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ODGOVORNOST U ANTICI U SLUŽBI OSIGURANJA – PRIMER VINA S OSVRTOM NA RIZIK

PREGLEDNI NAUČNI RAD

Apstrakt

Pitanje o počecima osiguranja vina kao tržišnog dobra nametnulo se kao rezultat pokušaja razumevanja nastanka osiguravajuće polise i sklapanja ugovora o osiguranju u vinskom sektoru. Ovaj rad istražuje genezu i evoluciju mehanizama upravljanja rizikom u trgovini vinom tokom antičkog perioda. Kroz analizu primarnih izvora, rad prikazuje kako je vino zbog svoje visoke vrednosti i slojevitosti podstaklo razvoj mnoštva pravnih instituta. Istorijskim i komparativnim metodom prati se kontinuitet u razvoju zaštitnih mehanizama od Hamurabijevih odredbi o nadoknadi štete u trgovinskim karavanima, preko grčkog pomorskog zajma, do rimskog *fenus nauticum* kao prvog eksplicitnog oblika transfera rizika, te *Lex Rhodia de iactu* kao temelja solidarne odgovornosti u slučaju havarije. Autorke, međutim, kritički naglašavaju da se analizirani antički instituti ne mogu poistovetiti sa savremenim ugovorom o osiguranju – njihova pravna priroda je drugačija (ugovorna raspodela rizika, solidarna odgovornost, zajam). Oni predstavljaju funkcionalne preteče osiguranja, tačnije pravne mehanizme koji su, svaki na svoj način, odgovarali na istu potrebu – zaštitu od rizika u trgovini vinom. Konačno, rad pokazuje da su se ti mehanizmi razvijali kao odgovor na konkretne tržišne potrebe u lancu snabdevanja vinom, čineći interdisciplinarnu sintezu koja sistematski povezuje fragmentirane

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Rad primljen: 6.2.2026.

Rad prihvaćen: 4.4.2026.

dokaze u celovitu teorijsku matricu i ukazuje na antičko poreklo savremenih principa upravljanja rizikom.

Ključne reči: vino, *Fenus nauticum*, rimsko pravo, alokacija rizika, kontraktna odgovornost, delikt.

I Uvod

Vino kao poljoprivredno-prehrambeni proizvod, dobijen potpunom ili delimičnom alkoholnom fermentacijom svežeg grožđa, kljuka ili šire od grožđa vinskih sorti vinove loze,³ oduvek je predstavljalo više od pića – bio je to multidisciplinarni fenomen koji seže u najdublje slojeve ljudske civilizacije. Njegov trag pronalazimo kako u poljoprivredi i trgovini tako i u pravu, umetnosti, književnosti i religijskim tekstovima, što svedoči o njegovoj temeljnoj društvenoj i ekonomskoj vrednosti kroz istoriju. Upravo tu širinu perspektive prihvata i nauka o osiguranju, koja ističe kako istorija osiguranja omogućava razumevanje specifičnih povezanosti i evolucije pravnih i ekonomskih instituta tokom dužih vremenskih raspona.⁴

Polazeći od teze da osiguranje, kao funkcionalni mehanizam upravljanja rizikom, nije moderna tvorevina, već je plod dugotrajne evolucije antičkih pravnih rešenja, ovaj rad istražuje upravo tu genezu. Ključni dokaz za takvo stanovište pruža analiza složenih trgovačkih praksi vezanih za jedno od najvrednijih dobara antike – vino, čija su proizvodnja i distribucija podsticale nastanak najranijih oblika pravne zaštite.

Arheološki nalazi potvrđuju postojanje organizovane trgovine vinom još u 5. milenijumu p. n. e.,⁵ dok otkriće velikih skladišnih posuda na lokalitetu Godin Tepe ukazuje na razvijenu transportnu mrežu koja je neminovno zahtevala mehanizme zaštite. Tu materijalnu građu nadopunjuju i prvi pisani pravni spomenici – od zakonika Ur-Namu i Hamurabija do kasnijih grčkih i rimskih izvora, u kojima se vino ne samo pominje već i detaljno reguliše, ukazujući na postepeno formiranje pravnih instituta koji će evoluirati u osiguranje. To dodatno potkrepljuje i ključna uloga Feničana kao pionira pomorske trgovine,⁶ koji su, osim transporta robe, razvijali rane oblike pomorskog prava i trgovačkih običaja, uključujući procedure nadoknade štete.⁷

Cilj ovog rada jeste da se kroz sistematsku analizu antičkih pravnih mehanizama upravljanja rizikom u trgovini vinom i njihovu komparaciju sa Rorbahovim

³ Zakon o vinu, *SL glasnik RS*, br. 41/2009, 93/2012, čl. 5, st. 1, t. 4.

⁴ Wolfgang R. Rorbah, Značaj istorije osiguranja, *Tokovi osiguranja*, br. 3/2018, 7.

⁵ Hugh Johnson, *The world of wine*, London, 2005, 14.

⁶ Maria Eugenia Aubet, *The Phoenicians and the west, politics, colonies and trade*, Cambridge University press, 1993, 146.

⁷ Massimo Botto, „The Phoenicians and the spread of wine in the Central west Mediterranean“, *Patrimonio cultural de la vid y el vino*, 2013, 103–131.

stavovima, ukaže na kontinuitet između antičkih praksi i savremenih principa osiguranja. Primenom istorijskog i komparativnog metoda, rad nastoji da rekonstruiše razvoj zaštitnih mehanizama – od najranijih mesopotamskih odredaba o raspodeli rizika, preko grčkog pomorskog zajma, do rimskog *fenus nauticum* i *Lex Rhodia de iactu* kao funkcionalnih preteča savremenog osiguranja, pri čemu se nijedan od navedenih instituta ne poistovećuje sa ugovorom o osiguranju u njegovom savremenom značenju.

II Mehanizmi zaštite od rizika u trgovini vinom starog veka

1. Stari Egipat

Da su grožđe, vinogradarstvo i vino postojali u starom Egiptu, svedoči i otkriveni grob Tutankamona u kojem je pronađeno oko 36 obeleženih i neobeleženih amfora s vinom.⁸ Te amfore nisu bile samo posude za skladištenje već i prvi tragovi trgovine vinom. Iako je sačuvani egipatski pravni sistem bio primarno naklonjen velikim faraonima, vlasnicima zemlje, vinograda na obali reke Nila i vinskim podrumima,⁹ u njemu su ipak postojali i obligacioni odnosi. Taj sistem, međutim, nije poznavao institut osiguranja u savremenom smislu. Prisustvo pet svedoka pri sklapanju ugovora i stroge kazne za neispunjenje obaveza mogu se, ipak, posmatrati kao prvi koraci ka pravnoj zaštiti trgovačkih interesa, odnosno svojevrсни prvi oblici pravne zaštite. To, zajedno sa arheološkim nalazima brodova s teretom vinskih amfora u mediteranskim vodama i lukama, opravdava pretpostavku postojanja trgovine vinom koja je, iako se svodila na razmenu dobara, na neki način bila obezbeđena makar datom rečju i zahtevala određeni oblik zaštite od rizika transporta.¹⁰

2. Mesopotamija i Vavilonsko carstvo

Trgovina vinom u Mesopotamiji¹¹ predstavljala je kompleksnu ekonomsku aktivnost koja je zahtevala odgovarajuće načine upravljanja rizicima. Fermentisani sok od grožđa, dostupan samo privilegovanim, podstakao je trgovinu konkretnim mehanizmima – uvezio se iscrpljujućim karavanskim i rečnim putevima, čime je

⁸ H. Johnson, 21.

⁹ Roderick Phillips, *A short history of wine*, Ecco, New York, 2002, 18.

¹⁰ *Ibid.*, 13–28.

¹¹ Vino je u praskozorje ranih civilizacija predstavljalo luksuzno piće, sakralnog karaktera, namenjeno isključivo elitama i vladajućim dinastijama. Postepenom domestikacijom vinove loze u plodnim južnim predelima Mesopotamije, vino je doživelo svojevrсну demokratizaciju, postajući dostupno širim društvenim slojevima i pretvarajući se u jedan od glavnih trgovačkih proizvoda čija je ekonomska težina bila uporediva sa žitom i uljem.

Vavilon, kao prva državica, stekao epitet prve „uvozno zavisne“ kulture drevne civilizacije.¹²

Za razliku od Egipta, Mesopotamija nam nudi prve pisane zakonske regulative u istoriji čovečanstva. Ti pravni spomenici, očuvani delimično ili u celosti kroz hiljade godina, predstavljaju neprocenljiv izvor¹³ za razumevanje početnih oblika pravne zaštite trgovine vinom, koji će kasnije evoluirati u institute osiguranja.

U fragmentima Zakonika vladara Ur-Namu (oko 2100. godine p. n. e), prvog važećeg pravnog akta grada Ura u južnoj Mesopotamiji, nije moguće pronaći direktan zakonski normativ o osiguranju vina.¹⁴ Taj izostanak, međutim, ne treba tumačiti kao nepostojanje bilo kakvog oblika zaštite, već kao ranu fazu pravne svesti u kojoj su se mnogi odnosi regulisali običajnim pravom. Iz uvodnog dela zakonika saznajemo da su postojale organizovana pomorska trgovina i služba „nadzornik pomoraca“, što povlači javnopravnu uređenost trgovinskih tokova¹⁵ unutar koje se primarno rešavalo pitanje snošenja rizika, a ne osiguranja u savremenom smislu.

Institucionalno imenovanje službenih lica nadležnih za nadzor kopnenog i rečnog saobraćaja ukazuje na postojanje regulatornog okvira koji je omogućio artikulaciju ranih mehanizama zaštite trgovačkih interesa u prometu vina.¹⁶ Za taj period ne možemo govoriti o autonomnom ugovoru o osiguranju, ali prepoznaje se funkcionalna alokacija rizika integrisana u kreditne aranžmane ili pravila o deliktnoj odgovornosti za gubitak robe. Čak i u sferi običajnog prava i usmenih ugovora, detektuje se svest o potrebi prenošenja rizika, što je raniji oblik onoga što bi savremena teorija danas nazvala osnovnim rizikom, i taj isti fenomen će kasnije definisati na sledeći način: „Rizik osiguranja je osnovni rizik i predstavlja rizik koji se preuzima u osiguranje.“¹⁷ Ključna distinkcija, međutim, leži u tome što antički mehanizmi nisu počivali na premiji već su bili ugrađeni u same ugovore o zajmu ili transportu, rešavajući pitanje snošenja štete u slučaju neskrivljene nemogućnosti izvršenja obaveze.

Zakonik vladara Lipit-Ištara (zakonik iz južnog dela Mesopotamije, iz grada Isine, stvoren oko 1930. g. p. n. e.) nije sačuvan u celosti, što ograničava potpunu rekonstrukciju tadašnjeg pravnog sistema. Taj pravni spomenik otkriva mehanizme pravne zaštite koji će biti od značaja za kasniju pravnu misao. Sačuvani fragmenti jasno navode najam brodića i obavezu najmprimca da, u slučaju brodoloma, usled

¹² *Ibid.* 1-2.

¹³ Sima Avramović, *Opšta pravna istorija, Stari i Srednji vek*, Pravni fakultet, Beograd, 2000, 117.

¹⁴ Marko Višić, *Zakonici drevne Mesopotamije*, Beograd, 1985, 111–114.

¹⁵ *Ibid.* 111.

¹⁶ Samuel Noah Kramer, *The Sumerians, their history, culture and character*, The University of Chicago press, Chicago, 1963, 104–105.

¹⁷ Žana Janković, Jovana Balaban, Mladenka Balaban, „Strategija upravljanja rizicima poslovanja u osiguravajućim kompanijama“, *Svarog*, br. 25/2020, 62.

nepoštovanja dogovorene rute, naknadi štetu u žitu i vrednost brodića.¹⁸ Iako zakon striktno ne navodi, iz konstrukcije slučaja i činjenice da je brodar za prevoženje vina dobijao izvesnu količinu šekela (merna jedinica srebra iz tog doba), može se govoriti o postojanju ekonomske protivvrednosti za preuzeti rizik. Istorijski, odredba predstavlja napredak u pravnoj tehnici – uočava se princip objektivne odgovornosti i direktne materijalne nadoknade, što je korak ka zaštiti trgovačkih rizika. Činjenica da je brodar za prevoz robe dobijao određenu količinu šekela, zajedno s postojanjem jasne pravne obaveze naknade štete, stvara pravni okvir koji se može posmatrati kao prethodnik osiguranja – jasno definisan rizik, obaveza nadoknade i novčana naknada.

Bilalamov zakon¹⁹ (Zakonik grada Ešnune), kompilacija ranijih propisa i sudskih odluka koja svedoči o sve složenijim društveno-ekonomskim odnosima, eksplicitno pominje vino u kontekstu založnog prava.²⁰ U regulativi zakupa broda nazire se isti obrazac: brodar se dogovori s trgovcem vina da preveze robu. Ako usled nemara potopi brod, odgovoran je za naknadu štete. Odavde se ponovo uočava temeljni princip deliktne odgovornosti i direktne materijalne nadoknade. Član 5 glasi: „Ako brodar bude nemaran pa brod potopi, brodar će platiti što je s brodom potopljeno.“ Ta odredba reguliše brodarku odgovornost za nastalu štetu. U kontekstu vina, njen značaj je osobito vidljiv: plaćanje nadoknade predstavlja pravnu posledicu štete nastalu usled kontraktne odgovornosti za štetu. Kao i kod Lipit-Ištarovog zakona, i ovde se detektuju rizik (s namerom izazvan brodolom), ekonomska protivvrednost (plaćanje za prevoz) i obaveza naknade štete. Savremena teorija osiguranja, međutim, zahteva znatno više elemenata. Rorbah navodi sedam konstitutivnih karakteristika svakog osiguranja: uzajamno pokrivanje, jasne odredbe o pravu na pokrivanje rizika, uzvratna obaveza za pokrivanje rizika, neizvesnost osiguranog slučaja, procenjivost osiguranog slučaja, izjednačen rizik svih u kolektivu i nastupanje osiguranog slučaja samo kod malobrojnih u poređenju s brojem svih nosilaca rizika u zajednici.²¹ Upravo stoga te drevne odredbe valja razlikovati od ugovora o osiguranju. Ovde se radi o deliktnoj i ugovornoj odgovornosti, a ne o prenošenju rizika na nezavisnog trećeg putem premije.

Iz analize pomenutog člana može se primetiti nesumnjiv društveni napredak kada je reč o shvatanju potrebe za zaštitom od rizika prilikom prevoza robe vodenim putevima. Polazeći od Rorbahovog okvira, u analiziranim drevnim zakonima moguće

¹⁸ I ponovo je najam u pitanju i ponovo postoji nadoknada štete u pogledu spekulativne priče da se u iznajmljenom brodiću prevozilo vino u svrhu trgovine. C xiii 9-11 i C xiii 12-23. Lipit-Ištarov zakonik. Martha T. Roth, *Law collections from Mesopotamia and Asia Minor*, Scholars Press Atlanta, Georgia, 1995, 27.

¹⁹ Naročito značajan zakonik, Bilalamov zakonik, ime je dobio prema vladaru koji ga doneo oko 1720. g. p. n. e.

²⁰ Marko Višić, *Zakonici drevne Mesopotamije*, Beograd, 1985, 116.

U članu 15 pripominje se i susamovo ulje, srebro i žito.

²¹ V. Rorbah, 12–13.

je uočiti pet elemenata koji podsećaju na karakteristike savremenog osiguranja: 1) uzajamno pokrivanje rizika (kolektivno priznata obaveza nadoknade štete); 2) jasne odredbe o pravu na naknadu; 3) uzvratnu obavezu (plaćanje usluge prevoza); 4) neizvesnost pomorskog transporta kao inherentni rizik; i 5) unapred određenu visinu nadoknade. Međutim, ti elementi ne čine osiguranje u klasičnom smislu. Rorbah naglašava da je za to potrebno svih sedam karakteristika.²² Shodno tome, ovde nije reč o osiguranju kao posebnom ugovornom institutu već o funkcionalno sličnim mehanizmima zaštite od rizika, koje valja razlikovati od savremenog osiguranja.

Prethodna razmatranja ukazuju na postojanje mehanizama zaštite trgovine vinom, čiji vrhunac u starom veku predstavlja Hamurabijev zakonik – pravni spomenik i „pravna enciklopedija“ svog doba.²³ U tom istorijskom periodu vino se čuvalo i transportovalo u specijalizovanim glinenim posudama (amforama), kako u Vavilonskom carstvu tako i u drugim državama tog doba. U okviru Hamurabijevog zakonika, regulisanje odnosa trgovac–pomoćnik otkriva rani pravni koncept alokacije rizika: dok je pomoćnik snosio teret rizika slučajne štete, on se oslobađao obaveze vraćanja duga (glavnice) ukoliko bi dokazao gubitak usled *vis maior* (usled nepovratnog gubitka), čime je rizik kapitala faktički prelazio na trgovca poverioca.²⁴

Ako tu pravnu shemu primenimo na „vinsku priču“, onda: novac je dat pomoćniku sa specifičnom namerom – kupovina, recimo, 10 amfora vina; Vino je kupljeno, ali se potom, usled nesrećnog slučaja (amfore se razbiju), dogodi šteta; lako je fizički gubitak pretrpeo pomoćnik, trgovac mu vraća glavnicu, čime se štiti njegov opstanak u trgovačkom lancu. Ipak, taj institut ne treba poistovećivati sa savremenim osiguranjem – ovde je reč o ugovornoj alokaciji rizika unutar internog odnosa trgovca i pomoćnika, bez učešća trećeg lica i plaćanja premije kao osnova za prenos rizika. Oдавde, vino je posmatrano kroz Rorbahov okvir. U odnosu između trgovca i pomoćnika moguće je uočiti četiri elementa koja podsećaju na karakteristike savremenog osiguranja: 1) uzajamno pokrivanje – zajednički interes obe strane u uspešnoj trgovini; 2) uzvratna obaveza – pomoćnik obavlja rad i preuzima rizik putovanja; 3) neizvesnost – razbijanje amfora je tipičan nesrećni slučaj; 4) procenljivost – vrednost 10 amfora vina lako je utvrdiva. Međutim, to nije savremeno osiguranje. Reč je o ugovornom odnosu u kojem se rizik raspoređuje između dve strane, bez učešća nezavisnog osiguravača i bez premije u pravnom smislu. Isti obrazac je primenljiv i kod transporta vina kopnenim putem – karavan (trgovac vraća glavnicu u slučaju da pomoćnik bude pokraden).

²² *Ibid.*

²³ Marc Van De Mieroop, *King Hammurabi of Babylon, a biography*, Blackwell Publishing, 2007, 100–111.

²⁴ Član 102 i 103, Hamurabijev zakonik. Ljubica Kandić, *Odabrani izvori iz opšte istorije države i prava*, Savremena administracija, Beograd, 1988, 42; tim mehanizmom se, zapravo, vrši prva institucionalna podela rizika između kapitala i rada, a predstavlja rani oblik transfera rizika.

Još jedan slučaj regulisanja rizika u Hamurabijevo doba ogleda se u transportu vina brodom. Vino je, zbog svoje prirode i čuvanja u amforama, bilo smatrano robom podobnom za tovar. Zakonik navodi da brodar, ako usled nepažnje potopi brod, snosi obavezu da nadoknadi svu robu koja je potopljena zajedno s brodom, uključujući i vino.²⁵ Time je ustanovljen princip objektivne odgovornosti, koji je u kontekstu trgovine vinom štitio interes trgovca, omogućavajući mu nadoknadu štete za slučaj gubitka vina tokom transporta.

U tom dobu nisu postojali precizni pravni termini kakve danas poznajemo. Ipak, ugovorni odnosi i oblici zaštite od rizika bili su funkcionalno efikasni, mada im je nedostajala konceptualna jasnoća. Ni ugovor o karavanu, ni brodske odredbe Zakonika ne predstavljaju osiguranje – reč je o osnovi za buduću regulativu prevoza, koja će se kasnije razviti u pomorski zajam (*fenus nauticum*), koji se pak u literaturi često navodi kao preteča savremenog osiguranja,²⁶ ali ga i dalje treba razlikovati od njega.

To razlikovanje između nužde i namere predstavlja početni pokušaj jasnog postavljanja te granice, pa su pravni instrumenti bili odgovor na praktičnu neopходnost. U poređenju s ranijim zakonicima (Ur-Namuov i Lipit-Ištarov), Hamurabijev zakonik pokazuje značajan napredak u konceptualizaciji upravljanja trgovačkim rizicima kroz jasnu alokaciju rizika.

3. Stara Grčka

Najraniji zapisi iz antičke Grčke svedoče o sveprisutnosti vina u svakodnevnici, tradiciji i ekonomiji Grka, te o razvijenoj trgovačkoj mreži između polisa. Među tim zapisima postoji i zaseban naziv za trgovca vinom: *woi-nē-wei* („vinski diler“).²⁷ To nameće pitanja: kako je diler vina štitio svoju robu i kako je štitio poslovanje od rizika? Iako ne postoje direktni dokazi, gotovo je izvesno da su postojali svojevrсни mehanizmi zaštite, te je trgovac vinom na neki način ipak snosio svoj teret i štitio delatnost. Atina je razvila složen sistem realnog obezbeđenja, koji je podrazumevao pravnu garanciju da će se obaveza izvršiti. Obaveze su bile dvojake: one koje proizlaze iz volje stranaka i one mimo volje (deliktна odgovornost za štetu). Otuda je svako kršenje ugovora ili nanošenje štete tokom transporta, skladištenja ili prodaje nužno povlačilo obavezu naknade štete.²⁸ Rečeno današnjim rečnikom, učesnici obligacionih odnosa dužni su da se u zasnivanju i izvršavanju obligacionih obaveza iz tih odnosa ponašaju u skladu s načelom savesnosti i poštenja.²⁹ Nemarno oštećenje ili gubitak

²⁵ Članovi 235–237, Hamurabijev zakonik

²⁶ Nikol Žiha, *Rimski pomorski zajam (Fenus nauticum) kao preteča prava osiguranja*, Osijek, 2019.

²⁷ Chadwick Ventris, „Evidence for Greek Dialect in the Mycenaean Archives“, *The Journal of Hellenic Studies*, Vol. 73, 1953, 85–129.

²⁸ Stephan Charles Todd, *The shape of Athenian Law*, Oxford, 1993, 262–268.

²⁹ Nataša Petrović Tomić, Ivana Bodić, „Načelna pitanja reverzibilnog odnosa krivičnog prava i prava osiguranja“, *Tokovi osiguranja*, br. 3/2025, 402.

amfore s vinom od strane brodarka značilo je za trgovca mogućnost obeštećenja (pravni mehanizam). Iako nije predstavljao polisu osiguranja u današnjem smislu reči, taj mehanizam se može smatrati supstitutom koji je omogućavao alokaciju i transfer rizika. Za vinskog dilera taj sistem je bio sasvim dovoljan: ukoliko brodar ne isporuči vino na dogovoreno odredište ili na odgovarajući način, kako je ugovoreno, brodarka je obaveza da se šteta nadoknadi.³⁰ Mehanizam zaštite vina naročito dolazi do izražaja u pomorskom zajmu kao načinu finansiranja transporta. Ugovor je podrazumevao stroge uslove: put amfore morao je da se odvija po unapred utvrđenoj ruti, luka iskrcavanja morala je biti unapred određena. Takva konciznost ugovora i njegova krutost bili su ključni za početak procene rizika (ali ne i za osiguranje u savremenom smislu).

Kada govorimo o proceni rizika, ona je bila direktno uklopljena u samu kamatu pomorskog zajma. Visina kamate nije bila proizvoljna već je direktno odražavala procenjenu opasnost puta. Tako su, u zavisnosti od rizičnosti puta (pomorski rizik), kamatne stope iznosile 22,5% po jednom putovanju, odnosno 30% u slučaju da put vina ne bude okončan do letnjeg doba.³¹ Uočava se diferencijacija: postojanje svesne procene rizika i njegove kvantifikacije kroz cenu novca, što, iako podseća na jednu od karakteristika savremenog osiguranja, još uvek nije osiguranje. Za taj iznos, trgovac vinom je slobodno ugovarao kamate, a plaćao ih nakon obavljenog posla.³²

Grci su, nasledivši pomorsku tradiciju,³³ sistematizovali i recipirali pravila poznata kao *Lex Rhodia de iactu* (Rodski pomorski zakonik).³⁴ Ta pravila su izvršila izuzetan uticaj na buduća zakonska rešenja u Rimu,³⁵ uključujući i vizantijska pravila o trgovanju putem mora. Prema tom zakonu, suštinska inovacija ogledala se

³⁰ Da je vino bilo značajna roba u staroj Grčkoj, potvrđuje jedan epigrafi, pronađen na Tasosu, u kome su, doduše oštećena, dva motiva posvećena vinu i vinogradima: a) nijedan brod iz Tasosa ne sme da uvozi strano vino u Atosu i Paheju; u suprotnom, (vlasnik) odgovara novčanom kaznom. Odgovorni su i oni koji mešaju vino s vodom, Predviđa se i novčana odgovornost kapetana broda: b) „Niko da vino ne prodaje u malim količinama ni u amforama, ni iz pitosa (vinska posuda), ni iz psevdopitosa“. Alessandro Perucca, *Leggi di Taso riguardanti il vino e le vigne*, Axon, Vol. 5, Num. 1, Giugno, 2021.

³¹ Srđan Vladetić, Emilija Stanković, „Fenus nauticum – praiizvor osiguranja“, *Evropska revija za pravo osiguranja*, br. 1/2014, 15.

³² Konkretni primer iz stare Grčke: „Jedan tipičan slučaj tiče se ugovora o zajmu između Atinjanina i Eubejskog trgovca sa dva trgovca iz Pamfilije (Male Azije), u iznosu od 3000 drahmi (platežno sredstvo). Roba se odnosila na 3000 amfora vina, a ugovor je predviđao da amfore treba da se utovare na brod u Halkidikiu (severna Grčka), transportuju i isporuče u luku na Crnom moru, s tim da se brod vrati u Atinu s novim teretom. Kamatna stopa po kojoj su Pamfiljci podigli zajam iznosila je 22,5%“, Emmanouil M., L., Economou, *The economy of classical Athens, organization, institutions and society*, Routledge, 2024, 94.

³³ Razvijeni sistem pomorske trgovinske mreže Grci su u velikoj meri nasledili i adaptirali od Feničana, čija je pomorska suprematija oblikovala rane mediteranske trgovačke puteve. Ističemo da ostrvo Rodos, čiji će pomorski zakon postati uzor, prvobitno bila važna feničanska kolonija.

³⁴ Beata J. Kowalczyk, „Rhodian law as a prototype of the claim for damage suffered in another person's interest in Polish civil law“, *Gdańskie studia prawnicze*, No. 3/2019, 204–205.

³⁵ Unutar Digeste, ovom zakonu posvećen je titulus u okviru knjige XIV.

u institutu opšte havarije. Taj institut, gledano kroz prizmu savremenih konotacija, podseća na određene elemente osiguranja. Ključni faktor bila je procena rizika od strane kapetana broda: u kritičnim situacijama, imao je ovlašćenje da odluči da se deo tereta namerno baci u more (*iactus*) u cilju spasavanja broda i preostale robe, a time i putovanje do predviđene destinacije. Gubitak bačene robe mogao je biti nadoknađen.³⁶ Kapetan broda je odgovarao u slučaju da je tužen. Mogli su biti tuženi i vlasnici spasene robe, što je vodilo solidarnoj odgovornosti.

Taj koncept solidarne odgovornosti podseća na savremeni princip osiguranja od opšte havarije, s tom razlikom što ovde nema premije niti nezavisnog osiguravača – trošak se solidarno raspoređuje nakon nastalog događaja. Takva pravna rešenja bila su idealna polazna osnova za pragmatične Rimljane. U domenu pomorske plovidbe, Rimljani nisu stvarali *ex nihilo*, već su recipirali postojeća rešenja, prilagodili ih i oplemenili svojom pravnom preciznošću. Upravo ta kombinacija grčkog i feničanskog predznanja s rimskom pragmatičnošću dovela je do onoga što će kasnije prerasti u sistem osiguranja.

4. Rimska imperija

U rimskoj agrarnoj ekonomiji, vinogradarstvo je bilo jedna od najsloženijih poljoprivrednih grana.³⁷ Ta ekonomska važnost nije promakla rimskoj pravnoj svesti, te su Rimljani na svoj sistematičan način prepoznali vino kao značajan trgovinski proizvod i obezbedili mu mesto u Digestama.³⁸ Vino je imalo značajan društveni uticaj, od kulturne uloge boga vina Bahusa (izražene kroz Bahanalije),³⁹ do svakodnevnih konzumacije na svim društvenim nivoima. Značaj vina nije značio da je u Rimu postojalo osiguranje, ali jeste uslovio potrebu za pravnom zaštitom i doprineo razvoju mehanizama koje danas zovemo pretečama osiguranja.

³⁶ Trgovci, naročito trgovci vinom, nisu bez nadzora ostavljali vinski teret na brod, već su putovali uz njega. Doduše, ne svi, ali zato su oni koji su s robom putovali primali određenu svotu novca da se roba doveze u konkretnu luku.; Petr Dostalík, „Lex Rhodia de iactu and general average“, *Gdańskie studia prawnicze*, No. 3/2019, nr. 3, 144.

³⁷ Richard Duncan-Jones, *The economy of the Roman Empire: quantitative studies*, New York: Cambridge University Press, Cambridge [Cambridgeshire]; 1982, 39.

³⁸ Sastavni deo Justinijanove kodifikacije *Corpus iuris civilis*, Vino je bilo pravno regulisano na svim nivoima: kupovalo se i prodavalo po strogo određenim pravilima, moglo se nasleđivati, a čak je bilo i predmet posebnih ostavinskih zapisa (*legata*). Pravna pravila o prodaji vina su postojala u kodeksu Digeste, u okviru Knjige 18.; Aleksandra Jovanović, Aneta Atanasovska Cvetković, „Wine as an agricultural and food product: a historical and legal approach“, *Economic of Agriculture*, No. 2/2022, 519. Pravna pravila o nasleđivanju vina postojala su u Knjizi 33, titulus 6 – *De tritico vino vel oleo legato*; Aneta Atanasovska Cvetković, Aleksandra Jovanović, „Наследувањето и наследувањето на виното во римското право“, *Годишен зборник*, Правен факултет Штип, Универзитет „Гоце Делчев“ Штип, Р. С. Македонија, 2022, god. 11, vol. XI, 25-32.

³⁹ *Senatus consultum de Bacchanalibus* je senatska odluka doneta 186 g. p. n. e. kojom se takva slavlja zabranjuju s obzirom na nedolično ponašanje tokom festivala.

U istoriji prava, Rim se često navodi kao period u kojem su učinjeni ključni koraci ka institucionalizaciji osiguranja, i to iz nekoliko razloga: transformacije Rima u imperiju, razvoja trgovinske mreže (kopnene i morske) i, najvažnije, razvoja pravne misli koja je stvarala pravila kao odgovor na životne i poslovne situacije. Poslovanje u rimskom svetu imalo je snažan etički kontekst – data reč, vera (*fides*) bila je povezana s trgovčevom čašću (*honor*),⁴⁰ svaka ozbiljna povreda poverenja vodila je ne samo do gubitka poslovnog ugleda već i do javne osude moralnog karaktera (*infamia*) i privatnih tužbi (*actiones*). Stoga je razvoj mehanizama zaštite od rizika bio sasvim očekivan.

Da bi se sprečile prevare (*dolus*) i zaštito kupac vina u amforama,⁴¹ jedan od mehanizama bila je obavezna degustacija u unapred određenom roku. Rimski pravnik Ulpijan u svojim spisima postavlja pitanje: da li prodavac, čija je prodaja zaključena pod određenim uslovima, snosi rizik od kvara vina, nezavisno od toga da li se kvar dogodio pre ili nakon roka za degustaciju? Zauzima ovakav stav: rizik snosi prodavac u svim situacijama, sve dok kupac ne prihvati robu.⁴² Posmatrano kroz Rorbahov okvir, u toj pravnoj konstrukciji moguće je uočiti tri elementa koja su slična karakteristikama osiguranja: 1) jasne odredbe o pravu na pokriće rizika – rizik od pokvarenosti vina snosio je prodavac sve do prijema od strane kupca; 2) neizvesnost – vino u neotvorenim amforama nije moglo biti u celosti provereno, a kvarenje bilo nepredvidivo; 3) procenjivost – razlika u vrednosti između „zdravog“ i „pokvarenog“ vina omogućavala je procenu potencijalnog gubitka. Navedeni elementi ne konstituišu osiguranje u savremenom smislu već pre ukazuju na rani mehanizam koji funkcionalno korespondira s današnjom zaštitom ugovornih strana. Iako se uočava, izvesni transfer rizika ostaje strogo u okviru *inter partes* obligacionog odnosa, a nikako ne predstavlja osiguranje kao autonoman ugovorni institut.

Upravljanje neizvesnošću u rimskom prometu vina ostvarivalo se specifičnim mehanizmima alokacije rizika, a ne putem autonomnog ugovora o osiguranju. Ključni instrument bila je uslovna obligacija (*conditio*). U Digestama nalazimo klasičan primer stipulacije kojom se isplata vezuje za buduću i neizvesnu okolnost dolaska broda: *Si navis ex Asia venerit...*⁴³ U kontekstu transporta vina, to ukazuje na svesnu ugovornu raspodelu rizika, gde su stranke koristile postojeće institute poput *locatio conductio operis* (najam) i *mutuum* (zajam).

Naročit značaj ima pomorski zajam (*fenus nauticum*), koji se u nauci opravdano smatra funkcionalnom pretečom osiguranja, a adaptiran je u rimskom pravu

⁴⁰ Magdolna Sič, „Fides i bona fides u procesu stvaranja rimskog opšteg prava (ius gentium)“, *Zbornik radova Pravnog fakulteta u Novom Sadu*, br. 2/2012, 157–76.

⁴¹ Samir Aličić, „Vinske posude (Vasa vinaria) u rimskom pravu“, *Analiz Pravnog fakulteta u Beogradu*, br. 1/2017, 131–150.

⁴² Tekst iz Digeste, u daljem tekstu: D.; D. 18.6.4 pr.

⁴³ D. 44. 7. 44. 2.

preuzimanjem grčkih pomorskih i trgovačkih običaja.⁴⁴ Kod tog instituta, otplata duga bila je uslovljena srećnim dolaskom broda u luku. Ukoliko bi roba propala usled više sile, rizik gubitka kapitala snosio bi zajmodavac jer zajmoprimac nije bio dužan da vrati sredstva. Visoka kamata (*pretium periculi*), koju je ograničio Justinijan I (gornja granica),⁴⁵ faktički je predstavljala cenu preuzetog rizika, a ne premiju osiguranja u modernom smislu.

Uz ugovornu alokaciju, pravna sigurnost u prometu vina bila je ojačana i režimom kvazideliktne odgovornosti, kao i putem pakta *receptum nautarum*, koji je uređivao odgovornost brodarka, gde se kroz pretorske tužbe, integritet vinskog tereta štitio od krađe ili oštećenja nastalih krivicom posade (*dolus, culpa*).⁴⁶ U tim odnosima, specifična uloga i odgovornost kapetana broda (*magister navis*) precizno su definisale granicu između ugovorne obaveze i neposrednog snošenja rizika.⁴⁷ Međutim, kada šteta nije bila posledica krivice već nužna žrtva za spasavanje pomorskog poduhvata, primenjivalo se načelo opšte havarije prema *lex Rhodia de iactu*. To načelo je predstavljalo vrhunac antičke pravne logike: ukoliko bi kapetan radi olakšanja broda u oluji, naredio izbacivanje amfora s vinom u more, gubitak se solidarno raspodeljivao između onih čiji teret je spasen.⁴⁸ Takva raspodela počivala je na duboko ukorenjenom principu pravičnosti, prema kojem niko ne bi smeo da bez naknade uživa imovinsku korist ili prednost od tuđe štete.⁴⁹ Na taj način, kroz kombinaciju različitih instituta, kod objektivnih opasnosti, zaokružen je rimski sistem upravljanja trgovačkim rizicima, koji, iako nije predstavljao osiguranje u modernom smislu, nudi njegovu funkcionalnu preteču.

⁴⁴ Aleksandra Jovanovic, Aneta Atanasovska Cvetkovic, „Loan contract (Roman MUTUUM) – legal rules pre and after the Serbian civil code from 1844. and the Criminal code from 1929“, 13th International Scientific Conference Employment, Education and Entrepreneurship, Belgrade, Serbia, 25 October 2024, 902.

⁴⁵ Srđan Vladetić, Emilija Stanković, „Fenus nauticum – prazvor osiguranja“, *Evropska revija za pravo osiguranja*, br. 1/2014, 16–17.

⁴⁶ Pretor je reagovao, dopunio pravila, pa je svakom brodarku odnosno kapetanu broda pridodata odgovornost za primljenu robu. Uveo je nekoliko tužbi: *actio furti*, *actio damni adversus nautas*, kao i *actio de recepto*. Prve dve su se podizale protiv brodarka, a ne kapetana broda, bez obzira na to kakav ugovor o prevozu robe je zaključen, pri čemu je bilo neophodno da roba bude oštećena ili ukradena dok se nalazila na brodu i da je tu štetu (krađu) počinilo lice koje radi na brodu (rob, mornar), uključujući i samog kapetana broda (*magister navis*); Jelena Danilović, „Beleške o ugovorima o prevozu robe brodom i rimskom pravu“, *Anali Pravnog fakulteta u Beogradu*, 1969, No. 3-4/1969, 361.

⁴⁷ Vukašin Stanojlović, „Navigating the Legal Waters: The Role and Liability of a Ship's Captain in Roman Maritime Law“, *Anali Pravnog fakulteta u Beogradu*, br. 2/2025, 373–403.

⁴⁸ D, 14, 2, 1 *Lege Rodia [Rhodia] cavetur, ut si levandae navis gratia iactus mercium factus est, omnium contributione sarcitur quod pro omnibus datum est*; „Rodski zakon predviđa da kada se roba baci preko palube u svrhu olakšanja broda, ono što je izgubljeno za dobrobit svih mora biti nadoknađeno doprinosom svih.“

⁴⁹ Vilma Pezelj, „Pomorske havarije u dalmatinskom statutarom pravu“, *Zbornik radova Pravnog fakulteta u Splitu*, br. 1/2006, 83.

III Zaključak

Savremeni tokovi osiguranja vina, od primarne proizvodnje grožđa do kompleksnih transportnih lanaca, predstavljaju kulminaciju milenijumskog razvoja mehanizama za upravljanje neizvesnošću. Istorijska analiza nedvosmisleno potvrđuje da je potreba za zaštitom ekonomske vrednosti vina bila konstantna u razvoju trgovine, evoluirajući od kazuističke odgovornosti do složenih sistema alokacije rizika.

Iako antički svet nije poznao ugovor o osiguranju kao autonoman pravni institut zasnovan na premiji, mesopotamski zakonici su kroz stroge odredbe postavili temelje ugovorne podele rizika. Trgovinska praksa starog Egipta i grčka kodifikacija pomorskih običaja dodatno su utemeljili principe pravne sigurnosti, koji su svoj vrhunac doživeli u rimskom pravu. Sistematizacija kroz *fenus nauticum* (pomorski zajam) i *receptum nautarum* (pakt o preuzimanju odgovornosti) stvorila je okvir koji je funkcionalno doprineo oblikovanju savremene polise, rešavajući ključno pitanje ko snosi teret u slučaju neskrivljene propasti vina. Naročito se ističe institut opšte havarije (*lex Rhodia de iactu*), koji je fokus sa pojedinačne odgovornosti preneo na solidarnu odgovornost učesnika pomorskog poduhvata, ostajući do danas stub pomorskog prava. Ovaj rad potvrđuje da savremeni sistemi osiguranja nisu *ex nihilo* tvorevine moderne ere, već plod dugotrajne evolucije pravne tehnike uslovljene praktičnom potrebom za balansiranjem između ugovorne odgovornosti i snošenja rizika.

Literatura

- Avramović, S., *Opšta pravna istorija Stari i Srednji vek*, Beograd, 2000.
- Aličić, S., „Vinske posude (Vasa vinaria) u rimskom pravu“, *Analiza Pravnog fakulteta u Beogradu*, br. 1/2017, 131-150.
- Atanasovska Cvetković, A., Jovanović, A., „Nasledovanje i nasledovanje na vinoto u rimskom pravu“, *Godišen zbornik, Prava fakultet Štip*, Univerzitet „Goce Delčev“ Štip, R. S. Makedonija, 2022, god. 11, vol. XI, 25-32.
- Atanasovska Cvetković, A., *Istorija države i prava*, Visoka škola za poslovnu ekonomiju i preduzetništvo, Beograd, 2023.
- Aubet, M., E., *The Phoenicians and the west, Politics, Colonies and Trade*, Cambridge University press, 1993.
- Botto, M., „The Phoenicians and the spread of wine in the Central west Mediterranean“, *Patrimonio cultural de la vid y el vino*, 2013, 103-131.
- Ventris, C., „Evidence for Greek Dialect in the Mycenaean Archives“, *The Journal of Hellenic Studies*, Vol. 73, 1953, 85-129.
- Višić, M., *Zakonici drevne Mesopotamije*, Beograd, 1985.
- Vladetić, S., Stanković, E., „Fenus nauticum – prouzročitelj osiguranja“, *Evropska revija za pravo osiguranja*, br. 1/2014, 11-20.

- Danilović, J., „Beleške o ugovorima o prevozu robe brodom i rimskom pravu“, *Anali Pravnog fakulteta u Beogradu*, br. 3-4/1969, 359-382,
- Digesti, *Justinijanova Kodifikacija*, Corpus Iuris Civilis. Dostupno na: <https://droitromain.univ-grenoble-alpes.fr/>
- Dostálík, P., „Lex Rhodia de iactu and general average“, *Gdańskie studia prawnicze*, 139–149.
- Duncan-Jones, R., *The economy of the Roman Empire: quantitative studies*, Cambridge; New York: Cambridge University Press, 1982.
- Economou, E., M., L., *The Economy of classical Athens, Organization, Institutions and Society*, Routledge, 2024.
- Žiha, N., *Rimski pomorski zajam (Fenus nauticum) kao preteča prava osiguranja*, Osijek, 2019.
- Janković, Ž., Balaban, J., Balaban, M., „Strategija upravljanja rizicima poslovanja u osiguravajućim kompanijama“, *Svarog*, br. 25/2022, 61-87.
- Johnson, H., *The World of Wine*, London, 2005.
- Jovanović, A., Atanasovska Cvetković, A., „Wine as an agricultural and food product: a historical and legal approach“, *Economic of Agriculture*, No. 2/2022, 517–532.
- Jovanovic, A., Atanasovska Cvetkovic, A., „Loan contract (Roman MUTU-UM) – legal rules pre and after the Serbian civil code from 1844. and the Criminal code from 1929“, 13th International Scientific Conference Employment, Education and Entrepreneurship, Belgrade, Serbia, 25 October 2024, 898–909.
- Kandić, Lj., *Odabrani izvori iz opšte istorije države i prava*, Savremena administracija, Beograd, 1988.
- Kowalczyk, B. J., „Rhodian law as a prototype of the claim for damage suffered in another person's interest in Polish civil law“, *Gdańskie studia prawnicze*, No. 3/2019, 203–215.
- Kramer, S. N., *The Sumerians, their history, culture and character*, The University of Chicago press, 1963.
- Lipit-Ištarov zakonik dostupan na: https://www.academia.edu/22455640/Lipit_Ishtar_Codex_Text_Sumerian_English_organic_transcription
- Mieroop, Van De M., *King Hammurabi of Babylon, A Biography*, Blackwell Publishing, 2007.
- Perucca, A., *Leggi di Taso riguardanti il vino e le vigne*, Axon, Vol. 5 n. 1, Giugno 2021.
- Petrović, Tomić, N., Bodirožić, I., „Načelna pitanja reverzibilnog odnosa krivičnog prava i prava osiguranja“, *Tokovi osiguranja* br. 3/2025, 397–416.
- Pezelj, V., „Pomorske havarije u dalmatinskom statutarom pravu“, *Zbornik radova Pravnog fakulteta u Splitu*, No. 1/2006, 83–104.

- Phillips, R., *A short history of wine*, Ecco, New York, 2002.
- Rorbah, W. R., „Značaj istorije osiguranja“, *Tokovi osiguranja*, br. 3/2018, 7–26.
- Roth, M., T., *Law collections from Mesopotamia and Asia Minor*, Scholars Press, Atlanta, Georgia, 1995.
- Sič, M., „Fides i bona fides u procesu stvaranja rimskog opšteg prava (ius gentium)“, *Zbornik radova Pravnog fakulteta u Novom Sadu*, br. 2/2012, 157–176.
- Stanojlović, V., Navigating the Legal Waters: „The Role and Liability of a Ship’s Captain in Roman Maritime Law“, *Anali Pravnog fakulteta u Beogradu*, br. 2/2025, 373–403
- Todd, S. C., *The shape of Athenian Law*, Oxford, 1993.
- Feier, I., Migala, A., Pietruszka, M., Jackowski, M., „Roman wine in Barbaricum, preliminary studies on ancient wine recreation“, *Heritage*, No. 2/2019, 331–338.

UDK 368.5
10.5937/TokOsig2602291J

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LIABILITY IN ANTIQUITY IN THE SERVICE OF INSURANCE – THE CASE OF WINE WITH REFERENCE TO RISK

REVIEW SCIENTIFIC PAPER

Abstract

The question of the origins of wine insurance as a market commodity arose as a result of attempts to understand the development of the insurance policy and the conclusion of insurance contracts in the wine sector. This paper examines the genesis and evolution of risk management mechanisms in the wine trade during the ancient period. Through the analysis of primary sources, the paper demonstrates how wine, owing to its high value and complexity as a commodity, stimulated the development of numerous legal institutions. Applying the historical and comparative method, the paper traces the continuity in the development of protective mechanisms, from the Hammurabi Code's provisions on compensation for losses in commercial caravans, through the Greek maritime loan, to the Roman *fenus nauticum* as the first explicit form of risk transfer, and the *Lex Rhodia de iactu* as the foundation of joint liability in cases of maritime casualty. The authors critically emphasize, however, that the ancient institutions examined cannot be equated with the modern insurance contract, as their legal nature is fundamentally different (contractual risk allocation, solidary liability, loan). These institutions constitute functional predecessors of insurance – more precisely, legal mechanisms which each, in

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Paper received: 6.2.2026.

Paper accepted: 4.4.2026.

their own way, addressed the same underlying need: protection against risk in the wine trade. Finally, the paper demonstrates that these mechanisms developed in response to specific market demands within the wine supply chain, thereby forming an interdisciplinary synthesis that systematically connects fragmented evidence into a coherent theoretical framework, while pointing to the ancient origins of modern risk management principles.

Keywords: wine, *fenus nauticum*, Roman law, risk allocation, contractual liability, delict.

I Introduction

Wine, as an agricultural and food product obtained through the complete or partial alcoholic fermentation of fresh grapes, grape must, or grape juice of wine-grape varieties,³ has always represented far more than a beverage – it has been a multidisciplinary phenomenon reaching into the deepest layers of human civilization. Its traces are found in agriculture and trade alike, as well as in law, art, literature, and religious texts, all of which attest to its fundamental social and economic significance throughout history. This broad perspective is likewise embraced by insurance studies, which emphasize how the history of insurance enables an understanding of the specific interconnections and evolution of legal and economic institutions over extended periods of time.⁴

Proceeding from the premise that insurance, as a functional risk management mechanism, is not a modern creation but rather the product of a long evolution of ancient legal solutions, this paper examines that very genesis. The main evidence for such a position is provided through the analysis of the complex commercial practices associated with one of antiquity's most valuable commodities – wine, whose production and distribution stimulated the emergence of the earliest forms of legal protection.

Archaeological findings confirm the existence of organized wine trade as early as the 5th millennium BC,⁵ while the discovery of large storage vessels at the archaeological site of Godin Tepe points to a developed transportation network that inevitably required protective mechanisms. This material evidence is complemented by the first written legal monuments – from the Codes of Ur-Nammu and Hammurabi to later Greek and Roman sources, in which wine is not merely mentioned but extensively regulated, attesting to the gradual formation of legal institutions

³ Art. 5, para. 1, item 4, Wine Act, *Official Gazette of RS*, No. 41/2009 and 93/2012.

⁴ Wolfgang R. Rohrbach, „Značaj istorije osiguranja“, *Tokovi osiguranja*, No. 3/2018, 7.

⁵ Hugh Johnson, *The World of Wine*, London, 2005, 14.

that would eventually evolve into insurance. Additional support for this argument is provided by the pivotal role of the Phoenicians as pioneers of maritime trade,⁶ who, in addition to transporting goods, developed early forms of maritime law and commercial customs, including procedures for the loss compensation.⁷

The purpose of this paper is to demonstrate, through a systematic analysis of ancient legal mechanisms for risk management in the wine trade and their comparison with Rohrbach's views, the continuity between ancient practices and modern insurance principles. By applying the historical and comparative method, the paper seeks to reconstruct the development of protective mechanisms – from the earliest Mesopotamian provisions on risk allocation, through the Greek maritime loan, to the Roman *fenus nauticum* and *Lex Rhodia de iactu* as functional predecessors of modern insurance, while none of the aforementioned institutions is regarded as equivalent to an insurance contract in its contemporary sense.

II Risk Management Mechanisms in the Ancient Wine Trade

1. Ancient Egypt

That grapes, viticulture, and wine existed in ancient Egypt is evidenced by the discovery of Tutankhamun's tomb, in which approximately 36 marked and unmarked wine amphorae were found.⁸ These amphorae were not merely storage vessels but constituted the earliest traces of wine trade. Although the preserved Egyptian legal system primarily favored the great pharaohs, landowners, vineyard proprietors along the banks of the Nile, and wine cellars,⁹ it nonetheless encompassed obligatory relationships. That system, however, did not recognize the institution of insurance in the modern sense. The requirement of the presence of five witnesses when concluding contracts, along with strict penalties for the non-fulfilment of obligations, may nevertheless be regarded as the first steps towards the legal protection of commercial interests, that is, a form of early legal safeguard. This, combined with archaeological findings of ships carrying cargo of wine amphorae in Mediterranean waters and ports, justifies the presumption wine trade existed and which, though limited to the exchange of goods, was secured at least by the given word and required a certain degree of protection against the risks of transport.¹⁰

⁶ Maria Eugenia Aubet, *The Phoenicians and the West: Politics, Colonies and Trade*, Cambridge University Press, 1993, 146.

⁷ Massimo Botto, "The Phoenicians and the Spread of Wine in the Central West Mediterranean", *Patrimonio cultural de la vid y el vino*, 2013, 103–131.

⁸ H. Johnson, 21.

⁹ Roderick Phillips, *A Short History of Wine*, Ecco, New York, 2002, 18.

¹⁰ *Ibid.*, 13–28.

2. Mesopotamia and the Babylonian Empire

The wine trade in Mesopotamia¹¹ constituted a complex economic activity that required appropriate risk management mechanisms. Fermented grape juice, accessible only to the privileged, stimulated trade through specific mechanisms – it was imported along exhausting caravan and river routes, which led Babylon, as one of the earliest city-states, to acquire the distinction of being the first “import-dependent” culture of ancient civilization.¹²

Unlike Egypt, Mesopotamia offers us the first written legal regulations in the history of humankind. These legal monuments, preserved either partially or in their entirety across thousands of years, constitute an invaluable source¹³ for understanding the earliest forms of legal protection in the wine trade, which would later evolve into the institutions of insurance.

In the fragments of the Code of Ur-Nammu (c. 2100 BC), the first binding legal act of the city of Ur in southern Mesopotamia, it is not possible to identify a direct legal norm concerning wine insurance.¹⁴ This absence, however, should not be interpreted as the non-existence of any form of protection, but rather as an early phase of legal consciousness in which many relationships were governed by customary law. The preamble of the Code reveals that organized maritime trade existed, alongside the office of a “supervisor of sailors”, indicating a system of public law regulating commercial activities,¹⁵ within which the question relating to the allocation of risk, rather than insurance in its modern sense, was primarily resolved.

The institutional appointment of officials responsible for overseeing land and river transportation points to the existence of a regulatory framework that enabled the articulation of early mechanisms for the protection of commercial interests in the wine trade.¹⁶ For this period, it is not possible to speak of an autonomous insurance contract, nonetheless, what may be identified is a functional risk allocation integrated into credit arrangements or rules of delictual liability for the loss of goods. Even within the sphere of customary law and oral agreements, there is an evident awareness of the need for risk transfer, an earlier form of what modern

¹¹ In the dawn of early civilizations, wine was a luxury beverage of a sacred character, reserved exclusively for the elites and ruling dynasties. Through the gradual domestication of the grapevine in the fertile southern regions of Mesopotamia, wine underwent a form of democratization, becoming accessible to broader social strata and evolving into one of the principal commercial commodities, its economic weight comparable to that of grain and oil.

¹² *Ibid.*, 1–2.

¹³ Sima Avramović, *Opšta pravna istorija, Stari i Srednji vek*, Pravni fakultet, Beograd, 2000, 117.

¹⁴ Marko Višić, *Zakonici drevne Mesopotamije*, Belgrade, 1985, 111–114.

¹⁵ *Ibid.*, 111.

¹⁶ Samuel Noah Kramer, *The Sumerians: Their History, Culture and Character*, The University of Chicago Press, Chicago, 1963, 104–105.

theory would describe as the fundamental risk, later defined as follows: "Insurance risk is the fundamental risk and represents the risk assumed under the insurance contract."¹⁷ The key distinction, however, lies in the fact that ancient mechanisms were not based on the payment of a premium, rather, they were embedded within the loan or transportation contracts themselves, addressing the allocation of losses arising from impossibility of performance without fault.

The Code of Lipit-Ishtar (a code from the southern region of Mesopotamia, from the city of Isin, created around 1930 BC) has not been preserved in its entirety, which limits a complete reconstruction of the legal system of that era. This legal monument reveals mechanisms of legal protection that would later prove significant for subsequent legal thought. The preserved fragments explicitly address the hire of a small vessel and the obligation of the lessee, in the event of a shipwreck caused by deviation from the agreed route, to compensate the damage in grain and to cover the value of the vessel.¹⁸ Although the law does not explicitly state so, from the construction of the case and the fact that the shipmaster received a certain number of shekels (a unit of silver measurement used during that period) for transporting wine suggest the existence of economic consideration for the risk assumed. Historically, this provision represents an advance in legal technique – it reveals the principle of strict liability and direct material compensation, constituting a step towards the protection of commercial risks. The fact that the shipmaster received a specified number of shekels for transporting of goods, together with the existence of a clear legal obligation to compensate for loss, establishes a legal framework that may be regarded as a predecessor to insurance – a clearly defined risk, an obligation to compensate, and monetary compensation.

The Laws of Bilalama¹⁹ (the Law Code of the city of Eshnunna), a compilation of earlier regulations and judicial decisions attesting to increasingly complex socio-economic relations, explicitly mentions wine in the context of pledge rights.²⁰ In the regulation of the hire of a vessel, the same pattern emerges: a shipmaster agrees with a wine merchant to transport the goods. Should he negligently sink the vessel, the shipmaster is liable to compensate for the loss. Here again, the fundamental principle of delictual liability and direct material compensation are

¹⁷ Žana Janković, Jovana Balaban, Mladenka Balaban, "Strategija upravljanja rizicima poslovanja u osiguravajućim kompanijama", *Svarog*, No. 25/2022, 62.

¹⁸ The element of hire recurs here, as does the obligation of compensation in connection with the speculative assumption of wine being transported in the hired vessel for commercial purposes. C xiii 9–11 and C xiii 12–23. *The Code of Lipit-Ishtar*. Martha T. Roth, *Law Collections from Mesopotamia and Asia Minor*, Scholars Press, Atlanta, Georgia, 1995, 27.

¹⁹ The particularly significant laws, The Laws of Bilalama, take their name from the ruler who promulgated it around 1720 BC.

²⁰ Marko Višić, *Zakonici drevne Mesopotamije*, Belgrade, 1985, 116. Article 15 also makes reference to sesame oil, silver, and grain.

evident. Article 5 provides: "If a shipmaster is negligent and causes a ship to sink, he shall pay whatever was lost with the ship". This provision regulates the shipmaster's liability for the resulting loss. In the context of wine, its significance is particularly evident: the payment of compensation constitutes the legal consequence of damage resulting in contractual liability. As in the Code of Lipit-Ishtar, the same elements can be identified here: risk (intentionally caused shipwreck), economic equivalent (payment for transportation), and the obligation to compensate. Modern insurance theory, however, requires considerably more elements. Rohrbach identifies seven constitutive characteristics of any insurance arrangement: mutual coverage, clear terms concerning the right to risk coverage, a reciprocal obligation to provide risk coverage, the uncertainty of the insured event, the assessability of the insured event, the equalized risk of all members of the collective, and the occurrence of the insured event in only a small number of cases compared with the total number of risk-bearers in the community.²¹ It is precisely for this reason that these ancient provisions should be distinguished from insurance contracts. What is present here is delictual and contractual liability, rather than the transfer of risk to an independent third party through the payment of a premium.

An analysis of the aforementioned article reveals undeniable social progress with respect to the recognition of the need for protection against risk in the transportation of goods by waterways. Viewed through Rohrbach's framework, five elements analogous to the characteristics of modern insurance may be identified in the ancient laws examined: 1) mutual risk coverage (a collectively recognized obligation to compensate for loss); 2) clear provisions as to the right to compensation; 3) a reciprocal obligation (payment for transportation services); 4) the uncertainty inherent in maritime transport as an intrinsic risk; and 5) a predetermined level of compensation. These elements do not, however, constitute insurance in the classical sense. Rohrbach emphasizes that all seven characteristics are required for that.²² Accordingly, this does not involve insurance as a distinct contractual institution, but rather functionally analogous mechanisms of risk protection that must be distinguished from modern insurance.

The foregoing analysis indicates the existence of mechanisms for the protection of the wine trade, the culmination of which in the ancient period was the Code of Hammurabi – a legal monument and the "legal encyclopedia" of its age.²³ In that historical period, wine was stored and transported in specialized clay vessels (amphorae), both in the Babylonian Empire and in other states of the era. Within the framework of the Code of Hammurabi, the regulation of the merchant-agent relationship reveals an early legal concept of risk allocation: while the agent bore the

²¹ W. Rohrbach, 12–13.

²² *Ibid.*

²³ Marc Van De Mieroop, *King Hammurabi of Babylon: A Biography*, Blackwell Publishing, 2007, 100–111.

burden of the risk of accidental loss, he was released from the obligation to repay the debt (the principal amount) if he could demonstrate that the loss had occurred as a result of *vis maior* (irreversible loss), whereby effectively transferring the risk associated with the capital to the merchant-creditor.²⁴

If we apply this legal scheme to the “wine scenario”, then: money was entrusted to the agent with a specific purpose – for example, the purchase of ten amphorae of wine; the wine was purchased, but subsequently, as a result of an accident (the amphorae being broken), damage occurred; although the physical loss was suffered by the agent, the merchant assumed the loss of the principal amount, thereby protecting the agent’s continued participation in the commercial chain. This institution, however, should not be equated with modern insurance – what is at issue here is the contractual allocation of risk within the internal relationship between the merchant and the agent, without the participation of a third party and without the payment of a premium as the basis for risk transfer. Viewed through Rohrbach’s framework, four elements analogous to the characteristics of modern insurance may be identified in the relationship between the merchant and the agent: 1) mutual coverage – the shared interest of both parties in a successful commercial transaction; 2) a reciprocal obligation – the agent performs work and assumes the risk of the journey; 3) uncertainty – the breaking of amphorae constitutes a typical accident; 4) assessability – the value of ten amphorae of wine is readily determinable. This does not, however, constitute modern insurance. What is present is a contractual relationship in which risk is allocated between two parties, without the participation of an independent insurer and without a premium in the legal sense. The same pattern can also be applied in the transportation of wine by land – the caravan (where the merchant bears the loss of the principal amount if the agent is robbed).

Another example of risk regulation in the Hammurabi era is found in the maritime transportation of wine. Wine, by reason of its nature and its preservation in amphorae, was regarded as a commodity suitable for cargo. The Code provides that a shipmaster, who negligently sinks a vessel, shall be under an obligation to compensate for all goods that sank with it, including wine.²⁵ In this way, a principle of strict liability was established which, in the context of the wine trade, protected the interests of the merchant by enabling him to obtain compensation for the loss of wine during transport.

At that time, precise legal terminology such as we know today did not yet exist. Nonetheless, contractual relationships and forms of protection against risk were functionally effective, even though they lacked conceptual precision. Neither

²⁴ Articles 102 and 103, Code of Hammurabi. Ljubica Kandić, *Odabrani izvori iz opšte istorije države i prava*, Savremena administracija, Belgrade, 1988, 42. This mechanism effectively constituted the first institutional division of risk between capital and labour, representing an early form of risk transfer.

²⁵ Articles 235–237, Code of Hammurabi.

the caravan contract nor the maritime provisions of the Code constitute insurance – they represent the foundation for a future transportation regulation, which would subsequently develop into the maritime loan (*fenus nauticum*), which is frequently cited in the literature as a predecessor of modern insurance,²⁶ while nonetheless it must be distinguished from insurance as a separate legal institution.

This distinction between necessity and intention represents the initial attempt to establish a clear boundary, and the legal instruments of that era were a response to practical necessity. Compared with the earlier codes (those of Ur-Nammu and Lipit-Ishtar), the Code of Hammurabi demonstrates significant progress in the conceptualization of commercial risk management through a clear allocation of risk.

3. Ancient Greece

The earliest records from ancient Greece indicate the omnipresence of wine in everyday life, tradition, and economy of Greek society, as well as to the existence of a developed commercial network among the city-states. Among those records, there exists a distinct designation for the wine merchant: *woi-nē-wei* ("wine dealer").²⁷ This raises a series of questions: how did the wine dealer protect his goods and safeguard his business against risk? Although no direct evidence exists, it is highly probable that certain protective mechanisms existed, and that the wine merchant somehow managed to bear the burden and protect his trade. Athens developed a complex system of real security, which encompassed a legal guarantee that an obligation would be fulfilled. Obligations were twofold: those arising from the will of the parties and those arising independently of that will (delictual liability for damage). Hence, any breach of contract or infliction of damage during transportation, storage, or sale necessarily entailed an obligation to compensate.²⁸ In contemporary legal terms, the participants in obligations-based legal relationships are required, in the formation and performance of their obligations, to act in accordance with the principle of good faith and fair dealing.²⁹ Negligent damage to, or loss of, an amphora of wine caused by a shipmaster gave the merchant the possibility of indemnification (the legal mechanism). Although this mechanism did not constitute an insurance policy in the present-day sense of that term, this mechanism may be regarded as a functional substitute that enabled the allocation and transfer of risk. For the wine dealer, this system was entirely sufficient: should the shipmaster fail to deliver the

²⁶ Nikol Žiha, *Rimski pomorski zajam (Fenus nauticum) kao preteča prava osiguranja*, Osijek, 2019.

²⁷ Chadwick Ventris, Evidence for Greek Dialect in the Mycenaean Archives, *The Journal of Hellenic Studies*, Vol. 73, 1953, 85–129.

²⁸ Stephan Chales Todd, *The Shape of Athenian Law*, Oxford, 1993, 262–268.

²⁹ Nataša Petrović Tomić, Ivana Bodirožić, „Načelna pitanja reverzibilnog odnosa krivičnog prava i prava osiguranja“, *Tokovi osiguranja*, No. 3/2025, 402.

wine to the agreed destination or in the manner stipulated by the contract, he would be obliged to compensate for the resulting loss.³⁰ The mechanism of wine protection found particular expression in the maritime loan as a means of financing transportation. The contract was subject to strict conditions: the itinerary of the amphora had to follow a pre-established route, and the port of discharge had to be determined in advance. Such contractual precision and rigidity were crucial for the initial risk assessment (though not for insurance in the modern sense).

Where risk assessment is concerned, it was directly embedded within the interest rate of the maritime loan. The interest rate was not arbitrary, rather, it directly reflected the estimated risks associated with the voyage. Thus, depending on the riskiness of the journey (maritime risk), interest rates amounted to 22.5% per voyage, or 30% where the transport of wine was not completed before the summer season.³¹ A clear differentiation may be observed here: the existence of a conscious risk assessment and its quantification through the price of money, which, although reminiscent of one of the characteristics of modern insurance, does not yet constitute insurance. For this amount, the wine merchant freely negotiated the interest rates and paid them upon completion of the venture.³²

The Greeks, having inherited a maritime tradition,³³ systematized and adopted the rules known as the *Lex Rhodia de iactu* (the Rhodian Maritime Code).³⁴ These rules exerted a remarkable influence on subsequent legal solutions in Rome,³⁵ including Byzantine regulations governing maritime trade. According to this law,

³⁰ The economic significance of wine in ancient Greece is confirmed by an epigraph found on Thasos, which, although partially damaged, contains two provisions concerning wine and vineyards: a) no vessel from Thasos may import foreign wine into Athos and Pacheia; otherwise, the owner shall be subject to a monetary penalty, which also extends to those who adulterate wine with water; b) "No one shall sell wine in small quantities, whether in amphorae, from pithoi (wine vessels), or pseudo-pithoi". Alessandro Perucca, *Leggi di Taso riguardanti il vino e le vigne*, Axon, Vol. 5, No. 1, June 2021.

³¹ Srđan Vladetić, Emilija Stanković, "Fenus nauticum – prazivor osiguranja", *Evropska revija za pravo osiguranja*, No. 1/2014, 15.

³² A specific example from ancient Greece: "A typical case concerns a loan agreement between an Athenian and a Euboean merchant with two traders from Pamphylia (Asia Minor), in the sum of 3,000 drachmae. The cargo consisted of 3,000 amphorae of wine, and the contract stipulated that the amphorae were to be loaded onto a vessel in Chalcidice (northern Greece), transported and delivered to a port on the Black Sea, with the vessel thereafter returning to Athens with a new cargo. The interest rate at which the Pamphylians contracted the loan was 22.5%". Emmanouil M. L. Economou, *The Economy of Classical Athens: Organisation, Institutions and Society*, Routledge, 2024, 94.

³³ The Greeks largely inherited and adapted their maritime trading system from the Phoenicians, whose maritime supremacy shaped the earliest commercial routes of the Mediterranean. It should be noted that the island of Rhodes, whose maritime law would later serve as a model for subsequent legal developments, was originally an important Phoenician colony.

³⁴ Beata J. Kowalczyk, "Rhodian Law as a Prototype of the Claim for Damage Suffered in Another Person's Interest in Polish Civil Law", *Gdańskie studia prawnicze*, No. 3/2019, 204–205.

³⁵ Within the Digesta, this law is accorded a dedicated titulus in Book XIV.

the essential innovation consisted in the institution of general average. Viewed through the lens of contemporary connotations, this institution resembles certain elements of insurance. The key factor was the shipmaster's risk assessment: in critical situations, he was authorized to decide that a portion of the cargo should be deliberately thrown overboard (*iactus*) for the purpose of saving the vessel and the remaining goods, thereby completing the voyage to the intended destination. The loss of the jettisoned goods could be compensated.³⁶ The shipmaster could be held liable if legal proceedings were instituted against him. The owners of the saved cargo could likewise be sued, resulting in joint liability among the parties involved.

This concept of solidary liability resembles the modern principle of insurance against general average, with the distinction that in this case there is neither a premium nor an independent insurer – the cost is distributed jointly after the occurrence of the event itself. Such legal solutions provided an ideal foundation for the pragmatic approach of the Romans. In the area of maritime navigation, the Romans did not create legal institutions *ex nihilo*, but rather adopted existing solutions, adapted them, and refined them through their characteristic legal precision. It was precisely this combination of Greek and Phoenician maritime knowledge and Roman pragmatism that ultimately contributed to the development of what would later evolve into a system of insurance.

4. The Roman Empire

In the Roman agrarian economy, viticulture was one of the most complex branches of agriculture.³⁷ This economic importance was not lost on Roman legal consciousness, and the Romans, in their systematic manner, recognized wine as a significant commercial commodity and secured for it a place within the *Digesta*.³⁸ Wine exercised a considerable social influence, from the cultic role of the wine god

³⁶ Merchants, particularly wine merchants, did not leave wine cargo aboard ships without supervision, but travelled with it. Not all did so, though those who accompanied their goods received a specified sum of money to ensure the cargo was delivered to the designated port. Petr Dostálík, „Lex Rhodia de iactu and General Average“, *Gdańskie studia prawnicze*, No. 3/2019, 144.

³⁷ Richard Duncan-Jones, *The Economy of the Roman Empire: Quantitative Studies*, Cambridge [Cambridgehire]; New York: Cambridge University Press, 1982, 39.

³⁸ An integral part of Justinian's codification, the *Corpus Iuris Civilis*. Wine was legally regulated at every level: it was bought and sold under strictly defined rules, could be inherited, and was even the subject of specific testamentary dispositions (*legata*). Legal rules governing the sale of wine were contained in the *Digesta*, Book 18; Aleksandra Jovanović, Aneta Atanasovska Cvetković, „Wine as an Agricultural and Food Product: A Historical and Legal Approach“, *Economics of Agriculture*, Belgrade, No. 2/2022, 519. Legal rules governing the inheritance of wine appeared in Book 33, titulus 6 – *De tritico vino vel oleo legato*; Aneta Atanasovska Cvetković, Aleksandra Jovanović, „Наследувањето и наследувањето на виното во римското право“, *Annual Review, Faculty of Law, Štip, University “Goce Delčev” Štip, Republic of North Macedonia*, 2022, Vol. XI, 25–32.

Bacchus (expressed through the Bacchanalia),³⁹ to daily consumption across all social levels. The significance of wine did not in itself mean that insurance existed in Rome, but it did create the need for legal protection and contributed to the development of the mechanisms we today describe as predecessors of insurance.

In legal history, Rome is frequently regarded as the period in which significant steps were taken towards the institutionalization of insurance, for several reasons: the transformation of Rome into an empire, the expansion of its commercial network (both overland and maritime), and, most importantly, the development of legal thought that created legal rules in response to practical and commercial circumstances. Business activities in the Roman world possessed a strong ethical dimension – the pledged word, good faith (*fides*), was closely associated with a merchant's *honor*.⁴⁰ Any serious breach of trust led not only to a loss of commercial reputation, but also to public condemnation of moral character (*infamia*) and exposure to private legal actions (*actiones*). The development of risk management mechanisms was therefore entirely to be expected.

To prevent fraud (*dolus*) and to protect the purchaser of wine stored in amphorae,⁴¹ one of the mechanisms employed was a mandatory tasting within a predetermined period. The Roman jurist Ulpian, in his writings, poses the question: does the seller, in a sale concluded subject to certain conditions, bear the risk of wine spoilage, irrespective of whether such spoilage occurred before or after the expiration of the tasting period? His position is as follows: the seller bears the risk in all circumstances, until the buyer accepts the goods.⁴² Viewed through Rohrbach's framework, three elements analogous to the characteristics of insurance may be identified in this legal construction: 1) clear provisions concerning the right to risk coverage – the risk of wine spoilage was borne by the seller until acceptance by the buyer; 2) uncertainty – wine stored in sealed amphorae could not be fully inspected, and spoilage was unpredictable; 3) assessability – the difference in value between "sound" and "spoiled" wine made it possible to estimate the potential loss. These elements do not constitute insurance in the modern sense, rather, they indicate an early mechanism that functionally corresponds to the modern protection of contractual parties. Although a certain risk transfer can be identified, it remains strictly confined to an *inter partes* obligations-based relationship and in no way constitutes insurance as an autonomous contractual institution.

³⁹ The *Senatus consultum de Bacchanalibus* was a senatorial decree enacted in 186 BC, prohibiting such festivities on account of the disorderly conduct that accompanied the festival.

⁴⁰ Magdolna Sič, "Fides and bona fides in the Formation of Roman General Law (*ius gentium*)", *Zbornik radova Pravnog fakulteta u Novom Sadu*, No. 2/2012, 157–176.

⁴¹ Samir Aličić, "Wine Vessels (*Vasa vinaria*) in Roman Law", *Anali Pravnog fakulteta u Beogradu*, No. 1/2017, 131–150.

⁴² Text from the Digest, hereinafter: D.; D. 18.6.4 pr.

The management of uncertainty in the Roman wine trade was achieved through specific risk allocation mechanisms, rather than through an autonomous insurance contract. The principal instrument was the conditional obligation (*conditio*). The Digesta contains a classical example of a stipulation making payment contingent upon the future and uncertain event of a ship's arrival: *Si navis ex Asia venerit...*⁴³ In the context of wine transportation, this illustrates a conscious contractual risk allocation, whereby the parties employed existing legal institutions such as *locatio conductio operis* (contract for work) and *mutuum* (loan).

Of particular significance is the maritime loan (*fenus nauticum*), which scholarship rightly regards as a functional predecessor of insurance, and which was adapted into Roman law through the reception of Greek maritime and commercial customs.⁴⁴ Within this legal framework, the repayment of the debt depended upon the safe arrival of the ship in port. If the cargo was destroyed by *force majeure*, the risk of capital loss was borne by the lender, as the borrower was not obligated to repay the funds. The high interest rate (*pretium periculi*), later restricted by Justinian I,⁴⁵ effectively represented the price of the assumed risk, rather than an insurance premium in the modern sense.

In addition to contractual allocation, legal certainty in the wine trade was further reinforced through a regime of quasi-delictual liability, as well as through the *receptum nautarum* pact, which governed the shipmaster's liability, whereby through praetorian actions the integrity of wine cargo was protected against theft or damage arising from the fault of the crew (*dolus, culpa*).⁴⁶ Within these relationships, the specific role and liability of the shipmaster (*magister navis*) precisely defined the boundary between contractual obligations and the direct assumption of risk.⁴⁷ However, where the loss was not the consequence of fault but rather constituted a necessary sacrifice for the preservation of the maritime venture, the principle of general average as established by *Lex Rhodia de iactu* applied. This principle represented

⁴³ D. 44.7.44.2.

⁴⁴ Aleksandra Jovanović, Aneta Atanasovska Cvetković, "Loan Contract (Roman MUTUUM) – Legal Rules Before and After the Serbian Civil Code of 1844 and the Criminal Code of 1929", 13th International Scientific Conference: Employment, Education and Entrepreneurship, Belgrade, Serbia, 25 October 2024, 902.

⁴⁵ Srđan Vladetić, Emilija Stanković, "Fenus nauticum – the Primordial Source of Insurance", *Evropska revija za pravo osiguranja*, No. 1/2014, 16–17.

⁴⁶ The praetor intervened to supplement the existing rules and attached to each shipowner or master of the vessel a liability for goods received. He introduced several actions: *actio furti*, *actio damni adversus nautas*, as well as the *actio de recepto*. The first two lay against the shipowner rather than the master, regardless of the nature of the contract of carriage concluded, provided that the cargo had been damaged or stolen while on board and that the damage (or theft) had been committed by a person working on the vessel (a slave, a sailor), including the master himself (*magister navis*). Jelena Danilović, "Beleške o ugovorima o prevozu robe brodom i rimskom pravu", *Anali Pravnog fakulteta u Beogradu*, 1969, No. 3-4/1969, 361.

⁴⁷ Vukašin Stanojlović, "Navigating the Legal Waters: The Role and Liability of a Ship's Captain in Roman Maritime Law", *Anali Pravnog fakulteta u Beogradu*, No. 2/2025, 373–403.

the culmination of ancient legal reasoning: should the shipmaster, for the purpose of lightening the ship during a storm, order the jettison of wine amphorae into the sea, the resulting loss would be allocated on a solidary basis among those whose cargo was thereby saved.⁴⁸ Such distribution rested upon the deeply rooted principle of equity, according to which no person should enjoy financial benefit or advantage derived from another's loss without compensation.⁴⁹ In this way, through the combination of different legal institutions, the Roman system of commercial risk management reached a high degree of development. Although it did not constitute insurance in the modern sense, it nevertheless represented a functional predecessor of insurance.

III Conclusion

Contemporary trends in wine insurance, from the primary production of grapes to complex transportation chains, represent the culmination of a millennia-long evolution of mechanisms for managing uncertainty. Historical analysis unequivocally confirms that the need to protect the economic value of wine has remained constant throughout the development of trade, evolving from casuistic liability to complex systems of risk allocation.

Although the ancient world did not recognize the insurance contract as an autonomous legal institution based on the payment of a premium, the Mesopotamian law codes, through their strict provisions, established the foundations of contractual risk allocation. The commercial practices of ancient Egypt and the Greek codification of maritime customs further reinforced the principles of legal certainty, which reached their culmination in Roman law. The systematization achieved through the *fenus nauticum* (maritime loan) and the *receptum nautarum* (the assumption of liability pact) created a framework that functionally contributed to shaping the modern insurance policy, addressing the fundamental question of who bears the burden in the event of the non-culpable loss of wine. Particular significance is given to the institution of general average (*Lex Rhodia de iactu*), which shifted the focus from individual liability to the solidary liability of participants in a maritime venture, and has remained a cornerstone of maritime law to this day. This paper confirms that modern insurance systems are not *ex nihilo* creations of the modern era, but rather the product of a long-term evolution of legal technique driven by the practical need to balance contractual liability and risk allocation.

⁴⁸ D. 14, 2, 1: *Lege Rhodia cavetur, ut si levandae navis gratia iactus mercium factus est, omnium contributione sarciatur quod pro omnibus datum est.*; "The Rhodian Law provides that where cargo has been jettisoned for the purpose of lightening a vessel, that which has been sacrificed for the benefit of all must be made good by the contribution of all."

⁴⁹ Vilma Pezelj, "Pomorske havarije u dalmatinskom statutarnom pravu", *Zbornik radova Pravnog fakulteta u Splitu*, No. 1/2006, 83.

Literature

- Avramović, S., *Opšta pravna istorija Stari i Srednji vek*, Belgrade, 2000.
- Aličić, S., „Vinske posude (Vasa vinaria) u rimskom pravu“, *Anali Pravnog fakulteta u Beogradu*, No. 1/2017, 131–150.
- Atanasovska Cvetković, A., Jovanović, A., Nasledovanjeto i nasledovanjeto na vinoto vo rimskoto pravo, *Godišen zbornik, Praven fakultet Štip*, Univerzitet „Goce Delčev“, Štip, Republic of North Macedonia, 2022, Vol. XI, 25–32.
- Atanasovska Cvetković, A., *Istorija države i prava, Visoka škola za poslovnu ekonomiju i preduzetništvo*, Belgrade, 2023.
- Aubet, M. E., *The Phoenicians and the West: Politics, Colonies and Trade*, Cambridge University Press, 1993.
- Botto, M., „The Phoenicians and the Spread of Wine in the Central West Mediterranean“, *Patrimonio cultural de la vid y el vino*, 2013, 103–131.
- Ventris, C., „Evidence for Greek Dialect in the Mycenaean Archives“, *The Journal of Hellenic Studies*, Vol. 73, 1953, 85–129.
- Višić, M., *Zakonici drevne Mesopotamije*, Belgrade, 1985.
- Vladetić, S., Stanković, E., „Fenus nauticum – praizvor osiguranja“, *Evropska revija za pravo osiguranja*, No. 1/2014, 11–20.
- Danilović, J., „Beleške o ugovorima o prevozu robe brodom i rimskom pravu“, *Anali Pravnog fakulteta u Beogradu*, No. 3-4/1969, 359–382.
- Digesti, *Justinijanova Kodifikacija*, Corpus Iuris Civilis. Available at: <https://droitromain.univ-grenoble-alpes.fr/>
- Dostálík, P., „Lex Rhodia de iactu and General Average“, *Gdańskie studia prawnicze*, No. 3/2019, 139–149.
- Duncan-Jones, R., *The Economy of the Roman Empire: Quantitative Studies*, Cambridge; New York: Cambridge University Press, 1982.
- Economou, E. M. L., *The Economy of Classical Athens: Organisation, Institutions and Society*, Routledge, 2024.
- Žiha, N., *Rimski pomorski zajam (Fenus nauticum) kao preteča prava osiguranja*, Osijek, 2019.
- Janković, Ž., Balaban, J., Balaban, M., „Strategija upravljanja rizicima poslovanja u osiguravajućim kompanijama“, *SVAROG*, No. 25/2022, 61–87.
- Johnson, H., *The World of Wine*, London, 2005.
- Jovanović, A., Atanasovska Cvetković, A., „Wine as an Agricultural and Food Product: A Historical and Legal Approach“, *Economics of Agriculture*, No. 2/2022, 517–532.
- Jovanović, A., Atanasovska Cvetković, A., „Loan Contract (Roman Mutuum) – Legal Rules Before and After the Serbian Civil Code of 1844 and the Criminal

Code of 1929", 13th International Scientific Conference: Employment, Education and Entrepreneurship, Belgrade, 25 October 2024, 898–909.

- Kandić, Lj., *Odabrani izvori iz opšte istorije države i prava*, Savremena administracija, Belgrade, 1988.
- Kowalczyk, B. J., "Rhodian Law as a Prototype of the Claim for Damage Suffered in Another Person's Interest in Polish Civil Law", *Gdańskie studia prawnicze*, No. 3/2019, 203–215.
- Kramer, S. N., *The Sumerians: Their History, Culture and Character*, The University of Chicago Press, 1963.
- Lipit-Ishtar Law Code. Available at: https://www.academia.edu/22455640/Lipit_Ishtar_Codex_Text_Sumerian_English_organic_transcription
- Van De Mieroop, M., *King Hammurabi of Babylon: A Biography*, Blackwell Publishing, 2007.
- Perucca, A., *Leggi di Taso riguardanti il vino e le vigne*, Axon, Vol. 5, No. 1, June 2021.
- Petrović Tomić, N., Bodirožić, I., "Načelna pitanja reverzibilnog odnosa krivičnog prava i prava osiguranja", *Tokovi osiguranja*, No. 3/2025, 397–416.
- Pezelj, V., "Pomorske havarije u dalmatinskom statutarom pravu", *Zbornik radova Pravnog fakulteta u Splitu*, No. 1/2006, 83–104.
- Phillips, R., *A Short History of Wine*, New York: Ecco, 2002.
- Rohrbach, W. R., "The Significance of Insurance History", *Tokovi osiguranja*, No. 3/2018, 7–26.
- Roth, M. T., *Law Collections from Mesopotamia and Asia Minor*, Scholars Press, Atlanta, Georgia, 1995.
- Sič, M., "Fides i bona fides u procesu stvaranja rimskog opšteg prava (ius gentium)", *Zbornik radova Pravnog fakulteta u Novom Sadu*, No. 2/2012, 157–176.
- Stanojlović, V., Navigating the Legal Waters: "The Role and Liability of a Ship's Captain in Roman Maritime Law", *Anali Pravnog fakulteta u Beogradu*, No. 2/2025, 373–403.
- Todd, S. C., *The Shape of Athenian Law*, Oxford, 1993.
- Feier, I., Migala, A., Pietruszka, M., Jackowski, M., "Roman Wine in Barbaricum: Preliminary Studies on Ancient Wine Recreation", *Heritage*, 2/2019, 331–338.