<u>Against Lacritus in the Context of Contract Theory</u>

The fourth-century bc Athenian dispute preserved in *Demosthenes* 35 (*Dem 35.)*, *Against Lacritus*, offers one of the richest windows into ancient commercial practice and contract design. In the speech, the Athenian lender Androcles of Sphettus prosecutes Lacritus of Phaselis, an Isocratean rhetorician and brother of the now-deceased merchant Artemon, for failing to honor a maritime loan contracted jointly with another brother, Apollodorus. According to the agreement, Androcles and his Carystian partner Nausicrates advanced 3,000 drachmas for a round-trip voyage from Athens to Mende/Scione and then to the Bosporus, the borrowers pledging “3,000 Mendaean jars of wine” as collateral and promising to bring all proceeds from the Black Sea “back to Athens.”[1] Yet upon returning, the Phaselites neither repaid the loan nor imported any return cargo; instead, they anchored in Thieves’ Cove “outside the boundary signs of your port,” evaded customs supervision, and claimed, falsely, according to Androcles, that the goods had been lost in a shipwreck.

This case, while arising from a concrete contractual dispute, raises questions that resonate strongly with modern economic theory. Scholars such as Douglass North, Oliver Williamson, and Oliver Hart, have analyzed how institutions, transaction-cost minimizing arrangements, and incomplete contracts structure economic behavior. The Athenian maritime contract in *Dem. 35* aligns closely with these theoretical frameworks. Its detailed clauses restricting the ship, route, security, interest rate, and contingencies reflect an effort to control risk in a world of high uncertainty and limited observability. Yet the borrowers’ behavior: under-collateralizing the voyage, double-pledging the same goods, diverting proceeds to unauthorized loans, and exploiting geographic loopholes, illustrates precisely the forms of opportunism, moral hazard, and contractual incompleteness that North, Williamson, and Hart predict. This essay argues that the structure and the failure of this Athenian maritime loan closely mirror the dynamics of modern contractual economics: the contract is rational, sophisticated, and well-designed for its environment, but its limits (mostly due to the limits of law and information in the ancient mediterranean) create predictable avenues for strategic abuse.

The speech *Against Lacritus* opens by framing the dispute as an instance of a broader pattern of abusive borrowing. Androcles tells the jury that “it’s nothing new that the Phaselites are doing … it’s what they usually do,” and that “they are the most terrible men for borrowing money in the port, and then, after they get it and draw up a maritime agreement, they immediately forget about written

1 Gagarin 2011, 376

agreements and laws."[2] This reveals how reputation and stereotypes functioned as informal institutions in Athenian commerce. Douglass C. North, wrote in his 1990 book *Institutions, Institutional Change and Economic Performance* that "institutions … are the constraints devised to structure human interaction."[3] Androcles is inviting the jury to treat "the Phaselites" themselves as a constraint: their alleged record of lawsuits and defaults is supposed to shape expectations.

Still, the loan that lies at the heart of *Dem. 35* is not formed on pure prejudice; instead, the speech shows how social networks and third-party endorsements underpin contract formation. Androcles insists that he "had no knowledge at all of these men," and that the deal arose only because Thrasymedes and Melanopus, his respectable friends from Sphettus, "came to me with this man Lacritus and asked me to lend money" to Artemon and Apollodorus "for a voyage to the Pontus, to set them up in business."[4] The text emphasizes that Thrasymedes "thought they were respectable people" and that he believed they would carry out "all that this man Lacritus promised and undertook that they would."[5] Economically, the story describes a classic response to asymmetric information: when a lender cannot observe the quality of potential borrowers, he relies on intermediaries who stake their own reputations on the deal. Oliver E. Williamson, argued in *The Economic Institutions of Capitalism* (1985) that economic organization is shaped by attempts to economize on transaction costs (creating, monitoring, enforcing contracts) especially those arising from opportunism and information problems.[6] In *Dem. 35*, the "promises" and personal standing of Lacritus and Thrasymedes serve as low-cost devices to screen borrowers and reassure lenders that the risks of default or fraud can be contained.

The written contract that the speaker has read out in court (quoted in §§10–13) bears out Williamson's intuition that parties design governance structures to control transaction hazards. The agreement records that Androcles and Nausicrates "lent to Artemon and Apollodorus of Phaselis 3,000 drachmas of silver for a voyage from Athens to Mende or Scione, and from there to Bosporus … and back to Athens, at 225 a thousand—and if they sail after Arcturus … at 300 a thousand—on security of 3,000 Mendaean jars of wine."[7] Where "Arturus … marked the end of the usual sailing season. After that, the weather deteriorated, and the voyage would be more risky (hence, the higher interst rate)."[8]

2 Gagarin 2011. 372
3 North 1990, 1
4 Gagarin 2011, 373
5 Ibid.
6 Williamson 1985, xi. – xiv.
7 Gagarin 2011, 373-374
8 Ibid.

The contract ties the interest rate directly to the seasonal risk of sailing after Arcturus and restricts the route to a grain-supplying region. By naming the specific ship, “the twenty-oared ship skippered by Hyblesius”,[9] the parties further limit the space for hidden actions: it matters which captain and which hull bear the risk. Oliver Hart, wrote in *Firms, Contracts, and Financial Structure* (1995) that institutions arise in situations where people “write incomplete contracts and where the allocation of power or control is therefore important.”[10] The Athenian maritime loan here is precisely such a contract: it cannot foresee all future states of the world, but it tries to allocate control (over the ship, the wine, the route, the timing) as tightly as feasibly possible.

The clauses that follow show how the contract allocates risk between lenders and borrowers. The borrowers “pledge these [3,000 jars] free from encumbrance and owing nothing to anyone, and that they will not obtain any further loan from anyone on this security,”[11] and they promise that they “will convey back to Athens in the same boat all the goods from the Pontus purchased with proceeds from the outward cargo.”[12] The contract then stipulates that if the goods “reach Athens safely,” the borrowers will pay within twenty days “apart from any jettison which the fellow-voyagers vote to make jointly and any enemy exaction from them, but otherwise in full,” and that they will “place the security intact under the control of the lenders until they pay.”[13] These provisions mirror practices known from other maritime contexts, such as the York-Antwerp rules, which aim to ensure that all parties share losses that ensure the safety of the voyage.[14] Spreading part of the loss among fellow traders, while the requirement that all goods purchased with the proceeds of the outward cargo return to Athens gives credit a clear asset base. In Hart’s language, the lenders acquire residual control rights over the pledged goods until repayment; they cannot control every decision the borrowers take abroad, but they are supposed to have first claim on whatever comes back.[15]

Still, the contract is also explicit about what happens if things go wrong. If the borrowers do not pay within the agreed time, “the lenders shall be permitted to pledge the pledged goods and to sell them at the prevailing price,” and if the proceeds are insufficient, the lenders may exact the shortfall “from Artemon and Apollodorus and from all their property, both on land and at sea, wherever it may be, in

9 Ibid.
10 Hart 1995, 1.
11 Gagarin 2011, 377.
12 Gagarin 2011, 374.
13 Ibid.
14 Hudson & Harvey 2017, 91.
15 Hart 1995, 9.

the same way as if judgment had been given against them."[16] If they fail even to enter the Pontus, after waiting a defined number of days in the Hellespont, they must "unload in any place where Athenians are not liable to seizure of goods," and pay interest as previously agreed.[17] Implying that "in some cities, unfriendly to Athens, individual who had suffered loss or damage by Athenian action could seize in compensation any Athenian goods which were landed there."[18] These clauses attempt to replicate court judgment in the contract itself: as if anticipating enforcement costs, the parties write a transfer of control and a right to seize assets "wherever it may be" straight into the agreement. Furthermore, they imply the party should unload in a friendly port, raising the chance of possible seizure, and constraining opportunism, altogether lowering transaction costs. Williamson emphasizes that parties often use such private ordering to supplement or substitute for public courts when transactions cross jurisdictions and face high enforcement costs.[19]In *Dem. 35*, the written agreement is supposed to be an institution that limits the enforcement costs:"on these matters nothing else is to prevail over the written agreement."[20]

The narrative of breach demonstrates how fragile these safeguards are when contracts are incomplete and monitoring is imperfect. Androcles recalls that the agreement specified that "they borrowed the 30 minas from us on security of 3,000 jars of wine," but in reality "instead of the 3,000 jars, they didn't put even 500 jars on board the boat."[21] Testimony from the helmsman and ship's commander confirms that Apollodorus carried only "450 jars of Mendaean wine and no more … and no other cargo" to the Pontus.[22] This is an example of the asset substitution problem: borrowers promise to maintain a certain level of collateral, but once the funds are lent, they secretly reduce the assets backing the loan, raising the creditors' risk without compensation. The contract tries to forbid such behavior, but it cannot police how many jars are actually loaded at Mende; there is a gap between the paper security and the physical reality. Hart and John Moore would later argue that the essence of incomplete contracts is precisely that not all actions are verifiable or contractible, so control rights over assets must substitute for detailed contingent clauses.[23] Androcles' speech shows what happens when even that allocation of control is undermined: the ship is underloaded, and the lenders only discover this long after the fact.

16 Gagarin 2011, 374
17 Gagarin 2011, 375
18 Ibid.
19 Williamson 1985, xii.
20 Gagarin 2011, 375.
21 Gagarin 2011, 376.
22 Gagarin 2011, 377.
23 Hart & Moore 1998, Abstract.

A second, equally revealing violation is the double-pledging of collateral. The contract had clearly stipulated that the borrowers “will not obtain any further loan on [this] security,” and that they owe nothing to anyone else on it.[24] Yet, as Androcles recounts, “they ignored what is written in the agreement and borrowed money from a certain young man; they lied to him that they owed nothing to anyone.”[25] Aratus of Halicarnassus testifies that he lent Apollodorus eleven minas “on the security of the merchandise which he was conveying … and of the goods purchased there with the proceeds,”[26] unaware of the prior loan. Here again, the problem is that the contract cannot create a centralized registry of claims; there is no institutional mechanism to prevent borrowers from using the same physical goods as collateral multiple times in different places. In Williamson’s terms, the trading environment invites opportunism -“self-interest seeking with guile”[27] -because verification is costly and dispersed, so parties can exploit informational asymmetries between different lenders. The only remedy available to Androcles is ex post litigation and the mobilization of witnesses from multiple cities.

The largest economic stakes concern the failure to buy and import a return cargo to Athens. The written agreement mandated that, after selling in the Pontus, the borrowers “use the proceeds to make further purchases as a return cargo and convey the return cargo to Athens,” and that “until they pay, we are to have control of the goods.”[28] Instead, Androcles complains, “they neither made any purchases with the proceeds in the Pontus nor loaded a return cargo to take to Athens; and because they arrived from the Pontus without it, we, the lenders of the money, had nothing to lay our hands on and take under our control … they didn’t import anything at all into your harbor.”[29] The economic logic of the maritime loan depends on that physical return cargo: the wine export finances grain or other imports; the goods serve as both the productive purpose of the voyage and the security for the loan. By refusing to convert proceeds into cargo and by staying outside the Piraeus, the borrowers deprive the lenders of any tangible asset base and turn what was meant to be a secured claim into a pure IOU. Contract theory would describe this as a hidden action that is not fully contractible: the lender cannot observe or verify every trading decision in the Pontus, so the borrower chooses a privately optimal but socially and contractually harmful course of action, akin to moral hazard in insurance contracts.

24 Gagarin 2011, 374.
25 Gagarin 2011, 377.
26 Gagarin 2011, 378.
27 Williamson 1985, 30.
28 Gagarin 2011, 378.
29 Ibid.

The spatial maneuver of anchoring at “Thieves’ Cove” underscores how the geography of institutions matters. Androcles describes how, when the ship reached Attica, “they didn’t put in to your port but anchored in Thieves’ Cove, which is outside the boundary signs of your port,” explaining that this harbor is “like anchoring at Aegina or Megara; you can sail off from that harbor wherever you wish and whenever you like.”[30] He and his associates watched “to see if they were unloading anything from a boat anywhere or paying the two-percent tax,” but nothing appeared under the borrowers’ names.[31] In North’s terms, the formal rules of the Athenian emporion (port boundaries, customs duties, legal jurisdiction) constitute part of the institutional environment that lowers uncertainty and allows contracts to be enforced. But those rules operate only within a defined physical space. By docking just outside that space, the borrowers increase the cost of enforcement “without institutional constraints, self-interested behavior will foreclose complex exchange.”[32]

The contested shipwreck around Panticapaeum and Theodosia shows how contractual provisions designed to handle risk can themselves be abused. Androcles reports that Lacritus claimed the boat was wrecked along the coast and that the cargo of “salt fish, Coan wine, and some other things” was lost, and that “all these were the return cargo which they intended to convey to Athens, if they hadn’t been lost in the boat.”[33] The written agreement, in line with other maritime loans, had presumably exempted borrowers from repayment if the ship and goods were genuinely lost at sea. Yet Apollonides and others testify that another lender, Antipater, “lent money to Hyblesius for a voyage to the Pontus on the security of the ship and the freight,” and that when the ship was damaged, it was effectively “empty,” with only “about eighty Coan jars of wine” belonging to a man from Theodosia and some modest items.[34] The core cargo that should have secured Androcles’ loan was no longer there. Here we see the moral-hazard problem that Oliver Hart later analyzed as central to debt contracts: once there is an event (like shipwreck) that excuses non-payment, borrowers have both an incentive to misrepresent events and an incentive to take unobservable risks that increase the likelihood of those events.[35] The Athenians’ response, visible in *Dem. 35*, is to lean heavily on witnesses and on the detailed wording of the contract to distinguish genuine misfortune from opportunistic storytelling.

30 Gagarin 2011, 379.
31 Ibid.
32 North 1990, 33.
33 Gagarin 2011, 380.
34 Ibid.
35 Hart & Moore 1998, Abstract.

Lacritus' most brazen move, however, is presented in explicitly contractual terms. When pressed about whether anything was saved in the Pontus, he admits that "100 Cyzicene staters were saved" and that his brother "had lent that gold in the Pontus to a Phaselite skipper, a fellow-citizen and friend of his own," but that he was "unable to recover it."[36] Androcles immediately contrasts this with the written terms: "it's not what the written agreement says … it instructs these men to purchase a return cargo and bring it back to Athens, not to lend our property in the Pontus to anyone they like without our consent but to produce it intact for us."[37] This is an almost perfect illustration of Hart's notion of residual control. The lenders understood themselves to have control over how the loan proceeds were used; the contract attempted to restrict use to trading voyages that ended in Athens. In fact, once the money is in the borrowers' hands in the distant Pontus, they exercise de facto control and redeploy the gold into a new, unauthorized loan. The incomplete contract cannot enumerate and forbid every possible misuse of funds, especially those involving unknown third parties in another city, so ex post litigation becomes the only way to reassert control.

Finally, the speech makes the political economy of this commercial world explicit when Androcles invokes Athenian grain legislation. He reminds the jury that "the law is … severe on any Athenian who imports grain to any place other than Athens or lends money for trade to any port other than the Athenian port," and the law is read: no Athenian or resident foreigner may "advance money for any ship which is not going to bring grain to Athens," and anyone who does "may not raise an action to recover any money" so advanced.[38] The state therefore uses legal sanctions not only to shape trade routes but also to direct private credit toward the city's food supply. North stresses that institutions structure incentives and that political bodies will design rules to align private behavior with public goals.[39] Yet in *Dem. 35* the defendants have, in Androcles' telling, "allowed what they borrowed from us in Athens to be taken to Chios," agreeing that their Athenian-financed cargo should become security for a Chian lender, and then sailing back to Attica to anchor once more at Thieves' Cove "without anchoring in your port."[40] The effect is not just to harm a creditor but to frustrate a state policy: money lent for a voyage to the Pontus and back to Athens has been "transported to Chios," and with it the grain or other goods that Athens sought to secure.

36 Gagarin 2011, 381.
37 Ibid.
38 Gagarin 2011, 384-385.
39 North 1990, 1.
40 Gagarin 2011, 385-386.

Overlaying the legal and institutional analysis is Androcles' preoccupation with jurisdiction and the proper forum for enforcing mercantile contracts. He mocks Lacritus' attempt to use a *paragraphē* – a legal objection plea[41] – to shut down the case,[42] only to conclude: "I am a merchant, and you are the brother and heir of one of the merchants who received the mercantile loan from us. Where, then, ought this case to come into court?"[43] The answer, implicitly, is the special mercantile court sitting under the Thesmothetae in the winter. This institutional specialization fits Williamson's argument that governance structures evolve to handle particular transaction types: high-value, long-distance, risky trade with foreign merchants gets its own legal forum where cases can be tried swiftly in the off-season.[44] The state is not a distant backdrop; it is an integral part of the contract environment, setting both the macro-rules (grain laws) and the micro-infrastructure (mercantile courts) that shape how private maritime loans are written and enforced.

The dispute between Androcles and Lacritus over the maritime loan to Artemon and Apollodorus ultimately shows an ancient contractual world that behaves very much like the modern one. The written syngraphē (contract), which meticulously specifying the route to the Bosporus, the seasonal interest rate, the 3,000-jar wine collateral, the requirement that all Black Sea proceeds be "conveyed back to Athens," and the lenders' right to seize goods "wherever they may be" if repayment fails,[45] embodies exactly the kinds of institutional solutions modern economists would expect in a high-risk, high-transaction-cost environment. As North would predict, the contract attempts to reduce uncertainty by imposing formal constraints on behavior; as Williamson would stress, it economizes on bounded rationality and seeks to limit opportunism through private ordering; and as Hart would note, it relies on allocating control rights as a substitute for foreseeing every future state of the world.

Yet the same theoretical lenses also illuminate why the contract ultimately collapses. The borrowers exploit precisely those spaces the contract cannot fully govern: they load only "450 jars" instead of 3,000; they secretly borrow again using the same goods as collateral; they forego purchasing a return cargo; they claim a shipwreck where witnesses insist the ship was "empty"; and they anchor at Thieves' Cove to evade the jurisdictional reach of Athenian port law. These actions exemplify the predictable consequences of incomplete contracts and hard to enforce contracts. Seen in this light, the

41 Macdowell 2017.
42 Gagarin 2011, 370
43 Gagarin 2011, 384
44 Williamson 1985, 3.
45 Gagarin 2011, 374

failures in *Dem. 35* are not signs of an unsophisticated economy, but signs of a sophisticated one operating at the edge of its institutional capacity.

The speech's dramatic rhetoric, with its condemnation of "rascally sophists" should not distract from the deeper pattern: the Athenians crafted advanced contractual forms to mitigate risk and protect commerce, but the inherent incompleteness of long-distance, multi-polis transactions created predictable opportunities for strategic abuse. The interplay between contract design and opportunism in this case parallels the very dynamics that animate modern economic theory. Far from being archaic the Athenian maritime contract in *Against Lacritus* reveals a commercial world governed by principles that remain fundamental in economics today.

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