Michael Binder

Universität Wien
ROR: 03prydq77
ORCID: 0000-0001-8479-1468
m.binder@univie.ac.at

Τὰν ἁπλόον τιμὰν διπ(π)λεῖ καταστασεῖ. Procedural penalties in the law of Gortyn*

Τὰν ἁπλόον τιμὰν διπ(π)λεῖ καταστασεῖ. Sanzioni procedurali nel diritto gortinio

Abstract
Procedural penalties intended to discourage parties from engaging in lawsuits were not uncommon in ancient legal systems. In Roman law, the procedural penalty of litiscrescence was used to sanction a defendant who denied a special obligation by increasing the *lis* (value of the claim). As such, if the *iudex* (judge) sided with the plaintiff, a *condemnatio in duplum* had to occur. In order to prevent a *condemnatio in duplum*, the defendant had to acknowledge his obligation before the praetor, meaning no trial before a *iudex* would be needed. This article examines whether a functional analogon of the procedural penalty of litiscrescence existed in the law of Gortyn. For this, it is necessary to exegetically analyse provisions of the law of Gortyn that indicate or refer to a condemnation for the double value. Furthermore, particular attention must be given to how a confession or denial before court was handled under the law of Gortyn.

* Dr. Michael Binder currently works as a postdoctoral researcher at the Department of Roman Law and Antique Legal History at the University of Vienna. This paper is based on a presentation conducted by the author on November 7th, 2025, "Tàn aplóon timàn dippleî katastaseî. Litiscrescence in the Law of Gortyn", at the "International Workshop – Beyond Borders: International Law in Antiquity" in Edinburgh (United Kingdom).
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Le sanzioni procedurali volte a scoraggiare le parti dall'intraprendere azioni legali non erano rare nei sistemi giuridici antichi. Nel diritto romano, la sanzione processuale della litiscrescenza veniva applicata al convenuto che negava la propria responsabilità nell'ambito di una determinata azione, con conseguente aumento della *lis*. Se l'*iudex* si pronunciava a favore dell'attore, seguiva *condemnatio in duplum*. Per evitare una *condemnatio in duplum*, il convenuto doveva riconoscere il suo obbligo davanti al *praetor*, il che significava che non sarebbe stato necessario un *iudex*. Questo articolo esamina se un analogo funzionale della sanzione procedurale della litiscrescenza esistesse nel diritto gortinio. A tal fine, è necessario analizzare esegeticamente le disposizioni del diritto gortinio che indicano o fanno riferimento a una *condemnatio in duplum* nel contesto di una causa. Inoltre, occorre prestare particolare attenzione al modo in cui il diritto gortinio trattava la confessione o il diniego davanti al tribunale.

Keywords: law of Gortyn, Roman law, procedural misconduct, litiscrescence, pledge, comparative analysis of ancient laws

Parole chiave: diritto gortinio, diritto romano, abuso del processo, litiscrescenza, pegno, analisi comparativa delle leggi antiche

1. Introduction

In Roman law, the procedural penalty of litiscrescence (*litis crescentia*)[1] appears in the context of certain actions (*actiones*),[2] whereby the value of the claim (*lis*) was increased if the defendant denied his liability before the praetor.[3] Actions with litiscrescence were enumerated by Roman jurists.[4]

[1] Zimmermann 1996, 308, 974; Ernst 2022, 320. Similar terms also exist in other languages: litiscrescenza (Italian), see Rotondi 1922, 413; Litiskreszenz (German), see Kaser, Hackl 1996, 139; litiscroissance (French), see Paoli 1933, 17.

[2] See Polara 2007, 195-238; Varvaro 2008, 218-39.

[3] Pugsley 1982, 6; Kaser, Hackl 1996, 139-40, 283-4.

[4] Gai. 4.9: *Rem vero et poenam persequimur velut ex his causis, ex quibus adversus infitiantem in duplum agimus; quod accidit per actionem iudicati, depensi, damni iniuriae legis Aquiliae, aut legatorum nomine, quae per damnationem certa relicta sunt.* Translation: Gordon, Robinson 2001, 405, 407: *We seek both property and penalty, on the other hand, in those cases where, for instance, we raise an action for double damages against someone who denies a claim, as happens with an action on judgment debt, on expenditure, for wrongful loss under the Aquilian Act, or for definite thing left by obligatory legacy.*
Further enumerations of actions with litiscrescence can be found in Gai. 4.171 and Pauli Sententiae 1.19.1, see Varvaro 2008, 218-22.

All of these actions shared the common characteristic that the value of the claim doubled if the defendant did not confess before the praetor but instead denied his liability.[5] In such cases, the praetor had to appoint a judge (*iudex*),[6] who could either condemn the defendant for double the amount or acquit him. The increase of the value of the claim was described with the expression *lis infitiando crescit in duplum*.[7]

If the defendant was sued in a proceeding with litiscrescence, he had to evaluate his chances of winning the lawsuit. He could either deny his liability (*infitiari*) or confess to his obligation (*confessio in iure*). If his chances of winning the lawsuit were low, it was better for him to perform a *confessio in iure* and voluntarily pay his debt. In Roman law, the procedural penalty of litiscrescence had the important function to reduce the number of lawsuits.[8]

The literature has highlighted that a functional analogon of the procedural penalty[9] of litiscrescence existed in several ancient legal systems. Specifically, legal scholars refer to Babylonian law[10] and to the law of Gortyn.[11] Furthermore, such a penalty might be present in the Laws of Plato,[12] on the

[5] Zeiss 1967, 26; Kaser, Hackl 1996, 140.

[6] The penalty of litiscrescence was not entirely abolished by Justinian. However, the distinction between the phases *in iure* and *apud iudicem* disappeared in Justinianic law; see Kaser 1975, 345. In Justinianic law, the defendant had to make a confession before a judge in the preliminary phase of the lawsuit in order to avoid an increase of the value of the claim; see de Jong 2015, 361.

[7] Paoli 1933, 17; Varvaro 2023, 50.

[8] Kaser, Hackl 1996, 283-4.

[9] For more information about procedural penalties in Athenian law, see Thür 2015, 39.

[10] Düll 1948, 218; Kelly 1966, 154; Pfeifer 2013, 21.

[11] Zitelmann in Bücheler, Zitelmann 1885, 172; Dareste 1886, 268; Beauchet 1897, 329; Düll 1948, 218; Guarducci 1950, 95, 107; Kelly 1966, 154; Scheibelreiter 2009, 147-50; Scheibelreiter 2010, 359-60, 368-70; Alonso 2012, 38; Scheibelreiter 2020, 91, 219, 265.

[12] Plat. Nom. 9.865b-d: text: Schöpsdau 2001, 212: Ἐὰν δὲ αὐτόχειρ μέν, ἄκων δὲ ἀποκτείνῃ τις ἕτερος ἕτερον, εἴτε τῷ ἑαυτοῦ σώματι ψιλῷ εἴτε ὀργάνῳ ἢ βέλει ἢ πώματος ἢ σίτου δόσει ἢ πυρὸς ἢ χειμῶνος προσβολῇ ἢ στερήσει πνεύματος, αὐτὸς τῷ ἑαυτοῦ σώματι ἢ δι᾽ ἑτέρων σωμάτων, πάντως ἔστω μὲν ὡς αὐτόχειρ, δίκας δὲ τινέτω τὰς τοιάσδε· ἐὰν μὲν δοῦλον κτείνῃ, νομίζων τὸν ἑαυτοῦ διειργάσθαι τὸν τοῦ τελευτήσαντος δεσπότην ἀβλαβῆ παρεχέτω καὶ ἀζήμιον, ἢ δίκην εἰς τὴν ἀξίαν τοῦ τελευτήσαντος ὑπεχέτω διπλῆν, τῆς δὲ ἀξίας οἱ δικασταὶ διάγνωσιν ποιείσθωσαν, καθαρμοῖς δὲ χρήσασθαι μείζοσίν τε καὶ πλείοσι τῶν περὶ τὰ ἆθλα ἀποκτεινάντων, τούτων δ᾽ ἐξηγητὰς εἶναι κυρίους οὓς ἂν ὁ θεὸς ἀνέλῃ· ἐὰν δὲ αὐτοῦ δοῦλον, καθηράμενος ἀπαλλαττέσθω τοῦ φόνου κατὰ νόμον.

Stele of Punishments,[13] and in a letter (RC 3) from Antigonos Monophthalmos to the Teians.[14]

Translation: Pangle 1979, 259: *If with his own hands, but involuntarily, one man should kill another, whether it be with his own unarmed body, or with an instrument, or missile, or by giving some drink or food, or by applying fire or cold, or by deprivation of air – whether he acts with his own body or through other bodies – in all cases let it be as if by his own hands, and let him pay something like the following judicial penalties. If he should kill a slave, he must render the master of the dead slave free of injury and penalty by reckoning what it would cost him to be deprived of a slave of his own, or else sustain a judicial penalty equal to twice the value of the deceased – the value to be assessed by the judges. He is to employ purifications that are greater and more numerous than those employed by persons who kill during the games, and the Interpreters whom the god selects are to be sovereign in these matters. If it's his own slave, he is to be released under law from the murder once he's undergone purification.*
See Knoch 1960, 75-6, 163, who explicitly states that the increase of the liability was the result of a procedural penalty.

[13] For the text and translation, see Prignitz, Thür 2025, 190-2. The term ἡμιέλιον (Attic: ἡμιόλιον), which refers to an increase of the value of the claim, can be found in l. 53 and l. 55; see further Thür 1984, 510-1; Thür 2020, 36-8, 43, 56-8 with additional references.

[14] Egetenmeier 2016/2017, 186 n. 62.
RC 3: § 6b (l. 27-39): text: Egetenmeier 2016/2017, 171: ὅσα δὲ <ὑμῖν> ἐστιν πρὸς τοὺς Λεβεδίους ἢ τοῖς Λεβεδίοις π[ρὸς ὑμᾶς, ποεῖν ἀμφοτέ-] | [ρ]ους συνθήκην, γράψασθαι δὲ τὴν συνθήκην καὶ ἄν τι ἀντιλ[έγηται πρὸς τὴν] | [σ]υνθήκην, ἐπικριθῆναι ἐν τῆι ἐκκλήτωι <ἐν> ἐξαμήνωι· ἔκκλητον [δὲ πόλιν γενέσθαι, κα-] | [θὰ] ἀμφότεροι συνωμολόγησαν Μιτυλήνην. τὰ μὲν οὖν ἄλλα ὑπ[ολαμβάνομεν ἀκολούθως] | [γ] ράφειν τοὺς συνθηκογράφους οἷς ἄν ποτε γινώσκωσιν· ἐπεὶ [δὲ τοσαῦτα τὸ πλῆθος ἀ-] | κούομεν εἶναι τὰ συναλλάγματα καὶ τὰ ἐγκλήματα ὥστε, ἂν τῶι [νόμωι διακριθῆι διὰ παν-] | τὸς τοῦ χρόνου, μηθένα ἂν δύνασθαι ὑπομεῖναι – καὶ γὰρ ἕως το[ῦδε οὐ δοκεῖ προκοπὴν εἰ-] | ληφέναι ταῦτα ἅπερ οὐδὲ αἱ συν[θῆκ]αι συντελέσθαι διὰ τὸ ἐ[κ πολλοῦ ἀδίκαστα] | εἶναι ὑμῖν τὰ συναλλάγματα – καὶ ἂν προστιθῶνται οἱ τόκοι πά[ντων τῶν ἐτῶν, μηθενὶ] | [δ]υνατὸν εἶναι ἀποτεῖσαι, οἰόμεθα δὲ δεῖν, ἂμ μὲν ἑκόντες ἀπο[τείσωσιν οἱ ὀφεί-] | [λο]ντες, γράφειν τοὺς συνθηκογράφους μὴ πλεῖον διπλασίου ἀποδ[ιδόναι τοῦ ἀρχαίου,] | ἂν δὲ εἰς δίκην ἐλθ<ό>ντες ὀφείλωσι, τριπλάσιον. ὅταν δὲ ἡ συνθήκ[η ἐπικυρωθῆι, γρά-] | ψασθαι τὰς δίκας καὶ ἐγδικάσασθαι ἐν ἐνιαυτῶι.
The translation, with slight changes, is based on Welles 1934, 21: *As to those suits which you have against the Lebedians or the Lebedians have [against you, that both cities make] an agreement, and the agreement should be written down, and if any objection is raised [against the] agreement that a decision be given by the arbiter city within six months; that the arbiter [city be] Mitylene, as both have agreed. [We think it best] that the committee charged with drawing up this instrument should write the other terms according to what they decide. As we hear that the suits over contracts and over statements of claim are [so numerous] that if [they were judged according to the law], even without interruption, no one would be able to wait for the end – for up*

However, most of the literature references just mentioned are general references regarding the functional analogon of the procedural penalty of litiscrescence. In order to determine whether such a penalty was part of ancient legal systems, a broader investigation is necessary, one that also takes procedural law into account. In view of the paucity of research focussing on the law of Gortyn, the present contribution aims to address this lacuna by analysing several provisions that indicate an increase of the value of the claim.

2. Condemnation for more than the simple value of the claim

Unlike in Roman law, where actions with litiscrescence were enumerated, the law of Gortyn does not contain any specific information about a functional analogon of the procedural penalty of litiscrescence. As such, in order to identify provisions that could include a functional analogon of the procedural penalty of litiscrescence, it is necessary to analyse sources that explicitly refer to a simple value of a claim and state or indicate that the defendant could be condemned for more than that value. Ultimately, through an exegetical analysis, it can be concluded whether the condemnation for more than the simple value was the result of a functional analogon of the procedural penalty of litiscrescence.

After reviewing sources from the law of Gortyn, the sources IC IV 41 3.7-17, IC IV 47 16-33, IC IV 79 1-21, and IC IV 72 9.24-40 were selected for closer analysis.[15] These four sources share the commonality that they

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to now [it does not appear that any progress] has been made with these nor have the contracts been executed because the suits have [long] remained [unadjudicated] – and if the interest [of all the years] accumulates [no one] would be able to pay it. We think it best for the committee to provide, if [the debtors pay] of their own accord, that they pay no more than double the value [of the debt], and if they go to court [and are adjudged liable], that they pay three times its value. Whenever the agreement [is ratified], (we think it right) that the suits be filed and judged within a year.

For more information about Antigonos Monophthalmos, see Billows 1990; Badian 1996, 752-3; for more information about RC 3, see Welles 1934, 16-23; Bencivenni 2003, 169-201.

[15] Further cases in the law of Gortyn, where a conviction could result in a multiple amount, are, for example, cited by Pelloso 2009/2010, 110-1, 162-7 and Scheibelreiter 2020, 247, 265. However, there is no indication that the conviction for multiple amounts in the sources IC IV 72 1.35-39, IC IV 72 3.9-16, IC IV 72 6.18-24, IC IV 72 6.37-44, IC IV 72 9.11-15, and IC IV 78 1-8 (see section "4.3.2 Functional analogon of the procedural penalty of litiscrescence?") could be attributed to a denial of the defendant before the δικαστάς.

all refer explicitly to a simple amount, which must be distinguished from a double amount or a multiple amount. Furthermore, in all sources, with regard to a conviction for a multiple amount, a connection to procedural misconduct seems possible.

3. Procedural law

3.1 Jurisdictional authority

In the context of dispute resolution, the law of Gortyn mostly refers to the δικαστάς[16] but sometimes also to the κόσμος.[17] Gortyn had several κόσμοι[18] who acted as the highest public officials.[19] The exact functions of the κόσμος and the δικαστάς in the context of a lawsuit are fiercely debated among legal scholars.

Kohler/Ziebarth and Bonner/Smith argue that both the δικαστάς and the κόσμος could resolve a case, and whether the case had to be decided by a δικαστάς or a κόσμος depended on who, by law, had jurisdiction over the matter.[20]

Wolff assumes that the κόσμος "*controlled the steps to be taken by the parties*" and, thus, had a similar function to the praetor.[21] According to Wolff, the κόσμος was not allowed to resolve the case by himself. Instead, he had to appoint a δικαστάς, who then had to resolve the case.[22] Wolff argues that it cannot be verified whether the δικαστάς was a public official or a private citizen.[23]

Thür emphasises that the appointment of a δικαστάς by a κόσμος is not mentioned in the law of Gortyn, meaning that the solution of Wolff does not seem to align with the sources. Thür provides another solution. According

[16] The Attic word δικαστής represents the equivalent of the Doric word δικαστάς; see Thür 1998, 1161.
[17] See Kohler, Ziebarth 1912, 81; Wolff 1946, 63-5.
[18] One of these κόσμοι was, for example, the ἱεραργός κόσμος who was responsible for religious affairs, see Willetts 1967, 32. The κσένιος κόσμος had to deal with issues regarding foreigners; see Thür 2005, 15; see further section "4.3.1 Introduction".
[19] Kohler, Ziebarth 1912, 44.
[20] Kohler, Ziebarth 1912, 81; Bonner, Smith 1968, 87.
[21] Headlam 1892/1893, 49-50 also refers to Roman law and to the terms "*in jure*" and "*in judicio*" but assumes that the δικαστάς presided over both phases.
[22] Wolff 1946, 64-6. Seelentag 2013, 327 assumes that the κόσμος could either appoint a δικαστάς or resolve the case by himself.
[23] Wolff 1946, 66; Wolff 1961, 58.

to Thür, the term δικαστάς referred to a specific κόσμος who was assigned to a case.[24]

Due to a lack of sources, a clear distinction between the terms δικαστάς and κόσμος is not possible. However, the κόσμος is rarely mentioned in the context of dispute resolution. Furthermore, the concept of the appointment of a δικαστάς by a κόσμος must not be imposed upon the sources. Roman law and the law of Gortyn are two fundamentally different legal systems, and thus, it cannot be assumed that their forms of dispute resolution before a magistrate were similar. Overall, Thür's approach appears to be the most compelling solution, as it does not require any further assumptions and is capable of explaining the different usages of the terms κόσμος and δικαστάς.

3.2 Dispute resolution

In the law of Gortyn, there are not many provisions with procedural law, and thus, it is very difficult to draw conclusions about this topic.[25] However, it is clear that there were two methods for how a dispute could be resolved.[26] The sources refer to the terms δικάδδεν[27] ("*rule*")[28] and ὀμνύντα κρίνεν ("*decide*").[29]

If a case had to be resolved by δικάδδεν, the δικαστάς had to follow a certain procedure.[30] Specifically, the δικαστάς had to rule the case in accordance with the testimony of witnesses or the oath of a party.[31] In such a

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[24] Thür 1996, 63; Thür 2005, 16; Thür 2006, 46; Thür 2014, 6.

[25] Wolff 1961, 57; Thür 2014, 5.

[26] IC IV 72 11.26-31: text and translation: Gagarin, Perlman 2016, 421: τὸν δικαστάν, ὅτι μὲν κατὰ | μαίτυρανς ἔγρατται δικάδδ- | εν ἒ ἀπόμοτον, δικάδδεν ἃι ἔ- | γρατται, τῶν δ' ἀλλῶν ὀμνύντ- | α κρίνεν πορτὶ τὰ μολιόμεν- | α. vac. – *Whenever it is written that the judge is to rule according to witnesses or an oath of denial, he is to rule as is written, but in the other cases he is to swear an oath and decide with reference to the pleadings. vac.*
For additional information regarding the edition of the text, see Guarducci 1950, 140; Willetts 1967, 49; Körner 1993, 554-5 (181); Effenterre, Ruzé 1995, 37 (4).

[27] The Attic form δικάζειν represents the equivalent of the Doric form δικάδδεν; see Thür 1998, 1161.

[28] Gagarin 2010, 128; see further Zitelmann in Bücheler, Zitelmann 1885, 68: "*urtheilen*"; Headlam 1892/1893, 49: "*he gives judgement*".

[29] Gagarin 2010, 128; see further Zitelmann in Bücheler, Zitelmann 1885, 69: "*entscheiden*"; Headlam 1892/1893, 49: "*he decides*".

[30] Gagarin 2010, 129.

[31] IC IV 72 11.26-31; see further Zitelmann in Bücheler, Zitelmann 1885, 71; Thür

case, the δικαστάς only executed the law without forming his own opinion about whether the claim of the plaintiff was actually justified or not.[32] A case could only be resolved by the method of δικάδδεν if there was a statutory justification.[33]

The other method for resolving a dispute is referred to as ὀμνύντα κρίνεν. In such cases, the δικαστάς had to find out the truth[34] and, thus, decide the case by his own judgment.[35] Furthermore, the δικαστάς had to swear an oath to guarantee that he did not abuse his power.[36]

Regarding the sources IC IV 41 3.7-17, IC IV 47 16-33, and IC IV 72 9.24-40, it is necessary to discuss whether the case had to be decided by the method of δικάδδεν or by the method of ὀμνύντα κρίνεν. Generally, a functional analogon of the procedural penalty of litiscrescence could occur under both methods because liability for a multiple amount could, for example, be triggered by the refusal of the defendant to take an oath or by a decision and an oath of the δικαστάς.

3.3 Denial before court

If one party sued another party, a proceeding before a δικαστάς[37] had to occur. The sources provide little information about the phases of the lawsuit. Headlam argues that the lawsuit could be divided into two phases, with the first being the preliminary phase.[38] Moreover, Thür explains that in the first phase of the lawsuit, the δικαστάς had to create a programme for the trial, and in the second phase, the resolution of the dispute was required.[39]

Before it was determined by which method the case was to be decided, the defendant had the possibility to acknowledge his obligation before the δικαστάς. If the defendant made such a confession a trial was not necessary.[40] This meant that – if the case had been decided by the method of

2005, 16.
[32] Zitelmann in Bücheler, Zitelmann 1885, 71.
[33] IC IV 72 11.26-31; see further Zitelmann in Bücheler, Zitelmann 1885, 68; Gagarin 2010, 129.
[34] Zitelmann in Bücheler, Zitelmann 1885, 68-9.
[35] Thür 2005, 16.
[36] Steinwenter 1925, 47.
[37] See section "3.1 Jurisdictional authority".
[38] Headlam 1892/1893, 49-54.
[39] Thür 2009, 493.
[40] See Maffi 1983, 156, who refers to the rule *confessus pro iudicato habetur* in the

δικάδδεν – a separate meeting before a sacred place, in order to swear an oath, could have been avoided. However, if the case would have been decided by the method of ὀμνύντα κρίνεν, the confession would have spared the δικαστάς from conducting further investigations into the matter.

In relation to the sources IC IV 41 3.7-17, IC IV 47 16-33, IC IV 79 1-21, and IC IV 72 9.24-40, it should be analysed whether liability for a multiple amount was caused by misconduct of the debtor before the δικαστάς[41] or by misconduct of the debtor that occurred outside the court proceedings. It is important to distinguish between these two possibilities, as the legal position of the debtor would be more favourable in the first case. In the first case, the debtor could prevent a condemnation for a multiple amount by confessing to his obligation at the beginning of the lawsuit, whereas in the second case, the debtor was unable to prevent a condemnation for a multiple amount if the creditor was not willing to reach a settlement.

With regard to the concept of the increase of the value of the claim, this paper adopts a broad understanding of this term. A verb that explicitly expresses a denial can be found only in IC IV 41 3.7-17 (l. 15-16: ἐκσαννήσεται).[42] However, a functional analogon of the procedural penalty of litiscrescence may also be present even if the text of the source contains no term that explicitly indicates a denial, since it is evident that when the debtor did not make a confession but instead engaged in proceedings against the creditor, he implicitly denied the creditor's claim.

4. Sources

4.1 IC IV 41 3.7-17

4.1.1 Introduction

The first source to be analysed is an inscription that was discovered on the north wall of the agora and can be dated to the beginning of the 5th century

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context of the law of Gortyn ("*vale dunque per il diritto gortinio una regola analoga a quella romana: confessus pro iudicato habetur*"); see further section "4.4.2 Grounds for obligations".

[41] About the problem of a fraudulent legal proceeding in Gortyn, see Benke 2021/2022, 42-3.

[42] The form ἐξαρνεῖσθαι (Attic) means "to deny [before a court]"; see section "4.1.2.2 Grounds for a condemnation for the double value".

B.C.[43] This inscription is called the Second Code[44] or Little Code[45] and it contains only seven columns, meaning it is much smaller than the Great Code.[46] The following text deals with the liability of a person who received an animal.

IC IV 41 3.7-17
αἴ κα τετ-
ράπος ἢ ὄνν[ι]θα παρ-
καταθ̣[ε]μένοι ἢ κρη-
σάμενος ἢ [ἀλ]λᾶι δε-
κσάμ̣ε[νο]ς μὴ νυνατ-
ὸς εἴη αὐτ[ὸν ἀ]ποδόμ-
ην, τὸ ἀ[πλ]όον κατασ-
τασεῖ. αἰ δ[έ κ' ἐ]πὶ τᾶι
δίκαι [μο]λίον ἐκσαν-
νήσεται, δι[πλ]εῖ κατ-
αστᾶσ[αι κ]αὶ θέμημ πόλι.

If someone has used or for some other reason received an animal or bird and is not able to give it back to the person who entrusted it to him, he shall pay the simple value. But if while contending in court he denies (having received it?), he shall pay double and is to give to the city.[47]

IC IV 41 3.7-17 addresses a situation in which the παρκαταθεμένος (the transferor)[48] handed over a τετράπος[49] or an ὄρνις[50] to another party (the transferee). The word τετράπος describes a quadrupedal herd animal[51] and the word ὄρνις a fowl.[52] Subsequently, the reason for the transfer of the

[43] Effenterre, Ruzé 1995, 237; Hölkeskamp 1999, 124.
[44] Willetts 1967, 3; Davies 2005, 307.
[45] Davies 2005, 307.
[46] Metzger 1973, 124.
[47] Text and translation: Gagarin, Perlman 2016, 295. For additional information regarding the edition of the text, see Guarducci 1950, 91; Metzger 1973, 97; Körner 1993, 376 (127); Effenterre, Ruzé 1995 237, 239 (65).
[48] See Scheibelreiter 2020, 90; for more information about the term παρακαταθήκη, see Kießling 1956, 69; Scheibelreiter 2020, 42-5.
[49] The Attic word τετράπους represents the equivalent of the Doric word τετράπος; see Schwyzer 1923, 91, 454; Liddell, Scott, Jones 1996, 1782.
[50] The Attic form ὄρνιθα represents the equivalent of the Doric form ὄννιθα (l. 8); see Buck 1910, 69; Willetts 1967, 53. For information on the syntax, see Gagarin, Perlman 2016, 296.
[51] Scheibelreiter 2020, 89; Alonso 2012, 38: "*quadruped*".
[52] Metzger 1973, 97; Gagarin 2008, 129; Alonso 2012, 38. According to Körner 1993,

τετράπος or ὄρνις is characterised by the phrase ἢ κρησάμενος ἢ ἀλλᾶι δεκσάμενος (l. 9-11). In particular, the word κρησάμενος refers to a loan for use or a lease,[53] whereas the words ἀλλᾶι δεκσάμενος could refer to a deposit or a pledge.[54]

The question arises whether the case mentioned in the text, in which only a single τετράπος or ὄρνις was handed over, reflected the usual practice in Gortyn. It seems plausible that, in many cases, several animals were entrusted for herding and grazing.[55]

IC IV 3.7-17 focusses on the following problem. Specifically, the transferee was not able to return the τετράπος or ὄρνις to the παρκαταθεμένος (l. 11-13: μὴ νυνατὸς εἴη αὐτὸν ἀποδόμην). Unlike in IC IV 47 16-33,[56] IC IV 41 3.7-17 does not mention any possibility for the transferee to prove that he is not responsible for his inability to return the object[57] he received.[58] Therefore, it has to be assumed that the transferee was liable regardless of his fault for the disappearance or death of the τετράπος or ὄρνις.[59]

If the transferee could not return the τετράπος or ὄρνις to the παρκαταθεμένος, he had to pay the simple value of the τετράπος or ὄρνις to the παρκαταθεμένος (l. 13-14: τὸ ἀπλόον καταστασεῖ). Furthermore, the text discusses a situation, in which the transferee who does not return the τετράπος or ὄρνις also refuses to pay the simple value to the παρκαταθεμένος. In such a situation, if the transferee were condemned, he would have to pay twice the value of the τετράπος or ὄρνις (l. 16-17: διπλεῖ καταστᾶσαι) and a fine to the polis (l. 17: καὶ θέμημ πόλι). It would be reasonable to assume

382 n. 32, most often a pigeon or goose was transferred.

[53] See Metzger 1973, 98; Körner 1993, 382; Scheibelreiter 2020, 89. The English word "*loan*" is ambiguous because it can refer to either a *mutuum* or a *commodatum*.

[54] See Koschaker 1917, 22; Felgentraeger 1933, 81; Metzger 1973, 98; Davies 2005, 307; Scheibelreiter 2020, 89.

[55] In this context, parallels with other ancient legal systems seem possible. Such a situation is, for example, illustrated by the case preserved in CBS 4579, Nippur (2nd half of 13th century B.C.), where 25 sheep were entrusted, see Thür 2022, 8-9; see further Jauß 2023, 30-3. Sheep and goats were probably the most frequently transferred animals in ancient times, see Bolla-Kotek 1969, 46.

[56] See section "4.2.1 Introduction".

[57] According to Metzger 1973, 99, the transferee was not allowed to keep the τετράπος or ὄρνις by paying the simple value to the παρκαταθεμένος.

[58] This distinction is highlighted by Metzger 1973, 104-5.

[59] Felgentraeger 1933, 81; Metzger 1973, 100; Scheibelreiter 2020, 91; for the opposing view, see section "4.1.2.2 Grounds for a condemnation for the double value".

that the value of a lost animal (or of the lost animals) would have to be determined by the δικαστάς under oath (ὀμνύντα κρίνεν).[60]

There are no further indications in the text regarding the fine to be paid to the polis.[61] As a result, the exact details of the penalty remain unknown. Two possibilities seem plausible. Firstly, the penalty could be an independent monetary fine. In this case, the transferee would have to pay the double value to the παρκαταθεμένος as well as an additional fine to the polis.[62] However, this interpretation is called into question by the absence of any explicit mention of the amount of the penalty.

Secondly, it is also conceivable that this penalty concerns a portion of the amount for which the transferee is being held liable.[63] The sum to be paid to the polis would therefore already be included in the double value.

4.1.2 Functional analogon of the procedural penalty of litiscrescence?

4.1.2.1 Condemnation for the double value

Generally, the transferee had to pay the simple value if he was unable to return the τετράπος or ὄρνις to the παρκαταθεμένος. The phrase αἰ δέ κ' ἐπὶ τᾶι δίκαι μοl͡ίον ἐκσαννήσεται (l. 14-16) explains the situation in which the transferee would have to face a condemnation for the double value.

In IC IV 41 3.7-17, it is not mentioned by which method of dispute resolution[64] – δικάδδεν or ὀμνύντα κρίνεν – a condemnation for the double

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[60] See further IC IV 72 1.7-12: text and translation: Gagarin, Perlman 2016, 338: αἰ [δέ] κα | μὲ [λαγ]άσει, καταδικαδδέτο τοͅ μὲν | ἐλευθέρο στατε͂ρα, τοͅ δόλο [δα]ρκν- | ἀν τᾶ͂ς ἀμέρας ϝεκάστας, πρίν κα λα- | γάσει· τοͅ δὲ κρόνο τὸν δι[κ]αστ- | ἀν ὀμνύντα κρίνεν. – *And if he does not release him, let him rule that he pay a stater for a free person and a drachma for a slave for each day until he releases him. And the judge is to swear an oath and decide about the amount of time.*
For additional information regarding the edition of the text, see Guarducci 1950, 126; Willetts 1967, 39; Effenterre, Ruzé 1995, 359.

[61] One possible reason a fine had to be paid to the polis is that the παρκαταθεμένος was a lower-ranking official of the polis.

[62] Guarducci 1950, 95; Körner 1993, 383; Scheibelreiter 2020, 265.

[63] See Effenterre, Ruzé 1995, 240.

[64] It is not known which method of dispute resolution was applied more often. Zitelmann and Gagarin emphasise that the law of Gortyn often does not mention the method for how the dispute should be resolved and, thus, conclude that the method of ὀμνύντα κρίνεν, which did not require a statutory justification, may have been more common; see Zitelmann in Bücheler, Zitelmann 1885, 68; Gagarin 2010, 129.
According to Thür, the view that the δικαστάς was a judge belonging to the magistracies

value could be achieved. It would be natural to assume that the δικαστάς would risk taking a personal oath (ὀμνύντα κρίνεν) only if he was certain about the case[65] – for example, because he witnessed the transfer of the τετράπος or ὄρνις from the παρκαταθεμένος to the transferee.

In most cases, however, it seems more plausible that he would settle the dispute through δικάδδεν. Generally, he could administer oaths to the witnesses[66] of the transfer who had been named by the παρκαταθεμένος or administer a dispute-deciding oath either to the παρκαταθεμένος ("*accusatory oath*"[67]) or the transferee ("*exculpatory oath*"[68]).

Due to the parallels between IC IV 41 3.7-17 and IC IV 47 16-33, which will be discussed later,[69] it is reasonable to assume that in IC IV 41 3.7-17 – as indicated in IC IV 47 16-33 by the term ναὶ (l. 27)[70] – the legal dispute should be settled by an accusatory oath of the παρκαταθεμένος (the plaintiff). Therefore, a condemnation for the double value could have occurred if the παρκαταθεμένος performed the accusatory oath.

It should be noted, however, that the considerations just presented are merely conjectures based on plausibility. Whether the dispute referred to in IC IV 41 3.7-17 was ultimately decided by δικάδδεν or by ὀμνύντα κρίνεν cannot be determined with certainty.

4.1.2.2 Grounds for a condemnation for the double value

Among scholars, conflicting doctrines can be found regarding the reason for the condemnation for the double value. The first doctrine seeks to explain the condemnation for double value as a procedural penalty. According

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of the polis, who convicted or acquitted the defendant by a judgment rendered on the substance of the case rather than on procedural grounds, is incorrect. In his view, the δικαστάς was the jurisdictional authority, who set the procedure for trials. Thür assumes that the procedural law of Gortyn remained at the stage of the Homeric oaths that determined the outcome of a trial; see Thür 2009, 493; see further Thür 2010, 148-50; see section "3.1 Jurisdictional authority".
See further Thür 2006, 46 ("*Die wenigen im Gesetz erwähnten dikazein-Sprüche, die einen Eid auferlegen, sind also nicht als Ausnahmen zu betrachten, sondern als die Regel.*").

[65] See further Thür 2010, 148.

[66] See further Thür 2006, 43.

[67] See further Gagarin, Perlman 2016, 407.

[68] See further Gagarin, Perlman 2016, 562.

[69] See section "4.2.1 Introduction".

[70] See section "4.2.3.1 Condemnation for the double value".

to Scheibelreiter, the word ἐξαρνεῖσθαι (l. 15-16: ἐκσαννήσεται)[71] refers to a denial before court, similar as the Latin word *infitiari*.[72] Furthermore, several legal scholars emphasise that the condemnation for the double value, which is mentioned in IC IV 41 3.7-17, was the result of a functional analogon of the procedural penalty of litiscrescence.[73]

Consequently, the situation would be as follows: After the initiation of the proceedings, the δικαστάς would question the transferee to determine whether he had indeed received a τετράπος or an ὄρνις from the παρκαταθεμένος and was therefore obliged to return it. The transferee could then either pay or acknowledge his obligation[74] before the δικαστάς, or deny his liability.

If the transferee were to acknowledge his obligation, a dispute resolution by δικάδδεν or by ὀμνύντα κρίνεν would no longer be necessary, and the transferee would have to compensate the παρκαταθεμένος with the simple value. If, however, the transferee were to deny having received a τετράπος or an ὄρνις,[75] he would thereby be entering into a lawsuit. The dispute would have to be resolved by δικάδδεν or by ὀμνύντα κρίνεν, and, in the event of losing the lawsuit, the transferee would have to compensate the παρκαταθεμένος with the double value.

According to the second doctrine, the double value is to be understood as a penalty directed at conduct outside the context of a trial. Several legal scholars refer in this context to a breach of trust[76] or a concealment,[77] which would mean that the transferee would be punished for unlawfully keeping the τετράπος or ὄρνις. This interpretation is supported by the fact that the

[71] The Attic form ἐξαρνήσηται represents the equivalent of the Doric form ἐκσαννήσεται (l. 15-16); see Scheibelreiter 2009, 148 n. 102.
[72] Scheibelreiter 2009, 147-151.
[73] Beauchet 1897, 329; Düll 1948, 218; Guarducci 1950, 95, 107; Scheibelreiter 2009, 147-150; Scheibelreiter 2010, 359-60; Alonso 2012, 38; Scheibelreiter 2020, 91, 219, 265.
[74] Such an acknowledgment constituted an independent ground of obligation, which had the same legal quality as a verdict, see Maffi 1983, 156; see the sections "3.3 Denial before court" and "4.4.2 Grounds for obligations". A confession would have been particularly reasonable if the transferee had no money but wished to avoid liability for the double amount.
[75] See Scheibelreiter 2009, 148 ("*Ableugnen der Verwahrung*"); Gagarin, Perlman 2016, 296 ("*he probably denies having received the animal*").
[76] Lipsius 1912, 738.
[77] Mitteis, Wilcken 1963, 258; Thür, Taeuber 1994, 179 n. 49.

text does not explicitly mention that the transferee denies having received[78] a τετράπος or an ὄρνις.[79]

Furthermore, comparing IC IV 41 3.7-17 to IC IV 41 2.17[80] and IC IV 47 16-33[81] could indicate that IC IV 41 3.7-17 refers to the liability of the transferee based on fault, rather than strict liability. Accordingly, just as a certain view is held regarding IC IV 47 16-33,[82] the liability in IC IV 41 3.7-17 could also be explained on the basis of double damages resulting from a delictual act.

Following the second doctrine, a denial in court would be irrelevant. The transferee would already owe the παρκαταθεμένος the payment of the double value before the proceedings began. Therefore, the παρκαταθεμένος could claim this payment by initiating a lawsuit, without the transferee having any means to prevent it, for example, by confessing to his obligation.

Both interpretations of IC IV 41 3.7-17 are possible and can be supported by good reasons; however, in my opinion, the first doctrine seems preferable, given the wording of IC IV 41 3.7-17, especially the use of the verb ἐξαρνεῖσθαι. This verb indicates a denial before court.[83] If IC IV 41 3.7-17 concerned a liability for the double value resulting from a delictual act, the

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[78] See Metzger 1973, 100 ("*Das Ableugnen des Beklagten wird darin bestehen, daß er ein besseres Recht des Klägers auf das Tier bestreitet und es als sein eigenes erklärt*"); Körner 1993, 383. However, a problem arises in Metzger's explanation, as the verb ἐξαρνεῖσθαι can hardly be understood as expressing a superior right.

[79] In IC IV 47 16-33, which is similar to IC IV 41 3.7-17, the denial of having received the κατακείμενος is not explicitly mentioned, see section "4.2.1 Introduction".

[80] IC IV 41 2.1-17: text and translation: Gagarin, Perlman 2016, 294:[—]ε[…] |ται, τὸ ϝίσϝον κατασ- | τασεῖ. vac. ἴππον δὲ κ' [ἠ]μ- | ί[ο]νον κ' ὄνον τὸ μὲν | νυνατὸν ἐπιδίεθαι | ἄι ἔγρατται· αἰ δέ κα | τετνάκηι ἢ μὴ νυν- | ατὸν ἦι [η] ἐπιδίεθθαι, | καλῆν ἀντὶ μαιτύρ- | ον δυοῖν ἐν ταῖς πέν- | τε ἄι δείκσει ὀπῆ κ' | ἦι, κ' ὀρκιότερον ἤμη- | ν αὐτὸν καὶ τὸνς μα- | ίτυρανς αἰ ἐπεδίετ- | ο ἢ ἐπήλευσε ἢ ἐκάλη | δεικσίον. vac. κύνανς | ἀπαμπαιόμενο[—] – — *he shall pay an equal amount. vac. If possible, a horse or a mule or an ass is to be led (to the offending animal's owner) as is written. But if it is dead or cannot be led, then (the injured animal's owner) is to summon (the other) in presence of two witnesses within five days in order to display it, whenever it is; and the summoner and his witnesses are to be the ones who swear as to whether he led or brought it or summoned him so as to display it. vac. Someone who wards off the attack of dogs —.* For additional information regarding the edition of the text, see Guarducci 1950, 90; Körner 1993, 376 (127); Effenterre, Ruzé 1995 237 (65).

[81] See section "4.2.1 Introduction".

[82] See section "4.2.3.2 Grounds for a condemnation for the double value".

[83] See further Plat. Nom. 9.949a; Liddell, Scott, Jones 1996, 587.

use of the verb ἐξαρνεῖσθαι could be misleading. Therefore, it appears that IC IV 41 3.7-17 refers to a functional analogon of the procedural penalty of litiscrescence.

4.2 IC IV 47 16-33

4.2.1 Introduction

The second source (IC IV 47 16-33) was discovered on the east wall of the agora and, thus, can be dated to the beginning of the 5th century B.C.[84] This source deals with a dispute between two parties in the context of a pledge.

IC IV 47 16-33
αἰ δέ κ' ἀ-
πόληται ὸ κατακείμενος, δικ-
ακσάτο ὀμόσαι τὸν καταθέμε-
νον μήτ' αὐτὸν αἴτιον ἔμην μήτ-
20 ε σὺν ἄλλοι, μήτ' ἐπ' ἄλλοι ϝισάμη-
ν. αἰ δέ κ' ἀποθάνηι, δεικσάτο
ἀντὶ μαιτύρον δυοῖν.
αἰ δέ κα μὴ ὀμόσει ἃι ἔ-
γραται ἢ μὴ δείκσει, τ-
25 ὰν ἀπλόον τιμὰν κατα-
στασεῖ. αἰ δὲ κ' αὐτὸν αἰ-
τιῆται ναὶ ἀποδόθαι ἢ
ἀποκρύπσαι, αἴ κα νικ-
αθεῖ, τὰν ἀπλόον τ-
30 ιμὰν διππλεῖ κατα-
στασεῖ. αἰ δέ κα ναεύ-
ηι, ἐμπανία δεικσάτ-
ο.

And if the indentured (slave) disappears, let (the judge) rule that the current master is to swear that he is not to blame himself nor with someone else nor does he know (that the slave is) with someone else. And if (the slave) dies, let (the current master) show (him to the old master) before two witnesses. And if he does not swear as is written or does not show him, he shall pay the simple value (of the slave). And if (the old master) accuses him (the current master) in fact of selling or hiding away (the slave), if he (the accused) loses

[84] See Hölkeskamp 1999, 124. There are two columns preserved; see Metzger 1973, 124.

the case, he shall pay double the simple value. And if (the slave) takes refuge in a temple, he is to show him clearly (to the old master).[85]

The word κατακείμενος, which appears in l. 17, refers to a pledge. In the law of Gortyn, there are several possibilities for how a person could be involved as a security in a pledge.

Firstly, the term κατακείμενος could describe a free person. In the literature, there is debate over whether κατακείμενος should be regarded as the (principal) debtor or as a guarantor. According to one opinion, the debtor who had an obligation could pledge himself to the creditor.[86] This situation meant that the person who pledged himself would temporarily lose his freedom.[87] Such a person would be referred to as a κατακείμενος.[88] This view is criticised by Maffi. In his opinion, a free person, referred to as κατακείμενος, should be regarded as a guarantor.[89]

Secondly, a πάστας (*i.e.*, the master of a serf) could pledge his serf to the creditor. Such a serf was also referred to as a κατακείμενος.[90] The creditor (*i.e.*, the pledgee; the recipient of the κατακείμενος) was characterised as the καταθέμενος.[91]

In IC IV 47 16-33, a situation is mentioned in which the κατακείμενος was granted asylum in a temple, leading to a dispute between the καταθέμενος and another person. Therefore, it is clear that in IC IV 47 16-33, the word κατακείμενος can only identify a serf, as correctly highlighted in the translation of Gagarin/Perlman.[92] The law of Gortyn contains the "*servile terms*" δ̃ολος and ϝοικεύς.[93] However, in the literature, it is fiercely debated whether the legal positions of the δ̃ολος and the ϝοικεύς were different.[94]

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[85] Text and translation: Gagarin, Perlman 2016, 319. For additional information regarding the edition of the text, see Guarducci 1950, 106; Metzger 1973, 101; Körner 1993, 408 (138); Effenterre, Ruzé 1995, 99 (26).

[86] Körner 1993, 409.

[87] Willetts 1955, 54; Willetts 1967, 14.

[88] Guarducci 1950, 153 uses the term *nexus* to describe a κατακείμενος who was free before he pledged himself.

[89] Maffi 1983, 91-9.

[90] Körner 1993, 409.

[91] Willetts 1955, 54-6.

[92] Gagarin, Perlman 2016, 319.

[93] Willetts 1967, 14; see IC IV 72 4.31-36; IC IV 72 5.25-28.

[94] Körner 1993, 468-70 argues that the ϝοικεύς had more rights than the δ̃ολος; see further Bile 2019, 40-6; different: Lipsius 1909, 397-8; Link 2001, 90; Lewis 2023, 229-37.

The text focuses on the following problem. Specifically, a πάστας (pledger) handed over the κατακείμενος (pledged one)[95] to the καταθέμενος (pledgee) as a pledge. Subsequently, the κατακείμενος was no longer available and a dispute between the πάστας and the καταθέμενος arose. In such a situation, both parties may have had an interest in initiating a lawsuit.

Firstly, the πάστας could try to demand his κατακείμενος from the καταθέμενος. The πάστας had the right to claim the κατακείμενος back if he fulfilled his obligation.[96] It is important to note that the κατακείμενος was likely required to carry out work for the καταθέμενος, thereby paying off the obligation of the πάστας. Such a pledge would be classified as an ἀντίχρησις.[97]

Secondly, the καταθέμενος could try to demand another pledge from the πάστας because he no longer had a security for his claim against the πάστας.[98] However, in IC IV 47 16-33, it is clear that the πάστας initiated a lawsuit against καταθέμενος, since the text mentions how the καταθέμενος could defend himself.

IC IV 47 16-33 contains information on how such a dispute between the πάστας and the καταθέμενος should be resolved. The text makes a distinction between three reasons for the κατακείμενος no longer being available for the parties: The κατακείμενος could disappear (l. 16-17: αἰ δέ κ' ἀπόληται ὁ κατακείμενος), die (l. 21: αἰ δέ κ' ἀποθάνηι), or flee into a temple (l. 31-32: αἰ δέ κα ναεύηι). All of these three variations are introduced with the conditional αἰ.[99]

4.2.2 Disappearance, death, and refuge in a temple

If the κατακείμενος disappeared (l. 16-17: αἰ δέ κ' ἀπόληται ὁ κατακείμενος), the καταθέμενος was able to swear an oath.[100] In this oath, the καταθέμενος could deny that he was involved in or knew anything about the disappearance of the κατακείμενος (l. 17-21: δικακσάτο ὀμόσαι τὸν καταθέμενον

[95] Kristensen 2004, 74 refers only to a δοῦλος.
[96] For further information on the expiration of the pledge, see Metzger 1973, 102.
[97] For more information about the term ἀντίχρησις, see Taubenschlag 1955, 287-91.
[98] See Körner 1993, 410-1.
[99] Metzger 1973, 104 refers only to two cases ("*zwei Fälle*") because the κατακείμενος could either disappear (flight to an unknown place or a temple) or die.
[100] Gagarin 1997, 126-7 assumes that the reason for this regulation, which seems to privilege the καταθέμενος, was that there was usually no other evidence than the oath of the καταθέμενος available to resolve the lawsuit.

μήτ᾽ αὐτὸν αἴτιον ἔμην μήτε σὺν ἄλλοι, μήτ᾽ ἐπ᾽ ἄλλοι ϝισάμην).[101]

IC IV 47 16-33 only mentions a situation in which the καταθέμενος decides not to swear an oath (l. 23-24: αἰ δέ κα μὴ ὀμόσει ἃι ἔγραται). In such a case, the καταθέμενος had to pay the simple value of the κατακείμενος to the πάστας (l. 24-26: τὰν ἀπλόον τιμὰν καταστασεῖ). The legal consequence for swearing an oath is not discussed in the text. It seems to be likely that the καταθέμενος would be freed from his obligation and, thus, would not have to pay the simple value of the κατακείμενος to the πάστας.[102]

If the κατακείμενος had died (l. 21: αἰ δέ κ᾽ ἀποθάνηι), the καταθέμενος had to present the dead body of the κατακείμενος in front of two witnesses (l. 21-22: δεικσάτο ἀντὶ μαιτύρον δυοῖν).[103] This had to be done outside formal legal proceedings. In this way, the καταθέμενος could prove that the cause of death was natural,[104] and thus, it seems that the πάστας could not successfully sue the καταθέμενος.[105] If the καταθέμενος failed to swear an oath or present the dead κατακείμενος (l. 23-24: αἰ δέ κα μὴ ὀμόσει ἃι ἔγραται ἢ μὴ δείκσει), he had to pay the simple value of the κατακείμενος to the πάστας (l. 24-26: τὰν ἀπλόον τιμὰν καταστασεῖ).

Furthermore, the κατακείμενος who had fled into a temple and received asylum could no longer be returned to the πάστας (l. 31-32: αἰ δέ κα ναεύηι).[106] The text only mentions that the καταθέμενος should show the κατακείμενος in the temple (l. 32-33: ἐμπανία δεικσάτο), so that the πάστας would have no claim against him.[107] In the event of refusal, it could be assumed that the same legal consequence would apply as for failing to

[101] See Latte 1920, 9; Willetts 1955, 56.
For more information about the oath in the law of Gortyn see, Gagarin 1997, 125-34.
[102] Metzger 1973, 104. Körner 1993, 411 assumes that the καταθέμενος could even successfully demand a new security for the obligation of the πάστας from the πάστας. Given that there are no further indications in the text which refer to a new security, the view of Körner seems problematic.
[103] Maffi 2003, 19. For more information about witnesses in the law of Gortyn, see Gagarin 2010, 140-2.
[104] It seems likely that not only two witnesses but also the πάστας had to be present when the καταθέμενος presented the dead κατακείμενος; see Körner 1993, 411.
[105] See Metzger 1973, 104. According to Körner 1993, 411, the καταθέμενος could also claim a new security from the πάστας in this variation. Since there are no further indications in the text, it appears that such an assumption about a new security cannot be made.
[106] Maffi 2003, 22 highlights that the text does not mention abuse by the master as a requirement for a κατακείμενος to receive asylum.
[107] Metzger 1973, 104.

swear an oath or refusing to present the dead κατακείμενος in front of two witnesses, meaning the καταθέμενος would have to pay the simple value of the κατακείμενος.[108]

4.2.3 Functional analogon of the procedural penalty of litiscrescence?

4.2.3.1 Condemnation for the double value

The text distinguishes between liability for the simple value and for the double value. As in IC IV 41 3.7-17, it is also necessary here to consider how a conviction of the debtor could be achieved. Regarding IC IV 47 16-33, one must first distinguish between the variants in which liability is limited to the simple value. This involves examining the scenarios in which the κατακείμενος disappears and in which the κατακείμενος dies, as liability of the simple value is explicitly mentioned in the text.

If the κατακείμενος disappeared, the καταθέμενος had to take an oath (*i.e.*, the exculpatory oath). The word δικάδδεν (l. 17-18) is a clear indication that a lawsuit between the πάστας and the καταθέμενος was already pending. There are two possible outcomes of the lawsuit. The καταθέμενος could either take the oath and, thus, win the case against the πάστας, or he could refuse to take the oath and lose the case. Losing the case led to a condemnation for the simple value.

If the κατακείμενος had died, the καταθέμενος had to find two witnesses who could testify to the natural cause of death. The δικαστάς had to condemn the καταθέμενος to pay the simple value if he could not provide two witnesses.

Following these two situations, where only liability for the simple value is mentioned, the text also makes reference to liability for the double value. According to Gagarin/Perlman, a conviction for the double value could occur even if the καταθέμενος had already won a lawsuit against the πάστας by an swearing oath.[109] However, the sources provide no support for this interpretation. It would be implausible to assume that the defendant's exculpatory oath could be overridden by the plaintiff's accusatory oath. Consequently, it cannot be assumed without justification that a second

[108] Metzger 1973, 104; Maffi 2003, 19.

[109] Gagarin, Perlman 2016, 321: "*This indicates that here, at least, an exculpatory oath would not be automatically decisive, but a suit could still be brought against someone even after he had sworn the oath.*"

lawsuit could be pursued by the πάστας after losing a lawsuit against the καταθέμενος.

If the πάστας believed that the καταθέμενος had sold or was hiding the κατακείμενος (l. 26-28: αἰ δὲ κ' αὐτὸν αἰτιῆται ναὶ ἀποδόθαι ἢ ἀποκρύπσαι), he could initiate a different type of a lawsuit against the καταθέμενος.

If the καταθέμενος lost this lawsuit against the πάστας (l. 28-29: αἴ κα νικαθεῖ), he would have to pay the double value (*i.e.*, twice the simple value of the κατακείμενος) to the πάστας (l. 29-31: τὰν ἁπλόον τιμὰν διππλεῖ καταστασεῖ). As indicated by the term ναὶ[110] (l. 27), the procedure was decided on the basis of the oath of the πάστας (*i.e.*, the accusatory oath). Therefore, the πάστας won the lawsuit and received the double value if he took the accusatory oath.

Another interpretation is offered by Körner, who argues that it was not the καταθέμενος who was required to pay the double value if he lost the lawsuit against the πάστας, but rather the πάστας if he lost the lawsuit against the καταθέμενος.[111] While this interpretation could be aligned with the literal wording of the passage, it makes little sense why a plaintiff should be penalised for losing a case.

4.2.3.2 Grounds for a condemnation for the double value

Similar to IC IV 41 3.7-17,[112] IC IV 47 16-33 also does not explicitly state why the defendant (καταθέμενος), in the event of losing the case, was required to pay the double value. With regard to the liability for the double value, two reasons can be suggested.

It could be assumed that the circumstances underlying IC IV 47 16-33 were comparable to those in IC IV 41 3.7-17, in which the transferee denied before the δικαστάς having received the entrusted object and was consequently sanctioned by a judgment imposing the double value. Accordingly, the καταθέμενος would deny having received the κατακείμενος from the πάστας. The denial of the καταθέμενος before the δικαστάς would increase the value of the claim. Guarducci, Egetenmeier, and Scheibelreiter explain the liability of the καταθέμενος for the double value as resulting from a functional analogon of the procedural penalty of litiscrescence.[113]

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[110] See Liddell, Scott, Jones 1996, 1173.

[111] Körner 1993, 411.

[112] See section "4.1.2.2 Grounds for a condemnation for the double value".

[113] Guarducci 1950, 95, 107; Egetenmeier 2016/2017, 186 n. 62; Scheibelreiter 2020,

Nevertheless, this interpretation can be contested. An argument against the existence of parallels between IC IV 41 3.7-17 and IC IV 47 16-33 can be made, namely that in IC IV 41 3.7-17, in addition to the conviction for the double value, a penalty payable to the polis is also stated. Furthermore, IC IV 47 16-33 does not explicitly mention that the καταθέμενος denied having received the κατακείμενος from the πάστας. The fact that the κατακείμενος had been handed over from the πάστας to the καταθέμενος might already have been undisputed. This view is supported by the fact that the pledge was likely an ἀντίχρησις,[114] which would have had to be public in a small society like Gortyn. Therefore, a denial of having received the κατακείμενος seems unlikely.

A liability for the double value could be explained by a delictual act committed by the καταθέμενος apart form the lawsuit. Such a delictual act could, for example, have been committed by the καταθέμενος fraudulently claiming that the κατακείμενος had run away or died.[115] The reason for the conviction for the double value would thus lie in the fact that the πάστας stated, at the initiation of the proceedings, that the καταθέμενος had acted fraudulently.[116]

Both of the interpretations of IC IV 47 16-33 outlined above are plausible. The scenarios mentioned in IC IV 47 16-33, in which the καταθέμενος does not deny having received the κατακείμενος and instead could exonerate himself through an oath or witnesses, all relate to liability for the simple value. It does not seem implausible that a καταθέμενος who actually sold or concealed the κατακείμενος would attempt to exonerate himself by denying that he had received the κατακείμενος.

Furthermore, an increase of the value of the claim is indicated by the wording of IC IV 47 16-33. The text does not explicitly refer to a double value but instead states that the καταθέμενος has to pay twice the simple value (l. 29-31: τὰν ἀπλόον τιμὰν διππλεῖ καταστασεῖ). Specifically, one simple value could contain the value of the κατακείμενος, and the other simple value could be added to this value as a procedural penalty.

It is particularly noteworthy that in IC IV 47 16-33 – unlike in IC IV 41 3.7-17 (l. 15-16: ἐκσαννήσεται)[117] – there is no reference to a judicial denial

92, 219, 265.
[114] See section "4.2.1 Introduction".
[115] See Körner 1993, 411.
[116] Körner 1993, 411.
[117] See section "4.1.2.2 Grounds for a condemnation for the double value".

by the defendant. However, the fact that a lawsuit is taking place between the πάστας and the καταθέμενος indicates that the καταθέμενος engaged in the legal proceedings and has therefore implicitly also denied the claim of the πάστας. Nevertheless, due to the lack of any indication of a judicial denial in IC IV 47 16-33, the existence of a functional analogon of the procedural penalty of litiscrescence appears less likely than in IC IV 41 3.7-17.

Overall, the source IC IV 47 16-33 could refer to another functional analogon of the procedural penalty of litiscrescence in the law of Gortyn, although this cannot be stated with certainty. Another source that distinguishes between a liability for the simple value and a liability for the double value is mentioned in the following section.

4.3 IC IV 79 1-21

4.3.1 Introduction

The next inscription was found in the debris of the Pythion,[118] which had originally been a theatre.[119] This inscription can be dated to the 5th century B.C.[120] The text[121] regulates the relationship between craftsmen and the polis.

IC IV 79 1-21
[c.7] . ο κριθ[ᾶν c.5]
[c.5]κια κα[c.9]
[. σύ]κον ἐκατὸν μ[εδίμν-]
[ονς κα]ὶ γλεύκιος προκ̣ό[ο]-
5 [νς ἐ]κατὸν καὶ τὰν π[c.3]
[c.2]ν[.]αλκίαν ἔ ἄλλαν ϝ[ισ-]
[ϝό]μετρον τ̄ο̄ προκ[όο. ϝερ-]
[γάδδ]εθαι δὲ ἐπὶ τοῖ μ[ι-]
[σ]τοῖ αὐτοῖ πάν[τ]α [τοῖς]
10 [ἐμ πόλι ϝ]οικίονσι το<ῖ>ς [τ’]
[ἐλ]ευθέροις καὶ το[ῖς δόλ-]
[οις. αἰ δ]ὲ μὲ λείοιεν ϝερ[γά-]
[δδε]θαι, δέκα στατε̄[ρ]α[νς]
[τ̄ο̄ πα]θέματος ϝεκάστ[ο]
15 [τ]ὸν κσένιο[ν ἐ]στει[σάμ-]

[118] Körner 1993, 437.
[119] Manzetti 2019, 435.
[120] Perlman 2000, 60-1.
[121] The legal nature of the text is unclear. Guarducci 1950, 182 and Willetts 1954, 216 refer to a decree.

[ενον] πόλι θέμεν. αἰ δ[ὲ μ-]
[ὲ] ‘ϙτείσαιεν [τ]ὰν [ἁπλόον ἄ-
[ταν(?), πράδ]δεθαι τᾶν διπ[λεί-]
[αν] αὐτοῦν ϝέκασϙο[ν c.6]
20 [c.2]μ[. . . τ]ὸνς τίτανς ἐϙ[τ-]
[εί]σανταν[ς] τ[ᾶι πόλι θέμεν.]

[…] of barley […] of figs one hundred [medimnoi, and] of must one hundred prokooi, and [c. 13] or another measure equal to a prokoos. And all the work is to be done for this exact wage by those who live in the city, both free men and slaves. And if they should not wish to work, the foreigners' official is to exact payment from them of ten staters for each offense[122] *and deposit it with the city. And if they should not pay the simple fine (?), each of them will be fined the double amount; [but if they do not pay?] the titai are to pay (the fine) and deposit it with the city.*[123]

In the first sentence, natural products are listed. The exact context of these natural products is not explained by the preserved text, but it seems likely that they were given as payment to craftsmen.[124] Subsequently, the text states that the craftsmen[125] should receive the same payment as craftsmen from the polis (l. 7-12: ϝεργάδδεθαι δὲ ἐπὶ τοῖ μιστοῖ αὐτοῖ πάντᾳ τοῖς ἐμ πόλι ϝοικίονσι τοῖς τ’ ἐλευθέροις καὶ τοῖς δόλοις). Therefore, the craftsmen who had a contract with the polis[126] and, thus, received natural products and money[127] for their services had to be foreigners.

[122] The words δέκα στατε̃ρανς το̃ παθέματος ϝεκάστο (l. 13-14) should be interpreted as meaning that 10 staters have to be paid for each day of refusal; see Metzger 1973, 127. Similar to Gagarin/Perlman, Youni 2010, 155 understands the words δέκα στατε̃ρανς το̃ παθέματος ϝεκάστο (l. 13-14) as neutral, meaning “*10 staters for each infringement*”. Youni’s interpretation aligns with that of Körner 1993, 438 and Seelentag 2015, 297: “*zehn Statere für jeden Schaden*”. Further information on the interpretation of the words δέκα στατε̃ρανς το̃ παθέματος ϝεκάστο can be found below.

[123] Text and translation: Gagarin, Perlman 2016, 439. For additional information regarding the edition of the text, see Guarducci 1950, 182; Metzger 1973, 127; Körner 1993, 438 (154); Effenterre, Ruzé 1994, 129 (30).

[124] Seelentag 2015, 297. Körner 1993, 439 argues that the text refers to craftsmen or artists.

[125] Willetts 1954, 216 assumes that the foreign craftsmen were freedmen. Critical: Körner 1993, 439.

[126] See Perlman 2002, 209. It should therefore be noted that the polis here – unlike in IC IV 41 3.7-17 – was not merely involved as a third party.

[127] Körner 1993, 439.

The κσένιος κόσμος[128] had to protect the interests of the polis.[129] If the craftsmen refused to perform their duties (l. 12-13: αἰ δὲ μὲ λείοιεν ϝεργάδδεθαι), and thus, breached the contract, the κσένιος κόσμος could demand 10 staters from every craftsman for every day[130] on which he refused to complete his work (l. 13-16: δέκα στατε̃ρανς το῀ παθέματος ϝεκάστο τὸν κσένιον ἐστεισάμενον πόλι θέμεν).

However, the obligation of a craftsman could also increase. If the craftsman did not pay the 10 staters (l. 16-18: αἰ δὲ μὲ ‘ϙτείσαιεν τὰν ἀπλόον ἄταν), he then had to pay the double amount (20 staters; l. 18-19: πράδδεθαι τὰν διπλείαν αὐτο῀ν ϝέκασ̣τ̣ον).[131] In the last passage, the text refers to the τίται. Due to the incompleteness of the text, it is unclear whether the κσένιος κόσμος or the τίται had to exact the double amount from craftsmen who refused to pay the 10 staters.[132] For the present question concerning a functional analogon of the procedural penalty of litiscrescence, it is irrelevant who exacted the penalty; the key point is that a doubling of the penalty occurred.

4.3.2 Functional analogon of the procedural penalty of litiscrescence?

According to IC IV 79 1-21, a craftsman who refused to perform his duties could either face a liability for the simple amount or a liability for the double amount.[133] Generally, the craftsman only had to pay the simple amount. However, if he did not make a payment to the κσένιος κόσμος, he was punished by having to pay the double amount (l. 16-19: αἰ δὲ μὲ ‘ϙτείσαιεν τὰν ἀπλόον ἄταν, πράδδεθαι τὰν διπλείαν αὐτο῀ν ϝέκασ̣τ̣ον). It is not known how much time a craftsman was given to pay the simple amount in order to avoid an increased penalty.

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[128] See Seelentag 2015, 297, who highlights the mention of the *κσένιος κόσμος* as evidence that the craftsmen were foreigners. Hölkeskamp 1999, 122 uses the notation ξένιος κόσμος; see further Perlman 2004, 1164; Thür 2005, 15.

[129] Perlman 2002, 209.

[130] This interpretation of Metzger 1973, 127 seems correct. Penalties were typically stipulated on a daily basis in construction contracts; see Thür 1984, 493-4.

[131] A similar provision where the refusal to pay a penalty led to an increased penalty can, for example, be found on the Stele of Punishments (l. 47-48); see Thür 2020, 36 n. 17 with further references; see section “1. Introduction”.

[132] Körner 1993, 441.

[133] Liability for the double amount is also mentioned in IC IV 78 1-8; however, unlike in IC IV 79 1-21, this double amount is attributable to a delictual conduct; see further Gagarin, Perlman 2016, 437-9

Furthermore, it is unclear whether craftsmen had the possibility to make an objection against the penalty of 10 staters. According to Körner, it seems that such an objection may have been possible. In such a case, a δικαστάς would have to decide whether the craftsman had a valid reason to refuse his work. For example, a valid reason could have been attending an annual festival, as these festivals were important for the foreign craftsman but unknown by the citizens of the polis.[134]

Körner's view is supported by the fact that the polis probably relied on foreign craftsmen. If these craftsmen could not object to a penalty, they would have been less willing to work. The considerations just described are, of course, based on plausibility arguments and therefore cannot be proven.

If Körner's assumption were true, the craftsman could indeed object to his penalty (10 staters), and the double amount (20 staters) could indicate another functional analogon of the procedural penalty of litiscrescence, as illustrated in the following example.

A foreign craftsman refused to work for 3 days, and thus, the κσένιος κόσμος gave him a fine for 30 staters. The craftsman did not make a payment to the κσένιος κόσμος. Subsequently, the κσένιος κόσμος sued the craftsman on behalf of the polis. Before the court, the craftsman could either confess to his obligation and pay 30 staters or deny his liability by objecting to the penalty. If the craftsman denied his liability, the δικαστάς would either have to sentence him to a payment of 60 staters or acquit him if the craftsman had a valid reason to refuse his work. Therefore, the condemnation for 60 staters could be explained by an increase of the value of the claim.

The fact that the phrase αἰ δὲ μὲ ‘ϛτείσαιεν τὰν ἀπλόον ἄταν, πράδδεθαι τᾲν διπλείαν αὐτõν ϝέκασ̣τ̣ον (l. 16-19) first refers to a simple amount and subsequently to a double amount could indicate that the double amount was the result of a functional analogon of the procedural penalty of litiscrescence. Evidence from the Stele of Punishments supports the existence of a functional analogon of the procedural penalty of litiscrescence, as in that case, a public official (construction official) initiated a proceeding.[135]

However, this interpretation of IC IV 79 1-21 is based on two assumptions. The first assumption is that a craftsman would have the possibility to object to a penalty, leading to a trial before a δικαστάς.[136] However, the proce-

[134] Körner 1993, 440-1.

[135] See section "1. Introduction".

[136] Since it is unclear whether any proceedings actually took place, no further speculation

dure described in IC IV 79 1-21 may not have been a judicial proceeding, but rather an administrative proceeding. The second assumption is that the craftsman could pay the simple amount and, thus, avoid a penalty of the double amount until the moment he declared his statement of defence to the court.

Against the existence of a procedural penalty speaks the fact that in IC IV 79 1-21 not a single word – unlike in IC IV 41 3.7-17 (l. 15-16: ἐκσαννήσεται)[137] – is used that would indicate a denial of the obligation before court. Moreover, the source IC IV 79 1-21 provides no evidence that the craftsman entered into a dispute with the polis, whereby he would implicitly deny the claim. Accordingly, the κσένιος κόσμος could set the amount of the penalty without any possibility of a formal trial, which the τίται were then obliged to execute.

Overall, it can be concluded that IC IV 79 1-21 does not provide clear evidence for a functional analogon of the procedural penalty of litiscrescence in the law of Gortyn. The source only mentions that the double amount could be exacted from the craftsman but does not explain the procedural acts that would lead to such an act of enforcement. This source would only provide evidence of a functional analogon of the procedural penalty of litiscrescence if the abovementioned two assumptions were true, which cannot be verified due to a lack of additional sources.

The sources discussed hitherto (IC IV 41 3.7-17, IC IV 47 16-33, and IC IV 79 1-21) distinguish between a liability for a simple amount and a liability for a double amount; however, this distinction is absent from the following locus, which is discussed in the next section.

4.4 IC IV 72 9.24-40

4.4.1 Introduction

The next source is part of the Great Code[138] and, thus, can be dated to the middle of the 5th century B.C.[139] This text regulates the liability of heirs for different types of obligations incurred by the decedent.

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will be made here as to whether such proceedings would be resolved through δικάδδεν or ὀμνύντα κρίνεν.

[137] See section "4.1.2.2 Grounds for a condemnation for the double value".

[138] The Great Code contains 12 columns, in which a variety of topics are discussed; see Gagarin 1982, 131.

[139] Davies 2005, 306; Scheibelreiter 2020, 84.

IC IV 72 9.24-40
αἰ ἀν[δ]εκσ-
25 άμ[ε]νος ἒ νενικαμένο[ς ἒ ἐν]κ-
οιοτὰνς ὀπέλοϝ ἒ διαβαλόμε-
νος ἒ διαϝειπάμενος ἀποθά-
νοι ἒ τούτοι ἄλλος, ἐπιμολ-
ὲνϝ ἰο͂ πρὸ το͂ ἐνιαυτο͂· ὸ δὲ δικα-
30 στὰς δικαδδέτο πορτὶ τὰ ἀποπ-
ονιόμενα. αἰ μέν κα νίκας ἐπι-
μολεῖ, ὸ δικαστὰς κὸ μνάμον,
αἴ κα δόει καὶ πολιατεύει, οἰ δὲ μ-
αίτυρες οἰ ἐπιβάλλοντες, ἀνδοκ-
35 ᾶδ <δ>ὲ κἐνκοιοτᾶν καὶ διαβολᾶς κ-
αὶ διρέσιος μαίτυρες οἰ ἐπιβ-
άλλοντες ἀποπονιόντον. ἐ͂ δέ κ' ἀ-
ποϝείποντι, δικαδδέτο ὸμόσ-
α<ν>τα αὐτὸν καὶ τὸνς μαίτυρ-
40 ανς νικε͂ν τὸ ἀπλόον. vac.

If someone should die who has undertaken an obligation, or has lost a suit, or owes (money) that he pledged (?), or has initiated litigation, or has agreed (to pay), or if another (has an obligation) to the deceased, litigation is to be brought concerning the matter within a year; and let the judge rule according to the testimonies. If someone brings suit concerning a case he won, (let) the judge and the rememberer, if he is alive and active in civic life, (testify), these being the appropriate witnesses; but in cases of security or money owed or litigation initiated or an agreement, let the appropriate witnesses testify.[140] *And when they have spoken,*[141] *let (the judge) rule that when he (the plaintiff) and the witnesses have sworn, he is to win the simple amount. vac.*[142]

The text focusses on situations in which the legal relationship between a creditor and a debtor is disrupted by the death of the debtor,[143]

[140] This is different from Willetts 1967, 47: "*the heirs as witnesses shall testify*". Metzger is critical of the translation of Willetts. According to Metzger 1973, 107, the word ἐπιβάλλοντες (l. 34) has a broader meaning. For more information on the interpretation of the word ἐπιβάλλοντες, see below.

[141] This is different from Maffi 1983, 157, who highlights that the word ἀποϝείποντι (l. 37-38) could indicate that the witnesses refused to testify. In my view, both interpretations of the word ἀποϝείποντι are possible.

[142] Text and translation: Gagarin, Perlman 2016, 403. For additional information regarding the edition of the text, see Guarducci 1950, 138; Willetts 1967, 47; Metzger 1973, 106; Körner 1993, 537 (175); Effenterre, Ruzé 1995 159 (45).

[143] The words ἀποθάνοι ἒ τούτοι ἄλλος (l. 27-28) could suggest that the following

whose obligation is characterised using the words ἀνδεκσάμενος (l. 24-25), νενικαμένος (l. 25), ἐνϙοιοτὰνς ὀπέλοϙ (l. 25-26), διαβαλόμενος (l. 26-27), and διαϝειπάμενος (l. 27).[144] According to the text, following the death of the debtor, the creditor had to sue the heirs within a year (l. 28-29: ἐπιμολὲνϙ ἰοͅ πρὸ τοͅ ἐνιαυτοͅ), meaning that the action of the creditor was subject to a one-year statute of limitations.[145]

Subsequently, the text refers to procedural provisions. The δικαστάς had to rule (l. 30, 38: δικαδδέτο)[146] the case based on the testimony or oath of witnesses and/or the plaintiff (the creditor). If the debtor had already been sentenced by a δικαστάς (l. 31-32: αἰ μέν κα νίκας ἐπιμολεῖ), the δικαστάς and the μνάμον[147] from the previous trial had to testify (l. 32-34: ὸ δικαστὰς κὸ μνάμον, αἴ κα δόει καὶ πολιατεύει,[148] οἰ δὲ μαίτυρες οἰ ἐπιβάλλοντες).

In the other cases, such as ἀνδεκσάμενος (l. 24-25), ἐνϙοιοτὰνς ὀπέλοϙ (l. 25-26), διαβαλόμενος (l. 26-27), and διαϝειπάμενος (l. 27), the appropriate witnesses had to be questioned (l. 34-37: ἀνδοκᾶδ δὲ κἐνκοιοτᾶν καὶ διαβολᾶς καὶ διαρρέσιος μαίτυρες οἰ ἐπιβάλλοντες ἀποπονιόντον). Appropriate witnesses were primarily those who were present at the time when the obligation of the debtor was established.[149] According to Zitelmann and Willetts, the δικαστάς could also allow the heirs to act as witnesses.[150] How-

provisions were also applicable if the creditor died; see Metzger 1973, 107.

[144] For the translation and explanation of these five terms, see section "4.4.2 Grounds for obligations". A similar plurality of facts appears for example in IC IV 72 10.20-25; see further Benke 2021/2022, 10-44.

[145] Metzger 1973, 107.

[146] If a case was ruled by the method of δικάδδεν, the δικαστάς had to apply a certain procedure, which led to the verdict; see Gagarin 2010, 129. For more information about the term δικάδδεν, see section "3.2 Dispute resolution".

[147] Hölkeskamp (1999) 123 uses the notation μνάμων.

[148] The words αἴ κα δόει καὶ πολιατεύει (l. 33) refer to the μνάμον and the δικαστάς; see Körner 1993, 539.

[149] Metzger 1973, 107.

[150] Zitelmann in Bücheler, Zitelmann 1885, 171; Willetts 1967, 47, 74. Critical: Metzger 1973, 107; Körner 1993, 539 n. 6.

Generally, the law of Gortyn did not allow both parties to swear an oath. An exception can only be found in IC IV 81 1-24, where both parties had to sewar an oath, and thus, the party that could find more oath-helpers won the case; see Thür 2009, 493.

IC IV 81 1-24: text and translation: Gagarin, Perlman 2016, 446: δενδρέον καὶ ϝοικίας ὅ[κ' ὀμό-] | [σον]τι τοῖν ὀμόρον ἐννέα οἰ | ἐπάνκιστα πεπαμένοι, μ[ο-] | [λεῖν, κ]αλεῖν δ' ἀντὶ μαιτύρο- | ν δυοῖν πρότριτον τὸν ἀπ[c.3] | [c.2]σαντα μετρεσιόμενο- | ν· αἰ δέ κα μὲ εἴει καλίον[τι ἆι] | [ἔγρ]αται, αὐτὸς μετρέθο τε | καὶ προπονέτο προτέταρ[τον] | [ἀν]τὶ

ever, since the heirs had a personal interest in the outcome of the trial and were likely not involved in establishing the obligation, they appear unsuitable as witnesses.[151]

The word δικάδδεν (l. 30, 38: δικαδδέτο) indicates that the case was ruled based on the testimony of the witnesses or on an oath of a party.[152] In the text, the testimony of witnesses (l. 29-31: ὸ δὲ δικαστὰς δικαδδέτο πορτὶ τὰ ἀποπονιόμενα) and the oath of the plaintiff and others[153] (l. 38-40: δικαδδέτο ὀμόσαντα αὐτὸν καὶ τὸνς μαίτυρανς νικεῖν τὸ ἀπλόον) are both mentioned. Since the text first mentions the testimony of witnesses, it is likely that, generally, the case was ruled based on the testimony of witnesses.[154]

However, the circumstances under which the lawsuit between the creditor and the heirs could be decided by an oath of the plaintiff are questionable. An oath of the plaintiff could have been mandatory if the witnesses refused testimony[155] or could not provide (convincing) testimony.[156]

μαιτύρον δυοῖν παρέμε- | ν ἐνσς ἀγοράν. ὀμνύμε[ν δ-] | [ὲ ἐ]μὰν τούτο μέν ἐστι ἀβλο- | πίαι δικαίος πρὶν μολέθ[θαι] | [τὰν] δίκαν, σ̓ δ᾽ ἐνεκύρακσαν | μὲ ἔμεν· νικεῖν δ᾽ ὅτερά κ᾽ οἰ π̣[λί-] | [ες ὸ]μόσοντι. vac. κ᾽ αἴ κ᾽ ἐς στέγα- | ς ἐνεκυράκσοντι, πονίον[τι μ-] | [ὲ ᾽νϜ]οικεῖν σ̓ ἐνεκύρακσαν συν- | εκσομόσαθθαι τοῖν ὀμό[ρον] | [τὸ]ν ἐννέα τρίινς, οἷς κα προ- | ϝείπει, μὲ ἐνϜοικεῖν σ̓ ἐνεκύ̣[ρα-] | [κσ]α[ν. α]ἰ δέ τίς κα τοῖν ὀμόρ- | ον vac. – *of trees and a house, when nine of the neighbors who possess the nearest land swear, (he) is to bring the case (?) and summon before two witnesses three days in advance the one who [c. 12], so that he can measure (the property). And if he does not come after he summons him as written, let him measure it himself and declare to him four days in advance before two witnesses that he should be present in the agora. And he is to swear that indeed this (the property) is (as claimed) without fault and lawfully before the case is tried, and the person from whom they received security (is to swear) that it is not. And whichever the majority swear, (that side) is to win. vac. And if they take something as security from a house, if the person from whom they received security asserts that he does not live in (the house), three of nine neighbors whom he notified earlier are to swear with him that the one from whom they received security does not live in (the house). But if one of the neighbors vac.*

For additional information regarding the edition of the text, see Guarducci 1950, 187; Metzger 1973, 127; Körner 1993, 442 (155); Effenterre, Ruzé 1995, 171 (47); Arnaoutoglou 1998, 74; Gagarin 2008, 260-1; see further Papakonstantinou 2008, 114-6. For general information on the oath of witnesses in Gortyn, see Latte 1920, 28-32.

[151] See Körner 1993, 539 n. 6.

[152] Zitelmann in Bücheler, Zitelmann 1885, 71; Thür 2005, 16.

[153] Gagarin 2010, 133-4, 140 mentions witnesses, while Zitelmann in Bücheler, Zitelmann 1885, 171 refers to oath-helpers.

[154] See Zitelmann in Bücheler, Zitelmann 1885, 171; Maffi 1983, 157.

[155] Maffi 1983, 157-8.

[156] Zitelmann in Bücheler, Zitelmann 1885, 171.

In such a case, the plaintiff would win the lawsuit and receive the simple amount if he swore an oath (l. 38-40: δικαδδέτο ὀμόσαντα αὐτὸν καὶ τὸνς μαίτυρανς νικεῖν τὸ ἀπλόον) or lose the lawsuit if he refused to swear an oath. Before the question of whether this reference to a simple amount indicates a functional analogon of the procedural penalty of litiscrescence can be analysed, it is necessary to briefly examine the grounds for obligations, which are listed in IC IV 72 9.24-40.

4.4.2 Grounds for obligations

In IC IV 72 9.24-40, several grounds for the obligation of the debtor are described with the terms ἀνδεκσάμενος (l. 24-25), νενικαμένος (l. 25), ἐνϙοιοτὰνς ὀπέλοϙ (l. 25-26), διαβαλόμενος (l. 26-27), and διαϝειπάμενος (l. 27). These terms have been analysed by legal scholars.

According to the main doctrine, the word ἀνδεκσάμενος (l. 24-25) refers to a surety, meaning that the debtor acted as a guarantor.[157] Metzer specifies this to a guarantee with sole liability of the guarantor ("*Gestellungsbürgschaft*").[158] Another interpretation of the word ἀνδεκσάμενος (l. 24-25) was presented by Maffi. Maffi suggested that this word could indicate that the debtor made a confession and, thus, was liable due to this confession.[159]

In the literature, there is a consensus regarding the interpretation of the word νενικαμένος (l. 25),[160] which is thought to refer to an obligation of the debtor resulting from a verdict.[161] According to Zitelmann, the debtor had to be condemned to pay a certain amount of money.[162]

Due to a lack of sources, the remaining grounds for obligations, including ἐνϙοιοτὰνς ὀπέλοϙ (l. 25-26), διαβαλόμενος (l. 26-27),[163] and διαϝειπάμενος

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[157] See Baunack, Baunack 1885, 114; Merriam 1886, 31; Partsch 1909, 35, 117; Kohler, Ziebarth 1912, 21; Guarducci 1950, 166; Willetts 1967, 47, 74; Körner 1993, 538; Vélissaropoulos-Karakostas 1994, 187; Gagarin 2008, 118; Scheibelreiter 2020, 85.
[158] Metzger 1973, 109.
[159] Maffi 1983, 128.
[160] This word is also mentioned in IC IV 72.11.32; see further Benke 2021/2022, 38.
[161] See, for example, Guarducci 1950, 166; Maffi 1983, 129; Effenterre, Ruzé 1995, 160; Scheibelreiter 2020, 85.
[162] Zitelmann in Bücheler, Zitelmann 1885, 169; see further Gagarin, Perlman 2016, 424: "*[…] losing a suit usually means owing money*".
[163] In the Great Code, this expression first appears in IC IV 72 9.26-27 as διαβαλόμενος, where it means "*the [person] who has fallen into a dubious or deceitful situation*" and secondly, the word appears in the plural accusative in IC IV 72 9.35 as διαβολᾶς; see

(l. 27), are subject to significant uncertainty.[164] It has been argued that the term ἐνϙοιοτὰνς ὀπέλοϙ (l. 25-26) might refer to a possessory pledge[165] or a loan for use,[166] meaning that the debtor was obliged to return the object back to the creditor.[167] The word διαβαλόμενος (l. 26-27)[168] could indicate wrongful conduct,[169] such as fraud[170] or concealment,[171] whereas the word διαϝειπάμενος (l. 27) may refer to a distinct contractual stipulation.[172]

4.4.3 Functional analogon of the procedural penalty of litiscrescence?

The source IC IV 72 9.24-40 does not mention a liability for the double amount. However, it is notable that the text explicitly states that the heirs would have to pay the simple amount to the creditor if the creditor and the witnesses swore an oath and, thus, won the lawsuit against the heirs (l. 38-40: δικαδδέτο ὀμόσαντα αὐτὸν καὶ τὸνς μαίτυρανς νικεῖν τὸ ἀπλόον).

In the literature, it has been highlighted that the reference to the simple amount should be understood as distinguishing the simple amount from the double amount[173] or from a multiple amount.[174] The reason why the heirs only had to be condemned for the simple value could – as several legal scholars point out – have been that the heirs could not unjustifiably deny the claim of the creditor because they would have had no knowledge whether the creditor actually had a claim against the debtor (the decedent). Therefore, the heirs would be excused and, thus, would not have to face a functional analogon of the procedural penalty of litiscrescence.[175]

However, the absence of any wording in IC IV 72 9.24-40 – unlike in

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Benke 2021/2022, 20.
[164] Metzger 1973, 111-2.
[165] Guarducci 1950, 166.
[166] Prellwitz 1928, 143-4.
[167] See Scheibelreiter 2020, 85-6.
[168] The word διαβολή means "*deception*" or "*a murky/dubious situation*"; see Benke 2021/2022, 20.
[169] Metzger 1973, 112; Körner 1993, 538.
[170] Willetts 1967, 47, 74.
[171] Baunack, Baunack 1885, 114, 136.
[172] Guarducci 1950, 166; Scheibelreiter 2020, 86 n. 326.
[173] Zitelmann in Bücheler, Zitelmann 1885, 172; Dareste 1886, 268; Körner 1993, 539.
[174] Wenger 1901, 68 n. 9; Metzger 1973, 112.
[175] Zitelmann in Bücheler, Zitelmann 1885, 172; Dareste 1886, 268; Wenger 1901, 68 n. 9; Metzger 1973, 108.

IC IV 41 3.7-17 (l. 15-16: ἐκσαννήσεται)[176] – that would signal a denial of the obligation before the court speaks against the existence of a procedural penalty. Another possible reason for a liability for the simple amount could have been that Gortynian legislators considered it unjust for a creditor to exact a penalty in addition to his claim if he was unable to prove his claim with witnesses.[177]

Furthermore, it is conceivable that the law of Gortyn recognised a special type of limited liability for heirs.[178] Therefore, the liability for the simple amount could also be explained by a *pro viribus* or a *cum viribus* liability.

Overall, it seems possible that the debtor, if he were still alive, would have faced a functional analogon of the procedural penalty of litiscrescence had he himself denied the creditor's claim. However, it cannot be determined under which of the five grounds for obligations[179] such a penalty could apply.

5. Conclusion

The law of Gortyn does not only contain substantive law but also procedural law. Some of these procedural provisions include procedural penalties. As has been shown, there are several provisions that could entail a functional analogon of the procedural penalty of litiscrescence.

It seems likely to me that IC IV 41 3.7-17, where the verb ἐξαρνεῖσθαι (l. 15-16: ἐκσαννήσεται) is found, refers to such a penalty.[180] IC IV 47 16-33,[181] IC IV 79 1-21,[182] and IC IV 72 9.24-40[183] might also relate to this penalty, although there is greater uncertainty in these cases.

The possibility of an increase of the value of the claim induced the defendant to evaluate his chances of winning the lawsuit. He had to decide for himself whether he was willing to risk a condemnation for the double

[176] See section "4.1.2.2 Grounds for a condemnation for the double value".
[177] See Maffi 1983, 161-4.
[178] See the remarks of Benke 2021/2022, 38 regarding IC IV 72 11.31-42.
[179] Zitelmann in Bücheler, Zitelmann 1885, 172 even thinks that it might be possible that, in all cases, an increase of the value of the claim could occur ("*[…] dass sonst in Gortyn das römische lis infitiando crescit in duplum galt […]*"); Wenger 1901, 68 n. 9 contemplates an increase of the value of the claim in the case of a judgement debt.
[180] See section "4.1.2.2 Grounds for a condemnation for the double value".
[181] See section "4.2.3.2 Grounds for a condemnation for the double value".
[182] See section "4.3.2 Functional analogon of the procedural penalty of litiscrescence?".
[183] See section "4.4.3 Functional analogon of the procedural penalty of litiscrescence?".

value. If his chances were low, it was in his best interests to either pay or confess to his debt before the δικαστάς[184] and, thus, avoid a condemnation for the double value. As a result, the creditor received the payment without any delay.

Without a confession – if the dispute had to be resolved through δικάδδεν – an additional court session at the sacred place to swear the oath would have been required. If, however, the dispute had to be resolved through ὀμνύντα κρίνεν, the δικαστάς would have had to conduct further investigations.[185]

In Gortyn, a functional analogon of the procedural penalty of litiscrescence was the exception rather than the norm. Whenever the transferor entrusted the transferee with a herd of animals (IC IV 41 3.7-17) or a serf (IC IV 47 16-33), there could have been a strong need to protect the transferor and ensure that he could recover his property without delay. This interest may have been safeguarded by a functional analogon of the procedural penalty of litiscrescence.

However, it should be noted that in Gortyn, denying a claim before the jurisdictional authority[186] and entering into legal proceedings did not delay the plaintiff's pursuit of his claim as much as it would have under Roman law. This was because in Gortyn, many cases were decided by the method of δικάδδεν,[187] which made lengthy evidentiary procedures unnecessary.

[184] A confession before the δικαστάς constituted an independent ground of obligation with the same legal quality as a verdict, see Maffi 1983, 156; see section "3.3 Denial before court". It would be logical for the debtor to make such a confession if he had no money but wanted to avoid liability for the double amount.

[185] It can be assumed that the δικαστάς would not lightly have risked giving a false oath, which is why he would only have decided the case by the method of ὀμνύντα κρίνεν if he was certain; see further Thür 2010, 148. Therefore, it seems likely that further investigations were usually necessary. See section "3.2 Dispute resolution".

[186] See section "3.3 Denial before court".

[187] See sections "3.2 Dispute resolution" and "4.1.2.1 Condemnation for the double value".

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