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SOME REMARKS ON SLAVE-SELLERS' LIABILITY UNDER ROMAN LAW**

Summary: *This article discusses the matter of the liability of professional slave-sellers for non-disclosure of a material defect to the buyer under Roman law. After first examining the professional sellers' representation and image as reported in the relevant sources, the article reviews the material defects of slaves for sale through the lens of jurists' and other relevant authors' discussion on* morbus et vitium, *and how the two relate to the sellers' claims in regard to the slaves they are selling. Next, the article provides an overview of the buyer's legal protection in the event of a found defect or false advertising, specifically in the form of* actio redhibitoria. *By analyzing legal and other relevant ancient Roman sources, this article probes the fine line between allowable sales talks and legally binding sales promises on a number of peculiar slave sale contracts under Roman law. Lastly, the article argues which party to the sale contract had the less favorable position in terms of carrying the risk of the unintentionally undisclosed material defects in the classical Roman law and explores the point at which the limits to advertising end and the seller's liablity begins.*

Keywords: *material defect,* curule aediles, emptio venditio, actio redhibitoria, *Roman law*

1. INTRODUCTION

That sales talk invariably involves exaggeration on the sellers' part in the claims of the quality of goods they are selling is no secret, as it is any seller's aim to portray their goods as superior to that of the competition. But just how far is it before such practice becomes a liability? The Latin maxim *caveat emptor*, meaning "let the buyer beware", is a disclaimer of warranties cautioning buyers to inspect the goods prior to purchasing: as the buyers are generally

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less privy to the information on goods than sellers, the proverb frees sellers from liability for defects that were not intentionally concealed.[1] The maxim is generally applicable to any sale contract, in both contemporary and historic law.

However – seeing as how *caveat emptor* is not directly endorsed in the sources of Roman law – when does the seller's legal (and moral) obligation not to exaggerate metamorphose into legal liability for a material defect or an absence of a promised quality? The question of the legal remedy in Roman law for the seller's veering into the territory of false advertising (mainly the *redhibendi iudicium* that morphed over time into the *actio redhibitoria*) has been extensively discussed in the literature.[2] Such circumstance, wherein the seller would have been wise to approach advertising cautiously to minimize the risk of a liability, indicates that somewhere in the Roman law the paradigm shifted from the *caveat emptor* to the *caveat venditor,* or "let the seller beware."[3]

With slave-sellers having been known as the most notorious of their kind, this article discusses sales precisely through the lens of slave sales given that the entire concept of the sellers' liability emerged therefrom. The article first provides an overview of the representation and the overall image of slave-sellers in the sources. Next, by examining what did and did not constitute a defect that the seller had the obligation to disclose to the buyer, the paper analyzes the material defects of slaves. Lastly, the article reviews the legal remedies in the case of an existing defect or absence of promised qualities. The aim of the article is to explore permissible praise or exaggerations on the seller's part and the limits thereto that guaranteed non-liability for the absence of promised features, as well as the consequences of noncompliance therewith.

2. ON PROFESSIONAL SLAVE-SELLERS

Perfecta emptione periculum ad emptorem respiciet is the time-honored rule of risk management in the sale contract (*emptio venditio*) of Roman law, originating in the D. 18,6,8pr. (*Paulus*

1 The exact phrase in Latin does not originate directly from the existing sources of ancient Roman law. Per Atiyah, it is an apotheosis of 19th century individualism, originating from the famous case *Chandelor v. Lopus* from 1603. Patrick Selim Atiyah, *The Rise and Fall of Freedom of Contract* (first published 1979, Clarendon Press 2003 repirnt) 178 and 464. Per Zimmermann, Roman law accepted the harsh idea of *caveat emptor* before it shifted (rather early) to the favor of the buyer. Reinhard Zimmerman, *The Law of Obligations, Roman Foundations of the Civilian tradition* (Oxford University Press 1996) 306–308. *Cf.* Walton H Hamilton, 'Ancient Maxim Caveat Emptor' [1931] 48(8) Yale Law Journal 1133, 1156 and 1157; James Mackintosh, *The Roman Law of Sale with Modern Illustrations* (T&T Clark, 1907) 278 *et seq*.; Ernst Rabel, 'Nature of Warranty of Quality' [1950] 24(3) Tulane Law Review, 273, 274–276.

2 For instance, see: Nunzia Donadio, 'Azioni edilizie e interdipendenza delle obbligazioni nell'emptio venditio. Il problema di un giusto equilibrio tra le prestazioni delle parti' in Luigi Garofalo (ed), *La compravendita e l'interdipendenza delle obbligazioni nel diritto romano II* (Cedam 2007) 457 *et seq*.; Giambattista Impallomeni, *L'editto degli edili curuli* (Cedam 1955) 256 - 273; Fritz *Pringsheim*, 'The *Decisive Moment* for Aedilician liability' in *Gesammelte Abhandlungen* (Carl Winter 1961) 171 - 176; Arthur De Senarclens, 'La date de l'édit des édiles de mancipiis vendundis' [1923] 4(4) Tijdschrift voor Rechtsgeschiedenis 345; Alan Watson, 'The Imperatives of the Aedilician Edict' [1971] 39(1) Tijdschrift voor Rechtsgeschiedenis 73.

3 The doctrine of *caveat venditor*, under which sellers are responsible for nondisclosure and the defects of sold items, emerged relatively recently in Common law as an antithesis to *caveat emptor*. Per Posner, *caveat venditor* arose largely from the sheer complexity of products and increasing costs of inspecting the goods. Richard Posner, *The Economics of Justice* (Harvard University Press 1981) 184. See more in: Charles T LeViness, 'Caveat Emptor versus Caveat Venditor' [1943] 7(3) Maryland Law Review, 177; Friedrich Kessler, 'The Protection of the Consumer under Modern Sales Law, Part 1: A Comparative Study' [1964] 74(2) The Yale Law Journal, 262; Chau Kong Wing and Lennon HT Choy, 'Let the Buyer or Seller Beware: Measuring Lemons in the Housing Market under Different Doctrines of Law Governing Transactions and Information' [2011] 54(4) The Journal of Law & Economics, 347, 348 *et seq*.

libro 33 ad edictum).[4] Therein, the classical-period jurist Paul remarks that the question of bearing risk for accidental destruction or deterioration of a sold item relates to the moment of contract perfection. The sale contract is considered perfected – *emptione perfecta* – once the object of sale has been specified and the contracting parties have agreed on the price. This moment may be postponed if the objects of sale are generic (such as wine or grain), or if the contract is concluded under a condition (Paul quotes opinions of Proculus, Octavenus and Pomponius on this topic). From the moment of perfection, the buyer (*emptor*) bears the entire risk, regardless of whether the sold item has been transferred by the seller to the buyer's possession or not. As it is, the said rule does not anticipate for a concealed defect or a lack of the qualities promised prior to or at the moment of the conclusion of the sale, instead providing only the object of sale being damaged or destroyed. The most obvious, but rather unfair formula would imply that the risk of the above-described pitfalls is also borne by the buyer seeing as how the *emptione* has been *perfecta*. Such rule was able to exist and function in a society where trade was marginal and sporadic, and trade participants were equal. With the emergence of professional traders, it grew less suited to the then trading practices, especially considering the sellers' experience in sales and – generally speaking – their more favorable negotiation position.

Unsurprisinlgy, professional slave-sellers are often cast in a negative light in existing sources of Roman law. For instance, classical jurist Mela, as quoted by his peer, Sextus Caecilius Africanus, remarked in the D. 50,16,207 (*Africanus libro 3 questionum*) that slave traders are not to be called *mercatores* (traders), but instead *mangones* and *venaliciarios,* terms seemingly carrying a rather negative connotation.[5] *Venaliciarios* was used for slave-sellers by Ulpian as well, as seen in the D. 14,4,1,1 (*Ulpianus libro 29 ad edictum*). Such impression of slave-sellers was likely formed on the slave-sellers' propensity to lie in praising goods that they were selling, a frequent theme in the relevant sources.[6] One such work, Claudian's *In Eutropium*, recounts the sale of a slave for whom it was not known how many times he had changed owners, been sold, changed his name, or been stripped for a physical examination to find any flaws hiding underneath his clothes.[7] Therewith, Claudian confirmed that slave-sellers did hide defects to

4 Per Lenel, the title of the book was *Empti venditi.* Otto Lenel, *Paligenesia Iuris Civilis,* vol. 1 (Bernhard Tauchnitz 1889) 1036. See more on the source in: Magdalena Apostolova Maršavelski, 'Venditor custodiam praestare debet – o prijelazu rizika rei venditae u klasičnom rimskom pravu' in Igor Gliha *et al.* (eds), *Liber amicorum Nikola Gavella - Građansko pravo u razvoju* (Pravni fakultet Sveučilišta u Zagrebu 2007) 523; Vincenzo Arangio-Ruiz, *La compravendita in diritto romano* (Casa Editrice Dott. Eugenio Jovene, seconda edition 1954) 259 *et seq*.; Paul Krückmann, 'Einige Randfragen zum periculum emptoris' [1939] 59 Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung (hereinafter ZSS), 1; Frank Peters, *Die Rücktrittsvorbehalte des Römischen Kaufrechts* (Böhlau Verlag 1973) 142 *et seq.*; Giuseppe Provera, 'Sul problema del rischio contrattuale nel diritto romano' in *Studi in onore di Emilio Betti*, vol. 3 (Multa Paucis 1962) 693; Emil Seckel and Ernst Levy, 'Die Gefahrtragung beim Kauf im klassischen römischen Recht' [1927] 47 ZSS, 117 *et seq*.; Zimmermann, note 1, 282 *et seq.*

5 See more on Africanus in Fritz Schulz, *History of Roman Legal Science,* (Oxford Clarendon Press 1946) 230 and 231; Paul Jörs, 'Caecilius 29 (Sex. Caecilius Africanus)' in Georg Wissowa (ed), *Paulys Realencyclopädie der classischen Altertumswissenschaft,* Band III 1 (J.B. Metzlerscher Verlag 1897) 1192–1195. On terms *mangones* and *venalicii* see: August Hug, 'mango' in Wilhelm Kroll (ed), *Paulys Realencyclopädie der classischen Altertumswissenschaft,* Band XIV 1 (Alfred Druckenmüller Verlag 1928) 1107.

6 Wiliam Warwick Buckland, *The Roman Law of Slavery: The Condition of the Slave in Private Law from Augustus to Justinian* (Cambridge University Press 1908) 39; Wiliam Fitzgerald, *Slavery and the Roman Literary Imagination* (Cambridge University Press 2004) 77; Roberta Stewart, *Plautus and Roman Slavery* (Wiley Blackwell 2012) 23 and 24; Thomas Wiedemann, *Greek and Roman Slavery* (Routledge 1981) 102.

7 Claudiani, *In Eutropium,* I.34-36: "(…) *quot iura, qout ille mutavit tabulas vel quanta vocabula vertit! Nudatus quotiens, medicum dum consulit emptor, ne qua per occultum lateat iactura dolorem! Omnes paenituit, pretii venumque redibat, dum vendi potuit* (…)." See full translation into English in: Abraham Hawkins, *The works of Claudian transalted into English verse* vol. 2 (J. Porter and Langdon and Son 1817) 2 and 3. More on the Claudian and *In Eutropium* see in: Michael H Bernes, 'Claudian' in Johm Miles Foley, *A Companion to Ancient Epic* (Blackwell Malden 2005) 538 – 550; Jacqueline Long, 'Juvenal Renewed in Claudian's In Eutropium' International Journal of the Classical Tradition [1996], 2(3) 321.

such an extent that it required physical examination to detect them, and such habits likely reinforced the negative impression of the whole profession. Similarly, in the *Epigrammaton libri,* Martial recounts auctioneer Gallian's sale of a slave girl with a bad reputation. As she had been on the market for a long time without any genuine buyer interest and the asking price was low, the auctioneer tried to prove her quality and pureness by pulling her towards himself in an attempt to kiss her, which attempt she refused. The auctioneer's role play and the slave girl's unconvincing performance, Martial concludes, caused the bidder who bid 600 sesterces to withdraw his bid.[8]

Confirming the above is the D. 21,1,37 (*Ulpianus libro 1 ad edictum aedilium curulium*), wherein Ulpian proscribed the sale of a long-term slave as a newly enslaved one.[9] Such a practice was frequent in his time, as new slaves usually sold at a better price for being presumed to be more submissive, easier to teach and overall more adaptable than their long-term counterparts. In other words, slave-sellers capitalized on the high demand for new slaves by fraudulently marketing long-term slaves as new ones.

True to the maxim, it follows from the above that the buyer in the era of classical Roman law did have to beware the sales talk preceding the conclusion of the sale contract, as well as inspect the slaves that he intended to buy, which means that the *caveat emptor* was partially aplicable.[10] In other words, the slaves' plainly visible defects could not constitute a liability on the part of the seller given that they were detectable by the buyer, as confirmed in Florentinus' eighth book of the *Institutiones*.[11,12] Per Florentinus, the sellers claims of the plainly visible (*si palam appareant*) qualities of the slave (or the house) being sold are not binding upon the seller: if the buyer can perceive that the slave sold is not as handsome as is claimed to be (given that the quality is plainly visible), it is the buyer's oversight to have accepted it as it was claimed, rendering the slave non-returnable. Conversely, where a quality is not plainly visible, such as in the case of the slave's education, the seller's claims thereon should not be misleading as such qualities raise the asking price.[13]

However, 'plainly visible' is difficult to delineate, especially in Florentinus' example of a well-built house (*domum bene aedificatam*), given that such a quality may be difficult to discern to the untrained eye,[14] such as to the average buyer lacking training as a craftsman or a builder

8 Martial, *Epigrammata,* VI, 66: *Famae non nimium bonae puellam, | Quales in media sedent Suburra, | Uendebat modo praeco Gellianus. | Parro cum pretio dio liceret, | Dum puram cupit adprobare cunctis, | Adtraxit prope se manu negantem | Et bis terque quaterque basiauit. | Quid profecerit osculo requiris? | Secentos modo qui dabat negauit.* See full translation into English in: Walter CA Ker, *Martial: Epigrams (Books I-VII),* vol. 1 (Wiliam Heinman 1919) 400 and 401. More on the Martial and his epigrams see in: Wiliam Fitzgerald, *Martial, The World of Epigramm* (University of Chicago, 2007) 1–25; Peter Howel, *Martial,* (Bloomsbury 2012) 49–63.

9 Nunzia Donadio, *La tutela del comparatore tra actiones aedilicae e actio empti* (Giuffre editore 2004) 60, ft. 47; Aldo Petrucci, *'Quelques observations sur les relations contractuelles avec les entrepreneurs dans le droit romain classique'* 90(1) Revue historique de droit français et étranger [2012] 1, 15 and 16.

10 Peter Stein, *Fault in the Formation of Contract in Roman Law and Scots Law,* (Oliver and Boyd, 1958) 31; Zimmermann, note 1, 315.

11 Per Lenel, the title was *De stipulatione duplae et edicto aedilium*. *Cf.* Lenel, note 4, 174.

12 D. 18,1,43pr. (*Florentinus libro 8 institutionum*) *Ea quae commendandi causa in venditionibus dicuntur, si palam appareant, venditorem non obligant, veluti si dicat servum speciosum, domum bene aedificatam: at si dixerit hominem litteratum vel artificem, praestare debet: nam hoc ipso pluris vendit.* See full translation into English in: Alan Watson, *The Digest of Justinian*, vol. 2 (University of Pennsylvania Press 1998) 62.

13 Stein, note 10, 29–32; Zimmermann, note 1, 315.

14 Peter Birks, *The Roman Law of Obligations* (Oxford University Press 2014) 84; Donadio, note 9, 177 and 178, ft. 69.

competent in assessing such claims. The same analogy should apply to the example involving the well-educated or craftsman slave as it, too, requires the asking of relevant questions or professional help to assess the factuality of the seller's claims.

The matter of the sales talk and its relation to sellers' liability is also partially covered in the D. 21,1,18,1 (*Gaius libro 1 ad edictum aedilium curulium*). Therein, Gaius relates about a seller's claim that the slave for sale was an excellent cook and the seller's promise to deliver one of the very best.[15] Had the seller claimed that the slave was a cook, he would have had to deliver any cook to fulfil his obligation. In the literature, the term for such a declaration is *dicta promissave,*[16] even though the D. 21,1,19,2 (*Ulpianus libro 1 ad edictum aedilium curulium*)[17] distinguishes between the *dictum* and the *promissum*. In the *principium* of the respective fragment (D. 21,1,19pr.) Ulpian states that there exists customary praise in the sale of slaves *quae ad nudam laudem servi pertinent*, i.e., that is not binding upon the seller. He then moves on to explain that regular promises (*dictum*) and promises (*promissum*) can be either formal (*stipulation*) or informal, but in both cases the seller's promise on the qualities of the slave is binding. Thus, customary praise does not represent a liability on the part of the seller, whereas both the *dictum* and the *promissum* do.[18] However, whether the seller's declaration that the house is well built (as mentioned above) constitute praise or an informal *dictum*, Ulpian does not explain.

Given that the buyer cannot ascertain all of the qualities of the slave he intends to buy, his or her position may be observed as the less favorable one. To improve his position, the buyer was able to ask the seller for an explicit guarantee – in the form of a verbal *stipulatio*[19] – that the slave does not possess any visibly undetectable flaws. With such a guarantee, the buyer was then able to take action on the basis of the *stipulatio, actio ex stipulatu,* where he could ask for the *qoud interest,* as seen in the D. 21,2,31 (*Ulpianus libro 42 ad Sabinum*): *"Sed ego puto verius hanc stipulationem 'furem non esse, vispellionem non esse, sanum esse' utilem esse: hoc enim continere, quod interest horum quid esse vel horum quid non esse."*[20] Having been the subject of many a controversy in the Romanistic literature, the term (*quod interest*) is generally understood as encompassing the buyer's entire interest, i.e., including both compensation for damages that may arise from his convictions, and, consequently, compensation for any further actions taken

15 *Venditor, qui optimum cocum esse dixerit, optimum in eo artificio praestare debet: qui vero simpliciter cocum esse dixerit, satis facere videtur, etiamsi mediocrem cocum praestet. Idem et in ceteris generibus artificiorum.*

16 See more on the term in: Adolf Berger, *Encyclopedic Dictionary of Roman Law* (first published 1953, The American Philosophical Society Philadelphia 1991 reprint) 434; Eva Jakab, 'Cavere und Haftung für Sachmängel, Zehn Argumente gegen Berthold Kupisch' in Eva Jakab and Wolfgang Ernst (eds), *Kauf nach Römischen Recht* (Springer Berlin, 2008) 133 and 134; Krückmann, note 4, 1–30; Barry Nicholas 'Dicta Promissave' in David Daube (ed), *Studies in the Roman Law of Sale* (Oxford Clarendon Press, 1959) 91–101.

17 *Dictum a promisso sic discernitur: dictum accipimus, quod verbo tenus pronuntiatum est nudoque sermone finitur: promissum autem potest referri et ad nudam promissionem sive pollicitationem vel ad sponsum. Secundum quod incipiet is, qui de huiusmodi causa stipulanti spopondit, et ex stipulatu posse conveniri et redhibitoriis actionibus: non novum, nam et qui ex empto potest conveniri, idem etiam redhibitoriis actionibus conveniri potest.*

18 Donadio, note 9, 177–179; Ivan Milotić and Dorotea Tuškan, 'Problematika patvorenja te garancije o svojstvima i kakvoći proizvoda u rimskom klasičnom pravu' [2019] 8(3) Zagrebačka pravna revija 183, 191.

19 See more on verbal *stipulatio* in: Thomas Finkenauer, 'Stipulation und Geschäftsgrundlage' [2009] ZSS 126, 305, 305–309; Tomislav Karlović, 'Neka razmatranja o nastanku stipulacijske obveze' [2012] 62(3) Zbornik Pravnog fakulteta u Zagrebu 901–928.

20 (...) *However, my view is that a promise* (stipulatio) *that "the slave is sound is not a thief or corpse robber" has substance; for its essence is the buyer's interest in his being or not being so... trans. cit.*, Watson, note 12, 165. Per Watson, the term *vispellio* translates to *thief or corpse robber,* whereas Wesel finds it translates to persons carrying corpses, who were disreputed and *turpes personae.* Uwe Wesel, 'Vispellio' [1964] 80 ZSS, 392, 392–394.

on the basis of such convictions, i.e., believing that the seller's claims were true.[21] Under this premise, *quod interest* may have exceeded the value of the sold slave. At any rate, the guarantee improved the buyer's position: either the seller gave an explicit guarantee, effecting the buyer's legal protection in the form of *stipulatio,* or the seller refused to do so, serving as a warning of a potential serious material defect on the slave. This legal practice demonstrates that slave traders were often distrusted to such a degree that buyers asked for additional assurance to cover losses resulting from sellers' false statements or concealed defects. Moreover, it also demonstrates that the seller's more favorable position was recognized as an acute problem.

3. MATERIAL DEFECTS OF SLAVES FOR SALE

Of decisive importance in the discussion on the rules on slave sales and the seller's responsibilities, which discussion dates to the pre-classical Roman law, were the *aediles curule* – patrician magistrates that were established in 367 BC.[22] Similarly to *praetores,* they issued edicts, as confirmed by Gaius in his *Institutiones* 1,6,[23] though the date of the first such edict or their original content is unkown. However, in a comment on an *aediles curule*'s edict, in the D. 21,1,10,1 (*Ulpianus libro 1 ad edictum aedilium curulium*), classical jurist Ulpian mentions Cato in reference to a discussion on the material defect of a slave (specifically, a severed finger). Considering the timeframe of Cato's era, it is safe to assume that Ulpian was referring to slave sales of the second century BC.[24] It is considered that the *aediles* had issued two separate edicts, one concerning slave sales, and the other livestock sales, with the first predating the latter.[25] While the original text of the *aediles curule's* edict has not been preserved – as it was the case with the final text of *praetores*' edict (*edictum perpetuum*) – a plausible reconstruction, as produced by Lenel, was possible owing to the numerous sources in the Digest. Lenel supplemented the *praetores*' edict with the *aediles curule*'s edict, remarking the brevity of the latter, and its sole three titles: *de mancipsis* (on the slave sales), *de iumentis* (on the sale of beasts of burden) and *de feris* (on the sale of beasts).[26]

The cornerstone of the *aediles curule*'s edict is explained by Ulpian in the D. 21,1,1 (*Ulpianus libro 1 ad edictum aedilium curulium*). As he relates, on the market, the seller was obligated to

21 *Cf.* Arangio-Ruiz, note 4, 357; Heinrich Honsell, *Quod interest im bonae-fidei-iudicium: Studien zum römischen Schadensersatzrecht* (C. H. Beck, 1969) 30 *et seq.*; Dieter Medicus, *Id quod interest* (Böhlau Verlag 1962) 110, 117 and 326; Zimmermann, note 1, 310, 826 and 827.

22 See more details on *aediles* in: Wilhelm Kubitschek, 'Aedilis' in Georg Wissowa (ed), *Paulys Realencyclopädie der classischen Altertumswissenschaft,* Band I,1 (J.B. Metzlerscer Verlag Stuttgart 1905) 448–466, or in the works cited in note 2.

23 *Ius autem edicendi habent magistratus populi Romani. Sed amplissimum ius est in edictis duorum praetorum, urbani et peregrini, quorum in provinciis iurisdictionem praesides earum habent; item in edictis aedilium curulium, quorum iurisdictionem in provinciis populi Romani quaestores habent…* See more in: Theodor Kipp, 'Edictum' in Georg Wissowa (ed), *Paulys Realencyclopädie der classischen Altertumswissenschaft*, Band V 2, (J.B. Metzlerscer Verlag Stuttgart 1905) 1940–1948.

24 Whether Ulpian referred to Cato the Younger or Cato the Older has been widely debated in literature. See more on the emergence of the aediles' edict in: Impalomeni, note 2, 93; Eva Jakab, *Predicere und cavere beim marktkauf* (C.H. Beck 1997) 102 *et seq.*; Herbert Felix Jolowicz and Barry Nicholas, *A Historical Introduction to the Study of Roman Law* (Cambridge University Press 1972) 294; de Senerclens, note 2, 391; Watson, note 2, 83; Zimmermann, note 1, 311.

25 See more in the works cited in note 2.

26 Otto Lenel, *Das edictum perpetuum* (Verlag Von Bernhard Tauchnitz 1883) 38 and 435–446.

disclose to the buyer all flaws and material defects of the slaves he was selling. This source is moreso relevant by Ulpian directly quoting the *Aiunt aediles:* "*Qui mancipia vendunt certiores faciant emptores, quid morbi vitiive cuique sit* […]."[27] However, Ulpian also notes that a disease or a defect (*morbus et vitium*, respectively) is relevant only if it is listed in the edict, the seller did not disclose it, and the slave lacks the qualities that the seller claimed he had.[28] In other words, not all defects represented a liability on the seller's part. Given their weight in this regard, the terms *morbus et vitium* require a more detailed analysis.

The discussion on the defects of slaves and their relation to the *curule aediles'* edict appears in non-legal sources as well, notably in Gellius' encyclopedic work *Noctes Atticae* 4,2.[29] Therein, Gellius points out that the edict (in the section concerning slave sales) prescribes that all slaves must wear a plaque stating their *morbus* or *vitium*. Continuing, he notes the jurist Caelius Sabinus' quoting of the early classical jurist Labeo's definition of *morbus* as "the state of any body contrary to the nature, which impairs its usefulness".[30] An even more obvious distinction between *morbus* and *vitium* is made by Cicero in the *Tusculanae Disputationes* 4,13: "As in the body there is disease, there is sickness, there is imperfection, so it is in the mind. The disordered condition of the whole body is called 'disease' (*morbus*); when disease is connected with debility, it is called 'sickness' (*vitium*)."[31]

It follows that the discussion on the definition of a defect of a slave occupied both Roman writers and jurists. Testifying to this is the sheer number of excerpts from the Digest, replete with different jurists' discussions on *morbus* and *vitium* and their connection with the seller's liability. The repeatedly discussed slave defects include slave with a disease affecting lungs, liver or bladder, epilepsy, or chronical diseases.[32] By contrast, there also existed a non-comprehensive list of defects that were considered to be so marginal that it was not mandatory to disclose them to the buyer. The list included, inter alia, slight feverishness, mild toothache, more then the ordinary number of fingers, ear pain, left-handedness, bad breath and mild eye infection.[33] Similarly, in *Noctes Atticae* 4,2,6-12, Gellius remarks on the controversies over a eunuch (quoting the jurist Labeo), infertility of female slaves (quoting both Labeo and Trebatius), and a short-sighted slave (quoting Servius). On the most peculiar example, that of a slave with a missing tooth, Gellius notes that Servius considered that concealing such a defect

27 *Aediles says: Those who sell slaves are to appraise purchasers of any disease or defect in their wares… trans. cit*., Watson, note 12, 144.

28 *Cf.* Donadio, note 9, 20 and 30; Impallomeni, note 2, 6 *et seq.*; Zimmermann, note 2, 311.

29 See more on Gelius and *Noctes Atticae* in: Barry Baldwin, *Studies in Aulus Gellius* (Coronado Press Lawrence 1975) 5–21; Andrew Stevenson, 'Gellius and the Roman Antiquarian Tradition' in Leofranc Holford Strevens and Amiel Vardi (eds), *The Worlds of Aulus Gellius,* (Oxford University Press 2004) 118–159; Leighton Durman Reynolds *et al.* (eds), *Text and transmission, A survey on the Latin classics,* (Clarendon Press 1983) 176–180. On the *Noctes Atticae* 4,2 see: David Daube, *Forms of Roman Legislation,* (Oxford Clarendon Press 1956) 92 *et seq.*; Anthony Maurice Honoré, 'The history of the Aedilitian actions from Roman to Roman-Dutch Law' in David Daube (ed), *Studies in the Roman Law of Sale* (Oxford Clarendon Press 1959) 134 and 135; Jakab, note 24, 40 *et seq.*; Zimmermann, *ibid.*

30 *Morbus est habitus cuiusque corporis contra naturam, qui usum eius facit deteriorem. Trans. cit*. Wiliam Beloe, *The Attic nights of Aulus Gellius translated into English,* vol. 1, (J. Johnson 1895) 239.

31 *Quo modo autem in corpore est morbus, est aegrotatio, est vitium, sic in animo. Morbum appellant totius corporis corruptionem, aegrotationem morbum cum imbecillitate, vitium, cum partes corporis inter se dissident, ex quo pravitas membrorum, distortio, deformitas. Trans. cit.* Andrew Preston Peabody, *Cicero's Tusculan Disputations, translated with as introduction and notes,* (Little, Brown and Company 1886) 213 and 214.

32 As seen in: D. 21,1,12,4; D. 21,1,14,4; D. 21,1,6pr., all from *Ulpianus libro 1 ad edictum aedilium curulium*; D. 21,1,53 (*Iavolenus libro 1 ex posterioribus Labeonis*).

33 For instance D. 21,1,1,8; D. 21,1,4,6; D. 21,1,10,2 all from *Ulpianus 1 primo ad edictum curulium*.

would render the seller liable, whereas Labeo disagreed, likening it to infants, i.e., any man, born toothless. As the same conclusion was drawn by Paul in the D. 21,1,11 (*Paulus libro 11 ad Sabinum*),[34] it is reasonable to conjecture that slaves with missing teeth were frequently returned to the seller. As it is, while there was no consensus on the matter, it was generally considered to be a non-defect.

From the above it follows that *morbus* and *vitium* concerned only physical flaws. While mentioned in several sources, mental faults and faults of character were mostly considered as information that need not be mandatorily disclosed to the buyer, given that the edict refers only to physical or bodily flaws.[35] In more practical terms, slaves prone to occasionally associate with religious fanatics, slaves who are excessively timorous, greedy, avaricious, quick-tempered, gamblers, winebibbers, gluttons, impostors, liars and the quarrelsome would not have been considered to have a defect.[36] Conversely, noxal liability of the sold slave was considered as a flaw that should be communicated to the buyer, despite the fact that it was neither a *morbus* or *vitium,* but rather liability of a master for the offence committed by the slave.[37]

Another peculiar example of the apparent limits of the seller's liability is found in Ulpian's commentary in the D. 21,1,4,3 (*Ulpianus libro 1 ad edictum aedilium curulium*).[38] As Pomponius explained and Ulpian commented thereon, while he may choose to do so, the seller is not obligated to guarantee that the slave he is selling is intelligent. However, if the sold slave were to have intelligence so low that it would prevent him from performing basic tasks, his lack of intelligence would be considered a defect (*vitium*). Pomponius also refers to the rule that the jurists seemingly observed: *morbus* and *vitium* entailed physical defects only. Conversely, in the case of a slave with a mental defect, a seller was held liable only if he willingly accepted to be.[39] At any rate, as mentioned above, low intelligence was an exception to the rule. However, it appears that intelligence below a certain (unwritten) degree was a defect that was mandatory to disclose to the buyer, even though intelligence as such was a quality that was optional to disclose. Perhaps it depended on whether the slave was used for mentally demanding tasks or purely manual labor. Per Misera, as such litigation and the burden of proof was especially challenging, parties would agree that the slave be returned to the seller on grounds of the defect, despite not constituting a defect in formal terms, i.e., under the *curule aediles'* edict.[40]

34 Donadio, note 9, 51; Zimmermann, note 1, 313.

35 Alan Rogerson, 'Implied Warranty against latent defects in Roman and English law' in David Daube (ed), *Studies in the Roman Law of Sale* (Oxford Clarendon Press 1959) 121 and 122. See more *infra*.

36 As seen in: D. 21,1,1,9; D. 21,1,4,2, both from *Ulpianus libro 1 ad edictum aedilium curulium*.

37 D. 21,1,1,1; D. 21,1,17,17-19, both from *Ulpianus libro 1 ad edictum aedilium curulium*.

38 *Idem Pomponius ait, quamvis non valide sapientem servum venditor praestare debeat, tamen, si ita fatuum vel morionem vendiderit, ut in eo usus nullus sit, videri vitium. Et videmur hoc iure uti, ut vitii morbique appellatio non videatur pertinere nisi ad corpora: animi autem vitium ita demum praestabit venditor, si promisit, si minus, non. Et ideo nominatim de errone et fugitivo excipitur: hoc enim animi vitium est, non corporis. Unde quidam iumenta pavida et calcitrosa morbosis non esse adnumeranda dixerunt: animi enim, non corporis hoc vitium esse*.

39 Karlheinz Misera, K, 'Der Kauf auf Probe' in Hildergard Temporini and Wolfgang Haase (eds), *Aufstieg und Niedergang der römischen Welt, vol*. II, 14, (de Gruyter 1982) 537; Zimmerman, note 1, 312, and 314. Birks catalogues certain non-physical vices that should be disclosed: a slave that is fugitive, wanderer, noxally liable, committed capital offences, sent into arena, or had suicide attempts. Birks, note 14, 89.

40 Misera, *ibid*. This theory concerns a special clause on redhibition that is different from the conventional *actio redibitoria*. Whether it has been proven is questionable. *Cf.* Zimmermann, note 1, 319, ft. 205.

On the other hand, as seen from Ulpian's commentary in the D. 21,1,1,2 (*Ulpianus libro 1 ad edictum aedilium curulium*), the *curule aediles'* edict derived from the need to prevent slave sellers' fraud. In Ulpian's view, even though the seller may not have been aware of a defect, he would still have been liable for it.[41] Moreover, Ulpian continues, such solution is not unjust given that the seller had time and opportunity to discover the defect; to the buyer it is irrelevant whether or not the seller was aware of the defect or was defrauding the buyer. Under this approach, whether he wilfully withheld the defect from the buyer or had no knowledge of it, the seller is objectively liable, regardless of his intentions.[42] Again, such reasoning – similarly to the above-discussed general attitude towards professional sellers – upholds the notion of shifting the risk from the buyer to the seller.

4. LEGAL PROTECTION IN THE CASE OF THE SELLER'S LIABILITY

In his book of commentary on the *curule aediles*' edict from the D. 21,1,28 (*Gaius libro 1 ad edictum aedilium curulium*), Gaius imparts that the *aediles* sanctioned violation of the edict on the seller's part (i.e., chiefly in regard to *morbus* and *vitium*) by granting to the buyer *redhibendi iudicium* of two months, and *quanti emptoris intersit* of six months.[43] This indicates that rules were laid down to protect the buyer whose trust in the seller and the sale was substantially undermined. Such protection was accomplished by allowing the buyer to unilaterally terminate the contract before a defect became apparent, limited to a period of two months (*redhibendi*) from the purchase. Per Zimmerman, following the expiry of the two months, the buyer had four months to request *qoud interest*, provided that the slave was shown to have a relevant defect. What allowed this was the fictitious *actio ex stipulatu* – the buyer's claim for damages for the seller's failure to provide what he guaranteed in the form of a stipulation.[44] However, as Zimmermann notes, whether such claim was indeed granted and on what basis may only be speculated.[45] As it stands, while the entire notion of the fictitious *actio ex stipulatu* is elaborated, existing sources do not explicitly confirm it.

That the *aediles* may have originally asked sellers to offer guarantees in the form of a double stipulation (*stipulatio duplae*) is suggested in the D. 21,2,37,1 (*Ulpianus libro 32 ad edictum*). Therein, Ulpian states that the double should be promised (*duplum pomitti oportere*) when selling valuable items such as pearls or jewelry, noting in the closing sentence, that slave sellers, too, are required by the *curule aediles*' edict to extend such promise. Lenel offered an identical solution for the excerpt from the D. 18,1,43pr. (*Florentinus libro 8 institutionum*), conjecturing that the edict may have been titled *De stipulatione duplae et edicto aedilium*.[46] The double

41 (...) *etiamsi ignoravit ea quae aediles praestari iubent, tamen teneri debere*.

42 *Cf.* Buckland, note 6, 54 *et seq.*; Nunzia Donadio, 'Garanzia per i vizi della cosa e responsabilità contrattuale' in Eva Jakab and Wolfgang Ernst (eds), *Kauf nach Römischen Recht*, (Springer 2008) 68; Donadio, note 2, 60 *et seq.*; Jakab, note 24, 128 and 232.

43 *Si venditor de his quae edicto aedilium continentur non caveat, pollicentur adversus eum redhibendi iudicium intra duos menses vel quanti emptoris intersit intra sex menses*.

44 See more on *stipulatio* in literature enumarted in the note 19.

45 Zimmermann, note 1, 316, 317 and 318. *Cf.* Arangio-Ruiz, note 4, 389; Medicus, note 21, 118 and 119; Honsell, note 21, 69.

46 Lenel, note 4, 174. On the source see more *supra*, notes 11, 12, 13 and 14.

stipulation may have stemmed from the *actio auctoritatis,* an early-civil law action implicitly included in the sale by the *mancipatio,*[47] appearing in the Twelve Tables,[48] and indicating that it had been in use around 450 BC. Under *mancipatio*, the previous owner had to protect the new owner from claims of third persons, which is essentially an early stage of the concept of liability for eviction. However, the previous owner's obligation was limited until the time required for the *usucapio* elapsed. Where the previous owner failed at affording such protection, the new owner was allowed to activate *actio auctoritatis* and ask for double the paid price.[49] Given that the liability under the *actio auctoritatis* required the formal *mancipatio,* it rendered the sale object a *res mancipi*.[50] Over time, it became standard practice for the buyer of a valuable *res nec mancipi* (presumably, it had originally been used for *res mancipi* as well) to ask the seller to promise double the price in case of eviction.[51] Since the objects of sale in the above-discussed cases were slaves (*res mancipi*), the suggested connection is more plausible.

In brief, if the seller contracted the double stipulation and the sold slave was found to have a defect, the buyer would be entitled to double the price he paid. However, if the seller refused to include such stipulation into the contract, the *curule aediles* allowed the buyer to return the bought slave irrespective of the defect appearing within the period of the two months, what Gaius calls *redhibendi iudicium.* Such mechanism likely resulted from the the seller refusing to include the double stipulation in the contract, disillusioning the buyer's trust in the regularity of the transaction, impugning the seller's honesty to such an extent that the *aediles* allowed the buyer to withdraw even before the defect would become apparent. After the two months elapsed, the buyer was still protected by the option of requesting *quod interest* in the subsequent four months, but under the condition that the slave did have a defect.[52]

The above practice presumably transformed into the *actio redhibitoria* and the *actio quanti minoris,* both classical-law actions for material defects. In the above-discussed D. 21,1,1, which lists the prerequisites for the *actio redhibitoria*, Ulpian notes that the *actio redhibitoria* is applicable in cases where a sold slave has one or more defects listed in the *aediles*' edict.[53] The term *actio quanti minoris* signifies the action that succeeded the *actio redhibitoria:* instead of termination of the contract, *actio quanti minoris* sought the reduction of the price due to

47 On *mancipatio*, see: Franz Leifer, 'Mancipium und auctoritas' [1936] ZSS 56, 136 – 235; Carlos Amunategui Perello 'Problems concerning Mancipatio' [2012] Tijdschrift voor Rechtsgeschiedenis 80(3-4) 329–352; Kaius Tuori, 'The Magic of Mancipatio' [2008] Revue Internationale des droits de l'Antiquité 55, 499– 521.

48 *Cicero, Topica,* 4, 23: *Usus auctoritatis fundi biennium, ceterarum rerum annos esto.*

49 Max Kaser, 'Neue Studien zum altrömischen Eigentum' [1951] ZSS 68, 168 - 174; Marijan Horvat, 'Uzukapija i auctoritas u starom rimskom pravu' in Marijan Horvat, *et al.* (eds), *Hrestomatija rimskog prava*, Svezak 1, (Pravni fakultet Zagreb, 1998) 112.

50 Gaius lists such items in Inst. 1,120: slaves, oxen, horses, mules and ases, urban and rustic estates (Italian lands). In addition, in Inst. 2, 17, he adds servitudes attached to rural lands (*iter, actus, via* and *aqueductus*). Under *ius civile*, the ownership of such items by *ius civile* is transferrable to others only by *mancipatio* or *in iure cessio. Cf.* Max Kaser, *Das Römische Privatrecht, Das altrömische, das vorklassische und klassische Recht,* vol. 1 (Beck, 1955) 107.

51 Zimmermann, note 1, 295 and 296. *Cf.* Arangio-Ruiz, note 4, 341 *et seq.*; Max Kaser, *Eigentum und Besitz im* älterenrömischen *Recht* (Böhlau 1956) 202 *et seq.*; Ernst Rabel, *Die Haftung Des Verkaufers Wegen Mangels Im Rechte*, vol. 1 (first published 1902, de Gruyter 1973 reprint) 72 *et seq.*; Alan Watson, *The Law of Obligations in the Later Roman Republic* (Oxford Clarendon Press 1965) 83–93.

52 Honsell, note 21, 69; Zimmermann, *ibid.* 316. Per Zimmerman, this was achieved with the fictitious *actio ex stipulatu.* However, he also points to the possibility of interpolation. *Cf.* Arangio-Ruiz, note 4, 389, ft. 1.

53 August Bechmann, *Der Kauf nach Gemeinem Recht*, vol. III, (Verlag Von Andreas Deichert 1908) 118 *et seq.*; Uwe Wesel, 'Zur dinglichen Wirkung der Rücktrittsvorbehalte des römischen Kaufs' [1968] ZSS 85, 141–163.

an uncovered defect.[54] The time frame in which the buyer could ask for termination of the contract was six useful (*utiles*) months, whereas for the reduction of the price (*quanti minoris*) the buyer had an entire year.[55] Nevertheless, the provision is hardly uniform throughout the sources, with Gaius, for example, stating in the (previously discussed) D. 21,1,28 (*Gaius libro 1 ad edictum aedilium curulium*) that the period for termination of the contract is two months, and for the price reduction six months.[56]

In discussing the limits of the seller's liability in the D. 19,1,13pr. (*Ulpianus libro 32 ad edictum*), Ulpian cites Julian's differentiating between the seller who intentionally sold the item with a defect, and the one who did it unknowingly. The former was then liable for *"omnia detrimenta, quae ex ea emptione emptor traxerit"* (for all the losses he [the buyer] sustained due to the sale), and the latter only for the *"quanto minoris essem empturus"* (for the difference from the smaller amount I would have paid had I known of this).[57] Importantly, however, Julian also presents that the action that the buyer would bring is *ex empto* (*actio empti*). Given that the same action would have been brought in the event that the seller had not been aware of concealed defects, it may be deduced that the liability for concealed defects was implicitly included in the contract.[58] Whether or not that was the case in the classical or the post-classical period is not certain; most authors believe it was used in the classical period.[59]

Apart from the usual legal remedy of the *actio redhibitoria,* parties to a sale contract had another option. To prevent disputes arising from a defect and the potential litigation issues, parties could add to the sale contract a contingency clause allowing the buyer to return the slave within an agreed period on grounds of dissatisfaction. The clause could have been formulated to condition either that the slave would be considered unsold ((...) *si displicuisset Stichus inempta sit*...) or that the slave may be returned (*si displicuisset, reddatur/redhibetur*).[60] Such additional clause (agreement) or *pactum displicentiae* to the sale contract (*emptio venditio*) was customary in the period between the pre-classical and the post-classical Roman law for any object of sale (ordinarily the slave).[61] Another option was the *datio ad experiendum* or *inspic-*

54 Prerequisites for this action correspond to those for the *actio redhibitoria.* See more on *actio quanti minoris* in: Arangio Ruiz, note 4, 381 *et seq.*; Bechmann, *ibid.* 119 *et seq.*; Fritz Pringsheim, 'Das Alter der aedilizischen actio quanti minoris' [1952] 69 ZSS 234–300.

55 For instance, D. 21,1,19,6 (*Ulpianus libro 1 ad edictum aedilium curulium*), D. 21,1,55 (*Papinianus libro 12 responsorum*) or Pauli *Sententiae* 2,17,5-6.

56 *Cf.* Wolfgang Ernst, 'Neues zur Sachmängelgewährleistung aufgrund des *Ädilenedikts*' [1999] 116 ZSS 208–221; Jakab, note 24, 136 and 137.

57 *Trans. cit*. Watson, note 12, 90.

58 Per Zimmerman, it is an *oportere ex fide bona.* Zimmermann, note 1, 321.

59 *Cf.* Bechmann, note 53, 174; Franz Haymann, *Die Haftung des Verkäufers für die Beschaffenheit der Kaufsache,* vol. 1, (Franz Vahlen 1912) 71 *et seq.*; Honoré, note 29, 137–140; Wolfgang Kunkel, 'D. 19. 1. 13. pr - 2' [1926] 46 ZSS 285–287; Pringsheim, note 54, 293–295; Zimmermann, note 1, 322.

60 Variations on such agreements are found in both legal and other relevant sources dating to the period between pre-classical and post-classical Roman law: Plautus, *Mercator,* 418–423; D. 18,1,3 (*Ulpianus libro 28 ad Sabinum*); D. 18,5,6 (*Paulus libro 2 ad edictum*); C. 4,58,4 (*Imperatores Diocletianus, Maximus*); I. 3,23,4.

61 Emma Diaz Rodriguez, *De la noción de contrato al pactum displicentiae en derecho romano* (Universidad de Oviedo 1998); Werner Flume, 'Die Aufhebungsabreden beim Kauf - Lex commissoria, in diem addictio und sogenanntes pactum displicentiae – und die Bedingung nach der Lehre der römischen Klassiker' in Dieter Medicus and Hans Herman Seiler, (eds), *Festschrift für Max Kaser zum 70. Geburtstag,* (Beck 1976) 309–327; Misera, note 39, 525–582; Attila Pókecz Kovács, 'Rücktrittsvorbehalt und pactum displicentiae (Ulp. D.19.5.20pr.)' [2011] 58 Revue internationale des droits de l'antiquite 315–338.

iendum dare,[62] which allowed the buyer to inspect the object of sale (the slave) prior to the conclusion of the sale contract.[63] While a difference in the clauses is evident in the above-mentioned sources, largely in the matter of risk-carrying and the juncture of the conclusion of the sale contract, it is uncertain whether such specifics had any profound effect in practice. Both clauses serve mainly as a way to prevent the application of the *actio redhibitoria* because of a concealed defect of the slave.[64] Given that this legal practice undeniably existed, the slave sales may be presumed to have involved a great deal of distrust between the sellers and the buyers, arguably stemming from false advertising.

5. CONCLUSION

The matter of liability of professional slave sellers under Roman law is somewhat open to interpretation. As both legal and non-legal sources show, professional sellers were disreputed, mostly on account of their propensity for false advertising. The *curule aediles* were forced to intervene, thus significantly improving the position of the buyer, but to the detriment of the professional sellers. As a result, the original doctrine, recognized today as *caveat emptor*, started to morph into *caveat venditor* by the second century BC, when the material defect of the slave and consequential liability of the seller is considered to have been first dicussed.

Supporting the theory of the sellers' less favorable position in the classical Roman law are the legal remedies that were available to the buyer. If a slave sold on the market was found to have a concealed defect or have been falsely advertised, the buyer had the option of *actio redhibitoria* and *actio quanti minoris*. In such cases, the buyer was protected even where the seller was not aware of the defect. Moreover, there seems to have existed in practice a grave distrust in the sellers' intentions and credibility, insomuch that buyers and sellers would at their own instigation add specific clauses (agreements) such as *pactum displicentiae* and/or *datio experiendum* to the original contract of sale. That such clauses existed attests to a developed market and more freedom in setting contractual terms.

The specific rules on the limits of the seller's liability for (false) advertising are discussed in a number of the mentioned sources. The more peculiar ones included the slave marketed as handsome and the house as well-built (in Florentinus' excerpt from the D. 18,1,43pr.). Other examples entailed the issue of a slave's intelligence (in the Ulpian's excerpt from the D. 21,1,4,3), as well as a missing tooth in a slave (from Paul's exceprt from the D. 21,1,11 and Gellius *Noctes Atticae* 4,2,12). While the rules may appear simple, to the average buyer it may

62 Such agreements may be found in D. 19,5,20pr. – 1 (*Ulpianus libro 32 ad edictum*) or D. 9,2,52,3 (*Alfenus libro 2 digestorum*)

63 Alvaro D'Ors, 'Una nota sobre la contractualización de las entregas a prueba en Derecho romano' [1975] Anuario de historia del derecho español 45, 595 - 603; Markus Knellwof, *Zur Konstruktion des Kaufes auf Probe, Die Gefallensbedingung und ihr Verhältnis zu Wollensbedingung, Resolutivbedingung und Rücktrittsrecht,* (Schulthess Polygraphischer Verlag AG 1987) 59; Raimondo Santoro, 'Riflessioni sul contratto nel pensiero di Labeone' in *Annali del seminario Giuridico dell'Università di Palermo*, Volume XXXVII, (Palumbo 1983) 123 *et seq.*; Andreas Wacke, 'Dig. 19,5,20 pr.: Ein Siegespreis auf fremden Pferden Zur Gewinn-Ablieferungspflicht beim Kauf auf Probe' [2002] 119 ZSS 359–379; Lihong Zhang, Contratti innominati nel diritto romano (Dott. A Giuffrè 2007) 108 and109.

64 Per the *Redhibitionsklausel theory* as proposed by Misera, parties to a slave sale could add a redhibition clause, under which the seller was obligated to accept the buyer's return of the slave as if the slave had a defect, even if it did not. See more in: Misera, note 39, 532 and 533. *Cf.* Jakab, note 24, 45–48.

have not been manifest whether a slave was indeed handsome or a house well built, and, by analogy, whether a missing tooth was a defect or not. Adding to the confusion, Ulpian maintained that a slave's intelligence that is so low that it prevents the slave from performing basic tasks is a defect that should be disclosed to the buyer, even though mental defects of the mind were not required to be disclosed. In essence, as the above examples demonstrate, the limits of "safe" advertising (i.e., preclusion of the seller's liability) could often not be straightforwardly recognized. At any rate, from the sources reviewed herein it has followed that the search for a systematic approach may be precarious as the sources themselves lack clear and simple rules on "safe" advertising, placing sellers in an unenviable position.

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NEKA RAZMATRANJA O ODGOVORNOSTI PRODAVATELJA ROBOVA U RIMSKOM PRAVU

Sažetak

U članku se raspravlja o odgovornosti profesionalnih prodavatelja robova za skriveni materijalni nedostatak u rimskom pravu. Nakon prvotne analize prikaza profesionalnih prodavatelja robova u relevantnim povijesnim izvorima, članak je usmjeren na koncept materijalnog nedostatka kroz raščlambu pojmova *morbus et vitium* te na pitanje odnosa navedenih pojmova s prodavateljevom odgovornošću za pohvale robova koje prodaje. Slijedi pregled kupčeve pravne zaštite u slučajevima postojećeg materijalnog nedostatka ili lažnog oglašavanja, posebice tužbom *actio redhibitoria*. Nakon toga, uz analizu pravnih i nepravnih izvora rimskog prava, članak raspravlja o tankoj granici između dopuštenih pregovora koji prethode kupoprodaji i pravno obvezujućih obećanja o kvaliteti prodanih robova. Slijedi rasprava o pitanju koja strana ugovora je u nepovoljnijem položaju te stoga snosi rizik za nenamjerno skriveni materijalni nedostatak u klasičnom rimskom pravu. Zaključno se istražuju granice pretjeranog hvaljenja robova tijekom oglašavanja te početak odgovornosti prodavatelja.

Ključne riječi: *materijalni nedostatak,* curule aediles, emptio venditio, actio redhibitoria, *rimsko pravo*

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