Modrzejewski, Józef

Private arbitration in the law of Greco-Roman Egypt

The Journal of Juristic Papyrology 6, 239-256

1952

Artykuł został zdigitalizowany i opracowany do udostępnienia w internecie przez Muzeum Historii Polski w ramach prac podejmowanych na rzecz zapewnienia otwartego, powszechnego i trwałego dostępu do polskiego dorobku naukowego i kulturalnego. Artykuł jest umieszczony w kolekcji cyfrowej bazhum.muzhp.pl, gromadzącej zawartość polskich czasopism humanistycznych i społecznych.

Tekst jest udostępniony do wykorzystania w ramach dozwolonego użytku.
PRIVATE ARBITRATION IN THE LAW OF GRECO-ROMAN EGYPT.

Only some short mentions but no monographic essays on the question of private arbitration in the law of Greco-Roman Egypt are to be found in the papyrological literature. It is the task of the present article to fill up this gap.

Greek private arbitration appears already in the IV century B.C. in Ptolemaic Egypt, brought there by Greek colonizers. It


3 This article is based only on Greek sources; on the arbitrators in the light of Coptic documents see Steinwenter, Stud. Pal. XIX, 22 ff., 53 ff. and passim (cf. Korschaker, Sar. Z. 41, 330 ff.).

continues to develop during the Roman epoch, simultaneously with the rise of Roman private arbitration which reaches its full expansion in the Byzantine epoch.

In all the three epochs two deeds are needed to set up a private arbitration: 1) the recording of the arbitration, i.e. an agreement between the parties to choose jointly an arbiter and let him decide their litigation (pactum compromissi) and 2) the agreement between the parties and the arbiter in which the latter accepts his office (receptum arbitri).

5 Elef. 1 (311 — 10 B. C.). As to the origin of private arbitration and its importance in the development of the jurisdiction of State-courts see: in general — B e k k e r, Z. f. vgl. Rez. 1, 110 ff.; B e r n h ö f t, Z. f. vgl. Rez. 2, 320; W e n g e r, Das Recht d. Griechen u. Römer 286 f.; B e s e l e r, Sav. Z. 50, 442 f. For Babylonian law — L a u t n e r, Die richterl. Entscheidung u. Streitbeendigung nach altbab. Prozess, passim. For Greek law — S t e i n w e n t e r, Streitbeendigung 1 ff.; S t a w r o s H u w a r d a s, Z. f. vgl. Rez. 49, 289; G e r n e t, Arch. d’Hist. Droit Orient. I, 111 ff.; P a n t a z o p o u l o s, Festschrift Koschaker III, 199 ff.; W o l f f, The origin of judicial litigation among the Greeks (Traditio IV), 36 ff. For Roman law — the works by W l a s s a k, cit. in W e n g e r’s art. Studi Solazzi 47 n. 1; B e k k e r, Sav. Z. 30, 49 ff.; S t e i n w e n t e r, RE IX, 2485; W e n g e r, Festschrift Hanausck 6 ff.; K a s e r, Festschrift Wenger I, 106 ff.; M o n i e r, Manuel P., 128; H o e t i n k, Seminar V. 16 ff.; W e i s s, B. F. D. R. VIII and IX, 194 ff.; in detail W e n g e r, Studi Solazzi, 47 ff. For Germanic laws — F. B e y e r l e, Das Entwicklungsproblem im germ. Rechtsgang I, 273 ff.; H. M i t t e s, Sav. Z. (germ. Abt.) 42, 142.

6 See: in general — M a t t h i a s, Festgabe f. Ihering (1892), 5 ff.; T h a l h e i m, RE V, 313 ff.; S t e i n w e n t e r, Streitbeendigung 1 ff., 140 ff.; G e r n e t l. c. 111 ff.; P a n t a z o p o u l o s l. c. 199 ff. For old Greek law — S t e i n w e n t e r l. c. 29 ff. For the law of Gortyn — K o h l e r, Gortyn 10 cf. 81; S t e i n w e n t e r l. c. 42 ff. For Attic law — L i p s i u s, Att. Recht I, 220 ff.; S t e i n w e n t e r l. c. 91 ff.; S t a w r o s H u w a r d a s l. c. 289 ff. For other ancient-Greek-city laws — H e r m a n n, Lehrbuch d. griech. Rechtsaltertümer 114, 156; S t e i n w e n t e r l. c. 172 ff.

7 From the most important literature see W e i z s ä c k e r, Das röm. Schiedsrichteramt (1879); M a t t h i a s, Die Entwicklung des röm. Schiedsgerichtes (Rostocker Festschrift f. Windscheid, 1888); W l a s s a k, RE II, 408 ff.; 412; L e i s t, REIV, 796 ff.; W e n g e r, RE I A., 358 ff.

8 Cf. for the Greek law M a t t h i a s, Festgabe f. Jhering 23 ff.; L i p s i u s, l. c. 224; S t e i n w e n t e r l. c. 91; for the Roman law — W e i z s ä c k e r, l. c. 52 ff.; M a t t h i a s, Festschrift Windscheid 30 ff.; L e i s t l. c.; W e n g e r l. c.; L a P i r a, Studi Riccobono II, 187 ff.; on compromissum in the provincial law — T a u b e n s c h l a g, Law I 304 f. and the lit. cited there.

9 Cf. S t e i n w e n t e r l. c. 91 ff.; W e i z s ä c k e r l. c. 61 ff.; M a t t h i a s, Festschrift Windscheid 19 ff.; in detail W e n g e r, RE I A., 358 ff.
The first of these deeds, i. e. the recording of the arbitration could consist either of a separate agreement or of a clause inserted into another contract. Such a separate agreement was already known to the Ptolemaic law\textsuperscript{10}; it contained the obligation of the parties to abide (έμμένειν) by the decision of the arbiter\textsuperscript{11} — and possibly also indicated the means guaranteeing this obligation\textsuperscript{12} and gave the names of the arbiters\textsuperscript{13}. Now, to learn what such an agreement was like later on, when it was transacted by Romans, we must turn to the numerous documents of the Byzantine epoch\textsuperscript{14} showing a similar structure, namely one founded — as it seems — on the existence of one form\textsuperscript{15}.

The prescript of such an agreement, which was often drawn up in two copies\textsuperscript{16} and couched partly in objective terms\textsuperscript{17} and partly in subjective ones\textsuperscript{18}, contains an invocation of the divine name\textsuperscript{19} and the date\textsuperscript{20}; it then indicates the parties\textsuperscript{21} and often

\textsuperscript{10} An example of such an agreement we find in BGU 1465 (early Ptol. time), where we read: Σωσίπατρος Άμονώψρει χαίρειν. έμμενώ έν οίς Όννωφρις καί ἵμοι — it is not evident to whom this announcement is addressed, may be it is the representative of the partner.

\textsuperscript{11} Cf. BGU 1465 v. 2; for Attic law see Matthias, Festgabe f. Jhering 25, 39 ff.; Steine wenter, Streitendigung im gr. Recht 101 ff.

\textsuperscript{12} As in the Attic law cf. Lipsius l. c. p. 224 f.

\textsuperscript{13} Cf. BGU 1465 (see above n. 10); for Attic law cf. Lipsius l. c. p. 224 ff.

\textsuperscript{14} In chronological order: Giss. 104 (399 A. D.); Jand. III 41 (V — VI cent. A. D.); Lond. III 992 p. 253 = M. Ch. 365 = A r a n g i o - R u i x, Fontes III N\textdegree 182 = Select Pap. 61, (descri. p. L1) (507 A. D.); Lond. V 1707 (566 A. D.); P. Klein.-Form. 402 (VI cent. A. D.); BGU I 309 (602 A. D.); SB 5266 (608 A. D.); SB 5271 (615 A. D.); SB 5681 (623 A. D.); SB 4673; SB 5257; SB 5258 (all from the Byzant. epoch); the contents of a compromissum is referred to also in SB 7033 + Princ. 82 (481 A. D.) v. 22 ff. (see below note 164).

\textsuperscript{15} Cf. Weng er l. c. 369 f.; about the structure of the compromissum in classical law cf. La Pir a l. c. p. 195. A little different structure has the compromissum in SB 4672 (Arab epoch).

\textsuperscript{16} Cf. SB 5681 (623 A. D.) v. 37 f.: κύριον το κομπρόμισσον διασφάλα τριγλά κτλ.

\textsuperscript{17} Cf. Jand. III 391, 11, 16; Lond. 1707, 1, 3; SB 5681, 16, 27; BGU I 315, 1, 12, 15; SB 4672

\textsuperscript{18} Cf. Lond. III 992, 10, 12, 11, 19; P. Klein.-Form. 402, BGU I 309, SB 5266; SB 5271, SB 4673.

\textsuperscript{19} Cf. BGU I 309, SB 5271, SB 5681, BGU I 315, SB 5266, SB 5271, SB 4673.

\textsuperscript{20} Cf. BGU I 309, 2; SB 5271, SB 5681, BGU I 315, SB 5266, SB 5271, SB 4673.

\textsuperscript{21} Cf. Giss. 104 f.; Lond. 992, SB 5271, SB 5681, BGU I 315, SB 5266.
adds a formula of mutual compliments. This is followed by the declaration that a dispute has arisen, the contested object being designated in a general manner, after which the parties state their concerted wish that the dispute may be decided by the arbiter whom they have chosen. Further on the parties declare that they will conform to the judgment by the arbiter (the clause-έμμένειν) and secure this promise by penal clauses or oath or by both. The document ends with the formula of stipulation, sometimes connected with the clause κύριον το κομπρόμισσον, and with the signature of the notary before whom the agreement was recorded. In addition, the compromise may give the day on which the parties have to come before the arbiter and also indicate the day on which the judgment is to be given. Some-
times the names of the witnesses who were present at the drawing up of the agreement\textsuperscript{24} or on whose testimony the judgment will depend\textsuperscript{25} are recorded.

As to clauses recording the arbitration and inserted into other contracts, it appears that the old Greek practice of instituting an arbitration in such a way lasted from Ptolemaic time\textsuperscript{36} until the late Byzantine epoch. Thus in P. Lond. V 1711 (566 — 573 A. D.)\textsuperscript{37} a marriage contract between a soldier and Scholastica, daughter of Theodore, the husband obliges himself not to repudiate his wife except in case of misconduct, which must be proved by three credible free men\textsuperscript{28} — this reminds one keenly of an analogous item in the oldest Greek marriage contract from Egypt nearly nine centuries back\textsuperscript{39}.

Turning now to the receptūm arbitri\textsuperscript{40}, we find in Ptolemaic papyri requests from one of the parties to a third person to accept the task of an arbiter and to summon the other party to take part in the proceedings. In the Ptolemaic epoch such a case is illustrated by UPZ 71 (152 B. C.)\textsuperscript{41} where Apollonios applies to Ptolemaios (l. 14 — 18):

\begin{quote}
Διό καὶ ἡγοῦμενος ἐπ' ἄλλου μὲν μηθενοι διακριόηναι, ἐπί σοῦ δ' αὐτοῦ, γέγραψα σοι ἃπο φθ[	extsuperscript{33}]
\end{quote}

This is an analog of an item in the oldest Greek marriage contract from Egypt nearly nine centuries back. \textsuperscript{39}

Lond. II 456 (p. 335) cf. Wenger l. c. 370.

\textsuperscript{24} Cf. SB 4672\textsuperscript{41} 19 (Arab time) cf. Berger l. c. 214 f.

\textsuperscript{25} Cf. Elef. 1 (310 B. C.) v. 6 — 8 (a marriage contract); Ent. 59 = Magd. 3 (222 B. C.) (a land lease-contract cited literally in a complaint to the king cf. Taubenschlag, Arch. f. Pap. XII, 188; Law I, 304.).

\textsuperscript{36} See on this document (the draft of which is to be found in Cair.-Masp. III 67,310) W i l k e n, Arch. f. Pap. VI, 446; B e u l l, J. E. A. II, 290; M i t t e i s, Sav. Z. 41, 316; T a u b e n s c h l a g, Law I 89\textsuperscript{39}, 90\textsuperscript{41}, 315\textsuperscript{41}.


\textsuperscript{37} Cf. Elef. 1 (311 B. C.) — it is characteristic that after nearly nine centuries the content of the clause is identical and the terminology similar with Lond. 1711 v. 31 ff.

\textsuperscript{27} Cf. W e n g e r, l. c.

\textsuperscript{41} = Par. 46 = W i t k o w s k i, Epist. priv. gr. N° 47 (152 B. C.) cf. Wilck en's commentary p. 339 (with reference to W e n g e r, Sav. Z. 23, 161 f. and S e t h e, Sarapis p. 52) see also P. M e y e r, Z. f. vgl. Rez. 41, 289; I de m, Sav. Z. 46, 343 cf. however B e u l l, Gnomon II, 658.
Similarly in the Roman epoch, Heroninos, a well known figure in Theadelphia, asks Aurelios Heracles in a private letter written sometime in the III century A. D. to accept the task of arbiter in a dispute with a certain Pesuas concerning the ownership of an ass; the same time he asks Aurelios to summon Pesuas to take part in the proceedings if he does not want to expose himself to a judicial or administrative action. One can also quote analogous cases from the Byzantine epoch, as e.g. Oxy. I, 131 (VI — VII cent. A. D.) where a Jew named Sousnes asks an honourable but unnamed person to intervene in a dispute which had arisen between him and his younger brother about the division of their father’s property.

The setting up of private arbitration could have been preceded — just as the conclusion of any other agreement — by negotiations between the parties; thus e.g. in Oxy. VIII 1164 (VI or VII cent. A. D.) Theodosius, „a minor local magnate”, suggests to comes Petros to let the dispute about a question of possession which had arisen among their dependants be settled by arbitration; he assures in advance that he will do his best to get the arbiter’s decision carried into effect.

Cf. also Oxy. VII 1061 (= O l s o n, Papyrusbriefe № 8) (22 B.C.) where the author of the letter reproaches the addressee that he has not brought about an agreement between him and his brother: (v. 3) και ού διήτησαι ημάς; it is possible that we have here a case of repudiation to accept the function of an arbiter.

Cf. the sources cited by the ed. p. 28.


V. 8 ff: δια τούτο σοι ἔγραψα, ὅτι ματαίως ἐπεβάλατο ὁ Πεσουάς. ἐξάν ὁδὸν δίς το ἐμον κεχαρισμένον πείσαι τόν Πεσουάν ἀποστήναι ἀφίκας, καθος ποιεῖς μην μην εἰς τό στρατηγόν πέρας, ἢ μὴ κόπους περιβάλλων τόν τρόπον. ἢ μὴ κόπους περιβάλλων τόν τρόπον. Οὐκ ἐστίν ἡμών πρóς δν ἄμεσως ἀνατιθέμενον, ἀλλὰ ἐν περικλήσει ἢ μὴ κόπους περιβάλλων τόν τρόπον.
The parties in proceedings before the court of arbitration\(^{50}\) are denoted by the technical term μέρος\(^{51}\) taken from the State judicature — while the adversary in the litigation is called αντίδικος\(^{52}\). The parties are Greeks\(^{53}\) as well as Roman citizens\(^{54}\) and their rights and duties correspond to those they had in proceedings in a State court\(^{55}\).

In all three epochs the participation in the litigation may be extended to several parties (\textit{litis consortium})\(^{56}\). In Ptolemaic times we find an instance in Ent. 59 = Magd. 3 (222 B. C.)\(^{57}\) where three co-tenants sue the other contracting party, a certain Demetrios, for failing to fulfill the lease contract which contained an arbitration clause; although no arbitration ensued, it is clearly to be seen from the terms of the document that all three tenants who had jointly signed the contract would also have jointly participated in the proceedings\(^{58}\). Instances of joint participation are shown in a number of documents dating from the Roman\(^{59}\) and Byzantine epochs\(^{60}\).

\(^{50}\) See Weizsäcker l. c. 31 ff.; Matthias, *Fest. Windscheid* 42 ff.; Wenger, *RE* 1 A, 362.

\(^{51}\) Cf. the Byzantine documents: SB 7033 + Princ. 82 (481 A. D.) v. 31; Lond. 1707 (566 A. D.) v. 5; Lond. 1708 (567 A. D.) v. 186, 187; SB 5681 (623 A. D.) v. 34, 36; BGU I 315 (Byzant. epoch) v. 17, 19; P. Klein.-Form. 402 (VI cent. A. D.) v. 5, 6; Lond. I 113 p. 199 (VI cent. A. D.) v. 30; SB 4847 (Byzant. epoch) v. 5.

\(^{52}\) Cf. BGU VII 1676 (II cent. A. D.) v. 7 — 8.

\(^{53}\) In the Roman epoch cf. Oxy. VII 1061 (22 B. C.); BGU VII 1675 (II cent. A. D.).

\(^{54}\) Before the C. A. cf. BGU IV 1125 (13 B. C.) and Fouad 37 (48 A. D.) (see below note 101).


\(^{57}\) Cf. Taubenschlag, *Arch. f. Pap.* XII, 188.


\(^{60}\) Boak, *Es. Pap.* V № 21 (296 A. D.); SB 7033 + Princ. 82 (481 A. D.); Lond. 1707 (566 A. D.); Lond. 1708 (567 A. D.); Lond. 1709 (570 A. D.); Mon. 1 (574 A. D.); Mon. 7 (583 A. D.); Oxy. 943 (VI cent. A. D.); Oxy. VIII 1164 (VI or VII cent. A. D.) cf. v. 8 f. ἀπετρέψατε τῶν ἀντιδίκων (plur.) ἐξῆκεν εἰς διανύειν μετὰ τῶν ἄνθρωπων (plur.); Wess. Stud. XX, 243 (VII cent. A. D.) and also SB 4672 (Arab. time).
Women could also be parties in arbitration proceedings in the Ptolemaic epoch, when they take action for themselves in Elef. 1 (311 — 10 B.C.) and Tebt. III 821 (209 B.C.), as well as in the Byzantine epoch when they act likewise for themselves or with the cooperation of their husbands as guardians. In this epoch, one not unfrequently meets cases in which soldiers or priests are parties. In one of the documents, a third person himself not interested directly in the dispute appears alongside the parties — it may be a case of the so-called litigation help. It is significant that disputes arise for the most part between family members.

As in normal court proceedings so in arbitration the parties can act through their representatives. One perceives it clearly in Wess. Stud. XX (1921) № 243 (VII cent. A.D.), a private letter in which Christodora asks her brother Theodoros, an epimeletes of the town...


62 Demetria as the partner in the marriage contract.

63 On both sides: Histeia and Tauthes.

64 Cf. B o a k, Ét. Pap. V № 21 (296 A.D.); Lond. V 1711 + Cair.-Masq. III 67.310 (566 — 573 A.D.); Lond. V 1709 (570 A.D.); Mon. 6 (583 A.D.); SB 5271 (615 A.D.); Grenf. II 99 a (VI — VII cent. A.D.).

65 Cf. Lond. V 1708 (576 A.D.); Mon. 1 (574 A.D.); on guardianship of women see Taubenschlag, Law I 128 ff.

66 Cf. Lond. III 992 p. 253 = M. Chr. 365 (507 A.D.); Mon. 6 (583 A.D.); Mon. 7 (583 A.D.); Mon. 14 (594 A.D.); Lond. I 113 p. 199 (VI cent. A.D.).

67 Cf. SB 7033 + Princ. II 82 (481 A.D.) — the diacon Theofilos versus the bishop Kyros from Lykopolis and his two brothers, presbyters to the bishop-church.

68 Mon. 1 (574 A.D.) see the commentary of the editor p. 20.

69 That is Thlou, the mother of the plaintiff Aurelia Tsaia, see the comment, of the ed. l. c.

70 Cf. We n g e r, Institutionen 82 ff.

71 Between parents and children: Mon. 6 (583 A.D.); between brothers and sisters: Lond. III 992 p. 253 = M. Chr. 365 (507 A.D.); Lond. 1708 (576 A.D.); Lond. 1709 (570 A.D.); Mon. 1 (574 A.D.); Mon. 7 (583 A.D.); Jand. III 41 (V — VI cent. A.D.); between consorts — Elef. I (311 B.C.); Lond. V 1711 + Cair.-Masq. III 63.310 (566 — 573 A.D.); between other family members: B o a k, Étud. Pap. V № 21 (296 A.D.); Lond. V 1707 (566 A.D.); Mon. 14 (594 A.D.).

72 Cf. Taubenschlag, Law I, 386 f. and the lit. cited there.

73 Cf. Taubenschlag, l. c. 387. Other cases: Lond. V 1707 (566 A.D.); Mon. 7 (583 A.D.); a daughter acting probably for his father (D III, 31, 41): Oxy.
of Arsinoe, to represent her before the arbitration court in a dispute between her and Menas and Victor, oikonomos of the temple of Mary; she authorizes him to settle the difference by compromise and especially to assess penalties and to designate arbiters; she promises to fulfill all the obligations which her representative may enter into in this connection and gives in advance her approval to all the steps he will take in the matter.

The arbiters are named κοινοί άνδρες, or simply άνδρες in the Ptolemaic epoch. In the Roman epoch there appears the proper technical term μεσίτης and in the Byzantine epoch a second one: διαιτητής and also other terms such as μέσοι,

893 = M. Chr. 99 (VI or VII cent. A. D.) (cf. Weng er, Graser Festg. zur 50 Vers. deutscher Philol. 29 ff; M itteis, Sav. Z. 30, 400; T aubenschlag, Sav. Z. 37, 222 f; otherwise S e id l, Eid II, 103 ff). Some kind of representation at negotiations before setting up of a private arbitration: Oxy. VIII 1164 (VI or VII cent. A. D.).

74 V. 19 ff. παρακέκλησε(σε) σε ἰκαλέσσειν τὸ ἐκλογ(ο)ν καὶ στίχοσθαι (so in the edition by W essely; πρόσφωναν καὶ στίχοσθαι according to Z e re t el i, Aegyptius 12, 376) πρὸς αὐτ(ο)ὺπο καὶ αὐτῶν συν ἐκρατήσθησθαι] δικαστῶν καὶ κομπρόμισσα έκθέσθαι καὶ πρόστιμον ἐπὶ παραβασία κύρια καὶ βεβαιά ήγουμαι τε καὶ ήγησομαι πάντα ἓντα παρά σου ὕπερ ἐμοῦ πρατόμενα κτλ.

75 See M a t t h i a s, Festg. f. I hering 34 ff; We i zs ä c k e r l. e. 6 ff; M a t t h i a s, Festschrift Windscheid 48 ff; W l a s s a k, RE I, 408 ff; W e n g e r, RE I A., 362 f.

76 Cf. Ent. 59 = Magd. 3 (222 B.C.) v. 6.

77 Cf. Tebt. III 821 (209 B. C.) v. 10; BGU 1818 (60—59 B. C.) v. 9, 24.

78 Cf. E l e f. 1 (311—10 B. C.) v. 7.

79 Cf. BGU VII 1676 (II cent. A. D.) v. 6—7. — On the difference between μεσίτης = an arbitrator and μεσίτης = an official designated by the authorities see T au benschlag, Law I, 391 ff. On κριτής καί μεσίτης in Re in. 44 = M. Chr. 82 (104 A. D.) v. 3; Lond. II 196 p. 152 = M. Chr. 87 (138—161 A. D.) v. 13—16; Catt. Ver so I v. 3 = M. Chr. 88 (ca 140 A. D.); BGU IV 1019 (II cent. A. D.) v. 13; Gand. 5 = SB 7264 (II cent. A. D.) v. 4 see M it teis, Grundz. 31, 43; T auntenschlag, Law I, 391. In Flor. 36 = M. Chr. 64 (ca 312 A. D.) μεσίτης denote rather experts than private arbitrators (cf. M it teis, Sav. Z. 27, 342 ff., may be the same holds good for B o a k, Étud. Pap. V, 21 (296 A. D.) (cf. T auntenschlag, Law I 377, 7; Journ. Jur. Pap. I, 119). On other meanings of the term μεσίτης see M it teis, Hermes 30, 616; M an i g k, Sav. Z. 30, 296 ff; T auntenschlag, Jura II, 76 ff.

80 On this term see T h a l he i m, art. s.h.t. RE V, 313 f; it appears in the Ptolemaic Egypt to define only the Alexandrian public arbitrators (see above n. 2); in the meaning of private arbitrator it is to be found in Lond. III 992 p. 253 (507 A. D.) v. 17.

81 Cf. SB. 7033 + Prinse 82 (481 A. D.) v. 30 (see E n s s l i n, Rhein. Museum 75, 422 ff); Lond. I 113 p. 199 (VI cent. A. D.) v. 27, 29 f.
μέσατοι82, ἄκουστοι83, άκροχταί84, κοινοὶ δικασταί85, δικασταί86, εἰρένικοι άνδρες87, αξιόπιστοι άνδρες88, or simply άνδρες89.

They act— in all three epochs — either individually (arbiter unus)91 or jointly, two92, three93 or six94 of them or in an indefinite number95.

82 Cf. P. Klein.-Form. 402 (VI cent. A. D.) v. 4 (see W 1 e n g e r, Arch. f. Pop. V, 295; W e n g e r, RE I A., 370).
83 Cf. Lond. V 1708 (567 A. D.) v. 127.
84 Cf. P. Klein.-Form. 402 (VI cent. A. D.) v. 3; Lond. 1708 (567 A. D.) v. 151.
85 Cf. Wess. Stud. I № 2 p. 2 (IV cent. A. D.) v. 4 (see T a u b e n s c h i e l a g, Law I, 369 n. 26).
86 Cf. Lond. V 1732 (586 A. D.) v. 4; Wess. Stud. XX № 243 (VII cent. A. D.) v. 22; see also P. Nessana Inv. № 14 (690 A. D.) v. 9 ff.
87 Cf. Lond. I 113 p. 199 ff. (VI cent. A. D.) v. 27.
88 Cf. Lond. V 1711 v. 32 = C  a i r. - M a s p. III 310 v. 13 (566—573 A. D.); Oxy 893 = M. Chr. 99 (VI or VII cent. A. D.) v. 1; see also SB 5941 (509 A. D.) v. 13.
89 Cf. e. g. SB 4672 (Arab time) v. 20.
90 On the technical term for the joint choice of an arbitrator: ζίπζο (cf. Nov. 82 c. 11, 1 δικαστὴς ζίπζος) lat. sumere (cf. D. 4, 8, 33; 50 arbiter ex compromisso sumptus) see W e n g e r, RE I A., 358; J o w i e z, R. I. D. A. II, 480 and n. 15.
91 It appears in: Lond. V 1707 (566 A. D.) v. 5; Mon. 1 (574 A. D.) v. 19; Oxy. VIII 1164 (VI or VII cent. A. D.) v. 9; SB 5681 (623 A. D.) v. 26; Wess. Stud. XX № 243 (VII cent. A. D.) v. 20 (cf. Z e r e t e 1 i, Aegyptus 12, 376); BGU I 315 (Byzant. epoch) v. 12. Once, in the Ptolemaic period: Elef. 1 (311 B. C.) v. the term δοκιμάζειν is used.
92 Cf. BGU VI 1465 (early Ptol. ep.) v. 3 f.; SB 7033 + Princ. 82 (481 A. D.); Lond. III 992 p. 253 = M. Chr. 362 (507 A. D.) v. 12 f.; Lond. V 1707 (566 A. D.) v. 5 f. (see R  o u i l l  a r d, L’adm. civ. de l’Eg. byz. 156).
93 Cf. Elef. 1 (311—10 B. C.) v. 7; Ent. 59 = Magd. 3 (222 B. C.) v. 6; BGU 1818 (60—59 B. C.) v. 24 ff.; Lond. V 1711 = C  a i r. Masp. III 310 (566—573 A. D.) (see the note in C  a i r.- Masp. III 310 ad v. 13 „πλέον très douteux”); SB 4672 (Byz. ep.) v. 20 τρεις άνδρες; Oxy. VI 893 = M. Chr. 99 (VI—VII cent. A. D.) three μείζονες.
94 Cf. P. B 367 (V cent. A. D.) v. 27 ff.
95 Cf. Tebt. III 821 (209 B. C.) v. 10; Jena Inv. 75 (Ptol. ep.) (see B e n e k e r, Sondergerichtsbarkeit 185); BGU 1676 (II cent. A. D.) v. 6—7; Mon. 6 (583 A. D.) v. 4, 23; Mon. 7 (583 A. D.) v. 34; Lond. I, 113 p. 199 ff. (VI cent. A. D.) v. 27; Wess. Stud. XX 243 (VII cent. A. D.) v. 21 f.; Wess. Stud. I № 2 p. 2 (IV cent.
In a document from the Byzantine epoch a military board acts as private arbitrator. In another document a priest is appointed as arbiter. The sources indicate clearly that arbiters were chosen from among prominent and esteemed persons, trusted by the parties, well disposed towards them and versed in law.

In all the three epochs the subject of a dispute could be...
arise out of all kinds of affairs *ius privati*\(^{102}\): rights in rem\(^{103}\) and possession\(^{103}\); obligations founded on contracts like loans\(^{106}\), purchases\(^{107}\), leases (or tenancies)\(^{108}\) and *locatio-conductio operis*\(^{109}\); partnerships\(^{110}\) as well as torts\(^{111}\); next matrimonial\(^{112}\), inheritance\(^{113}\) and other property questions the substance of which cannot be ascertained\(^{114}\) or was not precisely indicated by the parties.
in the written record of the *compromissum*. In none of the known cases the arbitration is concerned with several subjects.

The proceedings in arbitration, called *mesiteia* or *dikai* follow in all three epochs a similar course. The litigation starts with lodging of a complaint; according to Roman law the summons must be sent by the arbiter to the defendant *per nutium vel epistulam*. The presence of the parties in the court is obligatory and the obligation to come before the arbiter could be strengthened by means of suretyship.

Both parties put their claims before the arbiter (usually *εγκαλείν*) and the contention may last quite for a long time as appears from the Byzantine document Lond. V 1708 (567 A.D.).

111 See above note 23.
112 Cf. D IV, 8, 49, 1 comp. 49 pr.; see W e n g e r 1. c. p. 365.
113 In the Byzantine epoch the obligation to come before the arbiter can be taken up in the very act of the *compromissum* cf. Jand. III 41 (V—VI A.D.) v. 12 *παραγενέσθαι πρός αύτόν* (sic, the arbiter); Lond. III 992 p. 253 (507 A.D.) v. 12.
114 Cf. Jand. III 41 (V—VI A.D.) v. 12 *παραγενέσθαι πρός αύτόν* (sic, the arbiter); Lond. III 992 p. 253 (507 A.D.) v. 12.
115 Cf. D IV, 8, 49, 1 comp. 49 pr.; see W e n g e r 1. c. p. 365.
In the court of arbitration — like in ordinary proceedings\textsuperscript{125} — various sorts of evidence may be produced\textsuperscript{126}; first of all documents\textsuperscript{127}, then witnesses\textsuperscript{128} and oath (\textit{iusiurandum iudiciale})\textsuperscript{129} which e. g. in Mon. 6 (583 A.D.) (v. 7 ff., 25 ff.) was imposed by the arbiter on the defendant\textsuperscript{130} to prove that she had hidden nothing of the contentious hereditaments\textsuperscript{131}, lastly expert opinions\textsuperscript{132}.

Having heard the arguments of both parties\textsuperscript{133} and examined the evidence the arbiter announced his decision in the presence of the parties\textsuperscript{134}. The proceedings may also end in a \textit{transactio}\textsuperscript{135}. The decision of the arbiter is defined by following terms: τύπος\textsuperscript{136}, κρίσις\textsuperscript{137}, δίκη\textsuperscript{138}, δρος\textsuperscript{139}, φωνή\textsuperscript{140}, τά κριτήρια\textsuperscript{141},

expression is to be found in Lond. V 1731 (585 A.D.) v. 18 f. but it is not evident if the case has been put before arbitrators.

\textsuperscript{125} Cf. \textit{Taubenschlag, Law I}, 392 ff.

\textsuperscript{126} The onus probandi in the Ptolemaic epoch can weight upon the plaintiff as in Elef. I (311 B. C.) v. 7 ἄπειδειξάτω δὲ Ἡρακλείδης ὅτι ἐν ἄγεθείς Δημητρία.

\textsuperscript{127} Cf. BGU 1676 (II cent. A. D.) v. 12 τὰ γράμματα; Lond. V 1708 (567 A. D.) v. 126 ff.

\textsuperscript{128} Cf. SB 4672 (late Byzant. resp. Arab time) see above n. 35.

\textsuperscript{129} Cf. \textit{Taubenschlag, Law I}, 395.


\textsuperscript{133} Cf. BGU 1676 (II cent. A. D.) v. 7 ἄρτους, and from the Byzantine period: SB 7033 — Princ. 82 (481 A. D.) v. 32 f.: μέσοι κύτταροι γηγονότα καὶ τὰ γύτταν ἀπάσης ἀποθέωσαν δικαιολογίας κτλ.; similarly: Mon. I (574 A. D.) v. 20; Mon. 14 (594 A. D.) v. 35 f. See also the Coptic document Lond. V 1709 (ca. 570 A. D.) v. 16 „I have listened to them according to (κατά) their pleadings (δικαιολογία) against one another”.

\textsuperscript{134} Cf. Ulp. D IV, 8, 27, 4 proinde sententia dicta non coram litigatibus non valebit see Wlassa k, \textit{RE II}, 413. This is confirmed by CIL IX 2827 = \textit{Bruns, Fontes} Νο 185 (I cent. A. D.) v. 5 — 8: \textit{utrisque proesentibus iuratus sententiam dixit etc.}

\textsuperscript{135} E. g. Mon. 6 (583) see the introd.


\textsuperscript{137} Cf. Lond. III 992 p. 253 (507 A. D.) v. 18; SB 5681 (623 A. D.) v. 35; Oxy. VIII 1164 (VI or VII cent. A. D.) v. 11; BGU I 315 (Byz. ep.) v. 18; SB 4647 (Byz. ep.) v. 2 (cf. Nov. 82 c. 11, 1).

\textsuperscript{138} Cf. SB 5681 (623 A. D.) v. 34; BGU I 315 (Byz. ep.) v. 17.

\textsuperscript{139} Cf. \textit{Taubenschlag, Law I}, 392 ff.
PRIVATE ARBITRATION

τὰ ὁρισθημένα, τὰ ὁρισθημένα ἢ το κριθημένα, τὰ ἀπὸ διαίτης; the passing of sentence is denoted by the verbs: διακρίνειν, καταγιγνώσκειν, συνοράν, συνοράν καὶ ἔπικρίνειν, δικαιοῦν as well as by the expressions: ἦρεσεν τοῖς μέσοις or εδοξεν (seil, the arbiter). It is the will of the parties that gives its binding authority to the decision of the arbiter, who, being elected by the parties, is in principle free from State control. Such a decision — in the Ptolemaic epoch as well as in the Roman and Byzantine ones, in accordance with the principles of Roman law — is not definitely binding in law (res iudicata) and any party might not abide by it, at the risk of incurring the penalties indicated in the penal clauses of the compromise. This came to

142 Cf. Giss. 104 (399 A.D.) v. 10, 14.
143 Cf. SB 4672 (Byz. ep.) v. 20.
144 Cf. Lond. V 1732 (586 A.D.) v. 6.
145 Cf. Giss. 104 (399 A.D.) v. 9; Lond. III 992 (507 A.D.) v. 14; Lond. V 1732 (586 A.D.) v. 5.
146 Cf. Lond. V 1707 (566 A.D.) v. 8.
147 Cf. Grenf. II 99 a. (VI cent. A.D.) v. 7; Oxy VIII 1464 (VI—VII cent. A.D.) v. 9.
148 Cf. BGU VI 1465 (early Ptol. ep.) v. 4.
149 Cf. Tebt. III 821 (209 B.C.) v. 10 f.
150 Cf. Mon. I (574 A.D.) v. 20; SB 4712 (Byz. ep.) v. 14.
151 Cf. Mon. 14 (594 A.D.) v. 44.
152 Cf. SB 7033 + Princ. 82 (481 A.D.) v. 33.
153 Cf. Lond. I 113 p. 199 (VI cent. A.D.) v. 29 f.
155 Similarly as the decision of public arbitrators (the s. c. öffentliche Schiedsrichter) cf. T a u b e n s c h l a g, Arch. f. Pap. IV, 1 ff.; Arch. d’Hist. Droit Orient. III, 306. The same holds good for the ancient-Greek-city laws cf. B e r n e k e r, Journ. Jur. Pap. IV, 261.
156 Cf. W e n g e r, RE I A., 367. It may be noted that Roman private arbitrators passed their sentences according to the rules of equity: not till since Justinian they are under obligation to apply the law in force cf. M a t t h i a s, Fest. Windscheid p. 188 f.; S t e i n w e n t e r l. e. 108 f.
157 On the juristic force of judgement in Greco-Roman law see T a u b e n s c h l a g, Law I, 399 and the lit. cited note 16; from the later literature is to be added: B e r n e k e r, Πλοίοδοξία, in RE XVIII 3 (1949), 126 ff.; I d e m, Das wiederholte Prozessieren in antiken Rechten, Journ. Jur. Pap. I, e. 255 ff.
158 Such cases are to be found in Jena Inv. 75 (Ptol. period) cf. B e r n e k e r, Sondergerichtsbarkeit 185; BGU 1818 (60—59 B.C.) (cf. the comment. of the ed.); see also C a i r.-Z e n. IV 59,651 (III cent. B. C.).
159 Penal clauses of this kind appear already in the Ptolemaic period as we see in Tebt. III 821 (209 B.C.) (cf. B e r n e k e r, RE XVIII 3, 119 with refe-
an end when Justinian made the compromise and the arbiter’s decision, confirmed by oath, subject to execution; however, after ten years he rescinded the respective provisions and forbade to take such an oath in Nov. 82 cap. 11. (539 A. D.). But from antie Justinian papyrus documents we can see that as a means of guaranteeing the arbiter’s decision the oath was used in provincial practice before official legislation was introduced, while on the other hand it persisted even after the introduction of the said Novel, which makes us suppose that in the practice of Byzantine Egypt the provisions of this Novel were ignored.

There are frequent cases in which the parties, after the proceedings in arbitration have ended, conclude a διάλυσις-agreement in which they outline the story of their dispute, accept expressly the arbiter’s decision and provide the agreement with the formula. According to P. Meyer, Jur. Pap. p. 82 and the lit. cited there. In the Byzantine period they are to be found in: Giss. 104 (399 A. D.) v. 10 ff.; Lond. III 992 p. 253 (507 A. D.) v. 21; Jand. III 41 (V — VI cent. A. D.) v. 18; BGU I 315 (Byz. ep.) v. 17 ff.; P. Klein.-Form. 402 (VI cent. A. D.) v. 4 ff. (cf. Willeck, Arch. f. Pop. V 295); SB 4847 (Byz. ep.) and also in the post-Justinian epoch: SB 5681 (623 A. D.) v. 34 ff.; Wess. Stud. XX (1921) № 243 (VII cent. A. D.) v. 22 ff.; SB 4672 (Arab time) v. 9 f.; κομπόμισσον μετά προστίμου.
of Aquilian stipulation\textsuperscript{165}. This manner of guaranteeing the arbiter’s decision conforms in principle to the letter of Justinian law\textsuperscript{166} but it is a superfluity characteristic of the Byzantine legal style, the written or even tacit acceptance of the decision bringing just the same legal consequences\textsuperscript{167}. In the papyri there is also to be found the suretyship\textsuperscript{168} as means of securing the arbiter’s decision, namely in Grenf. II 99 a (VI cent. A. D.)\textsuperscript{169} and Lond. V 1732 (586 A. D.)\textsuperscript{170}.

In the Byzantine epoch, the idea of settling disputes by way of arbitration obtained a special importance in Roman provinces. This is attested not only by the frequent proceedings in Egyptian arbitration courts, which we have already discussed, but also by many papyri containing renouncement clauses which forbid to bring the

\textsuperscript{165} Cf. SB 7033 + Princ. 82 (481 A. D.) v. 61 ff.; Mon. 1 (574 A. D.) v. 32 ff.; Mon. 7 (583 A. D.) v. 47 ff.; Mon. 14 (594 A. D.) v. 64 ff.; Lond. I 113 (VI cent. A. D.) v. 78 ff., 86 ff. — see Taubenschlag, Law I, 306 ff.

\textsuperscript{166} C. Iust. II 55 [56], 4, pr., 2 cf. Windscheid, Pandektenrecht\textsuperscript{2} II, 845; Schulz, Einführung 120; Wengcr, RE I A., 367.

\textsuperscript{167} Cf. Wicken, Arch. f. Pap. III, 126; Wengcr I c. 370 f. puts this text before the Nov. 82 — but it is also possible, in respect of the ignorance of this Novel in Egypt and the below cited parallels, that this document belongs to a later period i. e. 539 — 566 A. D. (on the final date cf. Mittels, Grundz. p. 32, 276).

\textsuperscript{168} On suretyship see Taubenschlag, Law I, 311 ff.

\textsuperscript{169} Cf. Wicken, Arch. f. Pap. III, 126; Wenger I c. 370 f. puts this text before the Nov. 82 — but it is also possible, in respect of the ignorance of this Novel in Egypt and the below cited parallels, that this document belongs to a later period i. e. 539 — 566 A. D. (on the final date cf. Mittels, Grundz. p. 32, 276).

\textsuperscript{170} V. 2 ff.: ῥυσότατοι ... ἑγγυάσθηκαν καὶ ἀναδεδέχθηκαν τῷ Ψευδ. καὶ Ψευδόκοι ... στέρζοντες καὶ ἔμειναν τὰ ἀφενθηρομένα (see the introd. to this pap.); cf. also Oxy. 1164 (VI — VII cent. A. D.) v. 10 f. παντὶ γὰρ τρόπῳ παραπεμείνας των(των) ἄμειναι τῇ διδομένῃ κατατάξει.
specified case before State court as well as arbitration court. The development of the ecclesiastic arbitration is another proof of it. Some light on the popularity enjoyed by arbitration also in other provinces is thrown by an interesting document from Palestine P. Nessana Inv. № 14 (690 A. D.), where in divorce proceedings a husband suggests to his wife an arbitration; the wife, however, refuses declaring that her sole wish is to get rid of her importunate husband. This document proves that in local law the idea of arbitration, as the simplest means of settling disputes, had thrust deep roots into the people's mind.

[Warsaw University]

Józef Modrzejewski

---

171 The clause: μήτε έγκαλείν ή δίαιταν κινήσαι in the contracts of sale: Lond. V 1724 (578 — 582 A. D.) v. 57 ff.; Mon. 11 (586 A. D.) v. 55; Lond. V 1734 (VI cent. A. D.) v. 9; Lond. Inv. № 2018 (Zilliacus, Griech. Papyrusurkunden „Eranos“ XXXVIII (1941)) (644 — 5 A. D.) v. 36; in the acts of the divisio parentis: Lond. V 1727 = Select Pap. № 86 (583 — 4 A. D.) v. 50; Lond. V 1729 (584 A. D.) v. 37; in the abandonment of claims: Lond. V 1731 (585 A. D.) v. 25.
