



Universiteit
Leiden
The Netherlands

Application, adaptation and rejection: the strategies of Roman jurists in responsa concerning Greek documents

Mauer, Q.

Citation

Mauer, Q. (2022, May 3). *Application, adaptation and rejection: the strategies of Roman jurists in responsa concerning Greek documents*. *Meijers-reeks*. Boom juridisch. Retrieved from <https://hdl.handle.net/1887/3295802>

Version: Publisher's Version

License: [Licence agreement concerning inclusion of doctoral thesis in the Institutional Repository of the University of Leiden](#)

Downloaded from: <https://hdl.handle.net/1887/3295802>

Note: To cite this publication please use the final published version (if applicable).

Application, Adaptation and Rejection
The strategies of Roman jurists in *responsa* concerning Greek documents

Application, Adaptation and Rejection

The strategies of Roman jurists in *responsa* concerning Greek documents

PROEFSCHRIFT

ter verkrijging van
de graad van doctor aan de Universiteit Leiden,
op gezag van rector magnificus prof.dr.ir. H. Bijl,
volgens besluit van het college voor promoties
te verdedigen op dinsdag 3 mei 2022
klokke 16.15 uur

door

Quintijn Mauer

geboren te Helmond

in 1989

Promotor: Prof. mr. E. Koops
Co-promotor: Dr. F.A.J. Hoogendijk

Promotiecommissie: Prof. mr. drs. M. Haentjens
Prof. mr. H. de Jong (Vrije Universiteit Amsterdam)
Dr. hab. J. Urbanik, prof. ucz. (Universiteit van Warschau,
Polen)
Prof. dr. L. de Ligt
Prof. mr. F. Brandsma (Rijksuniversiteit Groningen)

Opmaak: AlphaZet prepress, Bodegraven

© 2022 Q. Mauer | Boom juridisch

Behoudens de in of krachtens de Auteurswet gestelde uitzonderingen mag niets uit deze uitgave worden vervoelvoudigd, opgeslagen in een geautomatiseerd gegevensbestand, of openbaar gemaakt, in enige vorm of op enige wijze, hetzij elektronisch, mechanisch, door fotokopieën, opnamen of enige andere manier, zonder voorafgaande schriftelijke toestemming van de auteur.

Voor zover het maken van reprografische vervoelvoudigingen uit deze uitgave is toegestaan op grond van artikel 16h Auteurswet dient men de daarvoor wettelijk verschuldigde vergoedingen te voldoen aan de Stichting Reprorecht (Postbus 3051, 2130 KB Hoofddorp, www.reprorecht.nl). Voor het overnemen van (een) gedeelte(n) uit deze uitgave in bloemlezingen, readers en andere compilatiewerken (art. 16 Auteurswet) kan men zich wenden tot de Stichting PRO (Stichting Publicatien- en Reproductierechten Organisatie, Postbus 3060, 2130 KB Hoofddorp, www.stichting-pro.nl).

No part of this book may be reproduced in any form, by print, photoprint, microfilm or any other means without written permission from the publisher.

ISBN 978-94-6236-291-8
ISBN 978-90-5189-952-8 (e-book)
NUR 824

www.boomjuridisch.nl

δίκαια μὲν ἐν τῷ ἀνθρωπεύῳ λόγῳ ἀπὸ τῆς ἴσης ἀνάγκης κρίνεται,
δυνατὰ δὲ οἱ πρῶχοντες πράσσουσι καὶ οἱ ἀσθενεῖς ξυγγωροῦσιν.

*Wat recht is neemt men pas in ogeschouw – zo redeneert de mens – bij
hen gelijk in kracht, de machtigen doen naar vermogen, de zwakkeren
dulden wat ze te lijden hebben.*

Thucydides, *Geschiedenis van de Peloponnesische Oorlog* (V.89)

C.P.W.M. (Christina) Mauer-Wijnhoven
30-08-1954 – 22-11-21 †

Table of contents

LIST OF ABBREVIATIONS	XIII
INTRODUCTION	1
II Research topic & question	3
III Timeframe	4
IV The <i>responsa</i> practice of the second century AD	5
V Strategies of the Roman jurists	6
VI Imperial rescripts excluded from the corpus	8
VII The dissertation divided into five chapters	10
VIII Embedding in the existing scholarly research context	11
IX The authors of legal questions	14
X Legal proceedings	15
XI The issue of applied law	16
XII Rationale for asking for legal advice from the Roman west	18
XIII The use of Greek	19
XIV Categorising greek in the justinianic digest	20
XV Two treatises in Greek in the Justinianic Digest	22
XVI Two cases of application of attic law as a basis for Roman law	24
XVII Greek common law as a basis for an imperial decision	26
XVIII A conclusion on the use of Greek in the Justinianic Digest	27
XIX The jurists who gave legal advice examined in this research	28
XX The <i>responsa</i> researched in relation to the jurists and their works	29
XXI Differences between the three jurists	34
XXII The twenty-six texts of the corpus examined	36
XXIII The corpus in relation to other primary sources	37
XXIV The Justinianic Digest	37
XXV The edition of the Justinianic Digest used in the research	38
XXVI Papyrological sources	39
Bibliography	39
I THE LAW OF OBLIGATIONS: CONSENSUAL CONTRACTS	41
I Introduction	41
II <i>Mandatum</i>	42
II.1 <i>Mandatum</i> in Roman law	42
II.1.1 The development and use of <i>mandatum</i> in Roman law	43
II.2 <i>Mandatum</i> in Hellenistic legal culture	45
II.3 Dig. 17.1.60.4 (Scaev. 1 <i>Resp.</i>): A <i>procuratio omnium bonorum</i>	47

	II.3.1	Contextualising the Greek epistolary contract from Dig. 17.1.60.4	48
	II.3.2	The contract from Dig. 17.1.60.4 in the light of three papyri	50
	II.3.3	Examining the question and the reply from Dig. 17.1.60.4	57
	II.3.4	Two Hellenistic legal formulae in the contract from Dig. 17.1.60.4	62
	II.4	Dig. 44.7.61 <i>pr</i> (Scaev. 28 <i>Dig.</i>): A contract of <i>procuratio</i>	64
	II.5	Conclusion on the bilingual contracts of <i>mandatum</i> in Dig. 17.1.60.4 and Dig. 44.7.61 <i>pr</i>	68
III		<i>Hypotheca</i>	69
	III.1	<i>Hypotheca</i> in a Roman and Greek-Hellenistic context	70
	III.2	Dig. 20.1.34 (Scaev. 27 <i>Dig.</i>): A <i>taberna</i> placed under hypothec	71
	III.2.1	A description of the Greek contract of Dig. 20.1.34.1	74
	III.2.2	Examining the legal question and corresponding reply in Dig. 20.1.34.1	80
	III.2.3	Conclusion concerning Scaevola's reply in Dig. 20.1.34.1	83
	III.3	Dig. 32.101 <i>pr</i> (Scaev. 16 <i>Dig.</i>): Hypothecated lands in Roman Syria	83
	III.3.1	Examining Greek elements in Dig. 32.101 <i>pr</i>	84
	III.3.2	The legal question and reply from Dig. 32.101 <i>pr</i>	88
	III.3.3	Conclusion based on Dig. 32.101 <i>pr</i>	92
IV		Conclusion based of bilingual consensual contracts in the Digest	93
II		THE LAW OF OBLIGATIONS REAL CONTRACTS	95
	I	Introduction	95
	II	<i>Depositum</i>	97
	II.1	Dig. 32.37.5 (Scaev. 18 <i>Dig.</i>): A legacy of deposited money	99
	II.2	Roman and Hellenistic law on <i>depositum</i> and <i>parakatatheke</i> with regard to Dig. 32.37.5	101
	II.2.1	Roman law on depositum	103
	II.2.2	Hellenistic law on depositum / <i>parakatatheke</i>	107
	II.2.3	Dig. 32.37.5 in light of Roman and Hellenistic law on depositum / <i>parakatatheke</i>	112
	II.3	<i>Iusiurandum</i> and the legal question in Dig. 32.37.5	113
	II.4	A <i>kyria</i> -clause in a Roman codicil	114
	II.5	Dig. 16.3.26.1 (Paul. 4 <i>Resp.</i>): A case of <i>depositum irregulare</i>	115

	II.6	A conclusion on <i>depositum irregulare</i> in light of Dig. 32.37.5 and Dig. 16.3.26.1	118
III		Two <i>responsa</i> on <i>parakatatheke</i>	119
	III.1	Dig. 40.5.41.4 (Scaev. 4 <i>Resp.</i>): Two slaves entrusted into your care	119
	III.2	An interpretation of <i>ἐν παρακατατίθεμαι ἔχειν</i> in Dig. 40.5.41.4	121
	III.3	The legal question and the reply in Dig. 40.5.41.4	122
	III.4	Dig. 31.34.7 (Mod. 10 <i>Resp.</i>): A case from Syria coele	124
	III.5	<i>Παρακατατίθεμαι</i> in Dig. 31.34.7	126
	III.6	The <i>fideicommissum</i> of Dig. 31.34.7	126
	III.7	The law of dowries and Dig. 31.34.7	129
	III.8	The legal question and reply by Modestin in Dig. 31.34.7	132
	III.9	Conclusion on <i>parakatatheke</i> in Dig. 40.5.41.4 and Dig. 31.34.7	133
IV		<i>Mutuum</i>	134
	IV.1	Dig. 31.88.15 (Scaev. 3 <i>Resp.</i>): Ownership without the power of alienation or hypothecation	135
	IV.2	The legal question concerning the loan in Dig. 31.88.15	136
	IV.3	The <i>fideicommissum</i> in Dig. 31.88.15	138
	IV.4	Conclusion based on <i>mutuum</i> in Dig. 31.88.15	143
	IV.5	Dig. 50.12.10 (Mod. 1 <i>Resp.</i>): Euergetism and pseudo- <i>mutuum</i>	144
	IV.6	The promise of Dig. 50.12.10 in the light of three inscriptions	147
	IV.7	Financing the games of Dig. 50.12.10	149
	IV.8	Conclusion based on Dig. 50.12.10	151
V		Conclusion on bilingual <i>responsa</i> concerning real contracts	152
III		THE LAW OF INHERITANCE I CASES WITHOUT A SLAVE CONTEXT	155
	I	Introduction	155
		I.1 An introduction to the law of inheritance	156
		I.2 An example from the Digest of Greek in the Roman testamentary practice	161
	II	The bilingual texts in the Digest on the law of inheritance by Scaevola	165
		II.1 Dig. 33.4.14 (Scaev. 15 <i>Dig.</i>): A dowry for Crispina	165
		II.2 Dig. 32.37.6 (Scaev. 18 <i>Dig.</i>): Callimachus the <i>incapax</i>	171
		II.3 Dig. 26.7.47pr (Scaev. 2 <i>Resp.</i>): Titius and Maevius tutors with unequal powers	174
		II.4 Conclusion based on the three bilingual <i>responsa</i> by Scaevola	179
	III	The bilingual texts in the digest on the law of inheritance by the jurist Paul	179

III.1	Dig. 36.1.76 (74) <i>pr</i> (Paul. 2 <i>Decr.</i>): An imperial decision on the <i>libertas testamenti faciendi</i>	180
III.2	Dig. 28.1.29 <i>pr</i> -1 (Paul. 14 <i>Resp.</i>): A Greek validation clause in writing	189
III.3	Conclusion	193
IV	A bilingual text in the digest on the law of inheritance by the jurist Modestin	193
V	Conclusion on bilingual responses regarding the law of inheritance without a slave context	203
	Appendix: Dig. 8.3.37 (Paul. 3 <i>Resp.</i>): The use of water cannot be inherited	204
IV	THE LAW OF INHERITANCE II FREEDMEN AND FREEDWOMEN	213
I	Introduction	213
I.1	Regulations regarding slaves and freedmen in the Greco-Roman world	213
II	Freedmen in bilingual replies by Scaevola	216
II.1	Dig. 33.8.23.2-3 (Scaev. 15 <i>Dig.</i>): An implicit bequest of a slave patrimony and other assets	217
II.2	Dig. 34.1.16.1 (Scaev. 18 <i>Dig.</i>): A freedman of my father's freedman	222
II.3	Dig. 34.4.30.1: A testatrix who changed her will	225
II.4	Dig. 34.4.30.3: A testator who changed his will	232
II.5	Dig. 40.4.60: A false demonstration?	237
II.6	Conclusion based on the <i>responsa</i> from Scaevola's <i>Digesta</i>	240
III	One bilingual <i>responsum</i> by Paul on testamentary manumission	241
III.1	Dig. 40.5.39.1 (Paul. 13 <i>Resp.</i>): Showing gratitude towards a slave	241
III.2	Conclusion	244
IV	One bilingual <i>responsum</i> by Modestin on testamentary provisions regarding freedmen	244
IV.1	Dig. 34.1.4 <i>pr</i> (Mod. 10 <i>Resp.</i>): Usufruct or <i>dominium</i>	244
V	Conclusion based on the bilingual replies of Scaevola, Paul and Modestin on freedmen	248
V	HELLENISTIC MUNICIPAL LAW	251
I	Introduction	251
II	The text of Dig. 50.9.6 (Scaev. 1 <i>Dig.</i>)	251
II	Description of the case	252
III	The origin of Dig. 50.9.6 (Scaev. 1 <i>Dig.</i>)	253
IV	A rationale behind the regulation in Dig. 50.9.6 (Scaev. 1 <i>Dig.</i>)	253
V	Decrees from the east comparable to Dig. 50.9.6 (Scaev. 1 <i>Dig.</i>)	254

VI	The authenticity of Dig. 50.9.6 (Scaev. 1 Dig.)	255
VII	Ignorantia iuris in Dig. 50.9.6 (Scaev. 1 Dig.)	256
VIII	Conclusion	259
CONCLUSION		261
I	Introduction	261
II	Interactions between East and West	261
III	Controversies from the East colliding and not colliding with Roman law	262
IV	Strategies of the jurists: Scaevola (II AD)	264
V	Strategies of the jurists: Paul (II – III AD)	265
VI	Strategies of the jurists: Modestin (III AD)	265
VII	Conclusion based on the differences between the three jurists	266
NEDERLANDSE SAMENVATTING (SUMMARY IN DUTCH)		267
BIBLIOGRAPHY		273
REGISTER		279
CURRICULUM VITAE		287

List of Abbreviations

AE	<i>L'Année Épigraphique</i>
Archiv für Pap.	<i>Archiv für Papyrusforschung und verwandte Gebiete</i>
AUPA	<i>Annali del Seminario Giuridico dell'Università degli Studi di Palermo</i>
BASP	Bulletin of the American Society of Papyrologists
BIDR	<i>Bullettino dell'Istituto di Diritto Romano "Vittorio Scialoja"</i>
CdE	<i>Chronique d'Égypte</i>
CIL	<i>Corpus Inscriptionum Latinarum</i>
Coll.	<i>Collatio Legum Romanarum Mosaicarum</i>
Cod.	<i>Codex Justinianus</i>
Cod. Theod.	<i>Codex Theodosianus</i>
CPh	<i>Classical Philology</i>
CR	<i>Classical Review</i>
CSCA	California Studies in Classical Antiquity
FV	<i>Fragmenta Vaticana</i>
FIRA	<i>Fontes Iuris Romani Antiqui</i>
GRBS	Greek, Roman and Byzantine Studies
Gl.	Accursian Glosse
JJP	Journal of Juristic Papyrology
JRS	Journal of Roman Studies
PS	<i>Pauli Sententiae</i>
RE	<i>Paulys Realencyclopädie der Classischen Altertumswissenschaft</i>
RIDA	<i>Revue Internationale des Droits de l'Antiquité</i>
RIDROM	<i>Revista Internacional de Derecho Romano</i>
SAK	<i>Studien zur Altägyptischen Kultur</i>
SCI	<i>Scripta Classica Israelica</i>
SDHI	<i>Studia et Documenta Historiae et Iuris</i>
SHA	<i>Scriptores Historiae Augustae</i>
sq. / sqq.	<i>et sequens, et sequentia</i>
s.v.	<i>sub voce</i>
TCU	<i>Tituli ex Corpore Ulpiani</i>
TvR	<i>Tijdschrift voor Rechtsgeschiedenis</i>
SZ	<i>Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung</i>
SubGron	<i>Subseciva Groningana</i>
ZPE	<i>Zeitschrift für Papyrologie und Epigraphik</i>

LIST OF ABBREVIATIONS OF PAPYROLOGICAL AND EPIGRAPHICAL SOURCES

BGU	<i>Griechische Urkunden</i> from the <i>Königliche Museen zu Berlin</i>
BKT	<i>Berliner Klassikertexte</i>
BL	<i>Berichtigungsliste der griechischen Papyrusurkunden</i>
ChLa	<i>Chartae Latinae Antiquiores</i>
Chr. Wilck	<i>Grundzüge und Chrestomathie der Papyruskunde I</i>
Chr. Mitt	<i>Grundzüge und Chrestomathie der Papyruskunde II</i>
CID	<i>Corpus des inscriptions de Delphes</i>
CPL	<i>Corpus Papyrorum Latinarum</i>
CPR	<i>Corpus Papyrorum Raineri</i>
I. Eph.	Ephesos Inscriptions
IG	<i>Inscriptiones Graecae</i>
IGLSyr	<i>Inscriptions grecques et latines de la Syrie</i>
O. Bodl.	Greek Ostraca in the Bodleian Library at Oxford and Various Other Collections
P. Aberd.	Catalogue of Greek and Latin Papyri and Ostraca in the Possession of the University of Aberdeen
P. Ashm.	Catalogue of the Demotic Papyri in the Ashmolean Museum
P. Athen.	<i>Papyri Societatis Archaeologicae Atheniensis</i>
P. Bas.	<i>Papyri of the University Library of Basel</i>
P. Bodl.	<i>Papyri Bodleianae</i>
P. Cair. Goodsp.	Greek Papyri from the Cairo Museum edited by E.J. Goodspeed
P. Cair. Masp.	<i>Papyrus grecs d'époque byzantine, Catalogue général des antiquités égyptiennes du Musée du Caire</i>
P. Cair. Zen.	<i>Zenon Papyri, Catalogue général des antiquités égyptiennes du Musée du Caire</i>
P. Catt.	<i>Papyrus Cattaoui</i>
P. Col.	Columbia Papyri
P. Coll.	<i>Collectanea Papyrologica: Texts Published in Honor of H.C. Youtie</i>
P. Diog.	<i>Les archives de Marcus Lucretius Diogenes et textes apparentés</i>
P. Dryton	The Bilingual Family Archive of Dryton, his Wife Apollonia and their Daughter Senmouthis
P. Dura	The Excavations at Dura-Europos conducted by Yale University and the French Academy of Inscriptions and Letters, Final Report V, Part I, The Parchments and Papyri
P. Eleph.	Elephantine Papyri
P. Eirene	<i>Eirene Studia Graeca et Latina (Papyrologica)</i>
P. Erl.	<i>Die Papyri der Universitätsbibliothek Erlangen</i>
P. Euphr.	<i>Documents d'archives romains inédits du Moyen Euphrates</i>
P. Hal.	Papyri from the collection of the University Halle
P. Hamb.	Greek papyri of the <i>Hamburger Staats- und Universitäts- bibliothek</i>

- P. Hever Aramaic, Hebrew and Greek Documentary Texts from Nahal Hever and Other Sites, with an Appendix containing Alleged Qumran Texts (The Seiyâl Collection II)
- P. Fouad The Fouad papyrus
- P. Flor. *Papiri Fiorentini*
- P. Freib. *Mitteilungen aus der Freiburger Papyrussammlung*
- P. Grenf. Papyri edited by B.P. Grenfell and A.S. Hunt. (Oxford)
- P. Harr. The Rendel Harris Papyri of Woodbrooke College
- P. IFAO *Papyrus grecs de l'Institut Français d'Archéologie Orientale*
- P. L. Bat. *Papyrologica Lugduno-Batava.*
- P. Lips *Griechische Urkunden der Papyrussammlung zu Leipzig*
- P. Lond. Greek Papyri in the British Museum
- P. Mert. Greek Papyri in the Collection of Wilfred Merton
- P. Michael *Papyri Michaelidae*, being a Catalogue of Greek and Latin Papyri, Tablets and Ostraca in the Library of Mr G.A. Michailidis of Cairo
- P. Mich Michigan Papyri
- P. Monts. Roca Papyri at Montserrat in the Roca Puig Collection
- P. Münch. Papyri of the Bavarian Library in Munich
- P. NYU Greek Papyri in the Collection of New York University
- P. Oslo. *Papyri Osloenses*
- P. Oxy. The Oxyrhynchus Papyri.
- P. Princ. Papyri in the Princeton University Collections
- P. Ryl. Catalogue of the Greek and Latin Papyri in the John Rylands Library
- P. Strass. *Griechische Papyrus der Kaiserlichen Universitäts- und Landesbibliothek zu Strassburg*
- P. Tebt. The Tebtunis Papyri
- P. Tebt. Wall. New Texts in the Economy of Tebtunis
- P. Thomas Essays and Texts in Honor of J. David Thomas
- P. Sijp. Papyri in Memory of P. J. Sijpesteijn
- P. Vat. Aphrod. *I Papiri Vaticani di Aphrodito*
- P. Vind. Tand *Fünfunddreissig Wiener Papyri* edited by P.J. Sijpesteijn and K.A. Worp
- P. Wisc. The Wisconsin Papyri
- P. Yadin The Documents from the Bar Kochba Period in the Cave of Letters
- PSI *Papiri della Società Italiana*
- SB *Sammelbuch griechischer Urkunden aus Aegypten*
- SIG *Sylloge Inscriptionum Graecarum*
- SEG *Supplementum Epigraphicum Graecum*
- Tab. Herc. *Tabula Heracleensis*
- TAM *Tituli Asiae Minoris*
- TPSulp *Tabulae Pompeianae Sulpiciorum*