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## CAUSA AND BONA FIDES – A LEGAL AND ETYMOLOGICAL STUDY\*

### Abstract

*This article questions some of the sacred truths which have been considered undeniable in the comparative legal doctrine. The author reveals the etymology of the well-known legal term CAUSA which is claimed to be of Latin foundation and historically developed in Roman law. In doing so, he finds out that the usual interpretation upon which the term causa has its roots in the expression cav, caveo (something that is defended or protected) does not sufficiently correspond to the legal sense of the causa, commonly understood as the underlaying purpose of a legal transaction. For that reason, he attempts to trace the origin of the word causa in the languages of ancient Latins neighbors: Etruscans (Rascians) and Sabinians. Starting from the premise that the Serbian language shares many exclusive characteristics with Etruscan language, the author also explores the possibility that both ancient and modern Serbian language could help us to find out where the legal sense of the term causa comes from.*

*The development of private law in Rome was significantly determined not only by notion of causa, but also by the legal standard of bona fides (good faith). The author argues that the origin of the word fides can be traced in the religious context more precisely in the name of the highest Slavic divinity, called – Vid (Svetovid). Regardless if the lexical sense of the root 'VID-VIT' is understood as the 'WORD', 'EYE SIGHT', or 'KNOWLEDGE' the name of this God clearly points out to the force that nobody and nothing can hide from. Not surprisingly, a statue portraying the Svetovid shows him with four heads, each one looking in a separate direction.*

*Furthermore, the author explores the possibility that decisive influence on Roman Law was made by non-Latin jurists through interpretation of the law, first by pontifices and later by praetors and other prominent jurists. If the core principle of truth is word then the etymology of the terms: causa and fides indicates the possibility that*

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\* This paper has already been published in Serbian language with necessary alteration, under the title: 'O kauzi i dobroj veri – jedan pravno-etimološki ogled', 3–4 *Pravni život* (2010) pp. 93–122. Since, my dear friend Christa Jessel-Holst is, at the same time, both eminent authority in private law and recognized expert for eastern European languages, I find appropriate to express my gratitude and admiration for her remarkable contribution in the harmonization of European private law, through this article which primarily explores the relation between these two subjects – matters: law and language.

*Etruscans, passed down their customs from one generation of prominent jurists to the next, in order to apply them when the commerce in Rome become as developed as in the conquered Etruscan cities. Recently excavated inscriptions from that period confirm author's belief that the Romans knowledge learned from the Etruscans (disciplina Etrusca) partially included the legal reasoning, and eventually that the persons of Etrusco-Sabinian origin, were not only the constructors of Rome, but also the main architects of this magnificent legal system.*

**Keywords:** *causa, bona fides, etymology, Etruscans, Cippus Perusinus, Tabula Cortonensis, Vid (Svetovid), Sabiniani, Gaius.*

## I. 'IN THE BEGINNING WAS THE WORD'<sup>1</sup>

How many mysteries regarding our origin still remain to be unveiled? Recent archeological discoveries undoubtedly show that the man's ancestor appeared even earlier than it was initially believed. It seems that the laws and rules, as a pure reflection of its human creators, closely followed the progress of civilization. Thus, the development of the legal reasoning in particular culture was always closely connected with linguistic skills of related people. Even though words represent a lawyer's primary tool, we got the impression that in contemporary legal studies the language is not really a first priority issue. This is especially the case in Serbia, where legal terms are taken for granted without any doubts and questions.

In public law, for example, the etymological analysis only considers the word 'constitution' (in Serb. – 'USTAV') and explains that this term is derived from the word 'weir' (in Serb.: – USTAVA) expressing the idea of strong barrier against rulers' obstinacy. On their side, the private law writers mostly insist on the fact that Serbian language makes no difference between the terms 'law' and 'right', which can be found in some other Slavic languages, for example, Slovenians distinguish the terms 'pravo' and 'pravica'.

It is quite obvious that the lawyers leave etymology to the linguists. They, however, seem to have more important tasks than to explore the origin of legal terms. Generally speaking, legal linguistics appears to be a rather undeveloped discipline.<sup>2</sup> Contrary to this scientific pattern, we will question the roots of some legal institutes by examining the natural links between the language and the law.

There is a great variety of terms in comparative law used to designate institutes which have similar or even identical meaning. For example, the English term 'property' related to the widest scope of rights over a certain object, has different forms in other languages: 'власништво' (Serbian), 'Eigentum' (German), 'propriété' (French), 'proprietà' (Italian), 'собственность' (Russian), etc. On the other hand, some words are used worlds wide becoming in that way a part of a common legal tradition. This is the case with the word *causa*, which is normally understood as a legal purpose of an obligation.

1 Book of *Genesis*, John Chapter 1: 1.

2 Contrary to Serbia, in some countries, legal linguistics is taken more seriously and it is even thought as a special course in law schools. For more details, See T. Salmi-Tolonen, 'Legal Linguistic Knowledge and Creating and Interpreting Law in Multilingual Environments', 29 *BROOK. J. INT'L L.* (2004) p. 1167 at 1169.

Many distinguished scholars discussed the issue of *causa*.<sup>3</sup> Most of them agree that the *causa* has its origins in Roman law and that in Latin language '*causa*' means 'reason' – cause.<sup>4</sup> These, scholars almost unanimously support the position that *causa* answers the question 'why a party assumes an obligation' and therefore represents the underlying purpose of a contract. Then, they **systematically expose** different theories on the notion of *causa*, understanding *causa* as: economic, psychological or legal purpose of contract. The authors mostly present the legal meaning of *causa*, avoiding to speculate on the possible etymology of the term itself. Quite the contrary, legal philosopher, Gustav Radbruch says that in ancient times, each word had a magical power, independent from the thoughts of the one who was saying it.<sup>5</sup> In this paper, we will follow the line of this Radbruch's thought, trying to discover the magical power of the word – *causa*.

The dictionaries mainly stress that the word *causa* has Latin origin,<sup>6</sup> with the possible root *cav-caveo*, means something protected or defended.<sup>7</sup> Although, it might be true, it seems that the existing interpretation of the word *causa* has absolutely no connection with its legal sense – as underlying purpose of contract. Therefore, one might ask, is it possible that the roots of the legal term *causa* are concealed in some other language? We believe that the answer to this question requires an examination of both material and spiritual factors which influenced the life of ancient Romans. Generally speaking, reception of foreign words comes as a consequence of interaction between peoples, through acceptance of actions and objects customary among foreigners and unknown by the natives. Consequently, it seems natural that in our quest for the origin of the word *causa* we should turn to those **ethnic groups** that Latins met when they arrived to the Apennines.<sup>8</sup> Ancient Greeks decisively influenced Roman philosophy, but as far as law and legal terminology are concerned,

3 A. Gams, 'Kauza i pravni osnov' [Causa and Legal Ground], 2 *Anali Pravnog fakulteta u Beogradu* (1959) pp. 156–175; S. Perović, 'Osnov ugovorne obaveze' [Ground of Contractual Obligation], *Zbornik radova sa Savetovanja pravnika 8–12. jun 2009 Budva*, pp. 7–19; O. Antić, 'Kauza' [Causa], 10 *Pravni život* (2005) pp. 821–856.

4 The term *causa* has different meanings in Roman legal terminology. However, it is predominantly used to denote the purpose of a contract: *causa venditionis* (for sale), *causa donationis* (for gift)... Entry: 'Causa' Ž. Bujuklić, *Forum Romanum, Rimska država, pravo, religija i mitovi* [Forum Romanum, Roman state, law, religion and myths] (Beograd 2007) p. 189.

5 G. Radbruch, *Filozofija prava*, [The Philosophy of Law] (trans. in Serb. language D. Guteša) (Beograd 2006) p. 118. (in Serbian language hereafter abbreviated as: in Serb.)

6 See Entry: 'Kauza' in M. Vujaklija, *Leksikon stranih reči i izraza*, [The lexicon of foreign words and phrases] (Beograd 1966) p. 416 and I. Klajn and M. Šipka, *Veliki rečnik stranih reči i izraza*, [The grand dictionary of foreign words and phrases] (Beograd 2006) p. 597. The French etymological dictionary also refers to the Latin origin of this word: *Cause fin XII s., Rois, du lat. causa, cause et procès*. Entry: 'CAUSE', A. Dauzat, J. Dubois, H. Mitterand, *Nouveau Dictionnaire Étymologique* (Paris, Larousse 1964) p. 143.

7 The Oxford dictionary of the Latin language states that the word *causa*, (spelled by Cicero and authors before him as *caussa*), ae f. Entry: 'Causa', C. Lewis, C. Short, *A Latin Dictionary* (Oxford, London) p. 303.

8 ...'when they arrived to the Mediterranean coast, Achaic and Italic Indoeuropeans found old settlements with a highly developed culture'. Accordingly, 'antique culture cannot be considered as an exclusive product of ancient Greeks and Romans' M. Budimir, *Pelasto-Slavica*, Poseban otisak iz 309. knjige Rada JAZU, <http://www.scribd.com>.

it was rather Romans who influenced the Greeks. However, it should be noted that 'hypothec', for example, is a Greek "invention".<sup>9</sup> Furthermore, in the Mediterranean, the Romans confronted the Phoenicians and conquered them after several bloody wars. The Romans also came in contact with the Rascians and eventually managed to overcome them too.<sup>10</sup>

Latins called Rascians by the name of Etruscans or Tuscians.<sup>11</sup> Therefore, the name Etruscan was world wide accepted by scholars, although the word 'Etruria' left few traces on the field. On the other hand, there are many toponyms, hydronyms and antroponyms in the broader area of Balkan derived from the morpheme 'RAS' (Ras, Rasina, Rašica, Raška, Rašo, etc.)<sup>12</sup> In order to designate this people, we will equally use the term 'Rascians', as they called themselves, and Etruscans, as they were called by the Roman neighbors. Furthermore, the interaction between these two ancient peoples: Romans and Etruscans will eventually help us to unveil the possible roots of the legal term – *causa*.

## II. DISCIPLINA ETRUSCA

It is commonly accepted that Rome was founded by three tribes: Ramnes – a Latin, Titienses – a Sabinian and Luceres – an Etruscan tribe.<sup>13</sup> During the first two and a half centuries, since 754 BC until 510 BC Roman kings were of Etrusco-Sabinian origin.<sup>14</sup> Each of these kings contributed to the development of Roman society. However, a special credit should be given to *Servius Tullius* who not only expanded the defensive wall around the city of Rome,<sup>15</sup> but also successfully performed military and political reforms.<sup>16</sup>

- 9 In order to mark the encumbered land, the ancient Greeks used pillars called 'horoi'. R. Versteeg, *Law in the Ancient World*, (Durham, North Carolina 2002) p. 258.
- 10 The conquest of the last Etruscan town - Volsini (265. BC) definitely proved the Roman supremacy over Italian peninsula. See M. Milošević, *Rimsko pravo* [Roman Law] (Beograd 2008) p. 35.
- 11 Paleolinguist Radivoje Pešić, who taught for many years in Italy, finds that this confusion is due to Herodotus, In the first book of his History (I, 94) Herodotus explains that this people came to Italy from Lydia in the VIII century BC, naming them Tirens, or Tirsens, by the son of the emperor Atis, Tiren. R. Pešić, *Vinčansko pismo i drugi gramatološki ogledi* [Vinch Script] (Beograd 1995) p. 51.
- 12 See R. Pešić, op. cit. n. 11, at p. 51.
- 13 A. Malenica, *Rimsko pravo* [Roman Law] (Novi Sad 2003) p. 20; also See Ž. Bujuklić, op. cit. n. 4, at p. 12.
- 14 'After Romulus, there were six kings in the Roman tradition. The science mostly considers credible only the data for the last three rulers presumably of Etruscans origin'. See M. Milošević, op. cit. n. 10, at p. 31. For more details about the Roman kings, see: M. Mirković, *Rea Silvija i sedam rimskih kraljeva, Srodstvo i vlast u ranom Rimu*, [Rea Silvia and Seven Roman kings] (Beograd 2008) p. 15–20.
- 15 M. Milošević, op. cit. n. 10, at p. 33. When expanding the city, the Romans applied the Etruscan construction skills based on the principles called *etrusco ritu* or *disciplina etrusca*. Ž. Bujuklić, op. cit. n. 4, at p. 15.
- 16 For the Etruscan origin of *Servius Tullius*. See J. F. Hall, 'From Tarquins to Caesars, Etruscan Governace at Rome', in J. F. Hall, ed., *Etruscan Italy: Etruscan Influences on the Civilizations of Italy from Antiquity to the Modern Era*, p. 156, <http://books.google.com>. 'Strabo says that this ruler finished the Roman defensive wall, from Esquiline Hill to Viminal Hill, writing his name as Serouios, i.e. Σερωιοϋ, which is equal to Serbios.' Strabo, V., gl. 3, 7. Cited upon: O. Luković-

Servius introduced the military formation consisted of a hundred soldiers (*centuria*) which, at the same time, was the voting unit in the common assembly (*comitia centuriata*).<sup>17</sup> Each *centuria* had one vote, and the voting process would stop as soon as the majority was achieved.<sup>18</sup> The scientists consider that the military reforms and the new tribal division enabled the Romans to finally establish the 'state'.<sup>19</sup> Aside of their authority in social organization, Etruscans had tremendous influence in paving infrastructure (aqueducts, bridges, and sewers). For instance, they built the first bridge over the Tiber (*Pons Sublicius*),<sup>20</sup> which totally turned over the commerce in Rome.<sup>21</sup> Etruscan written monuments,<sup>22</sup> at least some of them, that have been preserved clearly testify about outstanding knowledge and distinctive features of their civilization.<sup>23</sup> However, from this point in time it is also obvious that Romans and the Etruscans were not only confronted in the battlefield. To pacify their opponents, Romans applied wise policy of coaxing the conquered people into fighting for conqueror's goals. When that was not possible, the traces of the conquered civilization were simply erased.<sup>24</sup> Even though many written traces disappeared in the process of Romanization of the Etruscans, it is established that the Romans took over the Rascian numeral system,<sup>25</sup> as well as many Etruscan achievements in the field of architecture and arts, which lately became a part of the European cultural heritage.<sup>26</sup>

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Pjanović, *Srbi, Narod Najstariji*, [Serbs, An ancient people] (Beograd 1990) p. 241, <http://www.scribd.com>.

17 See A. Malenica, op. cit. n. 13, at p. 39.

18 See M. Milošević, op. cit. n. 10, at p. 34.

19 See M. Milošević, op. cit. n. 10, at 34. Until then, the Roman society was at the stage of military democracy. See Ž. Bujuklić, entry: "*Ab Urbe Condita*", op. cit. n. 4, at p. 95.

20 A. Malenica, op. cit. n. 13, at p. 31. In architecture, the Etruscans used arches, which did not exist in Egyptian and Hellenic civilization. Entry: "Etruria", *Mala Enciklopedija* [Small Encyclopedia] Volume I, (Beograd, Prosveta 1986) p. 796.

21 Rascian skills, especially regarding the draining of the land, were important for the development of agriculture. The construction of the well-known channel *Cloaca Maxima* is also attributed to the Etruscan king *Tarquinius Prisc*. See Ž. Bujuklić, op. cit. n. 4, at p. 15. In addition, Etruscans skills in iron and bronze processing, brought the metal plough instead of wooden plow, which was previously used. A. Malenica, op. cit. n. 13, at p. 23.

22 The longest Etruscan inscription which has been preserved is the Linen Book (*Liber Linteus Zagradiensis*). This text has been written on a mummy's linen wrappings and kept at the Archaeological Museum in Zagreb. G. Bonfante and L. Bonfante, *The Etruscan Language, An Introduction*, p. 58, <http://books.google.com>.

23 One of the prominent interpreters of the Etruscan language is definitely Svetislav Bilbija, the former head of the Institute for Etruscan studies in Chicago. He used the method of transposition of the phonetic value of Cyrillic scripts to the Etruscan letters and unveiled the so-called Etruscan secret to a large extent. According to Bilbija, the Linen Book is a sort of statute of a social and religious institution (in Etruscan language: "Krapište"), which represented a center of social life. S. S. Bilbija, *The mummy of Zagreb and other Etruscan, Lydian and Lycian written monuments* (Institute of Etruscan Studies, Chicago 1989) pp.122–144.

24 For example, in the Third Punic war (149–146 BC) Carthage was completely destroyed.

25 Bonfante and Bonfante, op.cit. n. 22, at p. 97.

26 At this point, it is useful to recall the words of Prof. Pešić: 'It is so exciting to meet the Etruscan (Rascian) civilization ... This civilization represents the history of the all Europeans'. Pešić, op. cit. n. 11, at p. 77.

How the things look like in terms of law? Were the Romans only in this field on they own and truly innovative, or does the Roman legal thinking represent just a stage in the natural development of the law and civilization conceived in the Danube region thousands of years before the founding of Rome?

### III. RASCIAN CONTRACT LAW

Cato's assessment that 'the whole Italy was once under the Etruscan control' mostly applies to the end of the 6<sup>th</sup> century BC. The Etruscan naval and commercial power undoubtedly played a major role in that domination. Various objects made by the Etruscans were found in North Africa, Greece, Anatolia, the Balkans, France, Spain, as well as on the banks of the Black Sea.<sup>27</sup> The fact that the Rascians were selling their products world wide, raise the probability that they were not only literate,<sup>28</sup> but they also had a developed customary law which regulated the frequent trade. This is further confirmed by two preserved Etruscan legal monuments: Cippus Perusinus<sup>29</sup> and Tabula Cortonensis.<sup>30</sup> We believe that the names used for these two inscriptions in historiography unjustifiably neglect their legal content.<sup>31</sup> Therefore, aside from their 'official' names, we will preferably call these monuments 'the contract from Perugia' and the 'contract from Cortona'. At this point it should be noted that the available transliteration of these writings and accordingly their translation into modern languages are quite diverse, sometimes even contradictory. Therefore, any attempt of their interpretation should be taken with certain caution.

#### 1. *Cippus Perusinus* (Contract from Perugia)

Etruscologist Svetisav Bilbija offers the following Cyrillic transliteration of the contract from Perugia<sup>32</sup>:

1. евлат тан на ларештву
2. аме ватр лаутн велжинаши е
3. шће тла абунаши слел еж кару

27 See entry: 'Etruscans', Exoansion and domination, *Wikipedia*, <http://sr.wikipedia.org>, 12. 08. 2009.

28 Prof. Pešić argues that the Rascian alphabet appeared some 900 years BC. Pešić, op. cit. n. 11, at p. 83.

29 *Perugia CIPPVS* (Pe 8.4) is stone tablet with 46 lines, discovered on the hill of St. Marco near Perugia in 1822.

30 This 2200 year-old bronze tablet was found near Cortona in Tuscany. It contains 40 lines written on both sides, with the dimensions 45.8 x 28.5 cm. The tablet had been broken into eight pieces, of which only seven have been found. *Wikipedia*, entry: "Tabula Cortonensis" [http://en.wikipedia.org/wiki/Tabula\\_Cortonensis](http://en.wikipedia.org/wiki/Tabula_Cortonensis) and <http://users.tpg.com.au/etr/etrusk/po/tabula.html>, 12. 08. 2009.

31 It was initially believed that the Cippus Perusinus had a religious content. It is also quite intriguing that the Cortona tablet was found in 1992, but the information about its discovery was released after few years, in 1999.

32 S. Bilbija, *Staroevropski jezik i pismo Etruraca* [The Ancient European Language and Etruscan Alphabet] (Beograd 2000) p. 192.

4. тестан бошћи лери тесншћи те ишће
5. **рашњеш**и ипа ама ђен напер
6. XII велжина журашћи арашћи пе
7. рашћи ћемулм љескол **што ћи ен**
8. **ес ћи** е плту лару
9. авлешћи велжина шћиа рштнал кл
10. ен шћии жии жилишћи кона **цену е**
11. **плћ белић** ларжалши абунеш
12. клен жун ту лже
13. баља шћи тием бошћле велжина
14. ђин закапе миникљет масу
15. апер шпанц стлжи балшћи ти в
16. елжина ђут напер пене стшћи
17. масу **акнина** клел абунa вел
18. жина мле ршт иниа ин тем аме
19. ркнл велжина стиашћа тене
20. тесње ека велжина журашћи ж
21. аура ђељу тесње рашње чеи
22. десн ште **ишће рашњешћи** чим же шп
23. елж у ташће кона абунa мена
24. ђен напер ћи кил ћаре уту шће.
25. велжина шћа
26. тена **што ћ**
27. **и е нес ћи** ин
28. а шпелане
29. жи буљум т
30. ва шпелжи
31. ренежи ешћи т
32. ак велжина
33. акил оне
34. туруне шћи к
35. оне штеа **што ћ**
36. **и е нес ћи** аж
37. омицшћи абун
38. нашћи пенжн
39. а ама велж
40. ина а бони зуру ни еин
41. стер јуна кт
42. а жии жун т

43. у лжл ит ка

44. чета шти тут

45 е...

This might be interpreted in the following way:<sup>33</sup>

The heirs of the boljar property, the men of the house of Velzians and the Dabonians, came together to write down and to certify, according to the customs, the arable gardens sales, as the Rascian customs demand.

Whatever is here is binding

Here they should pay to the neighboring landowner

To Velzina who are of the Rascian birth (and) who live on the property should be paid in silver by landowners Dabonians' heirs to gather harvest here (and) to collect the piles of twigs which are in the gardens of Velzina.

These buried graves which are chiseled in, built and decorated by tables, finished by axes, are Velzina's.

In the deal are together the constructed tables as property of Dabonians.

Velzina are saying it here because of others that Velzinas keep the customs.

It is there that noble Velzinas are (to be) buried according to the Rascian customs, there are ten of them and, when needed, the burial will be made according to the Rascian customs.

Dabonians agree with the deal struck here and the agreement made is what Velzinas wanted.

Whatever is here is binding.

When they are buried, their golden jewels should be returned to Velzinas as it is and as it was given as gift.

Read whatever is here, and it is binding.

As the domicile is of Dabonians, the rock is Velzina's.

Let them both look at this, spread, bear young ones, grow roots only in homes and read whatever is written here.

## 2. *Tabula Cortonensis* (Contract from Cortona)

Since we find the available interpretations of the Cortona Tablet rather controversial, in this paper, we will only expose widely accepted transliteration of this inscription given by Giulio M. Facchetti.<sup>34</sup>

### *Page A*

1. e{.}t . pêtruis šcêvês êliunts . v
2. **inac** . reštmc . **cenu** . tēnθur sar . cuš
3. uθuras . larišališvla . pešc . špante . tēnθur .

<sup>33</sup> See S. Bilbija, op. cit. n. 23, at p. 67.

<sup>34</sup> G. M. Facchetti, [http://webu2.upmf-grenoble.fr/Haiti/Cours/Ak/Etrusca/Tabula\\_Cortonensis.gr.htm](http://webu2.upmf-grenoble.fr/Haiti/Cours/Ak/Etrusca/Tabula_Cortonensis.gr.htm), 12. 08. 2009.



4. ša . sran . sarc . clθil . tēršna . θui . opanθi . ml
5. esiêθic . **rasna** ΣIII> [vacat] inni . peš . pêtrus . pav
6. ac . traulac . tiur . tēnθurc . tēnθa . zacinat . pr
7. inišerac . zal // cs . êšis . vērê cušuθursum . p
8. eš . pêtrusta . šceva[s] // nuθanatur . lart . petr
9. uni . arnt . pini . lart . vipi . lušce . lariš . šalini . v
10. êtnal . lart . vêlara . larθališa . lart . vêlara
11. auleša . vel . pumpu . pruciu . aule . cêlatina . šê
12. tmnal . arnza . fêlsni . vêlθinal . vêl . luišna
13. lušce . vêl . ušlna . nufreša . laru . šlanzu . larz
14. a lartle vêl aves arnt . pêtru . raufe // êpru
15. s . ame . velxe . cušu larišal . cleniarc . lariš
16. cušu . larišališa larizac . clan . larišal . pêtr
17. u . šcêvas . arntlei . pêtrus . puia [vacat]
18. cên . zic . ziχuxe . šparzêstis . sazleis . in
19. θuxti . cušuθuras . šuθiu . ame . tal . šuθive
20. nas . ratm . θuxt . cesu . tltel . têi . šians . špa
21. rzête . θui . šalt . zic . fratuce . cušuθuras . la
22. rišališvla . pêtrusc . šcêvas . pešs . tarχian
23. ês // cnl . nuθe . malec . lart . cucrina . laušiša .
24. zilaθ . mexl . rasnal . l[a]riš . cêlatina lau
25. ša [cl]anc . arnt . lušcni . [a]rnθal . clanc . larz
26. a . lart . turmna . šalina[l – – – a]
27. pnal . cleniarc . vêlxe [ – – – papal]
28. serc . vêlxe . cušu . aule[ša – – – ]
29. animalc . lariš . fuln[i – – – ]
30. rc . lart . pêtce . ušlnal [ – – – ]
31. inaθur . tēcšinal . vêl[θur . titlni . vêlθur]
32. us . larišc . cušu . ušlna[l – – – ]

*Page B*

33. aule σalini cuσual [vacat]
34. zilci . larθal . cušus . titlnal
35. larišalc . šaliniš aulešla . celtinê itiš
36. s . taršminass . šparza . in . θuxt cesu
37. ratm . šuθiu . šuθiušvê . vêlxes . cušus a
38. ulešla . velθurus . titlnis . velθurušla .
39. larθalc . cêlatinas apnal . larišalc cê
40. latinas . titlnal

### 3. A short comparison

If we take a general look at the content of the contracts from Persuia and Cortona, we can see that the Rascians were familiar with the concept of ownership,<sup>35</sup> and limited property rights.

It is generally considered that the contract from Perugia was passed between two families, the natives and the newcomers, and it is related to the land. The purpose of this contract can be compared with creation of divided ownership or the right of use the land that can be seen in another Etruscan inscription – the Pyrgi Tablets.<sup>36</sup>

And this, my book, written  
 Here, engraved, as I bequeath  
 That to you, everyone together  
 I donate this land,  
 (...) Here the Rascians to be brought forth on this land  
 Over the years to plow, to till the land  
 To let me come out from here the posterity  
 (...) I am the one who want them  
 To know the motive of my book  
 From greedy ones to be protected  
 That power and gold<sup>37</sup> to be guarded  
 From the theft...

It is also possible that the contract from Perugia shows the transformation of the collective ownership on land into the private property.<sup>38</sup> Additionally, it might be assumed that the property rights over the land in question were limited in a certain way. According to the translation made by Bilbija, the contract from Perugia mentions the 'right of burial'. The Rascians attached great importance to the afterlife,<sup>39</sup> so it is quite possible that this issue was also addressed in the contract.<sup>40</sup> According to other

35 In Etrurian language the word 'AKNINA' (in Cyrillic: 'AKHИHA') refer to property, although in the same Etruscan inscription we can find its abbreviation, 'AKN'. See Bilbija's transliteration of Cippus Perusinus: line 17. This author also explains the term 'AKNINA' in more details. Bilbija, op. cit. n. 32, at pp. 199–200.

36 The difference between these two inscriptions is that the latter probably record the gift or last will. In Bilbija's interpretation these golden plates granted to 'Sebrs' the right to use the land. Therefore, he terms this writing, 'Sebrs' Magna Carta'. Bilbija, op. cit. n. 32, at p. 206.

37 We believe that the term gold (in Serb.: 'ZLATO') in this case does not refer to the material value instead, it is related to the actual inscription on the golden tablets.

38 In Rome, such a family was called *consortium*, and the Law of the Twelve tables (tab.V, 10) regulates the action for dividing a consortium - *actio familiae erciscundae*. Ž. Bujuklić, entry: 'Agnatio', op. cit. n. 4, at p. 141.

39 The Etruscans were buried with objects that they used in everyday life, golden jewels, and even with golden teeth. L. Bonfante, 'Daily life and afterlife', in L. Bonfante, ed., *Etruscan life and afterlife, A Handbook of Etruscan Studies*, pp. 249–251, <http://books.google.com>. The Law of the Twelve Tables prohibits putting gold in crypts, except for the ones who are buried or cremated with golden teeth. (tab. X, 8), J. Danilović and O. Stanojević, *Tekstovi iz Rimskog prava* [The Roman Law Texts] (Beograd 2003) p. 38.

40 The importance of the land for purposes of burial was pointed out by Roman historians. When they describe the property disputes, they say that the aristocracy will occupy everything, so that

interpretations, Cippus Perusinus refers to the servitude regarding the use of water – *aquae haustus*.<sup>41</sup> However, such interpretation should not be excluded, especially if one considers the significance of real estate relations at the time. For example, in the Law of the Twelve Tables, the tables VI and VII refer to the property,<sup>42</sup> especially to the issues of boundaries and servitudes.<sup>43</sup>

It should be noted that both the contract from Perugia and the contract from Cortona were synallagmatic, i.e. each party to the contract where bound to provide something to the other party. The subject-matter of both contracts was the land: arable land in the contract of Perugia and vineyard ('VINAC')<sup>44</sup> in the contract of Cortona.

It is curious that both contracts contained the expression – 'CENU'. While other scholars often understand this word as meaning 'to obtain' or 'cede'.<sup>45</sup> However, it seems that the only acceptable interpretation is given by Bilbija. He considers that the true meaning of the expression 'CENU' is the 'PRICE' – i.e. cash equivalent for other party's performance.<sup>46</sup> Hence, in the case of the contract from Perugia, one of the parties accepts to pay the price in silver ('cenu e plć belić'),<sup>47</sup> while in the case of the contract from Cortona one of the parties undertakes to pay an exact amount of money – 14,5 rasna (*rašna*), i. e. Rascian coins.<sup>48</sup>

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there will be no room for the graves of the plebs. According to *Titus Livius*, the nobili refused to divide the conquered land, which will soon become 'the pray of few people'. *Ab urbe condita* 51, 6. Cited upon: O. Stanojević, *Rimsko pravo* [Roman Law] (Beograd 2003) p. 49.

41 'Cippus Perusinus does not only refer to sharing of the property between two families, ..., but it also contains a clause which provides for the right to use the water from another estate, *aquae haustus*'. G. M. Facchetti, *Frammenti di diritto privato etrusco* (Firenze 2000) pp. 18–19. Cited upon: K. Wylin, 'The first chapter of the Cortona inscription', 5 *Etruscan News* (2006) p. 6. <http://www.umass.edu/etruscannews/articles/WylinENews5.pdf>, 12. 08. 2008.

42 M. Milošević, op. cit. n. 10, at p. 71.

43 A. Malenica, op. cit. n.13, at p. 56.

44 In Serbian language, the term 'VINAC' is related to the land for wine cultivation and undoubtedly comes from the ancient time. It is mentioned in the pre-Christian song 'Saints share the assets' (in Serb.: 'Sveci blago dele') which describes Serbian hardship 'when they left India' (in Serb.: 'Indija'):

[...when the saints divided the assets	(In Serb.: ...'kada sveci blago podjeliše,
Peter took winyards and wheat	Petar 'UZE' 'VINCE' i šenicu)
and the key of a haven	I ključeve od nebeskog carstva)
Ilija took lightning and thunder'...]	A Ilija munje i gromove'...)

Cited upon: Luković-Pjanović, op. cit. n. 16, at p. 222. "UZE" here the verb as meaning "to take for himself", capture.

45 Wylin, loc. cit. n. 41, at pp. 6–7.

46 The word CENA (In Cyrillic: 'ЦЕНА') has the same meaning in Serbian and in Russian language. Цен|а [12 sg g, pl. h]. *Rusko - Hrvatski ili Srpski Rječnik* [Dictionary Russian-Croatian or Serbian language] (Zagreb, Školska knjiga 1987) p. 966.

47 In Cyrillic ("цену е плћ белић"). In Slovenian language, the word 'BELIĆ' means 'silver coins'. Bilbija, op. cit. n. 32 at p. 197. The phrase: 'cenu e plć' also appears in other transliterations of Cippus Perusinus, and clearly points to payment: '*aulesi velthinas arznal clensi thii thil scuna cenu eplc felic larthals afunes*'. Cippus Perusinus (Pe 8.4), clause III, See K. Wylin, loc. cit. n. 41, at p. 6.

48 Facchetti's transliteration of Cortona Tablet (line 5). The same interpretation gives Вяч. Вс. Иванов, 'Tabula Cortonensis и новое в этрускологии' [Tabula Cortonensis and news in Etruscology] <http://kogni.narod.ru/cortona.htm>, 12. 08. 2009.

The Roman poet Horace once said 'The time will bring to light everything which is now buried'.<sup>49</sup> Apparently, it seems that the recently **escavaded** written artifacts provide a basis for slightly different understandings of the inception of the Roman law. In other words, 'Although the Romans gave an immense contribution to the development of law, this achievement has not come out of the bloom. It came as a result of interaction between different peoples, and legal transplants from various cultures'.<sup>50</sup>

#### IV. WHERE DOES CAUSA COME FROM?

##### 1. Lexical sense of causa

The plain reading of the word CAUSA – in Serbian 'KAUZA', reveals that this noun is formed out of two morphemes: 'KA'+ 'UZ(A)'.

In Serbian language, '**k(a)**' always denotes direction,<sup>51</sup> focus on something or to someone, in other words: *the goal which is strived to* [e.g.: the term '**kadar**'<sup>52</sup> stands for the one able to achieve the goal; the expression '**kaste**' ('**nakast**') means going somewhere with a specific reason, with intention to achieve the goal].

On the other side, morpheme '**uz**' refers to the close connection and/or relation in space.<sup>53</sup>

'**Uz**' appears both as an independent lexeme, and as a constituent of other Serbian terms and expressions [e.g.: '**uzda**'<sup>54</sup> (rein), '**uzeti**' (take), '**zauzeti**' (occupy), '**uzidati**' (build in), '**uzano**' (narrow, tight in space), '**moreuz**' (sea straits), '**buzdovan**' (mace – a weapon one should always take to the battle), '**uziti**' (make something narrow), '**uzjahati**' (mount the horse or bicycle), '**uzglavlje**' (pillow) etc.].

The morpheme '**uz**' is also the source of other morphemes with equal meaning: '**už**' and '**uš**' [e.g.: '**muž**' (husband – understood as someone from whom wife should not part from), '**užina**'<sup>55</sup> (snack – take a way food); '**uši**' (ears – inseparable part of the head), '**ušiti**' (saw – tie by thread), '**uštinuti**' (pinch), '**ušće**' (confluence – the place where two rivers join) etc.].

Furthermore, in searching for proper understanding of the roots of the term KAUZA, the special emphasis has been given to the archaic Serbian term 'PRIUZA',

49 "Quidquid sub terra est in apricum proferet aetas".

50 O. Stanojević, op. cit. n. 40, at p. 139.

51 K = ka "Slavic and old-Slavic preposition used with dative... 'It denotes the aim.' See P. Skok, *Etimologijski Rječnik Hrvatskoga ili Srpskoga Jezika* [Etymological Dictionary of Croatian or Serbian language], knjiga druga, K - poni', (Zagreb 1972) p. 11

52 For instance, one who is highly capable (in Serb.: 'kadar stići i uteći'). Entry: 'KADAR', *Rečnik Srpskoga Jezika* [Dictionary of Serbian language] (Novi Sad, Matica srpska 2007) p. 514.

53 Near, close by; not far from (Pri, pored, kod, ukraj, blizu), 'Marks that someone or something is close to the person or object'. Entry: 'UZ', 'UZA', *Rječnik Hrvatskoga ili Srpskoga jezika* [Dictionary of Croatian or Serbian language] Svezak 83 (Zagreb, JAZU 1971) pp. 223–224.

54 'UZDA', lat. *fraenum*. Two fold leather strip used to restrain an animal and to steer it. It also appears in the idioms: keep somebody on short leash (in Serb.: 'držati na uzdi'), gain control over something ('zgrabiti uzde'). Entry: 'Uzda', op. cit. n. 53, at p. 1379.

55 UŽINA has the exactly same meaning as UZINA. V. S. Karadžić, *Srpski Rječnik, Istumačen Nemačkim i Latinskim Riječima* [Serbian Dictionary] (Beograd 1935) p. 799.

which denotes shorter rope (in Serb.: 'uže, **uzica**'), used both to tie and to take cattle to the market. It is not hard to imagine that a creditor, in the ancient times, could tie the debtor in default, and keep him on a rein ('**uzda**')<sup>56</sup> until he, or his close relatives ('**uža rodbina**') pay off both his main debt and interest ('**uzura**'). The ones on which the debtor ('**dužnik**') relies ('**uzda**') upon to repay his debt are called his dependence ('**uzdanice**'). However, if all the attempts to repay the debt remain futile ('**uzalud**') the debtor might be sold as a slave ('**sužanj**').

The outcome of the search for the origin of the word CAUSA in Sanskrit is rather intriguing.<sup>57</sup> In Sanskrit, the word **KazA** (sometimes also written as **kaSA**)<sup>58</sup> is a feminine-gender noun which denotes: a whip, a horse bridle or a rope in general.<sup>59</sup>

The Serbian expression **UZA** keeps all these meanings. It is generally understood as the leash<sup>60</sup> or the bond<sup>61</sup> and in plural may also denote a prison, as well as the slavery.

- 56 It is not impossible that the rein was made out of goat (in Serb.: 'KOZA') leather (in Serb.: 'KOŽA'). It is therefore understandable why in some region of Bosnia inhabitants still call nanny goat - **UZDA**. Entry: '**UZDA**', op. cit. n. 53 at p. 262. It is curious to note that an Etruscan settlement was also named '**KOSA**'. This settlement is often referred to as one of the most important Etruscan cities along with Veii, Cortona etc. See G. Barker and T. Rasmussen, *The Peoples Of Europe, The Etruscans*, Appendix, Etruscan places, a Rough Guide, p. 300.
- 57 For similarities between Sanskrit and Serbian especially in relation with two functions of phoneme - 'R'. See Luković-Pjanović, op. cit. n. 16, at p. 334; also See M. Mayrhofer, *Sanskritska gramatika* [A Sanskrit Grammar] (trans. in Serb. by A. Loma) (Novi Sad 2002), pp. 17–18; also See Pešić, op. cit. n. 11, at p. 52.
- 58 **KazA** f. (Naigh. i, 11 Nir. ix, 19) a whip Rg-veda. AV. S3Br. MBh. R. &c. (also written %**{kaSA}** R. BhP.); a rein, bridle S3is3. ; whipping, flogging W.; a string, rope... The similar meaning is attached to the word: **Kuza**, a horse's bridle (cf. %**{ka4zA}**) L. *Cologne Digital Sanskrit Lexicon*, <http://webapps.uni-koeln.de/cgi-bin/tamil/recherche>, 12. 08. 2009. In same Sanskrit - Serbian dictionary also: **Kašā** - whip, B. Božinović, *Rečnik srodnih sanskrtskih i srpskih reči* [Dictionary of related Sanskrit and Serbian Words], Part I, (Beograd 2000) p. 86.
- 59 **कशा** f. (Naigh. i, 11 Nir. ix, 19) a whip RV. AV. S3Br. MBh. R. &c, a rein, bridle S3is3, whipping, flogging W, a string, rope. *Monier Williams Sanskrit-English Dictionary* (2008 revision), <http://www.sanskrit-lexicon.uni-koeln.de/monier/>, 12. 08. 2009. The idea that the word '**KOSAR**' denotes a person who holds a whip and proves his authority by punishing his subordinates is much closer to our legal perspective than the hypothesis advocated by archaeologist Radovan Damjanović; who states that the word '**KOSAR**', describes a leader recognized by his long hair. (in Serb.: **KOSA** also hair) The other part of that idea that the word '**KOSAR**' has the same root as the '**CAESAR**', is much more persuasive. R. Damjanović, entry: '**CEZAR**', *Srpsko-Srpski rečnik, Etimologija ključ istorije Srba*, [The Serbo-Serbian Dictionary] (Beograd 2007) pp. 234–236. This position may be backed by an additional argument: the word used to designate the chief of the tribe, and, later, a magistrate in Gortyn was – '**KOZMOS**'. For more details, see: S. Avramović, *Rano Grčko pravo i Gortinski zakonik*, [Ancient Greek Law and Gortyn Code] (magistarski rad, Beograd 1977) pp. 57, 196. M. Budimir presents convincing arguments that *the Etruscan name Curtun, Cortōna corresponds to the Minoan Gortyn(a)*. Consequently, it should be accepted that these toponyms belong to the same lexical group: ghordh-/ghrondh, ('greda', 'grad'), meaning as space secured by wooden fence. See M. Budimir, op. cit. n. 8.
- 60 The expressions of a similar meaning in other European languages have obviously the same root, for example: 'cavo', 'costa' (Italian); 'câble' (French); 'das Kabel' (German); 'cord' (English). <http://www.e-rjecnik.net/translate>.
- 61 Lat. *vinculum*, germ. 'Band', slov. 'voza' (vez, vrpca, tamnica. rus. 'Y3A'; 'Y3bI' (vezi, okovi). Entry: '**UZA**' op.cit. n. 53 at 228; also See Entry: '**UZA**' f. noose (in Serb.: 'petlja'), loop ('omča'). op. cit. n. 52 at 1375.

The morpheme UZ(A), with the same semantic sense, still exists in the words which are used to describe certain relations between creditor and debtor: to take a loan (in Serb.: 'UZAJMITI', 'ZADUŽITI SE'), mutual ('UZAJAMAN'),<sup>62</sup> to seize ('UZAPTITI').

Applying this methodological approach persistently, we must note that the term for the 4<sup>th</sup> case accusative ('akuzativ') also hides the same lexical root. While that root has vanished in the Latin term – *actio*,<sup>63</sup> it is still kept in the corresponding Serbian legal terminology, e.g.: 'tužba' (law suit, claim), '(u)tužiti' (sue, take to court) and 'optužiti' (accuse, charge).<sup>64</sup> In a broader sense, *causa* is understood as a core of the trial, subject-matter of the dispute. In order to succeed in the trial, the plaintiff must provide evidence ('dokaz'), why he tied the debtor (lat. *causa probatio*). In his speech ('ka(u)zivanje') before the court he is often assisted by his counsel – (lat. *causidicus*)<sup>65</sup> a person who helps him to successfully end the case.<sup>66</sup>

In ancient times most obligations were established ('ustanovljavalo') by virtue of 'oral agreement' ('usmenim dogovorom'),<sup>67</sup> However, if the debtor breaches the contract, creditor could tie him ('ustaviti') by invoking his legal ground ('(i)usta causa'). Obviously, proving in that way that he is telling ('govori') the truth ('i(u)stina') and seeking for justice – ('iustitia').<sup>68</sup>

If one accepts that the peoples from the Danube region share the same linguistic heritage, it remains to be established which ethnic group mainly preserves the words and meanings of that ancient language.<sup>69</sup>

62 Lat. *reciprocus*, German: 'gegenseitig'.

63 *Actio* (from *ago, agere* – to do, to act). According to Celsus '*actio* is nothing else but the one's rights to claim something before the court' ('*nihil aliud est actio quam ius quod sibi debeatur iudicio persequendi*') D. 44,7,51. Ž. Bujuklić, entry: '*Actio*', op. cit. n. 4, at p. 98.

64 This lexical root is also preserved in the French term: 'ACCUSER', to accuse, to sue someone. J. Jovanović and S. Todorović, *Rečnik pravnih termina, Srpsko – Englesko – Francuski*, [The Legal Dictionary, Serbian-English French] (Beograd 2002) entry: 'Optužiti', p. 183.

65 *Causidicus*, i, m. (causam-dico) lawyer, counsel, the one who is paid to represent a party... M. Divković, *Latinsko - Hrvatski Rječnik*, [Latin-Croatian dictionary] (Zagreb 1900) p. 174.

66 This probably explains the expression: *causa finita est*. A. Romac, *Rječnik Latinskih Pravnih Izraza, Vademecum iuridicum* [The dictionary of Latin Legal Phrases] (Zagreb 1985) p. 35.

67 The debtor was entitled to make an objection (in Serb.: *prigovor*). EXCUSE (v), c.1225, "to clear (someone) from blame," from O. Fr. *escuser*, from L. *excusare* "release from a charge," from *ex-* "out, away" + *causa* "accusation, legal action". The noun sense of 'that which is offered as a reason for being excused'. Online Etymology Dictionary, <http://www.etymonline.com/index.php?search=excuse&searchmode=none>, 12. 08. 2009.

68 In Serb.: 'USTA' = mouth, 'GOVOR' = speech, oration, ISTINA = truth, in Russian: ИПРАВД[А] БИ, f. = truth. Therefore, some Russian authors also advocates that the root of the term *iustitia* should be sought in words '*usta, ustav, ustanovlenie*' L. N. Rižkov: 'O drevnostima ruskog jezika', *Drevne i savremeno* (Moskva 2002) p. 22. Cited upon: B. Mitrović, 'Kako su nastale reči kultura i pravo' <http://www.bozidar.ru/Knjiga%20KoloVeni%20i%20500%20godina%20Arhangelskog%20sabora.html>.

69 'The Etruscan language has not disappeared. It continued to live in the main European linguistic branches: Slavic, Roman and German-Nordic'. Bilbija, op. cit. n. 32, at p. IX.

## 2. Legal sense of the causa

It seems that the Latin verb *ligare* ('tie'), from which the word (ob)ligatio ('legally tied')<sup>70</sup> has been derived, is of a particular importance for proper understanding of the word *causa*. At the beginning of Rome, creditors could punish<sup>71</sup> the insolvent debtor by selling him on the opposite bank of the Tiber.<sup>72</sup> Therefore, it is quite possible that the founders of Rome used the same rope to tie the cattle and eventually to bind the debtor.<sup>73</sup> However, at this historical distance it is not an easy task to unveil whether a tangible object had provided the sense for the institute that lately become legal necessity (*causa sine qua non*).<sup>74</sup> Finally, the development line from concrete to abstract for this word looks rather natural. A loop that actually chokes the debtor becomes an invisible bond around his neck.<sup>75</sup>

If we get back to the contracts from Perugia and Cortona, we can see that in both cases one of the parties to the contract undertook to provide something to the other party. Hence, the legal purpose of the transaction was visible and the relation between the parties was not abstract.<sup>76</sup> On the contrary, in the 'old Roman civil law' (*ius civile vetus*) legal acts were typically 'abstract'. It is known that 'the ancient Romans did not consider the words and the gestures as the requests of the form, but rather as essential elements of a legal transaction'.<sup>77</sup> If the ritual is properly performed, the legal act becomes automatically effective.<sup>78</sup> The clear example of this principle is *stipulatio*, a verbal contract where the obligation is constituted at the moment when, explicitly asked by the future creditor: 'Do you promise?' future debtor gives a corresponding answer: 'I promise'<sup>79</sup> If the spiritual formula is constitutive element

70 *Ob* – *ligo* avi, atum, 1, v. a. I. A. eng. to bind or tie around ..., II A ... oblige, put under an obligation. C. Lewis, C. Short, *A Latin Dictionary*, (Oxford, London M DCCC XCVI) p. 1236.

71 It seems that the Serbian word 'KAZNA' ('punishment') has the same root as the word CAUSA, which is yet another confirmation that in earlier times there was no difference between the penalty for debtor's default and for criminal felony. It was only later that private matters, *causa civilis*, were separated from criminal matters *causa poenalis*. Romac, op. cit. n. 66 at 35–36. If we take into consideration that in different periods the word *causa* was differently written, as KAVŽ - KAVSS - KAVS, one might conclude that the words: 'KAIŠ' (belt) and 'KAVEZ' (cage) also share the same root.

72 See M. Milošević, op. cit. n. 10, at p. 29.

73 The creditor may take the defendant with him in stocks or chains with a weight of no more than 15 lbs. (or less if he desires) The Law of the Twelve Tables, (tab. III, 1). J. Danilović and O. Stanojević, op. cit. n. 39, at p. 31. The debtors were sold on the main square, and when the personal execution was suppressed, the magistrates used the same place to sell the assets of the insolvent debtors (*venditio bonorum*). Ž. Bujuklić, op. cit. n. 4, at p. 17.

74 When the city was founded, Romans had small land properties, so they used *ager gentilius* to find firewood and water. See Ž. Bujuklić, entry: '*Ager Gentilius*', op. cit. n. 4, at p. 137.

75 See R. Zimmermann, *The Law of Obligations, Roman Foundations of the Civilian Tradition*, (Cape Town 1990) p. 5. This is probably the origin of the expression: *iuris vinculum*, (in German: 'rechtliches Band').

76 It was usually the case in ancient laws. Stanojević, op. cit. n. 40, at p. 36.

77 D. Stojčević, *Rimsko privatno pravo*, [Roman Private Law] (Beograd 1985) p. 25; 'In ancient legal systems, the formalities took the place of *causa*'. See O. Antić, op. cit. n. 3, at p. 823.

78 See M. Milošević, op. cit. n. 10, at p. 65.

79 More about Roman *stipulatio*, See: R. Zimmermann, op. cit. n. 75, at pp. 68–74.

of the legal transaction, it is not relevant why the debtor assume the obligation.<sup>80</sup> Due to praetors' activity, strict formalism in Roman law gradually vanished. The debtor was granted by legal means that allowed him liberation from undertaken obligation if the purpose of the original contract had not been achieved.<sup>81</sup> The aggrieved party was entitled to recover damages (*actio doli*) and to oppose creditor's abstract claim without legal grounds (*exceptio doli*).<sup>82</sup>

Both the contract from Perugia and the contract from Cortona contain a provision according to which obligations have to be respected not only by the contracting parties, but by their heirs as well. Apparently, the expression 'što ċi e nes ċi'<sup>83</sup> that appeared in the contract from Perugia should be interpreted as 'whatever is here is binding'.<sup>84</sup> It should be noted that this provision does not invoke any supernatural force or the divine punishment for the breach of the contract. Consequently, it can be concluded that the religious influence on the Rascian contract law already started disappearing at that time.

The contracts from Perugia and Cortona were made in written form. It may be assumed that the contract from Cortona was made in a solemn form, but this has not yet been confirmed: it remains uncertain whether all the persons named in this act are the contracting parties or some of them were only witnesses.<sup>85</sup> It is quite clear that the undertaken formalities did not represent the ground for the debt. On the contrary, the written form only confirms the consent of the parties. Therefore, it seems that at the time of the conclusion of the contracts from Perugia and Cortona (3<sup>rd</sup> and 2<sup>nd</sup> century BC),<sup>86</sup> the Rascians knew that the constitutive element of the contract was the *causa*, and not the form.<sup>87</sup>

In that respect, Professor Stojčević notes 'The notion of *causa* could come to existence only when the law became separated from the religion. The use of ritual forms was no longer needed, since the debtor did not see his obligation as means of inducing Gods' mercy, but rather as a price for the service rendered by the creditor.'<sup>88</sup>

80 A. Malenica, op. cit. n.13, at p. 177.

81 O. Stanojević, op. cit. n. 40, at p. 61.

82 M. Milošević, op. cit. n. 10, at p. 130.

83 In Cyrillic: 'што њу е нес њу'. See Bilbija's transliteration of Cippus Perusinus: lines 7–8, 26–27, 35–36.

84 [In Serb.: 'što ovde (utanačismo) nek nas svuda (obvezuje)']. The obligation to respect the contract exists in the Law of the Twelve Tables: *uti lingua muncupassit, ita ius esto*. O. Stanojević, op. cit. n. 40, at p.55.

85 Some authors believe that this contract contains the names of witnesses and titles of two magistrates. Bonfante and Bonfante, op.cit. n. 22 at p. 59. G. Fachetti interprets the word *šparza* used in the Tabula Cartonesis as the tablet, and puts forward that sub-section II.1 (clause 5) mentions two tablets. G. Fachetti, 'Some new remarks on the Tabula Cartonesis (=TCO)', XLVII *Lingua Posnaniensis* 2005, 62. Bilbija's translation of the contract from Perugia leads to a conclusion that the contract was made in two copies, so that each party would keep one.

86 *Causa est origo negotii*. Romac, op. cit. n. 66, at p. 35.

87 *Not forma, sed causa dat esse rei*. O. Antić, *Obligaciono pravo* (Beograd 2009) p. 142, fn. 317.

88 The Romans came to know causality of contacts when they understood that the obligation of one party requires the performance of another. D. Stojčević, op.cit. n. 77, p. 191.



### 3. *Bona fides*

Another equally important term for the development of Roman contract law is the word – *fides* (faith, trust).<sup>89</sup> According to Professor Bujuklić, the etymology of the word *fides* should be sought in the physical act of tying: the weaker party holds hands in order to be tied and submits himself to the stronger one. Even when the physical act of tying disappeared, the word *fides* remained as a symbolic expression of submission to another person (*in fidem alicuius venire*). According to this Romanist, 'a parallel can be found in the terminology of the pottery craft: before it would be exposed to high temperatures, a pot would first be tightened by narrow pieces of wood (*fidelia*) = clay dish, *fiscus* = basket.'<sup>90</sup> Not commenting on this etymology, in order to find an explanation for the legal term *fides*, we will take a quite opposite path mostly concentrated on its contractual purpose. Prof. Bujuklić also points out the sacral character of *fides* explaining that the original *fides* was probably similar to an oath, 'which breach would cause the rage of Gods, the omnipresent witnesses of all human acts'.<sup>91</sup> In the same context Prof. Milošević finds that '*Fides* was a divinity which had its temple on the Capitol (*Fides Populi Romani*), from where it takes care over agreements and promises'.<sup>92</sup> If we put the aforementioned stands in relation to the fact that in the ancient Rome, even after the Law of the Twelve Tables, the priests of presumably Etruscan orgine (*pontifices*) were the supreme interpreters of law and in charge of rituals and legal formalities,<sup>93</sup> one could make a hypothesis that the Latin FIDES is eventually related with the name of the highest Slavic divinity, called VID (SVETOVID)<sup>94</sup> According to Čajkanović, 'Svetovid truly represents a common supreme God of all Slavs'. The terms Rugijevit, Porevit or Gerovit are only the different names of the same divinity.<sup>95</sup>

In the Book of Veles,<sup>96</sup> which describes the life of Slavic tribes between VII and IX century BC, it is stated:

89 Some authors believe that the word *fides* is a noun which correlates to the verb *credo*. These expressions links legal and religious, which shows that the ancient law was "deeply mystical". E. Benvenist, *Rečnik indoevropskih ustanova*, [The Dictionary on Indo-European Insitutes] (trans. into Serbian by A. Loma) (Novi Sad 2002) p. 77.

90 See Ž. Bujuklić, entry: '*Bona Fides*', op. cit. n. 4, at p. 181.

91 See Ž. Bujuklić, entry: '*Bona Fides*', op. cit. n. 4, at p. 181.

92 It is believed that this temple was erected by the second king of Rome - *Numa Pompilius* (Dionys. ii. 75). Entry: 'FIDES', <http://www.mythindex.com/roman-mythology/F/Fides.html>, 12. 08. 2009. Numa's Sabinian origin shows that *Romans took a significant part of their religious system from Sabinians*, rather than from Etruscans, as it is usually believed. Entry: 'NUMA' <http://www.mythindex.com/roman-mythology/N/Numa.html>, 12. 08. 2009.

93 See M. Milošević, op. cit. n. 10, at p. 72.

94 As far as the development of *bona fides*, is concerned, the scholars mostly agrees that the research has not yet given satisfactory explanation to question how the *bona fides* become the "basis and yardstick" in Roman law. M. J. Schermaier, 'Bona fides in Roman contract law', in R Zimmermann and S. Whittaker, ed., *Good Faith in European Contract Law*, p. 82.

95 Svetovid is basically identical to Dabog, who has the duty "to make the sun rise and set". See V. Čajkanović, *Mit i religija u Srba*, (priredio V. Đurić) (Beograd 1973) p. 222.

96 Prof. Pešić argues that this book is a collection of religious and didactic writtings with wide passages on history. O. Radulović, 'Istorija na brezovim daščicama', <http://www.tolkien.rs/publikacije/VelesovaKnjiga.pdf>, 12. 08. 2009.

'We praise Svarog, for he is the god of Prav and Jav, and to him we sing the song for he is the light with which we see the world. We are looking in Jav and we remain therein, while Svarog keeps us safe from Nav, so therefore we praise him. We sing and dance to him and call upon our God to keep the Earth, the Sun and the stars in light. Glory to *Svetovid*, our God, who opens our hearts so that we can admit our sins and turn to the good'.

The true importance of faith and trust in ancient contractual relations is also pictured in the following excerpt from the ancient Serbian poem 'The saints share the assets', which origin could be traced back to the pre-Christian times:

(...)'The godfather **sue** his godson before the court'<sup>97</sup>  
And brings false witnesses  
Who have neither the faith nor a pure heart'...]

Same authors claim that the Romans mainly took over their cults and myths from the neighboring Rascians and Sabinians.<sup>98</sup> This hypothesis is truly related to the etymology of the word SVETOVID, that has been given by S. Vasilyev: "Louis Leger keeps the first part of the word – Svent, and interprets it as a proof of Christian influence. The other part, ('vitъ'), is the base, and means – word". Accordingly, Leger understands "SVETOVID" as a 'SACRED WORD', or a divinity which gives words, i.e. advice to people."<sup>99</sup> The name Svetovid probably earlier had the form 'vsěto' – 'vidъ' ('vъsěto' – 'vidъ'), which would literally mean – 'SVETOVID': *the one who sees everything in the world*, or alternatively, *the one who knows everything in the world*. It is curious to note that Svetovid was represented as a four-headed divinity – each of his heads was facing one side of the world.<sup>100</sup> The temple of Svetovid was vividly described by Sax Gramaticus. An excerpt of this description is particularly relevant for this paper: 'Next to the idol, one could see a bridle ('UZDA'), a saddle and other insignia of a divinity'.<sup>101</sup> 'The Baltic Slavs particularly worshiped Svetovid,<sup>102</sup> they did not easily take an oath in his

97 In Serb.: 'Kum svog kuma na sudove **ćera**, I dovodi lažljive svedoke, I bez vjere i bez čiste duše'. We have already pointed out that the Latin expression for suit: *actio* is derived from *ago, agere* – to do, to act, but probably also to handle (N. T.). therefore the *actor pecoris* = 'catle handler' (In Serb., 'gonič', onaj koji **ćera** stoku).

98 R. Damjanović, entry: 'KONZUL', op. cit. n. 59 at. 93. B. Mitrović in his book "KoloVeni (SloVeni) i kontinuitet kulture i prava" points out that Rascians worshiped the divinity of VID. B. Mitrović, loc. cit. 67. 12. 08.2009. But See: E. Simon, Gods in Harmony, 'The Etruscan, Pantheon', N. Thomson de Grummond and E. Simon, eds., in *The Religion of Etruscans* (2006) pp. 45- 62, <http://books.google.com>.

99 S. Vasiljev, *Slovenska Mitologija*, [Mytology of Slavic People] subtitle: 'Svetovid', <http://www.scribd.com/doc/11360272/Spasoje-Vasiljev-Slovenska-Mitologija>.

100 Myths and icons also represent Trojan with several heads, which means that the names 'Triglav' and 'Trojan' are Vid's epithets. V. Čajkanović, op. cit. n. 95, at pp. 220–225.

101 S. Vasiljev, subtitle 'Svetovid' op. cit. n. 99.

102 Constantine VII Porphyrogenitus (913–959) testifies about the influence of this divinity in the Balkans in his work *De Administrando Imperio* ['On the governance of the Empire'] and states that the emperor Basil I (867–886), upon conquering the Neretva region (in 873), Christianized local Serbs and torn down their pagan temples. However, he decided to save the biggest of their

temple, and even during a war, did not allow that anything endangers the temple's purity'... 'The salesmen from abroad could not trade in this country if they had not previously donated some of their goods to Svetovid'.<sup>103</sup> The primary object of prayers to Svetovid was the fertility – *futurae messis incrementa*.<sup>104</sup> This is further evidenced by many rituals which still remain in Serbian people. For example, in the night preceding the Vid's Day, young men, and in some regions young girls as well, go to fields and sing:

'There goes Vid to see all the fields and all the crops  
To check what has sprouted.  
So the sprouted seed continue to grow.  
And the seed which have not yet sprouted to never sprout'.<sup>105</sup>

It is rather difficult to detect the exact moment when the phoneme 'V' in the word Vid turned into 'F' and gave the term Fides. Bilbija states that the grapheme ' has remained unaltered ever since its appearance in Cretan alphabet. Due to the reform of the Roman-Latin alphabet this letter received a different phonetic value: instead of being pronounced closer to 'V', it had been pronounced as 'F'.<sup>106</sup> Professor Pešić found the identical sign in the much older Vincha script and Venetian script.<sup>107</sup> 'In the Cyrillic, this letter was named 'VJEDI' and had the same phonetic value in all Cyrillic alphabets'.<sup>108</sup> R. Damjanovic notes that certain deviation almost regularly happened when the Etruscan words were written in Latin. Accordingly, there is immanent uncertainty regarding the first letter in a word.<sup>109</sup> In that context, this author mentions the Etruscan town of Fidenā – Videna, located on the left bank of the Tiber, only 10 km away from Rome.<sup>110</sup>

The use of adjective *bonus* in the expression *bona fides* is also in favor of our hypothesis that the roots of the legal terms *fides* have to be traced in religious

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temples and transformed it into the church dedicated to Saint Vitus. See entry: 'Vrhovni bog Srba', 'Wikipedia', <http://sr.wikipedia.org>, 12. 08. 2009

103 S. Vasiljev, subtitle: 'Svetovid', op. cit. n. 99.

104 V. Čajkanović, op. cit. n. 95, at pp. 209–210.

105 M. S. Milojević, *Pesme i običaji ukupnoga naroda srbskog, Prva knjiga. Obredene pesme* (Beograd 1869) p. 145, <http://www.scribd.com>.

106 Bilbija, op. cit. n. 32, at p. 128.

107 Prof. Pešić makes an analogy between various archaic scripts. Pešić, op. cit. n. 11, at p. 87, Tabla VI-VII and draws a conclusion that there is a direct link between Vincha script and Etruscan alphabet. Pešić, op. cit. n. 11, at p. 99.

108 In some images from Crete this sign represent the door (in Serb.: VRATA), the udder (in Serb.: VIME), and finally a hand gesture of a man who wishes to catch something (in Serb.: VATANJE). Bilbija, op. cit. n. 32, at p. 51.

109 Perhaps the letter 'digama' (F), hides the answer of this riddle. Plato states that "there are many words in Greek language which belong to the Barbarians, such as ὕδωρ "water", which Dankovski wrote in Doric form Φυδαζ. and this word clearly points to the Slavic form of the word "water", which later disappeared from Greek language. Luković-Pjanović, op. cit. n. 16, at p. 383. Perhaps one may look to find the similar pattern in the historic development of the German language, where the letter 'V' (fau) is pronounced as 'F' in Serbian language.

110 Damjanović, entry: 'Etruscans', op. cit. n. 59, at p. 58–59 and entry 'Sabinians', op. cit. n. 59, at p. 184.

context. When invoking their gods, the Romans traditionally used the term *bonus*, e.g. *bona Dea* worshipped as Goddess of fertility.<sup>111</sup> Furthermore, the adjective *bonus* may also refer to ancestors. For example, *bonus pater familias* was worshiped by Roman families as some sort of divinity.<sup>112</sup> Professor Stanojević says that 'while *pater familias* is alive, he is considered archpriest of the cult. When he passes away, he becomes a part of family cult.<sup>113</sup> The spirits of the dead may help a lot, if the family members respect them, but they can also hurt the descendants who neglect the tradition'.<sup>114</sup>

No matter how one understands the meaning of the term VID-VIT, as WORD (in Serb.: 'REČ'), EYESIGHT ('OČNI VID') or KNOWLEDGE ('ZNANJE'),<sup>115</sup> the divinity with that name clearly points to the supreme power from which nothing can be hidden. The fear from punishment, which will inevitably come to the one who breaks his promise, seems natural, especially if we consider that the agriculture was the main economic activity at that time. The Rascian founders of Rome deeply believed that nothing can remain hidden and that every act would come to light ('VIDELO') and that acting *contra bonam Videm* would bring them to disgrace of the one who enables sufficient food stock to all leaving beings.<sup>116</sup> Thanks to the activities of *pontifices* keeping promises in the fear of God, who sees and knows everything, was gradually accepted in legal transactions of all Romans. Long after, due to praetors' role in interpretation of law, invoking *bona fides* was liberated from its religious sense and limited to its legal meaning.<sup>117</sup>

However, it seems the opinion stated in the Oxford History of the Roman World, that the existence of three divinities in the Capitol – Jupiter, Juno and Minerva – may be explained only in the light of the Etruscan influence,<sup>118</sup> should be

111 The cult of this goddess was worshiped by women from upper classe. When Cicero was consul (63 BC), the central celebration of this holiday was held in his house. The following year (62 BC) the host of the celebration was Julius Caesar. See Bujuklić, entry: '*Bona Dea*', op. cit. n. 4, at pp. 179 – 181.

112 More on religious elements of *patria potestas*. See D. Stojčević, op. cit. n. 77, at p. 94.

113 Cicero also states that the father must be respected as god. *Pro Plancio*, 12, 29, Cited upon: D. Stanojević, op. cit. n. 40, at p. 180.

114 O. Stanojević, op. cit. n. 40, at p. 180.

115 Ancient Slavs considered that there was a connection between knowledge and eyesight – one can know only what one can see. This might be proved by particular words: 'VIDOVIT' (eng. visionary), 'VIDAR' ( healer), 'VIDIK' (scenery), 'SVEDOK' (witness) itd. The language of ancient Greeks shows some similarities with this pattern. S. Vasiljev, subtitle: 'Svetovid', op. cit. n. 99.

116 S. Vasiljev, op. cit. n. 99

117 Some authors argue that the magical words used of stipulation (...*Fidepromittis? Fidepromitto; Fideiubes? Fideiubeo*...) actually refer to the honor of the contracting party. However, it is likely that, at the beginning, these words referred to the divinity of Vid. (In Serb.: '*Vida ti? Vida mi; Zaklinješ li se Vidom? Zaklinjem se Vido*'...) Gaius, Institutions, Part on verbal contracts. Cited upon: Danilović and Stanojević, op. cit. n. 39 at p. 82.

118 J. Bordman, J. Griffin and O. Marey, eds., (trans. in Serb. S. Tanasijević), *Oksfordska Istorija Rimskog Sveta* [History of Roman World] (Beograd 1999) p. 7.

complemented with a conclusion that the role of Fides<sup>119</sup> in the Roman contract law may also be examined in the relation to the Slavic divinity of Vid.<sup>120</sup>

#### 4. Jurisprudents

The main duties of the lawyers in ancient Rome were to find the appropriate form for legal transactions (*cavere*), to provide counseling to litigators (*agere*) and to give opinions on the matters of law (*respondere*).<sup>121</sup> It was Octavian Augustus who gave the possibility to certain jurisprudents to give opinions on the matters of law with his authority (*ius publicae respondendi ex auctoritate principis*). The first equestrius who was given this honour was Massurius Sabinus.<sup>122</sup> This is not the only reason why this distinguished jurisprudent will be remembered. In the end of the Republican period and at the beginning of the Principate there were two opposing streams of interpretation of law: Proculiani and Sabiniani. Massurius Sabinus is generally considered as one of the founders of Sabiniani. However, it is not clear enough what were the principal differences between these schools of thoughts.<sup>123</sup> If we seriously take into account Pomponius' remark that the Sabiniani differed from the Proculiani by the manner in which they were approaching legal tradition,<sup>124</sup> it is thinkable that a jurisprudent's origin had a substantial impact on his interpretation of law. Massurius' nomen gentilicium testifies about his Sabinian origin. How likely is then that his main followers belonged to the same ethnos?<sup>125</sup> The author of Institutions, Gaius (whose origin and nomen gentilicium

119 She was represented as a woman with a laurel wreath *who holds corns or a basket of fruit*. (Rasche, *Lex Num.* ii. 1, p. 107.) Entry: 'FIDES', <http://www.mythindex.com/roman-mythology/F/Fides.html>, 12. 08. 2009. See also: Nancy T. de Grummond, *Etruscan Myth, Sacred History, And Legend*, 69, <http://books.google.com>. See also M. J. Schermaier, op. cit. n. 94, at p. 78.

120 Some believe that Svetovid actually represents four Slavic divinities: 'It is just a small pantheon of Slavic gods: Perun, Svarog, Lada and Mokoša (Vid among Serbs). Gathered like this, they were watching all the four sides of the world and deserved the name of Svetovid ('Svevid') – the one who sees everything'. S. Jarčević, *Istorijske skrivalice*, 6. <http://www.scribd.com>. On that line, S. Petrović, interprets the four-headed statue of Svetovid found in Zbruc river (now western Ukraine), stating that one of the represented divinities is Makoša, the goddess of fertility, which bears the appropriate 'horn of plentifulness'. S. Petrović, *Srpska Mitologija, Sistem srpske mitologije*, [Serbian Mythology] I knjiga, (Niš 1999) p. 121.

121 See Ž. Bujuklić, entry: 'Cavere', op. cit. n. 4, at p. 192.

122 Pomp. D. 1.2.2. Cited upon: V. Vuletić, 'Različiti pogledi na neke građanskopravne institute u Rimskom pravu' [The different views on private law intitutes in Roman Law] 10 *Pravni život* (2003) p. 149.

123 It is generally stated that the Sabiniani interpreted law on the line with stoic philosophy, whereas the Proculeani were close to Aristotle's ideas. However, it seems that this criterion can only be partially applied, since it does not reflect the true difference between these two streams. See M. Milošević, op. cit. n. 10, at p. 78.

124 M. Milošević, op. cit. n. 10, at p. 30.

125 Massurius Sabinus wrote the first commentary on civil law *Libri tres Iuris Civilis*. All subsequent commentaries are referred to as - *libri ad sabinum*. See M. Milošević, op. cit. n. 10, at p. 79. For example, Pomponius' works *ad Sabinum* were contained in 35 or 36 books. O. Stanojević, *Gaius Noster*, Prilog istoriji rimske pravne nauke [Gaius Noster] (Beograd 1976) p. 69.

are generally considered unknown)<sup>126</sup> by his own confession belonged to the school of the Sabiniani.<sup>127</sup> It is interesting to note that both Gaius and another prominent Sabiniani, Gaius Casius Longin, had the same first name – Gaius.<sup>128</sup> The explanation of this ‘coincidence’ may perhaps be found in the statement of Professor Stanojević, that in the ancient Rome ‘each gens had just a few characteristic names for their male children’. Although, it cannot be accepted that the reasons for this custom was the deficiency of names, as it is argued by Prof. Stanojevic.<sup>129</sup> Quite the contrary, we believe that this practice is not a sign of ‘uncreativity’, but rather a sign of an appreciation for the ancestors. A similar custom still can be seen among the Serbs, where a male child is usually named after his grandfather. If we can use the present patterns in order to make conclusions which could enlighten the past, we would submit that prominent Romans named Gaius probably had the same ancestor and belonged to the same gens or more general the same tribe. In Romulus’ biography Plutarch states the Lucurenses were named after the holy woods (in Serb.: ‘LUG’ or ‘GAJ’). Damjanovic therefore argues that the name of the founders of Rome – LVCERENSES can be read as LUGERENSES, the people from the woods.<sup>130</sup> Consequently, it seems that in Serbian language the term GAJ kept its ancient meaning related to the woods with spring or creak. Would this be enough to conclude with some certainty that the founder of tripartite division (*personae, res, actiones*)<sup>131</sup> was not of the Latin but rather of the Etrusco-Sabinian origin?<sup>132</sup>

We find that the process of adjustment of the Roman law to the needs of commerce was performed in two ways: by inventing the new institutions and by borrowing the proper solutions that already existed in other civilizations.<sup>133</sup> If the

126 Apart from his first name, each Roman was also recognized by his *nomen gentilicium*. M. Milošević, op. cit. n. 10, at p. 30.

127 O. Stanojević, op. cit. n. 125, at p. 45.

128 Many prominent figures from the Roman past bear this name: Gaius Menius (consul from 338 BC), Gaius Julius Caesar and many others. O. Stanojević, op. cit. n. 125, at p. 71.

129 O. Stanojević, op. cit. n. 125, at p. 76.

130 R. Damjanović, entry: ‘LUG’, op. cit. n. 59, at p. 113.

131 R. Zimmermann, op. cit. n. 75, at p. 25.

132 Some authors believe that the name Gaius has Etruscan origin. Salverte, *Essai historique et philosophique sur les noms d’hommes et peuples et lieux*, Paris 1824, t. I, 189. Cited upon: O. Stanojević, op. cit. n. 125, at p. 72, fn. 31. A useful clue in this quest can be the name of *Gaius Calvinus Sabinus*, who was not of Latin origin, and who served as general (*legatus*) in Caesar’s army in Greece (48 BC) and, as a praetor, tried to defend Caesar on the day he was killed (44 BC). S. Hornblower and A. Spawforth, ed., *The Oxford Classical Dictionary* (Oxford, New York 1999) p. 282; By using linguistic arguments Budimir proves that the Serbs, Thracians, Illyrians and Sabinians are only the historical variation of same name. M. Budimir, *O starijim pomenima srpskog imena* [On older Serbian Mentioning], SANU, Glas CCXXXVI, Odeljenje Literature i jezika, nova serija, knj. 4.

133 Even the Law of Twelve Tables show that the Romans were willing to transplant solutions from other legal systems. Few commissioners who had the duty to draft the Law (*decemviri legibus scribundis*) was sent to Greece in order to discover local law. See O. Stanojević, op. cit. n. 40, at p. 54. However, the Law of the Twelve Tables itself does not confirm this influence. A. Malenica,

highest Roman state officials were proud of their Etruscan origin,<sup>134</sup> it is also possible that the distinguished jurist who introduced the notion of *causa* into the Roman contract law was not Latin. It is known that Quintus Mucius Scaevola,<sup>135</sup> often mentioned as Cicero's professor of law,<sup>136</sup> recognized four informal pacts as the consensual contracts (*emptio venditio*, *locatio conductio*, *mandatum* and *societas*).<sup>137</sup> Moreover, it is also established that the praetor Gaius Aquilius Galus (who also received his legal education from Quintus Mucius Scaevola<sup>138</sup>) introduced sanctions for *dolus* through *actio doli* and *exceptio doli*.<sup>139</sup> Therefore, thanks to the prominent jurists, *causa* reshape the abstract nature of contracts in Rome 'transferring the underlying ground of legal act from *Divini iuris* to the of *humani iuris*'.<sup>140</sup>

Accordingly, it seems that intensive influence of non-Latin tradition on Roman law was made through the interpretation of law, first by *pontifices*, and later by praetors and other jurists.<sup>141</sup> If the word is a 'basic principle of the truth',<sup>142</sup> then the etymology of the terms *causa* and *bona fides*<sup>143</sup> suggests the possibility that the Etruscans passed down their customs from one generation of prominent

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op. cit. n. 13, at p. 54. On the other hand, Prof. Milošević finds some Etruscan and even oriental traces in that Law. See M. Milošević, op. cit. n. 10, at p. 71.

134 There is almost no doubt that Etruscan gens had an important place in the governing class in Rome after the period of Kings. See J. F. Hall, loc. cit. n. 16, at pp. 159–160, 164.

135 Quintus Mucius Scaevola lived in the end of the 2nd or at the beginning of the 1st century BC. He belongs to the so-called *veteres* often mentioned by classical jurists. His commentary on civil law usually served as a model for *libri ad sabinum*. O. Stanojević, op. cit. n. 125, at p. 44. Therefore, it is perhaps not just a wild guess that Massurius' work - *Libri tres Iuris Civilis* had the same structure as the commentary of Quintus Mucius Scaevola - *Libri XVIII Iuris Civilis*. 'Wikipedia', entry: 'List of Sabini', [http://en.wikipedia.org/wiki/List\\_of\\_Sabini](http://en.wikipedia.org/wiki/List_of_Sabini), 12. 08. 2009.

136 Prof. Stanojević states that Marcus Tullius Cicero probably had Etruscan origin. Stanojević, op. cit. n. 40 at 30. Although Stanojević notes that Pomponius tried to keep himself away from the dispute between Sabiniani and Proculiani, we believe that he refers to Gaius as "*Gaius noster*", since they shared common tradition or even been a part of the same *ethnos*. In the book "*Ad Quintum Mucium*", Pomponius writes '*Et non sine ratione est quod Gaius noster dixit...*'. O. Stanojević, op. cit. n. 125, at pp. 62, 65; Furthermore, both Gaius and Pomponius wrote books with the same title "*Ad Quintum Mucium*" which might also suggest their common origin. O. Stanojević, op. cit. n. 125, at p. 44.

137 Ž. Bujuklić, entry: '*Consensus*', op. cit. n. 4, at pp. 225–226.

138 O. Stanojević, op. cit. n. 125, at p. 44.

139 Ž. Bujuklić, entries: '*Bona Fides*' and: '*Clausula Doli*' op. cit. n. 3, at pp. 184, 201.

140 O. Antić, loc. cit. n. 3, at p. 826. More on the difference between *iudicia bonae fidei* and the *actio stricti iuris*. See M. J. Schermaier, op. cit. n. 94, at p. 84.

141 The law of an urban praetor is almost synonymous to a new legal system – *ius honorarium* which replaced *ius civilae antiquum*. M. Milošević, op. cit. n. 10, at p. 89. More on the impact of '*praetor urbanus*', '*praetor peregrinus*' and '*praetor provinciales*' on the development of Roman law. G. Mousourakis, *The Historical and Institutional Context of Roman Law* (Ashgate Publishing Limited 2003) p. 87.

142 R. Pešić, op. cit. n. 11, at p. 59.

143 Close semantic connection between terms *causa* and *fides* is confirmed by Serbian words **UZDANICA**, **UZDANJE** which are interpreted by Vuk as same meaning as the word **FIDUCIA**. V. Karadžić, op. cit. n. 55, at p. 798.

jurists to the next, in order to apply them when the commerce in Rome become as developed as in the conquered Etruscan towns.<sup>144</sup>

Recently excavated inscriptions from that period confirm our belief that the Romans knowledge learned from the Etruscans (*disciplina Etrusca*) partially included the legal reasoning, and consequently that the persons of Etrusco-Sabinian origin, were not only the constructors of Rome, but also the main architects of this magnificent legal system.

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Without entering into fruitless debate about the 'real cradle' of the European culture and literacy, we simply wished to present some of our linguistic observation to the readers and let them reach a final conclusion. There seem to be two possibilities on the etymology of legal term CAUSA. A more audacious one would suggest that the word CAUSA, along with its developed legal meaning – *the purpose of bounding*, was taken from the legal culture that preceded the Roman civilization and the second, more moderate though, that generally considered Latin word *causa*, has a clear lexical and legal meaning in both ancient<sup>145</sup> and contemporary Serbian language.<sup>146</sup>

The words we 'played' with, in this occasion, invoke once again the opening statement of Genesis '*In the beginning was the Word*'. Furthermore, the intriguing roots of words CAUSA and FIDES induce us to read it slightly different '*In the beginning was the Reason*'.

144 If a judge would act pursuant to *ex bona fide*, that would not be in conformity with *ex iure Quiritium*, contained primarily in the Law of the Twelve Tables. Ž. Bujuklić, entry: '*Clausula Bona Fidei*', op. cit. n. 4, at 201, but this is perhaps in conformity with Rascian customs ('IŠĆE RAŠNJEŠĆI', in Cyrillic: 'ИШЋЕ РАШЊЕШЋИ'), which might be suggested by the contract from Perugia. See: Bilbija's transliteration of Cippus Perusinus: lines 1, 9.

145 Here in a wider context of ancient Slavic language which is derived from (also only reconstructed) protoindoeuropean language. See 'Wikipedia', entry: 'Genealogija srpskog jezika', <http://sr.wikipedia.org>, 12. 08. 2009. Abel Hovelacq, for example, states that Latin and Greek are in many cases much more distant than Serbian from the common Indo-European language. See A. Hovelacq, 'Dictionnaire Encyclopedique des Sciences Medicales de Dechambre' in *La Republique section Revue des questions historiques*, CCLXIII, vendredi, le 16. Mars 1877. Cited upon: O. Luković-Pjanović, op. cit. n. 16, at p. 229. The rich Serbian vocabulary that derives from semantic unit 'UZ' – 'OZ' as well as morpheme 'VID' clearly show us that Mr. Hovelacq could be right and thereby Serbian language may be used as a proper tool for etymology of legal terms CAUSA and FIDES.

146 On that question Cyprien Robert says that: '(...) when studying Slavic languages, it would be useful to acquire the best possible knowledge of the most ancient and the simplest one. The language that gives the key for all the others. (...) I believe that I found that language, that people and that ancient Slavic poetry in Serbian people from Illyria'. C. Robert, *Revue des deux Mondes* (Janvier 1846) p. 372. Cited upon: O. Luković-Pjanović, op. cit. n. 16, at p. 227.