

**THE «OPTIMUS MAXIMUSQUE» CLAUSE IN ROMAN REAL ESTATE SALES:
NEW EVIDENCE OF COHERENCE AND PLURALISM IN THE RELATIONSHIP
BETWEEN JURISPRUDENCE AND PROVINCIAL PRACTICE**

Por

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ABSTRACT: The contractual clause «*ut/uti optimus maximusque esset/est*» has been at the centre of Roman jurists' debate on real estate sales for centuries. The opinions collected in the Digest give relevance to this expression and its legal consequences, especially to the general duty of *oportere ex fide bona*. The cases examined by Roman jurisprudence are emblematic (D. 18.1.59; D.21.2.48; D.21.2.75; D.50.16.90; D.50.16.126; D.50.16.169). Moreover, the writings of the *Gromatici Veteres* reveal interesting clues about the consistency of local legal practice (110.15-21 Th. = 146.15-20 L.). A comparison with the findings discovered in the Iberian Peninsula (FIRA III² 92), in Britannia (P12 = RIB II 2443.13) and in Dacia (FIRA III² 90) shows compelling results regarding Roman legal practice. Indirect confirmations of the contractual clause's gradual evolution can be found in some papyri from Ravenna (p.ital.2.30 = chla.20.706; p.ital.2.31 = chla.20.707; p.ital.2.35 = chla.3.181; p.ital.2.36 = chla.21.715; p.ital.2.37 = chla.21.716 = FIRA III² 140). A recent find (AE 2016, 2029) brings new light about this topic.

KEYWORDS: Roman law - real estate sales - *emptio venditio* - warranty - *optimus maximusque* - Roman Provincial Practice - *iter praestatur* - *servitus* - agricultural lands.

**LA CLÁUSULA «OPTIMUS MAXIMUSQUE» EN LAS VENTAS
INMOBILIARIAS ROMANAS: NUEVAS PRUEBAS DE COHERENCIA Y
PLURALISMO EN LA RELACIÓN ENTRE LA JURISPRUDENCIA Y LA
PRÁCTICA PROVINCIAL**

RESUMEN: La cláusula contractual «*ut/uti optimus maximusque esset/est*» ha sido durante siglos el centro del debate de los juristas romanos sobre la venta de bienes inmuebles. Las opiniones recogidas en el Digesto dan relevancia a esta expresión y a sus consecuencias jurídicas, especialmente al deber general de *oportere ex fide bona*. Los casos examinados por la jurisprudencia romana son emblemáticos (D. 18.1.59; D.21.2.48; D.21.2.75; D.50.16.90; D.50.16.126; D.50.16.169). Además, los escritos de los *Gromatici Veteres* revelan pistas interesantes sobre la coherencia de la práctica jurídica local (110.15-21 Th. = 146.15-20 L.). Una comparación con los hallazgos descubiertos en la península ibérica (FIRA III² 92), Britannia (P12 = RIB II 2443.13) y Dacia (FIRA III² 90) muestra resultados convincentes sobre la práctica jurídica

romana. Se pueden encontrar confirmaciones indirectas de la evolución gradual de la cláusula contractual en algunos papiros de Rávena (p.ital.2.30 = chla.20.706; p.ital.2.31 = chla.20.707; p.ital.2.35 = chla.3.181; p.ital.2.36 = chla.21.715; p.ital.2.37 = chla.21.716 = FIRA III2 140). Un hallazgo reciente (AE 2016, 2029) aporta nueva luz sobre este tema.

PALABRAS CLAVE: Derecho romano - ventas inmobiliarias - *emptio venditio* - garantía - *optimus maximusque* - Práctica provincial romana - *iter praestatur* - *servitus* - tierras agrícolas.

1. ROMAN CASE LAW

The contractual clause *optimus maximusque* as referred to real estate *negotia* appears in the Digest six times, with opinions from Roman leading jurists: *Celsus*, *Neratius*, *Venuleius*, *Proculus*, *Paulus* and *Ulpianus*. These sources allow us to reconstruct the legal framework from the 1st century BCE (through indirect references to *Quintus Mucius* via *Celsus* and *Venuleius*) to the 3rd century CE (*Paulus* and *Ulpianus*). Both schools of jurisprudence are presented here: the Proculians (*Celsus*, *Neratius*, *Proculus*) and the Sabinians (*Venuleius*, with indirect references to *Sabinus*, *Paulus*, and *Ulpianus*).

By examining the testimonies concerning *emptiones venditiones* and their associated *pacta* (D.18.1: *De contrahenda emptione et de pactis inter emptorem et venditorem compositis et quae res venire non possunt*), together with the testimonies about verbal agreement for *evictio* (D.21.2: *De evictionibus et duplae stipulatio*), several common points emerge: a) the Roman jurists agreed there was no need to specify the legal status of land at the time of sale, regardless of the type of property, indirectly confirming the clause's function as a supplementary or complementary provision¹; b) they validated the sale of encumbered land and they confirmed that *optimus maximusque* guaranteed land free of legal encumbrances, specifying that silence regarding the land's status did not imply that the land was free²; c) they identified the legal consequences of using the

¹ D.18.1.59, Cels. 8 dig.: *Cum venderes fundum, non dixisti "ita ut optimus maximusque": verum est, quod Quinto Mucio placebat, non liberum, sed qualis esset, fundum praestari oportere. idem et in urbanis praediis dicendum est.* See J. L. Ferrary - A. Schiavone - E. Stolfi, *Quintus Mucius Scaevola. Opera*, Roma, 2018, p. 148. For further reading see A. Fernández de Buján, *Sistemática y Ius Civile en las obras de Quintus Mucius Scaevola y de Accursio*, in *Revista jurídica Universidad Autónoma de Madrid*, 6, 2002, pp. 57-80 (see also in *Religión y cultura*, 220, 2002, pp. 90-114); Id., *Quintus Mucius Scaevola y Accursius. Trayectoria Vital y Obra Científica*, in *Revista de Derecho Romano "Pervivencia"*, 3, 2020, no page.

² D.21.2.75, Ven. 16 stip.: *Quod ad servitutes praediorum attinet, si tacite secutae sunt et vindicentur ab alio, Quintus Mucius et Sabinus existimant venditorem ob evictionem teneri non posse: nec enim evictionis nomine quemquam teneri in eo iure, quod tacite soleat accedere: nisi ut optimus maximusque esset traditus fuerit fundus: tunc enim liberum ab omni servitute praestandum. Si vero emptor petat viam vel actum, venditorem teneri non posse, nisi nominatim dixerit accessurum iter vel actum: tunc enim teneri eum, qui ita dixerit. Et vera est Quinti Muci sententia, ut qui optimum maximumque fundum tradidit, liberum praestet, non etiam deberi alias servitutes, nisi hoc specialiter ab eo accessum sit.* Compare J.L. Ferrary - A. Schiavone - E. Stolfi, *Quintus Mucius op.cit.*, p. 148; N. Dincer Araz, *Liability of the Vendor for Evictio in Roman Law.*, in

clause when the land was not, in fact, free (especially in cases of *evictio*, imposing duties on the seller and rights on the buyer, though silence carried no consequences)³.

Further clarification about the application of this clause by Roman jurisprudence appears in D.50.16 (*De verborum significatione*)⁴. Firstly, the two adjectives (*optimus* and *maximus*) were recognized as precise legal terminology and formed part of the *lex contractus*: when additional clauses were added; combinations of clauses impacted interpretation of the whole contractual regulation⁵. Moreover, *Paulus*, commenting on *Sabinus*, highlighted the clause's roots and applications, indirectly emphasizing individuals' *voluntas* and the role of Roman practice in shaping law⁶. Thanks to this information, it is pointed out that disputes about interpretation of the clause persisted into the 3rd century CE, though the validity of the terminology was never questioned⁷. Finally, it is relevant to outline that the clause could also be applied to buildings (*aedes*)⁸.

Dokuz Eylul Universitesi Hukuk Fakultesi Dergisi, 21, 2019, pp. 2415-2444; I. Pontoriero, L'uso delle opere di Sabino nella giurisprudenza antoniniana, in *Archivio giuridico*, 1, 2020, pp. 35-129.

³ D.21.2.48, Ner. 6 *membr.*: *Cum fundus "uti optimus maximusque est" emptus est et alicuius servitutis evictae nomine aliquid emptor a venditore consecutus est, deinde totus fundus evincitur, ob eam evictionem id praestari debet quod ex duplo reliquum est: nam si aliud observabimus, servitutibus aliquibus et mox proprietate evicta amplius duplo emptor quam quanti emit consequeretur.* See A. Corbino, *Il formalismo negoziale nell'esperienza romana*. Lezioni, Torino, 1994, pp. 25-30; G. Romano, *Nota sulla tutela del contraente evitto nell'ambito dei c.d. contratti innominati*. Il caso dell'actio auctoritatis, in *Diritto@Storia*, 9, 2010, pp. 1-50.

⁴ In general terms about this title see R. Rodríguez López, Andrea Alciato y el "De verborum significatione", in F. L. Lisi (ed.), *Tradición clásica y universidad*, Madrid, 2010, pp. 389-402.

⁵ D.50.16.126, Proc. 6 *epist.*: *Si, cum fundum tibi darem, legem ita dixi "uti optimus maximusque esset" et adieci "ius fundi deterius factum non esse per dominum, praestabitur", amplius eo praestabitur nihil, etiamsi prior pars, qua scriptum est "ut optimus maximusque sit" liberum esse significat eoque, si posterior pars adiecta non esset, liberum praestare deberem. Tamen inferiore parte satis me liberatum puto, quod ad iura attinet, ne quid aliud praestare debeam, quam ius fundi per dominum deterius factum non esse.* Compare G. Gandolfi, *Lezioni sull'interpretazione dei negozi giuridici*, Milano, 1962, p. 141 ff.; A. Barra, *Gli incrementi fluviali in diritto romano*, Frattamaggiore, 1998, pp. 16-18; J. Belda Mercado, *La obligación de garantía por evicción del comprador en el Derecho Romano clásico*, in *Anuario da Faculdade de Direito da Universidade da Coruña*, 8, 2004, pp. 119-140; M. Brutti, *Interpretare i contratti*, Torino, 2017, pp. 80-82; L. Pellecchi, *I giuristi che scrivono lettere: questioni di forme e di contenuti, attraverso gli epistularum libri di Proculo*, in *Tesseræ iuris*, 5, 1, 2024, pp. 225-285.

⁶ D.50.16.169, Paul. 5 *ad Sab.*: *Non tantum in traditionibus, sed et in emptionibus et stipulationibus et testamentis adiectio haec "uti optimus maximusque est" hoc significat, ut liberum praestetur praedium, non ut etiam servitutes ei debeantur.* See O. Sacchi, *Regime della terra e imposizione fondiaria nell'età dei Gracchi*. Testo e commento storico della legge agraria del 111 a.C., Napoli, 2006, pp. 196-202. In general terms, considering the duty of a correct behaviour, see A. Fernández de Buján, *El papel de la buena fe en los pactos, arbitrajes y contratos*, in *Anuario de justicia alternativa*, 10, 2010, pp. 149-180.

⁷ For further reading about the specificity of legal language and the application of the clause here analysed, see G. Crifò, *Il linguaggio del diritto romano come disciplina e forma della realtà*, in *Technai. An International Journal for Ancient Science and Technology*, 1, 2010, pp. 103-120.

⁸ D.50.16.90, Ulp. 27 *ad Sab.*: *Qui "uti optima maximaque sunt" aedes tradit, non hoc dicit servitutem illis debere, sed illud solum ipsas aedes liberas esse, hoc est nulli servire.* See V. A. Georgescu, *Optimus si optimus maximus in tehnica juridica romana: optima lex, optimum ius, fundus optimus maximusque*, in *Studii Clasice*, 10, 1968, pp. 185-206.

To conclude this overview on the jurisprudential consideration of the clause, two curiosities from Italian case law deserve mention. The opinion of *Venuleius* about the *optimus maximusque* clause was considered relevant among Italian scholars in late 19th and early 20th century. On the one hand, commenting a decision of the Supreme Court of Naples written in 1875, the annotator explicitly referenced the interpretation of the clause given by *Venuleius*: he considered the principles enucleated by the Roman jurist still useful and valid for the resolution of the case judged by the Court⁹. On the other hand, the same text was mentioned few years later, in a note of a judgement of the Supreme Court of Rome written in 1915¹⁰.

2. A TESTIMONY FROM *GROMATICI VETERES*

The opinions of Roman jurists above examined have to be compared with the texts collected in the *Corpus Agrimensorum Romanorum*. The writings of the *Gromatici Veteres*, preserved in a variety of manuscript sources, serve as ancient testimonies on the management and organization of land, encompassing both public and private property¹¹. They show the practical knowledge and common framework adopted in the field of land surveying. From this perspective, these sources not only shed light on the legal system but also reflect elements of customary practices¹². In this context, technical and legal expertise were deeply intertwined, covering a wide range of areas of competence¹³. Therefore, it's worth examining the opinion of *Siculus Flaccus*, a land surveyor who lived in the II century CE.

Sic. Flacc. *de condic. agror.* 110.15-21 Th. (= 146.15-20 L.): *Nam aliquando deficientibus uicinalibus uis per agros alienos iter praestatur. Quidam etiam*

⁹ See N. De Crescenzio, *Il foro italiano*, 1, 1876, pp. 9-16.

¹⁰ See N. Germano, *Il foro italiano*, 40, 1915, pp. 1387-1392.

¹¹ See L. Toneatto, *Codices artis mensoriae. I manoscritti degli antichi opuscoli latini d'agrimensura (V- XIX sec.)*, I, Tradizione diretta. Il Medioevo, Spoleto, 1994, 8 ff.

¹² Compare C. Lachmann, *Gromatici Veteres*, in F. Blume - K. Lachmann - A. Rudorff (eds.), *Schriften der Römischen Feldmesser*, I, Berolini, 1848 (reprint Hildesheim 1967); C. Thulin, *Corpus Agrimensorum Romanorum*, Lipsia, 1913 (reprint Stuttgart 1971); *Siculus Flaccus*, *Les conditions des terres*, texte traduit par M. Clavel-Lévêque - D. Conso - F. Favory - J.-Y. Guillaumin - Ph. Robin, Napoli, 1993; *Balbus, Présentation systématique de toutes les figures - Podismus et textes connexes. Extraits d'Epaphrodite et de Vitruvius Ruus; La mesure des jugères*, intr., trad. et notes par J.-Y. Guillaumin, Napoli, 1996; *Hygin L'arpenteur, L'Etablissement des limites*, texte traduit par M. Clavel-Lévêque - D. Conso - A. Gonzales - J.-Y. Guillaumin Ph. Robin, Luxembourg-Napoli, 1996; *Frontin, L'oeuvre gromatique*, texte traduit par O. Behrends, M. Clavel-Lévêque - D. Conso - P. Von Cranach - A. Gonzales - J.-Y. Guillaumin - M. J. Pena - St. Ratti, Luxembourg, 1998; B. Campbell, *The Writings of the Roman Land Surveyors. Introduction, Text, Translation and Commentary*, London, 2000.

¹³ Compare L. Maganzani, *Gli agrimensori nel processo privato romano*, Roma, 1997, p. 17 ff.; M. P. Pavese, *Costituciones in uno libello conferre: una raccolta normativa dell'agrimensore Igino*, in M. Bianchini - G. Viarengo (eds.), *Studi in onore di F. De Marini Avonzo*, Torino, 1999, 271 ff.

conueniunt specialiter uti seruitutem prestant his agris ad quos necesse habent transmittere per suum. nam et his uerbis comprehenditur, ITA VT OPTIMVS MAXIMVSQVE EST. Nam et aquarum ductus solent per alienos agros iure transmittere.

His testimony emphasises the widespread use of the warranty *optimus maximusque* in the practice (in particular, the standardized wording of such clause). The *gromaticus* used this expression right after discussing the consensual creation of a *servitus* between neighbouring landowners. The main issue was examining the situation of properties which needed a path to reach them (*iter prestatum*) or an *aquae ductus*. The author seemed to reflect the position of the dominant estate owner, the one benefiting from the easement, once achieved again full enjoyment of the real estate¹⁴.

3. DOCUMENTES OF THE PRACTICE

An overview of the application of this legal terminology in practice is possible thanks to discoveries made in Roman provinces.

Firstly, it's worth mentioning the well-known "Formula Baetica", the bronze tablet discovered between 1867 and 1868 in Andalusia (along the banks of the Guadalquivir river), dating back to the I-II century CE¹⁵. This tablet was probably consulted as a template, especially because of: 1) the presence of holes, which suggests that it was supposed to be affixed to a wall surface; 2) the use of a material like metal, mainly employed in public records due to its durability against weather conditions; 3) the onomastic elements common in theatrical comedies (*Dama, Midia*) or in praetorian edicts

¹⁴ See P. F. Girard, *Études historiques sur la formation du système de la garantie d'éviction en droit romain*, in *Mélanges de droit romain*, II, Droit privé et procédure, Paris, 1923, p. 233; M. P. Pavese, *Iter actus. Ricerche sulla viabilità privata nell'esperienza giuridica romana*, Torino, 2013, p. 95; Id., *La viabilità secondaria nell'esperienza giuridica romana*, in S. Quilici Gigli - Lorenzo Quilici (eds.), *Atlante tematico di topografia antica*, 31, Roma, 2021, p. 26.

¹⁵ Compare E. Hübner, *Ein pactum fiduciae*, in *Hermes*, 3, 1868, p. 283 ff.; Th. Mommsen, *CIL II*, 1868, 5042; Id., *CIL II*, Suppl., 1892, 5406; P. Gide, *Un pactum fiduciae. Note sur une inscription latine récemment découverte*, in *RLAMFE*, 1, 1870-1871, p. 74 ff.; C. Re, *Il pactum fiduciae. Illustrazione di un documento scoperto in Spagna nell'anno 1868*, in *Giornale di giurisprudenza teorico-pratica*, 1, 2, 1870, p. 64 ff.; M. Rodríguez De Berlanga, *Los bronce de Lascula, Bonaza y Aljustrel, Malaga, 1881*, 546 ff.; C. G. Bruns, *FIRA Additamentum*, Tübingen, 1912, 135; V. Arangio Ruiz, *FIRA, III*², Firenze, 1943, p. 295 ff.; A. D'ors, *Epigrafía jurídica de la España romana*, Madrid, 1953, p. 431 ff.; L. Núñez Contreras, *Manual de paleografía. Fundamentos e historia de la escritura latina hasta el siglo VIII*, Madrid, 1994, p. 332 ff.; J. A. Bueno Delgado, *El Bronce de Bonanza*, in *AFDUA*, 2004, p. 154; P. Lambrini, *Il negozio fiduciario e la sua causa*, in *Studi Urbinati*, 66, 2016, p. 37 ff.; A. Grillone, *Per un'ontologia della fiducia nel diritto romano classico*, in A. Petrucci (ed.), *I rapporti fiduciari: temi e problemi*, Torino, 2020, p. 21 ff.; I. Marra, *Garanzie reali dei mutui ed escussione del debitore in diritto romano*, Torino, 2024, p. 27 ff.

(*Titius*), so these were likely standard names when drafting legal documents¹⁶. In the very first lines of the Iberian text (l.1-4) a property transfer (*mancipatio*) of a land is indicated, which is described free of any legal encumbrances thanks to the standard contractual clause *optumus maxumusq(ue)*¹⁷.

Dama L. Titi ser(uus) fundum Baianum, qui est in agro qui
 Veneriensis uocatur, pago Olbensi, uti optumus maxumusq(ue)
 esset, (serstertio) n(ummo) l et hominen Midam (serstertio) n(ummo) l fidi fiduciae causa man-
 cipio accepit ab L. Baiano, libripende antest(ato). Adfines fundo
 5 dixit L. Baianius L. Titium et C. Seium et populum et si quos dicere oportet.
 Pactum comuentum factum est inter Damam L. Titi ser(uum) et L. Baian(ium), <uti>
 quam pecuniam L. <Titius L.> Baian<i>o dedit dederit, creditit crediderit, ex=
 pensumue tulit tulerit, siue quid pro eo promisit promiserit,
 sponondit <spoponderit>, fideue quid sua esse iussit iusserit, usque eo is fundus
 10 eaque mancipia fiducia essent, donec ea omnis pecunia fides=
 ue persoluta L. Titi soluta liberataque esset; si pecunia, sua qua=
 que die L. Titio h(eredi)ue eius data soluta non esset, tum uti eum
 fundum eaque mancipia, siue quae mancipia ex is <<uellet>>L. Titi=
 us h(eres)ue eius uellet, ubi et quo die uellet, pecunia praesenti
 15 uenderet; mancipio pluris (sestertio) n(ummo) l inuitus ne daret, neue sa=
 tis secundum mancipium daret, neue ut in ea ver=
 ba, quae in verba satis s(ecundum) m(ancipium) dari solet repromitteret neue simplam neue
 [duplam - - - - -]

It's interesting noting that legal practice not only is adherent to the jurisprudential sources examined before, but it also provides a case that goes beyond the list of *negotia* enucleated in the Digest. In fact, the tablet shows the application of this warranty in a *mancipatio fidi fiduciae facta* concerning a real estate. This situation highlights the autonomy of this contractual clause from the *lex contractus* and its possible application in each *negotium*, confirming the adaptability to the clause to each legal context, as well as the role of the contractual parties in expressing their *voluntas*. In the second half of the text the parties agreed to sell the land, if they wouldn't have fulfilled their previous duties.

Significant elements for the analysis emerge from the examination of the Dacian archive of wooden tablets: within this *corpus* there is record of a *mancipatio causa*

¹⁶ However, the presence of toponyms typical of the Campania region suggests that the tablet was originally produced in the Vesuvian area before being transported to Spain at a later time. See A. D'ors, *Epigrafía jurídica de la España romana*, Madrid, 1953, p. 432; P. Meylan, *La stipulation Habere Licere*, in *Legal History Review*, 38, 1-2, 1970, pp. 67-106; L. Migliardi Zingale, *In tema di fiducia cum creditore: i documenti della prassi*, in *Labeo*, 46, 2000, p. 458 ff.; A. Saccoccio, *Si certum petetur. Dalla conditio dei veteres alle condictiones giustinianee*, Milano, 2002, p. 158 ff.; R. Fercia, *Fiduciam contrahere e contractus fiduciae. Prospettive di diritto romano ed europeo*, Napoli, 2012, p. 220 ff.; F. Bertoldi, *Il negozio fiduciario nel diritto romano classico*, Modena, 2012, p. 60; P. Marra, *Fiducia causa*, Milano, 2018, 100 ff.; A. Grillone, *Per un'ontologia op.cit.*, p. 26; M. J. Azaustre Fernandez, *Una aproximación a la fiscalidad sobre la vivienda en Roma*, in *RIDROM*, 2023, pp. 1-65.

¹⁷ The substitution of vowel "i" with vowel "u" in the Iberian document (*optumus maxumusque* instead of *optimus maximusque*) appears to be an archaic spelling.

emptionis concerning half of a house. This is the document drafted on May 6th, 159 A.D., composed of two wax tablets measuring 187 x 113 mm (originally part of a triptych), discovered during the 1855 excavations at S. Catherine gold mine, in correspondence of the ancient village of *Alburnus Maior*¹⁸.

Tab. I p. 2

*Andueia Batonis emit manc[um]pioque accepit]
domus partem dimidiam interantibus partem [dex-]
tram, que est Alb(urno) maiori vico Pirustar[um in]t[er] ad[finis Platorem Accep-]
tanium et Ingenum Callisti X trecentis de Vetur[us]o Valente].*

*5 Eam domus partem dimidiam, q(ua) d(e) a(gitur), cum su[us] s]aepibus sae-
pimentis finibus aditibus claustris fenestris ita uti
clao fixsa et optima maximaque est, h(abere) r(ecte) l(iceat).*

[E]t si quis eam domum partemve quam quis [e]x [ea]

*evicerit, q(uo) m(inus) Andueia Batonis e(ive) a(d) q(uem) e(a) r(es) p(ertinebit)
h(abere) p(ossidere)*

*10 u(suque) c(apere) r(ecte) l(iceat), qu[od] ita licitum n[on] erit, t(antam)
p(ecuniam) r(ecte) d(ari) f(ide) r(ogavit), Andueia Batonis, fide promisit
Veturius Valens. Proque ea do[mu] partem]
[dim]idiam pretium X CCC Vetur[us]ius Vales*

Tab. I p. 3

a[b] A[n]du[e]ia Ba]tonis accepiss[e] et] ab[ere] se dixit.]

*15 Convenitq(ue) int[er] eos, [uti] Veturius Va[lens] pro ea]
domo tributa usque ad recensum dep[er]n[dat].]*

Act(um) Alb(urno) maiori prid(ie) nonas Maias

Qu[on]tillo et Prisco co(n)s(ulibus).

Focusing on the text, it is worth highlighting that, after the topographical and cadastral identification of the object of *mancipatio* and its description, was confirmed the absence of any legal encumbrance on it, as well as on its appurtenances (*ita uti clao fixsa et optima maximaque est*). Then, follows the reference to the *evictio*, but it concerns also the entire house (*si quis eam domum partemve*), even though only a portion of the building was sold (*emit mancipioque accepit domus partem dimidiam interantibus partem dextra*). This

¹⁸ Th Mommsen, CIL III, 945-947; V. Arangio Ruiz, FIRA, III² op.cit., p. 289 n. 90; I. Russu, IDR, I, Bucarest, 1975, n. 39 (= TabCerD IX); J. Macqueron, Contractus scripturae. Contrats et quittances dans la pratique romaine, Camerino, 1982, p. 55; E. Jakab, Formulae and proceedings before Roman courts, in MEP, 26, 2021, pp. 195-212; Ead., Quod se emisse diceret: Überlegungen zu einer Urkunde aus dem antiken London, in TR, 1-2, 2024, pp.1-36.

mistake can be considered a proof that the writer consulted a standard form or template when drafting the document.

The consistent use of the warranty formulation in real estate sales is further confirmed in the practice of the Roman Empire, as attested in Britannia. In particular, in 1954 during the excavations carried out near the remains of a Roman villa at Chew Stoke (a village in the English county of Somerset), was found an interesting wooden tablet: only the upper portion of the tablet, written in ink, has been preserved as the rest has broken away, making it impossible to determine the original dimensions of the piece. It probably dates back to the 3rd century CE¹⁹. After examining the legible portion of the text, it seemed that the writing belonged to a longer document concerning an *emptio venditio*, but the essential elements for its contextualization (name of the buyer, name of the seller, the price, the date and the place of the agreement) remain unknown. Below is the transcription provided by the editor²⁰.

*īta uti optimo maximoque iurē eșșe[t---] h(abere) r(ecte) l(iceat)
quod si quis e[---]rēd[---] quāe s(upra) s(cripta) eșș[---]-----p[ar]tēmūe quām
quis ex ea euiceret q(uo) m(inus) [-----] p[---]e[---] (vacat) m[
----- habere p[oss]idēre ut[i] frui recte liceat, tum quantum]
5 īd eritquod ita ex ea eūiç[tum
a--ea-ē[ā]*

Despite this loss of information, the verb *evinco*, used twice, as well as the adoption of the verbs *habeo*, *possideo* and *fruor*, strongly suggested that a warranty has been provided. The presence of the phrase *ita uti optimo maximoque iure esse* definitely inferred that the text regarded a real estate. A special attention has to be addressed to the addition of the word *iure*, which makes this tablet unique when compared to the other tablets in relation to the formula.

Comparing the three tablets above mentioned from a grammatical perspective, it is possible to demonstrate that several common points of the warranty's syntactical structure emerge: a) the clause is inserted in *testationes*, so using the third person (probably also in the British tablet, although the text is incomplete); 2) the two adjectives are correlated by enclitic *-que*; 3) the clause is introduced by the same adverbs (*uti* is present in the three tablets, in the British and Dacian deeds it is preceded by *ita*); 4) the verb following the adjectives is always from *sum*; in the British and the Iberian tablets the

¹⁹ E. G. Turner, A Roman Writing Tablet from Somerset, in *The Journal of Roman Studies*, 46, 1956, pp.115-118; L. J. Korporowicz, Buying a Slave in Roman Britain. The evidence from the Tabulae, pp. 212-224; E. Jakab, *Formulae op.cit.*, pp. 207-209; Ead., *Quod se emisse op.cit.*, pp.14-15.

²⁰ E. G. Turner, A Roman Writing op.cit., p. 116.

verb appears in the third person singular of the imperfect subjunctive, even though the indicative (as used in the Dacian one) would have been more appropriate, especially considering that the transferor was guaranteeing the absence of encumbrances at that precise moment²¹.

Indirect confirmations of the standardization of the warranty clause emerge also through the analysis of a group of papyri from Ravenna (p.ital.2.30 = chla.20.706; p.ital.2.31 = chla.20.707; p.ital.2.35 = chla.3.181; p.ital.2.36 = chla.21.715; p.ital.2.37 = chla.21.716 = FIRA III² 140)²². Within this famous archive there are records of *emptiones venditiones* of real estates, all dating back to the 6th century CE: they contain a huge number of details concerning each specific sale. Although these texts differ from the tables above examined in terms of geographical provenience and writing materials, they are relevant to this investigation because they were written in a period of the transition: from the Ostrogothic dominion (539-540 CE) to the Roman dominion (540-590 CE), then to the exarchate (591 CE). Therefore, their examination here validates the framework of this contractual clause in legal practice over the centuries, especially through the work of *tabelliones*²³.

²¹ Focusing on the differences, only in the Dacian tablet the two adjectives (*optima* and *maxima*) are feminine adjectives (because referred to *domus*, which is a feminine noun); in the Transylvanian tryptic it is also added the expression *clavo fixa* in order to show that the house was securely built. Moreover, only in the British tablet the noun *ius* is included in the warranty, differently from the other tablets. So, it is possible to point out that grammatical similarities are more than grammatical differences.

²² See G. Marini, *I papiri diplomatici raccolti ed illustrati*, Roma, 1805, n. 122 pp. 187-189; R. De Ruggiero, *I papiri greci e la stipulatio duplae*, in *BIDR*, 14, 1902, pp. 83-121; V. Arangio Ruiz, *FIRA, III² op.cit.*, n. 140 pp. 446-450; S. Tarozzi, *Norme e prassi. Gestione fondiaria ecclesiastica e innovazioni giuridiche negli atti negoziali ravennati dei secoli V-VII*, Milano, 2017; Ead., *Terre e patrimonio ecclesiastico: i papiri di Ravenna. Una ricerca campione*, in C. Lorenzi - M. Navarra (eds.), *Atti dell'Accademia Romanistica Costantiniana. Questioni della terra. Società, economia, normazioni, prassi*. In onore di Mariagrazia Bianchini, Napoli 2017, pp. 355-372; L. Di Cintio, *Alcune riflessioni su prassi e norme nella compravendita tra diritto romano e diritti germanici*, in *IAH*, 2024, pp. 11-53.

²³ For in-depth studies about this topic compare E. Durando, *Il tabellionato o notariato*, Torino, 1867, pp.1-67; M. Amelotti, *L'età romana*, in M. Amelotti - G. Costamagna, *Alle origini del notariato italiano*, Roma, 1975, pp. 5-47; Id., *Negocio, documento y notario en la evolución del derecho romano*, in *Anales de la Academia Matritense del Notariado*, 29, Madrid, 1990, pp. 136-146 (now in *Scritti giuridici*, Torino, 1996, pp. 151-162); Id., *Genesis del documento e prassi negoziale*, in F. Milazzo (ed.), *Contractus e Pactum. Tipicità e libertà negoziale nell'esperienza tardo-repubblicana. Atti del convegno di diritto romano e della presentazione della nuova riproduzione della littera Florentina*, Napoli, 1990, pp. 309-342 (now in *Scritti giuridici*, Torino, 1996, pp. 162-180); A. Fernández de Buján, *Documentación y notariado en Derecho romano*, in *RGDR*, 3, 2004, no page (now in *SDHI*, 73, 2007, pp. 389-402); Id., *Testigos y documentos en la practica negocial y judicial romana*, in *IVRA*, 54, 2003, pp. 21-47 (now in *RGDR*, 4, 2005, no page = in *Revista jurídica Universidad Autónoma de Madrid*, 12, 2005, pp. 117-142 = in *Religión y cultura*, 244, 2008, pp. 139-166); S. Tarozzi, *Tracce di clausole notarili dei tabelliones ravennati nei formulari medievali: il caso della retentio ususfructus ficticia*, in *Rivista internazionale di diritto comune*, 23, 2012, pp. 257-284; Ead., *Il diritto romano nelle clausole notarili dei Papiri di Ravenna del VI sec. d.C.*, in F. Lamberti - P. Gröschler - F. Milazzo (eds.), *Iuridica historica. Il diritto romano e le culture straniere*, Lecce, 2015, pp. 337-355; Ead., *Patrimonio ecclesiastico ravennate, Codice Teodosiano ed i*

Significant outcomes can be verified through grammatical parallels in the clause. On the one hand, analysing the most ancient papyri in this group, the combination of adjectives and verb tense (present indicative) is the same of the Transylvanian tablet: in 539 A.D. is used *optima maximaque sunt* (p.ital.2.30 = chla.20.7069, in 540 A.D. is used *optimum maximumque est* (p.ital.2.31 = chla.20.707), in 572 A.D. is used *optimae maximeque sunt* (p.ital.2.35 = chla.3.181). Some particulars must be highlighted. Firstly, in the last document of this group (p.ital.2.35 = chla.3.181) the warranty clause is introduced by *sicuti* instead of *ita ut/uti*, unlike the tablets above analysed. Secondly, like the British tablet, sometimes there are references to *ius*, but the term is not directly included in the clause and precedes it: e.g. in 540 A.D. the expression *optimo et inconcusso iure possessum est* is written just before the warranty clause seen above. This aspect determines a change in writing style which had an influence on the following contracts. In fact, considering the second group of papyri, the writers preferred to express a generic reference to the legal status of the real estate sold, adopting exclusively the adjective *optimus* (not adding anymore *maximus*), and they combined this adjective with the formulaic phrase about *possessio* used in 540 A.D.: the result is the formula *bono, optimo et inconcusso iure possessae sunt*, which appears two times in the late 6th century (in the papyrus dating back to the period 575-591 A.D., p.ital.2.36 = chla.21.715, as well as in the papyrus dating back to 591 A.D., p.ital.2.37 = chla.21.716 = FIRA III² 140)²⁴.

4. A RECENT FIND

A recent, little-known finding further expands the picture of Roman legal practice. In *L'Année épigraphique* 2016 (published in 2019) was reported the auction of six wooden tablets of juridical relevance²⁵. The series of auction organised by *Timeline Auctions* regarded three *acta mortis causa* (wills) and three *acta inter vivos* (a document concerning a *tabula dotis*, an *emptio venditio* of a young slave, and a sale of a land)²⁶. The transfers of ownership of this collection of documents appear to be rather unusual. According to the information collected by scholars, this group of tablets were sold to a

rapporti dei tabellioni con Costantinopoli nei contratti della Chiesa di Ravenna, in G. Bassanelli Sommariva - S. Tarozzi - P. Biavaschi (eds.), *Ravenna Capitale. Codice Teodosiano e tradizioni giuridiche in Occidente. La terra, strumento di arricchimento e sopravvivenza*, Santarcangelo di Romagna, 2016, pp. 187-202.

²⁴ For further details see V. Arangio Ruiz, *FIRA, III² op.cit.*, pp. 446-450.

²⁵ See AE 2016, 40.

²⁶ For the document concerning a *tabula dotis* see AE 2016, 2024; A. Barbano, *Spondit Iulianus sponsus. Un nuovo documento dotale del 344 d.C.*, in *TSDP*, 17, 2024, pp. 1-34. For the *emptio venditio* of a young slave see AE 2016, 2030; A. Barbano, *Nunc uocari coepit Victoria. Una nuova attestazione di compravendita del 274 d.C.*, in M.P. Pavese - R. Laurendi (eds.), *Studi in onore di Mario Amelotti*, Torino, 2025, pp. 35-62 (forthcoming).

Belgian collector in 1950s and were given to his son in 1965; then, in 1970s, they were purchased in UK by a private collector and they remained in UK in private property till the latest auction²⁷. It's likely that another wooden tablet containing a Roman will was part of this archive, but this finding was not put up for auction²⁸. The attention here is addressed to the deed auctioned on 23rd May 2017, corresponding to lot number 146²⁹.

The finding is a partially preserved rectangular tablet, whose dimension are 240 x 200 mm³⁰. Despite the damages along the short sides of the tablet, there seems to be a raised border on all sides, and probably three holes: two of them are part of the down border, the biggest one is immediately down the upper border³¹. The presence of holes can be considered a strong piece of evidence that the tablet was part of a longer document, which was aimed to be closed with the ordinary methods of document binding by passing a thread through the holes, in accordance with the requirements of Nero's *senatusconsultum*. Similar characteristics can also be found in other tablets of the group³². According to the editors of *L'Année épigraphique*, the traces of line decipherable were written with ink (*atramento*), like the British tablet. This technique made it possible to

²⁷ For further information see P. Rothenhöfer - J. Blänsdorf, *Sana mente sanaque memoria testamentum feci. Eine testamentarische Verfügung vom 12. April 340 n. Chr.*, in *Gephyra*, 13, 2016, pp. 153-163. Moreover, at the moment of the auction, the auction house stated that the document was accompanied by an Art Loss Register certificate and a copy of a witnessed ownership statement from Alain Sfez, son of Albert Sfez, the former collector. More precise details will be illustrated by P. Rothenhoefer, *Neue römische Rechtsdokumente aus dem Byzacena-Archiv / New Roman Legal Documents from the Byzacena Archive*, (forthcoming).

²⁸ See AE 2016, 2036; C. Masi Doria, *Dal testamento di Pomponius Maximus: prospettive del diritto ereditario tardo antico*, in L. Isola (ed.), *Klauselgestaltungen in Römischen Testamenten; Akten einer Internationalen Tagung zum Römischen Testamentsrecht* (Wien, 6-7 November 2020), Berlin, 2022, pp. 151-176. In particular, there are many points in common with the tablets auctioned, considering the legal context, the names of the places and individual mentioned, as well as the writing styles. This document currently belongs to a private collector in California. See also P. Rothenhöfer, *Bemerkungen zum Testament des Pomponius Maximus aus dem Jahr 371 n. Chr.*, in *ZRGR*, 142, 2025, pp. 200-232.

²⁹ See AE 2016, 2029.

³⁰ The dimensions are similar to the Transylvanian tablet above analysed (187 x 113 mm). The comparison with the dimension of the British deed is not possible due to the poor condition of that tablet.

³¹ To look at the picture of this finding: <https://www.invaluable.com/auction-lot/roman-tablet-recording-sale-of-agricultural-land-146-c-9e14a54aff?srsId=AfmBOoohoC54WHgKy4Gr6ZtqcX2xtkmWqW1GIFjdByPAgT3enh5PWyu;https://curator.org/item/582d53bc2920c9623f58708ae005a700>. It's important to note that the author of this article did not have direct access to the tablet nor directly examined it.

³² Compare C. Masi Doria, *Dal testamento op.cit.*, p. 156; P. Rothenhöfer, *Bemerkungen op.cit.*, p. 207; A. Barbano, *Spondit op.cit.*, pp. 2-3.

easily reuse the wooden tablets³³. Below is the transcript of the tablet published in *L'Année épigraphique*³⁴.

[--- ag]rum Maccurentianum, qui est in fundo Titiano sub dominio Iuli Pullaieni, cum olibe arbores sexa[ginta et arbores fici duodecim --- us]que ad fines agri Florentini, Vruri, Maiule [--- uti] optimus maximusq(ue) es[se]t denarios n(ummum) quinque milia [--- s]e accepisse et habere a Geminio Postum[io ---] dixit Iulus Mercurialis. Geminus Postumius agrum Maccarentianum, cum olibe arbores saxaginta et arbores fici duodecim ut s(upra) scriptum, t(eneat) h(abeat) p(ossideat), utatur fruaturque, ipse heredesque eius, in perpetuo ex hac die [---] | ----- |

The finding probably dates back to the late III century CE, as supposed by the editors, considering the kind of currency adopted as well as the value of the land sold (5000 *denarii*). The dating of the find also seems likely in relation to the period in which the other auctioned tablets were written³⁵. Although the text is incomplete, it seems clear that is a deed of a real estate: here is described an *ager*, composed of 60 olive trees and 12 plants of fig. This is a *testatio*, like the wooden tablets examined above. The localisation of the land is indicated through the mention of the neighbouring lands, following the traditional style of individualization (*fines agri*). The nature of record of a sale is confirmed: a) by the typical contractual clause of the reception of the price (*accepisse et habere se dixit*), very often adopted in other documents of the practice, such as the three *mancipationes causa emptionis factae* of slaves found in Dacia³⁶; b) the partially preserved clause of *evictio*, then followed by the formulaic phrase *t(eneat) h(abeat) p(ossideat)*, which is very similar to the formula included in the Transylvanian deed of sale of half house³⁷. The most interesting part of the text regards the warranty clause, expressed through the standardised formula *optimus maximus(que)*, probably introduced by *uti*, as in the common practice seen above. It's important addressing the attention to the verb tense of the clause: the imperfect subjunctive *esset* proposed by the editors is a point in common with the Iberian and the British tablets examined before.

³³ P. Rothenhöfer, *Bemerkungen op.cit.*, p. 206 nt. 17.

³⁴ See AE 2016, 2029. The editors pointed out that, according to the auction house, the published Latin text could have been followed by another text on the tablet concerning a guarantee (but was only provided the English translation without the original transcription). For this reason, the editors stated that it was impossible to add that text.

³⁵ See AE 2016, 40.

³⁶ V. Arangio Ruiz, *FIRA, III² op.cit.*, nn. 87-88-89; I. Russu, *IDR, I op.cit.*, nn. 36-37-38 See also J. Macqueron, *Contractus scripturae op.cit.*, p. 48 ff.

³⁷ V. Arangio Ruiz, *FIRA, III² op.cit.*, p. 289 n. 90; I. Russu, *IDR, I op.cit.*, n. 39: *t(enere) h(abere) p(ossidere)*.

Although the place of the agreement still remains unknown, a comparison with other documents of the practice might be helpful for its geographical contextualization. For this purpose, it is useful to focus on the *tablettes Albertini*, the famous group of wooden tablets found in 1928 by Eugène Albertini near the border between Algeria and Tunisia, corresponding to the area between Tébessa e Gafsa³⁸. This archive is mainly composed by deeds of sales of agricultural lands (written in Latin, like the tablets here analysed), but dating back to the years 493-496 CE³⁹. They are *testationes*, like the documents here examined. Unlike the tablets analysed before, in that archive there is no reference to the

³⁸ See E. Albertini, Actes de vente du Vesiècle trouves dans la region deTébessa (Algérie), in Journal des Savants, 1930, pp. 23-30; V. Arangio Ruiz, FIRA, III² op.cit., n. 139 pp. 443-446; C. Courtois - L. Leschi - C. Perrat - C. Saumagne, Tablettes Albertini. Actes privés de l'époque vandale (fin du V^e siècle), Paris, 1952; J. Carcopino, Review of Les Tablettes Albertini [Christian Courtois, Louis Leschi, Jean-Pierre Miniconi, Charles Perrat, Charles Saumagne. Tablettes Albertini, textes privés de l'époque vandale (fin du Ve siècle)], in Journal des savants, 1952, pp. 145-169; J. de Malafosse, Notes sur les Tablettes Albertini: Les stipulations de garantie, in Revue historique de droit français et étranger, 30, 1953, pp. 110-120; J. Macqueron, Les Tablettes Albertini, in Tijdschrift Voor Rechtsgeschiedenis, 23, 3, 1955, pp. 333-344; M. Pallasse, Les Tablettes Albertini intéressent-elles le colonat romain du Bas-Empire?, in Revue historique de droit français et étranger, 33, 1955, pp. 267-281; P. Grierson, The Tablettes Albertini and the Value of the Solidus in the Fifth and Sixth Centuries A.D., in The Journal of Roman Studies, 49, 1959, p. 73 ff.; V. Väänänen, Étude sur le texte et la langue des Tablettes Albertini, Helsinki, 1965, p. 8 ff.; H. Weßel, Das Recht der Tablettes Albertini, Berlin, 2003, p. 21 ff.; J. P. Conant, Literacy and private documentation in Vandal North Africa: the case of the Albertini Tablets, in A. H. Merrills (ed.), Vandals, Romans and Berbers: new perspectives on Late Antique North Africa, London-New York, 2004, pp. 199-224.; J. N. Adams, The regional diversification of Latin (200 BC-AD 600), Cambridge, 2007, p. 549 ff.; A. Leone, Changing townscapes in North Africa from late Antiquity to the Arab conquest, Bari, 2007, p. 132 ff.; A. Merrills - R. Miles, The Vandals, Chichester, 2010, p. 159 ff.; P. Tedesco, Economia e moneta nell'Africa vandalica, in Annali dell'Istituto Italiano di Numismatica, 57, 2011, p. 115 ff.; P. Biavaschi, Dat sagetun mi seolidante westar ubar Wentilseo. Conservatorismo giuridico ed evoluzione linguistica nell'Africa vandalica alla luce delle Tablettes Albertini, in Expressio: rivista di linguistica, letteratura e comunicazione, 5, 2021, p. 9 ff.; Ead., Earth and water in the formularies of the Albertini Tablets, in E. Focchi Malaspina - S. Tarozzi (eds.), Ravenna capitale. From International Treaties to the Binding Nature of Contract. A Historical and Comparative Study, Sant'Arcangelo di Romagna, 2022, pp. 13-22; Ead., Un esempio di economia di confine. Gestione della terra e olivicoltura nelle Tablettes Albertini, in C. Lorenzi - M. Navarra, La costruzione del testo giuridico tardoantico. Culture, linguaggi, percorsi argomentativi e stilistici. Atti dell'Accademia Romanistica Costantiniana (Spello, 23-25 settembre 2021), 25, Perugia, 2023, pp. 183-206; R. Ast - L. C. Colella, An estate account from Gefsa, in S. Killen - S. Scheuble Reiter - S. Schmidt (eds.), Caput studiorum. Festschrift für Rudolf Haensch zu seinem 65. Geburtstag, Wiesbaden, 2024, pp. 3-12.

³⁹ In general terms, to study the problem of real estate management in Roman North Africa, especially after the rules introduced by *lex Manciana* see F. Tenney Frank, A Commentary on the Inscription from Henchir Mettich in Africa, in The American Journal of Philology, 47, 2, 1926, pp. 153-170; D. Flach, Inschriftenuntersuchungen zum römischen Kolonat in Nordafrika, in Chiron, 8, 1978, pp. 441-492; D. Kehoe, Economics of Agriculture on Roman Imperial Estates in North Africa, Göttingen, 1988, p. 1 ff.; D. J. Mattingly - R. B. Hitchner, Roman Africa: an archaeological review, in Journal of Roman Studies 85, 1995, pp. 165-213; L. De Ligt, Studies in legal and agrarian history I: The inscription from Henchir-Mettich and the Lex Manciana, in Ancient Society, 29, 1998-1999, pp. 219-239; R. Scholl - C. Schubert, Lex Hadriana de agris rudibus und lex Manciana, in Archiv für Papyrusforschung, 50, 2004, pp. 79-84; H. González Bordas - J. France, A new edition of the imperial regulation from the Lella Drebbia shrine near Dougga, in Journal of Roman Archaeology, 30, 2017, pp. 407-428; P. Scheduling, Urbaner Ballungsraum im römischen Nordafrika. Zum Einfluss von mikroregionalen Wirtschafts und Sozialstrukturen auf den Städtebau in der Africa Proconsularis, Wiesbaden, 2019, pp. 40-41.

optimus maximusque warranty clause. Comparing the recent finding with the *tablettes Albertini*, it emerges that it is very likely that the new finding originates from an African context. Several pieces of evidence support this hypothesis.

First, the species of plants cultivated in the *ager* included in the sale here analysed (olive and fig trees) are also frequently mentioned in the *tablettes Albertini: olibe arbores* (tabb. III.3b, III.4a, V.9b, V.10, VI.12b, VII.14b, VIII.16a, VIII.16b, IX.18a, IX.18b, XII.24b, XIII.41a-bis, XX.40a-bis, XXII.35a, XXIV.37b, XXVI.35b) and *fici arbores* (tabb. III.3b, III.4a, IV.6a, X.20b, XI.22b, XII.24b, XIII.41a-bis, XIV.30b, XXIV.37b, XXVI.35b). In the *tablettes Albertini* is also frequently mentioned the wild fig (*caprificus*)⁴⁰. The North African territories were extremely well known in the Mediterranean trades for the production of olive oil⁴¹. Furthermore, in the recent discovery the size of the *ager* sold (and, therefore, its value) is described by counting the cultivated species, following the customs recorded in the Vandal archive⁴².

Second, the names in the text are predominantly attested in Africa according to epigraphical sources. This regards the object of the sale, the *ager Maccurentianus* (appearing later as *ager Maccarentianus*, neither transcription is attested before; therefore, it's probably a local name)⁴³, as well as some names of the neighbours (*Maiula*)⁴⁴, and *Ururus* (less common)⁴⁵. None of these names occur in the *Tablettes Albertini*, but their distribution in epigraphical sources still points to Africa⁴⁶. The names of

⁴⁰ See H. Weßel, *Das Recht op.cit.*, p. 27.

⁴¹ Regarding this topic see P. Biavaschi, *Un esempio op.cit.*, pp. 160-161 and pp. 169-171. In general terms, focusing on agricultural landscapes in those territories, see S. Sehili, *Bâtir dans le monde rural: les complexes agricoles en Afrique antique*, in L. Ben Abid - F. Prados Martínez - M. Grira (eds.), *De Carthage à Carthagène. bâtir en Afrique et en Ibérie durant l'Antiquité*, Alicante, 2021, pp. 415-443.

⁴² P. Biavaschi, *Un esempio op.cit.*, p. 163 and p. 170.

⁴³ Compare K. Jongeling, *North-African names from Latin sources*, Leiden, 1994, pp. 86-87; G. Camps, *Liste onomastique libyque. Nouvelle édition*. in *Antiquités africaines*, 38-39, 2002. p. 236. As an example of the use of the name "Maccur" in epigraphical sources from North Africa see Z. Benzina Ben Abdallah - L. Ladjimi Sebaï, *Catalogue des inscriptions latines païennes inédites du musée de Carthage*, Roma, 2011, n. 231.

⁴⁴ In Africa there are also two funerary inscriptions attesting "Maiula": CIL VIII, 26353; CIL VIII, 15411. Sometimes also "Maiulus" is attested in epigraphical sources from Africa: a) AE 2013, 2125; b) CIL VIII, 25038 = AE 1907, 00098 = AE 1908, 29 = AE 1908, 36 = AE 1908, 184 (this is particularly interesting because of its provenance, the ancient Carthage, like the inscription referring to "Maccur", which was cited above); c) AE 1917-1918, 61; d) A. Merlin, *Inscriptions Latines de la Tunisie*, Paris, 1944, p. 201, n 84.

⁴⁵ There are no other attestations of "Ururus" apart from the finding here analysed. However, there are four funerary inscriptions containing a sort of feminine version, "Ururia", all coming from North Africa: CIL VIII, 26321; CIL VIII, 1709; CIL VIII, 16115., 26321. Compare K. Jongeling, *North-African names op.cit.*, p. 171; G. Camps, *Liste onomastique op.cit.*, p. 254.

⁴⁶ In this perspective consider also, for example, the attestation of the feminine version *Iulia Pullaiena* (instead of the male version included in the deed) found in a funerary inscription from North Africa: compare CIL VIII, 26983. It's also interesting noting the presence of a *Iulius*

one the neighbours (*Florentinus*) as well as the name of the *fundus* (*Titianus*) are too common in the Empire. Furthermore, changing names on private lands depending on family history (*gens*) is a fairly common phenomenon in customary practice⁴⁷.

Third, the spelling and phonetic features strengthen the African hypothesis. The form *olibe* reflects two linguistic phenomena common in Africa: (1) betacism (*oliva* → *oliba*, substitution of “v” with “b”) and (2) monophthongization (*ae* → *e*, substitution of the dittoing “ae” with the vocal “e”)⁴⁸. Both are well documented in the *Tablettes Albertini*, where the form *olibe* occurs 18 times (tabb. III.3b, twice in III.4a, twice in V.9b, V.10, VI.12b, twice in VII.14b, VIII.16b, IX.18b, XII.24b, XIII.41a-bis, twice in XX.40a-bis, XXII.35a, XXIV.37b, XXVI.35b)⁴⁹. Furthermore, both linguistic phenomena appear in other tablets of the auctioned archive⁵⁰. Moreover, the monophthongization also occurs in *Maiule*, when the “e” is a mistake of the feminine genitive form “ae” (it should be written *Maiulae*). As for the misspelling of *saxaginta*, the hypothesis put forward by the editors seems correct: it was probably a simple scribal oversight, since the word is correctly spelled in line 2 of the text (*sexaginta*).

Fourth, the guarantee of the continuous right on the land - *ut [...] h(abeat) p(ossideat) utatur fruatur ipse* - immediately followed by the explicitly extension to future heirs, adopting the formula *heredesque eius in perpetuo*, is extremely common in the contracts of the Vandal archive (with few orthographic differences): sometimes the expression is quite the same (tabb. V.10b, IX.19a, XXV.38a) sometimes it includes only the verbs *utor* and *fruor* (tabb. XII.24b, XV.29a, XXVII.40a, XXVIII.41a)⁵¹.

Mercurialis recorded in Mauretania Tingitana: see AE 1960, 119. It is worth pointing out that in the text analysed here the names of the individuals mentioned are *Iulus Pullaienus* and *Iulus Mercurialis*. In both cases the traditional “i” of the name *Iulius* does not appear in the transcription. This coincidence could probably be assumed as a misunderstanding of the writer and, therefore, a spelling mistake. An indirect confirmation of this hypothesis can be found in the group of the other auctioned tablets: the name *Iulius* is correctly written there.

⁴⁷ Compare M. P. Pavese, *Fundus cum alluvionibus. Incrementi fluviali e condiciones agrorum in età traiana*, in SDHI, 66, 2000, pp. 63-117; Id., *Fundus cum vadis et alluvionibus. Gli incrementi fluviali fra documenti della prassi e riflessione giurisprudenziale romana*, Roma, 2004, pp. 43-124; Id., *Per vada ad alluviones. Gli incrementi fluviali nella Tavola di Veleia*, in P.L. Dall’aglio - C. Franceschelli - L. Maganzani (eds.), *Atti del IV Convegno Internazionale di Studi Veleiati*, Bologna, 2014, pp. 209-221; P. Rothenhöfer, *Bemerkungen op.cit.*, p. 219 nt. 38 and bibliography mentioned there.

⁴⁸ Compare V. Väänänen, *Étude op.cit.*, p. 10 ff.; J. N. Adams, *The regional diversification op.cit.*, p. 644 ff.; Id., *Late Latin*, in J. Clackson (ed.), *A Companion to the Latin Language*, Chichester, 2011, pp. 257-283; A. Papini, *Some preliminary remarks concerning sociolinguistic variation within the “Vulgar” Latin vowel system: as evidenced by the inscriptional data*, in *Acta Classica Universitatis Scientiarum Debreceniensis*, 56, 2019, pp. 97-112; A. Wilson, *The linguistic landscape of Late Antique North Africa*, in *Antiquité tardive*, 32, 2024, pp. 67-88.

⁴⁹ Concerning these tablets see J. Carcopino, *Review of Les Tablettes op.cit.*, p. 150.

⁵⁰ Compare P. Rothenhöfer - J. Blänsdorf, *Sana mente op.cit.*, p. 155; C. Masi Doria, *Dal testamento op.cit.*, p. 158; A. Barbano, *Nunc uocari op.cit.*, pp.39-59.

⁵¹ H. Weßel, *Das Recht op.cit.*, 71 nt. 101 and bibliography mentioned there.

5. CONCLUSIONS

In conclusion, this recent finding is very likely the only surviving African deed of sale of land - written in Latin on a wooden tablet - that explicitly preserves the *optimus maximusque* warranty clause. It provides valuable new evidence for the evolution of local practice in real estate sales. The text suggests that templates of deeds including the clause were still in circulation during the late 3rd century CE and were consulted when drafting agreements, even - probably - in Africa. Overall, the contract is consistent with the other documents of Roman legal practice here examined. One particularly interesting feature is the formula *qui est in fundo Titiano sub dominio Iuli Pullaieni*, which locates the land sold. The *dominus* of the *fundus* which contains the *ager* (*Iulus Pullaienus*) is not the seller (*Iulus Mercurialis*) nor the buyer (*Geminus Postumius*), and he does not appear to participate in the contract (at least in the decipherable part of the text)⁵². This phrase may be a piece of evidence that the *ager* sold was not directly accessible to the *emptor*, despite being part of another man's estate (*fundus*). If the transcript of the Latin text will be confirmed after further assessments of experts, the relative clause *qui est in fundo Titiano sub dominio Iuli Pullaieni* might possibly exemplify the application of the *optimus maximusque* clause with the meaning attributed to the *Gromatici Veteres*, as in the text of *Siculus Flaccus* here examined (*iter praestare*). In that case, the recent finding could be considered a documental proof that the clause had a double meaning in agreements written in real life: in the practice it could mean not only the absence of legal encumbrances (such as a *servitus*), but also the full enjoyment of the real estate, with consequences on the neighbouring land.

On the contrary, the terminology *sub dominium*, might be a reflection of the *cultura Manciana*, which is compliant with the specific rights of the local inhabitants, as attested in the Vandal archive. The expression *sub dominio* followed by a personal name frequently appears in the *tablettes Albertini* (tabb. III.3b, VI.12b, VII.14b, X.20b, XI.22b, XII.24b, XIII.41a-bis, XIV.26b, XV.28b, XVII.36b-bis, XVIII.31b, XIX.33b, XX.40a-bis, XXI.34b, XX.35a, XXIII.36b, XXIV.37b)⁵³. However, the *optimus maximusque* clause never appears in that archive. This contrast may be due to differences in chronology

⁵² Regarding the family of *Gemini* in the Vandals tablets, see J. Macqueron, *Les Tablettes* op.cit., pp. 337-338; H. Weßel, *Das Recht* op.cit., pp. 30-37, p. 47 and p. 264; P. Biavaschi, *Un esempio* op.cit., p. 162. It's worth noting that the name *Geminus* is also attested in other texts of the auctioned tablets, such as AE 2016, 2034. For an in-depth study about this tablet see A. Barbano, *Spondit* op.cit., pp. 1-34.

⁵³ Regarding the evolution from *dominium* to *usus proprius* in north African agricultural lands and its influence on the deeds recorded in this archive, see V. Arangio Ruiz, *FIRA*, III² op.cit., n. 139 p. 444; C. Courtois - L. Leschi - C. Perrat - C. Saumagne, *Tablettes Albertini* op.cit., pp. 84-103; J. Carcopino, *Review of Les Tablettes* op.cit., pp. 161-163 and p. 167; M. Pallasse, *Les Tablettes* op.cit., pp. 271-273; H. Weßel, *Das Recht* op.cit., pp. 89-123; P. Biavaschi, *Un esempio* op.cit., pp. 167-169.

(493-496 CE for the *tablettes Albertini*) and the use of slightly different contractual templates. Furthermore, traditional models were modified by writers according to the specific circumstances of each individual case⁵⁴.

However, even if the wording *sub dominium* could be a reference to the *cultura Manciana*, this isn't an obstacle to the proposed theory of the possible double meaning attributed to the clause in the practice. In fact, considering the territories described in the Vandal archive, scholars agree in assuming that there were rights of way involving neighbouring lands⁵⁵. A confirmation of this assumption can be found in the use of the peculiar expression *omium ius*⁵⁶. It's worth highlighting that the word *ius* was also included in the *optimus maximusque* clause of the British deed seen above. According to the scholars' point of view, the words *omium ius* seem to illustrate the right of full enjoyment of the Vandal lands (included the right of *transitus*), with no interferences on the particular legal status of those territories at that time: *omnem ius transtuli ut habeant teneant possideant in perpetuo* (tab. XXVI.35b)⁵⁷; *transtulerunt ut hab]eat possideat utatur fruatur ipsi eredesbe eorum in perpetum et si quis de memoratam rem cum omni iure ad se pertinenti de quo agitur* (tab. V.10b)⁵⁸; *a [pridi]e antequam uenderent h(abuerunt) t(enuerunt) p(ossedderunt) iuris eorum omnia fuerunt et hex ac die in nomine emtoru suoru transtulerunt ut abeant teneant possideant utantur fruatur ipsi eredesbe eoru in perpetu et si quis de memoratam rem [cum omni] iure ad se pertinenti de quo agitur* (tab. VIII.17a)⁵⁹; *h(a)b(uerunt) t(enuerunt) p(ossedderunt) iuris eorum omnia fuerunt* (tab. XI.23a)⁶⁰. It was hypothesized that *transitus* and *iter* had correlated meaning in such contexts (*transitus* entails the action of reaching a path): this also seems likely when comparing juridical and literary sources⁶¹.

It's interesting noting that in documents of the practice written mainly in Ancient Greek an analogue formula was adopted: examining a deed of a sale of a vineyard written on papyrus in Mesopotamia on 26th May 227 A.D. (P. Dura 26), there is the usage of the

⁵⁴ See J. de Malafosse, Notes op.cit., p. 119; H. Weßel, Das Recht op.cit., 67.

⁵⁵ See H. Weßel, Das Recht op.cit., pp. 156 - 165.

⁵⁶ Sometimes there is just a reference to *ius*, like in tab. IV.7a (*iuris eorum fuerunt*). See C. Courtois - L. Leschi - C. Perrat - C. Saumagne, *Tablettes Albertini* op.cit., p. 224.; V. Arangio Ruiz, FIRA, III² op.cit., n. 139 p. 445. In general terms, about this word see A. Fernández de Buján, Concepto y dicotomía del "ius", in *Religión y cultura*, 46, 212, 2000, pp. 111-144 (now in *Revista jurídica Universidad Autónoma de Madrid*, 3, 2000, pp. 9-43).

⁵⁷ C. Courtois - L. Leschi - C. Perrat - C. Saumagne, *Tablettes Albertini* op.cit. p. 288.

⁵⁸ C. Courtois - L. Leschi - C. Perrat - C. Saumagne, *Tablettes Albertini* op.cit. p. 230.

⁵⁹ C. Courtois - L. Leschi - C. Perrat - C. Saumagne, *Tablettes Albertini* op.cit. p. 243.

⁶⁰ C. Courtois - L. Leschi - C. Perrat - C. Saumagne, *Tablettes Albertini* op.cit. p. 253.

⁶¹ Following this perspective see H. Weßel, Das Recht op.cit., p. 159. Compare R. Teßmer, v. '*iter*', *ThLL*, VII.2, coll. 538-541.

formulaic phrase *καὶ παντὶ δικαίῳ τῆ[ς] αὐ[τ]ῆς χ[ώ]ρας* (lines 11-12) to express the right of full enjoyment of the land purchased⁶².

By contrast, the Ravenna papyri do include the *optimus maximusque* warranty clause, despite being later than the *tablettes Albertini*. This reflects both the consultation of different templates and the enduring influence of Roman law at Ravenna during a transitional period: from Ostrogothic rule (539-540 CE), to Roman control (540-590 CE), and finally to the Exarchate (from 591 CE). In any case, the general structure of these documents is compliant with the traditional models attested in the provinces, although they are full of details which are described with a long-winded style⁶³. Sometimes, in addition to the warranty clause, the authors of the papyri used several times the word *ius* to give further emphasis on the full enjoyment of the object of the *emptio venditio* (e.g. p.ital.2.37 = chla.21.716 = FIRA III² 140).

Further examination of the recent finding - ideally through a proper assessment rather than relying on the auction house's information - will undoubtedly shed more light on the interplay between central Roman jurisprudence and local legal practice.

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⁶² Compare C. B. Welles, *Doura papyrus 101. Purchase of a vineyard on the chabur by a Roman veteran in A.D. 227*, in *Archives d'histoire du droit oriental*, 1, 1937, pp. 261-284; W. Kamps, *Résumé, analyse et index juridiques de P. Dura 101*, in *Archives d'histoire du droit oriental*, 1937, pp. 284-288; L. Robert, *Études épigraphiques et philologiques*, Paris, 1938, pp. 157-158; V. Arangio Ruiz, *FIRA, III² op.cit.*, n. 138, pp. 439-443; R. Cavenaile, *CPL*, Wiesbaden, 1956, n. 344, pp. 429-430; C. B. Welles - R. O. Fink - J. F. Gilliam, *Excavations at Dura-Europos. Final Report. 5, 1. The Parchments and Papyri*, Haven, 1959, pp. 13-21; E. Crisci, *Scrivere greco fuori d'Egitto*, Firenze, 1966, p. 22, 56 and 135; J. Chi - S. Heath, *Edge of Empires: Pagans, Jews, and Christians at Roman Dura-Europos*, New York, 2011, p. 77. S. Zamponi, *I Papiri Di Dura Europos Nella Storia Della Scrittura Latina*, in B. A. Shailor - C. W. Dutschke (eds.), *Scribes and the Presentation of Texts (from Antiquity to c. 1550). Proceedings of the 20th Colloquium of the Comité international de paléographie latine* (New Haven, September 6-8, 2017), Turnhout, 2021, pp. 13-28.

⁶³ For this expression see H. Weßel, *Das Recht op.cit.*, p. 70.

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