Trading along Hadrian's Wall

Paul du Plessis

TRADING ALONG HADRIAN'S WALL

1. Introduction

Sometime towards the end of the first century/start of the second century AD, two business partners in the Roman province of Britain corresponded by letter regarding their joint business activities (Tab. Vindol. II 343). One partner resided at (or near) Catterick in North Yorkshire, the location of a prominent leather tannery, the other in the small town that had sprung up outside the large Roman military fort at Vindolanda. Through historical accident, their correspondence was preserved among the Vindolanda tablets, small rectangles of birch and fir wood roughly the size of a small postcard, used by the Romans to communicate across distances.[1]

2. The Text in Question

The letter in question reads as follows:

> (i) Octavius to his brother Candidus, greetings. The hundred pounds of sinew from Marinus - I will settle up. From the time when you wrote about this matter, he has not even mentioned it to me. I have several times written to you that I have bought about five thousand *modii* of ears of grain, on account of which I need cash. Unless you send me some cash, (ii) at least five hundred *denarii*, the result will be that I shall lose what I have laid out as a deposit, about three hundred *denarii*, and I shall be embarrassed. So, I ask you, send me some cash as soon as possible. The hides which you write are at Cataractonium - write that they be given to me and the wagon about which you write. And write to me what is with that wagon. I would have already been to collect them except that I did not care to injure the animals while the roads are bad. See with Tertius about the 8½ *denarii* which he received from Fatalis. He has not credited them to my account. (iii) Know that I have completed the 170 hides and I have 119 (?) *modii* of threshed *bracis*. Make sure that you send me cash so that I may have ears of grain on the threshing-floor. Moreover, I have already finished threshing all that I had. A messmate of our friend Frontius has been here. He was wanting me to allocate (?) him hides and that being so, was ready to give cash. I told him I would give him the hides by the Kalends of March. (iv) He decided that he would come on The Ides of January. He did not turn up nor did he take any trouble to obtain them since he had hides. If he had given the cash, I would have given him them. I hear that Frontinius Iulius has for sale at a high price the leather-making (things) which he bought here for five *denarii* apiece. Greet Spectatus and ... and Firmus. I have received letters from Gleuco. Farewell. (Back) (Deliver) at Vindolanda. [Bowman translation].[2]

[1] Alan K. Bowman, *Life and Letters on the Roman Frontier: Vindolanda and Its People*, rev., expanded and updated ed. (London: British Museum, 2003), 6–12.
[2] Bowman, *Life and Letters on the Roman Frontier*, 144–146.

The letter consists of four leaves of wood (marked i–iv) that were strung together and folded, like a concertina, to preserve the privacy of the correspondence. It was bound together on the outside with a leather thong, but it does not appear to have been sealed like other Roman commercial documents (such as contracts) where the sealing preserved the *fides* of the parties to the document.

3. Analysis

The significance of this tablet resides in the fact that it provides us with quite a bit of information about 'commercial practice' rather than formalised rules of Roman law as laid down in the main sources of Roman law, i.e. the Justinianic compilation. Furthermore, as a document from the Roman West, and more specifically from a Roman 'frontier province' (a term commonly employed when describing Roman Britain), it provides a welcome counterbalance to the rich body of documentation found in the East (Egypt being our prime example and the source of countless papyri).[3] For all these reasons, as well as for some that will be discussed below, this document deserves closer scrutiny.

Before this can be done, however, a few general remarks are required about Roman 'commercial law'. The first and most obvious point to make is that 'Roman commercial law' is a modern category. There is no evidence in the legal sources that the Roman jurists or the Roman Imperial bureaucracy ever conceived of or ring-fenced part of their private law as 'applied private law', i.e. 'commercial law'. This is also in keeping with modern debates about the extent to which the Romans understood 'economic theory'. In second place, as with so many areas of the study of the Roman world, scholars from different disciplines have approached the matter from their own disciplinary perspectives while paying little attention to the work undertaken in related fields. This is particularly evident in the study of Roman commercial law. In the last thirty years, two significant strands of scholarship have developed in this discourse. The first, located largely in the fields of ancient history (but increasingly also economic history), is based on the pioneering work of Moses Finley from the early 1970s on the ancient economy.[4] Thus, since the 1970s, scholars have investigated fundamental questions such as whether the Romans had a concept of 'economics', what the main features of this 'economy' were (and whether it was 'primitive' or 'sophisticated') and how this relates to issues of trade (especially

[3] On legal practice, see now the excellent collection of translated materials in James G. Keenan, Joseph Gilbert Manning and Uri Yiftach-Firanko (eds.), *Law and Legal Practice in Egypt from Alexander to the Arab Conquest: A Selection of Papyrological Sources in Translation, with Introductions and Commentary* (Cambridge: Cambridge University Press 2014) generally.
[4] M. I. Finley, *The Ancient Economy* (Berkeley: University of California Press, 1973).

the provision of grain) and monetary policy (minting of coins, tax collecting, etc.).[5] The academic debate in this area continues to be lively, but the current state of it is a far cry from Finley's original work. During the last twenty years, owing primarily to the work of Walter Scheidel, Dennis Kehoe and Bruce Frier, the study of the Roman economy has come under the influence of New Institutional Economics.[6] This movement, originating the USA in the 1970s, has moved away from the macro-level studies of the Roman economy characteristic of Finley's work (i.e. classical economics) and have begun to focus on 'institutions' in an attempt to explain Roman economic behaviour. The latter two scholars, especially, have chosen law as an 'institution' to be studied in order to uncover more information about Roman economics. The second strand of scholarship, largely confined to Italian Roman-law circles, have portioned off a section of Roman private law under the heading Roman 'commercial law' and have discussed the rules of law and their economic implications (e.g. partnerships, *peculium*, carriage) in great detail.[7] These works, while admirable, continue to focus on formal rules of law and thus far, has not engaged to any great extent with the works of Scheidel, Kehoe or Frier.[8] As this brief survey has shown, therefore, much work still needs to be done concerning the integration of macro-level narratives about the Roman economy with micro-level narratives concerning the rules of Roman law, especially in light of more recent approaches employing New Institutional Economics.

Having set the scene, I now wish to proceed to the letter in hand. As an example of 'commercial practice' a document of this kind forms an important part of what one might call 'law in action' (to use Roscoe Pound's phrase) and thus provides a counterbalance to the doctrinal rules of Roman law.[9] But 'law in action' in the Roman context is complicated by a number of factors. Of these, the main issue relates to the application of Roman law in the provinces. The issue is this: for the majority of the duration of the Roman Empire; Roman law was not a territorially based legal order. Rather, it was connected to Roman citizenship in the sense that only Roman citizens (or foreigners who had been

[5] Comprehensively summarised in Walter Scheidel, Ian Morris and Richard P. Saller (eds.), *The Cambridge Economic History of the Greco-Roman World* (Cambridge: Cambridge University Press, 2007); Walter Scheidel, *The Cambridge Companion to the Roman Economy* (Cambridge: Cambridge University Press, 2012) generally.

[6] A good example of this method may be found in the recently published – Legal Documents in Ancient Societies (Conference), Dennis P. Kehoe, David M Ratzan and Uri Yiftach, D.C. Center for Hellenic Studies (Washington, New York University), and Institute for the Study of the Ancient World, (eds.) *Law and Transaction Costs in the Ancient Economy* (2015).

[7] Pietro Cerami, Andrea Di Porto and Aldo Petrucci, *Diritto commerciale romano: profilo storico* (Torino: G. Giappichelli, 2004) is a good example of this approach.

[8] This may be seen in earlier works on the topic, such as, Generoso Melillo, *Economia e giurisprudenza a Roma: contributo al lessico economico dei giuristi romani* (Napoli: Liguori, 1978); Francesco De Martino, *Diritto, economia e società nel mondo romano* (Napoli: Jovene, 1995).

[9] Roscoe Pound, 'Law in Books and Law in Action', *American Law Review* 44 (1910), 12.

granted the *ius commercii*) could access Roman law.[10] According to the traditional narrative, based on the works of Ludwig Mitteis (1859–1921), the main effect of the *Constitutio Antoniniana* of 212 AD was to suppress any local customary law that may have existed prior to this date and to render Roman law '*Reichsrecht*' with territorial application.[11] Since then, the Mitteis thesis has come under sustained pressure, especially concerning Roman Egypt as records of court cases and petitions have painted a rather different picture.[12] In light of the overwhelming evidence gathered in the last century, most scholars now reject the Mitteis thesis and argue that both before and after 212 AD, the application of Roman law on a provincial level was much more selective (both in terms of topics and audience) than previously imagined. Furthermore, it is clear that the effect of the Imperial decree in 212 AD was not to render Roman law a territorially based legal order applicable to all free citizens within the Empire (although what it was intended to do remains debated).

In light of this rejection of Mitteis's thesis, it has become much more difficult to provide a picture of the application of Roman law in a provincial context. If the Roman state did not in all instances, impose Roman law from above as a modern state would, then it becomes necessary to identify when and to what extent individuals would access Roman law. Phrased differently, one has to investigate the 'legal consciousness' (to use a modern socio-legal term) of individual actors to a dispute.[13] Caroline Humfress[14] and Georgy Kantor[15] have done much to further this approach in recent years. They have focused on 'from the ground up' issues such as local knowledge of the law, dispute resolution options available to the parties and individual choices when accessing Roman law. Investigations of this kind have, however, as a rule focused on the Eastern part of the Roman Empire owing to the preservation of ample material from legal practice.

This is not an unimportant point. Traditionally, investigations into the existence of local custom under Roman rule have tended to focus on the East, not only because of the substantial preservation of

[10] For the use of 'fictions' to involve non-citizens in Roman law, see now Clifford Ando, 'Fact, Fiction, and Social Reality in Roman Law', *Law and Philosophy Library* 110 (2015), 295–324.
[11] Ludwig Mitteis, *Reichsrecht und Volksrecht in den östlichen Provinzen des Römischen Kaiserreichs mit Beiträgen zur Kenntniss des griechischen Rechts und der spätrömischen Rechtsentwicklung* (Leipzig: Teubner, 1891).
[12] Keenan, Manning and Yiftach-Firanko, *Law and Legal Practice in Egypt from Alexander to the Arab Conquest*, generally.
[13] David Nelken, 'Defining and Using the Concept of Legal Culture', in Esin Örücü and David Nelken (eds.), *Comparative Law: A Handbook* (Oxford: Hart Publishing, 2007), 109–132; David Nelken, *Using Legal Culture* (London: Wildy, Simmonds & Hill, 2012) generally.
[14] Caroline Humfress, 'Law's Empire: Roman Universalism and Legal Practice', in Claudia Rapp and H. A. Drake (eds.), *The City in the Classical and Post-Classical World* (Cambridge: Cambridge University Press, 2014), 81–108, generally.
[15] Georgy Kantor, 'Ideas of Law in Hellenistic and Roman Legal Practice', in Paul Dresch and Hannah Skoda (eds.), *Legalism: Anthropology and History* (Oxford: Oxford University Press, 2012) generally.

material but also because of cultural associations with the supposed sophistication of the Greek-speaking East. Although the available evidence does not permit modern scholars to conclude whether the Roman state ever had anything approaching an official policy about the engagement with different peoples in the Roman Empire (and by implication also the retention of indigenous systems of knowledge and of customary law), there does seem to have been a different approach to people in the Greek-speaking East than in the Latin West. As Caroline Humfress puts it:

> 'In contrast to the Hellenized provinces of the East, the Western provinces – and especially those within the Libyan, Iberian, Celtic and Germanic linguistic zones – seem to present a relatively "barren" pre-Roman legal landscape. Notwithstanding the highly technical nineteenth-century vocabulary and early twentieth-century debates over the concept of *Volksrecht* and the continuing scholarly discussions of the persistence of 'Germanic legal customs' or 'Germanic customary law', the prevailing sense is that the legal Romanization in the West was a simpler process than in the East: …'[16]

It is not my intention to enter into the complex and multi-faceted debate concerning 'Romanization'. For the moment, I wish to focus on the implications of Humfress's statement for the legal landscape of Roman Britain. There is virtually no evidence that the Roman government in Roman Britain attempted to engage in any systematic way with the indigenous systems of knowledge of the local population. Although information is sparse, comments such as those by Julius Caesar in *De Bello Gallico* V.14: 'The people of Kent are the most civilised of all the Britons. They have a way of life that is almost identical to that of the Gauls' are telling, especially in the choice of words. To this one may compare the intelligence report (Tab. Vindol. II 164) regarding the natives in the north: '…The cavalry do not use swords nor do the wretched [little] Britons (*Brittunculi*) mount in order to throw javelins'. [Bowman translation]. Early works of an anthropological nature such as those of Julius Caesar and of Tacitus, though clearly biased in favour of the Romans, do seem to suggest that the Romans had a complicated relationship with the local inhabitants of Britain and that there was clearly an element of judgement regarding their lack of 'civilisation' when it came to matters of society and of the retention of local systems of knowledge.

This then brings us to the letter under discussion. How should we interpret this work within the larger context of the provincial application of Roman law? First and foremost, the legal landscape of Roman law in the Roman province of Britain needs to be set out.[17] Despite the abundance of source material

[16] Caroline Humfress, *Law and custom under Rome* (Centre for Hellenic Studies, 2011) http://eprints.bbk.ac.uk/4918/1/4918.pdf., 44.
[17] For a good survey, see B. C. Burnham, A. S. Esmonde Cleary, L. J. F Keppie, M. W. C Hassall and R. S. O Tomlin, 'Roman Britain in 1992' *Britannia Britannia* 24 (1993), 267–322, generally.

(mostly material culture), knowledge of Roman law in Roman Britain is somewhat sparse.[18] Legally speaking, as an Imperial province,[19] it was governed by an Imperial Legate (*Propraetor*) who had the right to hear appeals from local courts (as any governor of a province did in the Roman Empire).[20] The court of the governor seems not have been a static entity and there is evidence that it moved around (much like similar gubernatorial courts in other provinces of the Roman Empire). We also have evidence of the existence of a legal deputy to the governor, the *legatus iuridicus*, who seems to have dealt with matters of law and jurisdiction on behalf of the governor when the latter was occupied with military matters. Such an office is known from at least the mid-first century AD and although the names of quite a few individuals are known from the epigraphic record (including one of the famous Roman jurists), it is unclear whether this was a permanent office. Apart from the governor, who had a fairly small retinue of permanent staff, the province was managed on a fiscal level by a *procurator* in charge of tax collection and directly answerable to Rome, who seems to have had his headquarters in London. On a municipal level, the existence of only four cities with the status of a Roman *colonia* (i.e. populated by veterans) and a small number of *municipia* are known. If the municipal charters of Roman cities elsewhere in the Roman Empire (e.g. the Flavian Municipal Laws and the *Lex Irnitana*) are taken as a comparator, we assume that Roman law must have applied also in these cities, but we have no record either of these charters or of the application of the law on this level.

Thus far the legal landscape of Roman Britain. So how do we go about locating this letter within this landscape? Although Birley and recently Korporowicz have set out general surveys of Roman law in Roman Britain, these have focused on general matters and have not approached the issue 'from the ground up' as suggested by Humfress. To that end, this contribution will attempt to do so by focusing not on general surveys, but on this document in particular.

Let us take the parties first. We do not know the status of these individuals. They do not address one another with the usual *tria nomina* used by Roman citizens, and we cannot, therefore, assume that they were.[21] Most likely, according to the general interpretation, they were civilian traders operating in Roman Britain who had followed the army there to peddle their wares. The names are too generic

[18] The main works are Eric Birley, *Roman Britain, and the Roman Army: Collected Papers* (Kendal: T. Wilson, 1953); Eric Birley, *Law in Roman Britain* (Berlin: Walter de Gruyter, 1980); Łukasz Jan Korporowicz, 'Roman Law in Roman Britain: An Introductory Survey', *The Journal of Legal History* 33:2 (1 August 2012), 133–150.
[19] And on this matter, the excellent work by D. J. Mattingly, *An Imperial Possession: Britain in the Roman Empire, 54 BC–AD 409* (London: Allen Lane, 2006).
[20] Anthony Richard Birley, *The Roman Government of Britain* (Oxford: Oxford University Press, 2005) generally.
[21] Andreas Kakoschke, *Die Personennamen Im Römischen Britannien* (Hildesheim: Olms-Weidmann, 2011).

to speculate about their origins. In all likelihood, they were *libertini*. Whether they had Roman citizenship is impossible to tell. If they had been properly manumitted, they would of course have had Roman citizenship, but we simply do not have the information. To this may be added the fact that most of the nakedly commercial transactions under Roman law were not confined to the *ius civile*:

> D. 18, 1, 1, 2 Paul. 33 ad ed.
> Est autem emptio iuris gentium, et ideo consensu peragitur et inter absentes contrahi potest et per nuntium et per litteras.

The fact that one party addressed the other as 'brother' cannot be used to infer that they were necessarily related. This salutation is frequently used in these tablets even where the parties are clearly not related and even of different statuses.

The most pressing matter, discussed at the start of this letter, concerns the sale of a large quantity of wheat. From the context, it seems that the parties had agreed to purchase a large amount of wheat. One party had laid down a deposit and is now seeking to close the deal by paying the remainder. He is, therefore, writing to his business partner (not for the first time it seems) to provide him with the remainder. Two aspects of this transaction are noteworthy. The first is the issue of the deposit (perhaps not the best translation of *arra* in this context). According to Octavius, he will forfeit the *arra* if the money is not paid. Although there is some debate in Roman-law circles about the exact function of the *arra* (whether merely as a token of good faith or something more), the forfeit seems compatible with Roman law as handed down in the doctrinal sources (e.g. D. 18, 1, 35 Gai. 10 ad ed. provinc.; I. 3, 23pr). Max Kaser, in his shortened *Studienbuch* on Roman private law, describes it as follows:

> [*A*]*rra* as it was known to the Greek systems, following the Semitic example, was unnecessary, at least in the developed Roman law. … In pre-classical and classical law the giving of a ring or a sum of money by the buyer to the vendor occurred in order to give force to the conclusion of the contract. After the performance of the contract the ring was reclaimed in the *actio empti*, and the sum of money was set-off against the purchase price (Ulp. D.19.1.11.6). Under Justinian *arra*, in keeping with the Greek pattern, was to secure the future conclusion of a contract of sale when the parties had decided to employ the written type (*ante* I, 4). A party who withdrew from the (pre-contractual) agreement of future conclusion of the sale after the *arra* had been given, suffered legal disadvantages: the giver forfeited the *arra* to the other party, the recipient had to repay double the amount of the *arra*. [Kaser (translation Dannenbring) 41.2.1)

In light of the statement above, it would seem that the way in which the parties employed the term in this letter is closer to the Justinianic (and thus by implication Greek) practice, than the practice in

classical Roman law. But this would perhaps be a step too far. There could be a variety of different reasons why the parties deviated from what is understood to be classical Roman law, ranging from scribal convention to incomplete or inaccurate knowledge of the law. This shows exactly why a 'gap-analysis' of legal practice with doctrinal legal scholarship is such a slippery slope.

The other aspect of this first transaction that deserves comment is the observation that the failure of the transaction will cause 'embarrassment'.[22] This statement is unique as it demonstrates one of the most important features of Roman commerce. For traders in a frontier province, reputation was key.[23] Modern contract-law theorists would call this 'relational contract theory'.[24] The Romans probably read elements of this into the term *bona fides*.[25] Where the parties and their business was dependent upon the continuing trust of other traders, it was important to fulfil all contractual obligations promptly and not to renege on contracts. This would create a bad atmosphere and might harm future business. It may also explain the rather anxious tone of the letter. To my knowledge, it is one of the few documents from the Latin West where the notion of 'financial embarrassment' is spelled out in so many words.

The second transaction that requires closer scrutiny concerns the carriage of a lot of hides. The hides are, at the time the letter was written, still at Catterick and needed to make their way to Vindolanda, no doubt for sale to the army. The issues raised here concern the release of the hides and their transport. When placing this into the larger context of the significance of land transport in the Roman Empire, these statements acquire new meaning. It is conventionally stated that land transport was of lesser significance that transport by water, owing to the state of the roads as well as the nature of Roman cart-technology.[26] Here we find this in action. The observation 'I would have gone to collect the hides, but I did not want to injure the pack animals when the roads were bad' is telling. Land transport was cumbersome and potentially dangerous to the animals. There is a suggestion here that the party at Vindolanda may have access to a wagon and could, therefore, send the wagon to pick the

[22] There are seven instances where permutations of the verb *erubesco* (to redden or blush) appear in in Roman legal sources, but none of these refer to 'financial embarrassment'. But see now information about the Bloomberg tablets recently unearthed in London: https://www.theguardian.com/uk-news/2016/jun/01/tablets-unearthed-city-glimpse-roman-london-bloomberg last accessed 16 June 2016.
[23] On all this, see Barbara Abatino, Giuseppe Dari-Mattiacci and Enrico C. Perotti, 'Depersonalization of Business in Ancient Rome', *Oxford Journal of Legal Studies* 31:2 (2011), 365–389, generally.
[24] The standard work remains Ian R. MacNeil and David Campbell, *The Relational Theory of Contract: Selected Works of Ian MacNeil* (London: Sweet & Maxwell, 2001).
[25] Riccardo Cardilli, *Bona fides tra storia e sistema* (Torino: G. Giappichelli, 2004) generally.
[26] The economics of land transport are discussed in Susan D. Martin, 'Servum Meum Mulionem Conduxisti: Mules, Muleteers and Transportation in Classical Roman Law', *Transactions of the American Philological Association (1974–)* 120 (1990), 301–314, generally.

hides up. One cannot push this too far, given the brevity of the statement, but it raises the tantalising question whether the party at Vindolanda might have somehow had access to the state transport system and could, therefore, move goods with greater ease than a private individual.[27]

The last aspect of this transaction (it may or may not be connected to the movement of the hides since the letter is written in a rather 'stream of consciousness' fashion) concerns an account held by Octavius with one Tertius. Again, the comment is so brief that one cannot push it too far, but it would be tempting to suggest that Tertius was a moneylender operating out of Vindolanda and that Octavius was enquiring through his business partner about a credit to his account from one Fatalis that has seemingly not yet shown in his account.[28] As Bowman observers: 'The movement of small sums of money between individuals is well attested'.[29] How Octavius would have known that the credit from Fatalis did not yet show is a mystery, but we can safely assume, given the number of Vindolanda tablets that have been recovered, that information was shared between locations on a regular basis.

The final transaction that I wish to focus on concerns the sale of hides to an acquaintance of a friend of theirs. This, again, shows the "relational contract" in all its glory. An acquaintance of a friend of theirs had arrived to purchase some hides. The hides were not ready, but an informal agreement had been reached that he would return but never did. One gets the distinct impression here that Octavius is expressing his displeasure at being taken for a ride by someone who had been referred to them by a friend. To me, this again shows the complexity of 'networks of association' and how these operated in Roman commerce.[30]

4. Conclusions

Although the law features quite significantly in this letter, it is not at the forefront of the discussion between the business partners. They are concerned primarily with the continuing profitability of their undertaking within a larger context where trust among merchants, good faith if you will, was paramount. Thus, this letter provides us with commercial substratum that underpinned much of Roman commercial law. But this is far from the entire affair.

---

[27] Compare the observation in Tab. Vindol. II 255, a letter between Clodius Super and Flavius Cerialis where the statement occurs 'I am a commissariat officer now and have access to transport'.
[28] Jean Andreau, *Banking and Business in the Roman World* (Cambridge: Cambridge University Press, 1999) generally.
[29] Bowman, *Life and Letters on the Roman Frontier*, 74.
[30] See, for example, Neville Morley, *Trade in Classical Antiquity* (Cambridge: Cambridge University Press, 2007); Helen Parkins and Christopher John Smith, *Trade, Traders and the Ancient City* (London: Routledge, 1998).

Traditionally, and especially about examples of legal practice from Graeco-Roman Egypt, scholars have tended to ask 'what law is this?' They have then proceeded to compare the case of legal practice to existing doctrinal sources with the aim either to show a) that the individuals in question followed the law (whatever this may be) or b) that they deviated from the law (or were perhaps even ignorant of it). It does not take much to appreciate that such a methodology is based on a view of law as a territorially based system radiating out from the centre. As recent research has begun to question whether Roman law ever operated in this fashion, this question about the nature of the law should be abandoned and replaced a more useful one, namely 'what did the parties to this letter think that they were doing?'[31] Phrased in this manner, it opens up a new vista of enquiry.

Unless new evidence comes to light, it will not be possible to establish the status of the two parties to the letter. If we assume that they were not slaves (and there is no reason to assume that they were), then Roman law was certainly potentially available to them. What is far more interesting (and revealing) is what the parties thought that they were doing. In his 1976 work, *The Behavior of Law*, Donald Black set out his theory of 'pure sociology'.[32] This theory is an attempt to explain why certain situations attract more law than others. Thus, according to Black, the amount of law a situation (used here in the sense of a conflict) will attract depends on sociological factors such as the 'social status' and 'social distance' of the parties. In essence, the better the parties know one another, the less law they will resort to. This, to my mind, beautifully explains the issues raised in the letter. Instead of asking what the law is in this situation, we should rather ask what the parties thought the law was and how and when they turned to it for assistance. Objectively, here at the very edge of the Roman Empire (if the wall really represented an 'edge', of which I am sceptical), these two partners were using legalistic language as if they had a court right on their doorstep to which they could turn if matters went badly wrong. But, as I have set out above, this clearly was not the case in a province as remote and underdeveloped as Roman Britain. The nearest *colonia* (where Roman law applied in theory) was very far away and who knows how long it might take for the travelling court of the governor to show up. It seems much more likely that what the business partners were relying on in this case was 'mercantile custom'[33] for want of a better phrase (knowing full well how complex the debate about the origins of the *lex mercatoria* in Antiquity is), supported by 'relational contract theory' and

[31] See generally Humfress, *Law and custom under Rome*.
[32] Donald J. Black, *The Behavior of Law* (New York: Academic Press, 1976) generally.
[33] Armin von Bogdandy and Sergio Dellavalle, 'The Lex Mercatoria of Systems Theory: Localisation, Reconstruction and Criticism from a Public Law Perspective', *Transnational Legal Theory Transnational Legal Theory* 4:1 (2015), 59–82, generally.

'networks of association'. In recent years, much has been made about traders in the Roman Empire. In my view, the role of traders and other lower level legal functionaries such as scribes and notaries in the spread of Roman law needs to be studied in much greater detail.[34]

[34] Gérard Minaud, *Les gens de commerce et le droit à Rome* (Aix-en-Provence: Presses universitaires d'Aix-Marseille, 2011) generally.