Problems in the Interpretation of Ancient Maritime Contracts

Maritime contracts (*nautikai syngraphai*) were written documents containing the terms of agreement between merchants and lenders for the financing of the acquisition of cargoes to be transported overseas. They were the lifeblood of *emporia*, the long-distance trade in commodities that flourished in the Mediterranean and Black Seas, from at least the late-fifth century B.C. until they were gradually phased out following the development of modern marine insurance. Maritime contracts were typically constructed from standard clauses that were tailored to suit the parties' needs. Two clauses of particular significance were: (i) the condition *salva nave*, which suspended the debtor's obligation to repay to the safe arrival of the ship at its final destination; and (ii) penalty clauses, which imposed a financial penalty on the debtor for failure to perform certain acts (e.g., to leave the outport by a certain date, etc.). The interpretation of the operation of these conditions was a source of dispute, particularly when the condition *salva nave* failed though the penalty clause was potentially engaged. In these circumstances, the case turned on the interpretation of the penal condition: the creditor faced the total loss of his investment unless he could show that the penalty was due. This presentation concerns how the Roman jurists approached the interpretation of penalty clauses in maritime contracts; and how the interpretation of maritime contracts served as the basis for doctrinal developments of wider application.