

## 5<sup>th</sup> International Roman Law Moot Court Competition

*In memoriam of Professors G. Maridakis & P. Zepos*

**29 March – 2 April 2012**

*Imaret of Kavala & Forum Coloniae Augustae Iuliae Philippensis*

1. Constantinos, Iohannes, Loukas, Alexios, Theodosios, Romanos, Marcus and Claudius were all active artisans and tradesmen in the weapon industry. Constantinos made swords, Marcus made shields, Loukas made bows and arrows, Alexios produced helmets, Romanos and Theodosios traded materials that were necessary for the production of all of the foregoing, Iohannes trained and sold horses for combat and Claudius had a lot of good contacts with the Imperial Army officials in charge of armaments.
2. In January 540 AD this group of traders established a *societas* in order to compete successfully against their competitors and increase their market share. Each one of them contributed his respective trade or skill and they agreed that they would annually share the profits amongst them in an equal manner.
3. The many wars in which the Emperor had engaged had guaranteed a constant demand for armaments in the market and thus the *societas* was soon a success. Very quickly, it acquired a good name in the market due to the quality of its products. The Imperial Army was very happy with its purchases from the *societas* and thanks to Claudius' marketing skills it kept increasing its orders from the *societas* members.
4. However, in early 542 AD some of the *societas* members started to face problems. Constantinos' problems were mainly due to his family. His participation in the *societas* instantly increased Constantinos' annual income and his family got used to spending a lot more money than before. In fact, as it happens with the *novi opulenti*, Constantinos' family lost the sense of money's value. Significant amounts of money were spent to buy clothes, perfumes and jewellery. Constantinos was a low tone man. Although he would frequently warn his family of the consequences of wasting funds, he felt unable to assert his authority as *pater familias* and put an end to his family frenzy of spending.
5. In February 542 AD Constantinos was hit with the bad news. The Imperial Army was very unhappy with his last delivery of swords. The iron Constantinos had purchased proved to be of low quality. The Army officials in charge of provisions complained that the blades broke extremely easily exposing the soldiers using them to great danger. The Treasury was instructed not to pay the

invoices sent by Constantinos. As this was a very big order, Constantinos found himself exposed to an alarming shortage of funds to pay his purveyors.

6. March 542 AD proved to be a very difficult month for Iohannes too. One of the horses he purchased from an Illyrian warrior was infected with an unknown virus. Despite the medical treatment it received, it was not possible to save it and the horse died quickly. To Iohannes' bad luck, the disease spread quickly and despite his efforts to prevent the further spreading of the disease, his horse herd was depleted. The financial consequences on his business were devastating. Not only was he unable to perform his obligation to deliver a consignment of 500 trained horses to the Imperial Army due in April 542 AD but he was also faced with claims for damages by a neighbouring farmer whose sheep were also hit by the disease and died in great numbers.
7. Faced with an imminent financial collapse, Constantinos and Iohannes asked for an urgent meeting of the *societas* to be convened. This meeting took place on the day following the feast of the Annunciation in 542 AD. During the meeting Constantinos and Iohannes explained their situation to their partners and presented a financial analysis of their expected loss. According to that analysis, which on the face of it looked reliable, their losses were quantified at 500 and 350 *solidi* respectively. With bankruptcy pending above their heads like the sword of Damocles they implored their fellow partners for financial assistance.
8. The reaction of the other partners was not unanimous. Claudius did not consider it appropriate for the partners to invest funds in the rescue of Constantinos and Iohannes. At some point in the meeting he actually said that had Constantinos been more prudent in the management of his affairs he would have been able to face misfortunes such as this. Other partners though like Romanos were more sympathetic to Constantinos and Iohannes' request. In fact, Romanos was married to one of Iohannes' wife's nieces and he cared deeply about Iohannes and his family. He argued that solidarity was the foundation of the *societas'* success and thus Constantinos and Iohannes should not be abandoned. Others like Marcus were more neutral. Marcus thought that the *societas* had succeeded in establishing a good commercial name and warned that if the news concerning the loss incurred by some of its partners leaked it would cause an increase in the interest bankers would charge them to grant them credit. He suggested that even though he was unhappy with the way Constantinos had managed his economic affairs abandoning him to his fate would send the wrong signal to the market.
9. The partners were unable to reach a decision on the same day. The sums at stake were enormous and they decided to take three days to consider their position and reconvene on the first day of April 542 AD. Marcus' predictions came true during these three days. A rumour had spread in the financial circles of Constantinople that the *societas* was facing financial difficulties. When Marcus visited his banker to request for a letter of credit, as he often did, when he had to order goods from faraway provinces of the Empire, he realized that he was asked to pay higher fees. His fears had come true. Marcus rushed home and wrote a letter to Claudius to remind him of the gravity of the situation.
10. The day before the meeting, Constantinople had been hit with the news of a scandal. Aaron, the city's most famous banker, had fallen in love with the young

and beautiful Alexia, one's of the Empress's courtesans. On a dark and stormy night, Aaron abandoned his wife and children, emptied the vaults of his bank and ran away with Alexia. The news was devastating for many of the capital's merchants, including Theodosios, who kept accounts with Aaron's bank and lost about 250 *solidi*.

11. When the meeting was convened on the first day of April, the partners were faced with a much worse problem than the one had been called to solve during their last meeting. Immediate action was warranted or the *societas* was headed for disaster. However, the partners were still unable to decide on the appropriate course of action. Some, like Constantinos, favoured an intra-*societas* loan which would be subject to lower interest rates. Others though, like Claudius, thought that it was not in the best interests of the *societas* to further reduce the liquidity of its partners. Instead, they would favour a solution whereby the partners would seek a loan from an independent banker. Following lengthy deliberations, a compromise was reached according to which all the partners of the *societas* would enter together into a loan for 1,200 *solidi* with a reputable banker.
12. The partners agreed that the loan would be structured in the following manner. All the partners would enter into the loan for 1,200 *solidi* to be repaid in 12 monthly instalments with a monthly interest of 3%. It was thought that the participation of Claudius in the loan would be viewed by the market positively. However, under a separate agreement that was concluded amongst the partners in strict confidentiality, Constantinos, Iohannes and Theodosios agreed to pay in advance of any instalment under the loan the share of instalment corresponding to Loucas, Alexios, Romanos, Marcus and Claudius and hold them immune from any liability arising out of the loan. This was because the said partners did not need the funds of the loan and would not benefit from it. Claudius and Alexios actually insisted at the meeting that this was a *sine qua non* term for them to participate in the loan. It was further stipulated in the separate agreement that the conclusion of the loan would be a condition precedent for the entry into force of the separate agreement. Following a relevant Claudius' offer, it was resolved at the meeting that Claudius would search for a reputable banker to grant the loan and would use his connections to obtain the most favourable terms possible.
13. The reputable banker was identified at the person of Leon who agreed to provide the loan on the aforementioned terms, subject to the provision of collateral for the loan. According to the loan agreement as concluded, Constantinos, Iohannes and Theodosios agreed to pledge certain properties to Leon. Constantinos offered as security his paternal estate at the Island of Prigkipos, Iohannes offered his farm in Thrace and Theodosios offered his olive groves in Chalcedon. The market value of these properties was approximately equal and amounted to 2,500 *solidi*. The agreement included the term that, as soon as payment had failed, Leon should become owner of the aforementioned property in order to realise the *hypotheca*. Finally, it was stipulated that failure to pay one instalment would make the repayment of the entire capital plus the interest due to Leon.
14. The 1,200 *solidi* under the loan were paid out by Leon on the fifteenth day of April 542 AD. The first few of the monthly instalments were paid in accordance with the agreements. However, Constantinos and Iohannes did not pay the

instalments (including their share of the other partners' instalments) with profits generated by their businesses but with their remaining savings and some of the capital received under the loan. By the end of summer 542 AD it became clear that, unlike Theodosios, Constantinos and Iohannes were unable to perform their obligations under the loan. Thus on fifteenth of September 542 AD they failed to pay their share of the fifth instalment of the loan to Leon and to make the relevant payments to their partners who also refused to make the payments to Leon out of their own pockets. The following day, Leon put all of the partners on notice and demanded that the outstanding capital and interest—amounting to 1,088 *solidi* (eight instalments of 800 *solidi* in total and interest amounting to 288 *solidi* in total)—be paid to him within two weeks.

15. During the two-week period set by Leon, a letter written by Claudius to Leon on the third day of April 542 AD was leaked to Constantinos, Theodosios and Iohannes. The letter made clear that Claudius had provided a loan of 1,200 *solidi* to Leon with a monthly interest of 2%. Under the terms of their agreement, Leon would have to repay the sum of 1,200 *solidi* to Claudius within a year. Leon also agreed that Claudius would have the right to purchase from Leon the assets that the partners would pledge to Leon once the latter had acquired legal title over them. Claudius could exercise this right subject to the additional payment of a fee of 50 *solidi*. According to their agreement, if Claudius exercised that right Leon would transfer the properties in question to Claudius and Claudius would release Leon from this debt under the loan concluded between the two of them.
16. From the letter it became clear that Claudius did not wish to appear as the lender and had effectively structured the loan in a way in which he would win on both sides. If the loan was repaid he would win on the interest and if the loan was not repaid he would have laid his hands on the immovable properties of Constantinos, Iohannes and Theodosios. In the letter Claudius stated explicitly the following: “Thus, I would like to thank you for your written commitment to grant me the right to purchase the pledged estates from you once you become the owner. In my view, the partners will not be able to repay their debts to you and you will soon be the owner of the estates in Prigkipos, Chalcedon and Thrace. As soon as you become the owner, I will request my banker to pay you the agreed sum of 50 *solidi*. In the name of our old friendship, I wish to thank you for this valuable service that you are rendering to me. You shall not find me ungrateful.”
17. As one might have imagined, Theodosios, Constantinos and Iohannes were very upset by Claudius' disloyalty and immediately sought a lawyer's advice. On his advice, they wrote a letter to Claudius stating the following: “We consider that Leon was nothing more than a façade and that you have orchestrated our economic stagnation with the sole purpose of getting your hands on our immovable property. You have in fact wished for us to be unable to perform our obligations and have thus acted in a disloyal manner towards the *societas*. We ask you to take all necessary steps to ensure that you resign from any right you may have to acquire ownership of the land given as collateral to Leon. Otherwise we will take appropriate legal action against you.” Claudius responded in writing that none of these actions were illegal and that he was under no such obligation to the requested action. He also urged the three partners to ensure payment of Leon within the deadline.

18. On the first of October, when the two-week deadline had elapsed, Theodosios, Iohannes and Constantinos learnt that Claudius had written to Leon exercising his right to acquire the pledged estates the same day. Claudius also instructed Agathon, a Peloponnesian farmer holding a neighbouring estate to the olive grove that Theodosios had pledged to Leon, to harvest the olives. Theodosios immediately wrote to Leon and Claudius complaining of this intrusion “in [his] own land” and threatening to take legal action to claim the proceeds from the harvest. By the time the proceedings were instituted and a date for the hearing was set, Agathon who was very experienced and well equipped had completed the harvest of the olive grove.
19. The following actions are brought amongst the *socii*:
  - I. Theodosios, Iohannes and Constantinos bring the *condictio ob turpem vel iniustam causam* against Claudius for the recovery of the sum of 68 *solidi* paid to him for the first four instalments of the loan.
  - II. Theodosios brings a *rei vindicatio* against Claudius for recovery of 150 *solidi* representing the total value of the olives harvested by Agathon following Claudius’ orders. Claudius, however, claims that one third of the olives have unfortunately been stolen from Agathon’s stocks with no prospect of recovery (although a certain Bulgarus was suspected to be the thief).