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Review Paper

DEVELOPMENT OF CONTRACT FORM IN ROMAN LAW ILLUSTRATED BY STIUPULATION AS A VERBAL CONTRACT

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Abstract. *As the first and fundamental verbal contract in Roman law, stipulation (stipulatio) emerged and developed under the influence of various socio-economic conditions that shaped the development of the Roman state. Originating in pre-classical Roman law under the influence of religion and customs, this verbal contract was subject to changes, such as acquiring the characteristics of a written contract during the period of classical Roman law and experiencing the most significant changes during the period of post-classical Roman law. By observing and analyzing the development of stipulation as a verbal contract, we can observe several general tendencies in Roman law. Thus, we can eventually respond to the following question: how the strict formalism of Roman contract law gave way to the primacy of causality, i.e. how the process of transition from strict formalism to consensualism and the transition from the oral to the written form of contract conclusion took place.*

Key words: *stipulatio, a form of contract conclusion, verbal contracts, contracts, unitas actus.*

1. INTRODUCTION

Starting from the form as a criterion for distinguishing contracts, during the long Roman history of almost thirteen and a half centuries, Roman law developed four types of named (nominate) contracts: verbal (oral), real, literal (written), and consensual contracts. A special category of contracts are unnamed (innominate) contracts (Ignjatović, 2022: 335).

Under Roman law, verbal contracts were formal contracts which were concluded by uttering solemn words (formula) (Ignjatović, 2022: 335). The basic feature of these contracts is that the contractual obligation arises regardless of the economic goal of the concluded legal transaction, indicating their formality and abstractness. Verbal contracts in Roman law included the following contracts: *nexum, stipulatio, adstipulatio, dotis dictio, iusiurandum libertati,*

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and praediatura. These types of verbal contracts did not originate simultaneously. Depending on the social and economic conditions in the development of the Roman state, there were different stages (periods) in which these contracts originated. The first stage is characterized by the appearance of verbal contracts of old Roman law – *ius civile* (*nexum, vadiatura, and prediatura*); the second stage covers verbal contracts of classical Roman law (*dotis dictio* and *iusiurandum libertati*), while the last stage in the development of verbal contracts covers contracts that were related to stipulation (*stipulatio*) as the most important verbal contract of Roman contract law.

In the first part of the paper, the author strives to explain the emergence and development of stipulation as a verbal contract in the Roman legal history (pre-classical, classical, and post-classical periods). The second part examines the nature and basic characteristics of this contract. In the third part of the paper, we will discuss the institutions where stipulation was applied. The fourth and the final part of the paper will focus on the basic characteristics of literal (written) contracts, another type of formal contract in Roman law, which replaced stipulation; considering that stipulation as the most important verbal contract changed its basic characteristics, it gradually took the form of a literal contract (*instrumentum stipulationis*).

Stipulatio was the first and fundamental verbal contract of Roman law. It represents the essence of Roman contract law because it was the legal ground of obligation in other branches of private law as well. The paper aims to underscore its importance for Roman contract law and to indicate the most significant changes in the nature and characteristics of Roman contract law in the course of thirteen centuries of Roman history, by using stipulation as an example.

2. DEVELOPMENT OF STIPULATION THROUGH ROMAN LEGAL HISTORY

As the first and fundamental verbal contract of Roman law, stipulation (*stipulatio*) emerged and developed under the influence of various socio-economic conditions that shaped the development of the Roman state. Originating in the pre-classical Roman law under the influence of religion and customs, this verbal contract changed its basic characteristics. During the classical Roman law period, it acquired the characteristics of a literal (written) contract, while during the post-classical Roman law period, it underwent the most significant changes.

2.1. Stipulation in Old Roman Law (the pre-classical period)

Stipulation (*stipulatio*) was a verbal contract of Old Roman law that originated from the creditor asking a solemn question and the debtor giving a solemn reply following the formulation of the question (Ignjatović, 2022: 336). As a contract of Old Roman law, stipulation emerged before the enactment of the Law of the Twelve Tablets in the form of *sponsio* and was closely related to religion and good Roman customs (*mos, mores maiorum*)[1].

[1] In Old Roman law, legal regulations (*ius*) did not differ from the rules of a religious character (*fas*) since all rules were of a sacred character and constituted religious law. However, a distinction was made between norms that were considered to be of human origin and norms that were of divine origin. The development of the state and the emerging needs for legal norms made it possible to develop *ius* or secular law from the norms of human origin. For more, see: Bujuklić, 2012: 639.

The form *sponsio* was a kind of a contractual oath that contractual parties took when concluding a legal transaction by using the verb *spondere*.[2] The formula for concluding *sponsio* was "*Spondesne mihi dare – Spondeo*."[3] Since it involved a kind of a contractual oath closely linked to religion, fear of divine punishment and fear of community condemnation for not fulfilling the contractual obligation, no witnesses were required to witness the conclusion of this legal transaction.[4] Moreover, patricians mainly entered into relationships with other patricians, whom they trusted, relying on their *fides*, which is another reason why no mechanism was established for securing evidence and protection against abuse.

In Old Roman Law, legal transactions concluded in the form of *sponsio* were *stricti iuris*, meaning they were the privilege of Roman citizens. During this period, unlike transactions *per aes et libram* and *in iure cessio*, stipulation was not used in other branches of law but was a legal transaction exclusively used in the law of contracts and torts (Eisner, Horvat, 1948:313).

2.2. Stipulation in Classical Roman Law (the classical period)

The period of Classical Roman Law encompasses a period of two centuries of the Roman Republic and the entire era of the Principate. During this period, there was a rapid expansion of the Roman state, development of trade, and monetary economy. The newly emerged socio-economic relations necessitated new legal solutions since the law of the previous period was inadequate, religiously tinted, and did not correspond to the circumstances of the society at that time. On the other hand, due to the discrepancy between existing legal rules and newly emerged social relations, the given word "*sponsio*" was increasingly disregarded, often leading to deception in concluding legal transactions based on the given word. The weakening role of religion in society resulted in the lack of fear of religious sanctions, which in the previous period had ensured the fulfillment of obligations undertaken by stipulation.

To protect the conscientious debtor, towards the end of the Republic period, the praetor introduced a procedural remedy called *exceptio doli*, or plea of fraud, which protected the conscientious debtor in cases where there was no legal basis for the contract. With this plea, the debtor could oppose the initiated lawsuit.

In classical law, the essential element of contracts became the agreement of the wills of the contracting parties (*consensus*), while the form of contract became less significant, as evidenced by the possibility of concluding this contract even in the Greek language.[5] The possibility of concluding stipulation in other languages was caused by frequent conquests, which necessarily imposed the need to enable stipulation to be concluded in other languages

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[2] Until the discovery of the Antinopolean fragments of Gaius' Institutions, it was believed that there was no mention of stipulation in the Law of the XII Tablets because it did not exist then. However, although the name stipulation probably began to be used later, it is noticeable in the Law that the legal force of nuncupation is emphasized, and the form was probably still reserved only for citizens of Rome, as *sponsio*. The term 'stipulation' began to be used later, after the verb that began to be used to ask a question and give an answer. The will of the party was completely neglected, and at no point was it taken into account. For more, see: Пухан, 1974: 300.

[3] The formula for making a *sponsio* read: "Do you promise to give me – I promise." See: Zimmerman, 1996:69.

[4] The given word, *sponsio*, was the manner all legal transactions were made in Old Roman law. It was of a purely religious character and denoted the one who receives an obligation before the gods, i.e. it meant that debtors bound themselves to the gods to pay or do what they promised. The word itself had a magical effect, which also reflected the binding force of the concluded legal affair. A common saying used in this period was that "the word of a Roman is law even without witnesses." For more, see: Ignjatović, 2022:69.

[5] In the old Roman law, the stipulation contract as a privilege of Roman citizens had to be concluded in Latin because it was a legal transaction *stricti iuris*. In the period of classical law, stipulation lost its strictly formal character due to the primacy of consensualism over formalism.

as well, primarily those spoken by *peregrini* who, with the expansion of the Roman state, entered into legal relations with the Romans. On the other hand, there was a wider application of stipulation contracts, which were also used within family and inheritance law.[6]

2.3. Stipulation in Post-Classical Roman law (the post-classical period)

The post-classical period in the development of Roman law encompasses the Era of Dominate, where the ruler was both the master and god, and thus all of his decisions had the force of law. In such circumstances, it is difficult to speak of the creative side in the domain of law.[7] Yet, in this period, stipulation as a legal affair experienced the greatest changes. The post-classical period in the development of Roman law was a period in which there was a departure from the strict formalism of stipulation, which was a characteristic of Old Roman law. In the post-classical period, when concluding legal deals, great importance was attached to the (mutual) agreement of wills of the contracting parties, at the expense of the presence of the parties at the time of concluding the legal deal and the pronunciation of solemn words in the expressly prescribed form.[8]

In post-classical law, stipulation produced legal effects regardless of the language in which the question was posed or in which the answer was given.[9] This is evidenced by a passage from Justinian's Institutions stating that two Greeks could enter into an obligation in Latin.[10] As for the presence of the contracting parties, it was sufficient for the document to state that the contracting parties were present, regardless of the accuracy of this information (Karlović, 2011:924).

3. STIPULATION CONTRACT

3.1. Definition of *Stipulatio*

Stipulation (*stipulatio*) was a strictly formalistic and verbal contract of Old Roman law, concluded by the creditor (*stipulator*) posing a solemn question and the debtor (*promissor*) solemnly responding properly to the form of the question.[11] Stipulation was a unique legal transaction which was concluded by uttering solemn words, which included asking the question

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[6] Being formal, but not excessively formal (such as *forma per aes et libram*), stipulation was suitable for concluding a contract even in the classical era. In this period, stipulation played a very prominent role as it was used to conclude a wide variety of contracts, not only within the law of contracts and torts but also in other branches of law. For more, see: Eisner, Horvath, 1948:309.

[7] During the Era of Dominate, trained lawyers represented a very significant part in the bureaucratized state, but only in terms of the successful functioning of the state administration and not in terms of the creation, interpretation and application of law. For more, see: Ignjatović, 2016.

[8] "Although it is said that stipulation is made between those present, it also produced legal effect if both parties were in the same city on the same day when the document was drawn up, unless the one who claims that they were absent or that both parties were absent prove this with clear evidence – preferably in writing, but also with reliable witnesses against whom no objection can be raised, that they or their assistant were not in the city that day, but such documents will be taken as true for the benefit of the parties". C. J. 8,37,14,2 (Translation: Karlović, 2011:902).

[9] The contracting parties knew both languages or communicated through an interpreter. See:: Ignjatović, 2022:337.

[10] „Utrum autem Latina an Graeca vel qua alia lingua stipulatio concipiatur, nihil interest, scilicet si uterque stipulantium intellectum huius linguae habeat: nec necesse est eadem lingua utrumque uti, sed sufficit congruenter ad interrogatum respondere: quin etiam duo Graeci Latina lingua obligationem contrahere possunt“ (Даниловић, Станојевић, 1993:60).

[11] This contract began to be used during the period of validity of the old *ius civile* and continued to live across thirteen centuries, with certain changes.

whether the debtor undertakes to give or do something and giving an answer to the question: "*Spondesne mihi dare*? – *Spondeo*." It was also used as a means to conclude the contract.

Over time, stipulation underwent numerous changes. Solemn questions could be posed using different words and in different languages: "*Promittis*? *Promittio*"; "*Fideipromittis*? *Fideipromittio*"; "*Dabis*? *Dabo*"; "*Facies*? *Faciam*" - I promise, I do, I give).[12]

3.2. Subject matter of the Stipulation Contract

From the earliest period, stipulation did not necessarily require that the purpose of the contract (*causa*) be stated. It further meant that the subject matter of the contract was not visible, which is why this type of contract represented an abstract legal transaction. The abstruseness of stipulation provided the possibility of its wider application. In addition, the oral form of contracting as a key feature of Old Roman law meant that the recital of solemn formulas was sufficient for the validity of the contract.

3.3. Contracting Parties

To validly conclude a stipulation contract, certain conditions had to be met. The first essential element of the stipulation contract was the competent contracting parties, who had contractual capacity and ability to hear and speak (utter words); thus, deaf and mute parties could not conclude this contract.[13] The second essential element was mental capacity; a stipulation contract could not be concluded by mentally ill persons because they were not aware of the consequences of the concluded legal transaction. Third, a person of a lower rank was not allowed to enter into a contractual obligation with his/her immediate superior (a person of a superior rank or authority), nor was a person with *potestas* (in a position of power or authority) allowed to contract with his/her subordinates (persons of a lower rank); on the other hand, slaves, persons in *mancipium*, daughters in the family and women under *manus* were completely forbidden to enter into contractual relations.[14]

By the very nature of stipulation, the contracting parties had to be present at the moment of concluding the contract. After being asked the question "Do you promise?", the debtor had to respond immediately by saying "I promise", which meant that the promissor unconditionally accepted what the creditor demanded from him/her.[15] The words of response had to include and exactly match the words used in the question; thus, it was not allowed to utter any other word with the same or similar meaning, nor to use conclusive actions or remain silence.

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[12] The possibility of concluding stipulation in other words and in another language implied that *peregrini* were not allowed to conclude a stipulation contract. Although stipulation was a formal contract that required the fulfillment of precisely defined elements of the legal affair, it was also a flexible contract because the contracting parties could use other words. For this reason, stipulation was widely used in other branches of private law. See: Ignjatović, 2022:337.

[13] Gaius III 105: "Mutum neque stipulari neque promittere posse palam est. Idem etiam in surdo receptum est; quia et is, qui stipulatur, uerba promittentis, et qui promittit, uerba stipulantis exaudire debet." Available at: University of Grenoble (n.d), https://droitromain.univ-grenoble-alpes.fr/Responsa/gai3.htm#100

[14] *Gaius* III 104, translated by Станојевић, 2009: 232.

[15] *Stipulatio* was not considered concluded if the debtor's answer did not follow the form of the question. Gaius specifies the cases in which stipulation was invalid - *stipulatio inutilis*. Thus, stipulation produced no effect when someone is asked if they give a certain sum of money, and they declare that they give another sum, as well as when they give under a condition. (*Gaius* III 102, translated by Станојевић, 2009: 232).

3.4. Rights and Obligations of the Contracting Parties

As stipulation was a verbal contract, it required both contracting parties to be present at the conclusion of the contract (Eisner, Horvat, 1948:313). In classical Roman law, contracting parties were considered present if they were in the same city on the day of concluding the contract. With the development of stipulation as a literal (written) contract, it became possible to conclude the contract even without the presence of the contracting parties because the document (*cautio – instrumentum stipulationis*) was sufficient for the contract to be concluded.

3.5. Termination of Obligations from Stipulation

The obligation from stipulation did not cease by fulfilling the obligation; rather, it was necessary to fulfill the requirements of the form for the obligation to cease. In order for the obligation from stipulation to cease, an act of release was required that was the opposite of the act of conclusion – *contrarius actus*. The end of obligation was reached by *acceptilatio*, a fictitious payment during which the creditor released the debtor from the debt owed by answering affirmatively to the debtor's question "*Did you receive what I promised you*?". The debtor had to ask the creditor if he had received the first and last pound that was promised, to which the creditor would answer in a precisely specified manner (Stanojević, 2010: 271).

In Roman law, we may find statements about *acceptilatio* in the writings of various legal authors. Gaius states that "everything created by a legal act ceases by a *contrarius actus*").[16] Ulpian mentions that "there is nothing more natural than for an obligation to cease in the same manner as it arose".[17] Pomponius states that "as it was contracted, so it must be paid".[18]

However, the great formality expressed through the form of *acceptilatio* impaired the speed of legal transactions; thus, in the period of the Republic, the prevailing view was that the assumed obligation ceased to exist by mere fulfillment, without the need for a formal act.

3.6. Procedural Instruments

As *stipulatio* created the right to sue, it was another reason why it was so frequently used, especially for securing protection in those legal relationships that were not protected by lawsuits at the time, mostly arising as a consequence of societal changes (Stojčević, 1985:244). As a strictly formal contract, *stipulatio* was protected by various procedural instruments. The most common ones were: *exceptio doli, querella non numeratae pecuniae, exceptio non numeratae pecuniae, condictio certae pecuniae, and condictio certae rei.*[19]

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[16] "Omnia, quae iure contrahuntur, contrario iure pereunt" (D. 50, 17, 100); available at: The Latin Library (n.d.) Digesta, available at: https://www.thelatinlibrary.com/justinian/digest50.shtml

[17] "Nihil tam naturale est quam eo genere quidque dissolvere quo colligatum est" (D. 50, 17, 35)

[18] "Prout quidque contractum est, ita et solvi debet: ut, cum re contraxerimus, re solvi debet: veluti cum mutuum dedimus, ut retro pecuniae tantundem solvi debeat. Et cum verbis aliquid contraximus, vel re vel verbis obligatio solvi debet, verbis, veluti cum acceptum promissori fit, re, veluti cum solvit quod promisit. Aeque cum emptio vel venditio vel locatio contracta est, quoniam consensu nudo contrahi potest, etiam dissensu contrario dissolvi potest." (D. 46, 3, 80); available at: https://www.thelatinlibrary.com/justinian/digest46.shtml

[19] *Exceptio doli* was a procedural means of praetorian protection that protected a debtor who had stipulated to return a certain item or money, but who had never received the item or money. *Querella non numerate pecuniae* was a procedural means of protection that could be raised by a debtor due to unpaid money within one year, or two in Justinian's era. *Exceptio non numeratae pecuniae* was a procedural means that served a debtor against whom a claim was filed for the fulfillment of an obligation. *Condictio certae creditae pecuniae/rei* was a

In case of a dispute between the contracting parties, legal protection in Old Roman law was ensured through legislative proceedings, via *sacramento* and *iudicis postulationem*. In classical Roman law and post-classical Roman law, legal protection was achieved through *condictio;* if the obligation was monetarily determined, it was secured by *condictio certae creditae pecuniae*, and if it concerned a thing, it was secured by *condictio certae rei*.

The legal protection provided in the stipulation contract supports the claim that stipulation was in use throughout the entire history of Roman law, from the Law of Twelve Tablets to Justinian's law.

4. Application of Stipulation in Other Legal Institutes

The stipulation contract was also widely used in other branches of Roman private law because, as an abstract legal transaction, it was valid without specifying the legal ground for entering into the contract. Thus, stipulation could also appear in the form of transfer of a claim to heirs (*adstipulatio*), a solemn promise of dowry (*dotis dictio*), an oath of manumitted slaves (*iusiurandum libertati*), and surety (*vadiatura*).

4.1. Adstipulation (*adstipulatio*)

Adstipulation was a contract used in the field of inheritance law. This contract transferred a claim to an heir in case of the stipulator's (creditor's) death. The debtor was first obliged to the principal creditor and then to the adstipulator (heir).

Adstipulation was concluded in the following manner: after the stipulation contract was concluded, the debtor would assume the obligation to the adstipulator (heir) in the same or a lesser amount. The formula for concluding this type of legal act was: "*Idem mihi dare spondes*? – *Spondeo*".[20] In this context, it was crucial to use the word "*idem*" (the same), as otherwise it would be considered two types of obligations. Hence, the legal position of the adstipulator was the same as that of the principal creditor, provided that they did not behave contrary to the principal creditor.

In classical law, adstipulation was actionable on the basis of the relationship between the principal creditor and the adstipulator. In Justinian's law, it ceased to be used because all instances of stipulation made in favor of heirs were legally valid.

4.2. Solemn Promise of Dowry (*dotis dictio*)

The solemn promise of dowry was a unilateral, formal and straightforward promise made during betrothal (*sponsalia*). Considering the definition of betrothal as an agreement made through demands (*stipulationes*) and mutual promises (*sponsiones*), we could say that it was rooted both in *mos* and *ius*.[21] *Mos* was a custom that imposed the obligation of marriage on the betrothed, while *ius* was an act imposed on the betrothed by the collective itself (*consortium*).

In Old Roman law, the father betrothed his daughter by responding "*spondeo*" based on the solemn question "*spondes tibi gnatam tuam uxorem fili meo*". This first *sponsio*,

procedural means of protection used in case the performance entailed giving a certain amount of money or handing over a certain item.

[20] "Do you promise to give me the same?" I promise". For more, see: Eisner, Horvath, 1948:366.

[21] *Hoc mores atque iure solita fieri scripsit Servius*. For more, see: Astolffi, 1989:12.

which mainly expressed the personal aspect of this relationship, would be followed by another *sponsio*, in which the father would promise a certain amount of money to the *fiancé* in case the betrothal failed through. The first *sponsio* allowed the injured party (suitor) to seek protection from the censor in case of failed betrothal. The second *sponsio*, where money was promised, provided the opportunity to seek protection through a multi-step judicial process in the form of *legis actio per iudicis arbitrive postulationem*,[22] as envisaged by the Law of Twelve Tablets.

In classical law, *sponsalia* expressed more prominent characteristics of the Roman spirit.[23] Towards the end of the period of the Republic, the consensus of betrothal was reflected in the agreement of wills of both betrothed parties, which was freely expressed. There was no requirement for the presence of other witnesses, nor did the will have to be expressed in precise words.[24] The prevalence of consensus in concluding betrothal gradually led to the disappearance of *sponsia* as a form of concluding betrothal. Thus, in the classical period, betrothal (as a prenuptial contract) evolved from a real contract into a consensual contract.

In post-classical law, *promissio dotis* was stipulation on the basis of which the party giving the dowry (father, brother) undertook to transfer certain dowry property to the betrothed, the future spouse. Just as in pre-classical Roman law, the father betrothed his daughter against her will, and his promise regarding the future marriage was binding even after his death. In this period, even when the daughter reached the age of 25 and thus became an adult, she was still bound by her father's promise, or the promise of her mother or relatives in those situations where such a promise was made by those persons for legally justified reasons (Ignjatović, 2009:146).

4.3. Oath of Manumitted Slaves (*iusiurandum libertati*)

The oath of manumitted slaves was a religious ceremony by which a slave, upon being freed from slavery, solemnly committed to their master that he/she (even though free) would work for a certain number of days each year without pay. In classical law, this type of contract was widely used due to the mass emancipation of slaves that marked this period.

4.4. Surety (*praediatura / vadiatura*)

Surety (*praediatura*) was a verbal contract in Old Roman law where the guarantor vouched in the *legis actio per sacramentum* procedure before the state magistrate that the contracting parties would fulfill the promised obligations.[25] This type of contract was not typical of classical and post-classical law due to the obsolescence of the *legis actio* procedure.

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[22] For more, see: Ignjatović, 2009, 127-156

[23] However, at the end of the 2nd and the beginning of the 3rd century, Roman betrothal showed the influence of different provinces of the world. For more, see: Astolfi, 1989:35.

[24] That is why the betrothal of the classical period is referred to as a consensual contract, since the agreement of the expressed wills of the contracting parties is the basic and the only form for the validity of a consensual contract.

[25] The magistrate asked the question "*Praes est*?" ("Are you a guarantor?"), to which the guarantor answered "*Praes sum*." ("I am a guarantor.") As in the case of *vadiatura*, *praes* was not an accessory debtor who was liable in case the main debtor did not fulfill the assumed obligation; *praes* was an independent debtor, the only one who could be sued in case the main debtor failed to fulfill the obligation towards the state. For more, see: Стојчевић, 1985:245.

Vadiatura was a verbal contract in which the guarantor (by uttering specific words) undertook to ensure that the debtor would appear before the state magistrate or continue the trial before the court if the proceedings could not be concluded on the same day.[26]

5. STIPULATION AS A LITERAL (WRITTEN) CONTRACT

Due to the development of legal and economic transactions and the geographic expansion of the Roman state, verbal contracts no longer satisfied the needs of developed legal transactions. *Sponsio* as a form of verbal contracts was a suitable ground for the development of various types of abuses because the expressed words were not perceived to be reflecting the legal ground.

Due to the development of trade and the weakening influence of religion, creditors had to find another method, in addition to stipulation, to ensure the fulfillment of their claims. Thus, in the period of the Republic, there was a need for a written record of concluded legal transactions. At the beginning of the Republic, witnesses began to be called to appear in court and testify about the content of the spoken words in case of disputes. The obligation undertaken publicly, (before witnesses) emphasized the creditor's claim, while the debtor feared public condemnation.

In classical Roman law, as literacy increased, spoken words started being recorded, and a written contract (*instrumentum stipulationis)* was drawn alongside *stipulatio*. Thus, stipulation changed over time and became a special type of contract − a literal (written) contract.

5.1. Instrumentum Stipulationis (*cautio – instrumentum stipulationis*)

After the adoption of Caracalla's Constitution in 212, which extended the use of Roman law to peregrini, the distinction between civil and praetorian contracts was no longer made.

Stipulation as a former institute of civil law was equated in its effect with literal contracts *chirographum* and *syngraphae*, which were concluded by peregrini. Thus, a clause stating that the obligation was assumed by stipulation was entered into chirographs and syngraphs. As a result, a new institution was created − *instrumentum stipulationis*, a document on the executed stipulation.

At the beginning of its application, *instrumentum stipulationis* had only evidentiary force and was not a condition for the validity of the concluded stipulation, but later it represented a strong presumption of the executed stipulation. In Justinian's time, it was almost an irrefutable proof that stipulation was executed, which actually proved that *stipulatio* was transformed into a literal contract (Eisner, Horvat, 1948:106).

As a result of the original method of conclusion, the document on the executed stipulation usually contained the statement "Since I was asked, I answered that I undertake..." The oral part of stipulation eventually disappeared completely, and stipulation became a written contract with traces of an oral formula (Stanojević, 1966:46).

The legal nature of stipulation changed along with the form of concluding stipulation, as it was transformed from an abstract legal transaction into a casual legal transaction. Thus, in Justinian's law, it became a unique causal transaction that was void in case consideration (*causa*) was missing or void (Kaser, 1984:207).

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[26] The creditor asked "*Vas es*?", and the guarantor replied "*Vas sum.*" For more, see: Стојчевић, 1985: 245.

6. CONCLUSION

By tracing the development of stipulation from Old Roman law, through classical law, to post-classical law, we may observe the expansion of the circle of people to whom *ius civile* applied, including non-Roman citizens. The extension of the personal validity of the rules of *ius civile* to peregrini caused other changes in the legal nature of stipulation (*stipulatio*).

Through the example of stipulation, we may also observe the transition from abstractness (as the basic feature of Old Roman law) to causality, which gained predominance in the classical and post-classical periods. The relationship between the principles of formalism and consensualism is directly related to this change. Although strictly formal in nature, stipulation was concluded by uttering short formulas. This probably contributed to the fact that stipulation endured longer than other methods of contract conclusion that emerged in the earliest Roman law period (such as *mancipatio*). Over time, it was allowed to conclude stipulation by uttering other words (not just *spondeo)* in various languages.

Examining changes in the form of concluding stipulation, we may observe a gradual transition from oral to written form of contract. In classical law, the content of stipulation was recorded in order to serve as evidence of the assumed obligation but, over time, the recording of the content of stipulation became a requirement for the contract validity.

The basic requirement for the validity of stipulation (personal presence of the contracting parties) was relativized after the transition to the written form of the contract. In the post-classical period, it was enough for the document to state that the contracting parties were present, regardless of whether this information was actually correct. Moreover, the requirement for *unitas actus* was relaxed so that, by the post-classical period, the promissor was no longer required to answer immediately after being asked a question.

Based on the research findings presented in this paper, we can draw a general conclusion. Stipulation was of great significance and importance for Roman contract law. It was the first and fundamental verbal contract in Roman law, representing the core of Roman contract law. However, it was used not only in contract and tort law but also in other branches of private law. Moreover, the development of stipulation from a verbal into a written contract illustrates the evolution of the legal form of Roman contracts in the course of 13 centuries of Roman history.

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RAZVOJ FORME UGOVORA U RIMSKOM PRAVU NA PRIMERU STIPULACIJE KAO VERBALNOG KONTRAKTA

Kao prvi i osnovni verbalni kontrakt rimskog prava, stipulacija (stipulatio) je nastala i razvijala se pod uticajem raznih društveno-ekonomskih prilika koje su uslovile razvoj rimske države. Nastao u pretklasičnom rimskom pravu pod uticajem religije i običaja, ovaj verbalni kontrakt menjao je svoje osnovne karakteristike na taj način što je u periodu klasičnog rimskog prava dobio karakteristike literarnog (pisanog) kontrakta, da bi u periodu važenja postklasičnog rimskog prava ovaj kontrakt doživeo najveće promene. Posmatrajući i analizirajući razvoj stipulacije, kao verbalnog kontrakta, možemo da uočimo mnoge generalne tendencije u razvoju forme ugovora u rimskom pravu. Na taj način možemo doći i do odgovora na pitanje kako je strogi formalizam rimskog ugovornog prava ustupio primat kauzalnosti, odnosno kako je tekao proces tranzicija od strogog formalizma do konsensualizma i prelazak sa usmene na pisanu formu zaključenja ugovora.

Ključne reči: *stipulatio, forma zaključenja ugovora, verbalni ugovori, kontrakti, unitas actus*.