religions

MDPI

Article

Law of Contracts in Late Antique Persia

Janos Jany

Faculty of Humanities and Social Sciences, Pázmány Péter Catholic University, 1088 Budapest, Hungary; jany.janos@btk.ppke.hu

Abstract: The article is about private law contracts and their social, economic, and religious background in Sasanian Persia (224–651) before the advent of Islam. After a brief introduction to the sources and research method, the paper examines Zoroastrian moral teachings about obligations in general and contractual obligations in particular. To emphasise the religious background, the Avestan hymn to Mithra and the Vendidad are scrutinised which have a classification of contracts and a pyramid of sanctions for their breach. The second part of the article analyses private law contracts, which can be found in the Sasanian Law Book called Madigan I Hazar Dadestan, such as sale, barter, donation, lease, and loan, together with legal guarantees such as surety and pledge. In addition to legal dogmatics, attention is also paid to gaps in the law and the opportunities they provide for parties to achieve unlawful ends with legal means, as well as the prudence of Sasanian lawyers and how they stopped such abuses of the law.

Keywords: Sasanian law; Zoroastrianism; ancient Persia; Iranian private law

1. Methods and Sources

Sasanian law is among the least researched areas of contemporary scholarship: Scholars of Iranian studies focus rather on history, linguistics, and archaeology, while legal scholars show little interest. Though academics still working in the field made valuable contributions to Sasanian law, the number of scholars and their scholarly work did not increase in the last decades. And those few who still dedicate their time and energy to Sasanian private law do not focus on ownership and the law of obligation but instead prefer some interesting yet problematic aspects of family law such as *stūrīh*, *chagar* marriage and *khwēdōdāh* (incest) (Bartholomae 1924; Carlsen 1984, pp. 103–14; 1988; Macuch 1985, pp. 187–203; 1991, pp. 141–54). As a result, this paper is "an exception among the exception" and can, therefore, hardly refer to a vast scholarly literature[1] but only to written sources, legal or religious, produced during the Sasanian and early post-Sasanian periods.

The rule of the Persian Sasanian dynasty (224–651) marked important changes in Iranian foreign, domestic, and religious policies. A confrontative foreign policy coupled with some victories against the Romans during the third century made the newly defined Iranian kingdom an unavoidable player in contemporary international politics.[2] Zoroastrianism and its newly established hierarchical priestly organisation received generous support from the dynasty in exchange for providing legitimacy and a political theory that came to a particular expression in the so-called twin theory, according to which state and religion are twins born from the same womb and never to be separated.[3] This strong cooperation between state and religion was further reinforced as a reaction to the decision of the Roman emperor Theodosius, who elevated Christianity to the status of a state religion (380, 391. C.E). In Sasanian Iran, law was a territory for both the state and the Zoroastrian clergy. Though it was the king who made the final decisions, he had the chief magus at his disposal as his legal advisor ex officio, who not only provided good advice but also made sure that judgments did not diverge from Zoroastrian law and ethics. There were, therefore, both royal and ecclesiastic courts, the latter judging matters of criminal law and ritual purity.

check for updates

Citation: Jany, Janos. 2024. Law of Contracts in Late Antique Persia. *Religions* 15: 252. https://doi.org/10.3390/rel15030252

Academic Editor: Klaus Baumann

Received: 8 December 2023
Revised: 10 January 2024
Accepted: 7 February 2024
Published: 20 February 2024

Copyright: © 2024 by the author. Licensee MDPI, Basel, Switzerland. This article is an open access article distributed under the terms and conditions of the Creative Commons Attribution (CC BY) license (https://creativecommons.org/licenses/by/4.0/).

Secular royal courts proceeded in private law matters; at least, this is what we can infer from the cases that have reached us.

The best way to study the law of contracts is to consult the law codes of private law or some compendiums (private or official) of customary laws. To our misfortune, no such texts exist now, and we do not know whether any of them were ever produced or not. If there were such collections, they would be lost to the last world. A surviving document produced during the Sasanian period would also be extremely helpful to see laws of contract in their "Sitz im Leben" but only a single contract has reached us, which is, sadly, not about a business transaction but about a marriage agreement (MacKenzie 1969, pp. 103–12).

In the absence of such texts, the only legal source that has reached us is a compendium of hundreds of judgments called Mādigān I Hāzar Dādestān (MHD + A) produced, most probably, in the last decades of the Sasanian rule. The text is as informative as confusing and challenges its students with some problems that are hard to resolve. To begin with, the texts have come down to us only in fragments; that is, almost half of the text is missing. Next, there are sentences that can also only be read in fragments, and thus we do not know the end of a given paragraph. But the hardest challenge is the interpretation of the text, which is very tarse, written in a style that was clear for the contemporary audience but certainly not for us. Sometimes we know only the judgment but not the case to which the judgment was related. In other cases, the facts of a lawsuit were given only sporadically and insufficiently, and we had to use our imagination and common sense to fill the gaps. Here is just one example: "if he says I give this item to you": The situation is clear to the point that someone gives a material object to another person, but we do not know whether this action is part of a barter, a sale or a lease agreement, a rent, or a pledge. In some fortunate cases, the legal situation is clear through further studying the given paragraph but there are also cases in which we are left in darkness. In brief, even reconstructing the text and the cases to which the judgments refer to is a painstaking and long work. It is a small wonder that the first editor of the text, the excellent German scholar Christian Bartholomae, only edited some fragments (Bartholomae 1910, 1918–1923) and it took almost two decades for Maria Macuch to edit the complete text with commentaries, a groundbreaking work that makes further research possible.[4]

Next to the MHD + A is the Shayast ne-shayast, which contains some additional references to legal matters, though the work concentrates primarily on ritual law in a very hair -plitting manner, which makes it an excellent source material for the students of Zoroastrian ritual law and practice (Tavadia 1930; Mazdapur 1990). The Avestan Nask called Vendidad (Law against the demons) (Darmesteter 1895), a somewhat confusing text about ritual purity and pollution, also contains legal material, some of which can be useful for the study of the history of private law. Vendidad is one of the Nasks that were classified by Zoroastrian scholars as legal, but we should not overinterpret it: The text has some legal cases in a casuistic manner about non-interrelated subjects such as some crimes, ritual obligations, and a few words about contracts, but it is not a law code in any sense. In addition to these difficulties, we should also bear in mind that the Vendidad goes back to remote antiquity and has very archaic material that might be irrelevant to a complex society, as the Sasanian clearly was, compared to the tribal world of the Avestan people.

The meagre number of our sources and their content is a huge constraint to finding the proper way of study and interpretation. In fact, the only method that has been left for us is induction, a problematic method to pursue with a huge number of pitfalls about which both Muslim and Common law legal scholars have a lot to tell us. Despite this, with no other option left, we have to pursue this way and take the risk of ending up with an erroneous inference. Induction is sound when it is based on clear facts and norms upon which some general statements could be pronounced. We are, however, far from this in the MHD + A, not only because, more often than not, the text is not clear enough, but also because we do not know the aim or audience of the text. Was it a teaching material to educate young professionals? If this might be the case, the legal cases and the judgments related to them were, we may assume, routine cases upon which a generalisation is in order.

By contrast, if the MHD + A was written for colleagues and high-ranking professionals about hard cases, then the judgments were exceptions that should not be generalised in order to prevent a clearly false result. The assumption that the work was intended to be a teaching material is backed by the numerous hypothetical cases, starting with if (*ka*), in which protagonists are named Farrokh and Mihrēn consistently throughout the entire work. The compiler thus used the case method to point at some neuralgic points of private law and their solutions. Taken as a whole, we cannot decide: Whilst there are clearly hard cases and judgments that seem to be rather the exception and not the rule, the whole work is not only about hard cases. Therefore, separating the hard cases from the routine cases is left to the modern researcher.

In order to arrive at a proper understanding of Sasanian contract law, we have to analyse the source material with the help of genuine legal terms; otherwise, we would misinterpret the inherent legal logic of Sasanian lawyers. The common method of legal comparatists to use Roman or Common law terminology and approach to describe legal cultures outside their scope would clearly be a failure concerning Ancient Persia and should be avoided.

Bearing in mind all these theoretic, linguistic, and methodical problems, the time has come now to turn our attention to the social and religious background of private law contracts.

2. Social and Religious Background of Contracts

To a modern mind, contracts are just boring paperwork for lawyers and bureaucrats written in a language hardly intelligible for non-professionals. This is why we leave it for them if the contract is of importance without recognising that we make plenty of contracts when we go shopping in a grocery store. Whilst doing these routine deeds, no one thinks of God, the transcendent order, or divine punishments.

In pre-modern societies, the situation was completely different. The number of contracts was reduced considerably, and such rare occasions were managed with extreme care. Business transactions about real estates were very few, if any, and outside of our everyday routine. Markets were organised on a regular basis in some places devoted to such a purpose on a particular day of the week (such as in Dushanbe, where markets were held on Monday, a practice that gave the name to the town). At such markets, barter was common since monetary economics was hardly the norm in remote parts of the realm, inhabited mainly by peasants, pastoralists, and some craftsmen. At such markets, sale and barter were with limited risks since the change of items was effectuated immediately and in situ.

The situation was, however, more dangerous when the contract was stipulated for services postponed to a later date, e.g., in a contract according to which a craftsman has to produce a particular object in the future. Here, the difference in time between the agreement and the realisation of the obligation poses a real danger for the parties since a guarantee is missing, though it may be extremely needed. To understand the situation, we have to bear in mind that there was neither a police force nor any other legal institution to rely on for help in case of a breach of contract. In the absence of social and legal institutions, the only guarantee for the fulfilment of contractual obligations was looked for in the divine order.

The ancient Iranian pantheon was, in fact, supportive of such pleas since one of the most venerated deities, Mithra, it was the lord of contracts. The name of this *ahura* (Lord) is subject to controversy and scholarly debate for long decades: Some believe it means friendship, while others interpret the name as contract. It was the German scholar Bartholomae who interpreted Mithra as contract, promise, and alliance already in the 19th century in his Altiranisches Wörterbuch, but it was the French scholar Meillet who convincingly argued that Mithra is indeed the personification of the power inherent in contracts, pacts, and covenants (Meillet 1907, pp. 143–59). According to his reasoning, in archaic times, contracts were a religious act at the same time, accompanied by ceremonies and rituals, and concluded with the help of some formulas (*mantra*), the wordings of which

were already fixed. Meillet's interpretation was followed by authorities in the field such as Thime, Gershevitch, and Boyce. The fact, however, that the same word means friend in Sanskrit, to which there exists a Persian equivalent (*mihr*), led some Iranists such as Herzfeld to think that Mithra's name means rather the friend and not the covenant.[5] There is neither need nor place here to enter this debate in detail now, but Meillet is certainly right in his reasoning, backed by, among other things, early Roman private law, where stipulations were also religious acts.

What is important now is that Mithra was the guarantor of promises punishing fraud with its divine force. This is because Mithra was not only the lord of covenants but also the lord of order and the truth (*rta*/*asha*), one of the most important Indo-Iranian concepts, who was venerated with a long and archaic hymn dedicated to his praise (Gershevitch 1959). Old Iranian *asha* stands for every kind of order, including cosmic order, moral order (the truth), and sacrificial order, which is very important among Indo-Iranian tribes. Here, the dual functions of being the lord of covenant and that of the moral order come together into a single logic because a covenant is at the same time part of the existing social and moral order. A god responsible for any kind of order is, obviously, the best candidate to supervise covenants and their fulfilment. It comes as no surprise, therefore, that a breaker of a contract is called *mithro. Druj*, being a foe to both his contractual partner and Mithra, the lord of covenants. To be an enemy of Mithra was by no means a good point of departure because Mithra was also a judge making decisions about human deeds and, as such, a punisher of faithless persons who do not fulfil their obligations. In this capacity, Mithra was a wrathful lord who also became a war god fighting, alongside the righteous Iranians against their enemies. This punitive aspect of Mithra is connected to his association with the Sun (though Mithra was never a Sun god), which, being above the heads of humans, can observe all of their deeds. This dualism came together through the symbolic force of fire, as it was a long and widespread custom to swear contracts in the presence of fire, symbolising the Sun and representing *asha*, cosmic and social order, supervised by Mithra. When stipulated promises were accompanied by oaths, these had to be taken while drinking a liquid containing sulphur. *Sugand khordan* also means taking an oath in modern Persian, an expression that goes back to such remote religious and legal thinking, resting on the belief that the sulphur would burn a false testifier from within as a punishment for swearing falsely and breaking the contract. By contrast, Mithra was benevolent for *ashavans*, that is, persons who respected the proper order and behaved accordingly. Mithra was invoked as the giver of life who brings rain and makes plants grow, notably in pastures where nomad Iranians grazed their herds during Avestan times. His standard epithet in his hymn: *vouru.gaoyaoti* (with wide pastures) reflects the importance of green pastures to Iranian nomads and, at the same time, the danger of losing them as a consequence of being a *mithro.druj*.[6]

Fulfilling obligations and promises is closely linked to telling the truth, an ethical standard the importance of which cannot be overemphasised in Iranian culture. This central role of telling the truth seems to be independent of religions Iranians followed during their history and can be seen as something above religious convictions, deeply rooted in an ethical standard since it is not only stressed in the Avesta but also in Sasanian wisdom literature[7] and early Islamic mirrors for princes (such as the Qābusnāme).[8]

To sum up, moral standards, religious convictions, cosmic and social order, coupled with divine punishment or benevolence, persuaded Iranians of Antiquity not to breach their contracts, to deceive their partners, or to swear falsely. In order to help the parties arrive at the legal consequences they really wanted and to root out misunderstandings concerning their stipulations, ancient religious life came to their rescue with the help of formulas. To speak in formulas, that is, reciting previously fixed texts word for word, was by no means alien to ancient religions, producing a great deal of hymns in the praise of gods recited during festive occasions. The same logic was applied to secular festive occasions when contracts were stipulated and reinforced by oaths taken by the parties. Though the content of the contracts was defined by the parties, they were not free to establish their

wording. By contrast, there were fixed formulas, each with a particular legal meaning and consequence. These formulas differ from each other slightly; only some words were changed or the same words were put into different word order in the sentence. Though the differences might seem irrelevant from a linguistic point of view, their legal consequences were, however, enormous. This is why it was so important to choose the proper formula during stipulation: If the parties chose an improper formula, it was their failure because legal consequences were attached to what they stipulated (said, promised) and not to what they truly wanted. This is not peculiar to Indo-Iranian tradition; the same formalism can also be seen in early Roman law. This is why the MHD + A is full of references to private law formulas and explanations of their legal consequences. This also proves the archaism of Sasanian private law, which did not break with the ancient formalism of contracts but followed the same logic after long centuries of legal development.

Despite the dominance of formulas, Sasanian private law diverged enormously from the archaic Iranian understanding of contracts, preserved in the fourth Fragard of the Vendidad (Darmesteter 1895, pp. 34–39). Accordingly, there were six types of contracts, a systematisation that rests on the objects of the contracts and their values. The first type is that of the word contract, which reflects the obligation that can be fulfilled by using words, that is, speech. This is either a commission by which one party is obliged to represent the other party in some process (*jādag-gōw*) or a learning agreement between a teacher and his disciple (mainly to teach religious subjects). The second contract is called the hand contract, reflecting, probably, the hiring of a working force, using the hand to produce something by a worker or a craftsman. No exact value was attached to these two types of contracts, though it is clear from the texts that these two had some material value.[9] The next four types of agreements are, by contrast, defined by their value and placed in a hierarchic order. The third contract is concluded for the value of a sheep, the fourth for the value of an ox, the fifth for the value of a man, and the sixth for the value of a real estate (Fragard IV:2). These contracts reflect, of course, the world of an agrarian community where sheep are plentiful and cheap and a piece of land is the most desired object of ownership, with a value hardly affordable by the majority of people. From a legal point of view, it is a strange typology since it rests on the economic value of the object but not on its legal content: One can sell a sheep (or anything else with the same value), borrow it, give it as a pledge, etc. As a consequence, we are not informed about the legal cause of the contracts, only about their value.

By contrast, we learn a lot about the consequences of breaking these agreements, an immoral and illegal deed. Agreements must be kept irrespective of the other party at all circumstances, be it a righteous follower of the Iranian religion or a deceitful person, because the legal obligation and its fulfilment stand for both, a clear moral standard mentioned at the very opening of the hymn to Mithra (1.2): Never break a contract, O Spitamid, whether you conclude it with an owner of Falsehood, or a Truth-owing follower of the good religion; for the contract applies to both, the owner of Falsehood and him who owns Truth (Gershevitch 1959, p. 75).

Debt was regarded as a very bad thing, and this is why being in debt was considered the worst after lying, a widespread belief that also reached the Greek historian (Herodotus I: 139) and was repeated in Sasanian wisdom literature. Having in mind this principle, it is clear now why the chapter on contracts starts with a refutation of debt, saying that whoever does not restore a loan to his debtor is a thief and a robber in every moment until he makes use of his fellow's property (Fragard IV: 1). Astonishingly, however, no penalty is attached to such unlawful behaviour.

By contrast, the punishment of persons who break the six kinds of contracts is enumerated precisely. Before entering details, two preliminary notes are in order. One is that sanction was understood both in a mundane and a transcendent way, leading to punishments in both worlds. The second is that sanctions rested on collective liability; that is, in addition to the offender, his relatives were also considered liable, up to nine degrees. Accordingly, even the breach of the mouth contract threatened the party and his

relatives with three hundred years in Hell, a huge number of years that are multiplied by six hundred, seven hundred, eight hundred, nine hundred, and one thousand, respectively. In addition to long years of suffering in Hell, monetary compensation and corporeal punishment (stripes) were also defined in a completely unrealistic number, corresponding to the number of years in Hell, ranging from three hundred to a thousand.[10] This archaic concept of collective liability was later reduced, and there is no trace of it in Sasanian private law.

Numbers were used as symbols to express abstract constructions and a hierarchy of values; this is why they should not be taken literally. The Hymn to Mithra again proves this when classifying ithra's to be understood here, respectively, as contracts or bonds of social cohesion.[11] Accordingly, twentyfold is the contract between two friends shouldering mutual obligations, thirtyfold between two fellow citizens, fortyfold between two partners, fiftyfold between husband and wife, sixtyfold between two fellow students, seventyfold between disciple and teacher, eightyfold between son-in-law and father-in-law, ninetyfold between two brothers, hundredfold between father and son, thousandfold between two countries, and ten-thousandfold is the contract of the Mazdayasnian religion.[12]

3. Contracts in Sasanian Law

According to the testimony of the MHD + A, Sasanian lawyers remained unimpressed by the typology in the Vendidad, though they certainly were aware of it, for at least two reasons. First, the Avesta was known during the Sasanian period (irrespective of the date of its composition, a subject to debate among scholars of Zoroastrianism), as was the Vendidad, which was a legal Nask of it. What is more, a Pahlavi commentary was also attached to this Avestan text. Second, legal scholars belonged to the literate elite of Sasanian society, whose culture was interwoven with religious doctrines, laws, and scholarly debates. Though not all of the legal professionals were priests, nevertheless, leading authorities were important figures of contemporary religious life, while the legal advisor to the king was ex officio the chief magus. It was just unthinkable for jurists not to be familiar with the basic notions and literature of Zoroastrianism. Sasanian lawyers were not secular professionals but part of an elite that administered the religious and legal life with strong contacts to body politics.

We can only speculate why Sasanian lawyers neglected the frame of contracts elaborated in the Vendidad. The reason might be, most probably, that it was no longer suitable for a more sophisticated society and economy, given the enormous differences between tribal Avestan society and the complex social hierarchy of the late Sasanian period. Though the economy of remote areas might not be very different from the archaic agriculture of the Avestan people, here too, nomadism and animal husbandry were reduced and replaced by a sedentary way of life coupled with growing plants. As a result of such changes, the archaic contracts were no longer in use, and new contracts were developed in their stead to accommodate to the new, imperial situation, equipped with a writing system, administrative institutions, courts, judges, and a more sophisticated monetary economy.[13] Unfortunately, the text of the MHD + A seldom defines the object of dispute, evidently because it was the legal problem that was important and not the object which was the subject of controversy. This is why we can find the term *khwāstag* (thing) so frequently, which can be, of course, anything. In those rare cases in which such a *khwāstag* was referred to more precisely, these turned out to be objects of agriculture such as a fruit, a palm tree, or a piece of land.

Sasanian legal experts made the huge step to change the basis of the taxonomy of private law contracts from the value of the object to its legal content. As a result, it was no longer a point of interest that a contract was concluded for the price of a sheep, ox, etc., but the legal cause was highlighted instead. This is why we can speak about contracts of sale, rent, donation, etc., categories that were missing from the elder material. These individual contracts were, however, not put into a larger framework of typology, and this is why we cannot speak about a new system that replaced the old one. There is no hint to any systematisation or hierarchy of contracts making the break with the Avestan system complete.

It is striking, by contrast, to realise the overwhelming importance of legal formulas as remnants of an archaic legal culture, the underlying principles of which remained untouched. Evidently, the language and the words used in these formulas were changed from Avestan to Middle Persian but the framework of legal thinking, that is, the use of fixed formulas instead of allowing the parties to express their will freely as they wish, continued. It was, therefore, a matter of course that a considerable part of the MHD + A was dedicated to the analysis of the formulas, highlighting the nuances of their wording and the legal consequences attached to them.

Formulas concentrated on certain legal topics such as stipulating conditions and timing for rights and obligations. Conditions stipulating in the contracts were either suspensive (MHD 109. 13–15, MHDA 8. 7–12, 23. 15–17) or resolutive (MHDA 18. 2–7, 32. 13–15, 15–17, 33. 3–7), circumstances that were important to define the time frame when the contract was operative. When a suspensive condition was stipulated, the contract did not enter into force until the stipulated condition was realised (if Zanbud bears a child) (MHDA 23. 15–17). A resolutive condition, by contrast, terminated the agreement between the parties if the condition specified in the contract happened to occur (this thing shall belong to you until my return from Babylon) (MHD 72. 5–10). If the stipulated condition did not happen at all, the deaths of the parties definitely terminated the contract (MHDA 32. 13–15).

If more conditions were specified, they were either conjunctive or alternative, depending on the formula used in the contract. When conjunctive conditions were stipulated, it was necessary for every item to happen; in alternatively formulated conditions, only one condition was necessary to be operative. It depended only on the nuances of the wording of formulas, whether it was conjunctive or alternative; sometimes only the word order was the main argument to settle the controversy (MHDA 17. 13–17). There was a separate chapter in the MHD + A devoted to contractual formulas in general and conditional formulas in particular (MHDA 18. 7–12, 18. 15–19. 2, 2–6, 6–9, 9–13, 13–16, 24. 1–9), but we can face the same problem in other chapters. too (MHD 56. 12–15). One has the impression that these formulas were either very widespread and common or, by contrast, they were subject to controversy, which is why the compiler devoted so much space and energy to elucidating them.

In addition to specifying conditions, timing was another method to define the time frame of the contract during which it was operative. The definition of the exact duration of the contract was also expressed with formulas and this is why the same chapter treats such formulas to some length. Timing was defined for a certain or an uncertain period of time. In the latter case, usually the formula "until my death" was used with the meaning that the beneficient was entitled to use a certain object until the death of its owner. It was also common to define periods of time for contractual obligations such as every second year, a legal practice concerning the appointment of *stūrīh* (MHD 69. 3–9). In addition to these practices, contracts were operative for a calendar year with formulas such as "in the course of this year," (MHDA 23. 7–11, 11–15) or for a longer period, the end of which was clearly fixed (after ten years) (MHD 17. 4–5, 20. 11–13, 30. 1–3). Sometimes exact dates were fixed very precisely, such as on the day of Wahman or the day of Ohrmazd (MHD 57. 15; MHDA 18. 13–16). Such techniques to fix the time frame of the contracts were used in order to specify the end of the contractual period but not to start it, though there are also some examples of this (MHD 57. 14–16).

Transfer of rights was accomplished either *pad abarmānd* or *pad dād*, a very important distinction made by Sasanian lawyers. *Pad abarmānd* was the transfer of rights through inheritance, which was regulated by the rather complicated laws of inheritance. For non-hereditary transfer of ownership, *pad dād* contracts were used, such as donation, sale, barter, and dowry as part of the marriage contract. Contracts about rent and lease were also considered *pad dād*, which leads one to the conclusion that every contract was classified in this category, while inheritance was separated because it is not a contractual obligation between the testator and his heirs.

The designation of these contracts reflects the very act of giving (*dād*); that is, the *khwāstag* would be given from one party to the other, the contract being operative between living persons, and the transfer of rights is not *pad abarmānd* in which one party is necessarily dead. On the other hand, *pad dād* contracts were consensual contracts; that is, they were in force when the parties agreed upon the conditions, irrespective of the time when the object was given to the recipient, which might differ from the time when the agreement was concluded.

3.1. Transfer of Ownership

For a transfer of ownership, sale, barter, and donation were at the disposal of the parties. This, of course, comes as no surprise because these are rather fundamental types of contracts present in every society. The MHD + A has a great deal of references to these contracts, though it is impossible to determine in some cases which contract was truly meant because there are short formulas that can be applied to all of them in the absence of more information. With this, we are back to the importance of legal formulas, which was clearly the case for these contracts.

Let us start with donation, which is pretty well documented in the MHD + A. Donation was a consensual contract; that is, it was binding at the time when the parties agreed upon it, irrespective of the time when the object was given to the recipient (usually a very late date) (MHDA 11. 12–17). Object of donation could be anything, movable property such as jewellery of gold and silver (MHD 17. 16–18. 6) or real estates, but the beneficiary had to accept the offer. If a real estate was given, all documents related to the property had to be given to the beneficiary, together with the movable goods and the slaves working on them (MHD 18. 6–7, 9–14, 19. 1–3, 4–8). On the other hand, Sasanian law limited the freedom of the donator because only objects belonging to the *handōkht i khvēsh* could be given away. This is an important point because *handōkht i khvēsh* was the designation of goods that were outside the inheritance of the donator and the family wealth, which was impossible to donate to anyone. Only *handōkht i khvēsh*, that is, personal property which was acquired by work or business transaction but not as a result of inheritance, was free for donation. But there was, seemingly, an exception to this rule when the inheritance was divided between the heirs, and so each individual heir received his/her own share. The legal practice of the courts (*kardag*) in late Sasanian times made no objection against the donation of such limited shares, seemingly being regarded as part of the *handōkht i khvēsh* and thus free for transactions. But in such a case, too, there was a limit to donation because objects necessary for the well-being of wives and children had to remain in the hands of the family irrespective of the will of the donator (MHD 30. 10–11, 31. 4–6). Such a ruling was, evidently, only important for objects of considerable value, such as a real estate. This is why it was crucial for legal practice to defend women and children even against fraudulent donators. The object of donation enriched the *handōkht i khvēsh* of the beneficiary, who could dispose of it as he pleased, or in the absence of any decision, it was added to his bequest when he passed away.

There were a lot of formulas used to determine when the donation entered into force (MHD 17. 4–5). In the majority of the cases, a period of 10 years was specified, a long period indeed, which occurs very frequently in the MHD + A, not only in cases of donation but also in cases of family law such as marriage contracts, etc. Here again, a modern reader can only record the facts, but without further evidence, we cannot know the reason for sure as to why the period of 10 years was so important. And it was a long period indeed if we think about the high mortality rate and the short period of life expectations. The importance of this consideration becomes immediately clear when we recall that a promise of donation could not be inherited; that is, if the beneficiary died within the period specified (10 years), not only the beneficiary but also the heirs lost the object that remained in the family of the donator (MHD 20. 11–13). Should, however, the beneficiary die before the proclamation of his/her declaration of acceptance, it has to be assumed that the beneficiary accepted

the donation; that is, that the thing was conveyed on the basis of a presumption (MHD 19. 16–20.2).

There were some formulas in practice that were used for donation with the same legal effect.[14] The beneficiary had to accept the donation; otherwise, the act was null and void (MHD 5.3, MHDA 8. 7–12), but it was impossible to change one's mind and withdraw the declaration of acceptance later (MHD 17. 5–9). Sasanian law protected minors and women against cheating guardians (*sālār*) because donations given to minors and women were effective irrespective of the rejection of the guardian (MHD 19. 7–10), an understanding also backed by the opinion of legal scholar Mardag (MHD 19. 12–16). The declarations of both the donator (*kāmag*) and the beneficiary (*sahishn*) were put in writing. Formulas used in these declarations were specified with utmost care because there were formulas according to which first the declaration was handed over, followed by the object, while there were other formulas in the opposite sequence; that is, the object was given first, followed by the written declaration (MHD 68. 12–14; Macuch 1993, p. 462).

It was also customary to define the market value of the donation and not its very object. In such a case, the beneficiary was allowed to select things from among the wealth of the donator up to the limit specified in the document of donation. In such a case, the values of the objects selected were multiplied in order to arrive at the value given in the document of donation (MHD 66. 6–8, 68. 6–8). If the beneficiary selected objects with less value than specified by the donator, it was his/her decision to not make the donation void (MHD 68. 9–12). To complicate matters, the right to select things out of the wealth of the donator could be transferred to a third party (MHD 66. 10–13, 66.17–67.2; MHDA 36. 12–16), too, who made the selection as the representative of the beneficiary. Should the representative fail to do so, he was liable to the beneficiary up to the limit of the value of the donation (MHD 68. 14–17; Macuch 1993, p. 462). The value of the object was specified according to the time when it was in fact handed over and not according to the value when the agreement had been reached (MHD 53. 12–13, 55. 3–7, 54. 15–17) though there was some disagreement (MHD 54. 17–55. 1). This point was only important when there was a long period between the declaration and the transfer of the object itself, which is a clear reference to inflation, save the value of the thing grew irrespective of market conditions (the slave child grew to an adult). If the period was long enough, the beneficiary was entitled to the fruits (profit) of the object donated (MHDA 8. 7–10, 10–12, 11. 12–15; Macuch 1981, p. 127), too, but we can also observe disagreement since legal scholars Yuvān-Yam and Vahrāmshād argued against such a view (MHDA 11. 15–17). It was, on the other hand, indisputable that the donator was liable for any damages—including vis maior—that occurred between the declaration and the handing over of the object (MHD 72. 3–5).

Declarations of donations could be made either orally or in writing. If the declaration was put in writing, it had to be sealed and could not be later modified (MHDA 10. 11–14). For an oral agreement, three witnesses were required, but only one of them was the chief magus whose testimony was accepted without further witnesses (MHDA 10. 11–14). If the thing donated was not in the possession of the donator at the time of declaration, it did not make the donation void. By contrast, the donator had to acquire the thing until the time when he/she had to hand it over to the beneficiary. Should a donator fail to acquire the object, he/she had to pay the monetary value of the thing to the beneficiary (MHDA 8. 13–9. 1, 9. 5–7). The beneficiary was entitled to claim the object when it was due to him/her and should the donator fail to give it in due time, the donator was obliged to give a pledge (MHDA 9. 4–5). If the donator changed his mind and rejected handing over the object, forfeit money (*tāvān*) was to be paid to the beneficiary (MHD 71. 9–12, 12–17).

Concerning sale, we are left in the dark on a variety of subjects relevant to such a contract. It is indeed remarkable that there are so few references to sale, compared to donation. Due to the numerous philological problems and the few references, it is next to impossible to separate barter from sale in the MHD + A. This is why I will treat them together in what follows. But Sasanian lawyers clearly distinguished barter from sale and developed technical terms to designate them: *Guharīg* (barter), *frōkhtan* (to sell). According

to the Dēnkard, an encyclopaedic work of the early post-Sasanian period encapsulating everything related to Zoroastrianism, the Avesta contained a chapter devoted to barter (*Dar i guharīgistān*), but not to sale (Dēnkard, 737.6–738.14, cited by Perikhanian (1983, p. 672)). This is, of course, no surprise, since barter is the most archaic form of contract, but it is a bit astonishing that during late Sasanian times (when the MHD + A was put to writing), the monetary economy (a precondition for sale to outnumber barter) did not make its breakthrough against more rudimentary conditions. In this regard, the rural economy was very different from the business transactions of merchants or the population of the capital, who relied more on sale than barter.

Objects to sell were restricted—similarly to donation—to those that belonged to the category of *handōkht i khvēsh*; that is, things that were not a part of family bequest. In addition to this general rule, there was also a particular prohibition: It was impossible to sell a Zoroastrian slave to a non-Zoroastrian person. This law was taken seriously since not only was such a contract null and void, but parties to the agreement were considered thieves and were therefore subject to criminal procedure (MHD 1. 13–16), save that the seller did not know that the buyer was not a Zoroastrian. Debates concerning such cases were proceeded at the ecclesiastic court of the *rad* (MHD 1. 13–16), which means that secular royal courts, otherwise competent in private law affairs, were pushed to the background in order to make sure that it was the clergy that judged all cases relevant to religion. We are, sadly, left in the dark concerning perhaps the most important question: what happened to the slave?

Parties of the contracts were persons of full legal capacity, that is, adult males. It was the guardian (*sālār*) who made agreements to the benefit of minors and women, though there was a possibility for the latter to enter into an agreement on their own right. Seemingly, women could make contracts, something that was against the strictly patriarchal understanding of the role of the sexes in Sasanian society. This empowerment of women was, however, restricted, and their husbands entertained the right to cancel the agreement made by their wives within three days. If the pater familias (*kadag khwadāy*) wanted to withdraw after three days, the other party was not obliged to accept this (MHDA 12. 3–5, 5–7).

This law was in accordance with a seemingly general rule about a three-day period granted for the parties to finalise their agreements. If the seller made his proposal to sell a thing under particular conditions defining its price, quantity, etc., the seller remained bound to his offer for three days. If the buyer accepted the offer within these three days, the seller had to sell the object without modifying any of the conditions he had set previously. The buyer also had a three-day period to decide whether to accept or reject the original offer (MHDA 11. 17–12. 4).

Concerning barter, agreements were concluded either on equal value (*guharīn i rāst*) or on unequal value. The latter case was when the things exchanged between the parties were of different value. The profit in such circumstances was maximised at one quarter of the value of the things exchanged (Perikhanian 1983).

3.2. Transfer of Rights

To transfer certain rights without granting ownership to someone, lease and loan agreements were concluded. The most important objects of lease were slaves and real estate.

Lease agreements were put in writing in order to specify their object, the duration of the contract, and the rent to be paid. The lessor was not entitled to terminate the contract, save for the non-payment of the rent. The lessor was also prohibited from disturbing the lessee (tenant) in the use of the object rented (MHDA 25. 8–11). The rental period could be a defined or an undefined one (MHDA 33. 1–3), the latter terminating with the death of one of the parties at the latest (MHDA 33. 3–7). When the parties agreed on a defined period of time, it was specified in years. Rent was due at the end of each year, but the parties were entitled to agree otherwise (MHDA 25. 8–11).

Legal formulas were also important regarding leases, particularly in defining the rent and regulating the burden of loss between the parties. It was possible to regulate

these two issues in concert, a technique that was important in land tenure for agricultural work. Bad harvests and losses because of natural disasters are always neuralgic points in contracts relating to agricultural land because losses could be huge. It was, therefore, of vital importance to specify who pays for such damages. In contracts relating to arable lands, it was possible to make the rent dependent on the fruits of the land because usually it was the fruit that provided the economic base to pay the rent. If there was no fruit for any reason, tenants were in great trouble. If the amount of the rent depended on the quantity of fruit the land produced, it was the owner who took the risk because, in the case of a bad harvest, he stood there empty handed. By contrast, if the rent was separated from the fruits of the land, it was the tenant who took the risk for bad harvests and natural catastrophes such as draught, something that is not unusual in Iran. Such a construction was very risky for tenants, who could lose everything in the event of a bad harvest and could be sold off to slavery for their debt at the end of the day. Seemingly, there were no laws protecting tenants because parties were free to agree on any condition of a rent (MHD 72. 13–17) but it was crop-sharing that was usually applied (Altheim and Stiehl 1954, p. 171). Accordingly, the landlord and the tenant shared the profit/loss according to the ratio they agreed upon. Such a construction survived the Sasanian period and continued for long centuries up to modern times (Lambton 1953, pp. 26, 40).

There was a particular land tenure granted to equestrians, that is, soldiers of crucial importance in the Sasanian army, who were obliged to finance everything needed for their military service with the help of such lands (*pad ēmōzān*: for equipment). Such a land tenure was granted for a lifetime, at the latest, but was no object of inheritance since it remained in the ownership of the king, who could give the privilege to lease such a real estate to anyone else. Such a method to finance the army was by no means a novelty in Sasanian times, since there is proof of the existence of such a system already in the Achaimenid period, that is, centuries earlier. Such a land tenure was in fact a privilege since only persons registered in the record of equestrians were entitled to acquire it (*asvār-nibīg:* list of horsemen). The number of such parcels must have been huge since they were administered by a particular royal office called *dīvān i ōstāndārīh* (Perikhanian 1983, p. 660).

A loan was also a legal means to accelerate resources, though Zoroastrian religious ethics were against it, as we have seen above. Thus, a loan was lawful, though morally condemned, because being in debt robbed one of the possibility of deciding freely in certain matters, and this is why Persian sages emphasised their rejection of being in debt. Despite this, loans are relatively well documented in the MHD + A: Though only a short chapter was devoted to them, there are also cases of rent outside of this chapter. Unsurprisingly, the object of the loan was money, but slaves were also among the "things" taken on a loan. What caused headaches for Sasanian lawyers was the release of a debt and legal problems concerning non-payment.

A loan could be with (*vakht*) or without interest (*a-vakht*). If more people took the loan, it was very important to use the proper formula if the lender wanted to release the debt of only one of them. If the lender chose a particular formula specified for the purpose of releasing a debtor from a debt, then only the debtor specified in the document was released from the obligation. If, however, the lender was careless enough and did not use this formula but only granted them some release, then all debtors were released with an equal share and not only the one which the lender wanted to release (MHD 2. 14–16). This again shows the extreme dependency on formulas.

In addition to choosing the relevant formula, timing was also a crucial matter: If the declaration of release was announced before the payment of the debt was due, it was the debtor who was released from the obligation. If, however, the declaration followed the date when the payment was due, it was not the debtor but the guarantor who was released from the obligation (MHD 2. 8–10). Lenders were free to release guarantors from their obligations at any time, but if release was granted after the expiration of the deadline specified to delivery for the debtor, both the guarantor and the debtor were regarded as released from their obligations. Needless to say, such a declaration was unusual. and

this is why it had to be underlined by uttering the sacred words of Zoroastrianism (*pad sē gōvishnīh)*, encapsulating the ethical message of the religion: good thought, good word, good deed (MHD 2. 11–13).

Parties could also agree upon a forfeit money (*tāvān*) for any trouble. If requested lawfully, both the debt and the forfeit had to be paid (MHD 71. 12–17). In case of a dispute, both the payment and the release of the debt had to be proven by witnesses or an oath at the court (MHD 8. 15–16).

When there were more debtors and their share was not specified exactly, it was assumed by law that their shares were equal (MHD 55. 15–17). Debtors were not guarantors for each other's share by law, but they were allowed to make such a contract (MHD 55. 17–56. 5). This agreement was of importance if one debtor paid back the whole debt because he could claim the share of the others only when they stipulated this in the contract (MHD 55. 17–56. 5, 8–1). If a married couple took a loan, they were responsible for each other's share in the absence of a contract (MHDA 30. 10–12). This wise law was, seemingly, against fraudulent debtors who did not want to pay back their debt and wanted to hide behind the backs of their wives, who were persons of limited legal capacity and could not be brought to court without the consent of their guardian (husband). Fraudulent debtors, however, did not stop here and gave their wealth to their wives or close relatives as a donation in order to trick out lenders, who had thus no chance to claim back the debt from the wealth of the debtor. Sasanian courts, however, stood firm and protected the rights of the lenders: Accordingly, beneficiaries were also liable for the debt of the donator if the donation was given after the taking of the loan since bad faith was assumed with good reason in this case (MHD 30. 16–17). By contrast, if a donation was given to a wife and minors before the loan was taken, they were exempt from the liability for the debt (MHD 30. 14–16). And to close any gap in the law, it was declared that if a debtor gave donations to others who were not his relatives, these beneficiaries, too, were liable for the debt up to the value of the donation (MHD 30. 1–3).

Debtors who did not pay back the debts (irrespective of their good faith or fraudulent intention) risked a lot because they were regarded as thieves and treated accordingly. As we have seen above, this principle was stated in the opening sentence of Vendidad Fragard IV concerning the typologies of contracts. Vendidad did not specify the punishment of such fraudulent persons, but MHD + A did: they were punished with *drosh*, that is, branding, to leave a lifelong sign and warning on their bodies that they were fraudulent persons best to be left out of business agreements (MHD 3- 5–6; Macuch 1993, p. 66).

3.3. Guarantees to Contracts

Drosh was, of course, a final means and warning, certainly not part of routine business transactions. In order to secure contractual obligations in a less radical way, two methods were introduced: Personal surety and pledge. This seems to be a legal innovation, as there is no mention of it in the Avestan material. Such a development shows that legal life evolved to be more technical and less religious. Oaths taken to Mithra perhaps provided less guarantee in a more complex society where the number of contracts grew exponentially, compared to a pastoralist nomadic past. Parallel to this, private law became more sophisticated and technical. As a result, while ethical standards remained untouched, legal protection was elaborated in addition to moral requirements. At the same time, the new legal institutions seem to be problematic in detail, which is why they were subject to judgments in a comparatively large number in the MHD + A.

Surety as a form of contractual guarantee was, of course, not the invention of Sasanian lawyers, as it was part of the legal life in both ancient India and Mesopotamia. Contrary to the Roman understanding of surety, however, in these ancient Eastern legal systems, guarantors did not pay the debt instead of the debtor if the latter failed to do so but guaranteed that the debtor would in fact pay or appear in person at the creditor.[15] This obligation was later replaced by the liability of the guarantor to pay back the debt instead of the debtor when circumstances required it. The Middle Persian legal term *pad tan* (MHD

57. 12–14, 15, 17, 58. 9, 11, 15, 89. 2, Macuch 1993, p. 401) (with body) reflects this archaic understanding of surety, though in contemporary legal life guarantors were obliged to discharge, too. The transition from the archaic to the modern understanding of surety seems to happen exactly at the very end of the Sasanian period because we can also find some cases according to which guarantors did not have to pay the debt but were obliged to deliver the very person of the debtor to the creditor, and only in failing to do so did they have to pay the debt instead (MHD 58. 4–9, 72. 10–13). These cases show that both understandings of surety were in practice, and the more modern one was only a secondary means if guarantors were unsuccessful in delivering the person of the debtor to the creditor.

The required minimum content in a surety contract was the exact definition of the persons of the debtor, creditor, and guarantor, the amount of the debt, and the deadline of delivery (MHD 58. 4–9). Surety was a subsidiary obligation; that is, guarantors only had to pay if the debtor was unable to do so. This becomes clear from both a law cited in the MHD + A (MHDA 32. 4–5) and judgments from the same law book (MHD 56. 5–8). Delivery was to be requested from the guarantor only when debtors failed to comply, but the parties could also agree to the contrary, a case that was subject to debate for Sasanian lawyers (MHD 56. 13–57. 2). Irrespective of this controversy, debtors were sued first, followed by the guarantor only later (MHD 57. 1–2). But should the debtor become solvent during the process, the trial against the guarantor had to be stopped and continued against the debtor (MHD 59. 6–10).

Surety was sometimes stipulated in the contract of the loan itself. This was the case if more debtors lent money to the creditor and agreed to be guarantors for each other's share. With such a legal technique, debtors who paid the debt to the creditor could claim the share of their fellow debtors for themselves (MHD 55. 17–56. 5, 56. 8–12). It was also common practice to conclude a contract between the debtor and the guarantor, but the consent of the debtor was needed for the person of the guarantor. Persian lawyers took this point seriously because, should a creditor conclude a contract with a guarantor without the consent of the debtor, such a guarantor was not entitled to request the debt from the debtor if the guarantor delivered first (MHD 56. 5–8).

Insolvency of debtors was seemingly a great obstacle in both legal and economic life. As demonstrated above, debtors used various techniques to get rid of the debt and their creditors. Sasanian lawyers made every effort in order to protect creditors from such malpractices. The donation of wealth to wives, minors, or relatives was one such technique, but Sasanian lawyers have found a way to close the door. But the problem of how to define insolvency remained unresolved. At this point, Sasanian legal scholars went radical when claiming that "nobody could be regarded insolvent in his lifetime," (MHDA 13.17, 32.3), a doctrine established by *kardag*, that is, the practice of the courts (Macuch 1981, p. 146). It is important to note that this understanding is that of the legal practice of the courts and not that of the canonical law referred to as *chāshtag*. To stop fraudulent debtors, such a legal device seemed logical. On the other hand, there was nothing really new in it since debt slavery was a practice going back to millennia, and it is exactly what the doctrine reflects: If someone was completely insolvent in terms of his wealth, he still possessed a valuable thing: His own person who could work in order to pay back his debt in this way (MHDA 32.3; Macuch 1981, pp. 225–27). Such an interpretation of the doctrine of the *kardag* makes perfect sense in late Sasanian times, when debt slavery was an established legal institution.

But there are some problems with that. First, as usual, there is a somewhat contradictory opinion, too, which narrows the spectrum of the *kardag* doctrine when claiming that nobody could be regarded as insolvent in his lifetime "except when the contrary is obvious (evident)," (MHD 58. 16–59. 2) a formula that makes some room for fraudulent debtors. We do not know whether this was a parallel (perhaps, minority) doctrine or, what seems to me more plausible, the old understanding that was overruled by *kardag* in order to protect debtors. The majority view not only protected debtors but also guarantors, whose liability was thus reduced considerably since a debtor in debt slavery was obliged to work for his debt. But Sasanian law also protected debtors against malpractices by fraudulent creditors,

and this is why debt slavery was reduced to a period of one year (MHD 57. 16–58. 4, 89. 1–3). As a result, guarantors were only freed from obligation if debtors were able to reduce their debt to nil within one year. Should the creditor die during this period, his heirs had to free the debt slave, irrespective of the amount of his delivery paid in human work (MHD 58. 14–16). Concerning persons without full legal capacity, such as women, minors, and slaves, the presumption was just the opposite: they were regarded as insolvent, but the contrary was well known (evident) (MHD 58. 16–59. 2).

The term in the Middle Persian text (*paydag*), which I translate here as obvious or evident, is a somewhat elastic term that resists a precise definition and creates some ambiguity.[16] On the other hand, it reflects small, rural communities where people know each other very well and know who is a well-to-do person and who is not. Unfortunately, we do not know how these well-known facts were proven in courts, but we can suppose that the local judge was well informed, too.

Concerning the liability of guarantors, it seems from one judgment that they were exempt if vis maior made their task impossible (MHD 58. 4–9). Here is the relevant text: *Pad abespārdan . . .atuvānīg ud pad ān atuvānīgīh avināh:* "in delivering (handing over). . .(of the debtor to the creditor) unable and in this unableness without sin (responsibility)." If a guarantor paid the debt instead of the debtor to the creditor, it was the guarantor who was entitled now to claim the debt from the debtor, save it was stipulated otherwise in the contract, or declined this right of his (MHD 102. 13–14), or the debtor did not consent to the person of the guarantor (MHD 56. 5–8). The guarantor enjoyed all the rights the former creditor had at his disposal in order to enforce delivery, including debt slavery (MHD 58. 11–14).

In addition to surety, pledges were the other means to secure obligations. Pledges were of two kinds, depending on the object of the pledge itself. If the pledge was the very object, this was called *āgrav,* while if the pledge was only the fruit of the object, such a construction was called *gravgān*. These were seemingly technical terms in legal Middle Persian, and Sasanian lawyers took them seriously because if the pledge was a *gravgān,* it was prohibited to also stipulate interest in the original loan contract. What type of pledge the parties wanted to stipulate in their contract became obvious from the wording in the very first sentences because to give a pledge was expressed either by *āgrav kardan* or *gravgān kardan* (MHD 40. 3; Macuch 1993, p. 287).

Here, too, legal formulas were of utmost importance in the case of non-delivery in due time. Depending on the formula used in the contract, creditors could choose whether they wanted the loan to be repaid or whether they preferred ownership of the pledge. This was of crucial importance since the market value of a pledge could be higher than that of the loan itself, thus enriching debtors considerably (MHD 68. 2–6). The parties could agree to rule out such a right of the creditor but could also stipulate otherwise, that is, to empower the creditor to acquire ownership of the object of the pledge in case of non-delivery by the debtor (MHD 38. 13–17).

In order to defend the rights and interests of the debtor, the custom was established to only choose objects as a pledge after the deadline for delivery was over and the debtor did not deliver. In such a case, only objects whose value was in accordance with the loan could be sorted out for pledge (MHD 67. 3–13). If the object was selected previously and its market value increased in the meantime, the increase had to be given to the debtor to prevent creditors from acquiring enrichment; e.g., the fruits of the object had to be handed over to the debtor. This understanding of contractual law is not only to be found in a particular judgment (MHD 54. 5–10) but was formulated as a principle, too, by Siyāvakhsh, a leading authority cited in the MHD + A (MHD 54.15).

As a rule, a pledge was stipulated in the contracts of the parties, but in particular circumstances, a creditor was automatically given a pledge. For example, in the case of a joint ownership of a real estate, if only one of the owners paid all the costs of necessary works of repair, the share of the co-owners was given as a pledge to such an owner without stipulating this in a contract about joint ownership (MHD 86. 8–15). Another example of

an extra-contractual pledge is the law that, when a debtor died, a pledge must be specified from his bequest in the interest of the creditor, even against his own wishes, with the help of a court judgment (MHD 99. 15–17). Fire temples, important for Zoroastrian ritual, were privileged, however, because in the event of the death of the debtor, fire temples as creditors gained the entire bequest as a pledge, irrespective of the difference in market value (MHD 50. 3–4). This was the only instance when Sasanian lawyers abandoned their legal and ethical standard to bring justice to both parties of the contract, a reflection of the growing legal, political, and economic influence of the Zoroastrian clergy.

The object of the pledge had to be given back when the debtor delivered in due time[17] or the creditor declined his right to the pledge irrespective of the delivery of the debtor, certainly not a routine case (MHD 89. 8–10, 99. 13–15). There was also a particular way to cessate the right of pledge, according to which the delivery of the loan and the cessation of the pledge went hand in hand: Both obligations were reduced at the same rate. For example, if half of the loan was paid back, half of the pledge was also given back (MHD 85. 2–4, 104. 1–4). If the creditor died, the pledge was inherited by his heirs if not stipulated otherwise in the testament (MHD 34. 15–35. 3; Macuch 1993, p. 263).

Particular laws were adopted to *gravgānīh* pledge when only the fruits of an object were given as a security. A *gravgān* pledge could be anything that bears fruit; in the majority of cases, it was real estate or a tree (palm tree) (MHD 40. 13–17). A slave as a particularly precious object could also be given as a pledge or, properly speaking, the workforce of a slave, this being regarded as its fruit (MHD 39. 2–5, 5–9). If there was no fruit for any reason, the period of possession of the pledge was enlarged by three successive years (MHD 39. 9–12). The fruit enriched only the creditor; this is why the creditor was not entitled to ask for an interest, too (MHD 40. 1–4).

The possessor of the object of the pledge was protected in his right of possession even against the owner of the thing. If the owner, that is, the debtor, took away the object of the pledge unlawfully, that is, without paying his debt back, it was seen as theft (*bē duzēd*: stole), and the object of the pledge was given to the priestly judge called *rad* until the original debt was paid back (MHD 38. 9–11). With this, Sasanian law provided institutional protection for possession and backing for creditors against fraudulent debtors who did not shy away from unlawful unilateral actions.

Creditors were given the right to use the pledge given to them as a pledge for their own debt if the original debtor did not deliver in due time. In such a case, the debtor had to deliver to the new creditor but not to the original one. Such a transfer of a pledge was null and void, however, if it was conducted without the consent of the original debtor (MHD 39. 12–17). Should the creditors disregard the will of the debtor to the contrary, both creditors lost their rights to claim the debt (MHD 104. 4–5). Creditors were entitled to transfer the right/object of the pledge only in part, in the ratio of their debt to their own creditors. In such a case, the original debtor had to pay his debt to the creditors according to this ratio (MHD 37. 11–13). Though these laws seem to be very technical, at the same time they reflect the fact that some kind of "stock or investment market" was about to develop where monetary claims were sold, this being supplementary to the monetary economy.[18]

The possessor of the pledge had to handle it with care and pay for the taxes related to it, at least, according to one judgment (MHD 40. 5–13). If the possessor was careless and damage was done to the object of the pledge, it was given to the *rad* (MHD 89. 3–5). This was a wise law since the object was removed from the careless possessor and given to authorities, which had to guarantee the conservation of the thing. At the same time, it was also a sanction for the careless possessor, who lost his right to the fruits of the object.

4. Conclusions

It was a long journey for contractual law to arrive at the imperial standard of Sasanian Persia from the pastoralist time of the Avestan people. The relation to their archaic legal heritage was ambivalent: On the one hand, they abandoned the Avestan typology of contracts completely, together with the lifestyle attached to it. On the other hand, however,

Sasanian lawyers relied heavily on the wisdom of their ancestors when they continued to use legal formulas in their everyday legal lives and private law contracts.

Though agriculture remained the economic background to Sasanian society and law, the monetary economy made its entrance into their economics and so into their laws. As a result, Sasanian private law took up the challenge to be in harmony with contemporary social reality and developed legal institutions accordingly. What is more, Sasanian lawyers also realised the gaps in the system and, with this, the possibility to abuse the law by fraudulent persons. To stop malpractice, Sasanian lawyers made attempts to hinder lawful means to achieve unlawful ends. To do this, they had a clear religious standard and moral guideline at their disposal—the archaic yet clear ethics of Zoroastrianism—to tell the truth and pay the debts back.

Funding: This research received no external funding.

Institutional Review Board Statement: Not applicable.

Informed Consent Statement: Not applicable.

Data Availability Statement: No new data were created or analyzed in this study. Data sharing is not applicable to this article.

Conflicts of Interest: The author declares no conflict of interest.

Notes

1 A valuable exception is the paper of Perikhanian (1983, pp. 627–80.) which has some pages about the law of contracts.

2 Concerning Sasanian history see Wiesehöfer (2001); Daryaee (2013).

3 dīn wa molk har do be-yek shekam zādand dūside, hargez az yekdigar jodā neshawand: Iqbal (1942, p. 17); for the English translation see Boyce (1968, pp. 33–34).

4 Macuch (1981); Macuch (1993). The first part of the text is conventionally referred to as MHD, the second part as MHDA while the whole text as MHD + A. For an English version (without a commentary) see: Perikhanian and Garsoian (1997).

5 Boyce (1975a, pp. 24–31). For more on the subject see Boyce (1969, pp. 10–34); Boyce (1975b, pp. 70–76); Gershevitch (1959, pp. 3–61); Schmidt (2006).

6 Boyce (1975a, pp. 29–35); concerning sugand khordan see also Schwartz (1989, pp. 293–95).

7 Shaked (1979, pp. 21, 47); Counsels of Adarbad i Mahraspandan No.75 in: Zaehner (1956, p. 101); the text is available also online at avesta.org

8 Nefisi (1923, pp. 19–27); for a German translation see: Najmabadi and Knauth (1988, pp. 79, 81).

9 One can interpret contracts of mouth and hand as expressions reflecting the mode they came into being, that is, concluded by word or handshake. Since, however, these contracts have also material value, it is clear that mouth and hand does not reflect to the method they were concluded but to a particular service to which a party was obliged to fulfill, see also Darmesteter (1895, pp. 154–56).

10 Vendidad: Fragard IV: 4–16.

11 Hanns-Peter Schmidt understands mithra as alliance here: see Schmidt (2006).

12 Gershevitch (1959, sect. 29, pp. 116–17); it is more than religious propaganda to ensure the greatest number of mithras to the Zoroastrian religion since a break of such a social cohesion amounts to *tanāpuhl* crime which became *margarzān* after one year, a crime sanctioned by capital punishment.

13 For Sasanian economic development see Altheim and Stiehl (1954, pp. 1–128).

14 MHD 66. 3–5: "ān i tō sahēd", "ān i tō kāmēd", "ān i tō pasande", "ān i tō abāyēd".

15 Macuch (1993, pp. 401–3) with references to works on Indian and Babylonian laws.

16 MacKenzie's Pahlavi Dictionary has visible, obvious, revealed for *paydag*.

17 MHD 89. 6–7. This principle was also expressed by the legal scholar *Siyāvakhsh*.

18 A very remarkable parallel is to be found in the old Assyrian city state where debt documents were used as a particular kind of payment 1300 years before monetary economy was introduced. See Korosec (1964, pp. 148–49).

References

Altheim, Franz, and Ruth Stiehl. 1954. *Ein asiatischer Staat. Feudalismus unter den Sasaniden und ihren Nachbarn*. Wiesbaden: Limes Verlag.

Bartholomae, Christian. 1910. *Über ein sasanidisches Rechtsbuch*. Heidelberg: Carl Winter's Universitätsbuchhandlung.

Bartholomae, Christian. 1918–1923. *Zum sasanidischen Recht I–V*. Heidelberg: Carl Winter's Universitätsbuchhandlung.

Bartholomae, Christian. 1924. *Die Frau im sasanidischen Recht*. Heidelberg: Carl Winter's Universitätsbuchhandlung.

Boyce, Mary. 1968. *The Letter of Tansar*. Rome: Istituto Italiano per il Medio ed Estremo Oriente.

Boyce, Mary. 1969. On Mithra's Part in Zoroastrianism. *Bulletin of the School of Oriental and African Studies* 32: 10–34. [CrossRef]

Boyce, Mary. 1975a. *History of Zoroastrianism*. Leiden: Brill, vol. I.

Boyce, Mary. 1975b. On Mithra, Lord of Fire. In *Acta Iranica (Monumentum Nyberg I.)*. Tehran and Liége: Peeters Publishers.

Carlsen, Bodil Hjerrild. 1984. The Cakar Marriage Contract and the Cakar Children's Status in the Mātiyān I Hazār Dātistān and Rivāyat I Ēmēt I Ašavahištān. In *Middle Irianian Studies*. Leuven: Peeters Publishers.

Carlsen, Bodil Hjerrild. 1988. Zoroastrian divorce. In *Acta Iranica XII, Papers in Honour of Jes P. Asmussen*. Leiden: E. J. Brill.

Darmesteter, James. 1895. *The Zend-Avesta, Part I, The Vendîdâd*. Oxford: Cosimo Classics.

Daryaee, Touraj. 2013. *Sasanian Persia: The Rise and Fall of an Empire*. New York: I. B. Tauris.

Gershevitch, Ilya. 1959. *The Avestan Hymn to Mithra*. Cambridge: Cambridge University Press.

Iqbal, Abbas. 1942. *Tarikh-e Tabaristan*. Tehran: Chāpkhānah-i Firdawsī.

Korosec, Viktor. 1964. Keilschriftrecht. In *Orientalisches Recht*. Handbuch der Orientalistik. Leiden: Brill.

Lambton, Ann Katherine Swynford. 1953. *Landlord and Peasant in Persia. A Study of Land Tenure and Land Revenue Administration*. Oxford: Oxford University Press.

MacKenzie, D. N. 1969. The Model Marriage Contract in Pahlavi. In *K. R. Cama Oriental Institute Golden Jubilee Volume*. Bombay: K. R. Cama Oriental Institute.

Macuch, Maria. 1981. *Das sasanidische Rechtsbuch "Mātakdān i Hazār Dātistān" (Teil II)*. Wiesbaden: Harrassowitz.

Macuch, Maria. 1985. Die Zeitehe im sasanidischen Recht- ein Vorlaufer der shi'itischen Mut'a Ehe in in Iran? *Archeologische Mitteilungen aus Iran* 18: 187–203.

Macuch, Maria. 1991. Inzest im vorislamischen Iran. *Archeologische Mitteilungen aus Iran* 24: 141–54.

Macuch, Maria. 1993. *Rechtskasuistik und Gerichtspraxis zu Beginn des siebenten Jahrhunderts in Iran. Die Rechtssammlung des Farrohmard i Wahraman*. Harrassowitz: Wiesbaden.

Mazdapur, Katayun. 1990. *Shayast-ne shayast*. Tehran: Cultural Studies and Research Institute.

Meillet, Antoine. 1907. Le dieu indo-iranien Mitra. *Journal Asiatique* 10: 143–59.

Najmabadi, Seifeddin, and Wolfgang Knauth. 1988. *Das Qābusnāme. Ein Denkmal persischer Lebensweishet*. Wiesbaden: Ludwig Reichert Verlag.

Nefisi, Sa'id. 1923. *Kay Qābus: Qābusnāme*. Tehran: Daneshkade.

Perikhanian, Anahit. 1983. Iranian Society and Law. In *The Cambridge History of Iran*. Cambridge: Cambridge University Press, vol. 3, pp. 627–80.

Perikhanian, Anahit, and Nina Garsoian. 1997. *The Book of a Thousand Judgments (A Sasanian Law Book)*. Costa Mesa: Mazda Publishers.

Schmidt, Hanns-Peter. 2006. *"Mithra" in: Encyclopaedia Iranica*. Leiden: E. J. Brill.

Schwartz, Martin. 1989. Pers. saugand xurdan, etc. 'To take an oath' (not *'to drink sulphur'). In *Études Irano-Aryennes offertes à Gilbertt Lazard*. Edited by C. de Fouchécour and Gignoux. Paris: Association pour l'avancement des études irannienes.

Shaked, Shaul. 1979. *The Wisdom of the Sasanian Sages (Denkard VI). An Edition with Translation and Notes*. Boulder: Westview Press.

Tavadia, Jahangir. 1930. *Sayast ne sayast*. Hamburg: CreateSpace Independent Publishing Platform.

Wiesehöfer, Josef. 2001. *Ancient Persia*. New York: I. B. Tauris.

Zaehner, Robert Charles. 1956. *The Teachings of the Magi*. London: Oxford University Press.

Disclaimer/Publisher's Note: The statements, opinions and data contained in all publications are solely those of the individual author(s) and contributor(s) and not of MDPI and/or the editor(s). MDPI and/or the editor(s) disclaim responsibility for any injury to people or property resulting from any ideas, methods, instructions or products referred to in the content.