegantia* was left out whenever a *salvos in terra* risk allocation scheme was applied (conferring risks on the tractator), although other characteristics of the contract were retained. Overall, maritime law was obviously the major legal matrix in trade, which inspired and shaped other legal areas.