

The Law of Contracts in Ancient Greece

1) Hyperides 3

πρώτον μὲν οὖν ὑμῖν τὰς συνθήκας ἀναγνώσεται· ἐξ αὐτῶν γὰρ τῶν γεγραμμένων μαθήσεσθε τὴν ἐπιβουλὴν αὐτοῦ τούτου. λέγε τὰς συνθήκας.

ΣΥΝΘΗΚΑΙ

- 13 Τὰ μὲν τοῖνυν πεπραγμένα, ὧς ἄνδρες δικασταί, καθ' ἓν ἕκαστον ἀκηκόατε. ἐρεῖ δὲ πρὸς ὑμᾶς αὐτίκα μάλ' Ἀθηνογένης ὡς ὁ νόμος λέγει, ὅσα ἂν ἕτερος ἐτέρῳ ὁμολογήσῃ κύρια εἶναι. τὰ γε δίκαια, ὧς βέλτιστε· τὰ δὲ μὴ τούναντίον ἀπαγορεύει μὴ κύρια εἶναι. ἐξ αὐτῶν δὲ σοὶ τῶν νόμων ἐγὼ φανερώτερον ποιήσω. καὶ γὰρ οὕτω με διατέθεικας καὶ περίφοβον πεποίηκας μὴ ἀπόλωμαι ὑπὸ σοῦ καὶ τῆς δεινότητος τῆς σῆς, ὥστε τοὺς τε νόμους ἐξετάζειν καὶ μελετᾶν νύκτα καὶ ἡμέραν, πάρεργα
- 14 τὰλ[λα] πάντα ποιησάμενον. ὁ μὲν τοίνυν εἰς νόμος κελεύει ἀψευδεῖν ἐν τῇ ἀ[γορᾷ],¹ πάντων, οἴμαι, παρὰ[γυγελ]μα κάλ[λιστα]ν παραγγέλλων· σὺ [δὲ] ψευδόμενος ἐν μέσῃ τῇ ἀγορᾷ συν[θήκας] κατ' ἐμ[οῦ] ἔθ[ους]. ἐπεὶ ἐὰν διείξῃς² προει[πῶν] ἐμ[οῖ] τοῖς ἐράνοισι [καὶ] τὰ χρέα, ἣ γράψας ἐν ταῖς συνθήκαις ὅσους [ἐπυθόμην, οὐδὲν⁴ ἀντιλέγω σοι
- 15 ἀλλ' ὁμολογῶ] [δφείλειν. μετὰ δὲ] ταῦτα ἔ[τερος] νόμος [ἐστὶ περὶ ὧν ὁμολογοῦν]τες⁵ ἀλλήλοις συμβάλλουσιν, ὅταν τις πωλῇ ἀνδράποδον προλέγειν ἐάν τι ἔχῃ ἀρρώστημα, εἰ δὲ μὴ, ἀναγωγὴ τούτου ἐστίν. καίτοι ὅπου τὰ παρὰ τῆς τύχης νοσήματα ἂν μὴ δηλώσῃ τις πωλῶν οἰκέτ[η]ν ἀνάγειν ἔξεστι, πῶς τὰ γε παρὰ σοῦ ἀδικήματα συσκευασθέντα οὐκ ἀναδεικτέον σοὶ ἐστίν; ἀλλὰ μὴν τὸ μὲν ἐπιληπτον ἀνδράποδον οὐ προσαπολλύει τοῦ πριμένου τὴν οὐσίαν, ὁ δὲ Μίδας, ὃν σύ μοι ἀπέδου,
- 16 καὶ τὴν τῶν φίλων τῶν ἐμῶν ἀπολώλεκε. σκέψαι δέ, ὧς Ἀθηνογένες, μὴ μόνον περὶ τῶν οἰκετῶν, ἀλλὰ καὶ περὶ τῶν ἐλευθέρων σωμάτων ὃν τρόπον οἱ νόμοι ἔχουσιν. οἶσθα γὰρ δήπου καὶ σὺ καὶ [οἱ] ἄλλοι πάντες ὅτι οἱ ἐκ τῶν ἐγγυητῶν γυναικῶν παῖδες οὗτοι γνήσιοί εἰσιν. ἀλ[λὰ] μὴ[ν] οὐκ ἀπέ[χρη]σε τῷ νομοθέτῃ τὸ ἐγγυηθῆναι τὴν γυναῖκα ὑπὸ [τοῦ πατ]ρός [ἢ] τοῦ ἀδ]ελφοῦ, ἀλλ' ἔγραψε δι' ἀρρήθην ἐν [τῷ νόμ]ῳ, [ἦν] ἂν ἐγγυήσῃ τις ἐπὶ δίκαιους δάμαρτα] ἐκ ταύτης εἶναι παῖδας γνησίους,² καὶ οὐκ³ ἐάν τις ψευδόμενος ὡς θυγατέρα⁴ ἐγγυήσῃ ἀλ[λ]ήν τινά. ἀλλὰ τὰς μὲν δίκαιας⁴ ἐγγύας κ[υρίας],⁵ τὰς δὲ μὴ δίκαιας ἀκύρους] καθ-
- 17 ἴστη[σιν].⁵ ἔτι δὲ καὶ ὁ περὶ τῶν διαθηκῶν νόμος

First of all

the clerk will read out to you the agreement; for you will learn of this man's plot from the text itself. Read the agreement.¹⁷

[AGREEMENT]

[13] Gentlemen of the jury, you have heard all the facts in detail. But Athenogenes will at once tell you that the law declares that any agreements made by two parties are binding. Yes, agreements that are just, my good fellow. But for unjust agreements, the law says the direct opposite; they are not binding.¹⁸ I will make this point clearer from the laws themselves. You have made me so fearful of being brought to ruin by you and your cunning that I have been forced to study and examine the laws night and day to the neglect of all else.¹⁹

[14] The one law stipulates that no one can make false statements in the Agora, a provision that seems to me to be the finest of all.²⁰ But you, Athenogenes, lied in the middle of the Agora when you made an agreement against my interests. If you show that you told me about the loans from contributors and the debts or wrote in the contract all the creditors' names that later I learned, then I have no argument with you, but I admit to owing money. [15] Next, there is a second law covering those who have made contracts by mutual agreement. It states that when someone sells a slave, he must fully disclose any physical defects the slave may have; and if he does not, the slave can be returned. And yet if it is possible to return a slave, where a seller has failed to reveal the defects caused by chance, how can you not accept responsibility for crimes that you planned yourself? Moreover, the epileptic slave does not cause further loss to the buyer, whereas Midas, whom you sold me, has even cost my friends' money.

[16] Consider, Athenogenes, the law's position not only on slaves but also on free persons. Surely, you and everyone else know that only children born of lawfully married women are legitimate.²¹ But clearly the simple act of betrothal by the woman's father or brother did not satisfy the lawgiver, but he expressly wrote in the law "whomever a man lawfully gives in betrothal, children born of her are legitimate," and not, "if someone betroths another woman, falsely alleging that she is his daughter." Rather, he stipulates that lawful betrothals are valid and unlawful ones, invalid.

2) Dem. 46.10: ΝΟΜΟΣ. Τοῖν ἀντιδίκωιν ἐπάναγκες εἶναι ἀποκρίνασθαι ἀλλήλοις τὸ ἐρωτώμενον, μαρτυρεῖν δὲ μὴ. "Both litigants must answer each other's questions but need not to come forward as witnesses."

3) Dem. 42.12: (νόμον) τὸν κελεύοντα κυρίας εἶναι τὰς πρὸς ἀλλήλους ὁμολογίας, ὅς ἂν ἐναντίον ποιήσωνται μαρτύρων. "... (the law) prescribes that *homologiai* (saying the same) to each other, which are delivered before witnesses, are definitive."

4) Dem. 56.2: (νόμοι), οἱ κελεύουσιν, ὅσα ἂν τις ἐκὼν ἕτερος ἐτέρῳ ὁμολογήσῃ, κύρια εἶναι. "... (the laws) that command that whatever someone voluntarily acknowledges to another is definitive."