IUSIURANDUM AND THE LIABILITY FOR EVICTION IN THE DOCUMENTARY PRACTICE OF *FIDUCIA*

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Already by the end of Republic, creditors in commercial transactions in Rome relied extensively on real security instruments, fiducia *and pignus. Their use is testified to by the preserved tablets dating from the 1st century AD. Among the tablets on fiduciary transfer of ownership (*fiducia cum creditore*), two of them, the* mancipatio Pompeiana *and* Tabula Herculanensis *65, in their initial part, contain an oath that the object belongs to the debtor, solely, and is not encumbered by any real burdens. The oath,* iusiurandum*, in the latter case was made –* per Iovem et numina deorum et genium Neronis Claudi Caesaris Augusti*. Taking into account earlier studies on the role of* iusiurandum*, it is investigated into the purpose and the effects of such an oath at the conclusion of a contract (extra-procedurally), in relation to the applicability of* actio fiduciae contraria *in enforcing the liability for eviction, and with regard to the inclusion of the* genius *of the Emperor, next to Jupiter and the* numina deorum*. These oaths are also set against the ones documented in the* Tabulae Pompeianae Sulpiciorum *54, 63 and 68 and their role.*

Key words: fiducia*;* fiducia cum creditore*;* iusiurandum*;* genius Caesaris*; liability for eviction*

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1. INTRODUCTION [**]

Divergences between the law in codes and the legal practice, both contractual and judicial, are commonly perceived through the dichotomy "law in books" – "law in action".[1] They manifest themselves both at the level of principles and in specific rules. The extent to which rules diverge from practice may vary from insignificant to consequential. Most often, such divergences reveal not only the efficacy of a legal system, but also the effects and the role of extra-judicial elements, such as morals, religion, or underlying societal relationships.[2]

In Roman law, the issue of "law in action" is particularly trying because of the scarcity of sources. While the picture of the "law in books" is often only partial, limited documentary evidence offers an even narrower insight into the real-life business dealings.[3] Albeit, for certain contractual arrangements, as is

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[1] For the term, see Pound, R., *Law in Books and Law in Action*, American Law Review, *vol*. 44, no. 1, 1910, pp. 12 – 36. As pointed by Halperin, "today this article is invoked more for its title than its content", however, the connection between the Legal realists and Roman law, as it is pointed out by Thévenin, may well justify the use of the dichotomy in Roman context. See more in: Halpérin, J.-L., *Law in Books and Law in Action: The Problem of Legal Change*, Maine Law Review, *vol*. 64, no. 1, 2012, p. 46; Thévenin, P., *Fact as Law. An Archaeology of Legal Realism*, in: Ando, C.; Sullivan, W. P. (eds.), *The Discovery of the Fact*, University of Michigan Press, Ann Arbor, 2020, pp. 185 – 188. See also: Tuori, K., *Ancient Roman lawyers and modern legal ideals: studies on the impact of contemporary concerns in the interpretation of ancient Roman legal history*, Klostermann, Frankfurt am Main, 2007; Pölönen, J., *Framing "Law and Society" in the Roman World*, in: du Plessis, P. J.; Ando, C.; Tuori, K. (eds.), *The Oxford Handbook of Roman Law and Society*, Oxford University Press, Oxford, 2016, pp. 8 – 18.

[2] The conservative nature of law, i.e. the lawgivers most often being late and sometimes reluctant regulators of already established affairs and relations, only contributes to deepen this gap. For Roman law see e.g. Watson, A., *The Spirit of Roman Law*, University of Georgia Press, Athens, 2008, pp. 117 ff.

[3] The claim is taken in relative meaning, not to downplay the number of epigraphic sources, on which see more in: Meyer, E. A., *Legitimacy and Law in the Roman World: Tabulae in Roman Belief and Practice*, Cambridge University Press, Cambridge, 2004; Beggio, T., *Epigraphy*, in: du Plessis, P. J.; Ando, C.; Tuori, K. (eds.), *The Oxford*

the case with *fiducia*[4], the information from the preserved tablets weighs in quite significantly.[5]

The general omission and the interpolations made in Justinian's Codification have left open many questions in the research of *fiducia*.[6] Thus, the archeological findings were primary catalysts for new studies during the last two centuries. In the second half of the 19th century, e.g., the discovery of the *Tabula Baetica* reinvigorated interest in its form and legal nature, becoming practically a basis, in its incompleteness, for the opposing theories on the modes of inclusion/addition of fiduciary purpose in/to the *mancipatio* and the *in iure cessio*.[7] Similarly, in the second half of the 20th century, the newly found *Tabulae Pompeianae Sulpiciorum*

Handbook of Roman Law and Society, Oxford University Press, Oxford, 2016, pp. 43 – 55.

4 Concerning the contractual nature of fiducia see e.g. Fercia, R., *"Fiduciam contrahere" e "contractus fiduciae". Prospettive di diritto romano ed europeo*, Jovene, Napoli, 2012.

5 This holds true especially taking into account that among the more recently found tablets there are lines of documents from the same cases. See e.g. Migliardi Zingale, L., *In tema di "fiducia cum creditore": i documenti della prassi*, Labeo, *vol*. 46, 2000, pp. 451 – 461; Peppe, L., *La vastità del fenomeno fiduciario nel diritto romano: una prima riflessione*, in: Lupoi, M. (ed.), *Le situazioni affidanti*, Giappichelli Editore, Torino, 2006, pp. 15 – 44.

6 The literature on the topic of *fiducia* is abundant, so we shall point here to some of the more recent literature and our previous articles with further references: Noordraven, B., *Die Fiduzia im römischen Recht*, J. C. Gieben, Amsterdam, 1999; Dunand, J.-P., *Le transfert fiduciaire: „donner pour reprendre", Mancipio dare ut remancipetur*, Helbing & Lichtenhahn, Bâle, Genève, Munich, 2000; Lambrini, P., *Lineamenti storico-dogmatici della fiducia cum creditore*, in: Vacca, L. (ed.), *La garanzia nella prospettiva storico-comparatistica*, Giappichelli, Torino, 2003, pp. 256 – 273; Karlović, T., *Neka razmatranja o actio fiduciae (Cic. De off. 3, 17, 70)*, Zbornik Pravnog fakulteta u Zagrebu, *vol*. 67, no. 3-4, 2017, pp. 465 – 496; Marra, P., *Fiduciae causa*, CEDAM, Milano, 2018; Karlović, T., *Reconsidering the authority to sell as the augmentation or restriction of creditor's rights in fiducia cum creditore*, Studia Universitatis Babeş-Bolyai. Iurisprudentia, *vol*. 65, no. 4, 2020, pp. 456 – 476; Milani, M., *La 'fiducia' in diritto romno. Atti costitutivi, causa, oggetto*, Jovene, Napoli, 2022; Schanbacher, D., *Treuhand (fiducia)*, in: Babusiaux, U. *et al.* (eds.), *Handbuch des Römischen Privatrechts*, Mohr Siebeck, Tübingen, 2023, pp. 1152 – 1178; Bertoldi, F., *Materialien zur fiducia im Lichte der Interpolationenkritik*, Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung, *vol*. 142, 2025, pp. 491 – 534.

7 E.g. Degenkolb, H., *Ein pactum fiduciae*, Zeitschrift für Rechtsgeschichte, *vol*. 9, 1871, pp. 117 – 179; Gide, P., *Un pactum fiduciae, note sur une inscription latine récemment découverte*, Revue de législation ancienne et moderne, française et étrangère, *vol*. 1, 1870-1871, pp. 74 – 92; Rudorff, D., *Über die baetische Fiduciartafel. Eine Revision*, Zeitschrift für Rechtsgeschichte, *vol*. 11, 1873, pp. 52 – 107.

provided a different perspective[8], shifting the focus from the conclusion of the contract to its enforcement.[9] The variety of tablets and transactions from the archives of Sulpicii, furthermore, offers contextualization for some of the elements identified in the earlier documents, especially those which were not mentioned in the literary and juristic sources on *fiducia*.

In this paper we shall focus on the role and the nature of one of these elements – the oath of ownership of an object transferred in *fiducia*. Specifically, two of the few preserved tablets on *fiducia cum creditore – mancipatio Pompeiana* and *Tabula Herculanensis* 65[10], in their initial part contain an oath that the object belongs to the debtor, solely, and is not encumbered by any real burdens. These oaths, by the fact of *iusiurandum* (or *iuramentum*) being a separate legal institution[11], and the exact form of incorporation of fiduciary purpose in the

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8 For the *TPSulp.* see in first place: Bove, L., *Documenti di operazioni finanziarie dall' archivio dei Sulpici*, Liguori, Napoli, 1984; Costabile, F., *L'"auctio" della 'fiducia' e del 'pignus' nelle tabelle dell'agro Murecine*, Rubbettino, Messina, 1992; Gröschler, P., *Die tabellae-Urkunden aus den pompejanischen und herkulanensischen Urkundenfunden*, Duncker & Humblot, Berlin, 1997; Camodeca, G., *Tabulae Pompeianae Sulpiciorum (TPSulp.): Edizione critica dell'archivio puteolano dei Sulpicii*, Quasar, Roma, 1999; Wolf, J. G., *Neue Rechtsurkunden aus Pompeji. Tabulae Pompeianae Novae*, WBG, Darmstadt, 2010.

9 See e.g. Romeo, S., *Fiducia auctionibus vendunda nelle Tabelle Pompeiane. Procedure e modalità di redazione delle testationes nelle avctiones puteolane del 61 d.C*, Polis, *vol*. II, no. 2, 2006, pp. 207 – 257; Peppe, L., *Alcune considerazioni circa la 'fiducia' romana nei documenti della prassi*, in: Peppe, L. (ed.), *'Fides, fiducia, fidelitas'. Studi di storia del diritto e di semantica storica*, CEDAM, Padova, 2008, pp. 173 – 200. See also, in the context of *pignus*: Verhagen, H. L. E., *Security and Credit in Roman Law. The historical evolution of pignus and hypotheca*, Oxford University Press, Oxford, 2022, pp. 129 ff.

10 See for these sources *infra*, but also most recently in: Schanbacher, D., *op. cit.* (fn. 6), pp. 1153 ff.

11 See more, although with emphasis in some of the works (e.g. by Harke) on the procedural oaths: Bertolini, C., *Il giuramento nel diritto privato romano*, Loescher, Torino, Firenze, 1886; Steinwenter, A., *Iusiurandum*, in: *Paulys Real-Encyclopädie der Classischen Altertumswissenschaft* (RE), *vol*. X.1, J. B. Metzler, Stuttgart, 1918, pp. 1253 – 1260; Fiori, R., *Homo sacer: dinamica politico-costituzionale di una sanzione giuridico-religiosa*, Jovene, Napoli, 1996, pp. 148 ff.; Calore, A., *"Per Iovem lapidem". Alle origini del giuramento*, Giuffrè, Milano, 2000; Zuccotti, F., *Il giuramento nel mondo giuridico e religioso antico. Elementi per uno studio comparatistico*, Giuffrè, Milano, 2000; Harke, J. D., *Der Eid im klassischen römischen Privat- und Zivilprozessrecht*, Duncker & Humblot, Berlin, 2013; Zuccotti, F., *Sacramentum civitatis. Diritto costituzionale e ius sacrum nell'arcaico ordinamento giuridico romano*, LED, Milano, 2016; Blidstein, M., *Perjury, honour, and disgrace in Roman Antiquity*, Mediterranean Historical Review, *vol*. 37, no. 1, 2022, pp. 19 – 41; Finkenauer, T., *Eid (iusiurandum)*, in: Babusiaux, U. *et al.* (eds.), *Handbuch des Römischen Privatrechts*, Mohr Siebeck, Tübingen, 2023, pp.

conveyance being the central problem[12], have been rather briefly discussed in the studies on *fiducia*.[13] The tablets, nevertheless, show that they were an important element in the documentary practice of fiduciary security.

The oaths specifically raise the question of the liability for eviction in *fiducia* and the function of *iusiurandum* in that regard. It was recognized in the literature that the oaths of ownership would indicate a specific need to provide security concerning the debtor's legal position with regard to the object of *fiducia*. While the earlier authors, like Oertmann and Frezza, saw their purpose in enabling the use of *actio fiduciae contraria*[14], the Romanists of the mid-20th century, such as Erbe, Longo, Burdese and Biscardi, rejecting such a thesis, focused mainly on the perjury giving rise to the *crimen stellionatus*.[15] Finally, Peppe, who summarized the possible means of protection and the outcomes of perjury, given the historically later sanction of *stellionatus*[16], expressed himself in favor of the

559 – 563. See also the contributions in: Calore, A. (ed.), *Seminari di storia e di diritto. II. Studi sul giuramento nel mondo antico*, Giuffrè, Milano, 1998.

12 See works in fn. 6, with further references.

13 Some considerations were dedicated to the issue by: Oertmann, P., *Die Fiduzia im römischen Privatrecht*, J. Guttentag, Berlin, 1890, p. 85; Biscardi, A., *Appunti sulle garanzie reali in diritto romano*, Cisalpino-Goliardica, Milano, 1976, pp. 36 – 37; Noordraven, B., *op. cit.* (fn. 6), pp. 128 – 130. The shorter attestations are e.g. found in: Longo, C., *Corso di diritto Romano. La fiducia*, Giuffrè, Milano, 1933, p. 48; Erbe, W., *Die fiducia im römischen Recht,* Böhlau, Weimar, 1940, p. 120; Burdese, A., *Lex commissoria e ius vendendi nella fiducia e nel pignus*, Giappichelli, Torino, 1949, p. 59, fn. 1; Frezza, P., *Le garanzie delle obbligazioni*, *vol*. II, Cedam, Padova, 1963, p. 51; Dunand, J.-P., *op. cit.* (fn. 6), p. 111, fn. 527; Pellechi, L., *Dimensione economica e azione della giurisprudenza: il caso delle garanzie reali*, Revue historique de droit français et étranger, *vol*. 94, no. 4, 2016, pp. 527 – 528; Marra, P., *op. cit.* (fn. 6), p. 111, fn. 52. Most notable is the discussion by Peppe, L., *op. cit.* (fn. 9), pp. 192 – 197, followed by the latest article on the topic: Milani, M., *Una congettura in tema di fiducia e crimen stellionatus*, in: D'Amati, L.; Garofalo, L. (eds.), *Scritti per Francesco Maria Silla*, Jovene, Napoli, 2024, pp. 491 – 498.

14 Oertmann wrote that the oath from *mancipatio Pompeiana*: "sollte doch jedenfalls den Zweck verfolgen gerade für den Fall der Eviktion, d. h. der Nichtübertragung des Eigentums, ihre *fraus* zu supplieren und damit die *actio fiduciae* zu ermöglichen, …" See Oertmann, P., *op. cit.* (fn. 13), pp. 105, 178, 210; Frezza, P., *op. cit.* (fn. 13), p. 51.

15 *Cf*. Longo, C., *op. cit.* (fn. 13), p. 48; Erbe, W., *op. cit.* (fn. 13), p. 120; Burdese, A., *op. cit.* (fn. 13), p. 59; Biscardi, A., *op. cit.* (fn. 13), p. 36. See also: Biscardi, A., *La dottrina romana dell''obligatio rei'*, Giuffrè, Milano, 1991, p. 96.

16 On which see more *infra*, but in general: Mommsen, T., *Römisches Strafrecht*, Duncker & Humblot, Leipzig, 1899, pp. 680 – 681; Mentxaka, R., *Stellionatus*, Bulletino dell'Istituto de diritto romano, *vol*. 91, 1988, pp. 277 ff.; Garofalo, L., *La persecuzione dello stellionato in diritto romano*, Cleup, Padova, 1992, pp. 49 ff.; Robinson, O., *The*

ethical-social significance of *iusiurandum* in the tablets.[17] He allowed for the possibility of the oath's use in proving the good/bad faith of the debtor, but left aside, at least directly, the issue of liability for eviction and its limits arising from *fiducia* alone.[18] In general, the doctrine accepts that the creditor could use the *actio fiduciae* in cases of eviction, mostly without specifying any differences in time.[19] In that sense, one may ask whether the oaths in the preserved tablets represented just another example of doubling the "securities" in Roman law, or there was a real need for such assurance.

Accordingly, first the contents of the tablets recording fiduciary transfers are investigated, then the liability for eviction arising from the *fiducia* itself, and finally the purpose and legal consequences of an added oath. Taking into account the contemporaneousness and similarity of the oaths, in the last part the comparison is also made with the *TPSulp.* 54, 63 and 68, where the oaths were given in connection with the *mutuum, fideiussio* and *stipulatio*. Additionally, using as the reference point the *iusiurandum* in the *TH* 65, made *per Iovem et numina deorum et genium Neronis Claudi Caesaris Augusti*, it is touched upon the significance of subjects of these oaths.

Criminal Law of Ancient Rome, The Johns Hopkins University Press, Baltimore, 1995, p. 32.

17 It can be cited: „Piu plausibile appare la conclusione che il giuramento ha in se ancora valore in primo luogo etico-sociale, anche se si sta avvicinando il momento di una sua diversa, autonoma rilevanza nel contesto delle garanzie reali, mentre non sembra contradittoria con questa conclusione la possibilità che il giuramento del debitore fiduciante potesse pori come la prova dell'assoluta buona fede del creditore fiduciario rispetto ai vizi in senso lato dei beni lui fiduciati." Peppe, L. *op. cit.* (fn. 9), pp. 196 – 197.

18 In a similar tone Noordraven allows for the use of oath in the process initiated by the *actio fiduciae* but considers the thesis "keineswegs Zwingend". Furthermore, in connection with the liability for eviction, he doubts how much the *creditor fiduciarius* would rely on the *actio fiduciae* in real life. See Noordraven, B., *op. cit.* (fn. 6), p. 130.

19 The most notable exception is Erbe who denied the existence of such liability at all times (Erbe, W., *op. cit.* (fn. 13), pp. 108 – 116), while Burdese would have recognized it only in the Severan period (Burdese, A., *op. cit.* (fn. 13), p. 73). See comprehensively: Noordraven, B., *op. cit.* (fn. 6), pp. 276 – 279; Marra, P., *op. cit.* (fn. 6), pp. 223 – 224; Milani, M., *op. cit.* (fn. 6), pp. 414 – 425.

2. *FIDUCIA* IN BUSINESS PRACTICE – TABLETS AND THE *IUSIURANDUM*

Documentary evidence of Roman *fiducia cum creditore*, since the *fiducia cum amico* is known only from juristic or literary sources, is rather scant.[20] There are only three tablets, *tabulae*, recording the transfers of ownership for security purposes in the form of *mancipatio*[21], whereby it was recently contested by Marra that even among these, one of them, *mancipatio Pompeiana*, was not made *fiduciae causa*, but was a conditional sale.[22] While we do not adhere to this position, it deserves to be mentioned already at the beginning to show the uncertainties when assessing the contents of tablets and their significance, especially as they are only partially preserved. The remains of wooden and bronze tablets contain either parts or fragments of the full texts, supplemented by scholars during the last two centuries, with varied acceptance of these additions and readings.[23]

Although there are some differences among these records, originating from different parts of the Roman Empire while all being from the 1st or 2nd century AD, they show some common traits, allowing for the supposition of generality. In the following lines we shall focus on the initial parts of two tablets recording that the transfer took place, the cause of conveyance, and that the oaths were given, while the agreement, the so-called *pactum fiduciae*[24], and the provisions on the rights of the parties before and after default will not be discussed here.

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[20] See the most recent overviews of epigraphic evidence, *negotia* as well as the mentions in preserved municipal codes, in: Milani, M., *op. cit.* (fn. 6), pp. 26 – 42; Schanbacher, D., *op. cit.* (fn. 6), p. 1153.

[21] It should be added "directly" having in mind the *TH* 74 (on which see *infra* fn. 31), which mentions but does not record *fiducia*. Also, the *TPSulp.* on the enforcement procedures are not considered.

[22] See Marra, P., *Un cas particulier de transfert de propriété à titre de garantie la « Mancipatio Pompeiana »*, Revue internationale des droits de l'antiquité, *vol.* 64, 2017, pp. 177 – 199.

[23] See e.g. Noordraven, B., *op. cit.* (fn. 6), pp. 12 ff.; Marra, P., *op. cit.* (fn. 6), pp. 97 ff.; Milani, M., *op. cit.* (fn. 6), pp. 55 ff.

[24] See e.g. Bellocci, N., *La struttura del negozio della fiducia nell'epoca repubblicana. II. Riflessioni intorno alla forma del negozio dall'epoca arcaica all'epoca classica del diritto romano*, Jovene, Napoli, 1983, pp. 148 ff.; Noordraven, B., *op. cit.* (fn. 6), pp. 124 ff.; Lambrini, P., *op. cit.* (fn. 6), pp. 46 – 48; Fercia, R., *op. cit.* (fn. 4), pp. 219; Grillone, A., *Per un'ontologia della "fiducia" nel diritto romano classico*, in: Petrucci, A. (ed.), *I rapporti fiduciari: temi e problemi*, Giappichelli, Torino, 2020, pp. 21 – 38; Schanbacher, D., *op. cit.* (fn. 6), p. 1159.

The *Tabula* or *formula Baetica*, which does not mention an oath[25], will be used, but not separately examined either.[26]

The two primary sources are wooden tablets coated with wax, *tabulae ceratae*, upon which the legal transactions were inscribed, unearthed in Pompeii and its environs.[27] The remains of a series of Roman settlements, the largest of which were Pompeii and Herculaneum, preserved under volcanic ash and mud following the eruption of Vesuvius in AD 79, include various archives that reveal the commercial practices of an area marked by intense economic and legal activity.[28] These collections also provide a higher degree of representativeness, since even when only a single document is found, its placement within a business register points to the standardisation and regularity of form and content according to the model of contracts with standard clauses.

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[25] It contains the formula "*uti optumus maxumusque*" indicating owner's "guarantee" that the land was in the best state and free of servitudes. Although these are formulaic words which were most probably uttered as the *leges in mancipio dictae*, they did not represent an oath. See e.g. Backhaus, R., *Die Einstandspflicht des Verkäufers eines mit einer Servitut belasteten Grundstücks*, in: Altmeppen, H; Reichard, I.; Schermaier, M. J. (eds.), *Festschrift für Rolf Knütel zum 70. Geburtstag*, Müller, Heidelberg, 2010, pp. 59 – 60; Ernst, W., *Klagen aus Kauf (actio empti, actio venditi)*, in: Babusiaux, U. *et al.* (eds.), *Handbuch des Römischen Privatrechts*, Mohr Siebeck, Tübingen, 2023, p. 2074.

[26] Next to the general literature on *fiducia*, see also: Bueno Delgado, J. A., *El bronce de Bonanza*, Anuario de la Facultad de Derecho de la Universidad de Alcalá, *vol.* 2004, 2003-2004, pp. 154 – 165; Sabio González, R., *El bronce de Bonanza. Contextualización arqueológica y toponímica de un documento jurídico romano*, Boletín del Museo Arqueológico Nacional, *vol.* 38, 2019, pp. 91 – 104.

[27] See e.g. Gröschler, P., *op. cit.* (fn. 8), pp. 18 ff.; Camodeca, G., *op. cit.* (fn. 8), pp. 11 ff.; Meyer, E. A., *op. cit.* (fn. 3), pp. 126 ff.; Wolf, J. G., *Documents in Roman Practice*, in: Johnston, D. (ed.), *The Cambridge Companion to Roman Law*, Cambridge University Press, Cambridge, 2015, pp. 61 – 84.

[28] The literature on the topic, tackling it from different points, has become indeed vast, especially relating to the financial activities recorded in the tablets. Accordingly, one may point only to the elementary works, with further references. See e.g. Gröschler, P., *op. cit.* (fn. 8), pp. 22 ff.; Andreau, J., *Banking and Business in the Roman World*, Cambridge University Press, Cambridge, 1999, pp. 71 ff.; Camodeca, G., *Gli archivi privati di tabulae ceratae e di papiri documentari. Pompei ed Ercolano: case, ambienti e modalità di conservazione*, Vesuviana, *vol.* 1, 2009, pp. 1 – 26. See also works collected in: Verboven, K.; Vandorpe, K.; Chankowski, V. (eds), *Pistoi dia tén technén. Bankers, Loans and Archives in the Ancient World. Studies in honour of R. Bogaert*, Peeters, Leuven, 2007; Flohr, M.; Wilson, A. (eds.), *The Economy of Pompeii*, Oxford University Press, Oxford, 2017; Erdkamp, P.; Verboven, K.; Zuiderhoek, A. (eds.), *Capital, Investment, and Innovation in the Roman World*, Oxford University Press, Oxford, 2020.

The earlier tablet belongs to the so-called *tabulae Herculanenses*.[29] This collection is relatively large, encompassing records of various legal transactions from the archives of L. Cominius Primus.[30] The wooden tablets evidently relating to the *fiducia* are registered under numbers 65 and 74.[31] The tablet 65 (*TH* 65), as part of a triptych, records a fiduciary transfer, while the tablet 74 (*TH* 74), considerably more damaged and difficult to read, documents the entry of the loan secured by fiduciary transfer.[32] The transaction in *TH* 65, according to the preserved part of page 1, took place on the 13th day before the kalends of February, i.e. it was composed on 20 January 62 AD. The main text, in tab. II, pag. 4, left side, of the *TH* 65 is as follows:

[M. Noniu]s Fuscus iuravit per Iovem et numina
[deoru]m et genium Neronis Claudi Caesaris
[Aug. ea]m puellam N[a]idem suam suique
[man]cipi esse seque possidere neque sibi cum ullo
co[m]munem aut in publicum privatumve
ob[li]gatam esse.
postea [L. Comin]us Primus eam puellam Naidem
fidu[cia]e c[a]us[a] HS n. I mancipio [a]cce[pit ab]
[M. No]nio Fusc[o] ob HS DC I libripende T. Blaesio Saturnino.[33]

In the given part of the tablet one can recognize two distinct parts. The first one is the *iusiurandum*, oath that the slave-girl Nais belongs to the M. Nonius

[29] See Arangio-Ruiz, V.; Pugliese Carratelli, G., *Tabulae Herculanenses IV*, La Parola del Passato, *vol*. 9, 1954, pp. 55 – 74; Camodeca, G., *Per una riedizione delle Tabulae Herculanenses. II. I nomina arcaria TH 70+71 e TH 74*, Ostraka, *vol*. 2, 1993, pp. 197 – 209; Gröschler, P., *op. cit.* (fn. 8), pp. 138 ff.; Camodeca, G., *Tabulae Herculanenses. Edizione e Commento*, *vol*. I, Quasar, Roma, 2017.

[30] See e.g. Gröschler, P., *op. cit.* (fn. 8), p. 138.

[31] Most probably the *TH* 66 is related as well. See e.g., with the recent exhaustive list of references on the tablets: Milani, M., *op. cit.* (fn. 6), pp. 61 – 67.

[32] See Arangio-Ruiz, V.; Pugliese Carratelli, G., *op. cit.* (fn. 29), p. 64; Gröschler, P., *op. cit.* (fn. 8), pp. 140 – 141; Camodeca, G., *op. cit.* (fn. 29), pp. 232, 241 – 247.

[33] *TH* 65: "M. Nonius Fuscus swore by Jupiter and the divine powers of the gods, and by the genius of Nero Claudius Caesar Augustus, that the girl Naïs was his own and in his ownership, that he possessed her, and that she was neither held in common with anyone nor bound in any way, whether publicly or privately.
Thereafter, L. Cominius Primus, for the purpose of *fiducia*, received the girl Naïs by the *mancipatio* from M. Nonius Fuscus for the sum of 600 sesterces, with T. Blaesius Saturninus acting as the *libripens*."

Fuscus solely[34], she is possessed by him, she is not co-owned by any other person, and she is not obliged, pledged, to another private person or to the state. The oath is furthermore given on the Jupiter, the supreme god in the Roman pantheon, on the spiritual power of the gods (*numen deorum*[35]), and on the divine spirit (*genius*[36]) of the Emperor Nero.[37] The second part confirms that the same girl was conveyed in the form of *mancipatio*, made *fiduciae causa*, to the L. Cominius Primus for 1 *sestertius*.

The preserved text is rather short, but the important elements are rather clearly legible. The initial part warrants the debtor's ownership of the object to be transferred, in this case through the *iusiurandum*. The separate warranty of ownership was a common practice at a time, especially in the consensual contract of sale[38], for which the *mancipatio* was a formal predecessor, in general and in that specific aspect as well.[39] However, the sale was usually accompanied by the formal contract *stipulatio*, while it was here the *iusiurandum*[40], to which reason of addition we shall come back at the end of this chapter.

The following record that the *mancipatio* was conducted for the purpose of *fiducia*, indicating also the amount of secured credit, is in accordance with the other sources on *fiducia*. It is in first place the *Tabula Baetica*[41], but also *TPSulp.* and the literary sources which use the formula *mancipio accepit* or *mancipasse* in conjunction with the *fiduciae causa*. In the *TH* 74, the debt registration (*nomen arcarium*) of the secured 600 HS[42], which testifies that this debt is added to the earlier one of 1300 HS, it is just stated that the 600 HS were given *ob fiduciam*

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34 On the "*suam suique mancipi esse*" see Arangio-Ruiz, V.; Pugliese Carratelli, G., *op. cit.* (fn. 29), p. 66; Milani, M., *op. cit.* (fn. 6), pp. 65.

35 More on the concept see, e.g.: Novaković, D., *Pojam numen u rimskoj religiji*, Stvarnost, Kršćanska sadašnjost, Zagreb, 1991; Gradel, I., *Emperor Worship and Roman Religion*, Oxford University Press, New York, 2002, pp. 234 ff. See also on the *numen Augusti* works by Fishwick collected in: Fishwick, D., *Cult, Ritual, Divinity and Belief in the Roman World*, Routledge, London, New York, 2012.

36 See e.g. Gradel, I., *ibid*.

37 *Cf.* Arangio-Ruiz, V.; Pugliese Carratelli, G., *op. cit.* (fn. 29), p. 66; Marra, *op. cit.* (fn. 6), pp. 111.

38 With further literature see: Ernst, W., *op. cit.* (fn. 25), pp. 2174 ff.

39 *Ibid*.

40 See: Peppe, L. *op. cit.* (fn. 9), pp. 196 – 197; Pellechi, L., *op. cit.* (fn. 25), p. 528.

41 See *supra* footnotes 6 and 26.

42 On the interpretation of their nature see more in: Camodeca, G., *op. cit.* (fn. 29), p. 205; Gröschler, P., *op. cit.* (fn. 8), pp. 71 – 95.

puellae Naidis, while the earlier sum was given against the fiduciary transfer (*ob fiduciam*) of women Primigenia.[43]

Chronologically the second source, *mancipatio Pompeiana* is a triptych of wax tablets drawn up in 79 AD.[44] These tablets, discovered on the 20 September 1887 in Pompeii in a rather damaged state, have been the subject of several reconstructions, among which the one carried out by Arangio-Ruiz has been most widely accepted.[45] According to his reconstruction, the initial part of the text reads as follows:

Poppaea Prisci liberta Note iurauit pueros Simplicem
et Petrinum, siue ea mancipia alis nominib[us]
sunt, sua esse seque possidere, neque ea mancipia [. . .]
ali ulli obligata esse neque sibi cum ul<l>o com[munia]
esse, eaque mancipia singula sestertis nu[mmis sin]
gulis Dicidia Margaris emit ob seste[rtios n(ummos) ∞ LD et]
mancipio accepit de Popp<a>ea Prisc[i liberta Note],
tutore auctore D. Caprasio A[mpliato], | libripende in si[ngu]la P. C[— — —, an]
testata est in singula [— — — —.[46]

Structurally, it corresponds to the *TH* 65, with some differences. In the initial part, the oath of ownership, it is used *iurauit* without the enumeration

[43] Cf. Marra, *op. cit.* (fn. 6), pp. 110 – 111; Milani, M., *op. cit.* (fn. 6), pp. 62 – 63.

[44] On the change of datation, from originally proposed from 61 AD to 79 AD, see more in: Camodeca, G., *Nuovi dati dagli archivi campani sulla datazione e applicazione del „S.C. Neronianum"*, Index, *vol*. 21, 1991, p. 356; Milani, M., *op. cit.* (fn. 6), pp. 35 – 36, fn. 156. Also, on the place of recovery and the dates see Camodeca, G., *op. cit.* (fn. 28), pp. 19 – 20.

[45] Cf. Arangio-Ruiz, V., *Fontes ivris romani antejvstiniani (FIRA)*, *vol*. III, Barbèra, Florentiae, 1972, No. 91, pp. 291 – 294, with the additional arguments on the reconstruction in his *Parerga*, published several times, cited according to the Arangio-Ruiz, V., *Studi epigrafici e papirologici*, (ed. Bove, L.), Giannini, Napoli, 1974, pp. 212 – 218. For the other attempts see: Milani, M., *op. cit.* (fn. 6), p. 76, fn. 76.

[46] *Mancipatio Pompeiana*: "Poppaea Note, freedwoman of Priscus, swore that the boys Simplex and Petrinus, whether these slaves are known by other names, were her own and in her possession, and that these slaves were not obliged to anyone nor held in common with anyone. Thereafter, Dicidia Margaris purchased each of these slaves for one sesterce apiece, on account of 1450 sesterces, and received them by *mancipatio* from Poppaea Note, freedwoman of Priscus, with her guardian D. Caprasius Ampliatus authorising; with P. C\[— — —] acting as the *libripens* for each, and \[— — —] formally attesting in respect of each." See also: Meyer, E. A., *op. cit.* (fn. 3), pp. 141 – 142.

of subjects on which the freedwoman swore it, while the objects are almost the same. It is stated that the slaves are her own, are in her sole possession, are not obliged to no one else, and are not held in common. The slight alterations were thus made only in the order of assurances, and that there is no differentiation of *obligatio rei* to private and public entities.[47]

The main difference is in the following part testifying the execution of *mancipatio*, where it is used the verb *emit* instead of the *fiduciae causa*. Consequently, Marra used this as the basis to argue for its specific nature, "*un sin qui sconosciuto tipo di garanzia reale, diversa dalla fiducia cum creditore e della emptio commissoria lege*".[48] Although his contentions are not without merit, taking into account the overall similarity with the other tablets, and that the *emptio nummo uno* was an essential feature of the developed *mancipatio* (cf. the *pactum conventum* in *Tabula Baetica*)[49], in connection with the other elements addressed in the older literature on *fiducia*[50], we are still leaning towards the traditional view and accept the *mancipatio Pompeiana* as one of the records of *fiducia*.

From the use of *mancipatio nummo uno*, the authors on *fiducia* have also surmised the principal purpose of *iusiurandum*.[51] Namely, as the guarantee for eviction from *mancipatio* and the *actio auctoritatis* was limited in *fiduciae causa* conveyances

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47 See more Biscardi, A., *op. cit.* (fn. 13), pp. 73 ff.

48 Marra, P., *La "mancipatio pompeiana". Un esempio di alienazione a scopo di garanzia*, in: Garofalo, L.; Zhang, L. (eds.), *Diritto romano fra tradizione e modernità: atti del convegno internazionale di Shanghai, 13-15 novembre 2014*, Pacini, Pisa, 2017, p. 305.

49 See e.g. Noordraven, B., *op. cit.* (fn. 6), pp. 143 ff. In general *cf.* Scevola, R., *'Venditio nummo uno'*, in: Garofalo, L. (ed.), *La compravendita e l'interdipendenza delle obbligazioni nel diritto romano, vol.* I, CEDAM, Padova, 2007, pp. 415 – 595. See also in connection with *actio auctoritatis*, in the sense that there was a choice between immediate payment of full purchase price or *mancipatio nummo uno* with the postponed payment which did not give rise to *actio auctoritatis*: Brägger, R., *Actio auctoritatis*, Duncker & Humblot, Berlin, 2012, pp. 61 – 63, and on the later point *contra* Ernst, W., *op. cit.* (fn. 25), p. 2182. See as well: Ankum, H., *D. 21,2,66pr. Eine schwierige Papinianstelle über die auctoritas-Haftung des Verkäufers im Fall umgekehrter Eviktion*, in: Schermaier, M. J.; Mayer-Maly, T. (eds.), *Iurisprudentia universalis: Festschrift für Theo Mayer-Maly zum 70. Geburtstag*, Böhlau, Köln, 2002, pp. 1 – 10; Dalla Massara, T., *Garanzia per evizione e interdipendenza delle obbligazioni nella compravendita romana*, in: Garofalo, L. (ed.), *La compravendita e l'interdipendenza delle obbligazioni nel diritto romano, vol.* II, CEDAM, Padova, 2007, pp. 282 ff.; Finkenauer, T., *Vererblichkeit und Drittwirkungen der Stipulation im klassischen römischen Recht*, Mohr Siebeck, Tübingen, 2010, pp. 49 ff.

50 As presented exhaustively by Scialoja, V., *Di nuovo sulle tavolette cerate pompeiane*, Bullettino dell'istituto di diritto romano, *vol.* I, 1888, pp. 222 – 227.

51 Oertmann, P., *op. cit.* (fn. 13), p. 85; Longo, *op. cit.* (fn. 13), p. 48; Biscardi, *op. cit.* (fn. 13), p. 36; Noordraven, B., *op. cit.* (fn. 6), p. 128.

to two *sestertia*[52], it was natural that the creditor would want to protect his position more firmly. If it can be taken that the *satisdatio* and *repromissio secundum mancipium* were strictly tied to the purchase price[53], to which we would adhere, there would be no point in contracting a *stipulatio*.[54] Thus, the remaining option was the oath. This would be even more important in the first, presumed phase of the fiduciary transfers after the introduction of coined money and before the praetor issued the edict with the *formula fiduciae*[55], the period when the religion still mattered significantly.[56] However, there remains the issue of the function of the oath, in parallel to the *actio fiduciae contraria*, in the early classical period, when the tablets were prepared.

3. *ACTIO FIDUCIAE CONTRARIA* AND THE LIABILITY FOR EVICTION

The early existence of *actio fiduciae contraria* is inferred from Cicero's *de Officiis* 3, 17, 70.[57] Its scope of use, on the other hand, can be primarily discerned from the interpolated texts in the Digest.[58] They confirm its application, as it is commonly accepted that they originally belonged to the commentaries on the *formula fiduciae*, in a variety of situations, including the debtor's liability for

[52] Cf. also: Brägger, R., *op. cit.* (fn. 49), p. 62; Ernst, W., *op. cit.* (fn. 25), p. 2182.

[53] See, with further references, e.g: Ankum, H., *La responsabilité du vendeur pour éviction dans le cas de sous-aliénation en droit romain classique*, in: De Ligt, L. *et al.* (eds.), *Viva Vox Iuris Romani. Essays in Honour of Johannes Emil Spruit*, Brill, Leiden, 2002, pp. 229 – 242; Dalla Massara, T., *op. cit.* (fn. 49), pp. 285 – 286; Rodriguez Diez, J. E., *Mancipatio by an agent and the satisdatio and repromissio secundum mancipium as sureties for eviction*, Fundamina, *vol.* 25, no. 1, 2019, pp. 70 – 99; Ernst, W., *op. cit.* (fn. 25), pp. 2184 – 2188.

[54] That is also in line with the absence of *stipulatio duplae* concerning *fiducia*. See more *infra*.

[55] See e.g. Frezza, P., *op. cit.* (fn. 13), p. 66; Bellocci, N., *La tutela della fiducia nell' epoca repubblicana*, Giuffrè, Milano, 1974, pp. 40 ff.; Noordraven, B., *op. cit.* (fn. 6), p. 8; Dunand, *op. cit.* (fn. 6), pp. 158 ff.; Fercia, *op. cit.* (fn. 4), pp. 235 ff.

[56] E.g. see: Schiavone, A., *Ius. L'invenzione del diritto in Occidente*, Einaudi, Torino, 2005, pp. 97 ff.

[57] With further references see in: Karlović, T., *Neka razmatranja o actio fiduciae…*, *op. cit.* (fn. 6), pp. 468 – 469.

[58] See Lenel, O., *Edictum Perpetuum*, 3rd ed., Tauchnitz, Leipzig, 1927, pp. 291 ff.; Longo, C., *op. cit.* (fn. 13), pp. 132 ff.; Erbe, *op. cit.* (fn. 13), pp. 106 ff.; Schwarz, F., *Die Konträrklagen*, Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung, *vol.* 71, 1954., pp. 190 – 191; Frezza, *op. cit.* (fn. 13), pp. 78 ff; Noordraven, B., *op. cit.* (fn. 6), pp. 139 ff.; Dunand, J.-P., *op. cit.* (fn. 6), pp. 191 ff.

eviction.[59] In the first place, these are the two Ulpian's texts, D. 13, 7, 22, 4 and D. 13, 7, 24 pr., both from the 30th book of commentary to the praetor's edict[60], which discuss the recourse against the debtor by the creditor/seller liable to the third party/buyer after the debtor defaulted, and the direct claim in case of the *impetratio* and the following eviction of the object of *fiducia* from the creditor. These are also the two principal situations through which the security relationship was finally resolved in the classical period, and in which the debtor would be liable for the transferred object for more than one *sestertius* given in the *mancipatio fidi fiduciae causa*. [61]

Overall, the fragment D. 13, 7, 22 (*Ulpianus lib. 30 ad edictum*) dealt with the extent of creditor's claim in the cases of potential set-off disputes (pr.-2), and the use of *actio contraria* when the object was sold to the third party (3-4).[62] In the exercise of his right to sell the object of *fiducia*, one would usually expect the creditor to have it in his possession and to be able to hand it over, nevertheless, it was not always the case as it is shown in paragraph 3.[63] The object could have remained with the debtor, commonly on the title of lease or the *precarium*, so if the creditor did not acquire it before the sale, and the debtor would not deliver it to the buyer willingly, he would have to sue the reticent debtor.[64] The creditor was obliged to deliver the object and as the buyer could not sue the debtor but the creditor as the seller, it was up to him to secure the fulfilment of the obligation.

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[59] As pointed out in fn. 19, there were dissenting views by Erbe and Burdese, for which see: Erbe, W., *op. cit.* (fn. 13), pp. 109 – 116; Burdese, A., *op. cit.* (fn. 13), p. 73. See in general: Marra, *op. cit.* (fn. 6), pp. 217 ff.

[60] Lenel, O., *Quellenforschungen in den Edictcommentaren*, Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung, *vol.* 3, 1882, pp. 104 ff.

[61] In the third case, if the object was forfeited to the creditor on default (*Verfall*) – the initial solution according to the majoritarian position in the literature which was suppressed by the *pactum de vendendo* – one could also think that the same rules applied, especially in comparison to the D. 13, 7, 24 pr., although such possibility was not directly mentioned, nor maybe even applied anymore.

[62] *Cf.* Lenel, O., *Palingenesia Iuris Civilis*, *vol.* II, Tauchnitz, Leipzig, 1889 (reprint Vico, Frankfurt am Main, 2006), p. 618.

[63] D. 13, 7, 22, 3: "*Si post [distractum pignus] <distractam fiduciam> debitor, qui precario rogavit vel conduxit [pignus] <fiduciam>, possessionem non restituat, contrario iudicio tenetur.*" (If after a [pignus] <*fiducia*> has been sold, the debtor, having borrowed or hired it, will not give up possession, he is liable to the counteraction.) Translation, adjusted for the *fiducia*, according to: Birks, P., in: Watson, A. (ed.), *The Digest of Justinian*, *vol.* I, University of Pennsylvania Press, Philadelphia, 1998, p. 410.

[64] See more on the paragraph, with references: Marra, *op. cit.* (fn. 6), pp. 225 – 226.

If the creditor was indeed in the position to hand over the object to the buyer, but it was later evicted from him, the buyer, in the same manner, would have to sue the creditor/seller. Ulpian discussed the creditor's position in that case, and whether he had a right of recourse against the debtor, in the fourth paragraph:

> D. 13, 7, 22, 4 (*Ulpianus lib. 30 ad edictum*) *Si creditor, cum venderet [pignus] <fiduciam>, duplam promisit (nam usu hoc evenerat et conventus ob evictionem erat et condemnatus), an haberet regressum [pigneraticiae] <fiduciae> contrariae actionis? Et potest dici esse regressum, si modo sine dolo et culpa sic vendidit et ut pater familias diligens id gessit: si vero nullum emolumentum talis venditio attulit, sed tanti venderet, quanto vendere potuit, etiamsi haec non promisit, regressum non habere.*[65]

More specifically, the question at hand was prompted by a creditor who, when selling the object of the *fiducia*, had given a guarantee in the form of *stipulatio duplae* to pay double the amount of the purchase price in the event that the thing should be evicted from the buyer. When the buyer was subsequently dispossessed, he sued the seller and succeeded with his claim. The issue was then whether the creditor could seek recourse against the debtor by means of the *actio fiduciae*. [66]

Although it was a usual practice to give such a guarantee in sale[67], it was not the same in *fiducia*, especially if we take the *Tabula Baetica* as the role model and a formulary example of classical *fiducia*, which envisaged that the creditor should not sell the object for more than 1 HS.[68] The reasoning behind this provision

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[65] D. 13, 7, 22, 4: "If a creditor in selling the [pledge] <fiducia> promised the double penalty (in fact this actually happened and he was sued on account of eviction and was condemned), can he have recourse to the counteraction on [pignus] <fiducia>? And he can be accorded his remedy over, so long as he sold without fraud or fault and performed the business in the manner of a careful head of a family. On the other hand, if he took no trouble over the sale and just picked up what he could have got even without the warranty, he has no remedy." Translation, adjusted for the *fiducia*, according to: Birks, P., in: Watson, A. (ed.), *op. cit.* (fn. 63), p. 410. See also for the literature: Bertoldi, F., *op. cit.* (fn. 6), pp. 500 – 501.

[66] See most recently, with the exhaustive overview of earlier positions, on the text: Marra, P., *op. cit.* (fn. 6), p. 224; Milani, M., *op. cit.* (fn. 6), pp. 416 – 417. Separately, for Biondi's opinion that the creditor had the *actio auctoritatis* instead of the *actio fiduciae*, which is hardly sustainable, see: Biondi, B., *Iudicia bonae fidei*, AUPA, *vol.* 7, 1918, pp. 161 ff.

[67] See Ernst, W., *op. cit.* (fn. 25), pp. 2193 ff.

[68] The last part of the *pactum conventum* in *Tabula Baetica*: "*mancipio pluris (sestertio) n(ummo) inuitus ne daret, neue satis secundum mancipium daret, neue ut in ea uerba, quae*

can be discerned also in Ulpian's decision, distinguishing the situation where the creditor acted as a *diligens pater familias* and achieved a specific advantage, i.e. a better price, with such a promise. If that occurred, Ulpian granted the right of recourse. On the other hand, if the same price would have been obtained without the *stipulatio duplae*, he rejected the claim for reimbursement.

The answer is based on the criterion of parties' responsibility used in adjudicating cases initiated by *actio fiduciae* (*contraria*), as one of the *bonae fidei iudicia*. The parties are liable only if they acted contrary to good faith, i.e. fraudulently (*dolo*) or through negligence (*culpa*), the latter being enunciated through the words "*ut pater familias diligens id gessit*". Furthermore, one could seek in this formula the echo of "*ut inter bonos bene agier oportet*" as the preclassical *bonus vir* became the classical *diligens pater familias*[69], who had to have a justified reason for giving the stipulation, which the creditor was not obliged to give. Such a reason might be an increase in the purchase price for the purpose of reducing the outstanding claim, or attaining a higher *superfluum*, in which case the creditor would be acting directly in the interest of the debtor and would therefore have a right of recourse.[70]

The following question arises naturally, and it concerns the situation when such a *stipulatio duplae* was not given. Based on the Ulpian's response, one could draw *a fortiori* conclusion to the legal effects of such a sale. To be more specific, if the fiduciary had a right of recourse in situations where he had expressly undertaken liability for legal defects and had acted in good faith, it may be implied that he would be liable – and therefore entitled to recourse – when no special agreement had been made, under the condition that his conduct at the time of the sale was *ut pater familias diligens id gessit*.

Some doubts could be cast on this by the second Ulpian's text, D. 13, 7, 24 pr.:

D. 13, 7, 24pr. (*Ulpianus lib. 30 ad edictum*) *Eleganter apud me quaesitum est, si impetrasset creditor a caesare, ut [pignus] <fiduciam> possideret [idque evictum] <eaque evicta> esset, an habeat contrariam [pigneraticiam] <fiduciae>. Et videtur finita esse [pignoris] <fiduciae> obligatio et a contractu recessum. Immo utilis ex empto*

in uerba satis s(ecundum) m(ancipium) dari solet, repromitteret, neue simplam neue || [duplam…"

[69] See, with further references: Falcone, G., *La formula "ut inter bonos bene agier oportet et sine fraudatione" e la nozione di "vir bonus"*, Fundamina, *vol.* 20, no. 1, 2014, pp. 258 – 274; Karlović, T., *Neka razmatranja o actio fiduciae…*, *op. cit.* (fn. 6), pp. 479 – 483.

[70] See: Noordraven, B., *op. cit.* (fn. 6), pp. 276 – 277; Milani, M., *op. cit.* (fn. 6), p. 417. A comparison may be also drawn to D. 18, 2, 10 (*Iulianus lib. 13 digestorum*), for which see: Marra, P., *op. cit.* (fn. 6), pp. 221 – 222.

accommodata est, quemadmodum si pro soluto ei res data fuerit, ut in quantitatem debiti ei satisfaciat vel in quantum eius intersit, et compensationem habere potest creditor, si forte [pigneraticia] <fiduciae> vel ex alia causa cum eo agetur.[71]

It relays the case of *impetratio possessionis*, when the creditor could not sell the object of *fiducia*[72], so he asked and was granted the right to have the object in place of the debt. Afterwards, the object was evicted, so there was a question if he could use the *actio fiduciae contraria* against the debtor. Ulpian gave the negative reply, explaining that the obligation was terminated once the creditor had been satisfied, so the lawsuit could not be successfully brought. However, there was another remedy. Since the *impetratio* materially corresponded to the *datio in solutum*[73], which was in turn legally conceived in terms of sale[74], Ulpian argued for bringing an *actio utilis ex empto*. With this action, the creditor might recover the amount of the debt, or the full damages – *quod interest*, depending on the extent of his claim.[75] Furthermore, he could file an objection, *exceptio*, on that account, if he would have been sued by the debtor.

Despite the Ulpian's negative answer to the use of *actio fiduciae* in this case, the text and the very question whether an *actio fiduciae* could be brought on account of eviction, are commonly used to conclude that such a right normally

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[71] D. 13, 7, 24 pr.: "This neat question was put to me. If a creditor successfully petitions Caesar for possession of a [pledge] <*fiducia*> and then is evicted from it, can he have the counteraction on [pignus] <*fiducia*>? The obligation arising from [pignus] <*fiducia*> is here understood to have been extinguished and the contract abandoned. Instead, an *actio utilis* is adapted to this case, as for that in which a thing is given him by way of substituted performance, enabling him to satisfy himself up to the amount of the debt or his damages. Also, the creditor can use a set-off against a claim made against him by action on [pignus] <*fiducia*> or some other cause." Translation, adjusted for fiducia, according to: Birks, P., in: Watson, A. (ed.), *op. cit.* (fn. 63), p. 411. *Cf.* Lenel, O., *op. cit.* (fn. 62), p. 618. See also for the literature: Bertoldi, F., *op. cit.* (fn. 6), pp. 501 – 502.

[72] See with further references: Fercia, *op. cit.* (fn. 4), pp. 12 – 23; Milani, M., *op. cit.* (fn. 6), pp. 419 – 423.

[73] See in addition to the literature on *fiducia* cited in works in previous footnote, with the primary perspective of *datio in solutum*, also: Saccoccio, A., *L'evizione nella cd. datio in solutum. Dal diritto romano all'art. 1197 co. 2 Cc. it. 1942*, in: *Modelli teorici e metodologici nella storia del diritto privato*, *vol.* 2, Jovene, Napoli, 2006, pp. 286 – 301.

[74] See more in general: Saccoccio, A., *Compravendita e datio in solutum*, in: Garofalo, L. (ed.*), La compravendita e l'interdipendenza delle obbligazioni nel diritto romano*, *vol.* I, CEDAM, Padova, 2007, pp. 629 – 697.

[75] See Fercia, *op. cit.* (fn. 4), pp. 18 – 20.

exists.[76] In first place, it can be argued that the mere reference to that action would not appear if it were not a regular legal remedy for the eviction. The negative answer can be explained by the peculiarities of this specific situation. This is illustrated by Ulpian's statement that the obligation has ceased and that the parties have withdrawn from the contract, which points to the "novatory" character of the *impetratio*, that is, the *datio in solutum* that *impetratio* implies. *Fiducia* is replaced by another arrangement[77], and even though it was not a proper sale, the right to an *actio fiduciae* ceased and the *actio utilis ex empto* could be used in its place. *A contrario*, if there would not have been another *causa* replacing the *fiducia*, followed by the appropriate *actio*, in all appearances the right to use *actio fiduciae contraria* in case of the eviction would remain.

Additionally, two further texts possibly dealt with eviction in *fiducia*. The first one is Pomponius' D. 13, 7, 8, 1, which was until Noordraven's study more generally accepted as belonging to the *corpus* of interpolated texts:[78]

> D. 13, 7, 8, 1 (*Pomponius lib. 35 ad Sabinum*): *Si [pignori] <fiduciae> plura mancipia data sint, et quaedam certis pretiis ita vendiderit creditor ut evictionem eorum praestaret, et creditum suum habeat, reliqua mancipia potest retinere, donec ei caveatur, quod evictionis nomine promiserit, indemnem eum futurum.*[79]

According to Pomponius, the creditor who has sold one of the objects of security, slaves, in a manner as to be liable to the buyer for eviction, which should be read with a *stipulatio* or *repromissio secundum mancipium*, he had the right to hold the remaining until the debtor gave the corresponding *stipulatio*. While its composition and the meaning could equally correspond to the *fiducia* and *pignus*, Noordraven disproved its original reference to *fiducia* as part of his

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[76] Milani, M., *op. cit.* (fn. 6), p. 423.

[77] On the dispute whether *datio in solutum* related to the primary debt or the pledge, in our opinion the *fiducia*, with the preference given to latter, see more in: Burdese, A., *op. cit.* (fn. 13), pp. 92 – 93; Saccoccio, A., *op. cit.* (fn. 73), pp. 298 – 300.

[78] See Noordraven, B., *op. cit.* (fn. 6), pp. 21 – 22. Also see: Marra, P., *op. cit.* (fn. 6), p. 223.

[79] D. 13, 7, 8, 1: "A number of slaves are given as pignus, and the creditor sells some at given prices with a term making him answerable in case of eviction. Having thus recouped his debt, he can still hang on to the other slaves until an undertaking is entered with him indemnifying him against liability under his promise against eviction." Translation, adjusted for *fiducia*, according to: Birks, P., in: Watson, A. (ed.), *op. cit.* (fn. 63), p. 407. See also for the literature: Bertoldi, F., *op. cit.* (fn. 6), pp. 499 – 500.

general argument that the Pomponius' 35th book *ad Sabinum* discussed *pignus*.[80] However, the specific argument in this case is not very strong, while the similarity of ideas on additional guarantees in the background of the special provisions in the tablets, of the D. 13, 7, 22, 4, and here, seem to be leaning more weight to original Lenel's understanding of the fragment.[81]

Most recently, it has been discussed another, Paul's text D. 13, 7, 16, 1, by Milani as also referring, even though indirectly, to this type of liability in *fiducia*:[82]

> D. 13, 7, 16, 1 (*Paulus lib. 29 ad edictum*): *Contrariam pigneraticiam creditori actionem competere certum est: proinde si rem alienam vel alii pigneratam vel in publicum obligatam dedit, tenebitur, quamvis et stellionatus crimen committat. sed utrum ita demum, si scit, an et si ignoravit? Et quantum ad crimen pertinet, excusat ignorantia: quantum ad contrarium iudicium, ignorantia eum non excusat, ut Marcellus libro sexto digestorum scribit. Sed si sciens creditor accipiat vel alienum vel obligatum vel morbosum, contrarium ei non competit*.[83]

The fragment also comes from the title on *actio pigneraticia*, although it is not assumed that it originally pertained to the commentary on *actio fiduciae*, but the edict's chapter *de rebus creditis*.[84] Paul commented the case of a person selling an object belonging to another, or the one pledged to another, or to the state, stating that the debtor is liable on the *actio pigneraticia contraria*, but also

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[80] Noordraven relied on earlier Ankum's conclusions. *Cf.* Noordraven, B., *op. cit.* (fn. 6), pp. 21 – 22.

[81] *Cf.* Lenel, O., *op. cit.* (fn. 62), p. 147. See: Burdese, A., *op. cit.* (fn. 13), pp. 70 – 73; Marra, P., *op. cit.* (fn. 6), p. 223.

[82] Before him it was mentioned by Erbe. See: Erbe, W., *op. cit.* (fn. 13), p. 120; Milani, M., *op. cit.* (fn. 13), pp. 493 ff.

[83] D. 13, 7, 16, 1: "It is certain that a counteraction on pignus lies to the pledgee. Accordingly, a pledgor will be liable if he gives property belonging to another or already pledged to another or charged to the state, though he also commits criminal fraud. But is he liable only if he knows or also where he does not? As far as the criminal charge is concerned, he has an excuse if he was unaware. However, Marcellus writes in the sixth book of his Digest that in the counteraction ignorance does not excuse. On the other hand, if the creditor knowingly accepts a pledge which belongs to another, is already charged, or is diseased, he will not have the counteraction." Translation according to: Birks, P., in: Watson, A. (ed.), *op. cit.* (fn. 63), p. 409.

[84] Lenel, O., *op. cit.* (fn. 62), p. 1023. See with further references: Milani, M., *op. cit.* (fn. 13), p. 494.

that he committed a crime of *stellionatus*.[85] Their use, i.e. the issue of concurring or just the contractual responsibility depended on the fact if the debtor acted knowingly or in ignorance. The criminal responsibility existed only if he knew about these defects, meaning if he acted fraudulently. However, if he was just ignorant, negligent, this did not exculpate him from contractual responsibility, whereby Paul invoked the authority of Marcellus. Finally, Paul denied the creditor the use of *actio contraria* if he knew about the third parties' rights.

It is in the Paul's reference to Marcellus' 6th book of Digest, that Milani recognized its relevance for *fiducia*.[86] Following Lenel's collocation[87], as well as his generally accepted thesis on the order of commentaries to the edict – first the titles on the *actio pigneraticia*, then on the *actio fiduciae*[88], Milani assumes that Marcellus had originally written in his 6th book of Digest about the *fiducia*.[89] Thus, the creditor would have had the possibility to use the *actio fiduciae contraria* with respect to the *res aliena vel obligata vel morbosa*. This seems quite plausible, having in mind the thesis on the order of titles, as well as the similar rules on liability for eviction in *pignus* and *fiducia* which would allow for an easy interpolation, or the use of an earlier comparable example.

Thus, all the texts would allow for the conclusion and the confirmation of initial position that the *actio fiduciae contraria* encompassed the liability for eviction. However, they also show that it was not available to the creditor without limits, but only in cases when he acted prudently, diligently, in line with the precept of *ut inter bonos bene agier oportet*, or *fides bona*. Otherwise, he had to make separate arrangements.

Secondly, the fragments reflect the positions of developed classical law, at earliest the mid-2nd century AD.[90] It can be questioned then whether they are representative of the 1st century AD, when the tablets in question were composed, as well. The general line of development of contractual responsibility in *fiducia*, with the same *formula* being used all that time, would suggest so.[91] Nevertheless,

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85 See more *infra*.

86 Milani, M., *op. cit.* (fn. 13), pp. 494 – 495.

87 Lenel, O., *Palingenesia Iuris Civilis*, *vol.* I, Tauchnitz, Leipzig, 1889 (reprint Vico, Frankfurt am Main, 2006), pp. 598 – 599.

88 Lenel, O., *op. cit.* (fn. 60), pp. 104 ff. See also: Noordraven, B., *op. cit.* (fn. 6), p. 18.

89 Milani, M., *op. cit.* (fn. 13), pp. 494 – 496.

90 *Ibid*., p. 494.

91 See e.g.: Oertmann, P., *op. cit.* (fn. 13), pp. 188 ff., 191; Rotondi, G., *La misura della responsabilità nell'actio fiduciae*, Rivista italiana per le scienze giuridiche, *vol.* 51, 1912, pp. 137 ff. (= Rotondi, G., *Scritti giuridici. 2: Studii sul diritto romano delle obbligazioni*,

before trying to give a more definite opinion on the issue, we shall look back at the *iusiurandum* and its role, continuing with the elaboration of D. 13, 7, 16, 1.

4. PURPOSE OF THE *IUSIURANDUM* AS THE EXTRAJUDICIAL OATH

The parallelism of legal protection, civil and criminal, in D. 13, 7, 16, 1 forms a suitable connection to the *iusiurandum*, especially taking into account Milani's reading of the text. More specifically, Milani suggested that Marcellus could have discussed both options, the suits for *stellionatus* and *fiducia*.[92] Following Garofalo's interpretation of the text, which did not question its relation to *pignus* but focused strictly on *stellionatus*[93], the Marcellus' commentary would thus offer a proof for an earlier sanction of this criminal offence, applicable in cases of pledging a *rem alienam* or *in publicum obligatam*[94], than otherwise accepted. *Per* majoritarian opinion, the *crimen stellionatus* was introduced during the first half of the 3rd century[95], while the commentary by Marcellus would prove its existence already during the mid-2nd century BC, between 161 and 169 AD.[96]

Hoepli, Milano, 1922, pp. 137 ff.); Erbe, W., *op. cit.* (fn. 13), p. 52; Noordraven, B., *op. cit.* (fn. 6), pp. 221 ff.

92 Milani, M., *op. cit.* (fn. 13), p. 494.

93 Garofalo, L., *op. cit.* (fn. 16), pp. 19 – 20, 59 – 63. See also the interpretation by Mentxaka, R., *op. cit.* (fn. 16), pp. 283 ff.

94 *Cf.* D. 47, 20, 3, 1 (*Ulpianus libro octavo de officio proconsulis*). According to the sources primarily collected in the title D. 47, 20 (*Stellionatus*), as well as in the C. 9, 34 (*De crimine stellionatus*), *crimen stellionatus* was defined by the jurists and in the imperial *constitutiones* of the first half of the 3rd century as belonging to the *crimina extraordinaria*, aimed at punishing fraudulent behaviors which were not tried under any other criminal charges. In that capacity, as a subsidiary criminal instrument of the *cognitio* procedure, Ulpian compared it in the D. 47, 20, 3, 1 to the private *actio doli*. See more in: Garofalo, L., *op. cit.* (fn. 16), pp. 32 ff.; Robinson, O., *op. cit.* (fn. 16), p. 32.

95 It is stated by Milani: "Secondo alcuni interpreti, la persecuzione dello stellionato avrebbe preso forma già nel corso del II secolo d.C., ma ben più nutrita è la schiera di coloro che ne collocano, l'introduzione ai primi decenni di quello successivo." See, with the overview of earlier literature: Milani, M., *Il crimen stellionatus*, Annali della Facoltà Giuridica dell'Università di Camerino, *vol*. XIV, 2025, p. 2; also Garofalo, L., *op. cit.* (fn. 16), pp. 60 – 61.

96 The arguments for its earlier recognition see in: Garofalo, L., *op. cit.* (fn. 16), pp. 60 – 63; Milani, M., *op. cit.* (fn. 13), p. 494.

This is relevant concerning the *iusiurandum* in fiduciary tablets as the perjury in relation to the oath of ownership of a pledged thing was specifically mentioned by Modestinus incurring responsibility for *stellionatus*:

> D. 47, 20, 4 (*Modestinus lib. 3 de poenis*): *"De periurio, si sua pignora esse quis in instrumento iuravit, crimen stellionatus fit, et ideo ad tempus exulat."*[97]

He stated that the false oath of ownership given in writing incurs the criminal responsibility for *stellionatus*[98], and the perpetrator is condemned to temporary banishment, exile.[99] Whereas Milani himself questioned the prosecution for sole perjury under the charges for *stellionatus*[100], the texts seems rather self-evident, especially considered as a qualified form of general pronunciations in the sale or pledging of others' objects.[101] Nevertheless, even if we accept Garofalo's and Milani's proposition on the earlier datation of *stellionatus*, although we are not as convinced as the text structure would imply, in our understanding, that Marcellus discussed only the use of *actio fiduciae* in case of an ignorant debtor[102], it remains that the crime was punished a century or so later than the transactions recorded in the tablets took place.

The *stellionatus* was only the final phase in the development of idea that perjury should be sanctioned not only by gods, by divine forces, but also before the secular courts.[103] While there were initially state/publicly authorized

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[97] D. 47, 20, 4: "There will be a charge of swindling for perjury when someone swears in writing that what are pledges belong to him and he will be sent into temporary exile." Translation according to: Thomas, J. A. C., in: Watson, A. (ed.), *The Digest of Justinian*, *vol*. IV, University of Pennsylvania Press, Philadelphia, 1998, p. 305.

[98] Nevertheless, as it is obvious from previous Paul's text, and Ulpian's texts D. 13, 7, 1, 2 (*Ulpianus lib. 40 ad Sabinum*) and D. 13, 7, 1, 36 pr. (*Ulpianus lib. 11 ad edictum*), which allowed criminal charges on *stellionatus* in cases of false allegations on the substance (*pro auro aes*), it did not matter if the oath was given just orally, or it was confirmed in the instrument, or there was no formal oath at all.

[99] *Cf.* Garofalo, L., *op. cit.* (fn. 16), pp. 145 ff.

[100] Milani, M., *op. cit.* (fn. 13), p. 17.

[101] The thesis proposed by Robinson (Robinson, O., *op. cit.* (fn. 16), p. 32) and Noordraven (Noordraven, B., *op. cit.* (fn. 6), pp. 129 – 130), that the text relates the situation where the owner swore that the pledged objects belonged to him, does not seem plausible. In that sense we can agree with Milani, M., *op. cit.* (fn. 13), p. 497, fn. 24.

[102] We would agree in that respect with Mentxaka, R., *op. cit.* (fn. 16), pp. 286 – 287.

[103] This is also in line with the understanding expressed by Gaius, *Inst*. 3, 96, that *iusiurandum* does not constitute an obligation, with the exception of *iusiurandum liberti* (for which see Harke, J. D., *op. cit.* (fn. 11), pp. 21 ff.). See in general e.g.

punishments in specific cases[104], the society condemned breaking oaths and the censors could use their prerogatives to chastise perjurers[105], introducing the judicial sanction for perjury was a slow process, with many interruptions and reversals.[106] One reflection of the restrained approach by the legislator could be recognized in Ulpian's commentary on the perjury of a procedural oath:[107]

Robinson, O., *Blasphemy and Sacrilege in Roman Law*, Irish Jurist, *vol*. 8, no. 2, 1973, pp. 356 – 371; Zuccotti, F., *Sacramentum civitatis*, *op. cit.* (fn. 11), pp. 33 ff. On the original "productive" role of *iusiurandum*, see Kaser, M., *Das altrömische ius*, Vandenhoeck & Ruprecht, Göttingen, 1949, pp. 25 – 26; Calore, A., *op. cit.* (fn. 11), pp. 142 – 146.

[104] It was primarily cases involving the community and reflecting the archaic intertwinement of the *fas* and *ius*, for which the sources indicate the capital punishment (e.g. Aullus Gellius, *Noctes Atticae* 16, 4, 2) or excommunication. In general, the oaths are important element of discussions on the archaic Roman law, both substantive and procedural, which go beyond the scope of this work. Accordingly, keeping the focus on the 1st century AD, the role of oaths in the earliest period of development of Roman law will not be discussed here. See e.g. Robinson, O., *op. cit.* (fn. 103), pp. 358 – 359; Zuccotti, F., *Sacramentum civitatis*, *op. cit.* (fn. 11), pp. 41; Calore, A., *op. cit.* (fn. 11), pp. 8 – 11; Fiori, R., *La condizione di homo sacer e la struttura sociale di Roma arcaica*, in: Lanfranchi, T. (ed.), *Autour de la notion de sacer*, Publications de l'École française de Rome, Rome, 2017, https://doi.org/10.4000/books.efr.3392, pt. 74 – 79. Also, for the connection with *sacramentum*, with further references, see more in: Kaser, M., *op. cit.* (fn. 103), pp. 13 – 20; Calore, A., *op. cit.* (fn. 11), pp. 129 – 147; Ando, C., *Law, Language, and Empire in the Roman Tradition*, PENN, Philadelphia, 2011, pp. 46 – 56; Finkenauer, T., *op. cit.* (fn. 11), pp. 559 – 560.

[105] One can see how Cicero, in *de officiis* III, 31, 111, praised the role of oaths in the old days, especially the Twelve Tables. It is more commonly taken that the threat of *nota censoria* for perjury had limited effects, especially in the later Republican period. On the contrary, Fiori argues that *nota censoria* had very significant repercussions, in line with the regular, not only divine, punishment of perjury. See Baltrusch, E., *Regimen morum. Die Reglementierung des Privatlebens der Senatoren und Ritter in der römischen Republik und frühen Kaiserzeit*, Beck, München, 1989, pp. 14 – 15; Fiori, R., *op. cit.* (fn. 104), pt. 70; Incelli, E., *La giustizia divina del principe. Augusto e il giuramento*, in: Baglioni, I. (ed.), *'Saeculum Aureum': Tradizione e innovazione nella religione romana di epoca augustea, I. Augusto da uomo a dio*, Quasar, Roma, 2016, p. 196; Marra, I. M., *Il iusiurandum per genium principis: uso politico, valore giuridico e fonte di responsabilità nel diritto e nel processo privato romano*, Teoria e storia del diritto privato, *vol*. XVI, 2023, pp. 2 ff.

[106] See e.g. Bertolini, C., *op. cit.* (fn. 11), pp. 267 ff.; Steinwenter, A., *op. cit.* (fn. 11), pp. 1253 ff; Zuccotti, F., *Il giuramento nel mondo giuridico e religioso antico*, *op. cit.* (fn. 11), pp. 33 ff.; Finkenauer, T., *op. cit.* (fn. 11), pp. 559 – 563. Also see: Zuccotti, F., *Sacramentum civitatis*, *op. cit.* (fn. 11), pp. 38 ff.

[107] On the composition of the book 22 *ad edictum* see Lenel, O., *op. cit*. (fn. 62), pp. 541 – 548.

D. 12, 2, 13, 6 (*Ulpianus lib. 22 ad edictum*): *Si quis iuraverit in re pecuniaria per genium principis dare se non oportere et peieraverit vel dari sibi oportere, vel intra certum tempus iuraverit se soluturum nec solvit: imperator noster cum patre rescripsit fustibus eum castigandum dimittere et ita ei superdici: προπετώς μή όμνυε.*[108]

He conveyed the imperial rescript according to which whoever made an oath in the proceedings about a pecuniary claim that he did not owe any money, or promised under oath to discharge his obligation within a specific period, and perjured himself, should be beaten with sticks. This is followed by the emperor's warning not to give oaths.[109]

Acknowledging the difference between the procedural and the extra-procedural oath, and the fact that the procedural *iusiurandum* had been regulated in the praetorian edict in two chapters, the one *de iure iurando* and the other *si certum petetur*[110], the light punishment attributed to the authority of *coercitio* is quite revealing of the hesitations to intervene more seriously into the area. It should be nevertheless stressed that the oaths in this case were given on the *genius* of the princeps, thereby summoning the imperial reaction.[111]

Previously, in the Republican period, the oaths were given invoking gods as witnesses, in first place the Jupiter[112], so it was natural that the divine powers

[108] D. 12, 2, 13, 6: "If in a money matter some one swears on the spirit of the emperor that a debt is not due from him or is due to him and proves forsworn or swears he will pay within a certain time and does not pay, it is held by rescript of our emperor and his father that he must be sent for flogging under a motto, 'Take not oaths in vain'." Translation according to: Birks, P., in: Watson, A. (ed.), *op. cit.* (fn. 63), p. 367.

[109] See more on the text, with further references, in: Zuccotti, F., *Il giuramento nel mondo giuridico e religioso antico*, *op. cit.* (fn. 11), p. 46; Marra, I. M., *op. cit.* (fn. 105), pp. 33 ff.; Blidstein, M., *op. cit.* (fn. 11), p. 23.

[110] Although, if it is accepted Harke's argumentation that this text shows that both promissory and assertory oaths were treated similarly, there would be no great differences between the procedural and the extra-procedural oath. However, in this case there is the common element of swearing on the *genium principis*, the main object of the rescript, making this position only partially tenable. See more in: Harke, J. D., *op. cit.* (fn. 11), pp. 43 ff.

[111] See in general in: Incelli, E., *op. cit.* (fn. 105), pp. 202 – 203; Marra, I. M., *op. cit.* (fn. 105), pp. 1 ff.

[112] See more in: Zuccotti, F., *Il giuramento nel mondo giuridico e religioso antico*, *op. cit.* (fn. 11), p. 23; Fiori, R., *op. cit.* (fn. 11), pp. 155 ff.; Calore, A., *op. cit.* (fn. 11), pp. 35 ff. Also see: Rossaro, S., *Archeologia e genealogia del giuramento nel mondo romano arcaico*, Dottorato di ricerca in giurisprudenza, Università degli Studi di Padova, Padova, 2014, pp. 44 f.

would inflict penalties on those transgressing their oaths on divinities.[113] Next to the Cicero's words from *de legibus* II, 9, 22: *"Periurii poena divina exitium, humana dedecus."*[114], which succinctly convey this idea, it is also quite often cited the argument from *de officiis* III, 29, 104: *"Est enim ius iurandum affirmatio religiosa; quod autem affirmate, quasi deo teste promiseris, id tenendum est. Iam enim non ad iram deorum, quae nulla est, sed ad iustitiam et ad fidem pertinet."*[115] It does not only testify to the sacred nature of oaths, but therein one can recognize the eroding fear of divine punishment.[116] While Cicero exhorted that the oaths be upheld, the moral decline of the period led to the lax perception of religion, so there was no real expectation of gods' wrath.[117] Still, the oaths to Jupiter, with the pertaining

[113] On the subjects to whom the oaths were given, in relation to the *fides* as the synonym of *iusiurandum*, see more in: Lombardi, L., *Dalla "fides" alla "bona fides"*, Giuffrè, Milano, 1961, pp. 118 – 121.

[114] Cic. *de leg.* II, 9, 22: "The divine punishment of perjury is destruction: the human penalty is infamy."

[115] The full text of the *de officiis* III, 29, 104, for better understanding, is as follows: "*"Non fuit Juppiter metuendus ne iratus noceret, qui neque irasci solet nec nocere." Haec quidem ratio non magis contra Reguli, quam contra omne ius iurandum valet. Sed in iure iurando non qui metus, sed quae vis sit, debet intellegi. Est enim ius iurandum affirmatio religiosa; quod autem affirmate, quasi deo teste promiseris, id tenendum est. Iam enim non ad iram deorum, quae nulla est, sed ad iustitiam et ad fidem pertinet. Nam praeclare Ennius: "O Fides alma apta pinnis et ius iurandum Iovis." Qui ius igitur iurandum violat, is fidem violat, quam in Capitolio vicinam Iovis optimi maximi, ut in Catonis oratione est, maiores nostri esse voluerunt*." ("He need not have been afraid that Jupiter in anger would inflict injury upon him; he is not wont to be angry or hurtful." This argument, at all events, has no more weight against Regulus' conduct than it has against the keeping of any other oath. But in taking an oath it is our duty to consider not what one may have to fear in case of violation but wherein its obligation lies: an oath is an assurance backed by religious sanctity; and a solemn promise given, as before God as one's witness, is to be sacredly kept. For the question no longer concerns the wrath of the gods, for there is no such thing, but the obligations of justice and good faith. For, as Ennius says so admirably: "Gracious Good Faith, on wings upborne, thou oath in Jupiter's great name!" Whoever, therefore, violates his oath violates Good Faith; and, as we find it stated in Cato's speech, our forefathers chose that she should dwell upon the Capitol 'neighbour to Jupiter Supreme and Best'.) See also: Agamben, G., *Il sacramento del linguaggio. Archeologia del giuramento*, Laterza, Bari, 2008, pp. 31 ff.

[116] This can be also deduced from the oaths given by suspect characters in Plautus' comedies., e.g. *Curc.* 456-460 and others, or *Rud.* 13-20. See more Incelli, E., *op. cit.* (fn. 105), p. 197, fn. 22.

[117] *Cf.* Incelli, E., *op. cit.* (fn. 105), pp. 197, but see also *contra* Fiori, R., *op. cit.* (fn. 104), pt. 69.

understanding that they were protected by religious sanction persisted in the period to come.[118]

The changes brought about with the Caesar's and especially Augustus' reign, the proclaimed restoration of old customs and the emphasis on religion and divine intermediation, bolstered the use of oaths.[119] Furthermore, following his deification, during the 1st century AD emerged the practice of (additionally) swearing on the *numen divi Augusti*, i.e. the divine power of the late August[120], or later emperors, and the *genius* of the standing ruler[121].[122] This is testified also by the aforementioned *TH* 65 and the several tablets from the collection of *Tabulae Pompeianae Sulpiciorum*, which provide the comparative framework for the assessment of significance of oaths of ownership in the documentary practice of *fiducia*.

Among these documents, the first pair is made of *TPSulp.* 28-29 (49 AD), with the *iusiurandum* given in the second one.[123] The first tablet, namely, records the *iurisiurandi delatio* (and possibly an oath on the existence of debt), while the second one contains the text of deferred oath (that there was no *iniuria*)

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[118] As witnessed by the literary and the documentary sources. Cf. Gröschler, P., *Der Eid in TPSulp. 28 und 29*, Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung, *vol.* 121, 2004, pp. 113 ff.

[119] See more in: Gradel, I., *op cit.* (fn. 35), pp. 54 ff.; Licandro, O., *La pax deorum e l'imperatore Augusto (che "iniziò a porre ordine nell'ecumene")*, in: Piro, I. (ed.), *Scritti per A. Corbino*, *vol.* IV, Libellula, Tricase, 2016, pp. 223 – 300 (= Licandro, O., *Augusto e la res publica imperiale. Studi epigrafici e papirologici*, Giappichelli, Torino, 2018, pp. 110 ff.).

[120] See more in: Fishwick, D., *Augustus and the Cult of the Emperor*, Studia historica. Historia antigua, *vol.* 32, 2014, pp. 47 – 60; Licandro, O., *op. cit.* (fn. 119), pp. 110 ff.

[121] Marra, I. M., *op. cit.* (fn. 105), pp. 35 ff. See also articles collected in: Fishwick, D., *op. cit.* (fn. 35).

[122] *Cf.* Incelli, E., *op. cit.* (fn. 105), pp. 197 – 201.

[123] *Cf.* Camodeca, G., *op. cit.* (fn. 8), pp. 93 – 96; Wolf, J. G., *op. cit.* (fn. 8), pp. 48 – 50 (*TPN* 22-23). See more in: Humbert, M., *À propos du iusiurandum de T Sulp. 28 et 29 : aveu d'iniuria ou défense, par un serment décisoire, à une action entachée de calumnia?*, Cahiers du Centre Gustave Glotz, *vol.* 11, 2000, pp. 121 – 129; Wolf, J. G., *Der neue pompejanische Urkundenfund: Zu Camodecas ‚Edizione critica dell'archivio puteolano dei Sulpicii'*, Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung, *vol.* 118, 2001, pp. 102 ff. (= Wolf, J. G., *Aus dem neuen pompejanischen Urkundenfund. Gesammelte Aufsätze*, Duncker & Humblot, Berlin, 2010, pp. 129 – 133); Gröschler, P., *op. cit.* (fn. 118), pp. 110 – 128; Broekaert, W., *Conflicts, Contract Enforcement, and Business Communities in the Archive of Sulpicii*, in: Flohr, M.; Wilson, A. (eds.), *The Economy of Pompeii*, Oxford University Press, Oxford, 2017, pp. 396 – 397.

according to the praetor's edict.[124] They are, however, not directly comparable to the *TH* 65 because of the separate regulation of procedural, or procedure related[125], oath in the edict, as it was presented in general in the title D. 12, 2 (*De iureiurando sive voluntario sive necessario sive iudiciali*), and mentioned before with the Ulpian's D. 12, 2, 13, 6. On the other hand, the oaths mentioned in *TPSulp.* 54, 63 and 68 are made extra-procedurally, and are more similar to the situation of fiduciary transfers.[126]

The earliest is *TPSulp.* 68 drawn in 39 AD.[127] It is preserved to the greatest extent, both the inner and the outer text, and it records the loan (*mutuum*) confirmed by the *iusiurandum* and the *stipulatio*. This transaction belongs to, and finishes (*reliquos ratione omni putata*), the business affairs between C. Novius Eunus and Hesychus, the slave of emperor Caligula at the time of drawing this tablet, which are recorded in *TPSulp.* 51-52 (18 June and resp. 2 July 37 AD)[128], with the pertaining mention in *TPSulp.* 45[129], and the *TPSulp.* 67 (29 August

[124] The tablets were scrutinized by Gröschler, who also offered, following Wolf in great part (Wolf, J. G., *op. cit.* (fn. 8), p. 50), new explanations of the missing parts. Accordingly, Camodeca's addition to the "*iusiurandum per Iovem optimum maximum et numen divi Augusti*" of words *"et Genium Tiberii Claudi Caesaris Augusti"* was replaced by "*deos penates*". See Gröschler, P., *op. cit.* (fn. 118), pp. 122 – 128. See also: Wolf, J. G., *Eine Eidesdelation und eine Eidesleistung*, in: Altmeppen, H; Reichard, I.; Schermaier, M. J. (eds.), *Festschrift für Rolf Knütel zum 70. Geburtstag*, Müller, Heidelberg, 2010, pp. 1459 – 1468 (= Wolf, J. G., *Aus dem neuen pompejanischen Urkundenfund. Gesammelte Aufsätze*, Duncker & Humblot, Berlin, 2010, pp. 198 – 208).

[125] See more on the issue of giving *iusiurandum voluntarium* not directly in court in: Gröschler, P., *op. cit.* (fn. 118), p. 118, fn. 42.

[126] Cf. Gröschler, P., *Die Mittel der Kreditsicherung in den tabulae ceratae*, in: Verboven, K.; Vandorpe, K.; Chankowski, V. (eds), *Pistoi dia tén technén. Bankers, Loans and Archives in the Ancient World. Studies in honour of R. Bogaert*, Peeters, Leuven, 2007, pp. 309 – 313.

[127] *Cf.* Camodeca, G., *op. cit.* (fn. 8), pp. 164 – 167; Wolf, J. G., *op. cit.* (fn. 8), pp. 93 – 95 (*TPN* 59).

[128] Cf. Camodeca, G., *op. cit.* (fn. 8), pp. 135 – 141; Wolf, J. G., *op. cit.* (fn. 8), pp. 75 – 80 (*TPN* 43-44). See more in: Verhagen, H. L. E., *Das Verfallpfand im frühklassischen römischen Recht. Dingliche Sicherheit im Archiv der Sulpizier*, Tijdschrift voor Rechtsgeschiedenis, *vol*. 79, no. 1, 2011, pp. 34 – 36; Sirks, B., *Law, Commerce, and Finance in the Roman Empire*, in: Wilson, A.; Bowman, A. (eds.), *Trade, Commerce, and the State in the Roman World*, Oxford University Press, New York, 2018, pp. 75 – 76.

[129] Cf. Camodeca, G., *op. cit.* (fn. 8), pp. 121 – 124; Wolf, J. G., *op. cit.* (fn. 8), pp. 124 – 126 (*TPN* 86). See more in: Jakab, É., *Loans and Securities: Tracing Maritime Trade in the Archive of the Sulpicii*, in: Candy, P. (ed.), *Roman Law and Maritime Commerce*, Edinburgh University Press, Edinburgh, 2022, pp. 151 – 153.

38 AD)[130].[131] The relevant part of the *scriptura interior*[132], after the statement of remaining debt of 1250 HS received in loan, testifies that the oath was given to repay the money. More specifically, the *iusiurandum* was given invoking the name of Jupiter, the *numen* of the deified Augustus and the *genius* of the ruling emperor Caligula, that the debtor, C. Novius Eunus, will repay the debt by the November kalends to Hesychus or to the C. Sulpicius Faustus (*…quem summam iuratus promissi me aut ipsi Hesucho aut C(aio) Sulpicio Fausto redditurum k(alendis) Noembrib(us) primis per Iovem Optum<u>m M<a>x<u>=mum et numen divi Augusti et Genium C(aii) Cessaris Augusti*[133]), the latter serving as the *adiectus solutionis causa*.[134] Thus, the oath was given to confirm the obligation to repay the loan, *mutuum*, which was in any case due, but was commonly, as witnessed in the continuation of this and by many other tablets from Murécine, confirmed by *stipulatio*.[135]

After the confirmation of a given loan and the oath, it is continued with the possible failure to meet the obligation in time. In first instance, the debtor will be liable for perjury (*…non solum periurio teneri, …*), but he will also have to pay the default interest for every day being overdue (*…quod si ea die non solvero, me non {t} solum periurio teneri set etiam peone nomine in de singulos sestertios vigienos nummo obligatum iri;…*). The tablet finishes with the stipulatory clause encompassing both the punitive interest and the principal debt (*…et eos HS ∞ CCL,*

[130] Cf. Camodeca, G., *op. cit.* (fn. 8), pp. 162 – 164; Wolf, J. G., *op. cit.* (fn. 8), pp. 91 – 93 (*TPN* 58).

[131] See also: Barron, C., *An oath sworn to Jupiter (TPSulp 68)*, available at: https://www.judaism-and-rome.org/oath-sworn-jupiter-tpsulp-68, published: 8.7.2019 (accessed: 11.11.2026).

[132] Scriptura exterior gives the approximately same text, only more precise and exact, explained by the fact that the interior part was written personally by the debtor, while the exterior was written by a scribe. See more in: Wolf, J. G., *op. cit.* (fn. 8), pp. 29 – 30; Meyer, E. A., *op. cit.* (fn. 3), p. 150; Jakab, É., *op. cit.* (fn. 129), p. 151.

[133] The texts of *TPSulp.* are given according to the: Camodeca, G., *op. cit.* (fn. 8).

[134] *Cf.* Camodeca, G., *op. cit.* (fn. 8), p. 167. See on the institution: Finkenauer, T., *Stipulation (Verbalkontrakt)*, in: Babusiaux, U. *et al.* (eds.), *Handbuch des Römischen Privatrechts*, Mohr Siebeck, Tübingen, 2023, pp. 588 – 589.

[135] See more, with further references, in: Kaser, M., *'Mutuum' und 'stipulatio'*, in: *Eranion in honorem G. S. Maridakis. vol.* I, Klissiuni, Athens, 1963, pp. 155 – 182 (= Kaser, M., *Ausgewählte Schriften*, *vol.* II, Jovene, Napoli, 1976, pp. 273 – 182); Gröschler, P., *Sachleistung zur Schuldbegründung (Realkontrakte)*, in: Babusiaux, U. *et al.* (eds.), *Handbuch des Römischen Privatrechts*, Mohr Siebeck, Tübingen, 2023, pp. 632 – 633. Also in general on the addition of *stipulationes* to chirographs in *TPSulp.* see: Meyer, E. A., *op. cit.* (fn. 3), p. 151.

q(ui) s(upra) s(crip)ti s(unt), probos recte dari stipulatus e<s>t Hessu(c)us C(aii) Cessaris Augusti ser(vus), spondi C(aius) Novi=us Eunus…).[136]

The two remaining tablets, *TPSulp.* 54[137] and 63[138], both drawn in 45 AD[139], show some important differences. The first one, *TPSulp.* 54, was also a *chirographum* recording the *mutuum cum stipulatione*, but with the addition of surety, *fideiussio*, being included in the document.[140] The oath was given here only by the guarantor, and to the fact that he did not give a personal warranty to no one else that year, and it was given only in the name of Jupiter and the *numen* of the deified Augustus (*…C(aius) Aviiilius Cinnamus scripsi, interrogante C(aio) Sulpicio Cinnamo, ea HS ((I)) ((I))millia nummum, quae s(upra) s(cripta) sunt, fide et periculo meo esse iussi pro M(arco) Lollio Philippo C(aio) Sulpicio Cinnamo; fateor autem et iuravi per Iovem et numen divi Aug(usti) me h[o]c anno pro eodem nulli alii fide mea esse [i]ussisse*).

The *TPSulp.* 63 initially transcribes the *nomen arcarium* as the entry of a loan into the creditor's accounting book, continuing with the records of *stipulatio poenae*, the obligation by the debtor, Magia L. f. Pulchra, to pay the double amount if the principal debt is not paid by the 1st of May 46 AD, and the corresponding *iusiurandum* (*…stipulatus est C(aius) Sulpicius (Cinnamus?), spopondit Magia L(ucii) f(ilia) Pulchra [et per Iovem et numen divi Aug(usti)] iuravit.*).[141] The oath is equally given only on Jupiter and the *numen divi Augusti*, without invoking the *genius* of actual emperor, Claudius.

The main difference between the three tablets concerning the oath is in the enumeration of the subjects who were invoked, or on whom the oath was given. The first one is made additionally to the *genius* of the emperor, while the other two were not.[142] This can be explained by different emperors at the time when

[136] See: Camodeca, G., *op. cit.* (fn. 8), pp. 167; Barron, C., *op. cit.* (fn. 131).

[137] Cf. Camodeca, G., *op. cit.* (fn. 8), pp. 143 – 144; Wolf, J. G., *op. cit.* (fn. 8), pp. 70 – 71 (*TPN* 45).

[138] Cf. Camodeca, G., *op. cit.* (fn. 8), pp. 157 – 158; Wolf, J. G., *op. cit.* (fn. 8), pp. 88 – 89 (*TPN* 52).

[139] Camodeca, G., *op. cit.* (fn. 8), pp. 144.

[140] See more in: Jakab, É., *Financial Transactions by Women in Puteoli*, in: du Plessis, P. J. (ed.), *New Frontiers: Law and Society in the Roman World*, Edinburgh University Press, Edinburgh: 2013, pp. 131.

[141] See: Gröschler, P., *op. cit.* (fn. 8), pp. 132 – 134.

[142] Concerning the *numen divi Augusti*, it is important to mention Tiberius' decision, according to Tacitus, *Ann.* 1, 73, 3, putting on the same level the perjury on Jupiter and on the *numen divi Augusti*, as the insults to gods, to be punished by gods

they were drawn, and the legal significance attributed to the oath by them.[143] The first one was written in 39 AD, at the time of emperor Caligula, when the perjury on his *genius* was prosecuted on the charges of *crimen laesae maiestatis*.[144] Claudius, on the other side, who was in power in 45 AD, exercised much more constraint, especially with regard to the possible divine attributions awarded him.[145] Consequently, the practice of swearing to the emperor's genius subsided, or more precisely ceased for some time.

In 62 AD, when the *TH* 65 was prepared, the emperor was Nero, and the practice of giving oaths on the emperor's *genius* was re-established. He reintroduced the same year the *crimen laesae maiestatis*[146], so this can easily explain the role of *iusiurandum* in *TH* 65, which would be similar as in the *TPSulp.* 68. In case of the perjury, the debtor would not only be threatened by religious sanctions[147], both on account of the perjury on Jupiter's name and on the August's divine power, but he would be also exposed to the criminal prosecution because of the injury to the emperor, as he would be a century after, as per D. 12, 2,

themselves. See Scheid, J., *The Gods, the State, and the Individual*, PENN, Philadelphia, 2016, pp. 102 – 103.

143 This was quite succinctly recognized by Gröschler, P., *op. cit.* (fn. 118), pp. 126 – 127, taking into account earlier comments by Camodeca and Wolf, for which see fn. 145.

144 On the *crimen laesae maiestatis* see e.g.: Kübler, B., *Maiestas*, in: *Paulys Real-Encyclopädie der Classischen Altertumswissenschaft* (RE), *vol.* XIV.1, J. B. Metzler, Stuttgart, 1928, pp. 542 – 559; Chilton, C. W., *The Roman Law of Treason under the Early Principate*, The Journal of Roman Studies, *vol.* 45, 1955, pp. 73 – 81; Pugliese, G., *Linee generali dell'evoluzione del diritto penale pubblico durante il principato*, in: Temporini, H. (ed.), *Aufstieg und Niedergang der römischen Welt, II.14 Recht (Materien [Forts.])*, De Gruyter, Berlin, Boston, 1982, pp. 750 ff.; Ferrary, J.-L., *Lois et procès de maiestate dans la Rome républicaine*, in: Santalucia, B. (ed.), *La repressione criminale nella Roma repubblicana fra norme e persuasione*, IUSS Press Pavia, 2009, pp. 223 – 249.

145 Camodeca mentioned the *crimen laesae maiestatis* both with *TPSulp.* 68 and the *TPSulp.* 63, while Wolf emphasized with *TPSulp.* 63: "indessen hat Claudius offenbar untersagt, bei seinem Genius zu schwören". Gröschler followed Wolf's reasoning in differentiating the positions of two emperors in that respect. See Camodeca, G., *op. cit.* (fn. 8), pp. 158, 167; Wolf, J. G., *op. cit.* (fn. 123), p. 133; Gröschler, P., *op. cit.* (fn. 118), p. 126.

146 Tacitus, *Ann.* 14, 48, 1. See more in: Bauman, R., *Impietas In Principem. A Study of Treason Against the Roman Emperor with Special Reference to the First Century A.D.*, C. H. Beck, München, 1974, pp. 141 – 145.

147 See also for taking into account the business reputation, i.e. the damage if someone would break his oath, in: Terpstra, T. T., *Trade in the Roman Empire: A Study of the Institutional Framework*, Columbia University, New York, 2011, p. 29.

13, 6 (one can notice the similarity in Ulpian's text and the promise the pay by certain date in *TPSulp.* 68), or at least on the charges of *stellionatus*. In case of the *mancipatio Pompeiana*, drawn in the last days of Vespasian, the situation would be more similar to the one under Claudius, explaining the use of shorter formula.[148] In general, the varying severity and the insistence on prosecution for perjury as *crimen laesae maiestatis*, because of which it did not become an established form of this criminal offence[149], could be also considered the cause for its separate later incrimination.

5. CONCLUSION

The use of oaths of ownership mentioned in the documentary practice of *fiducia*, *TH* 65 and *mancipatio Pompeiana*, resulted from the nature of fiduciary transfer of ownership, i.e. the *mancipatio nummo uno* being undertaken *fiduciae causa*. While the creditor had the possibility of using personal surety when entering into the primary obligation, when he chose the real security in the form of *fiducia*, its accessorial function and the corresponding price of 1 HS in *mancipatio* precluded him from using *stipulatio* in forms and manners in which it was used alongside *emptio venditio* and the *mancipatio* effectuating that contract. Thus, he was directed towards demanding debtors to give oaths of ownership, as a similar, though not legally binding, instrument. The oaths were an integral part of Roman life, with varying importance and enforceability, sacral or secular. During the 1st century AD, when the preserved records of *fiducia* were drawn, the main instrument of ensuring their truthfulness and upholding was the threat of punishment for *crimen laesae maiestatis* when swearing on the *genius principis*. As the *tabulae* show, the ones on *fiducia* as well as the *TPSulp.* 54, 63 and 68, and the differences among them, this was aptly used by creditors in the periods of emperors who accordingly sanctioned the wrongful invocation of their *genius*. During the reign of more moderate emperors, the creditors were satisfied with strictly religious oaths, on Jupiter and the *numen divi Augusti*, probably perceived as a customary, long-standing instrument, relying more on the moral integrity of debtors than anything else.

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[148] As Bauman stated: "Both Vespasian and Titus abolished charges of *maiestas*, Vespasian probably and Titus certainly with the same permanence as Claudius, but the very fact that the *lex maiestatis* was not available lends point to certain episodes in their reigns." See Bauman, R., *op. cit.* (fn. 146), p. 157.

[149] It was in the end abolished by Alexander Sever, C. 4, 1, 2 (223 AD). See Fiori, R., *op. cit.* (fn. 104), pt. 67.

Concerning the role of oaths in the tablets in relation to the liability for eviction arising from *fiducia*, the analysed sources indicate that they represent another example of doubling securities, or a safeguard against the possible deficiency in contractual protection. The texts from the Digest confirm the use of *actio fiduciae contraria* in the 2nd and 3rd century, and the stability of the *formula* suggests that it may have been used for the same purpose earlier as well, provided that the creditor, and the debtor too, acted *"ut inter bonos bene agier oportet"*. At the same time, these sources point to the specific features of contractual practice, including clauses regulating the modalities of sale upon default, also attested in the *pactum* contained in the *Tabula Baetica*, which could significantly influence the outcome of litigation. Accordingly, taking into account the casuistic nature of the given solutions, the regular limits of contractual responsibility, and the cautiousness of Roman creditors, it appears probable that, next to the contractual liability arising from *actio fiduciae*, the creditors resorted to oaths with the aim of securing an objective guarantee against eviction. They were not at the same level as *stipulatio* in the sale contract, but the fact that *fiducia* was a security *per se* could validate their use.[150]

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[150] That being said, there is no basis for claims that oaths would be used as a justification for *actio fiduciae*, as the perjury was later separately prosecuted. This position is not specifically elaborated in the text, or the theories by Erbe and Frezza mentioned in fn. 14 were critiqued, as the sources are very clear in that respect.

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Sažetak

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IUSIURANDUM I ODGOVORNOST ZA EVIKCIJU U DOKUMENTARNOJ PRAKSI FIDUCIJE

*Vjerovnici u rimskim trgovačkim odnosima već su se potkraj Republike u velikoj mjeri oslanjali na stvarnopravna sredstva osiguranja, fiduciju i pignus. Njihova je uporaba potvrđena sačuvanim tablicama iz 1. stoljeća. Među tablicama koje bilježe fiducijarne prijenose vlasništva (*fiducia cum creditore*), dvije od njih,* mancipatio Pompeiana *i* Tabula Herculanensis *65, u svome početnom dijelu sadržavaju zakletvu kojom se potvrđuje da predmet pripada samo i isključivo dužniku te da nije opterećen pravima trećih. U slučaju potonje tablice zakletva (*iusiurandum*) je položena* per Iovem et numina deorum et genium Neronis Claudi Caesaris Augusti*. Uzimajući u obzir prijašnja istraživanja o ulozi zakletvi, u radu se ispituju svrha i učinci takve zakletve pri sklapanju ugovora (izvanprocesno), kako u odnosu na primjenjivost* actio fiduciae contraria *glede odgovornosti za evikciju tako i s obzirom na pozivanje u zakletvi na carev* genius*, uz Jupitera i* numina deorum*. Ove se zakletve također uspoređuju s onima zabilježenima u* Tabulae Pompeianae Sulpiciorum *54, 63 i 68 te s njihovom funkcijom.*

Ključne riječi: fiducia*,* fiducia cum creditore*,* iusiurandum*,* genius Caesaris*, odgovornost za evikciju*

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