

## REFLECTIONS ON LABOUR RELATIONS IN ROMAN LAW

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Para citar este artículo puede utilizarse el siguiente formato:

**Gábor Hamza** (2011): "Reflections on Labour Relations in Roman Law", en *Revista Crítica de Historia de las Relaciones Laborales y de la Política Social*, n.º 3 (noviembre 2011), pp. 34-36. En línea: [www.eumed.net/rev/historia/02/gh.html](http://www.eumed.net/rev/historia/02/gh.html).

**ABSTRACT:** The contract of hire of service meant the employment of free labour in return for payment for the duration of the hire. In such cases a person obliged himself to place his services at the disposal of another and work for him against wages per hour, day, week, etc. The hire of services in Ancient Rome included primarily manual tasks. Although certain professional services could also be hired, high-standard intellectual activities belonging to the liberal arts could not be the object of *locatio conductio*. The hire of services gave rise to a synallagmatic *bonae fidei* obligation. The wage labourer was obliged to work according to the instructions of the employer and with a due standard of care. He was liable for *culpa levis*. The bearing of risks was divided between the parties. The general rule was that the risk was to be borne by the person within the sphere of whom the circumstance creating an obstacle in the way of performance occurred.

**KEY WORDS:** Liberal arts, Bearing of risks, *Bonae fidei* obligation, Conductor, *Culpa levis*, Hire of services, *Honorarium*, *Locatio conductio operarum*, Locator, *Mandatum*, *Merces*, Penalty.

**RESUMEN:** El contrato de arrendamiento de servicios suponía la contratación de mano de obra libre a cambio de un salario mientras durase el contrato. En tales casos, el contratado se obligaba a poner sus servicios a disposición del contratante y trabajar para éste por un salario por hora, día, semana, etc. El arrendamiento de servicios en la Antigua Roma se refería principalmente al trabajo manual, a pesar de que también podían arrendarse ciertos servicios profesionales, actividades de alto nivel intelectual dentro de las artes liberales, que no podían ser objeto de *locatio conductio*. El arrendamiento de servicios dio lugar a un principio de obligación sinalagmática de buena fe. El asalariado estaba obligado a trabajar conforme a las instrucciones del patrón y al nivel de calidad requerido. Se le podía considerar responsable de *culpa levis*. La asunción de riesgos era compartida por ambas partes. La norma general era que el riesgo era asumido por la persona en cuyo ámbito se diese la circunstancia que generase un obstáculo para el desempeño del servicio.

**PALABRAS CLAVE:** Artes liberales, Asunción de riesgos, Obligación *Bonae fidei*, Conductor, *Culpa levis*, Arrendamiento de servicios, *Honorarium*, *Locatio conductio operarum*, Locator, *Mandatum*, *Merces*, Multa.

Hire of services (*locatio conductio operarum*). The contract of hire of service meant the employment of free labour in return for payment (wage or day's pay) for the duration of the hire. In such cases a person obliged himself to place his services at the disposal of another and work for him against wages per hour, day, week, etc.

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It is worth mentioning that the Russian legal scholar Shereshevski in the 1950s and more recently certain western Romanists (for instance Bürge) maintain that the *locatio conductio operarum* applied in most cases to slaves hired for work rather than to free wage labourers. The question remains, however, debated i.e. unsolved.

The hire of services in Ancient Rome included primarily manual tasks (*operae*). Although certain professional services (such as were rendered by physicians, teachers, engineers, etc.) could also be hired, high-standard intellectual activities belonging to the liberal arts (e.g., those of jurists and philosophers) could not be the object of *locatio conductio* (Ulp. D. 50, 13, 1, 5). For a long time such people could act only gratuitously in the framework of mandate (*mandatum*). Although this theoretically gratuitous mandate was later rewarded and the claim of intellectuals hiring out their work for a reward came to be recognized (Ulp. D. 50, 13, 1 pr.), their payment was considered as something different from wage (*merces*) and was called fee, honorarium or salary (*honorarium, salarium*).

This distinction was made because the Romans considered work done for others for payment, especially manual work, as something to be disdained and similar to enslavement. They maintained that only the cultivation of their own land and work done for amusement were worthy of Roman citizens (*cives Romani*). A free person (*liber*) was believed to be best fit for high-standard intellectual activities (*artes liberales*)<sup>1</sup>.

The hire of services gave rise to a synallagmatic *bonae fidei* obligation with the following rights and duties. The wage labourer (*locator*) was obliged to work according to the instructions of the employer and with a due standard of care. He was liable for *culpa levis*. He was bound to exercise due diligence without regard to the result of his activities (cf. the *Sorgfalthaftung* of today)<sup>2</sup>. Wage labourers could thus claim the wage agreed by an *actio locati* irrespective of the results, merely on the basis of their diligent work. The employer (*conductor*) had the remedy of the *actio conducti* against the worker, for example, for damages, besides the possibility of withholding his wage.

The bearing of risks was divided between the parties. The general rule was that the risk was to be borne by the person within the sphere of whom the circumstance creating an obstacle in the way of performance occurred: «*qui operas suas locavit, totius temporis mercedem accipere debet, si per eum non stetit, quo minus operas praestet*» [a man who leases out his labour should receive wages for the entire term if he is not responsible for his labour not being rendered] (Paul. D. 19, 2, 38 pr.). For example, if the worker was present but bad weather made work impossible, he was to receive his wage. But if he fell ill and could not work, he was not entitled to payment. This regulation of bearing risks (and liabilities in general) was thus based on the principle of spheres (in German: *Sphärentheorie*).

<sup>1</sup> Although the aristocratic Roman distinction between wage labour and intellectual work, present also in Ancient Greece (see Árpád Szabó, *Periklész kora* [The Age of Pericles], Magvető Kiadó, Budapest, 1977, is naturally discarded today, it is worth while considering what the renowned Hungarian romanist, Vécsey Tamás, has to say about it in his *A római jog institúciói* [The Institutes of Roman Law], Franklin-Társulat, Budapest, 1902, p. 385: «The gratuitousness [of *mandatum*] followed from the social conditions of antiquity. A *honorarium* is never worth as much as the intellectual work rewarded by it even today. Lawyers should regard themselves as the representatives of jurisdiction, physicians as those of humanity, and teachers as those of science. They work for sacred causes without regard to the honorarium they might get because their activities cannot be paid anyway. Only the tribute they command can be expressed partly in terms of money».

<sup>2</sup> Time-rating was typical in the sphere of *locatio conductio operarum* but payment on results was also known to the Romans. As it becomes clear from Diocletian's decree fixing maximum prices, the workers of gold mines were paid according to the quantity of the ore-bearing rock they lifted. Payment on results makes labour contract approach the modern *Erfolgshaftung*. Due to the complexity/comprehensive nature of the Roman *locatio conductio*, this posed, however, no problem.

Apart from this permissive/dispositive rule, the parties could, however, also agree differently. The wax tablets (in German: *Wachstafeln*) from Dacia (FIRA III 467) reveal that a sharing of loss was applied when work in the mines became impossible due to the inrush of water.

The ways and rules of terminating contracts of services were similar to those applied in the case of the hire of things. The lack of the institution of giving notice was probably compensated for by fixing a penalty (*poena*), as the wax tablets of Dacia testify.

*Recibido el 4 de julio de 2011, corregido del 5 al 7 de julio de 2011 y aceptado el 13 de julio de 2011.*