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## Contracts in Athenian Law

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CONTRACTS IN ATHENIAN LAW

by

ELLEN KNOFF

A dissertation submitted to the Graduate Faculty in Classics in partial fulfillment of the requirements for the degree of Doctor of Philosophy, The City University of New York

2005

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This manuscript has been read and accepted for the  
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Abstract  
CONTRACTS IN ATHENIAN LAW  
by  
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This dissertation investigates contracts and the contractual language of 4<sup>th</sup> century B. C. Athens. Its main source is Attic oratory although there is some discussion of inscriptions. Since no ancient Greek word has the same range of meanings as the English word ‘contract’, the first task is to consider the characteristics of transactions that will count as contracts in the study and to define the term. After giving criteria for identifying contracts, the study examines Greek words whose dictionary definitions include the word ‘contract’. Part I surveys the terms, *ὁμολογία*, *συγγραφή*, *συμβόλαιον* and *συνθήκη*, discussing their senses in oratory and their legal significance in Athenian law. When a word can denote a written document, the study distinguishes between this concrete sense and the abstract reference to the idea of contract without the writing.

Part II of the dissertation examines the features of particular Athenian contracts and compares them to Roman counterparts. Avoiding a modern categorization of the transactions, I group them instead in Greek word groups or by Roman contract for the sake of comparison. I discuss loan transactions, security arrangements associated with other contracts, partnership, the complex of arrangements associated with the words

μίσθωσις and μισθόω, deposit and sale. All of the contracts studied involve economic relationships. I find that the Athenians had many of the same categories of contracts that the Romans did, but the Romans distinguished more types within some of the categories.

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## Table of Contents

<b>I. INTRODUCTION .....</b>	<b>1</b>
1. THE IDEA OF CONTRACT .....	1
2. ROMAN CONTRACTS .....	2
3. MODERN LEGAL SYSTEMS .....	5
(i) Introduction .....	5
(ii) French Civil Code .....	6
(iii) 19 <sup>th</sup> Century British Common Law: The Importance and Limitation of Agreement .....	8
4. APPROACH TO ATHENIAN CONTRACTS .....	10
(i) Definition of the Term ‘Contract’ .....	10
(ii) Dispute about the Status of Laws in Ancient Athens .....	13
(iii) Contracts and the Economy .....	14
(iv) Methodology .....	17
<b>II. WORD STUDIES .....</b>	<b>20</b>
1. ‘Ομολογία .....	20
(i) Overview .....	20
(ii) Contracts .....	20
(iii) Statewide or Interstate Agreements .....	25
(iv) Admission of Damaging Information .....	28
(v) Observations on Usage .....	29
2. Συγγραφή .....	30
(i) Introduction .....	30
(ii) Oratory .....	31
A. Maritime Commerce .....	33
B. Outside of Maritime Commerce .....	42
(iii) Conclusions .....	49
3. Συμβόλαιον .....	51
(i) Introduction .....	51
(ii) Συμβόλαια Described in Detail .....	51
A. Outside of Maritime Commerce .....	51
B. Maritime Commerce .....	69
(iii) Passing References to συμβόλαια .....	82
A. Andocides 1, <i>On the Mysteries</i> .....	82
B. Demosthenes 18, <i>On the Crown</i> .....	83
C. Demosthenes 47, <i>Against Evergus and Mnesibulus</i> .....	83
D. Isaeus 4, <i>On the Estate of Nicostratus</i> .....	85
E. Isaeus 5, <i>On the Estate of Dikaiogenes</i> .....	86
F. Isocrates 18, <i>Paragraphe against Callimachus</i> .....	87
G. Isocrates 20, <i>Against Lochites</i> .....	88
H. Lysias 5, <i>For Callias</i> .....	89
I. Lysias 12, <i>Against Eratosthenes</i> ; Isocrates 24, <i>Plataicus</i> .....	89
J. Lysias 30, <i>Against Nicomachus</i> .....	90
K. Isocrates’ Treatises .....	91

(iv) Conclusions.....	100
A. Συμβόλαια Described in Detail.....	100
B. Passing References to συμβόλαια.....	101
C. Public / Private Distinction.....	103
D. Location of the word συμβόλαιον in Orations.....	104
E. Notes on the Greek.....	105
4. Συνθήκη / συνθήκαι.....	106
(i) Introduction.....	106
(ii) Contracts.....	106
A. [Demosthenes] 25 and Lycurgus 1: Hypothetical and Concrete Examples.....	107
B. Συνθήκαι connected with the Cause of Litigation.....	108
C. Συνθήκαι not the Cause of Litigation.....	119
(iii) Treaties.....	130
(iv) Athenian Amnesty Agreement.....	131
(v) Figurative Uses of the Word συνθήκαι.....	131
A. Hypereides 3, <i>Against Athenogenes</i> .....	132
B. [Demosthenes] 25, <i>Against Aristogeiton A</i> .....	132
C. Dinarchus 1, <i>Against Demosthenes</i> .....	133
D. Aeschines 2, <i>On the Embassy</i> .....	134
(vi) Conclusions.....	135
5. CONCLUSIONS OF WORD STUDY.....	137
<b>III. CONTRACTS.....</b>	<b>138</b>
1. LOAN.....	138
(i) Roman Law.....	138
(ii) Δανείζω.....	138
(iii) Ἔρανος.....	142
2. ACCESSORY CONTRACTS.....	145
(i) Personal Security: ἐγγύη.....	145
A. Roman Law.....	145
B. Ἐγγύη as Personal Security between Private Individuals.....	146
C. Ἐγγύη as a Personal Guarantee to the State.....	148
D. Athenian Betrothal.....	150
E. Conclusion.....	151
(ii) Real Security.....	151
A. Real Security in Roman Law.....	151
B. Real Security in Athens.....	152
3. Κοινωνία.....	161
(i) Roman <i>societas</i> .....	161
(ii) Athenian κοινωνία.....	161
(iii) Conclusion.....	164
4. Μίσθωσις/μισθόω.....	165
(i) Roman Classification of Contracts.....	165
A. <i>Locatio conductio rei</i> .....	165

B. <i>Locatio conductio operarum</i> .....	165
C. <i>Locatio conductio operis (faciendi)</i> .....	166
(ii) Athenian Examples of <i>locatio conductio rei</i> .....	166
A. Overview.....	166
B. Objects Leased for Short-Term Usage .....	167
C. Equipment for a Trierarchy .....	168
D. Boats and Ships.....	169
E. Businesses.....	170
F. Dwellings.....	171
G. Land .....	172
H. Μίσθωσις by Official Groups.....	174
I. Μίσθωσις οἴκου .....	179
(iii) Athenian Examples of <i>locatio conductio operarum</i> .....	186
A. Overview.....	186
B. Prostitution .....	187
C. Hire of Flute Players .....	188
D. Agricultural Work.....	189
E. Actor’s Assistant .....	190
F. Hire of Trainer of Tragic Choruses by a Choregus .....	191
G. Hire of mercenaries.....	191
H. Hire of sailors, rowers and soldiers for a trireme.....	192
I. Hire of peltasts and ship’s crew.....	194
J. Illegal Payments .....	194
K. Lease of a Trierarchy .....	197
(iv) Athenian Examples of <i>locatio conductio operis</i> .....	200
5. Παρακαταθήκη .....	201
(i) Roman Law .....	201
(ii) Παρακαταθήκη: Physical Deposit.....	201
A. Outside of Banking .....	201
B. Banking .....	203
(ii) Παρακαταθήκη: Metaphorical Usages.....	206
A. Persons or Ideas to be Guarded or Protected .....	206
B. Guarantees.....	207
(iii) Conclusion .....	208
6. SALE .....	209
(i) Roman Sale .....	209
(ii) Athenian Sale .....	209
7. CONCLUSIONS OF CONTRACT STUDY.....	214
<b>IV. CONCLUDING REMARKS.....</b>	<b>216</b>
<b>BIBLIOGRAPHY.....</b>	<b>218</b>

## I. Introduction

### 1. *The Idea of Contract*

This dissertation is a study of contracts in Athenian law of the 4<sup>th</sup> century B. C. It focuses on contractual transactions in the speeches of Athenian orators since orations tell us much of what we know of Athenian law. There is no single term for ‘contract’ in ancient Greek, however, and words that might have a contractual significance also have other uses. As a result, while it is fruitful to investigate the usage of words that scholars have identified as contractual, one should not rely on Greek words alone to identify contracts. Having an operational definition of ‘contract’ would give us a way of identifying contracts in orations.

Atiyah (1990, 1) remarked in an essay on contracts in common law that “definitions of legal concepts are today somewhat unfashionable.” A living legal system develops and grows, and transactions may become contracts regardless of whether they fit a particular pattern or theory.<sup>1</sup> In a modern system, it may not be useful to define the term ‘contract’ other than to say that a contract is one of those entities defined as such by contract law. While “there have been many definitions of the term contract” (Coppola 1971, 8), some argue that it is impossible to define,<sup>2</sup> or that it cannot be defined without reference to contract law (Atiyah 1990, 1).

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<sup>1</sup> Coppola (1971, 8) remarks that “principles of law were not formulated to fit existing definitions, but rather to reach just and equitable results in the great variety of disputes which have come before the courts.”

<sup>2</sup> Fried (1981, 3) lists some of them.

We cannot take this approach in the case of ancient Athens, however, for we have not extracted from our sources a body of ‘Athenian contract law’, legally recognized and separate from other types of law.

What we find in the oratory of courts are descriptions of transactions that resemble modern contracts. Therefore, starting with a conception of contract, this study will identify a body of ‘contracts’ in Attic oratory and investigate its properties. As a preliminary, I survey the treatment of contracts in Roman and some more modern legal systems. Based on an understanding of the idea of ‘contract’, we will construct an operational definition for identifying contracts in Athenian oratory and criteria for applying it.

## **2. Roman Contracts**

The word ‘contract’ derives from the Latin, *contractus*. In the textbook of Roman law written by Gaius in the 2<sup>nd</sup> century A. D., a *contractus* is a kind of obligation (*obligatio*), i.e. a relationship between two parties which entails rights and duties. The textbook distinguishes two broad categories of *obligationes*, those arising *ex delicto* (by ‘delict’, roughly, a wrongful act) and those arising *ex contractu* (by ‘contract’) (*omnis enim obligatio vel ex contractu nascitur vel ex delicto*. Gaius 3.88).<sup>3</sup> Then, it mentions the ways that contracts are formed and types of contract for each method.

Of the contracts listed, the *stipulatio*, goes back at least to the time of the Twelve Tables (~450-51 B. C.), regarded by Romans as the foundation of their legal system. In the *stipulatio*, a type of formal questioning and answering, it was the ritual that created a

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<sup>3</sup> In my discussion of Roman contracts, the word ‘contract’ refers to an obligation *ex contractu*.

legal obligation of one party to another. In the oldest form of *stipulatio*, one party asked the other to do something using the word (*spondes*) “do you solemnly promise to ...?” The other replied in parallel words including (*spondeo*) “I solemnly promise.” “The validity of a stipulatio, like that of any formal act, came from its form and not from the agreement which the form no doubt embodied.” Nor was the existence of agreement relevant in a suit arising from a *stipulatio* (Nicholas 1962, 159-160). It appears that originally neither fraud nor threat of physical harm invalidated it (Buckland 1966, 415-6). Consequently the intent of the parties would be irrelevant. By the 1<sup>st</sup> century B. C., however, the Praetor gave a defense based on fraud.<sup>4</sup>

The *stipulatio* created a duty of one person to another, but the early Romans probably did not distinguish different causes of obligation as contractual, delictual, or of some other kind. There may have only been the idea that one person owed the other a debt without regard to whether it was due to a formal act such as *stipulatio*, a wrongful act such as theft, or some other reason (Nicholas 1962, 159).

Gaius distinguishes four methods of making a contract. The *stipulatio* was a contract “by the uttering of formal words (*verbis*).” There were obligations created by writing in an account book (*litteris*) of which we know little (Watson 1985, 20). Obligations *re* (‘by means of a thing’) arose through the transfer of an object or money from one person to another. One such obligation, the *mutuum*, existed by the 3<sup>rd</sup> century B. C. (Watson 1985, 6). Gaius considered intent in determining whether an obligation *re* was a contract.

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<sup>4</sup> During the time of Cicero, the Praetor created an (*exceptio doli*) (Nicholas 1962, 22). (The main function of Praetors was administration of justice. After 242 B. C. Rome had more than one. My concern is only with the *praetor urbanus*, who had jurisdiction over civil law for cases involving Roman citizens.)

Therefore the *mutuum*, a kind of loan, was a contract, but other obligations *re* were not. If one person made a payment to another “in the mistaken belief that it is owing,” this created an obligation *re* but not a contract since the purpose of the payment was to end a legal relationship not create one. “The emergence of agreement as the common factor of contractual obligations causes him to distinguish the contractual from the non-contractual obligation *re*” (Nicholas 1962, 168).

The obligation *consensu*, ‘consensual contract’, did arise purely through agreement (*nudo consensu*) and required no formal act or transfer of property (Nicholas 1962, 171). It was limited, however, to four types. All had appeared by the 2<sup>nd</sup> century B. C. (Watson 1985, 6)—*emptio venditio*, “sale for a price”; *locatio conductio*, a “contract of letting and hiring for a price”; *societas*, partnership; and *mandatum*. This last was the agreement to perform a service gratuitously, for example to lend money to someone. The first three kinds of contract were bilateral, that is each party acquired rights and duties. The double names of the first two kinds reflect that each party had different rights and duties (Buckland 1966; 481, 498).

Another class of contracts, termed ‘innominate’ by modern writers, appears to have developed later than the contracts *re*, *verbis*, or *consensu*. As two-sided agreements outside of the usual list of contracts, their legal treatment demonstrates “a new principle.” Legal protection is provided for bilateral agreements carried out on one side (Buckland 1966, 521). The jurist, Paul, categorized these contracts in the 2<sup>nd</sup> or perhaps 3<sup>rd</sup> century A. D as *do ut des* (‘I give in order that you give’), *do ut facias* (‘I give in order that you do’), *facio ut des* (‘I do in order that you give’), and *facio ut facias* (‘I do in order that you do’) (Watson 1985, 25; Buckland 1966, 523). There is disagreement

about the evolution and the precise legal procedures supporting the innominate contracts. *Permutatio*, the exchange of one object for another, is one of the more common (Buckland 1966, 521-23).

When the idea of contract arose in Roman law as a separate cause of obligation (or whether it was present at the time of the Twelve Tables) is not clear. The *stipulatio*, later at least regarded as a contract, created a duty in one party through a formal act. Initially intent was immaterial. Later it became more important as pleas of fraud arose, and Gaius clearly considers intent in classifying obligations as contractual. Later legal recognition was accorded agreements carried out on one side. Although intent and agreement were increasingly important factors in determining the legal recognition of a contract, serious agreements outside of the recognized types were not contracts. For example, an agreement to sell something at a reasonable price was not a contract since the contract of sale required a specific price (Nicholas 1962, 165). Watson argues that legal tradition must have been an important influence on the types of contracts that did arise. With *stipulatio* as the original contract, new contracts developed when the original types proved too awkward (Watson 1985; 6, 26).

### **3. Modern Legal Systems**

#### **(i) Introduction**

After the fall of the Roman Empire in the west to the Visigoths in the 5<sup>th</sup> century A. D., the new rulers produced certain legal works in a Roman style. Of note is



the *Lex Romana Visigothorum* of Alaric II (A. D. 506), which contained the writings of Roman legal scholars and some imperial *constitutiones* (i.e. legal pronouncements of Roman emperors). It is disputed whether this work was intended only for Roman subjects or for all residents of the area (Watson 1985, 81-83), but because of legal borrowing, remnants of Roman law survived in Spain, southern France, and Italy (Nicholas 1962, 48; Watson 1985, 93).

Two prevalent legal systems today are the common-law systems based on English common law and the civil-law systems, developed partly from the study of the Roman *ius civile*. The latter are employed by much of continental Europe. Common law and civil law have spread outside of Europe, whether as a result of domination by a European country, or because the civil codes of such countries as France and Germany served as models for later legal codes (Nicholas 1962, 51-52).

## **(ii) French Civil Code**

The development of contract law in Medieval Europe was connected with the growth of commerce. Merchants developed their own practice for handling transactions, a *ius mercatorum* that was “flexible and informal,” and by the 12<sup>th</sup> century A. D. there were specialized merchant courts (von Mehren 1956, 118-19).

Western Europe took a renewed interest in Roman law in the 12<sup>th</sup> century, first of all at Bologna, where Irnerius lectured on Justinian’s *Corpus Iuris Civilis*<sup>5</sup>. Legal and moral scholars began to debate the legal basis of agreements. Scholars of the canon law

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<sup>5</sup> The *Corpus Iuris Civilis*, compiled (A. D. 533-34) under the auspices of the Byzantine Emperor, Justinian, is the major source for Roman law. Gaius’ textbook was only known to survive in fragments, until Niebuhr discovered it in a palimpsest underneath a text of Jerome in 1816 (Nicholas 1962, 35).

of the church wanted to find a legal basis for the church doctrine, *pacta sunt servanda*. If all agreements (*pacta*) regardless of form ought to be observed, yet, for a sound legal defense, they needed some reason (*causa*). The canonists adopted the treatment of innominate contracts in Roman law. They concluded that a *pactum* between two parties, executed on one side created a legal obligation (von Mehren 1965; 122, 135 n.48).

Later, natural-law philosophers and jurists debated whether a formless agreement, could indeed give rise to a legal obligation. Some observed that merchants concluded binding contracts without a special form. Others felt that, as with Roman innominate contracts, an agreement had first to be executed on one side. Finally, the idea of formless contracts won out in the 18<sup>th</sup> century (von Mehren 1956, 124-13).

The legal and moral ideas of scholars of previous centuries paved the way for the treatment of contract in the French Civil Code. It replaced France's many regional legal systems and was intended as a unified law, written in language accessible to the ordinary citizen (Schwartz 1956, vii; Tunc 1956, 19-20).

The Civil Code (also called Code Napoléon after 1807) was promulgated in 1804. The Code made it a basic rule of contract that "agreements legally formed take the place of law for those who have made them" (Pound 1965, 161). Parties created a contract by "agreeing to a proposition," but, to be legally effective, certain types of agreement required proof in writing (von Mehren 1956, 111; von Mehren 1977, 909), for example, for non-commercial agreements involving more than a certain amount of money (von Mehren 1956; 115, 132 n.17). Proof in writing might be regarded as a necessary form for the contract, but the basis for determining whether parties made a contract is the

question of whether they had an agreement (von Mehren 1956, 111-12).

### **(iii) 19<sup>th</sup> Century British Common Law: The Importance and Limitation of Agreement**

As in Roman law, in common law today, a contract is a kind of obligation, and the law of contract involves “self-imposed” obligations (Atiyah 1989, 1-2). In Gaius’ textbook of Roman law, there is a distinction between obligations arising from contract and those arising from delict. In common law, however, the corresponding modern distinction between contract and tort “was only slowly evolving in the seventeenth and eighteenth centuries.” The idea “that the law of contract is concerned with duty created by act of | the parties, and the law of tort with duties imposed by law” was only in the process of development (Atiyah 1979, 143-4).

The 18<sup>th</sup> century was a transitional period. Jurists advanced competing theories of contractual liability. At a time when wealth was regarded as consisting mainly in property, especially landed property, the law of property was of much greater importance than the law of contract. As new kinds of wealth arising from capitalism became important towards the end of the century, “the significance of property rights changed from their use-value to their exchange-value.” The law of property yielded its central position to the law of contract as part of this development (Atiyah 1979, 102-3).

The rest of this discussion will focus on 19<sup>th</sup> century common law’s development of the law of contract and the role of agreement in contracts. Under the influence of the current *laissez-faire* philosophy, judges took the approach that the law should interfere with people as little as possible. ‘Freedom of contract’ was the ideal, where freedom of

contract meant that parties could mutually agree to whatever terms they pleased with a minimum of government interference (Atiyah 1989, 10). Freedom of contract reflected the idea that contracts are “based on agreement” and that contracts are “the outcome of free will.” It was also part of this ideal that parties were free to choose whether to enter a contract, what contracts to enter, and the terms of the contract (Atiyah 1989, 13-14).

In judging disputes, jurists considered agreement of paramount importance. They were reluctant to impose on parties obligations to which they had not agreed. They took the approach, in deciding cases, that they were merely working out the implications of the agreement that the parties had themselves made. This process of working out the implications of different kinds of agreements led to an increasingly complex legal system in which the terms of contracts less and less reflected the mere intention of the parties. The details of standard contracts became regularized (Atiyah 1989, 12, 15-16).

While agreement was important in creating a contract, increasingly, jurists applied an “objective” standard to determine whether agreement had in fact occurred. There was *objective* agreement between two parties if they would have seemed to agree to a reasonable bystander. With the objective approach, little attempt was made to determine the true intents of the parties (the ‘subjective’ approach). This development also limited the extent to which contracts were based on true agreement (Atiyah 1989, 15).

There had never been complete freedom of contract. The ideal that government should put no limitation on contracts was to some degree opposed to the ideal that a contract should be based on agreement. The concern of jurists deciding contract disputes was generally only whether the parties had in fact entered into a contract not whether the contract was in their interest. Opposing this, a party who had understood a dangerous

proposition would presumably not have agreed to it. More seriously, no account had been taken of the possibly great inequalities that might exist between the parties to contracts as, for example, between employee and employer.

The existence of competition, however, did allow consumers a choice with whom to do business. The growth of monopolies by the end of the 19<sup>th</sup> century robbed consumers of this choice especially in contracts for necessities. Atiyah describes the period from 1870-1980 as a time of decline in the freedom of contract. Laws began to limit the terms of contracts of sale or employment. For example, the Truck Act protected employees from payment in kind rather than cash. The details of standard contracts were regularized, and today the use of printed forms also means that a person may choose whether to sign but may not generally influence the terms of the agreement. Later, in the 20<sup>th</sup> century, legislation for consumer protection also limited possible contracts of sale (Atiyah 1979, 10-16).

#### **4. Approach to Athenian Contracts**

##### **(i) Definition of the Term 'Contract'**

In early Roman law, a *contractus* was a way that two parties could create a legal obligation between each other. Legal theory and precedent created by the Praetor later created a system that took the intent of the parties into consideration and considered whether the contract was entered in good faith. Agreement by itself did not create a contract. In modern systems such as civil law and common law, agreement is theoretically necessary for most contracts, but there may be objective rules for

determining agreement and formalities to be followed. In common law, for example, offer and acceptance may indicate agreement and the contract may be thought of as a bargain involving “consideration” (Coppola 1971; 11, 61).

In the legal traditions considered, a contract creates a type of obligation that is protected by private lawsuits. It may be that only certain kinds of obligations have legal recognition as in the Roman system of contracts. The legal recognition of the obligation may be due to mere performance of a formal procedure as in the early *stipulatio*. Where contract law is more developed, the intent of the parties, or evidence of agreement, is usually considered relevant. There are various ways of approaching the question of intent or agreement, however. At one extreme one may try to determine whether the parties had basically the same idea in mind when they made their contract (the ‘subjective’ approach), or else an objective approach to determining agreement may be taken. There may be agreement to all the details of a contract separately or merely agreement to abide by the terms of a written document.

We now turn to ancient Athens. The purpose of considering other legal systems was to look at the varying ways that people have viewed contracts. We might summarize the ideas as follows:

*A contract* is an obligation between two or more parties entailing rights and duties. It is created by a transaction of the parties, and there is a legal remedy for its breach.

This formulation is a bit too general to be useful for identifying contracts in oratory. ‘Transactions’ are found in almost every sentence of writing. Obligations are of many kinds. Emphasizing the idea of intent and agreement makes for usable criteria.

**Definition** A contract is a legally defensible agreement.

In this definition the contractual status of a transaction depends on (1) whether it is an agreement and (2) whether it is legally defensible. Since we are concerned with Athenian contracts, necessary legal remedies should be in the Athenian legal system.

In the descriptions of oratory, it is usually easier to recognize the existence of an agreement or promise entailing future obligations than it is to determine its legal status. When an orator describes a transaction between several parties, if the transaction is not of an illegal nature and appears to create an obligation, we can count it as a possible contract. We might particularly note transactions described with words of promising or agreeing.

There are several possible ways of thinking about the legal status of such a potential contract. If we wanted to determine the likely outcome of a dispute in Roman law, we might study the details of the case, the relevant laws and interpretations of law established by Praetors in their edict, and the types of actions and defenses available to prosecute and defend the case. For Athenian law, we might look at relevant laws, but legal precedent did not set a standard way of dealing with ambiguities. The decision of a court did not have to be consistent with that of other courts deciding similar cases (Harris 2000, 26).

Possible ways of determining the legal status of a potential contract are (1) determining whether the transaction fits some reasonable interpretation of a law; (2) including as contracts those transactions argued to be such by a litigant, or (3) using the actual decision of a court in a case. After all, the *dikastai* were judges of law as well as

fact, and they had sworn to uphold the laws and decrees (MacDowell 1986, 44).

## **(ii) Dispute about the Status of Laws in Ancient Athens**

The notion of a legally defensible agreement depends upon the existence of an objective notion of legality in the Athenian legal system. Courts must respect the law. The importance of law to Athenian courts is a subject of dispute.

In the view of Todd (1993), laws were not of paramount importance to Athenian courts and they were in fact on an equal footing with other evidence that litigants might present. In particular, he argues that "a contract cannot be binding in the same way that a law cannot be binding: there is no way in which an Athenian jury can be forced to be so bound" (1993, 267). He downplays the idea of contract and, emphasizing procedural law over substantive law, argues that there do not appear to be separate legal procedures for most kinds of contract (the maritime loans are an exception). The δίκη βλάβης (suit for damages) could be used for breach of agreement, but it was also available for a wide range of other charges (1993, 268).

On the other side of the dispute are those who argue that forensic arguments are in fact based on the laws and not upon "general appeals to equity." Meinecke, for example, points to the concern of Demosthenes that laws be worded in a clear and unambiguous way (Harris 2000, 5). These scholars tend to downplay the possible ambiguities in Athenian laws (Harris 2000, 4). Harris (2000, 10), who advocates a middle course, argues that Athenian courts not only took the law seriously but "were reluctant to vote for



accusers who relied on new or unusual interpretations of the statutes.”

### **(iii) Contracts and the Economy**

This study of contract was in part motivated by a dispute over the nature of the Athenian economy. The development of contract law has often been linked to the growth of a society's economy and growth in the division of labor. Contractual obligations allow individuals with no prior knowledge of each other to make a legal connection, and it is clear that the parties must be legally independent for a contract between them to be defensible (a slave, for example, cannot sue his master for breach of agreement).

The ancient economy, especially the Greek economy, has been a subject of study and debate since the 19<sup>th</sup> century. In 1893, Karl Bücher proposed a tripartite model for the development of economies that was roughly to correspond to the three historical periods of antiquity, the Middle Ages, and modern times. By his theory, the economy of antiquity was of a ‘closed household’ type, in which one household produced what it required for itself without needing exchange with the outside. Reacting to this view, Eduard Meyer made the much more modernizing assumption that ancient Greece had a monetary economy starting in the 8th century B. C., with aristocracies of entrepreneurs involved in production for sale and export. The disagreement between Bücher and Meyer gave rise to a more general dispute known as the ‘primitivist-modernist’ debate about how ‘modern’ or ‘primitive’ the Greek economy was (Pearson in Polanyi 1957, 6; Will 1954, 10).

In cross-cultural studies, as in capitalist economics, the economy tends to be divided into two or three functions. One anthropologist defines an *economy* as a “system

of production, distribution, and consumption of material resources.”<sup>6</sup> In terms of production and distribution, household members produce the goods that they need and distribute them among themselves in Bücher's model, while, in Meyer's model, specialists produce and distribute them through sale in their city or internationally. The anthropologist Karl Polanyi and his students later viewed the main point of this controversy to be the position given to market exchange (Pearson in Polanyi *et al.* 1957, 7-8)

Polanyi divided methods of distributing material resources into three general types: ‘reciprocity’, ‘redistribution’ and ‘exchange’ (Polanyi 1957, 250; Millett 1990, 169). In ‘reciprocity’, there is a mutual sharing, perhaps involving some “definite rules of redistribution” (Polanyi 1957, 253), and, in a system of ‘redistribution’, goods are gathered into and disbursed from a central repository. ‘Exchange’ may refer to several kinds of sale: one is “buying and selling at a fixed price” where a prospective purchaser has only the choice to buy or not to buy; the other is interchange of goods at a bargained or negotiated price (Neale in Polanyi *et al.* 1957, 366).

According to Polanyi, when exchange at bargained price dominates an economy, a ‘market system’ arises in which prices follow the ‘law of supply and demand’ (Polanyi 1957, 255; Neale in Polanyi *et al.* 1957, 363). By this law, first formulated by the English economist Alfred Marshall in 1890, the price of a commodity determines the amount of it that consumers are willing to purchase (the demand) and the amount that producers are willing to produce (the supply) (Neale 1957, 363; Nicholson 1985, 15).

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<sup>6</sup> Conrad Phillip Kottak, *Anthropology* (2d ed., New York, 1978) p. 345. Books about capitalist economics acknowledge the division but emphasize the problem of scarcity. For example, Walter Nicholson defines ‘economics’ as “the study of *the allocation of scarce resources among competing ends*” in *Microeconomic Theory* (3d. ed. Chicago, 1985) p. 5.

Consequently, “all economic decisions will be based upon prices and all events of economic importance will become effective through prices” (Neale 1957, 359).

Implicit in this analysis is the assumption that people engage in business for the purpose of making a profit, but this has not always been the case. According to Polanyi's school, “the facts of the economy were originally embedded in situations that were not in themselves of an economic nature, neither the ends nor the means being primarily material” (Polanyi, Arensberg, and Pearson 1957, 242).

In a discussion of the economy of classical Athens, Millett (1990, 168) questions the importance of supply and demand for setting the prices of commodities. He stresses the personal nature of economic activities while admitting that the prices of certain foodstuffs, grain in particular, fluctuated with supply (Millett 1990, 192-93).

Reciprocity, however, might be more important in a buyer's relationship with a familiar shopkeeper, in which one side had an advantage in one transaction but an unfavorable position in the next (Millett 1990, 189).

Harris (2002a) takes an opposite point of view. He argues that the conditions for market exchange were present in 5<sup>th</sup> and 4<sup>th</sup> century Athens. The society had a certain social stability and internal order. In the marketplace, there were “laws regulating exchange and magistrates to enforce them.” Finally, there was extensive specialization of labor by independent producers. Harris compiles a list revealing a wide variety of occupations which produced “goods and services to be exchanged for cash” in classical Athens (2002a, 8). This “extensive specialization of labor ... made it inevitable that the individual would need to acquire goods and services outside his immediate circle of

friends, neighbors, and family” (2002a, 9). Literary passages suggest that the prices of many commodities varied widely and that shoppers looked for bargains (12). Under these conditions, market forces would play an important role in determining prices.

A high level of technical specialization leading to business dealings between independent individuals should have the support of a legal system (Atiyah 1989, 3). If we think of a ‘contract’ as a transaction with legal validity that creates rights and obligations, we see that a system of contracts lessens the risk involved in accepting another person's word. It allows independent parties to exchange goods and services under the protection of the law.

A study of the range and frequency of contractual agreements in Athens would reflect an Athenian's need for business dealings outside of the circle of family or friends, but it would also reflect the independence of groups of producers in Athens and in other cities. If producers are controlled by some central authority and they do not own the product of their labor, then they do not need contracts to exchange what they produce (cf. Harris 2002a, 8).

#### **(iv) Methodology**

The legal system of 4<sup>th</sup> century Athens was based upon a revision in 403 B. C. when a board of citizens had collected the laws currently in force (in particular those of Drakon and Solon<sup>7</sup>), subjected them to examination (δοκιμασία) and published a revised code.

Laws were kept on papyrus in the Metroön, the state archive, and were also often inscribed on stone. (The original revision was inscribed on the wall of the Stoa

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<sup>7</sup> Solon's laws had replaced those of Drakon except for Drakon's law of homicide, which was in still force, “with modifications,” in the 4<sup>th</sup> century (Hansen 1999, 29).

Basileos).<sup>8</sup> Since legal inscriptions exist only in fragments<sup>9</sup>, much of our knowledge of Athenian law comes from discussions or quotations of laws in Attic oratory, especially forensic oratory. Oratory also gives examples of how people interpreted the law and mentions previous courts decisions.

Much of my dissertation will be a study of the contractual language of oratory,<sup>10</sup> where I identify contracts using the definition discussed above i.e. a contract is an agreement that is legally defensible. To avoid a modern categorization of contracts, I group them in Greek word groups or by Roman contract for the sake of comparison. The first part of the dissertation is a collection of studies of four Greek words (ὁμολογία, συγγραφή, συμβόλαιον and συνθήκαι) that lexicographers of the late Roman Empire and Middle Ages identified as having the meaning ‘contract’ or ‘documentation of contract’ in Athenian oratory. The interpretations of the lexicographers were influenced by the usage of their own time, however, and they made no distinction between the words (Kusmaul 1969, 14-15). The second part of the dissertation is a study of Greek terminology that sometimes has contractual significance along with a comparison to

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<sup>8</sup> Hansen 1999, 164.

<sup>9</sup> Hansen 1999, 12; MacDowell 1986, 46-7; Kusmaul 1969, 1.

<sup>10</sup> I investigate the works of the ten orators in the Alexandrian canon—Antiphon, Anecdotes, Lysias, Isocrates, Isaeus, Aeschines, Demosthenes, Lycurgus, Hypereides and Dinarchus (List from Moses Hadas 1962, 160).

corresponding Roman contracts. In the second part, I briefly discuss inscriptions, particularly in connection with rental contracts. All translations are mine.

## II. Word Studies

### 1. 'Ὁμολογία

#### (i) Overview

The word ὁμολογία has three main meanings in the Alexandrian canon of ten orators<sup>11</sup>, in which it occurs 44 times. First of all, it may refer to an agreement between two, or possibly more, members of a community, that they will perform some action. For the most part, there is a suggestion by someone that the agreement has legal force, i.e. is a 'contract'. ὁμολογία may also refer to a formal agreement between states or to an admission i.e. an agreement that a circumstance damaging to one is true.

It is generally clear when ὁμολογία represents a contract or treaty rather than an admission since contracts and treaties are agreements about future events under the control of the parties to the agreement. The text of such an agreement may mention the obligations involved or the parties, or there may be an allusion to the law about ὁμολογία (see below). The only party to an admission, on the other hand, is the one who admits something, and the admission is of what has already happened not what will happen.

#### (ii) Contracts

ὁμολογία most clearly has the meaning 'contract' in [Demosthenes] 42.12, 13, 30 and in Andocides 1.120. In [Demosthenes] 42 (*Against Phaenippus*), when the

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<sup>11</sup> I searched the *Thesaurus Lingua Graecae* for instances of ὁμολογί- in the Alexandrian canon of orators.

speaker of the oration was required to perform a liturgy, he challenged Phaenippus to an antidosis on the grounds that Phaenippus appeared better able to pay the expenses of a liturgy. Not giving an inventory of his property within the legally specified time limit (§1), however, Phaenippus came to the speaker in the company of others and asked to put off the declaration of property (§11). The speaker was agreed (ὁμολογήσαι), but Phaenippus again failed to appear on the day agreed for the inventory. Because of this, the speaker accuses him of disregarding the law about ὁμολογίαι, and he quotes it (§12): κυρίας εἶναι τὰς πρὸς ἀλλήλους ὁμολογίας, ἅς ἂν ἐναντίον ποιήσωνται μαρτύρων ('the *homologiai* that they make with each other before witnesses are binding'). All three instances of ὁμολογία recall this law. In language paralleling that of the law, the speaker insists that anyone who regarded the mutual agreement of parties (τὴν πρὸς ἀλλήλους ὁμολογίαν) as nonbinding (ἄκυρον) would be despised (§13). In his conclusion, the speaker again mentions Phaenippus' disregard of 'private *homologiai*' (ιδίων ὁμολογιῶν §30).

Andocides 1.117-20 (*On the Mysteries*) describes an agreement between two relatives that has the characteristics of a contract based on the law in [Dem.] 42.12. Epilycus, Andocides' uncle, died leaving two daughters but no sons. The daughters were therefore epikleiroi. Andocides called Leagrus, another relative, before friends (ἐναντίον τῶν φίλων) and (§119) proposed that he and Leagrus each take one daughter (§117-19). Leagrus "assented" (ὡμολόγησε), and they each made a claim (ἐπεδικασάμεθα) in accordance with their agreement (κατὰ τὴν πρὸς ἡμᾶς ὁμολογίαν §120). As specified by the law of [Dem.] 42.12, the transaction was witnessed, and Andocides' wording is similar to that in the law: τὴν πρὸς



ἡμᾶς ὁμολογίαν in Andoc. 1.120 instead of τὰς πρὸς ἀλλήλους ὁμολογίας in [Dem.] 42.12. Both this contract and the one in [Dem.] 42 appear to be purely oral. There is no mention of writing in either description.

Isocrates 18.24, *Against Callimachus*, seems to refer to the same law of contracts. In a παραγραφή procedure against Callimachus, the speaker argues that Callimachus is violating the amnesty agreement (συνθήκαι) that bars prosecution for actions taken under the 30 tyrants (403 B. C.). The speaker declares that it would be terrible if the courts made such contradictory decisions that τὰς μὲν ιδίας ὁμολογίας δημοσίᾳ κυρίας ἀναγκάζετ' εἶναι, τὰς δὲ τῆς πόλεως συνθήκας ἰδίᾳ τὸν βουλόμενον λύειν ἐάσατε ('you compel private agreements to have force publicly, but you allow whoever wishes to break the *synthekai* of the city privately'). The first clause appears to be a reference to contracts (ιδίας ὁμολογίας), with κυρίας as a reference to the law. To say that the court causes private ὁμολογίαι to be κυρίαι is to say that it gives them legal force.

Another reference to the law is at the end of [Demosthenes] 56, *Against Dionysodorus*, where the speaker makes the customary arguments about the importance for Athens of deciding the case in his favor (§48). The epilogos stresses the importance for commerce of enforcing τὰς συγγραφὰς καὶ τὰς ὁμολογίας πρὸς ἀλλήλους γιγνομένας ('*syngraphai* and *homologiai* made with each other'). As in Andoc. 1 and [Dem. 42], the preposition πρὸς governs parties to the contract. The loan agreements in this oration are in writing. In §1 the ὁμολογία to repay a loan is written on a piece of papyrus. The writer more frequently (42 times) describes the contract that is the basis of

the lawsuit as a συγγραφή, but the phrase, ἐπὶ ταύταις ταῖς ὁμολογίαις + form of δανείζω, occurs several times (§6, 11, 42). The expression is adverbial modifying the manner in which the speaker and his partner lent the money. Complaining that the ship did not return to Athens after its voyage, the speaker stresses that the money was lent on that condition (ἐπὶ ταύταις ταῖς ὁμολογίαις δανείζονται §6).

In this case the ὁμολογίαις are only part of the agreement. I agree with Carey and Reid's translation 'on these terms' for ἐπὶ ταύταις ταῖς ὁμολογίαις (1985, 210).

In Isaeus 11.24, *On the Estate of Hagnias*, a party to the ὁμολογία is, exceptionally, παρά + genitive rather than πρὸς + accusative. The speaker's opponent claims that the speaker agreed to give a child a half-share of an estate if his suit against the present possessors was successful. The speaker denies it and maintains that such an agreement would make no sense. If the child's claim was based on kinship, he would not need an agreement from the speaker (παρ' ἐμοῦ τὴν ὁμολογίαν). Another oration of Isaeus, *On the Estate of Pyrrhus*, discusses the absence of a dowry (ἄνευ ὁμολογίας προικός) agreement for a woman whose marriage is contested (3.29, 35).

In Hypereides 3, the speaker, Epicrates, is suing one Athenogenes for deceiving him in the sale of a perfume shop and slaves. A document, generally called a γραμματεῖον or συνθηκαί, contains the details of the arrangement, part of which is that Epicrates must pay off the debts of the business. The word ὁμολογία appears once (§7), where it refers to the contract itself rather than the document. Epicrates complains that, by selling the business and persuading him to take responsibility for the debts, Athenogenes ἐπάξειν μοι ἔμελλον ὕστερον τοὺς χρήστας καὶ τοὺς πληρωτὰς

τῶν ἐράνων ἐν ὁμολογία λαβῶν ‘was likely to sic the creditors and contributors to the eranos loans on me later by taking them into the agreement’. Hypereides may avoid the word ὁμολογία in most of the speech because Athenogenes will use the law about ὁμολογίαι in his defense (§13). The law is cited in this oration, with the verb ὁμολογέω, however, rather than the noun ὁμολογία.

In Dem. 30, *Against Onetor*, Timocrates, the former husband of Onetor’s sister has made an agreement to owe the woman’s dowry with interest to Aphobus, the following husband, rather than repay it at once (§7). The word ὁμολογία appears three times, twice in reference to the agreement (κατὰ τὰς ὁμολογίας §9 and §16) and once in reference to witnesses to the agreement (ἐπὶ ταῖς ὁμολογίαις §22).

In Isocrates 9 (*Evagoras*), a eulogy of Evagoras, the king of Cyprus, Isocrates lists some positive qualities of Evagoras, among them: ὁμοίως τὰς ἐν τοῖς ἔργοις ὁμολογίας ὡσπερ τὰς ἐν τοῖς λόγοις διαφυλάττων (‘equally in deeds as in words he observed his agreements’ §44). There is little to show the nature of the ὁμολογίαι mentioned. They may be private agreements with friends, and perhaps they include agreements with other states. Few, if any, would have been contracts governed by Athenian law.

The word ὁμολογία describes contracts of varied type: an agreement to marry epikleroi, to give a dowry, to share an estate, to lend money, to sell a business. Once ὁμολογία refers to agreements in general. Some contracts are oral, some written.

### (iii) Statewide or Interstate Agreements

The word *ὁμολογία* may also describe public ‘agreements’. In Dem. 40 (*Against Boeotus*), it refers to the amnesty between the supporters of the 30 tyrants and the Athenian democrats in 403 B. C. The speaker complains that it would be particularly terrible for the court to allow the speaker’s half-brother to speak badly of his father with whom he reconciled, especially since the Athenians abided by their agreement (*ἐμέννετε ταῖς ὁμολογίαις*) to reconcile with those who put many to death without trial during the oligarchy (§46).

Elsewhere *ὁμολογία* denotes interstate agreements ([Dem.] 12 and 17, Dem. 19 and Isoc. 4, 6, 12). Occurring most often in [Dem.] 17 (*On the Treaty with Alexander*), it is interspersed there with the word *συνθήκαι*. The word *ὁμολογία* appears 11 times, 8 of them in the phrases *ταῖς κοιναῖς ὁμολογίαις* or *ἐν ταῖς κοιναῖς ὁμολογίαις*.

[Demosthenes] 17 affords an opportunity to observe differences in usage between the terms *ὁμολογία* and *συνθήκαι*. The speech concerns an agreement between Alexander and Greek states. For the most part, when the speaker refers to the agreement in a general way, he calls it a *ὁμολογία*. He tends to use *συνθήκαι* when he refers to parts of it or mentions in passing that it is written (cf. §4, 6, 8, 10, 15, 16, 19, 30).

The speaker is disputing with those who assert that Athens should abide by her oaths and covenants (§1 and §2) (*ὄρκους καὶ ταῖς συνθήκαις*)—perhaps a quote from his opponents. Alexander has violated the oaths and covenants (*ὄρκους καὶ*

ταῖς συνθήκαις) written in the common peace (§4). He thought little of the common agreement (τῆς κοινῆς ὁμολογίας §5). Additionally, it is written in the covenants (συνθήκαις) that the one who does what Alexander did is an enemy to everyone sharing in the peace (§6). In §7, συνθηκαὶ and ὁμολογία (in plural) appear in equivalent senses: The sons of Philiades were tyrants before the covenants (συνθήκας), but the tyrants of Lesbos were also tyrants before the agreement (ὁμολογιῶν). The distinction between the words returns in §8: At the very beginning the συνθήκη declares the Greeks free and independent. The one who leads Greeks into slavery acts contrary to the agreement (τάναντία ταῖς κοιναῖς ὁμολογίαις). In §14, the speaker agrees with his opponents that Athens should abide by her agreements (ἐν ταῖς κοιναῖς ὁμολογίαις), but he substitutes the word ὁμολογίαις for his opponent's word συνθήκαις.

The writer has a tendency to distinguish the two words, but there is some overlap. It is not a hard and fast rule that συνθηκαὶ stand for the written articles of agreement of the treaty and ὁμολογία is a more general word for the treaty or agreement. Towards the end of [Dem.] 17 in §26 and §28, the speaker points to a particular breach of the agreement: the most arrogant act of the Macedonians was daring to sail into the Peiraeus contrary to the agreements (παρὰ τὰς κοινὰς ἡμῖν πρὸς αὐτοὺς ὁμολογίας §26). Based on the content of §26, one would expect the speaker to talk of συνθηκαὶ rather than ὁμολογία. (In fact, the vulgate text has συνθηκαὶ rather than ὁμολογία.)

In [Dem.] 12 (*Philip's Letter*), the word ὁμολογία in the plural refers to unspecified or potential interstate agreements between Philip and the Athenians (§1,

§18). Philip complains that he has sent many embassies to Athens so that they may remain in observance of their oaths and agreements (ἐμμείνωμεν τοῖς ὄρκοις καὶ ταῖς ὁμολογίαις), but he received no response (§1). Here the writer pairs ὄρκοι with ὁμολογίαι where in [Dem.] 17 ὄρκοι were paired with συνθήκαι. After Philip seized the island of Halonesus a dispute arose with Athens about it. He sent ambassadors ‘to make a just agreement with the Athenians on behalf of the Greeks’ (ὁμολογίας ὑπερ τῶν Ἑλλήνων §18). The term συνθήκαι (§2, 8) again refers to specific agreements. As in [Dem.] 17, the end of [Dem.] 12 presents a complication. According to the writer, Athens has acknowledged that Philip justly controls Amphipolis by making a peace with him while he held it and later an alliance ἐπὶ ταῖς αὐταῖς ὁμολογίαις. While suggesting the terms of a treaty, the word ὁμολογίας also refers to the admission that Philip justly holds Amphipolis.

In Isocrates’ orations, there is again a tendency for ὁμολογία to refer to unspecific or possible future agreements. In Isocrates 6 (*Archidamus*), accordingly, the warlike secure a better peace than those who make an agreement easily (τῶν ῥαδίως τὰς ὁμολογίας ποιουμένων §39). A proposed agreement between Sparta’s allies and Thebes is described as ὁμολογίαι (§52, 70). Isocrates 12.107 (*Panathenaicus*) uses the word ὁμολογίαι and the word συνθήκαι. The Spartans have agreed to a peace giving the king of Persia control over all Greeks in Asia (the Peace of Antalcidas). They are not ashamed to make such an agreement (τοιαύτας ποιούμενοι τὰς ὁμολογίας §107). They have actually set up the συνθήκας, a written agreement, in their sanctuaries and forced “their allies to do the same.” In Isocrates 4.176 (*Panegyricus*) ὁμολογίαι refer to

written agreements only part of which are being observed whereas συνθήκαι is a more formal term for a treaty (also the Peace of Antalcidas).

#### **(iv) Admission of Damaging Information**

In Demosthenes 29, Isocrates 11 and Lycurgus 1, the word ὁμολογία denotes an ‘admission’, i.e. an agreement that something weakening one’s case is true.

In Dem. 29.44 (*Against Aphobus III*), Demosthenes recalls that in his suit of Aphobus, when it was admitted by Aphobus himself (ὡμολόγηθ’ ὑπ’ αὐτοῦ τούτου) that Demosthenes’ father had bequeathed so much money on his deathbed, the court took his admission (τὰς ὁμολογίας) as evidence of the size of the estate. Here ὁμολογία is the noun corresponding to the verb ὁμολογέω they both refer to an ‘admission’ made by Aphobus. Perhaps Demosthenes uses the plural of ὁμολογία because Aphobus’ admissions concern several gifts.

In Isocrates 11 (*Busiris*), Isocrates criticizes an encomium of Busiris, a mythical king of Egypt. He says that one could consider the speech, ‘not a defense on behalf of Busiris, but an admission of the accusations’ against him (οὐκ ἀπολογία ὑπὲρ Βουσίριδος, ἀλλ’ ὁμολογίαν τῶν ἐπικαλουμένων §44).

In Lycurgus 11.35 (*Against Leocrates*), Lycurgus complains that Leocrates has testified against himself that he is a traitor, but he will ask the court to vote contrary to his own admissions (ἐναντία ταῖς αὐτοῦ ὁμολογίαις).

### **(v) Observations on Usage**

ὁμολογία usually stands in the plural (3/4 of the time). The choice between singular and plural seems partly a matter of taste (Isaeus uses only the singular) and partly may reflect the importance as well as the number of ὁμολογίαι.

πρός + accusative generally expresses a party with whom one makes an agreement or treaty (Andoc. 1.120; [Dem.] 12.18; [Dem.] 42.12, 13; [Dem.] 56.38). The sequence, ποιέομαι + accusative of ὁμολογία, also occurs several times.



## 2. Συγγραφή

### (i) Introduction

There are 126 instances of the word *συγγραφή* in extant oratory, almost all of them found in works attributed to Demosthenes (121 instances). Thus a study of the word *συγγραφή* is, to a large extent, a study of works attributed to Demosthenes.

The word, *συγγραφή*, very often refers to the documentation of a contract (legally defensible agreement). I will note the places where the word denotes ‘contract’, where the *συγγραφή* contains stipulations or agreements, and what its legal significance is. If a *συγγραφή* does record a contract, an English translation of the word might well be ‘contract’ since one tends not to distinguish between the document (a concrete object) and the legal relationship (an abstract idea). Although a good translation for the word *συγγραφή* may often be ‘contract’, such a translation does not answer the question of whether the *συγγραφή* is written. I will distinguish between concrete and abstract references in oratory. I will also note where the term, *συγγραφή*, refers to a written document and where there is no evidence for one.

The word *συγγραφή* sometimes appears in 5<sup>th</sup> century writers. The historians Herodotus and Thucydides use the word rarely and without contractual significance<sup>12</sup>. In Herodotus 1.93 *συγγραφή* refers to the act of writing.

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<sup>12</sup> There is a 5<sup>th</sup> century inscription (dated 418/7 B. C.), however, recording the lease of a *temenos* by the archon basileus that mentions a *συγγραφή* containing conditions of the arrangement *κατὰ τὰς συγγραφάς* (ll. 6-7) or *κατὰ τὰς χωνυγραφάς* (ll. 11-13) (IG I<sup>2</sup> 94 + p.302 [Syll.<sup>3</sup> 93, Michel. 77]; supplements SEG 19, 18 cited by Behrend, 1970, 55-57).

Θώματα δὲ γῆς ἢ Λυδία ἐς συγγραφὴν οὐ μάλα ἔχει

‘The land of Lydia does not have many marvels for writing about’

One could give a similar interpretation to the word in Thuc. 5.35.3 or else simply translate ξυγγραφὴ (the Attic form of συγγραφὴ) as ‘written document’.

χρόνους τε προύθεντο ἄνευ ξυγγραφῆς ἐν οἷς χρῆν τοὺς μὴ ἐσιόντας ἀμφοτέροις πολεμίους εἶναι.

[The Spartans] proposed a time period, without [making] a written document (ἄνευ ξυγγραφῆς), in which those [of their allies] who did not enter [the treaty] were to be the enemies of both [the Spartans and Athenians].<sup>13</sup>

On the other hand, the best translation of ξυγγραφὴ in Thuc. 1.97.2 would be ‘treatise’ or ‘narrative’:

τούτων δὲ ὅσπερ καὶ ἤψατο ἐν τῇ Ἀττικῇ ξυγγραφῇ Ἑλλάνικος, βραχέως τε καὶ τοῖς χρόνοις οὐκ ἀκριβῶς ἐπεμνήσθη.

‘The very one who also touched on these matters in the Attic Narrative, Hellanikos, made mention briefly and inaccurately in relation to time’.

## (ii) Oratory

It is only in the oration Lysias 30 (*Against Nicomachus*), that συγγραφὴ does not appear in connection with a contract or agreement. Lysias 30 is a speech for the prosecution in 399/8 of Nicomachus, a prominent member of the board that had been given responsibility for collecting and publishing the laws of Athens currently in force.

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<sup>13</sup> The passage refers to the Peace of Nicias (421 B. C.) in which the Spartans and the Athenians agreed to give back land they had taken from each other and to bring their allies into the agreement.

The word *συγγραφαί* denotes specifications for making state sacrifices. The speaker defends himself against a possible accusation of impiety (§17).

θαυμάζω δὲ εἰ μὴ ἐνθυμεῖται, ὅταν ἐμὲ φάσκη ἀσεβεῖν λέγοντα ὡς χρὴ  
θύειν τὰς θυσίας τὰς ἐκ τῶν κύρβεων καὶ τῶν στηλῶν κατὰ τὰς  
συγγραφάς, ὅτι καὶ τῆς πόλεως κατηγορεῖ.

But I wonder that he does not notice that when he claims I am behaving impiously in saying that one should make the sacrifices from the *kyrbeis* and from the *stelai* in accordance with the *syngraphai*, he is making an accusation of the city.

The speaker continues (§19-20) that Nicomachus has added extra sacrifices in addition to the ancestral ones and due to lack of money the city has omitted some written in the *kyrbeis*. He concludes (§21):

Ἐνθυμεῖτε τοίνυν, ὧ ἄνδρες δικασταί, ὅτι, ὅταν μὲν κατὰ τὰς  
συγγραφὰς ποιῶμεν, ἅπαντα τὰ πάτρια θύεται, ἐπειδὴν δὲ κατὰ τὰς  
στήλας ἅς οὗτος ἀνέγραψε, πολλὰ τῶν ἱερῶν καταλύεται

Notice, then, *dikasts*, that when we act in accordance with the *syngraphai*, all the ancestral [sacrifices] are made, but when we act in accordance with the *stelai* that he set up, many of the rites are brought to an end.

The speaker advocates that Athens follow the sacrifices of the ancestors as written in the *kyrbeis*, on *stelai* and as specified in *συγγραφαί* (κατὰ τὰς συγγραφάς).

Appearing only in the phrase κατὰ τὰς συγγραφάς (abstract usage), the *συγγραφαί* are specifications about the conduct of sacrifices. Lysias does not say whether the *συγγραφαί* are written, but writing would be a convenient way to remember what the *συγγραφαί* are.

## A. Maritime Commerce

It is in speeches for prosecutions based on a document called a συγγραφή that we find the most references to the word. (These are [Dem.] 34, 35 and 56.) In each case, the συγγραφή records the stipulations of a ‘maritime loan’, a loan of money for the purpose of making a voyage.

### Demosthenes 32, Against Zenothemis

Dem. 32 cites a law that would give legal protection for συγγραφαί in certain circumstances.

The speaker in this case, Demon, is involved in a legal dispute with Zenothemis over a cargo of grain on a ship. In response to a suit by Zenothemis, Demon has brought a παραγραφή, a lawsuit asserting that the court should dismiss the original suit on legal or procedural grounds, here because it has been introduced in the wrong court (cf. Hansen 1999, 400). Demon begins by citing the law that provides for the type of suit that Zenothemis brought:

οί νόμοι κελεύουσιν, ὥ ἄνδρες δικασταί, τὰς δίκας εἶναι τοῖς ναυκλήροις καὶ τοῖς ἐμπόροις τῶν Ἀθήναζε καὶ τῶν Ἀθήνηθεν συμβολαίων, καὶ περὶ ὧν ἂν ᾧσι συγγραφαί.

The laws prescribe, judges, that there be lawsuits available to shipowners and merchants for *symbolaia* (contracts) to Athens and those from Athens and concerning which there are *syngraphai*.

The speaker continues that, if someone prosecutes contrary to these things (παρὰ ταῦτα), the suit is inadmissible (§1).<sup>14</sup> He argues that Zenothemis, even by his own admission, had neither συμβόλαιον nor συγγραφή with the speaker (§2).

The Greek of §1 has been understood in different ways. Does the law provide lawsuits in two situations or one? Some, for example Gernet, argue that it provides shipowners and merchants with lawsuits when they have συμβόλαια regarding trips to or from Athens, and it also provides lawsuits to those with συγγραφαί (called the ‘disjunctive interpretation’ by Cohen 1973, 101; Gernet 1979, 187). Others including Cohen (1973, 101-106) argue that the law requires both conditions to hold: Shipowners and merchants may sue regarding συμβόλαια (contracts) for trips to or from Athens provided that they have συγγραφαί (‘conjunctive interpretation’). In every oration concerning violation of a συγγραφή, the συγγραφή documents an agreement to make a trip from Athens for the purpose of trade. (These are the orations [Dem.] 34, [Dem.] 35 and [Dem.] 56.)

The oration mentions συγγραφαί made outside of Athens. Zenothemis was a passenger on the ship of one Hegestratus. According to Demosthenes, they both borrowed money in Syracuse (§4), and there were συγγραφαί associated with the loans (§5). He continues, συγγραφαί customarily contain a clause requiring that the loan be repaid if the ship arrives safely (οὐσῶν δὲ τῶν συγγραφῶν, ὥσπερ εἰώθασιν ἅπασαι, σωθείσης τῆς νεῶς ἀποδοῦναι τὰ χρήματα). Consequently, Hegestratus and Zenothemis plotted to sink the ship so they would not have to repay their loans. Later,

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<sup>14</sup> Dem. 32 is regarded as one of the δίκαι ἐμπορικαί (‘commercial suits’). Dem. 32.1 is considered one of the most important passages for defining the scope of these suits (Cohen 1973, 100 n. 8).

during the voyage they deposited a συγγραφή, clearly a document, with one of the passengers (§16, 19).

Such a συγγραφή would have significance in Syracuse if it was written there. It is unclear what legal status the συγγραφή would have in Athenian courts. If it specified a voyage to Athens, it would fit the requirements of §1.

[Demosthenes] 34, 35 and 56

The συγγραφαί of these orations are written documents that are read to the court. Each oration involves the violation of the συγγραφαί.

#### **[Dem.] 34, Against Phormio**

Chrysippus, the speaker, lent Phormio 20 minas for a round trip voyage to Pontus. He initiated a lawsuit when Phormio did not repay the loan. The present speech is a response to Phormio's παραγραφή asserting that the original suit is inadmissible. The borrower's obligations are written in a document that the speaker generally calls a συγγραφή (§§3,6,7 etc.). Chrysippus has the συγγραφή read to the court (§7), and he accuses Phormio of violating specific parts of the document (Phormio did not put security of enough value in the ship at the beginning of the voyage §7, he did not put purchases from Pontus in the ship in accordance with the contract κατὰ τὴν συγγραφὴν §9 [an abstract usage] etc.). The συγγραφή is deposited with a third party, the banker Kittus (§6).

Chrysippus also calls the document συνθήκαι (§5, possibly in §46 although the reference is unclear) perhaps to emphasize that Phormio agreed to them (συγκείμενα;

see section on συνθήκαι.), but the term συγγραφή is much more common. (It appears 21 times.)

Chrysippus treats the loan conditions as the result of an agreement (§§4-5) and treats the συγγραφή as legally defensible, hence as a contract by my definition.

### [Demosthenes] 35, Against Lacritus

This case involves a loan of 3000 drachmas by Androcles, the speaker, and Nausicrates to Artemon and Apollodorus, the brothers of Lacritus. The brothers borrowed the money for a trip from Athens to Pontus and back again. The documentation of the loan, called a συγγραφή, is read to the court twice.

Because Artemon has died, Androcles is suing Lacritus on the grounds that he is Artemon's heir. Lacritus, however, says that he has rejected the inheritance, and Androcles has not made this issue a central part of the accusation. Instead, his story emphasizes Lacritus' role in obtaining the loan. According to Androcles, some friends, Thrasymedes and Melanopos, wanting to involve him in a business enterprise, came to him in the company of Lacritus and asked him to lend money to the brothers for a voyage (§6-7).<sup>15</sup> Lacritus wrote the συγγραφή and joined in sealing it. He took an active role in the transaction because his brothers were too young, *meirakia* (§15).<sup>16</sup>

Although Androcles does not claim that he made the loan to Lacritus, the story emphasizes Lacritus' assent and his role in making the συγγραφή. Suggesting

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<sup>15</sup> Regarding (Λακρίτου τουτουι ἀναδεχομένου μοι πάντ' ἔσεσθαι τὰ δίκαια παρὰ τῶν ἀδελφῶν τῶν αὐτοῦ§8), Isager and Hansen (1975, 174-5) remark that "Androcles attempts to convey to the jurors the impression that Lacritus has guaranteed the fulfillment of the contractual loan. This imprecise expression can only mean that Androcles has also | sued Lacritus as the guarantor."

<sup>16</sup> There was a law (Isaeus 10.10) incapacitating a child from making any but the smallest contract.

agreement and legal defensibility, it creates the impression that the contract is between Androcles and Lacritus. Again the συγγραφή is treated as a legal document, and it is read to the court twice (§10 and §38, cf. §39 ἢ μὲν γὰρ συγγραφή οὐδὲν κυριώτερον ἔᾱ εἶναι τῶν ἐγγεγραμμένων ‘for the *syngraphe* [abstract usage] allows nothing to have more authority than its contents’).

### [Demosthenes] 56, Against Dionysodorus

Darius, the speaker, and his partner, Pamphilos, lent 3,000 dr. to Dionysodorus and his partner Parmeniscos for a voyage to Egypt. In this speech, they accuse Dionysodorus of violating the terms of the loan and not repaying the money.

Darius explains that Dionysodorus and Parmeniscus came to him and his partner asking for a loan for a trip to Egypt (§5). They negotiated certain terms and then they wrote a συγγραφή (συγγραφήν ἐγράψαντο §6). It is clear that the parties voluntarily enter into the obligations of the συγγραφή. Darius has the συγγραφή read to the court.

Κατὰ ταύτην τήν συγγραφήν, ὧ ἄνδρες δικασταί, λαβόντες παρ’ ἡμῶν τὰ χρήματα Διονυσόδωρός τε οὕτοσί καὶ ὁ κοινωνὸς αὐτοῦ ἀπέστειλλον τὴν ναῦν εἰς τὴν Αἴγυπτον ἐνθένδε.

In accordance with the *syngraphe*, dikasts, taking the money from us, Dionysodorus here and his partner dispatched the ship to Egypt from here (§7).

Repeatedly referring to the συγγραφή, Darius details the violations of this document. Dionysodorus and Parmeniskos decided to sell their grain in Rhodes rather



than in Athens (καταφρονήσαντες μὲν τῆς συγγραφῆς ‘thinking little of the *syngraphe*’ §10). They tried to negotiate the interest on the loan and would not pay the amount of interest *tokoi* initially agreed (τοὺς ἐξ ἀρχῆς ὁμολογηθέντας §12) and written in the συγγραφὴ (ἐν τῇ συγγραφῇ γεγραμμένους §12). It takes audacity, Darius rages, to write a συγγραφὴ [as Dionysodorus has] with the express condition that one sail the ship back to Athens, and if not, pay double the money and then violate these very conditions (συγγραφὴν διαρρήδην γραψάμενος ἐφ’ ᾧ τε καταπλεῖν τὴν ναῦν εἰς τὸ ὑμέτερον ἐμπόριον, εἰ δὲ μή, ἀποτίνειν διπλάσια τὰ χρήματα §20).

Darius treats the συγγραφὴ as the documentation of a contract. He cites it repeatedly, he stresses the binding nature of its conditions (abstract usage) (οὐδὲν κυριώτερον τῆς συγγραφῆς ‘nothing has more authority than the *syngraphe*’ §26 cf. [Dem.] 35.39), and he reiterates that his opponents agreed to its conditions, as in the examples above.

Demosthenes 29 and [Demosthenes] 33

Dem. 29 and 33 both briefly mention συγγραφαί in a maritime loan context.

### **Dem. 29, Against Aphobus**

In Dem. 27.11 (*Against Aphobus*), Demosthenes mentions a loan involving one Xuthus, as an asset of his father’s. He describes it with the word ναυτικά, a word associated with maritime lending:

ναυτικά δ' ἑβδομήκοντα μνᾶς, ἔκδοσιν παρὰ Χούθῳ

and maritime money of 70 minas, a loan with Xuthus.<sup>17</sup>

Demosthenes mentions this loan in a suit for false witness brought by Aphobus (Dem. 29). He says that Aphobus divided the money with Xuthus and destroyed the συγγραφαί (§36).

περὶ δ' αὖ τῆς ἐκδόσεως, ἐπικοινωνήσαντες τῷ Χούθῳ καὶ διανεμᾶμενοι τὰ χρήματα καὶ τὰς συγγραφὰς ἀνελόντες, καὶ πάνθ' ὃν τρόπον ἐβούλεσθε κατασκευάσαντες, καὶ διαφθείραντες τὰ γράμματα, ὡς ὑμῶν Δήμων κατεμαρτύρει, φενακίζετε καὶ τουτουσὶ παρακρούσασθαι ζητεῖτε.

Concerning the maritime loan, sharing with Xuthus, dividing the money, destroying the *syngraphai*, arranging it the way you wanted, and destroying the writing, as Demon deposed against you, you cheat and you seek to deceive these men [the court].

The word συγγραφαί (pl.) refers to the documentation of a maritime loan (*ekdosis*).<sup>18</sup> Since Demosthenes only mentions this loan in passing, we have little direct evidence for the legal status of the συγγραφή in Dem. 29.36. One would have to look at the fuller descriptions of disputes involving συγγραφαί in [Dem.] 34, 35 and 56. At any rate, one can remark that the συγγραφαί are material objects that can be destroyed.

<sup>17</sup> I translate ambiguously “with” Xuthus because the preposition παρὰ does not have a usual meaning in this context. If it was a loan to Xuthus, πρὸς + accusative would be the usual Greek. παρὰ + dat. could be used of a document deposited with Xuthus (e.g. τίθεμαι+ παρὰ + dative of deposittee). Murray (*Loeb*, 1939) translates: “to Xuthus”; Gernet refers to sums “engagées dans le commerce maritime par l’intermédiaire de Xouthos (Page 68, note 2. *Démosthène, Plaidoyers Civils*. Tome 1. Texte établi et traduit par Louis Gernet, Paris 1954).

<sup>18</sup> According to LSJ, ἔκδοσις refers to lending money on the security of ships or exported goods i.e. maritime loans.

### [Demosthenes] 33, Against Apatourius

The oration briefly mentions συγγραφαί, but the litigation is about the disappearance of a written arbitration agreement (called συνθήκαι). The συγγραφαί, mentioned once in §12, involve loans of money and the security of a ship and slaves.

Unable to pay a debt on the security of his ship, Apatourius had asked the speaker for a loan to pay off his creditors (§6). The speaker describes a complicated refinancing operation in which he becomes surety for a loan to Apatourius from Heraclides' bank (§7) and he takes responsibility for a loan from Parmeno, a friend of Apatourius. Apatourius' ship and slaves are security for the debt (§8), and the speaker confiscated them when Apatourius tried to leave port (§§9-10).

After describing the repayment of the current creditors, the speaker mentions συγγραφαί connected with the loans (§12).

ἀποδοθεισῶν δὲ τῶν τριάκοντα μνῶν ἐπὶ τὴν τράπεζαν καὶ τῶν δέκα μνῶν τῷ Παρμένοντι, ἐναντίον πολλῶν μαρτύρων τὰς τε συγγραφὰς ἀνειλόμεθα, καθ' ἃς ἐδανείσθη τὰ χρήματα, καὶ τῶν συναλλαγμάτων ἀφεῖμεν καὶ ἀπηλλάξαμεν ἀλλήλους, ὥστε μήτε τούτῳ πρὸς ἐμὲ μήτ' ἐμοὶ πρὸς τοῦτον πρᾶγμα εἶναι μηδέν.

With the thirty minas repaid to the bank and the ten minas to Parmeno, before many witnesses we destroyed the *syngraphai* in accordance with which the money was lent, and we released each other and were released from the covenants (*synallagmata*) so that neither did he have business with me nor I with him.

The συγγραφαί involve loans of money, the security of a ship and slaves, the suretyship of the speaker and a bank, but it is difficult to determine the exact obligations in the συγγραφαί.<sup>19</sup>

In §36, part of the *epilogos*, the word συγγραφή appears again. The speaker points out that Apatourius' case is based on lost συνθήκαι, but his discussion unexpectedly switches to συγγραφαί.

πάντες ἄνθρωποι, ὅταν πρὸς ἀλλήλους ποιῶνται συγγραφάς, τούτου ἕνεκα σημηνάμενοι τίθενται παρ' οἷς ἂν πιστεύσωσιν, ἵνα, ἐάν τι ἀντιλέγωσιν, ἢ αὐτοῖς ἐπανελθοῦσιν τὰ γράμματα, ἐντεῦθεν τὸν ἔλεγχον ποιήσασθαι περὶ τοῦ ἀμφισβητουμένου.

All people, when they make *syngraphai* with each other, for this reason seal and deposit them with those they trust, in order that, if they dispute something, it is possible for them, having recourse to the writing, from there to make proof concerning the point in dispute.

There does seem to be a tendency to use a variety of contract words in the beginning and at the end of an oration, but the word συγγραφαί probably appears because attention is on the written form of the obligations.<sup>20</sup> The word γράμματα follows συγγραφαί later in the sentence, both words connected with the verb γράφω (to write). This reflects a tendency of oratory that we observe elsewhere to use words of similar roots

<sup>19</sup> Cohen (1973, 106) describes the transaction as “loan to meet Apatourios’ creditors.”

<sup>20</sup> In Cohen’s view (1973, 129 n. 68), the word “*syngraphē* was so thoroughly connected with the concept of ‘written’ form that it was applied carelessly to various other contracts.”

together in an utterance.

The συγγραφαί of the maritime loan orations are described as documents (Dem. 29, [Dem.] 33, 34, 35, 56; a document called a συγγραφή is mentioned in Dem. 32.16 and 19). They are read to the court ([Dem.] 34, 35, 56), deposited (Dem. 32) and destroyed at the end of a contract ([Dem.] 33.12). The law of Dem. 32.1 seems at least part of the reason why the orators call these documents συγγραφαί. It gives legal status to the documentation of their agreements.<sup>21</sup>

## **B. Outside of Maritime Commerce**

Outside of maritime commerce, the word συγγραφή occurs in Aeschines 1, Demosthenes 18, 46, 50 and 53 and in [Andocides] 4.

Aeschines 1, Against Timarchus

This is a speech for the prosecution of Timarchus, a political ally of Demosthenes. One of Aeschines' accusations is that Timarchus prostituted himself. The word συγγραφή appears twice among a jumble of other contract words.

Distracting attention, in §160, from his lack of direct evidence for Timarchus' prostitution, Aeschines ridicules the idea of a written prostitution contract. He envisions the defense asking for written documentation (γραμματεῖον) and witnesses and declaring that one has not been a hetaira (ἡτάριρκεν) unless hired by written document (κατὰ συγγραφᾶς ἐμισθώθη).

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<sup>21</sup> Kussmaul (1969, 6) notes the usage of the word συγγραφή in maritime lending.

ἐὰν δ' ἐπιχειρῶσι λέγειν, ὡς οὐχ ἠταίρηκεν ὅστις μὴ κατὰ συγγραφὰς ἐμισθώθη, καὶ γραμματεῖον καὶ μάρτυρας ἀξιῶσί με τούτων παρασχέσθαι, πρῶτον μὲν τοὺς περὶ τῆς ἐταιρήσεως νόμους μέμνησθε, ἐν οἷς οὐδαμοῦ μνεῖαν ὁ νομοθέτης περὶ συνθηκῶν πεποίηται.

If they try to say that he has not been a *hetaira* who has not been hired in accordance with *syngraphai*, and they demand that I furnish a document and witnesses for these things, first of all, remember the laws concerning prostitution (ἐταιρήσεως) in which the lawgiver nowhere makes mention of *synthekai*.

The excerpt suggests that the word *συγγραφή* either means 'formal agreement' or it refers to the documentation for such an agreement. The phrase *κατὰ συγγραφὰς* seems explained by the continuation after the *καί* referring to documentation and witnessing. The passage uses contract related words indiscriminately. If we look at the whole passage 160-65, we see *κατὰ συγγραφὰς* in §160. Then an argument that the prostitution law makes no mention of *συνθηκαί*. The argument continues that the lawgiver does not examine whether someone has shamed himself by document (*κατὰ γραμματεῖον*), but, however the practice happens, he orders the practitioner to have no share of the common things of the city.

Aeschines argues that such an agreement could not be defended in court (163-64). He envisions a prosecution for breach of a prostitution agreement. An Athenian citizen hired as prostitute might address the court as follows.

"κάγω μὲν ἅπαντα καὶ πεποίηκα καὶ ἔτι καὶ νῦν ποιῶ κατὰ τὸ γραμματεῖον, ἃ χρὴ ποιεῖν τὸν ἐταιροῦντα· οὗτος δὲ ὑπερβαίνει τὰς συνθήκας." ἔπειτ' οὐ πολλὴ κραυγὴ παρὰ τῶν δικαστῶν αὐτῷ

ἀπαντήσεται; τίς γὰρ οὐκ ἐρεῖ· "ἔπειτα ἐμβάλλεις εἰς τὴν ἀγοράν, ἢ στεφανοῖ, ἢ πράττεις τι τῶν αὐτῶν ἡμῖν;" οὐκοῦν οὐδὲν ὄφελος τῆς συγγραφῆς.

‘And I have done everything and still now do everything that the one acting as *hetaira* ought, in accordance with the document (*grammateion*), but he is violating the *synthekai*.’ Then will not much uproar from the dicasts meet him? For who will not say, ‘then do you burst into the agora or crown yourself or do any of the same things that we do?’ Therefore there is no help in the συγγραφῆ.

Again he employs a jumble of contract words. In this paragraph again the word appears to refer to a written document. (See the section on συνθηκαί for further discussion of the legality of this arrangement.) Note the frequency of κατά + a contract word:

κατὰ συγγραφάς (§160), κατὰ γραμματεῖον (§161), κατὰ τὸ γραμματεῖον (§163) and (§164) and κατὰ γραμματεῖον again in (§165).

Demosthenes 18, *On the Crown*

In this oration, defending Ctesiphon, another ally prosecuted by Aeschines, Demosthenes compares Aeschines’ attacks to the complaint of one who finds fault with a statue commissioned in accordance with a συγγραφῆ.

λέγεις πόσα δεῖ προσεῖναι τῷ δημοτικῷ, ὥσπερ ἀνδριάντ’ ἐκδεδωκῶς κατὰ συγγραφῆν, εἴτ’ οὐκ ἔχονθ’ ἃ προσῆκεν ἐκ τῆς συγγραφῆς κομιζόμενος

‘You enumerate how many attributes the friend of the people ought to have as if you had hired for a statue in accordance with a *syngraphe* and then received it without the attributes it should have had’ (§122).

This συγγραφή gives requirements to be satisfied in a transaction. We have no information about its material form or likely legal status.<sup>22</sup>

Orations 46, 50 and 53 in the Demosthenic corpus, are all written for prosecutions by Apollodorus, the son of the banker Pasion.

#### Demosthenes 46, *Against Stephanus II*

This is the second speech in Apollodorus' prosecution of Stephanus for perjury. In an earlier trial, Stephanus deposed that he saw a copy of the will of Pasion (§2), but Apollodorus argues that his father made no will (§12).

As one argument that Stephanus deposed falsely to a copy of the will, Apollodorus points out (§28):

Ἄξιον τοίνυν, ὧ ἄνδρες δικασταί, καὶ τόδε ἐνθυμηθῆναι, ὅτι διαθήκης οὐδεὶς πώποτε ἀντίγραφα ἐποίησατο, ἀλλὰ συγγραφῶν μὲν, ἵνα εἰδῶσι καὶ μὴ παραβαίνωσι, διαθηκῶν δὲ οὔ.

It is right, dikasts, to also consider this, that no one ever made a copy of a will; of *syngraphai*, however, in order that they know and do not violate them, but [they do] not [make copies of] of wills.

Whether the comment about wills is true (someone makes a copy of a will in Lysias 32.7), Apollodorus mentions συγγραφαί by way of contrast. They are written documents with conditions to be followed. (They have to be physical documents or they

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<sup>22</sup> Attic συγγραφαί for construction (mentioned in Schulthess 1932, 2115-16) exist in inscription form from Demosthenes' time (4<sup>th</sup> century B. C.) For example (Schulthess 1932, 2115, n. 2), an inscription discussing the construction of an arsenal refers to itself as συγγραφαί. Giving requirements for the contractor, it stipulates that everything be done κατὰ τὰς συγγραφάς ('in accordance with the *syngraphai*').



cannot be copied. This is a concrete usage of the word.)

Demosthenes 50, *Against Polycles*

In Dem. 50, Apollodorus, describes problems that arose with his family and farm in Athens when he was away fulfilling a trierarchy (§61).

His mother was dying, his wife sick, his property in debt and there was a drought.

Finally,

οἱ δὲ δεδανεικότες ἤκον ἐπὶ τοὺς τόκους, ἐπειδὴ ὁ ἐνιαυτὸς ἐξῆλθεν, εἰ μὴ τις ἀποδοίῃ αὐτοῖς κατὰ τὰς συγγραφὰς

the lenders had come for the interest when the year ended unless someone should repay them in accordance with the *syngraphai*.

Since Apollodorus is discussing events back at Athens, we might infer that his farm was the security for the loan. We do not have a description of material form or legal status of the συγγραφαί, but we observe Apollodorus' sense of obligation to abide by the συγγραφαί and pay the interest (abstract usage of συγγραφή).

[Demosthenes] 53, *Against Nicostratus*

In this oration, the word συγγραφή describes an arrangement of questionable legal status. Pursuing escaped slaves Nicostratus, the defendant, was captured and himself sold into slavery. His brother went to his rescue, and he was ransomed for 26 minas (§7). His ransom involved a loan from some foreigners (ξένοι), as he told the speaker, Apollodorus.

ἡμέραις δ' οὐ πολλαῖς ὕστερον προσελθὼν μοι κλάων ἔλεγεν, ὅτι οἱ ξένοι

ἀπαιτοῖεν αὐτόν, οἱ δανείσαντες τὰ λύτρα, τὸ λοιπὸν ἀργύριον, καὶ ἐν ταῖς συγγραφαῖς εἶη τριάκονθ' ἡμερῶν αὐτὸν ἀποδοῦναι ἢ διπλάσιον ὀφείλειν

Not many days later, coming to me in tears he was saying that the foreigners who lent the ransom were demanding back the rest of the money and there [was a clause] in the *syngraphai* that he pay within thirty days or owe double the money (§10).

The required money must be paid within 30 days or the debt is doubled.

According to Nicostratus, the creditors may seize him if he does not pay them.

Apollodorus had already given Nicostratus 1000 dr., when Nicostratus asked him to pay the rest before the thirty days were past.

‘ἵνα μὴ ὅ τε ἀποδέδωκα’ ἔφη, ‘τὰς χιλίας δραχμάς, ἀπόλωνται, καὶ αὐτὸς ἀγώγιμος γένωμαι.’

‘So that what I have given’, he said, ‘the 1000 drachmas, may not be lost, and myself be liable to seizure’ (§11).

According to Nicostratus, he may be seized because a person ransomed from the enemy belongs to the ransomer, by law, if the ransom is not repaid (οἱ νόμοι κελεύουσιν τοῦ λυσαμένου ἐκ τῶν πολεμίων εἶναι τὸν λυθέντα, ἐὰν μὴ ἀποδιδῶ τὰ λύτρα §11).

Nicostratus clearly takes the creditors, who he describes as ξένοι, seriously. The question remains of how they would act on their threat and what legal status the συγγραφαί have. We do not know whether the *xenoi* claim the right of seizure in the συγγραφαί. If they have a legal right to seize him there is no need for a trial to determine his fate. Harris (2002b, 425) points out that the law does not “form an exception to the rule forbidding loans made on the security of the body” because

“enslavement was the result of warfare, not debt.” The law, then, transfers ownership to the ransomer until the ransom is repaid.

Apollodorus does not say whether the *συγγραφαί* are written (it is an abstract usage). We have only the examples of other orations in which they are written. At any rate, it is questionable whether the debt provision in the *συγγραφαί* was legally defensible in an Athenian court. The maritime loan courts were open to all nationalities (Cohen 1973, 59) perhaps the *xenoi* could bring suit there. Otherwise the access of non-metic foreigners (*ξένοι*) to Athenian courts would probably have been governed by treaties between the state of their origin and Athens. Isager and Hansen remark (1975, 68-69) that outside of maritime courts “aliens (*xenoi*) had almost no legal protection: they could bring suits in Athens only if a special treaty on legal arrangements had been signed with their native town.” Citizens of Athens had a privileged legal status. Foreigners staying in Athens had to register as metics within a short time. Enrolment as a metic was more of a responsibility than a privilege (Hansen 1999). If they did not register themselves, they might be prosecuted in a *γραφὴ ἀπροστασίου* and themselves sold into slavery.

[Andocides] 4, Against Alcibiades

This oration, generally considered spurious, is written as the defense of the speaker against possible ostracism.<sup>23</sup> Much of it attacks Alcibiades, another candidate for ostracism.

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<sup>23</sup> If such an ostracism took place, it could have occurred in 415 B. C. (Edwards 1995, 131-32).

According to §17, Alcibiades persuaded Agatharchus, the painter (τὸν γραφέα), to come to his home and, once there, forced him to paint (γράφειν). Agatharchus said he could not do this because he had συγγραφάς with others (διὰ τὸ συγγραφὰς ἔχειν παρ' ἐτέρων). Alcibiades held him captive, however, and it was only three months later that Agatharchus escaped.

If we treat [Andoc.] 4, as a work of the 4<sup>th</sup> century or later,<sup>24</sup> a contractual interpretation makes sense.<sup>25</sup> The phrase διὰ τὸ συγγραφὰς ἔχειν παρ' ἐτέρων might be translated “because he had [written] contracts with others” (Edwards 1995) or, with a less definite connection to contracts, “because he had other engagements” (Maidment, *Loeb*, 1982). The use of συγγραφή with παρά+ gen. is unusual although we see παρά + dat. in a contractual context in Dem. 27.11 (ἔκδοσιν παρὰ Ζούθῳ).

The reference to συγγραφάς is too brief to have a definite significance from the context. The συγγραφὰς give a reason, some sort of prior obligation that makes it impossible for Agatharchus to paint for Alcibiades.

### (iii) Conclusions

In the majority of these orations (9 orations), συγγραφαί are written documents. There is no allusion to writing the συγγραφαί in Dem. 18, 50 or 53, or in [Andoc.] 4. The list of requirements for the statue of Dem. 18 would plausibly be part of a document.

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<sup>24</sup> The majority of modern commentators, consider [Andoc.] 4 to be a political pamphlet or literary exercise (Edwards 1995, 131). Edwards (1995, 136), argues that it is probably “a literary exercise, perhaps composed during the fourth century but possibly later.”

<sup>25</sup> The word συγγραφή continued in use as a contract word in Hellenistic times (Kussmaul 1969, 85-87).

In the context of maritime loans, we most clearly see *συγγραφαί* treated as legally binding documents, the documentation of contracts. Failure to abide by their terms may give rise to legal action. Outside of maritime trade, orators treat *συγγραφαί* as having a binding force although litigation is only envisioned in Aeschin. 1 and then, facetiously. In Lysias 30, the *συγγραφαί* contained sacrifices that the state should follow. In other orations, *συγγραφαί* concern the obligations of private individuals. In general they contain stipulations to be followed, although in [Andoc.] 4, their mere existence constituted an obligation.

### 3. Συμβόλαιον

#### (i) Introduction

The word συμβόλαιον appears 90 times in the ten canonical orators. There are 83 instances, excluding 6 fragments and one inserted document, spread out over 32 orations. I first discuss orations that give detailed descriptions of συμβόλαια and then deal with passing references to the word. The goal of this chapter is to determine the relationship between the word συμβόλαιον and the notion of ‘contract’ as defined previously. Is a συμβόλαιον legally defensible? Is it an agreement? To what kinds of transaction does the word refer?

I will also consider the significance of the phrase ἴδια συμβόλαια and whether συμβόλαια are part of private law. Athenians generally classified lawsuits as public (δίκαι δημόσιαι) or private (δίκαι ἴδιαι). Public cases concerned offenses to the whole state and any citizen could bring suit; whereas private cases were matters concerning the parties involved exclusively. Only injured parties could bring suit (MacDowell 1986, 57-58, cf. Dem. 18.210 below).

#### (ii) Συμβόλαια Described in Detail

##### A. Outside of Maritime Commerce

Isocrates 17, *Trapeziticus*

This oration concerns money deposited in the bank of Pasion, an Athenian banker. The speaker of the oration is from Pontus, where his father has a position of authority under Satyrus, the ruler of Pontus.

The speaker represents bank transactions, the subject of the suit, as *συμβόλαια*. The word first appears in the introductory statements (*prooimion*). The difficulty in this sort of lawsuit, says the speaker, is that

τὰ μὲν γὰρ συμβόλαια τὰ πρὸς τοὺς ἐπὶ ταῖς τραπέζαις ἄνευ μαρτύρων  
γίγνεται

*symbolaia* with those in charge of banks are without witnesses<sup>26</sup> (§2).

The speaker had deposited money in Pasion's bank. When he asked for the money, Pasion said he was without the means to pay at the moment (§9). Finally he agreed to sail with the speaker to Pontus and repay him, thereby avoiding publicity in Athens.

ὠμολόγησεν εἰς τὸν Πόντον μοι συμπλευσεῖσθαι κάκεῖ τὸ χρυσίον  
ἀποδώσειν, ἴν' ὡς πορρωτάτῳ ἀπὸ τῆσδε τῆς πόλεως διαλύσειε  
τὸ συμβόλαιον

He agreed to sail to Pontus with me and to repay the gold there, in order that, as far as possible from this city, he would pay off the *symbolaion* (§19).

Additionally, he agreed to arbitration by Satyrus if he did not repay. In §19, as object of the verb, *διαλύω*, *συμβόλαιον* would represent the money owed rather than the obligation 'contract' itself. Alternatively one might give the meaning 'debt' to the word since 'debt' can refer either to the obligation or the money owed.

Elsewhere in the discussion of the trip to Pontus the word *συμβόλαιον* would refer to the obligation. For example, when they had already committed the agreement to

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<sup>26</sup> The bank personnel were slaves and thus could only have given testimony under torture (*basanos*) (MacDowell 1986, 245).

sail to a document (συνθήκαι §20 or a γραμματεῖον §23), Pasion changed his mind about the voyage because of a lawsuit by one Menexenus involving Pasion's dispute with the speaker.

οὐτ' εἰς τὸν Πόντον ἔφη μοι συμπλευσεῖσθαι οὐτ' εἶναι πρὸς ἔμ' αὐτῶ  
 συμβόλαιον οὐδέν

He said he would not sail to Pontus with me and he did not have any *symbolaion* with me (§23).

'Contract' or, more precisely, 'debt' would be a reasonable translation for συμβόλαιον, which in this passage involves a relationship with the speaker.

Pasion again agreed to sail to Pontus, but instead he sent Kittus, a person whom the speaker describes as a slave of Pasion (§51). Satyrus, however, thought it wrong to give judgment about the συμβόλαια.

ἀκούσας δὲ Σάτυρος ἀμφοτέρων ἡμῶν δικάζειν μὲν οὐκ ἤξιον περὶ τῶν  
 ἐνθάδε γενομένων συμβολαίων, ἄλλως τε καὶ μὴ παρόντος τούτου μηδὲ  
 μέλλοντος ποιήσειν ἃ ἐκεῖνος δικάσειεν

But, listening to both of us, Satyrus did not think it right to make a judgment concerning *symbolaia* that were made here [Athens], especially since Pasion was not present and he was unlikely to do what Satyrus judged (§52).

We could translate συμβόλαια with the more general term, 'contracts' in §52.

In §57, a general comment about the treatment of ἰδία συμβόλαια by Bosporan authorities, there is too little description to determine an adequate translation for the phrase although we can conclude that ἰδία συμβόλαια may require judgment.



ἐν τοῖς ἰδίοις συμβολαίοις, ὧν ἐκεῖνοι κριταὶ γίνονται, οὐ μόνον ἴσον ἀλλὰ καὶ πλεόν ἔχοντες ἀπέρχεσθε

In the private συμβόλαια of which they (i.e. Satyrus and the speaker's father) are the judges, you not only have a fair treatment but also an advantage.

Outside of §57, συμβόλαια are created by actions that may be witnessed although transactions with a bank are not (§2). In places, συμβόλαιον might be translated as 'debt' (§19). 'Contract', however, would often be a good translation. It seems clear that the bank deposits resulted from agreement although this is not emphasized, and it is a premise of the oration that the court would defend the speaker's right to deposits if he could prove he made them. The speaker cites no laws.

#### Isocrates 21, *Against Euthynus*

This trial is another action to recover a deposit made without witnesses. The speech is written for a speaker supporting the prosecution by one Nicias of his cousin, Euthynus. After a brief introduction, the speaker describes the dispute. He refers to the transaction between Nicias and Euthynus as a συμβόλαιον.

ὅθεν οὖν τὸ συμβόλαιον αὐτῷ πρὸς Εὐθύνου γεγένηται, διηγῆσομαι ὑμῖν ὡς ἂν δύνωμαι διὰ βραχυτάτων.

I will describe to you the reason the *symbolaion* with Euthynus has arisen as briefly as possible (§2)

When the Thirty were in power following the Peloponnesian War, Nicias deposited three talents with Euthynus (§2). Then, deciding to leave Athens, Nicias asked for his money back. Euthynus, however, only returned two talents (§3). The money was

deposited without witnesses and returned without witnesses (§4). Nicias is suing to get the one talent back.

Euthynus will defend himself by arguing for the implausibility of Nicias' accusation. He will argue that no one would return 2/3 of the deposit (παρακαταθήκη) and rob 1/3 (§16). The speaker replies

ἔτι δ' ἔχοιμ' ἂν ἐπιδείξαι καὶ ἑτέρους, οἱ χρήματα λαβόντες τὰ μὲν πλεῖστ' ἀπέδοσαν, ὀλίγα δ' ἀπεστέρησαν, καὶ ἐν μικροῖς μὲν συμβολαίοις ἀδικήσαντας, ἐν μεγάλοις δὲ δικαίους γενομένους·

And yet I could point to others who, receiving money, returned most, but robbed a little, indeed doing wrong in small *symbolaia* but being just in large ones (§17).

He links *συμβόλαια* with financial transactions.

The *συμβόλαιον* is apparently an agreement to hold 3 talents of Nicias' money and return it when requested. In regard to the criteria for identifying a contract, agreement seems apparent. There is no emphasis on the fact of agreement, but Nicias is described as voluntarily giving the money. Euthynus appears to acknowledge his obligation to pay back the money by his repayment of two talents (cf. §16). The legal status of the *συμβόλαιον* will be tested in this lawsuit.

### Lysias 3, *Against Simon*

Simon is prosecuting the speaker of this oration for wounding with intent to kill. He alleges that he gave Theodotus, a Plataean boy, 300 drachmas and made (ποιησάμενος) *συνθηκῆναι* (§22). The money appears to be payment for a sexual relationship with Theodotus (discussed in the section on *συνθηκῆναι*). According to his

opponent, the reason that Simon claimed to give the money is that he does not want to seem to act terribly (δεινὰ ποιεῖν)

εἰ μηδενὸς αὐτῷ συμβολαίου γεγενημένου τοιαῦτα ἐτόλμα ὕβριζειν  
τὸ μειράκιον

if, when there had been no *symbolaion* with him, he dared to commit such acts of hybris on the boy (§26).

The word συμβόλαιον refers back to the συνθήκαι of §22. The passage suggests that, if the boy violated the συνθήκαι, then there was some excuse for treating him with hybris.

The hire of Theodotus would be an employment contract (The speaker uses the word ἐμισθώσατο in §24). The treatment of employees will be further considered in the section on μίσθωσις. The συμβόλαιον is the result of the συνθήκαι and the 300 drachmas. Its legal status is discussed in the section on συνθήκαι.

#### Lysias 17, *On the Property of Eraton*

The συμβόλαιον here is for an unpaid loan made in the 5<sup>th</sup> century B. C. (before the Thirty Tyrants) by the speaker's grandfather.

Erato, father of Erasiphon, borrowed two talents from the speaker's grandfather (§2). During Erato's life, the speaker's family received the interest and the rest of the agreement was carried out (τούς τε τόκους ἀπελαμβάνομεν καὶ τᾶλλα τὰ συγκείμενα), but Erato died leaving three sons, Erasiphon, Erato and Erasistratus, who respected none of the rights of the creditor. The speaker's father sued Erasistratus as

soon as it was possible. (There were no δίκαι during the rule of the Thirty Tyrants<sup>27</sup>, and the lawsuit had to wait until there was peace and δίκαι ἀστικά [§3].)

λαχῶν ὁ πατήρ παντὸς τοῦ συμβολαίου Ἐρασιστράτῳ, ὅσπερ μόνος τῶν ἀδελφῶν ἐπεδήμει, κατεδικάσατο ἐπὶ Ξεναιέτου ἄρχοντος

Obtaining leave to bring an action for the whole *symbolaion* against Erasistratos, who alone of the brothers was in town, father obtained a judgment against him in the Archonship of Xenaeteus (§3).

One might translate συμβόλαιον as ‘debt’ or ‘loan’ in §3 since the speaker views it, not as an independent entity such as a contract, but something with parts as, for example, the money in the loan. In §5 the speaker uses the phrase ἅπαντος τοῦ χρέως instead of παντὸς τοῦ συμβολαίου in reference to his father’s suit.

ὑπὲρ ἅπαντος τοῦ χρέως ἀντιδικῶν πρὸς τὸν πατέρα ὁ Ἐρασίστρατος ἠττήθη

Erasistratus was worsted in a legal dispute against my father for the whole loan.

Demosthenes 27, *Against Aphobus A*

Demosthenes sues Aphobus, one of his guardians, when he was a boy, after his father’s death. In the course of the guardianship many of the assets of the estate disappeared.

In particular, a debtor pledged 20 couch-making slaves (κλινοποιοί) to

Demosthenes’ father as security for a loan of 40 minas (§9), but the guardians do not

<sup>27</sup> Lamb (*Loeb*, 1930, 392 n. a) explains that this was during the conflict between the thirty tyrants and the democrats. Isoc. 21.7 also mentions the suspension of lawsuits (in Wyse, 1979, 414). In the public suit (*phasis*) of Isoc. 18.6, during the regime of the Thirty, the council decided the case. It had taken over the activities of the courts according to Van Hook (*Loeb*, 1945, 258 n. a).

explain where the slaves are or what happened to them (§24-25). They only say that the one who pledged the couch-makers (ὁ ὑποθεῖς τῶ πατρὶ τάνδράποδα) was overwhelmed with debt and call him the most wicked of persons (§24-25). Demosthenes replies

ὅτι τοίνυν οὐκ ἄπορος ἦν ὁ Μοιριάδης, οὐδ' ἦν τῶ πατρὶ τοῦτο τὸ συμβόλαιον εἰς τάνδράποδ' ἠλιθίως συμβεβλημένον, μεγίστῳ τεκμηρίῳ γνώσεσθε

Furthermore that Moiriades was not without means, nor was this *symbolaion* for the slaves foolishly made by my father, you will come to know by the greatest evidence (§27).

The *συμβόλαιον* refers to the loan on the security of the couch-makers. Notice that the verb form *συμβεβλημένον* echoes the noun *συμβόλαιον* (internal accusative).

#### Demosthenes 37, *Paragraphe Against Pantaenetus*

The speaker, Nicobolus, opposes Pantaenetus' suit against him with a *παραγραφή*. The suit is inadmissible, according to Nicobolus, because there was a release from all claims (§1).

Pantaenetus' assertions should not be trusted, Nicobolus argues, since if Pantaenetus had suffered any of the offenses he charges in his suit,

κατ' ἐκείνους ἂν τοὺς χρόνους εὐθύς ἐφαίνετό μοι δικαζόμενος, ἐν οἷς τὸ συμβόλαιον ἡμῖν πρὸς ἀλλήλους ἐγένετο

he would evidently prosecute me straightaway at the time when we had a *symbolaion* with each other (§2).

(It is common to argue that the behavior of one's opponent violates human nature and hence his story is implausible.) The συμβόλαιον is no longer in effect (§2) because of the release from claims in §1.

The background of the συμβόλαιον is as follows. Nicobolus, and one Evergus lent 105 minas to Pantaenetus on the security of a workshop and 30 slaves in the Maroneia mines (§4). The lenders wrote up a rental agreement (συνθήκαι) by which Pantaenetus would lease the security for the monthly interest on the loan (§5). The συνθήκαι were the documentation for the arrangement (see the section on συνθήκαι).

After they wrote up the lease Nicobolus sailed away to Pontus (§6). On his return, he found to his dismay that Evergus had expelled Pantaenetus from the security and taken possession of it

ἢ γὰρ κοινωνεῖν ἔδει τῆς ἐργασίας καὶ τῶν ἐπιμελειῶν τῷ Εὐέργῳ, ἢ  
χρήστην ἀντὶ τούτου τὸν Εὐέργον ἔχειν, καὶ πρὸς ἐκεῖνον πάλιν μίσθωσιν  
γράφειν καὶ συμβόλαιον ποιεῖσθαι

For it was necessary either to be a partner in concern for the business with Evergus or to have Evergus as a debtor instead of Pantaenetus and again to write a rental agreement with him and to make a *symbolaion* (§10).

In the second alternative, the role of Evergus would be like that of Pantaenetus in the previous lease. Paragraph 10 links the written lease (μίσθωσις) with the συμβόλαιον. The συμβόλαιον may be taken as the result of the lease arrangement.<sup>28</sup>

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<sup>28</sup> “καί may mark a result” (Smyth 1984, §2874).

Kussmaul (1969, 29) takes a different view. Because he believes that *συμβόλαιον* must refer to a credit transaction in this situation,<sup>29</sup> he takes the writing of the lease and creating the *συμβόλαιον* as two different acts (*μίσθωσιν γράφειν καὶ συμβόλαιον ποιῆσθαι*). The *συμβόλαιον*, he says, is a loan for whose security the factory is transferred to the creditor, and the lease allows the debtor to retain the factory and pay rent in lieu of interest on the loan.<sup>30</sup>

In response to this it can be pointed out that the *συμβόλαιον* of §2 must at least include the lease. The Nicobolus argues that Pantaenetus should have brought suit when they had a *συμβόλαιον* with each other (§2). As he already mentions, he was released from all claims (§1). If the *συμβόλαιον* only referred to the loan made to Pantaenetus, Pantaenetus would have no claims on his creditor. The creditor would have claims on him. The lease, however, entailed obligations on both sides. We see this in the accusations that Evergus, the other creditor, and Pantaenetus reportedly made against each other. Both sides refer to the lease (*συνθήκαι*). According to the Nicobolus, Pantaenetus made the accusation that he was thrown off the property by force, contrary to the lease (*παρὰ τὰς συνθήκας §6*), and Evergus claims that he took his property back because Pantaenetus did nothing *ἐν ταῖς συνθήκαις* (§7).

Turning to *συμβόλαιον* in the phrase *μίσθωσιν γράφειν καὶ συμβόλαιον*

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<sup>29</sup> He asserts (1969, 29), without explaining why, that *symbolaion* must refer to a credit transaction (*δάνειον*). “Es gibt eine Anzahl Worterbindungen, in die das Wort *συμβόλαιον* nur eintreten kann, wenn es das Kreditgeschäft (*δάνειον*) bezeichnet.”

<sup>30</sup> “Das *συμβόλαιον* ist ein *δάνειον*, zu dessen Sicherung dem Gläubiger eine Fabrik *ἐπὶ λύσει* übereignet wird” (1969, 29 n. 1).

ποιεῖσθαι in §10, the συμβόλαιον is not actually a loan, *daneion*, as Kussmaul suggests, since Nicobolus is not actually lending Evergus assets. Evergus already has possession of the factory. If we treat the word συμβόλαιον as a *daneion*, the phrase συμβόλαιον ποιεῖσθαι must mean to formalize the debtor-creditor relationship. How would this be done? The previous lease was written in συνθήκῃ. By writing up a new lease (μίσθωσιν γράφειν), Nicobolus automatically creates a debt relationship. Nothing in the text suggests that μίσθωσιν γράφειν καὶ συμβόλαιον refers to two separate actions even if συμβόλαιον is a debt-relationship in §10.

If we look at the use of συμβόλαιον in other orations. It is true that, in many cases, the word does refer to a loan, but not in all of them. Besides deposit agreements such as in Isocrates 21 (*Against Euthynus*) and bank deposits, there is the prostitution arrangement in Lysias 3 (*Against Simon*). Simon alleges that he had a συμβόλαιον with the Plataean boy (Lysias 3.26). As discussed previously, this was probably a contract for services rather than a loan.

Returning to Demosthenes 37, towards the end of the oration, Nicobolus discusses the type of defense that Pantaenetus may make, and he berates his opponent as the most justly hated of all human beings

ὅς γ' ὀφείλων μνᾶς ἑκατὸν καὶ πέντε καὶ οὐχ οἷος τ' ὦν διαλύσαι, τοὺς ταῦτα συνευπορήσαντας καὶ γενομένους αἰτίους σοι τοῦ τὰ δίκαια ποιῆσαι τοῖς συμβαλοῦσιν ἐξ ἀρχῆς, χωρὶς ὦν περὶ αὐτὰ τὰ συμβόλαι' ἡδίκεις, καὶ πρὸς ἀτιμῶσαι ζητεῖς.

inasmuch as, owing 105 minas and being unable to repay, besides your wrongful acts concerning the *symbolaia* themselves, you even seek to deprive them of civil rights



who contributed this (money) and were the cause for your doing what is right by the original parties to the agreement/contract (τοῖς συμβαλοῦσιν ἐξ ἀρχῆς) (§49).

The translation ‘parties to the *contract*’ for τοῖς συμβαλοῦσιν is warranted since τοῖς συμβαλοῦσιν are those who previously made a loan to Pantaenetus on the security of the workshop and slaves (§12). The loan would be subject to litigation as other loans, for example the loan in Lysias 17.

The noun συμβόλαιον in this oration, however, refers to the lease agreement. Pantaenetus is treating the lease as a contract by making its violation part of his prosecution (§29), but he makes other unrelated accusations, for example, that Nicobolus plotted to deprive him of civil rights (*atimosai*) (§24). The appearance of the word συμβόλαιον in §2, however, suggests that the lawsuit is about the violation of a συμβόλαιον. While there are other issues, Nicobolus’ description of his dealings with Pantaenetus focuses on the loans, the lease of the workshop and the συμβόλαιον.

#### Demosthenes 41, *Against Spoudias*

A certain Polyeuctus had two daughters and no sons. He adopted his wife's brother, Leocrates, and gave the younger daughter to him as a wife. The speaker in this oration married the older daughter, and was promised a dowry of 40 minas (§§3-4). He only received 30 minas, however.

τὴν προῖκ’ οὐ κομισάμενος ἅπασαν, ἀλλ’ ὑπολειφθεισῶν χιλίων  
δραχμῶν καὶ ὁμολογηθεισῶν ἀπολαβεῖν ὅταν Πολύευκτος ἀποθάνῃ, ἕως  
μὲν ὁ Λεωκράτης ἦν κληρονόμος τῶν Πολυεύκτου, πρὸς ἐκεῖνον ἦν μοι τὸ  
συμβόλαιον·

Not receiving all of the dowry, but with 1,000 drachmas left remaining and the agreement that I receive it when Polyeuctus dies, my *symbolaion* was with Leocrates as long as he was the heir Polyeuctus' property (§5).

Later, Polyeuctus had a falling out with Leocrates, took his daughter back and instead gave her to Spoudias.

Polyeuctus always admitted that he had a debt, and he introduced (συνέστησε) Leocrates to the speaker (§6), presumably as a guarantor. The συμβόλαιον of §5, appears to be the agreement to pay the speaker 1,000 dr. after the death of Polyeuctus. There were witnesses to this arrangement and presumably the speaker could have sued Leocrates, as guarantor if he did not pay (cf. Isaeus 5, an action to compel payment by a guarantor.). We may regard the συμβόλαιον as a contract.

#### Demosthenes 49, *Against Timotheus*

Until deposed from office, Timotheus, was an Athenian general in charge of a fleet of triremes (§6, 9, 11) and was later general for the king of Persia (§25, 39). The prosecutor, Apollodorus, explains to the court that he is suing Timotheus for money he owed (ὀφείλων ἀργύριον) to Apollodorus' father, the banker Pasion. He continues,

ἐπειδὴν ὑμᾶς ἀναμνήσω τὸν τε καιρὸν ἐν ᾧ τὸ συμβόλαιον ἐγένετο, καὶ τὰ συμβάντα τούτῳ ἐν ἐκείνῳ τῷ χρόνῳ, καὶ εἰς ὅσῃ ἀπορίαν κατέστη οὗτος, τότε ἠγήσεσθε τὸν μὲν πατέρα τὸν ἐμὸν βέλτιστον γενέσθαι περὶ Τιμόθεον

When I remind you of the critical time in which the *symbolaion* came into being, what happened to him at that time and the difficulty he was in, then you will think my father to have been the very best of people to Timotheus (§1).

Pasion helped Timotheus and gave him money from the bank, but Timotheus showed no gratitude, says Apollodorus.

καίτοι σφαλέντος μὲν τούτου ἀπώλλυτο καὶ τῷ πατρὶ τῷ ἐμῷ  
τὸ συμβόλαιον· οὔτε γὰρ ἐπ' ἐνεχύρῳ οὔτε μετὰ μαρτύρων ἔδωκεν·  
σωθέντος δὲ ἐπὶ τούτῳ ἐγίγνετο, ὅποτε βούλοιτο εὐπορήσας ἡμῖν  
ἀποδοῦναι.

And yet, with him (Timotheus) overthrown, the *symbolaion* also perished for my father because he gave the money without security or witnesses; but, with his survival, it [the *symbolaion*] had the condition that whenever he wanted, when in prosperity, he repay us (§2)

Pasion thought that, if Timotheus survived the present dangers and returned from the king, he would come back more prosperous (§3).

The introductory paragraphs of the oration describe a debt of Timotheus to Pasion and a *συμβόλαιον*. Notably, *συμβόλαιον* appears at the end of the introduction (*prooimion*) in the common remark that the speaker will describe the situation in full (*διηγῆσασθαι*).

ἀναγκαῖόν μοι δοκεῖ εἶναι ἐξ ἀρχῆς ἅπαντα διηγῆσασθαι ὑμῖν, τὰ τε ὀφειλόμενα, καὶ εἰς ὃ τι ἕκαστον αὐτῶν κατεχρήσατο, καὶ τοὺς χρόνους ἐν οἷς τὸ συμβόλαιον ἐγένετο.

It seems necessary to me to explain everything to you from the beginning, the debts, the purpose for which each of them was used and the occasions on which the *symbolaion* came into being (§4-5).

We conclude from the *prooimion* that the subject of the lawsuit is a debt involving a συμβόλαιον.

Apollodorus proceeds to describe Timotheus' dealings with Pasion's bank. Before an expedition that he sailed on as a general, Timotheus asked and received from Pasion a loan of 1351 drachmas and 2 obols (§6). This was the first debt (πρῶτον χρέως §8). Timotheus later faced trial in Athens due to his conduct in the war. Before the trial, Timotheus borrowed another 1000 drachmas in order to settle a debt with a ship's captain (§17).

Apollodorus interrupts his account to discuss the evidence he will present.

καὶ ταῦτα ὅτι ἀληθῆ ἔστιν, τὸν δόντα τὸ ἀργύριον Φορμίωνα ὑμῖν  
 μάρτυρα παρέξομαι, ἐπειδὴν καὶ περὶ τοῦ ἄλλου συμβολαίου διηγῆσωμαι  
 ὑμῖν, ἵνα τῇ αὐτῇ μαρτυρίᾳ περὶ ὅλου τοῦ χρέως ἀκούσαντες εἰδῆτε ὅτι  
 ἀληθῆ λέγω.

And that these things are true, I shall provide as a witness, Phormio, the one who gave the money, after I explain to you about the rest of the *symbolaion*, in order that, hearing about the whole debt by the same the deposition, you may know that I am telling the truth (§18).

I translate τοῦ ἄλλου συμβολαίου as the “rest of the *symbolaion*” (cf. LSJ II. 6).

Alternately, one might translate it, “the other *symbolaion*” (Goodwin and Gulick 1958, §965 a. describe ‘the other’ as an uncommon usage for ὁ ἄλλος). In fact, Murray (*Loeb*, 1939) renders the phrase as “the other loan.” The difficulty is that Apollodorus describes, not one, but two more loans (§23 and §26) and that he always uses συμβόλαιον in the singular.

Apollodorus continues his description of the transactions. Alketas and Iason, rulers in northern Greece, came to Athens to help Timotheus during his trial and stayed at his house. Timotheus sent a slave to ask for bedding, cloaks, two silver bowls and the loan of one mina (§22-23). He returned the bedding and cloaks, but not the silver bowls whose cost was later added to his account (§31).

After he was acquitted, Timotheus decided to serve the king of Persia. He introduced Philondas, a Megarian metic, to Pasion and asked him to give Philondas the freight charge for wood that he would bring back from Macedonia (§25-26). A year later, he came back with the wood and received 1750 drachmas from Pasion (§29). It is after these loans that Apollodorus begins to present depositions to support his case (§33), so we can assume that he has described the *συμβόλαιον* as indicated in §18.

We now consider the use of the word *συμβόλαιον*. Assuming that the *συμβόλαιον* reflects debts, we analyze these. If we take the introduction literally, since it uses the singular, *συμβόλαιον*, we expect one, but Apollodorus describes four separate loans to Timotheus, spread out over three situations—one before his expedition, two before his trial and one more while he was serving the king of Persia.

According to §2, the *συμβόλαιον* was made during a period of crisis and danger for Timotheus (*κινδύνοις τοῖς μεγίστοις καθεστηκῶς περὶ τῆς ψυχῆς* §2). This situation seems better to fit the loans before the trial, after which his steward was executed, rather than the loan before the military expedition, but the military expedition would also be a time of danger. To make sense of the exposition, if there was one *συμβόλαιον*, it came about before Timotheus' expedition. The translation 'debt' for *συμβόλαιον* covers the case of several loans. If, on the other hand, there was more than

one συμβόλαιον, we might construe τοῦ ἄλλου συμβολαίου (§18) as “the other *symbolaion*.” The other συμβόλαιον would be the loan of money for the freight charge.

Although συμβόλαιον may stand for ‘debt’, there are other words that Apollodorus could use for this idea. He probably uses it for its legal associations. He wants repayment of the money. Treating the debts as one συμβόλαιον unifies the subject of litigation. The συμβόλαιον here represents several agreements that the speaker hopes are legally defensible—one or more contracts, by our definition.

#### Demosthenes 50, *Against Polycles*

Apollodorus, the speaker, is suing Polycles for the extra expenses that he incurred as a trierarch because Polycles did not take over this responsibility at the end of Apollodorus’ term of service. He begins his prosecution by emphasizing the importance of this trial. The dispute with Polycles involves them privately but has public importance.

οὐ γὰρ ἐμὸς καὶ Πολυκλέους ἴδιός ἐστιν ὁ ἀγὼν μόνον, ἀλλὰ καὶ τῆς πόλεως κοινός. ὦν γὰρ τὰ μὲν ἐγκλήματα ἴδιά ἐστιν, αἱ δὲ βλάβαι κοιναί, πῶς οὐχ ὑπὲρ τούτων εἰκός ἐστιν ἀκούσαντας ὑμᾶς ὀρθῶς διαγινῶναι; εἰ μὲν γὰρ περὶ ἄλλου τινὸς συμβολαίου ἐγὼ διαφερόμενος πρὸς Πολυκλέα εἰσήειν εἰς ὑμᾶς, ἐμὸς ἂν ἦν καὶ Πολυκλέους ὁ ἀγὼν· νῦν δὲ περὶ τε διαδοχῆς νεώς ἐστιν ὁ λόγος καὶ ἐπιτριηραρχήματος πέντε μηνῶν καὶ ἕξ ἡμερῶν ἀνηλωμένου, καὶ περὶ τῶν νόμων, πότερα κύριοί εἰσιν ἢ οὐ.

For the trial of Polycles and myself is not only a private matter, but also a common matter of the city. Indeed, concerning matters of which the complaints are private but the harm is public, how is it unreasonable that you, the hearers, judge rightly? For if concerning some other *symbolaion*, at variance with Polycles, I came to you, the trial would be mine and of Polycles, but now the speech concerns succession to a ship and an added trierarchy of five months and six days expended and about whether the laws have force or not (§1).

The phrase εἰ μὲν γὰρ περὶ ἄλλου τινὸς συμβολαίου ἐγὼ διαφερόμενος indicates that this suit involves a *συμβόλαιον*. The appellation comes as a surprise in light of the other orations we have studied. The oration describes no contract. Polycles did not succeed to the trierarchy as he was legally obligated to do (§57), but he made no agreement or concession, despite several offers by Apollodorus or his friends (§28, §38-40). Based on §1, *συμβόλαιον* is a ‘legal dispute’ assuming that the suit really did involve a *symbolaion* from a Greek point of view.

It is possible that Apollodorus is stretching the meaning of the word *συμβόλαιον*. There may be legal or procedural reasons for calling their conflict a *συμβόλαιον* at the beginning of the oration, for example, if the trial was held before a court that heard private disputes. This was perhaps a *δίκη τρηραρχίας*, one of the suits listed by Pseudo-Aristotle (52.2) that were introduced by magistrates called *eisagogeis*. We do not know, however, what the *δίκαι τρηραρχίας* involved (Cohen 1973, pp. 12-14, 189).

The comments that the trial is ἴδιος and the accusations are ἴδια suggest that this is a private lawsuit (*δίκη ἴδια*). Apollodorus emphasizes that the trial and damages in

fact involve the whole city as in the case of a (δίκη δημόσια), in effect saying that the trial has the importance of a (δίκη δημόσια).

## B. Maritime Commerce

### Demosthenes 32, *Paragraphe Against Zenothemis*

Many of the orations involving maritime commerce, including this one, are for *paragraphe* procedures. The speaker, Demon, has brought a formal objection (παραγραφή) against Zenothemis on the grounds that Zenothemis' suit is not covered under the following law, discussed in more detail in the section on the word συγγραφή (See p. 32).

The law in 32.1, says Demon, is the basis for lawsuits, but, he adds, Zenothemis admits himself that he had neither συμβόλαιον or nor συγγραφή with Demon.

τουτῶι τοίνυν Ζηνοθέμιδι πρὸς μὲν ἐμὲ ὅτι οὐδὲν ἦν συμβόλαιον οὐδὲ  
συγγραφή, καὐτὸς ὁμολογεῖ ἐν τῷ ἐγκλήματι

That Zenothemis here had neither *symbolaion* nor *syngraphe* with me, he himself admits in the accusation (§2).

So far this describes no specific συμβόλαιον, but we can observe, at least, that συμβόλαια are agreed by both sides not to be the subject of Zenothemis' accusation. His charge is that Demon tried inappropriately to claim the cargo of Hegestratus' ship. Zenothemis, who made a loan to Hegestratus, wants possession of the cargo (grain) since Hegestratus died at sea (§2) and the cargo belonged to him (§12). According to Demon, on the other hand, Protus, who owes him money, purchased the grain (§15).



The first concrete συμβόλαιον is Demon's loan to Protus. When the ship carrying Zenothemis and Protus arrived in Athens, Zenothemis got possession of the grain and would not allow himself to be ejected (οὐκ ἐξήγετο) except by Demon (§17). Zenothemis refused a challenge to go to Syracuse, where the grain was purchased, in order to verify who paid the taxes on it.

λοιπὸν ἦν ἡμῖν τοῖς ἐνθένδε μὲν πεπιοημένοις τὸ συμβόλαιον, παρειληφόσι δὲ τὸν σῖτον παρὰ τοῦ δικαίως ἐκεῖ πριαμένου, ἐξάγειν τοῦτον.

It remained for us (Demon), who made the *symbolaion* here, receiving the grain from the one who justly bought (Protus) it there, to eject him (Zenothemis) (§20).

The word συμβόλαιον also appears in §8 where it refers to several loans.

According to Demon, Zemothemis and Hegestratus both borrowed money in Syracuse, and they agreed to corroborate each other's stories about the security for the loans. Since συγγραφή are accustomed to have a clause requiring repayment if the ship is saved, they plotted to sink Hegestratus' ship in order not to repay the lenders (§5). The passengers caught Hegestratus cutting a hole in the hull, and he drowned trying to get away from them (§6). Zenothemis acted as if he knew nothing about it and tried to persuade the crew to abandon the ship

ἵν', ὅπερ διενόησαν, τοῦτ' ἐπιτελεσθεῖη καὶ ἡ ναῦς ἀπόλοιτο καὶ τὰ συμβόλαι' ἀποστερήσαιεν.

in order that what they planned be carried out, that the ship be lost, and that they rob the *symbolaia*. (§7-8)

The purpose was to 'rob the contract' (τὰ συμβόλαι' ἀποστερήσαιεν) i.e. to violate it so as not to repay the money. Pearson (1972, 258) explains τὰ συμβόλαι' as is both "the contract" and "the money in the contract."

The loan of Demon to Protus is a contract, defensible in Athenian courts, under the law in (§1). The loans to Zenothemis and Hegestratus would not be defensible in Athens unless they were for the purpose of a voyage to Athens.

[Demosthenes] 33, *Paragrahe Against Apatourius*

The speech begins with reference to the law providing lawsuits for merchants and shipowners

before the Thesmothetai (cf. the law of Dem. 32.1). The speaker, whose name we do not learn, argues that Apatourius' case against him is inadmissible.

τοῖς δὲ περὶ τῶν μὴ γενομένων συμβολαίων εἰς κρίσιν καθισταμένοις ἐπὶ τὴν παραγραφὴν καταφεύγειν ἔδωκεν ὁ νόμος, ἵνα μηδεὶς συκοφαντῆται

For those in lawsuits about nonexistent *symbolaia*, the law has given recourse to the *paragraphe* in order that no one be slandered (§2).

The speaker bases his objection on the lack of συμβόλαια between himself and Apatourius.

ἐγκαλοῦντος δέ μοι Ἀπατουρίου τὰ ψευδῆ καὶ παρὰ τοὺς νόμους δικαζομένου, καὶ ὅσα μὲν ἐμοὶ καὶ τούτῳ ἐγένετο συμβόλαια, πάντων ἀπαλλαγῆς καὶ ἀφέσεως γενομένης, ἄλλου δὲ συμβολαίου οὐκ ὄντος ἐμοὶ πρὸς τοῦτον, οὔτε ναυτικοῦ οὔτ' ἐγγείου, παρεγραψάμην τὴν δίκην μὴ εἰσαγώγιμον εἶναι κατὰ τοὺς νόμους τουτουσί.

Because Apatourius is accusing me falsely and is prosecuting contrary to the laws, and there has been release and dismissal between myself and him of *symbolaia*, and I have no other *symbolaion* with him, either maritime or landed, I made a formal objection (*paragraphe*) asserting that the suit is inadmissible in accordance with the following laws (§3).

The *symbolaia* that the oration describes involve loans to Apatourius. Apatourius, a Byzantine merchant, owed 40 minas on the security of his ship and creditors were about to take possession of it. Parmeno, a countryman, had agreed to give him 10 minas, and Apatourius begged the speaker to provide the remaining 30. The speaker, who was involved in maritime finance, replied that he did not have ready money but he was friendly with the banker Herakleides. He persuaded Herakleides to loan the money to Apatourius, with himself as surety. Parmeno changed his mind about lending the money after a quarrel with Apatourius. Since he had already given 3 of the 10 minas that he had agreed to provide (ὡμολογηκῶς δ' εὐπορήσειν), he was forced to provide the rest, he said (§7).<sup>31</sup> He asked the speaker for help.

αὐτὸς μὲν οὖν διὰ τοῦτο οὐκ ἐβούλετο ποιήσασθαι τὸ συμβόλαιον, ἐμὲ δ' ἐκέλευεν πράξει ὅπως αὐτῷ ὡς ἀσφαλέστατα ἔξει.

This is why he did not want to make the *symbolaion*, but he told me to act in the way safest for himself (§8).

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<sup>31</sup> Why he was obligated to pay is not completely clear. Isager and Hansen (1975, 153) say that “their agreement was binding, so Parmenon had no hope of ever seeing his three minae again unless he fulfilled his part of the agreement.” They cite Pringsheim (1950, 58), who maintains that Parmeno’s “obligation was not legal, but rested on the financial consideration that unless he completed the loan, the creditor risked losing what he had already advanced owing to the debtor becoming insolvent.”

In this situation, a συμβόλαιον did not arise purely from agreement (ὡμολογηκῶς). It probably required written documentation, which would give the loan the protection of the law in Dem. 32.1. ‘Contract’ would be a reasonable translation for συμβόλαιον here.

The next instance of συμβόλαιον refers to an arrangement between the speaker and Apatourius. The speaker took the seven minas from Parmeno and the three previously given to Apatourius by Parmeno. The speaker in turn made an agreement (ἀνθομολογησάμενος πρὸς τοῦτον) with Apatourius and a conditional purchase of the ship and the slaves, until Apatourius should repay Parmeno the 10 minas and the bank the 30 minas.

A little time later, Heracleides' bank went bankrupt. Apatourius tried to send the slaves out of Athens and anchor the ship outside the port. Parmeno, finding out, took possession of the slaves and prevented the ship leaving. He sent for the speaker, who made arrangements to release himself from the suretyship and repay Parmeno what he lent through his agency. The speaker put guards on the ship and handed it over to the guarantors of the bank.

Sale of the ship brought exactly 40 minas. 30 went to the bank and 10 went to Parmeno. Before many witnesses, the speaker and Apatourius destroyed the written contract (συγγραφαί) by which the money was lent and released each other from all claims (§12).

μετὰ ταῦτα τοίνυν ἐμοὶ μὲν οὔτε μείζον οὔτε ἔλαττον πρὸς αὐτὸν  
συμβόλαιον γέγονεν

After this, moreover, I had no *symbolaion*, greater or smaller with him (§13)

Parmeno and Apatourius were persuaded to settle the remaining dispute with each other by arbitration, and it is on this arbitration that Apatourius bases his suit against the speaker. During negotiations, the parties disagreed over the terms, which had been documented but were now lost (see section on συνθήκαι). According to the speaker he was one of three arbitrators with equal authority to decide the case and others were appointed sureties for the two sides. Apatourius asserted that only one arbitrator was empowered to decide. When Parmeno was out of town, the arbitrator supported by Apatourius made a judgment against him. Since Apatourius further alleges that the speaker was Parmeno's surety, he is suing the speaker for payment of the fine.

The speaker denies that he is Parmeno's surety and attacks the judgment against Parmeno in his absence.

εἰ δὲ ὁ Παρμένων εἰς λόγον καταστὰς πανταχοῦ δικαιότερ' ἄν φαίνοιτο λέγων τούτου, πῶς ἄν ὀρθῶς ἐμοῦ καταγιγνώσκοιτε, ᾧ τὸ παράπαν πρὸς τὸν ἄνθρωπον τουτονὶ μηδὲν συμβόλαιόν ἐστιν;

But if Parmeno, standing here to give an account, should speak absolutely more justly than he [Apatourius], how would you rightly condemn me, for whom there is no *symbolaion* at all with him? (§34)

According to the speaker, he has no συμβόλαιον with Apatourius because they released each other from all claims arising from the lending arrangements, and he denies having any further συμβόλαια with him (§12-13).

Since the arbitration arrangement resulted from an agreement, it is a contract (legally defensible agreement) to the extent that it is governed by law. One might wonder whether the arbitration agreement could be considered a συμβόλαιον. The speaker's

role as arbitrator may create an obligation to Apatourius, but the focus of negotiations is on reconciling Apatourius and Parmeno.<sup>32</sup> As arbitrator, the speaker's connection to Apatourius is probably too distant to be felt as a *συμβόλαιον* between the two.

The success of the *παραγραφή* brought by the speaker depends upon demonstrating that he had no *συμβόλαιον* with Apatourius (§2). If there had been a danger that the opposition would treat an arbitration agreement as a *συμβόλαιον*, the speaker would probably have discussed this possibility.

[Demosthenes] 34, *Against Phormio*

The speaker, Chrysippus, responds to a *παραγραφή* brought by the merchant Phormio. Chrysippus begins by asking the court to hear him with good will. He describes himself as one who has been involved in many *συμβόλαιον* at Athens' port, but there is no description of the transactions.

ἰδιῶται παντελῶς ἔσμεν, καὶ πολὺν χρόνον εἰς τὸ ὑμέτερον ἔμποριον  
εἰσαφικνούμενοι καὶ συμβόλαια πολλοῖς συμβάλλοντες

We are completely novices [to court procedure], both coming to your port for a long time and making *symbolaia* with many (§1).

The subjects of the verbs are plural, suggesting that Chrysippus has a partner, perhaps his brother (Isager and Hansen 1975, 157).

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<sup>32</sup> Legal requirements on the arbitrators would have involved such preliminaries as oaths before negotiations began, but their exact nature is unknown. On the other hand, the decision of the arbitrators was binding on the disputants if certain conditions were met (MacDowell 1986, 204).

The next three instances of the word *συμβόλαιον* involve the legal basis for the suit. As we saw in [Dem.] 33, the law requires a *συμβόλαιον* for the type of suit that Chysippus brought against Phormio, but Phormio maintains there no longer is one.

καὶ γὰρ οὗτοι οὐ τὸ παράπαν συμβόλαιον ἐξαρνοῦνται μὴ γενέσθαι ἐν τῷ ἐμπορίῳ τῷ ὑμετέρῳ, ἀλλ' οὐκέτι εἶναί φασι πρὸς αὐτοὺς οὐδὲν συμβόλαιον· πεποιηκέναι γὰρ οὐδὲν ἔξω τῶν ἐν τῇ συγγραφῇ γεγραμμένων.

For indeed they do not deny that there was any *symbolaion* at all at your port, but they say that there is no longer a *symbolaion* with them for they have done nothing outside of what is written in the *syngraphe* (§3).

The παραγραφή procedure, responds Chrysippus, is

ὑπὲρ μὲν τῶν μὴ γενομένων ὅλως συμβολαίων Ἀθήνησι μηδ' εἰς τὸ Ἀθηναίων ἐμπόριον

for *symbolaia* altogether not occurring in Athens nor even for the port of Athenians (§4).

Chrysippus' original suit involved nonpayment of a loan he made to Phormio for a voyage. This arrangement is the *συμβόλαιον* of §3 and, as the subject of the present suit, it clearly represents a contract.

People repay loans before many witnesses

ἵνα ἐπιεικεῖς δοκῶσιν εἶναι περὶ τὰ συμβόλαια

in order that they seem fair concerning the *symbolaia* (§30)

We already see a contrast between the terms *συμβόλαιον* and *συγγραφή* in §3. The *συμβόλαιον* represents the contract whose conditions are written in a *συγγραφή*.

We see the contrast also in §31. Phormio alleges that he repaid Chrysippus' loan in the Bosphorus to the captain of the ship that brought him there. To this Chrysippus responds that, if Phormio had repaid in Athens,

τὴν γὰρ συγγραφὴν ἀνελόμενος ἀπήλλαξο ἂν τοῦ συμβολαίου·

destroying the *syngraphe*, you would have been released from the *symbolaion* (§31).

As in [Dem.] 33.12, destroying the documentation of a contract released the parties from claims. Also, there is a distinction between the documentation of the contract (συγγραφή) and the contract itself (συμβόλαιον). It is better to translate συμβόλαιον as 'contract' or 'legal tie' rather than merely 'agreement' because συμβόλαιον appears in a legal context, not of casual agreement, but of one that can be the subject of lawsuits. The συμβόλαιον is required for this type of trial (§4), and again a litigant brings a παραγραφή on the grounds that there is no συμβόλαιον (§3). By way of contrast, when Chrysippus wants to discuss the terms of the contract and their violation by Phormio, he uses the word συγγραφή (§6,7, 9 etc.; see the section on συγγραφή).

[Demosthenes] 35, *Against Lacritus*

This oration is a response to the παραγραφή of Lacritus against the speaker, Androcles. Androcles made a loan to Artemon, Lacritus' brother, but, since Artemon died without repaying the loan, Androcles brought suit against Lacritus as Artemon's heir.

In the first instance of συμβόλαιον, Lacritus makes general reference to the law.

Λακρίτω τουτῶι εἴληχα τὴν δίκην ταύτην κατὰ τοὺς αὐτοὺς νόμους  
τούτους καθ' οὕσπερ τὸ συμβόλαιον ἐποίησάμην



I was allotted this suit against Lacritus here in accordance with the same laws by which I made the *symbolaion* (§3).

The word συμβόλαιον denotes a loan contract for a trip to Pontus and back to Athens. The documentation specified the security for the loan and the ship that was to carry the cargo (§18; cf. essay on συγγραφή).

πρός τε γὰρ τὸ πλοῖον τὸ ναυαγῆσαν οὐδὲν ἦν αὐτοῖς συμβόλαιον, ἀλλ' ἦν ἕτερος ὁ δεδανεικῶς Ἀθήνηθεν ἐπὶ τῷ ναύλω τῷ εἰς τὸν Πόντον καὶ ἐπ' αὐτῷ τῷ πλοίῳ

They had no *symbolaion* regarding the ship that was wrecked, but someone else was the lender for the voyage from Athens on the security of the freight charge<sup>33</sup> to Pontus and on the security of the ship itself (§32).

In passages containing the words συμβόλαιον and συγγραφή, we can compare their usage.

ὅσα μὲν γὰρ ἀμφισβητήσιμά ἐστι τῶν συμβολαίων, κρίσεως δεῖται, ὧ ἄνδρες δικασταί· τὰ δὲ παρ' ἀμφοτέρων ὁμολογηθέντα τῶν συντιθεμένων, καὶ περὶ ὧν συγγραφαὶ κεῖνται ναυτικά, τέλος ἔχειν ἅπαντες νομίζουσιν, καὶ χρῆσθαι προσήκει τοῖς γεγραμμένοις.

Everything disputed in *symbolaia* requires judgement, dicasts; but, out of what is covenanted, that agreed by both sides, that concerning which maritime *syngraphai* are deposited, all believe that this has a finality, and it is proper to make use of the writing (§27).

<sup>33</sup> Isager and Hansen 1975, 76, n. 21

The συμβόλαια are contracts, but the συγγραφαί, the documentation, are the authoritative parts of the contracts, the parts not subject to dispute. This suggests that any unwritten part of the συμβόλαιον might have been subject to negotiation together with any dispute over the way that parties handled the obligations of the συγγραφή.

Again in §43, when Androcles discusses the specifics of the contract and the terms that he regards as binding, he uses the word συγγραφή. He uses συμβόλαιον in the discussion of contracts in general.

κελεύσατε αὐτὸν διδάξει ὑμᾶς, ἢ ὡς τὰ χρήματα οὐκ ἔλαβον παρ' ἡμῶν, ἢ ὡς λαβόντες ἀποδεδώκασιν, ἢ ὅτι τὰς ναυτικὰς συγγραφὰς οὐ δεῖ κυρίας εἶναι, ἢ ὡς δεῖ ἄλλο τι χρῆσασθαι τοῖς χρήμασιν ἢ ἐφ' οἷς ἔλαβον κατὰ τὴν συγγραφὴν. τούτων ὅ τι βούλεται πεισάτω ὑμᾶς. καὶ ἔγωγε καὶ αὐτὸς συγχωρῶ σοφώτατον εἶναι τοῦτον, ἐὰν ὑμᾶς πείσῃ τοὺς περὶ τῶν συμβολαίων τῶν ἐμπορικῶν δικάζοντας.

Tell him to explain to you either that they did not receive the money from us or that, receiving it, they repaid it or that maritime *syngraphai* ought not to be binding or that the money ought to be used in some other way than under the conditions they received it in accordance with the *syngraphe*. Let him persuade you whichever of these things he wants. And I, for myself, concede that he is wisest of all, if he persuades you who are judges concerning commercial *symbolaia* (§43).

The oration ends with more general discussion of the law and συμβόλαια. The court of this lawsuit is the court that hears disputes over commercial contracts (ἐμπορικὰ συμβόλαια).

ἀλλὰ ποῦ χρὴ λαβεῖν δίκην, ὧ ἄνδρες δικασταί, περὶ τῶν ἐμπορικῶν

συμβολαίων; παρὰ ποία ἀρχῇ ἢ ἐν τίνι χρόνῳ;

But where ought one to inflict punishment, dikasts, about commercial *symbolaia*? (If not with this court) (§47)

Androcles urges the court to vote against Lacritus.

περιαιρήσεσθε τῶν πονηρῶν ἀνθρώπων τὰς πανουργίας ἀπάσας, ἅς ἔνιοι πανουργοῦσι περὶ τὰ συμβόλαια τὰ ναυτικά.

You will strip from the wicked all wrongdoing, done by some concerning maritime *symbolaia* (§56).

The creation and defense of the συμβόλαιον of this oration is linked with law (§3).

It is a loan contract for a voyage of trade with a συγγραφή documenting its terms (§27, §43). The case is heard before a court for συμβόλαια that are termed ἐμπορικὰ συμβόλαια or τὰ συμβόλαια τὰ ναυτικά (§47, §56).

[Demosthenes] 56, *Against Dionysodorus*

This oration concerns nonpayment of a loan made to Dionysodorus and his partner for the purpose of a voyage. The speaker begins the account (*diegesis*) of his dealings with Dionysodorus:

τὴν δὲ ἀρχὴν τοῦ συμβολαίου διεξελθεῖν ὑμῖν πρῶτον βούλομαι

I want to go through the beginning of the *symbolaion* in detail (§4).

Rather than a συμβόλαιον, much of the discussion centers on the written συγγραφή that recorded the terms of the loan (see section on συγγραφή). At the conclusion of the

oration, however, the word *συμβόλαιον* reappears when the speaker, Darius, discusses the broader effects of a court decision against him.

εἰ μέντοι ἐξέσται τοῖς ναυκλήροις, συγγραφὴν γραψαμένοις ἐφ' ᾧ τε καταπλεῖν εἰς Ἀθήνας, ἔπειτα κατὰγειν τὴν ναῦν εἰς ἕτερα ἐμπόρια, φάσκοντας ῥαγῆναι καὶ τοιαύτας προφάσεις ποριζομένους οἷαισπερ καὶ Διονυσόδωρος οὔτοσὶ χρήται, καὶ τοὺς τόκους μερίζειν πρὸς τὸν πλοῦν ὃν ἂν φήσωσιν πεπλευκέναι, καὶ μὴ πρὸς τὴν συγγραφὴν, οὐδὲν κωλύσει ἅπαντα τὰ συμβόλαια διαλύεσθαι.

If however it will be possible for shipowners, having a *syngraphe* written under the condition of coming to port in Athens, then to bring the ship to another port, claiming it was wrecked and supplying the very sorts of excuses that Dionysodorus here uses, and to apportion the interest in relation to the voyage that they say they have sailed, and not in relation to the *syngraphe*, nothing will hinder all *symbolaia* in their entirety from being destroyed (§49).

There is again a contrast between the *συγγραφή*, with the specific conditions of the loan, and the word *συμβόλαια*, representing contracts in general. Of the orations about maritime commerce, this is the only one that is not for a *paragraphe*. This may be the reason that the word *συμβόλαιον* only appears twice. The speaker does not need to discuss whether his arrangement with Dionysodorus is legally admissible (a *συμβόλαιον*); the discussion can focus on the ways that Dionysodorus violated the terms of the loan (in the *συγγραφή*).

### (iii) Passing References to συμβόλαια

#### A. Andocides 1, *On the Mysteries*

Andocides recalls the revision of Athenian laws after the rule of the Thirty Tyrants.

τὰς μὲν δίκας, ὧ ἄνδρες, καὶ τὰς διαίτας ἐποιήσατε κυρίας εἶναι, ὅποσαι ἐν δημοκρατουμένη τῇ πόλει ἐγένοντο, ὅπως μήτε χρεῶν ἀποκοπαὶ εἶεν μήτε δίκαι ἀνάδικαι γίγνοιτο, ἀλλὰ τῶν ἰδίων συμβολαίων αἱ πράξεις εἶεν· τῶν δὲ δημοσίων <ἐφ’> ὅποσοις ἢ γραφαί εἰσιν ἢ φάσεις ἢ ἐνδείξεις ἢ ἀπαγωγαί, τούτων ἔνεκα τοῖς νόμοις ἐψηφίσασθε χρῆσθαι ἀπ’ Εὐκλείδου ἄρχοντος.

You gave authority to judgments and arbitrations that occurred when the city had democracy in order that neither debts be cancelled nor judgments be rejudged, but that private *symbolaia* might be exacted; but for all public offenses for which there are *graphai* or *phaseis* or *endeixeis* or *apagogai*<sup>34</sup>, for the sake of these you voted to make use of the laws from the archonship of Eucleides (§88).

MacDowell (1962, 129) referring to Wolf, suggests ‘judgments’ for the translation of ‘δίκας’ and of τῶν ἰδίων συμβολαίων αἱ πράξεις εἶεν, ‘agreements between individuals might be carried out’.

Because they are given force of law by this enactment, the συμβόλαια would reasonably mean ‘contracts’, but the discussion of previous clauses and the subjective genitive, ἰδίων συμβολαίων, with πράξεις also suggests the exacting of debts (cf. πράξις, LSJ VI). Andocides divides legal activities into those concerned with private law (τὰς μὲν δίκας ... τῶν ἰδίων συμβολαίων αἱ πράξεις εἶεν) and those of public

<sup>34</sup> *Graphai, phaseis, endeixeis* and *apagogai* are types of criminal prosecutions.

law (τῶν δὲ δημοσίων). The word ἰδίῳ with συμβολαίων serves to distinguish exacting debts, a part of private law, from types of public prosecutions (τῶν δὲ δημοσίων).

## **B. Demosthenes 18, *On the Crown***

As in Andocides 1, Demosthenes separates public from private suits.

ἐπεὶ οὐδ' ὑμᾶς, ἄνδρες Ἀθηναῖοι, ἀπὸ τῆς αὐτῆς διανοίας δεῖ τὰς τ' ἰδίας δίκας καὶ τὰς δημοσίας κρίνειν, ἀλλὰ τὰ μὲν τοῦ καθ' ἡμέραν βίου συμβόλαια ἐπὶ τῶν ἰδίων νόμων καὶ ἔργων σκοποῦντας, τὰς δὲ κοινὰς προαιρέσεις εἰς τὰ τῶν προγόνων ἀξιώματ' ἀποβλέποντας.

Yet, Men of Athens, you should not judge private and public suits in the same spirit, but [you ought to judge] the συμβόλαια of daily life considering particular laws and events, but the plans of state gazing steadfastly at the reputation of our ancestors (§210).

Demosthenes argues that judges of suits concerning state policy should take a different approach from those judging private lawsuits. Suits over the συμβόλαια of daily life are archetypal ἴδιαι δίκαι if all ἴδιαι δίκαι are not in fact about συμβόλαια in some extended sense of the word. Goodwin comments (1990, 130), “ἴδιαι δίκαι are suits which concern individuals and their ordinary business relations (συμβόλαια).”

## **C. Demosthenes 47, *Against Evergus and Mnesibulus***

The speaker went to the house of one Theophemus, empowered by a decree, to collect equipment for a trireme. He had had no previous dealings with him.

ἐμοὶ γὰρ πρὸς Θεόφημον συμβόλαιον μὲν οὐδὲν πώποτε πρότερον ἐν τῷ βίῳ ἐγένετο, οὐδ' αὖ κῶμος ἢ ἔρωσ ἢ πότος, ὥστε διαφερόμενον περὶ τινος πλεονεκτήματος ἢ παροξυνόμενον ὑπὸ ἡδονῆς τινὸς ἐλθεῖν ἐπὶ τὴν οἰκίαν τὴν τούτου.

For I never had any *symbolaion* with Theophemus earlier in my life, nor carousal, love object or drinking bout so as, either quarreling about a matter of gain or provoked by a matter of pleasure, to go to his house (§19).

The speaker divides possible reasons for going to Theophemus' house between business arrangements and social connections. The *συμβόλαιον* is a *πλεονέκτημα* about which one might quarrel.

The debt to the state resulted in a fight in which Theophemus struck the speaker. Suit and counter-suit followed. The speaker lost his case and owed Theophemus money (§49). When the speaker was ready to pay (§51), instead of following him to the bank, Theophemus, Evergus, and Mnesibulus seized some of his (§52-53). Evergus went to the speaker's house again on the next day (§63-64).

ἐκβαλὼν τὴν θύραν ἦνπερ καὶ τῇ προτεραίᾳ ἐξέβαλον κακῶς ἐνεστηκυῖαν, ᾧχετό μου λαβὼν τὰ σκεύη· ᾧ οὔτε δίκην ἰὼφλήκειν, οὔτε συμβόλαιον ἦν μοι πρὸς αὐτὸν οὐδέν.

Breaking in the very door that he broke in on the previous day (it gave little resistance), he was going and taking my furniture, one to whom I neither lost a lawsuit nor had I any *symbolaion* with him (§63-64).

The existence of a *συμβόλαιον* could justify this behavior.

#### D. Isaeus 4, *On the Estate of Nicostratus*

This is the speech of a supporting speaker for the claim of Hagnon and Hagnotheus to the estate of Nicostratus (§1). They claim the estate by reason of kinship. Their opponent claims it on the basis of a will.

In a discussion of the type of evidence that is reliable in this case, the speaker contrasts other συμβόλαια (τῶν ἄλλων συμβολαίων) with wills (διαθηκῶν).

περὶ μὲν γὰρ τῶν ἄλλων συμβολαίων οὐ πάνυ χαλεπὸν τοὺς τὰ ψευδῆ μαρτυροῦντας ἐλέγχειν· ζῶντος γὰρ καὶ παρόντος τοῦ πράξαντος καταμαρτυροῦσι· περὶ δὲ τῶν διαθηκῶν πῶς ἂν τις γνοιή τοὺς μὴ τάληθῆ λέγοντας, εἰ μὴ πάνυ μεγάλα τὰ διαφέροντα εἴη,

For, concerning the other *symbolaia*, it is not very difficult to refute false witnesses: for they bear witness against the one who made the transactions, a living and present person; but, concerning wills (διαθήκαι), how would anyone recognize those not telling the truth unless the difference is very great (§12)?

The speaker includes wills (διαθήκαι) among συμβόλαια. There are several explanations. If one translates συμβόλαια as ‘contracts’, one may infer that Isaeus considers wills to be types of contracts (Wyse [1979, 384] lists a few scholars who made this conclusion). Wyse prefers the interpretation of those who “explain that συμβόλαιον here does not mean a contract, but signifies either a legal transaction ... or an instrument.” He feels the first interpretation is “nearer the truth.” Harrison, citing Wyse, explains (1998, 150 n. 4) that συμβόλαια “has the very wide sense of ‘legal transaction’.” The term συμβόλαιον is broader than ‘contract’ in this context. One might translate it as ‘legal relationship’.



### E. Isaeus 5, *On the Estate of Dikaiogenes*

Before the present case was going to come into court, Leochares and Dicaeogenes, the adoptive son of the deceased, asked those on the speaker's side of the dispute, to entrust the case to arbitration (δίαίτια) and to put off the trial. They decided on four arbitrators, two chosen from each side. They agreed (ὡμολογήσαμεν) to abide by their decision and took oaths (§31). Leochares' arbitrators had family ties to Leochares' side or were otherwise ill disposed towards the speaker of this oration.

καίτοι Διοπέιθης ὁ ἕτερος τῶν διαιτητῶν Λεωχάρει μὲν ἦν τουτῶι κηδεστής, ἐμὸς δ' ἐχθρὸς καὶ ἀντίδικος ἐξ ἐτέρων συμβολαίων· Δημάρατος δὲ ὁ μετ' αὐτοῦ Μνησιπτολέμῳ τῷ ἐγγυησαμένῳ Δικαιογένην μετὰ Λεωχάρους ἦν ἀδελφός.

And further Diopeithes, one of the arbitrators was a kinsman by marriage to Leochares here and my enemy and opponent from other matters, *symbolaia*, and Demaratos, (arbitrator) with him, was the brother of Mnesiptolemus, who provided surety to Dikaiogenes (§33).

In the phrase ἐξ ἐτέρων συμβολαίων, I take συμβολαίων to be in opposition to ἐτέρων (cf. Smyth 1984, §1272). This gives a translation, 'from other matters, *symbolaia*'. It tells us nothing about the *symbolaia* except that they arise from a separate situation and that συμβόλαια can give rise to enmity between the parties. The translation 'from other/different *symbolaia*' (cf. LSJ II; Smyth 1984, §1271 a.) suggests that the speaker considers the arbitration agreement or this matter in general to be a συμβόλαιον, and the same analysis holds as was valid for τῶν ἄλλων συμβολαίων in Isaeus 4.

## F. Isocrates 18, *Paragraphe against Callimachus*

Callimachus is prosecuting the speaker for an offence that occurred under the regime of the Ten, an interim government that replaced the Thirty in Athens. One day when Callimachus was carrying money, he came upon Patroclus, king archon under the Ten and an enemy of his. Patroclus confiscated the money for the state (§5). The speaker happened to be walking with Patroclus at the time. When the democrats returned to Athens, Callimachus prosecuted Patroclus and Lysander (§7-8). He is now prosecuting the speaker.

From what is reasonable (ἐκ τῶν εἰκότων §16), the speaker presents arguments that Callimachus' charge against him is untrue. For example, he argues it would make no sense for the speaker to harm Callimachus rather than his own enemies.

ὁ δὲ πάντων δεινότατον, εἰ τῶν μὲν ὑπαρχόντων ἐχθρῶν μηδ' ἀμύνεσθαι μηδέν' ἠξίωσα, τοῦτον δὲ κακῶς ποιεῖν ἐπεχείρουν, πρὸς ὃν οὐδὲν πώποτε μοι συμβόλαιον ἐγένετο.

What is most terrible of all is, if I thought right to defend myself against none of my present enemies, but I undertook to do harm to this person, with whom I had no *symbolaion* ever (§18).

A συμβόλαιον is again a potential source of enmity.

The speaker appeals to the amnesty agreement (συνθῆκαι) in defense. It is ill advised to violate any συνθῆκαι.

μετὰ τούτων καὶ τὰ συμβόλαια τὰ πρὸς ἡμᾶς αὐτοὺς ποιοῦμεθα καὶ τὰς ἰδίας ἐχθρας καὶ τοὺς κοινούς πολέμους διαλυόμεθα

with these (*synthekai*) we make *symbolaia* with each other, and we put and end to private enmities and public wars (§28).

Here συμβόλαια, listed before the dissolution of private and public enmities, may possibly bring about positive associations between parties. These associations would only be between private individuals. The rest of the evidence from oratory does not suggest that the term συμβόλαιον can refer to a treaty between states. We can have already seen examples of συμβόλαια between private parties that are documented by συνθηκῆται (cf. [Dem.] 34.5; Dem. 37.10; [Dem.] 56.6, 11; Lysias 3.22-26).

### **G. Isocrates 20, *Against Lochites***

The speech is for the prosecution of one Lochites for assault. The speaker argues for a severe penalty.

ὧν ἕνεκα δεῖ περὶ πλείστου ποιεῖσθαι ταύτας τῶν δικῶν, καὶ περὶ μὲν τῶν ἄλλων συμβολαίων τοσούτου τιμᾶν, ὅσον προσήκει τῷ διώκοντι κομίσασθαι, περὶ δὲ τῆς ὕβρεως, ὅσον ἀποτείσας ὁ φεύγων παύσεσθαι μέλλει τῆς παρούσης ἀσελγείας.

For this reason one ought to take these suits most seriously; about the other *symbolaia* impose as much of a penalty as it is fitting for the prosecutor to receive, but, concerning *hybris*, impose the penalty that, paying, the defendant is likely to cease from the present licentiousness (§16).

Here συμβόλαια must have a broader meaning than simply ‘contracts’ since the speaker seems to include assault among the συμβόλαια. We must give συμβόλαιον a more

general meaning, as perhaps ‘legal dispute or transaction’ (cf. [Dem.] 50 and Isaeus 4, above).

## H. Lysias 5, *For Callias*

The speaker explains why he is making a supporting speech in defense of Callias. If the penalty were other than death, then the speeches of others would have sufficed,

νῦν δέ μοι δοκεῖ αἰσχρὸν εἶναι, κελεύοντος καὶ δεομένου, καὶ φίλου ὄντος καὶ ἐμοὶ καὶ ἕως ἔζη τῷ πατρὶ, καὶ πολλῶν συμβολαίων ἡμῖν πρὸς ἀλλήλους γεγενημένων, μὴ βοηθῆσαι Καλλίᾳ

but as it is now it seems disgraceful to me, when he is requesting and begging, and he is a friend to me and, while he lived, to my father, and when we have had many *symbolaia* with each other, not to help Callias (§1).

We can conclude that *συμβόλαια* are types of legal relationships between people and may lead to lasting associations.

## I. Lysias 12, *Against Eratosthenes*; Isocrates 24, *Plataicus*

In *Against Eratosthenes*, Lysias envisions what would have happened to the children of the democrats if the Thirty tyrants had won. The children remaining in Athens would have been treated with *hybris*,

οἱ δ' ἐπὶ ξένης μικρῶν ἂν ἔνεκα συμβολαίων ἐδούλευον ἐρημίᾳ τῶν ἐπικουρησόντων

but those in a foreign land would, because of small *symbolaia*, be in slavery bereft of those who would help (§98).

Isocrates uses a similar image in the treatise *Plataicus*. After the destruction of Plataea by Thebes, a Plataean exile asks Athens for help, describing the misfortunes of the exiles. Their parents receive unworthy sustenance in old age, and their children lack suitable education. Furthermore they see

πολλοὺς μὲν μικρῶν ἔνεκα συμβολαίων δουλεύοντας, ἄλλους δ' ἐπὶ  
θητείαν ἰόντας, τοὺς δ' ὅπως ἕκαστοι δύνανται τὰ καθ' ἡμέραν  
ποριζομένους

many in slavery because of small *symbolaia*, others going to *theteia* and others obtaining their daily necessities in whatever way each is able (§48).<sup>35</sup>

In both passages, the *συμβόλαια* involve unfulfilled obligations, such as debt. According to Harris (2002b; 417, 419), *theteia* refers to debt-bondage, a condition lasting only until the obligation is fulfilled. The legal status of the *συμβόλαια* would be guided by the laws of the cities in which the exiles wandered.

## J. Lysias 30, *Against Nicomachus*

The prosecutor anticipates the attacks that Nicomachus may use against him (§7) and remarks that he thinks it terrible

εἰ μὲν περὶ ἰδίων συμβολαίων ἀγωνιζόμενος οὕτως φανερώς ἐξήλεγchon  
αὐτὸν ἀδικοῦντα, οὐδ' ἂν αὐτὸς ἠξίωσε τοιαῦτα ἀπολογούμενος  
ἀποφεύγειν, νυνὶ δὲ περὶ τῶν τῆς πόλεως κρινόμενος οἰήσεται χρῆναι ἐμοῦ  
κατηγορῶν ὑμῖν μὴ δοῦναι δίκην

<sup>35</sup> Jebb comments (1962, 181 n.2): “Isocrates has borrowed this touch from Lysias *Against Eratosthenes* (Or. XII.) § 98, μικρῶν ἂν ἔνεκα συμβολαίων ἐδούλευον .)”

if, in a struggle about private *symbolaia*, I [the prosecutor] were so clearly to show that he [Nicomachus] was doing wrong, even he would not think it right that he should be acquitted making such a defense, but now, on trial concerning the affairs of the city, he thinks he ought not to pay the penalty to you [the people of Athens] since I am accuser (§8).

In other words, if this were a dispute over private *συμβόλαια*, Nicomachus would not consider such a defense adequate; now, in a suit concerning Athens, such an attack on the prosecutor should not prevent Nicomachus from paying the just penalty to the people.

*Against Nicomachus* is a speech for a public prosecution (Hansen 1999, 392).

Again, the orator makes a contrast between suits over ἴδια *συμβόλαια* and suits about the affairs of the city such as the present lawsuit.

## **K. Isocrates' Treatises**

These compositions, written in the form of orations, were intended for reading rather than delivery as speeches.

*Nicoles, Areopgitcus*

In *Nicoles* and *Areopagiticus* (speeches 2 and 7), Isocrates discusses the courts' treatment of *συμβόλαια*. In *Nicoles* he recommends lawful treatment of *συμβόλαια*; In *Areopagiticus*, he explains how observance of *συμβόλαια* allows the rich to help the poor without fear.

### **Isocrates 2, *Nicocles***

This work is a didactic treatise written for Nicocles, king of Cyprus, about the conduct of a king and management of the state. Among the precepts relating to the treatment of those from abroad is

ἅπασιν μὲν τοῖς ξένοις ἀσφαλῆ τὴν πόλιν παρέχε καὶ πρὸς τὰ συμβόλαια νόμιμον

Make the city safe for all foreigners and in reference to *symbolaia* observant of law (§22).

### **Isocrates 7, *Areopagiticus***

This work is a political pamphlet written as a deliberative speech before the Assembly of Athens (Jebb 1962, 202-3).

Isocrates recalls earlier times, under the state as constituted by Solon and Cleisthenes. There was harmony among between the citizens (ὤμονόουν), both in public matters and private (§31). In particular, the rich and the poor had mutual concern for each other's well being. The poor did not resent the wealthy, and the wealthy, in turn, did not fear to give financial backing to the enterprises of the poor. They leased farms at moderate rent, they sent people to engage in trade and they provided the capital (ἀφορμή) for other business (§32).

Because the courts strictly followed the law regarding *συμβόλαια*, the rich had no fear of losing their money when they helped the poor.

ἑώρων γὰρ τοὺς περὶ τῶν συμβολαίων κρίνοντας οὐ ταῖς ἐπιεικείαις χρωμένους, ἀλλὰ τοῖς νόμοις πειθομένους

For they saw that those judging about *symbolaia* did not deal in reasonableness but obeyed the law (§33).

The judges were angrier at the defrauders than the injured parties were.

νομίζοντας διὰ τοὺς ἄπιστα τὰ συμβόλαια ποιοῦντας μείζω βλάπτεσθαι  
τοὺς πένητας τῶν πολλὰ κεκτημένων

considering that those causing *symbolaia* to be untrustworthy were harming the poor more than they harmed those who possessed much (§34).

These *συμβόλαια* are legally defensible transactions. Although Isocrates does not discuss how parties engage in the *συμβόλαια*, it is clear, at least, that those who provide resources do this willingly. The *συμβόλαια* described are lease of property, provision of money to carry on trade (probably in the form of a loan) and provision of capital for business (again, probably a loan). In each case, the one receiving resources would have a financial obligation to the provider of capital (debt). In the case of lease, however, the lessor would also have obligations, at least the obligation to allow the lessee access to the leased property.

*Panegyricus, Panathenaicus, Antidosis*

While he acknowledges that *συμβόλαια* ought to be observed, Isocrates distances himself from forensic oratory and asserts that he has chosen to write about matters of greater importance to Athens and to Greece. In Isocrates 4.11 (*Panegyricus*), distinguishing his own kind of oratory from that of the law courts, he objects that some do not understand his writing and judge it by the standards of forensic oratory.



καίτοι τινές ἐπιτιμῶσι τῶν λόγων τοῖς ὑπὲρ τοὺς ιδιώτας ἔχουσι καὶ λίαν ἀπηκριβωμένοις, καὶ τοσοῦτον διημαρτήκασιν ὥστε τοὺς πρὸς ὑπερβολὴν πεπονημένους πρὸς τοὺς ἀγῶνας τοὺς περὶ τῶν ιδίων συμβολαίων σκοποῦσιν

And yet some censure speeches that are highly finished and beyond the powers of private persons (non-specialists), and they have gone so wrong that they examine highly wrought speeches by reference to trials about private *symbolaia* (Isoc. 4.11).

Isocrates distances his writing from speeches about ἴδια συμβόλαια for law courts. He uses the adjective ἴδια, not to distinguish these συμβόλαια from any δημόσια συμβόλαια, but to distinguish συμβόλαια in general, all of which appear to be ἴδια, from the topics that he writes about, issues of importance to all of Greece.

In Isoc. 12 (*Panathenaicus*) Isocrates explains that despite his general good fortune in life, he always lacked the strong voice and audacity so important in Athenian politics (§7-11). Thus

ἐπὶ τὸ φιλοσοφεῖν καὶ πονεῖν καὶ γράφειν ἅ διανοηθεῖην κατέφυγον, οὐ περὶ τῶν ιδίων συμβολαίων οὐδὲ περὶ ὧν ἄλλοι τινὲς ληροῦσιν, ἀλλὰ περὶ τῶν Ἑλληνικῶν καὶ βασιλικῶν καὶ πολιτικῶν πραγμάτων

I took refuge in the pursuit of knowledge, toil and writing the things I thought, not about private *symbolaia* or about the matters that some others speak foolishly, but about Greek, kingly and political affairs (Isoc. 12.11).

It is in Isocrates 15 (*Antidosis*) that he distinguishes his kind of oratory from the forensic at the greatest length.

## Isocrates 15, *Antidosis*

Συμβόλαια stand as the prime example of a topic that Isocrates does not discuss and the typical subject of forensic oratory. From this their potential to be legally defensible is clear. Isocrates' oratory is of a more elevated sort, however. It is about the affairs of Greece and what courses she should take, not about private concerns.

Saying that Isocrates writes forensic speeches is like saying that Pheidias, who made the statue of Athena in the Parthenon, a producer of figurines (§2). Before the recent attack on his pursuits by an opponent in court, Isocrates thought it was clear that

προήρημαι καὶ λέγειν καὶ γράφειν οὐ περὶ τῶν ἰδίων συμβολαίων

I have chosen to speak and write, not about private *symbolaia* but about great subjects and matters of a kind that no one else would attempt except those associated with him or those who wanted to imitate them (§3).

Isocrates writes the rest of the treatise in the form of a defense against a fictitious sycophant named Lysimachus (§8). Lysimachus accuses him of teaching a speaking style that gives students an unfair advantage in court (§30). Isocrates denies that he has had any concern with the courts. In his arguments, the word συμβόλαιον stands, by synecdoche, for the entire subject matter of forensic oratory.

Isocrates argues that his behavior is inconsistent with a concern for this type of oratory. All people, he begins, spend their time in what they elect to gain their livelihood (§47).

τοὺς μὲν τοίνυν ἀπὸ τῶν συμβολαίων τῶν ὑμετέρων ζῶντας καὶ τῆς περὶ ταῦτα πραγματείας ἴδοιτ' ἂν μόνον οὐκ ἐν τοῖς δικαστηρίοις οἰκοῦντας

Therefore you would see those who have their livelihoods from your *symbolaia* and the business connected with them all but living in the courts (§38).

But no one has seen Isocrates in councils (*synedria*), occupied with pretrial hearings (*anakriseis*), at the law courts or in the presence of the arbitrators.

According to Lysimachus, Isocrates has received many gifts from Nicocles, king of the Salaminians. But how is it believable, says Isocrates, that Nicocles, a king who is the judge of disputes, gave the gifts so that he could learn to plead cases.

ἐξ ὧν αὐτὸς οὗτος εἶρηκε, ῥάδιον καταμαθεῖν ὅτι πορρω τῶν  
πραγματειῶν εἰμι τῶν περὶ τὰ συμβόλαια γιγνομένων

From what he himself (Lysimachus) has said it is easy to understand that I am far from the business that arises in connection with *symbolaia* (§40).

Isocrates could most quickly persuade the listeners of his to change their view of him as a forensic orator

εἴ τις ὑμῖν ἐπιδείξειε μὴ τούτων τῶν πραγμάτων μαθητὰς μου γιγνομένους  
ῶν ὁ κατήγορος εἶρηκε, μηδὲ περὶ τοὺς λόγους ὄντα με δεινὸν τοὺς περὶ  
τῶν ἰδίων συμβολαίων

if someone should show you that my pupils do not study the matters that my accuser described, nor indeed am I clever concerning arguments about private *symbolaia* (§42).

There are many kinds of non-poetic discourse, according to Isocrates, and he lists some of them. Discussing his own type of writing he says,

εἰσὶ γὰρ τινες οἱ τῶν μὲν προειρημένων οὐκ ἀπείρως ἔχουσι, γράφειν δὲ  
προήρηνται λόγους οὐ περὶ τῶν ἰδίων συμβολαίων, ἀλλ' Ἑλληνικοὺς καὶ

πολιτικούς καὶ πανηγυρικούς, οὓς ἅπαντες ἂν φήσαιεν ὁμοιοτέρους εἶναι τοῖς μετὰ μουσικῆς καὶ ῥυθμῶν πεπονημένοις ἢ τοῖς ἐν δικαστηρίῳ λεγομένοις

For there are some, not experienced in the aforesaid (kinds of discourse), who have chosen to write speeches, not about private *symbolaia*, but Greek, political, panegyric speeches, speeches that all would agree are more like those with music and rhythm than those spoken in the court (§46).

Some criticize the study of philosophy, saying it corrupts students (§215-223).

Isocrates argues that students do not sail to Athens from far away places such as Sicily and Pontus and pay money in order to be corrupted (§226). Some of the critics are aware that the foreign students and their teachers are the least meddlesome, quietest people in Athens, that they live frugal, orderly lives, and they

τῶν λόγων ἐπιθυμοῦντας οὐ τῶν ἐπὶ τοῖς ἰδίῳ συμβολαίῳ λεγομένων οὐδὲ τῶν λυπούντων τινάς, ἀλλὰ τῶν παρὰ πᾶσιν ἀνθρώποις εὐδοκιμούντων

desire discourse, not that spoken in reference to private *symbolaia* or causing pain to anyone, but the discourse that is highly esteemed among all people.

Nevertheless critics attack them, saying that the goal of their practice is unjust gain in lawsuits (§228). The ἴδια συμβόλαια of §228 need not refer specifically to contracts.

They could reasonably stand for the entire subject matter of private lawsuits

(δίκαι ἴδια).

Although no art has been found that will produce virtue and justice in those who are bad by nature (§274), nevertheless a student who was eager to speak well would become a better person (§275).

πρῶτον μὲν γὰρ ὁ λέγειν ἢ γράφειν προαιρούμενος λόγους ἀξίους ἐπαινοῦ καὶ τιμῆς οὐκ ἔστιν ὅπως ποιήσεται τὰς ὑποθέσεις ἀδίκους ἢ μικρὰς ἢ περὶ τῶν ἰδίων συμβολαίων

for, first of all, it is impossible that one choosing to speak or write words worthy of praise and honor will make a *hypothesis* that is unjust, petty or concerns private *symbolaia* (§276).

The leaders who made Athens great excelled, not only in high birth and reputation, but also in thought and speech (§308). Bearing this in mind,

εἰκὸς ὑμᾶς ἐνθυμουμένους ὑπὲρ μὲν τοῦ πλήθους τοῦτο σκοπεῖν, ὅπως ἔν τε τοῖς ἀγῶσι τοῖς περὶ τῶν συμβολαίων τῶν δικαίων τεύξονται καὶ τῶν ἄλλων τῶν κοινῶν μεθέξουσι

it is reasonable for you to consider the following, on behalf of the multitude, how in trials concerning *symbolaia* they will come upon justice and share in the rest of the public life of the city (§309)

but, on the other hand, Athenians should love, honor and care for those prominent by nature and by practice and those eager to become like them.

### *Helen, Against the Sophists*

In Isocrates 10 (*Helen*), Isocrates criticizes teachers who concern themselves with useless disputation.

τοῖς δὲ παιδεύειν προσποιουμένοις ἄξιον ἐπιτιμᾶν, ὅτι κατηγοροῦσι μὲν

τῶν ἐπὶ τοῖς ἰδίοις συμβολαίοις ἐξαπατώντων καὶ μὴ δικαίως τοῖς λόγοις  
 χρωμένων, αὐτοὶ δ' ἐκείνων δεινότερα ποιοῦσιν

but it is right to censure those claiming to teach since they denounce those deceiving  
 in private *symbolaia* and using words unjustly, but they themselves do worse than this  
 (§7).

For the one group causes loss (ἐζημίωσαν) to others, but these harm their associates  
 most of all.

There is no other information about the συμβόλαια, but the language (δικαίως,  
 ἐζημίωσαν) suggests a court setting in which speakers profess to speak justly, and  
 unsuccessful defendants pay fines (ζημίαι).

In Isocrates 13 (*Against the Sophists*), Isocrates criticizes teachers of *philosophia*  
 for making extravagant and impossible claims (§1). First of all, what they profess to  
 teach, the conduct in life that will make their students fortunate, is much more valuable  
 than the fees they charge (§3). Most ridiculous of all, they require the students who will  
 learn justice to deposit their fees with third parties who have never received their  
 instruction (§5).

τοὺς μὲν γὰρ ἄλλο τι παιδεύοντας προσήκει διακριβοῦσθαι περὶ τῶν  
 διαφερόντων, οὐδὲν γὰρ κωλύει τοὺς περὶ ἕτερα δεινοὺς γενομένους μὴ  
 χρηστοὺς εἶναι περὶ τὰ συμβόλαια

For it is fitting that those who teach something else make careful examination  
 concerning their interests, for nothing prevents those who have become clever in  
 another subject from being dishonest about *symbolaia* (§6).

But what sense does it make, he asks, for those who produce virtue and temperance in their students not to trust them most of all? Surely they who are noble and good concerning others will do no wrong concerning those who have made them as they are.

The συμβόλαια represent transactions between teachers and students. As for their contractual status, presumably the choice to receive and give instruction is voluntary. Isocrates does not indicate the legal position of these συμβόλαια. On the other hand, Isocrates associates adherence to συμβόλαια with δικαιοσύνη, a word that suggests a legal context. The related noun, δίκη, means both ‘justice’ and ‘lawsuit’, and the associated adjective, δίκαιος, often refers to a litigant’s plea or the conditions of a contract in forensic speeches.

#### **(iv) Conclusions**

##### **A. Συμβόλαια Described in Detail**

When an oration describes a συμβόλαιον in detail we can make the following conclusions. Outside of maritime commerce, συμβόλαιον can either be translated as ‘contract’ or, less frequently, ‘debt’, i.e. money owed (as in Isoc. 17.19, Lys. 17.3, Dem. 32.8 or, in a passing reference to συμβόλαια, Andoc. 1.88 [τῶν ιδίων συμβολαίων αἱ πράξεις εἶεν]). The συμβόλαια of Lysias 3 and Dem. 37 are documented by συνθήκαι.

In the context of maritime commerce, the word *symbolaion* means ‘contract’. This is particularly clear in [Dem]. 33, 34, 35 and 56. When used with the word συγγραφή, συμβόλαιον refers to a contract and συγγραφή, its documentation. The law provided legal process for disputes involving συμβόλαια that were documented by

συγγραφαί (Dem. 32.1) and thus supported the continued use of the term συμβόλαιον with συγγραφή. We do, however, sometimes see συνθηκαί for the documentation of a maritime contract (as in [Dem.] 56.6 and 11. See the section on συνθηκαί). For maritime contracts, agreement alone would not be enough for legal defensibility under the law of Dem. 32.1 (cf. also 33.8).

Ending a συμβόλαιον ends legal liability, as litigants in some of the *paragraphai* maintain ([Dem.] 33, 34.3 (Phormio's assertion) and Dem. 37). Speakers mention a formal release from all claims in [Dem.] 33.3 and Dem. 37.1 as ending their συμβόλαια or the destruction of the documentation for the *symbolaia* as in [Dem.] 33.12 and [Dem.] 34.31.

[Demosthenes] 50 presents a situation in which the translation, 'contract' for συμβόλαιον, would be inappropriate. Apollodorus begins the speech by calling his dispute with Polycles a συμβόλαιον, but they have made no agreement or negotiations with each other. Only a general idea such as 'legal dispute' would fit the situation. There are other cases in which the translation 'contract' is questionable, most occur in brief comments on συμβόλαια occurring in orations about other topics.

## **B. Passing References to συμβόλαια**

When there are only passing references to συμβόλαια, some observations can still be made. Συμβόλαια may be a source of enmity or serve as an excuse for violence (Dem. 47.63-64, Is. 5, Isoc. 18.18, cf. Lysias 3.26), but they may also lead to long term relationships (Lysias 5.1). Isocrates explains in *Areopagiticus* (Isoc. 7) that, when the courts recognize the legal obligations of συμβόλαια, the rich have no fear of providing



resources for the enterprises of the poor. On the negative side, financial assistance formalized in συμβόλαια could lead to temporary or permanent enslavement (Lysias 12, Isoc. 24).

We defined contracts to be legally defensible agreements. To what extent are συμβόλαια contracts? Private συμβόλαια are the topics of forensic oratory and hence connected with the law courts (Isoc. 4 and Isoc. 15). Furthermore, cities ought to observe the law in their handling of συμβόλαια, according to orators (Dem. 18.210, Isoc. 2.22). Consequently συμβόλαια are at least potentially legally defensible. There is no emphasis on agreement, however. We might assume that there was agreement between the parties when a συμβόλαιον involved providing resources for various purposes (Isoc. 7) or services such as instruction (Isoc. 13), but in the case of an assault of one person on another (Isoc. 20) this is unwarranted.<sup>36</sup> Also, it is not clear that a testator's will results from agreement (Isaeus 4).

We have already noted that the dispute between Apollodorus and Polycles (Dem. 50), although called a συμβόλαιον by the prosecutor, involved no agreement. It involved a financial obligation of one person to another occasioned by negligence. Again, the man who is prosecuting Lochites for assault calls their relationship a συμβόλαιον (Isoc. 20). A will is a συμβόλαιον in Isaeus 4. When an orator describes the subject of a legal dispute as a συμβόλαιον, the word usually refers to a contract, but especially in brief references it may indicate a more general legal relationship, an

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<sup>36</sup> In fact Kussmaul disassociates the word *symbolaion* from the idea of agreement. The word *symbolaion* “ruft nicht den | Gedanken an eine Einingung hervor” (1969, 26-27).

obligation, dispute or transaction.<sup>37</sup> A συμβόλαιον between parties in this broad sense is a relationship governed by law, a relation that can lead to litigation. It is reminiscent of the *obligatio* of Roman private law<sup>38</sup> (see ‘Idea of Contract’ in the introduction), and, as with the *obligatio*, litigation arising from συμβόλαιον is part of private law.

### C. Public / Private Distinction

Some orations refer to ἴδια συμβόλαια [Andoc 1; Isoc. 4, 10, 12, 15, 17; Lysias 30]. In Isoc. 17.57 we learn that the Bosporan authorities gave judgments of ἴδια συμβόλαια that are favorable to Athens. Isoc. 10.7 refers to people who criticize those who deceive in private συμβόλαια. Elsewhere the adjective, ἴδια, appears with συμβόλαια when there is contrast between ἴδια συμβόλαια and something else. Andocides 1 and Lysias 30 compare trials concerning ἴδια συμβόλαια to criminal cases. Ἰδια συμβόλαια are the typical concerns of private lawsuits, or possibly any private dispute may be termed a συμβόλαιον (cf. Dem. 50). In Isocrates’ treatises, ἴδια συμβόλαια are the typical concerns of forensic oratory. Isocrates does not distinguish public and private lawsuits. The adjective ἴδια serves to distance the subject matter of Isocrates’ political orations from the relatively trivial concerns of forensic oratory.

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<sup>37</sup> In Kussmaul’s view (1969, 27), the word *symbolaion* “bezeichnet eine rechtliche Bindung, aber, anders als συνθήκαι, nie eine Norm oder einen Text.” Hopper (1943, 38), considering the term ξυμβόλαιος in Thucydides, notes that the word ξυμβόλαιον “can have a much wider sense” than just ‘commercial contract’.

<sup>38</sup> The Romans made a distinction between public and private law (Nicholas 1962, 2). Hopper implies to a connection between συμβόλαια and *obligationes*. A συμβόλαιον “is, among other things, a συνάλλαγμα, signifying an ‘association’” (38), by Hesychius’ definition. Hopper (1943, 38 n. 44 citing Lee *CQ* 31 [1937] 131) points to a correspondence between *obligationes* and συναλλάγματα.

The adjective ἴδια does not distinguish some συμβόλαια from others (this is not a ‘particularized’ use of the adjective). We find no mention of δημόσια συμβόλαια. The adjective seems rather to distinguish disputes about συμβόλαια from some other, different concerns (a ‘generic’ use of the word).<sup>39</sup>

The word συμβόλαιον never refers to treaties in oratory. The related adjective ξυμβόλαιος apparently appears in Thucydides (1.77.1).<sup>40</sup> In a passage that has caused scholars much difficulty (Hopper 1943, 35), Thucydides discusses Athens’ handling of ξυμβόλαιαι δίκαι with her allies (ἐλασσούμενοι γὰρ ἐν ταῖς ξυμβολαίαις πρὸς τοὺς ξυμμάχους δίκαις ‘[the Athenians] worsted in *xymbolaiiai dikai* with their allies’). Some derive the adjective ξυμβόλαιος from ξυμβόλαιον (i.e. συμβόλαιον) so that ξυμβόλαιαι δίκαι are lawsuits relating to συμβόλαια. Others believe that ξυμβόλαιαι δίκαι refer to lawsuits regulated by treaties (Hopper 1943, 50). The term for this would be δίκαι ἀπὸ ξυμβολῶν, substituting a xi for a sigma. According to MacDowell (1986, 220-21), δίκαι ἀπὸ συμβολῶν are “treaty cases,” lawsuits governed by treaties “specifying different legal procedures and penalties” for disputes between citizens of two different states (MacDowell 1986, 220-21).

#### **D. Location of the word συμβόλαιον in Orations**

In suits concerning the violation of a συμβόλαιον, the word appears in the introduction (*prooimion*), specifically at [Dem.] 56, Isoc. 17.2, Isoc. 21.2, Lysias 17.3

<sup>39</sup> Milman Parry (1987, 145) contrasts particularized, ornamental and generic epithets in Homer.

<sup>40</sup> Cobet amends the text so that the adjective is ξυμβολιμαίαις instead of ξυμβολαίαις (both in dative plural) (Hopper 1943, 38 n. 34).

and Dem. 50.1. While the suit of Dem. 37 concerns more than the violation of the συμβόλαιον, the beginning of the defense focuses on issues relating it. In Lysias 3, a trial for “wounding with intent to kill” (Carey 1998, 88), the discussion of the συμβόλαιον in §26 does not directly address the charge of the prosecution. Similarly Dem.27 concerns general mismanagement of an orphan’s estate not only the loan to Moiriades of §27.

In the four παραγραφή procedures related to maritime commerce, the word συμβόλαιον appears in the *prooimion* in reference to the laws providing for maritime lawsuits.

### **E. Notes on the Greek**

Συμβόλαιον commonly appears in the following constructions:

- συμβόλαιον with dative of one party to a transaction and πρὸς + other party of the transaction. Sometimes the dative above is missing.
- περί with συμβόλαιον in genitive or accusative.
- It appears a couple of times each with ἐν, ἐπί and ἔνεκα, and once each with ἐξ, ὑπέρ and ἀπό.

It appears most commonly with the verbs εἶμι, γίγνομαι and ποιέομαι.

## 4. *Συνθήκη / συνθήκαι*

### (i) Introduction

There are 245 instances of these words in the extant orations of the ten orators (not including possibly forged documents in orations, Dem. 18 and [Dem.] 35.14, fragments, and an epistle). The word *συνθήκαι*, or much less often the singular, *συνθήκη*<sup>41</sup>, appears in discussions of contracts; agreements between states (treaties); the amnesty agreement of 403 between the supporters of democracy and the supporters of oligarchy in Athens; and finally, rarely, in other contexts in which the usage appears to be metaphorical. The last category includes allusions to laws, decrees or agreements as *συνθήκαι*.

We may divide up references into allusions to ideas or stipulations abstracted from any document in which they may be written ('abstract' sense—idea considered separate from any documentation) or, alternatively, to the physical form, if any, of the documentation ('concrete' sense). This essay will call attention to these distinctions as well as the question of whether the *συνθήκαι* can lead to legal action.<sup>42</sup>

### (ii) Contracts

In this category, I consider *συνθήκαι* involving two or more parties, where no party represents a state government. [Demosthenes] 25 describes a hypothetical situation

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<sup>41</sup> Kussmaul (1969, 72). The singular, *συνθήκη*, appears 5 times in the ten orators, only twice in a discussion of contracts (Isoc. 17.25, 26).

<sup>42</sup> Kussmaul (1969, 62-71) has a detailed discussion of the instances of the word in Athenian private law.

in which *συνθήκαι* would be used. In the other orations of this section, the speakers describe actual *συνθήκαι*, at least, to the extent that they are being honest.

### A. [Demosthenes] 25 and Lycurgus 1: Hypothetical and Concrete Examples

[Demosthenes] 25

*Συνθήκαι* provide evidence of a legal obligation as the speaker of [Dem.] 25 (*Against Aristogeiton I*) says, describing the hypothetical case of a loan under litigation (§69). When one person sues another for not repaying a loan, he says, it would be shameless for the accused to deny the loan if *συνθήκαι* have been deposited (with a third party) and mortgage pillars (*ῥοι*) are standing on the land (*εἰ μὲν ἐφαίνονθ' αἱ τε συνθήκαι καθ' ἃς ἐδανείσατο κείμεναι καὶ οἱ τεθέντες ῥοι ἐστηκότες*). Without these, it is the accuser's claim that would seem shameless to the *dikasts*.

In combined concrete and abstract usage, the *συνθήκαι* are a document deposited with someone (*κείμεναι*), and the stipulations in the document govern the loan (*καθ' ἃς ἐδανείσατο*). The intent of legal defensibility is clear.

Lycurgus 1, Against Leocrates

Lycurgus 1.23 describes *συνθήκαι* for a debt. The *συνθήκαι* are similar to those described in [Dem.] 25. Leocrates, who had moved from Athens to Megara, asked his brother-in-law, Amyntas, to buy his slaves and house in Athens for a payment of 1 talent. From these assets he was to pay Leocrates' creditors, discharge his *eranos* loans and finally to return the remainder of the money to him. Amyntas sold the slaves for 35 minas to Timochares, another brother-in-law. Timochares, however, did not have the

money. Consequently he made *συνθήκαι* that he deposited with one Lysicles and paid 1 mina per month in interest on the loan (*συνθήκας ποιησάμενος καὶ θέμενος παρὰ Λυσικλεῖ μίαν μνᾶν τόκον ἔφερε* §23). The *συνθήκαι* acknowledge Timochares' future obligation to pay the debt. Lycurgus has them read to the court as evidence.

We again find references to the physical form of the *συνθήκαι* (*συνθήκας ποιησάμενος καὶ θέμενος*) and its written contents. Since Lycurgus mentions no litigation resulting from the *συνθήκαι* between Amyntas and Timochares, the oration gives no evidence of the legal status of the *συνθήκαι*.

## **B. Συνθήκαι connected with the Cause of Litigation**

In some orations, because of their connection with the complaint of the prosecutor and with extant law, it is clear that the *συνθήκαι* were meant to record legal obligations and hence contracts.

[Demosthenes] 56, *Against Dionysodorus*—A Maritime Loan

In [Dem.] 56, Dionysodorus is being sued for nonpayment of a maritime loan and other aspects of an agreement made with the prosecutor. The word *συγγραφή* is generally used for the documentation of the agreement, but the word *συνθήκαι* appears twice (§6 and §11). The meaning 'points of agreement' suits the contexts in which the word *συνθήκαι* appears. The speaker, Darius (Carey and Reid 1985, 195), describes writing the documentation for the loan (*συγγραφήν ἐγράψαντο* §6). He goes on to say that Pamphilos was written as a lender in the *συνθήκαι* (*ἐν μὲν οὖν ταῖς*

συνθήκαις δανειστής ἐγράφη Πάμφιλος οὔτοσί §6). When Darius subsequently has the documentation read in court (§6), he calls it a συγγραφή. The word ἐγράφη supports a combined abstract and concrete sense of the συνθήκαι in that it conveys both the physical document and the contents of the writing—that Pamphilos is the lender. The point of this comment is that the speaker, Darius, although having a share in the loan (§6) is not written in the documentation.

Supporting the interpretation ‘points of agreement’ for συνθήκαι, when Darius and Pamphilos (§11) discovered that Parmeniscos, Dionysodorus’ partner, sold the grain he purchased in Rhodes rather than bringing it back to Athens as agreed, they went to Dionysodorus to complain that this violated their arrangement. They expressly declared in the συνθήκαι that the ship should put ashore nowhere else than Athens (διαρρήδην ἡμῶν διορισαμένων ἐν ταῖς συνθήκαις ὅπως ἡ ναῦς μηδαμόσε καταπλεύσεται ἄλλ’ ἢ εἰς Ἀθήνας). This is a more abstract usage of the noun in that it refers to the contents of the writing (ἐν ταῖς συνθήκαις).

There may be a legal reason to use συνθήκαι in §11. According to Darius (§10), his opponents sold the grain in Rhodes, in disregard for the συγγραφή and the penalties they wrote (συνεγράψαντο) into it. He uses the verb corresponding to the noun `συγγραφή. Using the verb corresponding to συνθήκαι, he complains that they violated the law that shipowners and passengers must sail to whichever port they agree (συνθῶνται).

καταφρονήσαντες μὲν τῆς συγγραφῆς, ὧ ἄνδρες δικασταί, καὶ τῶν ἐπιτιμίων, ἃ συνεγράψαντο αὐτοὶ οὔτοι καθ’ αὐτῶν ἐάν τι



παραβαίνωσιν, καταφρονήσαντες δὲ τῶν νόμων τῶν ὑμετέρων, οἱ  
 κεύουσι τοὺς ναυκλήρους καὶ τοῦ ἐπιβάτας πλεῖν εἰς ὅ τι ἂν  
 συνθῶνται ἐμπόριον

Thinking little of the *syngraphe*, *dikasts*, and of the penalties which they themselves wrote against themselves if they violate something and also thinking little of your laws that prescribe shipowners and passengers sail to whichever port they agree (§10).

The laws of §10 are “otherwise unknown,” according to Carey and Reid (1985, 214).

The verb, *συνθῶνται*, in §10 prepares the way for *συνθῆκαι* in §11. If a form of *συγκεῖμαι* appeared in the law, the *συνθῆκαι* in §11 would reinforce the legal connection. It would also explain the appearance of the participle of *συγκεῖμαι* in the phrase τὸ συγκείμενον ἐμπόριον (§34, 37) when the speaker repeats the point that Parmeniskos did not go to the agreed port.

[Demosthenes] 34, *Against Phormio*—Two *Συνθῆκαι*

[Dem.] 34 (*Against Phormio*) was written for the defense in a *παραγραφή* procedure initiated by Phormio to block a suit for nonpayment of a maritime loan. The word *συνθῆκαι* occurs three times.

The first time, it refers to the stipulations of the loan to Phormio whose documentation the speaker, Chrysippus, usually calls a *συγγραφή* (§5). Chrysippus addresses Phormio’s use of the *παραγραφή* procedure. He says Phormio is using the argument that there is no longer any *συμβόλαιον* with Chrysippus because he has done nothing outside of those things written in the *συγγραφή* (*πεποιηκέναι γὰρ οὐδὲν*

ἔξω τῶν ἐν τῇ συγγραφῇ γεγραμμένων §3). To this, Chrysippus responds that the laws prescribe a defense in a regular trial rather than a παραγραφή if someone acknowledges that there was a συμβόλαιον and maintains that he has done everything agreed (ἐὰν δέ τις γενέσθαι μὲν ὁμολογῇ, ἀμισβητῇ δὲ ὡς πάντα πεποίηκεν τὰ συγκείμενα) (§4). In fact, he continues, his opponents make this admission. They admit having borrowed money and having made συνθήκαι of the loan (δανείσασθαι μὲν τὰ χρήματα ὁμολογοῦσι καὶ συνθήκας ποιήσασθαι τοῦ δανείσματος §5).

Chrysippus links the word συνθήκαι with the idea of agreement by the arrangement of sentences. The wording of §5 (συνθήκας ποιήσασθαι) parallels that of §4 (πεποίηκεν τὰ συγκείμενα). The agreement (τὰ συγκείμενα) formalized by συνθήκαι is clearly meant to have legal force since it is the basis for Chrysippus' case. We know that the συνθήκαι are written because, Chrysippus mentions written documentation (the συγγραφὴ of §3).

In its next appearance (§18) συνθήκαι refers to a different agreement, an arbitration arrangement.

μελλούσης δὲ τῆς δίκης εἰσιέναι εἰς τὸ δικαστήριον ἐδέοντο ἡμῶν ἐπιτρέψαι τινί· καὶ ἡμεῖς ἐπετρέψαμεν Θεοδότῳ ἰσοτελεῖ κατὰ συνθήκας.

But when the suit was about to come into court he begged us to entrust it to someone, and we entrusted it to Theodotus an *isoteles* in accordance with συνθήκαι.

The συνθήκαι mentioned here refer to a new arrangement and not the one of §5. The word συνθήκαι appears in an abstract context (κατὰ συνθήκας) referring to the

contents of an agreement rather than the writing. The *συνθῆκαι* govern the conduct of the arbitration. It is clear that they result from agreement since §18 indicates both parties intentionally went into the arbitration. Determining the legal force of the arbitrator's decision is more difficult because Theodotus refused to make a judgment and instead sent the case to court (§21). We learn that he swore an oath since the speaker says he dismissed them rather than judge in favor of Phormio and break it (ἴν' αὐτὸς μὴ ἐπιορκήσειν).

Finally, the word *συνθῆκαι* occurs towards the end of the speech:

τοῦ μὲν οὖν δανεῖσαι ἡμᾶς τὰ χρήματα αἱ τε *συνθῆκαι* καὶ αὐτὸς οὗτός ἐστι μάρτυς

The *synthekai* and he himself are witnesses that we lent the money (§46).

The usage of the word *συνθῆκαι* suggests both a material written object able to serve as evidence (μάρτυς) and the ideas embodied by them (τοῦ μὲν οὖν δανεῖσαι ἡμᾶς τὰ χρήματα).

Whether *συνθῆκαι* refers here to the documentation of the maritime loan, usually called a *συγγραφή*, or the arbitration agreement is unclear. One could argue for either interpretation and maybe both are meant. The *συγγραφή* that would provide evidence for the loan was called *συνθῆκαι* in §5. In the two paragraphs before §46, however, the speaker discusses the arbitration, for which there were other *συνθῆκαι*. The ambiguity in choice of contract words brings in both situations.

Hypereides 3, *Against Athenogenes*—Purchase of a Business

The speaker, Epicrates, made an agreement with Athenogenes to buy his perfume business and his slaves. The terms of the sale were written in a document described alternately by the words γραμματεῖον and συνθήκαι. Epicrates wanted to buy the freedom of a slave boy with whom he was enamoured, but Athenogenes, the owner of the slave, convinced him to buy the boy, his father and brother, as well as the perfume shop that they ran. Epicrates was to take responsibility for any indebtedness of the shop (§5-6).

Athenogenes writes on a tablet (γραμματεῖον) the (additional) concessions that the speaker had made (προσωμολόγησα) (§8), and he reads aloud what he wrote. Epicrates refers to what Athenogenes reads, the contents of the agreement, as συνθήκαι (abstract use of the word).

ἦσαν δὲ αὐται συνθήκαι πρὸς ἐμέ

These were the *synthekai* with me (§8)

The handling of the document invokes the physical form of the συνθήκαι (concrete usage).

σημαίνεται τὰς συνθήκας εὐθύς ἐν τῇ [α]ῦ[τ]ῇ οἰκίᾳ

The συνθήκαι are immediately sealed in the same house (in which their meeting took place) (§8).

Another person, one Nikon, possibly the guarantor, was written into the agreement with the speaker, and the document (γραμματεῖον) was deposited with a third party (§8-9).

The *συνθήκαι* are meant to represent a legally defensible agreement, and the speaker has them read to the court (§12).

[Demosthenes] 33 and Isocrates 17—Lost or Falsified *Συνθήκαι*

### [Demosthenes] 33, *Against Apatourius*

In [Dem.] 33, the word *συνθήκαι* refers to the documentation (*γράφαντες συνθήκας* §14) of an arbitration agreement. The document, also described as a *γραμματεῖον* (§18 and §37), specified the way a dispute between Apatourius and Parmeno was to be arbitrated. Although the documentation has now been lost, the legal conflict of the trial concerns the question of what the *συνθήκαι* stipulated.

The speaker alleges that the *συνθήκαι* appointed three arbitrators and one surety each for Apatourius and Parmeno (§14-15). They deposited the *συνθήκαι* with Aristocles, one of the arbitrators (§16).

ὅτι μὲν ἐτέθησαν αἱ συνθήκαι παρὰ Ἀριστοκλεῖ καὶ ἡ ἐπιτροπή ἐγένετο  
Φωκρίτῳ καὶ Ἀριστοκλεῖ καὶ ἐμοί, οἱ εἰδότες ταῦτα μεμαρτυρήκασιν ὑμῖν.

That, on the one hand, the *synthekai* were deposited with Aristocles and the arbitration belonged to Phocritus, Aristocles and me, those who know these things have deposed for you (§16).

The verb *συντίθεμαι*, rather than *ὁμολογέω*, describes their determination of the details of the *συνθήκαι* (*συνέθεντο ἐν ταῖς συνθήκαις* and *συνθέμενοι δὲ ταῦτα*) in §15. *συντίθεμαι* can mean ‘agree’ (LSJ II), a usage we see for the passive (*συγκεῖμαι*) in §18.

A dispute arose about the contents of the *συνθήκαι* when Apatourius claimed that Aristocles was the only arbitrator empowered to judge the case. The purpose of the others, he said, was only to help the parties reconcile (§17). Parmeno asked Aristocles to produce the *συνθήκαι* and they agreed on a day to meet. On the agreed day (*τὴν ἡμέραν τὴν συγκειμένην*), however, Aristocles made the excuse that his slave had lost the *συνθήκαι* (§18). Then Aristocles made a judgment against Parmeno in his absence

The *συνθήκαι* fit the criteria for the documentation of a contract (§14 and §22). First of all, the description of how the arbitration began shows that it resulted from agreement (§14).

ἐνεστηκυῶν δ' αὐτοῖς τῶν δικῶν πεισθέντες ὑπὸ τῶν παρόντων  
εἰς ἐπιτροπήν ἔρχονται

when legal proceedings had started, they were persuaded by those present to go to arbitration ( §14).

Also, the charge in the present case is that the *συνθήκαι* made the speaker Parmeno's surety for any fine Parmeno had to pay (§22), a charge the speaker denies (§23).

κάμοι δικάζεται, ἐπιφέρων αἰτίαν ὡς ἀνεδεξάμην ἐκτίσειν, εἴ τι καταγνώσθ  
εἶη τοῦ Παρμένοντος, καί φησιν ἐγγραφῆναι εἰς τὰς συνθήκας ἐμὲ ἐγγυητὴν  
He is prosecuting me, bringing as a charge that I took it upon myself to pay in full, if  
there was any judgment against Parmeno, and he says that I was written into the  
*synthekai* as a guarantor (§22).

The litigants thus treat the *συνθήκαι* as a record of the obligations, but they do not consider them the cause. Although the documentation has disappeared, the speaker never questions that the agreement must be honored.<sup>43</sup> The argument is based more on principle than on technicalities, in this case, the principle that agreements should be honored. We have references both to the physical treatment of the *συνθήκαι* (writing, depositing) and abstract references to the terms of the agreement.

### Isocrates 17, *Trapeziticus*

In Isoc. 17, the speaker, a man from Pontus, is suing the banker, Pasion, to recover money he says he deposited in Pasion's bank. When he asked for the money back, Pasion said that he could not pay him at the moment (§9, §18). Pasion finally agreed to repay the money, but he wanted to avoid the public attention of repayment in Athens, and so he agreed (*ὡμολόγησεν*) to sail with the speaker to Pontus and repay the money there. In the event he did not pay, he agreed to entrust arbitration to Satyrus, the ruler of Pontus (§19). They wrote up *συνθήκαι* to this effect.

ταῦτα δὲ συγγράψαντες καὶ ἀναγαγόντες εἰς ἀκρόπολιν Πύρωνα Φεραῖον ἄνδρα, εἰθισμένον εἰσπλεῖν εἰς τὸν Πόντον, δίδομεν αὐτῷ φυλάττειν τὰς συνθήκας, προστάξαντες αὐτῷ, ἐὰν μὲν διαλλαγῶμεν πρὸς ἡμᾶς αὐτούς, κατακαῦσαι τὸ γραμματεῖον, εἰ δὲ μή, Σατύρω ἀποδοῦναι.

Putting these things in writing and leading up to the Acropolis Pyro, a Pherian man accustomed to sail to Pontus, we give him the *synthekai* to save, telling him, if we reconcile with each other, to burn the tablet, but if not, to give it to Satyrus (§20).

<sup>43</sup> To the litigants, the documentation of the *συνθήκαι* is not *dispositive*. Its existence is not required for the legal effect of the transaction. (Kussmaul [1969, 4 n. 1] defines the term 'dispositiv'.)

Subsequently the speaker and Pasion disagreed about the contents of the document. Pasion directed that the document be opened (ἀνοίγειν τ' ἐκέλευε τὸ γραμματεῖον) before witnesses and it was found to say that Pasion was released from all claims. The speaker asserts that Pasion falsified the document (διαφθείρει τὸ γραμματεῖον) (§23).

The speaker sometimes uses the singular, συνθήκη, for the same document: ἐδίδομεν τῷ ξένῳ τὴν συνθήκην §25, συνθήκην ποιησάμενον §29.

As described by the speaker, the συνθήκαι were based on agreement. (Pasion agreed [ὡμολόγησεν] to repay the money [§27, cf. 31, 51].) Regarding the jurisdiction of the συνθήκαι, legal proceedings were to take place in Pontus, not Athens. Instead of going himself to Pontus, however, Pasion sent Kittus, identified by the speaker as a slave. When presented with the case, Satyrus thought it improper to give judgement on συμβόλαια made in Athens, especially as Pasion was not present (§52). The contents of the συνθήκαι ended up becoming an issue in the present lawsuit, held in an Athenian court.

Regarding the usage of the words συνθήκαι/συνθήκη, there are concrete references to the physical document (§§20, 25), but γραμματεῖον also appears in this context (§§20, 23, 25). Slightly more common among the passages containing συνθήκαι/συνθήκη are abstract references to the obligations contained in the document, often in the context of creating them, e.g. in the phrase συνθήκας ποιέομαι (§§ 26, 29, 30, 33). In the speaker's argument against Pasion's version of the document, for example, we have:



ἀλλὰ δῆλον ὅτι ταύτας τὰς συνθήκας ἐποίησάμεθ' ὡς ὑπολοίπων ὄντων ἡμῖν ἔτι πραγμάτων, περί ὧν ἔδει τοῦτον πρὸς ἐμὲ κατὰ τὸ γραμματεῖον διαλύσασθαι.

But it is clear that we made these *synthekai* because there remained business for us concerning which he had to make a settlement with me in accordance with the *grammateion* (§26).

Notice that there are also abstract usages of the word *γραμματεῖον* in the oration.

Demosthenes 36 (*For Phormio*) and 45 (*Against Stephanus I*)

Dem. 36 is a supporting speech for a *παραγραφή* brought by Phormio, a former slave of the banker Pasion, against a suit by Apollodorus, Pasion's son. The word *συνθήκαι* refers to a written lease through which Phormio rented a bank and shield factory from Pasion. The lease is part of the evidence for the case:

ἀναγνώσεται τὰς συνθήκας, καθ' ἃς ἐμίσθωσε Πασίων τὴν τράπεζαν  
τούτῳ καὶ τὸ ἀσπιδοπηγεῖον

[The clerk] will read the *synthekai* in accordance with which Pasion leased the bank and the shield factory to him (§4).

There is no direct allusion to the intent or agreement of the parties writing the *συνθήκαι*, but there are some indirect indications. Since Phormio was no longer Pasion's slave when Pasion leased the bank and shield factory to him (§4), Phormio could have a choice in the rental. Again, Phormio wanted certain terms in the lease. Some of the bank deposits that Phormio was to take over from Pasion had been invested (*ἐνεργά* §5) in

loans on the security of real estate (γῆ καὶ συνοικία §6). Because Phormio was not yet a citizen and as such could not own Athenian property, he would not be able to exact as much money from these debtors. He chose (εἴλετο) therefore to have Pasion as a debtor for this money, which he could exact for himself.

It seems clear that the lease was intended to be legally defensible and it is part of the basis of Apollodorus' suit. The speaker says repeatedly that he has been released from all claims and that therefore there should be no suit (§3, 60).

Dem. 45 (*Against Stephanus*) is Apollodorus' prosecution of Stephanus for false witness in the trial of Dem. 36. Apollodorus calls into question the authenticity of the document alleged to be the lease by which Phormio rented Pasion's bank (μίσθωσις τραπεζῆς [§31]). Uses the name συνθήκαι, distancing the document from any real lease (μίσθωσις).

ἄς μὲν τοίνυν παρέσχετο συνθήκας ὡς κατὰ ταύτας μισθωσάμενος τὴν τράπεζαν, αὐταί εἰσιν

These are articles of agreement (συνθήκαι) which he [Phormio] supplied on the grounds that he rented the bank in accordance with them.

The συνθήκαι represents are real or pretended documentation of a lease (combined abstract and concrete usage).

### **C. Συνθήκαι not the Cause of Litigation**

Demosthenes 37

In Dem. 37 (*Against Pantaenetus*), the speaker, Nicobolus, and one Evergus lent Pantainetus 105 minas on the security of a workshop and 30 slaves in the Maroneia mines

(§4). The word *συνθήκαι* appears in §5, referring to the terms of agreement for a lease in which Pantaenetus rents the security on the loan for 1% of the loan value per month.

μισθοῦται δ' οὗτος παρ' ἡμῶν τοῦ γιγνομένου τόκου τῷ ἀργυρίῳ, πέντε καὶ ἑκατὸν δραχμῶν τοῦ μηνὸς ἑκάστου. καὶ τιθέμεθα συνθήκας, ἐν αἷς ἢ τε μίσθωσις ἦν γεγραμμένη καὶ λύσις τούτῳ παρ' ἡμῶν ἐν τινι ῥητῷ χρόνῳ.

He rents from us for the interest on the money, 105 drachmas each month, and we set *synthekai* in which the lease was written and a release for him from us in a certain stated time (§5).

The account lacks an account of the circumstances in which the *συνθήκαι* were written, a description that would allow us to see directly that the *συνθήκαι* are the result of agreement, rather than compulsion. The description of later transactions, however, does not suggest compulsion on either side. Pantaenetus relies on the document when he complains that he was ejected by force from the lease contrary to the *συνθήκαι* (*παρὰ τὰς συνθήκας*) (§6). On the other side, Evergus explains that he took possession of the security because he was not receiving the interest payments and Pantaenetus was not doing anything in the *συνθήκαι* (*τῶν ἐν ταῖς συνθήκαις ποιοῦντος οὐδὲν τούτου*) (§7). Showing the importance of Pantaenetus' acquiescence, at least for later events, Evergus adds that Pantaenetus willingly relinquished the property (*παρ' ἐκόντος τούτου λαβῶν*) (§7).

Pantaenetus treats the *συνθήκαι* as having legal force. Part of his accusation against Nicobolus is that he acted contrary to the *συνθήκαι* (*παρὰ τὰς συνθήκας*) (§29). The term *συνθήκαι* denotes documentation of an obligation (combined abstract and concrete usage).

Demosthenes 50, *Against Polycles*

In Dem. 50 the speaker, Apollodorus, prosecutes one Polycles for not assuming the responsibilities of a trierarchy in which he was to succeed Apollodorus. His absence caused Apollodorus to serve beyond the usual one year and to incur extra expenses.

The one appearance of the word *συνθηκῆ* is at the end of the oration (§68) where Apollodorus adds that he is not the only trierarch who suffered from Polycles' negligence.

Ὅτι δ' οὐκ ἐμοὶ μόνῳ οὐ διεδέξατο τὴν ναῦν, ἀλλὰ καὶ πρότερον Εὐριπίδῃ συντριήραρχος ὢν καὶ συνθηκῶν οὐσῶν αὐτοῖς τοὺς ἕξ μῆνας ἐκάτερον πλεῖν, ἐπειδὴ Εὐριπίδης ἐξέπλευσε καὶ ὁ χρόνος ἐξῆκεν, οὐ διεδέξατο τὴν ναῦν αὐτῷ, ἀναγνώσεται τὴν μαρτυρίαν

And that it was not only in my case he did not succeed to the ship, but that earlier when Euripides was co-trierarch and they had *synthekai* for each to sail six months, when Euripides sailed away and the time had run out, he did not succeed to the ship for him, [the clerk] will read the deposition (§68).

There is not enough information in the paragraph itself to determine the contractual status of the *συνθηκῆ*, mentioned in passing, but from other uses of the word *συνθηκῆ* we would conclude that it represented an agreement between Euripides and Polycles that might well be subject to litigation. Apollodorus does not say whether the *συνθηκῆ* were written although this is likely. The *συνθηκῆ* represent an agreement (abstract sense of word).

Demosthenes 55, *Against Callicles*

In Dem. 55, Callicles is suing the speaker for damage to his land from water coming from the speaker's land. As in Dem. 50, after addressing Callicles' accusations, the speaker turns to his character. The court should not be surprised that Callicles had the audacity to make false accusations, he says. Once, Callicles persuaded his cousin to claim the speaker's land and handed in *συνθήκαι* that had never been made (*συνθήκας οὐ γενομένας ἀπήνεγκεν* §31).

This is all we learn about the incident. The *συνθήκαι* apparently recorded legal obligations that would allow Callipus' cousin to claim the speaker's land, but we should pay further attention to the phrase *συνθήκας οὐ γενομένας* (§31). The document that the speaker refers to as *συνθήκαι* existed, but the *συνθήκαι*, according to the speaker, did not come into being (*οὐ γενομένας*). If *συνθήκαι* refers to agreements between parties, then to say the *συνθήκαι* did not come into being is to say that there was no agreement. The *συνθήκας οὐ γενομένας* are a written document having the concrete form of *συνθήκαι*, but the abstract form of agreement is missing.

Isaeus 11, [Demosthenes] 43 and 48—Inheritance Battles

The *συνθήκαι* of Isaeus 11 (*On the Estate of Hagnias*), [Dem.] 43 (*Against Macartatus*) and [Dem.] 48 (*Against Olympiodorus*) were made in the course of inheritance battles. In an inheritance suit, termed a *diadikasia*, there could be any number of litigants rather than the usual two, prosecutor and defendant. Each dikast voted for the party that he found most convincing, and the party with the most votes won.

In such a situation, it could be useful for parties to combine forces as described in the following three orations.

The speaker of Isaeus 11, Theopompus, describes one of the contests for Hagnias' estate. He says that Hagnias' mother and Phylomache, the epikleros who then held the estate, had συνθήκαι:

ἐνῆν ποιήσασθαι συνθήκας, ἂν ἡ ἑτέρα νικᾷ, μετεῖναί τι καὶ τῇ ἡττηθείσῃ

It was possible to make *synthekai*, if one of them prevailed, to share something with the one defeated (§21).

Whether or not there actually were such συνθήκαι, the described agreement illustrates a way that parties could share the proceeds of any favorable judgment. Wyse, in fact, doubts the existence of the συνθήκαι: “Phylomache II, who was not a claimant but a tenant defending her possession, would have been very foolish if she had made a bargain with the mother of Hagnias II or any other of her assailants” (1979, 695).

Theopompus obtained control of Hagnias' estate in the previously mentioned contest, and then it passed to his son, Macartatus, the adversary in [Dem.] 43 (*Against Macartatus*). The speaker in this oration, Sositheus, is the husband of Phylomache, and he spoke for her ([Dem.] 43.9) in the previous suit for the estate of Hagnias. Referring back to the trial (*diadikasia*) in which Theopompus obtained the estate, Sositheus describes how Theopompus and three other claimants formed a conspiracy and wrote συνθήκαι that they deposited with one Medeius.

συννόσαντες καὶ συνθήκας γράψαντες πρὸς ἀλλήλους καὶ καταθέμενοι  
παρὰ Μηδείω

allying themselves, writing *synthekai* with each other and depositing them with Medeios (§7).

Since there were four claimants opposing the epikleros, the amount of time they had for speaking was quadrupled. Their plot was to agree (ὁμολογεῖν) on the lies that they would tell. This is how Theopompus won the most votes ([Dem.] 43.7-9).

In both Is. 11 and [Dem.] 43 parties to lawsuits allegedly formed alliances in order to increase their chances. The *συνθῆκαι* are based on agreement, but are they legally defensible? To tell lies as a witness could be prosecuted in a *δίκη ψευδομαρτυρίων*, but the *συνθῆκαι* described are an agreement to lie as a litigant. The violation of similar *συνθῆκαι* is the subject of [Dem.] 48 (*Against Olympiodorus*).

The trial is a suit for damages (*δίκη βλάβης*). The speaker, Callistratus, wrote *συνθῆκαι* with Olympiodorus (*συνθήκας ἐγράψαμεν πρὸς ἡμᾶς αὐτούς*) that they would divide up equally the property of Comon, a relative who died childless (§9). Since there were other claimants to the estate, part of their pact was to cooperate in handling lawsuits for possession of the property (§10). They swore oaths calling the gods and their relatives as witnesses and then deposited the document with one Androcleides (§11). According to Callistratus, the law supports their *συνθῆκαι*, and he has the law read in accordance with which they wrote the document.

βούλομαι οὖν, ὧ ἄνδρες δικασταί, τόν τε νόμον ἀναγνῶναι, καθ' ὃν τὰς συνθήκας ἐγράψαμεν πρὸς ἡμᾶς αὐτούς, καὶ μαρτυρίαν τοῦ ἔχοντος τὰς συνθήκας.

I want therefore, dicasts, to read the law in accordance with which we wrote the *synthekai* with each other and the deposition of the one who holds the *synthekai* (§11).

Unfortunately, the law does not survive in the text, but at the end of the oration there is a clear reference to the law concerning *ὁμολογία* (see the section on *ὁμολογία* concerning the law).

πῶς γὰρ οὐ μαίνεται ὅστις οἶεται δεῖν, ἃ μὲν ὠμολόγησεν καὶ συνέθετο  
ἐκῶν πρὸς ἐκόντα καὶ ὤμοσεν, τούτων μὲν μηδ' ὀτιοῦν ποιεῖν

For how is a person not mad, who thinks it right to do nothing of what he agreed and covenanted willingly with one who was willing and to which he swore (§54).

The speaker stresses willing agreement (*ὠμολόγησεν*) as in the *ὁμολογία* law and links it with the *συνθήκαι* by including the related verb form, *συνέθετο*.

To validate his *συνθήκαι* with Olympiodorus, Callistratus appeals to the law, but did their *συνθήκαι* involve illegality? Agreements to combine forces in a *diadikasia* could involve lying in court, as in the *συνθήκαι* of [Dem.] 43, and litigants apparently swore oaths “to the truth of the pleas in the documents handed in” (Harrison 1971, 99). Although witnesses who deposed falsely were liable to a suit for perjury (*δίκη ψευδομαρτυρίων*), it does not seem to have been illegal to tell lies as a litigant or to break one’s oath. Bonner and Smith (1968, 118) remark that, in Dem. 19.176 (*On the Embassy*), Demosthenes “proposed to confirm some of his statements by testifying in his own behalf and rendering himself liable to a *δίκη ψευδομαρτυρίων*.”

Thus the *συνθήκαι* described in Is. 11, [Dem.] 43 and [Dem.] 48 would not have involved illegality, and they may have been legally defensible. The result of the



συνθῆκαι, however, might not be. In a subsequent suit for the same property a litigant could argue as in [Dem.] 45 that the previous court decided incorrectly because some of the claimants lied.

Is. 11 refers to the content of the συνθῆκαι with no mention of the physical form. The συνθῆκαι described in [Dem.] 43 and [Dem.] 48 are written documents deposited with third parties (concrete references).

### Aeschines 1, *Against Timarchus*

There are two συνθῆκαι in Aeschines 1, one documenting an agreement to break the law and the other documenting an agreement whose contents would expose litigants to dangerous lawsuits.

In the first instance (§114-16), Timarchus claimed an Athenian citizen, Philotades, as one of his freed slaves, during a revision of the citizenship roles. Timarchus took charge of the resulting prosecution, but then accepted 20 minas from Leucondies, Philotades' brother-in-law to drop the suit. Aeschines has the court listen to what he describes as a copy of the συνθῆκαι 'through which he [Timarchus] sold the case' (καθ' ὅς τῆν πράσιον ἐποίησατο τοῦ ἀγῶνος §115). The description appears to be of συνθῆκαι to drop a prosecution. The agreement was illegal since accepting a bribe (or offering one) "in connection with public or private affairs was liable to prosecution by *graphe*" (MacDowell 1986, 172).

The word arises a second time is in connection with Aeschines' allegation that Timarchus prostituted himself. Aeschines predicts that the defense will ask for specific details. If Timarchus really prostituted himself, where and when did this happen, they

will ask. But Aeschines shifts attention away from his lack of evidence by ridiculing the idea of a prostitution contract with witnessed, written documentation. He uses a jumble of words associated with contracts (συγγραφάς, γραμματεῖον, συνθηκῶν) to describe such an agreement (160).

ἐὰν δ' ἐπιχειρῶσι λέγειν, ὡς οὐχ ἠταίρηκεν ὅστις μὴ κατὰ συγγραφὰς ἐμισθώθη, καὶ γραμματεῖον καὶ μάρτυρας ἀξιῶσί με τούτων παρασχέσθαι, πρῶτον μὲν τοὺς περὶ τῆς ἔταιρήσεως νόμους μέμνησθε, ἐν οἷς οὐδαμοῦ μνεῖαν ὁ νομοθέτης περὶ συνθηκῶν πεποίηται.

If they try to say that he has not been a *hetaira* who has not been hired in accordance with συγγραφάι and they demand that I furnish a document and witnesses for these things, first of all, remember the laws concerning prostitution (ἔταιρήσεως) in which the lawgiver nowhere makes mention of *synthekai*.

Aeschines envisions a prosecution for breach of such an agreement (163-64). An Athenian citizen hired as prostitute might address the court as follows.

"κάγω μὲν ἅπαντα καὶ πεποίηκα καὶ ἔτι καὶ νῦν ποιῶ κατὰ τὸ γραμματεῖον, ἃ χρὴ ποιεῖν τὸν ἔταιροῦντα· οὗτος δὲ ὑπερβαίνει τὰς συνθήκας." ἔπειτ' οὐ πολλὴ κραυγὴ παρὰ τῶν δικαστῶν αὐτῷ ἀπαντήσεται; τίς γὰρ οὐκ ἐρεῖ· "ἔπειτα ἐμβάλλεις εἰς τὴν ἀγοράν, ἢ στεφανοῖ, ἢ πράττεις τι τῶν αὐτῶν ἡμῖν;" οὐκοῦν οὐδὲν ὄφελος τῆς συγγραφῆς.

‘And I have done everything and still now do everything that one acting as *hetaira* ought, in accordance with the document (*grammateion*), but he is violating the *synthekai*.’ Then will not much uproar from the dicasts meet him? For who will not

say, ‘then do you burst into the agora or crown yourself or do any of the same things that we do?’ Therefore there is no help in the *syngraphe*.

Here again he employs a jumble of contract words. He argues that a written contract for the prostitution of an Athenian citizen would be of no use for either party to the contract because of the prejudice against an Athenian prostituting himself and the laws disfranchising such a person. Such an agreement in itself would not have entailed illegality, but a prostitute who did not abide by the restrictions violated the law.

Thus the politician who, according to Aeschines, prostituted himself in accordance with *συνθήκαι* deposited with Anticles (*κατὰ συνθήκας ἡταιρηκέναι τὰς παρ’ Ἀντικλεῖ κειμένας*) would violate the restrictions if he held public office or spoke in court (§165; cf. MacDowell 1986, 74, 126). Because of this politician, says Aeschines, it has become common to ask whether the practice [prostitution] was in accordance with a written document (*διὰ τοῦτο ἐρωτῶσί τινες, εἰ κατὰ γραμματεῖον ἢ πράξις γέγνηται* §165).

The references are to the terms of the *συνθήκαι* (*καθ’ ἃς τὴν πράσιν ἐποίησατο, ὑπερβαίνει τὰς συνθήκας*), but in each case the *συνθήκαι* are written documents.

### Lysias 3, *Against Simon*

An earlier example of *συνθήκαι* associated with prostitution is found in Lysias 3, written in the beginning years of the 4<sup>th</sup> century. (Aeschin. 1 was delivered in 345 B.C., 35 years after the traditional date, c. 380, for the end of Lysias literary activity [Carey

1998, 1]). The subject of the oration is the jealous rivalry of the speaker and his opponent, Simon, for the attentions of a Plataean boy, Theodotus.

ἐτόλμησε γὰρ εἶπειν ὡς αὐτὸς μὲν τριακοσίας δραχμὰς ἔδωκε Θεοδότῳ,  
συνθήκας πρὸς αὐτὸν ποιησάμενος, ἐγὼ δὲ ἐπιβουλεύσας ἀπέστησε αὐτοῦ  
τὸ μειράκιον.

For he (Simon) had the audacity to say that he gave Theodotus 300 drachmas, having made *synthekai* with him, but, plotting, I caused the boy to break with him.

Based on the context it is clear that the mention of *συνθῆκαι* is meant to give the relationship legal validity. The language suggests a prostitution contract. “Presumably the agreement was that Theodotus would live with Simon and satisfy his sexual needs in return for three hundred drachmas” (Carey 1998, 102-3). It is striking, however, that there is no mention of writing, depositing, agreement or any terms of their arrangement. At least one of these features was present in every other reference to *συνθῆκαι* between private individuals. Simon merely gave Theodotus 300 drachmas and made the *συνθῆκαι* (τριακοσίας δραχμὰς ἔδωκε Θεοδότῳ, συνθήκας πρὸς αὐτὸν ποιησάμενος). One might take this word order to indicate that the action of the aorist participle (ποιησάμενος) is concurrent with or a result of giving the 300 drachmas.<sup>44</sup> The rest of our examples suggest that the *συνθῆκαι* documented the terms of a prostitution contract, but, by itself, the language here could suggest that paying 300 drachmas created *συνθῆκαι* (here, merely a ‘contract’).

<sup>44</sup> “The action set forth by the aorist participle is generally antecedent to that of the leading verb; but it is sometimes coincident” (Smyth 1984, §1872, 3. c.).

As for the legal status of the *συνθήκαι*, there was no law against prostitution, and prosecution based on this *συνθήκαι* would not involve the parties in the difficulties envisioned in Aeschin. 1.163-64 since Theodotus was not an Athenian citizen. This is clear from the speaker's remark (§33) that, if he does something wrong, Theodotus could inform against him under torture (*μηνῦσαι δὲ ἱκανὸν ἦν βασιανιζόμενον*). In fact, many think that Theodotus was a slave (Carey 1998, 87) because Plataeans could become citizens, subject to scrutiny, and citizens could not be tortured. At any rate, since Theodotus was a boy and perhaps a slave, his legal guardian would have been responsible for any contractual claims against him.

The speaker does not say whether the *συνθήκαι* were written; he only describes the formation of the *συνθήκαι* (abstract usage) in vague terms.

### **(iii) Treaties**

Since my main concern is with contracts, the remaining topics will be treated more briefly. Within the context of interstate agreements, the word *συνθήκαι* often appears in discussions of specific conditions that we might call 'articles of agreement' (e.g. Aeschin. 2.178, Aeschin. 3.70, Andoc. 3.14, Dem. 5.25; 12.8; 15.27; Dem. 23. 149, 156, Isoc. 4.141, 5.100, 8.16). Along with the discussion of *συνθήκαι*, there are usually more general references to the treaty as a 'peace' (*εἰρήνη*) or 'agreement' (see the section on *ὁμολογία*) (e.g. Aeschin. 2.178, 3.83, Andoc. 3.14, Dem. 5.25, 12.8, Isoc. 4.172). The word is sometimes linked with oaths or with words of swearing. The phrase *οἱ ὄρκοι καὶ αἱ συνθήκαι*, in various grammatical cases, appears in e.g. Aeschin. 3.66;

[Dem.] 17.2; 23.10; Isoc. 6.21, 8.96, 12.107, 14.12, 17, 23, 39, 44.<sup>45</sup> There are some references to writing or inscription in connection with *συνθήκαι* (e.g. Aeschin. 3.70, Andoc.3.14, Isoc. 4.115).

#### **(iv) Athenian Amnesty Agreement**

In Lysias' orations 6, 25 and 26 and Isocrates' orations 16 and 18, the word *συνθήκαι* refers to the amnesty agreement of 403 between the supporters of democracy and the supporters of the previous oligarchic regime. As in the case of a treaty between warring states, the *συνθήκαι* and the oaths that accompanied them were written. (We know this because the litigant in Isocrates 18.19-20, has them read to the court.)

#### **(v) Figurative Uses of the Word *συνθήκαι***

Orators sometimes refer to laws or political enactments as *συνθήκαι*. This appears to be a metaphorical usage in that speakers compare them to *συνθήκαι* for private contracts, in two cases ([Dem.] 25 and Din. 1) bringing into the comparison some common features of contractual *συνθήκαι*. In Aeschines 2, the word *συνθήκη* designates a pact between ambassadors. Two of the citations of the word are in the singular.

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<sup>45</sup> Of pre-4<sup>th</sup> century *συνθήκαι* all of which involved interstate agreements, Kussmaul points out that they were solemnized by oaths. "Rechtliche | Wirkung gewinnt der Vertrag allein durch den Eid" (1969, 18-19). The meaning of 'legal' effectiveness for treaties, in the absence of interstate law is unclear. The inscriptions of his examples use the adjectives *κύριαι* / *κύρια*.

### A. Hypereides 3, *Against Athenogenes*

In a fragmentary passage that puts laws in the same category as the documentation of his contract, the speaker draws attention to Athenogenes' inconsistent behavior:

[τάς] κοινά[ς] τῆς πόλεως συνθήκας παραβὰς, ταῖς ἰδίαις πρὸς ἐμὲ  
ἰσχυρίζεται

After violating the common *synthekai* of the city, he puts his trust in private *synthekai* with me (§31)

[Dem.] 25 has a more extended treatment of laws as *συνθηκῆ*.

### B. [Demosthenes] 25, *Against Aristogeiton A*

In praise of law (νόμος), the speaker asserts that every law is an invention and gift of gods, judgment of the wise, corrective for voluntary and involuntary misdeeds and finally a common *συνθήκη* (πόλεως δὲ *συνθήκη* κοινή) of the city in accordance with which it is fitting that all in the city live (§16). Perhaps *συνθήκη* is singular because it refers to a single law.

Aristogeiton is accused of being a debtor to the state of Athens. After describing the hypothetical case of a private debt under litigation where the deposit of *συνθηκῆ* provides evidence for the loan (§69, see above under 'contracts'), the speaker turns to the case of a debt to the state.

εἰσὶ τοίνυν ὧν Ἀριστογείτων ὀφείλει τῇ πόλει *συνθηκῆ* μὲν οἱ νόμοι, καθ'  
οὓς ἐγγράφονται πάντες οἱ ὀφλισκάνοντες, ὅρος δ' ἡ σανὶς ἢ παρὰ τῇ θεῶ  
κειμένα

Then, for the money that Aristogeiton owes the state, the laws in accordance with which all debtors are registered are *synthekai* and the tablet deposited with the goddess is the *horos* (§70).

He makes an analogy between the evidence for private debts (συνθηκαι and ὄροι) and the handling of debt to the state.

### C. **Dinarchus 1, *Against Demosthenes***

Under suspicion of accepting a bribe from the Macedonian fugitive, Harpalus, Demosthenes proposed before the assembly that the council of the Areopagus investigate the matter and accepted for himself the penalty of death if they found that he took bribes. Dinarchus' description has a contractual flavor.

ἠξίωσας ἐκὼν σεαυτῷ τούτους κριτὰς καὶ ζητητὰς γενέσθαι, καὶ ἔγραψας κατὰ σαυτοῦ τὸ ψήφισμα, καὶ τὸν δῆμον ἐποίησω μάρτυρα τῶν ὠμολγημένων, ὀρισάμενος σεαυτῷ ζημίαν εἶναι θάνατον, ἐὰν ἀποφῆνη <σ> ἢ βουλή τῶν χρημάτων εἰληφότα τι

You [Demosthenes] willingly requested for yourself these to be judges and investigators, you wrote against yourself the decree, and you made the people witness of the agreements (ὠμολγημένων), setting for yourself the penalty of death if the council proclaims that you took any of the money (§61).

The appearance of a form of ὁμολογέω and the word ἐκὼν (willing) together with mention of witnesses recalls the wording of the law that made ὁμολογία, voluntarily entered, before witnesses legally binding.

Later Dinarchus refers to the written decree as *συνθηκαι*.



ἐπέτρεψεν [ὁ] αὐτὸς οὗτος ἐν τῷ δήμῳ τῷ συνεδρίῳ τούτῳ κρῖναι περὶ αὐτοῦ, μάρτυρας ὑμᾶς πεπονημένους. ἔθετο συνθήκας μετὰ τοῦ δήμου, γράψας τὸ ψήφισμα καθ' ἑαυτοῦ παρὰ τὴν μητέρα τῶν θεῶν, ἢ πάντων τῶν ἐν τοῖς γράμμασι δικαίων φύλαξ τῇ πόλει καθέστηκε. διὸ καὶ οὐχ ὄσιον ὑμῖν ἐστὶ ταύτας ἀκύρους ποιεῖν.

In the assembly, he himself entrusted it to the council (of the Areopagus) to make a judgment concerning himself, taking you as his witnesses. With the people he made *synthekai*, writing the decree against himself for the keeping of the mother of the gods, who has stood as guardian for the city of all just (legal) documents. Therefore it is impious to make them without authority (§86).

As a decree the *συνθῆκαι* are written and placed in the custody of the mother of the gods (since the Metroön was the state archive). The adjective ἀκύρους again recalls the wording of the ὁμολογία law.

#### **D. Aeschines 2, *On the Embassy***

This passage provides another example of *συνθήκη* in the singular and with no reference to writing. Additionally, the parties are said to be compelled rather than to agree.

Aeschines and Demosthenes were among ten Athenians sent as ambassadors to Philip of Macedonia to ratify a peace treaty (later called the Peace of Philocrates). On the return trip from Macedonia, Aeschines says that Demosthenes ‘obliged’ the ambassadors in a *συνθήκη* (εἰς συνθήκην τινὰ ἡμᾶς κατέκλησεν ὑπὲρ τοῦ ταυτ' ἐρεῖν πρὸς

ὕμᾱς). The nature of the *συνθήκη* is not completely clear, but it involves an agreement regarding what they will say about Philip to the Athenian people.

## (vi) Conclusions

*Συνθήκαι* are generally written. In contractual references, there is mention of writing for *συνθῆκαι* in eight orations. Only Lysias 3, Isaeus 11, Demosthenes 50 and the description of the arbitration agreement of [Demosthenes] 34 make no mention of whether the *συνθῆκαι* were written. Six of the orations explicitly mention that the *συνθῆκαι* were deposited sometimes with the name of the depositee. The verb ‘to deposit’ is τίθεμαι (or κατατίθεμαι) + object deposited + παρά (dative of depositee).<sup>46</sup>

There is often mention of some of the terms of the loan, sometimes in a relative clause (e.g. Dem. 36.4 τὰς συνθήκας, καθ’ ἃς ἐμίσθωσε Πασίων τὴν τράπεζαν.)

Between private individuals, *συνθήκαι* are generally the written terms of an agreement (Kussmaul 1969, 20, came to a similar conclusion)<sup>47</sup>. Usually the agreement is legally defensible, i.e. a contract. In at least one instance, however, the *συνθῆκαι* represent an agreement involving illegality, which would presumably preclude a defense in court. In another instance, defending the *συνθῆκαι* in court would involve revealing incriminating evidence. Nevertheless, writing, together with the often-

<sup>46</sup> Aeschin. 1.165 τὰς παρ’ Ἀντικλεῖ κειμένας, [Dem.] 25 κείμεναι, [Dem.] 33 ἐτέθησαν αἱ συνθῆκαι παρὰ Ἀριστοκλεῖ, [Dem.] 43 καταθέμενοι παρὰ Μηδείῳ, Isoc. 17.20 passage, Lysurg. 1 θέμενος παρὰ Λυσικλεῖ. Kussmaul (1969; 38, 59, 76) points out that *συνθῆκαι* are deposited.

<sup>47</sup> According to Kussmaul (1969, 20), in the domain of private law, “der Plural bezeichnet den text des Vertrages und ist der normale attische Ausdruck für die Vertragsurkunde.”

mentioned witnessing, may bring a feeling that compliance is necessary (Ceremonial forms give some extra-legal security to a transaction [cf. Kussmaul 82]).

## **5. Conclusions of Word Study**

The four words *ὁμολογία*, *συγγραφή*, *συμβόλαιον* and *συνθήκαι* can mean ‘contract’ in some situations. The word *ὁμολογία* means ‘agreement’ or ‘admission’. It becomes ‘contract’ because of the law giving voluntary, witnessed *ὁμολογία* legal force. The words *συγγραφή* and *συνθήκαι* may denote the documentation of a contract or the contract itself, much like the English word ‘contract’. It seems likely that these two words always refer to written contracts. All three words, *ὁμολογία*, *συγγραφή* and *συνθήκαι*, can also refer to interstate agreements. A *συμβόλαιον* may denote a contract, but its meaning sometimes extends to any legal relationship of private law including involuntary ones, such as assault.

### III. Contracts

#### 1. Loan

##### (i) Roman Law

In the *Corpus Iuris Civilis*, there are two loan contracts created by transfer of an object (a *res*, hence termed ‘real’ contracts). These are *mutuum* and *commodatum*. *Mutuum* is the loan of something whose use requires its consumption (e.g. money), and *commodatum* is a loan of an object that is not to be consumed. *Mutuum* already appears as a contract in Gaius’ textbook (Nicholas 1962, 167-68). It was a loan without interest. Since business lenders generally charged interest, they had to use separate contracts, usually a *stipulationes*. Law limited interest rates and forbade compound interest (Buckland 1966, 464-65).

##### (ii) Δανείζω

The active and middle voices of δανείζω represent the two sides of a transaction. In the active voice, δανείζω means ‘to lend’, in the middle voice, ‘to borrow’. I will compare loans described by the word δανείζω to those of Roman law, illustrate the features of Athenian loans and show that loan is a legally defensible transaction

Attic orators use the word δανείζω for loans of money i.e. *mutuum*. Loan of an object appears in Dem. 49.22 (*Against Timotheus*) where Timotheus sends a slave to Pasion to borrow bedding, cloaks, two silver bowls and one mina, but the word δανείζω only goes with the loan of money

ἐκέλευσεν αἰτήσασθαι στρώματα καὶ ἱμάτια καὶ φιάλας ἀργυρᾶς δύο, καὶ

μνᾶν ἀργυρίου δανείσασθαι

[Timotheus] told [his attendant] to ask for blankets and cloaks and two silver bowls and to borrow a mina of silver

A loan of money, a common transaction in oratory, is sometimes only mentioned in passing to make another point. For example, in Isaeus 5.40 part of a list of the defendant's character flaws is the fact that he did not return money lent to him (οἱ μὲν οὐκ ἀπέλαβον ἃ ἐδάνεισαν ' [his friends] did not recover what they lent').

The debts owed to a person (assets) or owed by the person (liabilities) are inherited by the heirs. Aeschines mentions in passing that Timarchus recovered some money that his father lent.

ἀργύριον τισιν ἐδάνεισεν, ὃ κομισάμενος οὔτος ἀνήλωκε

He [Aeschines' father] lent money to some people, money which Timarchus spent when he recovered it. (Aeschin. 1.100).

More importantly we have two prosecutions by heirs for repayment of debts. In Dem. 49 (*Against Timotheus*), Apollodorus sues Timotheus for repayment of debts to his father, the banker Pasion. Lysias 17 (*On the Property of Eraton*) gives an example of both creditors and debtors by inheritance:

Ἐράτων ὁ Ἐρασιφῶντος πατὴρ ἐδανείσατο παρὰ τοῦ ἐμοῦ πάππου  
τάλαντα δύο.

Eraton, the father of Erasiphon, borrowed two talents from my grandfather  
(Lysias 17.2).

The speaker emphasizes that the obligation was willingly accepted. He provides witnesses

ὅτι μὲν οὖν ἔλαβε τὰργύριον καὶ ὡς τοσοῦτόν γε ἐδεήθη δανείσασθαι, [καὶ]  
 ὦν ἐναντίον ἐδόθη, μάρτυρας ὑμῖν παρέξομαι·

that he [Eraton] took the money and that he asked to borrow this much (Lysias 17.2).

We often read of interest on loans, as in the loan to Eraton, above (Lysias 17.3).

One oration, however, mentions a group of loans apparently without interest.

Apollodorus ([Dem.] 49) lists a series of loans made by his father, Pasion, to the military commander, Timotheus, without mention of interest. Perhaps there was none.

Apollodorus explains that his father hoped that, when Timotheos was in a better position, he would be able pay back the money and it would be possible to ask him favors (§3).

Lenders might charge any interest that they wished, according to a law of Solon quoted in Lysias 10.18 (*Against Theomnestus* I).

"τὸ ἀργύριον στάσιμον εἶναι ἐφ' ὅπόσῳ ἂν βούληται ὁ δανείζων."

‘Let money be stationary (στάσιμον) for as much [interest] as the lender wishes’.

The speaker explains the archaic language (cf. Jebb 1906, xxii). By ‘στάσιμον’, Solon means that the lender is to exact as much interest as he wishes

(τόκον πράττεσθαι ὅπόσον ἂν βούληται).

Lenders in oratory usually appear to charge simple interest, but sources outside of oratory show that the Athenians understood the concept of compound interest

(τόκοι τόκων *compound interest*, Aristophanes, *Nu.* 1156; cf. Theophrastus,

*Char.* 10.11).

There are several lawsuits in the Demosthenic corpus to recover maritime loans ([Dem.] 34, 35 and 56)<sup>48</sup>, i.e. loans for the purpose of maritime commerce. In our examples, there was a written contract (a συγγραφή) describing the loan and other particulars such as the routes that the ship might take and the security on the loan, which is specified cargo or the ship itself. There was also a clause that the borrower only had to pay if the ship arrived safely at its destination. This clause gives rise to a plot in Demosthenes 32 (*Against Zenothemis*).

οὐσῶν δὲ τῶν συγγραφῶν, ὡσπερ εἰώθασιν ἅπασαι, σωθείσης τῆς νεῶς ἀποδοῦναι τὰ χρήματα, ἴν' ἀποστερήσαιεν τοὺς δανείσαντας, τὴν ναῦν καταδῦσαι ἐβουλεύσαντο.

and the *syngraphai* [specifying], as all are accustomed, that the money be repaid provided that the ship arrives safely, they plotted to sink the ship in order to rob the lenders (§5).

The phrase (σωθείσης τῆς νεῶς) is ambiguous enough that, in all the suits about the repayment of maritime loans ([Demosthenes] 34, 35 and 56), the borrower or an heir (in [Dem.] 35) argues that the loan should not be repaid because of damage to the ship (cf. [Dem.] 34.2, 35.31, 56.22).

Interest is charged on all of the maritime loans. For example in [Dem.] 34, the loan was 2,000 drachmas for a voyage to the Bosphorus and back to Athens (ἐδάνεισεν αὐτῷ δισχιλίας δραχμὰς ἀμφοτερόπλου). The lender was to receive 2,600 drachmas (a 30% return) when the ship returned to Athens (ὥστ' ἀπολαβεῖν

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<sup>48</sup> Strictly speaking, [Dem.] 34 and 35 are for παραγραφή procedures arising from loan litigation.



Ἀθήνησιν δισχιλίας ἑξακοσίας δραχμάς §23).

Orators also mention interstate loans in which Athenians borrow from sources outside of Athens. Isocrates 7.68 (*Aereopagiticus*) describes such a loan and its repayment. During the oligarchy of 404-3, those in the town (*astu*) borrowed money from Lacedaemonians (δανεισαμένων γὰρ τῶν ἐν ἄστει μεινάντων ἑκατὸν τάλαντα παρὰ Λακεδαιμονίων ) for the siege of those occupying the Peiraeus. After democracy was restored, an assembly was held to consider how to repay the debt (περὶ ἀποδόσεως τῶν χρημάτων ‘about repayment of the money’). Some argued that only the borrowers should repay, not those under siege. It was decided finally that the *demos* in common should pay. Repayment of the loan would not be the subject of a lawsuit in an Athenian court, but Sparta could bring a threat of force.

### (iii) Ἔρανος

*Ath. Pol.* (52.2) lists among the ‘monthly suits’ those pertaining to *eranos* loans (ἐραδικαί). An *eranos* loan was loan by a group of lenders, who were often friends of the borrower (Harris 1992, 312). Orators often describe the loan as ‘collected’ (with the verb συλλέγω). For example, someone in Antiphon’s Tetrology 1.2.9, says that he would gather an *eranos* from his friends, if he were in need of money (ἐρανον παρὰ τῶν φίλων συλλέξας). The *eranos* was always interest free (Harris 1992, 312). Oratory, of course, records other loans by groups of lenders, which are for business purposes and stipulate that the borrower pay interest. Examples come from maritime loan contracts as in [Demosthenes] 35, *Against Lacritus* or [Demosthenes] 56, *Against Dionysodorus*.

Orators mention *eranos* loans with other loans in discussions of debt (cf. Harris 1992, 311 n. 10), but they may use different terminology. For example Lycurgus 1.22  
 τοῖς τε χρήσταις ἀποδοῦναι τὰ ὀφειλόμενα καὶ τοὺς ἑράνους διενεγκεῖν  
 [Leocrates instructed his brother-in-law] to pay back the creditors what was owing  
 and to pay the *eranos* loans.

Lycurgus uses the verb ἀποδίδωμι of paying the regular debts (τὰ ὀφειλόμενα) and διαφέρω is for paying in full the ἑράνοι. On the other hand, the debts (τὰ χρέα) include the *eranoi* ([σὺ]ν τοῖς ἑράνοις) in Hypereides 3.9.

The *eranos* loan might be collected by the borrower or by a πληρωτής (masc.), who delivered it to the borrower and “was responsible for administering the terms of the loan.” There is an example of a female loan administrator (πληρώτρια) in an inscription (Harris 1992, 313).

Managers of businesses might also collect *eranos* loans as in Hyperides 3 (*Against Athenogenes*). Under the management of the slave Midas, the perfume shop of this oration had incurred both ordinary debts and *eranos* debts. When the speaker, Epicrates, bought the shop and the family of slaves who ran it, by his contract, he also took responsibility for their debts.

In general, *eranos* loans are to be repaid cf. Dem. 27.25. (ἑράνους τε λέλοιπε πλείστους καὶ ὑπέρχρεως γέγονε [A debtor of Demosthenes’ father] ‘had abandoned many *eranos* loans and was heavily in debt’.) Sometimes these loans had security, as recorded in *horoi* (Finley 1952, 100). On the other hand, repayment did not seem to be required in the *eranos* collected by the slave *hetaira*, Neaera, for her freedom (Dem. 59 [*Against Neaera*]).

She made a collection from her lovers of money to buy her freedom and gave the money to Phrynion, an Athenian, to deposit with her masters. Legally, Neaera bought her freedom in Corinth, so this is not part of Athenian law. The point made by Finley (1952, 105) nevertheless seems relevant. “Neaira obviously did her own collecting but for the completion of the legal act of purchasing her freedom a free man, Phrynion, must intervene.”

## 2. Accessory Contracts

Transactions providing financial security for loans or other contracts are, by their nature, never found alone. There are two basic types of security—real security and personal security. In real security, pledged property insures that a party will meet financial obligations; in personal security, another person promises to pay unmet obligations (Harris 1993, 73).

### (i) Personal Security: ἐγγύη

#### A. Roman Law

Among the Romans, there were three contracts of suretyship (personal security), each created by *stipulatio* (thus they were formal oral contracts). The two earliest were *sponsio* and *fidepromissio*. The *sponsio* was limited to Roman citizens. In these two contracts, the original debt also had to have been created by *stipulatio*, and the suretyship could last no more than two years. Also, in *sponsio* the debt did not pass to heirs. A third form of personal security, *fideiussio*, appeared in the late Republic. More favorable to the creditor, there was no limitation on the time that *fideiussio* lasted, and the obligation passed to heirs. This kind of suretyship could guarantee any debt (Nicholas 1962, 204). The suretyship contracts created legal relationships between the creditor and the surety” (Nicholas 1962, 205).

## B. Ἐγγύη as Personal Security between Private Individuals

Demosthenes 33 (*Against Apatourius*) provides several examples of Ἐγγύη (suretyship), and illustrates its legal significance. A dispute between Apatourius and one Parmeno has been submitted to arbitration. Apatourius charges, in the present suit, that the speaker was Parmeno's ἔγγυητής in the arbitration and that hence he undertook to pay any judgement against Parmeno.

κάμοι δικάζεται, ἐπιφέρων αἰτίαν ὡς ἀνεδεξάμην ἐκτείσειν, εἴ τι  
καταγνωσθεῖη τοῦ Παρμένοντος, καί φησιν ἐγγραφήναι εἰς τὰς συνθήκας  
ἐμὲ ἔγγυητήν

[Apatourius] is even prosecuting me, bringing the charge that I took it upon myself to pay in full if Parmeno was condemned to some [payment], and he says that I was written in the *synthekai* as an *egguetes* (§22).

Paragraph 22 defines the obligation of an ἔγγυητής. In Dem. 33, the word Ἐγγύη either denotes the obligation of the ἔγγυητής (cf. also §10, 11, 28, 37) or the money that an ἔγγυητής is may be obliged to pay (cf. §23, 24, 25, 28).

Both sides accept that Ἐγγύη is a legal obligation. One can be liable to prosecution (ἔγγυης ὑπόδικος §29). By law, the obligation lasts for one year

τὸν νόμον, ὃς κελεύει τὰς ἐγγύας ἐπετείουσ εἶναι

the law, that stipulates that *engues* are annual (§27).

According to the speaker, the proper procedure to exact money from a surety would be for Apatourius to go to him taking witnesses and ask for the Ἐγγύη

(ἔχοντα μάρτυρας καὶ ἀπαιτῆσαι τὴν ἐγγύην §25), and to prosecute if the money is not paid (§25), where ἐγγύη denotes the money that the surety guarantees rather than the obligation.

The oration describes other suretyships. With himself as surety (ἐγγυητής), the speaker had persuaded the banker Herakleides to lend Apatourius 30 minas (§7). This was not as risky as it sounds since, shortly thereafter, taking responsibility for a loan by Parmeno to Apatourius, the speaker made an agreement with Apatourius whereby he purchased his ship and the slaves, until Apatourius should repay both loans (§8. See section on *πραῖσις ἐπὶ λύσει*).

Concerning the Greek, the prepositions ἐπί and πρὸς both indicate the creditor for whom the ἐγγυητής gives security: (ἀπολυθήσομαι τῆς ἐγγύης τῆς ἐπὶ τὴν τράπεζαν ‘I will be released from the ἐγγύη towards the bank’ §10), (ἀπολυθῆναι τῆς ἐγγύης τῆς πρὸς τὴν τράπεζαν ‘to be released from the ἐγγύη towards the bank’ §11). For exacting ἐγγύη, as an amount of money, the verb πράττω appears (διὰ τί πρῶτον μὲν οὐκ εὐθύς τῆς γνώσεως γενομένης ἐπράττετο τὴν ἐγγύην; ‘Why didn’t you first try to exact the *eggue* right after the judgment?’ §23) or εἰσπράττω (§24, 28).

Demosthenes 59.68 (*Against Neaera*) gives a brief example of ἐγγύη as obligation between private individuals. When Stephanus caught one Epainetos in adultery with his daughter, he tried to exact 30 minas from him and took two men as sureties (ἐγγυηταί) for the money. When Epainetus sued Stephanus for unlawful imprisonment, Stephanus submitted the dispute for arbitration by Epainetus’ ἐγγυηταί

with the conditions that Epainetus discontinue his case and the sureties be released from their obligation (τῆς ἐγγύης αὐτοὺς ἀφεῖσθαι).

Acting as a guarantor (ἐγγυητής) may be listed as part of litigant's public-spirited activities. In the 1<sup>st</sup> tetralogy, speech 2, of the 5<sup>th</sup> century orator, Antiphon, the speaker includes his guarantorships among his loans to Athenians and his taxes and liturgies for the state of Athens:

μεγάλας δὲ ὑπὲρ πολλῶν ἐγγύας ἀποτίνοντα

and paying great “sureties”<sup>49</sup> (ἐγγύας) on behalf of many people (§12).

The ἐγγύαι represent the payments rather than the obligations themselves (cf. Dem. 33).

Dem. 25.86 (*Against Aristogeiton* I) also describes ἐγγύη as a benefaction. He lists some of the reasons that people go into debt and remarks that some debtors are good people

ἀνθρώπους ἐπιεικεῖς, οἷς ἐγγύαι καὶ φιλανθρωπία

γίνονται καὶ ὀφλήματ' ἴδια

good people for whom there arise *egguai* and acts of kindness and private debts

[i.e. they take on themselves *egguai*, acts of kindness and debts].

### C. Ἐγγύη as a Personal Guarantee to the State

In *Against Aristogeiton* above, Demosthenes accuses Aristogeiton of being a

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<sup>49</sup> “Sureties”, i.e. money deposited for someone else as a guarantee of his performance of an obligation” (Gagarin 1997, 134 on §12).

debtor to the state. Serving as surety (ἐγγυητής) for a debt to the state is one way a person can become a state debtor, as mentioned in Demosthenes 53.27 (*Against Nicostratus*). According to law, if someone stands as surety for something (due to) the state and does not pay (μὴ ἀποδιδῶ τὴν ἐγγύην), his property belongs to the state.

Andocides 1.73 (*On the Mysteries*) gives more information about suretyship to the state. He explains that after the destruction of the Athenian fleet at the end of the Peloponnesian War, there was deliberation about how to unite Athens. One Patrocleides proposed that those without civil rights should recover them (ἀτίμους ἐπίτιμους ποιῆσαι). Among the disfranchised were the those owing money to the state, whether due to offices they had held, or public lawsuits, or

ἐγγύας ἠγγυήσαντο πρὸς τὸ δημόσιον, τούτοις ἢ μὲν ἔκτεισις ἦν ἐπὶ τῆς ἐνάτης πρυτανείας, εἰ δὲ μή, διπλάσιον ὀφείλειν καὶ τὰ κτήματα αὐτῶν πεπραῶσθαι.

those who ... ‘pledged ἐγγύη to the state. These persons had to pay in full in the ninth prytany, if [they did] not, they owed double and their possessions were liable to sale’ [by the state].

ἐγγύας is an internal accusative with the verb ἐγγυάω.

Inscriptions show other transactions that required sureties. Leases of state sanctuaries or *temene* required guarantors for the rent (Behrend 1970; 124-5, 133). For example IG i<sup>3</sup> 84, dated 418/7 B. C. (Behrend 1970, 55), records the stipulations for the lease of the temenos of Kodros, Neleus and Basile. It mentions a law about temene that appears to require sureties (τὸς ἐγγυετας κατὰ τὸν νόμον l. 25) although it may also refer to the construction of a wall (Behrend 1970, 60). Sureties might also be required of



hostages in war as recorded in IG i<sup>3</sup> 252, line 39. (The inscription is dated 407 B. C. by Meiggs and Lewis 1969, 267). These inscriptions, dating from the 5<sup>th</sup> century, give evidence earlier than most of Attic oratory.

#### D. Athenian Betrothal

ἐγγύη also denotes “betrothal” or the promising of a woman by her guardian to a man for marriage. According to Demosthenes 46.18 (*Against Stephanus*) laws specify the men who may betroth a woman (τοὺς νόμους, παρ’ ὧν κελεύουσι τὰς ἐγγύας ποιεῖσθαι ‘the laws specifying by whom betrothals are made’). Children born from women who have been betrothed are legitimate (γνήσιοί) (Hypereides 3.16 [*Against Athenogenes*]).

Isaeus 3 (*On the Estate of Pyrrhus*) is the prosecution of one Nicodemus for bearing false witness about the betrothal of his sister to Pyrrhus. According to the prosecutor, the sister was never betrothed with the result that her daughter is illegitimate and cannot inherit Pyrrhus’ estate. The speaker questions the credibility of the witnesses brought in a previous suit.

περὶ δὲ τῆς ἐγγύης τῆς τήθης τῶν παίδων τῶν ἑαυτοῦ ἐν τῷ ἄστει  
ἐκμαρτυρίαν (ὡς φησὶ) ποιούμενος τῶν μὲν οἰκείων οὐδένα τῶν ἑαυτοῦ  
παρακεκληκῶς φαίνεται, Διονύσιον δὲ <τὸν> Ἐρχιέα καὶ [τὸν] Ἀριστόλοχον  
τὸν Αἰθαλίδην·

Concerning the ἐγγύη of the grandmother of his children, making for himself (as he says) a deposition he has manifestly summoned none of his relatives, but Dionysios, the Erchian, and Aristolochos, the Aethalid (§23).

Again in Isaeus 9.29 (*On the Estate of Astyphilus*), the speaker brings witnesses who know of his sister's betrothal (μαρτυροῦσι δὲ ὑμῖν καὶ περὶ τῆς ἐγγύης οἱ εἰδότες).

Betrothal (ἐγγύη) is necessary for a woman's children to be legitimate, but it does not appear to be a contract (legally defensible agreement). ἐγγύη is an agreement between a woman's *kurios* and the man to whom she will be given, but it is unclear what future obligations it creates. There are no orations discussing breach of such an agreement.<sup>50</sup>

## E. Conclusion

ἐγγύη may denote the obligation or the amount of money guaranteed in suretyship. In this meaning, it is a legal obligation. Sureties can guaranty debts arising from a loan or the payment of rent in a lease, particularly debts to the state of Athens. Sureties might also insure obligations arising from war. In addition, the word refers to the betrothal of a woman, which is not a contract

### (ii) Real Security

#### A. Real Security in Roman Law

In Roman law there were three kinds of real security for debts: *fiducia*, *pignus* and *hypotheca*. The oldest type, *fiducia*, entailed the transfer of ownership of the security from the debtor to the creditor subject to an agreement that the debtor could recover ownership by payment of the debt. *Pignus* entailed only transfer of possession of the

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<sup>50</sup> “We find no evidence for any legal action to enforce upon either party the carrying out of the ἐγγύη” (Harrison 1998, 6).

security. Finally, *hypotheca* entailed the creation of a right for the creditor in property of the debtor (i.e. a *ius in re aliena*) whereby the creditor might obtain payment (Nicholas 1962, 151-52).

## B. Real Security in Athens

Athenian terminology does not distinguish whether a creditor has ownership, possession or some other right in property offered as security (see section on δανείζω). The Athenians did not make a distinction between ownership and legal possession as the Romans did. Greek, however, did have a variety of ways of talking about the security. According to Harris (1993, 87), ἀποτίμημα is the most general term for real security. It appears as security for the return of a dowry or as security for the lease of an orphan's estate<sup>51</sup> (μίσθωσις οἴκου—see the section of this name) both in oratory and in inscriptions. But it can also be security for leases and debts in general. (Another term for security is ἐνέχυρον). To loan on security is δανείζω ἐπί + dative. The verb ὑποτίθημι, 'to mortgage', takes the security as a direct object.

### ὑποτίθημι

The active or middle voices of ὑποτίθημι express two sides of the same transaction. The active voice of the verb signifies mortgage by a debtor (mortgagor) of some property. The middle signifies acceptance of a pledge by a creditor (mortgagee).

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<sup>51</sup> In Dem. 31.11 it is security for return of a dowry; in [Dem.] 49.11 and Is. 6.36 it is security for μίσθωσις οἴκου.

Isocrates 21 (*Against Euthynus*) and Demosthenes 28 (*Against Aphobus II*) give examples of mortgages of houses. In Isocrates 21, one Nicias, in fear of the rule of the Thirty, mortgaged his house (δεδιῶς τὰ παρόντα πράγματα τὴν μὲν οἰκίαν ὑπέθηκε Isoc. 21.2). Why would fear cause him to mortgage his house? At the same time, he sent his slaves out of the land and sent his implements to the speaker and gave three talents to Euthynus to guard (§2). These actions seem calculated to preserve Nicias' assets. He mortgages his house, not out a need for funds, but in order to obtain a movable form of wealth. We are not told whether he still had possession of his house.

In Demosthenes 28.17, Demosthenes mortgages his house and all his property to pay for a liturgy that he must perform (ἀπέτεισα τὴν λητουργίαν ὑποθεῖς τὴν οἰκίαν καὶ τὰμαυτοῦ πάντα). If he actually mortgaged everything, it is likely that he and his family could at least remain in their house, but the mortgaged objects (τὰ ὑποκείμενα) are described as the property of the lenders (τῶν ὑποθεμένων ἐστίν §18).

Demosthenes 49 (*Against Timotheus*) gives an example of land mortgage. (There are also some in Demosthenes 50 [*Against Nicocles*] §7 and 13) As a general in charge of the Athenian fleet, Timotheus mortgaged a piece of his property for 7 minas apiece to each of the 60 trierarchs sailing out with him to pay for maintenance of the crews (§11). (δάνεισμα ποιεῖται ἰδίᾳ παρ' ἐκάστου αὐτῶν τὰς ἑπτὰ μνᾶς καὶ ὑποτίθησιν αὐτοῖς τὴν οὐσίαν 'he takes the 7 minas as a private loan from each of them and mortgages his property to them' §12). Mortgage markers (*horoi*) stood on the property, but Timotheus has pulled them up, an indication to the speaker that he will not honor his debts (νῦν αὐτοὺς ἀποστερεῖ καὶ τοὺς ὄρους ἀνέσπακε §12).

We have more information about the treatment of security in the form of movable objects or slaves. In Dem. 27.9 (*Against Aphobus*), Demosthenes counts among is father's assets

κλινοποιούς δ' εἴκοσι τὸν ἀριθμὸν, τετταράκοντα μινῶν ὑποκειμένους  
couch-makers [slaves], twenty in number, mortgaged for 40 minas

The couch-makers are in the possession of the lender.

In Dem. 49 (*Against Timotheus*), Timotheus says that Pasion lent money to a Boeotian admiral on the security of some bronze . (τῷ Βοιωτίῳ ναυάρχῳ, καὶ ὑποθεῖναι φησιν αὐτὸν τούτου τοῦ ἀργυρίου χαλκόν '[Pasion lent money] to the Boeotian admiral and he says that the admiral pledged bronze for the money Dem. 49.17). Apollodorus, the prosecutor, argues that Pasion actually lent the money to Timotheus. If bronze had been pledged, he argues, it would have to be weighed. (οὐ γὰρ δήπου ἄνευ γε σταθμοῦ ἔμελλεν οὔτε ὁ ὑποτιθέμενος <παραλήψεσθαι> οὔθ' ὁ ὑποτιθεὶς τὸν χαλκὸν παραδώσειν 'For, doubtless, the mortgagee was not likely to accept nor the mortgagor to hand over the bronze without a weight' [Dem. 49.52]).

Again in Dem. 49, Pasion paid the freight charge to the captain of a ship for some wood bought by one Philondas (§29). According to Apollodorus, the wood belonged to Timotheus.

ἔᾶσαι ἄν ποτε ὑποκειμένων αὐτῷ τῶν ξύλων τοῦ ναύλου ἀνακομίσει τὸν Φιλώνδαν τὰ ξύλα ἐκ τοῦ λιμένος '[Pasion] would not ever have allowed Philondas to bring the wood from the harbor if the wood was mortgaged to him for the price of the freight charge' (Dem. 49.35).

Apollodorus continues, Pasion would have stationed a slave to guard the wood and take the price, while the wood was being sold until he recovered the loan (§35). The normal practice, according to Apollodorus, if the mortgage object was merchandise of some kind, would be to take payment from the sale of the merchandise.

Merchandise is also the security for the maritime loan of 30 minas (§8) in Dem. 35 (*Against Lacritus*). The security, valued at one talent, double the amount of the loan, is 3000 casks of wine and ὑποθήκη valued at 30 minas. The borrowers, who are supposed to use the loan money to buy the merchandise (§19), are to bring it to Pontus (§18, see also section on ὑποθήκη). The borrowers are not to borrow other money on the security (οὐδ' ἐπιδανείσονται ἐπὶ τούτοις παρ' οὐδενός §21). It was written in the συγγραφή that, when the borrowers sell what they brought in Pontus, they buy a return cargo, bring it to Athens, and repay the money in 20 days. The lenders are to have control of the cargo until then (§24).

In Dem. 56 (*Against Dionysodorus*), the loan is the same amount as in Dem. 35.

δανεισάμενος παρ' ἡμῶν ἐπὶ τῇ νηὶ τρισχιλίας δραχμὰς

Dionysodorus borrowed 3,000 drachmas on the security of his ship (§3).

Notice the writer does not use the word ὑποτίθημι. The mortgage object is merely indicated by ἐπί plus the dative. Other terminology for the security is ἐνέχυρον (§3) or τὴν ναῦν τὴν ὑποκειμένην ἡμῖν ('the ship mortgaged to us' §4).

By the συγγραφή (contract), the borrowers are to bring the ship back to the creditors after the voyage. If they do not, they have to pay double the money (§20).

Again, the contract doubles the amount Dionysodorus must pay if he does not produce

τὰ ὑποκείμενα ἐμφανῆ καὶ ἀνέπαφα

the mortgaged objects (τὰ ὑποκείμενα) ‘plain to see and free from a legitimate claim by a third party’ (§38, Carey and Reid 1985, 229)

### **Non-Financial**

The word ὑποτίθημι also has non-financial senses in oratory such as ‘to propose as a subject of discussion’ (Cf. LSJ III 2), or to ‘establish as a preliminary or premise’ (cf. LSJ V) Since my concern is with contracts, I will not discuss these further.

ὑποθήκη

### **Reference to Real Security**

Sometimes the security on a loan is called ὑποθήκη. The word appears in two orations regarding maritime loans, Dem. 34 and Dem. 35. Other terminology for security is more common. Sometimes the writer merely gives the security with ἐπί + dative (cf. Dem. 56.3 ἐπὶ τῇ νηί ‘on the security of the ship’). In the examples with the word ὑποθήκη the security is a large movable object. The word does not always appear in this context, however, as in Dem. 49.21 where a bar of copper is security for a loan.

In Dem. 34 (*Against Phormio*), the word denotes security on a maritime loan.

ἐδάνεισα Φορμίῳνι τουτῶν εἴκοσι μνᾶς ἀμφοτερόπλουν εἰς τὸν Πόντον ἐπὶ ἑτέρῃ ὑποθήκῃ, καὶ συγγραφὴν ἐθέμην παρὰ Κίττω τῷ τραπεζίτῃ.

I lent to Phormio, here, 20 minas for a round-trip voyage to Pontus on the security of another *hypothēke*

The meaning of the ἑτέρῃ ὑποθήκῃ has been debated, it seems to mean that the security on the loan has twice the value of the loan.

In Dem. 35.18 (*Against Lacritus*)

πρῶτον μὲν γὰρ γέγραπται ὅτι ἐπ' οἴνου κεραμίοις τρισχιλίοις  
 ἐδανείζοντο παρ' ἡμῶν τὰς τριάκοντα μνᾶς, ὡς ὑπαρχούσης  
 αὐτοῖς ὑποθήκης ἐτέρων τριάκοντα μνῶν, ὥστε εἰς τάλαντον ἀργυρίου  
 τὴν τιμὴν εἶναι τοῦ οἴνου καθισταμένην, σὺν τοῖς ἀναλώμασιν, ὅσα  
 ἔδει ἀναλίσκεσθαι εἰς τὴν κατασκευὴν τὴν περὶ τὸν οἶνον·

For, first of all, it has been written that on the security of 3,000 casks of wine they borrowed from us the 30 minas, on the grounds that they had *hypotheke* of another 3,000 minas, so that for a talent of money, the established value of the wine, with expenditures.

### **Translation as ‘counsel’ or ‘advice’**

In Antiphon and Isocrates, the word might be translated as ‘counsel’ or ‘advice’.

### **Antiphon 1.17**

Regarding a drug, supposed to be a love potion, but actually a deadly poison

ἔδοξεν οὖν αὐτῇ βουλευομένη βέλτιον εἶναι μετὰ δεῖπνον δοῦναι, τῆς  
 Κλυταιμνήστρας ταύτης [τῆς τούτου μητρὸς] ταῖς ὑποθήκαις ἅμα  
 διακονοῦσαν.

Planning, it seemed better to her, therefore, to give [the drug] after dinner, at the same time attending to the advice of this Clytemnestra.

### **Isocrates 2 (To Nicocles)**

τῶν ποιητῶν τινες τῶν προγεγενημένων ὑποθήκας ὡς  
 χρῆ ζῆν καταλελοίπασιν· (§3)



Some poets of the past have left counsel about how to live

αίροῦνται συνδιατρίβειν ταῖς ἀλλήλων ἀνοίαις μᾶλλον ἢ ταῖς ἐκείνων  
ὑποθήκαις.

They choose to live constantly with the foolishness of the others rather than the  
counsel of the former (§43)

πρᾶσις ἐπὶ λύσει

Sometimes a text describes a lender as buying the security for a loan.<sup>52</sup> It treats  
borrowing on security as a ‘conditional sale’ of the security or ‘sale on condition of  
release’ (πρᾶσις ἐπὶ λύσει) of the security (Harris 1988, 351). The debtor can buy it  
back by paying off the loan. This is a common view on *horoi* (boundary stones) that  
mark as security such property as houses (οἰκίαι), land (χωρία) or workshops  
(ἐργαστήρια).<sup>53</sup> The Greek has a form of the participle, πεπραμένος, followed by  
ἐπὶ λύσει<sup>54</sup> (ὄρος χωρίου πεπραμένου ἐπὶ λύσει, for example, Finley 1952, 131 #41).

A couple of orations also describe the act of taking security as a purchase.  
([Dem.] 33.8 and throughout Dem. 37). In [Dem.] 33.8 (*Against Apatourius*), the speaker  
is Apatourius’ surety to a banker for thirty minas. When he takes responsibility for  
another ten mina loan to Apatourius, he takes his ship and slaves as security. The speaker  
describes taking security as a conditional purchase.

<sup>52</sup> The terminology is discussed by Edward M. Harris, "When is a Sale not a Sale? The Riddle of Athenian Terminology for Real Security Revisited," CQ 38 (1988), 351-381.

<sup>53</sup> Finley 1952, 122-46.

<sup>54</sup> Harris 1988, 351. Carey and Reid 1985, 106 n. 8.

ὠνήν ποιῶμαι τῆς νεῶς καὶ τῶν παίδων, ἕως ἀποδοίῃ τὰς τε δέκα μνᾶς  
 ἃς δι' ἐμοῦ ἔλαβεν, καὶ τὰς τριάκοντα ὧν κατέστησεν ἐμε ἐγγυητὴν τῷ  
 τραπεζίτῃ

I make a purchase of the ship and slaves until he should repay the ten minas that he received through my agency and the thirty minas for which he made me surety to the banker.

The speaker is to return the ship and slaves upon repayment of the loans (Harris 1988, 365).

Dem. 37 (*Against Pantaenetus*) provides more examples. The speaker, Nicobolus, begins describing the loan and security with the common terminology of oratory (Ἐδανείσαμεν πέντε καὶ ἑκατὸν μνᾶς ... Πανταινέτῳ τουτῶν, ἐπ' ἐργαστηρίῳ τ' ἐν τοῖς ἔργοις ἐν Μαρωνείᾳ καὶ τράκοντ' ἀνδραπόδοις 'We lent 105 minas to Pantaenetus here on the security of a workshop in the Maroneia mines and 30 slaves' §4). Pantaenetus previously owed the same money to other creditors on the same security. Nicobolus describes one of the previous creditors as having bought the property.

ἐῶνητ' ἐκεῖνος αὐτὰ τούτῳ παρὰ Τηλεμάχου τοῦ πρότερον κεκτημένου  
 he bought it [the security] for my opponent [Pantaenetus] from Telemachus, the  
 previous owner (§5).

The mortgaged property is considered to be purchased by each successive group of creditors. But it is possible for Pantaenetus to get the security back some day since Nicobolus and the other creditor, Evergus, lease the security to Pantaenetus and stipulate

λύσις τούτω παρ' ἡμῶν ἐν τινι ῥητῷ χρόνῳ 'a release for Pantaenetus from us within a certain stated time' §5.

### 3. Κοινωνία

#### (i) Roman *societas*

One of the Roman consensual contracts was *societas*, or partnership. It was an agreement by two or more parties to work together for some objective. There were many kinds of *societas*. The earliest form involved the pooling of all of the parties' assets (*societas omnium bonorum*), “but it came to include any agreement for joint activity, great or small, brief or prolonged” (Nicholas 1962, 185). Since one party could not generally make a contract affecting another, the law focused on relations between partners (Buckland 1966, 507).

#### (ii) Athenian κοινωνία

*Ath. Pol.* (52.2) lists among the ‘monthly suits’ those pertaining to partnerships (κοινωνικά). As pointed out by Harris (1989, 339), despite the existence of κοινωνία for various purposes, “Athenian law concerned itself solely with individual persons and did not recognize the separate legal existence of collective entities.” Since partnerships had no legal personality, the δίκαι κοινωνικά could not have been suits in which κοινωνία were prosecutors or defendants. They would reasonably have been prosecutions by one partner of another, as in Roman law.

In Demosthenes 14.16 (*On the Symmories*), κοινωνικά is a substantive. Demosthenes proposes a way of getting 1200 trierarchs for a war effort. Athens should expand the group of *eisphora* payers to 2000.

τῶν ἐπικλήρων καὶ τῶν ὀρφανῶν καὶ τῶν κληρουχικῶν καὶ τῶν

κοινωνικῶν καὶ εἴ τις ἀδύνατος ἀφαιρεθέντων, ἔσεσθαι χίλια καὶ διακόσια  
ταῦθ' ὑμῖν σώματα.

Taking away the epikleroi and orphans and cleruchs and the κοινωνικῶν and anyone  
unable, there will be 1200 persons.

The phrase τῶν κοινωνικῶν refers to property held by a group (LSJ I). Groups of  
people who owned property, such as demes or religious associations, could be subject to  
property tax.

I review the significance of the word κοινωνία in oratory. First of all, there are  
some descriptions of partnerships. In [Demosthenes] 48 (*Against Olympiodorus*), on  
partner prosecutes another. The speaker calls their association a κοινωνία in §28, but  
his presentation focuses on a written document (συνθῆκαι). In this dispute, the speaker  
and Olympiodorus, relatives by marriage (§1), agree to divide between themselves the  
property of a relative who has just died childless (§§5-6). They write an agreement  
(συνθῆκαι), swear oaths, calling on the gods and their relatives as witnesses, and they  
deposit the document with a third party. The speaker has the law read to the court in  
accordance with which they wrote the συνθῆκαι (§§9-11). The description of their  
activities repeatedly mentions the συνθῆκαι.

The speaker calls the relationship a κοινωνία in §28

τῆς κοινωνίας τῆς πρὸς τοῦτον ταῦτα ἐγὼ ἀπέλαυσα.

I derived these benefits from the partnership with him.

The reference to benefit is sarcastic. The associated adverb (κοινῆ) also appears (§§28,  
42), but the legal presentation is based on the συνθῆκαι. There is no indication of

whether this is a δίκη κοινωνική. There is no mention of the legal procedure and no emphasis on words of partnership.

Other references to κοινωνία as partnerships are briefer. Isaeus 4 (*On the Estate of Nicostratus*), an inheritance dispute, is the speech a speaker supporting the claim of relatives. Their opponent bases his claim on a will and maintains that there was a partnership (τὴν κοινωνίαν, ἣ μάλισθ' οὗτος ἰσχυρίζεται, ψευδῆ οὔσαν 'the partnership on which he relies most of all being a fabrication' §26).

Isaeus 11 (*On the estate of Hagnias*) has a brief description of an alliance (κοινωνία) to gain part of an inheritance. According to the speaker, Theopompus, two parties in a lawsuit for the estate had συνθήκαι that, if one of them won her case, she would share a portion with the defeated party (§21; see συνθήκαι 120). In the same suit, it was not possible for Theopompus and his brother to make such an arrangement since they had the same relation of kinship to Hagnias

οὐκ ἐνῆν κοινωνίαν οὐδὲ διομολογίαν ποιήσασθαι περὶ αὐτῶν

It was not possible to make a *koinonia* or agreement concerning them (§21).

Theopompus calls the agreement of the other two claimants a κοινωνία or διομολογία.

The word κοινωνία also appears in public prosecutions and oratory. In Aeschines 2 and 3 the κοινωνία refer to alleged cooperation in political action between Demosthenes and Philocrates or Philip (τὴν κοινωνίαν τῶν πράξεων 3.145 cf. 2.56). In Demosthenes 9 (*Third Philip*) it refers to a partnership of aid and friendship between the Greeks (κοινωνίαν βοηθείας καὶ φιλίας οὐδεμίαν ποιήσασθαι §28).

In Demosthenes 39 (*Against Boeotus*), *κοινωνία* denotes an involuntary association, rather than a partnership. The prosecutor describes going through life with the same name as his half-brother as a *κοινωνία* of reputation deeds (*ἐν κοινωνίᾳ τὸν ἅπαντα βίον τῆς τούτου δόξης καὶ τῶν ἔργων εἶναι* §18).

In Isaeus 9 (*On the Estate of Astyphilus*), the *κοινωνία* is a religious fellowship. *εἰς τοῖνον τὰ ἱερά ὁ πατήρ ὁ ἐμὸς τὸν Ἀστύφιλον <ὄντα> παῖδα ἤγε μεθ' ἑαυτοῦ ὥσπερ καὶ ἐμὲ πανταχῆ καὶ εἰς τοὺς θιάσους τοὺς Ἡρακλέους ἐκεῖνον [αὐτὸν] εἰσήγαγεν, ἵνα μετέχοι τῆς κοινωνίας.*

Furthermore, my father took Astyphilus to religious rites with him, when Astyphilus was a boy, just as he took me everywhere, and he introduced him into the religious guild of Heracles in order that he share in the *κοινωνία* (fellowship, communion).

### (iii) Conclusion

The translations of *κοινωνία*, “communion, association, partnership” (LSJ I) fit the usages of oratory. There are a few descriptions of *κοινωνία* in private law. Two of them have *συνθήκαι*. In [Demosthenes] 48, a prosecution of one partner by another, the argument focuses on the *συνθήκαι*. There is no emphasis on the fact that the relationship is a *κοινωνία*. It is unclear whether this is a *δίκη κοινωνική*. As with the Roman *societas*, the *κοινωνία* as a partnership is an agreement to act in cooperation. Orators also use the term to describe voluntary and involuntary associations and religious fellowships.

## 4. Μίσθωσις/μισθόω

### (i) Roman Classification of Contracts

One of the four consensual contracts distinguished by Gaius was hire (*locatio conductio*, described in III. §§142-147). The discussion follows that of *emptio venditio*, the contract of sale, and Gaius describes certain gray areas in which scholars disputed whether a contract was one of sale or hire. There is a slightly more detailed description in the textbook of the *Corpus Iuris Civilis* of Justinian (Inst. III. §24). “Within the single Roman category later civilians distinguished three types: *l.c. rei*, *l.c. operarum*, *l.c. operis*” (Nicolas 182). According to Buckland (1966, 498 note 5), “express classification into two types probably medieval.” Later scholars gave distinguishing names to three different types of *locatio conductio*.

#### A. *Locatio conductio rei*

*Locatio conductio rei* is the leasing of an object. The *locator* is the lesser and the *conductor* is the lessee or tenant. “The rules as to consent, object and price being much as in sale.” Unlike in sale, “rent of land might be fixed in produce. Thus arises the question whether in classical law the ‘*merces*’ or rent had to be in money, though Justinian is clear that it must” (Buckland 1966, 499).

#### B. *Locatio conductio operarum*

*Locatio conductio operarum* is the hiring out of a person’s services. The *locator* was the worker, and the *conductor* was the employer. In both *l. c. rei* and *l. c. operarum*, the *locator* places the object (*res*) or services (*opera*) at the disposal of the *conductor*



who pays for the use of the object of the services. When a slave was hired, it was “difficult to distinguish it from *locatio rei*. Usually an agreement by the master that a slave shall work for hire for a third person is called *locatio servi*: while if a freeman contracts to do the same thing it is *locatio operarum*” (Buckland 1966, 504).

### ***C. Locatio conductio operis (faciendi)***

The worker in *locatio operarum* generally received a “day wage”. The worker in *locatio conductio operis*, on the other hand, had more independence and responsibility (Buckland 1966, 504). The worker (or ‘contractor’) was hired to complete some piece of work, generally “with a physical subject-matter.” If the object was made out of the worker’s material, “the contract was sale (*emptio venditio*), but there was an exception” in the construction of a house. “Work of this kind was not necessarily, or usually, done by the contractor” personally. “The price fixed might be a lump sum or so much for each part of the work.” (Buckland 1966, 505).

The roles of the *conductor* and *locator* are reversed from other two kinds of *locatio conductio*. The *conductor* does the work for the *locator*, “but the names are confused: in one text a party is called both *conductor* and *locator*” (Buckland 1966, 504).

## **(ii) Athenian Examples of *locatio conductio rei***

### **A. Overview**

I collect here the instances of lease of objects. The terms of the rentals range from very short term to many years. The objects of lease may be movable such as a yoke of mules, boats, ships and equipment for triremes; they may be land or structures such as

a shed, multiple dwelling (συννοικία) or house or they may be a business along with its slaves. The businesses include a workshop of sword makers (slaves), a workshop and slaves in the Maroneia mines, a shield-making shop as well as a bank.

The verb μισθόω appears in the active when the lessor is the subject and in the middle voice when the lessee is the subject. μίσθωσις may denote the activity of leasing, a written lease or rent payment. Μίσθωσις denotes ‘rent payment’ for the businesses in Dem. 28, Dem. 36 and Dem. 45; for a house in Dem. 41; for a temenos in Dem. 57 (in ‘μίσθωσις by official groups’ below); for farms in Isoc. 7; and for unspecific property (χρήματα) in Is. 5. Sometimes the rent for a house or multiple dwelling is termed ἐνοίκιον (Dem. 48 and Is. 6). The monthly rent payments for the workshop in Dem. 37 are interest on a loan and are termed τόκος (interest). We do not usually learn how frequently the rent is paid. In Dem. 37 it is monthly and in Dem. 45 it is annual.

Generally orators mention little more than the existence of a lease. There is some indication, however, of the legal treatment of the arrangements in Dem. 37, Dem. 48 and Isoc. 7. The suit in Dem 37 by a tenant is partly based on violation of the lease, Dem. 48 mentions a suit for a lessor (ἐνοικίου δίκη) to collect rent on a house and Isoc. 7 mentions, in a general way, suits by landlords.

## **B. Objects Leased for Short-Term Usage**

### **A Shed**

The Thirty Tyrants forced Lysias’ brother to drink hemlock, and ignored the customary burial procedures

καὶ ἐπειδὴ ἀπεφέρετο ἐκ τοῦ δεσμοτηρίου τεθνεώς, τριῶν ἡμῖν οἰκιῶν  
 οὐσῶν <ἐξ> οὐδεμιᾶς εἶσαν ἐξενεχθῆναι, ἀλλὰ κλεισίον μισθωσάμενοι  
 προὔθεντο αὐτόν.

And when he was being brought out of the jail, dead, although we had three houses,  
 they allowed him to be borne out of none of them, but renting a shed they laid him  
 out. (Lysias 12.18)

The passage gives an example of rental although we would not consider it as a  
 contract since it took place when the usual laws had no force.

### **Yokes of Mules**

In prosecutions directed at Demosthenes, both Aeschines and Dinarchus tell of  
 Demosthenes' renting of a yoke of animals for Macedonian ambassadors. The orators  
 mean to depict fawning behavior towards the Macedonians and suggest that Demosthenes  
 may be in their pay (an act of treason).

According to Aeschines,<sup>55</sup> when a group of Macedonian ambassadors left Athens,  
 Demosthenes 'rented three yokes of mules for them and escorted the ambassadors to  
 Thebes, making the city [look] ridiculous' (ἐμισθώσατο αὐτοῖς τρία ζεύγη ὀρεϊκὰ  
 καὶ τοὺς πρέσβεις προὔπεμψεν εἰς Θήβας, καταγέλαστον τὴν πόλιν ποιῶν).

### **C. Equipment for a Trierarchy**

Appointed to the trierarchy of a ship, one Mnesilochus rented equipment from the  
 previous trierarch, Hagnias.

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<sup>55</sup> Aeschin. 3.76 (*Against Ctesiphon*) cf. Aeschin. 2.111 (*On the Embassy*) and Din. 1.28 (*Against Demosthenes*).

καὶ τὰ σκεύη παρὰ τοῦ Ἀγνίου ἐμισθώσατο

he rented the equipment from Hagnias Dem. 50.42 (*Against Polycles*)

## D. Boats and Ships

In Demosthenes 56 (*Against Dionysodorus*), Dionysodorus and his partner have borrowed money on the security of their ship, to pay for a trading voyage. Dionysodorus says that the ship could not complete its voyage back to Athens because it was wrecked; his partner, however, rented boats to carry some of the merchandise back.

ἐκ τῆς Ῥόδου μισθώσασαίτο πλοῖα καὶ δεῦρο ἀποστείλειε τῶν χρημάτων  
ἕνια.

[He says that proof of this is that] he rented boats (πλοῖα) from Rhodes and sent some of the things here. (56.21 cf. §24, 25)

The speaker of the oration doubts that the ship was really wrecked. The rental of boats is not evidence of shipwreck

τὴν μίσθωσιν τῶν πλοίων ὅταν λέγῃς, οὐ τοῦ ῥαγῆναι τὴν ναῦν  
τεκμήριον λέγεις

when you mention the rental of the boats, [objective genitive]

you are not giving proof of the ship being wrecked (§25)

because they did not send all the merchandise back to Athens, In particular, they sold the grain, whose price had fallen, on the island of Rhodes.

Subsequently the ship (ναῦς) was leased out for other voyages, further evidence, in the speaker's view, that the ship could have sailed back to Athens.

οὐκ ἂν εἰς ἕτερα δήπου ἐμπόρια

ἐμισθώσαν αὐτήν, ἀλλ' ὡς ὑμᾶς ἀπέστελλον,

... they would not have leased it, doubtless, for [trips] to other ports, but they would have sent it to you (§43)

## E. Businesses

### Sword making shop and slaves

In Dem. 27.20, the orator mentions a sword making shop (ἐργαστήριον), which Aphobus managed. He gave Therippides, another guardian, pay (μισθός) for three slaves that were in the workshop. In the second speech of the prosecution he mentions that he paid μίσθωσις to Therippides.

δύ' ἔτη τὸ ἐργαστήριον διοικήσας Θηριππίδη μὲν ἀποδέδωκε τὴν μίσθωσιν

Managing the workshop for two years, he paid the rent (μίσθωσις) to Therippides.

(Dem. 28.12)

If the court is expected to recall the first speech, the pay (μισθός) for the slaves is the (μίσθωσις) in the second speech. Payment to the master for a slave's work seems identified with rent on an object.

### Workshop and slaves in the Maroneia mines

In Dem. 37, παραγραφή Against Pantaenetus, Pantaenetus borrows 105 minas (i.e. 10,500 drachmas) on the security of a workshop and slaves in the Maroneia mines. The lenders write up a lease for the security in which the rent payments are the interest (τόκος), 105 drachmas a month, on the loan (thus the interest is 12% per year). The word μίσθωσις denotes the stipulations of the lease §5 (see συνθήκαι), the objects of the rental in §6 (ἐκπεσεῖν ὑπ' ἐκείνου βίβα παρὰ τὰς συνθήκας ἐκ τῆς μισθώσεως) and

the written lease in §10 (see section on συμβόλαιον) and §30 (αἱ τῆς μισθώσεως ἐνταῦθα συνθήκαι).

Brought as a mining suit (δίκη μεταλλική), this is the only lawsuit we have based, at least in part, on violation of a lease. Part of Pantaenetus' accusation is that the speaker sold the workshop and slaves contrary to the contract (ἀποδόμενος τὸ ἐργαστήριον τὸ ἐμὸν καὶ τοὺς οἰκέτας παρὰ τὰς συνθήκας, ἃς ἔθετο πρὸς με §29).

Bank and shield factory—Dem. 36, 45, 46

Dem. 36 (*For Phormio*), Dem. 45 and 46 (*Against Stephanus I and II*) concern the same situation. Phormio rented a bank and shield factory from Pasion, his former master. The lease was written in συνθήκαι (τὰς συνθήκας, καθ' ἃς ἐμίθωσε Πασίων τὴν τράπεζαν τούτῳ καὶ τὸ ἀσπίδοπηγεῖον 36.4). Phormio rented the banking business together with the deposits (μισθούμενος οὖν ὅδε τὴν ἐργασίαν αὐτὴν τῆς τραπέζης καὶ τὰς παρακαταθήκας [λαμβάνων] 36.6) Blass brackets λαμβάνων,<sup>56</sup> comparing it to the text in (τὰς παρακαταθήκας καὶ τὴν ἀπὸ τούτων ἐργασίαν αὐτὴν ἐμισθώσαντο §13).

Phormio paid a rent (μίσθωσιν) of two talents and forty minas a year for eight years on the bank and shield factory (36.51).

## F. Dwellings

Many orations mention rental of houses or multiple dwellings.

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<sup>56</sup> Note to line 10, on the page containing paragraph 6, W. Rennie, *Demosthenis Orationes*.

Aeschin. 1.124 (*Against Timarchus*) explains the difference between a *synoikia* and an *oikia*.

ὅπου μὲν γὰρ πολλοὶ μισθωσάμενοι μίαν οἴκησιν διελόμενοι ἔχουσι,  
 συνοικίαν καλοῦμεν, ὅπου δ' εἷς ἐνοικεῖ, οἰκίαν.

For when many people renting one house (*oikia*) hold it divided, we call it a *synoikia*, when one person lives in it an *oikia*.

The rent payment on a house (*oikia*) is sometimes μίσθωσις and sometimes ἐνοίκιον.

διακωλύει με τὰς μισθώσεις κομίζεσθαι Σπουδίας

Spoudias is hindering me from collecting the rents (on an *oikia*) (Dem. 41.5). But

οὐδεπώποτε μοι ἔλαχες ἐνοικίου δίκην τῆς οἰκίας ἧς ἔφασκες μισθῶσαί μοι

you never obtained leave to bring a suit for rent on the house which you claim to have rented to me (Dem. 48.45)

Apparently an ἐνοικίου δίκη is a lawsuit for rent on a house.

In Isaeus 6.21 the rent on a *synoikia* is ἐνοίκιον.

Rental of a house (*oikia*) also appears in Lys. 3.11. In Isaeus 11.42 a man has property yielding rental income:

ἡ μίσθωσις τοῦ μὲν ἀγροῦ δώδεκα μναῖ, τῶν δὲ οἰκιῶν τρεῖς

the rent on the land is 12 minas, and on the houses, three minas.

## G. Land

According to Isocrates, in the old days, the wealthy helped the poor

γεωργίας ἐπὶ μετρίαις μισθώσεσι παραδιδόντες '[the wealthy] handing over farms at moderate rents' (Isoc. 7.32).

The reason they could do this is that judges strictly followed the law.

ἑώρων γὰρ τοὺς περὶ τῶν συμβολαίων κρίνοντας οὐ ταῖς ἐπεικείαις  
χρωμένους, ἀλλὰ τοῖς νόμοις πειθομένους

For they saw those judging about *symbolaia*, not making use of reasonableness, but obeying the laws. (§33)

The suggestion is that landlords no longer offer moderate rents because they are not confident that the courts will uphold their rights.

The speaker of Lysias 7.10-11 (*On the Olive Stump*), mentions those who were tenants on his land. He leased his land (εμίθωσα) to Halkias a freed slave of Antisthenes, and then Proteus rented (ἐμισθώσατο) it for three years. Now the speaker farms (γεωργῶ) the land.

The speaker of Lysias 17.8 has been renting out some of the land that he is trying to claim as an inheritance.

μάρτυρας ὑμῖν παρέξομαι πρῶτον μὲν τοὺς μεμισθωμένους  
παρ' ἐμοῦ τὸ Σφηττοῖ χωρίον,

I will provide witnesses for you, first of all, those who have been renting the land at Sphettus from me (Lys. 17.8)



## Locatio servi

The employees of the businesses described above are slaves. The same would be the case for the banking business. Phormio and Pasion were both originally slaves as are also the personnel of Pasion's bank in Isocrates 17 (*Trapeziticus*).

## H. Μίσθωσις by Official Groups

As the evidence of inscriptions shows, the state of Athens and subdivisions such as tribes (φυλαί), phratries (φρατρία), clans (γένη) and especially demes (δῆμοι), as well as religious associations, owned and leased property. There is only one allusion to such a lease in Attic oratory, the lease of a deme's land in Demosthenes 57 (*Against Eubulides*). Attica was divided into 139 demes, or municipalities, membership in which was hereditary since the time of Cleisthenes (in 507). Membership in a deme was required for citizenship. The speaker of Demosthenes 57 (*Against Eubulides*) was voted not to be a citizen when his deme, Halimous (§15), reviewed its membership rolls. In this speech he appeals the decision to a court. He maintains that the vote was fraudulent and that he incurred the hostility of some deme members when he was the demarch, deme administrator.

διάφορος ἐγενόμην εἰσπράττων ὀφείλοντας πολλοὺς αὐτῶν μισθώσεις  
τεμενῶν καὶ ἕτερ' ἅ τῶν κοινῶν διηρπάκεσαν

I became an adversary exacting from many of them rents (μισθώσεις) that they owed on sacred lands [τεμένη] and other things they plundered from the public.

The word μίσθωσις refers to the rent payment here.

The vote against the prior demarch indicates one recourse, or alternately a way to express animosity, for lessees who feel that their lease was violated, at least, when the transaction remains within the deme. The vote on other issues, of course, does not constitute a trial and need not reflect an actual violation of the lease terms.

### Examples from Inscriptions

Inscriptions give other examples of leases made by demes. In inscription IG II/III<sup>2</sup> 2493 (339/8 B. C.), the deme-members (οἱ δημόται) of an unknown deme lease a temenos of Athena. Lease stipulations come after the common formula *κατὰ τὰδε μισθοῦσιν*.<sup>57</sup> The lessee is directed to pay the rent (μίσθωσις) to the demarch (Behrend 1970, 84). In IG II/III<sup>2</sup> 2497 (after 350 B. C.), the deme Prasiai leases land to a deme member (δημότης) and his descendents. According to the inscription, the right of lease lasts so long as the rent is paid (Behrend 1970, 84), which suggests that the lease is forfeited if the rent is not paid, a common stipulation in inscriptions (Behrend 1970, 131). In a later inscription, of the deme Prasiai<sup>58</sup>, the lessors have the right to lease anew if the rent is not paid and the lessee is charged a 1000 dr. penalty.

There is less evidence for lease stipulations in defense of lessees (Behrend 1970, 127). One example is in the 40 year lease arrangement of the deme Aixone (IG II<sup>2</sup> 2492. 346/5 B. C.), which specifically mentions the remedy of a δίκη βλάβης for the lessees against members of the deme who try to violate the terms of the lease (written in

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<sup>57</sup> According to Kussmaul (1969, 24), lease specifications in inscriptions referring to specific lessees begin with the wording, *κατὰ τὰδε ἐμίσθωσαν*, while those without the name of the lessee begin with *κατὰ τὰδε μισθοῦσιν*. In the second wording the lease had yet to be awarded.

<sup>58</sup> Vanderpool, McCredie, Steinberg *Hesperia* 1962, 54/6 n. 138 (SEG 21.644)—somewhat after 300 B. C., cited by Behrend, 1970, 85.

συνθήκῃ). Since the deme acts through its members, the deme itself need not be liable to prosecution.

lines 29-31.— ἐὰν δέ τις εἴπει ἢ ἐπιψηφίσει παρὰ τάσδε τὰς συνθήκας  
πρὶν τὰ ἔτη ἐξελεθῆναι τὰ τετταράκοντα, εἶναι ὑπόδικον  
τοῖς μισθωταῖς τῆς βλάβης

but if someone makes a proposal or puts [a proposal] to a vote contrary to these *synthekai* before the 40 years pass, let [him] be liable to the renters to trial for damages (τῆς βλάβης).<sup>59</sup>

As it is deme members rather than the deme, in the abstract, who are liable to prosecution, so in characteristic Greek form the deme members (Αἰξωνεῖς) are named as lessors rather than the deme<sup>60</sup>: After κατὰδε ἐμίσθωσαν Αἰξωνεῖς the inscription records the lessees (father and son), the lease duration of 40 years, and the rent of 152 dr. The lessors may not sell the land or make a new lease before the present lease expires.<sup>61</sup> On the other hand, if the rent was not paid, the lessor had the right of ἐνεχυρασία, immediate confiscation of some of the debtor's property. In this case the Aixones could seize both agricultural products as well as the belongings of the lessee (Behrend 1970, 133).

εἶναι ἐνεχυρασίαν Αἰξωνεῦσιν καὶ ἐκ τῶν ὥραιων τῶν τοῦ

<sup>59</sup> Kussmaul 1969, 52.

<sup>60</sup> Of the boundary markers or *horoi* on land pledged as security, Finley (1952, 89-90) describes the same kind of wording for creditors: "Twenty *horoi* name a total of twenty-six groups of one type or another as creditors. In all instances but one, the group is identified not by its name but by that of the members collectively. That is to say, the property is put up as security to the Phlyasians, not to the deme Phlya; to the Glaukidai or Lykomidai; to the eranists, not | to an *eranos*. The one exception is the Amorgian stone, no. 8, which speaks of an *eranos*"

<sup>61</sup> Behrend 1970, 80-81; Kussmaul 1969, 39.

χωρίου καὶ ἐκ τῶν ἄλλων ἀπάντων τοῦ μὴ ἀποδιδόντος<sup>62</sup>

Aixonos have *enechurasia* both from the fruits of the estate and from everything else of the one who does not pay.

### Contractual Status

Does μίσθωσις by an association represent a contract? I defined a contract as a legally defensible agreement for the breach of which there is a legal remedy. Looking at the idea of agreement first, it seems reasonable that the lessees would have agreed to the arrangement. In the example of the deme Aixone, the lease stipulations of the deme reflect bargaining between the parties. A *psephisma* (vote/decreed) in the inscription lowers the original rent in return for the profits from sale of olive wood from the estate (Behrend 1970, 80-82; Kussmaul 1969, 39).

The agreement of the Aixones as a group by what seems to be a voting procedure is, of course, not exactly the same as the agreement of each individual deme member. Some might have been absent for the vote or have voted in opposition. On the other hand, since the inscription names the deme members as a group as lessors rather than the deme itself, the question of whether a deme has a legal personality does not arise. In rare examples, however, groups are identified as a unity. In a lease inscription of a phratry dating from 300/299 B. C., slightly after the end of the classical Athenian political system (322 B. C.), the lessors are named, more compactly, as τὸ κοινὸν Δυαλέων and two leaders of the phratry φρατρίαρχοι. The lease stipulations are again called συνθηκῆαι.<sup>63</sup>

<sup>62</sup> Lines 7-9 (Finley 1952, 283 n. 36).

<sup>63</sup> Behrend 1970, 91, number 36, IG II/III<sup>2</sup> 1241. Schulthess 1932, 2102.

## Legal Remedies

The other criterion for identifying contracts was the existence of a legal remedy for breach of agreement. I will exclude the case in which the lessor is the state of Athens since the state has greater power than other parties to a lease arrangement. If the lessors are the members of an association, such as a deme, we have seen ways that they may assert their rights without the need to bring suit. The demarch may have an administrative role in the leases as in Dem. 57. As for the rights of the lessee, the Aixone inscription gave the lessees the right of bringing a private suit, the *δίκη βλάβης*, against certain deme members. Could lessees bring suit when there was no such stipulation?

In the Aixone inscription, by directing the lessees toward particular members of the deme, the stipulations actually protect other deme members from prosecution. A tenant of an association who wanted to sue because of a lease violation would probably have to sue a member of the association. I have found no evidence that associations themselves were subject to litigation. On the other hand, organizations such as demes did have obligations to the state of Athens. For example, they could owe tax (*εἰσφορά*)<sup>64</sup> on their property, and lease inscriptions specify whether the lessor or the tenant is responsible for *eisphora*. When an association did not meet its obligation to the state, the state might take action against officials of the group. For example, an inscription describes an official of the tribe Aiantis who collected money said to be owing to the hero Ajax but never paid it. As a result he was inscribed on the Acropolis as a debtor.<sup>65</sup>

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<sup>64</sup> Paid only by the wealthy, at first *eisphora* was a war tax levied when necessary, but starting in 347/6 B. C. was annual (Hansen 1999, 112).

<sup>65</sup> Finley 1952, 93; 281 n. 27 Inscription from *Hesperia* 5 (1936) 393, no. 10, lines 153-85.

## I. Μίσθωσις οἴκου

In this section my goal is to explain what it means to lease an *oikos* (οἶκον μισθοῦν). LSJ defines οἶκος, first of all, as a house in the sense of a dwelling, but also as “one’s household goods” or “substance.” The second definition is similar to that in Xenophon’s Socratic dialogue, *Oeconomicus*. Socrates and Critobulus agree that a man’s *oikos* is something larger than a simple *oikia*; it is all that he possesses (1.7 ἡμῖν ἐδόκει οἶκος

ἀνδρὸς εἶναι ὅπερ κτῆσις). When Attic orators talk about leasing the *oikos* of an orphan child, however, they are only discussing a lease of the child’s inherited property.<sup>66</sup>

Demosthenes 27, *Against Aphobus I*, discusses this institution. Demosthenes’ father died when Demosthenes was a boy. The family and the estate were left in the care of three guardians, among them one Aphobus. Soon after attaining adult status, Demosthenes prosecuted Aphobus for mismanaging the property. According to Demosthenes, his father left an estate worth nearly 14 talents, but the guardians only returned 70 minae (1 talent and 10 minae) (§§4, 59).

As he points out, the guardians could have leased the estate (τὸν οἶκον μισθοῦν) to a tenant, but they did not.

οὐδὲ τὸν οἶκον μισθοῦν ἐθέλοντος, ἀλλὰ μετὰ τῶν ἄλλων ἐπιτρόπων  
διαχειρίζειν ἀξιοῦντος

and not willing to lease the estate, but deeming it right to manage it with the other  
guardians (27.15)

<sup>66</sup> MacDowell (1989) cites *Oeconomicus* (10). “In the texts of Athenian laws *oikos* means ‘property’ or ‘house’”. *Oikos* probably did not begin to refer to a family until the 5<sup>th</sup> century B. C. (20).

In fact the will instructed the guardians to lease the estate.

ἐν γὰρ ἐκείναις ἐγγράπτο, ὡς φησιν ἡ μήτηρ, ἃ κατέλιπεν ὁ πατήρ  
πάντα, καὶ ἐξ ὧν ἔδει τούτους λαβεῖν τὰ δοθέντα, καὶ τὸν οἶκον ὅπως  
μισθώσουσι.

For in it [the will] had been written, as my mother says, everything that my father left,  
both from what they were to take their bequests and that they lease the estate (27.40).

Demosthenes describes the result of a successful lease. The lessee of Antidorus' property, an estate worth 3 talents and 3,000 drachmas, handed over more than 6 talents, 6 years later.

Ἀντιδώρω μὲν ἐκ τριῶν ταλάντων καὶ τρισχιλίων ἐν ἕξ ἔτεσιν ἕξ  
τάλαντα καὶ πλεόν ἐκ τοῦ μισθωθῆναι παρεδόθη

Out of three talents and three-thousand [drachmas] in six years, six talents and more  
from the rental were handed over to Antidorus, on the one hand (27.58).

The description suggests that, rather than periodic rent payments, the lessee returned the value of the principal plus an extra amount at the end of the lease. The lessee, Theogenes, paid out the money in the agora, probably for the sake of having many witnesses.<sup>67</sup>

καὶ ταῦθ' ὑμῶν τινὲς εἶδον· Θεογένης γὰρ ὁ Προβαλίσιος, ὁ μισθωσάμενος  
αὐτοῦ τὸν οἶκον, ἐν τῇ ἀγορᾷ ταῦτα τὰ χρήματ' ἐξηρίθμησεν.

and some of you saw this; for Theogenes, the Probalisian, the one leasing the estate,  
counted out this money in the agora (27.58).

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<sup>67</sup> Pringsheim emphasized the importance of witnessing for legal recognition of a transaction (1950, 25). Cf. [Dem.] 34.30 many witnesses are present (πολλοὺς παρίστανται μάρτυρας) when loans are repaid.

In Demosthenes 28, *Against Aphobus II*, the second speech of the prosecution, Demosthenes responds to Aphobus' allegation that, in fact, Demosthenes' father did not want the estate leased (οὐκ ἐβούλετο μισθωθῆναι τὸν οἶκον) since Demosthenes' grandfather had been a debtor to the state (28.1).

οὐκ εἶα μισθοῦν τὸν οἶκον οὐδ' ἐμφανῆ τὰ χρήματα ποιεῖν ὁ πατήρ

[According to Aphobus] the father neither wanted the estate leased nor the property made manifest (28.7).

The Pseudo-Aristotelian *Athenaion Politeia* explains the state involvement in leasing an orphan's property. The eponymous archon had charge of leasing of the estates of orphans and epikleroi, and took security<sup>68</sup> (ἀποτίμημα) for the lease (μισθοῖ δὲ καὶ τοὺς οἴκους τῶν ὀρφανῶν καὶ τῶν ἐπικλήρων, ἕως ἂν τις τετταρακαίδεκέτις γένηται, καὶ τὰ ἀποτιμήματα λαμβάνει [Ps.-Arist. *Ath. Pol.* 56.7]). Note that μισθόω appears in the active voice both of the guardians who are to lease the estate (cf. Dem. 28.7) and of the archon. Both are 'lessors'. The middle voice is used when the subject of the verb is the lessee (cf. Dem. 27.58). As a feminine adjective, τετταρακαίδεκέτις refers only to the epikleroi ('heiresses'). Rhodes comments (1993, 635), "presumably an orphaned girl with no legitimate brothers was to be treated as an orphan until she reached the age of fourteen, and as an ἐπίκληρος, who had to be found a husband thereafter." Demosthenes received his property from the guardians after his *dokimasia* (Dem. 27.36), which would have occurred at 18 years of

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<sup>68</sup> There has been disagreement about the meaning of the word, ἀποτίμημα, that translated here as 'security'. Rackham translates the word as 'rents' in 56.7 of *Ath. Pol.*, Loeb Edition. Schulthess (1932, 2113) identifies it as security for the lease. Harris (1993) shows that ἀποτίμημα is a general term that can refer to any kind of 'real security' (87), in particular the security for a lease (86-87).



age (*Ath. Pol.* 42.2).

In a later oration (Demosthenes 29, *Against Aphobus III*) Demosthenes mentions that the court fined Aphobus ten talents (§59). This amount is less ‘interest’ (τόκος) than one would get from leasing an estate.

θέντες οὖν οἱ δικασταὶ τοῖς πᾶσι χρήμασιν οὐκ ἐφ’ ὅσῳ μισθοῦσιν τοὺς οἴκους τόκον, ἀλλ’ ὅς ἦν ἐλάχιστος ...

Therefore, the dikasts setting interest on all the property, not at as much as they lease the estates, but what was less ... (29.60)

One may accept the fact of a usual interest rate on such leases, but we should avoid calculations based on the numbers since the account of Dem. 29 conflicts with that of Dem. 27 and Dem. 28 in some respects.<sup>69</sup>

From the point of view of guardians, leasing an estate is a way to avoid difficulties:

ἐξῆν αὐτῷ κατὰ τοὺς νόμους, οἱ κεῖνται περὶ τῶν ὀρφανῶν καὶ τοῖς ἀδυνάτοις τῶν ἐπιτρόπων καὶ τοῖς δυναμένοις, μισθῶσαι τὸν οἶκον ἀπηλλαγμένον πολλῶν πραγμάτων

It was possible for him, in accordance with the laws which are laid down concerning orphans both for incapable and capable guardians, being released from many problems to lease [as lessor] the estate (*Lysias* 32.23).

Another way to support wards would be to set aside land for their maintenance  
ἢ γῆν προιάμενον ἐκ τῶν προσιόντων τοὺς παῖδας τρέφειν

<sup>69</sup> Because of these discrepancies some have doubted the authorship of Dem. 29 (Gernet 1954, 64). Gernet, however, believes it plausible that the speech is stitched together from various essays that related to Demosthenes’ litigation and is basically the work of Demosthenes (68-69).

or buying land to rear the children from the proceeds (continuation of Lysias 32.23).

The possibility of profit would motivate the lessees of an estate (cf. Isaeus 6.36 μισθωταὶ δὲ αὐτοὶ γενόμενοι τὰς προσόδους λαμβάνοιεν). Lessees can share a lease as in Isaeus 2, *On the Estate of Meneclēs*. When Meneclēs decides to end his marriage, he returns the dowry of 20 minas (Is. 2.9). He is able to do this because he has become part-lessee of the estate of the children of Nicias (Is. 2.9). The lease apparently gives him a convenient source of money.

Isaeus 11.34 (*On the Estate of Hagnias*) attests the role of the archon in leasing an estate. Theopompus, the speaker, is the defendant in a criminal prosecution (εἰσαγγελία κακώσεως ὀρφανοῦ [Wyse 1979, 671]) for the mistreatment of his ward, the orphan son of his brother. Theopompus has won the estate of Hagnias in an inheritance suit, and the prosecutor, his fellow-guardian, claims half of the estate for the orphan. Theopompus criticizes his opponent's use of a criminal prosecution when, he says, private suits may have been available.

εἰ δ' αὖ μήτ' ἐπιδικάσασθαί φησι δεῖν τοῦ ἡμικληρίου μήτ' ἐμοὶ  
δικάσασθαι, ἀλλ' ἤδη εἶναι ταῦτα τοῦ παιδός, ἀπογραψάσθω πρὸς τὸν  
ἄρχοντα εἰς τὴν μίσθωσιν τῶν ἐκείνου χρημάτων, ἣν ὁ μισθωσάμενος  
εἰσπράξει με ταῦτα ὡς ὄντα τοῦ παιδός.

But if in turn he says that there must neither be an inheritance suit (*epidikasia*) for the half-estate nor a lawsuit, but this already belongs to the child, let him have it registered with the archon for the leasing of his [the child's] property. The tenant will exact this from me on the grounds that it belongs to the child (Is. 11.34).

Harrison (1998, 107) sees this passage as evidence that “the lessee would have the procedural rights necessary to maintain his control over the property during the lease.”

Isaeus 6 (*On the Estate of Philoctemon*) again illustrates the role of the archon in adoptions and leasing estates and also indicates a role for the law courts. Euctemon, an elderly man who had outlived all of his legitimate sons, formed a connection, of an unspecified kind, with a freedwoman, Alce. She had two sons, who she wanted to inherit the property of Euctemon.

ἀπογράφουσι τῶ παιῖδε τούτῳ πρὸς τὸν ἄρχοντα ὡς εἰσποιήτω τοῖς τοῦ  
Εὐκτῆμονος υἱέσι τοῖς τετελευτηκόσιν, ἐπιγράψαντες σφᾶς αὐτοὺς  
ἐπιτρόπους, καὶ μισθοῦν ἐκέλευον τὸν ἄρχοντα τοὺς οἴκους ὡς ὀρφανῶν  
ὄντων

[Alce’s associates] register the two children with the archon in order that he give them in adoption to the deceased sons of Euctemon, listing themselves [the associates of Alce] as guardians, and they told the archon to lease the estates since they [the children] were orphans (6.36).

The text goes on to indicate a leasing procedure.

ὁ μὲν ἄρχων προεκήρυττεν, οἱ δ’ ἐμισθοῦντο. παραγενόμενοι δέ τινες  
ἐξαγγέλλουσι τοῖς οἰκείοις τὴν ἐπιβουλήν, καὶ ἐλθόντες ἐδήλωσαν τὸ  
πρᾶγμα τοῖς δικασταῖς, καὶ οὕτως ἀπεχειροτόνησαν οἱ δικασταὶ μὴ  
μισθοῦν τοὺς οἴκους·

The archon tried to make a proclamation by herald (προεκήρυττεν), and they tried to rent. But some present made the plot known to the relatives, and they went to the dikasts and make the matter known. In this way the judges voted not to lease the

estate; if they [Alce's associates] had escaped notice, all of the property would have been lost (Is. 6.37).

Isaeus is the only source for the role the court in leasing an estate (Wyse 1979, 524). The verb προκηρύττω, translated as 'proclaim by herald, proclaim publicly' by the LSJ for this passage. The situation is explained as describing the beginning of an auction.<sup>70</sup>

Finley (1952, 41) explains that "the actual leasing in *misthosis oikou* ..., like all such publicly conducted transactions in Athens, was accomplished by auction, the lessee being the highest bidder." That the decision to lease rests with a group, we also find in the case of other kinds of leases. The magistrates known as the *poletai* conduct their leases before the *boule* (Ath. Pol. 47.2), and several inscriptions describe political divisions of Attica leasing land by the decision of a general assembly of their members (Behrend 1970, 108).

Laws regulate the lease of an estate (Dem. 27.58), but we learn nothing of the laws' content except that, at least in some cases, they require that an estate be leased (probably when this stipulation was in a will) (τὸν οἶκον οὐκ ἐμίθωσεν τῶν νόμων κελευόντων καὶ τοῦ πατρὸς ἐν τῇ διαθήκῃ γράψαντος [Dem. 29.29]).

To summarize, guardians, who are often relatives of the child, apply to the eponymous archon to have an estate leased. With the archon presiding, a court votes on prospective lessees, who must provide security (ἀποτίμημα). Girls (*epikleroi*) are minors until age 14, boys until they are enrolled as citizens at 18. There is a usual interest rate paid by lessees of an orphan's estate, which makes the lease seem like a loan;

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<sup>70</sup> Citing this passage, Rhodes (1993, 635) explains of μίσθωσις οἴκου that "the auction took place in a court presided over by the archon." Wyse (524) mentions an auction without clarification.

oratory does not explain, however, how the interest is paid, whether it is paid in regular installments or only in one sum at the end of the lease. At their maturity, orphans who feel that their estates were mismanaged can sue their guardians. The usage of the Greek is that μισθόω appears in the active voice for lessors, whether guardians or the archon; it appears in the middle voice for lessees (Dem. 27.28, Is. 6.37).

### **(iii) Athenian Examples of *locatio conductio operarum***

#### **A. Overview**

The arrangements include employment of prostitutes (slave and free), flute players (probably slaves), agricultural workers (harvesters or reapers), an actors' assistant, a trainer of choruses, a leader of mercenaries and personnel for warships (sailors, rowers, marines, peltasts). Orators use the verb μισθόω for these relationships as well as to describe accepting money to prosecute someone, to propose a measure before the assembly or to support the interests of a foreign power. Using the verb to denote the giving or accepting of bribes is probably not a standard usage. In the case of bribery, μισθόω invites a comparison with the usual employment relationship as well as suggesting subservience to the bribe giver.

When the employer is the subject of μισθόω, the verb appears in the middle voice as it did for the lessee of land (as if the employer is renting the services of the employee). We find two constructions when the employee is the subject of the verb. Either μισθόω appears in the passive voice, sometimes with ὑπό + the employer in the genitive, or μισθόω appears in the active voice usually with a reflexive pronoun (e.g.

μισθόω ἑμαυτόν ‘I hire myself out’/ ‘I take employment’). The passive voice appears when either free persons or slaves are the employees; the active voice appears only with the free, but it is hard to be certain, with so little evidence, about a status distinction between the active and passive voices.

There is little indication in the examples of a legal relationship between the employer and employee. The mention of συνθηκῶν in Lysias 3 at least has a legalistic sound. On the other hand, there are indications that employers would enforce their claims by violence rather than law in the military examples (Dem. 23.150-51 and Dem. 51.11). The kinds of employees listed above would not have a high social status (except for the mercenary commander), and, in some of the examples, the orators use the suggestion of such labor to insult each other. According to Demosthenes, Aeschines was once an actors’ assistant, and his relationship to the Macedonian monarchy is like that of an agricultural laborer to his employer. Aeschines (Aeschin. 1) accuses Timarchus, a political ally of Demosthenes, of prostitution. Jokingly envisioning lawsuits between a citizen prostitute and his employer for breach of contract, Aeschines concludes that the practice would not be legally defensible (§72).

## **B. Prostitution**

The first example is from Dem. 59 (*Against Neaera*). The speaker tells of Neaera’s prostitution in Corinth. The poet Xenocleides and the actor Hipparchus kept her as a prostitute when she was a hetaira and slave to Nicaretê, a third party, (εἶχον αὐτὴν μεμισθωμένοι ‘kept her having hired her’ §26). Money paid to Neaera would probably have gone to Nicaretê as suggested by the story in §21. Lysias, a lover

of Metanaera, another slave of Nicaretê, brought Metanaera to the Eleusinian Mysteries because he wanted to give her something that would not be taken by her owner (§21).

Nicaretê hired Neaera out to others (μισθωθεῖσα ὑπὸ τῆς Νικαρέτης, ὅτε ἔτι ἐκείνης ἦν). (This is *locatio servi*. The usages is the same as in lease.)

In Dem. 45.79 (*Against Stephanus*) Phormio is accused of hiring a citizen for prostitution ἀλλὰ τίν', ὧ Φορμίων, τῶν πολιτῶν ἑταιρεῖν, ὥσπερ σύ, μεμίσθωμαι; (Middle voice of employer with infinitive of activity)

The service of the prostitute is associated with συνθῆκαι in Lys. 3 and Aeschin 1. In Lysias 3 (*Against Simon*) (see section on Συνθῆκαι). It is uncertain whether the boy of *Against Simon* is free or a slave. If a slave, any payment would have gone to the master as in *Against Neaera*. The guardian or master of the boy would have to be legally responsible for the contract (see further discussion in the section on Συνθῆκαι).

In Aeschin. 1, Aeschines accuses an Athenian citizen, Timarchus, of having prostituted himself. A court would view such an arrangement with prejudice, and Aeschines argues that it could not be legally defensible. Strictly speaking, the prostitution would be legal if the male prostitute observed the resultant limitations on his rights imposed by law (Discussed further in section on Συνθῆκαι).

### C. Hire of Flute Players

Hypereides 4.3, *For Euxenippus*

Διογνίδης μὲν καὶ Ἀντίδωρος ὁ μέτοικος εἰσαγγέλλονται ὡς πλέονος μισθοῦντες τὰς ἀύλητρίδας ἢ ὁ νόμος κελεύει

Diognides and Antidorus, the metic, are being prosecuted by *eisangelia* [type of criminal prosecution] on the grounds that they hired out female flute players for more money than the law commands.

The language suggests the leasing of an object by a lessor. Diognides and Antidorus are the subjects of μισθόω in the active voice with the objects of employment in the accusative. The flautists were no doubt slaves.

## D. Agricultural Work

Harvesters—Demosthenes 18.51

οὔτε Φιλίππου ξένον οὔτ' Ἀλεξάνδρου φίλον εἶποιμ' ἂν ἐγὼ σε, οὐχ οὕτω μαίνομαι, εἰ μὴ καὶ τοὺς θεριστὰς καὶ τοὺς ἄλλο τι μισθοῦ πράττοντας φίλους καὶ ξένους δεῖ καλεῖν τῶν μισθωσαμένων.

Neither a guest-friend of Philip nor a friend of Alexander would I call you, I am not so crazy, unless one should call harvesters and those doing anything else for a wage friends and guest-friends of those hiring [them].

(Suggests that Aeschines has taken bribes from the Macedonian kings.)

Reapers—Demosthenes 53.21

The speaker, Apollodorus, argues that a group of slaves belongs to one Arethousius.

ὁπότε γὰρ οἱ ἄνθρωποι οὗτοι ἢ ὁπώραν πρίαιντο ἢ θέρος μισθοῖντο ἐκθερίσαι ἢ ἄλλο τι τῶν περὶ γεωργίαν ἔργων ἀναιροῖντο, Ἀρεθοῦσιος ἦν ὁ ὠνούμενος καὶ μισθούμενος ὑπὲρ αὐτῶν.



For whenever these people bought fruit or they were hired [passive voice] to reap a crop or something else concerning farming, Arethousius was the one buying and employed/hiring on their behalf.

Except for ὑπὲρ αὐτῶν, the Greek does not make a distinction between the slaves actually performing the work and the free person responsible for it. With this wording the slave's "acts were regarded simply as being the acts his master" (Harrison 1998, 174). From the other examples of the Greek for employment, if the slaves are hired, the verb μισθοῖντο, should be passive, if it is middle voice then they are hiring others. I translate as if both instances of μισθόω above are passive voice. Harrison, however, considers as middle voice the participle, μισθούμενος, describing the master. He explains, "the slaves are described as 'buying' and as 'hiring themselves out', and the use of the middle, μισθούμενος, for the master's part in the hiring indicates that his act differed from the hiring out of a chattel, for which the active form would have been appropriate" (Harrison 1998, 175).

### **E. Actor's Assistant**

Demosthenes 18.261

ἀλλὰ μισθώσας σαυτὸν τοῖς βαρυστόνοις ἐπικαλουμένοις [ἐκείνοις]  
 ὑποκριταῖς Σιμύκα καὶ Σωκράτει, ἐτριταγωνίστεις, σῦκα καὶ βότρυς καὶ  
 ἐλάας συλλέγων

but hiring yourself out to the actors Simycas and Socrates, called "heavy groaners",  
 you were playing a third part, gathering figs and grapes and olives

## F. Hire of Trainer of Tragic Choruses by a Choregus

Demosthenes 21.59, *Against Meidias*

τοῦτον μετὰ τὴν ἀτυχίαν ταύτην ἐμισθώσατό τις φιλονικῶν χορηγὸς

a certain choregus, desirous of victory, hired him after the misfortune

## G. Hire of mercenaries

Demosthenes 23, *Against Aristocrates* §149 (X2), 150, 152, 154, 158, 162

The instances of the verb μισθόω concern the hire of Charidemus, a Euboean commander of mercenaries who was awarded with Athenian citizenship (§151).

Operations take place in northern Greece.

Charidemus was hired (μισθωθεῖς) by the Athenian general, Iphicrates, and drew pay (μισθοφορήσας) for more than three years. When Athens dismissed Iphicrates and sent Timotheus to Amphipolis and the Chersonesus, Timotheus wanted to hire (μισθουμένου Τιμοθέου πάλιν αὐτὸν καὶ τὸ στράτευμα) Charidemus and his army, but Charidemus would not be hired (τούτῳ μὲν οὐ μισθοῖ) and went instead to Cotys, enemy of Athens (§149). Subsequently he tried to enter the employ of (μισθοῖ πάλιν αὐτόν) the Olynthians, who were hostile to Athens and who were holding Amphipolis at the time (§150), but he was captured by Athenian forces.

It is questionable whether Charidemus' employment of mercenaries by an Athenian general gives rise to obligations defensible in an Athenian court.

Lysias 12, *Against Eratosthenes*

Pheidon, one of those chosen to reconcile the Thirty and the supporters of democracy, was actually working against Athens. Unable to persuade the Spartans to send an army, he borrowed money to hire a mercenary force:

ἑκατὸν τάλαντα ἐδανείσατο, ἵνα ἔχοι ἐπικούρους μισθοῦσθαι, καὶ

Λύσανδρον ἄρχοντα ἠτήσατο

He borrowed 100 talents, in order that he might hire mercenary troops, and he asked for Lysander as the commander (§59 cf. §60)

The employment agreement would not be legally defensible in an Athenian court.

## H. Hire of sailors, rowers and soldiers for a trireme

Demosthenes 50, *Against Polycles*

For his trierarchy the speaker, Apollodorus, hired the best sailors possible, giving each of them bounties and large advance payments.

(μισθωσάμενος ναύτας ὡς οἷόν τ' ἦν ἀρίστους, δωρεὰς καὶ προδόσεις δούς ἐκάστῳ αὐτῶν μεγάλας). He hired the strongest rowers

(ὑπηρεσίαν τοίνυν ἦν ἐδυνάμην κρατίστην ἐμισθωσάμην §7)

He paid the rowers and soldiers on board monthly (he has the payments read to the court). τοὺς μισθοὺς οὖς ταῖς ὑπηρεσίαις καὶ τοῖς ἐπιβάταις κατὰ μῆνα ἐδίδουν (§10)

The crew of a trireme, it is acknowledged, disbands if one does not give pay (ἐὰν μὴ μισθὸν τις δίδῃ) or if the trireme returns to the Peiraeus in the middle of its

mission and the sailors who remain are unwilling to embark again, unless one gives them more money (ἕτερον ἀργύριον) so as to manage their households (§11).

The speaker received no pay (μισθόν) from the general for eight months, and some sailors deserted. Apollodorus hired (ἐμισθωσάμην) others, again with bounties and advance payments. To the original sailors who remained, he gave something to leave behind for the management of their households (§12).

When Apollodorus' trierarchy expired, the soldiers had been given only two months pay (μισθός). There were more desertions. (§14)

The problem of deserters is not a matter for lawsuits:

Because Apollodorus hired very good rowers, they were especially prone to leave and go to whoever paid more:

ἡγούμενοι τὴν ἐν τῷ παρόντι εὐπορίαν κρείττω εἶναι αὐτοῖς τοῦ  
μέλλοντος φόβου, εἴ ποτε ληφθείησαν ὑπ' ἐμοῦ.

Considering the abundance of the present more important for themselves than the future terror if they were ever caught by me (§16).

The trierarchy continues with desertions, hiring more personnel and lack of enough money for pay.

The treatment of deserters is also described in Dem. 51.11: Sailors who desert (ἀπολειπομένους) are imprisoned and punished (δοῦσι καὶ κολάζουσιν οὗτοι). Each sailor receives 30 drachmas pay.

In Thucydides (8.45.2), admittedly decades earlier than Demosthenes, Alcibiades has a more aristocratic attitude towards paying sailors. When he withdraws to the Persian satrap, Tissaphernes, he cuts the pay of sailors and pays it irregularly. As he explains,

Athenians pay their sailors less so that they do not spend money on enervating luxuries and so that they do not feel free to desert (οἱ δὲ τὰς ναῦς ἀπολείπωσιν).

## I. Hire of peltasts and ship's crew

Lysias 19, *On the Property of Aristophanes*

Ambassadors came to Athens from Cyprus to solicit aid, and the people voted them 10 triremes, but Cypriots needed money:

οὐ γὰρ μόνον τοὺς εἰς τὰς ναῦς, ἀλλὰ καὶ πελταστὰς ἐμισθώσαντο, καὶ ὅπλα ἐπρίαντο

for they not only hired people for the ships but also peltasts, and they bought equipment (§21)

In a list of public expenditures by Aristophanes, the speaker mentions that ‘when the Cyprians came and you gave them the 10 ships, he supplied 3,000 drachmas in respect to the hire of the peltasts and the purchase of the equipment’

(τῶν πελταστῶν τὴν μίσθωσιν καὶ τῶν ὀπλων τὴν ὠνήν (§43).

## J. Illegal Payments

To accept a bribe or offer one “in connection with public or private affairs was liable to prosecution by *graphe*” (MacDowell 1986, 172). When money is allegedly paid in an illegal way or for an illegal activity, μισθόω or μίσθωσις do not, of course, refer to legally defensible agreements, or contracts. Orators mention bribery of various types.

Dinarchus 1.52, *Against Demosthenes*

Dinarchus used a public process (*eisangelia*) against a person who had lied against him and the council of the Areopagus (καταψευσάμενον μέντοι κάμοῦ καὶ τῆς βουλῆς). Dinarchus showed in court that his accuser acted against him because he was in the pay of one Pythocles (having sold himself to Pythocles—μισθώσας αὐτὸν Πυθοκλεῖ κατ' ἑμοῦ ταῦτ' ἔπραξεν).

Payment to Support Certain Political Positions

**Demosthenes 18, *On the Crown***

Bribery: Most references are to the alleged bribery of Aeschines by Philip of Macedonia, an illegal arrangement. Middle voice of employer:

μισθοῦται τὸν κατάπτυστον τουτονί (he hired this despicable man §33).

Active voice of employee: τῶν ἐν ταῖς πρεσβείαις μισθωσάντων ἑαυτοὺς ἐκείνῳ (of those in the embassies hiring themselves out to this man §42)

The Athenians were led astray because of the ambassadors who were in the pay of Philip.

Passive voice of person employed:

§284 (ἀλλ' ἔμισθώθη ἐπὶ τῷ τὰ τουτωνὶ συμφέροντα διαφθείρειν.)

Aeschines was hired to harm the interests of the Athenians.

**Demosthenes 19, *On the Embassy***

The word μισθόω refers to taking or giving bribes especially to the allegation that Aeschines was bribed by Philip of Macedonia.

Middle voice: Philip hired Aeschines: ἔμισθώσατο μὲν τοῦτον §316.

Active voice: μισθώσας αὐτὸν καὶ λαβῶν ἀργύριον Aeschines, hiring himself out and taking money §110

Payment to Propose A Measure

### **Demosthenes 24, *Against Timocrates***

Timocrates is being charged with proposing an inappropriate law. Specifically, the type of prosecution is a γραφή νόμον μὴ ἐπιτήδειον θεῖναι.<sup>71</sup> He allegedly proposed the law in the pay of others (ταῖς γὰρ ἐκείνων τέχναϊς καὶ πανουργίαις μισθώσας αὐτὸν [Timocrates] ‘hired himself out to their cunning and mischief’ §14). cf. §15, 67.

Bribery to Prosecute

### **Demosthenes 21.103 cf. § 123, *Against Meidias***

Meidias hired someone to prosecute Demosthenes for leaving his post.  
(λιποταξίου γραφήν κατεσκεύασεν κατ’ ἐμοῦ καὶ τὸν τοῦτο ποιήσοντ’ ἐμισθώσατο)

### **Demosthenes 25.37, *Against Aristogeiton***

Having hired himself out to those doing business for Philip  
(τοῖς ὑπὲρ Φιλίππου τότε πράττουσι σεαυτὸν μισθώσας), Aristogeiton prosecuted the speaker seven times.

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<sup>71</sup> Hansen (1999, 212) identifies it as a γραφή νόμον μὴ ἐπιτήδειον θεῖναι.

### Demosthenes 59.10, *Against Neaera*

Clearly under hire of Cephisophon and Apollophanes, Stephanus brought a false accusation against Apollodorus (ψευδῆ αἰτίαν ἐπιφέρων, καὶ καταφανῆς γενόμενος μεμισθωμένος ὑπὸ Κηφισοφῶντος καὶ Ἀπολλοφάνους)

### K. Lease of a Trierarchy

A person assigned to perform a trierarchy<sup>72</sup> by the generals of Athens might pay someone else to take the responsibility (MacDowell 1990, 299). Dem 21, 50 and 51 describe this arrangement. An attraction of accepting such an offer might be the profit from looting and selling people into slavery. (The hired captain of a trireme ἄγει καὶ φέρει Dem. 51.13).

One may regard the lease of a trierarchy as a special form of employment, but the roles of employer and employee are reversed in the Greek. Normally the employer, who pays money for services, is the subject of μισθόω in the middle voice, and the employee, the recipient of the funds, is the subject of verb in the active voice or the passive. In lease of a trierarchy, the employer is the subject of μισθόω in the active, and the employee is subject of the verb in the middle (Dem. 51.7, 13). The lease might be *locatio conductio operarum* or *operis faciendi*. Linguistically speaking the roles of lessor and lessee are reversed in the Greek as they are in the Latin. The job of captaining a trireme requires more responsibility and independence than wage labor would. The product of the lease,

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<sup>72</sup> One of the liturgies or public services periodically required of the wealthiest citizens, the trierarchy was the responsibility of equipping and captaining a trireme. Only citizens could be trierarchs, but other liturgies were required of both citizens and wealthy resident aliens (cf. Hansen 1999, 388).



however, is not an object made as is usual with *locatio conductio operis*, but a duty performed. The examples follow.

Demosthenes 21.80, 155; *Against Meidias*

When assigned to perform a trierarchy, one Thrasylochus, he and his brother, Meidias, challenged Demosthenes to an *antidosis*, an exchange of property in respect to the liturgy.<sup>73</sup> Demosthenes agreed to give them 20 minas, they leased out the liturgy for that amount.

δίδωμ' εἴκοσι μνᾶς τούτοις, ὅσου τὴν τριηραρχίαν ἦσαν μεμισθωκότες.

I give them 20 minas, the amount for which they had leased out the trierarchy (§80).

Later the system of paying for a trierarchy changed, and a group of citizens (*symmory*) shared in the cost of maintaining a trireme for one year.<sup>74</sup>

παρ' ὧν εἰσπραττόμενοι τάλαντον τάλαντου μισθοῦσι τὰς τριηραρχίας οὔτοι

from whom [the symmory] exacting a talent they [trierarchs] lease the trierarchies for a talent (§155).<sup>75</sup>

Demosthenes 50.52, *Against Polycles*

τὸν Θρασύλοχον τῷ Καλλίππῳ μισθῶσαι τὴν τριηραρχίαν ἔπεισεν

<sup>73</sup> If an Athenian believed that he was unjustly called to a liturgy and that another man was wealthier, he could challenge that him to an *antidosis*. Then the other either had to perform the liturgy in his place or agree to an exchange of property.

<sup>74</sup> A law proposed by Periandros, 358 B. C., changed the system (Hansen 1999, 113).

<sup>75</sup> MacDowell (1990, 373) “D.’s allegation is that Meidias (and other trierarch) exacts from his contributors a total of one talent, saying that this is the amount required for the ship’s maintenance”

[The general Timomachus persuaded] Thrasyslochus to lease the trierarchy to  
Callippus

because of the use he wanted to make of Thrasyllochus' trireme.

Demosthenes 51, *On the Trierarchic Crown*

The speaker argues that he, and not his opponents, should receive a crown for equipping his trireme first (§1).

σκεψάμενοι γὰρ τὸν ἐξ ἐλαχίστου τριηραρχεῖν βουλόμενον, μεμισθώκασι  
τὴν λητουργίαν.

For, after considering the man willing to be trierarch for the least [money], they have leased the liturgy [to him]. (§7)

They blame the lessee (middle voice participle) for not bringing his ship to anchor on time

καὶ τοῦ μὲν μὴ περιορμίσει τὴν ναῦν τότε τὸν μεμισθωμένον αἰτιᾶσθαι,  
τῶν δέκαλῶς δεδιακονημένων νῦν αὐτοῖς κελεύειν χάριν ὑμᾶς ἔχειν;

And [how is it not unjust], on the one hand, to blame the one renting [the trierarchy] for bringing the ship round to anchor at that time, but on the other hand to tell you to be thankful to them now for rendering good service (§7).

When Athens lost a sea battle, considering that the trierarchs having leased their trierarchies (τῶν τριηράρχων τοὺς μεμισθωκότας τὰς τριηραρχίας) were most to blame for what happened, Athens sent them to jail. (§8)

Generalizing about renters of trierarchies and a possible reason for renting one:  
ἐπειδὴν γὰρ τις μισθωσάμενος τριηραρχίαν ἐκπλεύσει, πάντας ἀνθρώπους  
ἄγει καὶ φέρει

For when someone having rented a trierarchy sails out, he enslaves and robs all peoples and looks to his own private advantage (§13).

#### **(iv) Athenian Examples of *locatio conductio operis***

Several inscriptions described by Schulthess (1932) give examples of Athenian *locatio conductio operis*. One inscription,<sup>76</sup> from 347/46, regarding the construction of an arsenal stipulates that

ἐξεργάσονται οἱ μισθωσάμενοι κατὰ τὰς συγγραφάς

The contractors will accomplish [the work] in accordance with the *syngraphai*.

The contractors (οἱ μισθωσάμενοι), expressed by of a middle voice participle, would be subjects of a middle voice verb (μισθοῦμαι).

In another inscription,<sup>77</sup> from 288, regarding the construction of a portico refers to the contractor as a μισθωτής. It mentions an agreed amount of money and the name of his surety ἐγγυητής (lessee).

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<sup>76</sup> Contract for Services concerning the Construction of the Skeuothekē of Philon, Schulthess, 1932, 2115 n. 2 (IG II 1054 = Syll.<sup>3</sup> 969).

<sup>77</sup> Contract concerning the erecting of a portico, Schulthess, 1932, 2115-16 n. 5 (IG II 5, 1054 d = Syll.<sup>3</sup> 970).

## 5. Παρακαταθήκη

### (i) Roman Law

I make note of a similar Roman contract and then consider the legal significance of παρακαταθήκη, noting the contexts in which it appears. One of the real contracts in the *Corpus Iuris Civilis*, *depositum*, is “the handing over of a thing for safe-keeping” (Nicholas 1962, 168). In Nicholas’ view *depositum* “could be of no commercial significance” (Nicholas 1962, 169). If this is the case in the Roman economy, the corresponding Athenian transaction, παρακαταθήκη, appears only in connection with money or in metaphor.

### (ii) Παρακαταθήκη: Physical Deposit

#### A. Outside of Banking

Money is specifically mentioned as the deposit in every example except in the passing reference of Isocrates 4 (*Panegyricus*).

Lysias 32, *Against Diogeiton*

This is the prosecution of Diogeiton for mismanaging the estate of his brother, Diodotus. Before he set out on a military expedition, Diodotus gave his brother a will and a παρακαταθήκη of 5 talents (διαθήκην αὐτῷ δίδωσι καὶ πέντε τάλαντα ἀργυρίου παρακαταθήκην §5 cf. §13). Diodotus was indeed killed on the expedition. Diogeiton was to manage the estate for Diodotus’ children, but he did not reveal the extent of Diodotus’ estate or the orphans the deposit (παρακαταθήκη §16).

The word παρακαταθήκη refers to a deposit for safekeeping

Isocrates 4, *Panegyricus*

Speechwriters should stop writing about trivial subjects such as the deposit (παρακαταθήκη) and turn their attention to uniting Greece in a war against Asia (§188), an allusion to lawsuits over money.

Isococrates 21, *Against Euthynus*

This is a lawsuit to recover money given to Euthynus for safekeeping. The speech is for a supporting speaker.

Nicias, the prosecutor, gave three talents of money to Euthynus to guard (τρία δὲ τάλαντα ἀργυρίου Εὐθύνω φυλλάττειν ἔδωκεν §2). Nicias wanted to take a voyage and asked Euthynus for his money back, but Euthynus only gave him two talents and denied the third (§3). The transaction lacked witnesses. There was no one present either free or slave when Nicias was making his deposit (Νικία γὰρ οὔτε παρακατατιθέμενω τὰ χρήματα οὔτε κομιζομένω οὔδεις).

Euthynus may try to defend himself by arguing that οὐκ ἂν ποτ' ἀδικεῖν ἐπιχειρῶν τὰ μὲν δύο μέρη τῆς παρακαταθήκης ἀπέδωκε, τὸ δὲ τρίτον μέρος ἀπεστέρησεν he would never, if attempting to do wrong, give back two parts of the *parakatatheke* but rob the third part (§16).

A variety of terminology represents the act of depositing. Two verbal expressions (φυλλάττειν ἔδωκεν, παρακατατιθέμενω) and the noun παρακαταθήκης.

## B. Banking

All allusions are to the bank of Pasion or his successor, Phormio. Deposit is treated as legally defensible in Isoc. 17.

Isocrates 17, *Trapeziticus*

This is a lawsuit for recovery of a deposit in Pasion's bank. The main problem asserting the right to a bank deposit in this oration is proving that it actually existed. There are no receipts, and the only witnesses to the transactions were the bank personnel, who were slaves and could only give evidence under torture (*basanos*). Actually the speaker does not regard the slaves as witnesses and generalizes that bank transactions are unwitnessed

(ἀνευ μαρτύρων γίγνεται §2 [see section on συμβόλαιον]). Part of the oration describes the speaker's attempts to get hold of the slave who knew about the deposits (§12-13).

As for the Greek, the participle, κείμενα, 'deposited' and the noun, παρακαταθήκη, both denote the deposit: περὶ δὲ τῶν παρὰ τούτῳ κειμένων ('concerning the [money] deposited with him' §7), τὰ μὲν γὰρ χρήματα πόλλ' εἶναι τὰ παρ' αὐτῷ κείμενα ('for much money was deposited with him' §8). Later παρακαταθήκη appears (περὶ τῆς παρακαταθήκης §13 cf. §18, 27, 45, 50, 53, 56).

Demosthenes 36, *For Phormio*, and Demosthenes 45, *Against Stephanus*

The bank of Pasion was leased to his former slave, Phormio. After Pasion's death, his son, Apollodorus, sued Phormio. Dem. 36 is the speech for the defense. The exact

type of suit is disputed,<sup>78</sup> but a discussion of bank deposits, termed παρακαταθήκαι, is part of the defense. Pasion was written into the lease as owing the bank 11 talents (§4), and the speaker explains why this is reasonable. The implication is that the dispute with Apollodorus involves this part of the lease.

Pasion had about 20 talents of landed property, explains the speaker.

ἀργύριον δὲ πρὸς ταύτῃ δεδανεισμένον [ἴδιον] πλέον ἢ πεντήκοντα  
τάλαντα. ἐν [οὖν] τοῖς πεντήκοντα ταλάντοις τούτοις ἀπὸ τῶν  
παρακαταθηκῶν τῶν τῆς τραπέζης ἕνδεκα τάλαντ' ἐνεργὰ ἦν.

and additional money loaned out which amounted to more than 50 talents. Among these 50 talents from bank deposits (τῶν παρακαταθηκῶν τῶν τῆς τραπέζης), 11 talents were invested (ἐνεργὰ) (§5)

One might ask what the distinction between money lent (δεδανεισμένον) and money invested (ἐνεργὰ) is since money is generally lent at interest (see section on δανείζω). The explanation, apparently, is that the ἐνεργὰ money was invested in landed property.

Since Phormio was not an Athenian citizen at that time ‘he would be unable to collect as much as Pasion could on loans backed by land or apartment houses’ (οὐχ οἷός τ' ἔσοι' εἰσπράττειν ὅσα Πασίων ἐπὶ γῆ καὶ συνοικίαις δεδανεικῶς ἦν §6).

Therefore Pasion took these loans from the bank deposits, and was written as owing the bank 11 talents. Since the 11 talents are said to be part of the bank's deposits, it is reasonable that the money should be kept as an asset of the bank.

<sup>78</sup> Cohen argues against Libanios' designation of the suit as a δίκη ἀφορμῆς. “Gernet considers it a δίκη βλαβῆς,” i.e. a suit for damages (Cohen 1973, 13 n. 28).

Apollodorus lost the case against Phormio (Dem. 36). In Dem. 45 (*Against Stephanus*) he prosecutes one of Phormio's witnesses for perjury. According to Apollodorus, Phormio tried to steal the bank capital (*aphorme*), and false witnesses deposed to a fabricated lease and non-existent will (§5). Again the 11 talent debt is mentioned (προσγέγραπται ἕνδεκα τάλανθ' ὁ πατήρ ὀφείλων εἰς τὰς παρακαταθήκας τούτῳ 'my father was additionally written as owing 11 talents' §29, cf. §32), but Apollodorus attributes it to Phormio's mismanagement (ἔστι δ' ὅστις ἄν, δι' ὃν ὠφειλήκει τοσαῦτα χρήμαθ' ἢ τράπεζα, τούτῳ τὰ λοιπ' ἐπέτρεψεν; 'And is there anyone who would entrust the bank in the future to one through whom it was in debt for so much money?' §33).

Demosthenes 52, *Against Callippus*

Callippus sues Apollodorus for the money of a deceased depositor, paid to the wrong recipient. A variety of words refer to bank deposits. παρακαταθήκη does not have a special place in the oration. In §4 a verb (τίθημι) expresses the act of depositing and the money deposited.

εἰώθασι δὲ πάντες οἱ τραπεζῖται, ὅταν τις ἀργύριον τιθεὶς ιδιώτης ἀποδοῦναι τῷ προστάτῃ, πρῶτον τοῦ θέντος τοῦνομα γράφειν καὶ τὸ κεφάλαιον τοῦ ἀργυρίου

All bankers are accustomed, whenever some private individual making a deposit (τιθείς) instructs [the bank] to pay [it] to someone, first to write the name of the depositor (θέντος) and the amount of the money (τὸ κεφάλαιον τοῦ ἀργυρίου) (§4).



Later the word παρακαταθήκη. Callippus speaks of Pasion as

περὶ πονηροῦ δὲ καὶ ἀπαλείφοντος ἀπὸ τῶν παρακαταθηκῶν  
concerning a wicked man expunging part of the deposits (§27).

## (ii) Παρακαταθήκη: Metaphorical Usages

### A. Persons or Ideas to be Guarded or Protected

In metaphorical usage a παρακαταθήκη usually represents an idea.

Exceptionally in Dem. 28.15 (*Against Aphobus II*) it stands for human beings.

On his deathbed Demosthenes' father entrusted his children to his brother  
συμπαρακαθισάμενος Δήμωνα τὸν ἀδελφόν, τὰ σώμαθ' ἡμῶν εἰς τὰς  
χεῖρας ἐνέθηκεν παρακαταθήκην ἐπονομάζων

having his brother, Demon, sit beside him he placed our persons in his hands, calling  
them a *parakatatheke*.

In previous examples, the word παρακαταθήκη referred to inanimate objects, generally money. The children were called a παρακαταθήκη as an additional term of description (ἐπονομάζων). The terminology is effective because this is not a usual usage of the word. Here a παρακαταθήκη is something precious to be protected.

The παρακαταθήκη is the guarding of the Athenian people in Dinarchus 1.9  
(*Against Demosthenes*)

ᾧ τὴν τῶν σωμάτων φυλακὴν ὁ δῆμος παρακαταθήκην ἔδωκεν

to whom [the Areopagus] the people gave the guarding of their persons as a  
*parakatatheke*

Isocrates 1.22 (*To Demonicus*) contrasts the metaphorical and physical usage of παρακαταθήκη. He advises Demonicus to ‘guard deposits (παρακαταθήκας) of words more carefully than those of money’ (μᾶλλον τήρει τὰς τῶν λόγων ἢ τὰς τῶν χρημάτων παρακαταθήκας).

The mention of a παρακαταθήκη sometimes appears in conjunction with mention of the laws of Athens. In Aeschines asks (1.187 [*Against Timarchus*]), what use it is to maintain an attendant or to set trainers and teachers over children when those people (i.e. people like Timarchus) keeping the laws as a παρακαταθήκη are bent towards shame (οἱ τὴν τῶν νόμων παρακαταθήκην ἔχοντες πρὸς τὰς αἰσχύναις κατακάμπτονται). For other examples cf. Dem. 21.177, 25.11, 59.76.

## B. Guarantees

Athens had the παρακαταθήκαι of Aeschines’ previous life when he went on his embassy to Macedonia (τὰς ἐμὰς παρακαταθήκας, ἅς οἴκοι καταλιπὼν εἰς Μακεδονίαν ἐπρέσβευσα Aeschines 2.146 [*On the Embassy*]).

The speaker of Lysias 8 (*Accusation of Calumny against Fellow Members of a Society*) believed himself to be a special friend of the members of his association because they spoke badly of each other to him ‘having the wicked words concerning each other from each of you as a *parakatatheke*’ (παρακαταθήκην ἔχων ὑμῶν παρ’ ἐκάστου λόγους πονηροῦς περὶ ἀλλήλων §17).

### (iii) Conclusion

In lawsuits in which a παρακαταθήκη plays an important role, the word always denotes a deposit of money. It appears in banking and non-banking contexts. Litigants attempt to defend their right to deposits in two orations, both by Isocrates. The word παρακαταθήκη is not especially emphasized, which suggests that it did not have a special legal value as, for example, a συγγραφή had for maritime loans.

In metaphorical usage a παρακαταθήκη usually represents an idea. Exceptionally in Dem. 28.15 (*Against Aphobus II*) it stands for human beings. Something represented as a παρακαταθήκη is something to be guarded, such as a person's life or the laws of Athens. It is a sacred trust. Alternatively a παρακαταθήκη may represent a person's guarantee.

## 6. Sale

### (i) Roman Sale

Sale (*emptio venditio*) is one of the consensual contracts, contracts arising by agreement alone, without need for special forms or acts (Nicholas 1962, 171). (There were also older, formal kinds of sale, such as *mancipatio* and *in iure cessio* [Nicholas 1962, 63].)

*Traditio* ('delivery') was another kind of conveyance, or rather *traditio* based on a valid cause (*iusta causa*) since *traditio* could be used for other transactions such as loan (Nicholas 1962, 117).

### (ii) Athenian Sale

I will refer to Fritz Pringsheim's book, *The Greek Law of Sale* (1950). This monograph studies sale throughout Greece from the archaic period to Byzantine times with frequent comparison to other legal systems, especially Roman law.

Attic Greek has a variety of terminology to denote purchase and sale. From the verbs *ώνέομαι* and, in the aorist, *πρίαμαι* denoting 'to purchase' to *πωλέω*, *ἀποδίδωμαι* and, in the perfect tenses, *πιπράσκω* denoting 'to sell'. Of much less frequent occurrence are the nouns *ώνή*, 'purchasing', and *πρᾶσις*, 'sale'. As noted by Pringsheim (1950, 111-14), the Greek nouns sometimes appear together to indicate a single transaction. Corresponding to the Roman *emptio venditio* (purchasing sale), there appears the phrase *ώνή καὶ πρᾶσις*, or a phrase where the nouns have some other connective. He notes this first in Herodotus and Sophocles then in the 4<sup>th</sup> century

philosophers Plato, Aristotle and Theophrastus. It also occurs in Hypereides 3 (*Against Athenogenes*). Elsewhere in oratory the nouns appear separately.

The main oration relating to a contract of sale is Hypereides 3 (*Against Athenogenes*). Epicrates, the speaker, wants to buy the freedom of a slave boy. Antigona, a go-between, arranges that the owner release the boy together with his father and brother for 40 minas (§4). Later the owner, Athenogenes, convinces him instead to buy the family and to manumit them later (§5). Along with the family, Athenogenes wants Epicrates to buy the perfume shop that they run for him. Part of this purchase is taking on the debts of the shop.

The agreement was written in a document called συνθήκαι (§8). The purchase includes debts of the shop. Athenogenes wants Epicrates to take responsibility (σὺ ἀναδέξει) for the money the slaves owe:

ὅσον μέντοι ὀφείλουσιν ἀργύριον, μύρου τέ τινος τιμὴν Παγκάλῳ καὶ  
 Προκλεῖ καὶ εἴ τι ἄλλο κατέθετό τις ἐπὶ τὸ μυροπώλιον τῶν  
 προσφοιτῶντων

What money they owe, and the price of some unguent to Pankalos and Procles and whatever any of the regulars deposited for the perfume shop (§6).

There is probably a written contract because the buyer is to take over the debts. It deals with the future obligations of the parties.

Pringsheim argues that Greek sale, in general, was cash sale (1950, 190). In other words, a purchase was made by paying the purchase price. In Athenian oratory, in particular, payment of the price clearly completes the sale. Pringsheim (1950, 192) gives the sale in Hypereides 3 as an example of cash sale. Epicrates deposits 40 minas in a

bank (§5), Athenogenes writes συνθῆκαι (§8), they go to the shop and deposit the document with a third party (§9) and, finally,

τὰς δὲ τετταράκοντα μνᾶς ἐγὼ καταβαλὼν τὴν ὠνήν ἐποίησάμην

paying the 40 minas, I made the purchase (§9)

Pringsheim points out that after this the creditors, recognizing the new owner, begin hounding Epicrates.

Prinsheim (1950, 191) also gives the example of [Demosthenes] 32 (*Against Zenothemis*) as an illustration of the principle of cash sale. There is a disagreement about whether a cargo of grain belongs to a person named, Protus, or to Zenothemis, the speaker's opponent.

μετὰ ταῦτα προῦκαλεῖθ' ὁ Πρῶτος αὐτὸν καὶ ἡμεῖς ἐπὶ τὴν ἀρχὴν τὴν τῶν Συρακοσίων, κἂν μὲν ἐωνημένος τὸν σῖτον ἐκεῖνος φαίνεται καὶ τὰ τέλη κείμεν' ἐκείνῳ καὶ τὰς τιμὰς ὁ διαλύων ἐκεῖνος,

After this we and Protus challenged him [Zenothemis] [to go] to the authority of the Syracusans, and if it is clear that he [Protus] bought the grain, and the taxes were clearly deposited by him, and he clearly paid the fees (§18)

then the speaker will consider Zenothemis in the wrong.

As pointed out by Pringsheim (1950, 191), the evidence for Protus' ownership is that he bought the wheat and paid the taxes and fees on it. Notice that the verb used to denote 'purchase' does not matter. In §18 it was ὠνέομαι. Earlier, when the speaker describes Protus getting off the ship, he uses the verb ἀγοράζω of the purchased grain. (τὸν δὲ σῖτον ὁ ἠγορακῶς εἶχεν 'he having bought the grain in the market had it' §14).

In comparison with Roman sale, *traditio* (delivery) “is not required in Greek law for the transfer of ownership” (1950, 219). (Pringsheim translates the word παράδοσις [handing over].) Among his examples are two from Athenian oratory. He points out (220 n. 2) that in Dem. 32.18 “the fact that the goods have been delivered to the buyer is not used as an argument for his ownership.” Likewise in Hypereides 3, “all the conditions for the transfer of ownership are enumerated. Paradosis does not figure amongst them.”

Oratory shows that sellers, at least in some cases, would have obligations to the buyers after sale. Demosthenes 37 (*Against Pantanetus*) discusses the need to warrant the sale of a workshop and slaves. In this oration, there is a dispute between creditors over who owns the security on a loan, the security being a workshop and slaves in the Maroneia mines (see also *πρᾶσις ἐπὶ λύσει*). The speaker and his partner, one group of creditors, consult Mnesicles, someone described as a ‘vender’ (πρατήρ). Mnesicles confirms their title to the property (τοῦ Μνησικέου βεβαιοῦντος ἡμῖν §12). When the partners accept money to withdraw their claim to the property, there is again need for a *πρατήρ* of the property to the other group of creditors (§§13-14).

In the sale of slaves, according to Hyperides 3.15 (*Against Athenogenes*), a buyer could return a slave who had an illness that the vendor had failed to declare. The legal obligations of vendors in these circumstances indicate that there would be a legal remedy for buyers in certain cases, which makes sale a legally defensible agreement in these situations.

There were also general stipulations that vendors had to follow. For example, there was a law against lying in the *agora* (Hyp. 3.14). Additionally, according to the

Pseudo-Aristotelian *Athenaion Politeia* (51.1-3) there were groups of magistrates in the Peiraeus and in the city of Athens (*astu*), who regulated sale: the agoranomoi whose concern was the genuineness and purity of objects sold, metronomoi whose concern was the correctness of weights and measures and sitophylakes whose job it was to monitor the fairness of the prices of grain and grain products.



## **7. Conclusions of Contract Study**

The Athenians had many of the same categories of contracts that the Romans did. For example, *locatio conductio* (=μίσθωσις) and real security (=ἀποτίμημα). The Romans, however, separated contracts into more named types. In the contract of loan, for example, the Romans separated a single Athenian contract, loan of money with interest, into *mutuum* (loan of money) + *stipulatio* (for the interest). In Athens, terminology did not distinguish whether creditor or debtor held real security. Roman law, in contrast, made this distinction, and, in fact, had three kinds of real security since it treated ownership and possession as separate categories.

The table on the next page shows Athenian contracts with the corresponding Roman contracts.

<u>Types of contracts</u>	<u>Greek Words</u>	<u>Roman Contracts</u>
Loan of Money	δανείζω, ἔρανος	<i>mutuum</i> ,  <i>stipulatio</i> for interest
Personal Security	ἐγγύη	<i>sponsio, fidepromissio, fideiussio</i>
Real Security	ἀποτίμημα, ὑποτίθημι, ὑποθήκη	<i>fiducia cum creditore, pignus</i> ,  <i>hypotheca</i>
Partnership	κοινωνικός, κοινωνία	<i>societas</i>
Lease	μίσθωσις, μισθώω  Active voice verb of lessor  Middle voice of lessee	<i>locatio conductio rei</i>
Hiring Employees	μίσθωσις, μισθώω  Active or passive voice of employee.  Middle voice of employer  (Active and passive voices reversed for trierarchy).	<i>locatio conductio operarum</i>
Hiring Contractors	μισθωτής, μισθώω  Middle voice of contractor.	<i>locatio conductio operis faciendi</i>
Deposit	παρακαταθήκη	<i>depositum</i>
Sale	ὠνή, πρᾶσις  ὠνέομαι, πωλέω  Other verb forms in other tenses.	<i>emptio venditio</i> or  <i>traditio</i> with <i>iusta causa</i>

#### IV. Concluding Remarks

Using a definition of ‘contract’ to clarify the scope of the study, I discuss contract words and types in the 10 canonical orators, with some references to inscriptions. Orations often mention documentation (συνθήκαι or a συγγραφή) for detailed arrangements. Oral contracts also existed, however. For example, there is no indication of documentation in the agreements of [Demosthenes] 42 and Andocides 1, both identified as ὁμολογίαι. Again, the speaker of Isocrates 21 makes a deposit of money (παρακαταθήκη) without witnesses or, as it seems, documentation.

All of the contracts studied involve economic relationships. Their subjects are property and, even more often, amounts of money. Wealth consists of money, land, houses, multiple dwellings, ships, slaves and businesses whose personnel are slaves. Non-monetary obligations have monetary counterparts, as, for example, in the case of real security. The banker, Pasion, uses this idea in [Demosthenes] 49.22 when he does not receive back the silver bowls that he lent a patron. He makes a note of the debt in his books, as an amount of money. The focus of litigation is on financial awards. Lawsuits over family disputes, concern inheritances or dowry payments, not breach of betrothal (εγγύη) agreements. Business dealings took Athenians beyond the relationships of family and friends.

The contract study identifies Athenian contracts with their Roman counterparts. The distinctions of Roman legal terminology suggest investigations for Athenian law (the nature of creditor’s rights in the security for a loan, for example). Roman terminology may also allow precise ways of identifying Athenian contracts. The sources consulted for

the legal systems, however, are of unlike natures. Our knowledge of Athenian law comes mainly from oratory. It is law in practice, a record of interpretations of laws and modes of argument. For Roman law, on the other hand, we have descriptive works.

Among many contrasts between the systems, Athenian law did not have recognized precedents that determined how to decide issues not covered by laws. Such a system developed in Roman law with the Praetor's Edict and opinions of authorities. Gaius divides the ways in which contracts arise—*verbis, literis, re, consensu*. The focus on form does not come through in the discussions of orators. They describe people making contracts, but there is no emphasis the formal question of how the obligation arose. For example, Athenian orators often mention written contracts, but spend no time distinguishing whether the spoken words, the writing or payments created the legal relationship. There is often, however, emphasis on the willing agreement or pleas that an opponent had formerly made to enter an obligation.

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