MONASTIC ESTATES IN LATE ANTIQUE AND EARLY ISLAMIC EGYPT

OSTRACA, PAPYRI, AND ESSAYS IN MEMORY OF SARAH CLACKSON

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The deed which is the object of the present study, one of the longest documentary texts preserved on a papyrus, tells us of a certain risky financial business entered into by the ‘well-sanctified’ monastery of Apa Hierax. The whole account covers quite a time span and all the original *dramatis personae* had probably been dead long before the final act was concluded. The story finally resulted in the present settlement of claims in which the monastery of Apa Hierax confirms having received its money back from none less than the actual head of the house of the Apiones: Flavius Apion II.\(^1\) This document raises a number of questions concerning the legal status of monasteries and their representatives in conducting financial and legal transactions and especially about the relation between legal theory and practice in late Antique Egypt. It is also one of the most important pieces of evidence of the late Antique popularity of a practice nowadays commonly referred to as ‘alternative dispute resolution.’ In the present paper I shall try to examine the legal content of the deed and to provide an answer why this conflict solving form was chosen by the counterparts.

The parties to the deed were, on the one side, Flavius Apion II, represented by his slave Menas, who in the absence of his master received a stipulation guaranteeing the execution of the settlement, and, on the other, the priest Ioseph and Theodoros, prior and steward respectively of the monastery of Apa Hierax, who in turn submitted that they acted with the approval and on behalf of all their confrariats. They both declared to be illiterate—at first sight a curious thing for a priest and a steward. It most probably meant that neither Ioseph nor Theodoros could read and write Greek, but that they were literate in Coptic.\(^2\) The document is subscribed on their behalf by Pamouthios son of Philoxenos.

The present agreement was preceded by a long legal dispute. Some years before the year 545 when this final settlement of claims was made, a certain Diogenes, *vir illustriissimus* originating from Oxyrhynchos, while in the capital city, found himself in need of financial support. Luckily, he met there his kinsman, Theophilos, acting on behalf of the monastery of Apa Hierax. This spiritual foundation, whose exact location remains a mystery, is only known from yet another papyrus, *P.Oxy.* 1.1 3640 (C.E. 533). The latter text informs us that the monks of Apa Hierax produced ropes (interestingly the other party in the document is again closely connected to the Apiones and it must have been preserved in the Apiones’ dossier as well). Theophilos lent to Diogenes eighty *solidi* belonging to his

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\(^2\) Most recently on the Apiones see a very useful book by Roberta Mazza (Mazza 2001), on *P.Oxy.* LXIII 4397: 134-135; on Fl. Strategios II and Fl. Apion II who appear in our document see esp. pp. 53-68 and the extensive literature therein cited; see also my review thereof (Urbanik 2004). Cf. too, the classical study by Jean Gascou (Gascou 1985).

\(^2\) Cf. a similar situation in Apa Abraham’s will, *P.Lond.* I 77: 231-236) with *BL* I 241, ll. 80-81. (English translation in MacCoull 2000) where Ioseph, a priest of Hermonthis subscribes for Abraham who “does not know letters.” As Leslie MacCoull rightly points out, we know, however, that Abraham was perfectly literate in Coptic.
monastery with an annual interest of six per cent. The debt was duly secured by a mortgage of an irrigated plot of land measuring sixteen and one-half acres that Diogenes owned in the village of Ophis. Some time afterwards Diogenes, still much in financial troubles as it seems, borrowed another fifty solidi from the monastery, again through the agency of Theophilos. This time, a hypotheica generalis (a mortgage of all the present and future property of the debtor, securing the creditor’s claims) was created in favour of the monastery to guarantee repayment of the full debt with the accumulated interest.

At this point we already spot a few curiosities. Firstly, one may ask how it was possible that a relatively unknown monastery had provided its representative with such an impressive sum of money (which basically means that the holy institution must have disposed of much greater funds)? The editor of P.Oxy. L1 3640 supposed Apa Hierax to be a very humble monastery: not only the amount of ropes was not impressive but also its prior was only a deacon. But neither of these facts seems decisive in determining the wealth and importance of the monastery. The quantity of merchandise recorded in the papyrus depended on the order and the ecclesiastical rank of the prior may have nothing to do with the real size of his religious establishment. This conclusion only shows how pieces of information drawn from a singular document may be misleading, our document indicates in any case that the monastery could freely dispose of great sums of money.

Tomasz Markiewicz shows in his article in this book that monks not only frequently took part in the credit turn-out, but also apparently disposed of rather large sums of ready money. They—notwithstanding the imperial regulations and canonical norms3—did have their private resources, which they used and multiplied sometimes even accumulating apparently considerable wealth).4 In addition, various legal regulations indicate that monasteries took part in financial transactions as important moneylenders and borrowers. We may recall, for instance, the Novella 46 of C.E. 537, which—in cases when a church lacked money to pay its debts—granted an exception to the general ban on the alienation of ecclesiastical real estates introduced by the Novella 7 of C.E. 535. In such situations monks would obviously be the natural proxies of their own spiritual houses investing common wealth. We have to recall here however, that sometimes it is actually difficult to discern whether a monk or a nun acted in his or her own name,5 or on behalf of their monastic community.

In our case, however, it is absolutely certain that the money was lent on behalf of the whole monastic community: it is a party to the settlement (cf. ll. 8–9), and to its favour the mortgage was instituted and the deeds were executed (cf. ll. 27–45). A lawyer spots here immediately a crucial issue:

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3 Cf. on this subject see a recent exhaustive study of G. Barone Adesi (Barone Adesi 1988); and an older text of R. Orestano, (Orestano 1956). From the ecclesiastical norms see, for example Can. 3 of the Council of Chalcedon forbidding bishops, clergymen, and monks to hire possessions, or engage in business, or occupy themselves privately in worldly engagements, its existence proves only that the reality was exactly opposite.

4 A particularly illustrative example of the private possession of a large sum of money by a religious person, moreover a woman, is P.Lond. V 1731 (= Porter 1996 D42, Syene C.E. 585). By this deed Aurelia Tson, a nun, ends an ongoing dispute with her own mother, Aurelia Tapia, issuing a receipt for 4 solidi. This money had been left for the little girl’s upbringing by her father upon his divorce from Aurelia Tapia. The mother, however, never took care of Tson, who grew up with the father, and instead kept the money for herself.

5 One curious document, SB XX 14712, illustrates it well: the papyrus concerns a sale of two thousand four hundred wine jars on defer of payment to a woman described by the epithets οὐράνιος ἦ καὶ ζωοποιός, and represented by a presbyter, which could indicate she was a member of the clergy (cf. Sijpsteijn 1991: 197-199). Nothing in the text alludes to whether the purchase was made for her own use or on behalf of her monastic community.
the problem of the legal personality of the ecclesiastical entities. As this topic concerns my theme only marginally, I shall limit myself to a very brief statement on it. Suffice to say, that there has been an ongoing debate about the existence of the legal person as such in Roman law. There is no doubt, however, that if there was anything approaching the notion of a legal personality, it was indeed in the case of, as we shall call them, ‘church persons,’ such as bishoprics, monasteries, orphanages, hospices for the old and poor, and infirmaries. They are often characterised by the legal transactions (such as donations, inheritances, trusts, etc.) made to them super piis causis or εἰς ἔνδοξας αἰτίας, and therefore one tends to call them generically—albeit not very technically—piae causae.6 There is a number of imperial regulations pertaining to them and usually identifying them jointly (cf. for instance, the formulation used in the Novella 7 praef. of 535: exsitimavimus oportere legislationem imponere omnibus sanctissi sanctissimarum ecclesiarum <et> xenodochiorum et nosocomiorum et monasteriorum et brephotrophiorum et gerontocomiorum et totius sacrati collegii rebus ..., repeated later in the same law, or the similar formulation in the Novella 120 of C.E. 544 which to some extent derogated the provisions of the ban on alienation found in the Novella 7).

What is extremely important for the proper juridical collocation of our document is the question of the legal representation of such quasi-legal persons. Interestingly, the only general legal provision on the matter deals merely vaguely with the problem. Chapter 5 of the Novella 133 (C.E. 539)—a sort of a digest of norms concerning monks (quodmodo oportet monachos vivere)—orders that a monastery should be placed under the care of an abbot and apocrisiari, who, being elderly and experienced monks, should be charged with the management of affairs and interests of the house. As soon as we read the following part of the norm regarding female convents, we immediately notice how imprecise and non-technical this regulation is, mixing the mundane with the celestial affairs. The statute commands by the very same clause that three apocrisiari—either eunuchs, or men advanced in years and distinguished by their chastity—would have to conduct litigation on behalf of the nuns and administer the holy communion to them; they also—for the sake of chastity—would act as intermediaries between the reverend mothers and their business agents.7

More particulars may be deducted from the specific regulations concerning piae causae. The monasteries were to be normally represented by the abbot/prior and/or steward, and the other religious institutions by their stewards or governors (rectores).8 This seems to be somewhat, mutatis mutandis,

6 See C. 1.2.19 (C.E. 528) regulating the problem of illegally-made donations to sancta ecclesia, xenodochium, nosocomium, orphanotrophium, ptochotrophium, the poor or cities because of holy reasons and C. 1.3.45 (46).1a [C.E. 530] on trusts and bequests made to the holy institutions respectively. On the problem, see the general overview in Kaser 1975, § 214 V and the literature quoted in the footnotes therein. See also the classical study on legal persons: Orestrano 1968, passim, but above all, pp. 79-90 as well as, more specifically on piae causae, a paper of G. Barone Adesi, (Barone Adesi 1993).

7 Seeing that this statute does not nullify the provisions of the Novella 7 which introduced personal liability of an abbess for an illegal transaction on behalf of a monastery (see infra, ft. 8), I suppose that this norm presented rather wishful thinking of the legislator than a practical solution. Furthermore, we may see how well Aurelia Tsone managed her affairs without any intermediaries—of course we cannot be certain, if there had been any formal litigation between herself and her mother before the settlement documented in P.Lond. V 1731 (however the II. 18-20 may allude to it, cf. supra ft. 3).

8 Just to illustrate this: Novella 7 C.E. 535), ch. 3 vests the power of making of an emphyteutic contract on behalf of the monastery in its steward (oeconomus = οἰκονόμος) (provided that they have received a sworn opinion from two mechanics or architects—if the place in question had only one expert, his single opinion would suffice). The same statute in chapter 1 addresses abbots and abbesses generally, prohibiting alienation of monastic property. It is obvious therefore that the
corroborated by the disposition of the *Canons* attributed to Athanasius. *Can.* 61b states that no economic activity on behalf of a church should be conducted by the bishop or steward alone, they always should act jointly. In the case of a monastery we might expect that it would be the abbot who was required to act jointly with the steward.9 These powers of attorney are contrasted by personal liability of the persons in charge—with no gender discrimination10—for the illegal transactions conducted on behalf of a religious institution: the agreements shall be void, but the parties thereof may sue the abbot, steward or abbess.11 Curiously, there is no trace in the normative texts of the important administrative and economic role of the *dikaion/diakonia*, which become obvious—albeit the particulars remain obscure—even after a very superfluous examination of various monastic papyrological *corpora* (one may consult both volumes of Sarah Clarkson’s Apa Apollo papyri).12

It is also very likely that the cases of the private monasteries differed: their representation was very likely vested with their owners,13 founders or the guardians appointed by them.14 This all calls for a fresh thorough examination of the papyri—as new important material has become known since the publication of Artur Steindwenter’s classical studies—to confront the legal theory with the practice. At any rate, seeing the formulations in *P.Oxy.* LXIII 4397, it is obvious, that only the prior and the *oeconomus* acting jointly validly represented Apa Hierax.

Now how is it possible that Theophilos, who may have been one of the brethren of Apa Hierax—the document, referring to him as already dead styles him as τὴς εὐλαβείας μνήμης—but did not in fact need to have been a monk at all, contracted legally binding actions on behalf of the monastery operating with certainly more than petty sums of money? In the later course of events he may have

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9 Ed. Crum and Riedel 1904: 40. On the authorship of the canons, which may actually be rightly attributed to Athanasius, see pp. XX-XXVI. Similar provisions may be found, e.g. in *Can.* 26 of the *Council of Chalcedon*.

10 A mention of an abbess in Ch. 5 and 6 of the *Novella* 7 (C.E. 535) shows that, in legal practice, nuns were by no means deprived of the capacity to engage in legal transactions, see also, *supra*, ft. 6

11 And so the *Novella* 7 provided in chapter 5 that a contract of sale of ecclesiastical property was void, but that the purchase price might be demanded from the steward (*oeconomus* = οἰκονομός), abbot or abbess (*abba, abbatissa* = ἡγουμένος, ἡγούμενη), or head of the religious institutions. Similarly, chapter 6 introduced personal liability of the persons in charge of a religious institute for an illegally made pledge of particular objects belonging to it (in case of a monastery it is *praesul* = ήγουμένος). Finally, chapter 12 of the same *Novella* encumbers the abbot, steward and head of the religious house with all the expenses resulting from acquiring by whatever means a sterile field.

12 On *dikaion* and *diakonia* with examples, see Steinwenter 1930 at 30-34, 39-40 and Steinwenter 1958 at 26-27.

13 Just as the clauses of Apa Abraham’s will show: his heir, Victor obtained unhindered powers to do anything he wished with the monastery as it became his sole property (see ft. 2 above and *P.Lond.* 1 77 (pp. 231-236), ll. 25-40, especially 35-45, where the contents of the full property rights are described). See also, Steinwenter 1932, pp. 55-64, and Steinwenter 1930 at pp. 8-19.

14 As in the case of the monastery founded by Apollos of which Dioskoros was to become *curator* and *phrontistès* “by the order of his father”: cf. *P.Cair.Masp.* i 67096 (C.E. 573/4) where he co-represents the house together with its *oeconomus* Enoch. On this establishment, see MacCoul 1993: 21-63. Cf. also Steinwenter 1930: 21-23 and Steinwenter 1958: 28-29.
become the steward of the monastery—the text describes him as ὁ ἱκονομισμένος in the l. 96—but at the beginning he is significantly not titled at all.

Another question goes beyond the legal stratum of the text: what was he actually doing in Constantinople with such a handsome amount? What made the pious monastery send its envoy to the capital? The original purpose of the journey cannot have been lending money to Diogenes (he could have transferred the funds back home). A hint on this issue may be given by the fact that Theophilos was at least twice in the Capital: first when he lent Diogenes his money and a second time to negotiate with Fl. Strategios the monastery’s claims to the mortgaged plot of land (cf. ll. 66-75), once the feebleness of Diogenes’ securities had been discovered. This may mean that Theophilos was a regular envoy of Apa Hierax, who would travel to the Bosporus, whenever there was a need to put in a petition at the imperial courts. He might have thus been the ordinary procurator of the monastery, a figure described in another digest concerning church persons, the Novella 123 (C.E. 546)—de sanctissimis et deo amabilibus et reverentissimis episcopis et clericis et monachis. Chapter 27 of this law foresees that whenever a monk or a nun, or a monastery is summoned to court pro qualibet pecuniaria causa sive publica sive privata (i.e. the house) he or she shall be represented by an attorney, either the general procurator of the monastery or his/her own.15 If Theophilos was indeed an ἐντολεύς τῶν μοναστηρίων, he was probably empowered to use the wealth he was carrying. Such a supposition may also explain well why he had this enormous sum of money with him. Veering into speculations, we might imagine that the gold might have been intended to influence gently decision-making process in the Capital, perhaps to push forward any possible petitions he was carrying for the imperial justice. In this instance one immediately recollects the gifts advocating the cause and supplications of the Alexandrian patriarch Cyril at the Capital. A scrupulous list of the presents distributed by his envos among the courtiers of the pious empress Pulcheria less then a century before our settlement sheds light on the ways of imperial justice.16

Returning to the original contract that gave rise to the later settlement, we encounter the issue of the interest. The parties agreed on six per cent per year, the highest amount legally executable at this time, since Justinian set the admissible level of interest at 4% for illustres, at 8% for professional bankers, and at 6% for all others in 528 (CI 4.32.26.2).17 We are used to looking for abnormalities in the papyri rather than for confirmation of the imperial legal norms, as presented by our document. The correct 6% may, however, have been due to the execution of the original loan documents in Constantinople. It is still interesting, as Tomasz Markiewicz’s research has shown, that loans given in the ecclesiastical milieu only rarely stipulate for interest. Obviously, one cannot exclude the possibility that the interest, even higher than the admissible one, was hidden in the initial loan capital (just as it most probably

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15 There is an interesting difference between the Greek and the Latin version of the constitution. The Latin allows a monk to per se sive per procuratorem monasteris causam agere. The Greek adds to this a personal attorney of the monk: δι’ ἐκατόν ἐπὶ δι’ τῶν ἐντολεύων τὰς ἴδιας ἢ τὰς τοῦ μοναστηρίου πράττειν.

16 See Batiffol 1911: 247-264. The list was contained in the letter sent by Epiphanius, archdeacon and synkellos of Cyril to Maximianus, archbishop of Constantinople. The epistle, which purpose was to stimulate actions of the persons who had received gifts, but apparently wanted even more, makes part of Synodicon adversus tragoediam Irenaei, and was probably translated from Greek into Latin by its anonymous 6th-century compiler (ibidem: 248 and the ft. 2). Batiffol estimated the value of the presents as exceeding one million francs of the time (256).

17 See also Bonini 1968: 259-263.
happened in the case of loans documented in the *Tabulae Pompeianae Sulpiciorum*.18 In any case: the general lack of interest is not without reason: already at the time of the Council of Nicea, the church law was very negative about *usura*. The seventeenth canon of this assembly openly prohibited the clergy to lend money for profit.19 One might argue that canon seventeen did not specifically address monks or monasteries, but its wording is on the other hand rather general. Moreover, among the brethren of Apa Hierax there must also have been ordained clerics (like Joseph the prior). The repeated prohibition for clergy of usury—both on the canonical sources and the pastoral writings—of lending money at interest by clergy clearly shows that the practice was far from the gospel example found in *Luke* 6.34-35.20

This striking contradiction between the canonical norms and the loans granted by Apa Hierax might be mitigated by the fact that the interest was to be paid from the annual revenue and fruits of the irrigated land pledged by Diogenes and not in money. The parties may have styled their pledge as antichretical in order to circumvent the obvious prohibition, and perhaps they did not see it as contrary to the ecclesiastical norm. Which leads to another problem. Let us firstly recall that in this very late period the classical terminological distinction between *hypotheca* (mortgage, conventional pledge, or to use the German legal terminology for obvious reasons closer to the Roman one: *Hypothek*), and *pignus* (corporal pledge, *Besitzpfand*) had disappeared in legal practice: the documents use these terms synonymously.21 Now, the construction of *antichresis* (a pledge with the right to use the pledged thing vested with the pledgee) must obviously involve a transfer of possession of the thing pledged to the creditor.22 And in fact our papyrus uses in l. 20 the verb λαμβάνει, by which we should understand that the plot of land was really handed over to the monastery. But apparently it was not, because we learn from the continuation of the story that the plot later entered the property of Diogenes’ other creditor, Fl. Strategios II.

This circumstance brings about the issue of the effectiveness of the securities in the original loan deeds between the Monastery and its debtor, and, more generally, guarantees attested in the papyri, particular pledges and *hypothecae generales*. Given the commonness of the latter (it is, for instance, a standard burden introduced in marriage documents on the husband’s part to secure the rights of the wife to her dowry, it also normally appears as a security in settlements of claims), one may strongly doubt its real efficacy. We also realise how widespread general mortgage on all property was through the fact that Fl. Strategios made several of these with Diogenes (l. 50). This feeling is not altered even by the fact that in the actual case of Fl. Strategios this clause really worked at the end of the day (see below). Reading the legislative sources lends credence to this sensation: the provision of chapter 6 of


19 An indirect proof of such practices in Byzantine times may be found in the Justinianic constitution imposing limits on interests., See Ci. 4.32.26.4, where the legislator states that any illegally extracted interest should be counted as already repaid capital.

20 Of the same opinion is, e.g. Gaudemet 1958: 581.


the *Novella* 7 wherein a corporeal pledge of church property is prohibited and—if attempted—declared void, but a *hypotheca generalis* is still admitted. Seeing that the scope of the norm was protection of the ecclesiastical and monastic property, we observe that the legislator himself seems to have associated little risk with this kind of security, at the same time recognizing the efficacy of the corporeal pledge.

Returning to the monastery’s loans, we arrive at the point at which, upon Diogenes’ death, the debts were still not repaid (II. 45-66). At that moment the monks learnt that their debtor was not only insolvent, but that he also had other creditors whose rights were secured by prior mortgages. Apparently the most eminent was Fl. Strategios II, who started legal actions wishing to sue Diogenes’ heirs in order to get his money back.

Once the presumptive *ab intestato* heirs of Diogenes, his brother Apphaus and sister Klematia, had renounced the succession, Fl. Strategios had to find other ways to get his obligation fulfilled. Lines 58-59 describe how he did it: in absence of the heirs, he had to petition to own the inheritance of Diogenes’ property by the right of the mortgages (ἀπορία κληρονόμου αἰτήσας τὴν δεσποτίαν λαβέν τῷ δικαίῳ ὑποθεκών). It seems that Strategios applied a mixture of two legal procedures. Firstly, as there were no heirs of his debtor, he probably asked for *missio in possessionem* of the deceased debtor’s estate.23 Having obtained it, he should have tried to sell it (*venditio bonorum*) and get satisfaction from the price obtained. This, however, did not happen—either he did not attempt it at all, or he was not successful, as the papyrus tells us that he was compelled to “petition for ownership.” It is very likely that what is meant here is the procedure known as *impetratio domini.*24 This kind of pledge execution was reformed by Justinian by Cl. 8.33.3 (C.E. 530): the creditor—unless the original loan contract secured by pledge foresaw a different way of its execution—having obtained the possession of the pledge was supposed to try to sell it for a period of two years, in case no possible purchaser could be found, he could petition the emperor to obtain ownership. And so the imperial privilege, even more likely to have been granted considering the social position of Strategios, made him the rightful owner of all of Diogenes’ property, included of course the plot of irrigated land pledged to the monastery.

Apparently the monastery was seeking its own right at the same time. The monks must have realised quite quickly the successful efforts of Fl. Strategios, and so they sent Theophilos again to Constantinople in order to sue Strategios for (at least) the irrigated land. The monastery’s envoy may have started a judicial proceeding—the formulation of the renunciation clause, that the monks had “learnt from accurate laws they had no right or action on mortgage” seems to allude to a failed trial, cf. II. 170-172. And his claims were refused (II. 66-82): a simple and ancient rule of law concerning pledges was applied: *prior tempore, potior iure.* Later security cedes before the earlier one (II. 82-86). Theophilos at that point changed his strategy abandoning the legal way (useless as he well knew—he realised that monastery had no claim—*οὐδεμία δικαιολογία*—to the plot) and setting to appeal to Strategios’ religious and pious consciousness. Curiously, the consular did not want to hand the contestable plot of land over to Apa Hierax, he rather preferred paying off Diogenes’ debts in money. We may only speculate to the reason—perhaps the value of the field was much higher than the original

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23 The procedure was originally described in the rubric *cui heres non extabit of Edictum perpetuum* (Lenel 1927, § 207), cf. D. 40.5.2.4. D. 42.6.6 and G. 3.78.

24 See Kaser 1975: § 252 1c.
debts that it secured. And so Strategios ordered people managing his estates to return the money to the monastery. They were, however, only ready to pay one pound (72 solidi) of gold. Interestingly, they did not give it to the monastery but deposited it with the Oxyrhynchite zygotastes, Serenos, apparently creating a *depositum irregulare*: the money was to be lent at profit to provide income for the monastery until a suitable plot of land was found, once it was found it was to be bought and transferred to the monastery. Just to complicate the story further: both Serenos and Strategios II died (the latter before 543)\(^2\) and the remaining fifty-eight *solidi* were repaid before any suitable estate was found.

The monastery managed to get seventy-two *solidi* from Serenos’ heirs and again sent an envoy to the capital to ask the present head of the house, Fl. Apion II, for the rest of the debt. He, acting together with his mother Leontia as curator, ordered his people to return the remaining part of the money. A small note on Leontia’s role in the document may now be appropriate. Contrary to what the editor of the document says, her son was already a major, as every other Roman male *sui iuris* from the age of fourteen. The presence of the curator and her approval for the act was due to the ancient rules introduced by the *Lex Laetoria* which allowed Romans younger than twenty-five (*minores vigintiquinque annos*) to evade the effects of their legal actions should they turn out to have been concluded to their detriment.\(^3\) The application of *Lex Laetoria* means that a curator had to approve only of dispositive transactions of his or her ward. A ratified dispositive act of a *minor viginti quinque annos* got full legal efficacy. On the contrary, no authorisation was needed for any acquisitive acts—as long as the person in question was older than 7. No conclusion may therefore be drawn concerning the age of Fl. Apion II from the fact that in *P.Oxy. XVI* 1985, of 9th October 543 he acted alone.\(^4\) This document is a simple receipt addressed to him in which someone confirms having received various tools. There was no need to think of evading the legal results of this act.

Back to the Apa Hierax debt. So, finally the monks got their money back, and moreover in ready coin and not, as Strategios originally wanted, in a kind of a trust to buy a new plot of land. Theodoros and Ioseph stressed that they were receiving money back only because of the piously-disposed will of young Apion and his mother, and before them of Strategios, who had all acted ευσεβείας χάριν. What follows, is basically the clause of the final renunciation of any claims to the plot of land presently belonging Fl. Apion’s estate. Its format is typical: the clause excludes any possibility of any further controversy conducted both in court and out of it. It further states that the parties abandoned the right to petition the emperor and would not try to seek justice in the holy church (II. 168-169).\(^5\) This clause is strengthened by a penal stipulation (I. 180), and its fulfillment secured by a general mortgage on the monastery’s property (II. 183-185). All the parties involved clearly stated that earthly securities ceded before pious reasons. Still, the settlement of claims was made, probably to prevent any future legal (even if not very well founded) claims on the part of the monastery.

A final and conclusive point that has to be briefly considered here is the legal form of the present deed. In terms of legal anthropology this conflict was resolved through a negotiation, as—it seems at least—the parties, unlike many other late Antique settlements, were not aided by intermediaries.\(^6\) This

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\(^2\) See Mazza 2001: 59.

\(^3\) Various studies have been conducted on the topic, but see from the most recent works Francesco Musumeci, (Musumeci 2001; Musumeci 2004) and the literature therein cited.


\(^5\) Cf. a very similar formulation in Apa Abraham’s will: *P.Lond. I* 77, II. 45-47.

was probably due to the great discrepancy between their positions, and the factual feebleness of Apa Hierax’s argumentation. The monks were only petitioners from the moment they had realised they had no legal claim to the mortgaged land.

Settlements of claims or *transactio*nes become extremely common in the late Antique papyri as a way of conflict resolution. At the same time we have very few testimonies of the application of civil judicial procedure. Scholarship has formulated various hypotheses explaining this phenomenon. The most extreme opinion, postulating that civil courts ceased to exist in the course of the sixth century C.E., has justly been proven to be too far-fetched. It is much more likely that the rise of transactions was due to a mixture of circumstances: settlements may have seemed to the contestants quicker, easier and more durable, and above all cheaper than civil judgments. Many settlements were reached within families (especially in litigations resulting from hereditary disputes), and a few involve people connected to the church. In both of these contexts an out-of-court conflict resolution may have been chosen because of its more discreet character. Finally, a settlement was the only way to achieve results in discordance with the statutory law. This was precisely the case of Apa Hierax’s conflict with the *domus gloriosa* of Apiones, where pious inclination prevailed over earthly guarantees.

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