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A Contract for the Advance Sale of Wine

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A Contract for the Advanced Sale of Wine

Scott Gallimore *Wilfrid Laurier University*

Abstract

Edition of a sale of wine in advance from Byzantine Egypt (P.Vindob. inv. G 40267). Notable features include the guarantee clause and the supply of jars by the seller, both of which are put in a wider context.

The distribution of goods in antiquity took many forms, including reciprocity, redistribution, and market exchange.¹ Within the latter category, goods could be sold by vendors at periodic or permanent markets, put up at auction, swapped through barter, or peddled by itinerant salesmen. In some cases, a sale could occur months before the products even became available. Papyrus texts preserving contracts for the advanced sale of goods provide our best evidence for this type of transaction.² Scholarship concerned with these documents has offered numerous important insights, including studies focused on prices,³ preserved formulae,⁴ economic issues,⁵ and legal questions.⁶ The goal of the

¹ I would like to thank Peter van Minnen for providing me with the opportunity to publish this papyrus text and for his numerous helpful suggestions as I prepared the manuscript. Bernhard Palme looked at the original in Vienna and has been of great assistance with several readings, particularly the text on the verso. Also, I thank two anonymous readers for their valuable comments and criticisms. Any errors that remain are my own.

² A list of contracts recording the advanced sale of goods was compiled by A. Jördens, *Vertragliche Regelungen von Arbeiten im späten griechischsprachigen Ägypten* (P.Heid. V) (Heidelberg 1990) 296-301, and later supplemented by N. Kruit, "Local Customs in the Formulas of Sales of Wine for Future Delivery," *ZPE* 94 (1992) 167-168. See also A. Jördens, "Kaufpreisstundungen (Sales on Credit)," *ZPE* 98 (1993) 263-282; N. Kruit, "Three Byzantine Sales for Future Delivery," *Tyche* 9 (1994) 67-88; S. Hodeček and F. Mitthof, "Ein Weinlieferungskauf aus dem Herakleopolites," *APF* 51 (2005) 76-86.

³ R.S. Bagnall, "Price in 'Sales on Delivery,'" *GRBS* 18 (1977) 85-96.

⁴ H. Harrauer, "Sechs byzantinische Weinkaufverträge aus dem Hermupolites," in R. Pintaudi (ed.), *Miscellanea Papyrologica* (Florence 1980) 125-126; Jördens (n. 2, 1990) 301-331; Kruit (n. 2, 1992) 167-184.

⁵ F. Morelli, "Τιμή ε μισθός: vendita e prestazione di lavoro," *Comunicazioni dell'Istituto Papirologico G. Vitelli* 2 (1997) 7-29.

⁶ É. Jakab, "Guarantee and Jars in Sales of Wine on Delivery," *JJP* 29 (1999) 33-44; É. Jakab, *Risikomanagement beim Weinkauf: Periculum und Praxis im Imperium Roma-*

present paper is to offer an *editio princeps* of such a contract, currently housed in Vienna, which records the advanced sale of wine. The reading of the text is based on photographs of the original. Although wine contracts are among the most widely known and most widely discussed of the advanced sale agreements, this new example permits further reflections on select aspects of these documents. Following the edition and commentary of the text, I will discuss several points of interest that have not received sufficient attention thus far. These include the character of guarantee clauses concerned with the exchange of vinegar for wine and the supply of jars used to bottle the wine, from the buyer or the seller.

P.Vindob. inv. G 40267 H x W = 14.4 x 7.1 cm Arsinoite nome
VI/VII century CE(?)

The papyrus is rectangular with an unknown number of lines missing from the top. Fourteen lines of text are preserved on the recto, written along the fibers, and one line is visible on the verso, written along the fibres also. The left edge, although uneven and frayed, appears to preserve the beginning of each new line of text. A few centimeters from the left edge are a series of small holes running from top to bottom through lines 7 to 11. Near the right edge, a similar series of much larger holes also occurs suggesting that the papyrus was once folded into thirds. Most of the right third of the papyrus is missing, with one fragmentary section still in place in the center (lines 7 to 12).

No date is specified in the preserved text, nor are there any direct indications of provenance. Preserved formulae, which tend to be regional in character, do provide a means for suggesting an origin and possible date. One clause in particular is relevant for this text. N. Kruit notes that when wine is the item being sold in advance sale contracts, the agreement often describes which party will provide the jars.⁷ This clause typically reads σοῦ παρέχοντος τὰ κοῦφα, “with you providing the empty jars.”⁸ Contracts from the Arsinoite nome vary the word order in this formula, placing the participle παρέχοντος

num (Munich 2009); H.-A. Rupprecht, “Vertragliche Mischtypen in den Papyri,” in *Mneme G.A. Petropoulos*, vol. 2 (Athens 1984) 273–283 (*non vidi*); G. Thür, “Rechtsfragen des Weinkaufs,” in B. Kramer et al. (eds.), *Akten des 21. Internationalen Papyrologenkongresses* (Stuttgart and Leipzig 1997) 967–975.

⁷ Kruit (n. 2, 1992) 169–170.

⁸ For instance, *P.Amst.* 1.48.15; *P.Col.* 8.245.17–18; *P.Flor.* 1.65.8–9; *P.Heid.* 5.358.6; *P.Mich.* 11.608.11; *P.Rein.* 2.102.6; *P.Stras.* 1.1.10; *P.Stras.* 7.696.2; *PSI* 10.1122.18–19; *SB* 16.12486.17–18; *SB* 16.12489.10 = *CPR* 9.25; *SB* 16.12639.18–19 = *SPP* 20.136; *SB* 16.13037.15; *SB* 18.13124.8; *SB* 22.15725.9.

after τὰ κοῦφα, also a feature of the text below.⁹ The use of χύμα as a unit of measure in the new contract is characteristic of the Arsinoite nome as well.¹⁰ The date is more difficult to surmise. Most contracts for the advanced sale of wine are assigned to the sixth or seventh century CE. Thus, it is likely that this text dates to that same period.

The text is written in cursive and slopes forward. For the top half of the papyrus (lines 1 to 8), the spacing is generous, with no attempt made to maximize the number of words per line. Beginning in line 9, more and more text is fitted into each line as space runs out. The hand changes several times in the contract, with one individual responsible for lines 1 to 11, a second for lines 12 to 13, and a third for line 14. Determining which hand wrote the single line on the verso is problematic given that only faint traces of letters survive. While identifiable letters do appear to resemble the first hand of the recto more so than the last two, specifically when considering the *epsilon*, *omicron*, and *kappa* visible in the first word on the verso, this is only speculative. An additional possibility is that a fourth hand was responsible for the verso.

- - - - -
 [- - - - - -περ]
 σοι ἂ[ποδώσω μηνί]
 Μεσορή χύμα†[ι δικ(αίω)]
 ἔμοῦ τὰ κο(ῦ)φα [παρέχ(οντος)]
 ἐν τῷ ἐποικ[ίῳ ἀπὸ]
 5 ῥύσεως τῆς εἰ[σιο(ύσης)]
 τετάρτης ἰνδ(ικτίονος). [τὸ δὲ]
 ὄξος ἀλλάξω ἕως
 Τῦβι μη[ν]ὸς
 ἀναμφιβόλως ἐξ ὑπαρ-
 10 χόντων ἡμῶν πάν-
 των καὶ ἐπερ(ωτηθεῖς) ὠμο(λόγησα). †
 (m. 2) † Μηναῖ Γεωργίου ὃ π[ρο]κ(είμενος)
 στοιχεῖ μοι ὡς πρό[κειται].
 (m. 3) † di emu Mhna [eshm(ioth).]

⁹Jördens (n. 2, 1990) 324-325; Kruit (n. 2, 1992) 172. See *P.Lond.* 2.390.3; *SPP* 20.162.3 = *SPP* 3².141.3; *SPP* 3².125.5; *SPP* 3².135.7-8; *SPP* 3².205.3.

¹⁰Kruit (n. 2, 1992) 172. See *CPR* 14.4.11; *P.Lond.* 2.390.3; *SPP* 3.357.3; *SPP* 20.162.3 = *SPP* 3².141.3; *SPP* 3².163.4; *SPP* 3².205.3.

Verso

]ευνοκ() Ἀναστᾶσι(ν) αρ[.] . . . α

“... which I shall hand over to you in the month of Mesore in the exact quantity, with me supplying the empty jars, in the village from the yield of the present fourth indiction. I shall exchange vinegar (for wine) until the month of Tybi without ambiguity from all my possessions. (The agreement is valid) and, having been asked the formal question, I gave my assent.

I, Menas, son of Georgios, the aforementioned, deem it correct as written above.

Signed by me, Menas.

(*Verso*) ... of Anastasios ...”

1 σοῦ ἄ[ποδώσω μὴνι]. While only the faintest traces survive, this phrase occurs in most contracts for the advanced sale of wine, including *CPR* 14.4.10 and *P.Lond.* 2.390.3 from the Arsinoite nome. It is also possible to reconstruct [σοῖ ἀποδώσ]ω μὴνι in *SPP* 3.357.3, another of the Arsinoite contracts.

2 Μεσορὴ χύματ[ι δικαίω]. The adjective δικαίω often follows χύματι in Arsinoite contracts, including *P.Lond.* 2.390.3, *SPP* 3.357.3, and *SPP* 20.162.3, and can be reconstructed in the new contract. One exception, however, is *CPR* 14.4.11 where χύματι appears without δικαίω. Kruit suggests that χύμα δικαίον must represent a measure in these contracts rather than an indication of quality, since almost all other advanced sale contracts for wine contain a measure of some kind.¹¹ An Oxyrhynchite text, *T.Varie* 8.6, with the phrase οἴνου χυμάτων ἑκατὸν ἐξήκοντα ὀκτώ “168 *chymata* of wine,” provides corroborating evidence.¹²

3 ἐμοῦ τὰ κο(ῦ)φα [παρέχ(οντος)]. The word order of this phrase, with τὰ κοῦφα appearing before the participle παρέχοντος, adheres to the formula seen in contracts for the advanced sale of wine from the Arsinoite nome.¹³ Following τὰ κοῦφα, **however, there is only space for four to five additional letters**, suggesting that παρέχοντος was either abbreviated or omitted. Support for the former interpretation derives from two Arsinoite contracts, *SB* 1.4493.4 and *SPP* 3².135.7, which include the reading παρέχ(οντος). This formulaic word order observable in Arsinoite texts may have only ap-

¹¹ Kruit (n. 2, 1992), 172, n. 16. See also Jördens (n. 2, 1990) 319-320.

¹² N. Kruit and K.A. Worp, “Metrological Notes on Measures and Containers of Liquid in Graeco-Roman and Byzantine Egypt,” *APF* 45 (1999) 114.

¹³ See n. 9 above.

plied to wine contracts. *PHarrauer* 59.33, a lease of a vineyard and a work contract from Arsinoiton Polis, preserves the clause ἐμοῦ παρέχοντος τὰ κοῦφα, which is the standard formula seen in other regions of Egypt.

Of additional interest in this clause is the use of ἐμοῦ, instead of the more common σοῦ, to indicate that the seller is responsible for supplying empty jars.¹⁴ Only a small number of published contracts mention the seller providing containers. *SB* 6.9294.14, from the Arsinoite nome, and *P.Vind.Sal.* 8.12, from the Hermopolite nome, preserve variants of the phrase ἐμοῦ τὰ κοῦφα παρέχοντος.¹⁵ In *P.Ross.Georg.* 5.39.4, the seller agrees to provide wine σὺν κούφοις “with empty jars,” while in *SB* 1.4504.22 with *BL* 9.239 and *SB* 1.4505.24 with *BL* 9.239, ἐν κούφοις, “in empty jars,” appears. *PSI* 12.1250.3 records ἐν κούφοις καινοκεράμοις, “in new empty jars,” and *PSI* 12.1249.27-28 employs the shortened variant ἐν καινοκεράμοις, “in new jars.” An additional document of interest is *SB* 16.12488.12, which contains the phrase πάντων κούφων παρεχομένων παρ’ ἐμοῦ, suggested by Έ. Jakab as a reference to the seller providing jars.¹⁶ Some caution may be necessary with this text, however, since most of πάντων κούφων παρεχομένων was reconstructed by the editor and παρ’ ἐμοῦ designates a location that may not be the provenance of the jars. The phrase παρ’ ἐμοῦ also appears in *CPR* 9.25.10, following the clause σοῦ παρέχοντος τὰ κοῦφα.

5 ῥύσεως τῆς εἰ[σιο(ύσης)]. Insufficient space in the missing portion of this line means εἰσιούσης would have been abbreviated. In addition, the initial *epsilon* of εἰσιούσης is difficult to read because only faint traces of letters survive in this part of the text. One possibility is that the letter actually was omitted and that the writer instead used the iotacistic spelling ἰσιούσης.¹⁷ Three texts from the Arsinoite nome, *BGU* 2.519.14, *BGU* 3.971.17, and *SB* 1.4786.4, preserve this alternate spelling.

6-8 [τὸ δὲ] / ὄξος ἀλλάξω ἔως / Τῦβι μη[ν]ός. The guarantee to exchange vinegar (ὄξος) for wine, as Jakab notes, only appears in some contracts for the advanced sale of wine.¹⁸ P.J. Sijpesteijn observes that most guarantees to exchange vinegar for wine ran for five months after the delivery date (usually

¹⁴ According to P. Mayerson, “A note on κοῦφα ‘empties,’” *BASP* 34 (1997) 47-48, 51, “empty jars” is the most suitable translation for κοῦφα.

¹⁵ The clause appears as παρέχοντός μου τὰ κοῦφα in *SB* 6.9294.14 and as ἐμοῦ παρέχοντος τὰ αὐτάρκη κοῦφα in *P.Vind.Sal.* 8.12.

¹⁶ Jakab (n. 6, 1999) 40.

¹⁷ I thank one of the anonymous readers for making this suggestion.

¹⁸ Jakab (n. 6, 1999) 39-40; Jakab (n. 6, 2009) 133-134.

listed as Mesore). Thus, Tybi is the month usually specified.¹⁹ The use of ξως Τῦβι without the definite article in this contract has parallels from several nomes.²⁰ Overall, this clause to exchange vinegar for wine is abbreviated compared to other Arsinoite contracts. *SB* 1.4822.1-3 with *BL* 9.240, for instance, reads εὐρισκόμενον / ὄξος ἢ ἀποίητον ξως τοῦ Τῦβι μηνὸς / ἀλλάξω σοι οἶνον εὐάρεστον, “For you until the month of Tybi I shall exchange vinegar or wine not fit for use that has been discovered for acceptable wine.” *SPP* 20.162.4 = *SPP* 3².141.4 also contains the phrase σοι οἶνον εὐάρεστον, with ὄξος perhaps missing from the end of the previous line. Kruit notes the grammatical difficulty caused by the double accusative with ἀλλάξω in these texts.²¹ The new contract avoids the problem of the double accusative by omitting οἶνον. Also absent is the word ἀποίητον, “not fit for use.” A lack of space is not to blame since the clause appears in a part of the text where the writer made little effort to maximize the number of words per line.

9-11 ἐξ ὑπαρ/χόντων ἡμῶν πάν/των. The singular μου might have been more appropriate than the plural in this phrase. In line 13, the phrase στοιχεῖ μοι ὥς πρόκειται indicates that a single individual was responsible for selling the wine, and he would forfeit only his property if problems arose. While disparity between singular and plural is commonplace in advanced sale contracts, some examples from the Arsinoite nome do show consistency within their texts. *P.Heid.* 5.361.31-32, for instance, preserves ἐξ ὑπαρχόντων μου πάντων, followed a few lines later by στοιχεῖ μοι τοῦτο τὸ γραμματίον ὥς πρόκειται. In two other agreements, *P.Lond.* 1.113-6C and *SB* 1.4489, the plural is used in both clauses.

11 καὶ ἐπερ(ωτηθεῖς) ὦμο(λόγησα). While this phrase is standard in most contracts, many examples also preserve a stipulation concerning the validity of the agreement before the καί. In the Arsinoite nome, κυρία ἢ ὁμολογία, “the agreement is valid,” is often seen and should probably be understood here.²²

12 Μηνᾶς Γεωργίου ὁ π[ρο]κ(είμενος). The Menas denoted here is likely not the same person as the notary whose signature is preserved in line 14. In the *Pros.Ars.* only two Menas are described as (υἱὸς) Γεωργίου.²³ These two

¹⁹ P.J. Sijpesteijn, “*SPP* XX 136 Reconsidered,” *ZPE* 37 (1980) 283.

²⁰ Kruit (n. 2, 1992) 170. See *BGU* 12.2176.1; *CPR* 9.25.11; *P.Ant.* 1.42.20; *P.Stras.* 7.696.4; *SB* 16.12489.11; *SB* 16.13037.16.

²¹ Kruit (n. 2, 1992) 172-173.

²² See *BGU* 1.310.23; *BGU* 2.403.7; *CPR* 14.1.19; *P.Münch.* 3.100.16; *SB* 1.4711.2

²³ J.M. Diethart, *Prosopographia Arsinoitica I*, s. VI-VIII (*Pros. Ars. I*) (Vienna 1980) 212 no. 3602, 218 no. 3696.

individuals, identified in *P.Ross.Georg.* 5.66.7 and *P.Ross.Georg.* 5.71.8 respectively, are mentioned in documents dating to the seventh and eighth century CE. In the list of advanced sale contracts compiled by A. Jördens and later supplemented by N. Kruit, no agreements written in Greek are attested after the seventh century CE, although a few Coptic contracts for the advance sale of wine are known from the Arab period.²⁴ This indicates that the Menas from *P.Ross.Georg.* 5.71 is likely not the individual named in the new contract. With respect to the Menas from *P.Ross.Georg.* 5.66, no evidence is available which enables us to associate him with the present text.

13 στοιχεῖ μοι ὡς πρόκειται]. Texts from the Arsinoite nome which include this clause often preserve an additional word or phrase which acts as the subject of στοιχεῖ and specifies what is being deemed correct. For example, στοιχεῖ μοι πάντα ὡς πρόκειται, “I deem everything correct as written above,” is seen in numerous documents.²⁵ In *P.Heid.* 5.361.35-37, the phrase στοι/χεῖ μοι τοῦτο τὸ γραμμάτιον / ὡς πρόκειται, “I deem this document correct as written above,” appears. Either could perhaps be understood in the new contract.

14 *di emu Mhna* [*eshm(ioth)*]. While there are several sixth and seventh century CE notaries named Menas known from the Arsinoite nome, only three are attested using the Latin alphabet and the same wording for their signatures as the present contract.²⁶ It is difficult to associate any of these three with the notary of this agreement, however, and he may represent an individual who is not named in the *Notarsunterschriften*. In addition, this Menas does not appear to be the author of the main text of the contract.

15]ευνοκ() Ἀναστᾶσι(υ) αρ[. . . α. Part of the line was lost with the top section of the papyrus.²⁷ Discerning the function of ευνοκ() in this phrase proves difficult. One possibility is to take ευνοκ() as εὐνο(ύ)χ(ου), “eunuch.” This assumes two spelling errors, however, including the lack of an abbreviated upsilon above the *omicron*. *P.Flor.* 1.65.27, from the Oxyrhynchite nome, preserves εὐνοχ(ου) on the verso instead of εὐνούχ(ου), suggesting that this error is possible. Second, the *kappa* would stand for *chi*, which, according to

²⁴ See n. 2. For the Coptic advance sale agreements, including *CPR* 4.38-40, 82-83, 91 and *P.Flor.* 18.11, see Kruit (n. 2, 1992) 167 n. 1.

²⁵ For instance, see *BGU* 1.310.25; *CPR* 14.1.20; *SB* 1.4788.33.

²⁶ J.M. Diethart and K.A. Worp, *Notarsunterschriften im byzantinischen Ägypten* (Byz. Not.) (Vienna 1986) 44 nos. 12.3.2, 12.4.2, 45 no. 12.6.1.

²⁷ In the photograph, the text following ευνοκ() is very difficult to decipher. I thank Bernhard Palme, who looked at the original document in Vienna, for helping clarify the reading of the remainder of the line.

F.T. Gignac, is feasible when either letter appears between vowels.²⁸ Whether both errors can be understood in this contract is not clear and is perhaps unlikely. Alternatively, ευνοκ() may in fact be a form of εὐδοκ(ιμώτατος), “most honorable,” a common epithet. To justify this reading requires considering a speck above the nu as the upper part of a *delta*, a reading that is speculative based on the preservation of the text.

Discussion

This contract for the advanced sale of wine preserves an agreement between at least two individuals in which a certain Menas, son of Georgios, agrees to sell an unknown amount of wine from a future harvest. The name of the buyer(s) is not preserved. As in most sale contracts for wine, delivery is set for the month of Mesore, and Menas offers an exchange guarantee until the month of Tybi should any of the vintage be deemed unsuitable. An interesting element of this particular agreement is the concise, abridged wording of several clauses. While the presence of at least three hands, including a notary's signature, argues for this text representing an official contract and not a series of notes to be formalized into an agreement at a later date, some clauses, including the guarantee to exchange vinegar for wine and the standard legal formulae at the end, are abridged compared with other advanced sale contracts for wine. Even similar agreements from the Arsinoite nome where the same section of text is preserved tend to contain more detailed clauses.²⁹ Two exceptions may be *SPP* 20.162 = *SPP* 3².141 and *SPP* 3².205 + *SPP* 3.363, although both are less concise in their wording than the present agreement. Unabridged contracts also appear to be the norm in other regions of Egypt, including a recently published example from the Heracleopolite nome.³⁰ Thus, this text demonstrates that such contracts existed along a spectrum in which equally valid agreements containing the same core information varied in the amount of detail presented.

Examination of this new text also provides an opportunity to discuss two aspects of advanced sale contracts for wine that have not yet received sufficient attention. First, while there has been recent discussion of why only some advanced sale contracts for wine contain a guarantee to exchange vinegar for

²⁸ F.T. Gignac, *A Grammar of the Greek Papyri of the Roman and Byzantine Periods. Volume 1: Phonology* (Milan 1976) 92.

²⁹ *BGU* 13.2332; *CPR* 14.4; *P.Lond.* 2.390; *SB* 1.4703; *SB* 1.4882; *SPP* 3².151; *SPP* 3.357. In two other Arsinoite contracts, *P.Ross.Georg.* 5.39 and *SPP* 3².193, the portion of the text preserved is different than that of the agreement under investigation.

³⁰ Hodeček and Mitthof (n. 2).

wine, further insight is possible when we examine the use of this clause chronologically. Second, analyzing the stipulation found in numerous contracts concerning the supply of empty jars, and assessing why in most cases the buyer is held responsible, can provide a refined understanding of the relationship between wine production and amphora manufacturing.

Guarantee Clauses in Wine Contracts

A guarantee to replace vinegar or unfit wine with new, acceptable stock appears in many advanced sale contracts. Only some agreements contain this clause, however, and previous arguments have focused on its relevance for understanding the practice of storing wine after production. For Jakab, the guarantee indicates that storage occurred at the site of manufacture, with the buyer collecting the wine after fermentation was complete.³¹ Otherwise, when the clause is not present, she believes that the unfermented must was removed immediately following the pressing. Kruit argues to the contrary that storage and fermentation of wine by the seller is implicit in all advanced sale contracts, whether or not the exchange guarantee is present.³²

While the implications for storing wine with the seller after the delivery date are important to consider with respect to this guarantee clause, additional reasons for its presence or absence may also be relevant. Of particular interest is what happens when advanced sale contracts for wine are placed in chronological order. Upon examination of these texts in order of date, it appears that no agreement datable from the first to the fifth century CE includes a guarantee.³³ In the sixth and seventh centuries CE, however, all but eight contracts where the relevant section is preserved contain this guarantee.³⁴

³¹ Jakab (n. 6, 1999) 35, 39-40.

³² N. Kruit, "The Meaning of Various Words Related to Wine: Some New Interpretations," *ZPE* 90 (1992) 274-276.

³³ *P.Athen.* 23 (82 CE); *P.Rein.* 2.101 (198-209 CE); *PSI* 12.1249 (265 CE); *PSI* 12.1250 (265 CE); *BGU* 13.2332 (342 CE); *P.Stras.* 1.1 (435 CE); *P.Oxy.* 49.3512 (492 CE); *SB* 16.12486 (492 CE).

³⁴ Including a guarantee: *BGU* 12.2207; *BGU* 12.2209; *BGU* 17.2695; *P.Amst.* 1.48; *P.Ant.* 1.42; *P.Col.* 8.245; *P.Coll.Youtie* 2.93; *P.Edfou* 1.3; *P.Flor.* 1.65; *P.Lond.* 5.1764; *P.Mich.* 11.608; *P.Mich.* 15.748; *P.Oxy.* 61.4132; *P.Rein.* 2.102; *P.Ross.Georg.* 5.39; *P.Stras.* 7.696; *P.Wisc.* 1.11; *PSI* 10.1122; *SB* 5.8264; *SB* 6.9593; *SB* 16.12488; *SB* 16.12489; *SB* 16.12490; *SB* 16.12491; *SB* 16.12639 = *SPP* 20.136; *SB* 16.13037; *SB* 18.13124; *SB* 22.15595 = *SB* 16.12401; *SB* 26.16517; *SB* 26.16830; *SPP* 3².141; *SPP* 3².163; *SPP* 3².205. Without a guarantee: *CPR* 19.31; *PEirene* 2.7; *PHarrauer* 59; *P.Lond.* 2.390; *P.Lond.* 3.1001; *SB* 1.4504; *SB* 4505; *SPP* 3².135. Missing the relevant section: *CPR* 14.4; *P.Heid.* 5.358; *P.Heid.* 5.361; *P.Select* 2; *SB* 22.15725; *SPP* 3.357; *SPP* 3².125; *SPP* 3².200.

The unplanned conversion of wine to vinegar was a common dilemma in antiquity. Pliny (*NH* 14.26) observes that some authors dedicated entire books to the subject of fixing this problem. The sale of vinegar as wine, whether by accident or on purpose, also was a concern of Roman jurists. A study of B. W. Frier about this phenomenon can provide some insight into the need for a guarantee clause in advance sale contracts for wine.³⁵ According to Frier, Roman jurists made a conscious effort to distinguish between wine that had transformed into vinegar (*acuit*) and “vinegar from the beginning” (*ab initio acetum*).³⁶ The former is of concern in wine sale contracts and Roman law in the early Empire developed the concept of *error in substantia* as a solution. This condition held that “a sale is void if one or both parties enter into an agreement while under a fundamental misapprehension concerning the ‘material’ of the object of sale.”³⁷ Frier notes that the purpose of *error in substantia* was to protect the buyer since provisions for buyers were still underdeveloped at this time.

The doctrine of *error in substantia*, while relevant, does not provide the whole story, however. According to F. de Zulueta, vinegar sold as wine counts as such an error, but wine that has gone sour does not.³⁸ In other words, the phrase ὄξος ἢ ἀποίητον, “vinegar or wine not fit for use,” seen in numerous guarantee clauses covers two different types of defects. The reason for describing several types of defects in these guarantees may be related to why this clause only begins to appear in the sixth century. Under Justinian’s reorganization of the law in the first half of the sixth century, the seller in a contract became required to ensure a product was free from defect based on an implied warranty.³⁹ If defects were identified by the buyer, several options were available for seeking damages. As de Zulueta describes:

The buyer’s remedy is either an action for rescission (*actio redhibitoria*, involving *restitutio in integrum*), which must be brought within six months (*tempus utile*), or an action (*quantum minoris aestimatori*), which must be brought within an *annus utilis*, for reduction of the price to what it would have been, had the defect been known to the buyer.⁴⁰

³⁵ B. W. Frier, “Roman Law and the Wine Trade: the Problem of ‘Vinegar Sold as Wine,’” *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung* 17 (1983) 257-295.

³⁶ Frier (n. 35) 260.

³⁷ Frier (n. 35) 260.

³⁸ F. de Zulueta, *The Roman Law of Sale* (Oxford 1945) 26. The specific law in which this distinction is made clear is *Dig.* 18.1.9.2, codified by Ulpian.

³⁹ de Zulueta (n. 38) 47.

⁴⁰ de Zulueta (n. 38) 47.

The timeframe allotted to the buyer to seek damages associated with defects, either six months or one year, is of interest in the context of wine sales. As described above, P.J. Sijpesteijn observes that the majority of guarantee clauses to exchange wine cover a period of five months.⁴¹ Specifying that this guarantee is only valid for five months would mean the seller was not liable after six months or one year should the wine begin to show some defect. In addition, the fact that many guarantees list both ὅξος ἢ ἀποίητον suggests that buyers and sellers wanted to ensure that all manner of defects were covered during this initial period.

Sijpesteijn does mention some exceptions to the five month limit of these guarantees, but most appear to offer a shorter period for defects to be detected than under the implied warranty of Justinian.⁴² This may be why such guarantees appear exclusively in contracts dated to the sixth and seventh centuries CE.

Supply of Jars in Wine Contracts

While the guarantee clause in wine sale contracts appears to show a distinct chronological pattern, reference to who is responsible for supplying empty jars occurs in agreements of all dates. This stipulation is more common in contracts which do not include the guarantee clause, as Jakab notes, but also appears in approximately half of the known contracts which do include a guarantee.⁴³ One puzzling aspect of these clauses is that, in the vast majority of cases, the buyer is responsible for supplying empty vessels. Consideration of how buyers would go about procuring these jars helps shed light on what would have been a significant market in Egypt for the purchase of amphorae.

The advanced sale contract presented here is one of the small minority where the seller of the wine agrees to supply empty jars. One would presume that most of these sellers were owners of agricultural estates on which vineyards would be of primary economic importance. Certain estate owners also had amphora workshops attached to their property, a fact demonstrated by numerous lease agreements preserved in the papyrological record. The most well known of these leases is a mid-third century CE example from the Oxyrhynchite nome, *P.Oxy.* 50.3595, published by H. Cockle.⁴⁴ In cases where the

⁴¹ See n. 19 above.

⁴² Sijpesteijn (n. 19) 283. Texts he mentions include *P.Coll.Youtie* 2.93, *P.Lond.* 3.999, and *P.Lond.* 5.1881.

⁴³ Jakab (n. 6, 1999) 39–41.

⁴⁴ H. Cockle, "Pottery Manufacture in Roman Egypt: A New Papyrus," *JRS* 71 (1981) 87–97. Other lease contracts include *BGU* 19.2819; *P.Cair.Masp.* 1.67110; *P.Flor.* 1.50;

seller agrees to provide jars, perhaps his estate included an amphora workshop meaning that he had empty vessels at his disposal.

Lease contracts for pottery workshops have served as an important foundation for several recent studies aimed at exploring the papyrological record for insight into pottery production.⁴⁵ They do not explain, however, why so many wine buyers were required to supply their own jars when wine-producing estates could have vessels made to order. An underappreciated aspect of amphora production is that empty jars were marketable in their own right, which is demonstrated by the presence of several entries for such vessels in the section labelled *De fictilibus*, "On earthenware," in the Edict on Maximum Prices (15.88-101) issued by Diocletian in 301 CE.⁴⁶ Further evidence for jars being sold as an independent commodity derives from the papyrological record. Among the numerous advanced sale contracts that have been published, a small number of these texts are concerned with the sale of empty jars.⁴⁷ *PPrag.* 1.46, for instance, records a contract for 400 high quality new amphorae with pitched interiors to be delivered in the month of Payni. This is two months in advance of the grape harvest in Mesore and could represent either an estate owner seeking vessels to bottle wine from his own vineyards or an independent buyer purchasing jars for wine he bought in advance. In other cases, such as *CPR* 10.39, the delivery date for jars is specified as Mesore, indicating a direct connection with the grape harvest.

According to A.W. Mees, there are two main contexts in which the delivery of newly manufactured amphorae took place.⁴⁸ First, vessels were delivered for use in the harvest. Jars produced at estate workshops or ordered in advance sale agreements probably served this purpose. Second, amphorae could be delivered to merchants who would then retail these jars to interested buyers. This may have been the function of numerous workshops documented in the

PLond. 3.994; *POxy.* 50.3596-3597; *PTebt.* 2.342; *SB* 20.14300; and perhaps *PMert.* 2.76.

⁴⁵ S. Gallimore, "Amphora Production in the Roman World: a View from the Papyri," *BASP* 47 (2010) 155-184; A.W. Mees, *Organisationsformen römischer Töpfer-Manufakturen am Beispiel von Arezzo und Rheinzabern* (Mainz 2004) 209-260.

⁴⁶ The section numbers are based on the edition of the text presented in M. Giaccherio (ed.), *Edictum Diocletiani et collegarum de pretiis rerum venalium*, vol. 1 (Genoa 1974). For a discussion of the sale of pottery, including reference to Diocletian's Edict, see J.T. Peña, *The Urban Economy during the Early Dominate: Pottery Evidence from the Palatine Hill* (Oxford 1999) 29-37.

⁴⁷ *BGU* 4.1143; *BGU* 12.2205; *CPR* 10.39; *CPR* 14.34 = *MPER* 15.112; *PFlor.* 3.314; *PLond.* 3.1303; *PLond.* 5.1656; *POxy.* 58.3942; *PPrag.* 1.46; *SB* 1.4675. These texts have been examined in detail in Morelli (n. 5) 16-24.

⁴⁸ Mees (n. 45) 249.

archaeological record of Egypt that are not connected to agricultural estates. For example, P. Ballet notes that amphora production sites are often located on the periphery of settlements, implying a regular attachment to urban centers.⁴⁹ In Middle Egypt, D. Dixneuf observes that amphora kilns tend to be found near the Nile, implying that ease of transport was a primary motive behind location of production.⁵⁰

In certain cases, there may even be evidence that estate workshops also manufactured amphorae to be sold for extra profit. In *P.Oxy.* 50.3595.16-17, for instance, the potter in question is required to manufacture 15,300 jars of various sizes on an annual basis, of which 10,000 must be pitched, presumably for storing wine. With respect to the remaining third of the consignment, no specifications are given regarding their intended use. One possibility is that the estate owner required these jars for a purpose other than wine storage, although another option is that they were intended for sale to private buyers or other estates.

Buyers named in advance sale contracts were not the only individuals who purchased amphorae. Estate owners are also documented procuring jars in this way. In the Heroninos Archive, which records the operations of the Appianus estate in the third century CE Fayyum region of Egypt, no mention is made of potters in the employ of the estate or of pottery production in any manner.⁵¹ Instead, there are receipts for the purchase of large numbers of wine jars demonstrating that Appianus preferred to buy rather than manufacture any vessels he needed. Thus, the fact that wine buyers typically had to supply empty jars in advanced sale contracts adheres to a standard economic practice in Egypt. Amphorae could be bought and sold as independent commodities, and were often needed by individuals who had purchased stocks of wine.

Conclusions

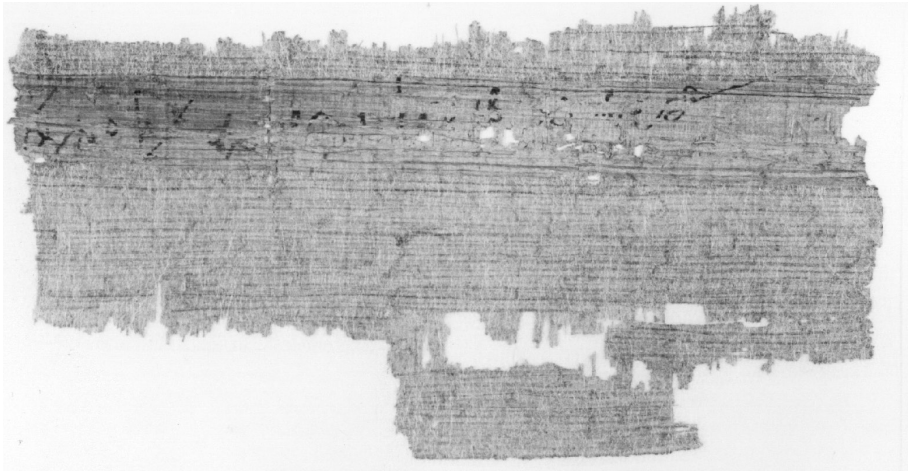
The advanced sale contract for wine presented here provides one more example of a growing corpus of texts known from all regions of Egypt. Though the wording in this agreement is more abridged than in most contracts of this

⁴⁹ P. Ballet, "Dépotoirs culturels, domestiques et 'industriels' dans la *chôra* égyptienne à l'époque romaine," in *La ville et ses déchets dans le monde romain: rebuts et recyclages*, ed. P. Ballet et al. (Montagnac 2003) 226.

⁵⁰ D. Dixneuf, "Les amphores d'époques romaine et byzantine découvertes à Tell el-Makhzan (Egypte – Nord du Sinaï): observations préliminaires," *MBAH* 25.1 (2006) 102.

⁵¹ D. Rathbone, *Economic Rationalism and Rural Society in Third-Century A.D. Egypt* (Cambridge 1991) 167.

type, it still preserves much of the standard formulae. Presentation of this text also enabled consideration of some more general issues. With respect to the presence of guarantee clauses to exchange vinegar for wine seen in numerous contracts, this section only appears in sixth and seventh century texts and may have been developed in response to changes in Justinian law. A second stipulation, which names the person responsible for providing empty jars, is significant for the insight it provides into the large-scale marketing of amphorae that took place in Egypt in antiquity. Overall, this contract provides several opportunities to explore broader economic and legal issues, demonstrating that advance sale contracts can be important sources for engaging such topics.



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