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LIBELLVS MMXVI

Demosthenes et Helena *contra* Menippum et Alexandrum

Demosthenes *contra* Jonan

1. It is AD 540. Konstantinos, who recently finished his law studies at the University of Constantinople, spends the summer at his father's villa on the Black Sea. His stay is linked to a research project for the Dean of the Faculty, who has hired him as a part-time research assistant. This summer, Constantinople's Law Faculty is in uproar. In a paper delivered at the last Faculty meeting of the academic year, a researcher had claimed that the phrase "*nihil enim tam conveniens est naturali aequitati, quam voluntatem domini, volentis rem suam in alium transferre, ratam haberi*" in the *Institutes* indicates that a transfer of ownership does not require a physical delivery. Though no professor accepts this view, it reopens an old rift: some professors insist on the presence of agreement for the transfer of ownership upon delivery, whereas others regard the valid *iusta causa traditionis* as indispensable. The Dean wants to settle the question once and for all by establishing which text – "*cum in corpus quidem*" in book 41, title 1 of the *Digest*, relied on by one group, or "*si ego pecuniam tibi*" of book 16, title 1 of the *Digest*, cited by the others – represents the position shared by the majority of the *iuris consulti* of the past.
2. Konstantinos was given the job not because of his legal capabilities but on account of his father's foresight. In AD 535, the University administration, without bothering to ask or to tell the Faculty, threw out all of the old law books, under the pretext that "Justinian's words have turned the library holdings into irrelevant waste," and converted the rooms into offices for the rapidly expanding law library administration. At that time, only Konstantinos's father Demosthenes, a retired judge and renowned legal scholar, was alert enough to buy the law books thrown out by libraries and bookshops alike after Justinian's ban on their further use in court. Knowing that researchers sooner or later would

be desperate to use his newly acquired book treasure, Demosthenes stores them away at his seaside villa, and categorically allows nobody access, because he intends to reserve the books for his own research and for his favourite project, a continuation of Pomponius's history of Roman law to the present. By appointing Konstantinos as his research assistant, the Dean hopes to bypass this obstacle.

3. For most of the summer, Konstantinos entirely neglects his task and, together with four friends, relaxes by the sea. From time to time, they joke about their former student colleagues, who are now toiling for little money in the hot and smelly offices of the big law firms in Constantinople. They enter the library only at the beginning of the last week of their stay to help Konstantinos with his assignment, and immediately realize how terribly their friend has underestimated the task: the shelves are overflowing, and the well-kept library catalogue lists, e.g., 200 books of Ulpian's commentary *ad Sabinum* alone. From this moment on, the five young lawyers work frantically, day and night, browsing scroll after scroll and page after page, in order to find texts discussing the transfer of ownership that were overlooked by Tribonian and his compilers.
4. Finally, late one night, Theodoros shouts "*Eureka!*" and waves a scroll at his friends. However, before he can share his discovery, he topples an oil lamp, setting fire to a heap of scrolls and, within minutes, the whole library is ablaze. The five young men narrowly manage to escape the building but the library and all of its holdings are lost.
5. Konstantinos, fearing his father's rage over the destruction of his most beloved possessions, is desperate: how can he hope to explain what has happened, knowing that his mere entering the library would be enough to incense his father? In this situation, his streetwise friend Theodoros comes up with a question: "What do you think your father would miss more, some musty old books or his only male heir?"
6. Theodoros suggests that Konstantinos and the others should proceed slowly over land to Constantinople, pretending to visit the celebrated churches that Konstantinos's mother has, for some time, urged her son to visit in order to offer prayers to John the Baptist, Alexis of Edessa, and Cosmas and Damianos. In the meantime, Theodoros would turn the villa upside down, return by sea to Constantinople and spread the news that, when he arrived for a visit, he found the house plundered and without any trace of Konstantinos or the others. Then, after a few days, Konstantinos's party would arrive in Constantinople from their pilgrimage and learn to their enormous ("and well pretended!") surprise that plundering pirates must have destroyed the library after their departure. Everybody would be happy to have them back safe and sound, and nobody

would suspect that the loss of the library was not the work of pirates. Having no better idea of his own, Konstantinos agrees to Theodoros's plan.

7. Once the others depart, Theodoros, who had carefully noted the contents of the villa during the course of his stay, gathers up all the gold and silver for himself. This he considers not only suitable recompense for saving the rich and pampered Konstantinos but also a sufficient basis to embark upon his dream of setting up business as a producer of superb wines on the *Mons Ilcinus* in Tuscany. He then sets the villa on fire. Theodoros boards one of the yachts in the villa's private harbour to sail for Constantinople, where he intends to take the earliest ship to Italy, long before Konstantinos and the others arrive in the capital.
8. However, barbarian pirates capture Theodoros on his voyage and rob him of the gold and silver. Hoping for a substantial ransom for the son of a rich Roman nobleman, the pirates dispatch a messenger to Constantinople. Recognising the Konstantinos family palace from the emblem used to decorate the captured yacht, the messenger wraps a letter demanding 200 *solidi* "for the son of the house" in one of the yacht's cushions, and throws it over the garden wall.
9. The cushion and the letter reach Konstantinos's mother, Helena, who recognises the cushion, embroidered with the family emblem, as coming from one of their yachts. Having read the message, Helena, a deeply pious woman, who cares more about the afterlife than anything else, immediately assembles all of her slaves and sends for the parish priest to say a mass in the palace chapel for Konstantinos's safe return. To increase the sincerity of the slaves' prayers, she proclaims with a saintly undertone in her voice: "The day my beloved son returns safely from his captivity, those who have aided to end his captivity shall be with me and him in joy and eternal freedom!" After kissing her favourite icon, she falls again to her knees and continues with her prayers, this time joined fervently by her slaves.
10. In contrast, Demosthenes puts his faith in more tangible means to recover his son. Through old acquaintances at the criminal courts, he knows about a certain Jonas, a seedy adventurer who, among other dubious businesses, sells bones to collectors who are willing to pay a lot of money for a tusk of the Calydonian Boar killed by Hercules or for the head of a Cyclops. Jonas's merchandise comes from the northern shores of the Black Sea and he is a well-known expert on the region and its inhabitants. Demosthenes sends a messenger and more or less orders Jonas to go to the northern shores and redeem Konstantinos. Jonas, who has not heard of Demosthenes before, at first tries to fob the messenger off. However, as ordered by Demosthenes in this eventuality, the slave points out his master's good relations with the customs authorities, who, for the time being, are not

aware of Jonas's valuable import business. Sensing that, under such circumstances, he can hardly deny Demosthenes's demands, and hoping to uphold his "duty-free business model" under Demosthenes' protection in the future, Jonas accepts the 200 *solidi* that the slave offers on behalf of Demosthenes and heads north towards the pirate coast.

11. After spending two weeks in hiding waiting for Theodoros following their arrival in Constantinople, Konstantinos and his friends timidly return to their homes. Konstantinos, not knowing what story Theodoros might have told, is surprised at the reaction to his belated return. His mother is overjoyed, and even his father takes the news regarding the library – as they finally tell the truth – without "freaking out", as Konstantinos later relates to his friend Alexandros. The slaves praise God for the quick answer to their prayers, and start making plans for their future. Helena receives special satisfaction from the slaves' merriment, which she interprets as an expression of their strengthened belief in the powers and grace of the Almighty God.
12. Meanwhile, Jonas quickly finds the village with the "young Roman hostage". He contacts the local chieftain and, after some haggling, buys Theodoros for 150 *solidi*. As a parting gift, the chieftain, knowing that Jonas always appreciates big bones, also presents Jonas with two Cyclops' heads and two enormous tusks of the Calydonian boar. Theodoros at once realizes that Jonas has come to save Konstantinos but, fearing that he will be left behind in the pirates' hands, says nothing.
13. Upon returning to Constantinople, Jonas sends a letter to Demosthenes, informing him of the safe return of his son. To his great surprise, he receives in response a harsh note ordering him "to bring the thievish crook, the silver, the gold and the 200 *solidi* to the palace immediately and without delay." With a few encouraging slaps, Jonas convinces Theodoros to admit his original plan and to explain the loss of Demosthenes' silver and gold. When Jonas asks how much his "real father would pay to have [him] back," Theodoros reveals that his parents died some years ago, leaving him in poverty.
14. Outraged, Jonas puts Theodoros in fetters and sells him for 20 *solidi* (the price of an unskilled slave) to a dealer from Africa, on condition that he immediately transport Theodoros away from Constantinople. The slave dealer takes Theodoros, who loudly protests that he is not a slave ("That's what they always say," a harbour official murmurs to himself, overhearing Theodoros's lament), and sails for Africa. With the two Cyclops' heads and the tusks of the Calydonian boar, Jonas is more fortunate. A eunuch at the imperial court pays 2,000 *solidi* for them and brags about the latest additions to his collection so much that

Demosthenes hears about it. When, through friends in the customs administration, Demosthenes learns about Theodoros's disappearance, he buries his hopes of retrieving the silver and gold *in specie* but not his intention to make somebody pay for his losses.

15. A month after Konstantinos's return, the slave Eutychos, Helena's bookkeeper, begs permission to leave the house with his *contubernalis* Elektra, because they regard themselves as free following Konstantinos's safe return, and now want to start a legitimate family. Their hopes come to nothing. Demosthenes, informed by Helena of the slaves' demands, has Eutychos beaten in front of the whole household for his "insolence and blasphemy," and transferred to work from now on as cleaner of the latrines. The following Sunday, the priest delivers – at Demosthenes' behest, the slaves assume – a sermon on "human captivity in sin and the real liberty that after death rewards a life spent in pious humility." After these events, no slave ever dares mention Helena's words in the chapel again.
16. Elektra, a 23-year old house-born slave, can hardly stand to see her beloved Eutychos, a sensitive and highly skilled administrator, doing the most disgusting and menial work in the house. She has loved him "for ages", since he came to the house aged ten, when she was five years old. She shares her sorrow with Alexandros, one of Konstantinos's friends from law school, who was also at the villa when the library burned down.
17. Alexandros assures Elektra that it was unlawful for Demosthenes and Helena to withhold the freedom Helena had promised that day in the chapel. Furthermore, Alexandros claims it was against the law to make a skilled slave such as Eutychos clean the latrines. Elektra immediately shares Alexandros's advice with the other slaves. As a result, discontent spreads, not only among Helena's slaves (who do not dare address Demosthenes on the subject again) but also among Demosthenes' own slaves, who were not personally present in the chapel.
18. After a few weeks, Demosthenes notices a change of attitude in his slaves. They are no longer as docile as they used to be; orders have to be repeated, or else they are deliberately misunderstood or forgotten; wine barrels inexplicably become leaky and expensive wine disappears, etc.. What finally prompts him to investigate, however, is the loss of an important case – a case against Alexandros's father, Menippos, with 20,000 *solidi* at stake – because the documentation for the deal in question disappears from his filing cabinet a few days before the hearing. Demosthenes' enquiries soon point to Elektra as the source of all the unrest. She dares to confront him and to tell him that she won't accept orders from one who is not her master. On learning that Elektra is often seen talking to Alexandros, Demosthenes becomes convinced that Alexandros's

father Menippos is behind it all. Demosthenes suspects that, in order to win a hopeless case, Menippos smuggled Alexandros into Demosthenes' house to stir up the slaves and make to the documents that threatened his case disappear.

19. The next day, Demosthenes accuses Menippos of interfering, by means of Alexandros, with members of his household for the sole purpose of ruining Demosthenes' chances at the trial. Smirking, Menippos retorts that his "kind-hearted and utterly unselfish" Alexandros – without his father's knowledge, but with his full endorsement, had he only known – simply used his legal learning to help oppressed individuals defend their rightful freedom. Menippos flatly denies any responsibility for himself or for Alexandros for the "disorder" that Demosthenes himself "caused by treating the slaves so cruelly." Demosthenes, Menippos concludes, should learn "not to blame others for [his] own failure to uphold discipline amongst [his] people."
20. Demosthenes discusses the affair with Helena, who empowers him to do whatever he thinks best for them. Accordingly, Demosthenes brings an *actio servi corrupti* in both of their names against Menippos and Alexandros (who is emancipated), in relation to the damages suffered through the illegal influence that Alexandros, with Menippos's knowledge, exerted via Elektra on their slaves. They estimate their combined financial losses at 300 *solidi* for the reduction in value of Elektra and a few other slaves, and 20,000 *solidi* for the loss caused in Demosthenes' trial against Menippos by the disappearance of the relevant documentation.
21. In addition, Demosthenes institutes an *actio negotiorum gestorum* against Jonas, claiming 2,220 *solidi* – for the retainer (200 *solidi*) and the proceeds of the sale of the tusks and heads (2,000 *solidi*) and of Theodoros (20 *solidi*) – together with 5,000 *solidi* – representing the minimum value of his gold and silver – on the basis that Jonas's actions have made it impossible to hold Theodoros responsible in person.