

That's What Should Be Done! Reflections on the Margins of the Monograph of Peter Candy, *Ancient Maritime Loan Contracts*

Maciej Jońca

Casimir Pulaski Radom University, Faculty of Law and Administration

E-mail: mjonca@al.edu.pl

ORCID: 0000-0003-4982-8936

Abstract:

In 2025, Dr. Peter Candy (University of Cambridge) published a monograph titled “Ancient Maritime Loan Contracts”. In it, he challenged many of the findings that had been firmly established in the study of Roman law since the 19th century. In his examination of Roman maritime law, he first undertook a “democratization” of the ancient sources. This led him to a surprising conclusion. Namely, the Romans (like the Greeks) did not recognize a separate maritime loan contract. They used a single, consistent loan structure that could be adapted for various purposes – including conducting business at sea. This work deserves attention among legal historians because the author not only debunked a (seemingly) unshakable dogma but also demonstrated how ancient sources remain a flexible and forward-looking subject for research. There are no topics about which nothing more can be written, as long as there are people who are not afraid to ask old sources new questions.

Keywords: Roman law; maritime loans; research methodology in the history of law

DOI: 10.14712/2464689X.2026.563

Introduction

What distinguishes the British way of writing about Roman law? First of all, a clear break with the scholastic narrative method. For authors from the British Isles, Latin and Greek legal sources are not a Romanistic surrogate for the Holy Scriptures (*ratio scripta*), which must be highlighted, paraphrased and then explained to laymen using specialised language and with great ceremony. It is research material like any other. Therefore, they do not tend to hierarchise sources by assigning greater importance to texts collected in Justinian’s codification than, for example, to stage works from the Republic or fragments of works by rhetors from the Empire. British authors follow the pattern: they collect available materials, organise them, study them, and then present their personal vision based on this research in a form that is attractive to the reader.

An excellent example of common sense and insightful writing about ancient laws is the monograph *Ancient Maritime Loan Contracts*.¹ Its author is Peter Candy from the University of Cambridge. The fact that the scholar has a background in both law and literature certainly contributes to the positive reception of the work. This interesting combination means that the language Peter Candy uses to discuss complex legal and economic issues is reader-friendly, rather than serving as a display of the author's erudition. The work consists of five chapters: "Maritime Loan Contracts",² "Maritime Loan Contracts and Long-Distance Trade",³ "Commeracial Practice and Dispute Resolution",⁴ "The Interpretation of Maritime Loan Contracts"⁵ and "Financial Terminology and the Regulation of Interest Rates".⁶ In addition, the reader receives two attachments: "The Enforcement of Maritime Loan Contracts in Classical Roman Law"⁷ and "Selected Texts".⁸

1. Two aspects

Reading Peter Candy's monograph provokes many reflections, two of which I would like to develop in this essay. The author's findings fully confirm the validity of the postulate that we should finally move away from the 19th-century reflex that views ancient *ius Romanum* as a closed system, immune to external stimuli. Peter Candy uses many specific examples to show how economic turnover and changing market realities shaped Roman law and forced it to change.⁹ He succeeds in providing excellent proof for the claims made in the book, because he does not treat *ius Romanum* as "lonely cultivated plant in the midst of systemically weakly cultivated environment".¹⁰ He is more interested in the phenomenon of the market than in the concept of a 'system'. This is perfectly logical, because when we look at the issue of maritime loans, the formula of the 'Roman legal system' ceases to make sense. What is more, it then becomes abundantly clear how much it is irrational and ahistorical to separate the history of Greek and Roman law.

Benedetto Croce argued that each generation of scholars should ask new questions of its sources.¹¹ The beginners like children who must first learn to walk and talk before they can begin to function independently. It is therefore not surprising that some of the questions asked are still the same. However, we should also expect that as we mature, some questions will be formulated differently, and some answers will turn out to be different from those received by predecessors. As far as Roman law is concerned, we arrive at an interesting paradox: the weaker the knowledge of Latin and Greek among the contemporary

¹ CANDY, P. *Ancient Maritime Loan Contracts*. Ann Arbor: University of Michigan Press, 2025, ISBN 978-0-472-2133-55-0, 238 p.

² CANDY, *Ancient Maritime Loan Contracts*, pp. 1–46.

³ CANDY, *Ancient Maritime Loan Contracts*, pp. 47–68.

⁴ CANDY, *Ancient Maritime Loan Contracts*, pp. 69–116.

⁵ CANDY, *Ancient Maritime Loan Contracts*, pp. 117–150.

⁶ CANDY, *Ancient Maritime Loan Contracts*, pp. 151–183.

⁷ CANDY, *Ancient Maritime Loan Contracts*, pp. 185–195.

⁸ CANDY, *Ancient Maritime Loan Contracts*, pp. 197–206.

⁹ These phenomena are nicely illustrated by a study: VERGAGEN, H. L. E. *Security and Credit in Roman Law: The Historical Evolution of Pignus and Hypotheca*. Oxford: Oxford University Press, 2022.

¹⁰ Quoted after: FÖGEN, M. T. *Römische Rechtsgeschichten. Über Ursprung and Evolution eines sozialen Systems*. Göttingen: Vandenhoeck & Ruprecht, 2002, p. 212.

¹¹ Cf. CROCE, B. *La storia come pensiero e come azione*. Bari: Laterza, 1966, pp. 138–141.

generation of Romanists, the greater the chance for those who ask new questions of the sources. Peter Candy works on sources. Among other things, his analysis of terms used in ancient materials to describe maritime loans allowed him to make a discovery that breaks the vicious circle in which the debate on *fenus nauticum* was closed in the 19th century.

2. The frenzy of systematization

For a scholar from Central Europe, the adjective ‘systematic’ is a compliment. This is not the time or place to recall how ‘systematic’ thinking developed in law and how little it has in common with the legal sensibilities of ancient jurists. Instead, I would like to compare the way Dr Peter Candy writes about ancient maritime loans with the structure and content of Stanisław Płodzień’s Polish monograph “*Lex Rhodia de iactu*. A historical and legal study of Roman maritime commercial law”.¹² The Polish author, a Catholic priest and professor at the Catholic University of Lublin, wrote it in the second half of the 1950s under the supervision of Waław Osuchowski, a Romanist from Krakow.¹³ Its final form was also greatly influenced by Rafał Taubenschlag, a scholar from Warsaw. Taubenschlag, who returned to Poland from the United States in 1947, served as head of the Department of Ancient Laws at the University of Warsaw. It was he who insisted that Płodzień adopt a broader perspective in the title. He even came up with the idea of the existence of ‘Roman maritime commercial law’.

The title of the monograph brings together two contrasting visions: the ‘systemic’ approach to Roman law presented by representatives of the ‘school’ of Ludwig Mitteis (Taubenschlag prided himself on being his student)¹⁴ and socialist realist deconstructionism (Taubenschlag’s ‘discovery’ of Roman commercial maritime law is an example of breaking new ground in the study of ancient law, which was required of Polish scholars by the communist authorities after 1944).¹⁵ The latter element, however, is only a clever camouflage. The book was written according to strictly defined academic patterns (i.e. ‘systematically’) established at German and Austro-Hungarian universities in the second half of the 19th century.¹⁶ Płodzień follows a well-trodden and well-known path. First, he

¹² PŁODZIEN, S. *Lex Rhodia de iactu. Studium z zakresu prawa handlowo-morskiego* [*Lex Rhodia de iactu: A Study in Commercial and Maritime Law*]. Lublin: Towarzystwo Naukowe KUL, 1961.

¹³ JOŃCA, M. Książka Stanisław Płodzień i jego „Rzymski proces cywilny” [Rev. Stanisław Płodzień and his “Roman Civil Procedure”]. *Zeszyty Prawnicze*, 2022, 22, No. 4, p. 99.

¹⁴ BEGGIO, T. Alla “scuola di Ludwig Mitteis”: gli studi papirologici e i nuovi orizzonti metodologici della romanistica di inizio Novecento. In: BALDUS, C. – MIGLIETTA, M. – BEGGIO, T. – BONIN, F. (eds.). *Lo studio dei papiri nei rivolgimenti metodologici della romanistica tra il 1860 e il 1960*. Trento: Università degli Studi di Trento, 2024, pp. 105–112.

¹⁵ The demarcation of new borders of the Polish state, which took place as a result of the Yalta Conference, gave Poland a vast coastline. This re-establishment of Poland’s connection with the Baltic Sea played an important role in propaganda narratives. Any scientific work confirming the ‘maritime’ character of the people’s state was also welcome. However, the Polish Romanist community did not cope very well with addressing the subject appropriately. Cf. CZECH-JEZIERSKA, B. *Prawo Rzymskie w Polsce Ludowej (1944–1989). Edukacja, polityka naukowa, ideologia* [*Roman Law in People’s Poland (1944–1989). Education, Academic Policy, Ideology*]. Lublin: Wydawnictwo KUL, 2025, p. 109, n. 385, 375.

¹⁶ Some authors emphasise the fact that at the turn of the 19th and 20th centuries, pandectists found itself in crisis. This led to a tendency to ‘historicise’ research into ancient Roman law. Cf. BEGGIO, T. – GREBIENOW, A. Einleitung. In: BEGGIO, T. – GREBIENOW, A. (eds.). *Methodenfragen der Romanistik im Wandel. Paul Koschakers Vermächtnis 80 Jahre nach seiner Krisenschrift*. Tübingen: Mohr Siebeck, 2020,

briefly discusses the Greek prototype (established practice), and then devotes all his energy to the Roman ideal (a legal institution with its particular place in the legal system).

Peter Candy takes a different approach. Firstly, he does not separate the commercial practices at sea that existed in Greek and Roman times. With regard to the legal reality of ancient states, he does use the term ‘system’, but not in the sense understood by Friedrich Carl von Savigny, author of the famous study *System des heutigen römischen Rechts*.¹⁷ Peter Candy’s ‘legal system’ is not a sealed package filled with coherent paragraphs. It is nothing more than a simple phraseological connection used in the narrative, for which a replacement can be found at any time (a very Roman approach, by the way). This has further, very important consequences. The author does not treat the sources he studies as scattered pieces of a puzzle, which, when put together, allow the reader to see a bigger picture. Peter Candy does not want to reconstruct a large photograph from a thousand tiny pieces. For him, the available (incomplete, uneven, sometimes contradictory) sources form a kind of algorithm that he tries to decipher and then simulates its impact on the legal and economic practices of ancient Greece and Rome.

3. Roman law was not a pyramid

If the Romans had found out that someone was trying to explain their law using the figure of a pyramid, they would not have been very pleased (their aversion to the Egyptians was proverbial). Fortunately, Peter Candy does not look at ancient laws in a ‘systematic’ way. That is why he does not include a single maritime loan in the title of his work, but rather many maritime loans.¹⁸ In this respect, he departs from the canons of 19th-century Pandectist systematics, for which there was only one maritime loan in the ‘Roman legal system’. This pattern is reflected in the content of many textbooks published at that time and today, in which the section devoted to loan agreements (*mutuum*) includes a separate subchapter entitled ‘Maritime loan’ (*fenus nauticum*).¹⁹ Peter Candy’s decision is quite witty, considering the conclusion of his research.

p. 2. However, introducing the ‘social’ element into research did not undermine the ‘systemic’ thinking popularised by Pandektistik. The example of Paul Koschaker illustrates this well. See: BEGGIO, T. *Paul Koschaker (1879–1951): Rediscovering the Roman Foundations of European Legal Tradition*. Heidelberg: Universitätsverlag Winter Heidelberg, 2018, pp. 50–61.

¹⁷ Cf. SAVIGNY, C. F. *System des heutigen römischen Rechts*. Vol. I–VIII. Berlin: Voigt, 1840–1849.

¹⁸ Similarly: VERHAGEN, *Secutiry and Credit*, pp. 81–82, 187–192. While we are on the subject of maritime trade, it is worth mentioning another interesting fact: st. Isidore of Seville, in his “Etymologies”, also does not write about the Rhodian law (*lex Rhodia*), but about the ‘Rhodian laws’ (*leges Rhodiae*). Cf. Isid. *etym.* 5.17: *Rhodiae leges navalium commerciorum sunt, ab insula Rhodo cognominatae, in qua antiquitus mercatorum usus fuit*.

¹⁹ The problem of the ‘nature’ of *fenus nauticum* goes far beyond the discussions held in 19th century science. Cf. MAŚLANKA, Ł. *Fenus nauticum*. In: DĘBIŃSKI, A. – JOŃCA, M. (eds.). *Leksykon tradycji rzymskiego prawa prywatnego [A Lexicon of Roman Private Law Traditions]*. Warszawa: C. H. Beck, 2016, p. 148: “In modern legal doctrine, there was controversy as to whether *fenus nauticum* should be considered an unnamed contract (*contractus innominatus*) or a form of loan (*mutuum*). Jaques Cujas considered it a form of loan in relation to capital, with interest being the subject of an unnamed contract, while Friedrich von Savigny argued that both obligations were unnamed contracts. This had an impact on the type of legal remedy available: *condictio* (in the case of *mutuum*) or *actio praescriptis verbis* (for an unnamed contract). Auguste Guénepin considered a maritime loan to be a *mutuum*, which exists on condition that the goods are successfully delivered to their destination.”

The author is fully aware of the circumstances mentioned above, as he notes: “is is commonly assumed that both the Athenians and the Romans drew fundamental distinction between different types of loan consumption (*daneismos*, *mutuum*): that is, between ordinary or landed loans on the one hand, and maritime loans on the other”.²⁰ Even Reinhard Zimmermann followed this path in his *magnum opus* entitled *Roman Law of Obligations. Roman Foundations of the Civilian Tradition*.²¹ I mention this particular work because the German author did not construct it in the same way as the 19th-century pandectists did. He arranged many issues differently, took up new themes, and showed off his brilliant associations. However, he placed maritime loans... right next to *mutuum* as a “specia type of loan”.²² In the subchapter ‘Loans to merchants involved in overseas trade’, we will not find an explanation as to why this perspective was adopted.²³

However, finding the answer to this question is not difficult. Prof. Zimmermann was probably influenced by what he saw in ancient sources. In the Gospel according to St. John, it is written: ‘In the beginning was the Word’²⁴. It was precisely the word that lay at the root of the difference in interpretation of the sources by Dr Peter Candy and Prof. Reinhard Zimmermann. The latter (like many other authors who addressed this topic before him), noticing the difference in concepts in ancient texts, took for granted the existence of a ‘dogmatic’ difference in the construction of an ordinary loan (*mutuum*) and a maritime loan (*fenus nauticum*). However, the problem of terminology is more complex. Let us recall the observation made by Hendrick L.E. Verhagen: “The maritime loan is known under various names in the Roman legal sources. The classical sources use expressions like *mutua pecunia nautica*, which may have been derived from the Greek δάνειον ναυτικόν, *pecunia traiectica* («travelling money»), and *pecunia usuris maritimis*. Mod. D. 22.2.1 defines *pecunia traiectica* as *ea pecunia est quae trans mare vehitur* («money which is transported overseas»). The term chosen by the Compilatores, *fenus nauticum*, came to be used relatively late, at the time of Diocletian.”²⁵

It is worth recalling here that 19th-century representatives of German pandectism not only reorganised the sources, but also blocked the meaning of many Latin legal terms for a long time. They constructed a complex dogma for their own use, in which two elements play a key role: the monopoly of meaning of concepts and their hierarchical structure (pyramid of concepts). In doing so, they created the famous *termini technici*, or tools with which their *Rechtswissenschaft* can up to the present day distinguish in the text law from non-law. At the same time, lawyers were obliged to adhere to a strict narrative regime (Gustav Radbruch writes of ‘rigorous asceticism of expression’²⁶). The 19th century also

²⁰ CANDY, *Ancient Maritime Loan Contracts*, p. 151.

²¹ ZIMMERMANN, R. *Roman Law of Obligations. Roman Foundations of the Civilian Tradition*. Oxford: Clarendon Press, 1996, p. 181.

²² The author includes the following in this group: loans to sons in power (ZIMMERMANN, *Roman Law of Obligations*, pp. 177–181), loans to merchants involved in overseas trade (ZIMMERMANN, *Roman Law of Obligations*, pp. 181–186) and loans to professional sportsmen (ZIMMERMANN, *Roman Law of Obligations*, pp. 186–187).

²³ Cf. ZIMMERMANN, *Roman Law of Obligations*, pp. 181–183.

²⁴ Joh. 1.1: *In principio erat Verbum*.

²⁵ VERHAGEN, *Secutiry and Credit*, p. 81.

²⁶ RADBRUCH, G. *Einführung in die Rechtswissenschaft*. Leipzig: Quelle & Meyer, 1913, p. 29.

saw the emergence of a conceptual model known as *juristische Methodenlehre*.²⁷ Its message is simple: if you do not think like us, you are mistaken; if you do not use the same cognitive tools as us, you are not a professional.

4. Deconstruction

“Fortunate, who has been able to know the causes of things” says the Roman poet Ovid in his *Georgics*.²⁸ Ignoring the rules developed by 19th-century jurisprudence and focusing exclusively on ancient sources allows us to see things in a completely new light. The manner of categorising, structuring and hierarchising legal concepts has made a great contribution to German civil law scholarship²⁹ but was particularly foreign to the mentality of the ancient Greeks.³⁰ As for the Romans, both their legislators and jurists loved synonyms. It is true that the title from the Code *De nautico fenore* contains one law of Diocletian and Maximian, in which the expression *fenus nauticum* also appears once.³¹ However, as already mentioned, there were many more terms used to describe maritime loans in Greek and Roman sources (some texts dispense with the noun in favour of a descriptive form, and then it is the content of the agreement that determines that we are dealing with a maritime loan). With regard to ancient realities the diversity of terminology does not necessarily indicate diversity of institutions. The Romans were not obsessed with *begriffsmathematisch konstruierte Dogmatik* or *Begriffspyramide*. Contemporary studies by authors who wish to ‘organise’ terminology (see especially the text by Wiesław Litewski)³² are just as much of a puzzle as trying to construct a ‘system of Roman law’.

So let us repeat once again: diversity of terminology does not settle anything. Dr Peter Candy rightly points out: “In a study first published in 1881, von Jhering described the apparent doctrinal problems thrown up by the *sedes materiae* as a ‘riddle’. For von Jhering, who was focused upon the interpretation of two especially problematic texts that I shall consider in more detail below, the ‘solution to the riddle’ was to recognize that the Roman lawyers made a primary distinction between yields and not between types of loan. Building upon von Jhering’s (and Cohen’s) insights, my basic proposition is that the Romans, just like the Greeks, had only the single conception of a loan for consumption (*mutuum*) that could produce either a maritime or landed yield (i.e., *faenus nauticum* or *usurae communes*, respectively). Put another way, for the Romans (like the Greeks) there were only loans for consumption (*mutua*), productive at any given time of either *usurae communes*

²⁷ See LEGE, J. *Kritik der juristischen Vernunft*. Baden Baden: Nomos, 2025, p. 53.

²⁸ *Verg. Georg.* 2.490: *Felix, qui potuit rerum cognoscere causas*.

²⁹ Polish scholar Leon Petrażycki rightly considered the first draft of the German Civil Code to be ‘a pile of paragraphs combined into a whole according to the headings of the Pandects manual’. Cf. PETRAŻYCKI, L. *Wstęp do nauki polityki i prawa [An Introduction to the Study of Politics and Law]*. Warszawa: Państwowe Wydawnictwo Naukowe, 1968, pp. 220–221. See also: GIERKE, O. *Das Bürgerliche Gesetzbuch und der Deutsche Reichstag*. Berlin: Karl Hermanns Verlag, 1896, p. 7, 36.

³⁰ Cf. CANDY, *Ancient Maritime Loan Contracts*, p. 152: “The ancient Greeks viewed the world of trade through the prism of a constellation of concepts that structured their understanding of commercial activity.”

³¹ C. 4.33. However, this was enough for Justinian’s compilers to give one of the titles of the Digests this name. Cf. D. 22.2 (*De nautico fenore*).

³² Cf. LITEWSKI, W. *Bemerkungen zum römischen Seedarlehen*. In: *Studi in onore di C. Sanfilippo*. Vol. IV. Milano: Giuffrè, 1983, pp. 381–397.

(the equivalent to the Greek concept of *tokos eggeios*) or *faenus nauticum* (a direct translation of *tokos nautikos*).³³

After presenting convincing evidence, the author shares his greatest discovery with the reader: “For a long time the idea has persisted that the maritime loan was a special type of *mutuum* that had its own place in the Roman contractual system. In fact both the Greeks and later the Romans possessed only the single conception of a loan for consumption (*daneismos*, *mutuum*), that could be productive of either a landed or maritime yield. The evidence suggests that the earliest use of maritime as an adjective was in connection with written contracts (*syngraphai*) made in connection with the long-distance trade in commodities. The defining feature of these contracts was the inclusion of a condition *salva nave* that suspended the debtor’s obligation to repay to the safe arrival of the ship at its destination. Since the yield produced by a loan made on such a *conditio* was not susceptible to denomination by time from the outset, this produced a contrast between maritime yields and landed interest, the latter susceptible to denomination by time. It was only in virtue of the type of yield generated by the capital that the loan fell to be described as either maritime or landed.”³⁴

Conclusions

I have no doubt that Dr Candy’s work opens up a whole new direction for discussion on maritime loans in antiquity and the relationship between law and economics. All the more so because neither the collective monograph *Diritto romano e economia. Due modi di pensare e organizzare il mondo (nei primi tre secoli dell’Impero)*³⁵ nor the compilation *Handbuch des Römischen Privatrechts*³⁶ (intended to replace Max Kaser’s textbook) can not serve as a source of inspiration in this regard. In the former, the topic of maritime loans is... absent (*sic!*). In the latter, the views formulated especially in the first half of the 20th century were considered binding (needless to say, they were inspired by earlier visions, which I mentioned above).

Leaving the comfort zone requires courage, that is true. However, it is worth making the effort and trying to follow the same path that Peter Candy took. In Central Europe, we often and willingly quote the works of English authors on Roman law, but when it comes to following their example, a problem arises. The force of habit and peer pressure remain too strong. This is particularly true of those who still remember the ‘two emperors’ (Franz Joseph and Wilhelm II), with the help of which university Sanhedrins assess the ‘scientificity’ of publications by representatives of the younger generation of scholars. I recommend Peter Candy’s monograph to anyone who cares about finally starting to express themselves in a mature and independent way.

³³ CANDY, *Ancient Maritime Loan Contracts*, p. 161. See also: JHERING, R. Skizzen. In: *Gesammelte Aufsätze aus den Jahrbüchern für die Dogmatik des heutigen römischen und deutschen Privatrechts*. Vol. III. Aalen: Scientia Verlag, 1969, p. 214.

³⁴ CANDY, *Ancient Maritime Loan Contracts*, p. 182.

³⁵ Cf. MANTOVANI, D. – LO CASCIO, E. (eds.). *Diritto romano e economia. Due modi di pensare e organizzare il mondo (nei primi tre secoli dell’Impero)*. Pavia: Pavia University Press, 2018.

³⁶ Cf. FARGNOLI, I. *Condictio* aus Darlehen (*mutuum*). In: BABUSIAUX, U. – BALDUS, C. – ERNST, W. – MEISSEL, S. – PLATSCHEK J. – RÜFNER, Th. (eds.). *Handbuch des Römischen Privatrechts*. Vol. I–III. Tübingen: Mohr Siebeck, 2023, pp. 1910–1911. See also: KASER, M. *Das römische Privatrecht*. München: C. H. Beck, 1971, p. 409.